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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MONTANA DEMOCRATIC PARTY and MITCH BOHN, Plaintiffs, v. CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State, Defendant.	Case No.: DV 21-0451 Judge Michael G. Moses **ORDER RE DEFENDANT'S MOTION TO DISMISS**

Defendant Christi Jacobsen, in her official capacity as Montana Secretary of State (the Secretary), filed a motion to dismiss with prejudice counts I (to the extent it relates to Senate Bill 169 and House Bill 176), II and III of the First Amended Complaint (FAC) filed June 2, 2021. Plaintiffs, the Montana Democratic Party (MDP) and Mitch Bohn, filed a response opposing the motion to dismiss on June 28, 2021. The Secretary replied

in support of her motion to dismiss on July 26, 2021. The Court held a hearing on the motion to dismiss and other pending motions on October 29, 2021.

I. BACKGROUND

In April 2021, the Montana Legislature passed House Bill 176 (HB 176) and Senate Bill 169 (SB 169). HB 176 eliminates election day voter registration. SB 169 changes the acceptable forms of identification to be used when voting.

Plaintiffs filed their FAC on May 14, 2021. The Secretary moved to dismiss MDP's claims asserted in Counts I, II, and III of the FAC. Relevant to the motion to dismiss, in Count I, Plaintiffs allege HB 176 and SB 169 violate Montana's Equal Protection Clause. FAC ¶¶ 116-127. In Count II, Plaintiffs allege that banning election day registration "severely burdens the right to vote of Montana voters, particularly students, the disabled, and indigenous communities." FAC ¶ 130. In Count III, Plaintiffs allege "[t]he Voter ID Restrictions' exclusion of registration confirmation forms and photo ID cards issued by Montana colleges and universities as acceptable forms of primary voter ID burdens the right to vote, particularly among students and indigent Montanans." FAC ¶ 133.

II. LEGAL STANDARD

"Pursuant to Rule 12(b)(6), M.R.Civ.P., a complaint should be dismissed where the factual allegations fail to state a claim upon which relief can be granted." *Stokes v. State*, 2005 MT 42, ¶ 6, 107 P.3d 494, 495. When addressing a Rule 12(b)(6) motion, "all

well-pleaded allegations of fact are taken as true." *Stokes*, ¶ 6. Courts must construe the complaint "in the light most favorable to the plaintiff..." *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, ¶ 8, 66 P.3d 316, ¶ 8 (quoting *Willson v. Taylor* (1981), 194 Mont. 123, 126, 634 P.2d 1180, 1182)(quotations omitted). A claim is subject to dismissal "only if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim." *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, ¶ 8, 407 P.3d 692, ¶ 8.

III. DISCUSSION

a. Standing

To determine if a party has standing, the court considers "whether the litigant is entitled to have the court decide the merits of the dispute." *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 30, 360 Mont. 207, ¶ 30, 255 P.3d 80, ¶ 30. "[T]he following criteria must be satisfied to establish standing: (1) the complaining party must clearly allege past, present, or threatened injury to a property or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party." *Mont. Envtl. Info. Ctr. v. Dep't of Envtl. Quality*, 1999 MT 248, ¶ 41, 296 Mont. 207, ¶ 41, 988 P.2d 1236, ¶ 41. "Economic harm caused by, or likely to be caused by, an alleged illegality is sufficient to establish standing to assert an otherwise cognizable claim for relief." *Larson v. State*, 2019 MT 28,

¶ 46, 394 Mont. 167, ¶ 46, 434 P.3d 241, ¶ 46; *see also Mont. Human Rights Div. v. Billings* (1982), 199 Mont. 434, 443, 649 P.2d 1283, 1288; *Geil v. Missoula Irrigation Dist.*, 2002 MT 269, ¶ 28, 312 Mont. 320, ¶ 28, 59 P.3d 398, ¶ 28. There are two ways in which an organization can have standing: organizational and associational. *Heffernan*, ¶ 42.

i. Organizational Standing

Under organizational standing, an organization "may file suit on its own behalf to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy..." *Heffernan*, ¶ 42. In determining whether an organization has standing, the "same inquiry as in the case of an individual" is conducted. *Havens Realty Corp. v. Coleman* (1982), 455 U.S. 363, 378, 102 S. Ct. 1114, 1124; *Irish Lesbian & Gay Org. v. Giuliani* (2d Cir. 1998), 143 F.3d 638, 649. Thus, organizational standing exists when injury has been clearly alleged, that injury is distinguishable from the public generally, and the injury would be alleviated by successfully maintaining the action. *Heffernan*, ¶ 33.[1]

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[1] The Secretary argues the factors outlined in *Baxter Homeowners Ass'n v. Angel* should be considered when determining if MDP has organizational standing. In *Baxter*, the Supreme Court describes three criteria must be met for a litigant to bring an action on behalf of a third party:

> The litigant must have suffered an "injury in fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute . . . ; the litigant must have a close relation to the third party . . . ; and there must exist some hindrance to the third party's ability to protect his or her own interests.

