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FILED this 14 day of
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Jessie Hill
Clerk of District Court

Attorney for Plaintiffs

MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
WHEATLAND COUNTY

10 ROBERT WILLEMS, PHYLLIS)
11 WILLEMS, TOM BENNETT, BILL) Case No. DV-13-07
12 JONES, PHILIP WILSMAN, LINDA)
13 WILSMAN, JASON CARLSON, MICK)
14 JIMMERSON, DWAYNE CROOK,) COMPLAINT FOR INJUNCTIVE
15 MARY JO CROOK, JAMES STUNTZ,) AND DECLARATORY RELIEF
16 RANDY BOLING, ROD BOLING, BOB)
17 KELLER, GLORIA KELLER, ROALD)
18 TORGESON, RUTH TORGESON, ED)
19 TIMPANO, JEANNIE RICKERT, TED)
20 HIGHLAND, KEITH KLUCK, PAM)
21 BUTCHER, TREVIS BUTCHER,)
22 BOBBIE LEE COX, WILLIAM COX,)
23 AND DAVID ROBERTSON,)
24 Plaintiffs,)
25 vs.)
26 STATE OF MONTANA, LINDA)
27 McCULLOCH, in her capacity as Secretary)
28 of State for the State of Montana,)
Defendants.)

26 COMES NOW Plaintiffs Robert Willems, Phyllis Willems, Tom Bennett, Bill Jones, Philip
27 Wilsman, Linda Wilsman, Jason Carlson, Mick Jimmerson, Dwayne Crook, Mary Jo Crook, James
28 Stuntz, Randy Boling, Rod Boling, Bob Keller, Gloria Keller, Roald Torgeson, Ruth Torgeson, Ed

1 Timpano, Jeannie Rickert, Ted Hogland, Keith Kluck, Pam Butcher, Trevis Butcher, Bobbie Lee
2 Cox, William Cox, and David Robertson, who allege the following:

3
4
5 **PRELIMINARY STATEMENT**

6
7 1. Plaintiffs, who constitute a diverse cross-section of registered voters in Fergus and
8 Wheatland Counties, seek to invalidate an unlawful, eleventh-hour alteration made by the Montana
9 Districting and Apportionment Commission (Commission) to its 2013 Redistricting Plan.
10 Specifically, Plaintiffs request that this Court invalidate the Commission’s last-minute reassignment
11 of two “holdover” senators (senators who were elected in 2012 and do not have to seek re-election
12 during the next general election held in 2014) which it made without notice to the public, review by
13 the Legislature, or consideration by anyone of the vote diluting effects upon the voters in Senate
14 District No. 15 (SD-15). Plaintiffs also request corresponding injunctive relief.

15 2. Ten years ago, the Commission assigned then-State Senator Jon Tester to SD-15,
16 which included Judith Basin, Fergus and Petroleum Counties. Senator Tester, elected in 2002, was a
17 holdover senator. The Commission’s assignment of Senator Tester to SD-15 prevented voters in
18 Judith Basin, Fergus and Petroleum Counties, who had previously voted for a state senate candidate
19 in 2000, from voting for one in 2004. They instead had to wait until Senator Tester, who had never
20 appeared on a ballot in those counties, completed his term in 2006. As a result, voters in those
21 counties cast ballots for state senate candidates in just two general elections during the ten years that
22 the Commission’s 2003 decennial plan was in effect, while many other Montana voters cast three
23 general election ballots for state senate candidates during the same period.

24 3. History just repeated itself for voters in Judith Basin, Fergus and Petroleum Counties
25 who, along with those in Wheatland, Meagher, and Golden Valley Counties, constitute 95% of the
26 voters in the newly drawn SD-15. The Commission last month again assigned a holdover senator to
27 the district. These six counties last voted for a state senate candidate in 2010. If the Commission’s
28 last-minute alteration of the redistricting plan stands, they will have to wait six years to cast a ballot

1 for a senate candidate while the holdover senator assigned to them by the Commission -- a senator
2 who has never appeared on a ballot in these counties -- completes his term.

3 4. The circumstances behind this latest disenfranchisement of SD-15 voters are
4 particularly egregious.

5 5. On January 9, 2013, the Commission submitted to the Legislature a redistricting plan
6 that included a proposed list of holdover assignments. The Legislature recommended reassigning a
7 holdover senator in Billings to an adjacent district, but made no other recommendations concerning
8 holdover assignments.

9 6. A handful of dissident legislators, however, wrote a letter to the Commission
10 complaining that Senator Llew Jones, who had been elected in 2010 from the “old” SD-14, now
11 found himself in the newly drawn SD-9 as a result of Pondera County being moved from SD-14 to
12 SD-9. Because the Commission had assigned to SD-9 a holdover senator whose term would not
13 expire until 2016, Senator Jones would have had to wait two years after his term expired in 2014
14 before he could run again for a senate seat in 2016.

15 7. The dissident legislators asked the Commission to remove the holdover from SD-9,
16 thereby furthering Senator Jones’ interests by accelerating the district’s senate election to 2014.

17 8. During its final hearing on February 12, 2013, the Commission adopted what its
18 chairman referred to as the “Llew Jones Motion.” Pursuant to the Llew Jones Motion, the
19 Commission reassigned the holdover senator in SD-9 to SD-10, a district that also had a holdover
20 senator. The Commission then reassigned the holdover senator in SD-10 to SD-15.

