

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

MONTANA PUBLIC INTEREST
RESEARCH GROUP and MONTANA
FEDERATION OF PUBLIC
EMPLOYEES,

Plaintiffs,

v.

CHRISTI JACOBSEN, *in her official
capacity as Montana Secretary of State,*
AUSTIN KNUDSEN, *in his official
capacity as Montana Attorney General,* and
CHRIS GALLUS, *in his official capacity as
Montana Commissioner of Political Practices,*

Defendants,

REPUBLICAN NATIONAL
COMMITTEE and MONTANA
REPUBLICAN PARTY,

Intervenor-Defendants.

No. 6:23-cv-070-BMM

**INTERVENORS'
PRELIMINARY PRETRIAL
STATEMENT**

RETRIEVED FROM DEMOCRACYDOCKET.COM

Intervenor-Defendants the Republican National Committee and the Montana Republican Party submit this preliminary pretrial statement under L.R. 16(2)(b)(1).

A. Brief Factual Outline of Case

The Montana Legislature recently enacted House Bill 892 to clarify penalties for double-voting and double-registering. Among other things, H.B. 892 made it unlawful for residents to “purposefully remain registered to vote in more than one place in this state or another state any time, unless related to involvement in special district elections.” Mont. Code 13-35-210(5). When registering to vote, residents who “previously registered to vote in another county or another state [must] provide the previous registration information on the Montana voter registration application.” *Id.* Violators are subject to a \$5,000 maximum fine or 18-month maximum prison sentence, or both. *Id.* §13-35-210(6).

On September 29, 2023, Plaintiffs filed their complaint against H.B. 892. *See* Doc. 1. They challenge the prohibition on “purposefully remain[ing] registered to vote in more than one place,” and the requirement that voters provide “previous registration information” on their voter-registration applications. *Id.* §13-35-210(5). Plaintiffs claim that these provisions violate the First and Fourteenth Amendments because (1) they are unconstitutionally vague, (2) they are unconstitutionally overbroad; and (3) they unduly burden the right to vote. They request declaratory relief to that effect, and an injunction prohibiting Defendants from enforcing those provisions.

About two weeks later, the Court issued a preliminary pretrial conference order. *See* Doc. 4. Among other things, the order scheduled a preliminary pretrial conference for February 12, 2024, and set a deadline of February 5 for filing pretrial scheduling

materials. After some extensions, the pretrial-filing deadlines were moved to March 18, and the hearing moved to March 20.

On October 24, 2023, the Republican National Committee and the Montana Republican Party moved to intervene as defendants. *See* Doc. 7. About two weeks later, Plaintiffs moved for a preliminary injunction on their vagueness and overbreadth claims. *See* Doc. 11. The parties briefed both motions. Meanwhile, on November 17, the State Defendants answered the complaint. *See* Doc. 17. On January 18, the Court granted the motion to intervene, allowing the Republican National Committee and the Montana Republican Party to participate as defendants in this case. *See* Doc. 34. The parties conferred about discovery and pretrial issues on January 22, 2024. In compliance with the Court's order, they prepared a joint discovery plan and a statement of stipulated facts.

B. Jurisdiction and Venue

Intervenors do not contest jurisdiction or venue in this matter.

C. Overview of Likely Defenses to Claims

1. Plaintiffs claim that H.B. 892 violates the Fourteenth Amendment because it is unconstitutionally vague.

H.B. 892 is not unconstitutionally vague. A law passes constitutional muster so long as it “define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary or discriminatory enforcement.” *Free Speech Coal. v. Reno*, 198 F.3d 1083, 1095 (9th Cir. 1999). The prohibition on “purposefully remain[ing] registered to vote in more than one place,” and the requirement that voters provide “previous registration

information” on their voter-registration applications are sufficiently clear. Mont. Code 13-35-210(5). Both provisions provide ordinary citizens with notice of the conduct prohibited, and neither encourages arbitrary or discriminatory enforcement.

2. Plaintiffs claim that H.B. 892 violates the First and Fourteenth Amendments because it is unconstitutionally overbroad.

H.B. 892 is not overbroad. To succeed on their overbreadth challenge, Plaintiff must show that the law “prohibits a substantial amount of protected speech” relative to its “plainly legitimate sweep.” *United States v. Williams*, 553 U.S. 285, 292 (2008). But Plaintiffs’ members don’t have a First Amendment right to register in more than one jurisdiction, or to encourage others to register in more than one jurisdiction. Even if they did, most applications of the law are plainly legitimate and will not cover a substantial amount of protected speech.

3. Plaintiffs claim that H.B. 892 violates the First and Fourteenth Amendments because it unduly burdens the right to vote.

