No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RAVALLI COUNTY REPUBLICAN CENTRAL COMMITTEE, et al.,

Applicants,

v.

LINDA McCULLOCH, in her capacity as Montana's Secretary of State, et al.,

Respondents.

ON EMERGENCY APPLICATION FOR INJUNCTION PENDING APPELLATE REVIEW

RESPONDENTS' MEMORANDUM IN OPPOSITION

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INTRODUCTION

Applicants, several Republican central committees and the Montana Republican Party ("the Party"), waited almost a year after filing their complaint to seek a preliminary injunction, and now seek it on the eve of a primary election. What is more, Montana's open primary system has been in place since 1912, with primary elections taking place regularly since adoption. App. 17a. Such a long delay demonstrates a lack of urgency and irreparable harm. *See Winter v. Natural Resources Defense Council*, 555 U.S. 7, 23 (2008) (finding it "pertinent" that the activity was not "new" but had been taking place "for the last 40 years.").

The Party below appealed the denial of a preliminary injunction to the Ninth Circuit. App. 10a. The Party also sought an injunction pending appeal before the district court, which denied the request. App. 5a. The Party then moved for an injunction pending appeal to the Ninth Circuit. App. 2a. A panel of the Ninth Circuit unanimously denied that request, concluding that the Party "made an insufficient showing of either likelihood of success on the merits or the likelihood of irreparable harm." App. 2a-3a. Even though the Ninth Circuit has

scheduled oral argument for May 4, 2016, App. 4a, the Party now applies to this Court for an injunction pending appeal.

The Party also has not established a likelihood that it will ultimately succeed on the merits of its claims. The Party must show that the open primary imposes a "severe burden" in order for strict scrutiny to apply, something it cannot do without evidentiary proof. *See California Democratic Party v. Jones*, 530 U.S. 567, 578-79 (2000) (analyzing Ninth Circuit determination that blanket primary did not impose a severe burden by analyzing California-specific evidence). In fact, the Party admitted below that "evidence" that non-Republicans voted in primary races "is required for challenges to laws regulating a party's candidates for public office . . . ." App. 260a). So far both the district court and Ninth Circuit have found their proof lacking.

The Party will continue to struggle to succeed on the merits as long as they lack Montana-specific evidence such as a survey. App. 6a-7a. In fact, though the discovery deadline has long passed, the Party recently moved the district court to reopen discovery so that it could perform a survey in Montana during the 2016 primary.

App. 225a-228a. This implicit concession undercuts its claim that the open primary should be deemed unconstitutional "as a matter of law."

Finally, the Party's proposed injunction would be detrimental to the public interest due to the "proximity of a forthcoming election and the mechanical complexities of state election laws." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). This concern is especially salient here, as Montana's "election machinery is already in progress." *Id.* Montana's candidate filing deadline closed March 15, 2016, and other deadlines continue to advance. Mont. Code Ann. § 13-10-201. The Party is wrong that Montana can easily install a new election system, for just the Republican Party, prior to June's primary election. The Montana Secretary of State does not possess the authority to unilaterally impose election protocols, Montana's legislature does not meet until January 2017, and special sessions of the legislature are rare. *See* discussion below.

The application should be denied and this already-briefed appeal should proceed to oral argument on May 4, 2016, and an initial decision by the Ninth Circuit.

ARGUMENT

I. THE STANDARD OF REVIEW IS HEIGHTENED BECAUSE THE PARTY SEEKS AN ORIGINAL WRIT OF INJUNCTION TO ALTER THE STATUS QUO.

The Party is "seeking not merely a stay of a lower court judgment, but an injunction against the enforcement of a presumptively valid state statute." *Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001) (Renquist, C.J., in chambers). Where an original writ of injunction is sought to "grant[] judicial intervention that has been withheld by lower courts," this Court "demands a significantly higher justification than that [of a stay case]." *Ohio Citizens for Responsible Energy v. Nuclear Regulatory Comm'n*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers). A "Circuit Justice's injunctive power is to be used sparingly and only in the most critical and exigent circumstance . . . and only where the legal rights at issue are indisputably clear." *Id.* (internal citations and quotations omitted). The applicant must further demonstrate an injunction is "necessary and appropriate in aid of the Court's jurisdiction." *Id.* at 1313-14 (citing 28 U.S.C. § 1651(a)) (internal brackets and quotations omitted).

