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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MONTANA LIFE DEFENSE FUND,

Petitioner,

v.

STATE OF MONTANA,

Respondent,

and

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

Intervenors.

Case No. DV-56-2025-0000966-DK

Thomas Pardy

**COMPLAINT FOR DECLARATORY
RELIEF**

Petitioner in the above caption for its Complaint for Declaratory Relief alleges as follows:

THE PARTIES

1. Petitioner Montana Life Defense Fund is a ballot issue committee organized for the purpose of opposing Constitutional Initiative 128 (“CI-128”), enacted on July 1, 2025, as Article II, Section 36 of the Montana Constitution, by ensuring the amendment complies with constitutional, statutory, and procedural requirements for amending the Montana Constitution.

2. Respondent State of Montana is responsible for the effectuation of and compliance with all state and federal laws, including the U.S. and Montana Constitutions.

3. Intervenors Samuel Dickman, Planned Parenthood Advocates of Montana, ACLU of

1 Montana, and Forward Montana were granted intervention by the Montana Supreme Court prior to
2 the Court's dismissal of Petitioner's request for original jurisdiction on July 1, 2025.

3 JURISDICTION AND VENUE

4 4. This is an action arising under Montana law for declaratory relief, pursuant to MCA § 27-
5 8-101, et seq.

6 5. Petitioner initially filed a Petition for Original Jurisdiction with the Montana Supreme Court
7 in Cause No. OP 25-0408. A copy of Petitioner's original petition is attached hereto as *Exhibit A*.
8 The Montana Supreme Court's Order declining to exercise original jurisdiction is attached as
9 *Exhibit B*. The Montana Supreme Court's Order granting intervention for the above-named
10 Intervenor is attached as *Exhibit C*.

12 6. Jurisdiction and venue are properly brought in the Montana Thirteenth Judicial District
13 Court for Yellowstone County pursuant to MCA §§ 3-5-302, 25-2-115, and 25-2-126.

14 FACTS

15 1. The Montana Constitution of 1889 provided for amendment of the constitution only after a
16 two-third vote of the Legislative Assembly and a subsequent referral of the amendment to the
17 qualified electors of the State for their approval or rejection. MONT. CONST. (1889), art. XIX, § 9.

19 2. In 1906, Montana voters amended the constitution to allow initiated state statutes and veto
20 referendums, but no right of citizen initiated constitutional amendments existed under the Montana
21 Constitution of 1889.

22 3. Under Montana's 1889 Constitution, constitutional amendments submitted to the qualified
23 electors were required to be placed on the official ballot. R.C.M. § 37-105 (1947).

24 4. Montana statute required the attorney general to prepare a "true and impartial statement of
25 the purpose of the measure in plain, easily understood language and in such manner as shall not be
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1 an argument or likely to create prejudice either for or against the measure.” R.C.M. § 37-104.1
2 (1947).

3 5. To better align the Montana Constitution with the will of the people, Article XIV of the
4 1972 Constitution was proposed. Section 9 proposed a new right of the people to seek constitutional
5 amendments by initiative. MONT. CONST. (1972), art. XIV, § 9.

6 6. Central to the debate over this proposed right of initiative was the delegates’ concern that
7 proposed amendments may be too complex to be submitted directly to voters. Delegate Blaylock
8 addressed this concern: “If we’re going to submit this entire Constitution to the people of Montana
9 for their adoption or rejection and we don’t consider it too complicated for them to make a decision,
10 certainly we should be able to submit one amendment or more at a time to them later on.” (Montana
11 Constitutional Convention Verbatim Transcripts, Volume 2, p. 497.)

12 7. Article XIV, Section 9 was ratified on June 6, 1972.

13 8. Under the 1972 Montana Constitution, citizen proposed constitutional amendments require
14 that petitions including the full text of the proposed amendment be signed by at least ten percent of
15 the qualified electors of the state, which must include at least ten percent of the qualified electors
16 in each of two-fifths of the legislative districts. MONT. CONST. (1972), art. XIV, § 9(1).

17 9. Once the signature requirements are satisfied, the secretary of state is required to publish
18 the full text of the amendment twice each month for two months prior to the next regular state-wide
19 election, as provided by law. MONT. CONST. (1972), art. XIV, § 9(2).

20 10. If all other statutory and constitutional prerequisites are satisfied, “the proposed amendment
21 shall be submitted to the qualified electors for approval or rejection” at the next regular state-wide
22 election. MONT. CONST. (1972), art. XIV, § 9(3).

23 11. Montana’s constitution requires the full text of any proposed constitutional amendment to
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1 be submitted to the qualified electors on the ballot—not merely a short title, explanatory statement,
2 or attorney general’s statement.

