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DEPUTY

*Attorneys for Defendant Christi Jacobsen, in her
official capacity as Montana Secretary of State*

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

<p>Montana Democratic Party and Mitch Bohn, Plaintiffs, vs. Christi Jacobsen, in her official capacity as Montana Secretary of State, Defendant.</p>	<p>Cause No.: DV 21-0451 Judge: Michael Moses DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY PURSUANT TO RULE 26(C)(1)</p>
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INTRODUCTION

This Court should stay discovery pending resolution of Secretary Jacobsen's motion to dismiss. As courts have routinely recognized, staying discovery while a motion to dismiss is

pending is appropriate to save potentially unnecessary effort and expense if the Court grants the motion. Here, the Court's decision on the motion to dismiss will dictate the scope of the case, and thus the permissible scope of discovery. It only makes sense to wait until that motion is resolved before proceeding to discovery and doing so will prejudice neither party.

That is especially so given the improper breadth of MDP's discovery requests, which will likely result in additional motions practice to limit that discovery. MDP has asked for wide-ranging information spanning 15 years, which will be unduly burdensome to compile. See Ex. A (MDP's Discovery Requests). Without a stay, Secretary Jacobsen will need to move for a protective order limiting MDP's discovery requests, if MDP will not voluntarily do so. But if the Court grants the motion to dismiss and eliminates issues in the case, a protective order limiting the permissible scope of discovery, if even still necessary, will also be more limited.

Most importantly, there is no harm in staying discovery pending this Court's decision on the motion to dismiss. Indeed, staying discovery will save the parties and the Court from potentially wasted effort. This case is in its infancy. There will be plenty of time to complete discovery after the Court resolves the motion to dismiss, at which time the scope of the case will be clear to all parties.

For these reasons, and because the clock is already ticking on Jacobsen's time to respond, Jacobsen presents this motion as an emergency motion and requests that the Court decide it as soon as practicable. In the event this motion is denied, Jacobsen requests ample time to seek a protective order limiting the scope of MDP's overly broad discovery and to respond to MDP's discovery.

BACKGROUND

On April 20, 2021, and as later amended, the Montana Democratic Party filed this action against Jacobsen challenging the constitutionality of three recently enacted laws relating to voting in Montana: HB 176, pertaining to election day registration; SB 169, pertaining to voter identification; and HB 530, pertaining to ballot assistance programs. *See Pltf's Compl and Am. Compl.* Before filing a responsive pleading, Jacobsen moved to dismiss MDP's claims as to HB 176 and SB 169 because MDP lacks standing and failed to adequately allege causes of action against under equal protection or an infringement upon the right to vote. *See Def's Motion to Dismiss.*

Despite the pendency of Jacobsen's motion to dismiss, and with this case in its infancy, on August 9, 2021 MDP served written discovery requests to Jacobsen. A copy of these requests is attached as **Exhibit A**. The requests are extensive and Secretary Jacobsen will argue that they impose burdens beyond the permissible scope of discovery. But even with objections and reasonable limitations, responding will require the devotion of substantial efforts and resources. For example, the very first interrogatory requests Jacobsen to gather the data and articulate the exact number of persons registering to vote on each election day over the past 15 years. *Exh. A.*, p. 11.

Secretary Jacobsen requested that MDP voluntarily withdraw discovery pending resolution of the motion to dismiss. MDP declined to do so, and noted that it opposes this motion.

LEGAL STANDARD

District courts have "inherent discretionary power to control discovery under its authority to control trial administration[.]" *Bartlett v. Allstate Ins. Co.*, 929 P.2d 227, 232 (Mont. 1996). The Montana Supreme Court has provided that the objective in controlling and regulating discovery

is to ensure a fair trial to all concerned, neither according one party an unfair advantage nor placing the other at a disadvantage. *Id.* (citing *Hobbs v. Pacific Hide & Fur Depot*, 771 P.2d 125, 131 (Mont 1989)). In implementing this discretionary control, Rule 26(c) authorizes a district court to make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense. *State ex rel. Burlington N. R.R. v. District Court*, 239 Mont. 207, 220-221, 779 P.2d 885, 894 (1989). Specifically, Rule 26(c)(1)(B) permits a district court to issue an order “specifying terms, including time and place for discovery.”

ARGUMENT

Rule 1 of the Montana Rules of Civil Procedure mandates that courts construe and administer the rules to “secure the just, speedy and inexpensive determination in every action and proceeding.” It is with that principle in mind that the Court must implement its discretion to grant a protective order to protect Jacobsen from the “undue burden or expense” resulting from answering MDP’s discovery requests prior to resolution of the motion to dismiss. M.R.Civ.P. 26(c).

