

No. DA 20–0397

In the Supreme Court of the State of MontanaMONTANA DEMOCRATIC PARTY, *et al.*,*Plaintiffs-Appellees,*

v.

THE MONTANA REPUBLICAN PARTY, LORRIE CORETTE
CAMPBELL, AND JILL LOVEN,*Proposed Intervenors-Appellants.*

On Appeal from the First Judicial District, Lewis and Clark County
Cause No. DDV 20–856, The Honorable James P. Reynolds, Presiding

**Appellants Montana Republican Party, Lorrie Corette Campbell,
and Jill Loven’s Reply Brief**

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INTRODUCTION

MDP's actions belie its words. MDP claims this case is just about the Secretary's actions, but its complaint, briefing, and proposed findings are replete with fraud allegations against MTGOP. The District Court denied MTGOP intervention, observing that campaign finance was for other tribunals and signers' motivations were irrelevant, but then allowed a full day of MDP's one-sided evidence. The Court judicially noticed COPP findings against MTGOP, but ignored public FEC filings exonerating MTGOP. The Court allowed MTGOP an *amicus* brief, then struck any evidence contradicting what MDP presented at the hearing and adopted MDP's findings wholesale, adjudicating misconduct and violations against MTGOP.

The fundamental failing below was the District Court's unwillingness to allow necessary parties (the MTGOP and Petition Signers) to build a record of what occurred in gathering and withdrawal of Green Party Petition signatures. The District Court narrowed its horizon to encompass only the state constitutional rights of Green Party opponents, and only the one-sided, false narrative spun by MTGOP's political adversary. MDP's Response Brief in the Secretary's appeal now tries to reap the benefits of this due process failure; MDP makes demonstrably false representations of fact, and asks for a default win on an unpled "notice"

argument because only the Signer *amici*, and not the Secretary, briefed it post-trial. MDP knows the real parties in interest cannot respond.

Now, in the interests of truth and justice, the Court should review the facts submitted by MTGOP to the District Court and in its Opening Brief to ensure that its decision in this case is based on all available information. And it should recognize that the First Amendment rights of Green Party ballot access supporters should prevail against the MDP and the single late-withdrawing Plaintiff. It is unfair and unconstitutional to suppress the Green Party's voice so that the MDP can amplify its own.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING APPELLANTS' MOTIONS TO INTERVENE.

MDP asserts that the Proposed Intervenors failed to meet any of the Rule 24(a) criteria to intervene as of right: (1) timeliness; (2) an interest in the subject matter of the action; (3) its possible impairment by disposition of the action; and (4) inadequate representation by existing parties. *Sportsmen for I-143 v. Mont. Fifteenth Jud. Dist. Ct.*, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400 (citations omitted). Montana's rule is essentially identical to the federal rule, which is interpreted liberally. *Id.* (citation omitted). The erred by denying the Proposed Intervenors' Motions using a constricted reading of Rule 24.

A. THE DISTRICT COURT ERRED IN DISPOSING OF THIS ACTION WITHOUT MTGOP.

1. MTGOP's Motion Was Timely.

MDP claims MTGOP's Motion was untimely because it "waited a full month and until the eve of the hearing to intervene," (Resp. Br. at 1), contending that the parties and the District Court had already "substantively engaged" in the legal issues, the case was nearing resolution, and MTGOP's filing of a response would have prejudiced MDP by significantly extending briefing. (*Id.* at 16–17 (quoting *Driscoll v. Stapleton*, No. DA 20-0295, 2020 Mont. LEXIS 2198, *3 (Mont. Aug. 11, 2020).)

MDP's arguments ignore MDP's own lack of diligence in filing this lawsuit in the first place. MDP knew that the Green Party had qualified for the ballot on March 6, 2020, and that MTGOP had provided funding for the petition signature gathering effort on March 24, 2020, at the latest. (Hrg. Tr. vol. 1, 67:5-8, 233:1-24.) However, MDP waited until the eve of the primary election—more than two months later—to file this lawsuit. (R. 1.)

MDP claims the MTGOP "indisputably" knew about the lawsuit sometime during the week of June 1, 2020, because MDP served its Complaint on the Montana Attorney General one day after filing, and upon the Montana Secretary of State four days after filing. (Resp. Br. at 16.) However, MDP cites no authority for the position that service upon an elected official is notice to his political party

at large. Additionally, the parties had not “substantively engaged” in the legal issues because, as is clear from the record, MTGOP filed its Motion before the Secretary had even filed an Answer and while the parties were still briefing procedural issues. MTGOP sought to intervene only one week after Judge Reynolds had assumed jurisdiction of the matter and more than a week before the rescheduled show cause hearing. (R. 19, R. 22.) Furthermore, *Driscoll* does not apply because the proposed intervenors in that matter did not intervene until *appellate* briefing was well underway. MTGOP’s Motion was timely and intervention would have prejudiced no one.