Baxter Homeowners Ass'n v. Angel, 2013 MT 83, ¶ 15, 369 Mont. 398, ¶ 15, 298 P.3d 1145, ¶ 15 (quoting *Powers v. Ohio*, 499 U.S. 400, 410-11, 111 S. Ct. 1364, 1370-71, 113 L. Ed. 2d 411 (1991)). The Court does not apply these factors in its analysis of organizational standing given that MDP—in addition to alleged harm occurring to third parties—has alleged harm to its own interests, thus a third party standing test would

In the present case, MDP contends it meets the criteria for standing under both the organizational standing and associational standing exceptions. The Secretary argues MDP has neither. As to organizational standing, MDP argues it is directly injured by SB 169 and HB 176. MDP points to examples in the FAC including that MDP "invests significant resources in voter engagement efforts with the goal of registering and turning out eligible Democratic voters" and that these new laws will require MDP to spend resources contacting unregistered voters earlier in the election cycle and informing members about the new laws. Pls.' Resp. Mot. Dismiss ("Response") at 5-6 (citing FAC ¶¶ 9-13). MDP argues these expenditures will require it to "'reallocate resources from other efforts' and 'divert more funds from its other critical priorities.'" *Id.* at 6 (quoting FAC ¶¶ 11-13).

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not be applied. The Secretary also claims that the *Baxter* factors were somehow supported in *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814 claiming that that case:

> [M]akes clear that the Secretary's framework is correct. 'The test of whether an organizational plaintiff has standing is identical to the three-part test outlined above normally applied in the context of an individual plaintiff.'

Reply at 8 (quoting *Donald J. Trump for Pres., Inc. v. Bullock*, 491 F. Supp. 3d 814, 828 (D. Mont. 2020)). However, the federal court in that case was referring to the federal three-part standing framework which requires individual plaintiffs to show "'(1) [they have] suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Donald J. Trump for President, Inc. v. Bullock* (D. Mont. 2020), 491 F. Supp. 3d 814, 827 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)). Thus, the organizational standing requirement in that federal case was met when the organizational plaintiff met the standing requirements that federal courts have outlined for individuals. That court did not require additional third party standing factors be considered in finding the organization had standing.

The Secretary argues that MDP has failed to allege an injury in fact because MDP does not have the constitutional right to vote, MDP has not alleged a close relation with a voter allegedly burdened by the new laws, and MDP has not alleged a hindrance to the third party's ability to protect their own interests. Def.'s Mot. Dismiss ("Motion to Dismiss") at 9. The Secretary additionally argues MDP's claims of economic injury due to the effect of these laws "cannot be squared with its amended complaint. All MDP's claims against the voter ID and voter registration amendments allege harm to voters, not MDP." Def.'s Reply Supp. Mot. Dismiss ("Reply") at 6.

In the FAC, which the Court is to construe favorably towards the Plaintiffs and well-pled facts within it are taken as true, MDP has alleged economic injuries arising from the passing of HB 176 and SB 169 including the expenditure of additional resources to contact voters regarding their registration, to encourage them to vote and to inform voters of the changes these laws have made to the voting process. FAC ¶ 11. MDP describes that a key part of its mission "is its extensive get-out-the-vote ('GOTV') efforts" during which MDP's "employees, members, organizers, and volunteers reach as many voters as possible...providing information to voters about how to successfully cast their ballot and encouraging them to do so." FAC ¶ 10. MDP alleges economic harm due to the effect these laws will have on its GOTV program because 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." FAC ¶ 13. Thus, based on MDP's likelihood of

experiencing economic harm due to the alleged unconstitutionality of HB 176 and SB 169, the Court finds that MDP meets the first requirement for standing by clearly alleging that MDP will suffer an economic injury, which satisfies the injury requirement of standing.

Regarding the second requirement for standing— "the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party" —MDP's allegations of economic harm are unique to MDP. *Mont. Envtl. Info. Ctr.*,¶ 41. Thus, the alleged injury is distinguishable from injury to the public in general. The Court finds MDP has met the second requirement for standing.