The discovery requests MDP served are impermissibly broad and objectionable. But, more importantly, they entail significant burden to gather extensive information that is completely unnecessary should the Court grant Jacobsen’s motion. Jacobsen’s motion to dismiss is fully briefed and before the Court for consideration. No scheduling order has been established in this case. Thus, a stay of discovery will not prejudice any party, but will allow for the just and inexpensive determination of this action by permitting discovery to commence once the pending motion to dismiss is resolved.

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I. Jacobsen’s Pending Motion to Dismiss Justifies Entry of the Protective Order.

Montana’s Rules of Civil Procedure “provide for the protection of parties and persons where the discovery sought subjects the party or person to undue burden or expense.” *McAtee v. Whitefish Credit Union*, 2015 WL 13776538, *1 (Mont. Dist. 11th, Dec. 10, 2015) (citing Mont.R.Civ.P. 26(c)). The Montana Supreme Court has indicated that “[i]t is appropriate for courts to delay costly and time-consuming litigation activities when a motion to dismiss or for summary judgment is pending” on an issue appropriately decided at the earliest possible stage. *Boese v. McKinnon*, 2010 MT 209N, ¶ 13 (unpublished decision) (applying the rule to a pending motion regarding immunity). Montana district courts have followed the same approach. *See, e.g., McAtee v. Whitefish Credit Union*, 2015 WL 13776538, *1 (Mont. Dist. 11th, Dec. 10, 2015) (entering a protective order precluding depositions until resolution of a motion to dismiss to avoid undue burden and expense and because the requesting party would have ample opportunity to engage in discovery following the court’s ruling).

Federal courts apply the same rule.¹ “Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should, however, be resolved before discovery begins.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997); *see also Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987) (affirming a district court’s stay of discovery pending the disposition of a motion to dismiss because “[d]iscovery is only appropriate where there are factual issues raised by a Rule 12(b) motion”).

¹ Because Rule 26(c) of the Federal Rules of Civil Procedure is nearly identical to its state counterpart, federal cases are particularly instructive. *See Bates v. Anderson*, 2014 MT 7, ¶ 19, 316 P.3d 857, 861; *see also* M.R.Civ.P. 26, Advisory Committee Notes (2011) (stating that Montana’s “Rule 26 is adopted from Rule 26 of the Federal Rules of Civil Procedure”).

The logic behind this rule is compelling and two-fold. First, such challenges present purely legal questions, resting solely on the allegations in the complaint, and neither the Court nor the parties have any need for discovery. *Chudasama*, 123 F.3d at 1367. Second, discovery imposes significant and numerous costs on the responding party including from searching and compiling documents and information, as well as the “attorneys’ fees generated in interpreting discovery requests, drafting responses to interrogatories and coordinating responses to production requests,” not to mention potential “burdens on the judicial system.” *Id.* As the Eleventh Circuit put it, dismissing a unmeritorious claim before discovery avoids “unnecessary costs to the litigants and to the court system,” whereas “delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs.” *Id.* at 1368. Accordingly, potentially legally unsupported claims should be eliminated before discovery and when faced with a motion to dismiss a claim that would expand the scope of discovery, the court should rule on the motion prior to allowing discovery. *Id.*; see also *Rutman Wine Co. v. E.& J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (stating that “[t]he purpose of F.R.Civ.P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery”).

The same rationale applies here. Jacobsen’s motion would eliminate MDP’s claims as to two of the three laws at issue, and thus eliminate those laws and the corresponding issues from discovery. Undoubtedly, requiring Jacobsen to respond to MDP’s requests at this stage risks a complete waste of non-recoupable time and resources. To be sure, Jacobsen’s motion to dismiss is based upon the allegations in the complaint and does not require any discovery. It will, however, directly dictate the claims at issue in this case and thus and thus directly impact the

appropriate scope of discovery. See Mont.R.Civ.P. 26(b) (limiting the scope of discovery in terms of matter “relevant to any party’s claim or defense”).

Once the Court resolves the motion to dismiss, discovery may proceed efficiently and the scope of the case will be known to all parties. But staying discovery now will prevent the risk of Jacobsen wasting significant time and resources responding to MDP’s discovery and may obviate the need for motions practice to limit that discovery.