21 9. Unlike previous hearings in which the Commission gave prior notice of proposed
22 holdover assignments, the Commission did not give prior notice of the reassignments it made on
23 February 12. If it had done so, Plaintiffs would have strongly objected either personally or in
24 writing before commissioners voted on the Llew Jones Motion.

25 10. Instead, there were no takers when commissioners opened the floor to public
26 comment on the Llew Jones Motion. None of the Commissioners mentioned that all of the voters in
27 six counties in SD-15 (95% of the total voters in the newly drawn district) would be forced to wait
28 an additional two years for their next senate election while being saddled with a senator they had

1 never voted for or against. Nor did Commissioners mention that voters in Judith Basin, Fergus and
2 Petroleum Counties (approximately 70% of the voters in the newly drawn SD-15) faced an identical
3 infringement of their voting rights during the previous redistricting period.

4 11. The Commissioners' only concern was that Senator Jones should not have to wait two
5 years after his term expires in 2014 to be able to run again for a senate seat.

6 12. The Commission approved the Llew Jones Motion by a vote of 3-2.

7 13. Put simply, the Commission had a choice of letting Senator Jones wait an extra two
8 years to run for a second senate term, or forcing 19,000 residents in Judith Basin, Fergus, Petroleum
9 Golden Valley, Wheatland, and Meagher Counties to wait an extra two years before exercising their
10 right to vote for their state senator. The Commission chose the latter.

11 14. This choice was unlawful and grossly unjust. The Court should invalidate the
12 holdover reassignments resulting from the Llew Jones Motion as a violation of Plaintiffs' (1) Right
13 of Suffrage under Article II, Section 13 of the Montana Constitution, (2) Right to Participate under
14 Article II, Section 8 of the Montana Constitution and (3) Right to Equal Protection under Article II,
15 Section 4 of the Montana Constitution.

16 15. The holdover reassignments made pursuant to the Llew Jones Motion should also be
17 invalidated due to the Commission's failure to submit those reassignments to the Legislature for its
18 recommendations, as required by Article V, Section 14(4) of the Montana Constitution.

19 16. The holdover reassignments should also be invalidated due to the Commission's
20 consideration of Senator Jones' address and prior election results in formulating those
21 reassignments, something prohibited by § 5-1-115(3), MCA.

22 17. Plaintiffs do not challenge any other portion of the redistricting plan.

23
24 **PARTIES**

25 18. Plaintiff Robert Willems is a veteran of World War II, a registered voter in
26 Harlowton, Montana, and has been a resident of Wheatland County for over 50 years.

27 19. Plaintiff Phyllis Willems is a registered voter in Harlowton, Montana and has been a
28 resident of Wheatland County for over 50 years.

1 20. Tom Bennett is a registered voter in Harlowton, Montana, and has been a resident of
2 Wheatland County for over 50 years.

3 21. Plaintiff Bill Jones is a registered voter in Harlowton, Montana, and has been a
4 resident of Wheatland County for over 50 years.

5 22. Plaintiff Philip Wilsman is a registered voter in Harlowton, Montana, and has been a
6 resident of Wheatland County for 5 years.

7 23. Plaintiff Linda Wilsman is a registered voter in Harlowton, Montana, and has been a
8 resident of Wheatland County for 5 years..

9 24. Plaintiff Jason Carlson is a registered voter in Forest Grove, Montana and has resided
10 in Fergus County for 35 years.

11 25. Plaintiff Mick Jimmerson is a registered voter in Lewistown, Montana and has
12 resided in Fergus County for 50 years.

13 26. Plaintiff Dwayne Crook is a registered voter in Lewistown, Montana, and has resided
14 in Fergus County for 76 years.

15 27. Plaintiff Mary Jo Crook is a registered voter in Lewistown, Montana, and has resided
16 in Fergus County for 71 years.

17 28. Plaintiff James Stuntz is a registered voter in Lewistown, Montana, and has resided in
18 Fergus County for 8 years.

19 29. Plaintiff Randy Boling is a registered voter in Lewistown, Montana, and has resided
20 in Fergus County for 34 years.

21 30. Plaintiff Rod Boling is a registered voter in Coffee Creek, Montana, and has resided
22 in Fergus County for 51 years.

23 31. Plaintiff Bob Keller is a registered voter in Lewistown, Montana, and has resided in
24 Fergus County for 53 years.

25 32. Plaintiff Gloria Keller is a registered voter in Lewistown, Montana, and has resided in
26 Fergus County for 70 years.

27 33. Plaintiff Roald Torgeson is a registered voter in Lewistown, Montana, and has resided
28 in Fergus County for 35 years.

1 34. Plaintiff Ruth Torgeson is a registered voter in Lewistown, Montana, and has resided
2 in Fergus County for 35 years.

3 35. Plaintiff Ed Timpano is a registered voter in Lewistown, Montana, and has resided in
4 Fergus County for 19 years.

5 36. Plaintiff Jeannie Rickert is a registered voter in Lewistown, Montana, and has resided
6 in Fergus County for 21 years.

7 37. Plaintiff Ted Hogland is a registered voter in Lewistown, Montana, and has resided in
8 Fergus County for 72 years.

9 38. Plaintiff Keith Kluck is a registered voter in Lewistown, Montana, and has resided in
10 Fergus County for 23 years.

11 39. Plaintiff Pam Butcher is a registered voter in Winifred, Montana, and has resided in
12 Fergus County for 44 years.

13 40. Plaintiff Trevis Butcher is a registered voter in Winifred, Montana, and has resided in
14 Fergus County for 40 years.

15 41. Plaintiff Bobbie Lee Cox is a registered voter in Forest Grove, Montana, and has
16 resided in Fergus County for over 50 years.

