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**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

Montana Democratic Party,

Plaintiff,

v.

Christi Jacobsen, in her official capacity as
Montana Secretary of State,

Defendant.

Case No. **DV 21-0451**

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF** **MARY JANE KNISELY**

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

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DEPUTY

INTRODUCTION

1. In the wake of the 2020 general election, when voter turnout was the highest Montana has seen in any general election since 1972, and when turnout among young voters in particular between the ages of 18 and 29 increased nearly 40% from the prior presidential election, the Montana Legislature introduced several laws aimed at restricting the rights of Montanans to engage in their democracy. While these new laws will burden all Montana voters, they specifically target the youngest members of the electorate just months after they turned out to vote at record

rates. There is no legitimate justification for these restrictions, much less any sufficiently weighty state interest to justify their burdens on the fundamental right to vote. The Court should invalidate each of these new restrictions, described further below, as unsustainable under multiple provisions of the Montana Constitution.

2. First, the Montana Legislature passed House Bill 176, which eliminated the State's longstanding and turnout-driving tradition of election day voter registration ("EDR"). Despite extensive testimony in House and Senate committee hearings detailing how students, the elderly, disabled voters, and indigenous communities have come to rely on EDR to participate in the electoral process, the Legislature passed HB 176 ("Election Day Registration Ban") along strict party lines, thwarting the will of Montana voters who, just seven years ago, firmly rejected a similar effort to eliminate EDR by referendum.

3. That same week, the Montana Legislature passed an even more precise attack on Montana's youngest voters: SB 169 (the "Voter ID Restrictions") limits the use of student ID cards as proof of identity when voting. The Voter ID Restrictions amended laws that had been in place for nearly 20 years and had long permitted student voters to use their Montana college or university identification card or voter registration confirmation form, among other kinds of identification, to verify their identity at the polls. Under these new Voter ID Restrictions, a Montana college or university photo identification card or voter registration confirmation form is no longer sufficient identification at the polls and must be accompanied by other documentary evidence before a voter may cast a regular ballot.

4. The proponents of the Election Day Registration Ban and Voter ID Restrictions (together, the "Voter Suppression Bills") justified these restrictions on the franchise with vague allusions to bolstering "election integrity." Notably, however, the legislative proceedings were

marked by a total lack of evidence of even a single instance in which Montana's prior EDR regime and ID laws jeopardized the integrity of Montana's elections or resulted in fraud.

5. In reality, the Voter Suppression Bills are not driven by any legitimate or credible concerns about the "integrity" of the state's elections. Instead, they represent the latest round of legislative shadowboxing aimed at imaginary threats to election integrity, and false accusations of election fraud orchestrated by those seeking to overturn the results of the 2020 presidential election, now weaponized by the Legislature to impede access to the franchise.

6. Because the Legislature's pretextual justifications are insufficient to justify the disparate burdens the Voter Suppression Bills impose—individually and collectively—on Montana voters (and particularly on students, the elderly, the disabled, and indigenous communities), the Voter Suppression Bills violate, and should be held invalid pursuant to, the Montana Constitution's right-to-vote and equal protection guarantees.

PARTIES

7. Plaintiff Montana Democratic Party ("MDP") is a political party established pursuant to MCA § 13-38-101 *et seq.* Its mission is to elect Democratic Party candidates in local, county, state, and federal elections. MDP works to accomplish that mission by educating, mobilizing, assisting, and turning out voters throughout the state. These activities include supporting Democratic Party candidates in national, state, and local elections through fundraising and organizing; protecting the legal rights of voters; and ensuring that all voters have a meaningful opportunity to cast ballots in Montana. MDP has thousands of members and constituents from across the state, including Montanans who regularly support candidates affiliated with the Democratic Party, and will register and vote in future elections. MDP has expended in the millions of dollars to persuade and mobilize voters to support candidates up and down the ballot who

affiliate with the Democratic Party in Montana. MDP again intends to make substantial expenditures to support Democratic candidates in the 2022 election and in future elections. The Chair of MDP, Robyn Driscoll, is a resident of Billings.

8. In past elections, MDP has invested significant resources in voter engagement efforts with the goal of registering and turning out eligible Democratic voters. Through the efforts of employees and volunteers, MDP engages in voter persuasion and mobilization activities, including door-to-door canvassing in Billings and other locations in Yellowstone County, providing information to voters regarding voter registration and the form of ID they must provide to election officials to cast their ballot and have it counted. In particular, MDP works to ensure that students and young voters are registered to vote and have a form of identification that will enable them to do so. MDP has provided trainings to organizers and volunteers regarding voter registration and voter education services at its Billings office. MDP is planning similar activities in Billings for the 2022 November election.

