IN THE SUPREME COURT OF THE STATE OF MONTANA
No. _____

MONTANANS FOR FAIR AND IMPARTIAL JUDGES and MONTANANS FOR NONPARTISAN COURTS,

Petitioners,

v.

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

Respondent.

PETITION FOR DECLARATORY RELIEF ON ORIGINAL JURISDICTION

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RELIEF REQUESTED

Montanans for Fair and Impartial Judges ("MFIJ") and Montanans for Nonpartisan Courts ("MNC") seek this Court's declaration that the Attorney General's rewritten ballot statement is invalid and in violation of §§ 13-27-226 and -212, MCA, for two reasons: (1) the Attorney General lacked authority to rewrite MFIJ's proposed statement because he failed to make a written determination that MFIJ's proposed ballot statement was not clear and impartial; and (2) the rewritten statement is misleading and prejudicial. Accordingly, MFIJ requests that the Court declare MFIJ's proposed statement statutorily and constitutionally compliant and certify the statement directly to the Secretary of State consistent with § 13-27-605(3)(c)(ii), MCA. Petitioners respectfully request expedited consideration under § 13-27-605(3)(c), MCA.

FACTS

1. MFIJ's initiative text and proposed ballot statement are appended as Exhibit 1. The Attorney General's legal sufficiency determination, including the rewritten ballot statement, is appended as Exhibit 2. MFIJ certifies that there are no issues of fact; only issues of law regarding the statutory components of the Attorney General's review and the legal sufficiency of the original and rewritten statements.

2. MFIJ is registered with the Montana Commissioner of Political Practices as a ballot issue committee in support of CI-131.

3. MNC is registered with the Montana Commissioner of Political Practices as a ballot issue committee in support of Ballot Issues 5 and 6, that, like the initiative here, would constitutionalize Montana's current system of nonpartisan judicial elections. MNC's own ballot issues are currently in the Attorney General's review process and, thus, MNC has a statutorily-protected interest in ensuring that the Attorney General does not freely rewrite its proposed ballot statements in the absence of a written determination that they "clearly" do not meet the statutory requirements for clarity and neutrality. MNC likewise has a constitutionally and statutorily protected interest in ensuring that any ballot statement rewrite proposed by the Attorney General is likewise clear and neutral. These interests are shared with MFIJ and concern identical questions of law. *See Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 45, 356 Mont. 41, 230 P.3d 808 (adopting the rule in *Clinton v. City of N.Y.*, 524 U.S. 417 (1998) that "the standing of any one of [the plaintiffs] would permit the suit to go forward"); *cf.* Mont. R. Civ. P. 24(b) (permitting participation in an action where a party has "a claim or defense that shares . . . a common question of law").

4. On July 29, 2025, Ted Dick submitted the proposed initiative and ballot statement to the Secretary of State.

5. On July 30, the Secretary of State forwarded the proposed initiative and ballot statement to the Legislative Services Division. The Legislative Services Division found the proposed statement to be in compliance with the requirements for their review. (Ex. 3).

6. The Attorney General issued his legal sufficiency determination on September 24, 2025. He concluded that the proposed initiative CI-131, also referred to as Proposed Ballot Measure No. 3, was legally sufficient, but nevertheless rewrote the proposed ballot statement in its entirety.

ANTICIPATED LEGAL ISSUES

This Petition raises the following legal issues:

- Whether the Attorney General lacked authority to rewrite the proposed ballot statement because he failed to make a written determination as to the proposed statement's clarity and impartiality.
- Whether the Attorney General's rewritten ballot statement is impartial, argumentative, prejudicial or misleading.

JURISDICTION

Proponents of a statewide ballot issue may file an original petition in the Supreme Court to challenge ballot statements approved by the Attorney General

that do not satisfy §§ 13-27-212 or -213, MCA. Section 13-27-605(1), MCA. Such a matter "takes precedence over other cases and matters in the [S]upreme [C]ourt" and must be decided "as soon as possible." Section 13-27-605(3)(c)(i), MCA. An original petition is the exclusive remedy for a challenge to ballot statements approved by the Attorney General. Section 13-27-605(5), MCA.

