A New Precedent Born of AI

How Civic Language Is Being Rewritten in America's Legal System
Co-Intelligence and the Quiet Remaking of Democratic Infrastructure

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Author's Note on Scope, Terminology, and Method

This paper is a documentary and doctrinal account of a specific civic drafting episode that occurred inside a live democratic process and resulted in a judicially certified ballot statement. It is not a technical specification, not a software design document, and not a description of any production system architecture. Nothing in this paper is intended to disclose implementation details, operational workflows, enforcement mechanisms, or technical methods for building artificial intelligence governance systems.

Disclosure of AI Assistance

This paper was developed with the assistance of generative artificial intelligence tools used as constrained drafting partners in a human-in-the-loop workflow. Specifically, the author used multiple large language model systems, including ChatGPT, Gemini, Grok, and Venice AI, to explore alternative sentence constructions, compress iterative drafting cycles, and surface potential ambiguity risks during the language development process.

No autonomous agents were used. No legal reasoning was delegated to any system. No policy decisions were automated. No factual assertions were generated without independent human verification. Every legally and ethically relevant judgment, including the selection of final language, remained the responsibility of the author and a team of retired jurists and constitutional experts.

The role of these tools was narrow and instrumental. They were used to accelerate linguistic exploration, not to replace human judgment, authorship, or accountability. All conclusions, arguments, and interpretations expressed in this paper are solely those of the author.

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Preface

Language Before Power

This paper is not about artificial intelligence in the way most writing about artificial intelligence is. It is not a story about speed, efficiency, disruption, automation, or technological novelty. It is a story about language, about governance, and about what actually happens when a new tool quietly enters a system that was never designed to acknowledge it.

It is also not a speculative paper. It is not a policy proposal. It is not a futurist manifesto. It is a documentary account of a specific drafting episode that occurred inside a live democratic process, was contested by a sitting Attorney General, was litigated directly in a state supreme court, and resulted in the judicial certification of a sentence that had been engineered with the assistance of generative AI.

The reason that episode matters has very little to do with the subject matter of the initiative it arose from. Judicial elections are not the point. Marijuana legalization is not the point. Montana is not even the point. What matters is the procedural layer at which the episode occurred and the doctrinal posture the court implicitly took toward it.

The sentence at the center of this story did not just survive judicial review. It normalized a new kind of institutional honesty. It quietly altered the grammar of democratic disclosure. And it demonstrated, in a way no abstract ethics framework ever could, what responsible AI instrumentation looks like inside a legally sensitive environment.

What follows is an account of how that sentence came into being, how it was challenged, how it was canonized, and why that process should matter to anyone thinking seriously about the future of law, governance, and artificial intelligence.

Prologue

How Laws Actually Start

Most people think laws begin in legislatures or courtrooms. They picture speeches, roll calls, gavels, or judges in robes reading opinions from the bench. That is not where most laws really begin. They begin in sentences that almost nobody ever sees.

In Montana, those sentences live in a narrow procedural corridor between the Secretary of State's office and the Attorney General's review desk. They are called ballot explanations. The specific term used in the Montana Code Annotated (MCA) is **"statement of purpose and implication"** for statutory initiatives (like I-190) and **"explanation of the amendment"** for constitutional initiatives (like CI-118 or CI-131).

However, the colloquial and most common term used by everyone involved in the process—from the Secretary of State's office to campaign managers—is simply the **ballot statement** or **ballot explanation**.

To be precise, the law requires that this statement "express the true and impartial explanation of the proposal in plain, easily understood language" (§ 13-27-212(1), MCA). It is not a "statement of intent," which would imply an argument or persuasion.

They are the only official words voters get to read before they sign a petition or cast a vote. They are not the law itself, but they decide whether the law ever gets to exist.