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. 7, 24 (2008) (citation omitted). As such, a plaintiff must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20 (citations omitted). A plaintiff specifically must demonstrate that irreparable injury is not just "possible," but "*likely* in the absence of an injunction." *Id.* at 22-23 (emphasis in the original) (finding it "pertinent" that the activity was not "new" but had been taking place "for the last 40 years.").

Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. This is especially true in the case of a "mandatory injunction" where plaintiffs "seek to alter the status quo." *American Freedom Def. Initiative v. King County*, 796 F.3d 1165, 1173 (9th Cir. 2015) (citation omitted). "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases . . . ." *Id.* (citation omitted); *see also Communist Party of Indiana v. Whitcomb*, 409 U.S. 1235, 1235 (1972) (Rehnquist, C.J., in

chambers) (a "mandatory injunction" will be granted "only in the most unusual case."). Here, the Party seeks to alter the status quo regarding Montana's primary system that has been in place since 1912. App. 17a.

The Party fails to meet these exceptionally high standards, especially where it delayed bringing its preliminary injunction motion for a year. In fact, the Party fails to qualify for injunctive relief even under the general preliminary injunction standard.

II. THE PARTY'S LONG DELAY SHOWS A LACK OF URGENCY AND IRREPARABLE HARM.

The Party, though now asserting that injunctive relief is "critical and exigent," waited almost a year to move for a preliminary injunction as to its open primary claim. Compare App. 265a to 266a. What is more, the open primary system has been in place since 1912, with primary elections taking place regularly since adoption. App. 17a. The Party's delay is alone sufficient reason to deny a preliminary injunction, and to instead preserve the status quo that has been in place for more than a century. *Winter*, 555 U.S. at 23; *see also Brown*, 533 U.S. at 1304-05 (applicants' delay in seeking injunctive relief before a Circuit

Justice "is somewhat inconsistent with the urgency they now assert"); *Miller ex rel. NLRB v. California Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm.") (internal quotation marks and citation omitted).

A preliminary injunction rests "upon the theory that there is an urgent need for speedy action to protect the plaintiff's rights." *Lydo Enters. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (denying preliminary injunction in part because plaintiff "delayed five years before taking any action.") (citations omitted). The Party's long delay "*alone* may justify denial of a preliminary injunction." *Tough Traveler v. Outbound Productions,* 60 F.3d 964, 968 (2d Cir. 1995) ("presumption of irreparable harm is inoperative if the plaintiff has delayed either in bringing suit *or* in moving for preliminary injunctive relief.") (citations omitted) (emphasis added).

The Party's delay shows a lack of urgency and irreparable harm. The Party had decades to develop Montana-specific data to support its challenge but elected not to do so, instead attempting to slide by on an insufficient record by manufacturing urgency due to an upcoming

primary. But as Montana's expert put it, "[g]iven that Montana has used the open primary system for decades, it logically cannot now be causing the problems currently facing the Republican legislative caucus." App. 251a. As such, not only the irreparable injury prong, but also the balance of equities and public interest prongs tilt decidedly in favor of maintaining the century-long status quo of an open primary in Montana. The Party is therefore not entitled to an injunction pending appellate review.

III. THE PARTY IS UNLIKELY TO SUCCEED ON THE MERITS BECAUSE IT HAS FAILED TO PROVIDE EVIDENTIARY PROOF THAT MONTANA'S OPEN PRIMARY IMPOSES A "SEVERE BURDEN."

A. Whether Montana's Open Primary Imposes a "Severe Burden" Is a Factual Determination Requiring Evidentiary Proof.

This Court in *Jones* treated the risk that nonparty members will skew either primary results or candidates' positions as a factual issue, with the plaintiffs having the burden of establishing that risk. This Court specifically analyzed the Ninth Circuit's conclusion that the burden imposed by the blanket primary was

"not severe." *Jones*, 530 U.S. at 578-79. In so doing, it relied on "evidence . . . demonstrat[ing] that under California's blanket primary system, the prospect of having a party's nominee determined by adherents of an opposing party [was] a clear and present danger." *Jones*, 530 U.S. at 578. *Jones* specifically relied on a "survey of California voters," noting that the figures in the California-specific survey were "comparable to the results of studies in other States with blanket primaries." *Id.* *Jones* also clarified that an open primary system "in which the voter is limited to one party's ballot" may be "constitutionally distinct" from the unconstitutional blanket primary. *Jones*, 530 U.S. at 577 n.8.

