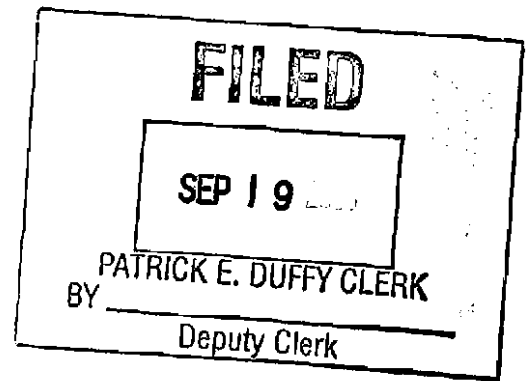


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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

STEVE KELLY and
CLARICE DREYER,

Plaintiffs,

v.

BRAD JOHNSON, in his official
capacity as Secretary of State of the
State of Montana,

Defendant.

) Cause No. CV-08-25-BU-SEH
)
) **STIPULATED FACTS**
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1. In 2008, four parties have qualified as major parties on the ballot: the Constitution Party, the Democratic Party, the Libertarian Party, and the Republican Party.

2. Previously, other than the Democratic and Republican Parties, the following parties have met the major party qualifications in Montana since 1980:

Party	Date Qualified	Qualification Expired	Type of Qualification?
American Party	11/7/1972	1976	Signatures, probably; the American Party had a Presidential candidate who received 13,430 votes in 1972, which qualified it for 1976.
Americanist	1976	1976	Signatures, probably; the Americanist Party had a Presidential candidate who received 5,772 votes in 1976.
Constitution Party	3/17/2000 2004 Re-qualification 2006 Re-qualification	2002 2006 N/A (Qualification Current)	By signatures (6391 in 34 districts) By signatures (5707 in 35 districts) By signatures (6299 in 34 districts) By votes (Ron Marquardt-received 86,027 votes)
Green Party	11/07/2000	11/02/2004	By votes (Nader / LaDuke won 24,437 votes, more than the 5% [or 10,457 votes] needed) although signatures were also gathered. In 2006, 264 certified signatures were collected, falling short of the 5% of the previous successful governor candidate electors needed. In 2002 and 2004 elections, Green party candidates did not receive enough votes to re-qualify the party.
Libertarian Party	3/18/1982	N/A (Qualification Current)	By signatures Re-qualified by votes in 1982 and subsequent years. Last re-qualified by votes in 2006
Natural Law Party	3/18/1996	11/02/2004	1996 Re-qualified by votes 2000 Re-qualified by votes 2004 Failed to re-qualify by votes in 2004 election
New Alliance Party	9/18/1987	11/8/1988	By signatures; failed to re-qualify by votes in 1988 election
Reform Party	3/13/1996	11/02/2004	1996 Re-qualified by votes 2000 Re-qualified by votes 2004 Failed to re-qualify by votes in 2004 election

3. In 2002, 2004, and 2006, William J. Nigro inquired as how to form the American Spring Kindness Nation Restoration Party but did not submit signatures.

4. There are no Constitution Party or Libertarian Party candidates for the 2008 Montana U.S. Senate seat.

5. Based on 5% of the combined votes for the last successful candidate in each office, the number of signatures required each election year for independent or minor party candidates has been:

	Governor	US House Distr. #1	US House Distr. #2	U.S. Senate
1982	No election	5644	4572	10312
1984	9979	5005	3999	8018
1986	No election	6350	5847	No election
1988	13329	4926	4228	8744
1990	No election	5764	4874	10786
1992	9530	9843	No election	No election
1994	No election	10186	No election	9743
1996	10471	8569	No election	10879
1998	No election	10599	No election	No election
2000	16039	8788	No election	10928
2002	No election	10571	No election	10097
2004	10457	10705	No election	No election
2006	No election	14304	No election	10405
2008	11251	11957	No election	10243

6. Any qualified elector residing within the state and district or political subdivision in which the officer or officers are to be elected may sign a petition for nomination.

7. Montana law does not limit when independent or minor party candidates may begin to gather electors' signatures.

8. A qualified elector may sign more than one petition for nomination.

9. A qualified elector may vote in the party primary of his choice regardless of whether he signed one or more petitions for nomination for independent or minor party candidates.

10. Steve Kelly has run for the following offices:

Position	Party	Nominated?	Primary Date	General Election Date
U.S. Representative	Independent	Qualified for General Ballot	n/a	11/8/1994
U.S. Representative	Democrat	Yes	6/4/2002	11/5/2002
Montana House District 64	Democrat	No	6/6/2006	11/7/2006

11. Steve Kelly served as coordinator of the Montana Green Party in 2007.

12. On April 21, 2007, Steve Kelly held the 2007 Montana Green Party Annual Meeting, and discussed a ballot access drive, a ballot initiative eliminating the signature requirement for small parties and independents to run for office, and candidates for the 2008 elections. (Exhibit 501, attached.)