I have lived inside that corridor long enough now that I know what it smells like. It smells like paper, fluorescent lights, stale coffee, deadline stress, and a quiet kind of power that never makes the news. It is not glamorous. It is not theatrical. It is administrative in the way that most real power in a democracy is administrative.

Back in 2020, when we wrote Initiative 190 and Constitutional Initiative 118, we rewrote Montana's marijuana law in two completely different legal layers at the same time.

Initiative 190 was a sixty-seven page statutory measure that legalized adult use marijuana, created a statewide licensing system, imposed a retail tax, and delegated regulatory authority to the Department of Revenue. It was a full machinery build. It had to be. You cannot legalize and regulate an entire industry with a slogan. Statutes are where you put all the moving parts because statutes are what bureaucracies actually run on.

Constitutional Initiative 118 did something much smaller and much stranger. It amended the Montana Constitution to make clear that age limits on marijuana use were constitutionally permitted. It did not legalize anything. It did not regulate anything. It did not build a program. It did not create a bureaucracy. It added two words to an existing sentence: and marijuana.

That was the entire amendment…and marijuana. That's it.

Everything else in that constitutional sentence was already there. All we did was take a category of conduct that had been living in statute and recognize it constitutionally.

That pairing taught me something that does not show up in civics textbooks. It taught me that statutes and constitutions are not just different documents. They are different instruments, with different drafting ethics, different risk profiles, and different kinds of permanence.

Statutes are where you build machines. Constitutions are where you set boundaries.

That lesson stayed with me.

I. The Long Road to Three Words

By the time we started talking seriously about CI-131 in 2025, I was not thinking like a campaign manager anymore. I was thinking like someone who had already watched his language become law and then watched other people try to bend that law to their own purposes.

CI-131 was not supposed to be flashy. It was not supposed to start a movement. It was not supposed to win a culture war. It was supposed to do one boring thing well: take a rule that had been sitting quietly in Montana statute books since 1935 and move it into the Constitution, where it would be much harder to mess with.

That rule was simple. Judicial elections in Montana are nonpartisan. Judges do not run with party labels next to their names. Voters have always understood that as part of the social contract of how justice is supposed to work here.

What most people do not realize is that this rule was never constitutionally protected. It lived in statute. Which meant it could be repealed by a simple act of the legislature, quietly, in a single session, without asking voters for permission. CI-131 was designed to close that gap.

The constitutional amendment text itself was almost insultingly small. We did not rewrite a sentence. We did not add a clause. We did not touch the structure. We inserted three words into a sentence that already existed in Article VII, Section 8(1) of the Montana Constitution: in nonpartisan elections. That was the entire amendment in this larger sentence:

“Supreme Court justices and district court judges shall be elected <u>in nonpartisan elections</u> by the qualified electors as provided by law.”

Everything else you see in that sentence was already there in the Constitution. All we did was take a rule that had been living in statute since 1935 and staple it into the constitutional text with three words that did not invite interpretation.

Over five years, I added two words to the Montana Constitution and was hoping for another three but it wasn’t to be, but a stranger more profound change to the Montana Constitutional amendment process emerged from the effort.

II. The Two Drafting Jobs Everyone Confuses

There are two completely different crafts involved in writing a ballot initiative, and most people treat them as if they were the same thing.

The first craft is writing constitutional text. That is language for judges twenty years from now, lawyers arguing future cases, legislatures trying to reinterpret your intent, and agencies looking for loopholes. That language needs to be minimal, durable, and as boring as possible.

The second craft is writing the ballot explanation. That is language for voters today. Ordinary people. People who do not read statutes. People who do not think in legal abstractions. People who still deserve to know what they are actually being asked to lock into their Constitution.

Montana law requires that ballot statements express the true and impartial explanation of the proposal in plain, easily understood language and may not be argumentative or written so as to create prejudice.

Most ballot statements in Montana had always followed a quiet convention. They explained what initiatives did. They almost never explained what initiatives meant structurally. They had never told voters how hard a constitutional amendment is to undo. That omission had always bothered me. Not in a political way. In an engineering way.

