

FILED

JUN 01 2020

Peter Michael Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena, MT 59624
(406) 442-8670
mike@meloylawfirm.com

ANGIE SPARKS, Clerk of District Court
By AMBER M MULLEN Deputy Clerk

Matthew Gordon
PERKINS COIE LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101
(206) 359-8000
mgordon@perkinscoie.com

Attorneys for Plaintiffs

IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA DEMOCRATIC PARTY,

and

TAYLOR BLOSSOM, RYAN FILZ,
MADELEINE NEUMEYER, and REBECCA
WEED, individual electors,

Plaintiffs,

v.

STATE OF MONTANA, by and through its
SECRETARY OF STATE COREY
STAPLETON,

Defendant

Case No. CDV-2020-856

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

KATHY SEELEY
PRESIDING JUDGE

INTRODUCTION

1. Plaintiffs Taylor Blossom, Ryan Filz, Madeleine Neumeyer, and Rebecca Weed, along with hundreds of other Montana voters, signed what they believed was a petition sponsored and organized by supporters of the Montana Green Party to select its candidates through a primary

election and obtain ballot access in the November 2020 general election (the “Petition”). In truth, the Montana Green Party had absolutely nothing to do with the Petition. Rather, the effort was led by professional out-of-state signature gatherers from a for-profit Texas-based political consulting firm, organized and funded by the Montana Republican Party. In other words, as activists affiliated with the Montana Green Party later described the effort, the petition drive was in fact a “Republican and conservative effort” to create “false” Montana Green Party candidates.¹ The Montana Republican Party funded the effort using cash routed through a shell committee operating under the title “Montanans for Conservation” that failed to properly disclose its petition gathering activities until well after the Petition was submitted to the Secretary of State.

2. As a result, Plaintiffs and other signers only discovered weeks later that they had signed a petition organized and funded by—and plainly intended to provide a political advantage to—a political party (the Republican Party) whose values and tactics they did not support and with whom they did not want to and do not want to be associated with.

3. In response, Plaintiffs, along with hundreds of other signers, informed state and county election officials that they wanted to remove their signatures from the Petition. In so doing, Plaintiffs exercised the long-recognized right of Montana petition signers to withdraw their names from a petition—a right that is a necessary inference from the very nature of the right to petition. In fact, so many signers requested to withdraw their signature that the Petition can no longer qualify the Montana Green Party for general election ballot access under 13-10-601, MCA (hereinafter the “Political Party Qualification Statute”). The Petition fails to evidence the sufficient “showing of a modicum of voter support,” *Larson v. State By & Through Stapleton*, 2019 MT 28,

¹ Mike Dennison, *Montana GOP spent \$100K to qualify Green Party for 2020 ballots*, Missoula Current (Mar. 25, 2020), <https://missoulacurrent.com/government/2020/03/montana-green-party/>.

¶ 82, 394 Mont. 167, 215, 434 P.3d 241, 271 (citing *Munro v. Socialist Workers Party*, 479 U.S. 189, 196 (1986)), required to obtain ballot access under Montana law.

4. Yet, as of the date of the filing of this Complaint, Defendant Secretary of State Corey Stapleton (the “Secretary”) has failed to act to withdraw the Montana Green Party as a party qualified to nominate candidates for general election ballot access through primary elections. While accepting some withdrawal requests, the Secretary has improperly rejected the withdrawal requests of Plaintiffs and hundreds of others based on his purported belief that those requests were submitted too late.

5. But the Secretary’s deadline finds no support in Montana statute or administrative rules, nor is it set forth in any public-facing guidance or policy statement; in fact, the Secretary appears to have invented the deadline in direct reaction to the many withdrawal requests he received regarding this very petition.

6. The Secretary’s failure to give effect to hundreds of withdrawal requests based on his newly created and unsupportable deadline contravenes Montana’s longstanding recognition of the right of voters to remove their signatures from petitions, and as applied to the signers of the Montana Green Party petition, violates their associational rights—including their right *not* to associate with a political party—protected by Article II, Sections 6 and 7 of the Montana Constitution.

7. Incredibly, this is not the first time that court intervention has been required to remedy this Secretary’s decision to erroneously certify the Montana Green Party for ballot access under the Political Party Qualification Statute. Just two years ago, in a case involving the exact same out-of-state signature gathering firm that sought to qualify the Montana Green Party for ballot access on behalf of an undisclosed funder, this Court found that at least one of the firm’s

signature gatherers made a false attestation on the signature gatherer affidavit, and that certain petition signatures and dates were missing required information, were altered, or otherwise incorrect. The Court determined that without these invalid forms, the petition failed to satisfy the required statutory thresholds, and it invalidated the Secretary's certification of the Montana Green Party for ballot access. The Montana Supreme Court, by a 6-1 vote, affirmed the District Court's well-supported findings of fact and conclusions of law on appeal. *See Larson*, 2019 MT 28, 394 Mont. 167, 434 P.3d 241.

8. Plaintiffs here, like the *Larson* plaintiffs in 2018, seek declaratory and injunctive relief pursuant to the Montana Declaratory Judgment Act: a declaration that (1) the withdrawal requests rejected by the Secretary are valid; (2) the Petition thus fails to meet the thresholds required by the Political Party Qualification Statute and is, accordingly, invalid; and (3) for the same reasons, the Secretary's certification of the Montana Green Party as a political party that can select its candidates through a primary election and obtain ballot access in the November 2020 general election is similarly invalid. Plaintiffs further seek an injunction enjoining the Secretary, as well as his agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to certification of the Petition under Section 13-10-601.