PURPOSE OF CI-131

The purpose of CI-131 is to constitutionalize Montana's longstanding statutory requirement that Montana Supreme Court and district court judicial elections remain nonpartisan. CI-131 would amend Article VII, Section 8 of the Montana Constitution by adding three underlined words: "Supreme court justices and district court judges shall be elected <u>in nonpartisan elections</u> by the qualified electors as provided by law." MFIJ submitted the following Statement of Purpose and Implication (ballot statement) with its proposal:

> 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.

MFIJ's proposed ballot statement plainly states the initiative's purpose and its implication. It is a straightforward description of a straightforward policy. It presents the change that CI-131 would render in plain terms: laying out the status quo (electing justices and district court judges via nonpartisan election since 1935)

and exactly how CI-131 would change it (by adding this requirement to the Constitution). And it states the implication of constitutionalizing this rule: because this is a constitutional amendment, nonpartisan elections for the Montana Supreme Court and district courts may only be changed by another constitutional amendment approved by voters.

ARGUMENT

Montana's statutes governing the ballot statement approval process strike a balance between securing the public's right to make an informed vote and proponents' constitutional right to propose ballot issues on fair terms. Thus, the government may intervene to improve ballot statements for clarity and neutrality. But the statutes do not empower the government to leave its own editorial imprint on ballot statements on a whim, or to degrade their quality by *introducing* confusing and prejudicial language.

"It is elementary that voters may not be misled to the extent they do not know what they are voting for or against." *State ex rel. Mont. Citizens for the Preservation of Citizens' Rights v. Waltermire*, 227 Mont. 85, 90, 738 P.2d 1255, 1258 (1987) (citation omitted). In this case, the Attorney General's effort to rewrite MFIJ's ballot statement suffers two fatal flaws. First, the Attorney General failed to make a written determination that MFIJ's proposed statement did not "express[] the true and impartial explanation of the [initiative] in plain, easily

understood language," as required by § 13-27-212, MCA. Under the plain text of § 13-27-226, MCA—the statute authorizing and outlining the scope of the Attorney General's review—the Attorney General lacks authority to rewrite a ballot statement in the absence of such a determination. His bare, conclusory statement comes nowhere close.

Second, the Attorney General's proposed rewrite of the ballot statement is prejudicial and misleading in violation of § 13-27-212, MCA. For example, its second sentence suggests to voters that the initiative will prevent them from voting for "independent" judicial candidates who do not affiliate with a political party. That is exactly the opposite of what the initiative does. The Attorney General's rewritten ballot statement offends the law in both form and substance and should not supplant the clear, plain and accurate statement proposed by MFIJ.

I. The Attorney General failed to make a written determination that MFIJ's proposed ballot statement was not clear and impartial.

Under the plain text of § 13-27-226, MCA, the Attorney General had no statutory authority to rewrite MFIJ's proposed ballot statement without first making a written determination that MFIJ's statement did not comply with § 13-27-212, MCA. State law tasks the Attorney General to "review the ballot statements to determine whether they contain," as relevant here, "a statement of purpose that complies with [§] 13-27-212[, MCA]." Section 13-27-226(3)(a), MCA. To comply with § 13-27-212, MCA, a ballot statement must "express[] the

true and impartial explanation of the proposal in plain, easily understood language. The statement . . . may not be argumentative or written so as to create prejudice for or against the issue." Section 13-27-212, MCA. If—and only if—the Attorney General "determines *in writing* that a ballot statement *clearly* does not comply with the relevant requirements of subsection (3)(a), the [A]ttorney [G]eneral shall prepare a ballot statement that complies with the relevant requirements of subsection (3)(a)." Section 13-27-226(3)(c), MCA (emphasis added). In short, the Attorney General is only permitted to rewrite a ballot statement if he makes a threshold determination that the proposed statement is false, deceptive, unclear, argumentative, or prejudicial. The Attorney General's editorial preferences are not enough. The deficiencies must be "clear[]" and must be memorialized in a written determination by the Attorney General. Without such a written determination—as here—proponents and the Court have no record of what deficiencies the Attorney General believes he is remedying, or reliable means of distinguishing a bona fide improvement to the ballot statement from an effort to create prejudice against it.