II. The Stay Will Not Prejudice MDP.

While not consistently applied, other federal courts consider whether a protective order and stay would prejudice the non-moving party. See *Weisman v. Mediq, Inc.*, 1995 WL 273678, *2 (E.D.Pa.1995). Even if the Court should consider this factor, entering a protective order staying discovery remains the appropriate resolution. This case is indisputably in its infancy. There has been no scheduling conference set and no scheduling order provided. Further, there is no risk of losing evidence or any need for MDP to obtain the requested information immediately. Once the Court has decided Secretary Jacobsen’s motion to dismiss, the parties may move forward with discovery on the appropriate topics (and subject to the scope and limitations of the Montana Rule of Civil Procedure) and the Court can ensure that all parties have ample time to conduct this discovery. See *McAtee*, 2015 WL 13776538, *1; *Weisman*, 1995 WL 273678, *2.

Therefore, no party will be prejudiced by a brief stay of discovery until the pending motion to dismiss is resolved, but there is a risk of considerable prejudice if Secretary Jacobsen is forced to respond to discovery requests that ultimately prove irrelevant and unnecessary.

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CONCLUSION

For these reasons, Secretary Jacobsen respectfully requests the Court to enter a protective order staying discovery until the Court decides the motion to dismiss. Secretary Jacobsen's motion is based on issues of law and the allegations in the complaint. As the Eleventh Circuit has held, at this time "neither the parties nor the court have any need for discovery before the court rules on the motion" and a stay is appropriate. *Chudasama*, 123 F.3d at 1367. Should the Court grant Secretary Jacobsen's motion, the parties may then proceed with discovery under the remaining claims. Should the motion be denied, discovery can commence at that time and no party will have suffered any prejudice.

DATED this 13th day of August, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 2021, I mailed a true and correct copy of the foregoing document, by the means designated below, to the following:

<input type="checkbox"/>	U.S. Mail	Peter M. Meloy
<input checked="" type="checkbox"/>	Electronic mail	P.O. Box 1241
<input type="checkbox"/>	Facsimile	Helena, MT 59624
<input type="checkbox"/>	Hand delivery	<u>mike@meloylawfirm.com</u>
<input type="checkbox"/>	Certified mail, return receipt	

<input type="checkbox"/>	U.S. Mail	Matthew Gordon
<input checked="" type="checkbox"/>	Electronic mail	Perkins Coie LLP
<input type="checkbox"/>	Facsimile	1201 Third Avenue, Ste 4900
<input type="checkbox"/>	Hand delivery	Seattle, WA 98101-3099
<input type="checkbox"/>	Certified mail, return receipt	<u>mgordon@perkinscoie.com</u>

<input type="checkbox"/>	U.S. Mail	John Heenan
<input checked="" type="checkbox"/>	Electronic mail	Heenan & Cook PLLC
<input type="checkbox"/>	Facsimile	1631 Zimmerman Trail
<input type="checkbox"/>	Hand delivery	Billings, MT 59102
<input type="checkbox"/>	Certified mail, return receipt	<u>john@lawmontana.com</u>

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

Montana Democratic Party, Mitch Bohn,
Plaintiffs,

v.

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

Case No. DV 21-0451

**PLAINTIFFS' FIRST
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS**

TO: Christi Jacobsen, in her official capacity as Montana Secretary of State, and her attorneys ("Defendant"):

Pursuant to Rules 26, 33, 34, and 36 of the Montana Rules of Civil Procedure, Plaintiffs Montana Democratic Party ("MDP") and Mitch Bohn (together, "Plaintiffs" or



“Propounding Parties”), propound the following interrogatories and requests for production of documents(collectively, the “Discovery Request(s)”) upon Defendant.

Responses to these Discovery Requests are to be produced electronically, where possible, and otherwise to Perkins Coie LLP, located at 1201 Third Avenue, Suite 4900, Seattle, Washington 98101-3099, to the attention of Matthew Gordon, within thirty (30) days of receiving these Discovery Requests. To make arrangements for electronic production, please contact Matthew Gordon at (206) 359-8000 or mgordon@perkinscoie.com. All responses to the Discovery Requests should be made pursuant to the Definitions and Instructions below.

DEFINITIONS

Except as specifically defined below, the terms used in these Discovery Requests shall be construed and defined in accordance with the Montana Rules of Civil Procedure, where applicable. Any terms not defined shall be given their ordinary meaning.

