

COPY

FILED

JUL 09 2018

ANGIE SPARKS, Clerk of District Court
By MAGGIE CONNOR, Deputy Clerk

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

JAMES LARSON, DONALD JUDGE, and
JEAN PRICE, individual electors, and
MONTANA DEMOCRATIC PARTY,

Plaintiffs,

v.

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

Defendant,

and

THE MONTANA GREEN PARTY,

Interested Party.

Cause No. DDV-2018-295

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

The Court¹ heard this matter on April 24, May 17 and 24, 2018. Peter Michael Meloy and Kevin J. Hamilton represented Plaintiffs. Emily Jones

¹ The Honorable Kathy Seeley presided over the first day of the hearing. The Green Party then moved to substitute Judge Seeley, whereupon the case was referred to the Honorable Michael McMahon. The Democratic Party moved to substitute Judge McMahon before the resumption of the hearing. The matter was referred to the undersigned, who presided over the last two days of hearing. The undersigned has referred to the transcript of the first day of hearing before Judge Seeley.

represented Defendant Secretary of State (Secretary). Quentin M. Rhoades represented Interested Party Montana Green Party. The parties presented testimony and introduced exhibits. The parties have submitted post-hearing briefs.

From the file, the testimony and evidence presented, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. This matter came before the Court on an order to show cause on Plaintiffs' first amended complaint for Declaratory and Injunctive Relief. Plaintiffs challenge a petition seeking to qualify candidates of the Montana Green Party to be on the primary and general election ballot in accordance with § 13-10-601, MCA.
2. Plaintiffs filed their Complaint on April 2, 2018, against the Secretary, alleging that the Petition, submitted to Montana county officials on March 4 and 5, 2018, did not meet the requirements of § 13-10-601, MCA, pursuant to the Montana Uniform Declaratory Judgment Act, Sections 27-8-101 *et. seq.*, MCA, and Sections 27-8-201 *et seq.*, MCA. Plaintiffs named the Montana Green Party as an interested party to the action.
3. Plaintiffs amended their Complaint on April 19, 2018, adding allegations related to false affidavits of a petition signature gatherer.
4. Plaintiffs' Amended Complaint alleges that the Petition was wrongly certified by the Secretary, because it does not meet the requirements of Montana law, § 13-10-601, MCA. This statute governs the appearance of political parties on the primary and general ballots in Montana. Subsection (1) provides that any political party which "had a candidate for a statewide office in either of the last two general elections who received a total vote that was 5% or more of the total votes cast for the most recent successful candidate for governor, shall nominate its candidates for public office, except for presidential electors, by a primary election

as provided in this chapter.” The Montana Green Party does not qualify under this provision. Subsection (2)(a) then provides, “A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the Secretary, requesting the primary election.” Subsection (2)(b) specifies the number of voters which must sign the petition:

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

5. Plaintiffs assert that the Petition submitted by the Montana Green Party does not contain the requisite number of signatures from 34 Districts. They allege that 209 petition signatures from nine Districts were erroneously counted as valid but are, in fact, invalid.

6. Plaintiffs’ amended complaint alleges that the Petition contains entries and signatures that were originally accepted as valid, but are in fact invalid, including: (a) petition entries that were collected by a petition circulator who falsely signed the petition circulator affidavit; (b) petition entries that do not contain a valid signature; (c) petition signatures that are not signed in substantially the same manner as the registration signature; (d) petition signatures that were matched to the wrong Montana registered voter; (e) petition entries that contain an incorrect or invalid date; and (f) petition entries that do not contain a printed name.

