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FILED

JAN 12 2022

ANGIE SPARKS, Clerk of District Court
By ~~MARY M GOYINS~~ Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

MONTANA FEDERATION OF
PUBLIC EMPLOYEES; MONTANA
FARMER'S UNION; DENNIS
MCDONALD; RON OSTBERG;
JEFF BARBER; and BARBER
REALTY, LLC,

Plaintiffs,

v.

STATE OF MONTANA by and
through the MONTANA
SECRETARY OF STATE and
MONTANA ATTORNEY
GENERAL; TROY DOWNING; and
MATTHEW MONFORTON.

Defendants.

Cause No: BDV 2022-29

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Comes Now, Plaintiff Montana Federation of Public Employees (“MFPE”), through counsel, and for its Complaint against the State of Montana by and through the Montana Secretary of State (“Secretary of State”) and the Montana Attorney General (“Attorney General”) states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. MFPE is a public-sector union representing tens of thousands of public employee members spread across the state, many of whom own residential property and pay property taxes. The vast majority are also voters, who may be contacted to support or oppose Constitutional Initiative 121 (“CI-121”). In particular, they may be asked sign the petition to place CI-121 on the 2022 ballot. And, if CI-121 makes it onto the ballot, they are entitled to understand its contents to make an informed vote.

2. The Montana Farmer’s Union is Montana’s only farm organization that represents family farmers. It is over 100 years old and has nearly 12,000 members. It supports the concept that taxes are levied to provide services people cannot provide efficiently for themselves based on, *inter alia*, the fact that property taxes are a stable source of revenue and should be based on equitable appraisals. The passage of CI-121 will affect the Montana Farmer’s Union members, who will also likely be requested to sign the petition supporting CI-121.

3. Dennis McDonald is landowner and rancher in Melville, Sweet Grass County, Montana.

4. Ron Ostberg is a landowner, rancher and farmer in Teton County, Montana.

5. Jeff Barber is a realtor in Helena, Lewis and Clark County, Montana. He owns and operates Barber Realty, LLC. If CI-121 is passed, it will likely affect his profession.

6. The Office of Secretary of State is the state agency responsible for overseeing the submission of ballot issues, including initiatives for constitutional amendments, before they are placed on the ballot.
7. The Attorney General is responsible for conducting legal sufficiency reviews of proposed ballot issues, including initiatives for constitutional amendments, and evaluating if there is any regulatory impact on businesses.
8. Troy Downing is the Montana State Auditor, and Matthew Monforton is a Montana resident. Together, they submitted CI-121 to the Secretary of State for placement on the 2022 ballot. They will be responsible for obtaining signatures in support of CI-121.
9. This Court has jurisdiction over this matter.
10. Venue is proper in Lewis and Clark County pursuant to § 25-2-126, MCA.

GENERAL ALLEGATIONS

11. On August 31, 2021, the Montana State Auditor, Troy Downing, and attorney Matthew Monforton submitted Ballot Issue No. 9 to the Secretary of State for review.
12. Ballot Issue No. 9 is a constitutional initiative that fundamentally changes the way property taxes are established by amending Article VIII, Section 3, of the Montana Constitution by stripping the power of the legislature to establish taxable values and methods of appraisal, and instead constitutionally creates a method to limit taxes.
13. The proposal changes the existing language of Article VIII, Section 3, and replaces it with:

Property tax administration -- limitation. (1) Subject to this section, the state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

(2) Except as provided in this section, the assessed valuation of residential property shall be the amount determined by the state in 2019.

(3) The value of residential property may be reassessed annually on January 1 of each year. If residential property is not newly constructed or significantly improved or did not have a change of ownership since January 1, 2019, the change in revised assessed valuation for a year may not exceed the lower of the following:

(a) two percent of the valuation for the prior year; or

(b) the percent change in the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(4) After January 1, 2019, whenever residential property is newly constructed or significantly improved or has a change of ownership, it must be assessed by the state at its fair market value with subsequent changes to that assessment made in accordance with the limits in subsections (3)(a), (3)(b), and this subsection (4).

(5) The legislature shall limit the total amount of ad valorem taxes assessed against residential property not to exceed one percent of the valuation established by this section.