9. Plaintiffs initiate this action to ensure that the Secretary respects the right of petition signers to withdraw their names from a petition, and to enjoin the Secretary from giving any effect to a petition that fails to meet the required minimum number of valid signatures required by Montana law. In the absence of declaratory and injunctive relief, the Secretary's use of a purported deadline to forbid voters from withdrawing signatures obtained through deceptive and misleading tactics will unjustifiably reward such behavior and encourage future petition circulators to engage

in similar tactics. By contrast, declaratory and injunctive relief affirming the right of petition signers to withdraw their signatures will create strong incentives for future petition circulators to abide by statutory financial disclosure requirements and to conduct their activities honestly and transparently.

FACTUAL BACKGROUND

I. Out-of-state petition gatherers, funded by unknown individuals or organizations, attempted to qualify the Montana Green Party for ballot access—and were denounced by activists affiliated with the Montana Green Party.

10. Beginning in late January 2020 a group of twenty-one petition circulators began showing up outside grocery stores, public libraries, and other gathering places in counties across the State, seeking signatures for their petition to obtain ballot access in the November 2020 election for the Montana Green Party.

11. While some of these circulators held themselves out as supporters or members of the Montana Green Party, almost all of them were not Montanans at all—listing their addresses on affidavits filed with the state in locations as far afield as Los Angeles, Indianapolis, Cleveland, Pittsburgh, Houston, and Jacksonville, to name a few.

12. As fillings would later show, one of the three petition circulators who listed a Montana address was Charles Denowh, a Helena political consultant who formerly served as Chief Policy Advisor to the Republican caucus of the Montana House of Representatives, Executive Director of the Montana Republican Party, campaign manager to Attorney General Tim Fox, finance director to State Treasurer Matt Rosendale, and a lobbyist for coal companies.

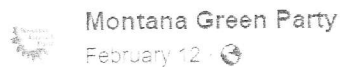
13. The circulators worked quickly, and by February 15, they had already collected almost all of the petition signatures that they would eventually turn in.

14. Their efforts bore clear signs of a for-profit operation: the gatherers averaged over 700 signatures per day during about a three-and-a-half-week period. But it remained unclear who

the petition circulators were and who was paying their bills.

15. In mid-February, activists affiliated with the Montana Green Party began to try to sound the alarm.

16. The Facebook account for the Montana Green Party posted the following message on February 12:²



We have been receiving notice that there are people falsely collecting information on behalf of the Green Party. As of this moment, we are still in legal battle with a lawsuit against the state of MT, and in such a state are not collecting, nor have we hired or asked for volunteers to collect information this 2020cycle.

Keep in mind that for the last few years there are individuals who seek nothing more than to smear our name and mission by using very rude and impractical methods, in these cases impersonation to degrade our cause. This is an ongoing effort led by plants from the mainstream parties who wish for nothing more than to end any resistance to the two party corporate duopoly that dares toe the line.

Rest assured, unlike google and Facebook, that we are not collecting your information, nor are we signature gathering for statewide efforts until likely the 2022 cycle. As of now we have no house senate or state office candidates running for the 2020 election, at least until the lawsuit reaches resolution.

Any individual acting in rude or suspicious behavior claiming to be collecting information on our behalf is not affiliated with our name or mission. Please report to us any information or incidents that occur.

Thank you.

17. Local reporters began investigating and uncovered that Club for Growth Action, the political arm of a conservative, free-market Washington D.C. SuperPAC, filed paperwork in early February with the Commissioner of Political Practices ("COPP") as a committee to petition

² Montana Green Party, *Facebook* (Feb. 12, 2020), <https://www.facebook.com/MontanaGreenParty/posts/2768549189858655>.

to qualify a minor political party for primary elections.³

18. But in response to reporters' inquiries, a spokesman for Club for Growth Action categorically denied that it was behind the signature gathering efforts.

19. The spokesman told MTN News on February 13th that Club for Growth Action had explored undertaking that effort for the Montana Green Party and then decided against it.

20. As a result, by the time that the circulators had finished collecting almost all of the petition signatures that they would eventually turn in, Montanans still did not know who was financing the Montana Green Party petition effort.⁴

21. This lack of transparency about the funding of the Montana Green Party petition effort was particularly egregious because only a year before, the Montana Legislature, on a bipartisan basis, passed legislation to require prompt disclosure of contributions and expenditures made in an effort to petition to qualify a minor political party for primary elections—and did so directly in response to a prior similar effort on the part of unknown individuals or groups in 2018 to petition to qualify the Montana Green Party for ballot access.

³ Mike Dennison, *Unclear who may be helping Green Party qualify for MT 2020 Ballot*, KTVH (Feb. 13, 2020), <https://www.ktvh.com/news/montana-news/unclear-who-may-be-helping-green-party-qualify-for-mt-2020-ballot>.

⁴ See Dennison, *supra* note 3 (“A group other than the Montana Green Party has been attempting to qualify the party for the 2020 ballot in Montana – but it’s not clear who.”); Sally Mauk et al., *Sorry, Not Sorry; Senate Race Grows; Green Party Mystery*, Montana Public Radio (Feb. 21, 2020), <https://www.mtpr.org/post/sorry-not-sorry-senate-race-grows-green-party-mystery> (Mauk: “Holly, finally, in the realm of shenanigans, some unknown group has gathered signatures and submitted petitions around the state to qualify the Green Party for the ballot, a move that is seen as possibly helping Republican candidates. The Green Party in Montana says it's not them. And a conservative PAC, the Club for Growth, says it's not them either. So who is it?” Michels: “That’s a really good question that I would like to find out the answer to. . . . [H]opefully we’ll see some sort of paperwork filed soon to give us an idea of who’s behind it.”).

