

IN THE SUPREME COURT OF THE STATE OF MONTANA
OP-24-0424

MONTANA DEMOCRATIC PARTY,

Petitioners,

v.

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY,
MONTANA, THE HONORABLE MICHAEL F. McMAHON, PRESIDING,

Respondent.

**STATE OF MONTANA AND SECRETARY OF STATE CHRISTI
JACOBSEN’S RESPONSE TO PETITION FOR WRIT OF
SUPERVISORY CONTROL**

On Appeal from the Montana First Judicial District Court, Lewis and Clark
County Cause No. DV 24-542, The Honorable Michael F. McMahon, Presiding

AUSTIN KNUDSEN

Montana Attorney General

MICHAEL RUSSELL

THANE JOHNSON

ALWYN LANSING

MICHAEL NOONAN

Assistant Attorney General

BRENT MEAD

Deputy Solicitor General

MONTANA DEPARTMENT OF JUSTICE

PO Box 201401

Helena, MT 59620-1401

Phone: 406-444-2026

Fax: 406-444-3549

michael.russell@mt.gov

thane.johnson@mt.gov

alwyn.lansing@mt.gov

michael.noonan@mt.gov

brent.mead2@mt.gov

EMILY JONES

Special Assistant Attorney General

Jones Law Firm, PLLC

115 N. Broadway, Suite 410

Billings, MT 59101

Phone: 406-384-7990

emily@joneslawmt.com

CHRISTI JACOBSEN

Montana Secretary of State

AUSTIN MARKUS JAMES

Chief Legal Counsel

MONTANA SECRETARY OF STATE

1301 E. 6th Ave. Rm. 260

Helena, MT 59620-0124

Phone: (406) 444-6197

Fax: (406) 444-3549

austin.james@mt.gov

clay.leland@mt.gov

Attorneys for the State of Montana and Secretary of State

Caitlin Boland Aarab
BOLAND AARAB PLLP
11 5th Street N, Suite 207
Great Falls, MT 59401
Phone: (406) 315-3737
cbaarab@bolandaarab.com

Attorney for Petitioner

Hon. Michael F. McMahon
Lewis & Clark County Courthouse
228 Broadway, 3rd Floor
Helena, MT 59601

Respondent

Robert Cameron
203 N Ewing Street
Helena, MT 59601
Phone: (406) 442-1300
Fax: (406) 443-7033
rcameron@jmgattorneys.com

Attorney for Intervenor Robert Barb

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INTRODUCTION

In June, Michael Downey defeated Robert Barb in the Green Party's primary election for their nominee to the U.S. Senate. But two months later Downey withdrew his candidacy. The Green Party ("GP") acted quickly, and in compliance with Montana law, it nominated Barb as the replacement, filed the required certification forms, and the Secretary of State ("SOS") certified the nomination. Displeased, the Montana Democratic Party ("MDP") sued to block the nomination, but ultimately the District Court (correctly) denied MDP's request for relief. Now, weeks after Barb's nomination was certified and while ballots are being printed and mailed, MDP races to this Court seeking extraordinary and unwarranted relief—relief that skirts federal law and will disenfranchise scores of military and overseas voters. And MDP's Petition piles defect on defect—jurisdictional, factual, legal, and more—each of which provides an independent basis to deny the Petition. Considered together, they leave this Court no choice but to deny it.

JURISDICTION

The Court lacks jurisdiction to issue a Writ of Supervisory Control. *Infra* Part.I.A; Mont.R.App.P.14(3)(a)–(b). The writ requires purely legal issues, inadequate avenues of appeal, and either a mistake of law causing gross injustice or constitutional issues of statewide importance.

BACKGROUND

Michael Downey and Robert Barb competed in the June primary election to select the GP candidate for U.S. Senate. Downey won. Just over two months later, on August 12, 2024, Downey withdrew his candidacy. Pet.Ex.1, at ¶2. Under Montana law, GP’s deadline to appoint a replacement was August 21, *see* Mont. Code. Ann § 13-10-327(2), and it appointed Barb as its nominee on August 19, *see* Pet.Ex.5, at Ex.A. GP filed the required declaration of nomination with SOS the next day. *Id.*; Mont. Code Ann. §13-10-201.

On the afternoon of August 22, 2024, MDP filed its Complaint and Motion for Temporary Restraining Order (“TRO”) and Preliminary Injunction (“PI”). Pet.Ex.8 at 3–4. Defendants were not provided notice or copies of the TRO. Pet.Ex.8, at 4 (“the Court learned that [MDP’s] counsel’s ‘notice’ representation to Judge Seeley was not true.”). SOS certified the 2024 ballot and notified the counties that evening. Pet.Ex.6, at Ex.A at ¶¶2, 5. Judge Kathy Seeley entered the TRO less than an hour later and set a hearing for August 30. Pet.Ex.3, at 2. Judge Michael McMahon assumed jurisdiction the next day and after the August 30 hearing, he denied MDP’s request for a PI and dissolved the TRO. Pet.Ex.8.

