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FILED BY *[Signature]*
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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
Hon. John A. Mercer
Dept. 2

**APPLICATION FOR
TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY
INJUNCTION**

COMES NOW: Plaintiffs and Petitioners Tracy Sharp, Larry

Ashcraft, Lukas Schubert, Matthew Regier, and Republicans for Freedom,

A.

by and through undersigned counsel and pursuant to Mont. Code Ann. § 27-19-301 *et. seq.* and request that the Court enter a temporary restraining order to restrain Defendant Secretary of State Christi Jacobsen (Secretary) from certifying CI-126 and CI-127 until the Court determines whether the Secretary is following statutes and constitutional provisions governing signature gathering through a preliminary injunction hearing and decision.

Further, Plaintiffs request that, upon hearing, the court issue a preliminary injunction until a declaratory decision can be made on the merits of Plaintiffs' petition. Plaintiffs are entitled to a lawful petition review by the Secretary, regardless of other terms governing the constitutional initiatives.

The application is made on the grounds that (1) Mont. Code. Ann. §13-27-302 requires the Secretary to adequately verify that each packet of signed petitions has a compliant affidavit attached wherein the petition circulator himself or herself swears that he or she personally collected the signatures attached to the affidavit and (2) the Secretary must only count active electors as valid signatures on petitions, as defined in Mont. Code Ann. §13-1-101(1)-(2), and as required by The Constitution of the State of Montana, Article XIV (9)(1). This Court has the power to prevent invalid constitutional amendments from appearing on the 2024 general election

ballot, which would result in upholding the integrity of Montana elections and preserving Plaintiffs' interests and rights.

This application is supported with a brief filed contemporaneously herewith and the Affidavit of the Plaintiff Attorney, Abby Jane Moscatel. In addition, a proposed order is attached.

Pursuant to Local Rules, the adverse party has been apprised of the motion and has not taken a position on whether it opposes or not. Oral argument is not requested for the TRO but is required prior to the preliminary injunction order.

Respectfully submitted on this 15th day of July 2024.

Dated: July 15, 2024
Blacktail Law Group, PLLC
By: /s/ Abby Jane Moscatel
Abby Jane Moscatel
Attorney for Plaintiffs

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**MONTANA TWENTIETH JUDICIAL DISTRICT COURT,
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Cause No. DV-24-153
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**BRIEF IN SUPPORT OF
PLAINTIFF'S APPLICATION
FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY
INJUNCTION**

I. INTRODUCTION

The underlying case is a petition for declaratory relief and injunctive relief by Plaintiffs to ensure the Montana Secretary of State (Secretary) is

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ensuring that counties comply with statutory and constitutional requirements when considering signatures on petitions for two constitutional amendments, CI-126 and CI-127, which would upend the way voters choose elected officials in the State of Montana.

Plaintiffs request that this Court issue a temporary restraining order preventing Defendant from certifying CI-126 and CI-127 for the 2024 general election ballot until the Court can hold a hearing to decide whether a permanent injunction should be granted pursuant to Mont. Code. Ann. Mont. Code Ann. § 27-19-301(1)(a)-(d). Plaintiffs further seek that the preliminary injunction stay in place until a declaratory decision on the merits of Plaintiffs' petition for declaratory and injunctive relief be made. Plaintiffs are entitled to a lawful petition review by the Secretary, regardless of other terms governing constitutional initiative processes.

The temporary restraining order is warranted because at a hearing for preliminary injunction, the Court will have the power to provide the relief requested by Plaintiffs by declaring that the Secretary of State may not certify CI-126 and CI-127 for the general election ballot unless or until (1) the Secretary verifies that each packet of signed petitions has a compliant affidavit attached wherein the petition circulator himself or herself swears that he or she personally collected the signatures attached to the affidavit pursuant to

Mont. Code. Ann. §13-27-302 and (2) only active electors on active lists are counted as valid signatures on petitions, as defined in Mont. Code Ann. §13-1-101(1)-(2), and as required by The Constitution of the State of Montana, Article XIV (9)(1). The temporary restraining order is also warranted because it will keep Plaintiffs from suffering immediate and irreparable injury should the Secretary improperly certify CI-126 and CI-127 for the general election ballot. Plaintiffs ask that the temporary restraining order remain until this Court can hold a hearing and determine whether to issue the preliminary injunction. Plaintiffs further request that any such preliminary injunction be in place until this Court can make a declaratory decision on the underlying petition for declaratory and injunctive relief. Plaintiffs are entitled to a lawful petition review by the Secretary regardless of any other terms or statutes governing constitutional initiative processes.