II. The courts invalidated prior attempts by undisclosed funders to qualify the Montana Green Party for ballot access, and the Montana Legislature imposed requirements to increase disclosure and transparency around these activities.

22. In 2018, out-of-state petition gatherers funded by secret donors attempted to qualify the Montana Green Party for ballot access, but the Montana Supreme Court invalidated their petition because of false attestations by petition circulators and invalid petition signatures.

23. The 2018 efforts began in 2017, when two Montana Green Party leaders (Danielle and Thomas Breck) began gathering signatures to qualify the Montana Green Party for the 2018 elections. But as of the March 2018 deadline, the Brecks had only gathered and submitted approximately 700 signatures, far short of the number required to qualify the Montana Green Party to nominate candidates for election in 2018. *Larson*, 2019 MT ¶ 4

24. To their great surprise, however, in the final three weeks before the March 5th deadline, Advanced Micro Targeting, a Nevada political consulting firm operating through 13 paid signature gatherers, many from out of state, independently collected an additional 9,461 signatures from four counties in support of the Montana Green Party petition. *Id.* Danielle Breck testified that the Green Party did not commission or coordinate with the eleventh hour paid signature gathering effort and was unaware of it until learning of it through news media reports. *Id.* ¶ 4 n.2.

25. Although the Secretary certified the petition and qualified the Montana Green Party to hold a primary election, a closer review revealed that Advanced Micro Targeting's last-minute signature gathering efforts, which were barely enough to qualify in the first place, had in fact not yielded a sufficient number of valid signatures.

26. In a challenge to the Secretary's certification brought by the MDP and individual voters, this Court found that at least one of Advanced Micro Targeting's petition circulators had falsely attested that he personally gathered certain signatures, that certain petition signatures were not substantially similar to signatures in voters' registration records, that certain signature dates

were missing, altered, or otherwise incorrect, and that other signatures were missing required information.

27. Based on the failure of Advanced Micro Targeting to comply with statutory requirements applicable to political party petition signatures, this Court invalidated the affected signatures and enjoined the Secretary's certification of the Montana Green Party for ballot access. The Montana Supreme Court, by a 6-1 vote, affirmed the District Court's conclusions on appeal. *Id.* ¶ 65.

III. In response, the Legislature enacted bipartisan legislation requiring disclosure and transparency in spending to petition for minor party ballot access.

28. Based on the events surrounding the 2018 Montana Green Party petition, the MDP filed a campaign practices complaint with the COPP against Advanced Micro Targeting, alleging that the firm failed to register and report contributions and expenses for its electioneering activities performed through its petition campaign.

29. COPP determined that Advanced Micro Targeting's activities did not qualify as expenditures under then-existing Montana campaign finance law, and COPP was forced to dismiss the complaint. Dismissal and Sufficiency Decision, *Mont. Democratic Party v. Advanced Micro Targeting*, No. COPP 2018-CFP-004, at 4-5 (July 20, 2018).

30. The fact that individuals or groups could spend unlimited sums of money on efforts to qualify minor parties for ballot access—and never be required to disclose their identity or the sources or amounts of their contributions or expenditures—came as a shock to Montanans of all political stripes.

31. The Montana Legislature quickly responded. Led by Senator Duane Ankney (R - Colstrip), Democratic and Republican legislators, the COPP Commissioner, and the Governor

worked together to pass Senate Bill (“SB”) 363 on a bipartisan basis during the 2019 Legislative Session.

32. SB 363 is codified at Section 13-37-601 *et seq.*, MCA. It imposes disclosure and reporting requirements on efforts to petition to qualify a minor political party for primary elections similar to the requirements applicable to efforts to petition to qualify initiatives and referenda.

33. As Senator Ankney explained, “Montana leads the nation when it comes to transparency in our elections. They’re successful at preventing secretive groups from either side of the aisle from seeking to influence our elections. Montana also has a proud tradition of people petitioning their government directly, whether it’s through initiatives, referendums, or other means. We make our voices heard. All of these activities are protected from the influence of dark money because they are protected under the Disclose Act. There is one significant exception: when groups organize to put a new party on the ballot.”⁵

34. Senator Ankney made clear that the purpose of the law was to ensure that a “secretive, outside group cannot invent spoiler political parties out of thin air.”⁶

35. The COPP Commissioner similarly made clear that the bill was a direct response to the activities of Advanced Micro Targeting and unknown funders to gather petitions to qualify the Montana Green Party for ballot access in 2018: “A significant amount of money was spent on that effort, and to this date, we do not know the individual or individuals involved in spending that money to bring a firm from Las Vegas to Montana over a thirty day period in several of our Montana communities to put something onto the ballot. No problem with folks doing that; if they

⁵ Hearing on SB 364 Before the H. Comm. on State Admin., 66th Leg., Regular Session 8:39:55 - 8:40:50 (Mont. 2019) (statement of Sen. Duane Ankney), <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/35000?agendaId=148228#agenda>.

⁶ *Id.* at 8:41:40-8:42:05 (statement of Sen. Ankney).

do that, Montanans want to know how much they're spending and who is providing that money. That's what this bill simply does."⁷

36. Among the disclosure requirements mandated by SB 363, organizations making efforts to qualify a minor political party for primary elections using a minor party petition are now required to file an organizational statement with the COPP within five days of spending or receiving \$500 towards the effort. Section 13-37-602, MCA; Section 13-37-601(4)-(7), MCA.

