

David M.S. Dewhirst (MT Bar #65934132)

Solicitor General

Kathleen L. Smithgall (MT Bar #67323943)

Office of the Attorney General

P.O. Box 201401

Helena, MT 59620-1401

Telephone: (406) 444-2026

Austin Markus James (MT Bar #58422031)

Chief Legal Counsel

Office of the Secretary of State

Montana Capitol Building, Room 260

P.O. Box 202801

Helena, MT 59620-2801

Telephone: (406) 444-6197

Dale Schowengerdt (MT Bar #30342848)

Ian McIntosh (MT Bar #4384)

David F. Knobel (MT Bar #212614)

Clayton Gregersen (MT Bar #36387689)

CROWLEY FLECK PLLP

Helena, MT 59601

P.O. Box 797

Helena, MT 59624-0797

Telephone: (406) 449-4165

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

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

Montana Democratic Party,

Plaintiff,

vs.

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

Defendant.

Cause No.: DV-56-2021-451

Hon. Michael Moses

**DEFENDANT'S STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

WESTERN NATIVE VOICE, Montana Native
Vote, Blackfeet Nation, Confederated Salish
and Kootenai Tribes, Fort Belknap Indian
Community, and Northern
Cheyenne Tribe,

Plaintiffs,

vs.

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

Defendant.

Montana Youth Action, Forward Montana
Foundation, and Montana Public Interest
Group,

Plaintiffs,

vs.

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

Defendant.

Defendant Christi Jacobsen, in her official capacity of Montana Secretary of State
("Defendant"), submits this Statement of Undisputed Facts In Support Of Her Motion For
Summary Judgment.

Americans Lack Confidence In Elections

1. Recent opinion polls and academic research establish an alarming trend: a
substantial and increasing number of Americans lack confidence in their elections. *See*
NPR/Ipsos Poll, *Seven in ten Americans say the country is in crisis, at risk of failing* (Jan. 3, 2022),
available at <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-01/Topline->

[NPR-Ipsos-poll.pdf](#) (last accessed Feb. 10, 2022) (Exhibit 1-1)¹; *see also* ABC News/Ipsos Poll, *A survey of the American general population* (Jan. 6, 2022), available at [https://www.ipsos.com/sites/default/files/ct/news/documents/2022-01/Topline%20ABC Ipsos%20Poll%20January%206%202022.pdf](https://www.ipsos.com/sites/default/files/ct/news/documents/2022-01/Topline%20ABC%20Ipsos%20Poll%20January%206%202022.pdf) (last accessed Feb. 10, 2022) (Exhibit 1-2); *see also* Pippa Norris, *Do perceptions of electoral malpractice undermine democratic satisfaction? The US in comparative perspective*, *International Political Science Review* (2019, Vol. 40), available at <https://journals.sagepub.com/doi/pdf/10.1177/0192512118806783> (last accessed Feb. 10, 2022) (Exhibit 1-3); *see also* Harvard Kennedy School's Electoral Integrity Project, *Election Integrity in the 2020 U.S. Elections* (Dec. 1, 2020), available at <https://static1.squarespace.com/static/58533f31bebafe99c85dc9b/t/604784f8451f52636f8315bb/1615299838676/PEI-US-2020+Report.pdf> (last accessed Feb. 10, 2022) (Exhibit 1-4); *see also* Center for Democracy and Election Management at American University, *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* (Sept. 2005) (Exhibit 1-5); *see also* Charles Stewart III, *Managing Polling Place Resources*, Caltech/MIT Voting Technology Project (Dec. 2015), available at <https://web.mit.edu/vtp/Managing%20Polling%20Place%20Resources.pdf> (last accessed Feb. 10, 2022) (Exhibit 1-6) *see also* Kyle Endres and Costas Panagopoulos, *Photo identification laws and perceptions of electoral fraud*, *Research & Politics* (July 2021), available at <https://journals.sagepub.com/doi/pdf/10.1177/20531680211030435> (last accessed Feb. 10, 2022) (Exhibit 1-7).

¹ Exhibits referenced are attached to both Defendant's Brief in Response to Plaintiffs' Preliminary Injunction Motions and in Support of Defendant's Motion for Summary Judgment and the Declaration of Dale Schowengerdt (Exhibit 1).

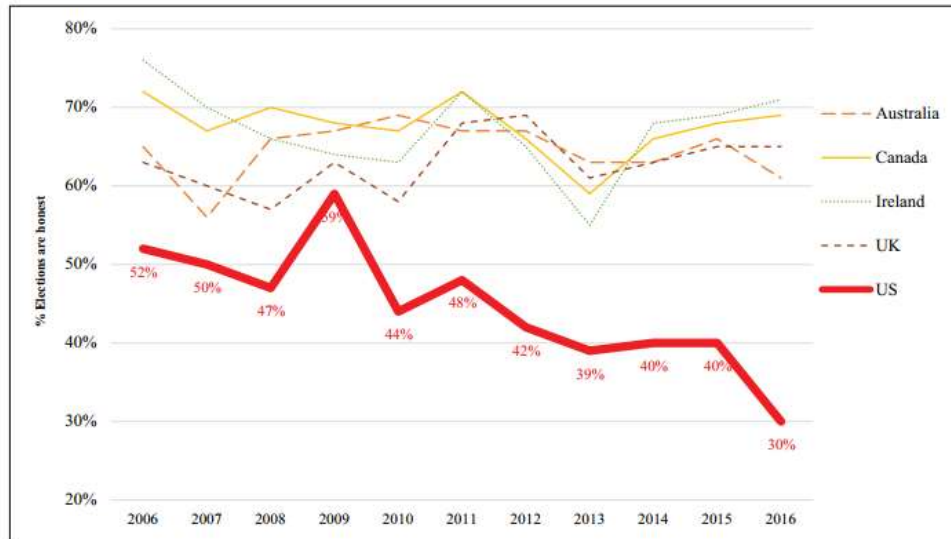
2. An NPR/Ipsos poll published in January 2022 concluded that 64% of Americans believe “American democracy is in crisis.” *See* Exhibit 1-1.

3. According to the NPR/Ipsos poll, only 48% of Americans believe that there was “either no fraudulent voting” or “very little” fraudulent voting in the 2020 presidential election in the United States. *See* Exhibit 1-1. Conversely: (i) 22% of Americans believe “there was major fraudulent voting” in the 2020 presidential election that “changed the results of the election”; and (ii) an additional 9% of Americans believe there was “significant fraudulent voting” in the 2020 presidential election, “but it had no impact on the results.” *See* Exhibit 1-1.

4. The NPR/Ipsos poll results generally were confirmed by an ABC/Ipsos poll, also published in January 2022. *See* Exhibit 1-2. According to the ABC News/Ipsos Poll, 41% of Americans are “not confident” in the “integrity of the U.S. electorate system overall.” *See* Exhibit 1-2.