1. **“Any”** and **“all”** mean “any and all.”
2. **“Defendant,” “you,” “your,” “Secretary of State”** and **“SOS”** mean Defendant Christi Jacobsen, in her official capacity as Montana Secretary of State, as well as her predecessors and successors, and their employees, staff, agents, and representatives.
3. **“Person,” “persons,”** or **“individual”** shall include natural persons, corporations, firms, partnerships, associations, joint ventures, trusts and estates, business entities, any city, state, or federal government entity or agency, and any other form of legal entity, whether real or fictitious.
4. **“Ballot collection”** means gaining possession or control of a voted absentee ballot by a person other than the voter who cast the ballot and conveying the voted ballot to the polling place, place of deposit, or election administrator’s office.
5. **“Date”** means the exact day, month, and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

6. “**Election day**” means the date that a statewide primary or general election was held.

7. “**Montana State Legislature**” means the House of Representatives and the Senate of the State of Montana, and includes the members of both the House and Senate, their employees, staff, agents, and representatives, as well as all employees, staff, agents, and representatives of either the Montana State House of Representatives, the Montana State Senate, or the legislative body as a whole.

8. “**Refer(s) to,**” “**referring to,**” “**relate(s) to,**” “**relating to,**” “**related to**” or “**concerning**” mean and include, without limitation: concerning, referring to, alluding to, responding to, pertaining to, being relevant to, connected with, commenting on, in respect of, about, containing, constituting, stating, discussing, showing, describing, depicting, mentioning, identifying, reflecting, analyzing, explaining, consisting of, dealing with, resulting from, evidencing, supporting, refuting, disproving, negating, comprising, or regarding a particular subject in whole or in part, either directly or indirectly.

9. The terms “**identify**” or “**identity,**” when used in reference to a natural person, shall mean to state his or her full name, current or last known home and business addresses, current or last known employer and position held, and current or last known personal and business telephone numbers.

10. The terms “**identify**” or “**identity,**” when used with respect to a person or individual other than a natural person, shall mean to state his, her, or its full name, address, telephone number, and the nature of its organization (*e.g.*, corporation, partnership, association, etc.).

11. The terms “**identify**” or “**identity,**” when used in reference to a document, shall mean to state the date and author, type of document (*e.g.*, letter, email, text message, memorandum, telegram, chart, etc.) or some other means of identifying it, and its present location and custodian. Documents prepared before or after any period covered by these discovery requests but that relate or refer thereto are to be included. If you are not in the

possession of the document, “identify” or “identity” shall also mean describing in detail whether it was lost, destroyed, or otherwise disposed of and the accompanying circumstances.

12. The terms “**identify**” or “**describe**,” when used with respect to an act, occurrence, contract, transaction, decision, statement, communication, or conduct (collectively, “act”), mean to describe in detail the event or events constituting the act, or what transpired; the place, the date, and time of the act; and to identify the persons involved in or with the act and the documents referring or relating to the act.

13. “**Document**” or “**documents**” mean and refers to a “writing” as defined in Rule 1001(1) of the Montana Rules of Evidence, and includes all written, printed or electronic material (handwritten, typed, or otherwise reproduced), any original, reproduction, or non-identical copy of any such material, including without limitation, correspondence, memoranda, interoffice communications, notes, e-mails, text messages, or other electronic messages, diaries, contract documents, business records, charts, graphs, drawings, plans, specifications, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billing, checks, reports, studies, computers tapes or discs, movies, videotape recordings, photographs, negatives, slides, dictation belts, voice tapes, tape recordings, telegrams, teletype messages, facsimiles, memoranda or notes of oral communications, tape records or transcripts thereof, motion pictures, desk calendars, and x-rays. The term “**document**” or “**documents**” also includes all electronic media on which responsive information is stored or recorded, including, but not limited to, all computer and internet databases, indexes, floppy disks, hard drives, zip drives, USB drives, CD-ROMs, DVD-ROMs, tapes, or other computer storage, e-mails, text messages, secure messaging platforms, such as Signal, and video or audio recordings.

14. “**Communication**” and “**communications**” mean any meeting, conversation (face-to-face, telephonic, electronic or otherwise), discussion, e-mail, text messages, cable, correspondence, message, tape-recorded message or other occurrences in which thoughts,

opinions, or information are transmitted between or among two or more **persons** or between or among one or more **persons** and any electronic, photographic, or mechanical device or devices for receiving, transmitting, or storing data or other information. Unless otherwise indicated, a request calling for **communications** includes **your** internal **communications** and memoranda and **communications** between **you** and any other **person**.

