

FILED

07/20/2018

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0414

FILED

JUL 09 2018

ANGIE SPARKS Clerk of District Court
By MAGGIE CONNOR Deputy Clerk

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

**JAMES LARSON, DONALD JUDGE, and
JEAN PRICE, individual electors, and
MONTANA DEMOCRATIC PARTY,**

Plaintiffs,

v.

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

Defendant,

and

THE MONTANA GREEN PARTY,

Interested Party.

Cause No. DDV-2018-295

**ORDER DENYING
MOTION TO DISMISS**

Interested Party The Montana Green Party, represented by Quentin M. Rhoades, moves to dismiss the petition filed by Plaintiffs James Larson, Donald Judge, Jean Price and the Montana Democratic Party, represented by Peter Michael Meloy and Kevin J. Hamilton. Defendant Secretary of State Corey Stapleton, represented by Emily Jones, supports the Green Party's motion.

The parties have briefed the motion and it is ready for decision.



Based on the file and the briefs and arguments of the parties, the Court concludes the Green Party's motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

In brief, Plaintiffs brought this action to challenge the certification of the Green Party for the 2018 primary and general election. Plaintiffs allege that the Green Party failed to submit sufficient numbers of valid signatures of electors from a sufficient number of different House of Representatives' districts to qualify for the ballot. Plaintiffs specifically challenge 209 signatures from eight different House districts on a variety of grounds, including that one signature gatherer certifying some of these signatures was not present when the signatures were gathered, that some of the signatures are not actually the signatures of the electors, that some of the signatures do not match the signatures appearing on the electors' voting registration forms, and that some of the signatures were matched incorrectly to the wrong electors. Plaintiffs allege that if these signatures are disqualified, the Green Party will not have submitted a sufficient number of valid signatures in these various House districts and therefore the Secretary of State should not have certified the Green Party for the primary and general ballots.

Taking the Green Party's motion to dismiss under advisement, the Court¹ heard three days of testimony on Plaintiffs' petition.

STANDARDS OF REVIEW

The Green Party moves to dismiss this matter on the basis that it fails to state a claim for which relief may be granted. The standards for review of such a

¹ The Honorable Kathy Seeley presided over the first day of the hearing. The Green Party then moved to substitute Judge Seeley, whereupon the case was referred to the Honorable Michael McMahon. The Democratic Party then moved to substitute Judge McMahon before the resumption of the hearing. The matter was then referred to the undersigned, who presided over the last two days of hearing.

motion are well-established as recently stated in *Buckles v. Cont'l Res., Inc.*, 2017 MT 235, ¶ 9, 388 Mont. 517, 402 P.3d 1213:

Motions to dismiss are construed in a light most favorable to the nonmoving party and should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief.

DISCUSSION

The Green Party's motion is premised on an argument that there is no right of private action under § 13-10-601, MCA, to challenge the certification of a political party to the ballot.

In response, Plaintiffs point out that they have not brought their action pursuant to § 13-10-601, MCA, the political party qualification statute. Instead, Plaintiffs bring this action seeking a declaratory judgment pursuant to the Montana Uniform Declaratory Judgment Act. This act allows any person whose rights, status or other legal relations are affected by a statute to bring an action to have determined any question or construction or validity arising under the statute. Section 27-8-202, MCA. The declaratory judgment statutes are to be liberally construed and administered. Section 27-8-201, MCA. The declaratory judgment statute is available to provide relief regardless of other available potential kinds of relief.

Independent of common law trespass and ejectment claims, a modern declaratory judgment action is also available to determine the "rights, status, and other legal relations" of the parties on any matter in dispute. Sections 27-8-201 and -301, MCA. Statutory declaratory judgment claims merely supplement other claims and remedies independently available at law or in equity. See M. R. Civ. P. 57; 26 C.J.S. *Declaratory Judgments* §§ 1-2 (2011). Prohibitive and mandatory injunctive relief are forms of supplemental

relief available where “necessary or proper” to effect or enforce a declaratory judgment. Section 27-8-313, MCA; *Lindey’s*, 246 Mont. at 82-83, 802 P.2d at 1260. As an alternative or supplemental remedy to preexisting common law trespass and ejectment claims, a party may seek redress of a trespassing real property encroachment by seeking a declaratory judgment of trespass, supplemental damages as otherwise provided by law, and supplemental injunctive relief for abatement of the encroachment as otherwise authorized in equity.

Davis v. Westphal, 2017 MT 276, ¶ 20, 389 Mont. 251, 405 P.3d 73 (emphasis added).

“Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Section 27-8-201, MCA.

The Court does not read the political party qualification statute as foreclosing a private right of action under the declaratory judgment statute. Throughout Montana’s history, courts have often been called upon to consider declaratory judgment actions in the context of an election law challenge. *E.g.*, *Cross v. VanDyke*, 2014 MT 193, 375 Mont. 535, 332 P.3d 215 (declaratory judgment action seeking to declare a candidate ineligible as a candidate to be Supreme Court justice); *State ex rel. Palmer v. Hart*, 201 Mont. 526, 655 P.2d 965 (1982) (declaratory judgment action to invalidate recall election); *Yunker v. Murray*, 170 Mont. 427, 554 P.2d 285 (1976) (original proceed in the Supreme Court seeking a declaratory judgment that district judges had to stand for retention elections).

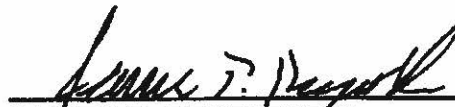
Applying the foregoing standards, the Court, taking all well-pled allegations of fact in Plaintiffs’ complaint as true, concludes that it does not appear beyond

doubt that Plaintiffs can prove no set of facts in support of their claim which would entitle them to relief.

Thus, the Court concludes that Plaintiffs have filed a valid action pursuant to the declaratory judgment statute, notwithstanding the Green Party's argument that the political party qualification statute has no private right of action. The Court need not analyze the Green Party's argument further and expresses no opinion on the validity of the Green Party' argument.

IT IS ORDERED that the Green Party's motion to dismiss is **DENIED**.

DATED this 9 day of July, 2018.



JAMES P. REYNOLDS
District Court Judge

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