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**MONTANA TWENTIETH JUDICIAL DISTRICT COURT,
LAKE COUNTY**

TRACY SHARP, LARRY
ASHCRAFT, LUKAS
SCHUBERT, MATTHEW
REGIER, and REPUBLICANS
FOR FREEDOM

Plaintiffs and Petitioners,

v.

CHRISTI JACOBSEN, in her
official capacity as Montana
Secretary of State

Defendant and Respondent.

Cause No. DV-24-153

John A. Mercer

**PETITION FOR
DECLARATORY AND
INJUNCTIVE RELIEF;
DEMAND FOR JURY TRIAL**

COMES NOW: Plaintiffs and Petitioners, by and through undersigned
counsel and pursuant to Mont. Code Ann. §§ 27-8-101 *et. seq* (declaratory

(1)

relief); Mont. Code Ann. §§ 27-19-101 *et. seq* (injunctive relief); and Mont. Code. Ann. §§ 2-4-101, *et. seq.* (Montana Administrative Procedures Act), Article XIV, Section 9 of the Montana Constitution, and for their causes of action against the Montana Secretary of State (hereinafter “Secretary”), hereby incorporate fully the facts and allegations made in this petition for declaratory and injunctive relief alleging as follows:

I. PARTIES

1. Plaintiff TRACY SHARP (Sharp) is an adult individual and at all times relevant to this Complaint, a resident of Lake County, Montana and a Republican Legislative Candidate.

2. Plaintiff LARRY ASHCRAFT (Ashcraft) is an adult individual and, at all times relevant to this Complaint was a resident of Lake County, Montana, and a Lake County Republican Central Committee Member.

3. Plaintiff LUKAS SCHUBERT (Schubert) is an adult individual and at all times relevant to this Complaint, a resident of Flathead County, Montana, and a Republican Legislative Candidate.

4. Plaintiff MATTHEW REGIER (Regier) is an adult individual and at all times relevant to this Complaint a resident of Flathead County, Montana, current Speaker of the Montana House of Representatives, and a Republican State Senate Candidate.

5. REPUBLICANS FOR FREEDOM (RFF) is a registered Montana Political Action Committee organized under the laws of the State of Montana, with its principal place of business in Kalispell, Flathead County, Montana.

6. Defendant MONTANA SECRETARY OF STATE CHRISTI JACOBSEN (Secretary) is the Montana Secretary of State. This suit is brought against her in her official capacity.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction to grant declaratory relief pursuant to the Montana Uniform Declaratory Judgments Act, Mont. Code. Ann. §§ 27-8-101 *et seq.*, which authorizes the court to declare rights, status, and other legal relations among the parties.

8. Venue is proper in this Court under Mont. Code. Ann. § 25-2-126 as it is an action against the State of Montana, and one or more Plaintiffs are residents of Lake County. *See* Mont. Code Ann. § 25-2-126(1).

III. ALLEGATIONS

9. A justiciable controversy between Plaintiffs and the Secretary exists as to whether the Secretary can certify Constitutional Initiatives 126 and 127, requiring a legal determination of all issues before the Secretary

can certify the petition for the 2024 general election ballot in the State of Montana.

10. CI-126 proposes to amend the Montana Constitution to provide a top-four primary election open to all voters and candidates, followed by a general election. Instead of having each candidate appear on a ballot separated by party preference, all candidates will be on the same ballot. The proposed amendment would remove the requirement for a candidate to be nominated by the political party, opening the door for party self-identification without any type of vetting process. The proposed amendment would apply to all state-wide offices, United States Senator and Congressmen, and other offices as provided by law.

11. CI-127 is a companion initiative to CI-126, proposes to amend the Montana Constitution to provide that elections for some offices must be decided by a majority vote as determined by law instead of the largest number of votes, requiring the Legislature to subsequently determine how elections are won if two or more candidates are tied or if one candidate does not receive the majority of votes. The proposed amendment would apply to all state-wide offices, the United States Senator and Congressmen, and other offices as provided by law.

12. Republican Plaintiffs have an interest in CI-126 and CI-127 (collectively called “the two constitutional initiatives”). They oppose the initiatives as a back door ranked choice voting scheme. The scheme requires no identified party affiliation for any candidate, allowing for liberals and Democrats to self-identify as conservatives, essentially deceiving voters as to their positions on issues. Unless voters conduct extensive and exhaustive research on an unknown, unlimited number of candidates in multiple races, they may accidentally vote for a candidate who does not represent their values and beliefs, resulting in disenfranchisement.

