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**FILED**

AUG 07 2020

By *Angie Sparks* Clerk of District Court  
Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

MONTANA DEMOCRATIC PARTY,  
  
and  
  
TAYLOR BLOSSOM, RYAN FILZ,  
MADELINE NEUMEYER, and  
REBECCA WEED, individual electors,

Plaintiffs,

v.

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

Defendant.

Cause No.: DDV-2020-856

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

This Court heard this matter on July 14 and 15, 2020.<sup>1</sup> Peter  
Michael Meloy and Matthew Gordon represented Plaintiffs Taylor Blossom,  
Ryan Filz, Madeline Neumeyer, Rebecca Weed, and the Montana Democratic

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<sup>1</sup> The more extensive and complicated procedural history of this matter is recited in the Findings of Fact, below.

1 Party (MDP). Austin James and Matthew T. Meade represented Defendant State  
2 of Montana, by and through Secretary of State Corey Stapleton (Secretary).

3 The parties presented testimony and evidence and made oral  
4 arguments. Following the hearing, the parties submitted proposed findings of  
5 fact and conclusions of law and briefs. On July 17, 2020, the parties submitted  
6 notices of submittal.<sup>2</sup>

7 From the file, the testimony and evidence presented, the Court  
8 makes the following:

### 9 FINDINGS OF FACT

10 1. This matter came before the Court on an order to show cause  
11 on Plaintiffs' Complaint for Declaratory and Injunctive Relief.

12 2. Plaintiffs filed the complaint on June 1, 2020, against the  
13 Secretary, alleging that the Secretary erroneously failed to honor the requests of  
14 several hundred Montana voters to withdraw their names from a petition to  
15 obtain ballot access for the Montana Green Party for the November 2020 general  
16 election ballot. Plaintiffs alleged that once the withdrawals are accounted for, the  
17 petition fails to meet the requirements of Section 13-10-601(2), MCA, the  
18 political party qualification statute, because it does not contain the requisite  
19 number of valid signatures from at least thirty four legislative House Districts.

20 3. On Monday, June 22, 2020, the First Judicial District Court,  
21 Judge Kathy Seeley presiding, began a hearing on an order to show cause. Six  
22 days before the hearing, Plaintiffs filed a trial brief containing exhibits and  
23 declarations from Plaintiffs' trial witnesses. Late Friday before the hearing, and  
24 on the morning of the hearing, the Secretary filed various motions to dismiss the  
25 complaint and to vacate the hearing. Plaintiffs opposed all motions. At the

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<sup>2</sup> The Court has also granted status to certain entities and people to file briefs as *amici curiae* as set forth in the findings of fact below and in the accompanying Order on Supplemental Motion.

hearing before Judge Seeley, counsel argued the Secretary's motions about whether to proceed, and upon hearing argument, the Court decided to proceed with the hearing and hear evidence and testimony. The Secretary then requested a two-minute recess during which the Secretary filed a motion to substitute Judge Seeley. Judge Seeley referred the matter to Judges Mike Menahan and Michael F. McMahon, both of whom declined to assume jurisdiction. Judge Seeley then referred the matter to the undersigned, who accepted jurisdiction and set a continuation of the show cause hearing for Tuesday, July 7.

4. Prior to the July 7 hearing, the Montana Republican Party (MTGOP) and two petition signers filed motions to intervene as defendants. The MTGOP also filed a motion to reschedule the Tuesday, July 7 hearing. The Secretary filed a response joining in the MTGOP's request to reschedule the Tuesday, July 7 hearing. Plaintiffs opposed the motions to intervene and the motion to reschedule the hearing. On the Sunday before the July 7 hearing, the Secretary filed an emergency motion to continue the hearing due to a family emergency that befell one of its counsel.

5. Plaintiffs filed a supplemental trial brief containing exhibits and declarations that reflected subsequent productions of public records by county elections offices and the Secretary since the first hearing in the case. This filing included copies of every signature withdrawal form known to Plaintiffs to have been submitted to county elections offices or to the Secretary.

6. On July 7, the parties convened before the Court. The Court granted the Secretary's request to continue the hearing, and re-set the hearing to begin Tuesday, July 14.

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1           7.     On July 8, the Secretary moved for partial summary judgment  
2 regarding the use of electronic signatures on withdrawal forms. Plaintiffs opposed  
3 the Secretary's motion and cross-moved for summary judgment on this issue.

4           8.     On July 14 and 15, the Court held a two-day evidentiary  
5 hearing.

6           9.     At the outset of the hearing on July 14, the Court denied the  
7 motions to intervene by the MTGOP and two individual signers of the petition.  
8 The Court granted these entities the right to file briefs as *amici curiae*. The two  
9 individual signers immediately filed a petition for a writ of supervisory control in  
10 the Montana Supreme Court seeking to reverse the Court's order denying their  
11 motion to intervene. The Montana Supreme Court denied the petition on July 15,  
12 noting Plaintiffs did not object to the signers' participation as *amici curiae*.  
13 *Campbell v. Montana First Judicial District Court*, No. OP 20-360.

14           10.    The Court heard testimony from five witnesses for the  
15 Plaintiffs, including MDP representatives Kendra Miller and Trent Bolger, and  
16 individual plaintiffs Madeleine Neumeyer (Neumeyer), Rebecca Weed (Weed),  
17 and Taylor Blossom (Blossom). The Secretary called one witness, Dana Corson,  
18 the Secretary's Elections Director. On rebuttal, Plaintiffs re-called Kendra Miller  
19 and Trent Bolger to testify. All witnesses were subject to cross examination, and  
20 both parties offered exhibits into evidence. The Court concluded the hearing  
21 with closing argument on the issues presented in the case.

22           11.    The political party qualification statute, § 13-10-601, MCA,  
23 specifies how parties are eligible to conduct a primary election. The statute has  
24 two ways by which a party may appear on the primary election ballot. First, a  
25 political party will appear on the primary ballot if it had a candidate for statewide

1 office in either of the last two general elections who received a total vote that was  
2 at least five percent of the total vote received by the successful candidate for  
3 governor. § 13-10-601(1), MCA. Under this provision, MDP, the MTGOP and  
4 the Montana Libertarian Party have qualified to appear on the primary ballot.

5 12. If a party does not qualify under this previous subsection, it  
6 may nevertheless qualify for the primary by submitting a petition, on a form  
7 prescribed by the Secretary, requesting a primary election. Section 13-10-  
8 601(2)(a), MCA. Section 13-10-601(2)(b), requires:

9 The petition must be signed by a number of registered voters  
10 equal to 5% or more of the total votes cast for the successful  
11 candidate for governor at the last general election or 5,000 electors,  
12 whichever is less. The number must include the registered voters in  
13 more than one-third of the legislative districts equal to 5% or more of  
14 the total votes cast for the successful candidate for governor at the  
last general election in those districts or 150 electors in those  
districts, whichever is less.

15 13. Montana has 100 legislative districts. Mont. Const. Art. V,  
16 section 2. Therefore, as set forth in this statute, the petition must include the  
17 verified signatures of registered voters in at least 34 legislative districts, being  
18 “more than one-third of the legislative districts.” Section 13-10-601(2)(b), MCA.

19 14. Plaintiff Neumeyer signed the petition in Helena in February  
20 2020. Neumeyer believed the petition was being advanced by an environmental  
21 organization. She did not know the circulation of the petition was being funded  
22 by the MTGOP, as explained below. Neumeyer generally supports the  
23 Democratic Party and Democratic candidates for office. Had she known that the  
24 MTGOP was behind the petition, she would not have signed it.

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1           15. Plaintiff Weed signed the petition in Bozeman in February  
2 2020. Weed believed the petition circulator was working with the Montana  
3 Green Party to get the Green Party on the ballot. Weed generally leans towards  
4 supporting the Democratic Party and usually supports Democratic candidates for  
5 office. She did not know the circulation of the petition was being funded by the  
6 MTGOP. Had she known that the MTGOP was behind the petition, she would  
7 not have signed it.

8           16. Plaintiff Blossom signed the petition in in Bozeman in  
9 February 2020. Based on his conversation with the petition circulator, Blossom  
10 believed that the petition circulator was working with the Montana Green Party to  
11 get the Green Party on the ballot. Blossom considers himself to be a member of  
12 the Democratic Party and supports Democratic candidates for office. He did not  
13 know the circulation of the petition was being funded by the MTGOP. Had he  
14 known that the MTGOP was behind the petition, he would not have signed it.

15           17. By mid-February when the circulators had finished  
16 collecting almost all of the petition signatures that they would eventually turn in,  
17 there was not any public information as to whom was financing the Montana  
18 Green Party petition effort, although there was discussion in the general news  
19 media raising the question as to whom was financing this effort.

20           18. On February 12, the Montana Green Party posted a message  
21 on its Facebook page stating:

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1       We have been receiving notice that there are people falsely  
2       collecting information on behalf of the Green Party. As of the  
3       moment, we are still in a legal battle against the state of MT, and in  
4       such a state are not collecting, nor have we hired or asked for  
5       volunteers to collect information this 2020 cycle. . . As of now, we  
6       have no house senate or state office candidates running for the 2020  
7       election, at least until the lawsuit reaches resolution. Any individual  
8       acting in rude or suspicious behavior claiming to be collecting  
9       information on our behalf is not affiliated with our name and  
10       mission.

11       See, Finding of Sufficiency, *Luckey v. Advanced Micro Targeting*,  
12       No. COPP 2020-CFP-004, at 3 (June 25, 2020) (hereinafter *Luckey*).

13               19.   Local news reporters discovered that on February 14, the  
14       Club for Growth Action, a political arm of a Washington D.C. SuperPAC, filed  
15       paperwork with the Commissioner of Political Practices (COPP) as a committee  
16       to petition to qualify a minor political party for primary elections, identifying the  
17       Green Party as the minor party. *Luckey* at 2.

