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**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

Montanans Securing Reproductive Rights, Samuel  
Dickman, M.D., Montanans for Election Reform  
Action Fund, and Frank Garner

Plaintiffs,

v.

State of Montana and Christi Jacobsen, in her  
official capacity as Montana Secretary of State,

Defendants.

Case No. **C DV-25-2024-0000463-DK**  
Presiding Judge: Hon. Kathy Seeley

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this claim because the Montana Secretary of State (“Secretary”) is unlawfully blocking the verification of potentially thousands of valid signatures by qualified Montana electors, defeating the constitutional rights of Montanans entitled to have their signatures counted in favor of three Constitutional Initiatives—Constitutional Initiatives 126,

127 and 128 (“CI-126,” “CI-127” and “CI-128”)—and imperiling qualification of the initiatives for the November ballot. Plaintiffs require immediate declaratory and injunctive relief to prevent further constitutional injury and to restore unlawfully invalidated signatures.

2. For years, the Secretary has correctly and lawfully directed county election administrators to “accept the signatures of” electors who appear on the “inactive” voter list, “since they are legally registered.” The “inactive” list is a list of voters whose addresses may have changed based on mail records. Voters on the “inactive” list are registered voters, are entitled to vote, and are plainly “qualified electors” under state law. *See* Section 13-1-111, MCA (defining “qualifications of voter”).

3. But on June 28, 2024—in the middle of the short four-week county-level signature verification window for CI-126, CI-127, and CI-128—the Secretary abruptly reversed course and is effectively forcing election administrators to reject signatures from qualified electors on the “inactive” voters list. The Secretary then unilaterally reprogrammed the State’s software program used by county election administrators to process petitions to reject signatures from these voters automatically, effectively preventing counties from verifying such signatures—even as county election officials expressed their misgivings about the lawfulness of the Secretary’s abrupt change.

4. The Secretary’s modifications to the software program and new directive are incorrect, unlawful, and impose an immediate constitutional injury on CI-126’s, CI-127’s and CI-128’s sponsors and signers alike. Whether a voter appears on the administrative “active” or “inactive” registered voters list has nothing to do with whether they are a “qualified elector” as defined by state law: voters on both lists are qualified and eligible to vote simply by showing up at their polling place to cast a ballot. Section 13-2-222(a), MCA.

5. To alleviate the constitutional injuries, this court should immediately require the Secretary to reverse its modifications to the state software program, withdraw and correct its unlawful directive, and restore the signatures of qualified electors unlawfully removed from the CI-126, CI-127, and CI-128 petitions.

#### PARTIES

6. Plaintiff Montanans Securing Reproductive Rights (“MSRR”) is a coalition of statewide reproductive health, rights, and justice organizations with a mission of ensuring that the citizens of Montana have control over reproductive health decisions. Its constituent members include Planned Parenthood Advocates of Montana, the ACLU of Montana, and Forward Montana, among other organizations. Its members are active throughout Montana, including in Lewis and Clark County. MSRR is headquartered in Helena, Lewis and Clark County.

7. To accomplish its mission, MSRR sponsored CI-128, which would amend the Montana Constitution to expressly provide a right to make and carry out decisions about one’s own pregnancy, including the right to abortion. Starting in April 2024, more than 500 MSRR volunteers gathered signatures in support of CI-128. And on June 21, 2024, MSRR submitted over 117,000 signatures—from voters in every county in the state—in support of CI-128 to county election administrators.

8. Plaintiff Samuel Dickman, M.D., is the Chief Medical Officer of Planned Parenthood of Montana. He formally submitted CI-128 in conjunction with MSRR. He is a resident and qualified elector of the State of Montana who supports CI-128 and intends to vote and organize in its favor.

9. Plaintiff Montanans for Election Reform Action Fund (“MER”) was incorporated on July 26, 2023, to advocate for electoral reforms. MER sponsored CI-126, intended to change Montana’s current party primary election system to a primary election for specified offices open

to all candidates and all voters, with the top four candidates advancing to the general election. MER also sponsored CI-127, which would provide that elections for certain offices must be decided by majority vote rather than by a plurality or the largest amount of the votes. Starting in early 2024, MER began gathering signatures in support of CI-126 and CI-127 throughout the state and submitted approximately 217,000 signatures to county election administrators in advance of the June 21, 2024 submission deadline.

10. Plaintiff Frank Garner is a member of MER's Board of Directors. He is a resident and qualified elector of the State of Montana who supports CI-126 and CI-127 and intends to vote and advocate in favor of the two initiatives.

