

Plaintiffs: Sister Mary Jo McDonald, Lori Maloney, Fritz Daily, Bob Brown, Dorothy Bradley, Vernon Finley, Mae Nan Ellingson, League of Women Voters

Defendant: Secretary of State

Venue: Montana Second Judicial District Court, Butte-Silver Bow County, Judge Kurt Krueger

Docket No.: 2-DV-21-0120

Legislation Challenged:

HB 325: AN ACT ESTABLISHING SUPREME COURT DISTRICTS; PROVIDING FOR THE SELECTION OF THE CHIEF JUSTICE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORATE AT THE 2022 GENERAL ELECTION; AMENDING SECTION 3-2-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Overview: Plaintiffs allege that HB 325, a legislative referendum establishing election districts for Supreme Court justices, would, if approved by voters, violate the language and intent of the Montana Constitution that Supreme Court justices be selected on a statewide basis rather than a districtwide basis. It further alleges that because the change conflicts with the Montana Constitution, it violates the constitutional procedures for amendments to the Montana Constitution by enacting a statutory referendum. Plaintiffs further allege that HB 325 infringes on the right to vote under Article II, section 13, of the Montana Constitution.

Plaintiffs have requested that the court declare HB 325 unconstitutional and enjoin the Secretary of State from certifying the referendum, as well as preventing it from appearing on the ballot.

Defendants filed to substitute the judge overseeing the matter, Judge Kurt Krueger, but the motion was denied because it had not been timely filed. Defendants appealed the substitution order to the Montana Supreme Court. The Montana Supreme Court reversed the District Court, holding that the substitution notice was timely filed due to the plaintiff's service of process not having been completed until the Attorney General had acknowledged service pursuant to Rule 4 of the Montana Rules of Civil Procedure. Judge John Brown assumed jurisdiction over the case in mid-November. The court is now considering the briefing schedule for consideration of the case's substantive matters.

Plaintiffs: Montana Federation of Public Employees, Montana AFL-CIO, Montana Association of Centers for Independent Living, Samantha Harrington, Adam Clinch, Paul Dougherty, Cullen Hinkle, Ashley Johnson, Greg Werber, Wyatt Murdoch, Theresa Froehlich Dutoit, Jasmine Tayler, Karen Cook

Defendant: Secretary of State

Venue: Montana Eighth Judicial District Court, Cascade County, Judge John Kutzman

Docket No.: 8-DV-21-0500

Legislation Challenged:

HB 176: AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview:

Plaintiffs allege that HB 176 violates Article II, section 13 of the Montana Constitution (Right of Suffrage) because it prevents otherwise eligible voters from voting if their registration status requires election day registration, interfering in the free exercise of the right of suffrage.

Plaintiffs also allege that HB 176 violates the Montana Constitution's guarantee of equal protection because it discriminates between new Montanans and Montanans who move to a new county by denying them the right to register and vote on election day in the county of residence while also allowing Montanans who have moved within a county to register and vote on election day. Further, plaintiffs allege that HB 176 discriminates against new or infrequent voters by denying them the right to vote unless they undergo additional registration burdens that are "not imposed on routine voters or voters who move within the same county."

Plaintiffs request that the court declare HB 176 unconstitutional and enjoin the defendant from enforcing its provisions. The plaintiffs further request costs and attorney fees.

Plaintiffs: Montana Democratic Party, Montanans for Tester, Macee Patritti

Defendants: Secretary of State, Commissioner of Political Practices

Venue: United States Federal District Court, District of Montana (Missoula) Judge Donald Molloy

Docket No.: 9-21-cv-00119

Legislation Challenged:

SB 319: AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; CREATING JOINT FUNDRAISING COMMITTEES; PROVIDING FOR CERTAIN REPORTING; ESTABLISHING THAT IF STUDENT ORGANIZATIONS THAT ARE REQUIRED TO REGISTER AS POLITICAL COMMITTEES ARE FUNDED THROUGH ADDITIONAL OPTIONAL STUDENT FEES, THOSE FEES MUST BE OPT-IN; PROHIBITING CERTAIN POLITICAL ACTIVITIES IN CERTAIN PLACES OPERATED BY A PUBLIC POSTSECONDARY INSTITUTION; PROVIDING FOR JUDICIAL RECUSALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING SECTIONS 13-1-101, 13-35-225, 13-35-237, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-207, 13-37-208, 13-37-216, 13-37-217, 13-37-218, 13-37-225, 13-37-226, 13-37-227, 13-37-228, AND 13-37-229, MCA; AND PROVIDING AN EFFECTIVE DATE.