Fifty of Montana’s 56 counties have begun printing 819 different ballot styles for 37,564 separate races in the November election. Sadie Dallaserra Decl. ¶7

(Ex.A). Counties must get ballots to print by the time this brief is filed to comply with federal deadlines. *Id.* ¶¶18–20.

ARGUMENT

I. THE COURT LACKS JURISDICTION.

A. THE COURT LACKS JURISDICTION TO ISSUE A WRIT.

MDP fails to satisfy M.R.App.P.14(3).

First, the Court has “routinely held that an adequate remedy of appeal exists, and supervisory control unwarranted, where the subject order is a preliminary injunction.” *Hert v. Mont. Sixteenth Jud. Dist. Ct.*, No. OP 24-0070, 2024 Mont. LEXIS 117, at * 5 (Feb. 6, 2024); M.R.App.P.6(3)(e); *see also MDP v. Jacobsen*, No. DA 24-0523 (MDP filed an appeal of the preliminary injunction before filing the Petition).

Second, SOS and Barb contest MDP’s factual allegations. For example, MDP’s central allegation that the Green “Party’s officers purported to appoint Barb as the Party’s nominee” in violation of GP bylaws rests only on “information and belief.” Pet.Ex.1, at ¶35; Pet.Ex.2, at 4.¹ SOS contested this citing GP’s sworn statement of nomination. Pet.Ex.6, at 7. Barb contests MDP’s role in engineering Downey’s withdrawal. Pet.Ex.5, at 10 (Downey sought to “give [the Montana Green

¹ Allegations made “upon information and belief” cannot form the evidentiary basis for a preliminary injunction. Mont. Code Ann. §27-19-303(2)(b).

Party] as little time as possible” to nominate his replacement.). And as detailed below, SOS contests the factual support for MDP’s claims of injury and irreparable harm. Given these open factual questions, this case does not present “purely legal issues.” M.R.App.P.14(3); *Barrus v. Mont. First Jud. Dist. Ct.*, 2020 MT 14, ¶¶17–20, 398 Mont. 353, 456 P.3d 577.

MDP’s arguments also fail to satisfy either M.R.App.P.14(3)(a) or (b). Subsection (a) is inapplicable because MDP fails to set forth a mistake of law or a gross injustice. *See infra* Part.II. This Court previously rejected attempts use this writ to secure “permanent declaratory and injunctive relief” at the preliminary stage. *State v. Mont. First Jud. Dist. Ct.*, No. OP 24-0431, 2024 Mont. LEXIS 800, at *8 (July 23, 2024). There, plaintiffs “chose to litigate [the] matter in the District Court” and this Court refused to “interfere with the District Court’s authority to hear” the case. *Id.* So too here. MDP’s doesn’t suffer gross injustice by litigating its case in its chosen forum. *See Barrus*, ¶20 (other writs provide original jurisdiction to initiate litigation in this Court).

Subsection (b) fails because MDP raises purely statutory, not constitutional, issues. *See* M.R.App.P.14(3)(b); Pet.3. In *State ex rel. Racicot v. Dist. Ct.*, 243 Mont.

379, 383–91, 794 P.2d 1180, 1182–87 (1990)², the Court interpreted ambiguous constitutional, not statutory, text.

MDP cannot satisfy any element of Rule 14(3), so this Court may not assume jurisdiction.

B. MDP LACKS STANDING.

The Court lacks jurisdiction because MDP failed to prove standing. “Standing is a threshold requirement in every case.” *Montanans Against Irresponsible Densification (“MAID”), LLC v. State*, 2024 MT 200, ¶9 (quotation and citation omitted). “A court must, however, evaluate standing at every stage of the litigation.” *Id.*

MDP incorrectly uses preliminary allegations to secure final relief. Pet.Ex.1, at ¶¶13-16, 35; Pet.16–17. Because MDP seeks full merits relief, it “can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts,” ... “[a]nd at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial.” *Lujan v. Defs of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted).