3 12. The mechanism for a citizen initiated constitutional amendment was first utilized in 1974
4 with CI-1, which proposed biennial legislative sessions.

5 13. The 1974 Voter Information Pamphlet published by the secretary of state provides the form
6 in which CI-1 was printed on the official ballot on November 5, 1974.¹

7 14. The official ballot in 1974 contained an “Explanatory Statement” by the Attorney General,
8 but importantly included the full text of the proposed constitutional amendment, which consisted
9 of strikethrough of Article V, § 6 of the Montana Constitution.

10 15. Citizens proposed a constitutional amendment in 1976 through CI-7, which proposed
11 limiting state spending to \$375 million every biennium.

12 16. Again, the official ballot language contained an “Explanatory Statement” prepared by the
13 Attorney General, along with the full text of the proposed constitutional amendment, which
14 consisted of lengthy textual insertions to Article VIII, § 9 of the Montana Constitution.²

15 17. In 1977, the Montana Legislature revised and reorganized Montana’s statutes concerning
16 constitutional initiatives.

17 18. While the statutory framework and citations changed, the general concepts were not
18 amended. Under the reorganized statutes, the attorney general was required to prepare a “statement
19 not exceeding 100 words in ordinary plain language explaining the general purpose of the issue
20 submitted.” MCA § 13-27-312 (1977).

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25 ¹ See Montana, Secretary of State, “Voters’ Information Pamphlet, 1974” (1974), *The Montana*
26 *Constitution Collection*, 51. <https://scholarworks.umt.edu/montanaconstitution/51>

27 ² See Montana, Secretary of State, “Voter Information Pamphlet for Proposed Constitutional Amendments,
28 Referendums, and Initiatives, 1976” (1976), *The Montana Constitution Collection*, 52.
<https://scholarworks.umt.edu/montanaconstitution/52>

1 19. The attorney general's explanatory statements for constitutional amendments appears on the
2 ballot before and after ratification of the 1972 Montana Constitution.

3 20. The attorney general's explanatory statements were intended as a supplement to the full,
4 plain text of the proposed amendment itself.

5 21. From 1978 onward, each official ballot containing a proposed constitutional amendment
6 appears to be constitutionally deficient because each ballot has lacked the full text of the amendment
7 required by Article XIV, section 9 of the Montana Constitution.³

8 22. In 1978, the official ballot language of CI-8 contained an Explanatory Statement prepared
9 by the attorney general and merely the title of the proposed constitutional amendment.⁴

10 23. The people of Montana retain the right to alter or abolish the constitution or form of
11 government whenever they deem it necessary, yet the people may amend the constitution by
12 initiative only in the manner provided by the constitution itself.

13 24. The "sovereignty of the people is itself subject to those constitutional limitations which have
14 been duly adopted and remain unrepealed." *Hunter v. Erickson*, 393 U.S. 385, 392, 89 S.Ct. 557,
15 561 (1969).

16 25. The full text of CI-128 was not printed on the November 5, 2024 ballot, which deprived all
17 qualified electors of a meaningful opportunity to analyze and deliberate on the language of the
18 proposed amendment.

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23 ³ Petitioner does not challenge prior Constitutional Amendments which were submitted to the qualified
24 electors in a constitutionally deficient manner. Under Article V, Section 11(6) of the Montana
25 Constitution, a law may be challenged on the ground of constitutional deficiency only within two years
26 after its effective date. It is Petitioner's contention that a similar limitation on actions challenging
27 constitutional amendments applies, such that a challenge to prior constitutional amendments would be
28 untimely. Thus, Petitioner's challenge relates only to CI-128, which was submitted to Montana's qualified
electors in a constitutionally deficient manner.

⁴ See Montana. Secretary of State, "Voter Information Pamphlet for Proposed Constitutional Amendments,
Referendums, and Initiatives, 1978" (1978). *The Montana Constitution Collection*. 53.
<https://scholarworks.umt.edu/montanaconstitution/53>

1 26. The omission of the full text of CI-128 on the November 5, 2024 ballot failed to comply
2 with the requirements of Article XIV, section 9 of the Montana Constitution.

3 27. The submission of CI-128 to Montana voters for approval or rejection was constitutionally
4 deficient, procedurally unsound, and should be declared null and void.

5 **CLAIM FOR RELIEF**

6 **Violation of Article XIV, Section 9(3) of the Montana Constitution**

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8 28. Petitioner incorporates herein by reference all allegations made in the preceding paragraphs
9 of this Complaint.