Overview: Plaintiffs have challenged provisions in SB 319 that prohibit certain voter registration activities on public university campuses. Specifically, section 21 of SB 319 provides, in part, that "[a] political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution." Plaintiffs claim that this section limits the information available to new voters and stops them from engaging in constitutionally protected political speech and activities on college campuses, chilling protected speech.

Plaintiffs have challenged the provisions under the First and Fourteenth Amendments of the United States Constitution as an unconstitutional restriction on core political speech and under the Twenty-Sixth Amendment of the United States Constitution as an unconstitutional abridgement of the right to vote on account of age.

The plaintiffs have requested a declaratory judgment stating that the provisions are unconstitutional. They have further asked that the Secretary of State and the Commissioner of Political Practices be enjoined from enforcing them. The plaintiffs have requested attorney fees and costs.

Plaintiffs: Montana Democratic Party and Mitch Bohn

Defendant: Secretary of State

Venue: Montana Thirteenth Judicial District Court, Yellowstone County, Judge Michael G. Moses

Docket No.: 13-DV-21-0451

Legislation Challenged:

HB 176: AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HB 530: AN ACT REQUIRING THE SECRETARY OF STATE TO ADOPT RULES DEFINING AND GOVERNING ELECTION SECURITY; REQUIRING ELECTION SECURITY ASSESSMENTS BY THE SECRETARY OF STATE AND COUNTY ELECTION ADMINISTRATIONS; ESTABLISHING THAT SECURITY ASSESSMENTS ARE CONFIDENTIAL INFORMATION; ESTABLISHING REPORTING REQUIREMENTS; DIRECTING THE SECRETARY OF STATE TO ADOPT A RULE PROHIBITING CERTAIN PERSONS FROM RECEIVING PECUNIARY BENEFITS WITH RESPECT TO CERTAIN BALLOT ACTIVITIES; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

SB 169: AN ACT GENERALLY REVISING VOTER IDENTIFICATION LAWS; REVISING CERTAIN IDENTIFICATION REQUIREMENTS FOR VOTER REGISTRATION, VOTING, AND PROVISIONAL VOTING; AMENDING SECTIONS 13-2-110, 13-13-114, 13-13-602, AND 13-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview: Plaintiffs allege that provisions in HB 176, HB 530, and SB 169, including the revision of which IDs are accepted for certain voter identification purposes, the revision of late voter registration to close the day before the election, and prohibitions on providing, offering to provide, or accepting a pecuniary benefit for collecting or delivering ballots violate the following provisions of the Montana Constitution: Article II, section 4, which provides for the equal protection of the laws, Article II, sections 6 and 7, which provide freedom of assembly and freedom of speech, Article II, section 13, which provides the right of suffrage, Article II, section 17, which provides due process requirements, and Article V, section 1, which provides for legislative power. Plaintiffs have requested that the bills in question be declared in violation of the Montana Constitution and be permanently enjoined.

Two motions requesting that this litigation be consolidated with other litigation have been made, including *Western Native Voice v. Jacobsen*. Those motions are still pending.

Plaintiffs: Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe

Defendants: Secretary of State

Venue: Montana Thirteenth Judicial District Court, Yellowstone County, Judge Gregory Todd

Docket No.: 13-DV-21-0560

Legislation Challenged:

HB 176: AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HB 530: AN ACT REQUIRING THE SECRETARY OF STATE TO ADOPT RULES DEFINING AND GOVERNING ELECTION SECURITY; REQUIRING ELECTION SECURITY ASSESSMENTS BY THE SECRETARY OF STATE AND COUNTY ELECTION ADMINISTRATIONS; ESTABLISHING THAT SECURITY ASSESSMENTS ARE CONFIDENTIAL INFORMATION; ESTABLISHING REPORTING REQUIREMENTS; DIRECTING THE SECRETARY OF STATE TO ADOPT A RULE PROHIBITING CERTAIN PERSONS FROM RECEIVING PECUNIARY BENEFITS WITH RESPECT TO CERTAIN BALLOT ACTIVITIES; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview: Plaintiffs have challenged HB 176, which revises late voter registration to close at noon the day before the election for most voters. Plaintiffs assert that HB 176 violates the right to vote and the right to equal protection of the law under the Montana Constitution.