2. MTGOP’s Legally-Protectable Interest Was Impaired By The District Court.

MDP claims that MTGOP “has failed to assert a legally protectable interest in this case.” (Resp. Br. at 7.) This is simply incorrect. MTGOP made significant in-kind contributions to Montanans for Conservation supporting the Green Party ballot petition effort. This involvement alone entitles MTGOP to intervention.

As this Court held in *Sportsmen for I-143*, “[a] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.” 2002 MT 18, ¶ 12 (citations omitted). In that case, this Court reasoned that because the Sportsmen’s Groups were the authors, sponsors, active supporters and defenders of I-143, they had a direct, substantial, legally protectable interest in the action. *Id.* Similarly, MTGOP, as a significant

contributor to Montanans for Conservation's effort to give the Green Party ballot access, has a direct, substantial, legally protectable interest in this case. This interest has been impaired by the District Court's decision.

While MDP contends that violation of state campaign finance law is not at issue, (Resp. Br. at 8), the District Court's legal conclusions of campaign finance violations directly affect MTGOP's interest. Mere disclosure burdens political speech (and spending) rights. *Yamada v. Snipes*, 786 F.3d 1182, 1194 (9th Cir. 2015). The legal theory MDP advanced and the District Court adopted means that a campaign disclosure violation for such spending can nullify and disqualify political parties, candidates and ballot initiative efforts after being duly certified and voted on by Montana voters. This is not an ancillary effect on MTGOP's rights, a "remote or conjectural possibility of being affected as a result of the action." (Resp. Br. at 8.) It nullifies MTGOP's spending and misguidedly punishes those supported by that spending. *See* Mont. Code Ann. § 13-37-128 (authorizing fines on those adjudicated to have failed to comply with Montana campaign finance law). MTGOP's interest is directly and substantially impaired by the District Court's decision below.¹

¹ The chill on First Amendment speech and associational rights if the District Court's decision stands opens up Montana's disclosure laws for federal constitutional challenge.

MDP attempts to construe MTGOP's claims as "relitigating COPP's findings." (Resp. Br. at 10.) This construction cannot be true because COPP never litigated, much less involved MTGOP, in its findings. (Opening Br. at 33–34.) Nor does COPP have the authority to adjudicate campaign finance violations. *See* §§ 13-37-111, 13-37-113, 13-37-124, 13-37-128 (authorizing COPP to investigate alleged campaign finance violations and have such allegations adjudicated in district court). Moreover, MTGOP's evidence of compliance with campaign finance disclosure laws shows public notice. (Opening Br. at 25-26.)

Finally, MTGOP had a legal interest in defending the validity of the Green Party Petition to which it contributed. The District Court's decision invalidated that petition without any meaningful participation by MTGOP, as discussed below.

MTGOP has a direct, substantial interest in this matter that the District Court impaired.

3. The Secretary Could Not Protect MTGOP's Interests And Participation As Amicus Was Inadequate.

MDP asserts that the Secretary shared MTGOP's interest in rebutting campaign finance allegations and adequately represented that interest, citing that the Secretary is one of the highest-ranking members of the MTGOP, one of its standard-bearers, and vigorously advanced the MTGOP's reputational interest. MDP states as a foregone conclusion that because the Secretary's and MTGOP's

interests were aligned, denial of intervention was proper. MDP's argument is legally infirm.

The "inadequacy" requirement is satisfied if representation of an applicant's interests "may be" inadequate; and the burden of proof is minimal. *Sportsmen for I-143*, ¶ 14; *see also Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972)). In these cases, the party opposing intervention made arguments similar to Appellees'. In *Sportsmen for I-143*, the district court held that the Sportsmen's Groups failed to allege or demonstrate that FWP would not zealously defend their interest, stating that no party was in a better position to defend the interpretation of I-143 than the Attorney General on behalf of the FWP. *Id.* at 15. Similarly, the party opposing intervention argued that the Attorney General appeared and vigorously defended the FWP's and Sportsmen's Groups' interpretation of the statute. *Id.*

In reversing, this Court held that because the Sportsmen's Groups were the best positioned to defend their interpretation of legislation they drafted and supported, the district court therefore erred in holding that the Sportsmen's Groups were adequately represented by the FWP. *Id.* at ¶ 17. Here, MTGOP supported and financially backed a petition effort to place the Green Party on the 2020 ballot. Like the Sportsmen's Groups, MTGOP was best positioned to defend the legality of the petition and the circumstances surrounding its execution and funding.