17 42. Plaintiff William Cox is a registered voter in Forest Grove, Montana, and has resided
18 in Fergus County for over 50 years.

19 43. Plaintiff David Robertson is a registered voter in Lewistown, Montana, and has
20 resided in Fergus County for 62 years.

21 44. Defendant State of Montana established the Commission and is liable for the
22 constitutional and statutory violations committed by the Commission against Plaintiffs.

23 45. Defendant Linda McCulloch is the Secretary of State for the State of Montana. She is
24 sued in her official capacity only.
25

JURISDICTION & VENUE

26
27 46. This Court has jurisdiction over the parties, all of whom reside in Montana, as well as
28 the subject matter of this action, which arises under the Montana Constitution, the Montana Uniform

1 Declaratory Judgments Act, § 27-8-101, MCA, *et seq.*, as well as § 27-19-101, MCA, *et seq.*, which
2 authorizes injunctive relief.

3 47. Venue for this action properly lies in the Fourteenth Judicial District because this
4 action is against the State and Plaintiffs Robert Willems, Phyllis Willems, Tom Bennett, Bill Jones,
5 Philip Wilsman, and Linda Wilsman reside in Wheatland County. § 25-2-126, MCA.

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7
8 **STATEMENT OF FACTS**

9
10 **The Basic Structure of Elections for the Montana Senate**

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12 48. Pursuant to Article V, Section 14 of the Montana Constitution, the Commission
13 prepares a redistricting plan every ten years for redistricting and reapportioning the state into
14 legislative districts based upon federal census data.

15 49. Preparation of the plan includes redistricting and reapportioning Montana’s 50 senate
16 districts, each of which now has approximately 20,000 residents.

17 50. Montana’s senators serve four-year terms and are elected on a two-year, staggered
18 schedule, resulting in 25 senators who were elected in 2010 serving terms extending through 2014,
19 and 25 senators who were elected in 2012 serving terms extending through 2016.

20 51. Senators in the latter group are commonly referred to as “holdover” senators because
21 they are not required to seek re-election during the general election held immediately following the
22 redistricting plan becoming law.

23 52. One of the Commission’s tasks in preparing a plan is to assign the 25 holdover
24 senators to newly redrawn districts.

25 53. The 25 senate districts to which a holdover senator is assigned will have their next
26 election for state senator in 2016. The other 25 districts will elect senators in 2014.

1 *Preparation of the Commission’s Plan for Submission to the Legislature*

2
3 54. On July 12, 2011, the Commission published its Operating Procedures applicable
4 during the preparation of its 2013 Plan.¹

5 55. The Commission stated that its work plan provides “the general picture of the ‘what’
6 and ‘when’ for redistricting,” while its Operating Procedures “provide the detailed ‘how’ the
7 commission will succeed in redrawing legislative district lines in Montana.”

8 56. The Commission also stated that a “[m]ore important[]” objective of the Operating
9 Procedures was to “serve as a guide to the public about what to expect from the commission and the
10 opportunities they will have to participate in the redistricting process.”

11 57. The Operating Procedures stated that the Commission “will hold an additional
12 hearing in Helena shortly after the November 2012 election so that any ‘holdover’ senators could
13 provide comment on any proposed senate districts and the commission’s assignment of these
14 senators to new districts.”

15 58. The Operating Procedures also stated that a “final public hearing will be held in the
16 Capitol to fulfill the requirement in 5-1-108, MCA. This meeting should be held by early December
17 2012 and should include final senate districts and assignments of holdover senators.”

18 59. On December 6, 2012, the Commission formulated a tentative redistricting plan.

19 60. On December 11, 2012, the Commission published an agenda² for a hearing to be
20 held in Helena on December 19, 2012. The agenda included a time for “[p]ublic comment on any
21 part of the Dec. 6 Tentative Commission Plan, as adopted for 100 House districts, 50 Senate
22 districts, and 25 holdover senators.”

23
24 _____
25 ¹ The Operating Procedures can be found at
26 <[https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-
27 Documents/1199RWFA-operating-procedures-7-12-2011.pdf](https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-Documents/1199RWFA-operating-procedures-7-12-2011.pdf)>

28 ² This agenda can be found at <[http://leg.mt.gov/content/Committees/Interim/2011-
2012/Districting/Agenda/12-19-AGENDA.pdf](http://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Agenda/12-19-AGENDA.pdf)>.

1 61. The Commission also published that same day its list of holdover assignments,³
2 including the following: Senator Rick Ripley to SD-9 and Senator Bradley Hamlett to SD-10. (A
3 map depicting these assignments is contained in **Exhibit 1**).

4 62. SD-15 was not one of the senate districts assigned a holdover senator.

5 63. The newly redrawn SD-9 includes Pondera County, which had previously been part
6 of SD-14.

7 64. Senator Llew Jones, who was elected in 2010 out of the “old” SD-14, resides in
8 Pondera County and therefore resides in the newly drawn SD-9.

9 65. Because Senator Ripley had been assigned to SD-9, that district was not scheduled to
10 have another senate election until Senator Ripley’s term expired at the end of 2016.

11 66. Senator Jones would therefore not have been able to run for the senate in 2014 from
12 SD-9.

13 67. Senator Jones could have filed as a candidate for an open senate seat in SD-9 in 2016,
14 however, as Senator Ripley is serving his second term in the Senate and will therefore be “termed
15 out” in 2016.

16 68. The Commission held a public hearing in Helena on December 19, 2012.