MDP bases its injury on three sets of broad allegations. Pet.Ex.1, ¶¶13–16 (economic injury, diversion of resources, and competitive standing). MDP’s public

² MDP references only subsection (a), *not* (b), in invoking the Court’s jurisdiction. Pet.3 (“The Court has jurisdiction to issue a supervisory writ under Mont.R.App.P.14(3)(a)”).

statements undercut its allegations. On September 4, 2024, an MDP spokesperson said the party finalized its budget, fundraising, and election plan in December 2023.³ At that time, the GP was entitled to nominate a candidate for the U.S. Senate race. MDP’s alleged economic and election activity injuries are illusory because it finalized its budget and election plans irrespective of any GP candidate nomination. Pet.Ex.1, ¶¶13–15. The United States Supreme Court hasn’t affirmatively accepted the “competitive injury” standing. Pet.14–15. And lower courts require a factual showing that the injury is based on the plaintiff’s right to campaign, not a “a failure to limit someone else’s right to campaign.” *Castro v. Scanlan*, 86 F.4th 947, 959–61 (1st Cir. 2023). MDP fails to prove that showing.

Finally, Barb argued that MDP created this issue by engineering Downey’s late withdrawal—a contested and unresolved fact implicating the laches doctrine. Pet.Ex.5, at 19-20. If true, then MDP improperly manufactured urgency or emergency. *Mont. Republican Party v. Graybill*, 2020 Mont. LEXIS 2196, *3–4 (Aug. 11, 2020); *see also Murthy v. Missouri*, 144 S. Ct. 1972, 1980 (2024) (“But plaintiffs cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.”) (internal quotations omitted). With unresolved factual questions and a lack of

³ Jacob Owens, *Mullen resigns from Dem executive board, cites lack of transparency*, (Sept. 4, 2024), available at: <https://tinyurl.com/228pza7y>.

evidence, MDP has failed to prove standing sufficient to grant the Court jurisdiction to weigh in on the matter.

C. THIS CONTROVERSY IS MOOT.

The Court cannot grant MDP relief because certification already occurred. “[W]hen an issue presented at an action’s outset ceases to exist or is no longer ‘live,’ or if, due to a change in circumstances or some intervening event, the court cannot grant effective relief, the issue is moot.” *Matter of Big Foot Dumpsters & Containers, LLC*, 2022 MT 67, ¶10, 408 Mont. 187, 191, 507 P.3d 169, 173 (cleaned up). MDP’s requested relief is to “[p]reliminarily and permanently enjoin [Defendant Jacobsen] ... from certifying Barb or any other Green Party candidate for the 2024 general election” (Pet.Ex.1, at 9-10.) It’s too late. Certification already occurred on August 22, 2024. Even if it weren’t too late, this Court refused to remove a candidate from the ballot when the petition was filed “just seventeen days *before* the statutory deadline for the Secretary of State to certify for the ballot the names and designations of statewide candidates to election administrators.” *Graybill*, 2020 Mont. LEXIS 2196, at *4 (emphasis added). But here, certification has long passed (eighteen days and counting as of this filing).

II. THE DISTRICT COURT CORRECTLY DENIED MDP RELIEF.

The Legislature has the “exclusive authority” to provide the statutory procedures and remedies available to ensure “compliance with Montana’s election laws.” *Larson v. State*, 2019 MT 28, ¶21, 394 Mont. 167, 434 P.3d 241. Exercising this authority, the Legislature created an “express statutory process for contesting a nomination or election to office.” *Graybill*, 2020 Mont. LEXIS 2196, at *4 (citing Mont. Code Ann. §13-36-102).

“An elector may contest the right of any person to any nomination ... [based on] a deliberate, serious, and material violation of any provision of law relating to nominations....” Mont. Code Ann. §13-36-101(1). “Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination” must provide notice according to law. Mont. Code Ann. §13-36-102(1).

MDP failed to challenge under this process. “Barb’s nomination has not been timely or lawfully challenged by the very ‘contest’ process the Legislature has provided under Montana election law.” Pet.Ex.8, at 7.

The GP nominated Barb. Pet.Ex.5, at Ex.A. The GP presiding officer attested: “I, the undersigned presiding officer of the committee having the qualifications to appoint a replacement candidate, hereby certify that the committee *nominated*, in accordance with Section 13-10-327, Montana Code Annotated[.]” *Id.* (emphasis added). The GP confirmed Barb “as the Green Party *nominee* for the office of U.S.

Senator.” *Id.* (emphasis added). MDP agrees that Barb was nominated. *See* Pet.Ex.1, ¶35. Because the GP nominated Barb, any challenge must go through the “express statutory procedure.” *Graybill*, 2020 Mont. LEXIS 2196, at * 4.

MDP misconstrues *Larson* to sidestep the statutory process. Pet.9–10. *Larson* dealt with a statute that “neither expressly provides nor precludes an asserted private right of action.” *Id.*, ¶ 29. Here, an express statutory procedure exists. Mont. Code Ann. §13-36-101, -102.

Nor can MDP lean on Mont. Code Ann. §13-10-327 to avoid Mont. Code Ann. §13-36-101. Instead, the clear language allows an elector to challenge *under* Mont. Code §13-36-101 by proving a violation of Mont. Code Ann. §13-10-327. MDP must still use the challenge procedure.

