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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

FILED

SEP 22 2026

Bowen Greenwood
Clerk of Supreme Court
State of Montana

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,

ORDER

Defendants and Appellees.

Plaintiffs and Appellants 406 People First and Denise Kelly (collectively Proponents) move this Court pursuant to § 3-2-205(1), MCA, to grant an injunction pending disposition of this appeal from the August 28, 2026 Order Denying Requested Relief issued by the Second Judicial District Court, Butte-Silver Bow County, in that court's Cause No. DV-26-298. Proponents advise us that 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) do not take a position on Proponents' request for injunction.

This litigation arises from a proposed local ballot initiative, designated Petition Number 00-02, to add new material to the Butte-Silver Bow Municipal Code that would define the term "data center" and would prohibit the City-County from authorizing, licensing, permitting, or otherwise approving construction or expansion of any data center without approval via special election in which two-thirds of all registered voters approve. On August 12, 2026, Proponents filed a Complaint for Declaratory and Injunctive Relief and Application for Alternative and Peremptory Writ of Mandate; Request for Expedited Hearing, in which they alleged, in relevant summary, as follows:

On April 29, 2026, Proponents submitted a proposed petition to place on the November ballot an initiative regarding data centers. Under § 13-28-201(4), MCA, the City-County government had 21 days to reject or approve the sample petition. However, the government did not act until May 28, 2026, at which time it approved the sample petition. In her letter of approval, Clerk and Recorder/Election Administrator Cynthia Sherman advised Proponents that they needed to gather at least 3,652 valid signatures by 5:00 p.m. on August 14, 2026.

On June 3, 2026, Proponents proposed to Sherman, in writing, that they submit signature sheets on a weekly basis to “help everyone involved and avoid delivering approximately 4,000 signatures on the final day of signature collection.” Sherman agreed. Proponents thereafter submitted signature sheets to Sherman on a weekly basis through July 31, 2026.

On the afternoon of July 31, 2026, Sherman emailed Proponents and advised them that they had met the signature requirement. She further advised Proponents, “I need to have the County Attorney look over the certificate before signing it”

On August 10, 2026, Sherman issued a “Notification of Statutory Issue,” in which she informed Proponents that the Butte-Silver Bow County Attorney’s Office had identified “an issue concerning the statutory deadlines applicable to the proposed . . . local initiative.” Sherman further explained that, although Proponents had been “informed that they would need 3,652 signatures, and the signatures could be gathered beginning May 29, 2026 through August 17, 2026,” the County Attorney’s Office concluded that the deadline “must be evaluated in light of the more specific requirements contained in [§] 13-28-206[, MCA (2025)].” Sherman advised Proponents that under § 13-28-206, MCA, they would have had to submit signatures by July 13, 2026. Thus, the initiative did not meet the statutory requirements.

Notwithstanding the August 10, 2026 Notification, on August 11, 2026, Proponents advised Sherman that they intended to deliver another batch of signature sheets. Sherman confirmed receipt of this batch and stated that she would process those signatures. Sherman

later advised Proponents that she had processed all received signatures and accepted 3,850 of them—198 more than the 3,652 required signatures.

On August 12, 2026, Proponents filed a Complaint for Declaratory and Injunctive Relief and Application for Alternative and Peremptory Writ of Mandate; Request for Expedited Hearing in the Second Judicial District Court, Butte-Silver Bow County. Proponents further filed a Motion for Temporary Restraining Order and Preliminary Injunction and Brief in Support, and an Application for Alternative Writ of Mandate and Order to Show Cause. Proponents alleged, in part, that the City-County should be estopped from rejecting the signatures as untimely and that § 13-28-206, MCA, is unconstitutional as applied in this case. Proponents requested declaratory judgment in their favor along with temporary and permanent injunctive relief.

Proponents and the City-County then filed a Stipulation for Entry of Temporary Restraining Order and Order to Show Cause. The parties explained that the Stipulation would preserve the status quo and the integrity of the petition records and signatures while allowing the election process to proceed without prejudice to either party's legal position and permitting the District Court opportunity to address the parties' respective positions at a hearing on preliminary injunctive relief.

On August 12, 2026, the District Court issued a Temporary Restraining Order and Order to Show Cause, in which it ruled that a temporary restraining order would issue and remain in effect until the court conducted a hearing on the request for injunctive relief and entered further order of the court.