Similarly, in *Trbovich*, the Secretary of Labor brought an action to set aside an election of union officers. 404 U.S. at 529. *Trbovich*, a union member, sought to intervene to urge additional grounds for setting aside the election and to present evidence and argument in support of the Secretary's challenge. *Id.* at 529–530. The Secretary opposed intervention, arguing *Trbovich*'s only legally-cognizable interest was the interest of all union members in democratic elections, which was identical to the Secretary's interest, and therefore he was adequately represented. *Id.* at 538. The U.S. Supreme Court reversed, holding that the Secretary's statutory duties were important, but may not dictate precisely the same litigation approach. *Id.* at 539. "Even if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about the performance of 'his lawyer.' Such a complaint, filed by the member who initiated the entire enforcement proceeding, should be regarded as sufficient to warrant relief in the form of intervention under Rule 24 (a)(2)." *Id.*

As in *Trbovich*, denial of MTGOP's Motion on the grounds that the government adequately protected its interests was reversible error. The Secretary is neither MTGOP's "highest-ranking member" nor its "standard-bearer." He is not a MTGOP officer or marketing strategist. As an elected public official constitutionally-vested with administration of elections and certification of ballot access petitions, he cannot add to his official duties the defense of his own political

party, any more than the Governor should have acceded to the MDP's request to change petition withdrawal rules to aid their withdrawal campaign..

Additionally, while MTGOP's and the Secretary's interests may align, MTGOP has interests not represented by the Secretary. The Secretary has no interest in whether the Green Party is on the 2020 ballot; MTGOP does. The Secretary has no interest in defending MTGOP against Appellees' allegations of fraudulent conduct; MTGOP does. The Secretary has no interest in investigating Appellees' allegations and amassing contrary evidence—especially when those allegations have nothing to do with the Secretary or his statutory duties and when none of these allegations were presented to him until the day before the primary election. MTGOP, however, has interest in ensuring that evidence directly disproving Appellees' claims is properly introduced, especially where, as here, the inability to introduce that evidence directly affected the outcome of the case. MTGOP made the required minimal showing that representation of its interests by the Secretary was inadequate, both in the District Court and before this Court. Denial of MTGOP's Motion was error that resulted in a miscarriage of justice when the Court accepted all of Appellees' false claims against MTGOP as true while denying MTGOP a meaningful opportunity to participate.

MDP also contends that MTGOP suffered “no prejudice” in being denied intervention because MTGOP was permitted to file an *amicus* brief. (Resp. Br. at

17.) However, MDP moved to strike all judicially noticeable evidence in MTGOP’s brief that might contradict MDP’s one-sided narrative, which the court granted. (See R. 86.) Conversely, in pending federal litigation brought by Green Party candidates and primary voters, the federal court authorized MTGOP to file its *amicus* brief, including all of its evidence, thereby affording MTGOP full participation as it requested. *See Davis v. Stapleton*, Cause No. 6:20–CV–63 (D. Mont. Aug. 17, 2020). No such participation was afforded MTGOP below. For these reasons, the Court’s factual findings, legal conclusions, and the decision based on those findings and conclusions, must be reversed.

4. MTGOP’s Due Process Rights Were Violated.

MDP asserts MTGOP’s due process rights were not violated because MTGOP’s First Amendment rights were not “altered” or “extinguished” (Resp. Br. at 11.) But MTGOP’s spending has not only been nullified, as discussed above, it has been adjudicated by the court below—a state actor—to violate campaign finance law. (*See e.g.*, R. 85, COL ¶ 41, 43.) MTGOP has never had an opportunity to respond.

MDP again claims COPP “adjudicated” MTGOP’s campaign finance violations, not the District Court, so MTGOP’s due process quarrel is with COPP. (Resp. Br. at 11.) But as shown above, COPP has no authority to adjudicate

campaign finance violations and indeed, did not do so. The District Court violated MTGOP's due process rights by denying MTGOP's Motion to Intervene.