“The proper grounds for contesting a nomination or election in Montana are set forth in §13-36-101, MCA,” *Paulsen v. Huestis*, 2000 MT 280, ¶10, 302 Mont. 157, 13 P.3d 931. The District Court correctly denied MDP relief for failure to avail itself of the proper process. Pet.Ex.8, at 8.

III. MDP IS NOT ENTITLED TO A PRELIMINARY OR PERMANENT INJUNCTION.

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376 (2008) (citation omitted). Montana employs a conjunctive four-factor test. *MAID*, ¶10.

“[A] plaintiff seeking a permanent injunction must satisfy a four-factor test ...: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships” and public interest an injunction is warranted. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157 (2010).

A. MDP CANNOT SUCCEED ON THE MERITS.

MDP must satisfy a threshold showing of likelihood of success on the merits. *See e.g., Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018). It doesn't.

First, MDP failed to utilize the express statutory process to challenge Barb's nomination. *Supra* Part.II.

Second, MDP fails on the facts and law that the GP acted contrary to Mont. Code Ann. §13-10-327.

Montana law provides that with a vacancy for nomination “the affected political party *shall* appoint someone to replace the candidate ... as provided by the rules of the party” Mont. Code Ann. §13-10-327(1), (1)(a) (emphasis added). The GP and Barb complied with the statute by filing sworn statements with SOS affirming Barb's nomination and qualifications for office. Pet.Ex.5, at Ex.A.

The GP's sworn statement that it complied with its rules is presumptively reliable. Mont. Code Ann. §13-10-201(4) (declaration for nomination must include an oath of the candidate); *McDermott v. Carie*, 2005 MT 293, ¶27, 329 Mont. 295,

124 P.3d 168 (sworn statements are presumptively reliable). Any challenge to the veracity of that statement is a challenge of fact. *Larson*, ¶53.

MDP’s challenge offers an unsupported assertion that “*On information and belief*, the Party’s officers purported to appoint Barb as the Party’s nominee on August 20, 2024....” (Pet.Ex.1, at ¶35, Pet.Ex.6, at 7) (emphasis added). But that’s an insufficient evidentiary basis for injunctive relief. Mont. Code Ann. §27-19-303(2)(b). And MDP failed to support its belief with statements by any GP member or officer that contradicts the sworn statement in the record. *See* Pet.Ex.5, at 10.

MDP continues to operate on the inapposite claim that the GP nominated Barb “without convening a general meeting or holding a vote of the party’s membership.” Pet.3. But statute provides that “the state central committee shall make the appointment....” Mont. Code Ann. §13-10-327(1)(a). And that’s what happened here. Pet.Ex.5, at 10. Without evidence that any GP member or officer reads the GP bylaws differently, MDP has no claim.

MDP’s reliance on *Larson* again shows the stark contrast in what is required here compared to what happened in that case. There, the district court held an evidentiary hearing to challenge the veracity of sworn statements. *Larson*, ¶¶12–13, 53–55. The district court findings in that case supported rejecting signed affidavits. *Id.* MDP offers no evidence that the GP officers falsely swore statements to SOS. The District Court, therefore, didn’t weigh competing evidence that would invalidate

the presumptive reliability of the GP statements. Pet.Ex.8, at 7 (the District Court's Order noted MDP agreed that the GP rules are silent on relevant central committee authority).⁴

Next, Articles III-V of the GP's Bylaws don't support MDP. As the District Court found:

[Article III] is not applicable to the Montana Democratic Party's argument since the Green Party did not endorse Mr. Barb, instead its central committee, *as agreed to by the Montana Democratic Party*, nominated/appointed Mr. Barb to replace Mr. Downey under Mont. Code Ann. §13-10-327(1)(a).

[...]

In addition, *as the Democratic Party agreed*, the Green Party's Bylaws are silent as to the who makes the replacement appointment decision when a candidate withdraws

Pet.Ex.8, at 6-7 (emphasis added). As MDP agreed, the Bylaws are silent on the issue of appointment and thus are inapplicable. Any other questions about whether the Bylaws apply remains an unresolved factual issue. Pet.Ex.8, at 8.

⁴ The elephant in the room is that the GP is not party to this case. Pet.Ex.6, at 14. Mont.R.Civ.P.19(a)(1)(B)(i) requires joinder when the action impairs the non-party's interest. The GP has an interest asserting proper interpretation of its own internal rules.

GP lawfully nominated Barb. The vacancy statute creates a legal obligation⁵ that “the affected political party *shall* appoint someone to replace the candidate. Mont. Code Ann. §13-10-327(1) (emphasis added.) Subsection (a) provides that “the state central committee *shall* make the appointment...” *Id.* at (1)(a) (emphasis added.) The GP’s committee members voted to appoint Barb. Pet.Ex.5 at 10. GP then swore under oath that it abided by Mont. Code Ann. §13-10-327. Pet.Ex.5 at Ex.A. SOS was then required to accept this nomination because the “candidate affirmation is presumed to be valid unless proven otherwise in a court of law.” Mont. Code Ann. §13-10-201(4).