10 29. Article XIV, section 9(3) of the Montana Constitution provides: “At that election, the
11 proposed amendment shall be submitted to the qualified electors for approval or rejection. If
12 approved by a majority voting thereon, it shall become a part of the constitution effective the first
13 day of July following its approval, unless the amendment provides otherwise.”

14 30. The Montana Constitution requires that “the proposed amendment” be submitted to the
15 qualified electors, and any statutory requirement for an explanatory statement, ballot issue
16 statement, or some other summary of the amendment cannot be interpreted as a replacement for
17 “the proposed amendment” itself.

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19 31. Such an interpretation, would require “insert[ing] what has been omitted” or “omit[ing]
20 what has been inserted,” and would itself “constitute an amendment to the Constitution.” *See* MCA
21 § 1-2-101; *State ex rel. Montana Citizens for the Preservation of Citizens’ Rights v. Waltermire*,
22 227 Mont. 85, 97, 738 P.2d 1255, 1262 (1987).

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24 32. The submission of CI-128 to the qualified electors of Montana violated Article XIV, Section
25 9(3) of the Montana Constitution and deprived the qualified electors of “the right of the electorate
26 ... to know the exact language upon which the vote was taken.” *Waltermire* at 97, 738 P.2d at 1262.

1 33. The people of Montana have the right to alter or abolish the constitution whenever they
2 deem it necessary, but the “people may amend the constitution by initiative only in the manner
3 provided by the constitution.” *Id.* at 91, 738 P.2d at 1258.

4 34. The submission of CI-128 to the qualified electors of Montana was constitutionally
5 inadequate under Article XIV, Section 9(3) and must be declared null and void.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully request that this Court:
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9 A. Declare CI-128 unlawful and unconstitutional for the reasons set forth above; and

10 B. Grant any other relief the Court deems just and proper.

11 DATED this 5th day of August, 2025.
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13 By: /s/ Derek J. Oestreicher
14 Derek J. Oestreicher
15 Attorney for Respondent
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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. _____

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

Petitioners,

v.

STATE OF MONTANA,

Respondent.

PETITION FOR ORIGINAL JURISDICTION

APPEARANCES

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Attorney for Petitioners

This is an original proceeding challenging the constitutionality of Constitutional Initiative 128 (“CI-128”), a proposed constitutional amendment for enactment on July 1, 2025. This petition seeks relief under 42 U.S.C. § 1983 and the Montana Uniform Declaratory Judgment Act of Title 27, Chapter 8 for deprivation of petitioners’ rights and privileges secured by the U.S. and Montana constitutions. This petition seeks a declaratory judgment under Rule 14(4), M.R.App.P. This case involves purely legal questions of constitutional interpretation. Urgency factors exist, making litigation in trial court and the normal appeal process inadequate. The issues presented are of statewide importance.

BACKGROUND

1. The Montana Constitution of 1889 provided for amendment of the constitution after a two-third vote of the Legislative Assembly and a subsequent referral of the amendment to the qualified electors for approval or rejection. MONT. CONST. (1889), art. XIX, § 9. In 1906, Montana voters amended the constitution to allow initiated state statutes and veto referendums, but no right of citizen initiated constitutional amendments existed under the Montana Constitution of 1889.

2. Under Montana’s 1889 Constitution, constitutional amendments submitted to qualified electors were printed on the official ballot. R.C.M. 37-105 (1947). Montana statute required the attorney general to prepare a “true and

impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.” R.C.M. 37-104.1 (1947).

3. To better align the Montana Constitution with the will of the people, Article XIV of the 1972 Constitution was proposed. Section 9 provides a right of the people to initiate constitutional amendments. MONT. CONST. (1972), art. XIV, § 9.

4. Central to the debate over this proposed right was the delegates’ concern that amendments may be too complex to be submitted directly to voters. Delegate Blaylock addressed this concern: “If we’re going to submit this entire Constitution to the people of Montana for their adoption or rejection and we don’t consider it too complicated for them to make a decision, certainly we should be able to submit one amendment or more at a time to them later on.” Montana Constitutional Convention Verbatim Transcripts, Volume 2, p. 497.

5. Article XIV, Section 9 was ratified on June 6, 1972.

6. Under the 1972 Montana Constitution, petitions including the full text of the proposed amendment must be signed by at least ten percent of qualified electors, which must include at least ten percent of qualified electors in each of two-fifths of the legislative districts. MONT. CONST. (1972), art. XIV, § 9(1).

7. Once signature requirements are satisfied, the secretary of state is required to publish the full text of the amendment twice each month for two months prior to the next regular state-wide election, as provided by law. MONT. CONST. (1972), art. XIV, § 9(2).

