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COUNSEL FOR DEFENDANT
SECRETARY OF STATE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

STEVE KELLY and)	Cause No. CV-08-25-BU-SEH
CLARICE DREYER,)	
)	SECRETARY OF STATE'S
Plaintiffs,)	ANSWER TO COMPLAINT
)	
v.)	
)	
BRAD JOHNSON, in his official)	
capacity as Secretary of State of the)	
State of Montana,)	
)	
Defendant.)	

Defendant Montana Secretary of State Brad Johnson ("the Secretary"), answers the Verified Complaint, served April 17, 2008, as follows:

1. The Secretary admits the allegations in the second and third sentences and denies the rest of the allegations in Paragraph 1.

2. The Secretary denies the allegations in Paragraph 2.
3. The Secretary denies the allegations in Paragraph 3.
4. The Secretary denies the allegations in Paragraph 4.
5. The Secretary admits the allegations in Paragraph 5.
6. The Secretary lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6.
7. The Secretary admits that Mr. Kelly is a registered voter in Gallatin County, Montana, and lacks knowledge or information sufficient to form a belief about the truth of the rest of the allegations in Paragraph 7.
8. The Secretary admits that Mr. Kelly ran for Congress as an independent candidate in 1994, and lacks knowledge or information sufficient to form a belief about the truth of the rest of the allegations in Paragraph 8.
9. The Secretary lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6.
10. The Secretary admits that Ms. Dryer is a registered voter in Gallatin County, Montana, and lacks knowledge or information sufficient to form a belief about the truth of the rest of the allegations in Paragraph 10.
11. The Secretary lacks knowledge or information sufficient to form a belief about the truth of the rest of the allegations in Paragraph 8.
12. The Secretary admits the allegations in Paragraph 12.
13. The Secretary admits the allegations in Paragraph 13.
14. The Secretary denies the allegations in Paragraph 14.

15. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, part 6, and denies the rest of the allegations in Paragraph 15.

16. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, part 6, and denies the rest of the allegations in Paragraph 16.

17. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, part 2, and denies the rest of the allegations in Paragraph 17.

18. The Secretary admits the allegations of Paragraph 18.

19. The Secretary admits the allegations in Paragraph 19.

20. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, parts 5 and 2, and denies the rest of the allegations in Paragraph 20.

21. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, part 5, and denies the rest of the allegations in Paragraph 21.

22. The Secretary admits the contents of Mont. Code Ann. title 13, chapter 10, part 5, and denies the rest of the allegations in Paragraph 22.

23. The Secretary admits the allegations of Paragraph 23.

24. The Secretary admits the filing fee required under Mont. Code Ann. § 13-10-202 for United States Senate in 2008 is \$1,693, and denies the rest of the allegations in Paragraph 24.

25. The Secretary admits the Montana Legislature amended Mont. Code Ann. § 13-10-503 at the Legislature's regular session in 2007, and denies the rest of the allegations in Paragraph 25.

26. The Secretary admits prior to the 2007 amendment, the nominating petition deadline was the first Monday in June, and denies the rest of the allegations of Paragraph 26.

27. The Secretary admits the allegations of Paragraph 27.

28. The Secretary denies the allegations of Paragraph 28.

29. The Secretary denies the allegations of Paragraph 29.

30. The Secretary denies the allegations of Paragraph 30.

31. The Secretary denies the allegations of Paragraph 31.

32. The Secretary denies the allegations of Paragraph 32.

33. The Secretary denies the allegations of Paragraph 33.

34. The Secretary denies the allegations of Paragraph 34.

35. The Secretary denies the allegations of Paragraph 35.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Plaintiffs lack standing to challenge a law that has not been applied to

Mr. Kelly.

3. Plaintiffs' claim is moot.

4. Plaintiffs' claim is not ripe for adjudication.

5. Plaintiffs' claim is barred by the doctrine of laches.

REQUEST FOR RELIEF

Based on these answers and affirmative defenses, the Secretary respectfully requests the Court to enter a judgment as follows:

- (a) Dismissing the Complaint with prejudice;
- (b) Denying the plaintiffs' request for declaratory and injunctive relief; and
- (c) Awarding such further relief as the Court may find to be just and equitable.

Respectfully submitted this 7th day of May, 2008.

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By: /s/ Anthony Johnstone
ANTHONY JOHNSTONE
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2008, an accurate copy of the foregoing Secretary Of State's Answer To Complaint was served on the following persons by the following means:

1, 3 CM/ECF
2 Mail

- 1 Clerk, U.S. District Court
- 2 Mr. Bryan Sells
Mr. Laughlin McDonald
American Civil Liberties union Foundation, Inc.
2600 Marquis One Tower
245 Peachtree Center Avenue, NE
Atlanta, GA 30303
- 3 Ms. Elizabeth L. Griffing
American Civil Liberties union of Montana Foundation, Inc.
241 East Alter, Suite. B
P.O. Box 9138
Missoula, MT 59802-9138

DATED: May 7, 2008

/s/ Anthony Johnstone
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