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Attorney for Plaintiffs

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

MAE NAN ELLINGSON; JEROME
LOENDORF; ARLYNE
REICHERT; HAL HARPER; BOB
BROWN; EVAN BARRETT; C.B.
PEARSON; CAROLE MACKIN;
MARK MACKIN; JONATHAN
MOTL,

Plaintiffs,

v.

STATE OF MONTANA; GREG
GIANFORTE, Governor of the
State of Montana; AUSTIN
KNUDSEN, Montana Attorney
General; CHRISTI JACOBSEN;
Secretary of Montana,

Defendants.

Cause No:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. One of the most fundamental precepts of the Montana Constitution is that all power is derived from the people. Art. II, Sec. 1. This case challenges recently enacted legislation that unlawfully impairs and infringes upon Montanans' expressly-reserved constitutional powers of initiative and referendum.

PARTIES, VENUE & JURISDICTION

2. Plaintiff Mae Nan Ellingson is a Montana citizen residing in Missoula, Montana. Ellingson was elected as a Republican Delegate to Montana's 1972 Constitutional Convention (ConCon) and served on the ConCon Legislative Committee. Ellingson has a history of citizen advocacy and is a supporter of the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

3. Plaintiff Jerome Loendorf is a Montana citizen residing in Helena, Montana. Loendorf was elected as a Republican Delegate to Montana's 1972 Constitutional Convention (ConCon) and served as Vice-Chair of the ConCon Legislative Committee. Loendorf has a history of citizen advocacy and is a supporter of the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

4. Plaintiff Arlyne Reichert is a Montana citizen residing in Great Falls, Montana. Reichert was elected as a Democratic Delegate to Montana's 1972 Constitutional Convention (ConCon) and served on the ConCon Legislative Committee. Reichert has

a history of citizen advocacy and is a supporter of the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

5. Plaintiff Hal Harper is a Montana citizen residing in Helena, Montana. Harper served for 26 years as Member of the Montana House, doing so as a Republican and Democrat, including 3 sessions where he was Majority Leader or Speaker of the House. Harper has a history of citizen advocacy and is a supporter of the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

6. Plaintiff Bob Brown is a Montana citizen residing in Whitefish, Montana. Brown served as Montana's Secretary of State and further served for 26 years as a Republican Member of the Montana House, including service as President of the Senate. Brown has a history of citizen advocacy and is a supporter of the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

7. Plaintiff Evan Barrett is a Montana citizen residing in Butte, Montana. Barrett has been involved, as an office holder and as a staffer to office holders, in multiple levels of government in Montana. Barrett has a history of citizen advocacy and is supporter of the Outstanding Resource Waters Initiative, the Pre-K Initiative, and the Historical Preservation Tax Credit Initiative proceeding through review by the

government entities whose activities are challenged as unconstitutional by this Complaint.

8. Plaintiff C.B. Pearson is a Montana citizen residing in Missoula Montana. Pearson has worked on Montana initiative and referendum matters for the past 40 years and is a supporter of the Outstanding Resource Waters Initiative, the Pre-K Initiative, and the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

9. Plaintiff Carole Mackin is a Montana citizen residing in Helena, Montana. Carole Mackin has worked on Montana initiative and referendum matters for the past 50 years and is a supporter of the Outstanding Resource Waters Initiative, the Pre-K Initiative, and the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint. Mackin is also a supporter of Ballot Issue #3, Ballot Issue #4, and Ballot Issue #5 – initiatives and a referendum proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

10. Plaintiff Mark Mackin is a Montana citizen residing in Helena, Montana. Mark Mackin has worked on Montana initiative and referendum matters for the past 50 years and is a supporter of the Outstanding Resource Waters Initiative, the Pre-K Initiative, and the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this

Complaint. Mackin is also a supporter of Ballot Issue #3, Ballot Issue #4, and Ballot Issue #5 – initiatives and a referendum proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

11. Plaintiff Jonathan Motl is a Montana citizen residing in Helena, Montana. Motl has worked on Montana initiative and referendum matters for the past 40 years and is a supporter of the Outstanding Resource Waters Initiative, the Pre-K Initiative, and the Historical Preservation Tax Credit Initiative proceeding through review by the government entities whose activities are challenged as unconstitutional by this Complaint.

12. Plaintiffs have brought this action under the Uniform Declaratory Judgments Act (“UDJA”) found at Title 27, Chapter 8, of the Montana Code. This Court has held that a party raising a "bona fide constitutional issue" can seek relief from the courts through a declaratory judgment action. *Stuart v. Dept. of Social & Rehab. Serv.* (1991), 247 Mont. 433, 438-39, 807 P.2d 710, 713 (quoting *Mitchell v. Town of West Yellowstone* (1988), 235 Mont. 104, 109-10, 765 P.2d 745, 748). Furthermore, the UDJA itself provides that it is remedial and that it is to be liberally construed and administered to permit courts "to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. ..." Section 27-8-102, MCA. Plaintiffs’ complaint states a justiciable controversy concerning their constitutional reserved powers of initiative and referendum and each Plaintiff has standing to challenge the Defendants’ impositions

on Plaintiffs' reserved powers. *See, Gryczan v State*, (1997) 283 Mont. 433, 440-446, 841 P.2d 112, ___-___.