15. In construing these Discovery Requests, the singular of each term shall include the plural and the plural shall include the singular, and a masculine, feminine, or neuter pronoun shall not exclude the other genders.

16. In construing these Discovery Requests, unless otherwise stated, the term “absentee ballot” shall be construed to be synonymous with the term “mail ballot,” and vice-versa.

17. “**Electronically Stored Information**” or “**ESI**” refers to any **document** storied primarily in electronic format. This includes, but is not limited to, computer and internet databases, indexes, floppy disks, hard drives, zip drives, USB drives, CD-ROMs, DVD-ROMs, tapes, or other computer storage, e-mails, text messages, secure messaging platforms (such as Signal), and video or audio recordings.

18. “**Election Day Registration Ban**” or “**EDR Ban**” refers to the changes made by House Bill 176 (2021) to Mont. Code Ann. §§13-2-301, 13-13-301, 13-19-207, and 13-21-104 moving the deadline to register to vote from election day to the prior day at noon.

19. “**Voter ID Restrictions**” refers to the changes in identification classification made by Senate Bill 169 (2021) to Mont. Code Ann. §§ 13-2-110, 13-13-602, and 13-15-107.

20. “**Renewed Ballot Assistance Ban**” refers to the creation by House Bill 530 (2021) of Mont. Code Ann. §§ 13-1-2XX and 13-X-XXX.

INSTRUCTIONS

1. In answering these Discovery Requests, you are required to not only furnish such information as you know of your own personal knowledge, but also information available to you, including but not limited to, nonprivileged information or facts in the possession of or known to your attorneys, investigators, or anyone else acting on your or their behalf. These Discovery Requests are continuing in nature, and supplemental answers shall be promptly served if Defendant directly or indirectly obtains further information of the nature sought herein between the time answers are served and time of trial.

2. Unless otherwise stated, the relevant time period for each Discovery Request is from January 1, 2018 through the date of your response.

3. If you object to any Discovery Request, in whole or in part, set forth the basis of your objection with specificity, and respond to all parts of the Discovery Request to which you do not object.

4. For each request for document production, the response must state that inspection and related activities will be permitted as requested, or state an objection to the request, including the reasons, which must be stated with specificity.

5. **Claims of Privilege.** If you assert a claim of privilege to the production of any document requested, provide a written privilege log that identifies each document individually and for each such document, provides the following information:

- a. The nature or type of privilege claimed;
- b. A precise statement of the facts upon which the claim of privilege is based;
- c. The following information for each purportedly privileged document:
 - i. The nature of the document, e.g., letter, memo, minutes, etc.;
 - ii. The date it bears, if any;
 - iii. The identity of the person preparing or sending it;
 - iv. The identity of each person receiving it or any copy; and,

- v. The subject matter of the document.

If you contend that only a portion of the document is privileged, please provide a redacted copy of the document with a listing of the above information as to the redacted portion.

6. With respect to any Discovery Request, if you can provide some, but not all, of the information requested, provide the information you can and specifically identify each item for which you do not have sufficient information to fully respond.

7. You should produce all **documents** available to you or subject to your access or control that are responsive to the Requests for Production. This includes documents in your actual or constructive possession or control, as well as that of your attorneys, investigators, experts, and anyone else acting on your behalf.

8. Produce original and any copied documents as they are kept in the ordinary course and business and/or organize and label the documents to correspond with the categories in the below requests for production. Accordingly, documents should be produced in their entirety, without abbreviation, redaction (except as qualified by Instruction No. 5, above), or expurgation; file folders with tabs or labels identifying documents responsive to this subpoena should be produced intact with the documents; and documents attached to each other should not be separated.

9. If any responsive document was, but no longer is, in your possession or subject to your control, state whether the document is: (a) missing or lost; (b) destroyed; (c) transferred voluntarily or involuntarily to others; or (d) otherwise disposed of, and in each instance, identify the name and address of its current or last known custodian, and the circumstances surrounding such disposition.

10. All documents are to be produced in electronic form. Electronically Stored Information is to be produced as either native files or as single-page image files accurately representing the contents of the original ESI. All productions should be accompanied with related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). All native,

text, image, and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.