9. A key part of MDP's mission is its extensive get-out-the-vote ("GOTV") efforts. Together, MDP's employees, members, organizers, and volunteers reach as many voters as possible—through text messages, phone calls, and door-to-door canvassing—providing information to voters about how to successfully cast their ballot and encouraging them to do so. Canvassers encourage unregistered voters to go to their county election administrator's office, the only place where voters can register to vote during the month before an election, to register to vote. They also encourage registered voters to go to their polling location to cast their ballots. Canvassers ensure that both types of voters understand exactly what they need to bring with them in order to vote and have their vote counted. On election day, MDP also offers rides to voters who lack the

ability to get to the polls on their own, runs a hotline to answer voter questions regarding voting requirements and polling location information.

10. Because of the Election Day Registration Ban, MDP can no longer encourage unregistered voters to register and vote on election day. Instead, it must expend additional resources to contact unregistered voters earlier in the election cycle. Conducting a turnout program in advance of election day requires more resources. Because the election is not at the forefront of voters' minds, MDP must contact each voter more frequently in order to motivate them to register, and then must contact that voter again to encourage them to turn out and vote. Similarly, because of both the Election Day Registration Ban and the Voter ID Restrictions, MDP will have to expend significant resources on an information campaign to help ensure that its members and constituents understand the changes in the law and have access to sufficient information in order to avoid disenfranchisement, which will require MDP to reallocate resources from other efforts, such as hosting events for Democratic candidates.

11. The Voter Suppression Bills directly harm MDP by limiting the effectiveness of its GOTV program making it harder for Montanans who would vote for MDP candidates to successfully register to vote, and thereby making it more difficult for MDP to accomplish its mission of electing members of the Democratic Party in Montana. Because of the Voter Suppression Bills, MDP will be forced to expend more resources, and divert more funds from its other critical priorities, in order to educate and turn out voters.

12. The Voter Suppression Bills also burden and violate the constitutional rights of MDP's members and constituents. Many of MDP's members and constituents will be required to register to vote before future elections, and all of MDP's members and constituents will be required to prove their identity in order to vote. Some of those members and constituents will struggle to

obtain a form of identification that satisfies the new Voter ID restrictions. Others will effectively be denied their right to vote by the Election Day Registration Ban.

13. Christi Jacobsen, Montana's Secretary of State, is the State's chief elections officer and is responsible for maintaining uniformity in the application, operation, and interpretation of election laws. Section 13-1-201, MCA. In carrying out these responsibilities, the Secretary has the duty of preparing and delivering to election administrators written directives and instructions relating to election law. Section 13-1-202(1), MCA. The Election Code also requires the Secretary to establish uniform standards for analyzing and verifying voter registration information. Section 13-2-109(1), MCA. The Secretary is named as a Defendant solely in her official capacity.

JURISDICTION AND VENUE

14. Plaintiffs bring this action under the Montana Constitution. As a court of general jurisdiction, this Court has authority to hear these claims. Section 3-5-302, MCA.

15. This Court has jurisdiction to grant declaratory and injunctive relief under the Montana Uniform Declaratory Judgment Act. Sections 27-8-101 *et seq.*, 27-8-201 *et seq.*, MCA.

16. Venue is proper in this Court, as Plaintiff, MDP, operates in Billings, Montana. In addition, the unlawful effects of the Voter Suppression Bills directly impact and interfere with the election and voting-related activities that MDP conducts in Yellowstone County. There is direct injury to MDP and its members in Yellowstone County.

FACTUAL ALLEGATIONS

17. For over two decades, Montana has been ahead of the curve on administering secure and accessible elections. But in the wake of record-breaking turnout in the 2020 general election, and astoundingly high young-voter turnout, the Montana Legislature abruptly reversed course, dismantling important voting procedures that were critical in facilitating political participation for thousands of new Montana voters over nearly two decades. The Voter Suppression Bills were not

necessary to secure either Montana's voter registration process or in-person voting, both of which already imposed several safeguards that have successfully operated for decades to prevent voter fraud in Montana.

A. *The Election Day Registration Ban*

18. EDR has a long and successful history in Montana. In 2005, Senate Bill 302, which allowed eligible residents to both register and vote on election day, passed nearly unanimously and with overwhelming bi-partisan support. A total of only 16 votes—in the House and Senate combined—were cast against the bill. The following year, Montana became one of just seven states to implement EDR. Today, that number has tripled.