In fact, the Party admitted below that "evidence" that non-Republicans voted in primary races "is required for challenges to laws regulating a party's candidates for *public* office . . . ." App. 260a. This admission was in response to Montana's contention that the Party "failed to prove non-Republicans voted in any of its precinct races." *Id.* The Party sought to distinguish the evidentiary requirements for

primary system challenges from challenges to county precinct elections, its second claim for relief.[1] *Id.*

In an attempt to get around *Jones*, the Party cites to *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981). But the question in *La Follette* was "not whether Wisconsin may conduct an open primary election if it chooses to do so," rather it was whether Wisconsin can "bind the National Party" regarding the selection of the National Party's delegates in a "separate process." *Id.* at 120, 125. In fact, the Court acknowledged the Wisconsin Supreme Court "*may well be correct*" that the open primary is constitutional. *Id.* at 121 (emphasis added).

La Follette followed *Cousins v. Wigoda*, 419 U.S. 477 (1975), wherein the Court ruled that a state's "interest in protecting the integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the National Party Convention." *Id.* (citing 419 U.S. at 491 n.4). In other words, a state's interests, even if compelling, are insufficient to control the processes used by a

[1] This claim regarding precinct elections was later mooted after the Montana Legislature changed the law. 9th Cir. Dkt. No. 9 at 47.

national party to select its candidates. *See id.* at 123 ("it is not for the courts to mediate the merits of" whether the burden on the National Party was "minor" or "substantial"). Whether Montana can "bind the National Party" is not at issue here.

The Fourth Circuit's decision in *Miller v. Brown*, 462 F.3d 312 (4th Cir. 2006), is likewise distinguishable, and thus does not signal a circuit split.[2] *Miller* was focused on justiciability, not the merits. *Miller* considered, for standing purposes, whether Virginia's system allowing an incumbent to require that the party use an open primary presented sufficient potential injury. *Id.* at 315, 321. The Fourth Circuit did not analyze the factual evidence relied on in *Jones* or discuss footnote 6 or 8 where *Jones* carefully distinguishes the open from the blanket primary. By the time the decision on the merits was considered in *Miller*, defendants (the Virginia Board of Elections) had *admitted* below, and did not challenge on appeal, that Virginia's open primary would severely burden the committee's associational rights.

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[2] *Utah Republican Party v. Herbert*, 2015 WL 6695626 (D. Utah Nov. 3, 2015) is also distinguishable in several ways. For example, *Herbert* challenged a *newly enacted* law, and relied on data of registered Republicans and Independents in Utah, which is not available in Montana.

Id., 503 F.3d 360, 368 (4th Cir. 2007). Thus the Fourth Circuit simply accepted, without analysis, that Virginia's open primary imposed a severe burden. *Id.* at 368-69 (only analyzing whether "the party" could control the incumbent's choice).

As discussed in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997), this Court applies a balancing test to determine whether a state law imposes a severe burden. This requires weighing the "character and magnitude" of the burden imposed by the primary system. *Timmons*, 520 U.S. at 358. Such a balancing test is necessary because "[n]o bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *Id.*, 530 U.S. at 359. The district court therefore correctly required the Party to present empirical evidence demonstrating the character and magnitude of the burden, if any, Montana's open primary imposes upon its associational rights. This Court should reject the Party's attempt to avoid that burden and short circuit the appeal process.