MDP has failed to show they are likely to succeed on the merits for a PI, let alone justify a permanent injunction. The Court should summarily reject MDP’s extraordinary request.

B. MDP HAS NOT SUFFERED IRREPARABLE HARM.

MDP must show more than a possibility of future harm; they are required “to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in the original). Furthermore, demonstrating an injury to establish standing differs from demonstrating an irreparable harm sufficient to

⁵ See *Ward v. Off. of Sec’y of State*, 2008 Mont. Dist. LEXIS 338, *6–7 (Mont. Dist. Ct. Aug. 26, 2008) (Section 13-10-327 is designed by “the legislature ... to ensure that there will be a candidate” in the general election from all parties that held a primary election.)

justify injunctive relief. *MAID*, ¶19 n.3. Montana law requires that “interpretation and application of subsection (1) closely follow United States [S]upreme [C]ourt case law.” *MAID*, ¶10 (quoting Mont. Code Ann. §27-19-201(4)). MDP fails to demonstrate a likelihood of irreparable harm through any of its theories. Pet.14–15.⁶

First, MDP’s statements undermine it will “incur otherwise unnecessary expense and burdens.” Pet.14. MDP and its allies have already raised and spent \$128 million on Montana’s United States Senate race. *Infra* note 9. MDP’s burden is to show how Barb’s nomination impedes that campaign spending effort. But it doesn’t. Instead, MDP publicly stated it set its budget months ago before any official candidate filing. *Infra* note 8. MDP doesn’t suffer an irreparable injury when it continues the spending plan it finalized and set in motion months ago.

Next, MDP substantiates no lost opportunity to conduct election-related activities. Pet.14–15. MDP offers no lost opportunity to contact voters, send mailers, conduct advertising, or otherwise execute its election plan.

Finally, MDP fails to cite to any United States Supreme Court decision recognizing competitive injury as irreparable harm. Pet.14-15. That brings the harm outside the scope of the PI. *MAID*, ¶10. Recent federal circuit court decisions also undercut MDP’s alleged harm. *Castro*, 86 F.4th at 960. Competitive injury requires

⁶ MDP, again, incorrectly relies on *Larson*. But *Larson* analyzed injury-in-fact for standing, not irreparable harm for an injunction. *Larson*, ¶¶44-47.

that the injury be based on the plaintiffs right to campaign, not “a failure to limit someone else’s right to campaign.” *Id.* So MDP must show Barb’s nomination results a loss of campaign resources to MDP. Even still the loss “of money, time and energy” isn’t generally sufficient to establish irreparable harm. *Sampson v. Murray*, 415 U.S. 61, 62 (1974).

MDP has been aware since earlier this year that it would be facing third parties like GP.⁷ This was clear even after the primaries in June when Downey won. In fact, MDP budgeted for this. According to MDP’s spokesperson, “The [MDP’s] budgeting process has been consistent for years ... this cycle’s budget was approved in December by the Board.”⁸ Thus, “the potential economic losses alleged by [MDP] would have occurred” regardless of Barb’s appointment. *See Netzer L. Off., P.C. v. State*, 2022 MT 234, ¶18, 410 Mont. 513, 520 P.3d 335 (finding no irreparable harm). MDP cannot now claim that it harms them to spend money already budgeted for this current election cycle.

In sum, MDP has to demonstrate its alleged injuries rise to irreparable harm necessary for injunctive relief.

⁷ Jonathon Ambarian, *One contested primary each for two Montana third parties*, (May 24, 2024), available at: <https://tinyurl.com/bdzbtyyr>.

⁸ Jacob Owens, *Mullen resigns from Dem executive board, cites lack of transparency*, (Sept. 4, 2024), available at: <https://tinyurl.com/228pza7y>.

C. MDP FAILS ON THE REMAINING FACTORS.

The balance of the equities and the public interest factors merge when the government is a party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). A temporary restraining order and preliminary injunction movant must show that “the balance of equities tips in his favor.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). In assessing whether the plaintiffs have met this burden, courts have a “duty ... to balance the interests of all parties and weigh the damage to each.” *See L.A. Mem’l Coliseum Comm’n. v. Natl. Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980).

MDP’s injuries are minimal. As of September 5, MDP and its allies have already spent \$128 million on the U.S Senate race—a record amount in Montana.⁹ MDP’s budget was finalized in December when they knew that there would be a GP candidate on the ballot. Not only has MDP failed to show how Barb’s appointment was unlawful, MDP has also failed to identify how Barb being on the ballot meaningfully affects their current fundraising and expenditure plans.