13. Defendant Greg Gianforte is the Governor of the State of Montana and is ultimately responsible for the execution of its laws. He is named in his official capacity only.

14. Defendant Austin Knudsen is Attorney General for the state of Montana and is responsible for implementing portions of the unconstitutional statute and for taking those certain unconstitutional actions set out in this Complaint. Defendant Knudsen is being sued in his official capacity.

15. Christi Jacobsen is the Secretary of State and is responsible for implementing portions of the statute that is challenged as unconstitutional and for taking those certain unconstitutional actions set out in this Complaint. Defendant Jacobsen is being sued in her official capacity.

16. Venue is appropriate in this Court because Plaintiffs Loendorf, Harper, Motl, Mark Mackin, and Carole Mackin reside in Helena, Lewis and Clark County.

17. This Court has jurisdiction under the provisions of the Montana constitution, §27-8-201, MCA and §3-5-302, MCA.

LEGAL FRAMEWORK

18. The 1972 Montana Constitution provides Montana citizens with the power to enact laws through the initiative process. Art. III, Sec. 4.

19. The Constitution explicitly distinguishes the power of legislature from

the power of the people:

Section 1. POWER AND STRUCTURE.

. . . The people reserve to themselves the powers of initiative.

Mont. Const. Art. V, § 1.

20. “Absent language to the contrary, a direct power conferred upon one necessarily excludes the existence of such power in the other.” *Bd. of Regents of Higher Educ. of Mont. v. State*, 2022 MT 128, ¶ 19, 409 Mont. 96, 512 P.3d 748. Citizen initiatives “should be broadly construed to maintain the maximum power in the people.” *State ex rel. Harper v. Waltermire*, 213 Mont. 425, 429, 691 P.2d 826, 829 (1984).

21. “A provision of a constitution is self-executing when legislation is not required to give it effect.” *In re Lacy*, 239 Mont. 321, 325, 780 P.2d 186, 1989 Mont. LEXIS. 264.

22. Art. XIV, Sections 9-11 of the Montana Constitution articulate and delineate the requirements for the people to propose a constitutional amendment.

23. Montana Constitution Art. XIV, Sections 9-11 are self-executing.

24. The Montana Constitution does not confer any direct or enabling power on the Montana legislature to regulate proposed constitutional initiatives.

25. Where legislative action infringes upon constitutionally granted powers, the legislation must yield. *Bd. of Regents of Higher Educ. of Mont.*, 2022 MT at ¶ 24.

26. On May 19, 2023, Montana Governor Greg Gianforte signed into law SB

93 (hereinafter “SB 93”).

27. SB 93 is unconstitutional because it impairs, inhibits, makes more expensive, infringes, prevents, and effectively denies the people of Montana their reserved power to enact laws using the initiative and/or referendum process pursuant to Article III, sections 4, 5 and 6, Article IV, section 7, Article V, section 1, and Article XIV sections 2 and 9 of Montana’s Constitution.

COUNT I

SB 93 is Unconstitutional

28. All paragraphs set out above are incorporated by reference as though set out in full herein.

29. Under SB 93 an initiative is defined at New Section 1(11) to include “a constitutional initiative, a constitutional convention initiative, or a statutory initiative.” Likewise, the Attorney General’s (“AG”) review applies to all forms of initiative. [New Section 1 (11)]. All assertions and claims for relief set in regard to an Initiative are hereby incorporated and applied to a constitutional initiative, a constitutional convention initiative, or a statutory initiative.

30. In SB 93 an initiated referendum is defined at Section 1(15) to include a referendum on a legislative statute. While SB 93 recognizes the initiated referendum (hereinafter “referendum”) as a separate category, it does not differentiate the initiated constitutional amendment and the initiated statute from the referendum except where SB 93 expressly infringes on the power of referendum in New Section 6.

31. The Montana Statutory laws set out below, along with necessary supporting laws, are unconstitutional because they impair the initiative and referendum power of the people by imposing requirements and obstacles that are not found within the Montana Constitution.

32. Montana statutory law requires that the proponent of a proposed initiative begin the formal initiative or referendum process by submitting the proposed language [hereinafter “Filing”] to Montana’s Secretary of State (“SOS”) and the office of Legislative Services.

33. The 2023 legislature, through passage of SB 93, imposed a mandatory nonrefundable fee of \$3700 before Filing could occur [SB 93, New Section 4(6)]; prohibited Filing of proposed initiative language that had previously been rejected at the ballot [SB 93, New Section 4(7)]; and limited the time during which a referendum may be filed [SB 93, New Section (5)(b)].

34. Such a fee for Filing, prohibition on Filing, and limitation on the time of filing a referendum are not set out in Montana’s constitution.

