

IN THE SUPREME COURT OF THE STATE OF MONTANA

MONTANA REPUBLICAN PARTY,
Petitioner,

v.

RAPHAEL JEFFREY CARLISLE GRAYBILL,
Respondent.

PETITION FOR DECLARATORY JUDGMENT

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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. _____

MONTANA REPUBLICAN PARTY,

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RAPHAEL JEFFREY CARLISLE
GRAYBILL,

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**PETITION FOR DECLARATORY
JUDGMENT**

For its Petition for Declaratory Judgment, Petitioner Montana Republican Party states as follows:

PARTIES AND JURISDICTION

1. Petitioner Montana Republican Party is a political party established pursuant to Mont. Code Ann. § 13-38-101, *et seq.* Montana Republican Party has incurred and continues to incur expense and other burdens by having to spend funds and adapt election strategy to defeat a candidate who is not eligible to hold the office of Attorney General.

2. Respondent Raphael Graybill is a candidate for Montana Attorney General and is a resident of Lewis and Clark County, Montana. Mr. Graybill is not entitled to appear on the general election ballot because he does not meet the eligibility requirements of Art. VI, § 3(2) of the Montana Constitution to hold the office of Attorney General for the State of Montana.

3. The Montana Supreme Court has original jurisdiction over this matter pursuant to Mont. Code Ann. §§ 27-8-101, *et seq.* and Mont. R. App. P. 14(4) and because this case presents urgent factors making litigation in the trial courts and normal appeal process inadequate. This matter must be resolved before the date the ballots for the general election are certified on August 20, 2020. Further, this case presents purely legal questions of statutory and constitutional interpretation which are of state-wide importance.

FACTS

4. Petitioner re-alleges Paragraphs 1–4.

5. This case presents a pure legal question on uncontested facts of interpretation of the eligibility requirements of a candidate to hold the office of Montana Attorney General, specifically Mont. Const. Art. VI, § 3, which provides:

- (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

- (2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

The following facts are not in dispute:

6. Mr. Graybill obtained a J.D. from Yale Law School. *See* Defendant Graybill's LinkedIn Profile, a true and correct copy of which is attached hereto as **Exhibit 1**.

7. Mr. Graybill was licensed to practice law in Montana by the Montana Supreme Court on September 22, 2015. *See* Defendant Graybill's Montana State Bar Attorney Profile, attached hereto as **Exhibit 2**.

8. From August 2015 through August 2016, Mr. Graybill was a judicial law clerk for the Chief Judge of the U.S. Court of Appeals for the Ninth Circuit, the Honorable Sidney R. Thomas, in Billings, Montana. Ex. 1.

9. After Defendant Graybill's clerkship ended, he lived in Seattle, Washington and worked for the Seattle-based law firm Susman Godfrey, LLP from October 2016 through July 2017. *Id.* He was admitted to practice law in Washington on February 3, 2017. *Id.*; *see also* Defendant Graybill's Washington State Bar Association member profile, a true and correct copy of which is attached hereto as **Exhibit 3**.

10. From August 2017 through the present time, Mr. Graybill has served as Chief Legal Counsel to the Office of the Governor of Montana. Ex. 2.

11. Mr. Graybill filed his declaration for nomination to the office of Attorney General with the Montana Secretary of State on January 9, 2020. *See* Declaration for Nomination and Oath of Candidacy, attached hereto as **Exhibit 4**.

12. In so filing, Mr. Graybill declared under oath that he possessed, or would possess within constitutional and statutory deadlines, the qualifications prescribed by the Constitution and law of the United States and the State of Montana to hold the office for which he is seeking election. *Id.*

13. On February 3, 2020, David E. Wanzenried filed a campaign finance and practices complaint with the Montana Commissioner of Political Practices (“COPP”), requesting *inter alia*, that the COPP take steps to prevent Mr. Graybill from appearing on the primary and general election ballots. A true and correct copy of the Wanzenried complaint is attached as **Exhibit 5**.

14. On February 28, 2020, the COPP issued its decision, finding that Mr. Graybill is eligible for the 2020 general election ballot. A true and correct copy of the decision is attached as **Exhibit 6**.

15. To date, Mr. Wanzenried has not requested judicial review of this decision.

16. Mr. Graybill defeated his Democratic opponent in the primary election on June 2, 2020, and is the Democratic candidate for the office of Attorney General.

COUNT I – DECLARATORY JUDGMENT

17. Petitioner re-alleges Paragraphs 1–16.

18. Petitioner seeks a declaratory ruling from this Court that Mr. Graybill is ineligible to hold the office of Montana Attorney General in 2020 because he does not meet the constitutional requirements to do so.