B. The Party's Own Experts Make Clear That Montana-Specific Survey Evidence Is Required.

At oral argument on the Party's motion for summary judgment and a preliminary injunction, the district court asked counsel for the Party why there is not "a genuine issue of material fact" when the experts disagree as to whether the Party has mustered sufficient evidence to prove the effect of crossover voting under Montana's open primary. App. 232a. Counsel admitted "a reasonable argument could be made that that is a genuine issue of fact for summary judgment." *Id.*

Montana's expert stated in his report that the lack of Montana-specific data "makes it impossible to know whether crossover voting has occurred, by whom and with what motivation, and what if any impact this has had on election outcomes." App. 248a. Dr. Saunders, the Party's expert, explained in his deposition that a Montana-specific survey would "have increased our knowledge about the amount of crossover voting," and that he would have recommended a survey had "the issue been brought to [him] in 2013." App. 245a-246a. In fact, Dr. Saunders admitted that a survey "is a *necessary tool* to measure [the electorate's] behavior."

App. 274a (emphasis added). Dr. Greene, the Party's other expert, was equally candid, admitting their figures represent only "an estimate" based on political science scholarship that "is not really looking to answer questions about crossover voting in ways that would be really helpful to deciding this as a legal matter . . . ." App. 240a.

Equally damaging to the Party's evidentiary case is Dr. Saunders' prior report in *Idaho Republican Party v. Ysursa,* 765 F. Supp. 2d 1266, 1276 (D. Idaho 2011). There Dr. Saunders was critical of the methods used by the Idaho Republican Party, including reliance on data from a survey that was performed long after the relevant election and that lacked specificity. App. 235a. He determined that "any comparison would be invalid" and any "conclusion drawn from the analysis" would be "highly questionable." *Id.* Here, we are not faced with a poorly done survey, but with no survey data at all. Consequently no conclusions or comparisons may be made. *Id.* The disparities among expert opinions in this case, in the literature, and with the *Ysursa* report, require further factual development before the merits can be assessed.

The Party seems to now agree that evidentiary proof is required, as it recently moved the district court to reopen discovery so that it could perform a survey in Montana during the 2016 primary. App. 225a-228a[3]. This implicit concession undercuts their claim that the open primary should be deemed unconstitutional "as a matter of law." The legal rights at issue here are hardly "indisputably clear." As such, the strict standards for a mandatory injunction pending appeal are not met.

C. The Party Failed to Show Non-Republicans Can or Have Voted in Republican Primaries, or That Open Primaries Are Materially Different Than Closed Primaries With Same-Day Registration.

In Montana, voters do not register with a party affiliation. App. 55a. Nor does the Montana Republican Party keep track of, or define, its members. App. 253a-256a. As the Party's 30(b)(6) witness conceded, "there is no exact way to become a member" of the Party. *Id.* at App. 253a. Consequently, as determined by the district court, the Party has not, among other evidentiary shortcomings, "developed a

[3] The district court denied the motion in part due to the Party's delay and its choice to initiate this litigation in September 2014 without possessing Montana-specific evidence. App. 220a, 222a-223a.

record that shows a voter who selects the Republican primary ballot, and foregoes the opportunity to vote for candidates of any other party, fails to qualify as a Republican." App. 8a (citing *Jones*, 530 U.S. at 570-79).

Instead of publicly registering their affiliation with the Republican Party, a voter in Montana affiliates with the Party when the voter casts a Republican ballot in the primary. *Jones*, 530 U.S. at 577 nn.6 and 8 (noting the open primary "may be constitutionally distinct" from the blanket and that "[t]he act of voting in the Democratic primary [in an open primary system] can be described as an act of affiliation with the Democratic Party") (quotation omitted). As this Court has recognized "anyone can 'join' a political party merely by asking for the appropriate ballot at the appropriate time . . . ." *Clingman v. Beaver*, 544 U.S. 581, 591 (2005) (quotation omitted). In fact, the Party's expert admitted the ballot voted is the only way to identify a voter's affiliation in Montana. App. 238a-240a.

Montana's open primary is therefore functionally equivalent to a closed primary with same-day registration. *See* App. 55a (Montana allows same-day registration); App. 258a (the Party's counsel

admitting closed primary with same-day registration is the "functional equivalent" of an open primary); *see also* App. 249 (noting no "statistically significant" difference between crossover voting in open and closed primaries, as even in closed primaries "individuals can and do find ways" to cross over).

