

Open Letter to the Montana Democratic Party On MDP's First Amendment Rights to Associate

July 16, 2026

Dear Montana Democratic Party leaders,

We've seen significant online debate about whether, if Alani Bankhead withdraws as the Democratic nominee for Senate, the Montana Democratic Party can choose not to replace her with another nominee. The short answer is yes: **if presented with a vacancy, the Montana Democratic Party can choose to not nominate a replacement.**

Legal Argument

Political parties have a First Amendment right to associate. This means the ability to associate—or not associate—as they see fit. Even if someone sued in response to a decision not to nominate, both state law and the First Amendment will protect the will of the Montana Democratic Party's State Central Committee.

Case law clearly supports this understanding of state and federal law. In 2000, the U.S. Supreme Court decided *California Democratic Party v. Jones*, 530 U.S. 567, holding that:

- The First Amendment accords special protections to political parties when it comes to selecting nominees because candidates are a political party's "standard bearer who best represents the party's ideologies and preferences." *Id.* at 575.
 - State Central Committees determine who their "standard bearer" is—and that person could be a Democrat or another candidate, leaving the State Central Committee with the authority to decide whether or not to nominate a candidate to replace someone who has withdrawn.
- The First Amendment expressly protects a party's "right not to associate" with anyone, including candidates. *Id.* at 574 ("Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.") (quoting *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 n.22 (1981); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986) ("The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization.")).

National Examples

Democratic parties in states including Nebraska, Utah, Alaska, Maine and Vermont have chosen to align with Independent candidates where it advances the party platform. **Montana can do the same.**

In Utah, Nebraska, and Alaska, Democratic party bodies have voted to affiliate with a non-Democratic candidate. In each case, these Independent candidates outperformed Democratic expectations, in many cases winning Republican seats for the first time in decades.

Specifically:

- In 2024, the Nebraska Democratic Party intentionally left their ballot line blank to ensure the most competitive head-to-head matchup against a Republican incumbent. As a result, Independent Dan Osborn outperformed Harris' presidential margin by 14%, more than any Democratic candidate for federal office in the country.
 - Dan Osborn is running as an Independent again in 2026. This time, the Nebraska Democratic Party fielded and funded a Democratic candidate committed to dropping out, who withdrew after the primary, the Party endured and won the lawsuits that came from Republicans, and now

Nebraska Democrats and Independent voters are a united front supporting Dan Osborn against the Republican.

- In 2022 in Utah, Independent candidate Evan McMullin challenged Republican Senator Mike Lee. At the Utah Democratic Party's nominating convention, nearly 60% of delegates voted not to nominate a candidate and instead endorsed McMullin's candidacy.
 - McMullin went on to have the best electoral performance by a non-Republican candidate in Utah since 1976 and overperformed by more than any Democratic U.S. Senate candidate running in 2022.
- In 2014, Bill Walker won Alaska Governor as an Independent candidate after the Democratic candidate withdrew at the last minute. He did so in a state Romney had won by 14 points two years earlier and Trump won by 15 points two years later.
- In 2012, when Angus King won Maine Senate as an Independent candidate, no non-Republican candidate had won in 24 years. Angus King caucuses with Senate Democrats.

These examples prove that Democratic parties can align with Independent candidates and those candidates can open new pathways to compete and win in seats otherwise safe for Republicans.

Let us be clear, each state is unique—unique bylaws, unique state laws, unique electoral systems. **But don't let that distract you from the main point: political parties are free to choose who represents them.**

And in 2026, Montana Democrats can do just that: and choose to advance their platform rather than feel cornered to nominate a Democratic candidate who cannot win a head-to-head match up with the hand-picked Republican nominee.

Montana Examples

- In Montana, the Montana Democratic Party has exercised its First Amendment right of association to support local nonpartisan candidates.
- The Party has likewise supported recent Independent candidates, including Elena Evans for the Public Service Commission and Janna Hafer for the Montana State Legislature, both of whom ran in 2024 for seats with no Democratic candidate on the ballot.
- Finally, in 2020, when both Libertarian primary candidates withdrew from the race for U.S. Senate, **the Montana Libertarian Party held a nominating convention and selected “none of the above” over other options.** [By majority vote, they chose not to name a replacement](#), leaving them without a nominee on the 2020 Senate ballot. That decision went unchallenged in court and stands as a clear example of a party exercising its freedom to choose whether to associate or nominate or otherwise endorse a candidate at all.

