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Legislative Campaign Committee*

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

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

**Appellant,**

**v.**

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

**Appellees,**

**and**

**MONTANA GREEN PARTY**

**Interested Party.**

**Case No. DA 18-0414**

**MONTANA REPUBLICAN  
LEGISLATIVE CAMPAIGN  
COMMITTEE’S MOTION TO  
INTERVENE, OR, IN THE  
ALTERNATIVE, FOR LEAVE TO  
FILE AMICUS BRIEF**

The Montana Republican Legislative Campaign Committee (“MRLCC”) requests leave to intervene in this appeal. Alternatively, MRLCC requests leave to file an amicus brief.

### **Factual and Procedural Background**

1. On March 12, 2018, the Secretary of State (“SOS”) certified ballot access for the Green Party for the 2018 elections.

2. On April 2, 2018, Plaintiffs initiated this action seeking to invalidate the certification.

3. MRLCC is a political party committee dedicated to the recruitment, training, and election of Republicans to the Montana Legislature.

4. On April 23, 2018 MRLCC moved to intervene. On May 17, 2018, the district court denied MRLCC’s motion, finding that the Green Party represented MRLCC’s interests. On May 22, 2018, MRLCC appealed the denial. This Court dismissed that appeal as premature.

5. On July 9, 2018, the district court declared certain signatures invalid and removed the Green Party from the ballot. The court invalidated 36 signatures gathered by Skye Berns based on testimony from two signers that Berns was not present when they signed. It invalidated five signatures because the signer failed to print his name and nine signatures because of issues relating to dates.

6. On July 18, 2018, the SOS noted its appeal and moved for expedited briefing.

7. On July 20, 2018, the Green Party noted its cross-appeal. On July 23, 2018, it moved for expedited briefing.

8. On July 24, 2018, the Green Party moved to dismiss its cross-appeal.

9. Prior to the ruling, the Republican, Democratic, and Green parties had candidates on three ballots.

10. This Court's review of the district court's decision directly impacts MRLCC. Voters who would have voted for Green Party candidates will likely support Democrats. MRLCC will have to commit additional financial and other resources to elect its preferred candidates.

11. This Court's review will also affect MRLCC's interests in future elections, both as to the qualification of the Green Party and as to future efforts to qualify other parties.

12. The district court held that the Plaintiff's interest in having to spend more money to oppose Green Party candidates conferred standing to challenge the otherwise-valid voter signatures that MRLCC now seeks to restore.

### **Argument and Authorities**

MRLCC seeks leave to intervene in this appeal. Alternatively, MRLCC seeks leave to submit an amicus brief. With the Green Party's decision not to appeal, no

party now represents MRLCC's position that the district court should not have invalidated certain signatures and removed the Green Party from the ballot. MRLCC seeks to submit its brief by Friday, August 3, 2018. This date will not prejudice the briefing schedule or any party.

**I. MRLCC Would Ordinarily Appeal the District Court's Decision Denying Intervention Below**

This Court ordered expedited briefing and declined to stay the order below, reflecting its judgment that this matter must be resolved within weeks. Absent some change in circumstances, MRLCC cannot obtain the post-appellate relief ordinarily accorded to parties errantly denied intervention below. MRLCC would ordinarily appeal the district court's denial of its motion to intervene and ask the Court to remand. MRLCC would then endeavor to present evidence that, perhaps because its interest never aligned with that of MRLCC, the Green Party did not present.

This includes, for example, the testimony of Berns, not only about the true circumstances surrounding the two witnesses who claimed he did not gather their signatures, but also about the other 34 otherwise-valid signatures the district court invalidated based solely on the testimony of those two witnesses. MRLCC would seek to present testimony from the other voters whose otherwise-valid signatures the district court invalidated about whether they actually signed the petition and, if so, who gathered their signatures. For these reasons, MRLCC will file a protective notice of appeal.

