No. _____

In the Supreme Court of the United States

COREY STAPLETON, MONTANA SECRETARY OF STATE,

Applicant,

v.

THE MONTANA DEMOCRATIC PARTY, TAYLOR BLOSSOM, RYAN FILZ, MADELEINE NEUMEYER, and REBECCA WEED

Respondents.

On Application to the Honorable Elena Kagan to Stay the Order of the Montana Supreme Court

EMERGENCY APPLICATION FOR STAY

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PARTIES TO THE PROCEEDING

Applicant is Corey Stapleton, Montana Secretary of State ("Secretary"), the defendant before the Montana District Court and the appellant in the Montana Supreme Court. Respondents, Montana Democratic Party ("MDP") and four individual voters, were plaintiffs at trial and appellees in the Montana Supreme Court.

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INTRODUCTION

This Court should stay, pending the filing and disposition of a petition for a writ of certiorari, the Montana Supreme Court's judgment removing state and federal Green Party candidates from the general election ballot after the Party held a primary election and on the eve of general election ballot printing. The Montana courts have, effectively, created chaos out of Montana's otherwise orderly election process, without ever adequately considering the First Amendment rights of Green Party candidates, voters, and ballot access supporters. In fact, no Green Party candidate, supporter, or funder was permitted to intervene in the matter. Rather, at the behest of a rival political party, the Montana courts have effectively voided thousands of votes cast in favor of the Green Party during the state's primary election and disenfranchised nearly 13,000 qualified electors who signed the petitions to place the Green Party on the ballot. Changing the rules for qualifying minor parties to hold their election primaries late in the election cycle at the request of a major party, or anyone else for that matter, is fundamentally unfair, especially when the Secretary of State followed established election laws and adopted rules.

At this late stage, without a stay, the mere passage of time will decide this case, extinguishing any constitutional claims by default and frustrating judicial review. The Secretary is required to soon begin printing general election ballots. Under the status quo, these ballots will be printed without the Green Party's federal

and state candidates. And once the ballots are printed, those who supported the Greens' ballot access will be without remedy.

This Court has repeatedly and recently stayed or upheld stays of orders that fundamentally alter a state's election laws, threaten the integrity of the electoral process, and undermine voter confidence in the electoral process. *See Little v. Reclaim Idaho*, 591 U.S. __, 2020 WL 4360897 (July 30, 2020)*; Merrill v. People 1st of Ala.*, 591 U.S. __, 2020 WL 3604049 (Jul. 2, 2020); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (Jun. 26, 2020); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205 (Apr. 6, 2020). The Montana Supreme Court's order does just these things, and unlike some of the cases in which this Court has recently acted, this matter involves candidates for federal office. On the eve of printing general election ballots, the Montana courts have completely rewritten the minor party petition process, removing the Montana Green Party and its state and federal candidates from the ballot. A stay is necessary to preserve the integrity of Montana's electoral process and voters' confidence in the system.

OPINIONS AND ORDERS BELOW

The Montana Supreme Court's order denying a stay to permit a petition for writ of certiorari is reproduced at App. 1. The Montana Supreme Court's order removing the Green Party from the general election ballot is reproduced at App. 3. And the district court's Findings of Fact, Conclusions of Law, and Order are reproduced at App. 5.

JURISDICTION

This Court has jurisdiction over this Application under 28 U.S.C. §§ 1257(1), 1651(a), and 2101(f). The Montana Supreme Court issued a final order on August 19, 2020, affirming the action of a state trial court in striking the Montana Green Party's federal and state candidates from the state's general election ballot after they had already qualified to appear by prevailing in the June primary election. The Green Party participated in and chose its federal and state general election candidates through the primaries after thousands of Montanans signed a ballot access petition and the Secretary ruled it sufficient on March 6, 2020. The Montana Supreme Court, however, nullified the petition and invalidated the thousands of primary votes cast in favor of the Montana Green Party by recognizing a state constitutional "right not to associate," thereby allowing voters to withdraw their signatures from the Green Party ballot access petition months after it was ruled sufficient—even after the primary—and, in violation of Montana law. The Montana Supreme Court failed, however, to recognize the constitutional implications of its Order. The Court has deprived petition proponents of their First Amendment right to effectively associate and has thrown the state's federal and state elections into chaos.

This Court has jurisdiction to hear this dispute under 28 U.S.C. § 2101(f). This Applicant has been denied relief by the Montana lower courts and the Montana Supreme Court, the court with current jurisdiction over the matter, has denied a motion for stay.

STATEMENT OF THE CASE

The Montana Supreme Court has removed the Green Party from the general election ballot on the eve of ballot certification, effectively voiding thousands of votes cast in favor of the Party during the state's primary election process. Absent intervention from this Court, Montana's general election ballots will be printed without the Green Party's candidates listed. At that point in time, no adequate remedy will remain. On the other hand, if a stay is granted the Court will be provided an opportunity to decide whether the Montana Supreme Court's order violated the First Amendment rights of Green Party ballot access supporters to effectively associate, and to exercise more than a merely "theoretical" right to federal ballot access. If it is ultimately determined that the Montana courts properly removed the Montana Green Party from the general election ballot, the Montana Secretary of State will have options for remedying the printed ballots (such as marking out or covering up listed Green Party candidates).

The following is a brief summary of the underlying facts and procedural posture.

A. The Montana Democratic Party filed suit to remove the Green Party from the ballot one day before the state's primary elections.

In early 2020, over 13,000 Montana electors validly signed a petition to qualify the Green Party to hold a primary election. (Tr. 234:14-17).[1] The petition stated: "We, the undersigned and registered voters of the state of Montana hereby request that in

[1] Relevant excerpts from the transcript are attached at App. 323.

accordance with 13-10-601, MCA, the names of the candidates running for public office from the Green Party be nominated as provided by law." The petition circulators turned in the signatures to county clerks by March 2, as required by law; the petition was certified on March 6; Green candidates filed nominating papers by the March 9 deadline; and the Secretary certified the Green Party primary ballots to county clerks by March 19. (Tr. 231:15 – 234:12). The Green Party primary ballots were then immediately designed and printed; they were mailed to overseas voters no later than April 17; by May 8, they were mailed to absentee list voters and all voters residing in areas where election authorities chose to vote by mail due to Covid; and only in-person voting remained to occur on June 2. (Tr. 240:10-14).

During this time, however, the Montana Democratic Party ("MDP") had launched a massive withdrawal campaign to convince petition signers that the Montana Republican Party ("MTGOP") had committed election fraud by submitting a "phony" petition because they had funded the petition efforts. (*See, e.g.,* Tr. 84:11 – 86:4). This well-orchestrated political effort by MDP, however, did not generate sufficient withdrawals before the Montana Secretary of State certified the minor party petition, under M.C.A. § 13-10-601, on March 6, 2020 or by March 9, 2020 when candidates needed to file their declarations of candidacy. (Tr. 233:1-11).

Indeed, the MDP campaign led to sufficient withdrawals only shortly before the June 2, 2020, primary election itself—long after candidates were declared, and ballots were printed, mailed, and cast. (Tr. 112:19 – 113:3; 115:11-17). In other words, the MDP continued collecting and submitting signature withdrawals after the Green

Party had qualified to appear on the ballot, after candidates had filed to run and begun their campaigns, and after votes had been cast.

On June 1, 2020, one day before the primary election, MDP filed a lawsuit challenging the Green Party's qualification to appear on the primary and general election ballots. MDP, along with four individual plaintiffs who had submitted signature withdrawals, sued the Montana Secretary of State, seeking a declaratory judgment that the MDP's signature withdrawals were valid and should have been counted, thereby rendering the Green Party's qualifying petition insufficient.

The Montana district court and supreme court both granted the MDP declaratory and injunctive relief, removing the Green Party and its federal and state candidates from the general election ballot.

B. The Montana courts have reworked Montana's minor party petition process at the eleventh hour.

The Montana courts have effectively rewritten the state's minor party petition process on an *ex post* basis in order to throw the Montana Green Party and its candidates off the general election ballot on the eve of ballot printing. The Montana courts have long followed the "final action" rule for determining the time period by which petition signature withdrawals must be filed. Under this rule, withdrawals are acceptable up until final action is taken on the petition. *State ex rel. Lang v. Furnish,* 134 P. 297, 300 (1913). In regards to state-wide petitions, Montana courts have consistently held that final action occurs when "the secretary of state has finally

determined, in the manner provided by statute, that the petition is sufficient." *Ford v. Mitchell*, 61 P.2d 815, 823 (1936).

The Montana courts have now thrown out this nearly century-old precedent in order to remove the Green Party from the general election ballot. Now, signature withdrawals from minor party petitions are permitted up "until the Board of State Canvassers tabulates the votes" from the primary election—allowing buyer's remorse weeks after the election is actually held, and when the unofficial results are widely known. (App. 5, COL, ¶ 20). Ignoring the merits of this decision, the courts have created a system by which minor party proponents must submit their petition and then sit back and watch for months as petition opponents pressure, corner, and extract withdrawals from petition signers. All the while, proponents are unable to continue to exercise their First Amendment rights to speak and associate in opposition to the withdrawal efforts, as the state gives them no ability to add signatures of their own.

Here, the petition proponents submitted their signatures in early March. The Secretary certified that the signatures satisfied the statutory requirements to place the Green Party on the primary ballots. Before this time, the MDP and petitioners alike had the opportunity to solicit withdrawals or new supporters. But for months after petitioners were forced to go "pencils down," at petition turn-in, the MDP was allowed to pressure petition signers into retracting their signatures. All the while, petition proponents had no option other than hoping their signatures held up under the MDP's pressure campaign.

Equally problematic is the courts' rewrite of Montana withdrawal requirements. Montana courts have long required signature withdrawal requests satisfy the same formalities required for collecting initial signatures. *Ford*, 61 P.2d at 822 (holding that if withdrawals are to be allowed, they must be completed "in an appropriate manner," and finding that certification on withdrawal petition was sufficient because it was identical to the certification required on the underlying initiative petition). This requires a wet-ink signature that is "substantially the same" as the individual's signature on their voter registration form. M.C.A. § 13-27-103. And requires some sort of verification (such as an affidavit) that the withdrawal is legitimate. M.C.A. § 13-27-303.

Despite this long-standing precedent, Montana courts have now ruled that DocuSign withdrawals with no wet-ink signature and no supporting affidavit are acceptable. (App. 5, COL ¶¶ 52–55). In fact, the Montana courts have rewritten the rules in such a way as to render a mere email or phone call to a local election administrator sufficient to remove an elector's name from a petition. (App. 5, COL ¶ 52). Therefore, the formality requirements imposed on signature gatherers are no longer equally applied to those who subsequently wish to remove their signatures from the petition.

REASONS FOR GRANTING THE APPLICATION

This Court will grant a stay if there is "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reserve the judgment below; and (3)

a likelihood that irreparable harm will result from the denial of the stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see* 28 U.S.C. § 2101(f). "In close cases," the Court will also "balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth*, 558 U.S. at 190.

The requirements for a stay of the Montana Supreme Court's decision, pending the filing and resolution of a writ of certiorari, are met here.

A. There is a reasonable probability that at least four Justices will find certiorari warranted.

The Montana Supreme Court's order violates this Court's binding precedent and the First Amendment by refusing to recognize that, where states allow citizens to achieve political goals by submitting petitions that meet certain statutory requirements, petition signers have a First Amendment interest in effectively associating and speaking through that petition process. Relatedly, supporters of minor party ballot access have a First Amendment interest in petition requirements that are reasonable and do not render ballot access merely theoretical. These First Amendment rights do not, as the district court found, arise only after petition supporters have amassed sufficient signatures.

Alternatively, the Montana Supreme Court decision implicates a circuit split recently outlined by this Court when it granted a stay in *Little v. Reclaim Idaho*, 591 U.S. __ (July 30, 2020). Specifically, in refusing to recognize the First Amendment associational rights of signers to effective petition procedures, the Montana Supreme Court seems to have sided with those Circuits that have determined regulations

placed on the initiative process "do not implicate the First Amendment so long as the state does not restrict political discussion or petition circulation." *Id.* This Court should grant the requested stay because there is a reasonable probability that at least four Justices will vote in favor of granting certiorari.

1. The Montana courts have disregarded the First Amendment and this Court's binding precedent.

This Court has been clear: the First Amendment protects the right of *effective* association to achieve a political goal. *Norman v. Reed*, 502 U.S. 279, 288 (1992); *Anderson v. Celebrezze*, 260 U.S. 780, 793 (1980). In regards to the petition process, the First Amendment right of effective association guarantees a state cannot impose undue burdens on the signature gathering process. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186-87 (1999) (invalidating Colorado requirements placed on the petition process because the First Amendment right of effective association is "at its zenith" in regards to the petition process). In this Court's first initiative petition case, the Court invalidated an *indirect* restriction on speech (a ban on paid circulators) because forcing supporters to rely on volunteers impairs their association right "in two ways." *Meyer v. Grant,* 486 U.S. 414, 422-23 (1988). First, it "limits the size of the audience they can reach." *Id.* And "[s]econd, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." *Id.* Just like the hurdles created by the Colorado legislature

that were invalidated in *Meyer* and *Buckley*, the Montana courts have now created numerous undue burdens on the state's minor party petition process.

Further, this Court has repeatedly and clearly instructed federal district courts that they may not alter state election procedures in a way that could fundamentally alter the nature of the election and cause voter confusion, particularly close to or in the midst of an election. *See, e.g., Purcell v. Gonzalez,* 549 U.S. 1, 4-5 (2006).[2] While the relevant orders do not come from a federal district court, the same policies apply here. The Montana courts have altered the minor party petition process in such a way as to throw the Montana Green Party off the general election ballot after qualifying for the ballot and receiving thousands of votes in the primaries. Such a drastic change to the ballot on the eve of the ballot certification and printing will surely cause voter confusion and interfere with the public interest in having orderly elections.

a) Montana courts have created significant undue burdens upon petition proponents.

The Montana courts have rewritten the state's minor party petition process and have imposed significant unconstitutional burdens upon petition proponents. Across the country and across the decades, court after court has recognized that allowing withdrawals after the proponents' filing deadline—at which point no further

[2] The policies underlying the *Purcell* decision are so fundamental that this Court routinely steps in to enforce such policies. *See, e.g., Abbot v. Perez*, 138 S.Ct. 49 (2017); *Gill v. Whitford*, 137 S.Ct. 2289 (2017). This Court's intervention is necessary to prevent "fundamental" alterations to the election process on the eve of an election. *Repub. Nat. Comm. v. Dem. Nat. Comm.*, 140 S.Ct. 1205, 1207 (2020). "[W]hen a lower court intervenes and alters the election rules so close to the election date, our precedents indicate that this Court, as appropriate, should correct that error." *Id.*

signatures in support may be submitted—is "unworkable," making it so impossible to mount a petition campaign that it jeopardizes the petition right itself. *See, e.g., Rekart v. Kirkpatrick*, 639 S.W.2d 606, 608 (Mo. banc 1982) ("To permit withdrawals after the petition is completed and filed, and the work of securing signatures abandoned, seems to us to make the system wholly unworkable. We do not believe that this mere implied power of the signer, which is not expressly provided for in our Constitution or statutes, can be used so as to jeopardize the exercise of the constitutional right itself.").

Now in Montana, however, petition opponents will be permitted to fish for withdrawals months after the petition proponents have submitted signatures. A petition—which by definition requires an ascertainable, verifiable list of names—simply cannot work if an entire withdrawal campaign can be mounted after the proponents are required to stop gathering signatures. Petition proponents will never be able to predict how many people will change their minds or be pressured to change their position during this extended "withdraw-only" phase. In a real sense, a proponent can never gather enough signatures because opponents will have months to sit back and bombard signers with texts and emails, picking off voters one by one. This will be a particularly effective tool in states like Montana, where the law requires that a certain threshold of signatures be met in one-third of the house districts. An opponent will merely have to target enough districts to bring the petition under the threshold. In state like Montana, with a smaller population, this may only require removing 5-10 signatures, such as it did in this case. This will certainly chill future ballot access efforts.

Not only have Montana courts now permitted a months-long withdrawal campaign after signatures have been gathered and verified, the courts have also created a process by which withdrawals can be submitted and counted in a significantly less demanding fashion than the gathering of signatures. While proponents are required to follow stringent statutory requirements (such as wet-ink signatures verified by a notarized affidavit), opponents are now permitted to obtain withdrawals through DocuSign or even through phone calls to county election officials. Thus, opponents can now easily nullify petition proponents' efforts by targeting the nearest-margin districts and directing electors to simply call or email their withdrawals to county election officials. There can be no doubt that the Montana courts' orders have fundamentally altered the election process on the eve of elections. These alterations have rendered Montana's minor party ballot access by petition a "theory" rather than a usable system for winning voter support.

Importantly, Montana courts have not only rewritten the rules for minor parties wishing to participate in *state* elections, Montana's new rules apply equally to *federal* elections. This Court has recognized that "state-imposed restrictions implicate a uniquely important national interest" when federal elections are implicated. *Anderson*, 460 U.S. at 781. Here, the Green Party did in fact nominate a candidate in Montana's U.S. senate race (Wendie Fredrickson), but that candidate has now been thrown off the ballot, *after* she beat a contender in the Green Party primary. This Court's intervention is necessary to ensure arbitrary restrictions and undue burdens are not placed on candidates for federal election.

b) Montana now has a two-part petition campaign process.

Under Montana's new process, a petition drive will consist of two separate campaigns. In the first campaign—the portion of the campaign that has existed for decades—circulators are required to follow strict petition rules. This includes a requirement that signature gatherers verify that the petition signers did indeed present themselves to the circulator and sign, and that they knew what they were signing. The circulator's affidavit must then be notarized.

During this first phase, petition opponents are free to counteract circulators by following them and attempting to discourage voters from signing—a frequent tactic—and are free to mount a simultaneous withdrawal campaign as signatures are gathered. Proponents, in turn, can observe and respond to the opponents' message as they talk to voters in the field. And, importantly, they can monitor their own petition results and have some sense of who has signed to become part of their association. If the opponents' counter-message begins to resonate and withdrawals begin to be filed, proponents can try to expand their efforts to gather even more signatures. It is this basic transparency and predictability—knowing who has signed on to join the team as the campaign draws to a close—that gives political supporters the confidence that a petition can be effective, and to commit their time and money to the petition process.

But now, every Montana ballot access effort will have a second phase. Unlike the first phase, only the petition opponents will hold the key to membership in the petition-association. The petition will essentially become theirs. Having gained the advantage of seeing the proponent's hand and reserving all of their resources for phase

two, opponents have the luxury of running a targeted pressure campaign. Rather than approaching the general population, they will be able to pick off specific individuals in specific areas where the proponents' margin was thinnest. Using modern data mining tools, they can obtain phone numbers and email addresses and continually pressure their targets in private and in secret, with no further participation by the proponents. This is precisely what MDP did here.

Once the campaign-after-the-campaign becomes the rule, petition proponents will never be able to predict how many people will change their minds or be pressured to change their position during this extended "withdraw-only" phase. In a real sense, a proponent can never gather enough signatures because opponents will have months to sit back and bombard signers with texts and emails, picking off voters one by one. This will certainly chill future ballot access efforts.

In conclusion, states do not need to use nominating petitions to allow minor party ballot access. But once they do so, states must afford proponents a process that gives real effect to their political association and speech. "If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process ... the First Amendment rights that attach to their roles." *Republican Party of Minn. v. White,* 536 U.S. 765, 788 (2002) (internal quotation marks and ellipsis omitted). Because Montana's new system thwarts an otherwise orderly and predictable process, the underlying judgments infringe on First Amendment rights to the United States Constitution by undermining Montana's rights to petition, to vote, and to access the State's primary processes.

2. There is a reasonable probability that at least four Justices will vote for certiorari to resolve a circuit split.

As highlighted in the Court's recent stay granted in *Little v. Reclaim Idaho*, 591 U.S. __ (July 30, 2020), a circuit split currently exists as to whether state laws regulating the mechanics of the petition process implicate the Free Speech Clause of the First Amendment. On one side, the Tenth, Seventh, and D.C. Circuits have all held that such laws do not implicate the First Amendment. *Initiative and Referendum Institute v. Walker*, 450 F.3d 1082, 1099-1100 (10th Cir. 2006) (holding that petition regulations are not laws that "regulate or restrict the communicative process of persons advocating a position in a referendum" and therefore do not implicate the First Amendment); *Jones v. Markiewicz-Qualkinbush*, 892 F.3d 935, 937 (7th Cir. 2018) (holding that Illinois' regulations on the petition process did not implicate the First Amendment because "it did not distinguish by viewpoint or content."); *Marijuana Policy Project v. United States*, 304 F.3d 82, 83 (D.C. Cir. 2002) ("the legislative act—in contrast to urging or opposing the enactment of legislation—implicates no First Amendment concerns").

On the other hand, the First, Sixth, and Ninth Circuits have all held that laws regulating the petition process implicate the First Amendment. *Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012) (regulations on the initiative petition process "indirectly impact core political speech."); *Wirzburger v. Galvin*, 412 F.3d 271, 276 (1st Cir. 2005) (finding that petition regulations prevented plaintiffs "from engaging in the sort of activity that implicates the First Amendment."); *Thompson v. Dewine*,

959 F.3d 804, 808 (6th Cir. 2020) (evaluating whether the petition regulations infringed on plaintiffs' First Amendment rights).

As this Court has seen over the last few months, federal courts are being inundated with petition and election challenges. Given the current pandemic, states are acting swiftly to alter the applicable rules and regulations—often with good motives. However, these alterations on the eve of elections create significant constitutional questions. Here, the Montana courts—rather that the current pandemic—have altered Montana's petition rules on the eve of the elections. Nevertheless, the constitutional ramifications of these alterations are equally important. This Court needs to provide clarification on whether regulations governing petition procedures implicates First Amendment rights.