19. Since its inception, EDR has become an integral part of Montana's highly regulated and secure voter-registration process. And over time, thousands of Montana voters have relied on EDR to cast their ballots on Election Day. Montana voters have also demonstrated a desire to affirmatively maintain EDR—even when it has come under threat by elected officials. But despite testimony regarding voter reliance on and approval of EDR, record-breaking turnout in the past election, and the absence of any evidence of fraud or any other disruption, the Legislature moved to eliminate EDR.

1. *Voter registration in Montana has several safeguards to protect against voter fraud.*

20. To register to vote in Montana, an applicant must prove both their identity and residence by providing their Montana driver's license number or the last four digits of their social security number. Section 13-2-110(3), MCA. If an applicant does not have a Montana driver's license or social security number, the applicant must provide an alternative form of identification: a current and valid photo identification or a current utility bill, bank statement, paycheck,

government check, or other government document that shows both the applicant's name and current address. Section 13-2-110(4)(a), MCA.

21. If an election official cannot immediately verify an applicant, the individual is registered only provisionally pending verification. Mont. Admin. R. 44.3.2011. And if an applicant provides insufficient or incorrect information, the election official will mark their application as incomplete in the statewide voter registration system. *Id.* 44.3.2005. Only when "the information provided by an applicant . . . is verified and the applicant meets all other legal requirements for registration," is the applicant considered a legally registered voter. Section 13-2-110(5)(a), MCA; Mont. Admin. R. 44.3.2012.

22. In addition to immediate verification, election officials also verify registration information on a rolling basis. Election officials "work in conjunction with the office of the Secretary of State, the Department of Justice's Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of information provided [by voter registration applicants]." Mont. Admin. R. 44.3.2012. Election administrators compare the list of registered voters against the United States Postal Service's national change of address file and take steps to ensure that electors whose addresses appear to have changed are still eligible to vote at their registered address. Section 13-2-220, MCA; Mont. Admin. R. 44.3.2014. Although election administrators currently perform list maintenance on active and inactive voter registration lists every other year, on April 8, 2021, the Governor signed a bill that requires this list maintenance to be performed annually. Section 13-2-220(1), MCA.

23. During the regular registration period, electors may register to vote in person or by mail up to 30 days before an election. Sections 13-2-110(1), 13-2-301(1)(a), MCA. Voters may also register to vote in-person at their election administrator's office until noon on the day before

election day (previously offered through election day pre-HB 176) during a period Montana calls “late registration.” Section 13-2-301(1)(a), MCA; Mont. Admin. R. 44.3.2015(1)(a). Late registration is different from the regular registration period in that registration can only be accomplished in-person, and it is only available at one or two locations within one’s county—typically, the county election office. *Id.*

24. Those who register during the late registration period do not receive a ballot at a traditional polling place. Instead, they receive an absentee ballot in-person directly from their county election office at the time they register to vote. Mont. Admin. R. 44.3.2015(2).

25. When voters cast an absentee ballot, Montana’s Election Code requires election administrators to confirm the validity of each ballot before it is counted. Election administrators must verify that the signature on the absentee ballot envelope matches the signature on the voter’s absentee ballot application or voter registration application. Section 13-13-241(1)(a), MCA. If an election administrator has any other question regarding the validity of a particular ballot, the question must be resolved before the ballot is counted. Section 13-13-241(6), MCA.

26. Separately, if there is some reason to believe that a voter has voted previously in an election, any other registered voter may challenge their right to vote. Section 13-13-301, MCA.

2. Montana voters broadly approve of EDR and have come to substantially rely on it.

27. Montana voters have demonstrated an affirmative desire to maintain EDR. In 2013, the Legislature passed Legislative Referendum 126 (“LR 126”), which put the fate of EDR in the hands of the electorate in the following November election. A “yes” vote by the majority of the voters participating in that election would have repealed EDR. But the voters of Montana firmly rejected the measure. In fact, they did so statewide—majorities in 80 out of the state’s 100 legislative districts voted to maintain EDR.

28. This widespread support of EDR was not surprising, given how popular the process of registering and voting simultaneously on election day has been among Montana voters. Since its enactment, EDR has been utilized by more than 60,000 state citizens to successfully register to vote.

29. Voters in Montana are nearly 16 times more likely to register on election day than on any other day during the late registration period. In 2018, an average of 515 Montanans registered per day during late registration. But that year, 8,053 Montanans registered on election day. Between 2006 and 2018, a total of 61,188 Montanans registered to vote on election day.