37. The organizational statement is required to contain details about the minor party qualification committee, the identity of its treasurer and depository accounts, and an organizational statement. *Id.* This was the filing made by Club for Growth Action in early February. Club for Growth was the first—and until March 23, weeks after the Montana Green Party petition was turned in—the only organization ever to file as a minor party qualification committee in the state.

IV. As word began to spread that the effort to put the Montana Green Party on the ballot was not what it seemed, Montana voters began to demand that their names be removed from the Petition, in accordance with longstanding Montana practice and precedent.

38. As word began to spread of the misleading Montana Green Party petition gathering efforts and as the circulators began to flood county elections offices with petitions in late February of this year, in advance of the March 2nd deadline for submission of political party qualification petitions, signers began to demand that their names be removed from the Petition.

39. While Montana law has long recognized the right of petition signers to withdraw their names from a petition—a right that is a necessary inference from the very nature of the right of petition—the Montana Legislature has not provided specific statutory requirements that signers of political party qualification petitions must meet in order to do so.

⁷ *Id.* at 8:47:09 - 8:47:47 (statement of Jeff Mangan, Commissioner, COPP).

40. By contrast, Montana law does specify a process by which signers of petitions for “constitutional amendment, constitutional convention, initiative, or referendum” may withdraw their signatures. Section 13-27-301(3), MCA. This statutory process—which by its plain terms does *not* apply to political party qualification petitions—requires the Secretary to prescribe a form for the signer to use. This statutory process also provides a deadline for withdrawals, which again, by its plain terms, does not apply to political party qualification petitions. Section 13-27-301(1), (3), MCA; Section 13-27-104, MCA. For withdrawals from initiative petitions, that deadline is the same day the initiative petitions must be submitted to county elections officials.

41. The Secretary has prescribed a form for signers of a “constitutional amendment, constitutional convention, initiative, or referendum” to use. This form, titled “Request for Withdrawal of Petition Signature” (hereinafter “Withdrawal Form”), provides spaces for the signer to provide their name, address, telephone number and signature.⁸

42. The Secretary’s Withdrawal Form also purports to require that the “signer must sign in the presence of a notary public or an officer of the office where the form is filed.” *Id.* The statute authorizing the Secretary to prescribe such a form makes no mention of a requirement that the form be notarized or signed in person in the presence of an election official. Section 13-27-301(3), MCA. The Withdrawal Form was not prescribed through an administrative rulemaking process.

43. Even though political party qualification petitions are not among the petitions for which the use of the Secretary’s Withdrawal Form is required, signers of the Montana Green Party petition began to complete and submit Withdrawal Forms to county elections offices, and election

⁸ Mont. Sec’y of State, Request for Withdrawal of Petition Signature (rev’d April 19, 2018), <https://sosmt.gov/Portals/142/Elections/Documents/Officials/Request-for-Withdrawal-of-Petition-Signature.doc>.

officials began to remove those signers from the Petition. Election officials did so by coding these voters' signatures in their petition processing database with the status of "[r]ejected" and with the verification reason of "[w]ithdrawn[.]"

44. After receiving requests for advice and assistance from its members, and after reviewing evidence indicating that secretive right-wing groups were involved with the Montana Green Party petition gathering efforts, the MDP mobilized to inform signers about these surreptitious efforts and to help those who wanted their names to be removed from the Petition.

45. Although the MDP did not believe that it was necessary for signers to complete the Secretary's Withdrawal Form in order to withdraw their names from a political party qualification petition, it advised signers that county elections officials would likely accept the Withdrawal Form to remove their names from the Petition and took steps to assist signers in completing and submitting such forms.

46. The deadline for the submission of petition signatures was March 2, and county election offices completed their review of the petitions later that week.

47. On Friday, March 6, Secretary Stapleton announced that the Montana Green Party had submitted enough purportedly valid signatures to qualify to nominate its candidates through a primary election. At the time of the Secretary's announcement, it was still unclear who had paid the signature gatherers.⁹

48. By the close of the candidate filing deadline two days later, only six candidates had filed to run in Green Party primary elections for legislative and statewide offices. Cheryl Wolfe, a Montana Green Party activist, would later post on the Montana Green Party Facebook page that

⁹ See *Green Party Qualifies for Montana 2020 Ballot*, Flathead Beacon (Mar. 7, 2020) ("It's unclear who paid the out-of-state signature gatherers. Montana's Green Party has said it wasn't them."), <https://flatheadbeacon.com/2020/03/07/green-party-qualifies-montana-2020-ballot/>.

“none of those running under the Montana Green Party ticket this season are actual Greens as far as we can tell. They have not been involved in Montana Green Party activities.”¹⁰

49. Meanwhile, petition signers, including Mr. Blossom, Mr. Filz, Ms. Neumeyer, and Ms. Weed, continued to submit Withdrawal Forms to county elections offices requesting that their signatures be withdrawn from the Green Party petition.

V. On March 24, local reporters uncovered that the Montana Republican Party was behind the effort to put the Montana Green Party on the ballot, causing even more signers to demand their names be withdrawn from the Petition.