18               20.   In response to reporters' inquiries, however, a spokesman  
19       for Club for Growth Action denied that it was behind the signature gathering  
20       efforts. *Luckey*, at 2. The spokesman told MTN News on February 13 that Club  
21       for Growth Action had explored undertaking that effort for the Montana Green  
22       Party and then decided against it.

23               21.   As a result, well after the circulators had finished collecting  
24       the petition signatures, Montanans still did not know who was financing the  
25       Montana Green Party petition effort. For example, one local news report  
26       published February 13 stated "A group other than the Montana Green Party has  
27       been attempting to qualify the party for the 2020 ballot in Montana – but it's not  
28       ////

1 clear who.” In a radio interview published February 21, one local reporter posed  
2 the following question to her colleague:

3 [I]n the realm of shenanigans, some unknown group has gathered  
4 signatures and submitted petitions around the state to qualify the  
5 Green Party for the ballot, a move that is seen as possibly helping  
6 Republican candidates. The Green Party in Montana says it’s not  
7 them. And a conservative PAC, the Club for Growth, says it’s not  
8 them either. So who is it?

9 Her colleague, a local politics reporter, responded: “That’s a really  
10 good question that I would like to find out the answer to. . . . [H]opefully we’ll  
11 see some sort of paperwork filed soon to give us an idea of who’s behind it.”

12 22. During the 2019 legislative session, the Montana legislature  
13 passed legislation to require prompt disclosure of contributions and expenditures  
14 made to petition to qualify a minor political party for primary elections. Sections  
15 13-37-601 to -607. These statutes became effective October 1, 2019. Despite  
16 these newly enacted statutes, Montanans did not know who was funding the  
17 petition to place the Green Party on the ballot. This 2019 legislative action was  
18 in response to a similar effort on the part of unknown individuals or groups in  
19 2018 to petition to qualify the Montana Green Party for ballot access.

20 23. In 2018, Advanced Micro Targeting, a Nevada political  
21 consulting firm operating through thirteen paid signature gatherers, many from  
22 out of state, independently collected 9,461 signatures from four counties in  
23 support of the Montana Green Party petition. *Larson v. State By & Through*  
24 *Stapleton*, 2019 MT 28 ¶ 4, 394 Mont. 167, 434 P.3d 241. A representative of  
25 the Green Party testified that it did not commission or coordinate with this  
eleventh-hour paid signature gathering effort and was unaware of it until learning



1 of it through news media reports. *Id.* ¶ 4 n.2. Based on the failure of Advanced  
2 Micro Targeting to comply with statutory requirements applicable to political  
3 party petition signatures, this Court invalidated some of the affected signatures  
4 and enjoined the Secretary from affording the Montana Green Party ballot access  
5 in the 2018 general election. The Montana Supreme Court, by a six to one vote,  
6 affirmed this Court's decision on appeal. *Id.* ¶ 65.

7           24. Based on the events surrounding the 2018 Montana Green  
8 Party petition, MDP filed a campaign practices complaint with the COPP against  
9 Advanced Micro Targeting, alleging that the firm failed to register and report  
10 contributions and expenses for its electioneering activities performed through its  
11 petition campaign.

12           25. The COPP determined that Advanced Micro Targeting's  
13 activities did not qualify as expenditures under then-existing Montana campaign  
14 finance law. The COPP dismissed MDP's complaint. Dismissal and Sufficiency  
15 Decision, *Mont. Democratic Party v. Advanced Micro Targeting*, No. COPP  
16 2018-CFP-004, at 4-5 (July 20, 2018).

17           26. As noted above, during the 2019 legislative session, the  
18 Montana legislature enacted new campaign finance disclosure requirements  
19 applicable to political party qualification petitions. As a result of the 2019  
20 legislation, Montana law now imposes disclosure and reporting requirements on  
21 efforts to petition to qualify a minor political party for primary elections similar  
22 to the requirements applicable to efforts to petition to qualify initiatives and  
23 referenda. *See* §§ 13-37-601 *et seq.*, MCA.

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1           27. Among the disclosure requirements mandated by these  
2 statutes, organizations making efforts to qualify a minor political party for  
3 primary elections using a political party qualification petition are now required to  
4 file an organizational statement with the COPP within five days of spending or  
5 receiving \$500 towards the effort. § 13-37-602, MCA; § 13-37-601(4)-(7), MCA.

6           28. The organizational statement is required to contain details  
7 about the minor party qualification committee, including its name and complete  
8 address, the identity of its treasurer and depository accounts, the names and  
9 addresses of its officers, and an organizational statement.

10           29. No entity filed an organizational statement under § 13-37-  
11 602, MCA, as a minor party qualification committee for the petition with the  
12 COPP until February 14, after almost all the petitions had been signed. The  
13 February 14th filing, however, still did not reveal the entity funding the petition.  
14 Club for Growth immediately denied that it was behind the signature gathering  
15 effort. *Luckey*, at 2.

16           30. According to the Secretary's pre-election calendar, the  
17 deadline for petition circulators to submit minor party qualification petitions to  
18 county elections offices was March 2nd.

19           31. On March 6, the Secretary announced to county elections  
20 officials and to the media that the Montana Green Party had submitted enough  
21 signatures to satisfy the requirements of § 13-10-601, MCA. The Secretary thus  
22 added the Green Party to the list of political parties on its website.

23           32. The Secretary's announcement did not identify in which  
24 house districts the petition had exceeded the minimum required number of  
25 signatures or the number of signatures in each of those districts.

1           33. At the time of the Secretary's announcement on March 6,  
2 Montanans still did not know who was financing the Montana Green Party  
3 petition effort. For example, a local news report published on March 7 stated "It's  
4 unclear who paid the out-of-state signature gatherers. Montana's Green Party has  
5 said it wasn't them."

6           34. As the news began to spread in late February and early  
7 March that the Montana Green Party had not sponsored the petition to qualify the  
8 Montana Green Party for ballot access, and that some unknown entity was behind  
9 the effort, signers began to demand that their names be removed from the  
10 petition. For example, Plaintiff Blossom attempted to withdraw his signature on  
11 March 6. Plaintiff Weed attempted to withdraw her signature on March 5.  
12 Blossom and Weed each filled out a signature withdrawal form the same day they  
13 learned that the Montana Green Party had disavowed the petition to put the Green  
14 Party on the ballot and submitted it shortly thereafter.

15           35. Montana law has long recognized the right of petition  
16 signers to withdraw their names from a petition. The Montana Legislature has  
17 not provided specific statutory requirements that signers of political party  
18 qualification petitions must follow to withdraw their names from such petitions.

19           36. By contrast, Montana law does specify a process by which  
20 signers of petitions for constitutional amendments, calls for constitutional a  
21 convention, initiatives, or referenda may withdraw their signatures: and grants to  
22 the Secretary the authority to prescribe the form to be used by an elector desiring  
23 to have the elector's signature withdrawn from such a petition. Section 13-27-  
24 301(3), MCA. This statute does not mention political party qualification  
25 petitions nor is this statute incorporated by reference in the statutes governing

1 political party qualification petitions. *Cf.*, § 13-10-601(2)(c), MCA,  
2 incorporating §§ 13-27-403 through 13-27-306, MCA, for process to be used in  
3 verifying signatures on a political party qualification petition.<sup>3</sup>

4 37. As noted, this statutory process for withdrawals from  
5 petitions for a “constitutional amendment, constitutional convention, initiative, or  
6 referendum” requires the Secretary to prescribe a form for the signer to use.  
7 Section 13-27-301(3), MCA.

8 38. The statutory process for withdrawals from petitions for a  
9 “constitutional amendment, constitutional convention, initiative, or referendum”  
10 also provides a deadline for withdrawals. That deadline is the same day that  
11 petitions for a “constitutional amendment, constitutional convention, initiative, or  
12 referendum” must be submitted to county elections officials. Section  
13 13-27-301(1), (3), MCA:

14 Signatures may be withdrawn from a petition for constitutional  
15 amendment, constitutional convention, initiative, or referendum up  
16 to the time of final submission of petition sheets as provided in  
17 subsection (1). The secretary of state shall prescribe the form to be  
18 used by an elector desiring to have the elector's signature withdrawn  
19 from a petition.

20 39. Based on this statutory authority, the Secretary has  
21 prescribed a withdrawal form for petitions for a “constitutional amendment,  
22 constitutional convention, initiative, or referendum.” The withdrawal form  
23 expressly states that, “Signatures may be withdrawn from a petition for  
24 constitutional amendment, constitutional convention, initiative, or referendum up  
25 to the time of final submission of petition sheets to the county election office.” *Id.*

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<sup>3</sup> This shows the legislature’s ability and awareness to incorporate statutes into the political party qualification petition statutes if it desires to do so.

1 The form does not reference withdrawal of signatures from a political party  
2 qualification petition.

3 40. The withdrawal form also requires that the “signer must sign  
4 in the presence of a notary public or an officer of the office where the form is  
5 filed.” *Id.* However, the statute authorizing the Secretary to prescribe such a  
6 form for withdrawals from petitions for a “constitutional amendment,  
7 constitutional convention, initiative, or referendum” does not mention a  
8 requirement that the form be notarized or signed in person in the presence of an  
9 election official. *Cf.*, § 13-27-301(3), MCA.

10 41. The Secretary did not present, and the Court cannot find,  
11 evidence that the Secretary’s withdrawal form was prescribed through an  
12 administrative rulemaking process, pursuant to § 2-4-302, MCA.

13 42. Unlike § 13-27-301, MCA, governing the withdrawal of  
14 signatures from a petition for a constitutional amendment, constitutional  
15 convention, initiative, or referendum, no statute grants the Secretary authority to  
16 prescribe a form for withdrawing from political party qualification petitions.  
17 Austin James, as chief staff attorney for the Secretary, advised the Secretary that  
18 § 13-27-301(3) was not relevant to signature withdrawal from a political party  
19 qualification petition because the statutes expressly referenced by the political  
20 party qualification statute do not include Section 13-27-301, MCA.