## **II. The Court Should Grant MRLCC's Leave to Intervene on Appeal**

The Court may have decided that exigencies preclude remand for the factual development that would ordinarily occur when all parties in interest participate at trial. But now the Green Party has abandoned its appeal. Even assuming the Green Party ever adequately represented MRLCC's interest—which MRLCC would dispute were it allowed time to do so—no remaining party can advance MRLCC's interests. MRLCC seeks to intervene to protect its interests in the outcome of this Court's decision and to advance arguments that will not otherwise be presented.

An intervenor is one who “because of an asserted interest in the outcome, has voluntarily entered into an action or who, on motion, is granted leave to enter a proceeding before this court, despite not being named originally as a party.” M. R. App. P. 2(1)(f). Though the Rules do not expressly provide a standard for reviewing motions to intervene on appeal, federal courts consider such motions under Federal Rule of Civil Procedure 24, the analogue to Montana's Rule 24. *Peruta v. Cnty. of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc); *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997).

MRLCC seeks leave to intervene both as of right and permissively. Rule 24(a)(2) requires intervention when one claims an interest and is so situated that disposing of the action may impair its ability to protect its interest, unless other parties represent that interest. Rule 24(b) permits intervention where the person has

a claim or defense that shares a common question of law or fact, but requires the Court to consider whether intervention will unduly delay or prejudice the adjudication of the original parties' rights.

No other party represents MRLCC's interest in seeing the Green Party returned to the ballot. Like the petitioner in *Peruta*, 824 F.3d at 941, MRLCC's need springs from the late departure of the party that represented a similar position—here, by the Green Party's decision to abandon its appeal.

If permitted to intervene, MRLCC will argue that the district court erred in excluding 34 signatures gathered by Berns. There was no evidence that “the signature gathering process was permeated by a pervasive and general pattern and practice of fraud.” *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶ 6, 146 P.3d 759. Plaintiffs presented evidence that Berns did not gather two signatures to which he affixed his affidavit, but even those two were otherwise valid, intentional acts by willing signers. Plaintiffs produced no evidence to challenge the remaining 34 signatures in that submission, and the court erred in invalidating them. MRLCC will also challenge the invalidation of signatures that lacked a printed name and correct date.

MRLCC has not delayed. It learned of the Green Party's decision to abandon its appeal on July 24, 2018. No party will be prejudiced by intervention. MRLCC can file its principal brief by August 3, 2018—more than a week in advance of the

deadline for appellees to respond. MRLCC will submit its reply brief, if any, by August 16, 2018. On July 28, 2018, MRLCC contacted all parties concerning this motion. The Green Party does not object; the plaintiffs and the SOS object.

### **III. Alternatively, MRLCC Seeks Leave to Submit an Amicus Brief**

Alternatively, MRLCC requests leave to submit an amicus brief in support of Appellant SOS by August 3, 2018. MRLCC described its interest above. On July 25, 2018, MRLCC sought consent from all parties. The SOS consents; the plaintiffs and Green Party did not respond.

WHEREFORE, MRLCC requests leave to intervene and to file its principal brief by Friday, August 3, 2018, and reply by August 16, 2018, and, in the alternative, leave to file an amicus brief by Friday, August 3, 2018.

Date: Monday, July 30, 2018

Respectfully Submitted,

/s/ Austin Knudsen

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**Certificate of Compliance**

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is not more than 1,250 words, excluding the caption, signature block, certificate of service, and certificate of compliance.

Dated: July 30, 2018

/s/ Austin Knudsen \_\_\_\_\_

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**Certificate of Service**

The undersigned counsel hereby certifies that copies of the foregoing document was filed with the Montana Supreme Court pursuant to Rule 16(1) of the Montana Rules of Appellate Procedure, with sufficient copies for service upon all parties, as well as stamped envelopes addressed to all counsel of record, including:

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Dated: July 30, 2018

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## CERTIFICATE OF SERVICE

I, Austin Miles Knudsen, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed - Intervene to the following on 07-30-2018:

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Dated: 07-30-2018