

2021 Election Law Litigation at the District Court Level

I. Contested Bills

In 2021, the Legislature passed four bills related to election laws that were later challenged in court. The four bills were:

- House Bill 176 (Greef): to close voter registration at noon the day prior to an election (originally Friday before election but was amended to noon the day prior to an election).
- House Bill 506 (P. Fielder): to disallow a 17-year-old elector, who would be 18 by election day, from receiving and voting an absentee ballot. The law prior to the passage of this bill allowed a 17-year-old to register to vote and receive an absentee ballot if the individual would be 18 on election day.
- House Bill 530 (McKamey): to require the Secretary of State to adopt administrative rules on election security to stop the paid collection and submission of absentee ballots by other individuals or groups. The bill also provided for a fine of \$100 for each ballot collected or distributed in violation of the administrative rules.
- Senate Bill 169 (Cuffe): to revise voter ID laws to require a voter using a student ID card as a form of identification to provide other supporting documentation for in-person voting.

II. Court Challenges

Montana Democratic Party v. Jacobsen

Plaintiffs: Montana Democratic Party and Mitch Bohn, Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe, Montana Youth Action, Forward Montana Foundation, Montana Public Interest Research Group

Defendant: Secretary of State

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

Docket No.: 13-DV-21-0451

Western Native Voice v. Jacobsen

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

Montana Youth Action v. Secretary of State

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

Western Native Voice v. Jacobsen (13-DV-21-0560) and *Montana Youth Action v. Jacobsen* (13-DV-21-1097) were consolidated with *Montana Democratic Party v. Jacobsen*.

III. Implicated Constitutional Provisions

At the District Court proceedings, the Plaintiffs alleged that the four bills (or portions of them) violated 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 (alleging improper delegation).

The Plaintiffs requested that the bills be declared in violation of the Montana Constitution and be permanently enjoined. The Plaintiffs also requested attorney fees and costs.

IV. Plaintiffs' Arguments

HB 176

Plaintiffs challenged HB 176, which revises late voter registration to close at noon the day before the election for most voters. Plaintiffs asserted that HB 176 violated the right to vote and the right to equal protection of the law under the Montana Constitution by eliminating election day registration, making voting in Montana more difficult, reducing young voter turnout, and making registering to vote impossible for someone who turns 18 on election day.

HB 506

Plaintiffs alleged that HB 506 violated Article II, section 4 (Individual dignity), section 13 (Right of suffrage), and section 15 (Right of persons not adults), 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, including young voters and individuals who have recently moved.

HB 530

Plaintiffs challenged section 2 of HB 530, which directed 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 asserted that section 2 of HB 530 violated the right to vote, the right to freedom of speech, and due process under the Montana Constitution. (Individual dignity-equal protection) and 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.

V. District Court Rulings

On July 27, 2022, the District Court granted summary judgment to the Plaintiffs, ruling that the law disallowing a 17-year-old, who would turn 18 by or on election day, to vote by absentee ballot was facially unconstitutional.

A nine-day bench trial on the three remaining laws was held in Billings during which several factual and expert witnesses testified. On September 30, 2022, the District Court issued an order finding that the remaining challenged laws were unconstitutional.

The Secretary of State appealed to the Montana Supreme Court. After the parties and three friends of the Court filed their briefs, the Supreme Court issued its opinion on March 27, 2024 (2024 MT 66). In it, the Court affirmed (upheld) the District Court's order in a 62-page opinion (synopsis provided).