

SYNOPSIS OF THE CASE

2017 MT 267, OP 17-0358: MONTANA ASSOCIATION OF COUNTIES (“MACo”); LEO GALLAGHER; ADRIAN M. MILLER; MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; and ACLU OF MONTANA FOUNDATION, INC., Petitioners, v. **THE STATE OF MONTANA**, by and through **TIMOTHY C. FOX**, in his official capacity; and **COREY STAPLETON**, in his official capacity, Respondents.¹

The Montana Supreme Court held the manner in which Constitutional Initiative 116 (CI-116), commonly known as Marsy’s Law, was submitted to Montana voters was unconstitutional because it violated the separate-vote requirement of Montana Constitution, Article XIV, Section 11.

Montanans have a constitutional right to govern themselves, a right that is effectuated in part by the power of the people to propose constitutional amendments by initiative. The Court held that where the people, in adopting the Constitution, have prescribed the method by which it may be amended, any attempt to amend the fundamental law in violation of a self-imposed restriction is unconstitutional. The separate-vote requirement of Montana’s Constitution is one such self-imposed restriction. It is a constitutional protection that ensures voters have the option to vote on each change to the Constitution separately. The Court held that the separate-vote requirement directs the manner or process by which a proposed amendment is submitted to voters and, in doing so, guards against voter confusion, grouping several issues under one title, and combining unrelated amendments into a single measure which might not otherwise command majority support. A proposed constitutional amendment violates the separate-vote requirement when the proposal makes two or more changes, either expressly or implicitly, to the Constitution that are substantive and not closely related. When two proposed amendments are not closely related but are nonetheless submitted in one proposal, voters have not been given the option of voting separately on each unrelated change.

In November 2016, a majority of Montana voters approved CI-116, a proposed constitutional amendment presented to the electorate by popular initiative. CI-116 contains four sections and its general purpose is to provide a crime victim with eighteen

¹ This synopsis was prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

specifically enumerated rights. Among these rights are the right to due process; the right of privacy, which includes the right to refuse the defendant's discovery requests; the right to notice of and to be present and heard at various proceedings; the right for the proceedings to be free from unreasonable delay and to a prompt final judgment; and the right to be informed of the rights and advised of the right to seek the advice and assistance of an attorney. The initiative also provides the manner in which those eighteen rights are to be recognized and effectuated; ensures the provision complements other crime victims' rights, is self-executing, and requires no additional legislative action; and defines "crime" and "victim." The definition of crime encompasses all felonies, misdemeanors, and delinquency proceedings, while victim is defined broadly to include the injured person, his or her kin, and others with substantially similar relationships to the injured person. Voters were asked to vote "yes" or "no" for CI-116 in its entirety.

The Court concluded that CI-116 made numerous substantive and unrelated changes to the Constitution and that the manner in which CI-116 was submitted to voters for one "yes" or "no" vote violated the separate-vote requirement. Although only two substantive and not closely related changes would have violated the separate-vote requirement, the Court analyzed some of CI-116's many provisions and concluded that CI-116 specifically affected existing constitutional provisions pertaining to the right to know, the right to participate, the right to bail, the Supreme Court's authority to regulate attorney conduct, and other constitutional rights related to criminal trials. The Court held that these changes were substantive and not closely related; thus a separate vote on each change was necessary to protect the integrity of the vote and to ensure that voters had control over each change to the Constitution. Because voters were asked to cast a single vote on multiple substantive and unrelated changes to the Constitution, the Court held that CI-116 was unconstitutionally submitted to Montana voters and void in its entirety.

Two justices dissented from the Court's opinion, stating that the case was not ripe for constitutional review because CI-116 has not yet been implemented, and its impacts and effects will depend on how a court interprets and applies its provisions to particular circumstances. Further, the dissenting justices believed the Court applied an over-restrictive test in determining whether CI-116 constituted multiple amendments, which could undermine the future exercise of the right of initiative by Montana citizens.