Based on the above, the Court finds MDP has standing to challenge HB 176 and SB 169.

ii. Associational Standing

Associational standing serves as an exception "to the general prohibition on a litigant's raising a third party's legal rights." *Heffernan*, ¶ 44 (citing *United Food & Commer. Workers Union Local 751 v. Brown Grp.* (1996), 517 U.S. 544, 557, 116 S. Ct. 1529, 1536). Under associational standing, "an association has standing to bring suit on behalf of its members, even without a showing of injury to the association itself..." *Heffernan*, ¶ 43. An association has standing under this theory when:

> (a) at least one of its members would have standing to sue in his or her own right,

> (b) the interests the association seeks to protect are germane to its purpose, and (c) neither the claim asserted nor the relief requested requires the individual participation of each allegedly injured party in the lawsuit.

Id.; *see also Hunt v. Wash. State Apple Advert. Comm'n* (1977), 432 U.S. 333, 343, 97 S. Ct. 2434, 2441.

MDP argues it meets the requirements for associational standing because it described in the FAC that its members would have standing to sue based on the burdens these laws impose on them, the FAC evidences that these new laws affect MDP's purpose, and declaratory and injunctive relief from these laws would not require the participation of each allegedly injured voter. Response at 8.

The Secretary argues MDP has not alleged any of its members have "standing to challenge SB 169 or HB 176, as it has not identified a member whose constitutional rights allegedly are implicated by either law." Motion to Dismiss at 8. The Secretary also argues the interests MDP seeks to protect are not germane to MDP's purpose because "there is no identity of interest between MDP" and groups including "students, the young, the elderly, the indigent, and indigenous Montanans" and "MDP is wrong to imply that one's political destiny is determined by membership in a particular demographic…" *Id.* at 8. Lastly, the Secretary argues "this matter demands participation of 'allegedly injured part[ies]'" and "MDP has no right to vote that may be infringed." *Id.* at 9.

The Court finds that the Secretary's interpretation of associational standing is incorrect. It seems to this Court that requiring an individual member to participate

when prospective relief is sought defeats the purpose of associational standing. The Montana Supreme Court has upheld the District Court in such a situation in *JRN Holdings v. Dearborn Meadows Land Owner's Association (DMLOA).* Specifically in that case, the Montana Supreme Court described that the District Court was correct when it determined the DMLOA satisfied the test for associational standing. *JRN Holdings, Ltd. Liab. Co. v. Dearborn Meadows Land Owners Ass'n,* 2021 MT 204, ¶ 23, 493 P.3d 340, ¶ 23. The Court describes as to the first prong of the test: "all DMLOA members would have standing to bring a claim seeking declaratory or injunctive relief" when all the members of the DMLOA were harmed by the action at issue. *Id.* As to the second prong: "the DMLOA, by defending against JRN's suit and pursuing its easement claims, is acting on its corporate purposes as defined in its Articles of Incorporation..." *Id.*

In regard to the third prong of the test, the Court described, "all DMLOA members need not participate in this suit" because, similar to an Idaho case, there was no need for "individualized findings of injury that would require the direct participation of its members as named parties." *Id.* (quoting *Beach Lateral Water Users Ass'n v. Harrison* (2006), 142 Idaho 600, 604, 130 P.3d 1138, 1142 at ¶ 24). The Court further described that "[b]eacuse the DMLOA sought relief in the form of declaratory and injunctive relief, rather than to quiet title in its own name or in the names of its members, the District Court correctly held that it satisfied the third requirement of the *Hunt* test." *Id.* at ¶ 24.

Here, MDP alleges its members will now be required to register prior to voting in future elections and all of its "members and constituents will be required to prove their identity in order to vote." FAC ¶ 14. Some of these members will have difficulty producing the necessary ID to vote and others "will effectively be denied their right to vote by the Election Day Registration Ban." *Id.* Thus, MDP has shown that at least one of its members would have standing to sue in his or her own right.

MDP stated purpose is to "elect Democratic Party candidates" which it attempts to achieve by "educating, mobilizing, assisting, and turning out voters throughout the state." FAC ¶ 8. Thus, MDP alleges these new laws will make it more difficult for its members to vote and therefore affects MDP's purpose of electing Democratic Party Candidates. *See* FAC ¶¶9-4. Thereby, the interests MDP seeks to protect are germane to its purpose.