11. Each document in a production shall be identified by beginning bates number in a metadata load file (*.DAT) reflecting, at minimum any parent / child relationship and the following fields:

- a. beginning bates number;
- b. ending bates number;
- c. beginning attachment bates number (if applicable);
- d. ending attachment bates number (if applicable);
- e. custodian;
- f. duplicate custodian;
- g. file extension;
- h. original file path;
- i. date sent (for e-mail messages);
- j. date created (for non-email messages);
- k. date modified (for non-email messages);
- l. sender (for e-mail messages);
- m. author (for non-email documents);
- n. to recipient (for e-mail messages);
- o. CC recipient (for e-mail messages where applicable);
- p. BCC recipient (for e-mail messages where applicable);
- q. subject (for e-mail messages);
- r. redacted (for all files);
- s. confidentiality (for all files) and
- t. file name (for non-email message).

12. To the extent the pages of documents produced can be accurately represented in black and white, they should be produced in group IV, single-page TIFF format. Pages

that require color to be accurately interpreted should be produced in single-page JPEG format. Each page image shall bear the bates number associated with that page and be identified in an image load file in standard Opticon (*.OPT) format showing what pages unitize to make a document. The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition ("OCR") text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents that contain redactions shall be OCR'd after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level.

13. **Native Files.** Unless otherwise agreed to by the parties, files that are not easily converted to image format, such as spreadsheet, audio and video, database, text (.csv or .txt) and drawing files, will be produced in native format. The parties may elect to utilize native redaction software tools such as "Blackout" to apply redactions directly to a native spreadsheet and produce a redacted native file instead of a TIFF image of a spreadsheet. If a document is produced in native format, a single-page Bates-stamped TIFF image slip-sheet containing the confidential designation and text stating the document has been produced in native format should also be provided. Each native file should be named for its Bates number with its original file extension, and should be linked directly to its corresponding record in the load file using the NativeFileLink field.

14. Where native format is unavailable, **ESI** is to be produced in a machine-readable format, and accompanied by a description of the system from which it was obtained.

15. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents that are not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

16. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in a writing under oath.

17. For those requests that refer to “election day,” please provide information for all statewide primary and general elections from 2006 to present.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify how many persons registered to vote on each election day from 2006 to present.

INTERROGATORY NO. 2:

Identify all complaints or reports that you received or are otherwise aware of regarding misconduct or other problems with election day registration. Please identify complaints or reports from 2006 to present. For each complaint or report, identify (1) the complainant; (2) the date received; (3) the subject matter addressed; (4) the particular allegations; and (5) the outcome of any corresponding investigation or analysis.

INTERROGATORY NO. 3:

Identify all complaints or reports of problems that you received or are otherwise aware of from 2006 to present with respect to the use of Montana college or university identification cards for the purpose of voting. This includes, but is not limited to, misconduct or fraud.

INTERROGATORY NO. 4:

Identify all complaints or reports of problems that you received or are otherwise aware of from 2006 to present with respect to ballot collection. This includes, but is not limited to, misconduct or fraud.

INTERROGATORY NO. 5:

Identify all state interests you contend the Election Day Registration Ban furthers, and for each state interest you identify, please identify how the Election Day Registration Ban serves that interest and identify any facts supporting your contention that the state interest is furthered by the Election Day Registration Ban.

INTERROGATORY NO. 6:

Identify all state interests you contend the Voter ID Restrictions further, and for each state interest you identify, please identify how the Voter ID Restrictions serve that interest and identify any facts supporting your contention that the state interest is furthered by the Voter ID Restrictions.

INTERROGATORY NO. 7:

Identify all state interests you contend the Renewed Ballot Assistance Ban furthers, and for each state interest you identify, please identify how the Renewed Ballot Assistance Ban serves that interest and identify any facts supporting your contention that the state interest is furthered by the Renewed Ballot Assistance Ban.

INTERROGATORY NO. 8:

Identify any state interests you contend are served by the changes S.B. 169 (2021) made to Mont. Code Ann. § 13-13-114 to make “school district or postsecondary education photo identification” a secondary form of identification that requires an additional form of identification, such as a utility bill or government check listing a Montana address, to vote.

INTERROGATORY NO. 9:

Identify any state interests you contend are served by the changes S.B. 169 (2021) made to Mont. Code Ann. § 13-13-114 to make a “Montana concealed carry permit” a primary form of identification that does not require any additional form of identification, such as a utility bill or government check listing a Montana address, to vote.

INTERROGATORY NO. 10:

Identify the number of absentee ballots returned on election day or the two days prior to election day for each statewide primary and general election from 2006 to 2020.

INTERROGATORY NO. 11:

Specify your understanding of the definition of the term “pecuniary benefit” as used in Section 2 of House Bill 530 (2021), and identify any facts or authority you rely on for that understanding.