17 69. As required by Article V, Section 14(4) of the Montana Constitution, the Commission
18 submitted its redistricting plan to the Legislature on January 8, 2013.⁴ The plan included all of the
19 Commission’s holdover assignments, including Senator Ripley’s assignment to SD-9 and Senator
20 Hamlett’s assignment to SD-10.

21 70. Pursuant to Article V, Section 14(4) of the Montana Constitution, the House and
22 Senate passed resolutions containing recommendations for changes to the Plan.

24 ³ This list can be found at <[http://leg.mt.gov/content/Committees/Interim/2011-
25 2012/Districting/Maps/tcp2013/1210VersionDocs/Senate/Reports/adopted-pairs-tcp-12-6-
26 numbers.pdf](http://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Maps/tcp2013/1210VersionDocs/Senate/Reports/adopted-pairs-tcp-12-6-numbers.pdf)>.

27 ⁴ A copy of the Plan submitted to the Legislature is posted at
28 <[https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-Documents/Final-
Report-for-1-8-Leg-Submission-2363RWNA.pdf](https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-Documents/Final-Report-for-1-8-Leg-Submission-2363RWNA.pdf)>.

1 71. House Resolution No. 2 included a recommendation that the Commission reassign
2 Senator Roger Webb, a holdover senator from Billings, to an adjacent senate seat.⁵

3 72. Senate Resolution No. 3 similarly included a recommendation for reassignment of
4 Senator Webb.⁶

5 73. Neither HR-2 nor SR-3 contained any other recommendation to the Commission
6 regarding the assignment of holdover senators.

7
8 **The Commission's Adoption of the "Llew Jones Motion" and Resulting**
9 **Reassignment of Senator Ripley to SD-10 and Senator Hamlett to SD-15**

10 74. In a letter to the Commission dated January 27, 2014 [*sic*], Representative Rob Cook
11 lamented what he described as the Commission's "significant oversight" in "leav[ing Senator Jones]
12 without a Senate district."⁷

13 75. Representative Cook lauded Senator Jones' purported "long history of bipartisan
14 policy making" as well as his purported "plac[ing] the state and its citizens above party wrangling
15 and political showmanship."

16 76. Representative Cook concluded his letter by calling upon the Commission to
17 "redress[] the current oversight" and "provide Senator Jones with a Senate district in which he can
18 run during the upcoming (2014) elections."

19 77. The letter was signed by Representative Cook and co-signed by 11 other legislators as
20 well as four members of Montana's education establishment.

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25 ⁵ HR-2 is posted at <<http://data.opi.mt.gov/bills/2013/billhtml/HR0002.htm>>.

26 ⁶ SR-3 is posted at <<http://data.opi.mt.gov/bills/2013/billhtml/SR0003.htm>>.

27 ⁷ This letter is posted at <[https://leg.mt.gov/content/Committees/Interim/2011-](https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-Documents/Public-Comment/public-comment-2-12-13.pdf)
28 <[2012/Districting/Other-Documents/Public-Comment/public-comment-2-12-13.pdf](https://leg.mt.gov/content/Committees/Interim/2011-2012/Districting/Other-Documents/Public-Comment/public-comment-2-12-13.pdf)>. The date on
the letter is presumably a typographical error.

1 78. Between January 27 and February 12, 2013, Commissioner Jim Regnier, the Chair of
2 the Commission, and other commissioners held private discussions among themselves as to where to
3 reassign Senator Ripley in order to open SD-9 for senate candidacy by Senator Jones in 2014.

4 79. These discussions were not open to the public and no notice of them was published.

5 80. Despite the Commission’s commitment that its Operation Procedures would “serve as
6 a guide to the public about what to expect from the commission and the opportunities they will have
7 to participate in the redistricting process,” and despite the Commission previously providing advance
8 notice to the public of specific holdover assignments being contemplated, the Commission did not
9 issue any public statement indicating that it was considering reassigning Senator Ripley to SD-10
10 and Senator Hamlett to SD-15 in order to advance Senator Jones’ political interests.

11 81. The Commission held its next (and last) hearing on February 12, 2013.

12 82. At that hearing Commissioner Regnier submitted to the other commissioners what he
13 described as the “Llew Jones Motion,” which the Commission approved on a 3-2 vote.

14 83. Commissioner Regnier made the Llew Jones Motion because of the request the
15 Commission received from Representative Cook two weeks earlier on behalf of Senator Jones.

16 84. The Llew Jones Motion consisted of reassigning Senator Ripley from SD-9 to SD-10,
17 and Senator Hamlett from SD-10 to SD-15. (See **Exhibit 2.**)

18 85. Senator Hamlett has never appeared on a ballot in Judith Basin, Fergus, Petroleum,
19 Meagher, Wheatland or Golden Valley Counties.

20 86. Therefore, approximately 95% of the voters in SD-15 (19,000 out of 20,000
21 residents)⁸ have never had an opportunity to cast a ballot for or against Senator Hamlett.

22 87. Because Senator Hamlett is “termed out” after 2016, these voters never will have an
23 opportunity to cast a ballot for or against him and thereby hold him accountable.

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⁸ Approximately 800 persons reside in a sliver of Cascade County that was added to the western side of SD-15. (See **Exhibits 1 & 2**).

1 88. The Commission’s last-minute reassignments accelerated SD-9’s senate election,
2 thereby enabling Senator Jones to run as a senate candidate in 2014 when his current term expires
3 rather than waiting until 2016.