30. On top of being widely used by voters, the number of voters who register on election day has also increased steadily over time. When Montana first introduced election day registration in 2006, 4,315 Montanans registered to vote on election day. By 2016, that number nearly tripled, to 12,055. That year, every single county in the state registered voters on election day.

31. Nearly all election experts agree that EDR significantly increases voter participation. Historically, experts have identified the “closing date” (the last day to register before an election) as the legal restriction having the single largest impact on voter turnout.

32. In particular, experts who have carefully studied EDR have concluded that it positively affects voter turnout by as much as three to seven percent, with an average increase of five percentage points. Without the ability to register on election day, thousands of voters might not have voted at all.

3. Despite ample testimony regarding voter reliance on EDR, the Legislature moved to eliminate it.

33. Following the 2020 election, the Legislature moved suddenly to eliminate this means of registration and voting in 2021. Their proposal to do so immediately met with marked

and substantial opposition, including from groups that represent the communities of Montana voters most likely to be adversely impacted. And during legislative hearings on HB 176, the Legislature heard explicit and repeated testimony about how several groups of Montana voters who have historically struggled to overcome obstacles to voting have relied on EDR to access the franchise.

34. For example, the Legislature heard testimony describing the many barriers to registration and voting that impede Native voters' access to the franchise. Facing high unemployment, election administrators' offices and polling locations that are far from reservations, and unreliable mail, Native-voter turnout is approximately 20 percentage points below the state average. Without the help of community organizers that arrange transportation and mobilize voters on election day, these barriers could prohibit many Natives from registering to vote or casting their ballots entirely. To overcome those barriers, Native voters often register and vote on election day when organizers arrange transportation to election administrators' offices and polling locations.

35. The Legislature also heard testimony from the Executive Director of the Montana Association of Centers for Independent Living—a disability advocacy organization that works throughout the state on behalf of Montanans with disabilities—who explained that disabled Montanans must overcome many obstacles to vote: they often require special transportation, accessible voting machines, and assistance requesting, completing, and returning their voter registration forms, absentee ballot applications, and ballots. Disabled voters rely on EDR as a means to overcome some of those barriers.

36. The Legislature also heard that, like disabled voters, many elderly voters live in institutionalized settings or rely on direct-care aids. For those institutions and aides, too, aggregating resources on election day allows them to drive some clients to polling locations where

they can use accessible, electronic voting machines to vote privately and independently, and others to their election administrator's office, where—prior to the enactment of the Election Day Registration Ban—those clients could register and cast absentee ballots.

37. Several Montanans also testified regarding the impact of HB 176 on low-income, rural, and working voters. They explained that EDR provides working Montanans an opportunity to register and vote that they would not otherwise have. Electors can register to vote only during standard working hours, between 8 a.m. and 5 p.m., in the late registration period. But on election day, they can register and vote until 8 p.m. EDR affords many working Montanans an opportunity to register to vote without requiring them to take time off work to do so.

38. The Legislature also heard testimony regarding the impact of HB 176 on young voters, who rely on EDR to update their voter registration information. According to the Montana Public Interest Research Group, young voters move frequently, often annually. And when voters change their residences, they must update their registration information before they can cast their ballot and have it counted. Sometimes young voters may show up to their polling location on election day without realizing their voter registration information is out of date. Now, because of HB 176, those voters will not have the option to update their registration information on election day.

39. In fact, EDR was critical to protecting the voting rights of tens of thousands of Montanans who arrived at the polls on election day only to learn that they were no longer properly registered. Of the Montanan voters who have registered on election day, 40 percent had been previously registered; many of those individuals had errors in their registration information that they were able to correct at the polls, which allowed them to vote.

40. In many cases, registration errors result from miscommunications between the Department of Motor Vehicles and election officials, and they often occur without any advance notice to the voter. Since 2005, EDR has ensured that they are not disenfranchised as a result. But no longer.

41. As Vice Chairman Bryce Bennett of the Senate Committee on State Administration noted during a hearing on February 15, 2021, “story after story” describes instances where Montanans believe they have registered to vote at the DMV, “[t]hey do everything right,” but the clerk from the DMV failed to transfer the voter’s registration form to election officials, or failed to do so on time. Prior to HB 176, those voters had a clear remedy. Now, they do not.

