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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

WRONG FOR MONTANA and STEVE
ZABAWA,

Plaintiffs,

v.

THE STATE OF MONTANA, by and through
TIMOTHY C. FOX, in his Official Capacity as
Attorney General, and COREY STAPLETON,
in his Official Capacity as Secretary of State,

Defendants.

Case No. BDV-2020-1854

**COMPLAINT FOR DECLARATORY
JUDGMENT**

**MICHAEL F. McMAHON
Presiding Judge**

COMES NOW, Wrong for Montana and Steve Zabawa, seeking judgment under Mont.
Code Ann. §§ 27-8-101 et seq.

NATURE OF THE ACTION

1. This is a complaint for declaratory judgment brought under the Montana Uniform
Declaratory Judgments Act. Plaintiffs challenge the substantive constitutionality of Initiative No.
190 ("I-190"). See Mont. Code Ann. §§ 13-27-312(7) and 316(6).

2. I-190 legalizes the possession and recreational use of marijuana and levies taxes
on marijuana products, with resulting revenues to be earmarked and credited to specified
programs and agencies for specified uses. As such, I-190 is an appropriation of money by
initiative in violation of Article III, § 4(1) of the Montana Constitution. Plaintiffs respectfully ask

1 this Court to enter judgment declaring that I-190 is an unconstitutional appropriation by
2 initiative, is void in its entirety, and that all of I-190 is unenforceable.

3 **PARTIES**

4 3. Wrong for Montana (“WFM”) is a “ballot issue committee” registered with the
5 Montana Commissioner of Political Practices. WFM’s purpose is to oppose I-190 and CI-118.

6 4. Steve Zabawa is a Montana citizen, voter, and taxpayer and is the treasurer of
7 WFM.

8 5. Defendant the State of Montana is a sovereign state.

9 6. Timothy C. Fox is Attorney General of the State of Montana, and is charged with
10 defending and enforcing Montana law, including law enacted by initiative. Defendant is named
11 in his official capacity only.

12 7. Corey Stapleton is the Secretary of State of Montana, and is charged with
13 overseeing and certifying the election process in Montana. Defendant is named in his official
14 capacity only.

15 **JURISDICTION AND VENUE**

16 8. The Court has jurisdiction over this matter pursuant to Mont. Code Ann. §§ 3-5-
17 302 and 27-8-201 and 202.

18 9. Venue is proper in the First Judicial District Court, Lewis and Clark County,
19 pursuant to Mont. Code Ann. §§ 25-2-125 and 126.

20 **ALLEGATIONS**

21 10. I-190 is a ballot initiative that appeared on the 2020 Montana general election
22 ballot. [Ex. 1].

23 11. I-190 authorizes the recreational use of marijuana, establishes a tax on the retail
24 sale of marijuana, and allocates such monies by appropriating the corresponding tax revenue to
25 particular programs and agencies for particular uses.

26 12. Montana taxpayers have standing to question the state constitutional validity of a
27 tax or use of tax monies where the issue or issues presented directly affect the constitutional

1 validity of the state or its political subdivisions acting to collect the tax, issue bonds, or use the
2 proceeds. *See e.g., Grossman v. State, Dep't of Nat. Res.*, 209 Mont. 427, 438–39, 682 P.2d 1319,
3 1325 (1984).

4 13. Section 35 of I-190 creates a new marijuana compensation special revenue
5 account in which the marijuana sales tax revenue is to be deposited.

6 14. Pursuant to Section 35 of I-190, revenue is appropriated and credited to specific
7 uses, purposes, and recipients; namely public land, public land access, conservation programs,
8 state parks, veterans' services, healthcare costs, and municipalities where marijuana is sold.

9 15. Section 38 of I-190 appropriates money from marijuana taxes collected under I-
10 190 section 35 to the Montana Department of Fish Wildlife and Parks.

11 16. Section 39 of I-190 appropriates money from marijuana taxes collected under I-
12 190 section 35 to the Trails and recreational facilities account.

13 17. Section 50 of I-190 appropriates money from marijuana taxes collected under I-
14 190 section 35 to the health and Medicaid initiatives account to be administered by the
15 department of public health and human services.

16 18. Section 52 of I-190 appropriates money from marijuana taxes collected under I-
17 190 section 35 to the Fish and Wildlife Commission and "must be used to secure wildlife
18 habitat."

19 19. Section 53 of I-190 appropriates money from marijuana taxes collected under I-
20 190 section 35 to the Montana Department of Fish, Wildlife, and Parks to be used as determined
21 by the Fish and Wildlife Commission.

22 20. The proponent of I-190, New Approach Montana ("NAM"), campaigned in
23 support of I-190 based upon the revenue and spending for public land access, conservation, and
24 veterans as provided in I-190.

25 21. NAM's website dedicated significant focus to the fact I-190 will raise tax revenue
26 and dedicate that revenue for spending on specific purposes including support of public lands,
27

1 public land access, wildlife conservation, state parks, local governments, and veterans. [Exs. 2-
2 4].

3 22. Several public land and conservation interest groups publicly supported I-190
4 based upon I-190 increasing revenue and spending for public land access and wildlife
5 conservation projects. This includes the Montana Conservation Voters, the Montana Wildlife
6 Federation, Wild Montana Action Fund, and the Trust for Public Land. [Exs. 5 – 10].

7 23. Under the Montana Uniform Declaratory Judgments Act, a party may seek a
8 declaratory judgment to determine rights under statutes and the Montana Constitution.

9 24. A true controversy exists regarding whether or not I-190 can be properly enacted.

10 25. A true controversy exists as to whether or not the tax money collected under I-190
11 can be credited, paid, allocated, earmarked, and restricted as provided in I-190.

12 26. A true controversy exists as to whether or not I-190 violates the Montana
13 constitutional prohibition on appropriation by initiative.

14 27. I-190 will come into effect in the form contained in the 2020 Montana Voter
15 Information Pamphlet. [Ex. 1].

16 28. Portions of I-190 will come into effect on January 1, 2021.

17 29. A judicial determination of the issues raised in this complaint will have the effect
18 of a final judgment upon the rights and status of I-190 and the Plaintiffs.

19 30. Mont. Const. Art. III, § 4 provides the electors of Montana “may enact laws by
20 initiative on all matters except appropriations of money and local or special laws.”

21 31. I-190 is an appropriation by initiative.

22 32. I-190 violates Mont. Const. Art. III, § 4.

23 **PRAYER FOR RELIEF**


24 WHEREFORE, Plaintiffs respectfully pray for the following relief:

- 25 1. That the court enter judgment declaring I-190 unconstitutional;
26 2. That the court enter judgment declaring I-190 void in its entirety;
27 3. That the court enter judgment declaring I-190 is unenforceable in its entirety;

1 4. That the court award all other relief as justice requires.

2 DATED this 4th day of November, 2020.

3 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

4 
5 By _____
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7 Kasey R. Kimball
8 Chad E. Adams

9 Attorneys for Plaintiffs
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