21 43. Section 13-10-601(2)(a) directs and grants the Secretary the  
22 authority to prescribe a form for petition circulators to use when gathering  
23 signatures for a political party qualification petition. The Secretary has  
24 prescribed such a form. That petition form does not require that a petition signer  
25 sign in the presence of a notary or county elections official.

1           44. Nevertheless, the Secretary believed that petition signers  
2 who wanted to withdraw their names from the Green Party qualification petition  
3 must use the withdrawal form applicable to petitions for a constitutional  
4 amendment, constitutional convention, initiative, or referendum. The Secretary's  
5 election director testified that if a petition signer wishing to withdraw his or her  
6 signature submitted a different form or submitted a withdrawal form that was not  
7 notarized or signed by a county elections official, it would not be honored.

8           45. The Secretary has not prescribed any administrative rule or  
9 issued any publicly accessible statement of policy regarding withdrawals from a  
10 political party qualification petition. Likewise, the Secretary has not promulgated  
11 through administrative rulemaking a form for a signer of a political party  
12 qualification petition to use to withdraw their signature from such a petition.

13           46. The Secretary did not notify the public or issue any publicly-  
14 accessible statement regarding the Secretary's belief that petition signers who  
15 wanted to withdraw their names from the Green Party qualification petition must  
16 use the withdrawal form, or that if they submitted a different form, or submitted a  
17 withdrawal form that was not notarized or signed by a county elections official, it  
18 would not be honored. The Court has not found or been directed to any statute,  
19 administrative rule, or public policy statement from the Secretary in support of  
20 these positions of the Secretary.

21           47. The Secretary did not notify the public or issue any publicly  
22 accessible statement regarding the Secretary's belief that the deadline for signers  
23 of political party qualification petitions to withdraw would be at the moment the  
24 Secretary determined sufficiency and that the Secretary would not honor  
25 withdrawal requests received after that moment. The Court has not found or

1 been directed to any statute, administrative rule, or public policy statement from  
2 the Secretary in support of these positions of the Secretary.

3 48. The Secretary did not notify the public in advance or issue  
4 any publicly-accessible statement that he would on March 6, 2020 make a  
5 determination of sufficiency for the Green Party petition or that he would refuse  
6 to accept any signature withdrawal forms that were submitted after that moment.  
7 The Court has not found or been directed to any statute, administrative rule, or  
8 public policy statement from the Secretary in support of these positions of the  
9 Secretary.

10 49. The Secretary did not notify the public or issue any publicly  
11 accessible statement that the Secretary believed that a petition withdrawal request  
12 that is electronically signed is not valid and would not be honored. The Court has  
13 not found or been directed to any statute, administrative rule, or public policy  
14 statement from the Secretary in support of this position of the Secretary.

15 50. Regarding the Secretary's foregoing determinations as to  
16 processes for the withdrawal of a petitioner signer's signature, the Secretary did  
17 not provide any opportunity for public input or participation prior to adopting  
18 these various determinations.

19 51. On March 3, 2020, the same day the Secretary's Elections  
20 Director received a legal memorandum from the Secretary's chief counsel  
21 regarding signature withdrawal from a minor party petition, the Director sent an  
22 email to county elections officials on that topic, revising prior guidance:

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1        There are questions about if an election office can accept a request  
2        from a signer of a petition to withdraw their signature. Yes, in  
3        reviewing this, any person signing the petition has the right to  
4        withdraw at any time before the person or body created by law to  
5        determine the matter submitted by the petition has finally acted.

6                52.    The Director's March 3 email, however, did not identify the  
7        Secretary as "the person or body created by law to determine the matter  
8        submitted by the petition." Likewise, the Director's March 3 email did not  
9        identify the Secretary's act of announcing that a political party qualification  
10       petition contained a sufficient number of signatures as "the time the person or  
11       body created by law to determine the matter submitted by the petition has finally  
12       acted." The Director's March 3 email also did not contain any statement  
13       regarding the Secretary's belief that the deadline for signers of political party  
14       qualification petitions to withdraw their signatures was March 6, 2020.

15               53.    The Director's March 3 email contained instructions for the  
16       process for withdrawals, including an instruction to time stamp withdrawal forms  
17       as they arrived in county election officials' offices, and that if there were no date  
18       stamp, to determine the arrival date of the form with the best data available to the  
19       county election official.

20               54.    The Director's March 3 email did not instruct county  
21       elections administrators to review withdrawal forms for completeness or  
22       compliance with any specific requirements. For example, the March 3 email did  
23       not contain any instructions regarding whether a withdrawal form must be signed,  
24       or what kinds of signatures are acceptable. The March 3 email did not instruct  
25       county elections administrators to compare a signature on a withdrawal form to a  
26       voter's signature on file with the county elections office. *See*, § 13-27-303,



1 MCA, incorporated into political party qualification statute, requiring local  
2 county election officials to check the names and signatures of petition signers  
3 against county registration records of the office.

4 55. The March 3 email was not made public until July 14, when  
5 the Secretary disclosed it as an exhibit in this action.

6 56. The Secretary's March 3 internal memorandum from  
7 attorney Austin James opined that Section 13-27-301, MCA, which sets out the  
8 statutory process for withdrawals from petitions for a "constitutional amendment,  
9 constitutional convention, initiative, or referendum," is "not a relevant statute  
10 regarding signature withdrawal from a political party qualification petition"  
11 because the statutes expressly referenced by the political party qualification  
12 statute do not include Section 13-27-301, MCA.

13 57. Section 13-27-308, MCA, provides:

14 When a petition for referendum, initiative, constitutional  
15 convention, or constitutional amendment containing a sufficient  
16 number of verified signatures has been filed with the secretary of  
17 state within the time required by the constitution or by law, the  
18 secretary of state shall immediately certify to the governor that the  
19 completed petition qualifies for the ballot.

20 This statute does not refer to §§ 13-10-601 through -605, MCA,  
21 the political party qualification statutes, nor do the political party qualification  
22 statutes refer to or incorporate this statute, regarding certification of a petition to  
23 the governor. No statute provides that, for a political party qualification petition,  
24 the Secretary is delegated authority to "certify to the governor" that a minor party  
25 qualification petition meets the threshold to get on the primary ballot.

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1           58. The Secretary did not introduce evidence that he certified to  
2 the Governor that the political party qualification petition “qualifies for the  
3 ballot.”

4           59. The Secretary’s March 3 internal memorandum was not  
5 made public until July 14, when the Secretary disclosed it as an exhibit in this  
6 action.

7           60. On March 24, more than two weeks after the Secretary  
8 announced on March 6 the petition contained enough valid signatures, it was  
9 revealed for the first time that the group funding the circulation of the petition  
10 was the MTGOP. One local news report published on March 24 stated: “A  
11 mystery of the 2020 election was solved Tuesday as it became clear the MTGOP  
12 paid for an effort to qualify the Montana Green Party for the ballot this election.”  
13 Ex. 16, at 1.

14           61. Local reporters uncovered that the MTGOP Central  
15 Committee contracted directly with a Texas-based petition signature gathering  
16 firm, Advanced Micro Targeting, to hire paid circulators to gather signatures for  
17 the petition. As the COPP later found, the MTGOP Central Committee made an  
18 expenditure of \$50,000 to Advanced Micro Targeting on January 21. *Luckey*,  
19 pp. 1-2.

20           62. The MTGOP Central Committee did not file an organization  
21 statement as a minor party qualification committee with the COPP within five  
22 days of spending \$50,000 towards the effort, as required by §§ 13-37-602, and  
23 § 13-37-601(7), MCA. *Luckey*, p. 4.

24       ////

25       ////

1           63.    Instead, on January 24, an entity called Montanans for  
2 Conservation filed an organization statement with the COPP. Montanans for  
3 Conservation did not file an organization statement as a minor party qualification  
4 committee. Rather, it filed an organization statement as an independent political  
5 committee with the COPP. *Luckey*, p. 2. On February 3, Montanans for  
6 Conservation amended its organization statement. The amendment added a  
7 statement that the committee “would serve as the minor party qualification  
8 committee to qualify the Montana Green party to hold primary elections in  
9 Montana.” The amendment did not request a committee status change from an  
10 independent committee to a minor party qualification committee. *Luckey*, p. 2.

11           64.    By registering as an independent political committee instead  
12 of a minor party qualification committee, Montanans for Conservation concealed  
13 its role in funding the petition. There are hundreds of independent committees  
14 listed in the COPP’s Campaign Electronic Reporting System database. By  
15 contrast, there are only two minor party qualification committees listed in the  
16 database. If an individual had at the time filtered the records in the Campaign  
17 Electronic Reporting System to show only minor party qualification committees,  
18 he or she would not have discovered the Montanans for Conservation filing.

19           65.    It was not until March 23, seventeen days after the  
20 Secretary’s March 6, announcement, that Montanans for Conservation filed  
21 another amended organization statement to change its committee type from  
22 independent committee to minor party qualification committee. *Luckey*, p. 2.  
23 The next day, local reporters ran articles revealing that Montanans for  
24 Conservation was the entity serving as the minor party qualification committee  
25 for the petition, and that the MTGOP Central Committee was the entity that

1 contracted with and paid Advanced Micro Targeting to gather signatures for the  
2 Green Party Qualification Petition.

