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IN THE MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

MONTANANS FOR JUSTICE:)
VOTE NO ON CI-98, NOT IN)
MONTANA: CITIZENS AGAINST CI-97,)
AND PROPERTY OWNERS AGAINST)
I-154, Political Ballot Committees,)

Plaintiffs,)

v,)

STATE OF MONTANA, by and through)
BRAD JOHNSON, in his capacity as)
Secretary of State; MONTANANS IN)
ACTION, a Montana Corporation,)
CITIZENS RIGHT TO RECALL)
MONTANA, PROTECT OUR HOMES)
MONTANA, STOP OVER SPENDING)
MONTANA, Political Ballot Committees;)
and TREVIS BUTCHER;)

Defendants.)

Cause No. CDV-06-1162

MOTION FOR AN
EXPEDITED HEARING
AND OTHER RELIEF

COME NOW Plaintiffs, through counsel, and move this Court for an expedited hearing in the above entitled action. Until such hearing can take place, Plaintiffs' request the Court to order Defendant State of Montana, acting through

Secretary of State Brad Johnson, to certify two ballots to election administrators—one containing ballot initiatives CI-97, CI-98, and I-154, and one that does not contain such initiatives. This motion is supported by its accompanying brief.

DATED this 23rd day of August, 2006.

MELOY TRIEWEILER

PETER MICHAEL MELOY

CERTIFICATE OF SERVICE

This is to certify that on the 23rd day of August, 2006, a true and exact copy of the foregoing document was sent by U.S. mail, first class, postage prepaid, to opposing counsel as follows:

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Defendants.)

Cause No. CDV-06-1162

BRIEF IN SUPPORT OF
MOTION FOR AN EXPEDITED
HEARING AND OTHER RELIEF

COME NOW Plaintiffs, through counsel, and submit this Brief in Support
of their Motion for Expedited Hearing and Other Relief.

INTRODUCTION

The Secretary of State, pursuant to § 13-12-201, MCA, must certify the ballot, including candidates and ballot issues, to the election administrators on or before Thursday, August 24, 2006. The official ballots must be available by September 22, 2006. Because of the time constraints involved in this lawsuit, an immediate hearing is required to resolve the issues raised in Plaintiffs' Complaint. However, since the Secretary of State is required to certify the ballot before such a hearing can be held, Plaintiffs' request the Court to order the Secretary of State to certify two ballots—one containing the disputed ballot issues and one that does not—so that this lawsuit does not cause unnecessary delay in the preparation and printing of ballots. Such action is authorized by the Court's original jurisdiction over this matter under § 3-5-302(6), MCA. And, as discussed below in the Argument Section, such action is warranted because Plaintiffs' are likely to prevail on the merits.

FACTUAL BACKGROUND

CI-97 is a proposed constitutional initiative imposing limits on the spending and taxation authority of the State of Montana; CI-98 is a proposed constitutional initiative revising the process by which district court judges could be removed from office. I-154 is a proposed statutory initiative drastically expanding the existing definition of "taking" by governmental units in Montana.

Plaintiffs Montanans for Justice: Vote No on CI-98 is a political committee whose purpose is to oppose CI-98. Plaintiff Not in Montana: Citizens Against CI-97 is a political committee whose purpose is to oppose CI-97. Plaintiff Property

Owners Against I-154 is a Montana not-for-profit corporation and a political committee whose purpose is to oppose I-154. Defendant Stop Over Spending Montana, Defendant Citizens Right to Recall Montana and Defendant Protect Our Homes Montana are political committees organized and registered in support of proposed CI-97, CI-98 and I-154, respectively. Defendant Trevis Butcher is the treasurer of all three of these political committees. Defendant Montanans in Action is a Montana not-for-profit corporation which provided the funds for the signature gathering efforts of all three ballot committees. These Defendants organized and carried out the efforts necessary to qualify three initiatives for placement on the November 7, 2006 general election ballot. To accomplish this end, they utilized paid signature gatherers.

To qualify a constitutional initiative for the ballot, petition gatherers must obtain the signatures of ten percent of the total number of qualified voters in the state, including ten percent of the voters in each of the 40 legislative districts (currently a total of 44,615 signatures). Section 13-27-204, MCA. To qualify a statutory initiative for the ballot, petition gatherers must obtain the signatures of five percent of the total number of qualified voters in the state, including five percent of the voters in each of 34 legislative districts (currently a total of 22,308 signatures). Section 13-27-204, MCA.

Under § 13-27-302, MCA, a signature gatherer is required to submit an affidavit with each sheet of signatures. The gatherer must swear that he/she gathered or assisted in gathering the accompanying signatures and he/she must certify “that the signatures are genuine, are the signatures of the persons whose

names they purport to be,” and “the signers knew the contents of the petition before signing the petition.” The signature gatherer must also provide their current address on the affidavit.