On August 18, 2026, the City-County filed its answer to Proponents' Complaint. The City-County took no position for or against the proposed local initiative, or whether it should appear on the ballot. The City-County requested that the District Court determine the parties' rights and obligations and enter an order directing Sherman as to how to proceed. The City-County explained that it believed the issue before the District Court was not whether the City-County should be compelled to give Proponents additional time beyond the statutory deadline to gather signatures. It believed the issue was whether the City-County, after providing Proponents with a deadline of August 14, 2026, to submit

signatures, accepting and processing signatures pursuant to that deadline, and confirming to Proponents that they had obtained the required number of signatures, could then reject the petition as untimely because § 13-28-206, MCA, established an earlier deadline.

Section 13-28-206, MCA, was enacted in 2025. Section 13-28-206(1)(b), MCA, provides that proponents must submit signed petition sheets to the county election administrator no later than four weeks before the ballot certification date. Section 13-28-206(2), MCA, sets the ballot certification date for local government ballot issues at no later than 85 days before the election. Thus, under § 13-28-206, MCA, Proponents needed to submit the signatures for their local initiative to Sherman no later than July 13, 2026, for the local initiative to appear on the November 3, 2026 ballot. The City-County asked the court to determine whether, under the facts of this case, its prior actions and representations to Proponents have legal consequences under equitable-estoppel principles.

The District Court held a show cause hearing on August 19, 2026. It then ordered the parties to provide it with supplemental briefing “on the issue of equitable estoppel and other arguments provided during the hearing.”

The parties submitted their respective briefs to the District Court on August 24, 2026. On August 28, 2026, the District Court issued its Order Denying Requested Relief. The court concluded that Proponents were obligated to follow the statutory deadline regardless of Sherman’s representations. It found that the elements of equitable estoppel were not met because both parties were mistaken as to the law and an inadvertent misrepresentation of the law does not constitute a misrepresentation of fact. The court further rejected Proponents’ as-applied constitutional challenge to § 13-28-206, MCA, and concluded that Proponents’ due process rights were not violated. It then denied Proponents’ requests for relief.

On August 31, 2026, Proponents moved the District Court for an injunction pending appeal pursuant to M. R. App. P. 22(1)(a)(iii), which provides, “A party shall file a motion in the district court for . . . an order suspending, modifying, restoring, or granting an injunction pending appeal.” Proponents argued that the court’s August 28, 2026 Order Denying Requested Relief was manifestly unjust because the court did not consider all of

Proponents' arguments in making its determination. Proponents alleged that they made a sufficient showing that they were entitled to an injunction pending appeal.

Proponents also filed the present appeal on August 31, 2026. On September 3, 2026, the District Court issued an Order on Plaintiffs' Request for Injunction Pending Appeal, in which it stated that it was "defer[ing] consideration" of Proponents' motion.

On September 4, 2026, Proponents filed an emergency motion requesting an injunction pending appeal. Noting that they could not request relief under M. R. App. P. 22(2) because the District Court had declined to rule on their motion for an injunction pending appeal, Proponents requested this Court find that extraordinary circumstances warrant consideration of their request for injunction as provided in M. R. App. P. 22(4), because the District Court's failure to rule constitutes "a functional denial where delay defeats all relief." 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.

Proponents first assert that the District Court's August 12, 2026 Temporary Restraining Order and Order to Show Cause established a preliminary injunction notwithstanding the court's characterization of a temporary restraining order. Proponents then ask us to reinstate the purported preliminary injunction. However, we need not determine whether the District Court in fact issued a preliminary injunction because this Court has the statutory authority to grant an injunction pending appeal if such is warranted.

Section 3-2-205(1), MCA, provides, in relevant part: "Upon such terms and under such rules as the supreme court may establish, the supreme court may . . . grant an injunction order and writ pending an appeal to the supreme court from an order of a district court or judge refusing or dissolving an injunction." In deciding whether to grant an injunction pending appeal, courts are guided by the standard employed when considering a motion for preliminary injunction. *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir, 1983). A preliminary injunction may be granted when the applicant establishes that:

(a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant's favor; and (d) the order is in the public interest. Section 27-19-201(1), MCA.

Pursuant to our statutory authority to grant an injunction while appeal from a district court's denial of an injunction is pending before this Court, we thus consider whether Proponents are entitled to an injunction under the factors set forth in § 27-19-201(1), MCA.

