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**MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS & CLARK COUNTY**

MONTANA CONSERVATION  
VOTERS; JOSEPH LAFROMBOISE;  
NANCY HAMILTON; SIMON  
HARRIS; DONALD SEIFERT;  
DANIEL HOGAN; GEORGE STARK;  
LUKAS ILLION; and BOB BROWN,

*Plaintiffs,*

vs.

CHRISTI JACOBSEN, in her official  
capacity as MONTANA SECRETARY  
OF STATE,

*Defendant.*

Cause No. ADV-25-2023-0000702-CR

**Complaint**

**Presiding Judge: Hon. Mike Menahan**

**INTRODUCTION**

1. In 2023, the Montana Legislature passed Senate Bill 109 (“SB 109”) to deliberately election-proof a unanimously Republican Public Service Commission (“PSC”).

2. A five-member elected body, the PSC regulates industries that affect every household and business in the State. The PSC oversees investor-owned electric, natural gas, water, waste-water, and legacy telecommunications companies; transportation companies; and intrastate transportation systems. By its own reckoning, the PSC “directly affects the safety, well-being, and finances of Montanans from every corner of the State and all walks of life.” Mont. Pub. Serv. Comm’n, *Pub. Participation*.<sup>1</sup>

3. The first draft of SB 109 solved a problem: PSC districts had remained unchanged for nearly two decades despite stark demographic shifts in the State, culminating in a successful federal challenge to the last legislative districting plan, which had gone into effect in 2003. But over the course of the legislative session, legislators seized an opportunity to consolidate long-term power in a decidedly undemocratic fashion. The Legislature redrew PSC districts with one goal: to cement one-party rule of the PSC.

4. SB 109’s map does away with decades of precedent of dividing Montana’s PSC districts along county lines. In this way, SB 109 ignores traditional districting goals of preserving communities of interest and political subdivisions. The new district map splits major cities and counties in two (and sometimes three), skews the voting power in each district towards one party, and jigsaws Montana’s urban centers.

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<sup>1</sup> Available at <https://psc.mt.gov/Documents-Proceedings/Public-Participation>.

5. Regardless of whether it is ever appropriate to split communities of interest and political subdivisions, rejection of this traditional districting principle must be in service of other, legitimate goals of redistricting. SB 109, however, does not advance any other legitimate goal; the Legislature rejected maps that were more contiguous, compact, and equal in population. The only justification for the Legislature's rejection of neutral principles is undue partisan advantage.

6. The current PSC districting plan violates the Montana Constitution's guarantees of equal protection and suffrage. The Constitution ensures that Montana voters have a fair opportunity to elect those who serve them. Because SB 109 interferes with Montanans' rights to an equal vote, it must be declared unconstitutional and preliminarily and permanently enjoined.

## **JURISDICTION AND VENUE**

7. Plaintiffs bring this action under the Montana Constitution. Article VII, Section 4, of the Montana Constitution provides this Court with original jurisdiction, as does § 3-5-302, MCA.

8. This Court has jurisdiction to grant declaratory relief pursuant to § 27-8-201 *et seq.*, MCA, and injunctive relief pursuant to § 27-19-101 *et seq.*, MCA.

9. Venue is proper in Lewis & Clark County under § 25-2-126(1), MCA.

## **PARTIES**

### **A. Montana Conservation Voters**

10. Montana Conservation Voters ("MCV") is a non-partisan member organization that works to protect Montana's climate, clean air and water, public

lands, communities, and future generations by supporting leaders who fight for conservation and by holding accountable the leaders who do not.

11. MCV's mission is directly affected by the PSC, which has significant power over Montana's energy policy. As Montana's primary utility regulator, the PSC directly oversees industries with significant impact on Montana's environment and energy consumption. For example, the PSC recently went on a statewide listening tour, during which citizens and commissioners discussed NorthWestern Energy's energy supply plan.

12. Although MCV is nonpartisan, it is not apolitical. Indeed, civic engagement is central to its mission of conservation. MCV works to protect and safeguard democracy. In furtherance of its pro-democracy mission, MCV advocates for fair and representative districting plans before the Montana Districting and Apportionment Commission.

13. MCV also regularly participates in PSC electoral politics by, for example, endorsing and supporting pro-conservation candidates. MCV supports pro-conservation candidates for various political offices in Montana regardless of party affiliation; it has supported candidates from both major political parties.

14. MCV and its members care deeply about conservation, and they share a strong associational interest in improving energy policy through electoral participation. Thus, MCV regularly communicates with its members about candidates for public office, including PSC commissioner candidates.

15. SB 109's extreme partisan gerrymander not only affects the outcomes of elections but also the possibility of meaningful participation in election-related messaging. The gerrymandered map locks out non-Republican candidates from the PSC and prevents meaningful competition in all districts. SB 109 silences many Montanans that share MCV's mission of conservation, including MCV's members. SB 109 also prevents MCV from continuing to engage in PSC elections, given that under this districting scheme, PSC commissioners are effectively predetermined based on their party affiliation. Because SB 109's partisan gerrymander will prevent competition in general elections, candidates will not compete against each other on the issue of conservation. MCV and its members likely will be unable to endorse and support pro-conservation candidates.

16. SB 109 directly harms MCV and its members.

#### **B. Individual Voter Plaintiffs**

17. Individual Voter Plaintiffs ("Voters") are qualified, registered voters in the State of Montana who reside across the state and in each PSC district. Voters do not share a single political ideology, but they universally support competitive, fair elections. Some Voters expect to support non-Republican candidates in upcoming elections; others are undecided; all believe that politicians should compete for the votes of all constituents, regardless of party affiliation. SB 109 dilutes non-Republican votes and eliminates competition from the electoral process. SB 109 therefore harms Voters.

18. Joseph Lafromboise is a Chippewa Cree tribal member registered to vote in Hill County, Montana. Lafromboise resides within PSC District 1, which covers most of eastern Montana. Lafromboise votes for Democratic and non-Republican candidates and intends to do so in future elections.

19. Nancy Hamilton is registered to vote in Valley County, Montana. Hamilton resides within PSC District 1, which covers most of eastern Montana. Hamilton votes for Democratic and non-Republican candidates and intends to do so in future elections.

20. Simon Harris is registered to vote in Yellowstone County, Montana. Harris resides within PSC District 1, which covers most of eastern Montana. Harris votes for Democratic and non-Republican candidates and intends to do so in future elections.

21. Donald Seifert is registered to vote in Gallatin County, Montana. Seifert resides within PSC District 2, which runs along Montana's southern border. Seifert, an independent-minded voter, desires that elections in Montana remain fair and that candidates compete for votes on equal footing.

