



October 4, 2008

Secretary of State Brad Johnson
State Capitol
P.O. Box 202801
Helena, MT 59620-2801

Dear Secretary of State Johnson,

On behalf of Montana Conservation Voters, I request that you provide immediate guidance to county election administrators to dismiss the challenges of the 6,000 Montana electors made by the Montana Republican Party through Jacob Eaton, as he failed to meet the burden of proof required in Montana law.

We also call on you to provide immediate and accurate information to the 6,000 voters who are subject to this challenge, advising them to vote as they would have otherwise – by absentee ballot or at the polls. Their signature on the register or the absentee ballot affirmation envelope is sufficient to confirm their address.

Finally, we call on you, as Montana's chief election administrator, to offer accurate and clear information about Montana's election laws and procedures, and what is required of a challenger, to replace the confusing, murky and legally questionable guidance appearing in today's newspapers, which shifts the burden of proof from the challenger to their victims.

Our reasons for these three requests are straightforward. Montana law says that a person challenging another voter's status as a legally registered voter must show, by a 'preponderance of the evidence,' that the challenged elector should not be permitted to vote. Mr. Eaton and the Republican Party failed to show this evidence for even one voter, much less 6,000.

A voter's name appearing on a change of address list is absolutely not sufficient to prove permanent residency contrary to the voter's legal voting record. Nor is it sufficient to put these thousands of Montana voters through the incredible hassle with a threat of losing their opportunity to vote.

There are many reasons people may have a different temporary address; they may be in the military, they may be at school or at a temporary job.

These challengers have not shown 'by a preponderance of evidence' that they have personal knowledge of each person's residency status sufficient to challenge each voter; they have offered no proof that any of the challenged voters have no intention of returning to the address at which they are registered - as evidenced by their acknowledgement that already certain challenges would be withdrawn because of information that they have just now become aware of. The partisan individuals making these challenges have clearly not met the burden of proof required in Montana statute to remove electors from the rolls.

Moreover, the burden should not be on the voter to prove residency; the burden, by law, is on the challenger, and we vehemently disagree that any of these voters should be put in the position of thinking they should have to take additional action and respond to this attack.

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Yet today's press reports indicate that your office has said that, to be safe, voters being challenged should "fill out the challenge affidavit, with a notarized signature, to foreclose any further challenges" (*Billings Gazette*, October 4, 2008). This advice, in effect, shifts the burden of proof from Mr. Eaton and the Republican Party, to the 6,000 voters. This is even more alarming in light of Mr. Eaton's publicly reported plan to challenge more voter registrations.

Lack of leadership from you on this critical point appears to condone or encourage abuse of the challenge provisions of Montana election law.

We are very concerned that these voters will be intimidated by the challenge and simply not vote. The challenges should be dismissed. Election officials should be able to focus on the tremendous task of ensuring that all electors get a chance to vote.

Montana has processes in place to both confirm voter registrations and to remove ineligible voters from the list of electors. It is absurd for any political party to ignore these election procedures that are in place to ensure the integrity of our elections. Moreover, as the guardian of Montana's election law, you should be defending these practices, explaining them to the public and the challengers and calling on them to practice their own due diligence.

We believe this blatant and unprecedented attempt to stifle voters deserves immediate condemnation and correction from you.

I appreciate your attention this matter, and look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Theresa M. Keaveny". The signature is written in a cursive, flowing style with a large initial 'T' and 'K'.

Theresa M. Keaveny
Executive Director

CC: Montana County Election Administrators