

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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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.

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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.

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| ☐ Federal Express | Office of the Montana Attorney General |
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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)
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Helena MT 59620
Representing: State of Montana
Service Method: eService

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