3 66. The only contributions to Montanans for Conservation were  
4 a cash contribution of \$800 from the MTGOP Central Committee to set up the  
5 committee, and an in-kind contribution from the MTGOP Central Committee of  
6 \$100,000 for hiring Advanced Micro Targeting. *Luckey*, p. 4. No other entity  
7 contributed to Montanans for Conservation. *Id.*

8 67. Because the MTGOP Central Committee was the entity that  
9 contracted directly with Advanced Micro Targeting to gather signatures on the  
10 petition, the sole purpose of Montanans for Conservation was to serve as a shell  
11 group to which the MTGOP Central Committee could attribute its expenditures.  
12 This enabled the MTGOP Central Committee to avoid having to register as the  
13 minor party qualification committee within five days of expending funds on  
14 petition signature gathering activities.

15 68. COPP later determined that Montanans for Conservation,  
16 the MTGOP, and Club for Growth Action, violated Montana's campaign finance  
17 law. *Luckey*, p. 8-10. COPP found that Montanans for Conservation failed to  
18 timely file as a minor party qualification committee as required by Section 13-37-  
19 602, MCA. *Id.* According to the COPP, this delay in reporting its efforts in  
20 violation of Montana law "added to the confusion surrounding the Green Party  
21 qualification effort in February and March of 2020." *Luckey*, p. 8.

22 69. As confusion proliferated over the Green Party petition  
23 effort, MDP mobilized to inform signers that an unknown entity unaffiliated with

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1 the Montana Green Party—eventually revealed to be the MTGOP—was behind  
2 the petition, and assisted signers who wanted to withdraw their names from the  
3 Petition.

4 70. To determine who had signed the petition, and the number  
5 of signatures on the petition and in each house district, MDP downloaded from  
6 the Secretary’s website a copy of the Petition Signers Report. The Secretary’s  
7 website describes the Petition Signers Report as “a county-by-county record of a  
8 specific petition’s signers” and contains fields for each signer, including the  
9 signer’s “County, Submittal Number, Sheet, Line, Voter ID, Name, Residence,  
10 Status, Verification Reason (if the signature was rejected, the rejection reason  
11 selected by the county is included), House District, and Circulator.”

12 71. It was difficult for MDP to reach signers of the petition.  
13 MDP did not have email addresses, cell phone numbers or phone numbers for  
14 many signers. Many phone numbers and addresses were incorrect or out of date.

15 72. When MDP organizers were able to reach signers and  
16 inform them that the Montana Green Party was not involved in the petition, and  
17 that the backers of the petition were unknown, some signers wanted to withdraw  
18 their names from the petition.

19 73. When it was revealed on March 24 that the MTGOP had  
20 sponsored, organized, and paid for the circulation of the petition, there was a  
21 significant increase in the number of signers who took steps to withdraw from the  
22 petition. Four times as many signers sought to withdraw in the first two weeks  
23 after March 24 as compared to the two weeks prior.

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1           74. Many signers reached by MDP were surprised to learn that  
2 the MTGOP was behind the Petition and that the Montana Green Party had  
3 nothing to do with the petition. For example, until she was reached by MDP in  
4 April, Plaintiff Neumeyer was not aware that the MTGOP had any involvement  
5 in the Petition.

6           75. Although MDP did not believe it was necessary for signers  
7 of a political party qualification petition attempting to withdraw their signature to  
8 complete the withdrawal form for signers of “constitutional amendment,  
9 constitutional convention, initiative, or referendum” petitions,<sup>4</sup> MDP advised  
10 signers that county elections officials would likely accept that form, and took  
11 steps to assist signers in completing and submitting such forms.

12           76. The withdrawal form states that it should be signed in the  
13 presence of a county elections official or a notary. Although some signers were  
14 able to make the trip to their county elections office to sign the form or were able  
15 to arrange a meeting with a notary to get the form notarized and submitted, for  
16 other signers, these steps were burdensome. MDP attempted to assist where  
17 possible by arranging for a notary to meet such signers at a convenient location

18           77. Shortly before the Governor issued the stay-at-home order in  
19 response to the COVID-19 pandemic, signers who wanted to withdraw their  
20 signatures told MDP organizers that they were unable or unwilling to travel to a  
21 county elections office or meet with a notary because of concerns about  
22 maintaining social distancing and attempting to eliminate non-essential travel.

23           78. MDP also arranged for online notary services for signers.  
24 Those services, however, require a computer, a high-speed internet connection,  
25

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<sup>4</sup> This is consistent with the opinion of the Secretary’s chief counsel that the withdrawal form for constitutional amendment, constitutional convention, initiative, or referendum was not relevant to withdrawing of signatures on a political party qualification petition, a conclusion with which the Court agrees.

1 video conferencing capability, installing software, and navigating the software's  
2 user interface.

3 79. The online notary solution proved difficult and cumbersome  
4 for some signers, especially elderly voters who were unfamiliar with the  
5 technology. For some signers, the online notary solution did not work at all; for  
6 others, it took up to forty-five minutes to work.

7 80. Because the online notary service was not an option for  
8 many signers, and because MDP did not want to encourage signers to risk their  
9 health by venturing out, MDP set up a process that allowed signers to complete  
10 the withdrawal form electronically from their computers or smartphones and sign  
11 the document using the electronic document signature platform DocuSign.

12 81. DocuSign collects and records information about the signer  
13 and the signature, including the signer's email address, the signer's IP address,  
14 and the date and time the document was transmitted, opened, and signed.  
15 DocuSign collects the same information about the sender of the document—in  
16 this case, the name, email address, and IP address of the MDP organizer who sent  
17 a copy of the DocuSign withdrawal form to the signer of the petition. After the  
18 signer affixes an electronic signature to a PDF, the document is assigned a unique  
19 identifying code that allows for subsequent audits. DocuSign also provides an  
20 electronic copy of the signed document to the signer for their records.

21 82. MDP would receive copies of the electronically signed  
22 withdrawal forms from the signers and transmit them to county elections offices  
23 by email in batches.

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1           83. Plaintiff Neumeyer completed and signed a withdrawal form  
2 via DocuSign on April 28, and MDP transmitted her form to the Lewis and Clark  
3 County elections department on May 4.

4           84. Plaintiff Filz did not testify at the hearing. According to  
5 Bolger and Miller, Filz completed and signed a withdrawal form on DocuSign on  
6 April 3, and MDP transmitted his form to the Yellowstone County elections  
7 department on April 13. The Secretary claims it did not receive a withdrawal  
8 form from the Yellowstone County elections department on behalf of Filz.

9           85. MDP was not informed by any county elections official that  
10 the official would not accept DocuSign withdrawal forms because they were  
11 electronically signed. Expressed differently, MDP was not informed by any  
12 county elections official that withdrawal forms must have a “wet” signature.<sup>5</sup>  
13 Similarly, MDP was not informed by the Secretary that it would not accept  
14 DocuSign withdrawal forms because they were electronically signed. Likewise,  
15 the Secretary did not inform MDP or anybody who submitted a signature  
16 withdrawal form of any requirement that withdrawal forms must have a “wet”  
17 signature.

18           86. On April 13, the Yellowstone County Election Administrator  
19 stated that he was forwarding MDP’s transmission of withdrawal forms with  
20 electronic signatures to the Secretary. On May 13, the Lewis & Clark County  
21 Election Administrator stated that she was sending MDP’s transmission of  
22 withdrawal forms with electronic signatures to the Secretary.

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<sup>5</sup> A ‘wet ink’ signature is where the parties to the document write (sign) their names with their own hands upon a paper document by ink pen. Although some specific types of legal documents do still have to be signed by the traditional ‘wet ink’ method, most documents including commercial contracts can be signed by electronic signature.” <https://www.nextgearcapital.co.uk/help-centre/how-to-use-docusign/what-is-the-difference-between-an-electronic-signature-and-a-wet-ink-signature/>



1           87. On May 4, 2020 and again on May 22, 2020, at the request  
2 of the Missoula County Election Administrator, MDP sent withdrawal forms with  
3 electronic signatures directly to the Secretary.

4           88. The Secretary's Petition Signers Report identifies each  
5 signer of the petition and whether the Secretary accepted and counted a signature  
6 towards the total number of verified signatures of registered voters required from  
7 each house district.

8           89. The Petition Signers Report identifies 116 signatures the  
9 Secretary rejected and did not count towards the total number of verified  
10 signatures because the signer withdrew his or her signature.

11           90. The Petition Signers Report indicated that the signatures of  
12 Plaintiffs Blossom, Filz, Neumeyer, and Weed were among the signatures  
13 accepted and counted towards the total number of required signatures.

14           91. The Petition Signers Report indicates that the Petition  
15 exceeded the required number of accepted signatures in forty-two house districts,  
16 including house districts 46, 53, 54, 68, 69, 80, 84, 96, and 97.

17           92. By late May, over 500 signers of the petition who were  
18 marked in the Petition Signers Report as accepted and counted towards the  
19 required number of accepted signatures had submitted requests to withdraw their  
20 signature. MDP obtained copies of withdrawal forms submitted to counties and  
21 to the Secretary through public records requests and by retaining copies of  
22 withdrawal forms that MDP transmitted to counties or to the Secretary on  
23 signers' behalf.

24           93. All but ten of these withdrawal forms were received by  
25 county elections offices no later than June 1, as demonstrated either by a stamp or

notation placed on the form, by the date that MDP transmitted the forms to the counties, or based upon metadata contained in the documents produced by counties and the Secretary in response to MDP's public records requests. Ten additional withdrawal forms were received by county elections offices no later than June 12.

94. After accounting for the withdrawal forms set out in Plaintiffs' Exhibits 4 and 5, the Petition contains signatures above the thresholds set by the Political Party Qualification Statute in no more than 33 House Districts, as set forth in Plaintiffs' Exhibit 7:

House District	Signatures Required	Signatures Accepted by Secretary (Petition Signers Report)	Signatures Withdrawn	Remaining Signatures Accepted by Secretary
46	138	161	At least 29	At most 132
53	129	160	At least 36	At most 124
54	130	166	At least 46	At most 120
68	106	136	At least 43	At most 93
69	109	141	At least 39	At most 102
80	132	180	At least 53	At most 127
84	150	208	At least 74	At most 134
96	150	229	At least 91	At most 138
97	138	195	At least 68	At most 127

95. Plaintiffs' Exhibit 7 uses the number of signatures withdrawn based on withdrawal forms received by county elections offices or the Secretary no later than June 12. If the chart used the number of signatures withdrawn based only on withdrawal forms received by county elections offices or the Secretary no later than June 1, the conclusion would not change: the petition contains

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1 signatures above the thresholds set by the political party qualification statute in no  
2 more than 33 House Districts.