8. If all other statutory and constitutional prerequisites are satisfied, “the proposed amendment shall be submitted to the qualified electors for approval or rejection” at the next regular state-wide election. MONT. CONST. (1972), art. XIV, § 9(3). Montana’s constitution requires the full text of any proposed constitutional amendment to be submitted to the qualified electors on the ballot—not merely a short title, explanatory summary, or attorney general’s statement.

9. The mechanism for a citizen initiated constitutional amendment was first utilized in 1974 with CI-1, which proposed biennial legislative sessions. The 1974 Voter Information Pamphlet published by the Secretary of State provides the form in which CI-1 was printed on the ballot on November 5, 1974.¹

10. The official 1974 ballot contained an Attorney General’s “Explanatory Statement” but more importantly included the full text of the proposed constitutional amendment, which consisted primarily of strikethrough of Article V, § 6 of the 1972 Montana Constitution.²

¹ See Montana, Secretary of State, “Voters’ Information Pamphlet, 1974” (1974), *The Montana Constitution Collection*, 51. <https://scholarworks.umt.edu/montanaconstitution/51>

² *Id.*

11. Citizens proposed a constitutional amendment in 1976 through CI-7, which proposed limiting state spending to \$375 million every biennium.³

12. Again, the official ballot contained an explanatory statement, and the full text of the proposed constitutional amendment, which consisted of lengthy textual insertions to Article VIII, § 9 of the Montana Constitution.⁴

13. In 1977, the Montana Legislature revised and reorganized Montana's statutes concerning constitutional initiatives. While the statutory framework and citations changed, the general concepts did not. Under the reorganized statutes, the attorney general was required to prepare "a statement not exceeding 100 words in ordinary plain language explaining the general purpose of the issue submitted." MCA § 13-27-312 (1977).

14. The attorney general's explanatory statements for constitutional amendments appeared on the ballot before and after ratification of the 1972 Montana Constitution. The attorney general's statement was intended as a supplement to the full, plain text of the amendment itself. See *State ex rel. Montana Citizens for the Preservation of Citizens' Rights v. Waltermire*, 227 Mont. 85, 91-97, 738 P.2d 1255, 1258-62 (1987).

³ See Montana, Secretary of State, "Voter Information Pamphlet for Proposed Constitutional Amendments, Referendums, and Initiatives, 1976" (1976), *The Montana Constitution Collection*, 52. <https://scholarworks.umt.edu/montanaconstitution/52>

⁴ *Id.*

15. From 1978, each official ballot containing a proposed constitutional amendment was constitutionally deficient because it omitted the full text of the amendment as required by Article XIV, section 9 of the Montana Constitution.⁵

16. In 1978, the official ballot language for CI-8 contained an Explanatory Statement prepared by the Attorney General and merely the title of the proposed constitutional amendment.⁶

17. The people of Montana retain the right to alter or abolish the constitution or form of government whenever they deem it necessary, yet the people may amend the constitution by initiative only in the manner provided by the constitution itself. “The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed.” *Hunter v. Erickson*, 393 U.S. 385, 392, 89 S.Ct. 557, 561 (1969).

18. Montana law requires that the Secretary of State publish a Voter Information Pamphlet (“VIP”) including the “complete text” of any constitutional amendment and the “form in which the issue will appear on the ballot.” MCA § 13-27-401 (2023). Yet, the VIP is only distributed to registered

⁵ Petitioners’ challenge is limited to the constitutionality of CI-128.

⁶ See Montana. Secretary of State, “Voter Information Pamphlet for Proposed Constitutional Amendments, Referendums, and Initiatives, 1978” (1978). *The Montana Constitution Collection*. 53. <https://scholarworks.umt.edu/montanaconstitution/53>

voters on the active voter list “not later than 45 days before the election.” MCA § 13-27-410.

19. Since the enactment of election-day voter registration in Montana in 2006, election-day registrants are not provided with copies of the VIP. In other words, this class of qualified electors are deprived of the same opportunities to cast more-informed ballots compared to registered, active voters who appear on a county’s voter registration list more than 45 days prior to the election.

20. With respect to the opportunity to evaluate the full text of proposed constitutional amendments, the deprivation of these qualified electors’ voting rights would be cured through strict adherence to Montana’s constitution—namely, that the full text of proposed constitutional amendments be placed on the ballot for approval or rejection.

21. Montana’s failure to include the full text of CI-128 on the November 5, 2024, general election ballot, violated the equal protection clause of Article II, section 4 of the Montana Constitution, and the equal protection clause of Section 1 of the Fourteenth Amendment to the United States Constitution.

