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

STEVE KELLY and CLARICE)	
DREYER,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 2:08-cv-25-SEH
)	
LINDA McCULLOCH, in her official)	
capacity as Secretary of State of the)	
State of Montana,)	
)	
Defendant.)	

**JOINT MOTION FOR LEAVE TO RE-FILE CROSS-
MOTIONS FOR SUMMARY JUDGMENT AND TO POSTPONE
STATUS CONFERENCE**

Counsel for Plaintiffs Steve Kelly and Clarice Dreyer (“Plaintiffs”) and Defendant Linda McCulloch, in her official capacity as Secretary of State of the State of Montana, (“Defendant”) (collectively “the Parties”) met and conferred telephonically on Friday March 3, 2011 and agreed to pursue the following course of action subject to the Court’s approval.

On February 1, 2011, the United States Court of Appeals for the Ninth Circuit issued its mandate pursuant to Federal Rule of Appellate Procedure 41(a), thereby implementing its December 10, 2010 decision finding Plaintiffs have standing to maintain this action. Having resolved the

threshold standing question, the Court of Appeals remanded the case to allow the district court to reach the merits of the constitutional claims. (Dkt. No. 102, Mem. Disp., at 3). The Parties now agree that there are no genuine issues of fact material to the constitutional merits.

To this end, the Parties jointly move for leave to re-file their Cross-Motions for Summary Judgment, the Parties' responsive papers, and the attached exhibits. The Parties, however, will not re-file their Statements of Genuine Issues, as they have agreed to drop all factual disputes. The Parties propose to edit these papers only to reflect the Ninth Circuit's decision and to delete any discussion of the standing issue as well as any exhibits solely related to that jurisdictional question. The balance of the briefs discussing the merits of this litigation will remain unaltered and exactly as they were set forth in the filings made prior to the appeal. If the Court grants this Joint Motion, the Parties request that they be afforded fourteen (14) days from the Court's order in which to re-file their Cross-Motions for Summary Judgment, responsive papers, and attached exhibits. Prior to that submission deadline and within seven (7) days of the Court's order, the Parties have agreed to exchange all the papers and exhibits to be re-filed, so that any citations to opposing counsel's briefs and exhibits may be corrected.

Additionally, in its February 7, 2011 Order, the Court scheduled a

status conference for March 25, 2011, at 10:00 a.m., “for the purpose of establishing a schedule for the final disposition of this matter.” (Dkt. No. 105). Given the Parties’ full agreement on the course of action outlined above and the apparent lack of any other scheduling needs at this time, the Parties jointly request that the March 25, 2011 status conference be postponed until such time as the Court deems it necessary to confer with the Parties.

Respectfully submitted,

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