22. Daniel Hogan is registered to vote in Butte-Silver Bow County, Montana. Hogan resides within PSC District 3, which stretches from southwest Montana into the center of the state. Hogan votes for his preferred candidate regardless of party affiliation and intends to continue to do so in future elections.

23. George Stark is registered to vote in Missoula County, Montana. Stark resides within PSC District 4, which covers the northwest corner of Montana. Stark votes for Democratic and non-Republican candidates and intends to do so in future elections.

24. Lukas Illion is registered to vote in Lewis & Clark County, Montana. Illion resides within PSC District 5, which covers portions of western Montana. Illion votes for Democratic and non-Republican candidates and intends to continue to do so in future elections.

25. Bob Brown is registered to vote in Flathead County, Montana. Brown resides within PSC District 5, which covers portions of western Montana. Brown is a former Republican legislator, Secretary of State, and gubernatorial candidate. He believes that Montana elections must remain fair and that candidates should compete for the votes of all constituents, regardless of party affiliation. Brown votes for his preferred candidate regardless of party affiliation and has supported both Republican and non-Republican candidates in past elections and intends to continue to do so in future elections.

### **C. Defendant**

26. Defendant Christi Jacobsen is the Montana Secretary of State and the “chief election officer of [the] state.” Section 13-1-201, MCA. Her duties include receiving declarations for nomination to public office, § 13-10-201, MCA, certifying candidate names for inclusion on ballots, § 13-21-201, MCA, and certifying election results, § 2-15-401(f), MCA.

## COMMON ALLEGATIONS

### A. Constitutional Background

27. The right to equal protection is central to the Montana Constitution:

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Mont. Const. art II, § 4.

28. “Article II, Section 4 of the Montana Constitution provides even more individual protection than the Equal Protection Clause in the Fourteenth Amendment of the United States Constitution.” *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15, 325 Mont. 148, 104 P.3d 445. Even laws containing apparently neutral classifications may nonetheless “violate equal protection ‘if in reality it constitutes a device designed to impose different burdens on different classes of persons.’” *Id.* ¶ 16 (quoting *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 327, 982 P.2d 421).

29. Montana’s Equal Protection Clause protects against discrimination on the basis of “political ideas.” Mont. Const. art II, § 4.

30. Equal protection principles include “the right to an equally weighted vote” and “the right to group effectiveness or an equally powerful vote.” *See In re 2021 Redistricting Cases*, 528 P.3d 40, 57 (Alaska 2023) (rejecting partisan gerrymander under Alaska’s equal protection clause, even in the absence of protection against political discrimination).



31. Partisan gerrymanders violate equal protection when they deprive a targeted class of a meaningful vote. *Id.* (“Districts drawn with an illegitimate purpose are unconstitutional even if the negative effect on proportional representation is slight.”). The Montana Equal Protection Clause protects against being “fenced out” of the electoral process. *See Nicholson v. Cooney*, 265 Mont. 406, 413–14, 877 P.2d 486, 490 (1994) (rejecting equal protection challenge to specific referendum procedure where plaintiffs did not allege that a class of the population had been “fenced out” of the electoral process); *see also Gray v. Sanders*, 372 U.S. 368, 381 (1963) (“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”); *League of Women Voters of Utah v. Utah State Legislature*, No. 220901712, at 38–44 (Utah Dist. Ct., Salt Lake Cty. Nov. 22, 2022) (appeal pending) (plaintiffs stated a claim under state equal protection clause in partisan gerrymander case); *Stephenson v. Bartlett*, 562 S.E.2d 377, 394 (N.C. 2002) (state equal protection clause protects “the fundamental right of each North Carolinian to substantially equal voting power”).

32. State action that harms an “identifiable group” “because of, not merely in spite of, its adverse effects upon” that group violates the Montana Equal Protection Clause. *State v. Miller*, 2022 MT 92, ¶ 16, 408 Mont. 316, 510 P.3d 17 (quoting *Hernandez v. New York*, 500 U.S. 352, 359–60 (1991)). The Legislature rejected multiple viable maps—including some that better accomplish the stated goals of compactness, contiguity, and population parity—for the purpose of silencing non-

Republican voices. The final map was chosen because it harmed non-Republicans, in violation of the Montana Equal Protection Clause. *See In re 2021 Redistricting Cases*, 528 P.3d at 57 (“If the purpose [of choosing a district plan] is intended discrimination against a class of voters, the purpose will be considered illegitimate without needing to ask about the relationship between purpose and efficacy.”).

33. The constitutional right to vote is likewise fundamental. “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const. art. II, § 13; *see also* James Grady, *Suffrage and Elections, Montana Constitutional Convention Study No. 11*, 25 (Mont. Const. Conv. Comm’n 1971) (“Suffrage is the basic right without which all others are meaningless.”) (quoting Lyndon Baines Johnson). The judiciary has a “solemn duty” to “ensure that the right of suffrage guaranteed to the people by our Constitution is preserved.” *Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 19, 410 Mont. 114, 518 P.3d 58.

34. “[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Burns v. Cty. of Musselshell*, 2019 MT 291, ¶ 19, 398 Mont. 140, 454 P.3d 685 (quoting *Bush v. Gore*, 531 U.S. 98, 105 (2000)). An election is not “free and open” unless each citizen has an equal vote. *See, e.g., League of Women Voters of Pa. v. Pennsylvania*, 178 A.3d 737, 814 (Pa. 2018) (Pennsylvania’s Free Elections Clause, analogous to Article II, Section 13, “governs all aspects of the electoral process” and provides citizens the guarantee of “an equally effective power to select

the representative of his or her choice, and bars the dilution of the people’s power to do so”); *Szeliga v. Lamone*, No. C-02-CV-21-0017733, 2022 WL 2132194, at \*34 (Md. Cir. Ct. Mar. 25, 2022) (“[T]he Free Elections Clause has been broadly interpreted to apply to legislation that infringes upon the right of political participation by citizens of the State.”). Partisan gerrymandering dilutes individual Montanans’ voting power, violating the right of suffrage.

### **B. Justiciability**

35. Montana law protects Plaintiffs from partisan gerrymandering, and this Court has the power to declare partisan gerrymanders unconstitutional under the Montana Constitution.

36. In *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the United States Supreme Court held that partisan gerrymandering claims are not justiciable in federal courts under the U.S. Constitution. *Id.* at 2498–502. The Court was careful to sketch the limits of its decision: “Our conclusion does not condone excessive partisan gerrymandering . . . . Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply.” *Id.* at 2507.