42. In addition to the increased risk of disenfranchisement due to registration errors, HB 176 will make the registration process more difficult. The problem with the Election Day Registration Ban is not just that it lessens the amount of time during which Montanans can register to vote, but it is also more burdensome to register on any other day besides election day—a day when there is greater access to free transportation and other resources to assist voters, and election administrators’ offices remain open until 8 p.m., providing access for those who are unable to vote during business hours. HB 176 thus eliminates a procedure on which tens of thousands of previously-registered voters have relied to avoid disenfranchisement.

4. The EDR Ban is not justified by any state interest.

43. Proponents of HB 176 cited election integrity and administrative concerns as justifications for the Election Day Registration Ban. But those purported justifications not only lacked any supporting credible evidence, they were also rebutted by the legislative record itself.

44. There is virtually no evidence of voter fraud resulting from Montanans registering to vote on election day. In fact, a federal judge noted just last year that, “[w]hen pressed during the hearing in this matter,” the state of Montana was “compelled to concede that they cannot point

to a single instance of voter fraud in Montana in any election during the last 20 years.” *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 822 (D. Mont. 2020). Proponents of the Election Day Registration Ban conceded the same: testifying before the Senate Committee on State Administration, bill sponsor Representative Sharon Greef admitted that when she mentioned voter fraud, she “wasn’t talking about Montana specifically.”

45. In the experience of election administrators, EDR in no way undermines the integrity of the election. As Audrey McCue, Elections Supervisor of Lewis and Clark County, testified before the House Committee on State Administration: “The first thing to know is that we don’t have problems with the integrity of our elections and certainly none caused by election day registration.”

46. The Elections Director in the Office of the Secretary of State, Dana Corson, similarly explained to the House Committee on State Administration that election officials verify the information contained on a voter’s registration application immediately. If an applicant provides a driver’s license or social security number, those numbers are entered into the Montana Votes database, the statewide registration system, and automatically verified against the social security database. *See* Mont. Admin. R. 44.3.2011. If the applicant provides an alternative form of identification, which the Election Code requires to be the original document, the document itself is sufficient for the purposes of verification. *Id.* Regardless of whether applicants register during the regular registration period or during the late registration period, including on election day, the mechanics of the verification process are the same. Registering on election day does not mean that an elector’s application is any less scrutinized.

47. In fact, the late registration process (including EDR) *enhances* the integrity of the election. As Director Corson explained, the registration application asks voters to affirm under

penalty of perjury that the information on their application is true. During regular registration, applicants may send their applications by mail, but late registration *requires* applicants to appear in person. The face-to-face interaction required only during late registration is an additional barrier to fraudulent activity.

48. Additionally, Regina Plettenberg, the Clerk and Recorder of Ravalli County and the President of the Montana Association of Clerk and Recorders, explained that during only the late registration period, the Montana Votes system will flag whether an applicant has already received a ballot. For most of the late registration period—and definitely on election day—absentee ballots have already been sent to voters. *See* Section 13-13-205, MCA (requiring absentee ballots to be available 25 days prior to an election). If an applicant has already received an absentee ballot from another county, the Montana Votes system will automatically flag that fact. But because ballots are not sent to voters until after late registration starts, that information is simply not available during the regular registration period. Thus, during late registration, election officials can *ensure* that registration applicants do not receive ballots from two counties. But during the regular registration period, there is no way for an election official to do so.

49. Although the late registration process is more secure than the normal registration process, it is no more time consuming: in either case, the process of registering a voter on election day takes only a few minutes of an election official's time. As Director Corson explained during the House Committee on State Administration hearing, voters often appear to register with a completed application in-hand. But even if a voter does not come prepared with a completed application, election officials need only hand the voter an application to fill out. Once the voter has completed the application, the election official merely enters the applicant's information into the Montana Votes database, and that system automatically verifies the applicant's information.

50. Contrary to the claims made by the proponents of the Election Day Registration Ban, the number of voters that take advantage of this opportunity have not been disruptive, even during the record-turnout 2020 general election. According to former Senate Majority Leader Jon Ellingson, election administrators have offered EDR for 15 years—and more voters have relied on it each year—without encountering any serious administrative problems.

51. When pressed, proponents of the bill admitted that registering voters on election day has not currently caused any serious administrative problems. Senator Mike Cuffe conceded that there are no administrative problems currently burdening Montana’s election administrators. When a member of the House Committee on State Administration asked Senator Cuffe to provide an example of an administrative problem that EDR has caused, he was unable to do so. And the administrators who would have first-hand knowledge of any administrative problems caused by EDR have all but rejected this rationale. When testifying before the Senate Committee on State Administration, Audrey McCue “wanted to be on the record saying that [the Election Day Registration Ban] will not help [her],” and may even create *more* administrative problems.