B. THE DISTRICT COURT ERRED IN DISPOSING OF THIS ACTION WITHOUT THE PETITION SIGNERS.

This case presents contradictory constitutional rights. On one hand, petition proponents (including Signers) assert First Amendment rights to effective association via the petition, and to effectively promote minor party access to the federal ballot. In direct competition, a single Plaintiff asserts a state constitutional "right not to associate," allowing late, informal withdrawals by hundreds of other signers. Finally, this Plaintiff's co-party, MDP, asserts no constitutional right; it seeks state action merely to vindicate its admitted interest in suppressing the voice of the Green Party in order to enhance its own voice—a flatly impermissible basis for judicial relief.

So far, Montana's state courts have held that the only interests they *cannot* hear are those arising under the First Amendment. MDP's Response abandons the District Court's rationale and labors to create a new excuse for excluding the Signers. But it fails: the Signers have a well-recognized First Amendment right to *effective* association to promote minor party ballot access (not just a political win, but more than a merely valid signature); the Secretary did not and could not represent that interest; and the Signers' participation was timely and without any identifiable prejudice to Plaintiffs. The District Court erred.

1. The Petition Signers’ First Amendment Rights To Effectively Associate Through The Green Party Petition Is Substantial And Superior To The “Rights” Of MDP To Amplify Its Own Voice By Suppressing The Green Party’s, Or Of The Late-Withdrawing Plaintiffs To Strike Signatures Of Hundreds Of Others Not Before The Court.

Appellees finally admit what the District Court’s decision refusing intervention denied: that “Individual Signers have a First Amendment right to associate...with the Petition and its proponent, the MTGOP.” (Resp. Br. at 20 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) and *Cal. Dem. Party v. Jones*, 530 U.S. 567, 574 (2000)). But what does this right encompass?

The Supreme Court has been clear: the First Amendment protects the right of *effective* association to achieve a political goal—not just a petition signer’s right to have his or her own signature “counted” on a petition that state law has doomed to fail. In its first initiative petition case, the Supreme Court even invalidated an *indirect* restriction on speech (a ban on paid circulators) because forcing supporters to rely on volunteers impairs their association “in two ways.” *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988). First, it “limits the size of the audience they can reach.” *Id.* And “[s]econd, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.” *Id.*; see also *Buckley v. ACLF*, 525 U.S. 182, 189 (1999) (reaffirming *Meyer’s* protection against a reduction in “chances that initiative proponents would gather signatures sufficient in number to

qualify for the ballot,” and “ability to make the matter the focus of statewide discussion.”). As Signers showed in their first brief, that is precisely the injury Signers will experience under the District Court’s rewrite of Montana’s procedures for withdrawal.

Similarly, ballot access cases teach that voters have the right to “cast their votes effectively,” not just have them counted. *Munro v. Socialist Workers Party*, 479 U.S. 189, 192-93 (1986) (striking down minor party ballot access laws under the First Amendment). *Munro*, cited by Appellees (Resp. Br. at fn.3), is instructive:

The freedom to associate as a political party, a right we have recognized as fundamental, has diminished practical value if the party can be kept off the ballot. Access restrictions also implicate the right to vote because absent recourse to referendums, “voters can assert their preferences only through candidates or parties or both.” By limiting the choices available to voters, the State impairs the voters’ ability to express their political preferences.

Id. (internal citations omitted). Here, then, the First Amendment protects Green ballot access supporters like Ms. Campbell and Ms. Loven in two ways: first, it protects their right to effectively associate via the petition process; second, it protects their right to effective means for placing the Greens on the ballot, which in turn promotes their goal of amplifying the Greens’ speech.²

² “Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.” *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979).

Significantly, the Signers’ interest in associating to amplify the Greens’ speech directly opposes the MDP, which openly admits that *its* interest lies in suppressing the Greens in order to enhance its own message. But unlike Signers’ *protected* interest, the MDP’s “interest” can *never* support state action: “...the fact that advocacy may persuade the electorate is hardly a reason to suppress it... The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is foreign to the First Amendment.” *Meyer*, 486 U.S. at 426 (citing *Buckley v. Valeo*, 424 U.S. 1, 48 (1976)).