13. Plaintiffs will be injured by these two constitutional initiatives because the primaries will be more expensive to administer, discourage voting due to the time necessary to vote, result in longer polling place lines, disadvantage candidates aligned with a party who are supported by voters aligned with a party, and increase the complexity of understanding the principles of every candidate.

14. Additionally, Plaintiffs oppose ranked-choice voting schemes like CI-126 and CI-127 because they lead to trickery and disenfranchisement of Montana voters.

15. Further, CI-126 and CI-127 minimize, at best, and obliterate, at worst, the traditional role of political parties, including the Republican Party, which Plaintiffs have a right to associate with and join.

16. Finally, Plaintiffs have an interest in CI-126 and CI-127 because they violate Mont. Code Ann. § 13-1-125, which prohibits ranked-choice voting.

17. Should the Secretary certify one or two of the constitutional initiatives without conducting the proper and necessary review, the initiatives will appear on the 2024 general election ballot in the State of Montana, causing irreparable harm to Plaintiffs.

18. This Court has the authority to determine whether the Secretary is taking the appropriate steps to verify signatures on the petitions. This Court can also determine whether the Secretary is following proper procedure when certifying the two constitutional initiatives in advance of the 2024 general election.

19. Should this Court find, as a matter of law, that the Secretary is unable to certify the petition signatures necessary for the two constitutional initiatives for the 2024 general election, then the Court's decision, as a matter of law, will provide redressability which Plaintiffs seek.

20. On June 12, 2024, the organization Montana for Elections Reform (MER) held a press conference at the State Capitol, telling media that they gathered enough signatures in over 40 legislative districts to qualify both CI-126 and CI-127 for the November ballot.

21. MER is a special interest group with at least 1.1 million dollars in out-of-state funding, working to interfere with the traditional voting methods in Montana.

22. MER received \$500,000.00 from Unite America Political Action Committee, a federal political action committee based in Denver.

23. MER received another \$500,000.00 from Virginia-based Article IV, a nonprofit organized as a 501c(4), sometimes referred to as a “dark money group” in which the group does not have to disclose its donors to election commissions.

24. Additionally, MER received another \$100,000 from The Sixteen Thirty Fund, a Washington, D.C.-based group that has also contributed to pro-abortion constitutional initiative (CI-128) and marijuana legalization efforts in Montana.

25. Both Plaintiffs and the Legislature understand that traditional American and Montana elections ensure that voters who support one candidate, not a plurality of candidates, are heard clearly while ranked-

choice voting schemes open elections to “ballot exhaustion” or disenfranchisement of voters who choose not to support multiple candidates who do not clearly represent their values.

26. Plaintiffs do not trust new election procedures and outcomes, and further complications of modern systems sow additional distrust in elections. The party owes a duty to voters to keep voting simple and secure.

27. Additionally, Plaintiffs know that states and communities where ranked-choice voting has been tested have consistently decreased voter participation in those communities, and in many cases, the elections have resulted in more discarded votes than counted votes.

28. Furthermore, Plaintiffs understand that ranked-choice voting often results in additional tabulation delays, resulting in days or weeks of additional counting while depending exclusively on technology without traceable ballots to support determined winners, while supporters of ranked-choice voting seek to eliminate or disempower party primaries.

29. In 2023, the Legislature passed Mont. Code Ann. § 13-1-125, entitled a Prohibition on Ranked Choice Voting Methods. The law provides that (1) An election conducted under Title 13 or under Title 20 may not use a ranked-choice voting method to determine the election or nomination of a candidate to a local, state, or federal office; (2) For the purposes of this

section, “ranked-choice voting method” means a voting method that allows voters to rank candidates for an office in order of preference and has ballots cast to be tabulated in multiple rounds following the elimination of a candidate until one candidate reaches a majority of the votes.

30. The petition to place proposed constitutional amendment No. CI-126 on the election ballot has the following Statement of Purpose and Implication: “CI-126 amends the Montana Constitution to provide a top-four election open to all voters and candidates followed by a general election. All candidates appear on a single primary election ballot, and the four candidates receiving the most votes advance to the general election. The ballot may list a candidate’s political party preference, but a candidate is not required to be nominated by a political party to qualify for the ballot. If candidates are required to gather signatures, the number required may not exceed five percent of the votes received by the winning candidate in the last election. CI-126 applies to elections for governor and lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, United States Senator, and other offices as provided by law.”