37. Indeed, since *Rucho*, several state courts have found partisan gerrymandering claims cognizable and justiciable under their respective state constitutions. *See, e.g., In re 2021 Redistricting Cases*, 528 P.3d 40; *League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, 192 N.E.3d 379, 414–15 (Ohio 2022); *League of Women Voters of Pa.*, 178 A.3d at 814; *Grisham v. Van Soelen*, No. S-1-SC-

39481, at 15–37 (N.M. Sept. 22, 2023); *League of Women Voters of Utah*, No. 220901712, at 10–20; *Szeliga*, No. C-02-CV-21-0017733, at 4, 12–14.

38. Partisan gerrymanders are justiciable under the Montana Constitution. The Court regularly reviews legislative enactments for compliance with the Equal Protection Clause, *see, e.g., A.J.B. v. Eighteenth Jud. Dist. Ct.*, 2023 MT 7, ¶ 33, 411 Mont. 201, 523 P.3d 519; *Oberson v. U.S. Dep’t of Agric., Forest Serv.*, 2007 MT 293, ¶ 15, 339 Mont. 519, 171 P.3d 715, and the suffrage clause, *see Mont. Democratic Party*, ¶¶ 31, 36. “[O]nce the Legislature has acted, or ‘executed,’ a provision . . . that implicates individual constitutional rights, courts can determine whether that enactment fulfills the Legislature’s constitutional responsibility.” *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 17, 326 Mont. 304, 109 P.3d 257.

39. SB 109 abridges Montanans’ fundamental rights of suffrage and equal protection. This Court has jurisdiction to review and strike down unconstitutional legislative action that interferes with Montanans’ fundamental rights. Its duty is never more important than in the case of suffrage, which is “perhaps the most foundational of our Article II rights and stands, undeniably, as the pillar of our participatory democracy.” *Mont. Democratic Party*, ¶ 19. This matter is justiciable.

### **C. Structure and History of the Public Service Commission**

40. In 1907, the Montana Legislature created the Board of Railroad Commissioners, the precursor to the modern PSC. The Board was later expanded to oversee all public utilities and renamed the Public Service Commission. Prior to 1974, the PSC had three commissioners, who were elected in a statewide at-large

election. Thus, when the Montana Constitution was ratified, the PSC was not a districted entity. In 1974, the Legislature expanded the PSC to include five commissioners, each elected from a single-member regional district.

41. The PSC is a state executive branch agency and the head of the Department of Public Service Regulation. Sections 2-15-2601, 2-15-2602, MCA; *Williamson v. Mont. Pub. Serv. Comm.*, 2012 MT 32, ¶ 29, 364 Mont. 128, 272 P.3d 71. Prior to the Executive Reorganization Act of 1971, the PSC was considered “an arm of the legislature in the performance of its functions.” *State Bar of Mont. v. Krivec*, 193 Mont. 477, 484, 632 P.2d 707, 711 (1981). The PSC is “invested with full power of supervision, regulation and control of” certain private, investor-owned natural gas, electric, telephone, water, and private sewer companies that operate in Montana. Sections 69-3-101, 69-3-102, MCA. The PSC also regulates certain motor carriers and oversees rail and pipeline safety regulations.

42. To carry out its statutory obligations, the PSC performs an expansive set of functions, including, *inter alia*, rulemaking, §§ 69-3-103, 69-3-310, MCA; setting rates, §§ 69-3-301 through 69-3-308, 69-3-901 through 69-3-910, MCA; investigating utilities’ business and affairs, § 69-3-106, MCA; hearing ratepayers’ and utilities’ complaints, §§ 69-3-321, 69-3-323, MCA; and regulating utilities’ securities and liens, § 69-3-501, MCA.

43. The Montana Legislature draws PSC district boundaries. The nonpartisan, constitutionally mandated Montana Districting and Apportionment

Commission draws district lines for all other districted, popularly elected state government entities. *See* Mont. Const. art. V, § 14.

#### **D. Montana's 2003 PSC Map**

44. In 2021, a group of Montana residents sued Secretary Jacobsen in federal court, alleging that the PSC districts were unconstitutionally malapportioned. *Brown v. Jacobsen*, 590 F. Supp. 3d 1273 (D. Mont. 2022). The federal challenge arose from the Legislature's failure to update the PSC district map for over eighteen years, even though Montana had experienced prodigious and uneven population growth. Thus, by 2021, District 3 (the State's southwest region containing Bozeman and Butte-Silver Bow) contained 25% more people than District 1 (the Hi-Line). Plaintiffs argued that these discrepancies violated the Fourteenth Amendment of the United States Constitution and the one-person, one-vote rule. *Id.* at 1276.

45. After a bench trial in March 2022, a three-judge panel granted plaintiffs' motion for summary judgment and held that the 2003 map was unconstitutional. *Id.* at 1286. The court ordered the adoption of a new map that brought the maximum population deviation between districts to a presumptively constitutional 6.72%. *Id.* at 1291. The court noted that it drew the PSC map reluctantly, and the court's action did not "prevent the Montana legislature from creating a different constitutional map during the 2023 legislative session." *Id.* at 1292.

#### **E. SB 109**

46. SB 109 began innocently enough. On January 4, 2023, Senator Keith Regier introduced the original version of SB 109, which had two simple goals: (1) to

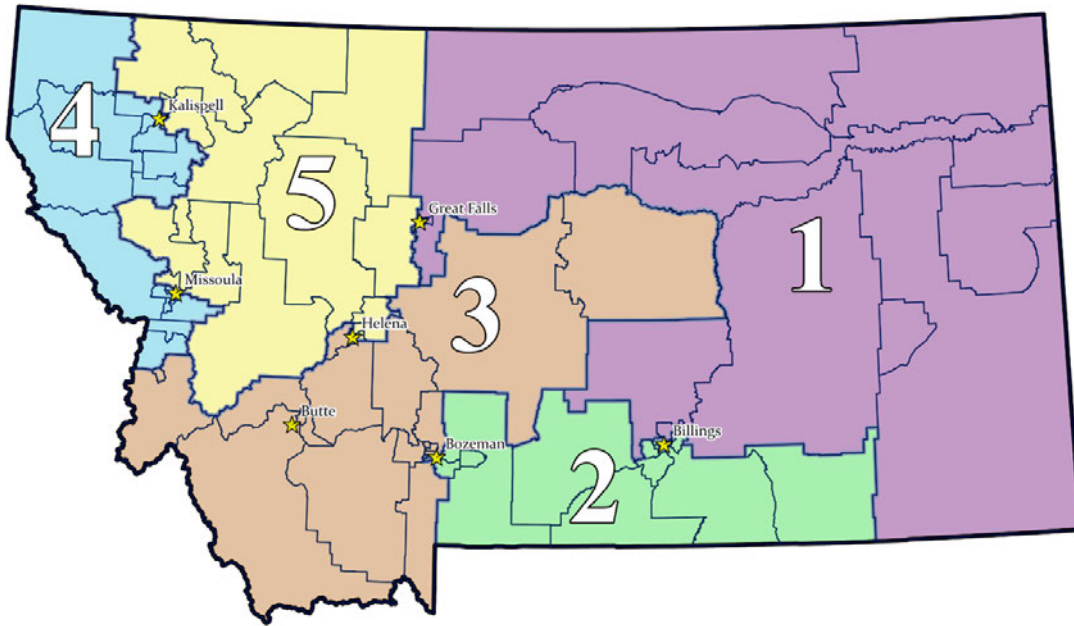
codify the 2022 court-drawn map and (2) to mandate that the Legislature review and adjust PSC districts after each decennial census to ensure compliance with the United States Constitution. *See* Ex. A, original version of SB 109. As initially introduced, SB 109 maintained the division of districts along county lines, consistent with decades of precedent.