5. Although the 2020 presidential election exacerbated Americans’ lack of confidence in their elections, the 2020 presidential election is not the root cause of Americans’ lack of confidence. According to the International Political Science Review (“IPSR”), the number of Americans who believed “in the honesty of their country’s elections” declined steadily from 2006 to 2016, especially when compared to other major democracies. *See* Exhibit 1-3, p. 15.

Figure 1. Public confidence in the honesty of their country's elections in five Anglo-American democracies, 2006–2016.



Q: 'In this country, do you have confidence in each of the following, or not? How about honesty of elections?' Response options: Yes/No/Don't know. (% Yes)

Source: The Gallup World Poll <http://www.gallup.com/analytics/213704/world-poll.aspx>

6. According to data analyzed by the IPSR, “there is now plummeting trust in the integrity of American elections” and “American trust in their elections has been persistently lower than many comparable democracies during the last decade.” Exhibit 1-3, p. 14.

7. IPSR’s data review concluded that Americans’ lack of trust in American elections is consistent across political ideologies: “What is perhaps most striking, given the strength of party polarization on so many issues in contemporary America . . . is that the gap between Clinton and Trump voters in the overall electoral integrity and malpractice scales is remarkably modest (two percentage points).” Exhibit 1-3, p. 15.

8. Based on its interpretation of the underlying data and academic analyses of democratic societies, IPSR determined that “if citizens believe, **for whatever reason**, that an election is deeply flawed or even stolen, doubts are likely to spread rapidly to other core political

institutions” because “most people regard free and fair elections . . . as the core pillars of democracy.” Exhibit 1-3, p. 7 (emphasis added). That analysis and underlying data supported IPSR’s conclusion that “doubts about electoral integrity do indeed undermine general satisfaction with how democracy works.” Exhibit 1-3, p. 5.

9. Ultimately, IPSR concluded: “If the public comes to believe that electoral malpractice is widespread . . . then even in long-standing democracies this can corrode public faith in democracy itself[.]” Exhibit 1-3, p. 19.

10. The U.S. Supreme Court reached a similar conclusion in 2006. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. ‘[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise’”) (citation omitted).

11. IPSR’s analysis was confirmed by Harvard University’s Electoral Integrity Project when it analyzed the 2020 U.S. presidential election. *See* Exhibit 1-4. Although it did not find evidence of “widespread fraud” in the 2020 U.S. Elections, “this does not imply that experts believe . . . the 2020 American elections should be given a clean bill of health.” Exhibit 1-4, p. 5.

12. Harvard University’s Electoral Integrity Project surveyed 789 political scientists across the United States. Exhibit 1-4, p. 10. Those experts concluded the two greatest problems facing American elections were: (i) “acceptance of the integrity of the elections by all parties”; and (ii) “public trust and confidence in the elections.” Exhibit 1-4, p. 16.

13. When Harvard University's Electoral Integrity Project compared the 2016 U.S. presidential election to the 2020 U.S. presidential election, that comparison revealed "several warning flags, namely **worsening** confidence in the integrity of American elections and falling public trust[.]" Exhibit 1-4, p. 5 (emphasis added). Ultimately, the Project recommended that political leaders, including state legislatures, should "identify effective ways to strengthen American elections and democracy." Exhibit 1-4, p. 6; *see also* Exhibit 1-4, p. 18 ("To prevent further deterioration of public confidence in future elections, this report recommends that structural weaknesses should be addressed by a program of comprehensive reforms designed to restore confidence and trust in the electoral process."). Such action is necessary, according to the Project, because "[d]oubts about electoral integrity among ordinary citizens have the capacity to undermine general satisfaction with the electoral process and how democracy works." Exhibit 1-4, p. 7.

14. Legislative actions are necessary to improve public perceptions of American elections; on average, "in elections from 2012-2018, the Perceptions of Electoral Integrity (PEI) Index ranked the U.S. 57th out of 165 countries around the globe." Exhibit 1-4, p. 12. Notably, expert assessments of Montana's performance in the 2020 elections resulted in a PEI Index score of 77, slightly **below** the average score of 79 among the 50 states. Exhibit 1-4, p. 15. In other words, public perceptions of electoral integrity in Montana elections are **lower** than in most other states, even when considering the prevailing lack of trust in elections present in American society as a whole.

15. The need for election reform in the United States has been apparent since at least 2004, when former United States President Jimmy Carter and former United States Secretary of

State James A. Baker chaired the Commission on Federal Election Reform (“CFER”), a bipartisan effort to strengthen American elections. Exhibit 5. After studying American elections—including issues highlighted by the 2000 recount of the presidential election in Florida—CFER drafted a report (the “Carter-Baker Report”), the purpose of which was to “recommend ways to raise confidence in the electoral system.” Exhibit 1-5, p. ii.

16. The CFER was composed of 21 different members. Exhibit 5, pp. 93-98. The Carter-Baker Report describes its members as follows: “We are Republicans, Democrats, and Independents. But we have deliberately attempted to address electoral issues without asking the question as to whether a particular party would benefit from a particular reform. We have done so because our country needs a clear unified voice calling for serious election reform.” Exhibit 1-5, p. 7.

17. The CFER was “united in the view that electoral reform is essential” and urged “all Americans,” including State legislatures, to “recognize the urgency of election reform[.]” Exhibit 1-5, p. ii. The CFER believed “the time for acting to improve our election system is now” because if America’s “elections are defective, the entire democratic system is at risk.” Exhibit 1-5, p. ii. Stated differently, “[p]ublic confidence in the electoral system is critical for our nation’s democracy.” Exhibit 1-5, p. 1; *see also Purcell*, 549 U.S. at 4.

18. The Carter-Baker Report began its analysis by noting that “American are losing confidence in the fairness of elections,” as confirmed by numerous polls, and that there was “growing skepticism with our electoral system.” Exhibit 1-5, p. ii-iv. In particular, the Report found that “only one-third of the American people said that they had a lot of confidence that their votes would be counted properly” and “a minority of Americans—only 48 percent—said

they were very confident that the votes cast across the country were accurately counted.” Exhibit 1-5, p. 1. “Significant segments of the American public” had lost faith in elections due to concerns “about voter fraud, voter suppression, and the fairness of the election process in general,” including in response to “long lines at polling stations.” Exhibit 1-5, p. 49; *see also* Exhibit 6, p. 10 (“in the American setting, it can be shown that long lines discourage voting, lower voting confidence, and impose economic costs”). The Carter-Baker Report concluded those deep-seated concerns were antithetical to American democracy because the “vigor of our democracy depends on an active and engaged citizenry who believe that their votes matter and are counted accurately.” Exhibit 1-5, p. 69.

19. The Carter-Baker Report also acknowledge that Americans’ concerns regarding election integrity were justified by concerns of voter fraud. *See* Exhibit 1-5, p. 18 (“the perception of possible fraud contributes to low confidence in the system”). “While the Commission is divided on the magnitude of voter fraud . . . **there is no doubt that it occurs.**” Exhibit 5, p. 18 (emphasis added); *see also* Exhibit 5, p. 45 (“**While election fraud is difficult to measure, it occurs.**”) (emphasis added); *see also* Exhibit 1-5, p. 4 (identifying documented instances of election fraud).