Importantly, as Signers’ appellate brief showed (and as Appellees ignore), their asserted “right” has no sweeping consequences here; it protects only a modicum of procedural fairness, such as being able to count on an orderly petition process without months-late, phoned-in withdrawals. They assert no “right” to political success,³ nor is their claim limited to the validity of their own signatures or the petition itself. Instead, as voters in many other cases have successfully

³ Appellees’ claim to the contrary is simply false and is unsupported by its purported citation to the Signers’ appellate brief. (Resp. Br. 19). For that reason, Appellees’ collected authority is irrelevant. The cited cases dispose of claims that First Amendment compelled the state to: (1) act on an informal petition; (2) allow an invalid petition to be circulated as an exercise in advocacy; or (3) ignore term limits or age restrictions on candidates, as violating the right to vote for a specific candidate. (Resp. Br. 19-20).

done,⁴ they assert their First Amendment right to effectively associate via the petition for Green Party ballot access. That thousands of others also share this goal does not diminish their interest or deprive them of standing. After all, the District Court apparently allowed a single late-withdrawing Plaintiff, Ms. Neumeyer, to successfully assert murky state constitutional claims on behalf of hundreds of others who were never before the Court. And again, the MDP's "interest" in using state action to stifle the Greens and thereby enhance its own speech is unconstitutional.

In short, the District Court erred in failing to recognize Signers' First Amendment rights in an effective petition process, wrongly prioritizing the unconstitutional interests of the MDP and the questionable state constitutional interest of a single Plaintiff who withdrew late. As shown below, the other intervention factors also compel reversal.

⁴ Appellees falsely claim that federal caselaw "underscores" the Signers' lack of particularized interest. But here, no one else is asserting the Signers' First Amendment rights. First Amendment plaintiffs need not be parties, committees, or candidates; they can simply be supporters. *See, e.g., Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (voter who wanted to support Nader's ballot access); *ACLF*, 525 U.S. at 189 (individuals who wanted to circulate petitions—not just proponents and petition coordinators). Further, there is no basis for distinguishing between the claims of parties and their supporters: " '[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' " *Tashjian v. Rep. Party Conn.*, 479 U.S. 208, 215 (1986).

2. The Secretary did not adequately represent the Petition Signers' interests.

From the time the Petition Signers first moved to intervene, they have asserted a First Amendment right to effectively associate. Their proposed Answer pled that Plaintiffs' position "would infringe upon the rights of petition proponents and signers under the First Amendment to the United States Constitution and Article II, Sections 6 and 7 of the Montana Constitution." But because they were denied intervention, the Petition Signers' constitutional rights received no attention during the trial and are not once mentioned in the District Court's Order.

Plaintiffs claim the Secretary is presumed capable of "adequately represent[ing] its citizens when the applicant shares the same interest." (Resp. Br. at 21.) But here, the Petition Signers and the Secretary did not share the same interest. The Secretary was interested in preserving the effective administration of his duties by asserting certification of the minor party petition and denial of untimely and inadequate withdrawals was proper. The Petition Signers, on the other hand, were interested in preserving their First Amendment right to effective association, regardless of what Montana law required. These interests are not the same.

Plaintiffs claim the Secretary advocated for the "constitutional rights of voters like Campbell and Loven," (Resp. Br. at 22), but their cited examples fail to deliver. The Secretary fleetingly posited a "public interest" in preserving the Green

Party's status on the ballot, and never actually "opposed" (Resp. Br. at 24) Plaintiffs' First Amendment rights, but that is a far cry from articulating a First Amendment claim, promising to uphold that against the potentially contrary commands of Montana law, and then preserving the constitutional argument.

Indeed, where it suits their interests (in the sister case to this appeal, Case No. 20-0396, Resp. Br. at 23), Appellees would have this Court find that the Secretary did *not* adequately represent the Signers' interests by waiving a key issue on appeal.⁵ Appellees argue that "the Secretary failed to preserve this issue on appeal, and the brief treatment of the issue by *amici* cannot resurrect it." Appellees cite a case for the proposition that "amici cannot assume the functions of parties, nor create, extend, or enlarge issues." (*Id.*) Appellees want to have their cake and eat it too: in one appeal, they claim the parties shared identity of interest and claim the Signers were adequately protected as *amici*; in the other appeal, they use the Signers' *amicus* status against them, arguing the Secretary waived a key argument

⁵ At the very close of the hearing below, the District Court posited that perhaps a failure of "notice" by the Secretary could control disposition of the case, notwithstanding the rest of the record. This issue was not pled by any party and no party had notice that it might be considered other than the judge's tentative remarks. Still, the Signers showed in their post-trial *amicus* brief how the Court's *sua sponte* "notice" comments were incorrect and, even if they were valid, could not be used to supersede the Signers' and petition supporters' First Amendment interests in an effective process—only allowing timely withdrawals under the same formalities originally used for signing the petition.

that was not even pled. The reality is clear: the Secretary was in no sense an adequate representative of the Signers' First Amendment interests.