50. On March 24, weeks after the Secretary officially certified the Petition, intrepid local reporters delivered a bombshell: the Montana Republican Party had finally admitted that it was behind the Montana Green Party signature gathering effort all along.¹¹

51. Reporting and subsequent state and federal campaign finance filings revealed that the Montana Republican Party Central Committee, assisted by the political operative Charles Denowh, contracted directly with the Texas-based petition gathering firm Advanced Micro Targeting for these efforts—the very same firm whose 2018 Montana Green Party petitions had been invalidated by the Montana Supreme Court, and whose funders had never been revealed.

52. The Montana Republican Party Central Committee then made a \$100,000 contribution to a shell group titled “Montanans for Conservation” to cover the expenditure.

¹⁰ Montana Green Party, *Facebook* (Apr. 14, 2020), https://www.facebook.com/MontanaGreenParty/posts/2905761376137435?_tn=-R.

¹¹ See Holly Michels, *State GOP spent \$100k to qualify Montana Green Party for the ballot*, Missoulian (Mar. 24, 2020) (“A mystery of the 2020 election was solved Tuesday as it became clear the Montana Republican Party paid for an effort to qualify the Montana Green Party for the ballot this election.”) https://missoulian.com/news/state-and-regional/govt-and-politics/state-gop-spent-k-to-qualify-montana-green-party-for/article_e255eae0-b7f1-5e16-b224-95b79e6ff7a1.html#tracking-source=home-top-story-1; Mike Dennison, *Montana GOP spent \$100K to qualify Green Party for 2020 ballots*, Missoula Current (Mar. 25, 2020), <https://missoulacurrent.com/government/2020/03/montana-green-party/>.

53. And rather than abide by the newly enacted requirement to file a statement of organization as a minor party qualification committee within five days of beginning their operations—which even Club for Growth Action had managed to do—Montanans for Conservation instead filed as an *independent* committee, only amending their filing to accurately disclose their status as a *political party qualification* committee a day before the newspaper articles ran and their involvement was revealed.

54. These revelations galvanized even more signers of the petition signature to request that their signatures be withdrawn from the Republican-backed petition.

55. Among those voters was Mr. Filz and Ms. Neumeyer. Mr. Filz was contacted by the MDP and provided with a copy of a newspaper article containing the revelation that the Montana Republican Party organized and funded the Petition that he signed.

56. Prior to receiving the newspaper article, Mr. Filz believed that he had signed a petition organized by the Montana Green Party to advance the Montana Green Party's ideas and values.

57. Similarly, even though Ms. Neumeyer tries to stay abreast of the news in her community and subscribes to and reads the Helena Independent Record every day, she had no idea that the Montana Republican Party organized and funded the Petition that she signed until she was reached by the MDP in April.

58. MDP continued to mobilize to inform signers about the Montana Republican Party's misleading efforts and help those who wanted their names to be removed from the Petition.

59. The COVID-19 crisis and ensuing statewide stay-at-home order, however, made signers' attempts to remove their signatures from the Petition unexpectedly and substantially more difficult.

60. Many signers, attempting to abide by social distancing guidelines, were unable or understandably unwilling to travel in person to a county elections office in order to sign the Withdrawal Form in front of an election official, or to visit a live notary to have the Withdrawal Form notarized.

61. In response to these well-founded concerns, the MDP set up a process to enable singers to complete the Withdrawal Form electronically on their computers or smartphones using the electronic document signature platform DocuSign.

62. MDP then transmitted Withdrawal Forms completed through DocuSign to county elections offices on a regular basis.

63. Despite these challenges, in the ensuing weeks, hundreds more voters submitted Withdrawal Forms to county elections offices.

VI. The Secretary has refused to honor voters' requests to withdraw.

64. By late May, well over 500 signers had requested to be removed from the Petition.

65. As a result of these withdrawals, the Petition no longer contains a sufficient number of valid signatures to qualify the Montana Green Party for ballot access.

66. A political party can nominate its candidates by primary election and obtain general election ballot access through the submission of petition signatures from a sufficient number of Montana voters under the Political Party Qualification Statute. *See* Section 13-10-601(2)(a), MCA.

67. To be successful, a petition must contain an overall threshold number of valid signatures collected statewide, and also contain a threshold number of signatures for each state house district in 34 or more districts. *See* Section 13-10-601(2)(b), MCA (emphasis added).

68. As a result of the withdrawals submitted to elections officials in the wake of the revelations about the financial backers and organizers of the Petition, the number of valid Petition

signatures falls below the required threshold in at least nine of the 42 districts originally certified by the Secretary of State as having reached the required threshold, including districts 46, 53, 54, 68, 69, 80, 84, 96, and 97, and, consequentially, the Petition does not meet the requirements of the Political Party Qualification Statute.

69. As of the date of the filing of this Complaint, the Secretary has inexplicably failed to act to withdraw the certification of the Petition.

70. Instead, the Secretary has apparently taken the position that requests to withdraw a signature from a political party qualification petition are untimely if submitted after an unspecified date.

71. The Secretary's purported deadline for political party qualification petition withdrawal requests is not set out in any Montana statute or administrative rule.

72. Nor, upon information and belief, is the Secretary's purported deadline for political party qualification withdrawal requests set out in any public-facing policy document or guidance issued by the Secretary.

73. Rather, the Secretary's deadline appears to have been invented in reaction to requests for withdrawal from this very Petition.

74. The Secretary's purported deadline has no basis in law, flies in the face of the long-recognized right of petition signers to withdraw their names from a petition, and severely burdens petition signers' constitutionally-protected right of association—in particular, constitutional protections against forced association with a rival political party. And the State has no sufficient countervailing governmental interest.