47. Senator Regier advised that any proposed map should follow the “constitution guidelines for redistricting”—which he described as “compact, contiguous, and nearly equal in population as is practicable.” Mont. Leg., Sen. Energy & Telecoms. Hrg., 15:04:25 (Jan. 24, 2023).<sup>2</sup> Senator Regier invited alternatives and expressed hope for a map with population deviations smaller than one percent. *Id.* at 15:04:15.

48. On February 28, 2023—only days before the transmittal deadline—the Senate Energy and Telecommunications Committee approved an amendment from Senator Regier that redrew the PSC district map by dividing Montana’s one hundred state House districts across the PSC’s five districts. *See* Ex. B, final version of SB 109. Before SB 109, PSC maps had always preserved counties. The final version of SB 109 splits not only fourteen counties but also six of Montana’s seven major municipalities (Billings, Missoula, Great Falls, Bozeman, Helena, and Kalispell):

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<sup>2</sup> *Available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/1/47031?agendaId=248606>.



49. The Fifth District alone contains parts of four of the State’s seven major cities.

PSC District	Major Cities Within District Boundaries
District 1	Great Falls, Billings
District 2	Bozeman, Billings
District 3	Bozeman, Helena, Butte-Silver Bow (fully contained)
District 4	Missoula, Kalispell
District 5	Missoula, Helena, Great Falls, Kalispell

50. SB 109 cracks major cities to dilute the influence of non-Republican and urban voters. *See* Ex. C, detailed maps displaying 2020 election data and PSC district boundary lines dissecting six of Montana’s seven major municipalities.

51. SB 109 also cuts the Flathead Indian Reservation in two. Because the Reservation extends into two high-population counties, Flathead and Missoula, it is impossible to draw lines that keep the Reservation and all counties intact. *See*



*Brown*, 590 F. Supp. 3d at 1288–89; *see also id.* at 1292–93 (Morris, J., concurring). But, while previous maps reduced the impact on the Reservation, keeping it mostly intact and dividing it only to prioritize county lines, *see id.* at 1289, SB 109 does not even attempt to preserve the Reservation as a community of interest.

52. By splitting all major municipalities except for Butte and dividing the Flathead Indian Reservation in two, SB 109 does away with the traditional redistricting goal of preserving communities of interest.

53. Consistent with past precedent, in July 2021, Montana’s bipartisan Districting and Apportionment Commission promulgated goals for congressional redistricting that included “[k]eeping communities of interest intact.” Districting & Apportionment Comm’n, Adopted Congressional Criteria.<sup>3</sup> A community of interest is a community that contains a “group of people with common concerns.” Sandra J. Chen, et al., *Turning Communities of Interest into a Rigorous Standard for Fair Redistricting*, 18 Stan. J. C.R. & C.L. 101, 107 (2022). Examples include “Indian reservations, urban interests, suburban interests, rural interests, tribal interests, neighborhoods, trade areas, geographic location, demographics, communication and transportation networks, social, cultural, historic, and economic interests and connections, or occupations and lifestyles.” Districting & Apportionment Comm’n, Adopted Congressional Criteria.<sup>4</sup>

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<sup>3</sup> Available at <https://leg.mt.gov/content/Districting/2020/Topics/Criteria/adopted-criteria-congressional-dac-july-2021.pdf>.

<sup>4</sup> Available at <https://leg.mt.gov/content/Districting/2020/Topics/Criteria/adopted-criteria-congressional-dac-july-2021.pdf>.

54. People who live in geographically bounded communities of interest such as cities are often connected by socioeconomic status, cultural values, and local industries. Nicholas O. Stephanopoulos, *Redistricting and the Territorial Community*, 160 U. Penn. L. Rev. 1379, 1431–32 (2012). Maintaining communities of interest yields greater political representation of common interests and concerns and requires representatives to consider and advocate for the needs of the community. Sandra J. Chen, 18 Stan. J. C.R. & C.L. at 108.

55. Respecting political subdivisions and communities of interest has especial importance for the PSC. For example, voters on either side of Bozeman Avenue vote for different PSC commissioners despite shared community interests in, *inter alia*, electric utility rates, garbage disposal policies, and clean energy investment. *See* Ex. D, Detailed Map of Downtown Bozeman.

56. Splitting communities of interest may, at times, appropriately advance other legitimate districting criteria. Here, however, it is an intentional attack on non-Republican voters. Preserving communities of interests “indirectly prevents political gerrymandering.” Sandra J. Chen, 18 Stan. J. C.R. & C.L. 101 at 109. Respecting communities of interest decreases the ability of the majority party to draw lines that favor that party by splitting or “cracking” a community that may not share that party’s views. *Id.*

57. On February 28, 2023, in a hearing on SB 109, Senator Regier had multiple opportunities to justify splitting municipalities and communities of interest. When asked about the partisanship of the new districts, Senator Regier responded

that he “didn’t check that” and followed the constitutional redistricting guidelines of contiguousness and population parity and did not pay any attention to “communities of interest” or political party representation. Mont. Leg., Sen. Energy & Telecoms. Hrg., 18:10:00 (Feb. 28, 2023).<sup>5</sup> When asked why Cascade County was split into three different districts, Senator Regier responded only, “That’s the way it worked out.” *Id.* at 18:21:00. When asked about the constitutional considerations of “compactness” of districts, Senator Regier responded, “The big emphasis was the population.” *Id.* at 18:22:30. When specifically asked if he considered communities of interest, Senator Regier responded that he “tried to follow what the Constitution said as far as contiguous and equal in population as is practical. Community of interest . . . no.” *Id.* at 18:15:45. As Representative Derek Harvey stated, “We asked questions of the metrics that were used to come up with this map, and we didn’t get answers . . . I believe the citizens of the State of Montana deserve to know how this map was drawn and why it was drawn the way it is.” Mont. Leg., House Fl., 14:41:00 (Apr. 14, 2023).<sup>6</sup>

58. The House of Representatives passed SB 109 on April 17, 2023 along party lines.

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<sup>5</sup> Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230228/-1/47041?startposition=20230228180743&mediaEndTime=20230228182558&viewMode=3&globalStreamId=4>.