So when we sat down to write the ballot explanation for CI-131, I had one quiet goal. I wanted to see if we could finally tell voters the truth about that.

The statement we drafted was four sentences long. It explained that the initiative would require Montana Supreme Court and district court elections to remain nonpartisan, that state law had required this since 1935, and that the amendment would add that rule to the Montana Constitution so it could only be changed by another constitutional amendment approved by voters.

No slogans. No threats. No persuasion.Just three facts.

That third sentence is the one that changed everything.

III. How Co-Intelligence Actually Entered the Room

I did not sit down one morning and ask a chatbot to write a constitutional amendment. That is not how this happened, and it is not what this project was.

What I did was build a deliberately constrained drafting workflow that used multiple generative AI systems as linguistic instruments rather than as authors. I worked across ChatGPT, Gemini, Grok, and Venice AI, not to outsource judgment or reasoning, but to compress what would

normally have been weeks of sentence iteration into a much tighter exploratory space, one in which I could test alternative grammatical constructions, explore different minimal framings, and surface ambiguity risks that are easy to miss when you are too close to your own language.

There were no autonomous agents involved in this process. There was no tool chaining, no background task execution, no delegated reasoning, and no moment at which a system was allowed to decide what the law should say. Every ethically relevant decision point remained human. Every legal judgment remained human. Every final word selection remained human. The role of the AI systems was narrow and disciplined, and that narrowness was intentional.

I used them to generate alternative sentence constructions, to stress test different ways of describing permanence, and to surface subtle ambiguities that might later become litigation hooks. The permanence sentence did not appear fully formed. It emerged through elimination, refinement like the distillation of a fine whiskey. Who knows what staggering amount of rejected drafts became the angel's share that evaporated in the process just as in spirits distillation. Each draft version was stripped of adjectives, stripped of rhetorical framing, stripped of emotional cues, until only the minimal truthful structure remained.

Human judgment selected the words. Human experience shaped the minimalism. Human legal reasoning filtered the options. The machines did what machines are good at: they accelerated the search across the possibility space of language.

That distinction matters more than most people realize, because it draws a bright line between co-intelligence and substitution. No legal reasoning was outsourced. No policy choice was automated. No human accountability was displaced. The systems were used as language microscopes, not as language factories, and the responsibility for what went onto the page never left human hands.

That is the model I will defend, because it is the only model that survives contact with law.

IV. The National Legal Backdrop We Were All Pretending Not to See

By the time we were drafting CI-131, anyone paying attention to the legal world already knew that artificial intelligence had become radioactive in courtrooms.

In 2023, the United States District Court for the Southern District of New York sanctioned attorneys in Mata v. Avianca, Inc. after a legal brief filed by counsel contained fictitious judicial opinions generated by ChatGPT. The court emphasized that lawyers remain fully responsible for verifying any work product produced with AI assistance and that professional responsibility does not disappear just because a machine was involved in the drafting process.

Around the same time, Judge Brantley Starr of the United States District Court for the Northern District of Texas issued a standing order requiring attorneys to disclose whether they had used generative AI in preparing filings and to certify that any such content had been verified by a human being.

State courts and regulatory bodies followed with their own guidance. In 2024, the American Bar Association issued Formal Opinion 512, which reminded lawyers that they may use generative AI tools but must understand their limitations, protect client confidentiality, and independently verify the accuracy of any AI-generated output.

The national legal system's default posture toward AI had become defensive, bordering on allergic. AI was being treated as a liability, not as a governance tool.

We knew all of that going in, which is exactly why we did not treat AI as an author. We treated it as an instrument.

V. Designing the Fight Instead of Hoping to Avoid It

We did not expect the Attorney General to approve our ballot explanation. We expected him to reject it. That was not paranoia. It was experience. So the CI-131 language was engineered backward from that assumption.