The requirements that ballot statements are clear and neutral is essential to the purpose of a ballot statement. A ballot statement must "identify the measure on the ballot so that a Montana voter, drawing on both official and unofficial sources of information and education, will [be able to] exercise his or her political judgment." *Harper v. Greely*, 234 Mont. 259, 269, 763 P.2d 650, 657 (1988). The

wording must "fairly state[] to the voters what is proposed within the Initiative," and intervention is necessary "when a ballot statement's language would prevent a voter from casting an intelligent and informed ballot." *Montanans Against Tax Hikes v. State ex rel. Fox*, 2018 MT 201, ¶ 7, 392 Mont. 344, 423 P.3d 1078 (quoting *State ex rel. Wenzel v. Murray*, 178 Mont. 441, 448, 585 P.2d 633, 637-38 (1978)) (additional citations omitted).

Here, the Attorney General rewrote MFIJ's ballot statement without making the requisite written finding that the proposed language "clearly" failed to meet this standard. Unlike in *Montanans Securing Reproductive Rights* ("*MSRR*"), 2024 MT 67, ¶ 22, 416 Mont. 138, 546 P.3d 183, where the Attorney General detailed his justifications for rejecting the proponents' ballot statement, here there is no analysis or written determination justifying a rewrite of MFIJ's proposed ballot statement. Rather, after reciting the proposed ballot statement verbatim, the Attorney General simply states that he "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."

The Attorney General makes no articulable finding that MFIJ's proposed statement "clearly" presents issues of readability, "clearly" obscures the nature of the constitutional requirement, or "clearly" hides its practical implications. Section

13-26-226(3)(c), MCA. Conclusory assertions cannot satisfy the threshold requirement for authorizing a rewrite. Yet the Attorney General did exactly what the statute proscribes: opining on what the ballot initiative, if passed, will do and what voters should think about it. These statutory guardrails are important. If the Attorney General is permitted to rewrite the ballot statement in this case, he will no doubt exercise that discretion on all future ballot issues coming to him for review. This contravenes the clear intention of Montana Constitution's guarantee of *citizen*-initiated ballot measures. Mont. Const. art. XIV, § 9 ("The *people* may also propose constitutional amendments by initiative." (emphasis added)).

The Attorney General lacked statutory authority to rewrite MFIJ's statement because he did not follow the requirements of the statute. Accordingly, the Court should vacate the Attorney General's ballot statement and approve MFIJ's statement.

II. The Attorney General's rewritten ballot statement is argumentative, prejudicial and misleading.

Without making the requisite written determination that the proponents' ballot statement is deficient, the Attorney General proposed an entirely new ballot statement that is prejudicial and misleading and does not comply with the law: "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."

The Attorney General cannot rewrite ballot statements to introduce prejudicial and misleading language. *See MSRR*, ¶¶ 17-19 (holding that the rewritten statement would "prevent a voter from casting an intelligent and informed ballot" because it both failed to inform voters of the initiative's provisions and highlighted topics that the initiative did not reach); *Cottonwood Envt'l Law Ctr. v. Knudsen*, 2022 WL 780998 at *2 (Mont. March 15, 2022) (holding Attorney General's rewritten ballot statement "confusing and convoluted" and drafting an acceptable statement in its place). Consistent with *MSRR* and *Cottonwood*, the Court should reject the Attorney General's ballot statement rewrite, for two reasons. First, the rewritten statement would lead voters to believe the initiative prohibits them from voting for judicial candidates not aligned with a political party, when that is the exact opposite of the initiative's purpose. Suggesting the opposite effect is per se misleading and confusing. Second, the statement tells voters to presume that judicial candidates are partisan and that the effect of the initiative will be to conceal this information from voters. This is pure political messaging and flatly inappropriate for a ballot statement.

Especially egregious is the Attorney General's gratuitous reference in the second sentence to prohibiting "independent" judicial candidates. This is

misleading, confusing, and prejudicial. As written, it would lead a reasonable reader to conclude that voting for the initiative would prevent them from casting ballots for judicial candidates who do not affiliate with a political party. This is, of course, exactly the opposite of what MFIJ's policy would achieve; at its core, MFIJ's policy, if passed, would ensure that Montana's judicial elections remain non-partisan. It is telling that the Attorney General chose to highlight independent judicial candidates in the second sentence, as opposed to judicial candidates running under either of the two major political parties. The effect is confusing, prejudicial, and fails to comply with Montana's requirements for ballot statements.