3 96. As conceded by counsel for the Secretary in closing  
4 argument, if the Court determines that all the withdrawal requests contained in  
5 Plaintiffs' Exhibit 5 should be given effect, the petition does not meet the  
6 statutory threshold for qualification.

7 97. Kendra Miller, the former data director of MDP, obtained  
8 and relied upon Petition Signers Reports for numerous petitions in the past.

9 98. In 2018, in *Larson v. State By & Through Stapleton*,  
10 2019 MT 28 ¶ 4, 394 Mont. 167, 434 P.3d 241, MDP requested a copy of the  
11 Petition Signers Report for the 2018 Green Party petition, and introduced into  
12 evidence numerous exhibits that expressly relied upon the data in the Petition  
13 Signers Report. *See, e.g.*, Apr. 24, 2018 Hrg. Tr. 48:20-66:10, *Larson et al v.*  
14 *Stapleton*, CDV 2018-295 (1st Jud. Dist. Ct. 2018). Counsel for the Secretary in  
15 the *Larson* case did not object to the introduction of these exhibits based upon  
16 Petition Signers Report data. Nor did the Secretary reveal that the Petition  
17 Signers Report was not the record of the petition's signers, and that a different  
18 record maintained by the Secretary contained the true record of the petition's  
19 signers. Corson, testifying on behalf of the Secretary in the *Larson* case, did not  
20 testify that the Petition Signers Report was not the record of the petition's  
21 signers, or that a different record maintained by the Secretary's office contained  
22 the record of the petition's signers. In rendering their decisions in *Larson*, this  
23 Court and the Montana Supreme Court relied upon those exhibits containing data  
24 from the Petition Signers Report.

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1           99. MDP first obtained a copy of the Petition Signers Report for  
2 the Green Party petition from the Secretary on March 12 and relied on it to  
3 determine how many withdrawal forms had not been honored by the Secretary  
4 and to calculate the effect on the Green Party petition's sufficiency if those  
5 withdrawals were honored.

6           100. During the July 14-15 evidentiary hearing, Elections  
7 Director Corson, testifying on behalf of the Secretary, stated for the first time that  
8 the Petition Signers Report was not the official record of the signers of the  
9 petition. Corson testified that the Secretary used a different decisional document  
10 to record the signers of the petition and whether their signatures were accepted or  
11 rejected, and to determine whether the petition contained a sufficient number of  
12 signatures under the political party qualification statute.

13           101. The Petition Signers Report indicates that Plaintiffs Weed's  
14 and Blossom's signatures were accepted and counted towards the thresholds set  
15 by the political party qualification statute in their House Districts. Elections  
16 Director Corson testified that withdrawal forms submitted by Weed and Blossom  
17 were received, and that their signatures were not counted towards the thresholds.  
18 Corson testified that the separate decisional document reflected this disposition of  
19 Weed's and Blossom's withdrawal forms.

20           102. The Secretary did not produce this separate decisional  
21 document to MDP in response to their public records request for the Petition  
22 Signers Report.

23           103. Until the July 14 evidentiary hearing, the Secretary had not  
24 informed MDP or the general public that a separate decisional document  
25 contained the record of the signers of the petition and whether their signatures

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1 were accepted or rejected. The Secretary did not offer this separate decisional  
2 document as an exhibit. The document is not part of the record before the Court.

3 104. Director Corson submitted a chart purporting to contain the  
4 number of accepted signatures in each house district. Plaintiffs' Exhibit 1  
5 compares the number of accepted signatures in each house district as set forth in  
6 Director Corson's chart with the number of accepted signatures set forth in the  
7 Petition Signers Report. In twelve house districts, Corson's chart records fewer  
8 accepted signatures than the Petition Signers Report. In one house district,  
9 Corson's chart records more accepted signatures than the Petition Signers Report.

10 105. Plaintiffs' Exhibit 7 uses the number of signatures marked as  
11 accepted by the Secretary's Petition Signers Report. If Exhibit 7 instead used the  
12 number of signatures marked as accepted on the Corson chart, the conclusions  
13 would not change: the petition contains signatures above the thresholds set by the  
14 political party qualification statute in no more than thirty-three House Districts.

15 106. After filing an emergency request to continue the hearing,<sup>6</sup>  
16 the Secretary purported to compile records of withdrawal forms in his possession  
17 at the time and attempt to determine the effect of honoring such withdrawal  
18 forms. The Secretary's compilation, however, did not include all the withdrawal  
19 forms that had been submitted to county elections offices.<sup>7</sup> The Secretary's  
20 compilation purported to analyze the effects by house district, but the tabulation  
21 is inaccurate because the Secretary relied on current address information rather  
22 than address information at the time of petition signing and did not assign all  
23 individuals to a house district. The Secretary did not provide the Court with the  
24 underlying withdrawal forms on which his tabulation is based.

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<sup>6</sup> To be clear, the Court does not dispute that the Secretary's emergency motion to continue the hearing was filed in good faith.

<sup>7</sup> Corson testified that the Secretary could not count withdrawal forms it had not received. While this is true, the Secretary had advised county election officials that withdrawals received after March 6 should not be counted.

1           107. At least 562 signers of the Petition submitted requests to  
2 withdraw their signature that the Secretary has not honored, according to the  
3 Petition Signers Report.

4           108. The Secretary's failure to honor signers' requests to  
5 withdraw their signature injures these signers because their signatures are being  
6 counted in support of a petition that they no longer wished to support, as  
7 demonstrated by their submission of requests to withdraw their signature.

8           109. The Secretary's failure to honor signers' requests to  
9 withdraw their signatures also injures these signers because they continue to be  
10 associated with a petition and a petition sponsor with whom they no longer wish  
11 to be associated. For example, Plaintiffs Neumeyer, Weed, and Blossom testified  
12 they are not supporters of the MTGOP, do not support a petition whose purpose  
13 is harming the Democratic Party, and do not want to be associated with the  
14 MTGOP or its efforts relative to the petition.

15           110. If the Green Party qualifies for ballot access pursuant to the  
16 Petition, MDP would be harmed both financially and electorally. MDP would be  
17 harmed financially because it would need to spend additional funds on voter  
18 persuasion, voter education, and polling, and would have to expend additional  
19 time and resources to address an additional swath of center-left voters. MDP  
20 would be harmed electorally because voters who might otherwise vote for MDP  
21 candidates might vote instead for Green Party candidates.

22           111. MDP's mission is to elect Democratic Party candidates in  
23 local, county, state, and federal elections. MDP works to accomplish this  
24 mission through its efforts to educate, persuade, mobilize, assist, and turn out  
25 voters throughout the state.

1                   112. In past elections, MDP expended millions of dollars to  
2 persuade and mobilize voters to support candidates who affiliate with the  
3 Democratic Party in Montana. MDP again intends to make substantial  
4 expenditures to support Democratic candidates in the 2020 general election and  
5 in future elections.

6                   113. If candidates nominated in the primary election for the  
7 Green Party as a result of the petition are given ballot access in the 2020 General  
8 Election, MDP will incur additional expenditures and will divert resources from  
9 other MDP priorities.

10                  114. These expenditures and diversions of resources would be  
11 caused by the need for MDP to educate voters about the differences between  
12 candidates from the Democratic Party and candidates nominated in the Green Party  
13 primary, and to persuade voters to vote for candidates from the Democratic Party  
14 over candidates nominated in the Green Party primary.

15                  115. For example, MDP will need to calibrate their internal voter  
16 file differently to target a different ideological area of the universe of voters MDP  
17 needs to reach to convince them to vote for MDP candidates. This is not  
18 something that MDP has planned for and would require MDP to spend money and  
19 time to address.

20                  116. MDP would also need to contact more voters for persuasion,  
21 which in turn requires more volunteers, staff, and campaign materials. MDP would  
22 need to put out more expensive and more complicated polling to determine which  
23 kinds of voters to target and what kinds of messages to use. All these efforts cost  
24 money, and MDP would need to devote additional time and effort to fundraising to  
25 accomplish them.

1 From the foregoing findings of fact, the Court draws the following:

2 **CONCLUSIONS OF LAW**

3 1. The Court has jurisdiction to grant declaratory and  
4 injunctive relief pursuant to the Montana Uniform Declaratory Judgments Act,  
5 Section 27-8-101 *et. seq.* MCA, and Sections § 27-8-201 *et seq.*, MCA, which  
6 authorize the Court to declare rights, status, and other legal relations among the  
7 parties. *See Larson*, ¶ 31.

8 2. As a court of general jurisdiction, this Court has authority to  
9 hear Plaintiffs' claims under the Montana Constitution. *See* Section 3-5-302,  
10 MCA.

11 3. The Court has subject matter jurisdiction to determine the  
12 validity of a political party qualification petition, like this one. *Larson*, ¶ 43.

13 4. MDP has standing to assert the claims in the Complaint  
14 because it is injured by the Secretary's failure to give effect to Montanans'  
15 withdrawal requests seeking to remove their names from the Petition. Allowing  
16 the Montana Green Party to qualify under the political party qualification statute,  
17 and thus obtain primary and general election ballot access, when it has not shown  
18 sufficient support as required by statute, would result in MDP having to expend  
19 additional funds and resources to educate and persuade voters to support  
20 Democratic candidates over candidates claiming to be affiliated with the Montana  
21 Green Party in the 2020 general election. *See Larson*, ¶ 43.