<sup>6</sup> Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230414/-1/46168?startposition=20230414142544&mediaEndTime=20230414144941&viewMode=3&globalStreamId=4>.

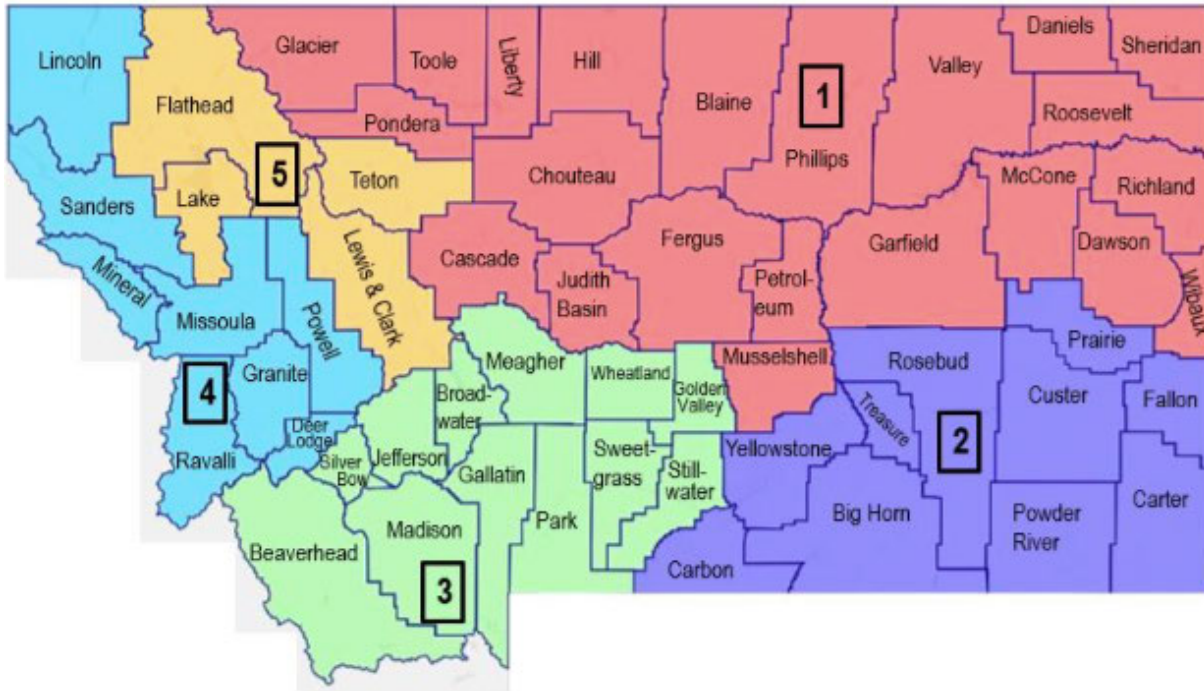
59. In fact, Senator Regier was well aware of the partisan advantage conferred by the revised map. All major redistricting software provides analysis of partisanship, and it is absurd to suggest that politicians are unaware of the electoral consequences of districting.

60. Moreover, the final map is an extreme outlier. Many possible maps can be drawn that prioritize compactness, contiguity and population equality—the redistricting criteria described by Senator Regier. Considering a large sample of possible maps, more than 99% of all possibilities will include at least one district that is competitive or Democratic-leaning. But the enacted map has five safe Republican districts.

61. Gerrymandering is “[t]he practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition’s voting strength.” Black’s Law Dictionary (11th ed. 2019) (emphasis added). The bifurcation of major population centers and extraordinary partisan slant are unmistakable indicators of partisan gerrymandering.

62. Legislators “cracked” the votes of non-Republicans across multiple districts, diluting non-Republicans’ voting strength.

63. The court-drawn map implemented in 2022, which the SB 109 map replaced, was fairer and more representative because it maintains two competitive districts, District 3 (containing Butte-Silver Bow and Bozeman) and District 4 (containing Missoula).



*Court-Drawn 2022 PSC Map*

64. SB 109 took Republican votes from Districts 2 and 5 and deposited them into Districts 3 and 4, where they would be of better use to Republicans. Instead of three safe Republican districts and two competitive districts, the new map has one ultra-safe Republican district (District 1) and four remaining districts where the margin is wide enough to ensure with near certainty that a Republican will be elected.

65. Legislators intentionally diluted the voting power of Bozeman and Missoula to create five safe Republican districts. Missoula County has a population of around 117,000 and routinely gives close to 65% of its votes to non-Republican candidates. Gallatin County includes roughly 95,000 inhabitants and usually gives more than 55% of its votes to non-Republican candidates. Given that each PSC district only has about 200,000 people, the size and voting history of Bozeman and Missoula present significant challenges for partisan gerrymandering—unless

legislators disregard legitimate districting criteria, such as preserving communities of interest.

66. SB 109 is an intentional and targeted attempt to silence a certain subset of voters based on their political ideas, political affiliation, and past voting history. All five districts are drawn intentionally to favor the majority party and thwart competition by cracking the voting power of the minority party. Montana is not unilaterally Republican: 40–45% of voters regularly choose Democratic and third-party candidates. It takes tactical line-drawing to undermine the influence and weight of Democratic voters where they congregate. The simplest—and most obvious—way to stifle competition is to crack the non-Republican vote share across PSC districts. That is exactly what the Legislature did.

#### **G. Non-Gerrymandered Alternatives**

67. During debate on SB 109, legislators introduced several maps that were *more* compact, contiguous, and equal in population than the current map. Each map—like nearly all possible maps—provided for competitive commission districts.

68. Gerrymandered maps dilute the voting strength of certain targeted, disfavored groups. In contrast, fair maps allow all voters, regardless of partisanship, to translate votes into representation.

69. Montana legislators do not need to guess at what constitutes a fair map. The constitutionally designated, bipartisan Montana Districting and Apportionment Commission agrees on districting criteria each cycle, and these criteria provide helpful indicators of fairness. In addition to preserving communities of interest, no

districting plan may be drawn to unduly favor a political party, and a redistricting committee may consider competitiveness when drawing plans. Districting & Apportionment Comm’n, Adopted Congressional Criteria.<sup>7</sup>

70. The PSC map accomplishes none of these goals—and, in fact, frustrates them. Legislators split communities of interest and political subdivisions, and they considered the competitiveness of districts only in order to make the districts *less* competitive.

