

LEGAL REVIEW NOTE

Bill No.: HB 645

LC#: LC 1635, To Legal Review Copy, as
of December 30, 2024

Short Title: Require ballot issue signature
gatherers to be Montana citizens and
registered voters

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CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review IS NOT dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See *Alexander v. Bozeman Motors, Inc.*, 356 Mont. 439, 234 P.3d 880 (2010); *Eklund v. Wheatland County*, 351 Mont. 370, 212 P.3d 297 (2009); *St. v. Pyette*, 337 Mont. 265, 159 P.3d 232 (2007); and *Elliott v. Dept. of Revenue*, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

HB 645 may raise potential federal constitutional issues related to the First Amendment under the United States Constitution.

Pursuant to the amendments by HB 645 in sections 13-27-112, 13-27-233, and 13-27-

302, only an individual who resides in and is registered to vote in Montana may collect signatures on a petition for the purpose of an initiative, referendum, or the calling of a constitutional convention. Prior to the 2023 legislative session, 13-27-102(2)(b), MCA required that a person gathering signatures “must be a resident, as provided in 1-1-215, of the state of Montana.”

The United States Supreme Court has held that the gathering of signatures for ballot initiatives is protected as “core political speech” under the First Amendment of the United States Constitution. Meyer v. Grant, 486 U.S. 414 (1988). While the First Amendment does not prohibit all restrictions a state may place on signature gathering, the severity of the burden imposed on the right will determine what level of scrutiny a court will use in analyzing the constitutionality of the restriction. Pierce v. Jacobsen, 44 F.4th 853 (9th Cir. 2022).

In 2022, the United States 9th Circuit Court of Appeals determined that Montana’s previous residency requirement for ballot initiative signature gatherers imposed a severe burden on the free speech rights of both out-of-state residents and in-state proponents of the initiative, thereby subjecting the residency restriction to strict scrutiny. Pierce, 44 F. 4th at 862. The court held that the residency requirement could not survive strict scrutiny because there exists a more narrowly tailored way of preventing fraud than an outright ban on out-of-state petition circulators – namely requiring petition circulators to consent to the state’s jurisdiction. Id. at 862-63. Ultimately, because the residency requirement of signature gatherers severely burdened core political speech and was not narrowly tailored to further a compelling state interest, it violated the First Amendment. Id. at 863.

HB 645, as drafted, reimposes a residency requirement on ballot initiative signature gatherers, which was recently litigated and struck down by the United States 9th Circuit Court of Appeals. Therefore, HB 645 may raise potential conformity issues with the requirements of the First Amendment of the U.S. Constitution based on the ruling in Pierce v. Jacobsen.

Requester Comments: