

RYLEE SOMMERS-FLANAGAN  
Upper Seven Law  
P.O. Box 31  
Helena, MT 59624  
Phone: (406) 396-3373  
Email: rylee@uppersevenlaw.com

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*Attorney for Plaintiffs*

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

Montana Youth Action; Forward  
Montana Foundation; and  
Montana Public Interest  
Research Group,

*Plaintiffs,*

vs.

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

*Defendant.*

Cause Nos. DV 21-0451  
DV 21-1097

Hon. Michael Moses  
Hon. Gregory R. Todd

**Plaintiffs' Brief in Support  
of Motion for Consolidation**

INTRODUCTION

Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group (hereinafter Youth Plaintiffs), file this brief in support of their concurrently filed Motion for Consolidation. Youth Plaintiffs seek consolidation with the pending case

of *Montana Democratic Party et al. v. Jacobsen*, Cause No. DV 21-0451 (13th Jud. Dist. Ct., Hon. Michael Moses) (hereinafter MDP). Youth Plaintiffs note that plaintiffs in another pending case, *W. Native Voice et al. v. Jacobsen*, Cause No. DV 21-0560 (13th Jud. Dist. Ct., Hon. Ashley Harada), have likewise moved for consolidation with the MDP case and that their motion remains pending.

Pursuant to Local Rule 1(h), Youth Plaintiffs filed their motion contemporaneously in Cause No. DV 21-0451 and Cause No. DV 21-1097.<sup>1</sup> Counsel for MDP and Western Native Voice plaintiffs have been contacted respectively and consent to this Motion. Counsel for the Secretary of State—Defendant in all three cases and represented in each by the same counsel—objects to this Motion.

### **FACTUAL BACKGROUND**

Three cases pending in the Thirteenth Judicial District Court challenge recently passed voter suppression laws. In order of filing date:

- 1) The MDP plaintiffs filed an Amended Complaint on May 14, 2021, challenging HB176 (eliminating election day registration), SB169

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<sup>1</sup> The motion “will be heard before the judge presiding in the lowest cause number and, if the cases are consolidated, the trial will also be conducted in that department. The judges may consult with each other regarding any decision on a motion to consolidate.” Thirteenth Jud. Dist. Local R. 1(h).

(revising voter identification laws), and HB530 (requiring adoption of rules governing election security); 2) Western Native Voice plaintiffs filed their Complaint on May 17, 2021, challenging HB176 and HB530; 3) Youth Plaintiffs filed the instant action on September 9, 2021, challenging HB176, SB169, and HB506 (barring officials from distributing ballots to registered voters who are not yet eligible to vote, but who will be eligible by election day).<sup>2</sup>

All three lawsuits present similar and, in some cases, nearly identical issues of law and fact. Each suit names Secretary of State Jacobsen in her official capacity as the sole Defendant. Each alleges that two or more of four laws passed during the 2021 legislative session unconstitutionally burden the fundamental right to vote and violate myriad provisions of the Montana Constitution. Each case seeks a declaration that these laws are unconstitutional as well as an injunction permanently halting their enforcement.

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<sup>2</sup> On September 22, 2021, a fourth case was filed challenging HB176. Plaintiffs Montana Federation of Public Employees (MFPE) and others filed their complaint in the Eighth Judicial District Court. *MFPE et al. v. Jacobsen*, Cause No. DV 21-0500 (8th Jud. Dist. Ct. Hon. John A. Kutzman).

Youth Plaintiffs thus respectfully request consolidation with MDP, and Western Native Voice, if their pending motion for consolidation is granted.

### ARGUMENT

The cases that Youth Plaintiffs, MDP, and Western Native Voice bring should be consolidated because they involve common questions of law and fact such that consolidation promotes judicial efficiency. Mont. R. Civ. P. 42(a).

“[T]he paramount objective of consolidation is the accomplishment of great convenience and economy in the administration of justice.” *Palacios v. Corr. Corp. of Am.*, 2012 WL 13076596, \*9 (D. N.M. Sept. 14, 2012) (quoting *Barcelo v. Brown*, 78 F.R.D. 531, 536 (D. P.R. 1978)).<sup>3</sup> Indeed, under the Rules, “the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). More

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<sup>3</sup> Montana’s Rule 42(a) mirrors the Federal Rule of Civil Procedure 42(a), making federal cases instructive here as well. *See Bates v. Anderson*, 2014 MT 7, ¶ 19, 373 Mont. 252, 316 P.3d 857 (relying on the Federal Rules for guidance in interpreting a Montana rule modeled on its federal counterpart); Mont. R. Civ. P. 42, Advisory Comm. Notes (2011) (“The rule is identical with the Federal Rule.”).

specifically, Rule 42 “seeks to avoid overlapping duplication in motion practice, pretrial and trial procedures occasioned by competing counsel representing different Plaintiffs.” *Barcelo*, 78 F.R.D. at 536. The purpose of consolidation is thus to permit trial convenience and administrative economy by avoiding unnecessary costs or delay. *See, e.g., Park Cty. Stockgrowers Ass’n v. Mont. Dep’t of Livestock*, 2014 MT 64, ¶ 11, 374 Mont. 199, 320 P.3d 467; *Means v. Mont. Power Co.*, 191 Mont. 395, at 401, 625 P.2d 32, at 36 (1981).