Finally, the last prong of the test is whether the claim asserted, or relief requested requires individual participation of all the allegedly injured parties in the lawsuit. *Heffernan*, ¶ 43. MDP seeks declaratory relief which does not require the individual participation of each allegedly injured individual, satisfying the third prong of associational standing. *See e.g., JRN Holdings, Ltd. Liab. Co.*, ¶ 23

In sum, the Court finds MDP has standing under both organizational and associational standing.

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b. Plaintiff's Claims for Relief

i. Count I

Under the Montana Constitution, equal protection "embodies 'a fundamental principle of fairness: that the law must treat similarly-situated individuals in a similar manner.'" *Gazelka v. St. Peter's Hosp.*, 2018 MT 152, ¶ 7, 392 Mont. 1, ¶ 7, 420 P.3d 528, ¶ 7 (quoting *McDermott v. State Dep't of Corr.*, 2001 MT 134, ¶ 30, 305 Mont. 462, 29 P.3d 992). Montana's equal protection clause serves "to ensure that Montana's citizens are not subject to arbitrary and discriminatory state action." *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 16, 302 Mont. 518, ¶ 16, 15 P.3d 877, ¶ 16.

Equal protection claims are evaluated under a three-step process. *Hensley v. Mont. State Fund*, 2020 MT 317, ¶ 18, 402 Mont. 277, ¶ 18, 477 P.3d 1065, ¶ 18. These three steps require identification of the classes involved and a determination as to if the classes are similarly situated, a determination of which level of scrutiny to apply, and the application of that level of scrutiny to the statute. *Hensley*, ¶ 18. Additionally, "[a] law or policy that contains an apparently neutral classification may violate equal protection if 'in reality [it] constitutes a device designed to impose different burdens on different classes of persons.'" *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 16, 325 Mont. 148, ¶ 16, 104 P.3d 445, ¶ 16 (quoting *State v. Spina*, 1999 MT 113, P85, 294 Mont. 367, P85, 982 P.2d 421, P85). In *Fitzpatrick v. State*, the Montana Supreme Court described that the Fifth Circuit was persuasive when it noted "that disproportionate

impact of a facially neutral law will not make the law unconstitutional, unless a discriminatory intent or purpose is found." *Fitzpatrick v. State* (1981), 194 Mont. 310, 323, 638 P.2d 1002, 1010 (citing *Spinkellink v. Wainwright* (5th Cir. 1978), 578 F.2d 582, 615).

If the law affects a fundamental right, strict scrutiny is applied. *Snetsinger*, ¶ 17. Middle-tier scrutiny is applied "if the law...affects a right conferred by the Montana Constitution, but is not found in the Constitution's Declaration of Rights." *Id.* ¶ 18. When neither strict nor middle-tier scrutiny is appropriate, rational basis scrutiny is applied. *Id.* ¶ 19.

At the stage in the litigation, if the FAC "states facts sufficient to constitute a cause of action upon any theory, then the motion to dismiss must be overruled. However, when a complaint alleges facts and, assuming the facts are true, there still is no claim for relief stated under any theory, a motion to dismiss must be granted." *Duffy v. Butte Teachers' Union* (1975), 168 Mont. 246, 253, 541 P.2d 1199, 1203 (citing *Magelo v. Roundup Coal mining Co.*, 109 Mont. 293, 300, 96 P.2d 932).

Plaintiffs identified young voters in Montana as the class that is treated differently from other voters because HB 176 and SB 169 "constrict identification and voting methods disproportionately used by them." Response at 11 (citing FAC ¶¶119-20; ¶¶ 122-123). Plaintiffs claim SB 169 and HB 176 impose "heightened and unequal burdens on the right to vote, particularly for Montana's youngest voters." FAC ¶ 118.

The Secretary argues both laws are neutral and impact all voters the same way. Reply at 9-10.

Specifically, regarding SB 169, Plaintiffs allege that prohibiting the use of student ID cards and registration confirmation forms as primary forms of ID, both of 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." FAC ¶ 119; ¶ 75 (citing § 13-13-114(1)(1), MCA). Plaintiffs further describe that young Montana voters without acceptable primary forms of ID under HB 169, "will be forced to rely on a poorly defined and confusing hodgepodge of acceptable identifying documentation in the hopes of casting their ballots" and that "some young voters may lack those forms of identifying documentation entirely." *Id.*

As to HB 176, Plaintiffs describe that young Montana voters will have their right to vote disproportionately abridged by banning election day registration because it will be more difficult for young Montanans to register and to cast an effective ballot. FAC ¶ 120. Plaintiffs explain "[a]s research shows, young voters are much more likely than the general electorate to use [Election Day Registration]—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." *Id.*

The Secretary argues "the laws do not draw a line between classes of voters as required to state an equal protection claim...[a]nd even if they did, the claim would fail again at the second and third steps" of the equal protection analysis. Motion to Dismiss at 10. The Secretary also argues that "MDP alleges no facts to support its bare legal allegation that the Legislature intended to discriminate against young voters." Reply at 9.

