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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION**

ROYAL DAVIS, GARY MARBUT, TOM)	
HARSCH, TERESA HARSCH,)	Case No. CV 20-62-H-DLC
)	
Plaintiffs,)	BRIEF IN SUPPORT OF
v.)	EMERGENCY MOTION FOR
)	INJUNCTION PENDING APPEAL
COREY STAPLETON, in his official capacity)	
as Montana Secretary of State,)	
)	
Defendant.)	
)	
and)	
)	
MONTANA DEMOCRATIC PARTY, <i>et al.</i> ,)	
)	
Intervenor-Defendants.)	

Plaintiffs filed a notice of appeal. Doc. 21. Pursuant to Rule 62(d) of the Federal Rules of Civil Procedure and Rule 8 of the Federal Rules of Appellate Procedure, Plaintiffs move this Court for an injunction pending appeal. Given the extreme urgency arising from the deadlines imposed by various provisions of Montana’s election statutes, Plaintiffs request an immediate ruling on this motion.

Immediate action on this motion is necessary because the Secretary of State is about to certify candidates for the general election ballot. A state district court has ordered him to exclude all Green Party candidates whose names were lawfully placed on the primary election ballot and declared by the Secretary to be the winners of their respective primaries after the canvass of votes. The Secretary and other Montana election officials will soon begin the process of preparing and printing ballots. The Secretary must then distribute the ballots to Montana's electors, starting with military and overseas electors on September 18, 2020.

Courts evaluate motions for preliminary injunction and motions for injunction pending appeal using the same standard. *Southeast Alaska Conservation Council, v. U.S. Army Corps of Engineers*, 472 F.3d 1097, 1100 (9th Cir. 2006). To obtain preliminary injunctive relief, a plaintiff must show (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm if injunctive relief is not granted, (3) the balance of equities tips in his or her favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,20 (2008). The Ninth Circuit uses a "sliding scale" approach to these factors by which "a stronger showing of one element may offset a weaker showing of another." *HiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 992 (9th Cir. 2019), quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

As to the merits, Plaintiffs need demonstrate only “serious questions going to the merits” when the balance of hardships tips sharply in Plaintiffs favor, as it does in this case. *Id.* Plaintiffs have, at a bare minimum, demonstrated serious questions going to the merits, as explained in their prior briefs to this Court. Doc. 4 at 12-16.

And, for reasons explained in their prior briefs, Plaintiffs and the nearly 800 other Montana electors who selected Green Party ballots are suffering a violation of their federal constitutional right to vote, a right that is central to a government based upon consent of the governed. The Montana Democratic Party’s right to remove rival candidates from the ballot, while not completely illusory, pales in comparison to Plaintiffs’ fundamental right to vote. Moreover, the public interest is clearly furthered by avoiding disenfranchisement of Green voters.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for an injunction pending appeal.

DATED: August 20, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiffs

CERTIFICATE OF COMPLIANCE PURSUANT TO L. R. 7.1(d)(2)(E)

I hereby certify that this document, excluding caption, tables and certificate of compliance, contains 487 words, as determined by the word processing software used to prepare this document, specifically Microsoft Word 2007.

DATED: August 20, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 20th day of August, 2020, that a copy of the foregoing will be delivered this day to all parties via the Court's ECF system:

DATED: August 20, 2020

Respectfully submitted,

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiffs