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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, HELENA DIVISION

MONTANA PUBLIC INTEREST
RESEARCH GROUP; et al.,

Plaintiffs,

v.

CHRISTI JACOBSEN, in her official
capacity as Montana Secretary of State, et al.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE
and MONTANA REPUBLICAN PARTY,

Defendant-Intervenors.

Cause No. 6:23-cv-070-BMM

**DEFENDANTS'
PRELIMINARY PRETRIAL
STATEMENT**

Pursuant to Local Rule 16.2(b)(1), Defendants Christi Jacobsen, Austin Knudsen and Chris Gallus (“State Defendants”) respectfully submit the following Preliminary Pretrial Statement:

A. Factual Outline of the Case

On May 22, 2023, Montana’s Governor signed HB 892 with bipartisan support. HB 892 amends § 13-35-210, MCA to rearticulate the prohibition on double voting with greater precision than the existing statute. Section 13-35-210(2) and (4). The legislation also prohibits a person from purposefully remaining registered in more than one place either in Montana or in a different state. Section 13-35-210(5). An elector is also required to provide their previous place of voter registration when registering to vote in Montana. The legislation penalizes a violation of the law by imposing a fine of up to \$5,000.00 and/or incarceration for up to 18 months. Section 13-35-210 (6).

Section 13-35-210(5) codifies the longstanding practice of county election officials and the Secretary of State of requiring a person registering to vote to provide their prior registration information. This same information is requested by several other states and by the Federal Government. Once a person registers to vote in a county of Montana, the prior place of registration information is provided to the Secretary of State. The Secretary of State then takes action to de-register the voter in their prior place of registration by contacting the previous place of registration.

HB 892 has not changed the methodology of county election officials or the Secretary of State in either registering or de-registering an elector. Even if a person fails to provide a prior place of registration, the county official will still register the elector to vote. Neither a county official, nor the Secretary of State will notify a local county attorney of an issue unless the elector indicates that they are voting in two different locations for the same election.

Finally, there exists no evidence of any harm with regard to electors registering to vote. In fact, voter registration has not declined in Montana after the passage of HB 892.

B. Federal Jurisdiction and Venue

This Court has jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), and 28 USC § 1357 because Plaintiffs assert there has been a deprivation of constitutional rights under color of state law. The Helena Division of the District of Montana is a proper venue because Defendants Christi Jacobsen, Austin Knudsen and Chris Gallus are all residents of Lewis and Clark County, Helena. 28 U.S.C. § 1391; L.R. 3.2(b).

C.–D. Factual and Legal Bases for State Defendants’ Defenses

Plaintiffs seek a declaratory judgment and injunctive relief asserting in Count I that HB 892 is unconstitutionally vague, Count II that HB 892 is unconstitutionally overbroad and in Count III that HB 892 unconstitutionally burdens the Right to Vote. The State Defendants’ defenses to these claims are as follows:

1. Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted against the State Defendants. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Plaintiffs have suffered no injuries and therefore lack standing. The legal basis for this defense is Fed. R. Civ. P. 12(b)(6) and applicable caselaw.

2. Plaintiffs lack standing. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Both county election officials and the Secretary of State are conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892. Plaintiffs have suffered no injuries and therefore lack standing. Voter registration has not declined in Montana. The legal basis for this defense is *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973) and other applicable caselaw.

3. Plaintiffs' claims are not justiciable. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Both county election officials and the Secretary of State are conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892. Plaintiffs have suffered no injuries and therefore lack standing. Plaintiffs' claims are not justiciable. The legal basis for this defense is *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) and other applicable caselaw.

4. Plaintiffs have failed to allege sufficient facts in order to obtain the relief requested. Both county election officials and the Secretary of State are

conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892. No person has been charged for a violation of HB 892.

5. HB 892 does not violate the United States Constitution. HB 892 is not vague or overbroad. The factual basis for this defense is that HB 892 gives fair notice of the forbidden conduct and is not so vague in its terms that persons of common intelligence must guess its meaning. The legal basis for this defense is *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239 (2012) and other applicable caselaw. HB 892 is very detailed and a person of ordinary understanding knows that they can't purposefully remain registered in two locations and they cannot purposefully fail to provide previous registration information. In addition, being registered to vote in two locations is not constitutionally protected, thus, HB 892 fails to be constitutionally overbroad. Finally, the enactment of HB 892 has not diminished voter registration in any manner.