- (6) The legislature shall define "residential property" and provide for the application and implementation of subsections (2) through (5), and it may provide for acquisition valuation of other real property.
14. On November 22, 2021, the Secretary of State referred the ballot issue to the Attorney General for its legal sufficiency review.
 15. On December 7, 2021, the Attorney General opened public comment on the legal sufficiency of the proposed ballot language.
 16. MFPE submitted comments regarding the language of CI-121. Its comments suggested, *inter alia*, that the Attorney General needed to undertake the analysis required under the recently passed House Bill 651 (HB 651) and to apply the requisite warning that it constituted a regulatory taking.
 17. Five additional organizations also requested that the Attorney General review CI-121 under HB 651 and provide the required warning.
 18. HB 651 was a bill passed in the 2021 Legislative Session. It was signed into law by the Governor on May 14, 2021, with an immediate effective date.
 19. HB 651 amended two important sections of the Montana Code Annotated related to ballot issues. It created a system whereby the Attorney General must undertake an analysis of the impacts on businesses (amending § 13-27-312, MCA) and the Secretary of State must refer a ballot issue to a legislative interim committee for review (amending § 13-27-202, MCA).
 20. With respect to the Attorney General requirements, HB 651 expanded the requirements for review. Now, once the Attorney General receives a proposed "ballot issue"

and statement from the Secretary of State, they not only must evaluate the legal sufficiency of the proposed issue, but also the potential impacts on Montana businesses.

21. Specifically, the Attorney General “*shall review the proposed ballot issue* as to whether the proposed *ballot issue* could cause a regulatory taking under Montana law or otherwise will likely cause significant material harm to one or more business interest in Montana if approved by the voters.” § 13-27-312(9)(a), MCA (2021) (emphasis added). The Attorney General then must notify the Secretary of State if there is a likelihood of harm, so that this information may be placed on the petition. § 13-27-312(9)(b), MCA (2021). This ensures that Montana residents and voters can make an informed decision when deciding whether to sign the petition.

22. On December 22, 2021, after reviewing the comments from MFPE and others, the Attorney General issued his legal sufficiency review and determined the ballot issue was legally sufficient.

23. In his legal sufficiency review, the Attorney General determined that CI-121 was constitutional. He analyzed whether the proposed initiative implicated the single vote requirement, which essentially prohibits amending more than one section of the constitution at a time. In doing so, he specifically looked at *Roosevelt v. Montana Dept. of Revenue*, 1999 MT 30, 293 Mont. 240, 975, P.2d 295, wherein the Montana Supreme Court found that law similar to CI-121 violated the equal protection clause, the takings clause, and the due process clause of the Montana Constitution.

24. Despite the clearly implied amendments to those constitutional provisions, the Attorney General stated that CI-121 was legally sufficient.

25. The Attorney General, however, refused to evaluate any potential takings issues or whether CI-121 would cause any significant harm to Montana businesses. In justifying this refusal, the Attorney General explained that he believed the significant harm evaluation only applied to statutory initiatives and not constitutional amendments.

26. The Attorney General's conclusion was in error as the plain language of § 13-27-312(9), MCA, is clear. By use of the word "shall" it mandates his review of all "proposed ballot issue".

27. A "ballot issue" or "issue" under § 13-27-312(9), MCA means "a proposal submitted to the people at an election for their approval or rejection, including, but not limited to an initiative, referendum, *proposed constitutional amendment*, recall question, school levy question, bond issue question, or ballot question." § 13-1-101(6), MCA.

28. So, the Attorney General is required to undertake an analysis of the impacts on Montana business prior to forwarding his legal sufficiency review to the Secretary of State. The Attorney General must forward their review within 30 days of receiving the proposed ballot issue.

29. Here, the Attorney General forwarded his review to the Secretary of State on December 22, 2021, without any analysis of the impact on businesses.

30. Once the Secretary of State received the ballot issue, they are required to review the Attorney General's legal sufficiency opinion and ballot statements. § 13-27-202(5)(a), MCA.

31. Additionally, under the new requirements imposed by HB 651, the Secretary of State "*shall provide* the executive director of the legislative services division a copy of the final text of the *proposed issue* and ballot statements." § 13-27-202(5)(b), MCA (2021). The Executive

Director of the Legislative Services Division then sends the information to the appropriate legislative interim committee for review. *Id.*

32. Once an interim committee receives the information, it has 14 days in which to meet, hold a public hearing and vote on whether to support or not support the proposed issue. *Id.* The Executive Director of the Legislative Services Division then must send the vote information to the Secretary of State. *Id.* Like the regulatory takings analysis, the interim committee vote must be placed on the ballot to ensure Montanans can make an informed decision in signing or refusing to sign the petition.

33. Only “[a]fter the executive director provides the information to the secretary of state” may the Secretary of State send the sample petition to the submitter and allow signature gathering. In other words, without the review by an interim committee, no signatures can be gathered.

34. The term “ballot issue” or “issue” in § 13-27-202(5) (2021), MCA, includes proposed constitutional amendments. § 13-27-101(6), MCA.

35. Here, the Secretary of State failed to send the ballot issue to the Executive Director of the Legislative Services Division, and so no interim committee review took place.