The 2026 Race for U.S. Senate

So what happens next? To run pro-choice, pro-labor, pro public lands Independent Seth Bodnar directly against hand-picked Republican Kurt Alme, Democrat Alani Bankhead would need to withdraw **by Monday, August 10th** according to the [SOS Calendar](#).

Next, according to its [bylaws](#), the Montana Democratic Party would announce and hold a meeting to consider nominating a replacement candidate before Wednesday, August 19th.

A vote of more than 50% of that body could choose to nominate a replacement candidate OR not nominate a replacement, [as the Libertarian Party did in Montana in 2020](#).

Montana law provides that “For offices to be filled by the state at large, the state central committee shall make the appointment **as provided by the rules of the party.**” [Section 13-10-327\(a\), MCA](#) (emphasis added). Separately, state law empowers political parties to, among other things, “make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one county where the vacancies are caused by death, resignation, or removal from the electoral district.” [Section 13-38-101\(8\), MCA](#). This statute states that “parties may. . . make nominations.” *Id.* (emphasis added). Although state law provides for timelines should parties choose to nominate replacements when a candidate withdraws, it imposes no requirement that parties nominate replacements, only that they follow their own rules.

The question becomes whether a majority of the Montana Democratic Party’s Central Committee wishes to fill the vacancy. And while the Montana Democratic Party’s bylaws require that “The person receiving a majority of the votes cast shall be declared the Party’s nominee,” Bylaw 16(3), **the Party is free to interpret its own bylaws to include an option to nominate no one**. This is the simplest and most efficient path for the Montana Democratic Party to support the head-to-head race between Independent Seth Bodnar and annointed Republican Kurt Alme.

The Montana Democratic Party is responsible for interpreting its own rules and can interpret those rules to include an option against replacing the nominee so long as a majority of the Montana Democratic State Central Committee vote for that option. Courts are loathe to interpret a body’s internal rules in a way that is contrary to the body’s own interpretation of those rules. See *La Follette*, 450 U.S. at 122 (1981) (“Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.”); *id.* at 123 (holding that the Wisconsin Supreme Court could not “obligate[] the National Party to accept the delegation to the National Convention chosen in accord with Wisconsin law, despite contrary National Party rules”).

However inefficient it would be, if the Montana Democratic Party interprets its own rules to require nominating a specific individual, the party could choose to nominate Independent Seth Bodnar, recognizing that he will appear as an Independent on the ballot. [Section 13-10-303, MCA](#) (provision prohibiting candidates from appearing on the ballot with more than one party nomination, but not prohibiting parties from nominating the same candidate). The Party could also exercise its right to change the bylaws by two-thirds vote, Bylaw 13(1), to change the Party rules to further ensure legal protection against interference with the choice not to nominate a replacement.

If someone (likely Kurt Alme supporters) sued the Party, then a lawsuit would play out in state court. While no state precedent is directly on point, **there is good reason to believe that state courts would defer to the State Central Committee’s decision not to nominate a replacement candidate because state law defers to parties generally to administer their own rules**. In Nebraska, when the Secretary of State attempted to block a Democratic nominee who ran in the primary specifically to later withdraw, [Nebraska courts sided with the nominee](#) and allowed her to run. Republicans in Nebraska are trying once again to prevent her removal from the ballot, but the Nebraska Democratic Party has stood strong in the face of Republican threats to interfere with Independent Dan Osborn’s ability to run for reelection in a head-to-head with their candidate.

We do not believe a state court would interfere with the Montana Democratic Party’s First Amendment right to associate or not associate with a candidate.

Conclusion

We know this Senate race is contentious right now, and tensions are running high, but, as strong Democrats, we hope the Montana Democratic Party State Central Committee members keep in mind the latitude they have under the U.S. Constitution—as well as under state statute and Party Bylaws.

Montana has had an open U.S. Senate seat only three times in the last 50 years.

In a moment as rare as this one, the greatest risk to Democratic values is failing to do everything possible to flip the Senate seat.

Personally, we would choose a tough internal conversation and fighting off a possible lawsuit every day of the week if it means we have the opportunity to advance our values and policies in the U.S. Senate, arguably the most powerful single political body in the world. The only alternative is loss—and further advancement of the federal administration's agenda.

In these trying times nationally and in state, the Montana Democratic Party owes it to its members to explore all opportunities for success on the issues and values that matter most. We hope Montana Democrats choose the path most likely to advance their platform, defeat Kurt Alme, and secure a workable Senate majority.

And the constitution has their back.

In solidarity for a brighter future for our state and country,

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