Plaintiffs have also challenged section 2 of HB 530, which directs the Secretary of State to adopt an administrative rule that prohibits a person from providing or offering to provide or accepting a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots and subjecting violators to a civil penalty. Plaintiffs assert that section 2 of HB 530 violates the right to vote, the right to freedom of speech, and due process under the Montana Constitution.

Plaintiffs have requested interim and permanent injunctions of both HB 176 and section 2 of HB 530 and attorney fees and costs.

Plaintiffs have requested that this litigation be consolidated with the *Montana Democratic Party v. Jacobsen*.

The Secretary of State has filed an answer to the plaintiffs' claims responding to the allegations. The Secretary of State has denied plaintiffs' claims that the challenged bills violate due process, equal protection, free speech, or the right to vote under either the United States Constitution or the Constitution of the State of Montana.

Plaintiffs: Montana Youth Action, Forward Montana Foundation, Montana Public Interest Research Group

Defendant: Secretary of State

Venue: Montana Thirteenth Judicial District Court, Yellowstone County, Judge Gregory Todd

Docket No.: 13-DV-21-1097

Legislation Challenged:

HB 176: AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HB 506: AN ACT GENERALLY REVISING ELECTION LAWS; ESTABLISHING PRIORITIES FOR DEVELOPMENT OF CONGRESSIONAL DISTRICTS; REVISING PROCEDURES FOR PROSPECTIVE ELECTORS TO REGISTER AND VOTE; CLARIFYING REQUIREMENTS FOR A BOARD OF COUNTY CANVASSERS; ELIMINATING THE EXPERIMENTAL USE OF VOTE SYSTEMS; AMENDING SECTIONS 5-1-115, 13-2-205, AND 13-15-401, MCA; REPEALING SECTION 13-17-105, MCA; AND PROVIDING EFFECTIVE DATES.

SB 169: AN ACT GENERALLY REVISING VOTER IDENTIFICATION LAWS; REVISING CERTAIN IDENTIFICATION REQUIREMENTS FOR VOTER REGISTRATION, VOTING, AND PROVISIONAL VOTING; AMENDING SECTIONS 13-2-110, 13-13-114, 13-13-602, AND 13-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview: Plaintiffs allege that provisions in HB 176, HB 506, and SB 169, including the revision of which IDs are accepted for certain voter identification purposes, a prohibition on issuing ballots to individuals who do not yet meet residence and age requirements, and revising the close of late voter registration to the day before the election. Plaintiffs allege that SB 169 violates Article II, section 13 (Right of Suffrage), of the Montana Constitution by reducing the number of standalone forms of identification that can be used for voting purposes. Plaintiffs also allege that this section and Article II, section 15 (Age Discrimination), are violated by HB 506 by making it more difficult for individuals who do not yet meet age and residency voting requirements – but who will by election day – from receiving a ballot, specifically young voters and individuals who have recently moved. Plaintiffs also allege HB 176 violates this section by eliminating election day registration and making voting in Montana more difficult.

Plaintiffs allege that SB 169 violates Article II, section 4 (Equal Protection), of the Montana Constitution, which unequally burdens individuals without ready access to the forms of identification required by the new law. Plaintiffs further allege that this section is violated by HB 506 because it imposes "additional burdens particularly on youth who are turning 18 years old in the month before an election and on young people more generally, who tend to move more frequently than older people." Plaintiffs also allege that this section is violated by HB 176 by reducing young voter turnout and by making registering to vote impossible for someone who turns 18 on election day.

The plaintiffs have requested the court to declare that HB 176, HB 506, and SB 169 are unconstitutional and have requested that "any aspects" of all three bills be enjoined from enforcement. The plaintiffs have requested attorney fees and costs.