22. The full text of CI-128 was not printed on the ballot, which deprived all qualified electors, and particularly election-day registrants, of a meaningful opportunity to analyze and evaluate the language of the proposed amendment.

23. The omission of the full text of CI-128 from the ballot violated the requirements of Article XIV, section 9 of the Montana Constitution.

24. The submission of CI-128 to the voters for approval or rejection was constitutionally deficient, procedurally unsound, and should be declared null and void.

PARTIES

25. Petitioner Hannah Rhodes (“Rhodes”) is a qualified elector from Cascade County, Montana. Despite attempts to register to vote prior to the general election on November 5, 2024, the Cascade County election administrator was unable to process Rhodes voter registration. On election day, Rhodes waited in line for approximately seven hours to register to vote and exercise her franchise. Rhodes was not provided with a VIP, as she was not an active, registered voter at least 45-days prior to the general election. As an election-day registrant, Rhodes was forced to cast a ballot without having an opportunity to read, evaluate, or analyze the full text of CI-128.⁷

26. Petitioner Joe Addy (“Addy”) is a qualified elector from Cascade County, Montana. In advance of the November general election, Addy attempted to register to vote in person at the Cascade County election office. Addy was directed to register on election day by an employee at the election office. On

⁷ Declaration of Hannah Rhodes (June 6, 2025) submitted herewith.

election day, Addy waited in line for approximately five hours to register to vote and exercise his franchise. Addy was not provided with a VIP, as he was not an active, registered voter at least 45-days prior to the general election. As an election-day registrant, Addy was forced to cast a ballot without having an opportunity to read, evaluate, or analyze the full text of CI-128.⁸

27. Petitioner Montana Life Defense Fund is a ballot issue committee organized for the purpose of opposing CI-128 by ensuring the proposed constitutional amendment complies with constitutional, statutory, and procedural requirements for amending the constitution.

28. Respondent State of Montana is responsible for the effectuation of and compliance with all state and federal laws, including the U.S. and Montana constitutions.

FACTS FOR APPROPRIATE SUPREME COURT ORIGINAL JURISDICTION

The “urgency or emergency factors” required by Rule 14(4), M.R.App.P., exist here because CI-128 will be effective July 1, 2025, and if enacted will eliminate all regulation of abortion up to the moment of birth. Yet, the submission of this proposed amendment to voters in Montana was constitutionally deficient.

⁸ Declaration of Joe Addy (June ___, 2025) submitted herewith.

Under Article XIV, § 9(3), “the proposed amendment shall be submitted to the qualified electors for approval or rejection.” This provision plainly requires the full text of proposed amendments be printed on the ballot for consideration by qualified electors. This interpretation is consistent with the plain language of Article XIV, § 9 and confirmed by constitutional initiatives on the ballot in 1974 and 1976. The plain and original meaning of “proposed amendment” cannot rationally be interpreted as satisfied by the submission of an explanatory statement. An explanatory statement may be helpful to supplement the text of the amendment but falls short of satisfying constitutional requirements for amendment.

Election-day registrants in Montana were deprived of the same opportunities extended to other qualified electors to consider such a weighty amendment to the Constitution in violation of the Equal Protection Clauses of both the United States and Montana Constitutions. While other qualified electors may have been provided with the full text of CI-128’s proposed amendment in various forms, including the Voter Information Pamphlet, election-day registrants were treated differently and would have been required to search for or request the full text of the amendment on election day, assuming they knew that such a request could be made and that copies of the full text of would be readily available at all polling places. Such disparate treatment of qualified electors violates both equal protection guarantees. *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (“Having once granted the right to vote on equal

terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); see also *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 32 (recognizing federal law "provides less protection than that clearly intended by the plain language and history of the Montana Constitution's right to vote"); *Driscoll v. Stapleton*, 2020 MT 247, ¶ 23 (upholding injunction against laws interfering with the "free exercise of the right of suffrage."). This infringement of voting rights would be avoided by strict adherence to Art. XIV, § 9(3). The State's failure to submit the text of CI-128 on the ballot cannot be cured at this juncture. The amendment should be declared null and void.

Lastly, an original proceeding is warranted here to provide ample time for the proponents of CI-128 to correct the constitutional inadequacies and re-submit a citizen initiative in a manner that adheres to the requirements of Art. XIV, § 9, and which treats all qualified electors equally.

SPECIFIC LEGAL QUESTION TO BE RAISED

A. Whether CI-128 is void under Article XIV, § 9 of the Montana Constitution?

B. Whether the omission of the full text of CI-128 from the ballot violated the Equal

Protection rights of election-day registrants under Art. II, Section 4 of the

Montana Constitution and U.S. Const. Amend. XIV?