19. Specifically, Mr. Graybill has not engaged in the active practice of law in Montana for five years before election.

20. The question of whether a candidate’s five years of active practice is required to be in Montana was debated by the delegates to the constitutional convention. Mont. Const. Conv. Vol. IV at 893–899, attached hereto as **Exhibit 7**.

21. The delegates to the constitutional convention intended “to put the Attorney General on the same status as the district judge, that he’d have to practice law in Montana for 5 years, learn the procedure of Montana so, therefore – so that he could then be a good, qualified, experienced lawyer when he became Attorney General, and so the issue is clear. If you vote for the majority report, you will be voting that way. If you vote for the amendment [to strike ‘who has engaged in the active practice thereof for at least five years before election’], you will be doing the opposite.” *Id.* at 895 (quoted by this Court in *Cross v. VanDyke*, 2014 MT 193, ¶ 25, 375 Mont. 535, 332 P.3d 215).

22. Ultimately, the delegates did not approve the proposed amendment, and thus the requirement that candidates for Attorney General be engaged in the active practice of law in Montana for five years before the election was approved. *Id.* at 899; *Cross*, ¶ 25.

23. In reaching its campaign finance and practices decision, the COPP found that the Montana Constitution does not require active practice in Montana for five years. Based on the transcript from the constitutional convention and the plain language of Article VI, § 3, the COPP's ruling was erroneous.

24. Federal clerks are not allowed to actively practice law, with limited exceptions. *See* Fed. Code of Conduct for Jud. Empl., Canon 4, pp. 11–12, a true and correct copy of which is attached hereto as **Exhibit 8**. However, Mr. Graybill never asserted in the COPP action that he actively practiced law while serving as a federal clerk. Thus, Mr. Graybill was not engaged in the active practice of law in Montana when he was a federal clerk.

25. Mr. Graybill was not engaged in the active practice of law in Montana while he worked for Susman Godfrey, LLP from October 2016 through July 2017. While the COPP found that Mr. Graybill would have been eligible to provide legal services to Montana clients, Mr. Graybill provided no evidence that he actually did so.

26. Moreover, the Montana Constitution, by its plain language, does not require that Attorney General candidates be eligible to practice law in Montana for five years; it requires that such candidates have engaged in the active practice of law in Montana for five years (emphasis supplied). Mr. Graybill's time at Susman Godfrey, LLP does not meet this requirement.

27. Mr. Graybill began working as Chief Legal Counsel for Montana Governor Steve Bullock in August 2017, and currently occupies that position. Thus, Mr. Graybill has engaged in the active practice of law in Montana since August 2017.

28. Pursuant to the delegates' intent and the plain language of Montana's Constitution, Mr. Graybill will not be qualified for the Office of Attorney General until August 2022.

29. Mr. Graybill has not met the constitutional requirements to be eligible for the office of Montana Attorney General for the 2020 general election.

WHEREFORE, Petitioner Montana Republican Party prays for a declaratory ruling from this Court that Respondent Raphael Graybill is ineligible for the office of Attorney General for the 2020 general election, and any other relief that the Court deems just and proper.

Dated this 3rd day of August, 2020.

/s/ Emily Jones
EMILY JONES
TALIA G. DAMROW
Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(e), I certify that this Petition is printed with proportionately-spaced, size 14 Times New Roman font, is double-spaced, and does not exceed 4,000 words, excluding the cover page, certificate of service, and certificate of compliance, and table of contents as calculated by Microsoft Word.

Dated this 3rd day of August, 2020.

/s/ Emily Jones
EMILY JONES
TALIA G. DAMROW
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that I have filed a true and accurate copy of the foregoing PETITION FOR DECLARATORY JUDGMENT with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing PETITION FOR DECLARATORY JUDGMENT upon each party as follows:

Raphael Jeffrey Carlisle Graybill
533 5th Ave.
Helena, MT 59601
raphael.graybill@gmail.com

Dated this 3rd day of August, 2020.

/s/ Emily Jones
EMILY JONES
TALIA G. DAMROW
Attorneys for Petitioners

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CERTIFICATE OF SERVICE

I, Emily Jones, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 08-03-2020:

Talia Grace Damrow (Attorney)
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P.O. Box 22537
Billings MT 59104
Representing: Montana Republican Party
Service Method: eService

Raphael Graybill (Respondent)
533 5th Avenue
Helena MT 59601
Representing: Self-Represented
Service Method: Conventional

Electronically Signed By: Emily Jones
Dated: 08-03-2020