31. The petition to place proposed constitutional amendment No. CI-127 on the election ballot has the following Statement and Purpose and Implication: “CI-127 amends the Montana Constitution to provide that elections for certain offices must be decided by majority vote as determined by law rather than a plurality or the largest amount of votes. If it cannot be determined who received a majority of votes because two or more candidates are tied, then the winner of the election will be determined as provided by law. CI-127 applies to elections for governor and lieutenant governor, secretary of state, auditor, attorney general, superintendent of public instruction, state representative, state senator, United States representative, United States Senator, and other offices as provided by law.”

32. The Secretary of State is charged with certifying only proper signatures for constitutional initiatives and removing invalid signatures from petitions.

33. The Secretary is not conducting adequate due diligence to determine whether MER has qualified the two constitutional amendments for the 2024 general election ballot.

34. Legal issues must be determined prior to the Secretary’s certification to avoid irreparable harm to Plaintiffs.

35. Should the Secretary improperly certify CI-126 and/or CI-127 as constitutional initiatives for the 2024 general election, Plaintiffs will be irreparably harmed in future elections as Republican candidates, office holders, party officials, and a political action committee.

36. Plaintiffs are of the information and belief and allege that the Secretary is not conducting its adequate due diligence as to whether Counties investigated and verified those who were petitioning and gathering signatures were compliant with Mont. Code Ann. § 13-27-102 (1)-(2). Specifically, Plaintiffs are of the information and belief that the counties did not determine whether petitions were signed only by qualified electors of the state of Montana and that some of the people gathering signatures were paid based on the number of signatures gathered.

37. Plaintiffs are of the information and belief that the Secretary is not investigating whether counties verified that each signature for the petitions was the original signature of the elector in ink and signed in substantially the same manner as on the voter registration form as required by Mont. Code Ann. § 13-27-103 and is not removing invalid signatures from the petitions.

38. Plaintiffs are of the information and belief that the Secretary did not investigate whether counties referred people who knowingly made a

false entry on an affidavit or petition to their respective County Attorney for prosecution under Mont. Code Ann. § 13-27-303(3).

39. Plaintiffs are of the information and belief that the Secretary did not investigate whether the counties investigated and verified all petition signers were registered electors under Mont. Code Ann. §13-27-303 and did not remove inactive electors from the petitions as required by statute.

40. Plaintiffs are of the information and belief that the counties and Secretary did not investigate and verify that the signature gatherers complied with all reporting requirements under Mont. Code Ann. § 13-27-112.

41. Plaintiffs are of the information and belief that the Secretary is accepting signatures from people who are neither registered nor qualified in contravention of Mont. Code Ann. § 13-27-307 and is not rejecting petition signatures that failed to meet statutory requirements.

42. Plaintiffs are of the information and belief that the counties did not identify their randomly selected signatures to the Secretary, and the Secretary failed to ensure county compliance with this requirement.

43. The Secretary has failed to make a proper public determination based on statutory authority as to how to calculate the minimum signature threshold for these petitions during this redistricted election year, as there has been no general election in the newly redistricted legislative districts.

44. Plaintiffs are of the information and belief that the Secretary is improperly imputing averages into the new legislative districts, however, the averaging envisioned in Mont. Code Ann. § 13-27-303(2) does not apply to constitutional initiatives.

45. Upon information and belief, the Secretary is not reconciling the new legislative districts that span county borders, so the minimum threshold is unable to be verified.

46. Upon information and belief, to satisfy Montana law, signatures on constitutional initiative petitions are required to be in substantially the same manner as in the individuals' voter registration file signatures, pursuant to Mont. Code Ann. § 13-27-241(f).

47. Upon information and belief, the petitions for the two constitutional initiatives here fail to meet the requirements of Mont. Code Ann. § 13-27-241(f) because the Secretary failed to ensure counties are requiring signatures to be in substantially the same manner as in the individuals' voter file signatures.

48. Additionally, upon information and belief, to satisfy Montana law, signatures on constitutional initiative petitions may not be counted unless it is in the original signature of the elector in ink, and the signature bears significant similarity to the signature on the registration form as to

provide reasonable certainty of its authenticity, pursuant to Mont. Code Ann. § 13-27-103(1).