11. Defendant Christi Jacobsen, Montana's Secretary of State, is the State's chief election officer 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, and to advise, assist, and train election administrators. Sections 13-1-202(1) and -203, MCA. The Election Code also requires the Secretary to tabulate certified constitutional initiative petition signature totals, Section 13-27-307, MCA, and certify to the governor that a completed petition qualifies for the ballot. Section 13-27-308, MCA. The Secretary is named as a Defendant solely in her official capacity.

12. Defendant State of Montana is a governmental entity subject to suit for injuries to persons. Mont. Const. art. II, § 18.

### **JURISDICTION AND VENUE**

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

14. This Court has jurisdiction to grant declaratory and injunctive relief under the Montana Uniform Declaratory Judgments Act. Section 27-8-101 *et seq.*, MCA.

15. Venue is proper in this Court under Sections 25-2-125 and -126, MCA.

### STANDING

16. Plaintiffs have standing because the Secretary's inactive voter guidance directly injures their constitutional right to propose a constitutional amendment, as well as their fundamental rights of popular sovereignty and self-government. *Bullock v. Fox*, 2019 MT 50, ¶ 31, 395 Mont. 35, 48, 435 P.3d 1187, 1194 (holding a party may establish standing by alleging "past, present, or threatened injury to a . . . civil right").

17. The Montana Constitution provides "the people"—including Plaintiff Samuel Dickman and the members of MSRR and Plaintiff Frank Garner and members of MER—the right to propose a constitutional amendment. Mont. Const. art. XIV, § 9. But the Secretary's challenged actions directly impair their ability to do so.

18. MSRR and MER are directly injured by the Secretary's decision to prevent the verification of qualified electors who appear on the inactive voter list. As CI-126's and CI-127's sponsor, MER is required to submit an adequate number of signatures in support of the two initiatives to qualify for the ballot in the November 2024 election. As CI-128's sponsor, MSRR is required to submit an adequate number of signatures in support of the initiative for CI-128 to qualify for the ballot in the November 2024 election. But MER's and MSRR's efforts to do so are harmed by the Secretary's legally unsupportable mandate that counties reject the signatures of qualified electors on the inactive voter list.

## FACTUAL ALLEGATIONS

### I. Citizen initiated ballot petitions in Montana

19. In enacting the 1972 Montana Constitution, the people of Montana “reserve[d] to themselves the powers of initiative and referendum.” Mont. Const. art. V, § 1. The people’s power to amend the Constitution by initiative corresponds with the foundational rights of popular sovereignty and self-government, the two very first rights in the Constitution’s Declaration of Fundamental Rights. *See* Mont. Const. art. II, §§ 1-2. Accordingly, the Constitution expressly empowers the people to propose initiatives, and prohibits the government from erecting arbitrary barriers to participation in the initiative process. *E.g.*, Mont. Const. art. XIV, § 9.

20. The Montana Constitution may be amended by a majority vote of the people, a process known as a “constitutional initiative.” *Id.*

21. To place a proposed amendment on the ballot, proponents must gather signatures from at least ten percent of the state’s qualified electors, including “at least ten percent of the qualified electors in each of two fifths of the legislative districts.” *Id.* (emphasis added); *see also* Mont. Const. art. XIV, § 10 (“Petition signers” are “qualified electors”). This year, that meant gathering at least 60,359 signatures, including at least 604 signatures from each of 40 legislative districts.

22. Once gathered, the signatures are submitted to county election officials who check “the names of all signers to verify they are registered electors of the county.” Section 13-27-303, MCA (emphasis added). A random sample of the signatures are compared to those in the voters’ registration records to ensure they match. State law instructs county election administrators to determine if the submitted signatures “appear to be genuine”—focusing on their authenticity, not other administrative classifications that have nothing to do with whether a signature comes from

a “registered elector[] of the county.” *Id.* County officials must complete that verification within 4 weeks of receiving the petition. *Id.*

23. Once the signatures are verified, county officials forward petition sheets to the Secretary along with a count of the valid signatures. Section 13-27-304, MCA. That filing is due by “5 p.m. of the third Friday of the fourth month prior to the election”—July 19, 2024. Section 13-27-104, MCA.

24. The Secretary must then “consider and tabulate” the signatures on the petitions. Section 13-27-307, MCA. If she finds that any petition “does not meet statutory requirements,” she must return the petition to the county official who must either correct the error or forward the petition to the signature gatherer. *Id.* When the requisite number of verified signatures have been tabulated by the Secretary, she must “immediately” certify the petition to the Governor. Section 13-27-308, MCA.

25. The statutes governing county- and Secretary-level signature verification make no reference to the “inactive” or “active” voter lists, which implement federal voter registration requirements and are principally administrative classifications.

## **II. Montana’s qualified electors**

26. The Montana Constitution defines a “qualified elector” as “[a]ny citizen of the United States 18 years or older who meets the registration and residence requirements provided by law . . . .” and who is not “serving a sentence for a felony in a penal institution” or been adjudicated “of unsound mind.” Mont. Const. art. IV, § 2. It makes no reference to whether an elector appears on an “active” or “inactive” list of registered voters.