7. Local county election officials reviewed the signatures on the Petition submitted within their respective counties and forwarded their certifications to the

Secretary. The Secretary certified the Petition on March 12, 2018. The Secretary's certification found it to meet the required threshold of signatures in eight house Districts by close margins. In House District 20, the Secretary certified as valid 145 signatures, which exceeded the 140 signatures required by 5 signatures. In House District 21, the Secretary certified as valid 141 signatures, which exceeded the 135 signatures required by 6 signatures. In House District 43, the Secretary certified as valid 107 signatures, which exceeded the 105 signatures required by 2 signatures. In House District 54, the Secretary certified as valid 141 signatures, which exceeded the 130 signatures required by 11 signatures. In House District 56, the Secretary certified as valid 103 signatures, which exceeded the 101 signatures required by 2 signatures. In House District 80, the Secretary certified as valid 138 signatures, which exceeded the 132 signatures required by 6 signatures. In House District 83, the Secretary certified as valid 161 signatures, which exceeded the 150 signatures required by 11 signatures. In House District 84, the Secretary certified as valid 151 signatures, which exceeded the 150 signatures required by 1 signature.

8. With the primary election fast approaching, this Court, Judge Seeley presiding, ordered the Secretary and the Montana Green Party to show cause why the requested relief should not be granted. A hearing date was set for April 24, 2018.

9. The first day of the show cause hearing took place before Judge Seeley on April 24, 2018. The show cause hearing was continued until April 30, 2018. On the morning of April 30, 2018, the Montana Green Party filed a notice of removal to federal court and a motion to substitute Judge Seeley. These procedural steps resulted in the scheduled hearing being vacated. The Montana U.S. district court remanded the action to the state district court later that afternoon.

10. The show cause hearing was re-scheduled to May 17, 2018. On that date, the Court, with the undersigned presiding, heard testimony from one of Plaintiffs' witnesses and two of the Secretary's witnesses.

11. The show cause hearing concluded on May 24, 2018, with testimony from two of the Secretary's witnesses, one Montana Green Party witness, and one rebuttal witness by Plaintiffs. The Court, without objection from the Defendant or the Interested Party, permitted Plaintiffs to re-open their case to admit a set of exhibits containing discovery materials that had been served upon Plaintiffs by the Secretary on May 16, 2018. The Court admitted 22 of Plaintiffs' exhibits into evidence. The Secretary did not offer any exhibits into evidence. The Montana Green Party offered three exhibits, but the Court excluded them on relevance grounds.

12. To gather the necessary number of signatures, petition signature gatherers submit packets of signed petitions to county elections offices. These signature gatherers are required to submit an affidavit with each packet of signed petitions.² Among other things, the affidavit requires the petition circulator to swear that he personally collected the signatures attached to the affidavit. The county clerks do not check to make sure that the signer of the petition signature gatherer affidavit personally collected the signatures attached to the affidavit, because the county clerks do not have a way of performing this check.

² "An affidavit, in substantially the following form, must be attached to each sheet or section submitted to the county official:

I, (name of person who is the signature gatherer), swear that I gathered the signatures on the petition to which this affidavit is attached on the stated dates, that I believe the signatures on the petition are genuine, are the signatures of the persons whose names they purport to be, and are the signatures of Montana electors who are registered at the address or have the telephone number following the person's signature, and that the signers knew the contents of the petition before signing the petition."

Section 13-27-302, MCA.

13. Multiple petition entries were ostensibly collected by petition circulator, Skye Robert Berns. Two petition signers, Thai Nguyen and Dana Toole, testified that a woman, acting alone, collected their petition signatures. The witnesses testified that the woman was the only person collecting signatures, and no one else was present to witness their signature. Nguyen testified that the woman identified herself as Hannah Rose Kuntz. While the evidence shows that a woman named Hannah Rose Kuntz collected Nguyen's and Toole's signatures, Berns signed the signature gatherer affidavit attached to the packet of petitions containing Nguyen's and Toole's signatures. Berns, through his affidavit, claimed to have personally gathered Nguyen's and Toole's signatures. Hannah Rose Kuntz was not listed as the signature gatherer on any signature gatherer affidavit submitted with the Petition.