3. The Petition Signers' motion to intervene was timely filed.

The Petition Signers' motion to intervene was filed on July 2, 2020. At that time, no discovery had occurred, the Court had yet to rule on initial motions, and no substantive hearing had been held. The trial did not occur until two weeks later, July 15. At the trial, the Petition Signers appeared ready to proceed with their claims. Plaintiffs never indicated they would have been prejudiced had the Petition Signers been allowed to intervene. That alone is dispositive.⁶

C. HARMLESS ERROR REVIEW DOES NOT APPLY AND, EVEN IF IT DID, THE DISTRICT COURT COMMITTED REVERSIBLE ERROR.

Appellees assert that even if the motions to intervene should have been granted, "such an error would have been harmless" and does not warrant involvement from this Court. (Resp. Br. at 25). Appellees, however, fail to demonstrate that harmless error review applies to the denial of motions to intervene. The case Appellees cites does not involve a motion for intervention. Rather, in prior decisions determining the propriety of a motion to intervene, the Court has not applied harmless error review. *See In re Custody of R.R.K.*, 260

⁶ Because the District Court did not deny the Petition Signers' motion to intervene due to timeliness concerns, there is no reason to apply an abuse of discretion standard.

Mont. 191, 201-02, 859 P.2d 998, 1005 (1993) (reversing the district court’s denial of the motion to intervene after a final order had been issued because the court’s denial was erroneous); *Carlson v. Flathead*, 130 Mont. 24, 29-30, 293 P.2d 273, 275-76 (1955) (reversing the district court’s denial of intervention because the proposed intervenor had “a vital public interest in the subject matter of the action” warranting intervention).

Even if harmless error review applies, the District Court’s denial of the motions to intervene were surely sufficiently harmful. Large portions of the Court’s Order directly hinge on the actions of the MTGOP. For example, the District Court concluded that Appellees “withdrew after learning that representations made to induce them to sign the petition were false.” (R. 85 at COL, ¶ 32). The Court concluded that MTGOP did not reveal its support for the petition “until well after signers signed the Petition and the Secretary found that the signatures satisfied the requirements of the political party qualification statute.” (R. 85 at COL, ¶ 33). And, finally, the Court found that “[t]he actions taken by the MTGOP and their agents to induce Montanans to sign the petition without disclosing their role in organizing and sponsoring the petition closely track the elements of each of these [fraud] doctrines.” (R. 85 at COL, ¶ 40). MTGOP was prepared to refute each of these claims and, if such evidence was accepted by the Court, such evidence may well have led the Court to conclude that the untimely

withdrawals were not a result of fraud and should not have been counted (resulting in the minor party petition maintaining sufficient signatures).

Similarly, the Signers' First Amendment interest in this matter was substantial and dispositive. They were not permitted to introduce evidence or effectively argue that Plaintiffs' proposed remedy (now adopted by the District Court) would materially infringe upon their First Amendment constitutional rights. As a result, the District Court's opinion is entirely void of any discussion of the Petition Signers' constitutional rights. Further, Plaintiffs now argue that the Secretary failed to preserve an important Montana constitutional argument for appeal, and that the Signers' amicus status renders irrelevant and ineffective their own discussion in their post-trial brief. Had they been allowed to intervene, Ms. Campbell and Ms. Loven would have shown the District Court that if the Plaintiffs' arguments were adopted as Montana law, it would eviscerate the First Amendment association rights of minor party ballot access proponents. It would render ballot access "merely theoretical," because petition proponents will never know how many signatures to safely collect due to the months-long "withdraw-only" phase of the petition process created by the district court at which time any number of signatures may be withdrawn. In Ms. Campbell and Ms. Loven's absence, the District Court ignored these First Amendment rights and adopted Plaintiffs' radical reinterpretation of Montana law.

For all of these reasons, the denial of the motions to intervene significantly prejudiced the proposed intervenors and constitutes reversible error. There is, at a minimum, a reasonable possibility that the District Court’s opinion would have been materially different had the motions to intervene been granted.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court’s denial of Appellants’ Motions to Intervene and its decision to strike MTGOP’s evidence and consider their arguments and evidence in appeal No. DA 20–0396.

Dated this 18th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(e), I certify that this Reply Brief is printed with proportionately-spaced, size 14 Times New Roman font, is double-spaced, and does not exceed 5,000 words, excluding the cover page, certificate of service, certificate of compliance, table of contents, table of authorities, and appendix as calculated by Microsoft Word.

Dated this 18th day of August, 2020.

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