49. Upon information and belief, the petitions for the two constitutional initiatives here fail to meet the requirements of Mont. Code Ann. § 13-27-103(1) because many of the petition entries originally counted towards meeting the threshold number of signatures in each House District are invalid because there is no valid signature on the petition, the petition signature does not match the voter file signature, the petition entry lacks a valid date or printed name, the petition signature is not an active registered voter of that district, and/or county officials did not verify that the individual who signed the petition is a registered Montana voter or the individual was not a registered voter in Montana.

50. Upon information and belief, Mont. Code Ann. § 13-27-303 requires county officials to check the names of all signers to verify they are registered electors of the county within four weeks of receiving the sheets or sections of a petition, and to randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office.

51. Upon information and belief, the two constitutional initiatives here fail to meet the requirements of Mont. Code Ann. § 13-27-103 because

neither the county nor the Secretary have decided how to determine whether the petition signers are active, registered voters or whether they are inactive registered voters.

52. Additionally, upon information and belief, pursuant to Mont. Code Ann. § 13-19-313 (2), the Secretary did not ensure election administrators properly placed electors on the inactive list provided for in Mont. Code Ann. § 13-2-220 until the elector becomes a qualified elector, and that the elector followed the procedure outlined in Mont. Code Ann. § 13-2-222 or 13-2-304 as applicable.

53. Upon information and belief, pursuant to Mont. Code Ann. § 13-27-303, if the randomly selected signatures appear to be genuine, the rest of the signatures on the sheet or section may be certified to the Secretary without further comparison of signatures. But, if the randomly selected signatures do not appear to be genuine, then all signatures on that sheet must be compared with the signatures in the registration records of the office.

54. Upon information and belief, the two constitutional initiatives here fail to meet the requirements of Mont. Code Ann. § 13-27-303 because the counties have not communicated to the Secretary which signatures they

randomly selected on each sheet or section, and what the outcome of that sheet or section was.

55. The documents to confirm the allegations above have not been made available to the public by the counties or Secretary, but a public records request has been made concurrent with the filing of this complaint to obtain such records.

56. As a result of the deficiencies listed above, the Secretary cannot lawfully verify or certify the minimum number of petition signatures was achieved.

IV. CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

57. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint, as though fully set forth herein.

58. This is an action for declaratory relief pursuant to Montana Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101 *et. seq.*

59. This is also an action for injunctive relief pursuant to Mont. Code Ann. § 27-19-101, which provides that this Court may grant and enforce an injunction as the order of the court.

60. This Court has the power to declare whether further relief is or could be claimed and may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree, pursuant to Mont. Code Ann. § 27-8-201.

61. Only if 10% of the voters in each of two-fifths of the legislative districts sign a petition for a constitutional initiative, can a constitutional amendment appear in the next general election ballot. If a majority of voters vote for the amendment at that election, it will become part of the constitution, pursuant to Mont. Code Ann. § 13-27-241(a).

62. For the 2024 general election, the Secretary of State is charged with certifying signatures on two separate petitions for constitutional amendments (CI-126 and CI-127).

63. Thus, both the petitions for the two constitutional initiatives here are invalid and do not qualify for the 2024 general election ballot, and the Secretary must be enjoined from certifying them.

64. The Court should declare both the two constitutional initiatives, as well as the Secretary's expected certification of the petitions, legally insufficient under Mont. Code Ann. § 13-27-241.

65. Further, as pecuniary compensation would not afford adequate relief, injunction is proper under Mont. Code Ann. § 27-19-102(1).

66. In addition, the Court should enjoin the Secretary, her agents, officers, employees, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to the certification

of the two constitutional initiative petitions under Mont. Code Ann. § 13-27-241.

V. PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment against Defendant as follows:

- A. Declare that the Petition is invalid under Mont. Code Ann. § 13-27-241;
- B. Declare that the Secretary's certification of CI-126 and CI-127 is invalid;
- C. Order that the Secretary, as well as her agents, officers, employees, and successors, and all persons acting in concert with each or any of them, is enjoined from implementing, enforcing, or giving any effect to certification of CI-126 and CI-127, under Mont. Code Ann. § 13-27-241, until all legal issues are addressed; and,
- D. Grant such other or further relief as the Court deems just and proper.

Dated: July 12, 2024
Blacktail Law Group, PLLC
By: /s/ Abby Jane Moscatel
Abby Jane Moscatel
Attorney for Plaintiffs