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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

NEW APPROACH MONTANA,
THEODORE J. DICK, and DAVID
M. LEWIS,

Plaintiffs,

vs.

STATE OF MONTANA, and
COREY STAPLETON,
SECRETARY OF STATE

Defendants.

Case No. BDV-2020-444

Hon. Michael F. McMahon

**COMPLAINT
FOR DECLARATORY AND
PRELIMINARY AND
TEMPORARY
INJUNCTIVE RELIEF**

For their Complaint against Defendants, Plaintiffs allege:

NATURE OF ACTION

1. This is an action for declaratory and injunctive relief pursuant to which Plaintiffs seek temporary authority, for purposes of the current election cycle only, (1) to obtain electronic signatures in support of their Petition to place Constitutional Initiative 118 (CI-118) and Statutory Initiative 190 (I-

190) on the 2020 ballot, pursuant to Montana's Uniform Electronic Transactions Act, MCA §§ 30-18-101, et seq.; and (2) to suspend and restrain the enforcement of certain statutory requirements and deadlines governing the initiative process.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over this action pursuant to MCA § 3-5-302.

3. Venue is proper in this Court pursuant to MCA § 25-2-126.

THE PARTIES

4. Plaintiff New Approach Montana is the registered ballot committee and sponsor of CI-118 (to amend the Montana Constitution to allow the people by initiative or the legislature to establish the legal age for purchasing, consuming or possessing marijuana) and I-190 (to legalize the possession and use of limited amounts of marijuana for adults over the age of 21).

5. Plaintiff Theodore J. Dick is a citizen and registered voter in the State of Montana, who brings this action on behalf of himself and all other similarly situated citizens and registered voters in Montana.

6. Plaintiff David M. Lewis is a citizen and registered voter in the State of Montana, who brings this action on behalf of himself and all other similarly situated citizens and registered voters in Montana.

7. The State of Montana is named as a Defendant because this action seeks to modify and restrain the enforcement of certain provisions governing the signature gathering process for initiative petitions.

8. Defendant Corey Stapleton is the Montana Secretary of State. He is sued in his official capacity only.

FACTS

9. The world, the United States of America, and the State of Montana are facing an unprecedented situation with the coronavirus pandemic.

10. The respiratory disease caused by the novel coronavirus, also known as COVID-19, is an infectious disease that can spread from person to person and can result in serious illness and death.

11. On January 30, 2020, after the coronavirus outbreak had spread throughout the world, the World Health Organization declared that COVID-19 constitutes a Public Health Emergency of International Concern.

12. On January 31, 2020, as a result of confirmed cases of COVID-19 in the United States, Health and Human Services Secretary Alex M. Azar

II declared a nationwide public health emergency retroactive to January 27, 2020.

13. On February 27, 2020, the Centers for Disease Control issued guidance recommending, among other things, that persons practice “social distancing,” to minimize contact with others in order to slow the spread of COVID-19.

14. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

15. On March 12, 2020, Governor Steve Bullock issued Executive Order No. 2-2020 declaring a state of emergency to exist within Montana relating to COVID-19.

16. On March 13, 2020, the President of the United States declared a national emergency (retroactive to March 1, 2020) due to the COVID-19 outbreak in the United States.

17. In order to prevent the spread of the virus, Governor Bullock has issued additional directives pursuant to his emergency authority under MCA § 10-3-104.

18. Each of those directives has ordered that schools, restaurants, bars, breweries and other places where groups of people gather and circulate are to be closed to the public, subject to limited exceptions.

19. The Governor's directives have also mandated that Montanans maintain social distancing and to the extent possible not be within six feet of other persons while in public places.

20. By directive dated March 26, 2020, the Governor issued a shelter in place order, requiring Montanans to remain in their homes subject to limited exceptions.

21. Based on the coronavirus pandemic and the associated executive orders and directives, it is neither ethical nor permitted under the terms of the Governor's executive orders and directives for the sponsors of CI-118 and I-190 to obtain signatures in person from Montana electors in order to qualify the initiatives for the 2020 ballot.

COUNT I
DECLARATORY JUDGMENT

22. Plaintiffs incorporate by reference all allegations above.

23. Pursuant to MCA §§ 27-8-201 and 202, this Court may adjudicate and declare the legal and constitutional rights of Plaintiffs with respect to the statutes governing the process for ballot measures.

24. Article III, § 4 guarantees the people of Montana the right to enact laws by initiative on all matters except appropriations and local or special laws.

25. Based on the situation relating to the coronavirus pandemic, certain statutory provisions governing the signature gathering process for initiatives nullify the ability of Plaintiffs to gather sufficient signatures to qualify CI-118 and I-190 for the 2020 ballot.