The Wisconsin Supreme Court, in *La Follette*, recognized that both closed and open primaries work "in substantially the same way" due to the reliance on "*self-designation*." 287 N.W.2d 519, 535 (1980) (emphasis in the original). In closed primary states also "you are a Democrat if you say you are . . . and you can become a Republican any time the spirit moves you . . . ." *Id.* (quoting Austin Ranney, *Curing the Mischiefs of Faction: Party Reform in America*, 166-67 (U. of Cal. Press, 1975)). Voters are not obligated to do anything if they register a party affiliation, but they nevertheless receive the privilege of taking part in nominating candidates. *Id.* The Party therefore cannot show that Montana's open primary imposes a substantially greater burden than would a closed primary.

The Party, though, claims that "Montana exacerbates the Party's First Amendment injury by refusing to register voter's party

affiliation." App. for Inj. at 14. The Party relies on *Clingman* for the novel proposition that a state voter registration list, funded by the taxpayer, is an independent constitutional right. But *Clingman* was describing the *legitimate state interest* in maintaining accurate voter registration lists for the parties' use, not the potential burden on political parties. 544 U.S. at 595. The voter registration interest was based on the state's interest in "voter turnout efforts" and the general public interest of "encouraging citizens to vote." *Id.* at 596. Nowhere in *Clingman* does the Court hold, or even intimate, that a state is *required* to facilitate electioneering and party-building efforts, as the Party alleges. The choice, instead, is left to "the democratic process." *Id.* at 598.

The Party also now alleges it "requires those who select Party nominees to register as Party members" and that this is its "only membership requirement." App. for Inj. at 17. This is factually incorrect. The Montana Republican Party has no specific membership requirements at all. As the Party previously admitted, "there is no exact way to become a member" of the Party. App. 253a. The Party cites to a legislative plank for this newly discovered "membership

requirement." App. 85a. The Party's bylaws, however, merely state that "*in the event that Montana law is changed* to allow for closed primary elections" a rule will come into effect, *at that time*, limiting participation to "persons who have registered as a Republican." App. 214a-215a (emphasis added). The Party certainly could create membership requirements and a membership list, but it has so far chosen not to do so. App. 253a-256a.

In sum, the Party has yet to meet its burden to establish, as a factual issue, that Montana's open primary imposes a severe burden. It has thus failed to compile a sufficient evidentiary record to show it is likely to succeed on the merits.

D. The State's Important Regulatory Interests Justify the Open Primary Requirement.

Because the Party has failed to provide sufficient evidence of the "character and magnitude" of the burden it alleges is imposed by Montana's open primary, the law is subject to less exacting review, and "important regulatory interests" are sufficient to justify it. *Timmons*, 520 U.S. at 358. Important interests justify Montana's open primary.

A state has broad power to regulate elections, *Washington State Grange*, 552 U.S. 442, 451, and "indisputably has a compelling interest

in preserving the integrity of its election process." *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231-32, (1989) (listing cases upholding restrictions on elections). Further, a state has the uncontested right to require that candidates be elected by primary, *American Party of Texas v. White*, 415 U.S. 767, 781 (1974), even though this decreases a party's control over its candidates.

The open primary system was adopted by the people of Montana over 100 years ago. Requiring party registration now, less than three months from the primary, would infringe on a voter's privacy and also would place barriers on a person's right and ability to vote in primary elections. *See La Follette*, 450 U.S. 107, 136 (Powell, J., dissenting) (noting "Wisconsin has determined that some voters are deterred from participation by a public affiliation requirement").

Montana's open primary system also addresses the real "threat" of negative strategic crossover voting. App. 236a. This type of malicious voting, known as "raiding," where a voter votes in a party's primary in order to cause harm to the party, is *more likely to occur* in closed primaries than in open primaries. App. 243a-244a, 250a. Montana's open primary thus protects the parties, and by extension

the voters, from the most significant crossover voting risk. This is clearly an important regulatory interest.