H.B. 892 does not unduly burden the right to vote. Plaintiffs’ members have no right to vote in more than one jurisdiction or to be registered to vote in more than one jurisdiction. Even if they did, H.B. 892 does not impose substantial burdens on the right of individuals to vote, and H.B. 892 is supported by strong state interests.

4. Other Defenses:

- a. *Purcell v. Gonzalez*, 549 U.S. 1 (2006) forecloses granting Plaintiffs their requested relief before the 2024 elections.
- b. Plaintiffs do not meet the requirements to obtain a preliminary injunction.

- c. Under the abstention doctrine, related state court proceedings foreclose granting Plaintiffs their requested relief.

D. Computation of Damages

Plaintiffs seek only declaratory and injunctive relief in this case and therefore do not have damages to calculate. To the extent damages are sought, Intervenors deny that Plaintiffs have suffered any damages.

E. Pendency of Related State or Federal Litigation

A lawsuit brought by the League of Women Voters of Montana also challenges the constitutionality of H.B. 892. *See League of Women Voters of Mont. v. Knudsen*, No. DV-16-2023-1073D (Mont. 18th Jud. Dist. Ct. Oct. 31, 2023). The plaintiffs in that case challenge the same provisions at issue here: the prohibition on “purposefully remain[ing] registered to vote in more than one place,” and the requirement that voters provide “previous registration information” on their voter-registration applications. Mont. Code §13-35-210(5). The plaintiffs claim that those provisions violate their rights to free speech, to free association, and to vote under the Montana Constitution. They also argue that the law is unconstitutionally vague in violation of the due process clause of the Montana Constitution. On November 16, the plaintiffs moved for a preliminary injunction based on all their claims. That motion is fully briefed, and the court held a hearing on February 8. To Intervenors’ knowledge, the court in that case has not issued a decision and there are no other federal or state lawsuits challenging the constitutionality of H.B. 892.

F. Proposed Stipulations of Fact and Law

Intervenors refer the Court to the separately submitted list of jointly stipulated facts and incorporate that list herein. At this stage, Intervenors are unwilling to stipulate to additional facts or points of law pending availability of discovery and investigation into Plaintiffs’ claims.

G. Proposed Deadlines for Joinder of Parties or Amendment of Pleadings

Intervenors propose that the deadlines for joinder of parties and amendment of pleadings be those dates set forth in the parties’ Joint Discovery Plan.

H. Identifications of Controlling Issues of Law Suitable for Pretrial Disposition

Plaintiffs’ claims are facial challenges to H.B. 892 that depend primarily upon statutory and constitutional interpretation. Resolution of these purely legal issues is appropriate at the pleading or summary judgment stages. Thus, Intervenors believe that all issues described in Section C, *supra*, are appropriate for pretrial disposition.

I. The Name and Residence of Individuals with Information about Claims or Defenses

Montana Public Interest Research Group	c/o Graybill Law Firm, PC; Elias Law Group LLP
Montana Federation of Public Employees	c/o Graybill Law Firm, PC; Elias Law Group LLP
Office of the Montana Secretary of State	c/o Montana Department of Justice
Office of the Montana Department of Justice	c/o Montana Department of Justice
Office of the Montana Commissioner of Political Practices	c/o Montana Department of Justice

The Republican National Committee	Contact through counsel.
Montana Republican Party	Contact through counsel.

Witnesses identified in discovery by any party.

Any witnesses necessary for foundation, rebuttal, or impeachment.

Any witnesses identified by Plaintiffs or Defendants.

Any expert witnesses disclosed by any party.

J. Substance of Any Insurance Coverage

Plaintiffs seek only declaratory and injunctive relief, and none of their respective claims are monetary. Thus, no insurance agreement applies.

K. Status of Settlement Discussions and Prospects for Compromise of the Case

No settlement discussions have taken place. Intervenors do not believe a resolution is likely through compromise.

L. Special Procedures

Intervenors do not believe any special procedures are necessary or appropriate.

DATED this 18th day of March, 2024.

Thomas R. McCarthy*
Kathleen L. Smithgall
Conor D. Woodfin*
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
katie@consovoymccarthy.com
conor@consovoymccarthy.com

By: /s/ Dale Schowengerdt
Dale Schowengerdt
Landmark Law PLLC
7 West 6th Avenue, Suite 518
Helena, MT 59601
(406) 457-5496
dale@landmarklawpllc.com

*admitted pro hac vice

*Counsel for the Republican National Committee
and the Montana Republican Party*

CERTIFICATE OF SERVICE

I certify that on March 18, 2024, an accurate copy of the foregoing Defendant's Preliminary Pretrial Statement was served electronically through the Court's CM/ECF system on registered counsel.

/s/ Dale Schowengerdt