This Court has previously invalidated constitutional initiatives post-passage on similar facts when government speech about an initiative misleads voters and frustrates their ability to know what they are voting for or against. *Waltermire*, 227 Mont. 85, 738 P.2d 1255. In *Waltermire*, the presentation of a constitutional initiative in the Voter Information Pamphlet indicated certain words would be inserted into the text of the Constitution when they would actually be deleted, and that mistake foundationally changed the meaning of the amendment. *Id.* at 89-90, 738 P.2d at 1257-58. The Court held "[i]t is elementary that voters may not be misled to the extent they do not know what they are voting for or against." *Id.* at 90, 738 P.2d at 1258 (citation omitted). If the voters cannot understand the purpose

of an amendment or understand its purpose to be the opposite because "a ballot proposal is misleading, the remedy is to void the election." *Id.*, 738 P.2d at 1258.

The situation created by the Attorney General's misleading ballot statement rewrite is similar, if not worse. Where *Waltermire* concerned the Voter Information Pamphlet mailed to voters and available at polling places, the ballot statement at issue here is actually printed on the ballot. Every single voter casting a ballot for or against CI-131 will read it. There is a strong, protected interest in ensuring the ballot statement presented to voters is clear and neutral—both to ensure a fair election, and to protect CI-131 from invalidation post-passage on grounds similar to *Waltermire* if the misleading statement stands. The Attorney General's rewrite plainly violates the statutes that protect that interest, and that promote electoral fairness to the benefit of proponents, opponents, and the public alike.

Next, the rewritten statement prejudicially, and falsely, tells voters to presume that judicial candidates are partisan actors aligned with a political party, and that voting for the initiative will have the effect of concealing this information. This is exactly the kind of *argument*—not description—that belongs in the "opponent arguments" section of the Voter Information Pamphlet, not the ballot statement itself. Montana, unlike other states, does not require voters to identify or register with a political party. On its face, the presumption of judicial partisanship is a cynical political refrain that aims to cast doubt on the independence, fairness,

and impartiality of the judiciary; it is necessarily prejudicial. And, contrary to statute, the statement's presumption of hidden judicial partisanship does nothing to tell voters about what the initiative itself actually does—which can be described simply and directly without reference to politically-charged rhetoric. Section 13-27-212, MCA, proscribes exactly this sort of biased and argumentative language. To the extent opponents wish to further arguments against the initiative, they have a dedicated place to do so in the Voter Information Pamphlet and in political discourse more broadly—but statutes make clear the Attorney General is not permitted to act as an opponent at this stage in the form of a rewritten ballot statement.

III. The Court should approve MFIJ's ballot statement.

Apart from rejecting the Attorney General's unlawful ballot statement, the Court should adopt the ballot statement originally submitted by MFIJ. As described above, that statement "expresses the true and impartial explanation of the proposal in plain, easily understood language." Section 13-27-212(1), MCA. It explains the purpose of the initiative, the context in which it arises, and the direct effect of its passage. It uses plain language. And it is not "argumentative or written so as to create prejudice for or against the issue." *Id.* In short, it empowers voters to cast an educated vote on a straightforward proposal.

CONCLUSION

The Attorney General's legal sufficiency review, including review of ballot statements, is intended to serve a neutral gate-keeping function to ensure that voters receive a fair summary of an initiative so they can make an intelligent and informed vote. Proponents, opponents, and the public all have a strong interest in neutral ballot statements because they ensure a fair election with a durable result. Accordingly, under § 13-27-605(3)(c), MCA, the Court should certify MFIJ's proposed ballot statement[1] to the Secretary of State.

Respectfully submitted this 3rd day of October 2025.

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[1] Or a statement that the Court devises which meets the requirements. *See Montanans Securing Reproductive Rights*, ¶ 30; *Cottonwood Envt'l Law Ctr.*, 2022 WL 780998.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the requirements of Rule 11, M. R. App. P., is double-spaced, except for footnotes, quoted, and indented material, and is proportionally spaced utilizing a 14-point Times New Roman typeface. The total word count for this document is 3,126 words, as calculated by the undersigned's word processing program.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 3rd day of October, 2025, a copy of the foregoing document was served on the following persons by the following means:

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I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 10-03-2025:

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