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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,)	CROSS-MOTION FOR
)	SUMMARY JUDGMENT
v.)	
)	
LINDA MCCULLOCH, in his)	
official capacity as Secretary of State)	
of the State of Montana,)	
)	
Defendant.)	

The Secretary of State moves for summary judgment on all of Plaintiffs' claims. See Fed. R. Civ. P. 56; 02/02/09 Order Granting Stipulated Motion for Briefing Schedule (Doc. 66).

1. Plaintiffs' claims are nonjusticiable on mootness and standing grounds because the election at issue has passed and Mr. Kelly has not been subject to the laws at issue. Plaintiffs' claims also fail on the constitutional merits because Montana's ballot access laws in their entirety impose a reasonable burden on good faith candidates and serve important and compelling state interests.

2. For these reasons, as explained in the accompanying brief and supported by the pleadings, the discovery and disclosure materials on file, and accompanying affidavits, the Secretary of State respectfully requests the Court to render summary judgment against Plaintiffs on all claims.

3. Counsel for the Secretary of State has contacted counsel for the Plaintiffs and has been informed that Plaintiffs object to this motion. See L.R. 7.1(j)(1).

Respectfully submitted this 1st day of May, 2009.

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By: /s/ Anthony Johnstone
ANTHONY JOHNSTONE
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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2009, an accurate copy of the foregoing Defendant's Cross-Motion for Summary Judgment was served on the following persons by the following means:

1, 2, 3 CM/ECF

- 1 Clerk, U.S. District Court
- 2 Mr. Bryan Sells
Senior Staff Counsel
Southern Regional ACLU
230 Peachtree Street, N.W.
Suite 1440
Atlanta, GA 30303-1513
- 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 1, 2009

/s/ Anthony Johnstone
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