One motion has been made by the plaintiffs to consolidate this litigation with another matter. Defendants have opposed the motion. The motion is still pending.

Plaintiffs: Forward Montana, Leo Gallagher, Montana Association of Criminal Defense Lawyers, Alexander Blewett III, Larry Anderson, Maxon Davis, Gary Zadick

Defendants: State of Montana

Venue: Montana First Judicial District Court, Lewis and Clark County, Judge Michael F. McMahon

Docket No.: 1-DV-21-0611

Legislation Challenged:

SB 319: AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; CREATING JOINT FUNDRAISING COMMITTEES; PROVIDING FOR CERTAIN REPORTING; ESTABLISHING THAT IF STUDENT ORGANIZATIONS THAT ARE REQUIRED TO REGISTER AS POLITICAL COMMITTEES ARE FUNDED THROUGH ADDITIONAL OPTIONAL STUDENT FEES, THOSE FEES MUST BE OPT-IN; PROHIBITING CERTAIN POLITICAL ACTIVITIES IN CERTAIN PLACES OPERATED BY A PUBLIC POSTSECONDARY INSTITUTION; PROVIDING FOR JUDICIAL RECUSALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING SECTIONS 13-1-101, 13-35-225, 13-35-237, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-207, 13-37-208, 13-37-216, 13-37-217, 13-37-218, 13-37-225, 13-37-226, 13-37-227, 13-37-228, AND 13-37-229, MCA; AND PROVIDING AN EFFECTIVE DATE.

Overview: Plaintiffs have challenged provisions in SB 319 that require judges to recuse themselves in certain situations and prohibit certain voter registration activities on public university campuses. Plaintiffs have challenged the provisions under Article V, section 11, of the Montana Constitution, which provides a single subject requirement for legislative bills. Plaintiffs allege that the challenged provisions were inserted later in the legislative process in a bill concerning joint fundraising committees, consequently violating the single subject rule and the requirement that a bill not be so amended as to change its original purpose. Plaintiffs further allege that section 21 of SB 319 violates Article II, sections 6 and 7, of the Montana Constitution, which provide for freedom of assembly and freedom of speech, as well as the First Amendment under the United States Constitution. Plaintiffs also allege that the judicial recusal provision in section 22 of SB 319 violates Article II, sections 16, 17, and 24, of the Montana Constitution, which provide for the administration of justice for every injury of person, property, or character, due process requirements, and rights of the accused, as well as the First Amendment under the United States Constitution.

Plaintiffs have requested a declaratory judgment stating that SB 319 is unconstitutional and enjoining the state from enforcing "any aspects of SB 319." The plaintiffs have requested attorney fees and costs. The plaintiffs argue that the bill is not severable, and therefore the entirety of the bill should be enjoined.

Plaintiffs applied to the court for a preliminary injunction, and the court granted the preliminary injunction, preventing the state from enforcing two sections of SB 319 pending the outcome of the court case. Section 21 has been enjoined, which provides that a "political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution." The court also enjoined section 22, which provides that a judicial officer must disqualify himself or herself if the judicial officer directly or indirectly received or benefitted from certain campaign

contributions from a party or a lawyer to the proceeding. Although the preliminary injunction prevents the state from enforcing the two enjoined sections while the court case is pending, it is not a ruling on the merits of the case. The preliminary injunction preserves the *status quo* until the court issues a substantive ruling on the merits of the case.

The defendant filed a motion to dismiss the proceeding, arguing that the plaintiffs lack standing and have failed to state a claim on which relief may be based.

Plaintiffs have filed a motion for summary judgment that SB 319 violated Article V, section 11, of the Montana Constitution by violating the single subject rule and changing the bill's original purpose. In response, the defendant filed a request to stay the plaintiffs' motion for summary judgment, arguing that the defendant's motion to dismiss the proceeding based upon the plaintiff's failure to allege facts sufficient to support standing must be determined first. If that motion fails, the defendants argue, they should then have the opportunity to conduct discovery and defend against the plaintiff's jurisdictional and substantive claims. The plaintiffs responded, noting that a summary judgment motion is in order whenever there are no genuine issues regarding material facts and that the pending motion to dismiss is not required to be resolved before the summary judgment motion.

The motions are pending before the court.