MEMORANDUM

To: The Office of the Montana Secretary of State  
From: The Office of the Montana Attorney General  
Date: July 21, 2023  
Re: Legal sufficiency review of Proposed Ballot Measure No. 7

Ballot Measure #7, as modified is legally sufficient.

Attorney General’s Authority

The Attorney General’s office and authority are created and bounded by the Montana Constitution. Mont. Const. art. VI, § 4(4) (“The attorney general is the legal officer of the state and shall have the duties and powers provided by law.”). The Constitutional phrase ‘provided by law’ delegates the matter to the Legislature. See Brown v. Gianforte, 2021 MT 149, ¶ 41. The Montana Legislature, by law, granted the Attorney General authority to conduct legal sufficiency reviews for proposed ballot measures. MCA, § 13-27-312.

Legal sufficiency “means that the petition complies with statutory and constitutional requirements governing submission of the proposed issue to the electors, the substantive legality of the proposed issue if approved by the voters, and whether the proposed issue constitutes an appropriation as set forth in 13-27-211.” MCA, § 13-27-312(8). The sufficiency review can be thought of as two buckets: (1) a procedural review if the issue complies with the statutory and constitutional provisions governing submission of the issue to the electorate; and (2) a substantive review of the measure for lawfulness if passed. The Montana Supreme Court recognized the Attorney General’s historic authority regarding procedural legal sufficiency issues. See Montanans Opposed to I-166 v. Bullock, 2012 MT 168, ¶ 6 (“[T]he Attorney General's review for legal sufficiency is limited by law to determining whether the petition for a ballot issue complies with the statutory and constitutional requirements governing submission of the proposed issue to the electors.”). The Attorney General’s legal sufficiency review remains subject to judicial review pursuant to MCA, § 13-27-316.
Memo to Secretary of State’s Office re: Proposed Ballot Initiative #7
July 25, 2023
Page 2 of 4

Ballot Initiative #7

Ballot Initiative #7 amends Article VII, Section 2, of the Montana Constitution as follows:

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

The effect of Ballot Initiative #7 is to divest the supreme court of jurisdiction to make rules governing procedure and practice for admission to the bar and the conduct of members of the bar.

Analysis

Ballot Initiative #7, as modified by the Legislative Services Division, and accepted by the proponent, complies with all substantive and procedural requirements for placement on the ballot. The proposed measure confines itself to a single amendment within a single section of the Montana Constitution. The provision does not expressly or impliedly amend any other constitutional provisions within the meaning of Article XIV, Section 11 of the Montana Constitution. See Mont. Ass’n of Counties (“MaCO”) v. State, 2017 MT 267.

The Initiative does not reflect with whom the authority to govern admission to the bar, and the conduct of members of the bar, will or should lie. The State Bar submitted comment that Ballot Issue No. 7 is substantively unconstitutional because the Supreme Court possesses an inherent power, regardless of any constitutional text to the contrary, to regulate the practice of law. “[A] constitutional amendment via initiative cannot strip the Montana Supreme Court of its inherent powers.” State Bar Comments at 2. That’s incorrect. All government authority, regardless of branch, derives from the people. Mont. Const. art. II, § 1. The State Bar’s position is an untenable statement that some elements of government operate beyond popular sovereignty. The question of who will regulate the practice of law will be an open
question if voters pass Ballot Issue No. 7. But the State Bar’s position must be incorrect otherwise the people don’t have full authority over their own government.

**Significant Material Harm Statement**


Senate Bill 93 (2023) does not apply to Ballot Measure No. 7. The Measure was submitted to the Sec. of State on May 4, 2023—prior to SB 93’s effective date. As such, MCA § 13-27-312(9) (2021) controls. Further, Senate Bill 93, § 58 contains an express savings clause—again, meaning that because this measure was submitted prior to Senate Bill 93’s effective date, MCA § 13-27-312(9) (2021) applies.

**Conclusion**

Ballot Initiative #7 is legally sufficient.

**Ballot Statement**

The Attorney General shall ensure the ballot statements “express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue.” The statement of purpose and implication must be 135 words or less. MCA, § 13-27-312(2)(a).

Ballot Initiative #7’s proponent submitted a draft of a complete Initiative Petition, but did not submit a ballot statement. The Legislative Services Division determined that the “ballot language” could suffice as a statement of purpose and implication. The Attorney General agrees. The proponent agreed to the following 59-word statement:

Under the 1972 Constitution, the requirements for a person seeking admission to the practice of law in Montana are determined by the Montana Supreme Court under Article VII, section 2, of the Montana Constitution. CI ___ amends the Montana Constitution to remove jurisdiction from the Supreme Court to govern admission to the Bar and the conduct of its members.

[ ] YES on Constitutional Initiative CI- ___
[ ] NO on Constitutional Initiative CI- ___
The Attorney General has no cause to rewrite the proponent’s ballot statement as it meets the requirements of MCA, § 13-27-312.

The Attorney General requested a fiscal note for Ballot Initiative #7. A fiscal note has not been received; however, it is anticipated that the Initiative would have a fiscal impact on both the judicial branch and legislative branch.