22 5. MDP also has standing to assert the claims in the Complaint  
23 because MDP, which performs the functions of a membership organization by  
24 providing the means by which Democratic voters in Montana express their  
25 collective views and protect their collective interest, is harmed because some of



1 its members or associates, including but not limited to Plaintiffs Blossom,  
2 Neumeyer, and Weed, are injured by being forced to associate with a petition of a  
3 political party with which they never wanted to be associated and by being  
4 deprived of their right to withdraw their names from that petition.

5           6. Plaintiffs Blossom, Neumeyer, and Weed have standing to  
6 assert the claims in the Complaint because they will suffer a concrete injury by  
7 being forced to be associated with a petition organized and funded by a political  
8 party with which they do not want to be associated, and by being deprived of  
9 their right to withdraw their names from the petition.

10           7. Montanans have the right to withdraw their signatures from  
11 a petition. *State ex rel. Lang v. Furnish*, 48 Mont. 28, 36, 134 P. 297, 300 (1913)  
12 (“signers of a petition have an absolute right to withdraw therefrom at any time  
13 before final action thereon”); *See also Ford v. Mitchell*, 103 Mont. 99, 61 P. 2d  
14 815, 822 (1936) (“[T]he signers of an initiative petition may, in an appropriate  
15 manner and at the proper time if they so desire, withdraw from such petition.”).  
16 The Montana Supreme Court has described this longstanding right as “a  
17 necessary inference from the very nature of the right of petition.” *Lang*, 134 P.  
18 at 300.

19           8. Pursuant to this right, individuals can withdraw their  
20 signature so long as: (1) there is no express legal prohibition on doing so; and (2)  
21 individuals withdraw before final action is taken on a petition. *Lang*, 134 P. at  
22 300; *Ford*, 61 P. 2d at 821 (finding right to withdraw in the absence of “an  
23 express sanction or prohibition of withdrawals”).

24           9. Even after final action is taken on a petition, signers may  
25 still withdraw if signers learn that representations made to them as an inducement

1 to sign the petition, and on which they relied, were false. *State ex rel. Peck v.*  
2 *Anderson*, 92 Mont. 298, 306, 13 P.2d 231, 234 (1932).

3 10. The statutes governing political party qualification petitions  
4 do not contain any express prohibition against persons who have signed the  
5 petition from withdrawing their signatures.

6 11. The statutes governing political party qualification petitions  
7 do not define what constitutes final action for the purposes of those statutes. Nor  
8 do those statutes confer any express authority on the Secretary to certify that a  
9 minor political party has submitted sufficient signatures to qualify for the general  
10 ballot. This contrasts with the statute governing petitions for initiatives,  
11 referenda, constitutional amendments, or calls for constitutional conventions.  
12 Section 13-27-308, MCA, provides that the Secretary, after tabulating signatures  
13 for a “petition for referendum, initiative, constitutional convention, or  
14 constitutional amendment,” “shall immediately certify to the governor that the  
15 completed petition qualifies for the [general election] ballot.” This statute, by its  
16 plain terms, does not apply to political party qualification petitions. Although the  
17 political party qualification statutes incorporate by reference certain statutes  
18 applicable to ballot issues, Section 13-27-308, MCA is not among those statutes.  
19 See Section 13-10-601, MCA. The political party qualification statute makes no  
20 mention of certification by the Secretary, to the Governor or to anybody else, and  
21 no other statute delegates certification authority to him.

22 12. The process by which a political party not otherwise eligible  
23 for listing on the primary ballot under § 13-10-601(1), MCA, defines only a  
24 process by which a “minor” political party may nominate its candidates by a  
25 primary election. The statute is silent as to the general election. The purpose of

1 this statute is thus different than that for approval of an initiative, referendum,  
2 constitutional amendment, or constitutional convention. In these latter petitions,  
3 the proposed change to statute or constitution is to be voted on by the electorate  
4 at the general election. Initiatives, referenda, constitutional amendments, or  
5 constitutional conventions are placed directly upon the general election ballot so  
6 long as proponents submit enough valid signatures by the deadline—there is no  
7 requirement to first go through a primary election or to take any other  
8 preliminary steps. *See* Mont. Const. art. III, § 4. Once the Secretary certifies to  
9 the Governor that the initiative petition qualifies for the ballot, Section  
10 13-27-308, MCA, there are no other procedural steps or contingencies that must  
11 occur before all voters are afforded the right to vote on the initiative.

12           13. Political party qualification petitions serve a different  
13 function than initiative referenda, constitutional amendments, and constitutional  
14 conventions petitions. Final action for purposes of an initiative petition is not the  
15 same as final action for purposes of a political party qualification petition. The  
16 unique characteristics of petitions for political party qualification in Montana  
17 compel the conclusion that action on such a petition is not final until votes have  
18 been cast and canvassed in the primary election and certificates of nomination  
19 have issued.

20           14. Filing a political primary qualification petition is one of  
21 several initial steps in a process through which voters decide whether a political  
22 party's candidates in a primary election will obtain ballot access in the general  
23 election. Primary election voters make the ultimate decision whether to nominate  
24 candidates for office through this procedure, and the state canvassing board,  
25 which counts votes and issues certificates of nomination based on those votes, is

1 “the person or body created by law to determine the matter submitted by the  
2 petition[.]” *See State ex rel. O’Connell v. Mitchell*, 111 Mont. 94, 106 P.2d 180,  
3 181 (1940) (citing *Ford*, 61 P.2d 815).

4 15. The filing of a political party qualification petition with the  
5 Secretary simply initiates this multi-step procedure that a party’s voters may use  
6 to determine who to nominate, but no right to ballot access is acquired until  
7 primary votes have been cast and counted for candidates running for a party’s  
8 nomination. Accordingly, no final action is taken on the petition until that time.  
9 *See Town of Blooming Grove v. City of Madison*, 253 Wis. 215, 33 N.W.2d 312  
10 (1948). (Holding that tabulation of the signatures on a petition was a necessary  
11 step in a process that concluded with a vote on the ordinance proposed by the  
12 petition, but the court held that no final action had occurred, and no rights were  
13 acquired by anyone, until the vote on the ordinance was finally taken).

14 16. The Secretary’s tabulation of the number of signatures on a  
15 political party qualification petition and announcement that the petition meets the  
16 requirements of the political party qualification statute confers no right to  
17 placement on the general election ballot. No statute so holds. The act of  
18 submitting a political party qualification petition simply authorizes a political  
19 party to use the state-administered procedure of a primary election to determine  
20 whether to nominate candidates and which candidates to nominate.

21 17. Many other procedural requirements and contingencies must  
22 first be met before a primary election can even take place: candidates for the  
23 nomination of the political party must: (1) timely file a declaration of nomination,  
24 Section 13-10-201, MCA; (2) not die or withdraw their candidacies, Section  
25 13-10-326, MCA; (3) maintain their constitutional and statutory eligibility for the

1 offices in question, Section 13-12-201(3), MCA; and (4) file certain campaign  
2 finance and business disclosure statements and reports, Section 13-37-126, MCA.

3 18. In addition, candidates for a nomination must stand for  
4 primary election and receive voters from electors; the act of seeking a party's  
5 nomination has no legal significance until votes are canvassed and counted and  
6 until certificates of nomination are issued. Section 13-15-507, MCA (state  
7 canvassing board declares nominated the individual having the highest number of  
8 votes); *see also* Section 13-10-303, MCA (providing that candidates nominated  
9 by more than one party must choose one party or appear on the general election  
10 ballot without a party designation).

11 19. Montana statutes do not support the Secretary's claim that  
12 he has the authority to "certify" a political party qualification petition to the  
13 Governor, or that his act of determining and announcing sufficiency constitutes  
14 final action on the petition. A political party qualification petition confers no  
15 access to the general election ballot without additional procedural steps and  
16 contingencies. The Secretary could not have certified to the Governor that the  
17 petition "qualifies for the ballot," like an initiative petition or referendum would.

18 20. To illustrate the issue, if a petition is submitted and a  
19 primary election is held for which no qualified person<sup>8</sup> received any votes, would  
20 defeat the petition and the party would have no right to appear on the general  
21 election ballot. The Court concludes that under the unique procedures applicable  
22 to petitions for political party qualification, it is not until the Board of State  
23

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24 <sup>8</sup> There is evidence before the Court that the Montana Green Party disavowed the signature gathering process  
25 and has also disavowed the persons filing under the Green Party banner as not being true Green Party members or  
adherents. *See*, § 13-10-602(1), MCA: "(1) Except as provided in subsection (3), a political party and its regularly  
nominated candidates, members, and officers have the sole and exclusive right to the use of the party name. A  
candidate for office may not use any word of the name of any other political party or organization other than that  
by which the candidate is nominated in a manner that indicates or implies the individual is a candidate of the  
nonnominating party."

1 Canvassers tabulates the votes that the process is final. Until that date, there is no  
2 final action on the petition. Therefore, the withdrawal requests at issue here—  
3 nearly all submitted prior to the June 2, 2020 primary election, and all before  
4 June 12, 2020—must be given effect because they were submitted to officials  
5 before final action was taken on the political party qualification petition.

6 21. Even assuming that the Secretary had authority to take “final  
7 action” on a political party qualification petition under some circumstances, the  
8 evidence at trial revealed that the Secretary’s actions in connection with the  
9 petition, which were not revealed to the public, cannot constitute final action.

10 22. Article II, § 8 of the Montana Constitution requires that  
11 government agencies conduct a transparent process that allows for public input  
12 “prior to the final decision.” Mont. Const. Art. II, § 8. *Bryan v. Yellowstone Cty.*  
13 *Elementary Sch. Dist. No. 2*, 2002 MT 264, ¶ 39, 312 Mont. 257, 269, 60 P.3d  
14 381, 390 (discussing “the constitutional mandate on open government.”).