52. Proponents of the Election Day Registration Ban also claim that the bill was intended to reduce the likelihood of mistakes on election day, despite the absence of evidence that mistakes are currently a problem or that eliminating EDR is a solution. Audrey McCue explained to the Senate Committee on State Administration that EDR is not a novel service—election officials register voters all the time, and from the official’s perspective, the process is no different on election day; thus, the likelihood of mistakes is small.

53. Regina Plettenberg, Clerk and Recorder of Ravalli County, also testified that she was unaware of any errors resulting from EDR. And bill sponsor Representative Sharon Greef pointed to only an “opportunity” for mistakes to occur.

54. Nor does the Election Day Registration Ban reduce wait times at polling locations. Representative Greef claimed that the Election Day Registration Ban is intended “to provide a solution for citizens discouraged from registering to vote and casting a ballot due to long lines and extended wait times.” But voters registering during late registration, including on election day, must go to their election administrator’s office, not the polling place. Mont. Admin. R. 44.3.2015.

55. The pretextual and widely de-bunked rationales advanced by proponents of the Election Day Registration Ban reveal their true motive: to restrict voting.

B. *Voter ID Restrictions*

56. Montana has required some form of voter ID for in-person voting since 2003, but the law as it existed for nearly two decades (until it was revised this session) allowed voters to prove their identity with any form of current photo ID that shows the elector’s name. Moreover, the list of forms of ID accepted for voting in Montana, explicitly included school district or postsecondary education ID cards.

57. But in the wake of record-breaking turnout in the 2020 general election, and in particular the historically high young-voter turnout, the Montana legislature abruptly reversed course, suddenly restricting the forms of acceptable voter ID. It did so, moreover, despite the lack of any evidence that more strict measures were needed to combat voter fraud (which even the proponents of the bill acknowledge is non-existent in Montana).

1. *Montana’s prior voter ID regime did not create a risk of voter fraud.*

58. Even before this legislative session, Montana already had a voter ID law on the books.¹ Under the pre-existing law, voters were first asked to provide photo ID bearing the voter’s name, including but not limited to “a valid driver’s license, a *school district or postsecondary*

¹ Before 2003, voters were not required to present any identification at all to cast their ballots. See ELECTIONS—LAWS—REVISION, 2003 Montana Laws Ch. 475 (H.B. 190).

education photo identification, or a tribal photo identification.” Section 13-13-114(1)(a), MCA (2003) (emphasis added).

59. If the voter could not provide qualifying photo ID, the voter could instead provide any one of several categories of secondary identifying documents, such as “a current utility bill, bank statement, paycheck, notice of confirmation of voter registration . . . government check, or other government document that shows the elector’s name and current address.” *Id.*

60. If a voter supplied either an acceptable form of photo identification or a secondary identification, they could cast a regular ballot. Section 13-13-114(1)(b), MCA. If instead, the voter could not produce one of the above forms of identification, they could only vote a provisional ballot. Section 13-13-114(2), MCA. Provisional ballots are counted only if the voter returns with “valid identification or eligibility information” either in person or electronically by 5pm on the day immediately following the election. Section 13-15-107, MCA.

61. In the elections that occurred under these longstanding voter identification rules, voter fraud was virtually non-existent. As noted above, just last year, a federal judge noted that, “[w]hen pressed during the hearing in this matter,” the state of Montana was “compelled to concede that they cannot point to a single instance of voter fraud in Montana in any election during the last 20 years.” *Donald J. Trump for President*, 491 F. Supp. at 822.

62. Yet through SB 169, the Montana Legislature imposed more stringent voter identification requirements that make voting less accessible and more difficult for those who lack the preferred forms of identification, including Montana college or university students whose school IDs are no longer sufficient for voting.

2. These new restrictions followed an election in which young voters participated in Montana in historic numbers.

63. Young Montanans want to be involved in their democracy more than ever, as shown by the surge in young voter participation in the 2020 general election, where turnout among voters between the ages of 18 and 29 increased by nearly 40% from the prior presidential election.

64. These voters have long relied on the ability to cast their ballots upon presenting either photo identification issued by a Montana college or university, or their Montana voter registration confirmation form. Section 13-13-114(1)(a), MCA (2003).

65. SB 169, however, has relegated Montana college or university identification cards to secondary forms of identification, which must be presented in conjunction with other documentation, such as “a current utility bill, bank statement, paycheck, government check or other government document that shows the electors current name and address,” in order to satisfy the new voter identification requirements.