14. Neither Berns nor Kuntz appeared before the Court to testify. Neither the Secretary nor the Green Party presented evidence or testimony rebutting the testimony of Toole or Nguyen. Neither the Secretary nor the Green Party presented evidence regarding which petition sheets attached to Berns' affidavits were personally collected by Berns and which petition sheets were collected by Kuntz or any other unknown third party. In view of the lack of any testimony or evidence contradicting that of Nguyen and Toole, the Court finds that Berns falsely swore that he personally gathered signatures for the Petition. The signatures gathered by Berns should therefore be invalidated.

15. With respect to the Districts at issue in this action, Berns collected 1 signature from District 43; 10 signatures from District 54; 2 signatures from District 56; 8 signatures from District 80; 9 signatures from District 83; and 6 signatures from District 84.

16. Plaintiffs did not discover evidence of Berns' false petition circulator affidavit until after the Secretary certified the Petition.

17. Certain petition entries consist of a printed name, rather than a signature. The Secretary's Political Party Qualification Petition form has numbered signature entries containing four columns for signers to complete. The titles of the columns are as follows: "*Signature*"; "Date Signed"; "Residence Address or Post Office Address or Home Telephone Number"; "*Printed* Last Name and First and Middle Initials." The Secretary's instructions state that "[e]ach person is required to *sign* the person's name and list the person's address or telephone number in *substantially the same manner* as on the person's voter registration card or the *signature* will not be counted." *Id.* (emphasis added).

18. To be a valid signature on the political party qualification petition, the signature must be substantially similar to that on the voter's voter registration form. Thirty-one petition entries certified as valid by the Secretary contain the voter's printed name in both the signature column and the printed name column, rather than the voter's signature in the signature column and the voter's printed name in the printed name column. For the 31 petition entries at issue, the voter's signatures in the voter registration records are in cursive or use a distinctive, stylized script. In each petition entry, the signature columns do not contain the cursive or distinctive, stylized signature. Instead, the voter's name in the signature column is printed in the same print handwriting used to fill out the other columns of the petition. These printed petition "signatures" clearly are not substantially similar to and do not match the signatures in the voter registration records. These signatures should be invalidated.

19. Seven of these signatures are from District 20; 9 signatures are from District 21; 1 signature is from District 43; 3 signatures are from District 54; 4 signatures are from District 56; 1 signature is from District 80; 3 signatures are from District 83; and 3 signatures are from District 84.

20. Plaintiffs next challenge additional signatures which they allege are not signed in substantially the same manner as the voter's registration signature. Plaintiffs challenge the standards used by the local election officers to verify signatures as vague and inconsistent. The Court agrees that the standards are vague and uncertain. The statutory standard for verifying signatures on a political party qualification petition are set forth in § 13-10-601(2)(c), "the affidavits of circulation required by 13-27-302 must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306." Referring to these latter statutes, the Court finds that upon receipt of petitions,

the county official shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures³ on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

Section 13-37-303(1), MCA.

21. This section provides precious little guidance to the election officials or to this Court in the determination of a valid signature. What the section does do, however, is to commit to the local election officials the discretion to make this determination. *See, State ex rel. Miller v. Murray*, 183 Mont. 499, 600 P2d 1174 (1979) (improper to issue writ of mandate to compel local election official to

³ The local election officers testifying in this case stated that they had compared all signatures submitted.

accept questioned signatures). This discretion, however, is directed to the local election officials determining whether a signature is “genuine⁴” when “compare[d] . . . with the signatures of the electors as they appear in the registration records of the office.” Section 13-37-303(1), MCA.