SOS and county election officials, Barb, the GP, and the people of Montana will suffer significant harm.

⁹ W. Kight, Poll: Democrat faces tough deficit in pivotal Montana Senate race, (Sept. 5, 2024), available at: <https://tinyurl.com/ynu2z3ds>.

First, SOS certified the ballot to the counties. Since then, Montana’s 56 counties have prepared 819 ballot styles for 37,564 separate races. Ex.A, ¶7. This process entails reviewing and testing each ballot style to ensure compliance with Montana requirements. *Id.* ¶8. Rushing the proofing process increases the likelihood of errors on the ballot. *Id.* ¶13. Altering any race on the ballot requires changes to the rest of the ballot. *Id.* ¶¶14–15. As a practical requirement, counties must complete ballot proofing by September 9, 2024, to allow time for ballot printing according to federal deadlines. *Id.* ¶¶19–20. Costs to print vary based on county, but overall, the larger counties incur over \$100,000 in costs for ballot printing and mailing. *Id.* ¶32.

As of 9:00 a.m., September 9, 2024, 50 counties have begun printing ballots. *Id.* ¶28. By close of business on September 9, 2024, that will likely be all 56 counties. *Id.*

If the Court orders MDP’s requested relief, Montana counties must re-proof and reprint ballots. Montana will not be able to guarantee compliance with federal law at that point. *Id.* ¶¶19–20, 34.¹⁰

¹⁰ 52 U.S.C. §20302(a)(8)(A): “Each state shall...transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter—not later than 45 days before the election.” To meet this requirement, ballots must be mailed by September 20, 2024. Mont. Code Ann. §13-13-205(2).

Additionally, any change to the ballot after mailing creates additional confusion to voters. First, SOS and the counties must identify and notify any voters receiving invalid ballots. Second, those voters must be informed not to vote the invalid ballot. If a voter casts an invalid ballot, it is unclear what steps SOS or the counties can take to inform the voter to correct the error before counting ballots on election day.

Next, both Barb and the GP have an interest in being represented on the ballot. *See supra* note 5. The GP qualified a nominee this cycle and losing a candidate on the ballot harms their ability to appear on future ballots. Mont. Code Ann. §13-10-601. Barb loses the ability to seek office and compete for voters. Montana voters lose out by losing a choice of candidate for federal office.

At bottom, the public has an interest in orderly elections. MDP's requested relief sows significant confusion past the midnight hour. Granting MDP relief risks voter disenfranchisement and non-compliance with federal law. These harms and risks significantly outweigh MDP's illusory injuries.

CONCLUSION

For these reasons, the Court should deny the Petition.

DATED this 9th day of September, 2024.

Austin Knudsen
MONTANA ATTORNEY GENERAL

/s/ Michael Noonan

Michael Noonan

Michael D. Russell

Thane Johnson

Alwyn Lansing

Assistant Attorneys General

Brent Mead

Deputy Solicitor General

Montana Department of Justice

215 North Sanders

PO Box 201401

Helena, MT 59620-1401

Emily Jones

Special Assistant Attorney General

JONES LAW FIRM, PLLC

115 N. Broadway, Suite 410

Billings, MT 59101

Attorneys for Defendant State of Montana

Christi Jacobsen

Montana Secretary of State

/s/ Austin Markus James

Austin Markus James, Chief Legal Counsel

Clay R. Leland, Attorney

MONTANA SECRETARY OF STATE

1301 E. 6th Ave Rm 260

Helena, MT 59620-0124

Attorneys for Defendant Christi Jacobsen

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,934 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature, and any appendices.

/s/ Michael Noonan

Exhibit A

Austin Knudsen
Montana Attorney General
 Michael Russell
 Thane Johnson
 Alwyn Lansing
 Michael Noonan
Assistant Attorneys General
 MONTANA DEPT. OF JUSTICE
 PO Box 201401
 Helena, MT 59620-1401
 Phone: (406) 444-2026
 Fax: (406) 444-3549
michael.russell@mt.gov
thane.johnson@mt.gov
alwyn.lansing@mt.gov
michael.noonan@mt.gov
 Attorneys for Defendant
 State of Montana and Christi Jacobsen

Christi Jacobsen
Montana Secretary of State
 Austin Markus James, *Chief Legal Counsel*
 Clay R. Leland, *Attorney*
 MONTANA SECRETARY OF STATE
 1301 E. 6th Ave Rm 260
 Helena, MT 59620-0124
 Phone: (406) 444-6197
 Fax: (406) 444-3549
austin.james@mt.gov
clay.leland@mt.gov
 Attorneys for Defendant
 State of Montana and Christi Jacobsen