Defendant Secretary of State certified a total of 52,804 signatures for CI-97, 8,189 over the required number; for CI-98, a total of 51,706 signatures were certified, 7,091 over the required number; and for I-154, 36,604 signatures were certified, 14,296 over the required number.

ARGUMENT

The signatures necessary to qualify the ballot measures at issue were gathered in violation of the law. Accordingly, the initiatives should be disqualified from the November 7, 2006 general election ballot.

- I. The professional signature gatherers engaged in a statewide pattern of deceptive practices in order to secure the requisite signatures to get CI-97, CI-98, and I-154 on the ballot.

Defendants’ brought in signature gatherers from out of state to collect signatures for these ballot initiatives. These professional signature gatherers were encouraged to lie and generally engage in a pattern of devious and deceptive practices, including routinely providing false addresses on affidavits, signing other signature gatherer’s affidavits despite the fact they had not personally gathered the signatures, and purposely not leaving a trail as to their future whereabouts. (Sworn Hearing Testimony of Robert A. Colby, before the Supreme Court of Oklahoma, June 29, 2006, 35:10-36:15, 34:1-25, 38:18-39:9, attached in its entirety as Exhibit 1). Mr. Colby testified that after he and other paid signature gatherers worked in Oregon, they then came to Montana for a

month to gather signatures and then proceeded on to Nebraska. (Exhibit 1, 20:8-21:7). In his testimony, Mr. Colby admitted that he lied in his affidavit in Montana by providing a false address. (Exhibit 1, 81:10-84:3). He also admitted that he lied on affidavits in other states and that he, and other paid signature gatherers, deliberately lie and violate the law in gathering signatures. (Exhibit 1, 39:4-22, 97:20-23, 34:1-25).

In addition to these dishonest practices, professional signature gatherers in Montana engaged in other deceptive practices to induce people to sign the petitions for CI-97, CI-98, and I-154, including misinforming voters as to effect of the initiatives if they were to be adopted by voters, failing to inform voters at all on the substance of the initiatives, and, most egregiously, using a ‘bait and switch’ scheme whereby they would tell voters that they were signing copies of the petition sheets for I-154, when they were actually signing petition sheets for CI-97 and CI-98. (See Affidavits of Jan Novy, Marcia Barfknecht, Jessica Overtuff and Libbi Lovshin attached as Exhibits 2-5.¹)

All of these described actions violate the law and constitute a pervasive pattern of illegal and deceptive practices such as to pervert the entire ballot qualification process for all three initiatives. Other jurisdictions have adopted the remedy of excluding all of the petition signatures in cases such as this where ‘wrongdoing [has] permeated a signature-gathering operation.’ Citizens Committee for the D.C. Video Lottery Terminal Initiative v. District of Columbia Bd. of Elections & Ethics, 860 A.2d 813 (D.C. 2004) (Board of Elections and

¹ Additionally, Affidavits of Jim Heikes, Michael C. Samples and Joseph Stauffer will be provided as supplements as soon as possible.

Ethics was entitled to strike all of the petition sheets generated by citizens' group in support of proposed ballot initiative due to irregularities in the petition circulation process, where circulators of petitions testified as to having falsely signed circulator affidavits).

II. One of the professional signature gatherers, Marvin King, attested to an impossible number of signatures.

Marvin King collected signatures in Montana for all three proposed initiatives and periodically filed affidavits as required by § 13-27-302, MCA, as he submitted gathered signatures. King, alone, accounted for 41,761 total signatures on all three petitions. He submitted affidavits on 16,856 signatures in support of CI-97. He also submitted 14,890 signatures in support of CI-98 and 10,015 signatures in support of I-154. In a one-week period of time between June 1st and June 7th, King gathered 3,313 signatures on CI-97, 2,567 signatures on CI-98, and 2,324 signatures on I-154. This total of 8,204 signatures was allegedly gathered in Custer, Rosebud, Lewis & Clark and Yellowstone counties. This is a rate of 49 signatures per hour, almost a signature per minute, for this entire week around the clock. This impossible task was purportedly accomplished in counties some 400 miles apart. In the period June 1st to June 19th, King gathered at least 16,685 signatures from Missoula to Miles City. This is a rate of one signature in one minute, 42 seconds around the clock for 19 days in counties over 600 miles apart.

Because of the sheer volume of signatures claimed by King during these time periods, it was impossible for him to personally ascertain that the signers were genuine and that they each knew the contents of the three complex

initiatives on which he gathered signatures. His actions, alone, violate § 13-27-302, MCA, and invalidate the ballot initiatives' status on the ballot.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court set an immediate hearing date in order to resolve the issues raised in Plaintiffs' Complaint. In the meantime, in order to avoid unnecessary disruption and delay in the ballot preparation process, issue an order directing the Secretary of State to certify two ballots to election administrators, so that, after this Court renders its decision, election administrators can prepare and print the proper ballot for the November 7, 2006 general election.

DATED this 23rd day of August 2006.

MELOY TRIEWEILER

PETER MICHAEL MELOY

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