22. Alan Miller, an elections specialist at the Secretary’s office; Audrey McCue, the Elections Director of Lewis & Clark County; and Rina Moore, the Clerk of Cascade County, each testified to the standard they applied in determining whether a signature was valid. These standards, while sharing some similarities, varied in other respects. The Secretary did not introduce into evidence any guidance or training materials published by the Secretary discussing such criteria and characteristics or explaining a specific methodology and procedure for performing the comparison.⁵

23. While the standards varied, local election officials are statutorily constrained to compare the signature on the petition only to “the signatures of the electors as they appear in the registration records of the office.” Section 13-27-303(1), MCA. In this respect, Cascade County performed signature verification by comparing the petition signature to signatures in the voter registration records of the county. Cascade County, however, also performed signature verification by comparing petition *signatures* to *handwriting* on voter registration records generally, including characteristics other than the signature. In other words, for at least some petition entries, Cascade County compared the petition signature to other writings than “the signatures of the electors as they appear in the registration records of the office.” Lewis and Clark County performed signature verification

⁴ On the political party qualification form itself, the Secretary requires the signature be signed in “substantially the same manner as on the person’s voter registration card or the signature will not be counted.”

⁵ Some materials prepared for Colorado elections have apparently been used on training provided by the Secretary’s office to local election officials.

using only the signatures on voter registration records. No testimony was offered as to Yellowstone County's practices.

24. Plaintiffs invite the Court to review 156 challenged petition signatures and determine they are not substantially similar to the voters' signatures on their voter registration card. The Court declines to do so. The Court has no expertise in comparing handwriting nor was the Court offered any expert witness testimony on how it should undertake this task. As noted above, the statute for verifying petition signatures commits to the discretion of the local election officials the determination of whether signatures are genuine. The Court finds from the testimony of the local election officials that they undertook this responsibility seriously. Indeed, the Court finds that the local election officials went above and beyond the requirements of the verification statute. McCue and Moore both testified that they checked **every** signature on the submitted petitions. The statute only requires the local election official to "randomly select signatures on each sheet" for purposes of comparison. Then if the randomly selected signatures are determined to be genuine, the official may certify the entire sheet without further comparison of signatures. Notwithstanding this, those signatures from Cascade County which were verified by reference to writings other than "the signatures of the electors as they appear in the registration records of the office" should be disqualified.

25. Plaintiffs presented testimony and evidence that certain petition signature entries were erroneously matched to the wrong Montana registered voter. County elections officials review each petition signature and attempt to look up the name of the petition signer in the statewide voter file. Because of difficult-to-read handwriting and similar-looking names, however, it is possible for county elections officials to match the wrong voter to a petition signature. Six petition signatures certified as valid by the Secretary were in fact matched to the wrong registered voter. Specifically, petition signer John Ranieri was erroneously matched to John

Rains of House District 21; petition signer Kimberly D. Barnes was erroneously matched to Kim Alan Barnes of House District 21; petition signer Stephen Gordon was erroneously matched to Steven Gordon of House District 21; petition signer “Calvin” was erroneously matched to Robin Calvin of House District 56; petition signer Nick Kozub was erroneously matched to Nick Kuppinger of House District 54; and petition signer Nathaniel Calkins was erroneously matched to Nathan W. Collier of House District 56. Neither the Secretary nor the Montana Green Party presented any evidence contradicting the Plaintiffs’ evidence. These signatures should be invalidated.

26. Plaintiffs presented evidence that certain petition entries contain an incorrect date or a date altered without the petition signer’s initials. While this may be a minor defect, it goes to the statutory certification of signatures by the gatherer. The affidavit of the signature gatherer requires the signature gatherer to swear that he or she “gathered the signatures to which this affidavit is attached on the stated dates[.]” The Political Party Qualification Petition promulgated by the Secretary directs petition signers to list the date that they signed the petition. The Secretary has published a document titled “Signature Gathering in Montana: Your Rights and Responsibilities.” The document instructs signature gatherers that one of their responsibilities is to “[c]heck to ensure that signers provide the correct date; if they do not, have the signer change the date and have the signer initial it[.]” The Secretary’s document also instructs that a “signature gatherer who signs an affidavit **before** the last signer on the attached petitions has signed cannot logically nor legally claim that all the signers knew what they were signing, as is required by law[.]” Neither the Secretary nor the Montana Green Party presented evidence to rebut this evidence from Plaintiffs.