We wrote a statement that was clearly true, stripped of tone, stripped of advocacy, and anchored in statute. We included the permanence sentence anyway. We assumed it would be rejected. And we prepared to force judicial review. Every word was chosen as if seven justices would read it.

This was not campaign drafting. It was appellate drafting.

VI. What the Montana Supreme Court Did

The Attorney General rewrote the ballot statement without making a written determination that it failed to comply with statutory requirements.

We sued him directly in the Montana Supreme Court.

On December 11, 2025, the Court held that the Attorney General lacked authority to rewrite the statement, that a conclusory declaration of noncompliance was insufficient, that the Court would not invalidate a statement merely because a better one could be written, and that the original statement satisfied statutory requirements. The Court certified our language verbatim.

This ruling appears in the Montana Supreme Court's published opinion in Montanans for Fair and Impartial Judges v. Knudsen.

With that, the permanence sentence became law.

VII. The Precedent Hidden in One Sentence

No Montana ballot statement had ever told voters that a constitutional amendment would be hard to undo. By certifying that sentence, the Court normalized procedural permanence disclosure, narrowed executive rewrite power, raised voter literacy, created a reusable template, and redefined neutrality. Future initiatives will undoubtedly copy that structure.

That is how democratic systems actually evolve.

VIII. Why CI-131 Was Withdrawn

After the Court certified the language, we withdrew CI-131. Not because it failed. Not because the language was weak. We withdrew it to avoid confusing voters with a similar initiative, CI-132, which had the funding to proceed.

That decoupled the precedent from any political win or loss.

The sentence remains.

IX. The Governance Plane

Every democratic system runs on sentences long before it runs on votes.

Before there is a campaign, there is a clause. Before there is a lawsuit, there is a paragraph. Before there is a political fight, there is a line of text that someone had to decide was good enough to survive into the future.

We like to pretend that politics is the arena where power lives. It makes for better television. But anyone who has actually built law from the inside knows that the real leverage point sits lower than politics, lower than ideology, lower even than institutions.

It sits in language design.

Most of the time, nobody is paying attention to that layer. It is treated as a clerical step. Ballot statements get written, reviewed, rewritten, litigated, and certified as if they were neutral packaging instead of what they actually are: the user interface of democracy.

CI-131 was not designed as a political intervention first. It was designed as a language intervention. The constitutional text was almost insultingly small. Three words. Inserted into a sentence that already existed. No new policy. No regulatory detail. No ideological framing. Just a structural entrenchment of a rule Montanans already lived under.

The real design work happened one layer up, in the ballot explanation. That is where the Governance Plane lives.

The Governance Plane is the layer where civic language is engineered, tested, stabilized, and then quietly propagated across institutions. It is not legislative drafting. It is not constitutional theory. It is not campaign messaging. It is the narrow zone where truth, neutrality, and durability have to coexist inside one sentence that seven justices will read and millions of voters will never consciously notice.

Before CI-131, Montana ballot explanations followed an unwritten norm. They told voters what a measure did. They did not tell voters what a measure meant structurally. They described policy effects. They did not describe constitutional permanence.

That omission was not malicious. It was inherited. Until we fixed it on purpose.

The permanence sentence was not a rhetorical flourish. It was not a political argument. It was a literal statement of constitutional mechanics that had simply never been written down in a ballot explanation before.

“This amendment would add that rule to the Montana Constitution, so it could only be changed by another constitutional amendment approved by voters.”

That sentence translates constitutional law into ordinary English. It removes a structural asymmetry between what insiders know and what voters are told. It forces future initiative drafters to confront the permanence of what they are asking people to approve.

That is not messaging. That is infrastructure.

The Montana Supreme Court did not just certify our ballot statement. It certified a new linguistic norm.

From now on, every initiative sponsor in this state knows that they are allowed to tell voters the truth about permanence. Every Attorney General now knows that they cannot strike that truth just because it is inconvenient. Every court now has a published opinion saying that neutrality includes structural honesty. That is how the Governance Plane evolves.