15 23. The Secretary has purported to issue “final action” on the  
16 petition without first announcing his cutoff date or the procedural requirements  
17 applicable to withdrawals, and without disclosing, even to this Court, the data  
18 underlying his decision, despite knowing that such data was squarely at issue in  
19 this litigation. The Secretary also announced for the first time during this case, in  
20 a motion for summary judgment, that he has a policy forbidding electronic  
21 signatures on petition withdrawal forms.

22 24. While the Montana Supreme Court has not definitely  
23 resolved what “final action” generally means in the context of a political party  
24 qualification petition, it cannot be what the Secretary contends it is under these  
25 circumstances: an announcement of sufficiency based upon a decisional

1 document not revealed to the public, made without prior notice that the Secretary  
2 would refuse to honor withdrawal requests past a certain date, which date was not  
3 revealed, and made without prior notice of purported procedural requirements  
4 that withdrawal requests would have to satisfy. *Cf., State ex rel. Lang v. Furnish*,  
5 48 Mont. 28, 134 P. 297 (1913) (board of county commissioners set a hearing  
6 date to consider petition and counter-petitions supporting and opposing formation  
7 of a new county).

8           25. In addition, “final action” necessarily presupposes a final  
9 decision by “the person or body created by law to determine the matter submitted  
10 by the petition,” so even if the Secretary were such person, the Secretary’s choice  
11 to shield the process, applicable procedural requirements, and decisional  
12 documents from the public means that his decision cannot be a “final action” that  
13 precludes the withdrawal requests submitted in this case from being honored.  
14 “The public has the right to expect governmental agencies to afford such  
15 reasonable opportunity for citizen participation in the operation of the agencies  
16 prior to the final decision as may be provided by law.” Mont. Const. Art. II, § 8.  
17 “No person shall be deprived of the right to examine documents or to observe the  
18 deliberations of all public bodies or agencies of state government and its  
19 subdivisions, except in cases in which the demand of individual privacy clearly  
20 exceeds the merits of public disclosure.” Mont. Const. Art. II, § 9.

21           26. These constitutional limits on the Secretary’s power comport  
22 with similar legal principles, like those codified in the Montana Administrative  
23 Procedure Act, Sections 2-4-101 *et seq.*, MCA. Under that statute, state agencies  
24 must “make available for public inspection all rules and all other written  
25 statements of policy or interpretations formulated, adopted, or used by the agency

1 in the discharge of its functions.” Section 2-4-103(1)(a), MCA. When an agency  
2 fails to do so, it exceeds its authority, and its interpretations have no legal effect.  
3 See Section 2-4-103(3), MCA (“No agency rule is valid or effective against any  
4 person or party whose rights have been substantially prejudiced by an agency’s  
5 failure to comply with the public inspection requirement herein.”).

6 27. The Legislature has not granted the Secretary authority to  
7 prescribe forms for withdrawing from political party qualification petitions.

8 28. The Legislature has not granted the Secretary the authority  
9 or directed him to certify, to the to the governor or otherwise, the results of a  
10 political party qualification petition.

11 29. The Legislature has not established a statutory deadline for  
12 submitting requests to withdraw signatures from a political party qualification  
13 petition.

14 30. The Secretary has not properly adopted rules or public  
15 policies to prescribe forms and requirements for withdrawing from political party  
16 qualification petitions or established a deadline for submitting requests to  
17 withdraw signatures from a political party qualification petition.

18 31. Therefore, the Secretary’s determinations of a cut-off date  
19 for the withdrawal of signatures from the political party qualification petition and  
20 of forms and requirements for withdrawing signatures from the petition in this  
21 matter were without statutory authority and were arbitrary and capricious.

22 32. Further, the withdrawal requests at issue are valid because  
23 Plaintiffs and other petition signers withdrew after learning that representations  
24 made to induce them to sign the petition were false.

25 /////



1           33. The identity of the group that sponsored and organized the  
2 petition—the MTGOP—was not revealed until well after signers signed the  
3 petition and the Secretary found that the signatures satisfied the requirements of  
4 the political party qualification statute.

5           34. Montana law provides that even after final action is taken on  
6 a petition, signers can still withdraw if they learn that representations made to  
7 them as an inducement to sign the petition, and on which they relied, were false.  
8 *See, Anderson*, 92 Mont. at 298, 13 P.2d at 231, 234.

9           35. To determine when a misrepresentation justifies a  
10 signatory's withdrawal, courts often apply general common law and statutory  
11 principles of contract and tort law. *See Anderson*, 13 P.2d at 234 (citing contract  
12 principles); *see also Nelson v. Morse*, 91 N.H. 177, 177 (1940) (drawing on  
13 principles of tort law to disqualify signatures obtained by deception) (“[F]raud  
14 lies in silence or concealment which constitutes dishonesty as well as in actual  
15 misrepresentations[.]”).

16           36. Montana law provides for an independent statutory  
17 prohibition on the willful deception of another with the intent to induce that  
18 person to act. *See, e.g.*, Section 27-1-712(2)(c), MCA (describing deception as  
19 including “the suppression of a fact by one who is bound to disclose it or who  
20 gives information of other facts that are likely to mislead for want of  
21 communication of that fact”); *Dewey v. Stringer*, 2014 MT 136, ¶ 15, 375 Mont.  
22 176, 182, 325 P.3d 1236, 1241.

23           37. The doctrine of negligent misrepresentation imposes liability  
24 on those who make untrue representations about material facts with the intent to  
25 /////

1 induce reliance. *See Morrow v. Bank of Am., N.A.*, 2014 MT 117, ¶ 45, 375  
2 Mont. 38, 52, 324 P.3d 1167, 1180 (citing *Kitchen Krafters v. Eastside Bank*, 242  
3 Mont. 155, 165, 789 P.2d 567, 573 (1990)).

4           38. The doctrine of constructive fraud provides both contractual  
5 and damages remedies—including the right of rescission—for the breach of a  
6 duty which, even without fraudulent intent, creates an advantage for the  
7 breaching party by misleading another person to that person’s prejudice. *See*  
8 *Morrow*, ¶ 62; Section 28-2-406(1), MCA; *McGregor v. Mommer*, 220 Mont. 98,  
9 109, 714 P.2d 536, 543 (1986) (noting that a material misrepresentation sufficient  
10 to constitute constructive fraud that can lead to rescission of a contract may be  
11 implicit, such as when a party “create[s] a false impression concerning . . .  
12 important matters and subsequently fail to disclose the relevant facts”).

13           39. The doctrine of unilateral mistake justifies rescission of a  
14 contract when one party has a “belief in the present existence of a thing material  
15 to the contract which does not exist or in the past existence of such a thing which  
16 has not existed,” and the other party knew or suspected the mistake. *See E.H.*  
17 *Oftedal & Sons, Inc. v. State ex rel. Mont. Transp. Comm’n*, 2002 MT 1, ¶ 47,  
18 308 Mont. 50, 64-65, 40 P.3d 349, 358; Section 28-2-409(2), MCA.

19           40. The actions taken by the MTGOP and their agents to induce  
20 Montanans to sign the petition without disclosing their role in organizing and  
21 sponsoring the petition closely track the elements of each of these doctrines, and  
22 by analogy, justify the acceptance of withdrawal forms at issue in this case.

23           41. The MTGOP and its agents failed to properly and timely  
24 disclose its involvement in the petition in violation of Montana’s campaign  
25 finance rules, and only made such disclosure weeks after signers had signed the

1 petition and even after it was submitted to officials. *See* 27-1-712(2)(c), MCA  
2 (deceit entails “the suppression of a fact by one who is bound to disclose it” or  
3 “giving facts that are likely to mislead for want of communication”); *Morrow*, ¶  
4 45 (negligent misrepresentation requiring an untrue representation made without  
5 any reasonable ground for believing it to be true); *Dewey*, ¶ 9 (constructive fraud  
6 requiring a false representation with knowledge of its falsity).

7           42. These misrepresentations and failures to disclose mattered to  
8 signers, who would not have signed the petition had they known who was  
9 sponsoring and organizing it, and who took action to withdraw their signature  
10 once they learned what had happened.

11           43. The actions of the MTGOP and its agents demonstrate that  
12 its misrepresentations and failures to disclose in violation of Montana campaign  
13 finance law were intentionally designed to create an advantage for the MTGOP at  
14 the expense of unwitting signers. The MTGOP’s conduct regarding its disclosure  
15 obligations—under a disclosure regime enacted in direct response to the very  
16 same petitioning firm gathering signatures for the very same petition just two  
17 years earlier—further demonstrates that these misrepresentations and failures to  
18 disclose were designed to confer a strategic benefit.

19           44. The Secretary’s failure to give effect to Plaintiffs’ and other  
20 signers’ withdrawal requests also violates Article II, Sections 6 and 7 of the  
21 Montana Constitution as applied to the circumstances of this case because it  
22 severely burdens Plaintiffs’ and other signers’ constitutional right to not associate  
23 with a petition sponsored by a political party with which they do not want to be  
24 associated.

25 /////

1           45. Article II, Section 6 of the Montana Constitution provides  
2 that “[t]he people shall have the right peaceably to assemble, petition for redress  
3 or peaceably protest government action.” Article II, Section 7 provides that “[n]o  
4 law shall be passed impairing the freedom of speech or expression.” Like the  
5 First Amendment, these provisions protect “the unfettered interchange of ideas  
6 for the bringing about of political and social changes desired by the people.”  
7 *Dorn v. Bd. of Trs. of Billings Sch. Dist. No. 2*, 203 Mont. 136, 145, 661 P.2d  
8 426, 431 (1983).