4 89. None of the Commissioners discussed the fact that approximately 19,000 out of the
5 20,000 residents in the newly drawn SD-15 (consisting of Judith Basin, Fergus and Petroleum,
6 Meagher, Wheatland and Golden Valley Counties) had last voted for a state senator in 2010 and
7 would therefore have to wait six years to vote again for a state senator.

8 90. None of the Commissioners discussed the fact that persons who resided in Judith
9 Basin, Fergus and Petroleum (70% of the population of the newly drawn SD-15) during the previous
10 decennial period had been similarly deprived of a senate election as a result of holdover Senator
11 Tester’s assignment to SD-15 by the Commission in 2003.

12 100. After the Commissioners discussed the Llew Jones Motion, Commissioner Regnier
13 opened the floor to public comment.

14 101. No public comments on the Motion were offered.

15 102. Had the Commission given the public advance notice of the holdover reassignments
16 contemplated in the Llew Jones Motion, Plaintiffs would have communicated their strong objections
17 to the Commission, either in writing or by personally attending the hearing on February 12, 2013.

18 103. The Commission filed the Plan with the Secretary of State later in the day on
19 February 12, 2013, causing the Commission to immediately dissolve by operation of law. Art. V,
20 sec. 14(5), Mont. Const.

21
22
23 **Continuation of Previous Vote Dilution From the Previous Decade**

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25 104. By adopting the Llew Jones Motion, the Commission has continued the vote dilution
26 inflicted during the previous decade upon voters in Judith Basin, Fergus and Petroleum Counties.

1 105. During the previous decennial cycle (2004 to 2013), the assignment of holdover
2 Senator Tester to SD-15 in 2003 deprived voters in these counties of the opportunity to cast a senate
3 ballot that voters in many other counties had, as shown by a comparison with Teton County:

4
5 State Senate Elections Held Pursuant to Commission’s 2003 Decennial Plan
6 (Effective 2004-2013):

<u>Judith Basin, Fergus & Petroleum</u>	<u>Teton</u>
2006	2004
2010	2008
	2012

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8
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12 106. The Commission’s adoption of the Llew Jones Motion will -- yet again -- result in
13 vote dilution for voters in Judith Basin, Fergus and Petroleum Counties (as well as Meagher,
14 Wheatland, and Golden Valley voters) for another decade when compared to other counties, as
15 shown by a comparison with Teton County voters:

16
17 State Senate Elections Held Pursuant to Commission’s 2013 Decennial Plan
18 (Effective 2014-2023):

<u>Judith Basin, Fergus & Petroleum</u>	<u>Teton</u>
2016	2014
2020	2018
	2022

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24 107. Thus, in the twenty-year period covered by the Commission’s 2003 Plan and 2013
25 Plan, voters in Judith Basin, Fergus and Petroleum Counties will have cast votes for state senate
26 candidates in four (4) general elections, while voters in many other counties, such as Teton, will
27 have cast votes for state senate candidates in six (6) general elections during the same period:
28

1 State Senate Elections Held Pursuant to Commission’s 2003 and 2013 Decennial Plans
2 (Effective 2004-2023):

3

4 <u>Judith Basin, Fergus & Petroleum</u>	5 <u>Teton</u>
6 2006	7 2004
8 2010	9 2008
10 2016	11 2012
12 2020	13 2014
	14 2018
	15 2022

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **Denial of Right of Suffrage**
19 **Article II, Section 13 of the Montana Constitution**

20 108. Plaintiffs incorporate herein by reference the allegations made in all of the preceding
21 paragraphs.

22 109. Article II, Section 13 of the Montana Constitution provides that “All elections shall
23 be free and open, and no power, civil or military, shall at any time interfere to prevent the free
24 exercise of the right of suffrage.”

25 110. The Montana Constitution’s Right of Suffrage is part of the Declaration of Rights and
26 is therefore a “fundamental” constitutional right. *State v. Riggs*, 2005 MT 124, ¶ 47, 327 Mont. 196,
27 113 P.3d 281, quoting *Butte Community Union v. Lewis*, 219 Mont. 426, 430, 712 P.2d 1309, 1311
28 (1986).

111. The Montana Constitution provides greater protection for voting rights than does the
United States Constitution, which contains no express right to vote. See, e.g., *Weinschenk v. State*,

1 203 S.W.3d 201, 211-12 (Mo. 2006) (Missouri Constitution’s identically-worded Right of Suffrage
2 gives “more expansive and concrete protections of the right to vote” and therefore “provides greater
3 protection than its federal counterpart”).

4 112. The free exercise by Montana citizens of their Right of Suffrage under the Montana
5 Constitution is prevented when the State disenfranchises voters by assigning holdover senators in
6 such a way as to require voters to wait six years before electing their state senator.

7 113. The free exercise by Montana citizens of their Right of Suffrage under the Montana
8 Constitution is also prevented when they are assigned a term-limited holdover senator who has never
9 appeared as a candidate on their ballots and, because of term limits, can never be supported or
10 opposed at the ballot box by those citizens and therefore never held accountable by them.

11 114. Because of the Commission’s adoption of the Llew Jones Motion, approximately
12 19,000 of the 20,000 residents in newly-drawn SD-15 (those residing in Judith Basin, Fergus,
13 Petroleum, Meagher, Wheatland and Golden Valley Counties) will only be permitted to vote twice
14 for senate candidates during the decennial period between 2014 and 2023, while many other voters
15 in the state will vote three times for state senator during the same period.

16 115. This burden is particularly acute for voters in Judith Basin, Fergus, and Petroleum
17 Counties because they suffered an identical infringement upon the free exercise of their Right of
18 Suffrage ten years ago when Senator Tester was assigned to SD-15.