Even if the burden on the Party were severe, Montana need not provide "elaborate, empirical verification of the weightiness of the State's asserted justifications." *Timmons*, 520 U.S. at 364 (citation omitted). Here the compelling interest is enshrined in Montana's Constitution, Art. II, § 10, which provides "one of the most stringent protections of its citizens' right to privacy in the United States." *Armstrong v. State*, 1999 MT 261, ¶ 34, 296 Mont. 361, 989 P.2d 364 (citation omitted). While *Jones* determined that privacy was not a compelling interest supporting California's blanket primary, it first emphasized it was ruling only "*in the circumstances of this case*." 530 U.S. at 584-85 (emphasis in the original). The circumstances of *Jones*, in contrast to Montana, involved California voters that *already publicly registered* their party affiliation, and thus had no significant privacy interest in that affiliation. *Id.* at 578.

To deem the burden of the open primary as severe on this record "would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections,

and compel federal courts to rewrite state electoral codes." *Clingman*, 544 U.S. at 593. These choices are best left to the "democratic process, not the courts." *Id.* at 598.

IV. AN INJUNCTION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST DUE TO THE "PROXIMITY OF A FORTHCOMING ELECTION."

An injunction from the Court at this point would be a serious disruption to Montana's primary election, and would likely cause significant harm to the State and its voters, because the State's "election machinery is already in progress." *Reynolds*, 377 U.S. at 585. The period for candidates to file for office passed March 15. Mont. Code. Ann. § 13-10-201. On March 24, 2016, just two days after the filing of this Response, the Secretary of State must certify the names and designations of statewide and state district candidates to election administrators. Mont. Code. Ann. § 13-10-208.

Ballots must be printed and sent no later than April 22, 2016, to absent military and overseas electors. Mont. Code. Ann. § 13-10-205. When those ballots are printed and sent, if this Court has enjoined Montana's open primary, it will be impossible for the State to determine

who may receive a Republican primary ballot because the State does not have a registration list, App. 55a, and the Party does not have a membership list. App. 253a. An injunction would thus either disenfranchise these absentee voters or create total electoral chaos—or both.

The Party is wrong that Montana's Secretary of State can unilaterally issue emergency rules to address the void left by an injunction. The Secretary of State only has the authority to issue directives to election administrators about Montana's existing election laws—not make new laws out of whole cloth. *See* Mont. Code. Ann. § 13-1-201 (role limited to "maintain[ing] uniformity in the application, operation, and interpretation of *election laws*") (emphasis added); Mont. Code. Ann. § 13-1-202 (1)(a) (may issue "written directives and instructions relating to and based on *the election laws*) (emphasis

added). "Election laws" in these statutes means the laws passed by the Montana Legislature, not edicts from the executive branch.[4]

Likewise, Montana's legislature only meets every two years, and its next session is not until January of 2017. Mont. Const. art. V, § 6. Special sessions are exceedingly rare in Montana because they entail significant burdens on the State, the last one having occurred 9 years ago in 2007.[5] In fact, although this lawsuit was filed months in advance of the 2015 Regular Session of the Montana Legislature, not a single legislator introduced legislation to close Montana's primary.[6] The Party's lack of interest in finding legislative solutions[7] to a century-old

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[4] *O'Callaghan v. State of Alaska*, 6 P.3d 728, 730-31 (Alaska 2000) does not provide otherwise. There the election administrator was addressing a final holding of this Court, *Jones*, not an injunction pending appeal. Additionally, Alaska's "director of elections'" authority is broader and not limited to providing direction regarding election laws. *See* Alaska Stat. § 15.15.010 (may adopt regulations "necessary for the administration of state elections.").

[5] *See* http://leg.mt.gov/css/Sessions/default.asp

[6] *See* http://laws.leg.mt.gov/legprd/LAW0217W$BAIV.return_all_bills?P_SESS=20171

[7] The Montana Republican Party held majorities in both houses of the 2015 Montana Legislature. *See* http://leg.mt.gov/css/About-the-Legislature/Facts-and-Statistics/party-control.asp.

election system shows they did not consider a change to Montana's election laws to be an urgent matter. The potential harm to the public interest thus far outweighs the potential harm to the Party.

CONCLUSION

For the above-stated reasons, this Court should deny the emergency application for injunction pending appellate review, on the eve of the primary election, and maintain the century-old status quo of Montana's open primary.

Respectfully submitted this 22nd day of March, 2016.

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