X. The Doctrine That Did Not Have a Name

We ended up doing something that did not have a name yet. So I am giving it one now.

Procedural Permanence Disclosure.

It is the principle that ballot statements for constitutional initiatives should explicitly state, in neutral, plain language, that a constitutional amendment can only be changed by another constitutional amendment approved by voters.

It is not persuasion. It is institutional truth.

XI. Why This Matters Nationally

If CI-131 were only a Montana story, it would still matter, but it would not matter in the way that it actually does. What makes this episode doctrinally significant is not the subject matter of judicial elections. It is the process by which a sentence was engineered, contested, and canonized. It is the legal posture the Montana Supreme Court took toward that sentence. And it is the way artificial intelligence quietly entered the civic drafting process without triggering the professional backlash that has defined nearly every other major AI law encounter in the United States so far.

Nationally, the legal system has spent the last two years learning how not to use AI. In Mata v. Avianca, Inc., the Southern District of New York sanctioned attorneys for submitting a brief containing fictitious judicial opinions generated by ChatGPT, underscoring that lawyers remain responsible for the accuracy of filings regardless of AI involvement.

Judge Brantley Starr's standing order in the Northern District of Texas required attorneys to disclose and certify human verification of any generative AI use in filings. The American Bar Association's Formal Opinion 512 reminded lawyers that generative AI tools may be used but must be understood, supervised, and independently verified. The legal system's default posture toward AI had therefore become defensive.

What makes CI-131 different is that it does not fall into that category at all. No fictitious authority was generated. No legal reasoning was outsourced. No policy choice was automated. No human accountability was displaced.

AI's role was narrow and disciplined. It was used to explore alternative sentence constructions, compress iteration time, and surface ambiguity risks. It did not generate legal conclusions. It did not select the final words. It did not validate the result. Every ethically relevant decision point remained human.

If Mata represents reckless AI substitution, CI-131 represents cautious AI instrumentation. The Montana Supreme Court implicitly ratified that model. The Court did not care how the sentence had been produced. It cared whether the sentence was true, impartial, and statutorily compliant.

That is the right standard. The rule that emerges is not "AI is allowed to write law." The rule is something quieter and more durable: courts care about outputs, not tools; they care about truth, not process mythology; they care about accountability, not novelty.

That rule harmonizes with existing professional responsibility doctrine. CI-131 shows what it looks like when AI is used as a language microscope instead of a language factory, and that model scales.

XII. Conclusion

I-190 taught me how heavy statutes need to be. CI-118 taught me how light constitutions need to be. CI-131 taught me that voters deserve the truth about permanence.

Co-intelligence helped me find the sentence that said that truth cleanly, not because a machine knew what the law should say, but because it helped me see more clearly the language space I was already working inside.

The Montana Supreme Court canonized it. We withdrew the initiative to protect voter clarity when it became obvious that the financial backing was going to CI-132, an almost identical constitutional amendment effort. The precedent remained. Language became infrastructure.

References

These are the only external legal authorities referenced in the text, and all are real, verifiable, and widely documented:

1. Mata v. Avianca, Inc.
   United States District Court for the Southern District of New York (2023)
   Sanctions imposed after attorneys submitted a brief containing fictitious case citations generated by ChatGPT.
2. Standing Order of Judge Brantley Starr
   United States District Court for the Northern District of Texas (2023)
   Order requiring disclosure and certification of human verification for generative AI use in filings.
3. American Bar Association Formal Opinion 512 (2024)
   Guidance on lawyers' ethical obligations when using generative artificial intelligence tools.

4. Montanans for Fair and Impartial Judges v. Knudsen
   Montana Supreme Court (December 11, 2025)
   Case certifying the CI-131 ballot statement and limiting the Attorney General's rewrite authority.