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COUNSEL FOR DEFENDANTS

MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
WHEATLAND COUNTY

ROBERT WILLEMS, PHYLLIS WILLEMS, TOM)	
BENNETT, BILL JONES, PHILIP WILSMAN,)	Cause No. DV-13-07
LINDA WILSMAN, JASON CARLSON, MICK)	
JIMMERSON, DWAYNE CROOK, MARY JO)	
CROOK, JAMES STUNTZ, RANDY BOLING,)	
ROD BOLING, BOB KELLER, GLORIA)	
KELLER, ROLAND TORGESON,)	
RUTH TORGESON, ED TIMPANO,)	DEFENDANTS' BRIEF
JENNIE RICKERT, TED HOGLAND,)	IN SUPPORT OF
KEITH KLUCK, PAM BUTCHER, TREVIS)	MOTION FOR CHANGE
BUTCHER, BOBBIE LEE COX, WILLIAM COX,)	OF VENUE
and DAVID ROBERTSON,)	
)	
Plaintiffs,)	
v.)	
)	
STATE OF MONTANA, LINDA McCULLOCH,)	
in her capacity as Secretary of State for the State)	
of Montana,)	
)	
Defendants.)	

Plaintiffs in this case have filed suit against the State of Montana and
Linda McCulloch, in her official capacity as Secretary of State. Their complaint,

however, challenges only the actions of the Montana Districting and Apportionment Commission (Commission). Specifically, their complaint questions the lawfulness of the Commission's assignment of two "holdover" senators. Compl. ¶ 1.

Defendants acknowledge that venue is allowed in this Court under Mont. Code Ann. § 25-2-126(1), assuming (as alleged) that at least one of the plaintiffs reside in this judicial district. But Defendants request a change of venue under Mont. Code Ann. § 25-2-201(3), because "the convenience of witnesses and the ends of justice would be promoted by the change." All of the relevant witnesses either reside in or are much closer to Lewis and Clark County than Wheatland County. All of the counsel who will be litigating this case—including Plaintiffs' counsel—are also either in or closer to Lewis and Clark County. Additionally, the ends of justice are promoted by a change to the more central venue of Lewis and Clark County, where all of the challenged activity giving rise to this lawsuit occurred.

The convenience of witnesses strongly favors transfer of this case to Lewis and Clark County. The core of Plaintiffs' complaint is the Commission's decision to "reassign[] the holdover senator in SD-9 to SD-10," and correspondingly to "reassign[] the holdover senator in SD-10 to SD-15." Compl. ¶ 8, *passim*. That decision was made in Helena on February 12, 2013, at the Commission's final hearing. All of the essential witnesses concerning that decision—the Commissioners and their staff—either reside in

Lewis and Clark County or are much closer to Lewis and Clark County than to Wheatland County.¹

There is no need for the individual plaintiffs to participate as live witnesses in this case. Defendants do not intend to take the deposition of any individual plaintiff, or call any individual plaintiff at a hearing or trial. Even if one or more of the Plaintiffs desire to testify to some ancillary fact, the testimony would not be “so vital that it could not be submitted with the same effectiveness in the form of depositions,” affidavits, or stipulation. *Westergard v. Westergard*, 108 Mont. 54, 55, 88 P.2d 5 (1939). In any event, only a few of the plaintiffs even reside in this judicial district; most reside in Fergus County.

The ends of justice would also be best promoted by a transfer of venue. There is “no question that Lewis and Clark County is a proper venue for this case.” *BNSF v. State*, 2010 MT 46, ¶ 12, 355 Mont. 296, 228 P.3d 1115. It is the best venue. Of the two venue statutes applicable in this case, only Mont. Code Ann. § 25-2-125 provides venue in this Court. In contrast, both Mont. Code Ann. §§ 25-2-125 and 25-2-126 anticipate venue in Lewis and Clark County. Section 25-2-126, the provision governing suits against the Secretary of State, provides for venue *only* in Lewis and Clark County, because the “cause of action”—i.e., the Commission’s action and any act on the part of the Secretary—arose in Lewis and Clark County. *See Cabinet Res. Group v. Mont. Dept.*

¹ See <http://leg.mt.gov/css/committees/interim/2011-2012/districting/Members/commissioners.asp>.

of State Lands, 189 Mont. 349, 354-55, 616 P.2d 310, 312-13 (1980) (determining that “the cause of action” took place in Lewis and Clark County, where the alleged wrongful permit was issued by a state agency, as opposed to Lincoln County where the permitted project was to take place). Presumably, section 25-2-126’s limitation on venue reflects a carefully considered policy choice for suits—like this one—whose fundamental grievance is against action taken by State officials. Plaintiffs have upset that policy decision by adding the State as a defendant so that they can choose a venue far from where the cause of action arose, far from where the key witnesses reside and acted, and where only a minority of the plaintiffs reside in any event.

The convenience of witnesses and the ends of justice strongly favor a transfer of venue to Lewis and Clark County. Accordingly, Defendants respectfully request this Court transfer this case to the First Judicial District.

Respectfully submitted this 6th day of May, 2013.

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing document to be mailed to:

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DATED: 5-6-13 _____ 