13. On April 26, 2007, the Montana Green Party published on its website ballot access information containing instructions on petitioning for Green Party ballot access. (Exhibit 502, attached.)

14. The Montana Green Party did not turn in petitions for ballot access for the 2008 elections.

15. Steve Kelly did not contact, in person, by telephone, or by electronic message, any person in the Secretary of State's office or any county election official about a petition for nomination for any public office this year.

16. Steve Kelly did not submit a petition for nomination for any public office this year.

17. Clarice Dreyer is Steve Kelly's life and business partner.

18. In the 2006 election for Rosebud County Sheriff, two Democratic Party candidates filed for the primary (Pamela Ash and Randy C. Allies), and no Republican Party candidates filed for the primary. Instead, four independent candidates successfully petitioned to be on the ballot after the major party primary filing deadline, leading to the following general election result:

Name	Party	Votes	Percentage
Randy C. Allies	Democrat	2204	66.02%
Tyrone "Tiger" Stevenson	Independent	271	8.12%
Darin Bixby	Independent	228	6.83%
Arthur D. Walgren	Independent	189	5.66%
John J. Grinsell	Independent	446	13.36%

Following the placement of four independent candidates on the ballot, Rosebud County introduced a resolution at the August 29, 2006 district Montana Association of Counties meeting to restore a unified filing deadline for all party and independent candidates.

19. Senate Bill 270 was introduced before the 2007 legislature by Lane Larson. SB 270 proposed to revise the filing deadline for independent and minor party candidates from the primary to the filing deadline for the primary. At the House State Admin Executive Action, Mar. 28, 2007, the House Sponsor Rep. Ingraham testified:

This is one of those bills that's good. It is good, and if you remember the testimony what it does is it allows everybody to be on the same timeframe for filing so everybody know who step up to the plate and be in the election. So it gives them a good cutoff date so that you know what's happening so ah right now independents have several months like 'til May to do their filings so you never know quite who you are running against and how it's going. So this puts everybody in the same playing field. And the independents, for those that you know, are not party line, they are just people not aligned with a party and are just running for themselves. And

there is one thing that still exists. This does not exempt write-ins. There is always an opportunity for write-in candidates to file so this does not eliminate anyone who chooses to run later. They can file 15 [now 39] days before an election to run as a write-in. So this is dealing just with independents, and it really would be nice because people would know who's out there and who they can look to get behind and support so it is a good, it is a nice bill.

20. The Montana Association of Clerk and Recorders, Rosebud County, the Jefferson County Clerk and Recorder, the Montana Association of Counties, and the Secretary of State's office testified in favor of the bill. There were no opponents.

21. The bill passed out of the House and Senate committees unanimously. It passed the House 95-5 on March 31, 2007, and passed the Senate 49-1 on April 19, 2007.

22. That same session, several bill proposals sought to move the presidential primary up to February, March, April, or May. H.B. 797 (passed House 76-24); H.B. 841 (passed house 74-26).

23. Montana asserts the following interests in setting a uniform filing date for all party and independent candidates include the following: simplifying the timelines for candidates who wish to appear on the ballot; equalizing the timelines to level the playing field for all Montana candidates and eliminating a double-standard that was perceived as unfair to major-party candidates; reducing the administrative burden on busy election officials in the weeks before the primary to improve the quality of election administration for voters; providing sufficient time and staff to scrutinize petition signatures and avoid error or fraud; allowing for the investigation and judicial resolution of petition or other election challenges; requiring a modicum of community support early in the process; preventing voter confusion by limiting ballot access to serious candidates who can

demonstrate some level of political viability; lessening the likelihood of multiple independent candidates appearing on the ballot and diluting the will of the majority; preventing multiple potential major- or third-party candidates from waiting out the primary and appearing as last minute "independent" candidates; encouraging candidates aligned with major- or third-parties to appear on the ballot with those party designations to inform voters; encouraging independent and minor party candidates to reach out early to voters who do not have the benefit of the extended media coverage accorded to some major party candidates; and responding to increased early interest in politics during an election year with unprecedented early presidential primaries and caucuses, demonstrated by legislative interest in earlier primary dates and the Montana Republican Party's eventual choice of a February 5, 2008, nominating caucus.

Dated this 19th day of September, 2008.

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