PARTIES

75. Plaintiff Taylor Blossom is a registered elector in the State of Montana, residing in

Gallatin County. Mr. Blossom affiliates with the Democratic Party, has supported Democratic candidates for federal, state, and local office in the past, and plans to do so again, including in the 2020 general election. Mr. Blossom holds values and beliefs on many issues that differ significantly from the Republican Party, including on LGBTQ rights, voter access, and higher education funding, and Mr. Blossom does not want to be associated with the Republican Party, its policy positions, campaign tactics, or candidates. On or around February 15, 2020, Mr. Blossom signed the Petition in downtown Bozeman after being approached on the street by a petition circulator. Based on his conversation with the petition circulator, Mr. Blossom believed that the petition circulator was working with the Montana Green Party to advance the Montana Green Party's ideas and values. Had he known that the Montana Republican Party organized and funded the petition drive, Mr. Blossom never would have signed the Petition. Mr. Blossom does not support petitions to qualify a party with the intent of sabotaging a different political party. After learning that an unknown group of signature gatherers was behind the Petition and that the Montana Green Party was not involved in the Petition, he completed a request to withdraw his signature on February 29, 2020, and the request was received by the Gallatin County Election Administrator on March 6, 2020. The Secretary has not accepted his withdrawal request, and as a result, Mr. Blossom's signature is presently among those that are being counted towards the required threshold of valid signatures for the Petition in House District 63. If his withdrawal request is not honored, Mr. Blossom will suffer a concrete injury by being forced to be associated with a petition organized and funded by a political party that he has never wanted to be associated with, and by being deprived of his right under Montana law to withdraw his name from the Petition.

76. Plaintiff Ryan Filz is a registered elector in the State of Montana, residing in Yellowstone County. Mr. Filz affiliates with the Democratic Party, has supported Democratic

candidates for federal, state, and local office in the past, and plans to do so again, including in the 2020 general election. Mr. Filz holds values and beliefs on many issues that differ significantly from the Republican Party, including on healthcare and the environment, and Mr. Filz does not want to be associated with the Republican Party, its policy positions, campaign tactics, or candidates. On January 29, 2020, Mr. Filz signed the Petition in the parking lot of a grocery store in Billings after being approached by a petition circulator. Based on his interaction with the petition circulator, Mr. Filz believed that the petition circulator was working with the Montana Green Party to advance the Montana Green Party's ideas and values. Had he known that the Montana Republican Party organized and funded the petition drive, Mr. Filz never would have signed the Petition. Mr. Filz does not support efforts to qualify a party for ballot access with the intent of taking votes from a different political party, as opposed to bringing different opinions into the political dialogue. After learning from a newspaper article that the Montana Republican Party organized and funded the petition drive, Mr. Filz completed a request to withdraw his signature on April 3, 2020, and the request was received by the Yellowstone County Election Administrator on April 13, 2020. The Secretary has not accepted his withdrawal request, and as a result, Mr. Filz's signature is presently among those that are being counted towards the required threshold of valid signatures for the Petition in House District 46. If his withdrawal request is not honored, Mr. Filz will suffer a concrete injury by being forced to be associated with a petition organized and funded by a political party that he has never wanted to be associated with, and by being deprived of his right under Montana law to withdraw his name from the Petition.

77. Plaintiff Madeleine Neumeyer is a registered elector in the State of Montana, residing in Lewis & Clark County. Ms. Neumeyer affiliates with the Democratic Party, has supported Democratic candidates for federal, state, and local office in the past, and plans to do so

again, including in the 2020 general election. Ms. Neumeyer holds values and beliefs on many issues that differ significantly from the Republican Party, including on public education, and Ms. Neumeyer does not want to be associated with the Republican Party, its policy positions, campaign tactics, or candidates. On February 13, 2020, Ms. Neumeyer signed the Petition in a public location in Helena after being approached by a petition circulator. Based on her interaction with the petition circulator and their use of the name "Green Party," Ms. Neumeyer believed that the petition circulator was working to advance pro-environmental and pro-conservation values. Had she known that the Montana Republican Party organized and funded the petition drive, Ms. Neumeyer never would have signed the Petition. Ms. Neumeyer does not support efforts to qualify a party for ballot access when the purpose is to siphon off votes for Democratic candidates. After learning from a representative of the MDP that the Montana Republican Party organized and funded the petition drive, Ms. Neumeyer completed a request to withdraw her signature on April 28, 2020, and the request was received by the Lewis & Clark County Election Administrator on May 4, 2020. The Secretary has not accepted her withdrawal request, and as a result, Ms. Neumeyer's signature is presently among those being counted towards the required threshold of valid signatures for the Petition in House District 84. If her withdrawal request is not honored, Ms. Neumeyer will suffer a concrete injury by being forced to be associated with a petition organized and funded by a political party that she does not want to be associated with, and by being deprived of her right under Montana law to withdraw her name from the Petition.

78. Plaintiff Rebecca Weed is a registered elector in the State of Montana, residing in Gallatin County. Ms. Weed generally affiliates with the Democratic Party. Ms. Weed does not want to be associated with the Republican Party in connection with the Petition. On or around February, 2020, Ms. Weed signed the Petition in Bozeman after being approached by a petition

circulator. Based on her brief conversation with the petition circulator, Ms. Weed believed that the petition circulator was working with the Montana Green Party to advance the Montana Green Party's ideas and values. Had she known that the Montana Republican Party organized and funded the petition drive, Ms. Weed never would have signed the Petition. After learning that an unknown group of signature gatherers was behind the Petition and that the Montana Green Party was not involved in the Petition, she completed a request to withdraw her signature on March 5, 2020, and the request was delivered in-person to the Gallatin County Election Administrator on March 5. The Secretary has not accepted her withdrawal request, and as a result, Ms. Weed's signature is presently among those being counted towards the required threshold of valid signatures for the Petition in House District 69. If her withdrawal request is not honored, Ms. Weed will suffer a concrete injury by being forced to be associated with a petition organized and funded by a political party that she has never wanted to be associated with, and by being deprived of her right under Montana law to withdraw her name from the Petition.

