

## MONTANA FIFTH JUDICIAL DISTRICT

Loren Tucker  
District Judge



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Judicial Redistricting Commission  
Helena, MT 59620

Dear Commissioner:

Discussions with colleague judges convince me that persons who serve in our Montana judiciary are deeply concerned that all citizens of Montana have ready access to the Courts and equal opportunity to resolve legal and fact issues. Your judges continue to work diligently in an attempt to satisfy those goals. However, it is difficult to achieve those goals when required to discharge constitutional and statutory responsibilities with too few resources.

Your staff has provided you the data (Montana District Court Judicial Weighted Caseload Study, 2014; Judicial Need Model; District Court Case Filing Statistics, 2013; Uniform Caseload Filing Standards, etc.) which demonstrate that there are too few judicial resources. I respectfully urge you to recognize that the puzzle of too few judicial resources cannot be solved by reshuffling too few puzzle pieces.

The only possible method to add judges in one area by redistricting is to reduce judges (usually the only judge) in another. No one can think that urban areas will suggest that they reduce the number of their judges. Thus, consolidation of existing judges in the urban areas where need is arguably most pressing would be the likely suggestion. Simply counting the number of votes in each urban and rural area demonstrates that urban areas would benefit from a rearrangement of the existing too few judges at the expense of the rural areas.

If rural areas are incorporated into judicial districts centered in urban areas, the majority or plurality of votes in the urban areas will ensure that judges will be elected only from those areas. It will be increasingly difficult, if not impossible, for rural areas to elect a judge who is knowledgeable about the issues and circumstances which are critical

to understanding and resolving disputes in rural areas. Rural residents would never elect another judge and would be disenfranchised.

A judge removed from a rural district or consolidated with an urban district would be called upon to attend to the issues arising in the hard pressed urban areas. Rural residents then would have judicial service only when the pressing work in the urban area might be able to accommodate the rural stepchildren. That problem would be exacerbated because of the small number of voters in the rural area. The urban judges would have no incentive to serve the rural area.

Video conferencing has ameliorated the deficiency in judicial resources somewhat. However, interactive television is only marginally useful. First, the systems are imperfect. Both video and audio problems develop at critical stages. It is difficult at times to understand and to make oneself understood. Such hearings are very difficult to manage when more than two parties are involved. Persons in remote locations are disadvantaged by the separated distance. Their positions simply are more difficult to effectively present. Persons in the near location are disadvantaged in their attempts to communicate with the persons at the remote locations. Management of a hearing which involves complex issues or more than two persons and persons who are not perfectly calm, patient, and entirely respectful of one another are virtually impossible. Video conferencing is wholly inadequate for other than an occasional routine hearing. The parties understandably do not appear to be satisfied when their important matter is relegated to a video conference.

Please consider judge travel requirements. The larger judicial district which would result from consolidating rural areas into urban concentrations would require judges to spend even more time traveling. More time traveling results in less time judging. There would less time available overall to do the people's work. The greatest number of miles travelled to serve the people are necessarily encountered in rural areas. The roads in those areas are much less readily traversed than the interstate highways which are typically near the urban areas. Likewise, rural travelers encounter a variety of wildlife which can compromise safety. For example, in the 5<sup>th</sup> Judicial District, deer are legion along brush lined highways. I have encountered virtually every species of big game animal as well as cattle. Fatigue caused by excessive travel also compromises the quality of judicial work.

The more locations in which a judge is required to preside, the greater the scheduling problems become. Aside from the fact that it causes significant inefficiency in completing judicial work, the inevitable constant rescheduling and re-juggling is an inconvenience for parties, witnesses and attorneys and sometimes an outright hardship and even impossibility. The people are not well served in that situation. The workload statistics provided to you do not touch these issues at all.

The situation is fundamentally different from legislative redistricting. The Constitution sets the maximum and minimum number of legislators. Even if more legislators were necessary, all of them would be required to deal with all the same proposed legislation at the same time. In contrast, judges must separately deal with individual cases, the number of which continues to climb with increasing inclination to litigate.

Our Constitution provides that all Montanans must have access to the courts. Equal protection requires that there be reasonable access to the courts for all residents. There is no equality when rural residents must travel excessively or wait excessively for their issues to be heard. Reducing the number of judges in any area will impermissibly thwart the Constitutional right of access to the Courts.

Judicial workload studies show what is necessary in each area. The challenge is to address that need. Redistribution of too few judges will only make the problem worse for some citizens and inevitably will create factions, incite parochial jealousies, and cause bitter feuds across the State. Unfortunately, the redistricting study will create problems in achieving consensus on how to resolve the underlying problem of too few resources and will delay resolution. A more appropriate study would consider State funding of necessary court buildings and equipment.

Due to my age and time in service, it is doubtful that redistricting would have an impact upon me personally. However, I remain deeply concerned about Montanans who live in rural areas and especially those residents where populations are declining.

Please avoid any temptation to ease a need for more judges in one area by leaving the residents of another without reasonable access to the courts and without an opportunity to elect a judge who understands the people and the issues of the slighted area.

Of course, I am available to you individually or collectively on any occasion when I can provide assistance to you in your deliberations.

Sincerely,

Loren Tucker  
District Judge

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