20. However, the Carter-Baker Report also acknowledged that incidents of voter fraud did not receive sufficient attention from prosecutors and law enforcement because allegations of voter fraud “usually attracts public attention and comes under investigation only in close elections.” Exhibit 1-5, p. 45 (identifying successful prosecutions of voter fraud, including “convictions related to a variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens”).

21. The Carter-Baker Report urged Americans “to view the administration of elections as a continuing challenge, which requires the highest priority of our citizens and our government.” Exhibit 1-5, pp. v, 1, 70. In particular, the Report found that “further important improvements are necessary to remove any doubts about the electoral process” and “to assure the integrity of the electoral system.” Exhibit 1-5, p. 1.

22. The Carter-Baker Report proposed “five sturdy pillars” for “transforming the electoral system.” Exhibit 1-5, pp. iv-v, 6.

23. One of the pillars of the Carter-Baker Report was a recognition of the need for robust voter identification laws. Exhibit 1-5, pp. iv-v, 6. According to the Carter-Baker Report, robust voter identification laws are the “bedrocks of a modern election system” and “essential to guarantee the free exercise of the vote by all U.S. citizens.” Exhibit 1-5, pp. 9-10; *see also* Exhibit 1-7, p. 5 (scientifically establishing that voter identification laws, including “photo ID” requirements, “can reduce perceptions of voter fraud when the public learns about these restrictions”).

24. According to the Carter-Baker Report: “The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo IDs currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.” Exhibit 1-5, p. 18. Adopting and implementing voter identification requirements “could deter, detect, or eliminate several potential avenues of fraud—such as multiple voting or voting by individuals using the identities of others or those who are deceased—and thus it can enhance confidence.” Exhibit 1-5, p. 18.

25. Social scientists have used empirical evidence to confirm voter identification laws do not decrease voting turnout. *See* Enrico Cantoni and Vincent Pons, *STRICT ID LAWS DON'T STOP VOTERS: EVIDENCE FROM A U.S. NATIONWIDE PANEL, 2008-2018*, National Bureau of Economic Research (Revised May 2021), available at https://www.nber.org/system/files/working_papers/w25522/w25522.pdf (last accessed Feb. 10, 2022) (Exhibit 1-8).

26. Researchers who have studied even “strict [voter] ID laws” have found “no significant negative effect on registration or turnout, overall or for any subgroup defined by age, gender, race, or party affiliation.” Exhibit 1-8, pp. 1-2. Furthermore, “strict ID requirements do not decrease the participation of ethnic minorities relative to whites.” Exhibit 1-8, p. 2; *see also* Exhibit 1-8, p. 20. If anything, empirical evidence establishes that “parties and candidates who fear they might lose votes as a result of strict ID requirements mobilize their supporters around this issue.” Exhibit 1-8, p. 2; *see also* Exhibit 1-8, p. 9 (“the effects of the laws on Democratic turnout may be null or even positive”); *see also* Exhibit 1-8, pp. 22-23.

27. Social scientists have concluded that “the effect of strict photo ID laws [on voter turnout] is not significantly different than zero.” Exhibit 1-8, p. 3. Rather, “the very existence of stricter controls at polling places could be perceived as an improvement in election administration and increase voter confidence,” i.e., increase voter participation overall. Exhibit 1-8, p. 5. Thus, it is not surprising empirical evidence establishes strict voter ID laws “are supported by a large majority of the overall population.” Exhibit 1-8, p. 6.

28. The Carter-Baker Report recommended States adopt voter identification laws much more stringent than those recently adopted in Montana. Specifically, the Report

“recommend[ed] that states use ‘REAL ID’ cards for voting purposes.” Exhibit 1-5, p. 19. The REAL ID Act—federal legislation signed into law in 2005—“requires states to verify each individual’s full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver’s license or personal ID card.” Exhibit 1-5, p. 19.

29. In addition to recommending States adopting voter identification laws, the Carter-Baker Report also recommended that States regulate voting by absentee ballot, which it concluded was “the largest source of voter fraud” in the United States. Exhibit 1-5, pp. 46-47.

30. The Carter-Baker Report established: “Absentee balloting is vulnerable to abuse in several ways: Blank ballots mailed to the wrong address or to large residential buildings might get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, and to intimidation.” Exhibit 1-5, p. 46; *see also* Exhibit 1-5, p. 47 (“State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials. **The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.**”) (emphasis added).

31. To protect against voter fraud associated with voting by absentee ballot, the Carter-Baker Report recommended States prohibit “‘third-party’ organizations, candidates, and political party activists from handling absentee ballots.” Exhibit 1-5, p. 46.

32. Political operatives have exploited the risks of voting by absentee ballots in recent years, most notably in the 2018 election for North Carolina’s 9th Congressional District. *See* John Bowden, *House Dems signal possible probe of disputed North Carolina election*, Capitol Hill

Publishing Corp. (Jan. 5, 2019) (Exhibit 1-9); *see also* Max Greenwood, *North Carolina board calls for new election in contested House race*, Capitol Hill Publishing Corp. (Feb. 21, 2019) (Exhibit 1-10); *see also* Michael Graff and Nick Ochsner, ‘*This Smacks of Something Gone Awry*’: *A True Tale of Absentee Vote Fraud*, Politico Magazine (Nov. 29, 2021), available at <https://www.politico.com/news/magazine/2021/11/29/true-tale-absentee-voter-fraud-north-carolina-523238> (last accessed Feb. 11, 2022) (Exhibit 1-11) (detailing how, as established in North Carolina, “**fraud involving absentee ballots is a real thing**”) (emphasis added).

33. Even if voter fraud is not widespread in American democracy, the Carter-Baker Report recommended States bolster voting laws and raise confidence in elections because in “close or disputed elections, and there are many, a small amount of fraud could make the margin or difference.” Exhibit 1-5, p. 18.

Montanans Lack Confidence In Elections

34. Just like Americans generally, Montana voters also lack confidence in the integrity of their elections. For example, a significant majority—nearly 63%—of Montanans voted to enact LR-129 in 2018. *See* Montana Secretary of State Corey Stapleton, *2018 Statewide General Election Canvass* (Nov. 6, 2018), available at <https://sosmt.gov/wp-content/uploads/2018GeneralReportStateCanvass.pdf> (last accessed Feb. 10, 2022) (Exhibit 1-12). LR-129 would have strengthened Montana election law by placing certain restrictions on the practice of third-party ballot collection in Montana. *See* Montana Legislature, *Ballot Language for Legislative Referendum No. 129* (May 3, 2017), available at <https://sosmt.gov/wp-content/uploads/LR-129.pdf> (last accessed Feb. 10, 2022) (Exhibit 1-13). A majority of Montanans support stronger election laws.

35. Polls conducted after the general election in 2020 showed that young voters voted more often for Republican candidates than for Democratic candidates. *See* Missoula Current, What happened? Most pollsters greatly underestimated GOP vote in Montana (November 11, 2020) available at <https://missoulacurrent.com/government/2020/11/montana-polls/>; The New York Times, Montana Exit Polls: How Different Groups Voted (November 2020) available at https://www.nytimes.com/interactive/2020/11/03/us/elections/exit-polls-montana.html?action=click&module=ELEX_results&pgtype=Interactive®ion=StateSubNav.

36. There are various valid reasons why Montanans distrust elections. First and foremost, it is indisputable that voter fraud occurs in Montana. For example, two “foreign residents working in Phillips County on temporary visas were recently cited with falsifying their voter registration information prior to the 2021 Dodson municipal election.” *See* Sam Wilson, 2 *Phillips County residents charged with falsifying voter registrations*, Helena Independent Record (Feb. 7, 2022), available at https://helenair.com/news/state-and-regional/govt-and-politics/2-phillips-county-residents-charged-with-falsifying-voter-registrations/article_f388ec04-aa90-5892-b889-9dc27cdd00a4.html (last accessed Feb. 10, 2022) (Exhibit 1-14); *see also* Phillips County Criminal Complaints—Jannet B. Zeta and Grace O. Albia (Oct. 12, 2021) (Exhibit 1-15). Both individuals were “cited for deceptive election practices and for violating the state’s law requiring U.S. citizenship to register to vote.” Exhibit 1-14; *see also* Exhibit 1-15. Notably, the election those two individuals voted in was decided by two votes, with “[i]ncumbent mayor Angel Arocha [winning] by 21-19 over Glenn Dolphay, according to the county’s official canvass of the results.” Exhibit 1-14.

37. Similarly, “Michael Winters of Gallatin County pleaded guilty . . . to falsifying information on voter registration application in early 2020.” *See* Associated Press, *Montana man sentenced for falsifying voter registration*, Billings Gazette (Jun. 8, 2021), available at https://billingsgazette.com/news/state-and-regional/crime-and-courts/montana-man-sentenced-for-falsifying-voter-registration/article_67f360f9-3539-54ff-8b29-163533b4e7d0.html (last accessed Feb. 10, 2022) (Exhibit 1-16). Winters, who previously had “talked about how easy it would be to commit voter fraud” in Montana, successfully submitted “a voter registration application under the name Miguel Raton, a rough Spanish translation of Mickey Mouse” and received “ballots for two elections” under that name. Exhibit 1-16. District Judge Peter Ohman, who sentenced Winters, reportedly stated: “This was a serious offense and, obviously, with all that’s going on with elections now and election integrity, this is something that is obviously front and center[.]” Exhibit 1-16.

38. Other documented instances of voter fraud in Montana exist.

39. Alan Lloyd Skari of Liberty County “pled guilty” to voting using “his ex-wife’s mail-in ballot, without her permission” in 2011. *See* Hugh B. Brown, *Information on Voter Fraud*, Liberty County Attorney’s Office (June 20, 2012) (Exhibit 1-17).

40. Other instances of voter fraud almost certainly take place in every Montana election. As noted by the Carter-Baker Report, “[w]hile election fraud is difficult to measure, it occurs.” Exhibit 1-8, p. 45.

41. According to American Political Science Review, there are various ways to commit “voter fraud,” including “the illegal casting of multiple ballots (i.e., double voting), illegal ballots (e.g., noncitizen voting), or [using] other peoples’ ballots (i.e., voter

impersonation).” *See* Sharad Goel, Marc Meredith, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr, *One Person, One Vote: Estimating the Prevalence of Double Voting*, American Political Science Review (2020) (Exhibit 1-18). The American Political Science Review evaluated voting data to “focus specifically on double voting,” and not other forms of voter fraud. Exhibit 1-18, p. 1. The American Political Science Review ultimately concluded that “about one in 4,000 voters cast two ballots,” in violation of election laws. Exhibit 1-18, p. 1; *but see* Exhibit 1-18, p. 10 (acknowledging competing model developed by McDonald and Levitt “generates an estimate of about 200,000 double votes, which is about ten times larger than what we estimate using our method”); *see also* Exhibit 1-8, p. 13 (referencing “collection of 2,068 cases of suspected voter fraud reported from 2000 through 2012”).

42. But beyond documented cases of prosecuted voter fraud, voter concerns regarding voter fraud are common in Montana elections. *See generally* Exhibit 8. The Secretary has received numerous complaints from voters concerned about voter fraud including ineligible voters voting in Montana elections and voters illegally voting multiple ballots.

43. Montana election administrators—the county workers charged with administering Election Day—have first-hand knowledge of the many challenges that voters, and election workers, routinely face on Election Day in Montana. *See* Declaration of Doug Ellis (Feb. 8, 2022) (Exhibit 4); *see also* Aff. Monica Eisenzimer, Manager of the Election Office for Flathead County (Feb. 15, 2022) (Exhibit 5); *see also* Aff. Janel Tucek, Current Fergus County Election Administrator and Former Petroleum County Election Administrator (Feb. 11, 2022) (Exhibit 6).

44. Montana election administrators have concluded it was “very challenging to run organized elections” under prior Montana law. Exhibit 4, ¶ 4; Exhibit 6, ¶¶ 4-11; *see also* Exhibit 5, ¶¶ 5-8.

45. Montana election administrators sometimes lacked sufficient resources to handle the “tremendous workload” associated with administering elections under Montana law. Exhibit 4, ¶¶ 5-9; Exhibit 5, ¶¶ 3, 12; Exhibit 6, ¶¶ 4, 10. On Election Day, Montana election administrators begin work early in the morning, and continue that work late into the night, in addition to all the time they spend preparing for Election Day. Exhibit 4, ¶¶ 10-13; Exhibit 5, ¶¶ 7-8; Exhibit 6, ¶¶ 5-10.

46. According to at least some Montana election administrators, “election day registration complicates an already challenging day for election administrators and poll workers and adds to the burden election workers face in trying to run organized elections on election day.” Exhibit 4, ¶ 15-16; Exhibit 6, ¶ 11; Exhibit 5, ¶ 9.

47. In particular, “[n]ew voter registration takes much longer to accomplish than precinct-to-precinct changes or corrections to an existing registration.” Exhibit 4, ¶ 17; Exhibit 5, ¶ 9; Exhibit 6, ¶ 11. When Montana allowed election-day registration, it “substantially increase[d] wait times for other voters waiting in lines to vote at the election office.” Exhibit 4, ¶ 21; *see* Exhibit 5, ¶ 9.

48. Montana election administrators need additional time to focus on voting—and not election-day registration—on Election Day because “many individuals who have worked on elections for years are retiring due to the added stress” and the “loss of this institutional knowledge makes administering elections much more difficult.” Exhibit 6, ¶ 11.

49. Montana election administrators have concluded that, due in part to election-day registration, Montana voters have to stand in line for lengthy periods of time, often in excess of one hour. Exhibit 4, ¶¶ 18-20. As one election administrator noted: “Voters have often complained to me about how long they waited in line to vote. Ironically, it is usually the voters who want to register to vote on election day that complain the most about the lines.” Exhibit 4, ¶ 20. It is clear to Montana election administrators that “election day registrations substantially increase wait times for other voters waiting in lines to vote at the election office” and that election-day registration “substantially delay[s]” election administrators’ “ability to tabulate and report election results.” Exhibit 4, ¶¶ 21-22.

50. For these reasons, Montana election administrators “believe ending election day registration for new voter registrations will ease the administrative burden on election administrators, especially those in small counties,” by providing election administrators with more time “to focus primarily on voting on election day.” Exhibit 4, ¶ 25; Exhibit 5, ¶ 11; Exhibit 6, ¶ 11.

51. Additionally, Montana election administrators believe that “ending election day registration for new voters will substantially shorten lines” at polling places. Exhibit 4, ¶ 26.

52. Montana election administrators also believe that “ending voter registration at noon before the election day” would allow them to “spend more time assisting individuals who have special circumstances preventing them from being able to vote in person,” such as elderly or disabled Montanans. Exhibit 5, ¶ 12.

53. Montana election administrators have communicated their concerns regarding the state of Montana election law—including the practical problems with election-day registration—

directly to the Montana Legislature in various ways, including by: (i) testifying in support of the legislation Plaintiffs have challenged; and (ii) speaking directly with Montana legislators. Exhibit 4, ¶¶ 27-28; *see also* Declaration of Steve Fitzpatrick, Montana Senator, ¶¶ 4, 6 (Feb. 11, 2022) (Exhibit 7); *see also* Declaration of Greg Hertz, Montana Senator, ¶¶ 5, 7 (Feb. 11, 2022) (Exhibit 8).

54. Monica Eisenzimer, based on her experience as the Manager of the Flathead County Election Office since 2005, has found that election day registration adds stress to the administration of elections and leads to long lines on election day. *See* Exhibit 5.

55. Janel Tucek, the Fergus County Clerk and Recorder, has found that election day registration increases the burden on election officials on election day. *See* Exhibit 6.

Montana Legislature’s Reasonable, Non-discriminatory Efforts To Improve Voter Confidence, Eliminate Voter Fraud, and Strengthen Montana Elections

56. During the 67th Montana Legislative Session, elected officials attempted to do precisely what both the Carter-Baker Report and Harvard University’s Electoral Integrity Project recommended—the Legislature took action that, in its considered judgment, would restore Montanans’ confidence and trust in the electoral process. Exhibit 7, ¶¶ 8, 16; Exhibit 8, ¶¶ 9, 19. The Montana Legislature also acted to solve practical problems in election administration and protect core pillars supporting our democracy, as explicitly required by Article IV, § 3 of the Montana Constitution. *See* Exhibit 7, ¶¶ 4, 25; *see also* Exhibit 8, ¶¶ 5, 29.

57. The 67th Montana Legislature heard concerns from various stakeholders regarding Montana election law, including: (i) concerns regarding voters’ lack of confidence in the security and administration of Montana elections; (ii) election administrators’ concerns regarding the administrative burdens placed on them by Montana law, including election-day registration; (iii)

concerns regarding long lines at polling places in Montana; (iv) concerns regarding delays associated with, and the accuracy of, tabulating election results; and, (v) concerns of Montanans who opposed the Legislation's proposed changes to Montana election law. *See generally* Exhibits 7–8.

58. In particular, the Montana Legislature sought to improve public confidence in Montana elections by “ensur[ing] fair and safe elections in Montana.” Exhibit 7, ¶ 4; Exhibit 8, ¶ 4. The Montana Legislature did so by “address[ing] practical issues with the administration of elections in Montana, including problems communicated to the Legislature by election administrators from various counties in Montana.” Exhibit 7, ¶ 4; *see also* Exhibit 8, ¶ 5 (Legislature enacted Legislation to “address practical problems with the administration of elections in Montana, many of which were described during legislative sessions and hearings on the bills”).

59. A strong majority of members of the 67th Montana Legislature voted for the four pieces of legislation Plaintiffs have challenged: (i) House Bill 176; (ii) House Bill 506; (iii) House Bill 530; and (iv) Senate Bill 169 (collectively, the “Legislation”). Exhibit 7, ¶¶ 3–4; Exhibit 8, ¶¶ 3–5; *see also* HB 176, 67th Mont. Legis. (Apr. 9, 2021) (Exhibit 1–19); *see also* HB 506, 67th Mont. Legis. (May 4, 2021) (Exhibit 1–20); *see also* HB 530, 67th Mont. Legis. (May 4, 2021) (Exhibit 1–21); *see also* SB 169, 67th Mont. Legis. (Apr. 12, 2021) (Exhibit 1–22).

60. The Legislation has “strong public support” in Montana. Exhibit 7, ¶ 5; Exhibit 8, ¶ 5.

61. The Montana Legislature did not enact the Legislation to “harm or disadvantage any particular class or group of voters.” Exhibit 7, ¶¶ 9–10, 21; Exhibit 8, ¶¶ 10–11, 24.

62. The Legislation itself is facially neutral and generally applicable. *See* Exhibits 1–19 through 1–22.

63. The Legislation is nondiscriminatory. *See* Exhibits 1–19 through 1–22.

64. The Legislation contains reasonable regulations on the electoral process. *See* Exhibits 1–19 through 1–22. This is especially true when comparing the Legislation to election laws in other states. *See* Defendant’s Expert Report of Sean P. Trende (Feb. 16, 2022) (Exhibit 14); *see also* Defendant’s Expert Report of Scott E. Gessler (Feb. 16, 2022) (Exhibit 15). The Legislation is unlikely to decrease voter participation in Montana elections, but it likely will increase public confidence in Montana’s elections. Exhibit 14; Exhibit 15.

65. The Legislation is likely to increase voter confidence in Montana elections. Exhibit 15, pp. 2, 18, 23, 28; Exhibit 14, p. 12.

66. Even after passage of the Legislation, voting in Montana remains relatively easy. Exhibit 14, pp. 7, 13–15; Exhibit 15, p. 15.

67. The Montana Legislature voted for the Legislation to fulfill its constitutional obligation to “insure the purity of elections and guard against the abuse of the electoral process.” Exhibit 7, ¶ 25 (quoting Mont. Const. Art. IV, § 3); *see also* Exhibit 8, ¶ 29.

68. The Legislation is straightforward and brings needed clarity to Montana election law. *See* Aff. Austin James, Chief Legal Counsel–Montana Secretary of State (Feb. 16, 2022) (Exhibit 2).

House Bill 176

69. HB 176 makes modest changes to Montana’s voter registration deadline. *See* Exhibit 1–21.

70. Instead of permitting late registration to occur on Election Day, HB 176 changes the late registration deadline to noon on the day before Election Day. Exhibit 1-19. Most states do not permit election-day registration. Exhibit 14, pp. 7, 10; Exhibit 15, p. 15.

71. HB 176 “imposes a minimal burden on those seeking to register to vote.” Exhibit 15, p. 2. Conversely, HB 176 “provides substantial benefits” to Montana election administrators, especially those in rural counties.” Exhibit 15, pp. 2, 12-18.

72. The legislative purpose of HB 176 was, in part, to “give election administrators plenty of time to finalize registration rolls and run organized and efficient elections on election day.” Exhibit 8, ¶ 6. This purpose is evidenced by testimony of the Sponsor, Representative Sharon Greef, before the House State Administration Committee on January 21, 2021.

73. Montana election administrators requested and supported HB 176’s change to Montana’s late registration deadline because allowing late registration to occur on Election Day placed an excessive administrative burden on Montana’s election administrators. *See* Exhibits 4-6; *see also* Exhibit 7, ¶¶ 4, 6; *see also* Exhibit 8, ¶¶ 5-7.

74. Election experts have concluded that HB 176 facilitates effective election administration because it “provides election administrators and workers adequate time to process voter registration application.” Exhibit 15, p. 12. That is critical to effective election administration, because “election day is busy” and “rural counties in particular face challenges registering voters on busy election days.” Exhibit 15, p. 13. Eliminating election-day registration “reduc[es] election day work volume” and, in doing so, “reduce confusion and mistakes” by election workers. Exhibit 15, p. 14.

75. The Montana Legislature also enacted HB 176, in part, to reduce “long lines at the polls,” which “are common on general election days,” and to give election administrators sufficient time to accurately and efficiently tabulate and report election results. Exhibit 7, ¶ 7; Exhibit 8, ¶ 8. Election experts have concluded that eliminating election-day registration “reduces the wait times for voters on election day.” Exhibit 15, p. 13.

76. Montana Legislators are hopeful the modest changes effected by HB 176 will “boost voter confidence in Montana elections” by reducing voting lines and “curbing delays in tabulating and reporting election results.” Exhibit 7, ¶ 8; Exhibit 8, ¶¶ 8-9.

77. When the Montana Constitution was ratified, voters were required to register 40 days before election day for state elections, and 30 days before election day for federal elections. *See* Rev. Code Mont. §§ 23-3016, 23-3724 (1971).

78. Notably, in an effort to reach a political “policy compromise,” the 67th Montana Legislature rejected a proposal that would have moved the late registration deadline to “two days before the election.” Exhibit 8, ¶ 6. That compromise was made, in part, in response to concerns raised by opponents of HB 176. Exhibit 8, ¶ 6.

79. Montana Legislators voted for HB 176 in furtherance of legitimate and compelling state interests. Exhibit 8, ¶¶ 6-10.

80. Social scientists have found no causal link between election-day registration and increased voter turnout. Exhibit 14, pp. 7-10; Exhibit 15, pp. 15-18. HB 176 is unlikely to have any statistically significant impact on voter participation in Montana elections, especially when considering the fact that Montana election law still permits voters to simultaneously register and

vote until the day before Election Day, i.e. same-day registration. Exhibit 14, pp. 7, 10; Exhibit 15, pp. 15-17 (any impact on turnout is “likely low”).

81. The Office of the Montana Secretary of State has “fully implemented” the changes HB 176 made to Montana election law, including by implementing new software, training election officials, providing election officials with new voting forms and other information, and educating voters on the changes made by HB 176. Exhibit 2, ¶¶ 3, 53, 72-127.

82. Under current Montana law, “safeguards exist to ensure registered electors can exercise their right to vote,” including the limited number of voters who discover on Election Day their voter registration records contain administrative errors. Exhibit 2, ¶¶ 6-16. The Office of the Montana Secretary of State has trained election administrators on this “failsafe” process. Exhibit 2, ¶ 15. Voters also may “vote a provisional ballot” in these circumstances. *See* Exhibit 2, ¶ 13.

House Bill 506

83. HB 506 “ensures that only qualified electors are voting in Montana elections,” and further “ensures that all counties in Montana are using consistent practices with respect to mailing and accepting [absentee] ballots” before voters satisfy Montana’s age or residency requirements. Exhibit 7, ¶ 24; *see also* Mont. Const. Art. IV, § 2; *see also* Mont. Code Ann. § 13-1-111 (setting voter qualification standards).

84. HB 506 “clarifies that absentee ballots can only be sent to voters when they meet age and residency requirements.” Exhibit 7, ¶ 22; Exhibit 8, ¶ 25; *see also* Exhibit 1-20.

85. HB 506 resolved an apparent uncertainty in Montana law regarding whether election administrators could provide absentee ballots to individuals before they satisfied Montana’s

age and residency requirements. Exhibit 7, ¶ 23; Exhibit 8, ¶ 26; Exhibit 2, ¶¶ 125-128. Election administrators in some Montana counties were providing absentee ballots to individuals who did not yet meet Montana's age or residency requirements, and some election administrators were waiting until those individuals satisfied Montana's age or residency requirements before providing them with absentee ballots. Exhibit 7, ¶ 23; Exhibit 8, ¶¶ 26-28; Exhibit 2, ¶¶ 128-132; Exhibit 5, ¶ 13; *see also* Declaration of Melissa McLarnon, ¶¶ 4-7 (Feb. 8, 2022) (Exhibit 9).

86. The Office of the Montana Secretary of State learned of that disagreement between Montana election administrators in different counties in the months leading up to the 2020 General Election. Exhibit 9, ¶¶ 4-7; Exhibit 2, ¶¶ 131. Montana election laws are supposed to be applied uniformly in all Montana counties. § 13-1-201, MCA; *see also* Exhibit 9, ¶ 7.

87. Defendant requested the 67th Montana Legislature resolve this apparent conflict legislatively, consistent with Montana law. Exhibit 7, ¶ 23; Exhibit 2, ¶ 132; Exhibit 9, ¶¶ 7-9; *see also* Mont. Code Ann. § 13-1-201 (directing Montana Secretary of State to “obtain and maintain uniformity in the application, operation, and interpretation of the election laws”).

88. The Office of the Montana Secretary of State has implemented HB 506, including by creating a “written computer system code” in multiple programs “to reflect this clarification of Montana law and ensure uniformity in its application statewide.” Exhibit 9, ¶ 9.

House Bill 530

89. Subject to certain exceptions, HB 530 generally “makes paid ballot collection or ‘ballot harvesting’ illegal.” Exhibit 7, ¶ 17; Exhibit 8, ¶ 20; *see also* Exhibit 1-21.

90. HB 530 “imposes little burden on voters, reduces opportunity for fraud, and fosters confidence in elections.” Exhibit 15, pp. 2, 25-26.

91. Montana’s ballot collection law, HB 530, is “relatively modest” when compared to similar laws in other states. Exhibit 15, pp. 23-28. “Because Montana does not restrict who may collect ballots, how many ballots may be collected, or when ballots must be returned, the state offers many avenues for ballot collection.” Exhibit 15, pp. 25, 28.

92. The Montana Legislature furthered several important interests in enacting HB 530. First, the Legislature responded to general concerns regarding voter fraud and, in particular, the potential for voter fraud associated with ballot collection as evidenced by the “2018 congressional race in North Carolina when a paid political operative was alleged to have illegally gathered up and fraudulently voted absentee ballots.” Exhibit 7, ¶ 17; Exhibit 8, ¶ 20; *see also* Exhibits 1-9 through 1-11 (articles detailing how, as established in North Carolina, “**fraud involving absentee ballots is a real thing**”).

93. Montana’s prohibition on paid ballot collection “serves important anti-fraud purposes.” Exhibit 15, pp. 26-28.

94. Second, by instructing the Secretary to impose a reasonable restriction on the receipt of a pecuniary benefit in exchange for ballot collection, the Montana Legislature furthered the State’s interest in preserving the integrity and reliability of its electoral processes by regulating the connection between money and ballot collection. Exhibit 8, ¶¶ 20–24. This is evidenced by Sponsor Wendy McKamey’s testimony to the House State Administration Committee on February 25, 2021, and during the House Floor Session on April 27, 2021.

95. The Montana Legislature also identified various other problems that could be associated with ballot collection, including: (i) “tampering or destroying or not returning ballots”; (ii) experienced political operatives “discard[ing] ballots” returned to them if they

suspected the individual's vote would be contrary to the operative's political interests; and (iii) the "perception among voters that an election may be tainted by the influence of money on the process" associated with paid ballot collection. Exhibit 7, ¶¶ 18-20; Exhibit 8, ¶¶ 21-23; *see also* Exhibit 1-5, pp. 46-47 (Carter-Baker Report establishing why "[a]bsentee ballots remain the largest source of potential voter fraud").

96. Montana Legislators also were aware of their constituents' concerns with ballot collecting practices in Montana. Exhibit 7, ¶¶ 18-19; Exhibit 8, ¶¶ 21-23.

97. Defendant "has not yet began the process of adopting an administrative rule giving effect to the provisions of HB 530, § 2." Exhibit 2, ¶¶ 67-71.

Senate Bill 169

98. SB 169 "made minor changes and clarifications to Montana's voter identification laws." Exhibit 7, ¶ 10; Exhibit 8, ¶ 11; *see also* Exhibit 27. Montana legislators voted for SB 169 because it made "practical sense to them." Exhibit 7, ¶ 10; Exhibit 8, ¶ 11.

99. Montana law "permits voters with a wide variety of options to identify themselves for voting purposes." Exhibit 2, ¶¶ 22-25.

100. Montana law also provides voters with "additional processes for reasonable impediments," which "provides a mechanism for voters to cast a provisional ballot due to being unable to produce identification to cure their ballot through an alternative process after the election." Exhibit 2, ¶ 26-27.

101. Additionally, voters may use a confirmation of registration issued to them pursuant to § 13-2-207 as a permissible method of secondary identification. Exhibit 2, ¶¶ 33-34.

102. Furthermore, Montana voters may use the “voter confirmation cards” they receive from the State of Montana as a form of voter ID when used with any form of photo ID (including student ID). Exhibit 2, ¶¶ 33–34.

103. In certain ways, SB 169 “makes satisfying voter identification requirements easier,” such as by eliminating the requirement for a “current” or “valid” photo ID. Exhibit 7, ¶¶ 11-12; Exhibit 8, ¶ 12; *see also* Exhibit 1-22. The Montana Legislature adopted that change contained in SB 169 in response to requests “from certain groups of voters in Montana, such as tribal members, who expressed concern that satisfying this requirement was too burdensome.” Exhibit 7, ¶ 12; Exhibit 8, ¶ 12; *see also* Exhibit 2, ¶¶ 58-64 (the Secretary recommended Legislature make this change to remove a potential barrier to Tribal voting).

104. The Montana Legislature did not enact SB 169 to “harm or disadvantage any particular class of voters.” Exhibit 7, ¶ 10; Exhibit 8, ¶ 11.

105. Social scientists have found no evidence establishing that election laws requiring photo ID have a negative effect on voter turnout. Exhibit 14, pp. 7, 10-11; Exhibit 15, p. 19 (“It is well established that voter identification requirements do not reduce turnout or create undue burdens.”).

106. In SB 169, Montana legislators decided to require “voters relying on non-government issued ID’s, like student ID’s, to also show a utility bill, bank statement, paycheck, or other government documents such as a voter registration card” because non-government issued ID’s like “student id’s are categorically different from government issued ID’s like a Montana driver’s license.” Exhibit 7, ¶¶ 13-15; Exhibit 8, ¶¶ 15-16.

107. Requiring voters to show a government-issued ID “does not burden students, and it is an important election integrity measure that fosters confidence in elections.” Exhibit 15, pp. 2, 18-23. Students have both the means and the ability to obtain the primary or secondary identification needed to vote in Montana elections. Exhibit 15, pp. 19-20 (“If any group is capable of obtaining identifying documents, it is students.”).

108. Montana legislators also supported SB 169 because it “makes it easier for election administrators and workers to administer and understand what constitutes proper voter ID.” Exhibit 8, ¶ 14.

109. Election experts have concluded that voter identification laws “help[] prevent illegal voting in the local district” and “increases voter confidence in elections.” Exhibit 15, pp. 22-23.

110. Montana legislators are confident “Montana resident students have” the ID necessary to vote under SB 169. Exhibit 8, ¶ 17; *see also* Aff. Caleb Lowe, ¶¶ 4-5, 7, 12-16 (Feb. 11, 2022) (Exhibit 10) (Montana State University student “support[s] voter identification laws” and does not “know any university students at MSU or other Montanans in my age range who would be unable to satisfy voter identification requirements” because almost all Montanans have driver’s licenses or other ID; alternatively “no photo identification is required to vote absentee”).

111. Montana legislators “also voted in favor of SB 169 because it was clear to [them] that [their] constituents support strong voter identification laws” and hoped that “passing SB 169 will help boost voter confidence in the integrity and security of Montana elections.” Exhibit 7, ¶ 16; Exhibit 8, ¶¶ 18-19; *see also* Exhibit 1-5, p. 17-20 (Carter-Baker Report detailing why

strong voter identification laws are “bedrocks of a modern election system”); *see also* Exhibit 1-8, p. 5 (strong voter identification laws can increase voter confidence and participation); *see also* Exhibit 10, ¶ 13 (college student “more likely to vote—and to trust the legitimacy of Montana election results—if voter identification laws are in place”); *see also* Aff. Dennison Rivera, ¶¶ 4, 17-21 (Feb. 9, 2022) (Exhibit 11) (Latino voter in Montana “support[s] Montana’s voter ID laws” because “[r]equiring voter ID to vote is basic, minimal security, and common sense” and he is “more inclined to vote knowing that there are election integrity laws such as identification requirements”).

112. The Voter ID requirements of SB 169 are less onerous than those recommended by the Carter-Baker Report. *Compare* Exhibit 1-22 *with* Exhibit 1-5, pp. 17-20 (recommends requiring “REAL-ID”).

113. “Even if a registered elector is unable to verify their eligibility, Montana law nonetheless provides the elector with the right to vote and uniquely grants the elector until the day after the election to provide identification information.” Exhibit 2, ¶ 47 (citing Mont. Code Ann. § 13-15-107). If a voter cannot do so, they still are “afforded additional fail-safe provisions set forth by SB 169,” a provision that did not exist under Montana law prior to SB 169. Exhibit 2, ¶¶ 48-50.