27. Based on the evidence presented, the Court finds that nine petition entries certified as valid by the Secretary contain a blank date, a date that postdates

the notarization date of the signature gatherer affidavit, or a date altered without the signer's initials. One such signature is from District 21; 1 is from District 43; 3 are from District 80; and 4 are from District 83.

28. Plaintiffs presented evidence that certain petition entries do not contain a printed name. The Political Party Qualification Petition promulgated by the Secretary directs petition signers to list their printed last name and first and middle initials. The Secretary's document titled "Signature Gathering in Montana: Your Rights and Responsibilities" instructs signature gatherers "[t]he printed last name and initials should be legible[.]" To qualify for the ballot, a political party must "present a petition, in a form prescribed by the secretary of state[.]" Section 13-10-601, MCA. The failure of five signers to provide their printed names violates this statutory requirement. These five signatures should be invalidated.

29. Based on the evidence presented, the Court finds that five petition entries certified as valid by the Secretary do not contain a printed name: 1 signature in District 43; 1 in District 80; 1 in District 83; and 2 in District 84.

CONCLUSIONS OF LAW

30. This Court has jurisdiction and authority to review the circumstances surrounding the submission of the Petition by evaluating its contents and the signatures certified by the Secretary. *See, e.g., State ex rel. Haynes v. District Court*, 105 Mont. 604, 86 P.2d 4 (Mont. 1937) (court could examine signatures on a petition to determine if they were valid, even though the Secretary had already made a determination); *Martin v. State Highway Commission*, 107 Mont. 603, 614, 88 P.2d 41, 46 (Mont. 1939) (describing that the Secretary's certification of a petition was not "conclusive," as "the majority of the court [in *Haynes*] held that qualifications of the signers could be inquired into by the courts"); *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277 at ¶ 2 (invalidating the Secretary's certification of signatures obtained by certain signature gatherers that engaged in

fraudulent signature gathering practices); *see also State ex rel. Matts v. Reek*, 18 Mont. 557, 560, 46 P. 438, 439 (Mont. 1986) (granting injunction enjoining county clerk from placing a candidate's name on the ballot as a "Silver Republican," after the Secretary certified his nominating certificate); *Sawyer Stores v. Mitchell*, 103 Mont. 148, 150, 62 P.2d 342 (Mont. 1936) (enjoining the Secretary from certifying a proposed initiative measure); *State ex rel. Palmer v. Hart*, 201 Mont. 526, 529, 655 P.2d 965 (1982) (affirming a declaratory judgment and permanent injunction against the holding of a recall election, after the recall petition had been certified, due to improper circulation and verification process that was contrary to Montana's statutory requirements); *Davis v. The Jefferson Cty. Election Office*, No. DV201653, 2016 WL 11063812, at *5 (Mont. Dist. Dec. 9, 2016) (issuing a declaratory judgment that the form of recall petitions and circulation sheets were deficient and did not conform to the requirements of Montana statute and permanently restraining and enjoining a recall election based upon invalid petitions).

31. While statutory guidance on the verification of signatures is sparse, state law prescribes that "A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, **in a form prescribed by the secretary of state**, requesting the primary election." § 3-10-601(2)(a), MCA (emphasis added). Throughout the Court's analysis, it has adhered to this standard. If the submitted petitions or signatures did not comply with the state law or did not comply with the form as prescribed by the Secretary, the Court disregarded those petitions or signatures.

32. The submission of false affidavits by a signature gatherer, of which the Secretary was unaware when certifying the Petition; the acceptance of printed names when the voter's voter registration forms showed cursive signatures;

comparing petition signatures to other writing on voter registration records generally, including characteristics other than the signature; accepting petition signature entries erroneously matched to the wrong Montana registered voter; accepting petition entries containing no date, an incorrect date or a date altered without the petition signer's initials; and accepting petition signatures without an accompanying printed name violates the requirements of § 13-10-601, MCA. Signatures associated with these deficiencies are thus invalid.

