

Partisan Canceling of Voter Registrations

Montana Democratic Party v. Eaton
(Donald W. Molloy, D. Mont. 9:08-cv-141)

One month before the 2008 general election, and on the last day for voter registration, Montana’s Democratic Party and two voters living in Missoula County filed a federal complaint in the District of Montana’s Missoula Division claiming that the state’s Republican Party was improperly challenging the eligibility of Democrats’ voter registrations.¹ Based on postal service changes of address, the Republican Party challenged the eligibility of approximately 6,000 voters.² With their complaint, the plaintiffs filed a motion for a temporary restraining order.³

Montana’s attorney general observed that the mass voter registration challenges were unprecedented.⁴

Montana law specifies that upon submission of a voter registration challenge, “the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector’s registration.”⁵ The complaint alleged that county officials were in the process of sending notices to challenged voters.⁶ “Apparently in response to the filing of Plaintiffs’ complaint, the Secretary of State has astutely directed the involved counties to refrain from sending the letters of challenge.”⁷

The National Voter Registration Act⁸ allows for a program of registration cancellation in which “change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have

1. [Complaint](#), *Mont. Democratic Party v. Eaton*, No. 9:08-cv-141 (D. Mont. Oct. 6, 2008), D.E. 2 (“The challenges were filed in traditionally Democratically leaning areas, including Missoula, Lewis & Clark, [Deer] Lodge, Silver Bow, Glacier, Hill, and Roosevelt counties.”); [Mont. Democratic Party v. Eaton](#), 581 F. Supp. 2d 1077, 1078 (D. Mont. 2008); see Matthew Brown, *GOP Backs Off Voter Registration Challenges*, Great Falls Trib., Oct. 8, 2008, at M1.

In the 2008 presidential election, the Democratic nominee received more votes in Missoula County than in any other Montana county. Montana Secretary of State 2008 Election Cycle, <http://sos.mt.gov/elections/archives/2000s/2008/index.asp>; see New York Times Election Results 2008, <http://elections.nytimes.com/2008/results/states/president/montana.html>.

2. *Mont. Democratic Party*, 581 F. Supp. 2d at 1078–79 (“these challenges do not appear directed at the statewide voting population, but rather at select counties that likely contain concentrations of Democratic voters”); see *Cascade County Not Affected by GOP Voter Challenge*, Great Falls Trib., Oct. 3, 2008 (reporting Republican Party challenges to “the eligibility of 6,000 registered voters in six counties that historically are Democratic strongholds”).

3. [Temporary Restraining Order Motion](#), *Mont. Democratic Party*, No. 9:08-cv-141 (D. Mont. Oct. 6, 2008), D.E. 1.

4. [Prehearing Brief](#) at 2, *id.* (Oct. 10, 2008), D.E. 13.

5. [Mont. Code § 13-13-301\(3\)\(a\)](#) (Westlaw 2012).

6. [Complaint](#), *supra* note 1, at 6–7.

7. *Mont. Democratic Party*, 581 F. Supp. 2d at 1080.

8. Pub. L. No. 103-31, 107 Stat. 77 (1993), [42 U.S.C. §§ 1973gg to 1973gg-10](#) (2010).

changed,”⁹ but a state may not systematically cancel voter registrations fewer than 90 days before a federal election.¹⁰

Two days after the action was filed, Judge Donald W. Molloy denied the plaintiffs a temporary restraining order:¹¹ the Republican Party was not a state actor governed by the federal statute,¹² and the state’s decision not to effectuate the Republican Party’s scheme mitigated the immediacy of the alleged injury.¹³ Judge Molloy set a merits hearing on the plaintiffs’ pleas for declaratory and injunctive relief for October 14, the action’s ninth day.¹⁴

Four days before the hearing, however, the plaintiffs voluntarily dismissed their action on assurances that Montana would not act on the Republican Party’s challenges.¹⁵

Judge Molloy was able to resolve this case without proceedings.¹⁶ His chambers were notified of the ex parte application for a temporary restraining order immediately upon its filing, and Judge Molloy gave the case his immediate attention.¹⁷

9. § 1973gg-6(c)(1)(A); *Mont. Democratic Party*, 581 F. Supp. 2d at 1081.

10. § 1973gg-6(c)(2)(A); *Mont. Democratic Party*, 581 F. Supp. 2d at 1081.

11. Judge Molloy ruled on October 8, 2008. [Opinion](#), *Mont. Democratic Party v. Eaton*, No. 9:08-cv-141 (D. Mont. Oct. 8, 2008), D.E. 10. Two days later, Judge Molloy amended the opinion nunc pro tunc to add a footnote concerning who should attend a subsequent hearing, [Opinion](#), *id.* (Oct. 10, 2008), D.E. 11, and the amended opinion was published in the Federal Supplement. *Mont. Democratic Party*, 581 F. Supp. 2d 1077.

Tim Reagan interviewed Judge Molloy for this report by telephone on May 16, 2012.

12. *Mont. Democratic Party*, 581 F. Supp. 2d at 1081 (“If the State of Montana, instead of the Montana Republican Party, engaged in the conduct that has created this controversy, its actions would violate the Federal Voter Registration Act.”).

13. *Id.* at 1080 (“the allegedly immediate and irreparable injury Plaintiffs’ motion addresses is not as immediate as it first appeared”).

14. *Id.* at 1085.

15. [Notice](#), *Mont. Democratic Party*, No. 9:08-cv-141 (D. Mont. Oct. 10, 2008), D.E. 15; [see Docket Sheet](#), *id.* (Oct. 6, 2008) (noting Oct. 10, 2008, dismissal); [see also](#) Brown, *supra* note 1 (“Montana Republican Party executive director Jacob Eaton said he was withdrawing the challenges and would be issuing no more.”).

16. Interview with Hon. Donald W. Molloy, May 16, 2012.

17. *Id.*