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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

THOMAS BRECK,  
DANIELLE BRECK, and  
STEVE KELLY,

CV 17-\_\_\_\_\_

Plaintiffs,

vs.

VERIFIED COMPLAINT

COREY STAPLETON,  
in his official capacity as  
Secretary of State of the  
State of Montana, )

Defendant.

### **Nature of the Case**

1. This is an action under 42 U.S.C. § 1983 to enforce rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution. At issue is Montana's ballot-access scheme for independent and minor-party candidates as applied to the plaintiffs in the at-large special election set for May 25, 2017, to fill the seat vacated by former Congressman Ryan Zinke upon his confirmation as Secretary of the Interior. The plaintiffs seek declaratory and injunctive relief prohibiting the defendants from enforcing the ballot-access scheme in an unconstitutional manner.

### **Jurisdiction and Venue**

2. This Court has original jurisdiction over this case under Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3).
3. This suit is authorized by 42 U.S.C. § 1983.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
5. Venue is proper in the District of Montana under 28 U.S.C. § 1391(b) and in the Missoula Division pursuant to LR 3.2 and LR 1.2(c).

### **Parties**

6. Plaintiff Thomas Breck is a United States citizen and a resident of the State of Montana. He is a resident and registered voter in Missoula

County, Montana. He is the nominee of the Montana Green Party in the May 25 special congressional election.

7. Plaintiff Danielle Breck is a United States Citizen and a resident of the State of Montana. She is a resident and registered voter in Missoula County, Montana. She is a member of the Montana Green Party and would like to have the opportunity to vote for Thomas Breck in the May 25 special congressional election.

8. Plaintiff Steve Kelly is a United States citizen and a resident of the State of Montana. He is a resident and registered voter in Gallatin County, Montana. He ran for Congress as an independent candidate in 1994 and wants to run as an independent candidate in the May 25 special congressional election.

9. Defendant Corey Stapleton is the Secretary of State of the State of Montana and is charged by statute enforcing Montana's ballot-access scheme for independent and minor-party candidates seeking to run in the May 25 special congressional election. He is sued in his official capacity only.

### **Factual Background**

10. On March 1, 2017, U.S. Representative Ryan Zinke resigned from Congress, effective immediately, in order to take office as Secretary of

the Interior. His resignation created a vacancy in Montana's at-large congressional seat.

11. On the same day, Montana Governor Steve Bullock ordered a special election to fill the vacancy. He set the election for May 25, 2017 – 85 days following the vacancy – which was the earliest date allowed by Montana law. Mont. Code Ann. § 10-25-203.

12. Ballot access in the special congressional election is governed by Mont. Code Ann. § 13-25-205, which contains one provision for candidates nominated by qualified political parties, and a different provision for independent and minor-party candidates.

13. A qualified political party is any party that had a candidate for statewide office who met a certain vote threshold in either of the last two general elections or that submitted a party-qualifying petition meeting the requirements of Mont. Code Ann. § 13-10-601 at least 82 days before the election at which it seeks to have its candidates appear on the ballot.

14. Qualified parties nominate candidates for the special election according to party rules and must notify the Secretary of State of its nominee no later than 75 days before the election. Mont. Code Ann. § 13-25-205(1).

15. Qualified-party candidates must also file a declaration and oath of candidacy form and, unless filing as indigent, pay a filing fee no later than 75 days before the election. Mont. Code Ann. § 13-10-202.

16. Independent and minor-party candidates, on the other hand, can appear on the special-election ballot only if the candidate or party submits declaration and oath of candidacy form and a nominating petition containing a sufficient number of signatures no later than 82 days before the election. Mont. Code Ann. §§ 13-25-205(2), 13-10-503.

17. The number of signatures required on a nominating petition for a special election is the same number required for a general election: 5% or more of the total vote cast for the successful candidate for the same office at the last general election. Mont. Code Ann. § 13-10-502(2).

18. Unless filing as indigent, independent and minor-party candidates must also pay a filing fee no later than 82 days before the election. Mont. Code Ann. § 13-10-503(1).

19. For the May 25 special election called by Governor Bullock on March 1, the 82nd day before the election fell on Saturday, March 4.

