

ORIGINAL

FILED

December 9 2013

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

ROBERT WILLEMS, PHYLLIS WILLEMS, TOM
BENNETT, BILL JONES, PHILIP WILSMAN,
LINDA WILSMAN, JASON CARLSON, MICK
JIMMERSON, DWAYNE CROOK, MARY JO
CROOK, JAMES STUNTZ, RANDY BOLING, ROD
BOLING, BOB KELLER, GLORIA KELLER, ROALD
TORGESON, RUTH TORGESON, ED TIMPANO,
JEANNIE RICKERT, TED HOGELAND, KEITH
KLUCK, PAM BUTCHER, TREVIS BUTCHER,
BOBBIE LEE COX, WILLIAM COX AND DAVID
ROBERTSON,

ORIGINAL

FILED

Plaintiffs and Appellants,

DEC 09 2013

v.

STATE OF MONTANA, LINDA McCULLOCH, in her
capacity as Secretary of State for the State of Montana,

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Defendants and Appellees.

**UNOPPOSED MOTION FOR (1) EXPEDITED APPELLATE
PROCEEDINGS AND (2) REDUCTION OF TIME FOR TRANSMISSION
OF RECORD PURSUANT TO M. R. APP. P. 9(3)(A)**

Matthew G. Monforton
MONFORTON LAW OFFICES, PLLC
32 Kelly Court
Bozeman, Montana 59718
Telephone: (406) 570-2949
Facsimile: (406) 551-6919
matthewmonforton@yahoo.com

Attorney for Plaintiffs and Appellants

INTRODUCTION

Appellants are 26 registered voters in Senate District 15 (SD-15) who move this Court for an order under M. R. App. P. 9(3)(a) reducing the time to transmit the District Court record as well as an order for expedited briefing and resolution of this matter. This is a redistricting lawsuit raising constitutional issues of first impression that, as the District Court forthrightly noted, should be resolved by this Court. (See Trans. dated 11/8/13, p. 64, attached as Exhibit 1.) These issues are likely to recur in subsequent redistricting cycles. Because state senate representation in three senate districts is affected by this case, and because the deadline for state senate candidates to file for office is **March 10, 2014**, Appellants request that (1) this Court order a reduction of time for the record to be transmitted from the District Court and that (2) a ruling be issued by this Court before that date.

Pursuant to M. R. App. P. 9(3)(a), undersigned counsel states that he has contacted Cheryl Romsa, the court reporter assigned to the District Court during the hearing held on November 8, 2013. Ms. Romsa stated that she would be able to prepare a transcript of the hearing by November 15, 2013. No other hearings have been held in this matter and therefore no other transcripts are needed.

Montana Solicitor General Lawrence VanDyke, counsel for Appellees, has been notified of this Motion and has requested to make the following statement:

The State has been contacted and does not generally oppose expediting appellate proceedings in this matter. But because of State counsel's fixed commitments in other matters over the next two months, the State strongly opposes shortening its normal 30 day period for filing an answer brief under Rule 13(1) of the Montana Rules of Appellate Procedure.

ARGUMENT

This case presents extraordinary circumstances under M. R. App. P. 9(3)(a). It arises from the Districting and Apportionment Commission's (Commission) last-minute, surprise reassignment of a "holdover" senator¹ to SD-15. Redistricting lawsuits are typically expedited due to election-related deadlines. See, e.g., *Vandermost v. Bowen*, 53 Cal.4th 421, 441 (Cal. 2012); *Independent Redistricting Comm'n v. Brewer*, 275 P.3d 1267, 1271 (Ariz. 2012); *Leroux v. Secretary of State*, 635 N.W.2d 692, 698 (Mich. 2001).

This case has time sensitivities similar to other redistricting lawsuits. Appellants seek to void the Commission's last-minute reassignment of a holdover senator to SD-15 and thereby reopen the district for a senate election in 2014. If the Commission's reassignment stands, Appellants will be represented until 2016 by a holdover senator that has never appeared on their ballots.

¹ Montana's 50 senators serve four-year terms and are elected on a staggered basis, resulting in the election of 25 senators every two years. The Commission reassigned the 25 senators elected in 2012 under the old districting system to newly drawn districts. These senators are commonly referred to as "holdover" senators. *Wheat v. Brown*, 2004 MT 33, ¶ 5, 320 Mont. 15, 85 P.3d 765.

Appellants' exercise of their right to vote for senate candidates requires, of course, that there be senate candidates to select. This, in turn, requires that senate candidates in SD-15 have an opportunity to file for office before the filing deadline on March 10, 2014. Thus, any relief from this Court must be granted before that date in order to redress the injuries Appellants (as well as 20,000 other voters in SD-15) will suffer if the Commission's surprise holdover reassignment is not voided. *Greenberg v. Bolger*, 497 F.Supp. 756, 772 (E.D.N.Y.1980) ("Election cases require courts to be particularly careful to expedite disposition so that excessive procedural niceties do not result in delays making the relief useless in an upcoming election").

Appellants have worked diligently to advance this case in the District Court and will continue to do so on appeal. They have no objection to complying with any expedited briefing schedule the Court deems appropriate.