6. HB 892 is supported by rational, legitimate and compelling state interests. The factual basis for this defense will be the concern of citizens in the United States over the integrity of elections

7. The State Defendants have not deprived Plaintiffs, or any Plaintiff, of any constitutional rights under color of law. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Both county election officials and the Secretary of State are conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892.

Plaintiffs have suffered no injuries and therefore lack standing. The legal basis for this defense is 42 U.S.C. § 1983 and applicable caselaw.

8. The State Defendants have taken no enforcement actions against Plaintiffs, or any Plaintiff. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Both county election officials and the Secretary of State are conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892. Plaintiffs have suffered no injuries and therefore lack standing. The legal basis for this defense is 42 U.S.C. § 1983 and applicable caselaw.

9. The State Defendants may be subject to qualified immunity or sovereign immunity. The factual basis for this claim is that the State Defendants have taken no action to enforce HB 892. Both county election officials and the Secretary of State are conducting both registration and de-registration in the same manner as they did prior to the enactment of HB 892. They have therefore not engaged in any conduct which clearly violates established statutory or constitutional rights of which a reasonable person would have known. Additionally, Montana has only waived sovereign immunity with respect to actions involving injuries to persons or property. Plaintiffs have suffered no injuries as a result of conduct of the State Defendants. The legal bases for this defense are *Grossman v. City of Portland*, 33 F.3d 1200 (9th Cir. 1994), *Peretti v. State*, 238 Mont. 239, 777 P.2d 329 (1989) and other applicable caselaw.

10. Controlling legal precedent bars some or all of Plaintiffs' claims. This defense is a legal defense and speaks for itself.

11. HB 892 is not vague or overbroad. The factual basis for this defense is that HB 892 gives fair notice of the forbidden conduct and is not so vague in its terms that persons of common intelligence must guess its meaning. The legal basis for this defense is *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239 (2012) and other applicable caselaw.

12. HB 892 does not violate due process under United States Constitution, the Constitution of the State of Montana, or Montana state law. The factual basis for this defense is that HB 892 is not void for vagueness or overbreadth and does not violate the First Amendment to the United States Constitution. HB 892 is factually not changing the number of voters registering or voting in Montana. The legal bases for this defense are the First, Fifth, and Fourteenth Amendments to the United States Constitution, *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239 (2012), *United States v. Williams*, 553 U.S. 285, (2008) and other applicable caselaw.

13. HB 892 does not discriminate or disparately impact any person based upon race or age. Legally, HB 892 is a neutral bill that does not have an age or race factor.

E. Computation of Damages

This is a facial declaratory judgment action so damage computation is irrelevant. Additionally, Plaintiffs have suffered no injuries.

F. Pendency of Related State or Federal Litigation

A state challenge to HB 892 is pending in the Montana Eighteenth Judicial District Court as *League of Women Voters of Montana v. Knudsen, et al.*, DV 23–1073, Judge Ohman, presiding. A preliminary injunction hearing was held on February 8, 2024 in that case and the parties submitted their proposed findings of fact and conclusions of law on March 8, 2024.

G. Proposed Additional Stipulations of Fact

No additional proposed stipulations of fact are contemplated at this time.

H. Proposed Deadline to Amend Pleadings

Defendants do not foresee the need to amend pleadings any further and propose a deadline of May 1, 2024 for amendments.

I. Issues of Law Suitable for Pretrial Disposition

Issues of standing and justiciability, as well as qualified and sovereign immunity are suitable for pretrial disposition. All claims against the State Defendants are likely suitable for decision on summary judgment.

J. Preliminary Witness List

1. Connor Fitzpatrick, Helena, Montana.
2. Dana Corson, Helena, Montana.
3. Regina Plettenberg, Hamilton, Montana.
4. Dr. Alexander Street, Helena, Montana.
5. Sadie Dallaserra, Helena, Montana.

K. Insurance Agreements

None.

L. Settlement Discussions

The State Defendants do not believe this case is suitable for pretrial settlement.

M. Special Procedures

None.

DATED this 18th day of March, 2024.

Austin Knudsen
Montana Attorney General

/s/ Thane Johnson

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