Consolidation is proper where cases involve “a common question of law or fact.” *Tucker v. Tucker*, 2014 MT 115, ¶ 16, 375 Mont. 24, 326 P.3d 413. Courts may exercise discretion to consolidate actions for interests of judicial economy, even *sua sponte*. *Id.* Cases may be consolidated in their entirety or for any subset of matters, and the Court may “issue any other orders to avoid unnecessary cost or delay.” Mont. R. Civ. P. 42(a)(1)–(3). Consolidation does nothing to change the rights of any party nor does it merge suits into a single action. *Park Cty. Ass’n*, ¶ 11.

**A. All three cases share exceedingly similar issues of fact.**

Even where cases are not precisely identical, consolidation is appropriate where common legal or factual issues are presented. *See,*

*e.g.*, *State ex rel. Great Falls Tribune Co. v. Mont. Eighth Jud. Dist.*, 238 Mont. 310, 777 P.2d 345 (1989); *Cheney v. Judd*, 429 F. Supp. 3d 931, 935–36 (D.N.M. 2019). Consolidation prioritizes efficiency without changing any party’s rights, merging the cases, or otherwise altering the substance of any party’s claims. *Park Cty. Ass’n*, ¶ 11 (quoting *John v. Manhattan R. Co.*, 289 U.S. 479, 496–97 (1933)). Consolidation eliminates duplication, reduces the administrative load, streamlines the exchange of information between opposing parties, and generally improves judicial economy without impacting the parties’ ability and responsibility to assert their own claims and defenses

The inefficiency of failing to consolidate similar cases is evidenced by the Ballot Interference Prevention Act cases of 2020. These cases remained separate and involved two sets of plaintiffs who sought duplicative discovery, presented duplicative expert testimony, and deposed the same agents of the Secretary of State’s Office. *See W. Native Voice et al. v. Stapleton et al.*, Cause No. DV 20-0377 (13th Jud. Dist. Ct., Hon. Jessica Fehr); *Driscoll et al. v. Stapleton*, Cause No. DV 20-0408 (13th Jud. Dist. Ct., Hon. Donald Harris). After bench trials conducted

by different judges successively, both judges declared the law unconstitutional and enjoined its enforcement.

Such waste can be avoided here, where all three cases challenge HB176, both Youth Plaintiffs and MDP challenge SB169, and where similar sets of facts are relevant to all four challenged laws. All plaintiffs allege these laws place special burdens on certain groups' ability to exercise the fundamental right to vote. Youth Plaintiffs argue the Montana legislature passed a cocktail of voter suppression laws that particularly burden young voters. Western Native Voice argues HB176 and SB530 harm Native Americans in rural tribal communities across Montana, impairing access to voter registration and absentee voting. W. Native Voice Compl., ¶ 3. MDP alleges the Legislature impaired the constitutional rights of "students, the elderly, disabled voters, and indigenous communities" by eliminating election day registration with HB 176, and that SB169 was "an even more surgical attack on Montana's youngest voters." MDP Am. Compl., ¶¶ 2, 3.

As a result, these cases all require proof that HB176 particularly burdens specific groups'—Native Americans and young voters—right of suffrage. Two of three require the same for SB169 and for SB530. Across

these cases, plaintiffs are certain to seek discovery of similar information, documents, and depositions, including of precisely the same agents of state government.

The fact that Youth Plaintiffs alone challenge HB506 is no bar to consolidation. First, there will be overlap in discovery needs across the four laws that the three cases challenge with the same officials responsible for advocating for all four laws. And because plaintiffs allege that each law restricts voting rights, some written discovery and deposition requests will necessarily relate and apply generally to voting-related information. Second, to the extent that HB506 claims require unique discovery, those requests will only be supplemental and consistent with requests related to HB176, SB169, and SB530.

**B. All three cases involve a subset of nearly identical legal issues.**

Each case claims that a subset of HB176, SB169, SB530, and HB506 violates a group of plaintiffs' fundamental rights to suffrage and equal protection guaranteed in the Montana Constitution.