Plaintiffs alleged that Montana legislators knew HB 176 and SB 169 "would place heightened burdens on Montana's youngest voters when it passed all three laws." FAC ¶ 122. Plaintiffs describe that "[t]he Montana Legislature heard direct testimony from both student voters and advocacy organizations that restrictions like these would impose barriers on the franchise for young voters; it passed the bills anyway in direct contravention of Montana's Equal Protection Clause." *Id.* Thus, Plaintiffs allege the Montana Legislature passed these laws "with the intent and effect of placing increased barriers on young Montanans who wish to exercise their fundamental right to vote." FAC ¶ 123. Plaintiffs lastly argue that these laws would not hold up under constitutional scrutiny. FAC ¶¶ 124-125. The Secretary argues these laws would be subject to rational basis and would pass easily. Reply at 14.

Taking the well-pled allegations in the FAC as true and viewing them in the light most favorable to the Plaintiffs, the Court finds that Plaintiffs have sufficiently pled that SB 169 and HB 176 violate the Equal Protection Clause. Plaintiffs alleged that young

voters are uniquely affected by SB 169's changes to allowable forms of primary IDs and its changes to acceptable secondary forms of IDs. Plaintiffs alleged that HB 176's ban on election day registration uniquely affects young voters due to their need to register to vote with more frequency than the general public. Plaintiffs have also alleged sufficient facts to support discriminatory intent. Whether these laws are subject to strict, middle-tier, or rational basis scrutiny is not for the Court to decide today given that under any of those constitutional reviews, there is still a plausible claim being presented.

Therefore, the motion to dismiss Count I is **DENIED.**

ii. Count II

In Count II of the FAC, Plaintiffs allege HB 176 burdens Montanans' right of suffrage by burdening the right to vote. Plaintiffs allege this change will particularly affect "students, the elderly, the disabled and indigenous communities." FAC ¶ 130. Plaintiffs allege that due to the election day registration ban, "[a]t 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." *Id.*

Additionally, Plaintiffs described that "[v]oters in Montana are nearly 16 times more likely to register on election day than on any other day during the late registration period." FAC ¶ 32. Further, "[b]etween 2006 and 2018, a total of 61,188 Montanans

registered to vote on election day." *Id*. Plaintiffs describe that testimony from differing groups in Montana about their reliance on election day registration due to distances to polling locations, unreliable mail, the need for assistance to get to polling locations, and other obstacles to voting that were remedied due to election day registration was heard by the Legislature but the Legislature moved to eliminate it anyway. FAC ¶¶ 36-45. As previously discussed above, Plaintiffs have also described the need to expend additional resources in order to educate voters about these changes to the process of voting.

The Secretary argues the Legislature is granted "explicit discretion to enact election day registration in Article IV, § 3" of the Montana Constitution. Motion to Dismiss at 16; *see also* Reply at 14-15. The Secretary points to the statement that the Legislature "may provide for a system of poll booth registration" as determinative of the Legislature's ability to enact or rescind election day registration. The Secretary describes that under a plain reading of that provision it is clear "the Framers made election day registration the Legislature's choice." *Id*. at 16.

While Article IV, § 3 gives the Legislature authority to provide for a system of poll booth registration, the laws passed by it in order to provide that system are still subject to judicial review and "determining the constitutionality of a statute is the exclusive province of the judicial branch." *Brown v. Gianforte*, 2021 MT 149, ¶ 24, 404 Mont. 269, ¶ 24, 488 P.3d 548, ¶ 24 (discussing *Marbury v. Madison*, 5 U.S. 137, 177, 2 L.

Ed. 60, 1 Cranch 137 (1803)). Moreover, "once the Legislature has acted, or 'executed,' a provision that implicates individual constitutional rights, courts can determine whether that enactment fulfills the Legislature's constitutional responsibility." *Id.* at ¶ 23 (citing *Columbia Falls Elem. Sch. Dist. No. 6 v. State,* 2005 MT 69, ¶ 17, 326 Mont. 304, ¶ 17, 109 P.3d 257, ¶ 17).