79. Plaintiff Montana Democratic Party (the "MDP") is a political party established pursuant to Section 13-38-101 *et seq.*, MCA. Its mission is to elect Democratic Party candidates in local, county, state, and federal elections. The MDP works to accomplish its mission by educating, mobilizing, assisting, and turning out voters throughout the State. In past elections, the MDP has made expenditures in the millions of dollars to persuade and mobilize voters to support candidates up and down the ballot who affiliate with the Democratic Party in Montana. It plans to make substantial expenditures to support Democratic candidates in the 2020 election and in future elections. The MDP is injured by the Secretary's failure to give effect to Montanans' withdrawal requests seeking to remove their names from the Petition. In particular, allowing the Montana Green Party to qualify under the Political Party Qualification Statute, and thus obtain primary and

general election ballot access, when it has not shown sufficient support, would result in the MDP having to expend unnecessarily additional funds and resources to educate and persuade voters to support Democratic candidates over candidates claiming to be affiliated with the Montana Green Party in the 2020 general election than it would have to if the Montana Green Party were not on the ballot. In addition, the MDP, which performs the functions of a membership organization by providing the means by which Democratic voters in Montana express their collective views and protect their collective interest, is harmed because some of its members or member equivalents, including but not limited to Mr. Blossom, Mr. Filz, Ms. Neumeyer, and Ms. Weed, are injured by being forced to associate with a petition of a political party that they never wanted to be associated with and by being deprived of their right to withdraw their names from that Petition.

80. Defendant State of Montana is acting in this matter through Defendant Corey Stapleton, the duly elected Secretary of State. The Secretary is the chief elections officer of the State of Montana and is responsible for maintaining uniformity in the application, operation, and interpretation of election laws. Section 13-1-201, MCA. In carrying out these responsibilities, the Secretary has the duty of preparing and delivering to election administrators written directives and instructions relating to election law. Section 13-1-202(1), MCA. In particular, the Secretary is charged with certifying political parties and candidates for participation in a primary election, *see* Section 13-10-208, MCA, as well as with creating the form used by petitions to qualify under the Political Party Qualification Statute. He is also the one who gives effect to withdrawals of signatures for petitions, and his actions in creating a deadline and declining to effectuate withdrawals give rise to this action. The Secretary is named as a Defendant solely in his official capacity.

JURISDICTION AND VENUE

81. The Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Montana Uniform Declaratory Judgments Act, Section 27-8-101 *et. seq.* MCA, and Sections § 27-8-201 *et seq.*, MCA, which authorize the Court to declare rights, status, and other legal relations among the parties. *See Larson*, 2019 MT 28, ¶ 31, 94 Mont. at 191.

82. Plaintiffs also bring this action under the Montana Constitution. As a Court of general jurisdiction, this Court has authority to hear these claims. *See* Section 3-5-302, MCA.

83. Venue is proper in this Court under Section 25-2-126, MCA because it is an action against the State of Montana. *See* Section 25-2-126(1), MCA. In addition, the unlawful effects of the Secretary's action directly effect and interfere with the election and voting related activities that the MDP conduct in Lewis and Clark County. Thus, there is direct injury to the MDP in Helena.

CLAIMS FOR RELIEF

COUNT I

Section 27-8-101 *et seq.*, MCA Declaratory Relief

84. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint, as well as in the count below, as though fully set forth herein.

85. This is an action for declaratory relief pursuant to the Montana Uniform Declaratory Judgments Act, Section 27-8-101 *et. seq.*, MCA. *See Larson*, 2019 MT 28, ¶ 31.

86. The Secretary certified that the Petition exceeded the requisite number of valid signatures in 42 House Districts.

87. However, as set forth in the chart below, the Petition fails to meet the requirements of Section 13-10-601(2), MCA, because it does not contain the requisite number of valid signatures from at least 34 House Districts. At least 443 petition signatures originally counted by the Secretary

towards meeting the threshold number in nine House Districts are invalid because the signer submitted a withdrawal request to remove their name from the Petition.¹²

House District	Signatures Required	Signatures Accepted by Secretary	Signatures Withdrawn	Remaining Signatures Accepted by Secretary
46	138	161	At least 28	At most 133
53	129	160	At least 36	At most 124
54	130	166	At least 45	At most 121
68	106	136	At least 33	At most 103
69	109	141	At least 35	At most 106
80	132	180	At least 49	At most 131
84	150	208	At least 68	At most 140
96	150	229	At least 88	At most 141
97	138	195	At least 61	At most 134

88. Under Montana law, these withdrawal requests must be given effect. *See, e.g., Ford v. Mitchell*, 61 P. 2d 815, 821 (1936) (finding that in the absence of “an express sanction or prohibition of withdrawals,” “the signers of an initiative petition may, in an appropriate manner and at the proper time if they so desire, withdraw from such petition”); *State ex rel. Lang v. Furnish*, 134 P. 297, 300 (1913) (finding “signers of a petition have an absolute right to withdraw therefrom at any time before final action thereon”).