II. SUMMARY OF BACKGROUND FACTS

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.

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.

CI-127 is a companion initiative to CI-126 and 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.

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.

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.

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.

The Secretary is currently reviewing the two petitions to determine whether there are enough signatures for the petitions to qualify as

constitutional amendments on the 2024 general election ballot. The Secretary is also determining whether the petitions meet statutory requirements.

III. LEGAL AUTHORITY

A. Procedural Requirements

This Court may enjoin the Secretary of State from certifying CI-126 and/or CI-127 as constitutional initiatives for the 2024 general election until a hearing and decision on the application for preliminary injunction can be called pursuant to Mont. Code Ann. § 27-19-314.

A motion for preliminary injunction may be granted when the applicant establishes that (a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant's favor; and (d) the order is in the public interest. Mont. Code. Ann. § 27-19-201(1)(a)-(d).

No motion for preliminary injunction order may be issued without reasonable notice to the adverse party of the time and place that the application for the injunction order was made, and before granting an injunction order, the Court or judge shall make an order requiring cause to be shown, at a specified time and place, why the injunction should be granted, and the adverse party may in the

meantime be restrained as provided in 27-19-314. Mont. Code. Ann. § 27-19-301(1)-(2).

The applicant can be required to provide a “written undertaking” to provide for any damages from an improperly granted preliminary injunction. Mont. Code. Ann. § 27-19-306(1). The written undertaking can be waived “in the interests of justice.” Mont. Code. Ann. § 27-19-306(1)(b)(ii). It can be decided on affidavits. Mont. Code Ann. § 27-19-307(2). Oral testimony can also be considered. *Id.* A hearing is required. Mont. Code Ann. § 27-19-303(1). The applicant can be required to provide a “written undertaking” to provide for any damages from an improperly granted preliminary injunction. Mont. Code Ann. § 27-19-306(1). The written undertaking can be waived “in the interests of justice.” Mont. Code Ann. § 27-19-306(1)(b)(ii).

B. Standard for Granting a Preliminary Injunction.

1. Statutory Requirements

Mont. Code Ann. § 27-19-201(1) provides that a motion for preliminary injunction may be granted when the applicant establishes that a motion for preliminary injunction may be granted when the applicant establishes that (a) the applicant is likely to succeed on the merits, (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant’s favor; and (d) the order is in the public interest.

2. Miscellaneous Factors

The issuance of a preliminary injunction is within the discretion of the Court. *Talley v. Flathead Valley Community College*, 259 Mont. 479, 857 P.2d 701 (1993), cert. denied, 510 U.S. 1044 (1994).

A court must base its decision “in furtherance of the limited purpose of [a] preliminary injunction[:] to preserve the status quo and minimize the harm to all parties pending final resolution on the merits.” *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386 (citation omitted). The status quo is defined as the “last actual, peaceable, non-contested condition which preceded the pending controversy.” *Id.* (citation omitted). Here, the pre-suit status quo is the non-sale of the house, so the Court may direct its sale and the distribution of the proceeds.

A decision on a preliminary injunction is not a determination of the merits of the case. *Driscoll*, ¶ 12.

3. Van Loan Elements

There are four elements to a preliminary injunction: (1) “likelihood of success on the merits,” (2) “irreparable injury,” (3) “balancing of the equities,” and (4) the injunction would not be “adverse to the public interest.” *Van Loan v. Van Loan*, 271 Mont. 176, 182, 895 P.2d 614, 617 (1995).

a. Prima Facia Showing of “Likelihood on the Merits”

An applicant for a preliminary injunction must show “the likelihood that the movant will succeed on the merits of the action.” *Van Loan*, 271 Mont. at 182, 895 P.2d at 617. This requires the movant to make a “prima facie” case that he or she is entitled to relief. See *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2022 MT 162, ¶ 18, 409 Mont. 478, 515 P.3d 806. In our case, this would mean a prima facie showing the Secretary is required to abide by statutory requirements and the state constitution when determining whether a pair of constitutional amendment initiatives qualify for the 2024 general election ballot in the State of Montana. The plain meaning of Mont. Code Ann. §7-2-2802, Mont. Code Ann. §13-1-101(1)-(2), and The Constitution of the State of Montana, Article XIV(9)(1) show this to be true. This element is easily met.

b. Irreparable Injury

The second element for a preliminary injunction is “the likelihood that the movant will suffer irreparable injury absent the issuance of a preliminary injunction.” *Van Loan*, 271 Mont. at 182, 895 P.2d at 617. If the Secretary improperly certifies the two constitutional initiatives for the 2024 general election ballot and the initiatives are approved by voters in the general election, Plaintiffs will face irreparable harm because the two constitutional initiatives are an attempt to thwart Mont. Code Ann. § 13-1-125, which prohibits ranked-choice voting. CI-126 and CI-127 are a form of ranked-choice voting.

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.

CI-127 is a companion initiative to CI-126 and 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.

c. Balancing of Equities

The third element for a preliminary injunction is “the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing

party (a balancing of the equities)." *Van Loan*, 271 Mont. at 182, 895 P.2d at 617. The threatened injury to Plaintiffs is for an out-of-state special interest group to override state law to upend the way Montanans vote for elected officials and threaten to disenfranchise Montana voters throughout the state by allowing any candidate to self-identify as a Republican or Democrat without vetting by political parties, allowing for candidates to trick voters into voting for someone who does not align with their values and interests. There is no injury to the Secretary by requiring her to follow state law and the Montana Constitution. In fact, that is exactly what statutory and constitutional requirements are intended to do.

d. Public Interest

The fourth and final element is that the injunction would not be "adverse to the public interest." *Van Loan v. Van Loan*, 271 Mont. at 182, 895 P.2d at 617. An injunction would protect the integrity of elections. It would also require the Secretary to follow state law and the state constitution, even when faced with an attempt by a powerful out-of-state special interest group, funded by other out-of-state donors, to upend the way Montana state elections work, thwarting the will of the voters in the process. The Legislature has already taken steps to protect election integrity in Montana by passing a law prohibiting ranked-choice voting. Plaintiffs support this law and understand that the two constitutional initiatives are a scheme that allows for Democrats to self-identify as conservatives, essentially deceiving voters as to their positions on issues, resulting in disenfranchisement. It is against

the public interest for the Secretary to certify constitutional initiatives if legal requirements are not met, including counting invalid signatures and foregoing requirements that signature gatherers attach sworn affidavits as to their work.

C. The Court Should Waive the Security Requirement.

Mont. Code Ann. § 27-19-306(1) requires a successful movant for a preliminary injunction to provide a “written undertaking” for the costs and damages from an injunction that is eventually dissolved. However, this statute goes on to provide that the security requirement “may be waived ... in the interest of justice.” Mont. Code Ann. § 27-19-306(1)(b)(ii). See also *Four Rivers Seed Co. v. Circle K Farms, Inc.*, 2000 MT 360, ¶ 21, 303 Mont. 342, 16 P.3d 342 (Court has discretion to waive the bond requirement). The Court should do so here because the Secretary will suffer no monetary loss while complying with the law while the temporary restraining order or the preliminary injunction is in effect.

IV. CONCLUSION

For all these reasons, Plaintiffs are entitled to a temporary restraining order until a preliminary injunction can be heard. Plaintiffs further request a preliminary injunction until this Court can make a declaratory decision. The Adverse party has been notified of Plaintiffs’ application for a temporary restraining order and preliminary injunction but has not yet provided its position.

Respectfully submitted on this 15th day of July 2024.

By: /s/ Abby Jane Moscatel

Abby Jane Moscatel, attorney for Plaintiffs Tracy Sharp, Larry Ashcraft, Lukas Schubert, Matthew Regier, and Republicans for Freedom

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