AUTHORITIES FOR ACCEPTING JURISDICTION AND ARGUMENTS PERTAINING TO THE MERITS

- I. The Court should accept original jurisdiction because the right of the electorate to know the exact language upon which the vote was taken has been violated.

Assumption of original jurisdiction over a declaratory judgment action is proper when: “(1) constitutional issues of major statewide importance are involved; (2) the case involves purely legal questions of statutory and constitutional construction; and (3) urgency and emergency factors exist making the normal appeal process inadequate.” *Hernandez v. Bd. of County Commissioners*, 2008 MT 251, ¶ 9 (citations omitted); see also *State ex rel. Montana Citizens for the Preservation of Citizens’ Rights v. Waltermire*, 224 Mont. 273, 729 P.2d 1283 (1986) (“*Waltermire I*”), *State ex rel. Montana Citizens for the Preservation of Citizens’ Rights v. Waltermire*, 227 Mont. 85, 738 P.2d 1255 (1987) (“*Waltermire II*”); *State ex rel. Montanans for the Preservation of Citizens’ Rights v. Waltermire*, 231 Mont. 406, 757 P.2d 746 (1988) (“*Waltermire III*”).

In *Waltermire I*, this Court rejected an original proceeding petition seeking to enjoin CI-30 from appearing on the November 1986 election ballot. *Waltermire I* at 275, 729 P.2d at 1284. This Court reasoned that “unless an initiative is clearly unconstitutional on its face or has been improperly submitted, it would not be appropriate... to remove it from the ballot prior to the voters’ consideration.” *Id.* at

277-78, 729 P.2d at 1286. On these grounds, this Court declined to exercise pre-election jurisdiction over the challenge. *Id.*

In anticipation of prospective litigation, Justice Sheehy's dissent expressed gratitude for the opportunity that Montanans possess to question the validity of constitutional initiatives post-election. *Id.* at 290, 729 P.2d at 1293. Justice Sheehy disagreed with the majority's refusal to interfere with the constitutional initiative pre-election, contending that uninformed voters facing such a ballot issue would be ill-equipped to cast an intelligent vote:

The majority of qualified electors are so much interested in managing their own affairs that they have no time to carefully consider measures affecting the general public. A great number of voters undoubtedly have a superficial knowledge of proposed laws to be voted upon, which is derived from newspaper comments or from conversations with their associates. We think the assertion may be safely ventured that it is only the few persons who earnestly favor or zealously oppose the passage of a proposed law, initiated by petition, who have attentively studied its contents and know how it will probably effect their private interests. The greater number of voters do not possess this information and usually derive their knowledge of the contents of a proposed law from an inspection of the title thereof, which is sometimes secured only from the very meager details afforded by a ballot which is examined in an election booth preparatory to exercising the right of suffrage.

Id. at 291, 729 P.2d at 1294 (citations omitted).

The litigation anticipated by Justice Sheehy came in the form of *Waltermire II*, which was a post-election original petition seeking to enjoin the enactment of CI-30. *Waltermire II* at 86, 738 P.2d at 1255-56. This Court accepted original jurisdiction and rendered the passage of CI-30 null and void. *Id.* Inherent to the

Court's conclusion was the manner in which the electorate could become aware of the "full text" of any proposed constitutional amendment: "(1) through the petition for the initiative, (2) through the voter information pamphlet, and (3) through publication by the Secretary of State." *Id.* at 89, 738 P.2d at 1257. This Court cautioned 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." *Id.* at 90, 738 P.2d at 1258 (citing *Burger v. Judge*, 364 F.Supp. 504, *affd.* 414 U.S. 1058, 94 S.Ct. 563 (Mont. 1973)). Providing the electorate with the full text of the amendment also satisfies due process requirements which mandate that "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." *Id.* (citations omitted).

Notably, this Court recognized the people's exclusive right to "alter or abolish the constitution or form of government whenever they deem it necessary" is limited in that "the people may amend the constitution by initiative only in the manner provided by the constitution." *Id.* at 91, 738 P.2d at 1258. The Court examined the constitutional requirements of article XIV, Section 9(2), which mandate publication of "the amendment" prior to the election as provided by law.

The present Montana Constitution requires "the amendment" to be published as provided by law. The legislature provided that "a summary of the amendment" would suffice. That statute, if permitted, would itself constitute an amendment to the Constitution insofar as initiatives

are concerned and should not be allowed. Any initiative amendment adopted in that manner is, of course, void.

