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

MONTANA DEMOCRATIC PARTY,

Plaintiff,

v.

THE STATE OF MONTANA and  
CHRISTI JACOBSEN, in her official  
capacity as Montana Secretary of State,

Defendants,

and

ROBERT BARB,

Intervenor.

Cause No.: BDV-2024-542

**ORDER**

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1 Before the Court are the following motions:

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- 3 1. The Montana Democratic Party’s (“Democratic Party”) Temporary  
4 Restraining Order and Preliminary Injunction Motion<sup>1</sup>. Montana, the  
5 Secretary of State (“the Secretary”), and Robert Barb oppose this  
6 motion. The motion is fully briefed.
- 7 2. Montana and the Secretary’s Motion to Dissolve the August 22,  
8 2024 Temporary Restraining Order. The Democratic Party opposes  
9 this motion. Mr. Barb does not oppose this motion. The motion is  
10 fully briefed.
- 11 3. Montana and the Secretary’s Summary Judgment Motion. The  
12 Democratic Party opposes this motion. Mr. Barb does not oppose  
13 this motion. The motion **is not** fully briefed.
- 14 4. Mr. Barb’s Dismissal Motion. The Democratic Party opposes this  
15 motion. Montana and the Secretary do not oppose this motion. The  
16 motion is fully briefed.

17 On August 30, 2024, a hearing was held on the pending motions  
18 except the pending summary judgment motion. For the reasons stated below, the  
19 Democratic Party’s motion is **DENIED**, Montana and the Secretary’s motion to  
20 dissolve is **DENIED as MOOT**, and Mr. Barb’s dismissal motion is **DENIED as**  
21 **MOOT**.

### 22 **FACTUAL BACKGROUND**

23 On June 4, 2024, Michael Downey prevailed over Mr. Barb by a  
24 substantial margin in the Green Party Montana U.S. Senate primary election.

25 On August 12, 2024, Mr. Downey lawfully and timely withdrew  
from the Montana U.S. Senate general election. Thus, leaving the Green Party  
with no 2024 U.S. Senate candidate.

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<sup>1</sup> Challenges to political election matters must often be decided on an expedited schedule, due to election calendar requirements. See e.g., *Larson v. State by and through Stapleton*, 2019 MT 28, 394 Mont. 167, 434 P.3d 241.

1                   On August 16, 2024, Mr. Barb filed suit in Lewis & Clark County  
2 District Court seeking to compel either the Green Party to nominate him or the  
3 Secretary to certify him as the Green Party nominee. *Barb v. Jacobsen*,  
4 DDV 2024-534.

5                   On August 19, 2024, Steve Kelley, the Green Party’s presiding  
6 officer, certified to the Montana Secretary of State that the Green Party’s  
7 “committee nominated, in accordance with Section 13-10-327, Montana Code  
8 Annotated,” Mr. Barb “as the Green Party nominee for the office of U.S. Senator  
9 to fill the vacancy created by the withdrawal/death of Michael Downey.” Mr.  
10 Kelly also requested that Mr. Barb’s “name . . . be placed on the ballot in the  
11 General Election to be held November 5, 2024, after having paid the prescribed  
12 filing fee, if applicable.” In addition, Mr. Barb, on the same form signed by Mr.  
13 Kelly, accepted the Green Party’s appointment. It appears undisputed that no  
14 general Green Party meeting or membership vote was held on this appointment.  
15 Later that day, Mr. Barb dismissed DDV 2024-534.

16                   On August 20, 2024, the Secretary received and filed the August  
17 19, 2024 “Certificate of Appointment of Replacement Candidate, Declaration of  
18 Acceptance and Oath of Candidacy” signed the day earlier by Mr. Kelly and Mr.  
19 Barb. As a result, Mr. Barb replaced Mr. Downey for purposes of 2024 U.S.  
20 Senate general election ballot.

21                   On August 22, 2024, the Secretary certified the 2024 general  
22 election ballot that included, in relevant part, Mr. Barb as the Green Party’s 2024  
23 U.S. Senate candidate.

24                   On August 22, 2024, at 2:33 p.m., the Democratic Party filed the  
25 instant lawsuit seeking declaratory and injunctive relief. On the same day, at

1 3:29 p.m., it filed its temporary restraining order and preliminary injunction  
2 motion (TRO motion) wherein, in relevant part, its attorney stated, “Plaintiff has  
3 provided written notice to Defendants.” At 3:30 p.m. that day, the Secretary was  
4 served, via a process server, with the Democratic Party’s Complaint and  
5 Summons but not its TRO motion. At the August 30, 2024 hearing, the Court  
6 learned that the Democratic Party’s counsel’s “notice” representation to Judge  
7 Seeley was not true. Instead, the Democratic Party’s counsel copied Mr. James  
8 and Mr. Austin in an email to Judge Seeley’s Scheduling Clerk at 4:10 p.m. with  
9 a courtesy copy of TRO motion and supporting brief. According to Mr. Johnson,  
10 he did not see the email until sometime the next week.