First, we consider whether Proponents are likely to succeed on the merits. Section 27-19-201(1)(a), MCA. A "likelihood of success on the merits" merely requires a prima facie case on the underlying claim; it does not require that the party has established entitlement to relief at a trial on the merits. *Planned Parenthood of Mont. v. State*, 2022 MT 157, ¶ 35, 409 Mont. 378, 515 P.3d 301 (citation omitted). "Prima facie" is defined as "at first sight" or "on first appearance but subject to further evidence or information." *Driscoll v. Stapleton*, 2020 MT 247, ¶ 15, 401 Mont. 405, 473 P.3d 386 (citations omitted). Moreover, "when the balance of equities tips sharply in the plaintiff's favor, the plaintiff need demonstrate only 'serious questions going to the merits.'" *Driscoll*, ¶ 16 (quoting *Davis v. Stapleton*, CV 20-62-H-DLC, 2020 U.S. Dist. LEXIS 150267, *12 (D. Mont. Aug. 19, 2020)). As we conclude below, the balance of equities indeed tips in Proponents' favor.

Here, as to the first element, Proponents argue that the District Court overlooked a key component of their argument, thus causing that court to incorrectly conclude that Proponents are not likely to succeed on the merits of their as-applied constitutional challenge. Specifically, they argue the district court did not take into account that the purpose of § 13-28-206, MCA—to allow election administrators sufficient time to process signatures and determine whether a local initiative has qualified for the ballot—was satisfied.

At this juncture, we agree that this factor tends towards Proponents' favor. However, our determination is based only on a prima facie consideration of the matter before the Court and in no way stands as our final conclusion on the matter.

Second, we consider whether Proponents are likely to suffer irreparable harm in the absence of preliminary relief. Unquestionably, they will. If we do not grant Proponents the injunctive relief they seek while we consider the matter on appeal, the subject initiative will not appear on the November ballot—a result which, if erroneous, has no timely remedy.

Third, we consider whether the balance of equities tips in Proponents' favor. In assessing the balance of equities, the court weighs the competing interests based on the record before it, without finally resolving the underlying constitutional questions. *Kalarchik v. State*, 2026 MT 76, ¶ 40, 427 Mont. 333, 587 P.3d 784. Here, we weigh Proponents' right, having obtained the necessary signatures, to have its local initiative appear on the ballot against the government's right to compel the people to comply with a duly enacted statute. In balancing the equities, we take note of Proponents' argument that they complied with the intent of the statute because Sherman had sufficient time to process their signature sheets even though Proponents submitted sheets after the statutory deadline. Furthermore, the statute was enacted and created a new deadline in 2025; it is not a longstanding law. We also consider the fact that the City-County takes no position on Proponents' request for injunctive relief. This leads us to conclude that this factor also favors injunctive relief while this appeal is pending.

Fourth, we consider whether the requested order is in the public interest. Of this there can be no question: well over the threshold 3,652 individuals signed Proponents' petitions to place this initiative on the ballot. Article XI, Section 8, of the Montana Constitution, provides, "The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit." Preventing constitutional injury is always in the public interest. *All Fams. Healthcare v. State*, 2026 MT 64, ¶ 59, 427 Mont. 238, 586 P.3d 803. The public interest is served by allowing the voters to exercise their initiative powers.

Finally, we note that our decision to grant Proponents injunctive relief is informed by our consideration of the consequences if we deny them the relief sought. If the initiative appears on the ballot but we ultimately determine that was in error, and if the initiative

receives sufficient votes to be approved by the electorate, it is possible that the initiative may ultimately be invalidated—a result we are loathe to contemplate. However, if we deny Proponents injunctive relief with the result that the initiative does not appear on the November ballot and we ultimately determine the District Court erred, the result would be that the electorate would be denied their right to vote on an initiative that met the threshold requirements to appear on the ballot. The latter is the greater evil.

IT IS HEREBY ORDERED Proponents' motion for injunction pending appeal is GRANTED.

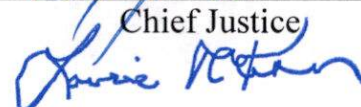
IT IS FURTHER ORDERED that the City-County of Butte-Silver Bow and Cynthia Sherman, in her official capacity as Clerk and Recorder/Election Administrator are ENJOINED from denying certification of Local Initiative 00-02 on the basis that it failed to comply with the deadline for submission of signatures as set forth in § 13-28-206, MCA (2025).

IT IS FURTHER ORDERED that this injunction shall remain in place until such time as this Court disposes of this appeal.

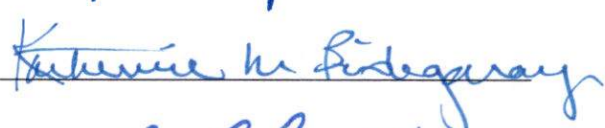
The Clerk is directed to provide a true copy of this Order to all parties of record.

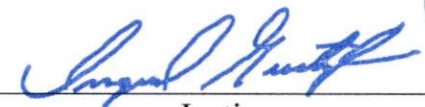
DATED this 22nd day of September, 2026.



Chief Justice








Justices