Id. at 97, 738 P.2d at 1262. On these grounds, the Court determined that the failure of the Secretary of State to publish the full text of CI-30, as required by the constitution, rendered the amendment void. *Id.* In doing so, this Court safeguarded “the right of the electorate... to know the exact language upon which the vote was taken.” *Id.*

This Court also rejected the notion that any “widespread availability” of the full text of the amendment represented a “reasonable probability that a substantial part of the electorate knew what they were voting upon.” *Id.* at 97, 738 P.2d at 1263. Adopting such an argument would be to “say that the Constitution may be amended merely by an undefined idea.” *Id.* Words, or the lack of them, make a tremendous difference, especially when considering amendment to our Constitution. *Id.* This Court held that the requirement for publication of the full text of any constitutional amendment “is necessary so that the electors can make an intelligent choice.” *Id.* at 98, 738 Mont. 1263.

Lastly, in *Waltermire III*, after having determined that CI-30 was void, this Court analyzed whether CI-30 could be properly re-published by the Secretary of State and resubmitted to the electorate at the next regular statewide election. *Waltermire III* at 411, 757 P.2d at 749. The Court answered this question in the negative because resubmission of the proposed amendment could not be

accomplished in strict compliance with the manner prescribed by Art. XIV, Sec. 9 of the Montana Constitution. *Id.* at 413, 757 P.2d at 751.

The rationale from the *Waltermire* trilogy is applicable here. Petitioners have not sought to disturb the people's initiative rights through the sort of pre-election challenge that was declined in *Waltermire I*. Instead, Petitioners have properly submitted their application for original jurisdiction post-election and pre-enactment of CI-128, as was the case in *Waltermire II*.

While *Waltermire II* concerned strict adherence to the plain language of Article XIV, Sec. 9(2), Petitioners' challenge relates to the plain language of Article XIV, Sec. 9(3), which provides:

At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

The Montana Constitution requires that "the proposed amendment" be submitted to the qualified electors. Any statutory requirement for an explanatory statement, ballot issue statement, or some other summary of the amendment cannot be interpreted as a replacement for "the proposed amendment" itself. Such an interpretation, if permitted, would "constitute an amendment to the Constitution" and should not be permitted. *Waltermire II* at 97, 738 P.2d at 1262. Because CI-128

was submitted without all qualified electors being provided with the full text, it must be declared null and void.

- II. The Court should accept original jurisdiction because the Equal Protection rights of election-day registrants were violated through the omission of the full text of CI-128 on the ballot.

With respect to proposed constitutional amendments, this Court has recognized the right of the electorate to know “the exact language upon which the vote was taken.” *Waltermire II* at 97, 738 P.2d at 1262. To guarantee this right, both the Montana Constitution and statutes dictate the manner in which voters could have access to the full text of a proposed amendment. As the *Waltermire II* Court explained, voters could become aware of the full text: (1) through the petition for the initiative; (2) through the voter information pamphlet, and (3) through publication by the Secretary of State. *Id.* at 89, 738 P.2d at 1257. Yet, the *Waltermire* trilogy was decided prior to Montana’s enactment of election-day registration. This relatively new method for voter registration highlights a voting rights issue that would be avoided through strict adherence to Article XIV, Sec. 9(3).

There is no question that qualified electors include election-day registrants. Yet, these qualified electors, like Rhodes and Addy, are placed in the very circumstance that Montana’s Constitution and statutory scheme seeks to avoid—they do not know what they are voting for or against. *Waltermire II*, at 90, 738 P.2d at 1258. This is due to Montana’s failure to place the full text of constitutional

amendments on the ballot, which results in election-day registrants being deprived of the opportunity to evaluate the full text of constitutional amendments. Thus, with respect to constitutional amendments considered by qualified electors in Montana, election-day registrants are denied equal protection of the laws in violation of Article II, Section 4 of the Montana Constitution and the Fourteenth Amendment to the United States Constitution.

At the time initiative petitions are circulated, election-day registrants are not “qualified electors,” and could not have reviewed the full text of a proposed amendment while petitions are circulating. Likewise, because election-day registrants are not found on the active voter list at least 45 days before the general election, they will not receive the Secretary of State’s Voter Information Pamphlet. MCA §§ 13-27-401; 410. Lastly, even the publication requirements of Article XIV, Sec. 9(2) do not provide assurance that election-day registrants will have an opportunity to examine the full text of any proposed amendment. Such “widespread availability” arguments have been rejected by this Court before. *Waltermire II* at 97, 738 P.2d at 1263.

Yet the Montana Constitution provides a safeguard for qualified electors in Article XIV, Sec. 9(3). This safeguard has been inexplicably abandoned since 1978. That safeguard is the requirement that “the proposed amendment,” not a mere

summary or explanation, be submitted to the qualified electors for approval or rejection. MONT. CONST. (1972), art. XIV, § 9(3).

