

No. 20-35847

In the United States Court of Appeals for the Ninth Circuit

**Joe Lamm, Ravalli County Republican Central Committee, Jeff Wagner,
Sylvia Wagner, Fiona Nave, and Brent Nave,**
Plaintiffs-Appellants

v.

Stephen Bullock, in his official capacity as Governor of Montana, and
Corey Stapleton, in his official capacity as Secretary of State of Montana,¹
Defendants-Appellees

On Appeal from the U.S. District Court for the District of Montana,
Case No 6:20-cv-00067-DLC, Honorable Dana L. Christensen, District Judge

Appellants' Motion for Voluntary Dismissal

Pursuant to Federal Rule of Appellate Procedure 42(b), Appellants move to dismiss their appeal in this matter. Appellants and Appellees have agreed that each shall bear their own costs. Appellees have authorized us to represent that they consent to this motion.

Appellants note that this cases involves the constitutionality of former Governor Bullock's August 6, 2020 Executive Directive that authorized Montana coun-

¹ Federal Rule of Appellate Procedure 43(c)(2) provides automatic substitution of officeholders. So Greg Gianforte replaces Stephen Bullock as Montana Governor and Christi Jacobsen replaces Corey Stapleton as Montana Secretary of State. But for present purposes and given the nature of this motion, Appellants retain the caption as is for the sake of continuity.

ties to hold the November 3, 2020 general election primarily by mail ballot in lieu of the primarily in-person voting prescribed by statute. *See* Order at 2, *Lamm v. Bullock*, No. 6:20-cv-00067-DLC (D. Mont. Sept. 30, 2020) (Doc. 73; order granting summary judgment to defendants-appellees and denying it to plaintiffs-appellants). On February 12, 2021, now-Governor Gianforte repealed then-Governor Bullock’s August 6 Directive and declared it the legislature’s job to decide the manner of elections “regardless of circumstance,” in his Directive Repealing Election-Related August 6, 2020 Directive,² providing as relevant:

On August 6, 2020, a Directive issued by the prior Administration implemented election procedures for the 2020 general election contrary to existing statute and Montana law. This Directive was challenged in federal court and awaits further adjudication in the Ninth Circuit Court of Appeals.

Election procedures are the province of the legislature, which is expressly tasked under the United States and Montana Constitutions with prescribing the time, place, and manner of elections in this State, regardless of circumstance.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the repeal of the August 6, 2020 Directive, effective immediately.

In Appellants’ opinion, the (i) change of administration, (ii) repeal of the August 6 Directive, and (iii) acknowledgment that the manner of elections is the legisla-

² Governor Gianforte’s February 12, 2021 Directive is available at <https://governor.mt.gov/docs/Directives/Directive-2-12-2021-Repealing-Election-Directive.pdf>.

ture's province "regardless of circumstance" make it less likely that the new administration would displace the legislature's balancing of voting access against election-integrity concerns expressed in Montana's election-law statutes. That in turn makes it less likely that this case would be deemed to be within the mootness exception for matters capable of repetition yet evading review. Consequently, Appellants have decided to voluntarily dismiss the present appeal.

Respectfully submitted,

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Certificate of Service

I hereby certify that on March 8, 2021, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the Court's CM/ECF filing system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

The Bopp Law Firm, PC

s/ Richard E. Coleson

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