9           46. Activities that involve associating to promote political  
10 preferences, like signing a petition, are protected conduct under the First  
11 Amendment. *See, e.g., Clingman v. Beaver*, 544 U.S. 581, 586 (2005); *Filo*  
12 *Foods, LLC v. City of SeaTac*, 179 Wn. App. 401, 406, 319 P.3d 817, 819 (2014)  
13 (concluding that “an individual expresses a view on a political matter by signing  
14 an initiative petition,” and “this expression of a view implicates the signer’s First  
15 Amendment rights”).

16           47. Under Montana law, state action that burdens fundamental  
17 rights, like those protected by Sections 6 and 7 of Article II of the Montana  
18 Constitution, must be justified by a compelling state interest narrowly drawn.  
19 *See, e.g., Montana Env’tl. Info. Ctr. v. Dep’t of Env’tl. Quality*, 1999 MT 248, 63,  
20 296 Mont. 207, 225, 988 P.2d 1236, 1246 (holding that strict scrutiny applies to  
21 statutes infringing the rights protected under Article II of the Montana  
22 Constitution); *State v. Lilburn*, 1993 ML 78, \*4 (Mont. Dist. Ct. 1993)  
23 (“Significant interference with First Amendment rights may be allowed only if a  
24 compelling government interest is shown, and all such infringements will be  
25 subject to close judicial scrutiny.”) (citation omitted).

1           48. The right to associate is burdened not only when a law  
2 harms a voter's ability "to associate in the electoral arena to enhance their  
3 political effectiveness as a group," *Anderson v. Celebrezze*, 460 U.S. 780, 793  
4 (1980), but also when a voter's "right not to associate" is harmed, *Cal.*  
5 *Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) (emphasis added); *See also*  
6 *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973) (finding First Amendment rights  
7 burdened when a statute "'lock[ed]' the voter into his pre-existing party  
8 affiliation for a substantial period of time").

9           49. The Secretary's imposition of an arbitrary deadline for  
10 withdrawal requests, set well before the MTGOP's involvement was revealed,  
11 imposes a severe burden on Plaintiffs' associational rights in this case by  
12 "locking in" their association—and the consequences that flow from such  
13 association under statute—in support of a petition they no longer support, and a  
14 political party with whom they do not want to affiliate and whose political  
15 effectiveness they do not want to advance. *See Kusper*, 414 U.S. at 58 (holding  
16 statute prohibiting voter from changing pre-existing party affiliation substantially  
17 abridged her ability to associate effectively with the party of her choice).

18           50. The severity of this burden imposed by the Secretary's  
19 deadline and refusal to credit the withdrawal requests at issue in this case is  
20 heightened by the fact that Plaintiffs' association was "locked in" before they had  
21 any way to know that they were affiliating with, and advancing the interests of,  
22 the MTGOP.

23           51. The Secretary's refusal to give effect to Plaintiffs'  
24 withdrawal requests in this case is not justified by any weighty state interest—  
25 much less one narrowly tailored to advance a compelling state interest.

1           52. No statute, regulation, or policy statement requires that  
2 requests for withdrawal from political party qualification petitions contain the  
3 requestor's signature, nor does any statute afford the Secretary the authority to  
4 require signatures or prescribe what forms of signatures are sufficient.

5           53. All that is required is that the requestor clearly express their  
6 intent to withdraw by identifying the petition at issue. *See Ford v. Mitchell*, 103  
7 Mont. 99, 61 P.2d 815, 822–23 (1936). The withdrawal forms at issue—which all  
8 contain an unambiguous request to withdraw their petition signature, include the  
9 requestor's name, address, and contact information, and include a signature  
10 captured electronically through the DocuSign platform—easily satisfy this  
11 requirement.<sup>9</sup>

12           54. Assuming that it was necessary for a voter to provide a  
13 signature in order to withdraw from a political party qualification petition, the  
14 submission of withdrawal requests to the Secretary are not “transactions”  
15 between the voter and the Secretary under the Montana Uniform Electronic  
16 Transactions Act, Section 30-18-101, MCA (UETA) that require the Secretary's  
17 consent to the use of electronic signatures. Withdrawing from a political party  
18 qualification petition is a unilateral act by the voter, not a “transaction” between  
19 the voter and the Secretary.

20           55. Taking it one step further, if one assumes that political party  
21 qualification petition withdrawals require a voter's signature and that such  
22 withdrawals are “transactions” between the voter and the Secretary for purposes  
23 of UETA, the context, surrounding circumstances, and the parties' conduct,  
24 specifically the failure to the Secretary to promulgate or announce the deadline  
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<sup>9</sup> Section 13-10-601(2)(c), MCA, delegates to county election administrators the authority to verify signatures on political party qualification petition, like the process used for other ballot issues under §§ 13-27-303 through -306, MCA. The statute does not delegate to the Secretary any authority to verify signatures.

1 for withdrawals and that certain requests for withdrawal would not be accepted,  
2 all demonstrate that the Secretary consented to receiving withdrawals from the  
3 Green Party political party qualification petition through electronic means.  
4 Accordingly, electronic signatures satisfy any purported signature requirement.  
5 *See* §§ 30-18-105, -106, MCA.

6           56. The Secretary's previously undisclosed opposition to the use  
7 of electronic signatures would also impose an unconstitutional burden as applied  
8 to the signers who, in the absence of contrary guidance from the Secretary,  
9 electronically signed their withdrawal request in the middle of a global pandemic.  
10 Failing to honor the withdrawal forms at issue here serves no state interest.  
11 Courts and other institutions have consistently recognized the security and  
12 validity of the DocuSign platform for electronic signatures across a wide variety  
13 of contexts. The DocuSign platform used in this case collected the same  
14 identifying information that would be collected by paper forms promulgated by  
15 the Secretary for withdrawals from other kinds of petitions, and its security,  
16 tracking, and its additional auditing features more than adequately serve any  
17 interest in preventing and investigating fraudulent activity.

18           57. As with the Secretary's adoption of a deadline for the  
19 submission of withdrawal forms, the Secretary's adoption of a rule or policy  
20 banning the submittal of electronic signatures was done without public input or  
21 proper notice to the public. Mont. Const. Art. II, § 8. No statute grants the  
22 Secretary the authority to adopt such a rule or policy. The Secretary has not  
23 properly adopted such a rule or policy.

24 /////

25 /////

58. The Secretary's adoption of a rule or policy barring submittals of electronic signatures midway through this petition-gathering process is arbitrary and capricious.

59. When Plaintiffs' and other Montanans' valid and timely withdrawal requests are given effect, the petition fails to meet the requirements of Section 13-10-601(2), MCA. The statute requires that a political party qualification petition contain: (1) an overall signature count of the lesser of "5% or more of the total votes cast" for the last-elected governor, or 5,000 registered voters; and (2) a threshold number of signatures for each state house district in at least 34 districts. *See* Section 13-10-601(2)(b), MCA.

60. After accounting for the valid withdrawal forms set out in Plaintiffs' Exhibits 4 and 5, the Petition contains signatures above the thresholds set by the political party qualification statute in no more than 33 House Districts, as set forth in Plaintiffs' Exhibit 7.

Based on the foregoing findings of fact and conclusions of law, the Court enters the following

## ORDER

1. The Secretary's motion for partial summary judgment on the acceptance of electronic signatures is **DENIED**. MDP's cross-motion for summary judgment regarding electronic signatures is **GRANTED**.

2. The withdrawal requests are valid under Montana law;

3. The Secretary's failure to accept and honor these withdrawal requests violates Mont. Const. Art. II, §§ 6 and 7;

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1           4.     The Petition fails to satisfy the requirements of section  
2     13-10-601(2)(b), MCA; in that the petition does not satisfy the requirement that  
3     the signatures come in sufficient numbers from at least 34 different legislative  
4     House Districts; and

5           5.     The Secretary and all persons acting under his authority are  
6     enjoined from implementing or giving any effect to the Petition.

7                               **MEMORANDUM**

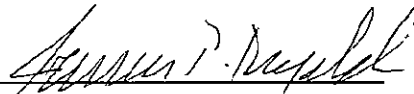
8           It was presented to the Court that this is a unique situation, not  
9     likely to re-occur. Indeed, Dana Corson, the Secretary's Election Director,  
10    testified he had never encountered anything quite like the situation presented by  
11    this case. Further, the statutes governing the qualifications for minor political  
12    parties are new and untested, having been passed by the Legislature in 2019 and  
13    becoming effective only on October 1, 2019. As the various entities involved in  
14    these kinds of election processes become familiar with these statutes'  
15    requirements, the kinds of difficulties encountered in this case might be avoided.

16           Nonetheless, the Court concludes that the Secretary's *ad hoc*  
17    decision-making with regards to the petition defeats the purpose of these statutes.  
18    The Secretary took steps not authorized by statute or regulation, made decisions  
19    "on-the-fly" and without public input or knowledge as to the deadline and  
20    process for withdrawing signatures from the petition, and made those decisions  
21    based on documents not made public, even during this hearing. Such actions fly  
22    in the face of well-established principles for open governmental action requiring  
23    public participation and knowledge. The remedy for these actions is to set aside  
24    the Secretary's decisions as set forth above.

25    ////

1                   It was represented by the Secretary that he will be making  
2 proposals to the next legislature about improvements and clarification to these  
3 statutes. The Court fully supports this effort.

4                   DATED this 7 day of August 2020.

5  
6                     
7                   JAMES P. REYNOLDS  
8                   District Court Judge

9 cc:       Peter Michael Meloy, (via email to: mike@meloylawfirm.com)  
10       Mathew Gordon, (via email to: mgordon@perkinscoie.com)  
11       Austin James, (via email to: Austin.james@mt.gov)  
12       Matthew T. Meade, (via email to: matt@bigskylaw.com)

13 JPR/lm/DDV-2020-856 Montana Democratic Party, et al. v. State of Montana - Findings of Fact, Conclusions of Law, and Order.doc  
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