66. Similarly, under SB 169, a voter registration confirmation form is now insufficient by itself and must be accompanied by secondary identification, despite that voters must prove their identity in order to register and obtain a voter registration confirmation form to begin with. *See supra* at ¶ 20.

67. While the Legislature restricted the use of identification traditionally used by young voters, such as student photo identification cards, SB 169 simultaneously added new forms of acceptable identification that young voters are less likely to possess—including, most notably, a Montana concealed carry permit.

68. Eliminating the ability to rely on previously-accepted and widely-held forms of identification will burden thousands of Montana voters who previously relied on student identification or voter registration confirmation forms to vote. Beyond the burden of having to

locate and produce additional secondary identification in the first place, some young voters lack secondary identification entirely. Those who live in a university dorm or with their parents, for example, are highly unlikely to be able to produce a utility bill in their name. In practice, young voters also live in a paperless world—even if they do have a paycheck or bank account linked to their address, many will not have a physical paper copy to bring to the polls.

69. Overall, SB 169 will only make it more difficult for Montanans and particularly young voters to cast their ballots, which, based on the forms of identification targeted and the absence of any voter fraud, appears to be a motivating purpose behind the voter identification restriction.

3. The Voter ID Restrictions are not justified by any state interest sufficient to outweigh the injuries they impose on voting rights.

70. In his speech in support of SB 169, the chief sponsor of the bill, Senator Mike Cuffee, a Republican representing Lincoln County, cited “election integrity” as his primary motivation in sponsoring this legislation. “People all over our nation are begging for election integrity,” he said to the Senate Administration Committee—a nod to the false accusations of voter fraud and ongoing misinformation campaign advanced by Donald Trump and his supporters in their seditious attempt to overturn the results of the presidential election.

71. The truth is, the 2020 presidential election was “the most secure in American history,” and SB 169—particularly its limitation on the use of student photo identifications—will do nothing to make Montana’s elections more secure.² Montana has allowed students to use their college and university identification cards at the polls for nearly the past twenty years. Section 13-

² Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees (Nov. 12, 2020), available at <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

13-114(1)(a), MCA. In those twenty years, the law has been entirely effective at preventing even a single known instance of voter fraud in the state. *See supra* at ¶ 44.

72. Given the absence of any voter fraud to begin with, a legislature's reliance on false accusations and cynical attempts to undermine elections as justification for restrictions on voting is no less an act of voter suppression. The entirely predictable (and all but certainly intended) consequence of SB 169 is clear: it will become much harder for Montana voters, particularly students and indigent Montanans, who lack government-issued photo identification to exercise their most fundamental right.

CLAIMS FOR RELIEF

COUNT I

Montana Constitution, Article II, § 4 *The Voter ID Restrictions and Election Day Registration Ban - Equal Protection, Discrimination Based on Age*

73. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

74. Article II, § 4 of the Montana Constitution guarantees that no person shall be denied the equal protection of the laws. Notably, Montana's equal protection clause "provides for even more individual protection" than the federal equal protection clause of the United States Constitution. *Cottrill v. Cottrill Sodding Serv.*, 229 Mont. 40, 42, 744 P.2d 895, 897 (1987).

75. Both the Voter ID Restrictions and the Election Day Registration Ban violate the Equal Protection Clause by imposing heightened and unequal burdens on the right to vote, particularly for Montana's youngest voters.

76. The Voter ID Restrictions' prohibition on student ID cards and registration confirmation forms—two forms of identification which had been accepted for years without resulting in a single known instance of fraud—will disproportionately and disparately abridge the

right to vote of young Montana voters by making it more difficult for them to participate in our democracy. This is compounded by the Voter ID Restrictions' elimination of a state-issued registration confirmation form, which is issued to every registered voter (though a process that already requires a voter to identify themselves), as an acceptable form of primary identification. As a result of the Voter ID Restrictions, young Montana voters who lack a Montana driver's license, military identification card, tribal identification card, passport, or Montana concealed carry permit will be forced to rely on a poorly defined and confusing hodgepodge of acceptable secondary identification in hopes of casting their ballots. Beyond the burden of having to locate and produce additional identification in the first place, some young voters may lack secondary identification entirely.

77. The Election Day Registration Ban will similarly disproportionately abridge the right to vote of young Montana voters by making it more difficult for them to register and to cast an effective ballot. As research shows, young voters are much more likely than the general electorate to use EDR—a simple result of the fact that young voters are highly mobile, and thus need to register to vote with much more frequency than the rest of the electorate.