MONTANA SUPREME COURT

<p>MONTANA DEMOCRATIC PARTY,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>STATE OF MONTANA and CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,</p> <p style="text-align: center;">Defendants.</p>	<p>DECLARATION OF SADIE DALLASERRA</p>
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STATE OF MONTANA)

:ss

County of Lewis & Clark)

SADIE DALLASERRA states under oath:

1. I, SADIE DALLASERRA, submit the following DECLARATION, pursuant to § 1-6-105, MCA.

2. I am the Elections Specialist Business Analyst for the Montana Secretary of State.
3. I began working for the Secretary of State in October 2022. I am a classified employee, meaning, my employment is not contingent on the current officeholder.
4. Prior to working for the Secretary of State, I served as the Deputy Elections Administrator in Butte, Silver Bow County, Montana.
5. I am familiar with the in-depth activity and procedures within the Secretary of State's Office as well as within County Election Offices throughout Montana regarding the preparing, printing, and sending of election ballots to qualified electors.
6. I am aware that there are fifty-six (56 counties) in Montana. Through my duties with the Secretary of State's Office, I have overseen the work of all 56 counties as each prepares for the November 5, 2024 General Election.
7. I am aware that there are 819 different ballot styles for the 2024 general election. Of those 819 ballot styles, there is a total of 37,564 separate races (not including ballot issues) amongst all 56 counties.
8. I am aware that the Secretary of State's Office and all 56 counties review every ballot style in their entirety. This process consists of reviewing all of the different races, including the title of the race, candidate name (including punctuation), ballot spacing, and proper ballot format. This process also

includes reviewing each ballot issue to ensure that the verbiage is the actual and true verbiage approved for the ballot issue to appear on the general election ballot.

9. I am aware that counties plan around statutory deadlines for write in, withdrawal, and replacement of candidates, so that each deadline only creates minimal work and upon certification proceed to print. Certification provides finality. It is not uncommon for counties to approve proofs for print with their designated vendors immediately upon receipt of certification.
10. I am aware that counties engage with a variety of vendors as part of this process to ensure Montana's election timeline is satisfied. Counties may have individual contracts for ballot stock, ballot printing, ballot folding, label and/or envelope printing, instructions printing, signature envelope printing, mail houses, and ballot transportation.
11. I am aware that some counties engage with local vendors to perform one or more of the duties to require or do some portion in house. Any alteration of any timelines at this stage impacts the pipeline of vendor agreement a county has engaged with, creating a trickle-down effect of additional delays and complications.
12. I am aware that 55 of the 56 counties enter all information necessary for the ballot into the Election Systems & Software ("ES&S") ballot portal. I am aware counties initiated this process at the beginning of August. As such,

counties are dependent on a vendor to generate and build the first proof of all ballot styles.

13. I am aware, and have experienced, both at the state and county level, the increase in likelihood of errors when the proofing stage is rushed, or timelines are altered. It is impossible to compress a several week process into a matter of days at the volume required and perform the requisite level of checks for errors that is demanded by the process.
14. When the County notices a necessary change needing to be made through the ballot proofing process, the County provides the same to ES&S, and the implementation of the change has a high instance of creating other issues to the ballot layout, etc.
15. For instance, the removal of a race will move up other races on the ballot. In doing so, races are left spanning over two columns or multiple pages. A race is prohibited from spanning over multiple pages or columns because of the tremendous amount of voter confusion and overvotes or undervotes that is created by the poor ballot layout. Simply put, the removal of a candidate from a race at this stage would lead to an unexplainable amount of work and risk for errors, as well as a likely source of voter confusion.
16. Moreover, both state and county election officials have duties that must be performed over the coming weeks to ensure a sound election. Replacing upcoming tasks with reperforming already completed tasks will be at the

expense of completing statutorily required duties at both the state and county level.

17. Based on my experience, some ballots may already been on their way from smaller counties to military voters.

18. I am aware that Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) ballots are to be mailed at least 45 days before an election. Federal law specifically requires election officials to ensure that absentee ballots and blank absentee ballots are transmitted and received to Uniformed Services and Voters 45 days before an election. I am aware that counties are already under pressure to meet this federal requirement with the ballots that have been printed and, in some cases, have already been received by, and are being prepared by counties for distribution.

19. I am aware that ballot proofing must be done by September 9th, 2024.

20. I am aware that ballots must be proofed by September 9th, 2024 because counties must go to print by September 9th in order to receive the physical ballots in time for mailing to UOCAVA voters in accordance with the aforementioned timelines.

21. I am aware of the extensive mailing process of counties, including but not limited to the following:

A. Counties pull labels to send labels to print.

B. Counties physically receive the ballots, and after such are received, counties organize their ballots. Counties physically separate them by

precinct and organize the ballots prior to stuffing the ballots, in order to know exactly how many ballots they have and to reconcile numbers.