89. The Court should declare the Petition, as well as the Secretary’s certification of the Petition, legally insufficient under Section 13-10-601(2)(b), MCA, and the withdrawal requests valid. In addition, the Court should enjoin the Secretary, his agents, officers, employees, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to certification of the Montana Green Party’s Petition under Section 13-10-601, MCA. *See*,

¹² Plaintiffs have sought copies of withdrawal requests from the Secretary and county elections offices under the Montana Public Records Act. As of the filing of this Complaint, not all such requests have been fulfilled. Accordingly, it is likely that there are additional withdrawal requests that are not reflected in the chart.

e.g., Ford, 61 P.2d at 815 (enjoining the Secretary from including on the ballot an initiative that did not contain the requisite number of signatures after taking into account the valid withdrawal requests).

COUNT II
Montana Constitution, Article II, §§ 6, 7
Infringement on Speech and Expressive Rights

90. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint, as though fully set forth herein.

91. Article II, § 6 of the Montana Constitution provides that “[t]he people shall have the right peaceably to assemble, petition for redress or peaceably protest government action.” And Article II, § 7 provides that “[n]o law shall be passed impairing the freedom of speech or expression.” Together these provisions, like the First Amendment to the United States Constitution, protect “the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Dorn v. Bd. of Trs. of Billings Sch. Dist. No. 2* (1983), 203 Mont. 136, 145, 661 P.2d 426, 431.

92. Courts have recognized that the First Amendment to the U.S. Constitution is burdened when a law harms a voter’s ability “to associate in the electoral arena to enhance their political effectiveness as a group.” *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1980); *see also Fulani v. Krivanek*, 973 F.2d 1539 (11th Cir. 1992) (holding that provision of Florida election statute denying candidates the option of waiving signature verification fee burdened fundamental First Amendment right to associate politically).

93. Courts have also long recognized that “a corollary of the right to associate is the right *not to associate*.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (emphasis added). Thus, forced association, including with a “rival” political party, violates the right to

associate protected by the First Amendment. *Id.* at 577.

94. And courts have found that associating to promote political preferences is “expressive conduct” and is therefore entitled to protection. *See Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (internal quotations and citations omitted) (explaining that the First Amendment “protects the right of citizens to band together in promoting among the electorate candidates who espouse their political views.”); *Norman v. Reed*, 502 U.S. 279, 288 (1992) (“For more than two decades, this Court has recognized the constitutional right of citizens to create and develop new political parties,” and “[t]he right derives from the First and Fourteenth Amendments and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences.”).

95. Sections 6 and 7 of Article II of the Montana Constitution protect fundamental rights, so a law that burdens those rights must be justified by a compelling state interest that is narrowly drawn. *See, e.g., Montana Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 63, 296 Mont. 207, 225, 988 P.2d 1236, 1246 (holding that strict scrutiny applies to statutes infringing the rights protected under Article II of the Montana Constitution); *State v. Lilburn*, 1993 ML 78, *4 (Mont. Dist. Ct. 1993) (“Significant interference with First Amendment rights may be allowed only if a compelling government interest is shown, and all such infringements will be subject to close judicial scrutiny.”) (citation omitted).

96. The Secretary’s failure to give effect to Plaintiffs’ and other signers’ withdrawal requests here violates Article II, Sections 6 and 7 of the Montana Constitution because it severely burdens Plaintiffs’ and other signers’ associational rights by forcing them to associate with a party and a petition that they do not want to be associated with. And the Secretary’s rejection of the

withdrawal requests is not narrowly tailored to advance a compelling state interest.¹³

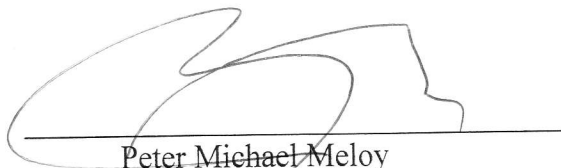
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the Petition is invalid under Section 13-10-601, MCA;
- B. Declare that Plaintiffs' and other Montanans' withdrawal requests are valid;
- C. Declare that the Secretary's failure to accept Plaintiffs' and other Montanans' timely withdrawal requests violate Article II, Sections 6 and 7 of the Montana Constitution;
- D. Declare that the Secretary's certification of the Petition is invalid;
- E. Order that the Secretary, as well as his agents, officers, employees, and successors, and all persons acting in concert with each or any of them, is enjoined from implementing, enforcing, or giving any effect to certification of the Montana Green Party's petition under Section 13-10-601, MCA; and
- F. Grant such other or further relief as the Court deems just and proper.

¹³ Plaintiffs exclusively seek relief under Montana law and the Montana Constitution, and expressly disclaim any claim for relief under the United States Constitution. Plaintiffs cite to federal authority solely for its persuasive value. *See Larson v. Stapleton*, No. CV 18-61-H-SPW, 2018 WL 2002805, at *2 (D. Mont. Apr. 30, 2018) (remanding complaint arising entirely out of Montana law despite citations to federal authority in the complaint).

Dated this 1st day of June, 2020



Peter Michael Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena, MT 59624
(406) 442-8670
Mike@meloylawfirm.com

Matthew Gordon
PERKINS COIE LLP
1201 Third Ave., Suite 4900
Seattle, WA 98101
(206) 359-8000
mgordon@perkinscoie.com

Attorneys for Plaintiffs

RETRIEVED FROM DEMOCRACYDOCKET.COM