35. Such a fee for Filing, prohibition on Filing and time limitation of Filing impairs and interferes with the People’s power of initiative and referendum.

36. The Legislature has placed no comparable filing fee or prohibition on filing on bill drafting requests made by a Legislator.

37. The \$3700 filing fee and/or the prohibition on filing and/or time limitation on filing a referendum is/are unconstitutional.

38. Montana statutory law, as amended by SB 93, requires that an initiative, once Filed, proceed through agency review.

39. The review provides the AG and the SOS with the power to reject the language of the proposed initiative or referendum.

40. SB 93 grants the AG unilateral, sole, and direct authority to reject the language of a proposed initiative on the basis of legal sufficiency. [New Section 1(7) read with New Section 11 (2, 6)].

41. SB 93 grants the SOS unilateral, sole, and direct authority [“shall reject”] to reject the language of a proposed initiative or referendum on the basis of interpretation of how the Initiative proponent has responded to comments by Legislative Services in regard to proposed initiative language [New Section 5(4)].

42. The Montana Constitution does not confer the power to reject a proposed initiative or referendum on the AG or SOS.

43. Such agency power to reject a proposed initiative or referendum impairs and interferes with the People’s power of initiative.

44. The legislature has granted no comparable authority for an agency, including the SOS and AG, to reject a bill drafting request by a legislator.

45. SB 93 is unconstitutional to the extent it confers power on the AG or SOS to reject a ballot initiative or referendum.

46. SB 93 requires that the initiative language pass through policy review by

multiple government entities with those reviews allowing government entities to insert language (some written by the legislature) onto the face of ballot petition used by the initiative sponsor to gather signatures to place the initiative on the ballot.

47. SB 93 unlawfully provides the AG and SOS authority to incorporate and place on the face of the form of initiative petition (even over the objection of the initiative proponent) statements on: a) harm to business interests [New Section 5(6)(b) read with 13-27-204(2)(a) MCA]; b) a 50 word statement of fiscal impact [New Section 10(4)]; c) and/or a listing of the tally of a Legislative Committee vote on whether the initiative should be placed on the ballot [New Section 13].

48. Each of the three statements set out in the paragraph above are written by government entities and are mandated by statutory law to appear on the face of the initiative petition.

49. The Montana constitution does not provide the AG, the legislature, the SOS or any entity of government with the power to interfere with the People's power to write the initiative, including the language of the petition to place the initiative on the ballot.

50. The Legislature has granted no comparable authority for an agency, including the SOS and AG, to insert language into a bill drafting request by a legislator.

51. SB 93, including incorporated statutory language, is unconstitutional to the

extent it allows any entity of government to interfere with and impair the ballot sponsor's right to control the language that appears on the petition to place an initiative or referendum on the ballot.

52. The 2023 Legislature, through incorporation of the statutory language of 2021 HB 651, and by new statutory language added by SB 93, added specific initiative review functions to two new government entities, the Budget Office and the appropriate Legislative Interim Committee.

53. These new agency functions grant power to the Budget Office and/or Legislative Interim Committee to independently analyze a proposed initiative or referendum for the purpose of adding language to the petition to place the initiative on the ballot.

54. The new agency functions, along with the expanded functions assigned to the AG and SOS, add weeks of additional time during which the agencies include unwanted language to the face of an already crowded initiative petition.

55. The Montana constitution does not provide any government entity with the power to interfere with, control or manipulate the timing and time of the People's power to write initiative or referendum language, including the language of the initiative petition.

56. The Legislature has placed no comparable agency power to write language and control the time and timing of a bill drafting request made by a Legislator.

57. Montana law does not allow an initiative proponent to begin signature

gathering until the form of petition is released by the SOS and therefore SB 93 is unconstitutional to the extent it allows government entity exclusive control, including timing, of the proposed initiative language and initiative petition before it is released to the initiative proponent.

58. SB 93 amends 13-27-112 MCA to require any person employing paid signature gatherers to register with and pay a filing fee to the SOS.

59. The Montana constitution does not confer legislative power to impair the People's power to gather signatures for an initiative petition.

60. Such legislative power interferes with the People's power of initiative.

61. The Legislature has placed no comparable registration requirement on a Legislator who employs a paid staff person to assist in his or her legislative work.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray that this court enter:

1. A judgment that SB 93 and/or specific statutory provisions incorporated therein is/are unconstitutional.
2. An order enjoining Defendants from enforcing any aspects of SB 93 or the statutory provisions incorporated therein.
3. Any other relief that is just and equitable.
4. An award of attorney fees, as the court deems just and appropriate.

Dated this 26th day of May 2023.

/s/ John Meyer

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CERTIFICATE OF SERVICE

I, John Phillip Meyer, hereby certify that I have served true and accurate copies of the foregoing Complaint - Complaint to the following on 05-26-2023:

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Electronically Signed By: John Phillip Meyer
Dated: 05-26-2023