36. Because both the Attorney General and Secretary of State failed to complete their statutory obligation, the Secretary of State has no authority to authorize signature gathering in support of placing the ballot issue on the official ballot.

COUNT ONE – TEMPORARY RESTRAINING ORDER

37. The preceding paragraphs are realleged as though set forth herein.

38. MFPE is entitled to a temporary restraining order prohibiting the signatures from being gathered in support of Ballot Issue No. 9.

a. The language of the petition is was generated using a deficient process.

Procedurally, the Attorney General failed their his duty to consider and address the impact of the initiative on business activity and the Secretary of State failed their duty to refer the initiative for required legislative committee review. Without these reviews, the language on the petition could not be sent to the submitters for signature gathering; or

b. The language is also deficient because the Secretary of State and Attorney General failed to include the results of the significant harm analysis and the vote of the interim committee on the petition; or,

c. The language of the petition is constitutionally invalid because its constitutes multiple changes to the constitution in violation of the single-vote requirement.

39. The restraining order should last until this Court holds a hearing and a decision is made on a preliminary and/or permanent injunction.

COUNT TWO – INJUNCTIVE RELIEF

40. The preceding paragraphs are realleged as though set forth herein.

41. MFPE is entitled to a preliminary injunction enjoining the Defendants from gathering signatures in support of the proposed Ballot Issue No. 9 until such a time as the Attorney General and Secretary of State have met their obligations under §§ 13-27-202(5) and -312(9),

MCA, and the petition provides the results of the Attorney General and interim committee reviews of CI-121.

COUNT THREE – DECLARATORY JUDGMENT

42. The preceding paragraphs are re-alleged as though set forth in full hereunder.

43. MFPE is entitled to declaratory judgment under §§ 27-8-201 et seq., MCA, wherein the Court declare that requirements of HB 651 apply to proposed constitutional amendments as well as proposed statutory initiatives.

44. MFPE also seeks a declaration that the Attorney General's review of Ballot Issue No. 9 was defective for failing to evaluate its impacts on businesses and that he must conduct that review. Further, the outcome of that review must be placed on the petition prior to signature gathering.

45. MFPE further requests a declaration that the Secretary of State must send the Ballot Issue No. 9 to the Executive Director of the Legislative Services Division for its review by an appropriate interim committee pursuant to § 13-27-202(5), MCA. Further, the outcome of the vote by the interim committee must be placed on the petition prior to signature gathering.

46. MFPE also requests that the Court That the Court find, pursuant to §13-27-316(3)(c)(iii), MCA, that the Attorney General's legal sufficiency determination was incorrect and that the proposed issue does not comply with statutory and constitutional requirements governing submission of the issue to the electors, that the issue is void and that it may not appear on the ballot.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment all Defendants by the Court or Jury:

1. That the Defendants be temporarily restrained from collecting signatures in support placing of Ballot Issue No. 9 on the 2022 Ballot until the Court holds a hearing on the temporary restraining order;
2. That the Defendants be enjoined from collecting signatures in support of placing of Ballot Issue No. 9 on the 2022 Ballot until such a time as the Attorney General and Secretary of State have fulfilled their obligations under §§ 13-27-202(5) and – 312(9), MCA;
3. A declaration that the requirements of §§ 13-27-202(5) and – 312(9), MCA, apply equally to proposed constitutional amendments, such as Ballot Issue No. 9, and statutory initiatives.
4. A declaration that the Attorney General’s review of Ballot Issue No. 9 was deficient for failing to evaluate the impacts on Montana businesses, and that the Attorney General must conduct this review prior to any signatures being gathered in support placing of Ballot Issue No. 9 on the 2022 Ballot, and that the results of the review must be sent to the Secretary of State and placed on the petition for signatures.
5. A declaration that the Secretary of State must send the Ballot Issue No. 9 to the Executive Director of the Legislative Services Division for its review by an appropriate interim committee pursuant to § 13-27-202(5), MCA, prior to any signatures being gathered in support placing of Ballot Issue No. 9 on the 2022 Ballot and the results of such interim committee review be placed on the petition for signatures.
6. A declaration that that the Attorney General's legal sufficiency determination was incorrect, that the proposed issue does not comply with statutory and constitutional requirements

governing submission of the issue to the electors, that the issue is void, and that it may not appear on the ballot.

7. For any other relief this court deems just and equitable.

DATED this 12th day of January, 2022.

MORRISON SHERWOOD WILSON & DEOLA PLLP

By:



Robert Farris-Olsen
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of January, 2022, a true copy of the foregoing document was served upon the following:

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PO Box 201401
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Montana Secretary of State
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840 Helena Ave
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Matthew Monforton
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Bozeman MT 59718



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