

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

MONTANA YOUTH ACTION; FORWARD)	Cause No. DV 21-1097
MONTANA FOUNDATION; and)	
MONTANA PUBLIC INTEREST)	Judge Gregory R. Todd
RESEARCH GROUP,)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS'
vs.)	MOTION FOR CONSOLIDATION
CHRISTY JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
Defendant.)	

On September 9, 2021, Plaintiffs Montana Youth Action, Forward Montana Foundation and Montana Public Interest Research Group (hereinafter "MYA") filed a Complaint challenging the constitutionality of three Montana bills passed by the 2021 legislature. MYA is asking that Defendant Christy Jacobsen (hereinafter "Jacobsen"), the Montana Secretary of State, be enjoined from enforcing the three bills.

On November 9, 2021, MYA moved to consolidate this case with two other cases already consolidated in the 13th Judicial District before Judge Michael Moses - DV 21-0451 and DV 21-0560. Cause No. DV 21-0451 is brought by the Montana Democratic Party and Mitch Bohn (hereinafter "MDP"). Cause No. DV 21-0560 is brought by Western Native Voice (hereinafter "WNV"). All three cases have sued Christi Jacobsen

1 and all three cases challenge HB 176. MYA and MDP both challenge SB 169. MDP and
2 WNV do not oppose consolidation with MYA.

3 Jacobsen opposes consolidation by arguing that the three cases would be
4 unnecessarily complicated, existing scheduling would be disrupted and Defendant
5 would be prejudiced. It is acknowledged that all three cases challenge HB 176, but only
6 MYA challenges HB 506. Jacobsen argues that a 10-day jury trial would not allow
7 enough time and that issues would be confusing to a jury.
8

9 MYA counters that all three cases rely on the same nucleus of facts and every
10 claim is premised on violations of rights from Article II of the Montana Constitution.
11 According to MYA, the challenges by the other parties are harmonious and compatible
12 with each other's claims.
13

14 MYA disagrees with Jacobsen's argument that discovery needs between the
15 parties differ. MYA states that its discovery will be mostly duplicative of MDP and WNV
16 and that future discovery would be made simpler by consolidation. Jacobsen also
17 claims prejudice if this case is consolidated. MYA argues that resolution of most, if not
18 all, claims by cross-motions for summary judgment is highly likely.
19

20 MYA further argues that failure to consolidate would prejudice all three cases.
21 Forcing MYA to duplicate efforts of MDP and WNV, and vice versa, in separate trials
22 would be inconvenient and inefficient for everyone involved.

23 MYA acknowledges that even though it raises a unique legal theory that it is
24 predicated on virtually the same facts as all other claims in all three cases. If this case
25

1 is not consolidated, there would certainly be substantial duplication and, even worse, a
2 greater chance for inconsistency. This Court has considered the factors in Rule 42.
3 There are substantial common questions of fact and law in all three cases. Even with
4 the separate issue involving youth in the MYA case, consolidation is appropriate to
5 avoid unnecessary cost or delay. The Court finds the arguments of MYA persuasive.
6
7 Therefore,

8 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to consolidate this case with
9 Cause Nos. DV 21-0451 and DV 21-0560 before the Hon. Michael Moses is GRANTED.

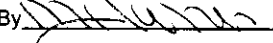
10 **DATED** this 13th day of December 2021.

11
12 
13 **HON. GREGORY R. TODD**, District Court Judge
DV 21-1097

14 Cc: Rylee Sommers-Flanagan
15 David M.S. Dewhirst
16 Austin Marcus James
Dale Schowengerdt / Ian McIntosh / David F. Knobel / Clayton Gregersen

17 CERTIFICATE OF SERVICE

18 This is to certify that the foregoing was duly served
19 by U.S. mail or by hand the parties or their attorneys
of record at their last known address this 13th day
20 of December 2021.

21 By 
22 Judicial Assistant to Hon. Gregory R. Todd
23
24
25

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

<p>MONTANA YOUTH ACTION; FORWARD MONTANA FOUNDATION; and MONTANA PUBLIC INTEREST RESEARCH GROUP,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Cause No: DV 2021-451 DV 2021-1097</p> <p>Hon. Michael G. Moses Hon. Gregory R. Todd</p> <p>ORDER GRANTING PLAINTIFFS' MOTION FOR CONSOLIDATION</p>
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Before the Court is the motion for consolidation submitted by Plaintiffs in Cause No. DV 2021-1097 ("MYA"). MYA requests to consolidate their matter into DV 2021-451, which was previously consolidated with DV 2021-560. Plaintiffs, the Montana Democratic Party and Mitch Bohn ("MDP"), and the previously consolidated Plaintiffs, Western Native Voice et al ("WNV") in Cause No. DV 2021-451, do not object to consolidation. Defendant Secretary Christi Jacobsen ("the Secretary") does object to

consolidation. The motion for consolidation has been fully briefed and oral argument was not requested. Judge Gregory R. Todd issued an Order Granting MYA's Motion for Consolidation. This Court, pursuant to Thirteenth Jud. Dist. Local R. 1(h) consulted with Judge Todd about this consolidation and concurs in his Order Granting Consolidation.

The Court has considered all the papers and briefs on file. The Court, being fully informed, makes the following decision:

IT IS HEREBY ORDERED:

- 1) MYA's Motion for Consolidation is **GRANTED**;
- 2) the Clerk of this Court is directed to consolidate Cause No. DV 21-1097 with Cause No. DV 21-451;
- 3) all future documents shall be filed under Cause No. DV 21-451; and
- 4) all of the parties (MDP, WNV, MYA, and the Secretary) will contact the Court, through its judicial assistant, to set a scheduling conference, during which the timing of issues related to the consolidation will be discussed.

DATED this 13th day of December, 2021.

/s/ Michael G. Moses
DISTRICT COURT JUDGE

cc: Hon. Gregory R. Todd
David M.S. Dewhirst, Austin M. James, and Dale Schowengerdt; *Attorneys for the Secretary*
Peter M. Meloy, Matthew Gordon, and John Heenan; *Attorneys for MDP*
Alex Rate, Akilah Lane, Alora Thomas-Lundborg, Ihaab Syed, Theresa J. Lee, Dale E. Ho,
Jacqueline De León, Matthew Campbell, and Samantha Kelty; *Attorneys for WNV Plaintiffs*
Rylee Sommers-Flanagan, *Attorney for MYA*

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email
upon the parties or their attorneys of record at their last known
addresses this 13th day of December, 2021.

BY: /s/ Monique Rodriguez on behalf of Deanne Breshears
Judicial Assistant to Hon. Michael G. Moses