

KURT KRUEGER
DISTRICT COURT JUDGE, DEPT. I
SILVER BOW COUNTY COURTHOUSE
155 WEST GRANITE STREET
BUTTE, MT 59701
(406) 497-6410

FILED

JUL 30 2021

By Tom Rowers, Clerk
Deputy Clerk

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

SISTER MARY JO MCDONALD; LORI
MALONEY; FRITZ DAILY; BOB
BROWN; DOROTHY BRADLEY;
VERNON FINLEY; MAE NAN
ELLINGSON; and the LEAGUE OF
WOMEN VOTERS OF MONTANA,

Plaintiffs,

vs.

CHRISTIE JACOBSEN, Montana
Secretary of State,

Defendant.

Cause No. DV-21-120

ORDER DENYING MOTION TO
SUBSTITUTE JUDGE

This matter comes before the Court upon the Defendant's *Motion for Substitution of Judge* filed on July 16, 2021. In response, the Plaintiffs filed their *Objection to Defendant's Motion to Substitute Judge* on July 19, 2021. On July 23, 2021, the Defendant filed her *Reply in Support of Motion to Substitute Judge*. The Court having considered this matter finds the Defendant's *Motion for Substitution of Judge* shall not be granted at this time.

Under the law of the State of Montana, "A motion for substitution by the party served must be filed within thirty (30) calendar days after service has been completed." Section 3-1-804(1)(a), MCA. Further, "Any motion for substitution that is not timely filed is void. The district judge for whom substitution is sought has jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall enter an order denying the motion." Section 3-1-804(4), MCA.

According to the pleadings, Defendant Christie Jacobsen, Montana Secretary of State, was served with the summons and complaint on May 13, 2021. On the same day, the Plaintiffs served the Montana Attorney General with a notice of a constitutional challenge pursuant to Rule 5.1, M.R.Civ.P. Despite allegations the Attorney General was improperly served, the Plaintiffs and the Attorney General entered an *Acknowledgement and Waiver of Service of a Summons* on July 7, 2021. The Attorney General did not allege the Defendant was

improperly served. However, the Defendant now moves to substitute judge based on the date stipulated between the Plaintiffs and the Attorney General in the *Acknowledgement*, rather than the date she was initially served.

While the Court acknowledges the importance of ensuring the Attorney General is properly notified of, and able to defend as needed, all suits against the State and state officers in whatever capacity, the Attorney General is *not* presently a party in this matter. Further, since the Defendant allowed sixty-four (64) days to pass since being served with the complaint and summons, the Court shall not grant her *Motion for Substitution of Judge*.

Based on the foregoing, it is hereby

ORDERED the Defendant's *Motion for Substitution of Judge* is **DENIED**.

DATED this 30th day of July, 2021.



KURT KRUEGER
District Court Judge