11 Later on August 22, 2024, at 7:06 p.m., the Secretary’s agent  
12 notified County Election Administrators/Officers that the 2024 ballot had been  
13 certified.

14 At 7:58 p.m. on August 22, 2024, Judge Seeley signed the  
15 Democratic Party’s proposed Temporary Restraining Order. The next day, this  
16 Court assumed this proceeding following Judge Seeley’s substitution.

### 17 **PRELIMINARY INJUNCTION STANDARD**

18 The 2023 Montana Legislature substantially altered when a district  
19 court may issue a preliminary injunction. Specifically, Mont. Code Ann. § 27-  
20 19-201 now provides:

21 (1) A preliminary injunction order or temporary restraining order may be  
22 granted when the applicant establishes that:

23 (a) the applicant is likely to succeed on the merits;

24 (b) the applicant is likely to suffer irreparable harm in the absence of  
25 preliminary relief;

1 (c) the balance of equities tips in the applicant’s favor; and

2 (d) the order is in the public interest.

3  
4 (2) An injunction order may be granted in either of the following cases  
5 between persons, not including a person being sued in that person’s official  
6 capacity:

7 (a) when it appears that the adverse party, while the action is pending,  
8 threatens or is about to remove or to dispose of the adverse party’s  
9 property with intent to defraud the applicant, in which case an  
10 injunction order may be granted to restrain the removal or disposition;  
11 or

12 (b) when it appears that the applicant has applied for an order under  
13 the provisions of 40-4-121 or an order of protection under Title 40,  
14 chapter 15.

15 (3) The applicant for an injunction provided for in this section bears the  
16 burden of demonstrating the need for an injunction order.

17 (4) It is the intent of the legislature that the language in subsection (1) mirror  
18 the federal preliminary injunction standard, and that interpretation and  
19 application of subsection (1) closely follow United States supreme court  
20 [sic] case law.

21 Mont. Code Ann. § 27-19-201 (2023).

22 A preliminary injunction does not resolve the merits of the case. *See*  
23 *Four Rivers Seed Co. v. Circle K Farms, Inc.*, 2000 MT 360, ¶ 12, 303 Mont.  
24 342, 16 P.3d 342 (citing *Knudson v. McDunn*, 271 Mont. 61, 65, 894 P.2d 295,  
25 298 (1995)). It is error for a district court to determine the ultimate merits of the  
case at the preliminary injunction stage. *Yockey v. Kearns Props., LLC*, 2005 MT  
27, ¶ 18, 326 Mont. 28, 106 P.3d 1185. (citations omitted) (emphasis added).

1 **DISCUSSION**

2 **Democratic Party’s Preliminary Injunction Motion**

3 The Democratic Party argues that the Green Party central  
4 committee’s August 19, 2024 nomination of Mr. Barb was ineffective and  
5 because the time to nominate a replacement for Mr. Downey has now statutorily  
6 passed, this Court should enjoin the Secretary from certifying any Green Party’s  
7 U.S. Senate candidate for the 2024 Montana General Election.

8 The relevant provision of the statute governing a vacancy in  
9 candidacy between primary and general election states:

10 [I]f a party candidate dies or withdraws after the primary and before  
11 the general election, ... the affected political party shall appoint  
12 someone to replace the candidate ...

13 (a) For offices to be filled by the state at large, the state central  
14 committee shall make the appointment as provided by the rules of  
the party.

15 Mont. Code Ann. § 13-10-327(1) (2023).

16 The Democratic Party argues that the Green Party’s central  
17 committee was not authorized to unilaterally nominate Mr. Barb, and that such  
18 deviation from the party’s bylaws violates Mont. Code Ann. § 13-10-327(1),  
19 thereby voiding Barb’s nomination.

20 “The [Green Party] membership shall be responsible for decision-  
21 making on statewide issues and endorsement of statewide candidates.” *Montana*  
22 *Green Party Bylaws*, Art. III. This provision is not applicable to the Democratic  
23 Party’s argument since the Green Party did not endorse Mr. Barb, instead its  
24 central committee, as agreed to by the Democratic Party, nominated/appointed  
25 Mr. Barb to replace Mr. Downey under Mont. Code Ann. § 13-10-327(1)(a).

1 Notwithstanding, however, the Democratic Party refers the Court to Article V of  
2 Green Party’s Bylaws that provides, “Consensus is preferred; if not possible,  
3 general decisions are passed by simple majority” of members attending a general  
4 meeting.

