

ORIGINAL

FILED

09/24/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 26-0618

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 26-0618

406 PEOPLE FIRST and DENISE KELLY,

Plaintiffs and Appellants,

v.

THE CITY-COUNTY OF BUTTE-SILVER BOW
and CYNTHIA SHERMAN, in her official
capacity as Clerk and Recorder/Election
Administrator,

Defendants and Appellees.

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Clerk of Supreme Court
State of Montana

ORDER

On September 22, 2026, this Court granted a motion for injunction under § 3-3-205(1), MCA, requested by Plaintiffs and Appellants 406 People First and Denise Kelly (collectively Proponents). The injunction enjoined Defendants and Appellees The City-County of Butte-Silver Bow and Cynthia Sherman, in her official capacity as Clerk and Recorder/Election Administrator (collectively the City-County), from denying certification of Local Initiative 00-02 on the basis that it failed to comply with the deadline for submission of signatures as set forth in § 13-28-206, MCA (2025).

On September 23, 2026, the City-County filed a Notice of Issue, advising this Court that the ballots—without Local Initiative 00-02—have been printed, absentee and mail ballots have been mailed, and some voters have already returned their ballots. The City-County explained that it was not seeking rehearing of the Court's September 22, 2026 Order and that Sherman intends to fully comply with the Order. However, the City-County seeks guidance from this Court as to how to place Local Initiative 00-02 on the ballot under these circumstances. The City-County further explains that Sherman consulted with the Office of the Secretary of State and understands that modifying the ballot after ballots have been

returned may violate Montana election laws. Sherman thus has conflicting obligations of complying with a court order and following the law.

Ballots are controlled by Title 13, Chapter 12, Part 2, of the Montana Code Annotated. Although § 13-12-204, MCA, provides a method for correcting the ballot regarding candidates for certain offices if such correction is needed “after the ballots have been prepared but before the election,” no statute provides a method for adding an initiative that was not included on a ballot after the ballot was prepared prior to the election. The City-County advises us that it appears no Montana statute identifies a procedure for issuing an additional ballot containing a newly added ballot initiative to an elector who has already returned a voted ballot.

Upon review of the City-County’s Notice, we requested and received a response from Proponents.

In its Notice, the City-County poses a long list of very good questions as to how Sherman might proceed with correcting the ballot in order to comply with this Court’s September 22, 2026 Order, such as: May Sherman modify the existing ballot, or should she prepare and issue a supplemental ballot? If Sherman prepares a supplemental ballot, should it be sent to every elector who has not yet returned a ballot? Should it be sent to electors who have returned ballots? And, if an elector has already returned a ballot, may the elector subsequently return a supplemental ballot containing only the initiative?

Before we announce our decision, we take a moment to point out that the situation the parties and this Court find themselves in was entirely avoidable. When Proponents filed their emergency motion requesting an injunction pending appeal on September 4, 2026, they implied that the ballots had not yet been printed. In the Declaration of Proponents’ counsel John Meyer that was filed in support of the motion, Meyer declared, “Ballot preparation is time-sensitive. Without immediate relief, Local Initiative 00-02 may be omitted before this Court can decide the appeal, permanently eliminating the November 2026 vote.”

As we further set forth in our September 22, 2026 Order:

In their motion, Proponents also advised this Court that the City-County indicated it would take no position on the motion, thus making it an unopposed motion ready for immediate consideration by this Court. However, due to a clerical error, this motion was not brought to the Court's attention until Proponents filed further notice with this Court on September 21, 2026.

Under M. R. App. P. 16(2), any party may file a response in opposition to a motion within 11 days after the service of the motion. In this case, even though the City-County had decided to "take no position," surely it could have taken this opportunity to advise the Court about what Proponents had neglected to mention in their emergency motion: specifically that the ballots had already been printed and mailed.¹ Finally, and most frustratingly, when Proponents filed Appellants' Notice of Expiration of Response Period and Request for Prompt Ruling on Emergency Motion on September 21, 2026, Proponents implied to this Court that the ballots had not yet been printed and mailed. In that Notice, they urged this Court to rule quickly on their request for injunction because "further delay threatens the ability to place Local Initiative 00-02 on the November 3, 2026 ballot."

Although we stand by our reasoning in the September 22, 2026 Order that it would be preferable to place the initiative on the ballot and risk invalidating the voters' will post-election over not allowing the electorate to vote on an initiative that we later determine should have been on the ballot, we nonetheless would not have granted Proponents an injunction pending appeal had we known prior to issuing the September 22, 2026 Order that the ballots had already been printed and mailed. This fact materially affects our analysis of three of the injunction factors and renders our ordered remedy impracticable. Montana's ballot statutes do not contemplate this situation and we have no good answers for the City-County's very good questions as to how Sherman can implement our Order while complying with those statutes.

¹ If, in fact, that is the case. None of the parties have informed the Court as to *when* the printing and mailing occurred.

Proponents, likewise, offer no answers for how Sherman can both implement our Order and comply with the statutes. Proponents' response asks this Court to require Sherman to prepare an initiative-only supplemental ballot for every elector eligible to vote on Local Initiative 00-02, including electors who have already returned a general-election ballot, and to record and canvass a "separately identified supplemental vote" for Local Initiative 00-02 while leaving the general-election ballot effective for all other contests. Proponents ask us to direct Sherman to consult with the Secretary of State and provide us with "an implementation plan that specifies custody, voter-record, secrecy, reconciliation, and canvass procedures" that also identifies "the latest date on which every affected voter will receive the supplemental ballot, the available means of returning it, and how voters will have a meaningful opportunity to do so" Proponents' response contains no discussion of how they believe Sherman could disseminate the type of supplemental ballot Proponents describe while also complying with the ballot statutes.

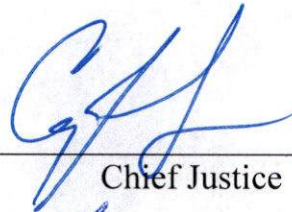
Proponents also bring our attention to the District Court's August 12, 2026 Temporary Restraining Order (TRO), noting that the TRO had enjoined the City-County from "taking any action that would make certification or ballot placement impracticable." Proponents request that this Court require Sherman to answer for her actions that led to the dissemination of a ballot that did not contain Local Initiative 00-02. Proponents offer no explanation as to why Sherman should have continued to follow the restrictions imposed by the TRO once the District Court denied their request for injunctive relief in its August 28, 2026 Order Denying Requested Relief. This Court has no basis to order Sherman to account for an alleged failure to abide by a restriction imposed by a TRO that was no longer in effect.

Seeing no remedy under the statutes, and in light of the fact that ballots have been mailed and some voters have returned their ballots, we will not order Sherman to undertake a supplemental ballot process under these circumstances.

IT IS THEREFORE ORDERED that this Court's September 22, 2026 Order granting Proponents' motion for injunction pending appeal is VACATED.

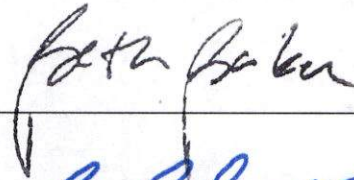
The Clerk is directed to provide a true copy of this Order to all parties of record.

Dated this 24th day of September, 2026.

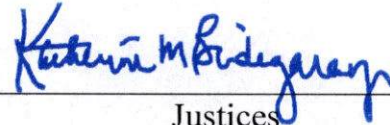


Chief Justice









Justices