26. Specifically, those statutory provisions include:

a. MCA § 13-27-102, which requires a person gathering signatures to be a resident of Montana.

b. MCA § 13-27-103, which provides that a signature may not be counted unless the elector has signed in substantially the same manner as on the voter registration form on file with the local election office. The statute further provides that the signature may be counted as long as, taken as a whole, it bears sufficient similarity to the signature on the voter registration form.

c. MCA § 13-27-302, which requires that the person who gathers signatures must sign an affidavit swearing before a notary that the person gathered the signatures and believes that the signatures are genuine and signed by the person whose names they purport to be.

d. MCA § 13-27-304, which requires the county official verifying the number of registered electors signing the petition to forward the petition to the secretary of state by certified mail,

verifying that the official examined the signature sheets “in the manner prescribed by law,” that the signatures are valid, and attaching the affidavit of the signature gatherer.

e. Pursuant to Article III, § 4(2) of the Montana Constitution, petitions in support of CI-118 and I-190 must be filed with the secretary of state at least three months before the general election. For the upcoming general election, this deadline is August 3, 2020. The following are additional statutory deadlines applicable to the initiative process:

- i. MCA § 13-27-301: Petitions must be submitted to the county election office by no later than 4 weeks before the final date for filing the petition with the secretary of state. In 2020, this deadline is June 19, 2020.
- ii. MCA § 13-27-410: At least 110 days before the general election, the secretary of state must arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues. In 2020, this deadline is July 16.

- iii. MCA § 13-27-104: All petitions must be filed with the secretary of state before 5:00 p.m. of the third Friday of the fourth month before the general election. In 2020, this deadline is July 17.
- iv. MCA § 13-27-406: An argument advocating approval or rejection of a ballot issue must be filed with the secretary of state no later than 105 days before the general election. In 2020, this deadline is July 21. Rebuttal arguments are due 10 days later, by July 31.
- v. MCA § 13-27-303: The county elections official must check the names of all signers to verify they are registered voters of the county within 4 weeks after receiving petitions.
- vi. MCA § 13-12-201: Seventy-five days before the general election, the secretary of state must certify to the elections administrators the ballot issues that have qualified for the ballot. In 2020, this deadline is August 20.

27. Enforcement of the above statutes will result in the violation of constitutional rights of Plaintiffs and the people of Montana to amend the constitution and enact laws by initiative, as well as the rights of Plaintiffs and the people of Montana under the First and Fourteenth Amendments to the United States Constitution.

28. Montana's Uniform Electronic Transactions Act ("UETA"), provides that it applies to a "transaction," which is defined as "an action or set of actions occurring between two or more persons relating to the conduct of...governmental affairs." MCA §§ 30-18-102(18).

29. The UETA further expressly provides that "[i]f a law requires a signature, an electronic signature satisfies the law." MCA § 30-18-106(4).

30. The UETA further provides that an "electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including the showing of the efficacy of any security procedure applied to determine the person to which the electronic signature was attributable." MCA § 30-18-108.

31. A "security procedure" is defined as "a procedure employed for the purpose of verifying that an electronic signature...is that of a specific person...." MCA §§ 30-18-102(15).

32. Plaintiffs have arranged contract with DocuSign, which is a nationally recognized firm that processes transactions involving electronic signatures.

33. DocuSign has more than 500,000 customers and has processed hundreds of millions of electronic signatures and transactions for governmental entities, financial institutions, insurance companies, nonprofit entities, educational institutions, real estate transactions, healthcare providers, and legal services.

34. DocuSign has implemented sophisticated protocols and procedures that are recognized as being fully compliant with the Uniform Electronic Transactions Act.

35. DocuSign's protocols and procedures provide assurance and verification that a person executing an electronic signature is in fact that person and that the person intends to execute the electronic signature.

36. Under its protocols, DocuSign creates and maintains a secure electronic record of each transaction in which a person executes an electronic signature.

37. The electronic record, which provides all of the information required by MCA § 13-27-204, can be printed in hard copy and submitted to

election officials, as required by Montana law governing the signature gathering process.