19 116. Creating a holdover-free zone in SD-9 so that Senator Jones can run again in 2014
20 rather than wait an extra two years is not a compelling or even legitimate state interest that justifies
21 making approximately 19,000 voters in Judith Basin, Fergus, Petroleum, Meagher, Wheatland and
22 Golden Valley Counties wait an extra two years to vote for their state senator.

23 117. The reassignment of Senator Ripley to SD-10 and Senator Hamlett to SD-15 resulting
24 from the Commission’s approval of the Llew Jones Motion should therefore be invalidated by this
25 Court.

1 **SECOND CAUSE OF ACTION**
2 **Denial of the Right to Participate**
3 **Article II, Section 8 of the Montana Constitution**

4 118. Plaintiffs incorporate herein by reference the allegations made in all of the preceding
5 paragraphs.

6 119. Article II, Section 8 of the Montana Constitution provides that “[t]he public has the
7 right to expect governmental agencies to afford such reasonable opportunity for citizen participation
8 in the operation of the agencies prior to the final decision as may be provided by law.”

9 120. The Commission assured the public that an “important” objective of its Operating
10 Procedures was to “serve as a guide to the public about what to expect from the commission and the
11 opportunities they will have to participate in the redistricting process.”

12 121. The Operating Procedures stated that the Commission “will hold an additional
13 hearing in Helena shortly after the November 2012 election so that any ‘holdover’ senators could
14 provide comment on any proposed senate districts and the commission’s assignment of these
15 senators to new districts.”

16 122. The Commission published a list of proposed assignments of holdover senators a
17 week before it held a public hearing on December 19, 2012.

18 123. The Commission’s Operating Procedures, its practice of giving the public advance
19 notice of contemplated holdover assignments, and the significant impact of holdover assignments
20 upon the public gave the public a reasonable expectation that the Commission would give prior
21 notice of any subsequent reassignments of holdover senators.

22 124. The reassignment of holdover senators provided by the Llew Jones Motion, and the
23 resulting disenfranchisement of 19,000 residents in SD-15, was an act of significant public interest
24 of which the public should have been given prior notice.

25 125. The Commission failed to provide the public with prior notice of these reassignments.

26 126. Had the Commission provided prior notice to the public that it was contemplating the
27 reassignment of holdover senators as provided in the Llew Jones Motion, Plaintiffs would have
28 voiced strong objections to the Commission before or during the hearing on February 12, 2013.

1 134. On January 8, 2013, the Commission submitted a plan to the Legislature that included
2 assignments for all holdover senators.

3 135. The House on February 5, 2013, and the Senate on February 8, 2013, passed
4 resolutions pertaining to the Plan.

5 136. Both houses of the Legislature recommended that the Commission reassign Senator
6 Webb to an adjacent Billings district but made no other recommendations as to the holdover
7 assignments presented by the Commission.

8 137. On February 12, 2013, the Commission reassigned Senator Ripley to SD-10 and
9 Senator Hamlett to SD-15 pursuant to its approval of the Llew Jones Motion.

10 138. The Commission never submitted these reassignments to the Legislature for
11 recommendations as required by Article V, Section 14(4) of the Montana Constitution.

12 139. Neither of these reassignments related in any manner to any of the prior
13 recommendations made by the Legislature.

14 140. The letter sent to the Commission by Representative Cook and eleven other dissident
15 members of the House and Senate on or about January 27, 2013, did not constitute a
16 recommendation of the “Legislature” as defined in Article V, Section 14(4) of the Montana
17 Constitution.

18 141. The Commission thus lacked authority to reassign holdover senators on February 12,
19 2013.

20 142. The reassignments of Senator Ripley to SD-10 and Senator Hamlett to SD-15
21 resulting from the Commission’s approval of the Llew Jones Motion should therefore be invalidated
22 by this Court.

23
24 **FOURTH CAUSE OF ACTION**
25 **Denial of Equal Protection**
26 **Article II, Section 4 of the Montana Constitution**

27 143. Plaintiffs incorporate herein by reference the allegations made in all of the preceding
28 paragraphs.

1 the government, the specter of arbitrary classification is fairly raised, and the Equal Protection
2 Clause requires a rational basis for the difference in treatment.” *Id.*, quoting *Village of Willowbrook*
3 *v. Olech*, 528 U.S. 562, 564 (2000).

4 153. When the Commission approved the Llew Jones Motion and reassigned Senator
5 Ripley to SD-10 and Senator Hamlett to SD-15, it intended to provide Senator Jones with a
6 holdover-free district from which he could run as a senate candidate.

7 154. The Commission did not confer this privilege upon any other person in Montana.

8 155. By approving the Llew Jones Motion, the Commission intended to create a class of
9 one consisting of Senator Jones.

10 156. The State had no rational basis for creating a holdover-free zone in SD-9 for Senator
11 Jones to be able to run as a candidate for state senate in 2014 rather than in 2016.

12 157. The reassignments of Senator Ripley to SD-10 and Senator Hamlett to SD-15
13 resulting from the Commission’s approval of the Llew Jones Motion should therefore be invalidated
14 by this Court.

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16
17 **SIXTH CAUSE OF ACTION**
18 **Unlawful Consideration of Incumbent Legislator’s Address in Developing Redistricting Plan**
19 **Section 5-1-115(3)(a), Montana Code Annotated**

20 158. Plaintiffs incorporate herein by reference the allegations made in all of the preceding
21 paragraphs.