Youth Plaintiffs allege that HB176, SB169, and HB506 violate their rights to suffrage and equal protection, and that HB506 also violates their right to freedom from age discrimination. Youth Ps' Compl. ¶¶ 107–



159. MDP alleges that HB176, SB169, and SB530 violate plaintiffs' rights to suffrage, equal protection, due process, and freedom of speech and expression. MDP Compl. ¶¶ 116–160. Western Native Voice alleges that HB176 and SB530 violate plaintiffs' rights to suffrage, equal protection, due process, and freedom of speech. W. Native Voice Compl. ¶¶ 138–204.

The applicable level of scrutiny for each of these fundamental constitutional rights is identical. The same legal issues in each case will interact with overlapping and analogous sets of facts. Both Youth Plaintiffs and MDP expressly argue that HB176 and SB169 disparately burden young voters, while Western Native Voice argues HB176 likewise disparately burdens Native American voters. W. Native Voice Compl. ¶ 2. Consolidating these cases serves the interests of judicial economy and avoids costly duplication and delay.

Moreover, nothing counsels against consolidation. *Cf. Ass'n of Unit Owners of Deer Lodge Condo. v. Big Sky*, 245 Mont. 64, 798 P.2d 1018 (1990) (denying consolidation where the defendants across two cases were not the same and where one case would involve “piercing-the-corporate-veil issues” that the other case would not involve). Even

though Youth Plaintiffs challenge one law that no others challenge, the legal and factual issues underlying that challenge are interrelated with the other challenges—including MDP and Western Native Voice’s claims against SB530—because all relate to the same fundamental questions of suffrage and equal protection. Youth Plaintiffs’ additional claim of discrimination against young people bears significant similarity to the equal protection claim, and simply takes advantage of the Montana Constitution’s particular guarantee of protection for minors.

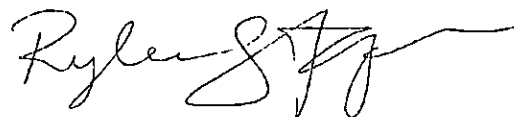
**C. Defendant faces no prejudice related to consolidation.**

Named in her official capacity, Montana Secretary of State Christi Jacobsen is the sole Defendant in all three cases. Despite objecting to this motion, the Secretary would reap the benefits of consolidation. As discussed, these are related cases that present related questions of law based on related and, in some cases, identical facts. Consolidation will prevent duplicative trials and appeals, create organized discovery and motions practice. As a result, consolidation is more efficient and economical for the Court, and simultaneously reduces the resources the Secretary need expend on these cases. There is no prejudice.

## CONCLUSION

For the reasons set forth, Youth Plaintiffs request that the Court grant their Motion for Consolidation.

Respectfully submitted this 9th day of November, 2021.



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Rylee Sommers-Flanagan  
Upper Seven Law

*Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above was duly served upon the following on the 9th day of November, 2021, by email.

David M.S. Dewhirst  
Office of the Attorney General  
Justice Building, Third Floor  
215 North Sanders Street  
P.O. Box 201401  
Helena, MT 59620-1401  
david.Dewhirst@mt.gov

Austin Marcus James  
Office of the Secretary of State  
Montana Capitol Building, Room 260  
P.O. Box 202801  
Helena, MT 59620-2801  
austin.james@mt.gov

Dale Schowengerdt  
Ian McIntosh  
Crowley Fleck, PLLP  
900 North Last Chance Gulch, Suite 200  
Helena, MT 59601  
P.O. Box 797  
Helena, MT 59624-0797  
DSchowengerdt@crowleyfleck.com  
imcintosh@crowleyfleck.com

/s/ Rylee Sommers-Flanagan  
Upper Seven Law

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY

Montana Youth Action; Forward Montana Foundation; and Montana Public Interest Research Group,  <i>Plaintiffs,</i>  vs.  CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,  <i>Defendant.</i>	Cause Nos. DV 21-0451 DV 21-1097  Hon. Michael Moses  [Proposed] Order
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Before the Court is Plaintiffs' Motion for Consolidation. Having considered Plaintiffs' motion and the related briefing,

IT IS HEREBY ORDERED that Plaintiffs' motion for consolidation is granted: Cause No. DV 21-1097 shall be consolidated with Cause No. DV 21-0451.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
THE HONORABLE MICHAEL MOSES  
DISTRICT COURT JUDGE

cc: austin.james@mt.gov  
daviddewhirst@mt.gov  
dschowengerdt@crowleyfleck.com  
imcintosh@crowleyfleck.com  
rylee@uppersevenlaw.com