38. Plaintiffs seek relief pursuant to Montana's Declaratory Judgment Act as follows:

a. For a declaration that for purposes of the current election only, and based on the emergency circumstances involving COVID-19, Plaintiffs are entitled to submit electronic signatures of qualified electors in Montana in support of CI-118 and I-190, subject to the condition that the electronic signatures comply fully with the requirements of the UETA;

b. For a declaration that for purposes of the current election only, and based on the emergency circumstances involving COVID-19, electronic signatures gathered in compliance with the UETA fully satisfy the verification requirements under Montana law;

c. For a declaration that for purposes of the current election only, and based on the emergency circumstances involving COVID-19, the provisions of MCA §§ 13-27-102, 103, 302 and 304 are suspended and are deemed to be satisfied by the verification and authentication protocols and processes employed by DocuSign pursuant to the UETA;

d. For a declaration that for purposes of the current election only, and based on the emergency circumstances involving COVID-19, the

statutory deadlines governing the signature gathering process shall be suspended and not enforced, subject to the requirement that all petitions must be submitted to the Secretary of State by no later than August 3, 2020 as required by Article III, § 4 of the Montana Constitution.

e. For a declaration that for purposes of the current election only, and based on the emergency circumstances involving COVID-19, the Secretary of State shall coordinate with local elections officials to establish the procedures for verifying the number of signatures gathered in support of CI-118 and I-190 after the petitions have been submitted to the Secretary of State by no later than August 3, 2020.

COUNT II
PRELIMINARY AND TEMPORARY INJUNCTION

39. Plaintiffs incorporate by reference all allegations above.

40. Based on the emergency circumstances that exist relating to the coronavirus pandemic, enforcing the statutory provisions identified above constitutes a violation of the constitutional right of Plaintiffs and the people of Montana to amend the constitution and enact laws by initiative as well as their rights under the First and Fourteenth Amendments to the United States Constitution.

41. The violation of the constitutional rights of Plaintiffs and the people of Montana constitutes irreparable harm, entitling them to preliminary and temporary injunctive relief pursuant to MCA §§ 27-19-101, et seq.

42. For purposes of the current election only and based on the emergency circumstances involving COVID-19, Plaintiffs seek preliminary and temporary injunctive relief restraining and enjoining the enforcement of the following statutory provisions governing the process for submitting petitions in support of ballot initiatives:

- a. MCA § 13-27-102
- b. MCA § 13-27-103
- c. MCA § 13-27-302, and
- d. MCA § 13-27-304

43. For preliminary and temporary injunctive relief, enjoining the enforcement, for purposes of the 2020 election only, the following statutory deadlines relating to the gathering of signatures and submission of petitions in support of ballot initiatives:

- a. MCA § 13-27-301
- b. MCA § 13-27-104
- c. MCA § 13-27-303(1), and
- d. MCA § 13-12-201(1)

44. For purposes of the current election only and based on the emergency circumstances involving COVID-19, Plaintiffs further seek preliminary and temporary injunctive relief entitling them to submit

electronic signatures in support of CI-118 and I-190, conditioned on the requirement that the electronic signatures comply fully with the provisions of the UETA.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

1. For a declaratory judgment declaring that for purposes of the 2020 election only, Plaintiffs are entitled to submit electronic signatures of qualified electors in Montana in support of CI-118 and I-190, subject to the condition that the electronic signatures comply fully with the requirements of Montana's UETA;

2. For a declaratory judgment declaring that for purposes of the 2020 election only, electronic signatures gathered in compliance with the UETA satisfy the requirements of Montana law governing initiatives;

3. For a declaratory judgment directing the Secretary of State to coordinate with local election officials to establish procedures for verifying the number of signatures submitted in support of CI-118 and I-190 after the petitions have been submitted to the Secretary of State by no later than August 3, 2020;

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4. For preliminary and temporary injunctive relief, enjoining the enforcement, for purposes of the 2020 election only, the following statutes governing the process for submitting petitions in support of ballot initiatives:

- a. MCA § 13-27-102
- b. MCA § 13-27-103
- c. MCA § 13-27-302, and
- d. MCA § 13-27-304

5. For preliminary and temporary injunctive relief, enjoining the enforcement, for purposes of the 2020 election only, the following statutory deadlines relating to the gathering of signatures and submission of petitions in support of ballot initiatives:

- a. MCA § 13-27-301
- b. MCA § 13-27-104
- c. MCA § 13-27-303, and
- d. MCA § 13-12-201

6. For an order declaring that the relief granted by the Court in this action is for purposes of this election cycle only, and shall have no precedential or binding effect on any subsequent elections;

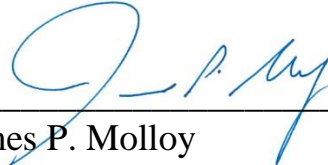
7. For an award of attorney fees and costs as allowed by Montana law; and

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8. For such further relief as this Court deems just, proper and equitable under the circumstances.

DATED THIS 6th day of April, 2020.

GALLIK, BREMER & MOLLOY, P.C.



James P. Molloy
Attorney for Plaintiffs

Certificate of Service

I hereby certify that I caused a true and correct copy of the foregoing to be delivered by email and by hand-delivery to the following on this 6th day of April, 2020:

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