5           According to the Democratic Party, under the Green Party’s  
6 Bylaws, Mr. Barb’s nomination/appointment to replace Mr. Downey was a  
7 decision required to be made not by the Green Party’s central committee  
8 unilaterally, but rather by a simple majority vote of the membership under Article  
9 V. In addition, as the Democratic Party agreed, the Green Party’s Bylaws are  
10 silent as to the who makes the replacement appointment decision when a  
11 candidate withdraws. In this regard, Montana, the Secretary and Mr. Barb argue  
12 that in that event, since the Green Party’s “rules” are silent, it would be entirely  
13 up to the Green Party’s central committee to make the replacement  
14 nomination/appointment under Mont. Code Ann. § 13-10-327(1)(a).

15           The Democratic Party contends that since the Green Party did not  
16 comply with its Bylaws in appointing Mr. Barb as Mr. Downey’s replacement,  
17 the committee’s appointment is invalid. Thus, it maintains it has satisfied the first  
18 preliminary injunction element (likelihood of success).

19           What the Democratic Party conveniently ignores however, as  
20 pointed out by Mr. Barb, is the express and exclusive statutory process for  
21 contesting nominations such as Mr. Barb’s under Mont. Code Ann. § 13-36-102.  
22 There is no dispute that Mr. Barb’s nomination has not been timely or lawfully  
23 challenged by the very “contest” process the Legislature has provided for under  
24 Montana election law. See *Mont. Republican Party v. Graybill*, 2020 Mont.  
25 LEXIS 2196, 401 Mont. 556, 472 P.3d 1150.

1           This Court respectfully refuses to provide the Democratic Party an  
2 advisory opinion as to whether the Green Party’s central committee complied  
3 with Mont. Code Ann. § 13-10-327(1) in nominating Mr. Barb to replace Mr.  
4 Downey when the Democratic Party bypassed “the express statutory process for  
5 contesting [Mr. Barb’s August 19, 2024] nomination.” The Legislature “has the  
6 exclusive authority to provide, define, and limit the procedures, standards, and  
7 remedies available for enforcement of compliance with Montana’s election  
8 laws.” *Larson v State*, 2019 MT 28, ¶ 21, 394 Mont. 167, 434 P.3d 241. (citing  
9 authority).

10           Since the Democratic Party failed to comply with the Legislature’s  
11 exclusive nomination “contest” procedure, this Court finds, at this juncture in this  
12 proceeding, that the Montana Democratic Party is not likely to succeed on the  
13 merits in this matter and therefore, a preliminary injunction is neither permitted  
14 nor authorized under Mont. Code Ann. 27-19-201. Accordingly, the Democratic  
15 Party is not entitled to a preliminary injunction. Moreover, as a result, Judge  
16 Seeley’s August 22, 2024 Temporary Restraining Order must, and shall be,  
17 dissolved.

18 **Mr. Barb’s Dismissal Motion**

19           Since the Court has denied the Democratic Party’s TRO motion,  
20 which in itself, dissolves Judge Seeley’s August 22, 2024 Temporary Restraining  
21 Order, Mr. Barb’s pending dismissal motion, in the Court’s view, has become  
22 **MOOT**. If he disagrees, he can certainly file a companion summary judgment  
23 motion which will be decided in conjunction with Montana and the Secretary’s  
24 pending, but not fully briefed, summary judgment motion.

25 /////



1 **Montana and the Secretary’s Motion to Dissolve**

2 Since the Court has denied the Democratic Party’s TRO motion,  
3 which in itself, dissolves Judge Seeley’s August 22, 2024 Temporary Restraining  
4 Order, Montana and the Secretary Motion to Dissolve that Order, in the Court’s  
5 view, has become **MOOT**. A determination whether the Democratic Party gave  
6 proper notice to Montana and the Secretary under Mont. Code Ann. § 27-19-  
7 315(2)(a) would, in this Court’s view, be merely advisory and thus unlawful at  
8 this juncture.

9 **ORDER**

10 Based on the above, the Court hereby **ORDERS, ADJUDGES,**  
11 **AND DECREES** that:

- 12 1. The Democratic Party’s Temporary Restraining Order and  
13 Preliminary Injunction Motion is **DENIED**.
- 14 2. Montana and the Secretary’s Motion to Dissolve the August 22,  
15 2024 Temporary Restraining Order is **DENIED as MOOT**.
- 16 3. Mr. Barb’s Dismissal Motion is **DENIED as MOOT**.
- 17 4. Judge Seeley’s August 22, 2024 Temporary Restraining Order is  
18 **DISSOLVED, VACATED, and QUASHED** and thus, Montana,  
19 the Montana Secretary of State, their agents, officers, employees,  
20 successors, and all persons acting in concert with each or any of  
21 them, are **NO LONGER** temporarily stayed and/or enjoined from  
22 certifying a Montana Green Party candidate or otherwise allowing a  
Montana Green Party candidate to appear on the Montana ballot for  
the 2024 general election for U.S. Senate.

23 **ELECTRONICALLY SIGNED AND DATED BELOW**

24 cc: Caitlin B. Aarab, via email  
25 Thane Johnson/Alwyn Lansing, via email  
Rob Cameron, via email