33. Section 13-10-601, MCA, sets forth the requirement that the Petition contain signatures from "registered voters in more than one-third of the legislative districts equal to 5% or more of 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." For the June 5, 2018 primary election, the Petition was required to contain between 55 and 150 valid signatures from at least 34 Districts.

34. With the elimination of the foregoing signatures, the Court calculates that there are now at most⁶ the following totals of valid signatures within the following districts:

- a. 138 valid signatures from **District 20**, short of the 140 signatures required by 2 signatures;
- b. 128 valid signatures from **District 21**, short of the 135 signatures required by 7 signatures;
- c. 103 valid signatures from **District 43**, short of the 105 signatures required by 2 signatures;
- d. 127 valid signatures from **District 54**, short of the 130 signatures required by 3 signatures;

⁶ The Court does not have specific evidence on how many signatures were verified in Cascade County by reference to writings other than the voter's signature on the voter registration form.

e. 95 valid signatures from **District 56**, short of the 101 signatures required by 6 signatures;

f. 125 valid signatures from **District 80**, short of the 132 signatures required by 7 signatures;

g. 144 valid signatures from **District 83**, short of the 150 signatures required by 6 signatures; and

h. 140 valid signatures from **District 84**, short of the 150 signatures required by 10 signatures.

35. The Court concludes the signatures are invalid for the following specific reasons.

a. The 36 signatures from Districts 43, 54, 56, 80, 83, and 84 that were filed under the cover of a false petition circulator affidavit are invalid. The Montana Supreme Court has specifically required that a petition circulator affiant be present when a petition is signed. *See Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶ 57, 334 Mont. 237, 146 P.3d 759 (affiant must be present when the petition is signed). Here, Berns, the signer of the petition circulator affidavit, was not present when an unknown number of signatures on the Petition were signed. “[T]he filing of a false affidavit by a signature gatherer is ‘more than a technicality’ in that it destroys the primary procedural safeguard for ensuring the integrity of the signature gathering process,” because the “‘integrity of the [petition] process in many ways hinges on the trustworthiness and veracity of the circulator.’” *Id.* at ¶¶ 83-85. Here, there is no way to know whether Berns, Kuntz, or other unidentified persons collected any particular signature that Berns swore under oath to have personally collected. The false signature on the petition circulator affidavit invalidates the signatures that Berns claimed to have personally collected. *See Id.* at ¶ 44 (upholding invalidation of all signatures on all petition sheets purportedly collected by petition gatherers based upon practice of falsely

attesting that they personally gathered signatures). The 36 signatures Berns collected in the relevant Districts are invalid.

b. The Petition contains 31 entries originally counted as valid that are invalid because they lack the signature of the voter. The statute requires that a petition “must be signed” to qualify a political party to nominate candidates in a primary election. Section 13-10-601(2)(b), MCA. The Political Party Qualification Petition form prescribed by the Secretary of State states “[e]ach person is required to **sign** the person’s name . . . in substantially the same manner as on the person’s voter registration card or the **signature** will not be counted.” (emphasis added). This signature requirement is not met when a petition entry contains a printed name, and that voter’s signature on file with the county uses a cursive or stylized signature. Montana law makes a distinction between a printed name and a signature. *See e.g.*, Section 13-10-502, MCA (distinguishing between requirement for a “signature” and the “printed last name of the signer” on a party nomination petition). Thus, the 31 petition entries that only contain printed names are invalid.⁷

c. The “signatures” on a petition seeking to qualify a political party pursuant to Section 13-10-601, MCA must be compared against the “signatures” in the signer’s voter registration records—not other handwriting, notes, or materials contained on the voter registration card, such as a printed name, the way the voter writes numbers or addresses, or other extraneous notes or information contained in those records. In particular, the statute incorporates the requirements of § 13-27-303(1), MCA, which requires that the “signatures” on a petition be compared “with the signatures of the electors as they appear in the registration records of the office.” *See* Section 13-10-601(2)(c), MCA (requiring