71. Lawmakers introduced several amendments proposing maps that better aligned with traditional and modern redistricting criteria, consistent with the Districting Commission’s goals and mandatory criteria.

72. Three amendments were introduced in committee and were voted down. Two of those were again voted down on the House floor. A fourth amendment was never voted on but was drafted as a potential amendment. All provide more competitive districts and smaller deviations in population across districts.

73. Amendment 2 split zero counties and zero cities and provided a lower population deviation than SB 109.<sup>8</sup> In line with historical precedent, Amendment 2 divided PSC districts by county. This map created two competitive PSC districts based on 2020 voting data. It was voted down in committee.

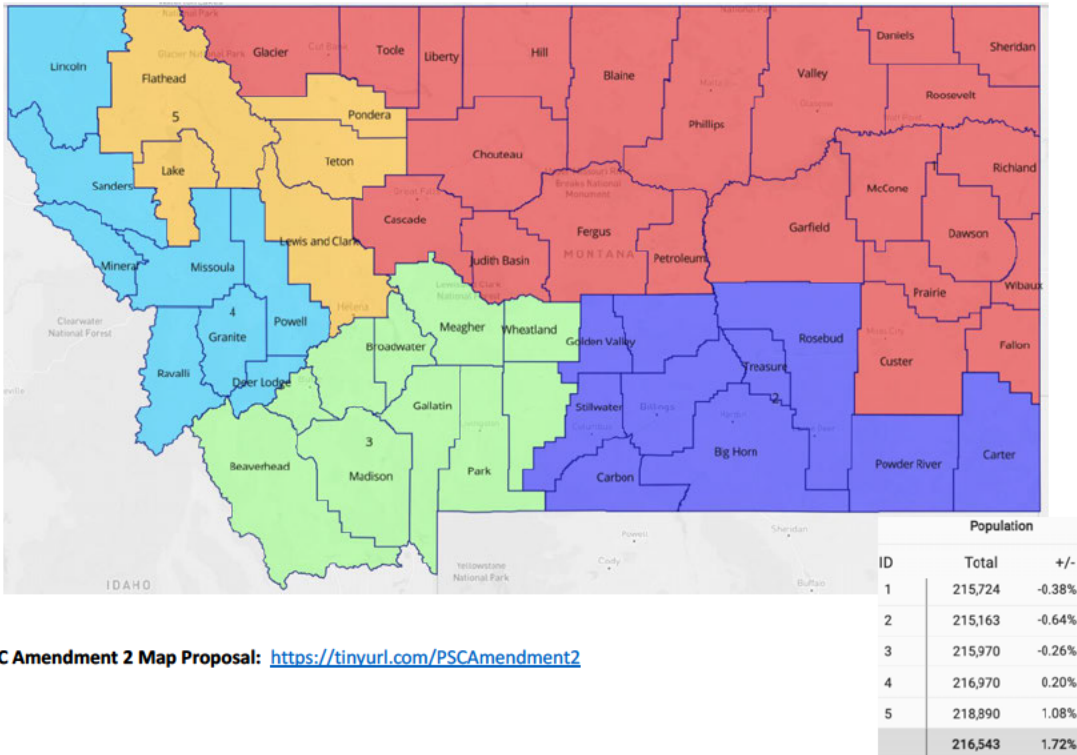
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<sup>7</sup> Available at <https://leg.mt.gov/content/Districting/2020/Topics/Criteria/adopted-criteria-congressional-dac-july-2021.pdf>.

<sup>8</sup> SB 109.002.002 (“Amendment 2”), available at [https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.002\\_Amendments-in-Context\\_final-full.pdf](https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.002_Amendments-in-Context_final-full.pdf).

**PSC Amendment 2 – Population Equal, County Lines**

Amendment 2 has lower population deviation than SB 109 while splitting no cities and no counties (compared to SB 109 that groups 20 house districts to make up each PSC district while splitting counties 14 times and dividing 6 cities).



PSC Amendment 2 Map Proposal: <https://tinyurl.com/PSCAmendment2>

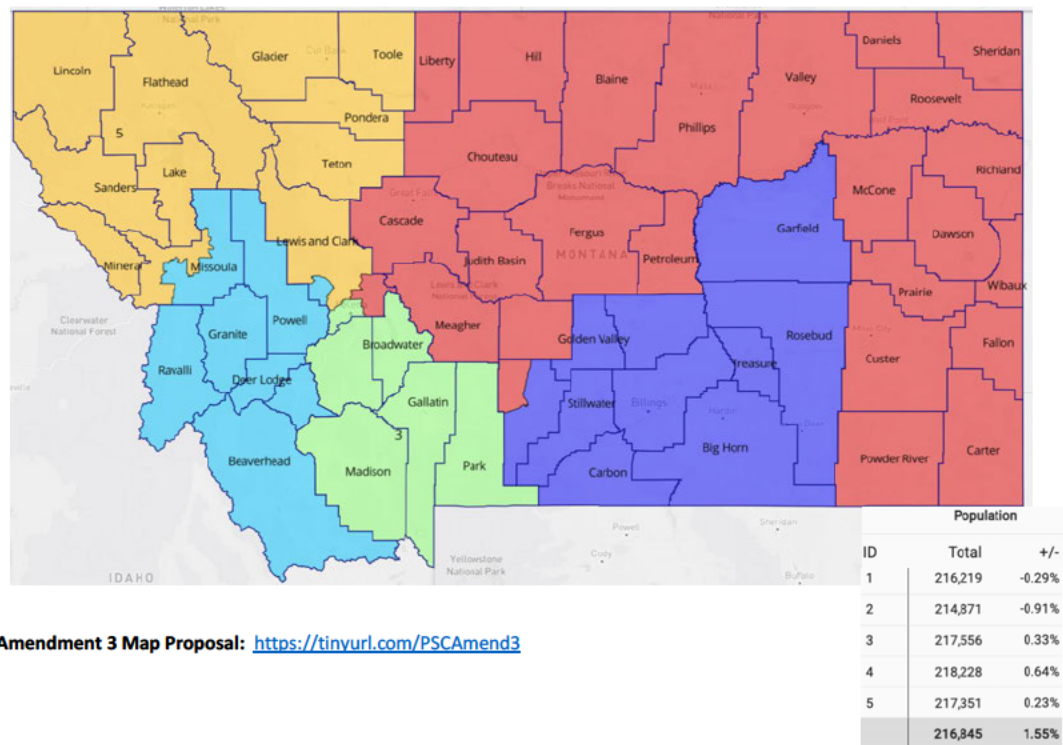
74. Amendment 3 split three counties and one city and provided a lower population deviation than SB 109.<sup>9</sup> Amendment 3 would have maintained district divisions by legislative district. This map created two competitive PSC districts based on 2020 voting data. It was voted down in committee and on the House floor.