27. State law defines the qualifications of a voter—or elector—at Section 13-1-111, MCA. That statute makes no reference to presence on an “active” or “inactive” list of registered voters, either.

28. All “qualified electors” have the constitutional right to sign initiative petitions to amend the Constitution. Mont. Const. art. XIV, § 10.

29. The counties and the Secretary included inactive registered voters in the count of “accepted” signatures when qualifying “independent” candidates for the ballot in 2024 and when reviewing the petitions for the No Labels Party to qualify for minor party ballot access.

Declaration of Kendra Miller, ¶¶ 11, 12.

30. Prior to June 28, 2024, and until the Secretary’s change of position, the counties had verified qualified electors who appear on the “inactive” list in support of the constitutional initiatives at issue in this suit. Declaration of Kendra Miller, ¶ 10.

### **III. Voters flagged active or inactive**

31. The Secretary of State maintains the official statewide database of “registered electors.” Section 13-2-107, MCA. All electors on the statewide list of registered electors are flagged as either “active” or “inactive” based on whether there are certain, statutorily specified indications that a voter may have moved residences. Section 13-2-220(2), MCA.

32. “Inactive” voters are plainly, under Montana law, registered voters and entitled to vote. They may still vote in person, request a mail ballot, or cast a mail ballot without completing any additional forms or other requirements. *See* Section 13-2-222(1)(a), MCA.

### **IV. Inactive voter list and signature verification for ballot issues**

33. Until very recently, the Secretary directed county officials to “accept the signatures of inactive voters, since they are legally registered” when verifying signatures for ballot issue petitions. Presentation on Petition Processing in MT Votes, 2020 Election Administrator Certification Training (updated March 2021), Coburn Aff., Ex. A; *see also* Secretary of State’s Petition Processing Tips (downloaded Feb. 13, 2024), Coburn Aff. Ex. B.



34. On June 28, 2024, while the four-week county-level verification of petition signatures was already well underway for at least three constitutional initiatives (CI-126, 127, and 128) and the deadline for gathering and submitting signatures had just passed a week earlier, the Secretary reversed her longstanding directive and instructed county officials via email that a voter “in ‘inactive’ status does not appear to fit within the category of a ‘qualified elector’” and so their signatures on a petition may not be counted. Email from Clay Leland, Attorney for the Secretary of State, to Crystal Cole, Election Administrator of Glacier County (July 28, 2024), Coburn Aff., Ex. C. The email directive cited no Montana statute or case in support of this reinterpretation and instead relied on *Whitehead v. Fagan*, a case from Oregon’s Supreme Court interpreting that state’s laws. Coburn Aff., Ex. C (citing 369 Or. 112, 501 P.3d 1027 (2021)).

35. Shortly thereafter, on or around July 2, 2024, the Secretary unilaterally reprogrammed ElectMT, a software program used by county election officials to verify that each of a petition’s signers are “registered electors of the county,” so that it will now “auto reject” the signatures of any voter who has been flagged as inactive following the modification. Email from Sadie Dallaserra, Elections Specialist, Business Analyst, to SOS Elections (July 2, 2024), Coburn Aff., Ex. D.

36. As a result of the Secretary’s actions, qualified electors on the inactive voter list reviewed after July 2, 2024, will be automatically rejected. Identically-situated voters reviewed before that date will have their signatures verified.

37. Plaintiffs’ petitions in support of CI-126, CI-127, and CI-128 include thousands of signatures from qualified electors—registered voters—on the inactive list. The Secretary’s directive and changes to ElectMT burdens and invades Plaintiffs’ rights to propose CI-126, CI-127, and CI-128 as secured by Article XIV, section 9 of the Montana Constitution and Plaintiffs’

corresponding fundamental rights to popular sovereignty and self-government in Article II, sections 1 and 2 of the Montana Constitution.

### **CLAIM FOR RELIEF**

#### **Montana Constitution, Article XIV, § 9**

#### ***The Inactive Voter Directive Violates the Right to Propose a Constitutional Amendment***

38. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

39. The Montana Constitution gives “[t]he people” the power to “propose constitutional amendments by initiative.” Mont. Const. art. XIV, § 9.

40. Any “qualified elector” may participate in the constitutional initiative process by signing a petition in support of a proposed amendment. Mont. Const. art. XIV, § 9.

41. The Montana Constitution defines “qualified elector” in Article XIV, section 9 and state statute defines the same term through Section 13-1-111, MCA. *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 68, 365 Mont. 92, 278 P.3d 455 (definition for “qualified elector” includes Section 13-1-111, MCA).