22 159. Section 5-1-115(3)(a), MCA, prohibits an incumbent legislator’s address from being
23 considered in the development of a redistricting plan.

24 160. The Commission’s approval of the Llew Jones Motion resulted in Senator Ripley
25 being reassigned to SD-10 and Senator Hamlett being reassigned to SD-15.

26 161. The Commission’s purpose for making these reassignments was to transform SD-9
27 into a holdover-free zone, thereby enabling Senator Jones to run as a candidate for senate in 2014.

1 162. Consideration of Senator Jones’ address was necessary in order for the Commission
2 to know which of the newly drawn districts he resided in and, therefore, which district needed to be
3 cleared of holdover senators.

4 163. The reassignments of Senator Ripley to SD-10 and Senator Hamlett to SD-15
5 resulting from the Commission’s approval of the Llew Jones Motion therefore required
6 consideration of Senator Jones’ address and, as a result, should be invalidated by this Court.
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9 **SEVENTH CAUSE OF ACTION**
10 **Unlawful Consideration of Previous Election Results in Developing Redistricting Plan**
11 **Section 5-1-115(3)(d), Montana Code Annotated**

11 164. Plaintiffs incorporate herein by reference the allegations made in all of the preceding
12 paragraphs.

13 165. Section 5-1-115(3)(d), MCA, prohibits previous election results from being
14 considered in the development of a redistricting plan.

15 166. The Commission’s approval of the Llew Jones Motion resulted in Senator Ripley
16 being reassigned to SD-10 and Senator Hamlett being reassigned to SD-15.

17 167. The Commission’s purpose for making these reassignments was to transform SD-9
18 into a holdover-free zone, thereby enabling Senator Jones to run as a candidate for senate in 2014.

19 168. Consideration of the previous election results in the old SD-14 in 2010 was necessary
20 in order for the Commission to know that Senator Jones’ term expired in 2014 and that he therefore
21 needed newly drawn SD-9 to be cleared of holdovers in order for him to run as a candidate for state
22 senate in 2014.

23 169. The reassignments of Senator Ripley to SD-10 and Senator Hamlett to SD-15
24 resulting from the Commission’s approval of the Llew Jones Motion therefore required
25 consideration of the 2010 election results in the old SD-14. This Court must therefore invalidate
26 these reassignments.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following:

a) An Order from this Court declaring that the Commission’s reassignment on February 12, 2013, of Senator Ripley to SD-10 and Senator Hamlett to SD-15 in accordance with the Llew Jones Motion was unlawful;

b) An Order enjoining Defendants, their officers, agents, servants, employees, or persons in active concert with any of them from (1) giving any legal effect to the Commission’s reassignment of Senator Ripley to SD-10 and Senator Hamlett to SD-15 (2) regarding Senator Ripley’s holdover assignment as anything other than SD-9 and Senator Hamlett’s holdover assignment as anything other than SD-10;

c) An award of reasonable fees and costs;

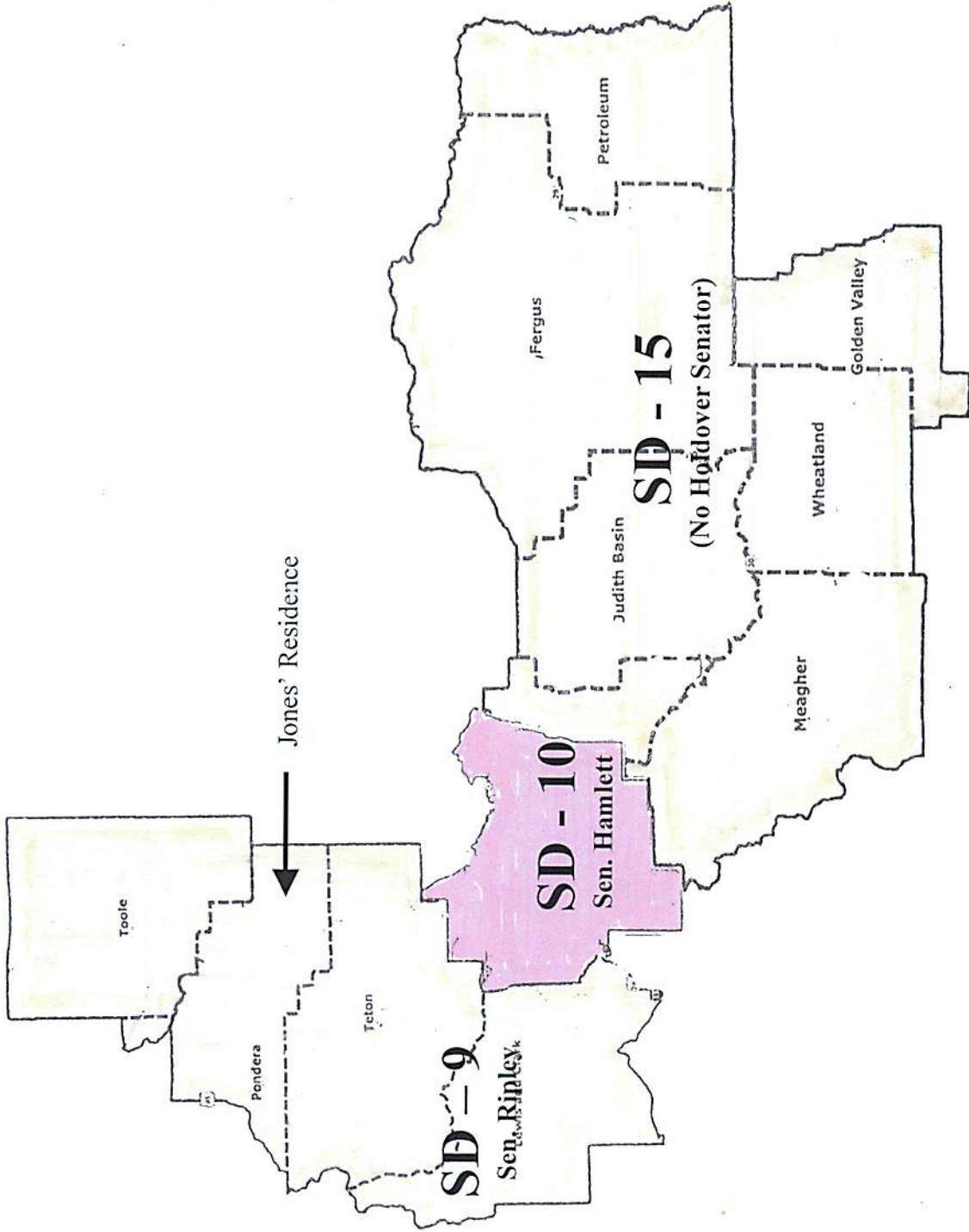
d) Such other and further relief as this Court deems just and equitable.