20. Under Montana law, most deadlines that fall on weekends are automatically moved to the next business day, Mont. Code Ann. § 1-1-307,

so the legal deadline for independent and minor-party candidates to qualify for the May 25 special-election ballot fell on Monday, March 6.

21. However, the Montana Secretary of State published an election calendar for the special election on his website which incorrectly identified the deadline as Friday, March 3. The Secretary of State corrected the deadline on his website sometime after March 6.

22. For the May 25 special election, the number of signatures required on the nominating petition for independent and minor-party candidates is 14,268.

23. The filing fee for the May 25 special election is \$1,740.

24. The Montana Green Party is the state-level affiliate of the Green Party of the United States. It has run candidates for U.S. President, governor, lieutenant governor, and the Montana state legislature since the party's formation in 2001. It is a minor party for purposes of access to the ballot in the May 25 special election.

25. On March 4, 2017, the Montana Green Party held a convention and chose plaintiff Thomas Breck to be the party's nominee in the May 25 special election.

26. Plaintiff Thomas Breck submitted a declaration and oath of candidacy form and a statement of indigency to the Montana Secretary of

State's office on March 10, 2017. He did not submit a nominating petition containing more than 14,268 valid signatures.

27. Plaintiff Steve Kelly submitted a declaration and oath of candidacy form and a statement of indigency to the Montana Secretary of State's office on March 6, 2017. He did not submit a nominating petition containing more than 14,268 valid signatures.

28. Neither Breck nor Kelly has yet received notice from the Montana Secretary of State that his name will not appear on the ballot for the May 25 special election.

### **Claim One**

29. Montana's ballot-access scheme for independent and minor-party candidates, as applied to the plaintiffs in the May 25 special election, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983.

### **Relief**

30. A real and actual controversy exists between the parties.

31. The plaintiffs have no adequate remedy at law other than this action for declaratory and equitable relief.

32. The plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, the plaintiffs respectfully pray that this Court:

- (1) assume original jurisdiction over this case;
- (2) enter a declaratory judgment that Montana's ballot-access scheme for independent and minor-party candidates, as applied to the plaintiffs in the May 25 special election, violates rights guaranteed to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution, as enforced by 42 U.S.C. § 1983;
- (3) enjoin the Secretary of State from enforcing Montana's ballot-access scheme for independent and minor-party candidates against plaintiffs Thomas Breck and Steve Kelly in the May 25 special election;
- (4) issue a writ of mandamus requiring the Secretary of State to add plaintiffs Thomas Breck and Steve Kelly to the special-election ballot;
- (5) award the plaintiffs nominal damages;



(6) award the plaintiffs the costs of this action together with their reasonable attorneys' fees under 42 U.S.C. § 1988; and

(7) retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Respectfully submitted this 21st day of March, 2017.

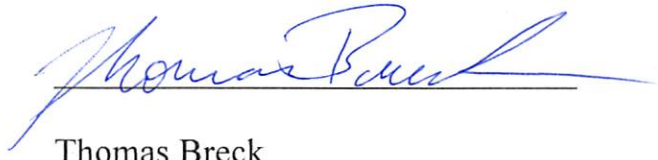
/s/ Bryan Sells\*  
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**VERIFICATION OF COMPLAINT**

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury under the laws of the United States of America that the allegations in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief.

Executed this 21 day of March, 2017, at Missoula, Montana.

A handwritten signature in blue ink, appearing to read "Thomas Breck", is written over a horizontal line.

Thomas Breck

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Thomas Breck, Danielle Breck, and Steve Kelly

DEFENDANTS Corey Stapleton, in his official capacity as Secretary of State of the State of Montana

(b) County of Residence of First Listed Plaintiff Missoula, Montana (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Lewis and Clark, Montana (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, A e Number) Bryan L. Sells, The Law Office of Bryan L. Sells LLC, PO Box 5493, Atlanta, GA 31107 404-480-4212; Timothy Bechtold, Bechtold Law Firm, PO Box 7051, Missoula, MT 59807 406-721-1435

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983

Brief description of cause: Montana's ballot access scheme for May 25 special election violates First Amendment as applied to plaintiffs

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 1 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/22/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Timothy M. Bechtold

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.