INTERROGATORY NO. 12:

Specify your understanding of whether the Renewed Ballot Assistance Ban will prevent a salaried staff member from the Montana Democratic Party or a paid student organizer from spending a portion of his or her work time collecting or delivering ballots from other voters, and identify any facts or authority you rely on for that understanding.

INTERROGATORY NO. 13:

Identify which if any specific types of voter fraud the Election Day Registration Ban is intended to prevent, and for each type of voter fraud you identify, please identify how the Election Day Registration Ban will prevent such fraud, and identify any supporting facts.

INTERROGATORY NO. 14:

Identify which if any specific types of voter fraud the Voter ID Restrictions are intended to prevent, and for each type of voter fraud you identify, please identify how the Voter ID Restrictions will prevent such fraud, and identify any supporting facts.

INTERROGATORY NO. 15:

Identify which, if any, specific types of voter fraud the Renewed Ballot Assistance Ban is intended to prevent and for each type of voter fraud you identify, please identify how the Renewed Ballot Assistance Ban will prevent such fraud, and identify any supporting facts.

INTERROGATORY NO. 16:

Identify all instances of alleged unlawful conduct related to ballot collection in Montana, and for each such instance identify any investigatory or enforcement actions undertaken in response, and the outcome of such actions.

INTERROGATORY NO. 17:

Identify all instances of alleged unlawful conduct related to election day registration in Montana, and for each such instance, identify any investigatory or enforcement actions undertaken in response, and the outcome of such actions.

INTERROGATORY NO. 18:

Identify all instances of alleged unlawful conduct related to voter identification in Montana, and for each such instance, identify any investigatory or enforcement actions undertaken in response, and the outcome of such actions.

INTERROGATORY NO. 19:

Identify any policy standard or rule articulated in H.B. 530 that you understand to inform the “rules defining and governing election security” that Section 1 of H.B. 530 directs the Secretary to adopt.

INTERROGATORY NO. 20:

Identify any policy standard or rule articulated in H.B. 530 that you understand to inform the administrative rule that Section 2 of H.B. 530 directs the Secretary to adopt.

INTERROGATORY NO. 21:

Identify all persons with personal knowledge of the responses to these requests, including, but not limited to, knowledge of incidents of voter fraud in Montana, complaints of voter fraud in Montana, and election security.

INTERROGATORY NO. 22:

Identify any plans you have to educate the public and county election officials on the changes to Montana law resulting from the Renewed Ballot Assistance Ban, the Voter ID Restrictions, and the Election Day Registration Ban.

INTERROGATORY NO. 23:

Identify the number of people who were denied the ability to vote for reason of not providing valid identification, as defined under Montana law, in the statewide general elections in 2010, 2012, 2014, 2016, 2018, and 2020.

INTERROGATORY NO. 24:

Identify how the Renewed Assistance Ban “enhance[s] election security” as stated in Section 2 of H.B. 530 (2021), and identify all facts supporting your response.

INTERROGATORY NO. 25:

Identify your involvement in the passage of H.B. 530 (2021) and any other ballot collection legislation this legislative session. This includes, but is not limited to, discussions with legislators or their staff, election officials, or internal communications.

INTERROGATORY NO. 26:

Identify any expert witness that has been retained by Defendants in this litigation.

INTERROGATORY NO. 27:

Identify any provision of H.B. 530 that you understand to prescribe “with reasonable clarity the limits of the power delegated to the Secretary.”

INTERROGATORY NO. 28:

Identify any and all persons who helped respond to these discovery requests, including by drafting the written responses, compiling documents, or providing any other information.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All records relied upon or reviewed in answering the preceding interrogatories or subsequent request for admission or otherwise related to the information sought in the preceding interrogatories or subsequent requests for admission.

REQUEST FOR PRODUCTION NO. 2:

All documents related to the ongoing or future implementation of the Election Day Registration Ban.

REQUEST FOR PRODUCTION NO. 3:

All documents related to the ongoing or future implementation of the Renewed Ballot Collection Ban.

REQUEST FOR PRODUCTION NO. 4:

All documents related to the ongoing or future implementation of the Voter ID Restrictions.

REQUEST FOR PRODUCTION NO. 5:

All documents related to the promulgation of rules pursuant to H.B. 530.

REQUEST FOR PRODUCTION NO. 6:

Records of statewide voting data, including but not limited to the Statewide Voter Files, Absentee Ballot Reports, and Late Registrant Reports, from the statewide general elections in 2014, 2016, 2018, and 2020.