<sup>9</sup> SB109.002.003 & SB109.002.006 (“Amendment 3”) (renumbered), *available at* [https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.003\\_Amendments-in-Context\\_final-full.pdf](https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.003_Amendments-in-Context_final-full.pdf).



**PSC Amendment 3 – Follows Legislative District Lines while Minimizing City/County Splits**

Amendment 3 has lower population deviation than SB 109. It groups 20 legislative house districts for each PSC district and splits only 3 counties and 1 city (compared to SB 109 that also groups 20 house districts to make up each PSC district while splitting counties 14 times and dividing 6 cities).



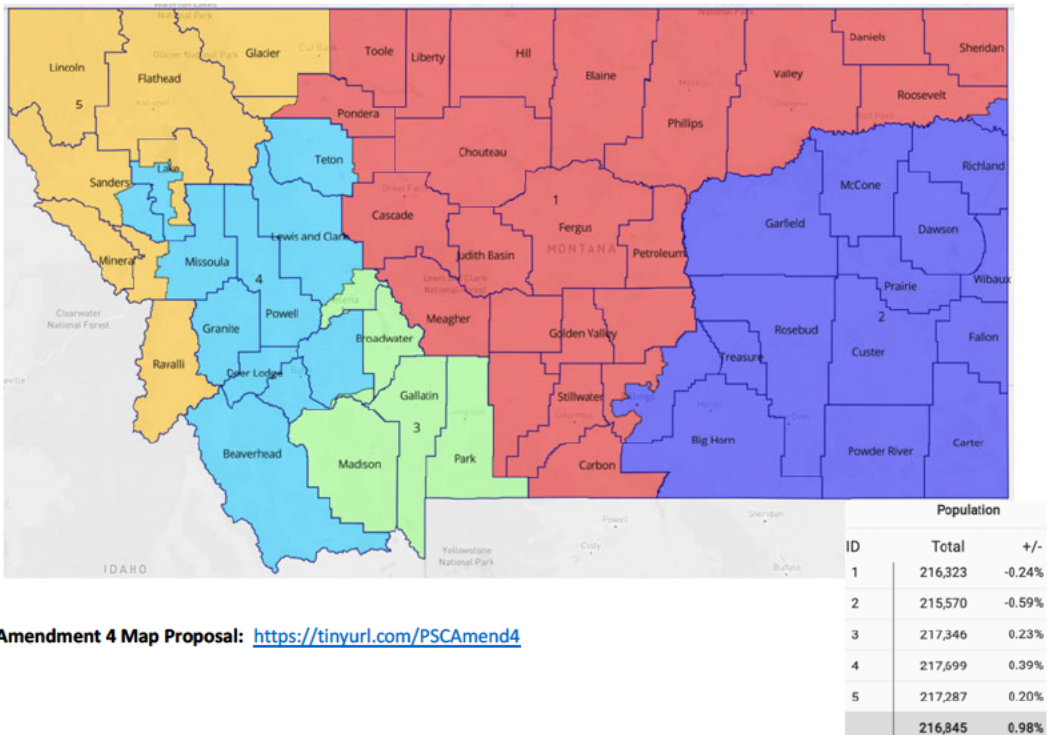
PSC Amendment 3 Map Proposal: <https://tinyurl.com/PSCAmend3>

75. Amendment 4 split nine counties and zero cities and provided a lower population deviation than SB 109.<sup>10</sup> Amendment 4 maintained district divisions by legislative district. This map created two competitive PSC districts based on 2020 voting data. It was not voted on but was drafted as a potential amendment and posted online with SB 109.

<sup>10</sup> SB109.002.004 (“Amendment 4”), *available at* [https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.004\\_Amendments-in-Context\\_final-full.pdf](https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.004_Amendments-in-Context_final-full.pdf).

**PSC Amendment 4 – Follows Legislative District Lines while Avoiding Any City/Town Splits**

Amendment 4 has lower population deviation than SB 109. It groups 20 legislative house districts for each PSC district and keeps all cities and towns whole while splitting only 9 counties (compared to SB 109 that also groups 20 house districts to make up each PSC district while splitting counties 14 times and dividing 6 cities).



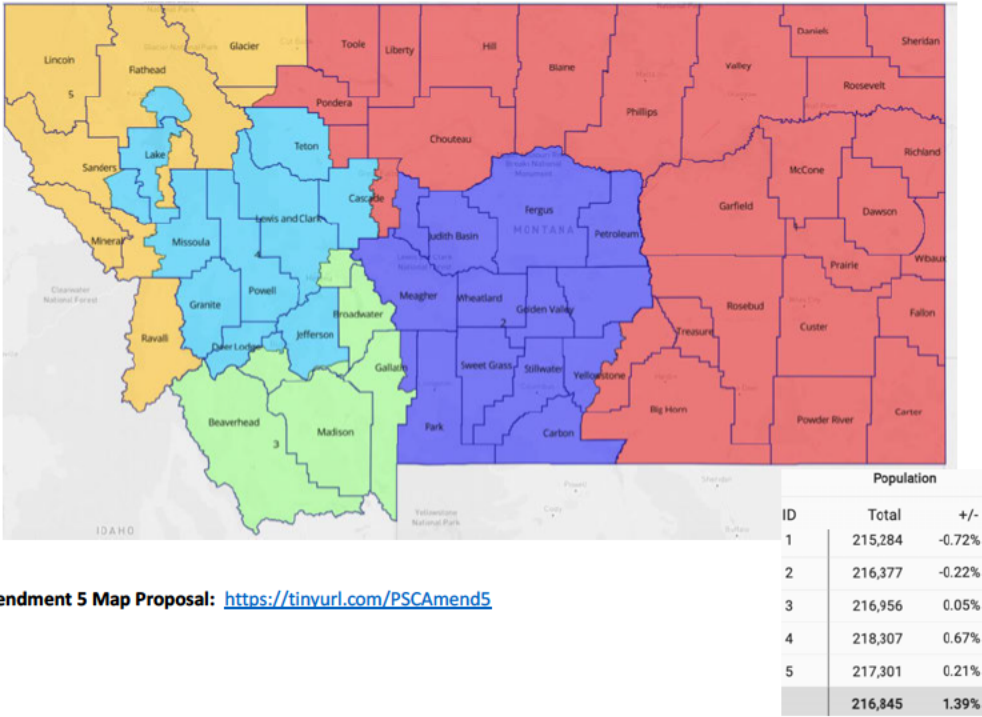
PSC Amendment 4 Map Proposal: <https://tinyurl.com/PSCAmend4>

76. Amendment 5 split all seven major cities—including Butte-Silver Bow—to ensure each would receive the same purported advantage of two commissioners, and it provided a lower population deviation than SB 109.<sup>11</sup> Amendment 5 maintained district divisions by legislative district. This map created two competitive PSC districts based on 2020 voting data. It was voted down in committee and on the House floor.