C. Counties bring in temporary workers to work on the stuffing of ballots.

Counties look at the ballot and identify the stub number. Counties physically stamp the ballot, pursuant to Section 13-13-116, MCA. The Election judge has the duty to ensure that the ballot is individually stamped. Counties also fold the ballots in a certain way in order to ensure that once received, that they will run through the machines appropriately. Short handing this process can mean that tabulation has errors and causes delays.

22. From my personal experience, I am aware that for each ballot, the processes required by counties take roughly 60 to 90 seconds.

23. I am aware that due to the time limitations, counties such as Cascade County and Flathead County have already generated labels which indicates to voters that a ballot is queued in the voter portal, based on assigning ballots to a voter.

24. I am aware that to ensure timely delivery of ballots, counties arrange times with their post office driver in advance so that a truck can appropriately transport the ballots from the office to the post office. This involves preplanning to ensure that ballots are counted when they leave and once they arrive at the post office. All of the counties preplanning for this step is reliant

upon the current ballot schedule, which cannot be performed if any alteration of the ballot occurs.

25. I am aware ballots are not only needed to be available for voters, but ballots are needed for programming and testing by county election administrators of ballot tabulation machines.

26. Every county in Montana with a tabulator relies upon one of two people that assist the counties with writing unique code for the specific county races. Scheduling of this testing is done to ensure that programming and testing is completed by the statutory timeline. Counties have scheduled this process based on reliance of receipt of the current ballot. If the ballot is altered, counties would be unable to proceed with programming and testing of the tabulator as necessary for the upcoming election.

27. With regard to the programming of tabulators, the Secretary of State's Office works with the counties to extract the specifics of all races, which is programmed into the tabulators. This is currently underway, or already finalized. If a candidate is removed from the ballot, it alters the candidate ID's programmed, which would require manual entry of the results for the United States Senate race by precinct, running a significant risk of human error.

28. I am also aware of that at this time, at least 50 counties have moved on to print as of open of business on September 9, 2024. By close of business on September 9, 2024, all or almost all counties will already be at the print

stage. Montana's largest counties, including but not limited to, Yellowstone, Gallatin, Flathead, Cascade, Lewis and Clark, and Silver Bow have already proceeded to print.

29. For instance, Gallatin County has over 300 pages of proofs, which has been completed and sent to print.

30. I am also aware that some counties have already received printed ballots. For instance, Lewis and Clark County already received their UOCAVA ballots and are in the middle of the process to stamp and mail out to military and overseas county voters.

31. The cost to print, depending on the county and printer, is roughly \$.34 cents each for absentee ballot, and \$.32 cents for polling place ballots. The cost to print does not include the cost for labels, printing of labels, envelopes, postage, and staff time for folding and stuffing.

32. Ballot printing, not including freight or set up costs, is expensive. As part of the post-election cost survey for the 2024 primary, counties reported to the Secretary of State the following total printing costs: Yellowstone \$110,338; Flathead \$189,691; Gallatin \$127,154; Missoula \$160,649. Rush printing, if even available and/or possible, would likely include additional costs due to the turnaround time.

33. Some counties purchase ballot stock and purchase the printing of the ballot stock by a local printer. The ballot stock already purchased is already being used for print, and thus, counties under this method would be required to

order new stock and suffer the time delays in waiting for delivery and reprint.

34. I am aware that the State of Montana and county election officials will be unable to comply with federal law, including but not limited to the Military and Overseas Voter Empowerment Act (MOVE Act) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) if a ballot change is made at this stage.

35. I hereby declare under penalty of perjury that the foregoing is true and correct.

DATED this 9th day of September, 2024, from Silver Bow County.



SADIE DALLASERRA
MONTANA SECRETARY OF STATE'S OFFICE

CERTIFICATE OF SERVICE

I, Michael Noonan, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 09-09-2024:

Robert Cameron (Attorney)
203 N. Ewing St
Helena MT 59601
Representing: Robert Barb
Service Method: eService

Clay Richard Leland (Attorney)
1301 E 6TH AVE
HELENA MT 59601-3875
Representing: Secretary of State, Office of the
Service Method: eService

Austin Markus James (Govt Attorney)
1301 E 6th Ave
Helena MT 59601
Representing: Secretary of State, Office of the
Service Method: eService

Caitlin Boland Aarab (Attorney)
11 5th St N
Suite 207
Great Falls MT 59401
Representing: Montana Democratic Party
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: State of Montana
Service Method: eService

Michael F. McMahan (Respondent)
228 Broadway, Second Floor
Helena MT 59601
Service Method: Conventional

Electronically signed by Deborah Bungay on behalf of Michael Noonan
Dated: 09-09-2024