B. There is at least a fair chance that the Montana Supreme Court's decision will be overturned.

Given the reasonable probability that four Justices will grant certiorari, it is less important to consider the prospects of reversal. *See In re Roche*, 448 U.S. 1312, 1314 n.1 (1980) (Brennan, J., in chambers) ("[T]he consideration of prospects for reversal dovetails, to a great[] extent, with the prediction that four Justices will vote to hear the case. Thus, it may be that the 'fair prospect'-of-reversal criterion has less independent significance in a stay determination when review will be sought by way of certiorari."). However, even if this factor must be independently considered, it is met.

First, no Montana court has given due weight to petition proponents' First Amendment right to effective association. This Court has expressly and routinely recognized such a right exists in the petition process. Yet, here, no lower court considered the constitutional ramifications of its order. Without considering this right, the Montana courts have eviscerated the state's orderly minor party petition process, thereby infringing on applicable constitutional rights. There can be no doubt that creating a system by which petition proponents and petition opponents are treated entirely different violates the First Amendment.

Further, this Court's instruction in *Purcell* demonstrates that Applicant has a fair chance of success on the merits. Montana and its electors have "a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral processes is essential to the function of our participatory democracy." *Purcell*, 549 U.S. at 4 (internal citation omitted). The Montana judiciary, however, has undermined this compelling interest by issuing orders in the midst of an election that fundamentally alter the election and will cause voter confusion. The Montana courts' extreme deviation from the policies enumerated in *Purcell* demonstrates there is at least a fair chance that the courts' orders will be overturned as violating these principles.

Finally, this Court should approve the conclusions of the First, Sixth, and Ninth Circuits that have all held that even procedural laws can implicate the First Amendment where they unduly burden political association and, when the right to federal ballot access is at issue, render that right more theoretical than practical.

Montana's new judge-made rules call into question the very idea of a "petition," as signatures that were required to be made in-person and with verification could be withdrawn by a mere phone call, weeks after the result petitioned for—a primary election—was already obtained, allowing for buyer's remorse. Without some reasonable degree of permanency of signatures, and without equal opportunities to add and subtract signatures, the ballot access procedure allows for "petitions" in name only. There is a reasonable likelihood that this Court will find that Montana's new dichotomy violates the First Amendment.

C. Applicant, and the State of Montana, will suffer irreparable harm if the requested stay is not granted.

The State of Montana and the minor party petition proponents will be irreparably harmed if a stay is not granted. Currently, the Montana Green Party is set to be removed from the general election ballot. Therefore, both federal and state Green Party candidates will have their campaigns cut short and will, forever, lose the ability to run for office in 2020. Further, the thousands of votes cast in favor of the Green Party during the primary elections will be invalidated. And the current orders to remove the Green Party from the ballots will surely cause voter confusion when voters appear at the polls and cannot find their Green candidates to support.

Further, without a stay, the mere passage of time will decide this case, extinguishing the minor party petition proponents' First Amendment claims by default and frustrating judicial review. The Secretary is required to certify the general election ballots on August 20, 2020, with printing and mailing to occur soon

after. M.C.A. § 13-12-201. Under the status quo, these ballots will be printed without the Green Party's federal and state candidates. Once the ballots are printed and mailed, those who supported the Greens' ballot access will be without remedy. On the other hand, if a stay is granted, the United States Supreme Court will be provided an opportunity to decide whether the First Amendment rights of Green Party ballot access proponents should have been considered and enforced. If it is ultimately determined that the Montana Green Party was properly removed from the general election ballot, the Secretary of State will have options for remedying the printed ballots (such as by marking out or covering up listed Green Party candidates). There are no such options, however, if proponents prevail and no stay is granted. Therefore, in the interest of preserving the availability of a federal forum for determining the application of applicable First Amendment defenses to the Plaintiff-Appellees' state law claims and to prevent irreparable harm, this Court should grant the application for an emergency stay.

The current timeline of events prevents this Court from considering this matter through the normal certiorari process. A stay is necessary to allow this Court an opportunity to review the matter. The serious harm that Applicant and State of Montana will suffer far outweigh any possible injury to the opponents of the Green party.

CONCLUSION

Applicants respectfully request that this Court stay the Montana courts' orders removing the Montana Green Party from the general election ballot in order to permit this Court an opportunity to review the Applicant's petition for writ of certiorari.

Respectfully submitted,

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