114. The Montana Secretary of State’s Office has successfully implemented SB 169. Exhibit 2, ¶¶ 17-64.

115. The Office of the Montana Secretary of State “is unaware of a single instance where a voter was unable to complete the voter registration form due to implementation of the voter identification requirements” of SB 169. Exhibit 2, ¶ 90.

116. The Office of the Montana Secretary of State has worked with county election administrators to implement SB 169. *See* Exhibit 2, ¶¶ 17–64.

117. The Office of the Montana Secretary of State has “expended public time working alongside various vendors to overhaul digital production of the voter confirmation card so that all voter confirmation cards issued indicate that the card may be presented as a form of secondary identification containing the elector’s name and address.” Exhibit 2, ¶ 32.

Defendant’s Efforts To Implement The Legislation And Strengthen Montana Election Law

118. “In April, 2021, the Secretary of State’s office began the labor-intensive task of implementing the amended election laws the Legislature passed, especially SB 169 and HB 176.” Exhibit 2, ¶ 72.

119. Efforts to implement the amended election laws include: (i) working to adopt and implement administrative rules; (ii) hiring “a vendor to perform system changes” regarding election law changes; (iii) reviewing and updating the Montana Secretary of State website pages regarding Montana election law; (iv) training election administrators on changes to Montana election law; and (v) updating voting registration application forms and other voting forms to reflect current Montana law, including Montana’s “My Voter Page.” Exhibit 2, ¶¶ 72-127. In particular, the Office of the Montana Secretary of State has “spent significant time and resources to ensure the [State of Montana] website containing the voter registration and identification information is compatible with mobile, tablet, and web devices to provide user friendly viewing by all digital device types.” Exhibit 2, ¶ 100.

120. Additionally, the Montana Secretary of State's Office has "conducted substantial outreach efforts to voters regarding the election law changes," including by spending "hundreds of hours of state worker time" educating voters on the new election laws. Exhibit 2, ¶¶ 92-93.

121. In particular, Defendant has educated voters and election administrators that "tribal identification is an acceptable method of identification in light of SB 169's elimination of identified barriers related to the use of tribal identification." Exhibit 2, ¶ 102.

122. In partnership with the Montana Broadcasters Association, Montana Secretary of State's Office has "produced Public Service Announcement television ads related to HB 176 and SB 169" that air on television and radio broadcasts across Montana. Exhibit 2, ¶¶ 94-108. Defendant also has "broadcast a public service announcement to provide voters with a voter registration application, directions to check voter registration status, and encourages voters to register or contact the voters local election office prior to noon the day before the election." Exhibit 2, ¶ 103.

123. In total, Defendant's public service announcements regarding the ways in which the Legislation strengthens Montana election law "have been aired approximately 14,240 times on broadcast television" at a value of "approximately \$742,915." Exhibit 2, ¶ 105-106. Additionally, Defendant's similar public service announcements have been aired "over 18,102" times as radio ads, at a value of "approximately \$298,848.00." Exhibit 2, ¶¶ 107-108. The television and radio ads reflecting changes to Montana election law have a combined value of over \$1 million. Exhibit 2, ¶¶ 105-108.

124. "It would pose an insurmountable challenge to reverse the monumental effort to implement" the Legislation, and there is no clear "ability to identify the laundry list of election

material changes performed beginning in April 2021 related to the legislation.” Exhibit 2, ¶ 116.

Election officials in the Montana Secretary of State’s Office “fear that widespread voter confusion and conflicting information will result from a sudden change before the 2022 primary or general elections.” Exhibit 2, ¶ 116.

125. Plaintiffs have not identified any individuals who will be prohibited from voting by SB 169.

126. Plaintiffs have not identified any Montana voter who lacks all of the primary forms of identification required by SB 169.

127. Plaintiffs have not identified any Montana voter who cannot meet the non-primary identification requirements posed by SB 169.

128. Plaintiffs do not present any statistical evidence demonstrating that SB 169 will have a disparate impact on “young voters” in Montana.

129. Plaintiffs do not present any statistical evidence demonstrating that HB 176 will have a disparate impact on “young voters” in Montana.

130. Plaintiffs do not present any evidence demonstrating that HB 176 or HB 530 was enacted with discriminatory intent towards Native Americans.

Dated this 16th day of February, 2022.

By Dale Schomengerdt

CROWLEY FLECK PLLP
P.O. Box 797
Helena, MT 59624-0797

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

CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Supplemental Brief to the following on 02-17-2022:

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Western Native Voice
Service Method: eService

Ryan Ward Aikin (Attorney)
1018 Hawthorne St.
Missoula MT 59802
Representing: Blackfeet Nation
Service Method: eService

Rylee Sommers-Flanagan (Attorney)
40 W. Lawrence Street
Helena MT 59601
Representing: Forward Montana Foundation, Montana Public Interest Reserch Grp., Blackfeet Nation,
Montana Youth Action
Service Method: eService

Matthew Prairie Gordon (Attorney)
1201 Third Ave
Seattle WA 98101
Representing: Montana Democratic Party
Service Method: eService

John C. Heenan (Attorney)
1631 Zimmerman Trail, Suite 1
Billings MT 59102
Representing: Montana Democratic Party
Service Method: eService

Peter M. Meloy (Attorney)
2601 E. Broadway
2601 E. Broadway, P.O. Box 1241
Helena MT 59624
Representing: Montana Democratic Party

Service Method: eService

David M.S. Dewhirst (Govt Attorney)

215 N Sanders

Helena MT 59601

Representing: Jacobsen, Christi As Secretary Of State Of Mt

Service Method: eService

Austin Markus James (Attorney)

1301 E 6th Ave

Helena MT 59601

Representing: Jacobsen, Christi As Secretary Of State Of Mt

Service Method: eService

David Francis Knobel (Attorney)

490 N. 31st St., Ste 500

Billings MT 59101

Representing: Jacobsen, Christi As Secretary Of State Of Mt

Service Method: eService

Confederated Salish And Kootenai Tribes (Plaintiff)

Service Method: Other Means by Consent

Fort Belknap Indian Community (Plaintiff)

Service Method: Other Means by Consent

Northern Cheyenne Tribe (Plaintiff)

P.O. Box 128

Lame Deer 59043

Service Method: Other Means by Consent

Jonathan Topa (Attorney)

125 Broad Street 18th Floor

New York 10004

Representing: Western Native Voice

Service Method: Other Means by Consent

Kathleen Lynn Smithgall (Attorney)

P.O. Box 201401

Helena 59620

Representing: Jacobsen, Christi As Secretary Of State Of Mt

Service Method: Other Means by Consent

Ian McIntosh (Attorney)

1915 S. 19th Ave

P.O. Box 10969

Bozeman MT 59719

Service Method: eService

E-mail Address: imcintosh@crowleyfleck.com

Electronically Signed By: Dale Schowengerdt
Dated: 02-17-2022