DATED: March 14, 2013

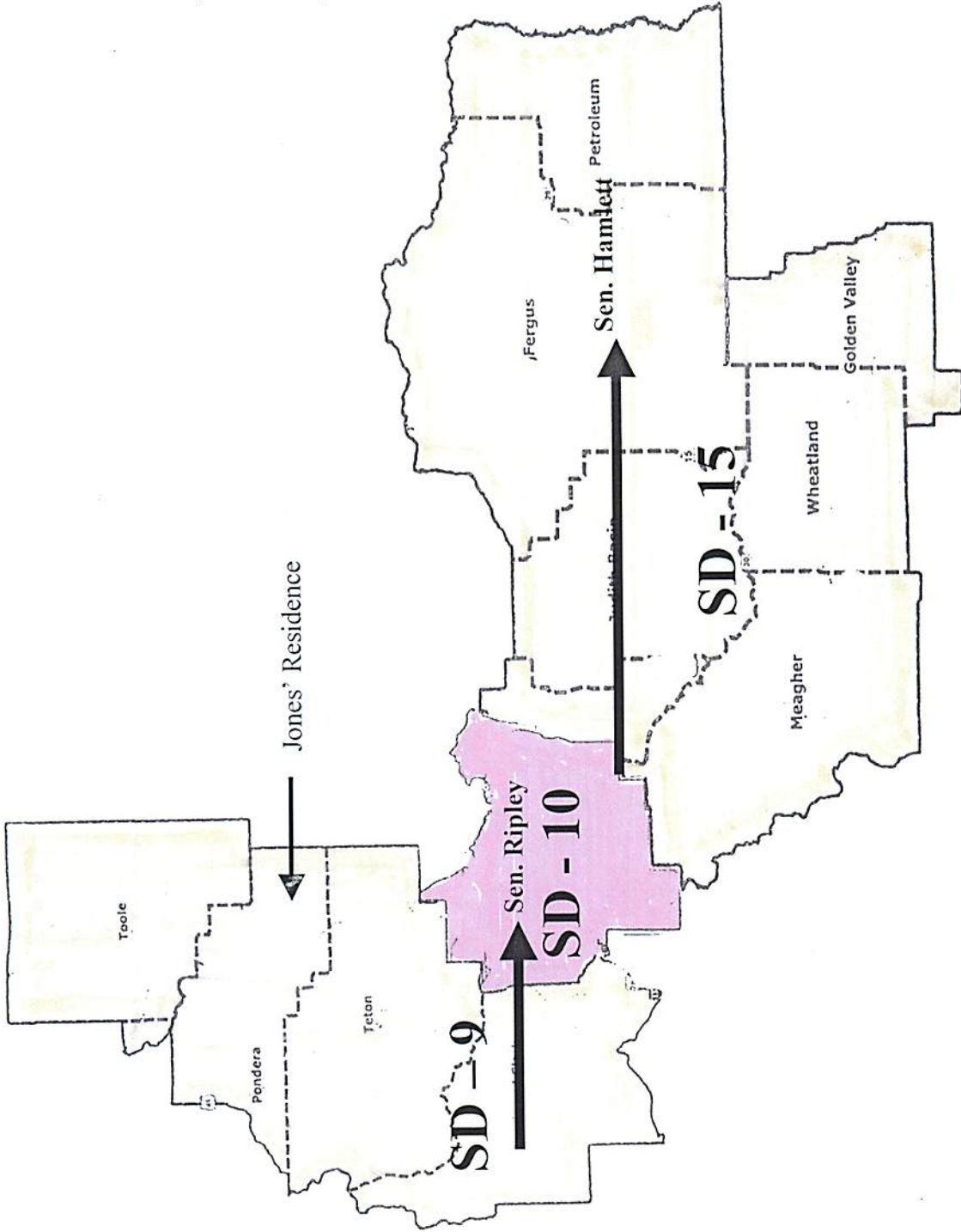
Respectfully submitted:



Matthew G. Monforton
Attorney for Plaintiffs



SENATE DISTRICTS 9, 10, and 15
 (As Submitted by the Commission to the Montana Legislature on January 8, 2013)



SENATE DISTRICTS 9, 10, and 15
 (Based Upon the Commission's Adoption of the "Llew Jones Motion" on Feb. 12, 2013)