REQUEST FOR PRODUCTION NO. 7:

All records pertaining to how many people registered to vote on election day in each statewide general election in 2006, 2008, 2010, 2012, 2014, 2018, and 2020.

REQUEST FOR PRODUCTION NO. 8:

All communications regarding Montana House Bill 176 (2021), including without limitation all relevant official records and testimony from your office.

REQUEST FOR PRODUCTION NO. 9:

All communications or internal documents regarding Montana Senate Bill 169 (2021), including without limitation all relevant official records and testimony from your office.

REQUEST FOR PRODUCTION NO. 10:

All communications regarding Montana House Bill 406 (2021), including without limitation all relevant official records and testimony from your office.

REQUEST FOR PRODUCTION NO. 11:

All communications regarding Montana House Bill 530 (2021), including without limitation all relevant official records and testimony from your office.

REQUEST FOR PRODUCTION NO. 12:

All records referencing or reflecting data about the numbers and locations of persons denied the ability to vote for reason of not providing valid identification, as defined under Montana law, in the statewide general elections in 2010, 2012, 2014, 2016, 2018, and 2020.

REQUEST FOR PRODUCTION NO. 13:

All records referencing or reflecting the number of ballots returned by a person other than the person voting the ballot in the statewide general elections in 2010, 2012, 2014, 2016, 2018, and 2020.

REQUEST FOR PRODUCTION NO. 14:

All documents reflecting or related to complaints about ballot collection since 2010.

REQUEST FOR PRODUCTION NO. 15:

All communications between you and any elections officials relating to registering voters on election day since 2016.

REQUEST FOR PRODUCTION NO. 16:

All records from any elections officials relating to the use of fraudulent identification to vote since 2016.

REQUEST FOR PRODUCTION NO. 17:

All communications between you and any elections officials relating to ballot collection since 2016.

REQUEST FOR PRODUCTION NO. 18:

All communications between you and any member of the public relating to registering voters on election day since 2016.

REQUEST FOR PRODUCTION NO. 19:

All communications between you and any member of the public relating to acceptable identification to vote in Montana since 2016.

REQUEST FOR PRODUCTION NO. 20:

Any records related to your plans to educate the public and county election officials on the changes to Montana law resulting from the Renewed Ballot Assistance Ban, the Voter ID Restrictions, and the Election Day Registration Ban, including without limitation training materials and communications regarding the meaning and implementation of the Renewed Ballot Assistance Ban, the Voter ID Restrictions, or the Election Day Registration Ban.

REQUEST FOR PRODUCTION NO. 21:

Any guidance, definitions, statements of policy, standards, or rules provided to you regarding the Renewed Ballot Assistance Ban.

REQUEST FOR PRODUCTION NO. 22:

Any guidance, definitions, statements of policy, standards, or rules provided to you regarding Section 1 of H.B. 530.

REQUEST FOR PRODUCTION NO. 23:

All documents and communications regarding the Secretary's plans for adopting or promulgating "rules defining and governing election security" as provided for by Section 1 of H.B. 530.

REQUEST FOR PRODUCTION NO. 24:

Any guidance, definitions, statements of policy, standards, or rules provided to you regarding Section 2 of H.B. 530.

REQUEST FOR PRODUCTION NO. 25:

All documents and communications relied upon or reviewed in connection with the testimony of you or Mr. Dana Corson in support of H.B. 530, S.B. 169, H.B. 176, or H.B. 406.

REQUEST FOR PRODUCTION NO. 26:

All communications with any Montana state legislators or legislative staff related to H.B. 530, S.B. 169, H.B. 176, or H.B. 406.

REQUEST FOR PRODUCTION NO. 27:

All communications with Governor Gianforte or his staff related to H.B. 530, S.B. 169, H.B. 176, or H.B. 406.

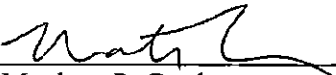
REQUEST FOR PRODUCTION NO. 28:

Any records reflecting the complaints identified in response to Interrogatory No. 2.

REQUEST FOR PRODUCTION NO. 29:

Any records related to the claim that the Renewed Ballot Assistance Ban will “enhance[] election security” as described in Section 2 of H.B. 530 (2021).

Dated: August 9, 2021

By: 
Matthew P. Gordon

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CERTIFICATE OF SERVICE

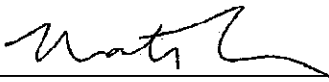
This is to certify that on August 9, 2021, a true and exact copy of the foregoing Discovery Requests was sent via electronic mail to the following:

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