⁷ To be clear, if the voter’s voter registration card shows a printed signature, as opposed to a cursive signature, that printed signature would be an acceptable match to a printed signature on a petition. It is the distinction between the cursive signature on the voter registration form and the printed signature on the petition that creates a non-match.

compliance with Section 13-27-303(1), MCA). Montana case law has interpreted this statute as requiring that “[t]he county election administrators check all of the names of the petition signers and compare a sample of the signatures on each petition against the signatures on voter registry cards.” *Montanans for Equal Application of Initiative Laws v. State ex rel. Johnson*, 2007 MT 75, ¶ 18, 336 Mont. 450, 154 P.3d 1202; *see also* Section 13-27-103, MCA (“A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registration form.”); Mont. Secretary of State, Political Party Qualification Petition, Ex. 1 to Compl. (“Each person is required to sign the person’s name . . . in substantially the same manner as on the person’s voter registration card or the signature will not be counted.”); Section 13-10-601(2)(a), MCA (requiring a political party to “present[] a petition, in a form prescribed by the secretary of state, requesting the primary election”). To the extent that Cascade County or any other county used non-signature handwriting on voter registration documents to perform signature comparison and signature verification, such practice was contrary to the statute. The individual petition signatures for which Cascade County or other counties used non-signature handwriting for signature verification are invalid.

d. Six petition signatures originally counted as valid are invalid because they are either not from a registered Montana voter or were erroneously matched to a different Montana voter. The statute requires a petition to contain signatures of “a number of registered voters,” Section 13-10-601(2)(b), MCA, and gives county officials the duty to “check the names of all signers to verify they are registered electors of the county.” Section 13-27-303, MCA; *see also* Section 13-10-601(2)(c), MCA (incorporating the requirements of Section 13-27-303, MCA).

e. Nine petition entries that originally were counted as valid are invalid because they lack a valid date. *See* Mont. Secretary of State, Political Party

Qualification Petition, Ex. 1 to Compl. (requiring Montana voters to provide the “Date Signed”); Section 13-10-601(2)(a), MCA (requiring a political party to “present[] a petition, in a form prescribed by the secretary of state, requesting the primary election”); *see also Matter of DiSanzo v. Addabbo*, 76 A.D.3d 655, 656-657 (N.Y. App. Div. 2010) (signatures invalid when they contain the “incorrect date”) (citations omitted); *see also Matter of Merrill v. Fritz*, 120 A.D.3d 689, 690 (N.Y. App. Div. 2014) (“unexplained and uninitialed alterations to the dates on numerous signature lines, many of which were contained on petition sheets for which the appellant himself was the subscribing witness, required the invalidation of the designating petition”).

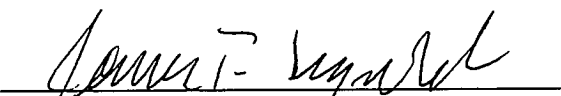
ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED** that:

1. Certain signatures on the Petition are declared invalid as set forth above. Removal of these signatures results in the Petition not qualifying in the 34 House districts required by § 13-10-601, MCA.

2. Plaintiffs’ complaint for a declaratory judgment removing the Montana Green Party from the election ballot is **GRANTED**. The Green Party’s Petition is declared invalid and the Secretary is directed to remove the Montana Green Party from the election ballot. The Secretary, his agents, officers, employees, and successors, and all persons acting in concert with each or any of them, are enjoined from implementing, enforcing, or giving any effect to certification of the Green Party’s Petition under § 13-10-601, MCA.

DATED this 7 day of July, 2018.



JAMES P. REYNOLDS
District Court Judge

C: Peter Michael Meloy, PO Box 1241, Helena, MT 59624
Kevin J. Hamilton, 1201 Third Avenue, Suite 4900, Seattle, WA 98101-3099
Emily Jones/Talia G. Damrow, PO Box 81274, Billings, MT 59108-1274
Quentin M. Rhoades, 430 North Ryman, 2nd Floor, Missoula, MT 59802

JPR/a/DDV-2018-295_FOF, COL and Order.doc