

ORIGINAL

FILED

09/29/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 20-0477

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 20-0477

ROBYN DRISCOLL; MONTANA
DEMOCRATIC PARTY; and DEMOCRATIC
SENATORIAL CAMPAIGN COMMITTEE,

Plaintiffs and Appellees,

v.

COREY STAPLETON, in his official capacity as
Montana Secretary of State,

Defendant and Appellant.

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

This matter comes before the Court on Secretary of State Corey Stapleton's motion to stay the Thirteenth Judicial District Court's September 25, 2020 final order enjoining several provisions of Montana law requiring that absentee ballots be received in county election offices by 8:00 p.m. on election day (Election Day Ballot Deadline) and another provision (Cure Deadline) that allows absentee voters until 5:00 p.m. the day after Election Day to correct deficiencies in their ballot. The District Court enjoined these statutes for the November 3, 2020 general election only and substituted the following deadlines in their place:

- a) All absentee ballots postmarked on or before Election Day shall be counted, if otherwise valid, provided such ballots are received by election officials by the deadline for federal write-in ballots for military and overseas voters; and
- b) The Cure Deadline statutes shall be extended until 3:00 p.m. on the second Thursday (9 days) after Election Day, at which time all cure information permitted under Mont. Code Ann. §§ 13-13-245(2)(a) and 13-15-107 must be received by election officials.

The District Court also declared unconstitutional and enjoined the Ballot Interference Protection Act (BIPA), Tit. 13, ch. 35, part 7, MCA. The Secretary has appealed the District

Court's order in its entirety but does not move to stay that portion of the order.

This Court previously stayed the District Court's preliminary injunction against the Election Day Ballot Deadline, noting that ballots for the primary election already had been printed and included notice of the receipt deadline. The Election Day Ballot Deadline thus remained in place for the June 3, 2020 primary pending the Secretary's appeal of the preliminary injunction, which this Court now has decided.

Likewise for the November general election, ballots have been printed and were sent to absent military and overseas electors by September 18, 2020. Absentee ballots must be available for in-person voting on October 2, 2020, for counties conducting a mail-ballot election, and on October 5, 2020, for counties conducting a polling place election. On October 9, 2020, counties conducting a polling place election must mail ballots to electors on the absentee list, and counties conducting a mail-ballot election must mail ballots to all active registered voters. As with the June 2020 primary election, the instructions that accompany mailed ballots notify voters of the Election Day deadline in three separate places.

Having reviewed the District Court's order, the Court agrees with the Secretary that the injunction disrupts the status quo, is likely to cause voter confusion, and interferes with the ability of the State to administer an orderly general election process already under way. The Court is cognizant of the fact that the time for response to the Secretary's motion to stay has not expired. Given the immediacy of the issue, however, and consistent with our Opinion in Cause No. DA 20-0295, reversing the preliminary injunction against the Election Day Ballot Deadline, we conclude that a stay is appropriate here as well.

IT IS THEREFORE ORDERED that Paragraph 3 of the District Court's September 25, 2020 order declaring unconstitutional the Election Day Ballot Deadline statutes and Cure Deadline statutes and enjoining their enforcement for the November 3, 2020 election is STAYED pending further order of the Court.




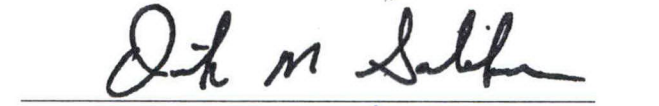
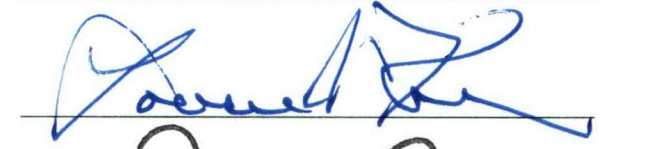

The Clerk of this Court is directed to provide immediate notice of this Order to counsel for all parties.

Dated this 29 day of September, 2020.

The Clerk of this Court is directed to provide immediate notice of this Order to counsel for all parties.

Dated this ____ day of September, 2020.


Chief Justice







Justices