42. The inactive voter directive unlawfully prohibits inactive registered voters from having their signatures verified in support of an initiative petition, even though inactive registered voters are “qualified electors” under Montana law and the Montana Constitution.

43. The Secretary’s inactive voter directive thus has no basis in Montana law.

44. The Secretary’s decision to change her position on the validity of inactive registered voters’ signatures after they had already been submitted, after the deadline for gathering and submitting signatures had passed, and in the middle of counties’ review constitutes a further constitutional harm to Plaintiffs. Plaintiffs gathered and submitted their signatures in reliance on the Secretary’s prior position that inactive voters were qualified electors and

therefore eligible signers. Miller Dec., ¶ 13. The Secretary's abrupt change of position, after Plaintiffs had already submitted signatures, prevented Plaintiffs from adjusting their petition circulation strategy to account for the Secretary's novel position.

45. The Secretary's lawless inactive voter directive impairs and infringes upon Plaintiffs' constitutional right to place an initiative on the ballot, as well as their fundamental rights of popular sovereignty and self-government. To exercise their right to propose a constitutional amendment, Plaintiffs are required to submit 60,359 verified signatures. But by effectively forcing county election administrators to reject signatures from voters marked "inactive," the Secretary has impeded Plaintiffs' ability to reach that threshold, threatening their right to place CI-126, CI-127, and CI-128 on the ballot in November, causing injury and harm

46. For these reasons, the inactive voter guidance violates Montanans' right to propose constitutional amendments by initiative.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that the inactive voter directive violates the Montana Constitution and Montana Code;
- B. Declaring that inactive registered voters are "qualified electors" for purposes of constitutional initiative petitions;
- C. Preliminarily and permanently enjoining the Secretary of State, her agents, officers, employees, successors, and all persons acting in concert with each or any of them, and the State of Montana from rejecting a petition signature solely because the voter appears on the list of inactive voters;

- D. Requiring the Secretary of State and her agents, officers, employees, successors, and all persons acting in concert with each or any of them, and the State of Montana, to immediately restore the signatures of “qualified electors” unlawfully removed under the inactive voter guidance.
- E. Granting Plaintiffs attorney fees as supplemental relief under the Declaratory Judgment Act, Section 27-8-313, MCA; in equity; or under any applicable authority.
- F. Granting Plaintiffs such other and further relief that the Court deems necessary and proper.

Dated: July 10, 2024

Respectfully submitted,

By: /s/ Raph Graybill

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## VERIFICATION

STATE OF Florida )  
 )ss.  
County of Pasco )

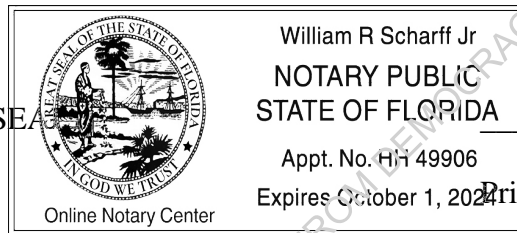
I, Christopher Coburn, being first duly sworn upon his oath, verify that the statements contained in paragraphs 1-8, 11-28, and 31-46 of the foregoing Complaint for Declaratory and Injunctive Relief are true and accurate to the best of my knowledge, information, and belief.

Dated: 07/10/24

Christopher Coburn  
Christopher Coburn

Subscribed and sworn to before me this 10<sup>th</sup> day of July, 2024.

(NOTARIAL SEAL)



William R Scharff Jr

Printed Name: William R Scharff Jr

Notarial Act performed by Audio-Video Communication.

## VERIFICATION

STATE OF ~~MISSOURI~~ ) Florida  
 ) ss.  
County of ~~Missouri~~ Broward )

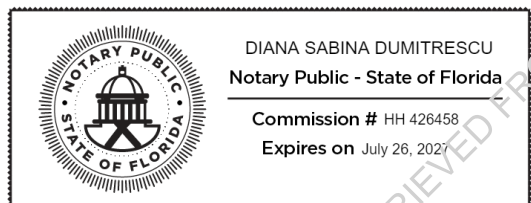
I, Kendra Miller, being first duly sworn upon her oath, verify that the statements contained in paragraphs 1-5 and 9-46 of the foregoing Verified Complaint are true and accurate to the best of my knowledge, information, and belief.

Dated: 07/10/24

Kendra Janice Miller  
Kendra Miller

Subscribed and sworn to before me this 10<sup>th</sup> day of July, 2024.

(NOTARIAL SEAL)



Notarized remotely online using communication technology via Proof.

Diana Sabina Dumitrescu

Printed Name: Diana Sabina Dumitrescu

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above was duly served upon the following on the 10th day of July, 2024, by hand delivery on the following:

Austin James  
Chief Legal Counsel, Montana Secretary of State  
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