



**Montana Legislative Services Division**

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**TO:** State Administration and Veterans' Affairs Interim Committee

**FROM:** Andria Hardin, Staff Attorney

**DATE:** January 8, 2024

**RE:** Litigation Update Concerning Recent Legislation

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This memorandum was prepared as background information at the request of the State Administration and Veterans' Affairs Interim Committee and does not represent any opinion or action on the part of the committee.

**I. Montana Public Interest Research Group v. Jacobsen**

**Plaintiffs:** Montana Public Interest Research Group; and Montana Federation of Public Employees.

**Defendants:** Montana Secretary of State Christi Jacobsen; Attorney General Austin Knudsen; and Montana Commissioner of Political Practices Chris Gallus.

**Venue:** United States District Court for the District of Montana, Helena Division

**Docket No.:** 6:23-cv-00070-DVM

**Legislation Challenged:**

**HB 892:** AN ACT REVISING VOTING LIMITS; PROHIBITING DOUBLE VOTING; PROVIDING A PENALTY; PROVIDING A DEFINITION; PROVIDING AN APPROPRIATION; AMENDING SECTION 13-35-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

**Overview:** Plaintiffs allege that HB 892 violates the Fourteenth Amendment due process clause under the U.S. Constitution by using vague and unclear standards in a criminal statute seeking to prohibit double voting, violates the First and Fourteenth Amendments of the U.S. Constitution by criminalizing and chilling protected political expression beyond its intended purpose thereby making it overbroad, and also violates the First and Fourteenth Amendments of the U.S. Constitution by unjustifiably burdening fundamental voting rights.

Plaintiffs have asked the court to find the provision of HB 892 codified at section 13-35-210(5) unconstitutional and enjoin the Defendants from enforcing that subsection. The Plaintiffs have requested attorneys' fees and costs.

This case is in the early stages of litigation. Plaintiffs filed for a preliminary injunction on November 6, 2023. As of the date of this memorandum, no orders have been issued.

## **II. League of Women Voters of Montana v. Knudsen**

Plaintiffs: League of Women Voters of Montana.

Defendants: Attorney General Austin Knudsen; Montana Secretary of State Christi Jacobsen; and Montana Commissioner of Political Practices Chris Gallus.

Venue: Montana 18<sup>th</sup> Judicial District Court, Gallatin County

Docket No.: DV-16-2023-0001073D

Legislation Challenged:

HB 892: AN ACT REVISING VOTING LIMITS; PROHIBITING DOUBLE VOTING; PROVIDING A PENALTY; PROVIDING A DEFINITION; PROVIDING AN APPROPRIATION; AMENDING SECTION 13-35-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Overview: Plaintiffs allege HB 892 violates the Montana Constitution's guarantees of the rights to vote, free speech, free association, and due process. The allegations of this case mirror the above-mentioned case, *Montana Public Interest Research Group v. Jacobsen*, which was filed in U.S. District Court alleging violation of the U.S. Constitution, while this suit alleges violation of the Montana Constitution. Plaintiffs requested the court preliminarily and permanently enjoin Defendants from enforcing the challenged provisions of HB 892 – specifically the “Deregistration Requirement” and the “Omission Provision” under section 13-35-210(5), MCA – and award attorneys’ fees.

On November 16, 2023, Plaintiffs filed a motion for a preliminary injunction against HB 892. No order has been issued in this case as of the date of this memorandum.

## **III. Ellingson v. State**

Plaintiffs: Mae Nan Ellingson; Jerome Loendorf; Arlyne Reichert; Hal Harper; Bob Brown; Evan Barrett; C.B. Pearson; Carole Mackin; Mark Mackin; and Jonathan Motl.

Defendants: State of Montana; Governor Greg Gianforte; Montana Secretary of State Christi Jacobsen; and Attorney General Austin Knudsen.

Venue: Montana First Judicial District Court, Lewis and Clark County, Judge Kathy Seeley

Docket No.: DV-25-2023-0000388-DK

Legislation Challenged:

SB 93: AN ACT GENERALLY REVISING BALLOT ISSUE LAWS; PROVIDING AND REVISING SUBMISSION AND PROCESSING TIMELINES FOR STATEWIDE BALLOT ISSUES; CLARIFYING SUBSTANTIVE AND PROCEDURAL PROVISIONS APPLICABLE TO BALLOT ISSUES; REORGANIZING STATUTORY PROVISIONS RELATED TO BALLOT ISSUES; PROVIDING

DEFINITIONS; ESTABLISHING A FEE FOR FILING BALLOT ISSUES; PROVIDING A PENALTY; PROHIBITING FILING A BALLOT ISSUE SUBSTANTIALLY SIMILAR TO A DEFEATED BALLOT ISSUE OF THE PAST 4 YEARS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 5-5-215, 5-11-105, 7-5-132, 7-7-2224, 7-14-204, 13-27-102, 13-27-103, 13-27-105, 13-27-112, 13-27-201, 13-27-204, 13-27-205, 13-27-206, 13-27-207, 13-27-209, 13-27-210, 13-27-211, 13-27-301, 13-27-303, 13-27-304, 13-27-308, 13-27-311, 13-27-316, 13-27-317, 13-27-401, 13-27-402, 13-27-403, 13-27-406, 13-27-407, 13-27-409, 13-27-410, 13-27-501, 13-27-502, 13-27-503, 13-27-504, 13-37-126, 13-37-201, 13-37-228, AND 30-18-103, MCA; REPEALING SECTIONS 13-27-111, 13-27-113, 13-27-202, 13-27-208, 13-27-312, AND 13-27-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Overview: Plaintiffs allege that SB 93 is unconstitutional because it impairs, inhibits, makes more expensive, infringes, prevents, and effectively denies the people of Montana their reserved power to enact laws using the initiative and/or referendum process under Article III, sections 4, 5, and 6, Article IV, section 7, Article V, section 1, and Article XIV sections 2 and 9 of Montana's Constitution. Plaintiffs aver that SB 93 imposes requirements and obstacles to the initiative and referendum process not found within the Montana Constitution, including the filing fee, prohibition on filing, and time limitation on filing. Plaintiffs further aver that SB 93 grants agencies unconstitutional authority over the proposed initiative by subjecting it to review and rejection by the Secretary of State and Attorney General. Plaintiffs also state that the policy review process by multiple government entities, and those entities' ability to insert language on the face of the ballot petition (e.g., statements on harm to business interests, fiscal impact, and committee votes) is an unconstitutional interference with the sponsor's right to control the language that appears on the petition and adds additional time to the process. Plaintiffs further allege that SB 93 unconstitutionally impairs the People's power to gather signatures for the initiative petition.

Plaintiffs seek a declaratory judgment that SB 93 and/or specific statutory provisions are unconstitutional and an order enjoining Defendants from enforcing any aspects of SB 93. The Plaintiffs also seek attorney's fees.

On October 20, 2023, Plaintiffs filed a Motion for Partial Summary Judgment. No orders have been issued in this case as of the date of this memo.