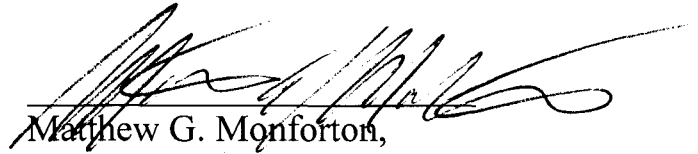
CONCLUSION

For all of the foregoing reasons, Appellants move this Court for an order under M. R. App. P. 9(3)(a) reducing the time for transmission of the record by the District Court as well as an order for expedited briefing, thereby enabling this Court to issue a final ruling prior to March 10, 2014, the deadline for state senate candidates to file for office.

DATED: December 7, 2013

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'Matthew G. Monforton', written over a horizontal line.

Matthew G. Monforton,
Attorney for Plaintiffs and Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing MOTION with the Clerk of the Montana Supreme Court; and that I have served, via U.S. Mail and email, true and accurate copies of the foregoing MOTION upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

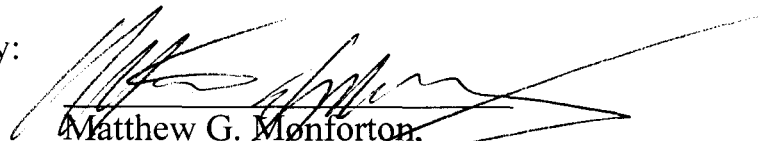
Lawrence VanDyke
J. Stuart Segrest
Attorney General's Office
215 N. Sanders
P.O. Box 201401
Helena, MT 59620-1401
LVanDyke@mt.gov,
SSegrest@mt.gov

Nancy Sweeney
Clerk of the District Court
228 Broadway, Rm 104
Helena, Montana 59624
nsweeney@lccountymt.gov
dapple@lccountymt.gov

DATED: December 6, 2013

Respectfully submitted,

By:


Matthew G. Monforton,
Attorney for Plaintiffs and Appellants

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

ROBERT WILLEMS, PHYLLIS WILLEMS,
TOM BENNETT, BILL JONES, PHILIP
WILSMAN, LINDA WILSMAN, JASON
CARLSON, MICK JIMMERSON, DWAYNE
CROOK, MARY JO CROOK, JAMES STUNTZ,
RANDY BOLING, ROD BOLING, BOB
KELLER, GLORIA KELLER, ROALD
TORGESON, RUTH TORGESON, ED TIMPANO,
JEANNIE RICKERT, TED HOGELAND,
KEITH KLUCK, PAM BUTCHER, TREVIS
BUTCHER, BOBBIE LEE COX, WILLIAM
COX, AND DAVID ROBERTSON,

Plaintiffs,

vs.

CAUSE NO. ADV-2013-509

STATE OF MONTANA, LINDA
MCCULLOCH, in her capacity as
Secretary of State for the State
of Montana,

Defendants.

TRANSCRIPT OF HEARING ON MOTIONS FOR SUMMARY JUDGMENT

Heard before the Honorable Mike Menahan
228 Broadway, Helena, Montana

November 8, 2013

REPORTED BY: CHERYL ROMSA
CHERYL ROMSA COURT REPORTING
ONE NORTH LAST CHANCE GULCH, SUITE 3
P. O. BOX 1278
HELENA, MONTANA 59624
(406) 449-6380

EXHIBIT 1

1 MR. MONFORTON: And I ask this ever so
2 delicately, because I know the Court has an enormous
3 workload to deal with. I am going to make a request,
4 though, that regardless of what the Court's ruling is --
5 As we mentioned in some of our filings, there are enormous
6 time pressures with this case.

7 THE COURT: I realize that.

8 MR. MONFORTON: And I don't mean to say this in
9 any kind of disrespectful or belligerent tone to the
10 Court, but if the ruling goes against us, we do intend to
11 appeal, and, obviously, the Montana Supreme Court will
12 want some time to try to digest this before -- I think
13 March 10th would be the deadline as far as when candidates
14 have to file for office. So we'd have to -- assuming the
15 ruling goes against us, we have to appeal it and hopefully
16 get the Montana Supreme Court to issue a ruling sometime
17 before March 10th. Again, I'm not trying to add pressure
18 to you, Your Honor, but the sooner we can get a ruling
19 from the Court, obviously, the better.

* 20 THE COURT: I assume that no matter which way I
21 rule there will be an appeal, because, ultimately, this
22 issue, I think, has to be decided by the Supreme Court.
23 So it's my intention to try to get a decision out as soon
24 as possible. But was there anything further on that?

25 MR. MONFORTON: I have nothing further, other

COURT REPORTER'S CERTIFICATE

STATE OF MONTANA)
) SS.
COUNTY OF LEWIS AND CLARK)

I, CHERYL ROMSA, Court Reporter in and for the
County of Lewis and Clark, State of Montana, do hereby
certify:

That the foregoing proceedings were reported by
me in shorthand and later transcribed into typewriting;
and that the -76- pages contain a true record of the
proceedings to the best of my ability.

DATED this 14th day of November, 2013.

CHERYL A. ROMSA