Montana's omission of the text of CI-128 from the ballot violated the rights of election-day registrants and CI-128 should be declared null and void.

CONCLUSION

Petitioners request that this Court accept original jurisdiction, direct briefing the Court deems suitable, and, after consideration, declare CI-128 null and void.

DATED this 9th day of June, 2025.

/s/ Derek J. Oestreicher
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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 Times New Roman text of 14 points; is double spaced (except footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word, excluding the cover page, Certificate of Service, and Certificate of Compliance, is 3,955 words, not in excess of the 4,000-word limit.

By: /s/ Derek J. Oestreicher
Derek J. Oestreicher

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following parties, by the means designated below, this 9th day of June, 2025.

- | | |
|---|--|
| <input type="checkbox"/> Certified U.S. Mail | Austin Knudsen |
| <input type="checkbox"/> Federal Express | Office of the Montana Attorney General |
| <input type="checkbox"/> Via fax: | P.O. Box 201401 |
| <input type="checkbox"/> E-mail: | Helena, MT 59620 |
| <input checked="" type="checkbox"/> Hand-Delivery | |

By: /s/ Derek J. Oestreicher
Derek J. Oestreicher

CERTIFICATE OF SERVICE

I, Derek Joseph Oestreicher, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-09-2025:

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

Electronically Signed By: Derek Joseph Oestreicher
Dated: 06-09-2025

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.

FILED

JUL 01 2025

Bowen Greenwood
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>.

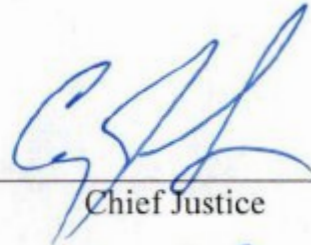
In support of the present petition, Rhodes and Addy declare they were “not provided” VIPs and were “never . . . provided with an opportunity to read . . . the full text of . . . CI-128.” However, their declarations do not explain why such opportunity did not exist for them. Are they alleging the Secretary 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).

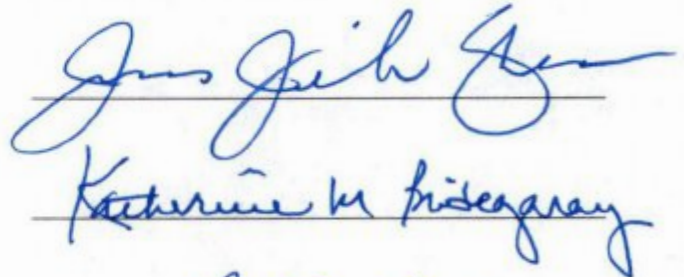
IT IS THEREFORE ORDERED that the Petition for Declaratory judgment on Original Jurisdiction is DENIED and DISMISSED.

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

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0408

HANNAH RHODES, JOE ADDY, and
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ACLU of MONTANA, and FORWARD
MONTANA,

Intervenors.

FILED

JUL 01 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Pursuant to M. R. App. P. 2(1)(f) and 16(1), Doctor Samuel Dickman, Planned Parenthood Advocates of Montana, ACLU of Montana, and Forward Montana have moved to intervene in this original proceeding. They request intervention regardless of whether this Court orders a summary response to the petition under M. R. App. P. 14(7)(a) because Petitioners Hannah Rhodes, Joe Addy, and Montana Life Defense Fund included a claim under Amendment XIV to the United States Constitution. Proposed Intervenors alleged, “By including a federal claim, any final disposition by this Court is subject to a petition for writ of certiorari to the United States Supreme Court.” Proposed Intervenors argue that this Court should grant their motion to protect their interests in all potential future stages of this litigation.

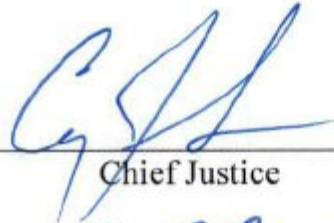
Petitioners have responded that they do not object to intervention by Proposed Intervenor.

IT IS THEREFORE ORDERED that Doctor Samuel Dickman, Planned Parenthood Advocates of Montana, ACLU Montana, and Forward Montana MAY INTERVENE in this original proceeding.

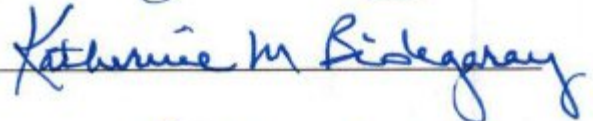
IT IS FURTHER ORDERED that the Caption of this Original Proceeding is accordingly amended as set forth above.

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