78. It is no accident that both the Voter ID Restrictions and the Election Day Registration Ban were passed just months after Montana's youngest voters turned out to vote at record rates. Montana's legislators knew that both the Voter ID Restrictions and the Election Day Registration Ban would place heightened burdens on Montana's youngest voters when it passed both laws. The Montana Legislature heard direct testimony from both student voters and advocacy organizations that both laws would impose barriers on the franchise for young voters; it passed the bill anyway in direct contravention of Montana's Equal Protection Clause.

79. The Montana Legislature passed the Voter ID Restrictions and the Election Day Registration Ban with the intent and effect of placing increased barriers on young Montanans who wish to exercise their fundamental right to vote. The laws are, in other words, “device[s] designed to impose different burdens on different classes of persons.” *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, ¶ 85, 982 P.2d 421, ¶ 85.

80. Furthermore, the State cannot show that the Voter ID Restrictions’ prohibition on using photo identification issued by a Montana college or university as a primary identification to cast a ballot advances a compelling state interest, or that the prohibition on student identifications is the “least onerous path” the State can take to ensure electoral integrity—to the extent the State maintains that “electoral integrity” was the motivating force behind the Voter ID Restrictions—or even that the restrictions are justified by any legitimate purpose. To the contrary, there is no evidence of voter fraud in Montana in recent history, let alone any kind of voter fraud perpetuated by young voters using their student identifications to vote.

81. Nor can the State show that the Election Day Registration Ban advances a compelling (or even legitimate) state interest. Not only have election administrators refuted the Legislature’s reliance on administrative burdens to justify the ban, but courts have also made clear that administrative efficiency is not a compelling state interest. *See, e.g., Frontiero v. Richardson*, 411 U.S. 677, 690 (1973). Even if this Court found that electoral integrity was a compelling state interest, the State cannot show that banning EDR is the least onerous path to accomplishing any permissible goal given that Montana voters used EDR seamlessly for fifteen years.

82. For all of these reasons, both the Voter ID Restrictions and the Election Day Registration Ban violate young Montanans’ constitutional right to equal protection under the law.

COUNT II

Montana Constitution, Article II, § 13

The Election Day Registration Ban - Undue Burden on the Right of Suffrage

83. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

84. By eliminating election day voter registration, the Election Day Registration Ban severely burdens the right to vote of Montana voters, particularly students, the elderly, the disabled, and indigenous communities. At no point during the month before an election will voters be able to register outside of normal working hours—between 8 a.m. and 5 p.m. And unregistered voters who rely on services that are widely available on election day, like organized transportation, will no longer be able to do so. Additionally, previously-registered voters who discover errors in their voter registration information on election day—as tens of thousands of voters have over the last 15 years—will no longer be able to update their registration information and cast a ballot at their polling location on election day.

85. The Election Day Registration Ban's burdens are not justified by any state interests, let alone interests sufficiently weighty to counterbalance its attendant harms. The Election Day Registration Ban is not necessary to protect election integrity because the verification process applied to late registration applications differs from that applied to regular registration applications only in that it includes *additional* security measures. In any event, EDR has not led to a *single* known instance of voter fraud, *see supra* at ¶ 44, nor has it caused *any* serious administrative problems on election day, *see supra* ¶¶ 49-53.

COUNT III
Montana Constitution, Article II, § 13
Voter ID Restrictions - Undue Burden on the Right of Suffrage

86. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

87. The Voter ID Restrictions' exclusion of registration confirmation forms and photo identification cards issued by Montana colleges and universities as acceptable forms of primary voter identification burdens the right to vote, particularly among students and indigent Montanans.

88. The burdens imposed by the Voter ID Restrictions are not justified by any cognizable state interest; accepting registration confirmation forms and photo identification cards issued by Montana colleges and universities as primary identification did not result in a *single* known instance of voter fraud. *See supra* at ¶ 44.

89. While ramping up restrictions under Montana's voter identification law was wholly unnecessary to prevent fraud, the new law makes it harder for certain groups of voters, particularly students, to participate in our democracy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that the Voter Suppression Bills violate the Montana Constitution;
- B. Preliminarily and permanently enjoining the Secretary of State and her agents, officers, employees, successors, and all persons acting in concert with each or any of them, from enforcing the Voter Suppression Bills; and
- C. Granting Plaintiffs such other and further relief that the Court deems necessary and proper.

Dated: April 19, 2021

Respectfully submitted,

By: /s/ Peter Michael Meloy

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