Thus, just because the Legislature chose to enact election day registration and expand voting rights does not mean the Legislature can water down those rights without a review of the constitutionality of that action. Plaintiffs have sufficiently pled that HB 176 burdens Montanans' right to vote. The motion to dismiss Count II is **DENIED.**

iii. Count III

In Count III of the FAC, Plaintiffs allege that SB 169 unconstitutionally violates the right to vote. FAC ¶¶ 132-135. The Secretary moved to dismiss Count III claiming Plaintiffs failed to state a claim because their allegations were "fact-free" and only contained "broad, speculative allegations of *potential* impact on non-plaintiff students and other voters." Motion to Dismiss at 18 (emphasis in original).

The Court finds the argument made by the Secretary that Plaintiff's purported "misreading of SB 169" somehow undercuts their entire claim unavailing. *See* Def's Reply at 18. SB 169 does in fact expressly remove "notice of confirmation of voter registration" as a document that could be used in combination with something else for

purposes of proving identity. The Secretary argues that phrase was removed due to it being redundant with the option to show "other government document that shows the elector's name and current address." Motion to Dismiss at 18. However, the Court does not see how that changes Plaintiff's allegation it will need to expend resources to notify voters about the changes made by SB 169 to the requirements that need to be met to vote.

As discussed above, Plaintiffs assert that SB 169 made changes in addition to the removal of "the notice of confirmation of voter registration." *See e.g.*, FAC ¶ 65 (describing "through SB 169, the Legislature imposed more stringent voter ID requirements that make voting less accessible and more difficult for those who lack the preferred forms of ID, including Montana college or university students whose school IDs are no longer sufficient for voting.") Also, MDP described it "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..." FAC ¶ 11. Plaintiffs have alleged that prior to the passing of SB 169, voters could use a student ID as a primary form of identification. After the passing of SB 169, to use a student ID, voters must also present some additional identifying information. Plaintiffs described young voters may not have these additional forms of identifying information, and thus, may not be able to

exercise their right to vote due to the passage of SB 169, thus burdening the right of suffrage, which encompasses the right to vote.

Thus, the motion to dismiss Count III is **DENIED.**

c. Elections Clause

The Secretary claims the Elections Clause of the U.S. Constitution bars the Court from hearing these legal challenges to these laws passed by the Legislature. Motion to Dismiss at 19 (citing U.S. Const. art. I, § 4, cl. 2). Specifically, the Secretary argues the Elections Clause constrains "the authority of state courts to modify the time, place, and manner of *federal elections*." Reply at 20 (emphasis in original).

The Court finds this argument unavailing. "[C]ourts, as final interpreters of the Constitution, have the final 'obligation to guard, enforce, and protect every right granted or secured by the Constitution . . . .'" *Columbia Falls Elem. Sch. Dist.* No. 6 v. State, 2005 MT 69, ¶ 18, 326 Mont. 304, ¶ 18, 109 P.3d 257, ¶ 18 (quoting *Robb v. Connolly* (1884), 111 U.S. 624, 637, 4 S. Ct. 544, 551, 28 L. Ed. 542, 546). When the Legislature has "acted, or 'executed,' a provision (2) that implicates individual constitutional rights, courts can determine whether that enactment fulfills the Legislature's constitutional responsibility." *Id.*, ¶ 17 (citing *City of Boerne v. Flores* (1997), 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624).

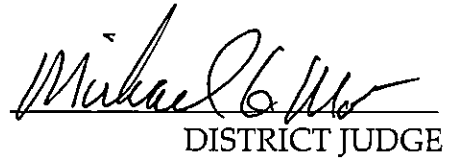
Thus, the Court finds the Elections Clause of the U.S. Constitution is not a basis for dismissal of the FAC.

IV. CONCLUSION

The Court, being fully informed, having considered all briefs on file and in-court arguments, makes the following decision:

IT IS HEREBY ORDERED Defendant's motions to dismiss Counts I, II, and III are **DENIED.**

DATED this 5th day of November, 2021



DISTRICT JUDGE

cc: Dale Schowengerdt
David M.S. Dewhirst
Austin Marcus James
Peter M. Meloy
Matthew Gordon
John Heenan

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email/mail/hand upon the parties or their attorneys of record at their last known addresses this 10 day of November, 2021.

BY

Judicial Assistant to Hon. Michael G. Moses