<sup>11</sup> SB109.002.005 & SB109.002.007 (“Amendment 5”) (renumbered), *available at* [https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.005\\_Amendments-in-Context\\_final-full.pdf](https://leg.mt.gov/bills/2023/AmdPublicWeb/SB0109.002.005_Amendments-in-Context_final-full.pdf).

**PSC Amendment 5 – Follows Legislative District Lines while Splitting the 7 Major Cities**

Amendment 5 has lower population deviation than SB 109. It groups 20 legislative house districts for each PSC district and splits all 7 major cities to ensure they all receive the same advantage of two representatives on the PSC as described by the sponsor (compared to SB 109 that also groups 20 house districts to make up each PSC district but only splits 6 of the 7 major cities while treating Butte differently than other cities).



PSC Amendment 5 Map Proposal: <https://tinyurl.com/PSCAmend5>

77. The legislative supermajority offered no explanation for its rejection of these maps, refusing to even consider them. It is false that the Legislature only considered population parity, contiguity, and compactness, as evidenced by its rejection of maps better satisfying these goals.

**h. Long-Term and Short-Term Effects of SB 109’s Gerrymandered Map**

78. The framers of the Montana Constitution were profoundly aware of the dangers of gerrymandering.

79. To promote proportional representation and ensure a responsive legislature, the framers created single-member legislative districts. A single-member

district is a district that selects only one representative. The PSC contains five single-member districts.

80. It is particularly important to preserve communities of interest in single-member districts. During the constitutional debates, Delegate Carman Skari described single-member districts as a “great improvement in democratic representation.” Mont. Const. Conv., IV Verbatim Tr. at 681. He added, “We feel that the most accurate method of representation is by single-member districts. Minorities are not submerged and their voice drowned out.” *Id.* at 680.

81. Extreme partisan gerrymandering destroys the justification for single-member districts. Minority voices can be heard in fair single-member districts, but gerrymandered districts dilute the votes of these same minority voters.

82. Partisan gerrymanders do not only harm voters in the minority party. A partisan gerrymander prevents candidates from competing for votes and renders representatives less responsive to their constituents’ needs. Representatives elected in gerrymandered districts are “more likely to believe that their primary obligation is to represent only members of [the favored] group, rather than their constituency as a whole. This is antithetical to our system of representative democracy.” *Shaw v. Reno*, 509 U.S. 630, 648 (1993). Instead, a fairly drawn single-member district “fosters personal identification between the legislator and his constituency.” Mont. Const. Conv., IV Verbatim Tr. at 680.

83. SB 109 also sows confusion.

84. Commissioner Annie Bukacek, who represents District 5, now resides in District 4, which is represented by Commissioner Jennifer Fielder. Candidate filing for these races opens on January 11, 2024. Mont. Sec’y of State, Candidate Filing.<sup>12</sup>

85. In 2024, District 2, District 3, and District 4 are up for election.

86. Under SB 109, two commissioners will reside in District 4, and no commissioners will reside in District 5. It is unclear what will happen to the two commissioners who live in District 4. When the Districting Commission’s work similarly affects incumbents, it provides a plan for the affected seat. *See Willems v. State*, 2014 MT 82, ¶ 34, 374 Mont. 343, 325 P.3d 1204 (addressing holdover senators). The Legislature made no similar plan for the PSC.

87. Extreme political gerrymanders, like SB 109, lead to less competitive—and in many cases uncompetitive—electoral races. Partisan gerrymandering reinforces extreme partisanship. When they do not need to compete across party lines for votes, politicians have no incentive to build consensus or seek middle ground.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(Violation of the Right to Equal Protection Under Law, Mont. Const. art. II, § 4)**

88. Plaintiffs incorporate all foregoing allegations.

89. “The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or

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<sup>12</sup> Available at <https://sosmt.gov/elections/filing/>.

political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Mont. Const. art II, § 4.

90. “Article II, Section 4, of the Montana Constitution provides even more individual protection than the Equal Protection Clause in the Fourteenth Amendment of the United States Constitution.” *Snetsinger*, ¶ 15. Even a law containing apparently neutral classifications may nonetheless “violate equal protection if in reality it constitutes a device designed to impose different burdens on different classes of persons.” *Id.* ¶ 16 (internal quotations omitted).

91. On its face, the new map creates an impermissible classification between Republican voters and all others. It dilutes the voting power of non-Republican voters by placing those voters in non-competitive districts where they are outnumbered by Republican voters.

92. Additionally, the map was enacted with the intent to discriminate against non-Republican voters. It is an extreme outlier, selected “because of, not merely in spite of, its adverse effects upon” non-Republican voters. *Miller*, ¶ 16.

93. SB 109 violates Montana’s Equal Protection Clause, which protects against discrimination on the basis of political ideas and safeguards the fundamental principle of one person, one vote.

**COUNT II**  
**(Violation of the Right of Suffrage,  
Mont. Const. art. II, § 13)**

94. Plaintiffs incorporate all foregoing allegations.

95. The Montana Constitution provides: “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const. art. II, § 13.

96. An election is free under the Montana Constitution’s Suffrage Clause only when the will of the people may be fairly ascertained and accurately reflected. Votes may not be diluted on the basis of the voter’s political affiliation. “The right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Burns*, ¶ 19.

97. SB 109 denies non-Republican voters the representation guaranteed by the Free Election Clause. If the redistricting plan were fair, all voters would have the opportunity to fairly influence election results. But SB 109 denies them that opportunity.


98. The only reasonable explanation for the final map is that it entrenches one-party control of the PSC. An election held pursuant to this map is not “free and open.” SB 109 deprives Montanans of their right of suffrage.

## PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter:

- a. A declaratory judgment that SB 109 is unconstitutional;
- b. An order preliminarily enjoining Defendant and all agencies, agents, and employees from enforcing any aspect of SB 109;
- c. An order permanently enjoining Defendant and all agencies, agents, and employees from enforcing any aspect of SB 109;
- d. An order granting any other appropriate relief that may be necessary to enjoin implementation of SB 109;
- e. An award of attorney's fees and costs incurred in bringing this action; and
- f. Any further relief this Court deems just and appropriate.

Respectfully submitted this 30th day of October, 2023.

  
/s/  
Constance Van Kley  
Christopher Patalano  
Rylee Sommers-Flanagan  
Upper Seven Law

*Attorneys for Plaintiffs*