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

Montana Democratic Party, Mitch Bohn, *Plaintiffs*, Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe, *Plaintiffs*, Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group, *Plaintiffs*, vs. CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State, *Defendant*.	Cause No. DV 21-0451 Hon. Michael Moses **YOUTH PLAINTIFFS' REPLY BRIEF IN SUPPORT OF APPLICATION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group ("Youth Plaintiffs"), submit this Reply Brief in Support of their Application for Preliminary Injunction, filed concurrently with the Montana Democratic Party ("MDP") and Western Native Voice ("WNV") plaintiffs' reply briefs in support of the same.

Youth Plaintiffs ask this Court to enjoin House Bill 506 ("HB506"), Senate Bill 169 ("SB169"), and House Bill 176 ("HB176") because each law unconstitutionally burdens youth voters' rights to suffrage and equal protection. HB506 also violates the rights of voters who turn 18 in the month before election day by restricting their access to the ballot because of their status as minors *before* election day. And the laws are interactive: together, they impose an amplified burden on youth voters.

In its response, the State neglected entirely to address Youth Plaintiffs' argument that the interactive or cumulative effect of HB506, SB169, and HB176 is devastating to youth voters and separately unconstitutional. But Youth Plaintiffs clearly established that combining burdensome voting laws reduces voter turnout, particularly among voters aged 18 to 29. The State simply did not respond. Instead, the State claims Youth Plaintiffs lack standing, delayed in applying for a preliminary injunction, and that the laws in question are constitutional. These arguments fail.

ARGUMENT

Youth Plaintiffs have standing, have not delayed, and have established the likelihood they will prevail on the merits of their claims because the three challenged

laws place an outsized and unconstitutional burden on youth voters—together and separately. Youth Plaintiffs have also established that HB506, SB169, and HB176 will cause them irreparable injury.

In response, the State's combined brief in opposition and in support of its motion for summary judgment is, in several places, misleading. For example, ignoring the twelve declarations and affidavits Youth Plaintiffs filed in support of their application—and the similar plethora of evidence supplied by MDP and WNV, the State claims that no plaintiff has identified any voter suffering concrete harm resulting from the challenged statutes. State's Br. in Opp. to Ps' App. for Prelim. Injunction ("Opp."), at 7. But each statement speaks to concrete harms certain to occur as a result of one or more of the three laws. Similarly, the State writes that Youth Plaintiffs are inadequately defined, Opp. at 13, although Youth Plaintiffs repeatedly define youth voters as aged 18 to 29, Youth Ps' Compl. ¶¶ 1, 44, 60; Youth Ps' Br. in Supp. of App. for Prelim. Injunction ("PI Br."), at 2 ("these laws will prevent thousands of Montanans from voting entirely, and a disproportionate number of those Montanans will be youth aged 18 to 29"), 3, 4. Youth Plaintiffs further define the subgroup that HB506 affects. *See, e.g.*, PI Br. at 12 (referring to "newly 18-year-old voters"). And, when discussing the preliminary injunction standard, the State recites Montana law, but quickly switches to inapposite federal cases to argue limited delay should bar preliminary relief. Opp. at 3–5; 7–10.

The Court should grant Youth Plaintiffs' application for preliminary relief.

I. Youth Plaintiffs have organizational and associational standing.

Youth Plaintiff organizations have established organizational and associational (also called representational) standing. Youth Ps' Compl. ¶¶ 2, 10–19 (Sept. 9, 2021); Ex. B,[1] Caudle Decl. ¶¶ 2, 14–15; Ex. D, Dozier Decl. ¶¶ 2, 3–11; Ex. F, Lockner Aff. ¶¶ 2–8, 13; Ex. I, Nehring Decl. ¶¶ 2, 4–16, 20–24; Ex. J, Reese-Hansell Decl. ¶¶ 2, 7–10, 17–31; Ex. L, Runnion Aff. ¶¶ 2, 9–19; Ex. N, Wagler Decl. ¶¶ 2, 15–24; *see generally Hunt v. Wash. Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977) (associations have standing to sue on behalf of members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit"); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982) (assessing organizational standing involves "the same inquiry" as individual standing: "Has the plaintiff 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction'?" (quoting *Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977))); *Baxter Homeowner's Ass'n v. Angel*, 2013 MT 98, ¶ 17 (describing organizational and associational standing).

Youth Plaintiff organizations sue directly and on behalf of their members; they have standing to do both. The State relies on *Baxter Homeowners* for the inapposite proposition that plaintiffs cannot bring cases on behalf of unidentified or hypothetical

[1] Youth Plaintiffs cite Exhibits as filed in support of their preliminary injunction application because no additional exhibits have been filed with this Reply.

parties. Opp. at 7. But Youth Plaintiffs bring their claims on their own behalf, as organizations with missions frustrated by the three challenged laws, and—aside from Forward Montana Foundation, which is not a membership organization—on behalf of their members, many of whom submitted the twelve declarations and affidavits filed in support of Youth Plaintiffs' preliminary injunction application. Because the State simply claims that these individuals do not exist and ignores Youth Plaintiff organizations' mission statements and voter registration and education activities, the State's standing arguments fail. Each organization has made out their stake in this case more than adequately—describing how the laws will frustrate their work in the youth civic engagement space, Youth Ps' Compl. ¶¶ 2, 10–19, and providing concrete examples of multiple members' and employees' injuries, Ex. Caudle Decl. ¶¶ 14–15; Ex. C, Davies Decl. ¶¶ 5, 8; Ex. D, Dozier Decl. ¶¶ 3, 6; Ex. E, Hosefros Decl. ¶ 12; Ex. F, Lockner Aff. ¶¶ 6–13; Ex. G, Lockwood Decl. ¶¶ 4, 15; Ex. H, Miller Aff. ¶¶ 13–21; Ex. I, Nehring Decl. ¶¶ 6–7, 12–14, 25–26; Ex. J, Reese-Hansell Decl. ¶¶ 7–10, 19–25, 30; Ex. K, Roche Decl. ¶¶ 8, 12–13; Ex. L, Runnion Aff. ¶¶ 6, 12, 19; Ex. M, Sinoff Decl. ¶ 12; Ex. N, Wagler Decl. ¶¶ 7, 14, 19.[2]

[2] The State also cites incorrectly to *Summers v. Earth Island Inst.*, 444 U.S. 488 (2009), *see* Opp. at 6–7, using it for precisely the proposition the Ninth Circuit has repeatedly rejected. *See, e.g.*, *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (discussing *Summers* and reflecting that where "it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury, we see no purpose to be served by requiring an organization to identify by name the member or members injured").

II. Youth Plaintiffs have not delayed and have established that the challenged laws will cause irreparable injury.

Next, the State argues that Plaintiffs delayed in applying for preliminary injunctions. The State offers no authority showing delay in factually analogous circumstances has precluded issuance of a preliminary injunction and makes no attempt to offer an on-point case arising under Montana's preliminary injunction standard. Rather, the State invites this Court to rewrite Montana's statutory regime governing preliminary relief and to insert a requirement the legislature chose not to include. *See* § 1-2-101, MCA ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."). Even the inapplicable federal authorities cited by the State are plainly distinguishable. First, the State relies on *Benisek v. Lamone*, 138 S. Ct. 1942 (2018), where plaintiffs delayed six years and three elections before moving to enjoin a gerrymandered map. *Id.* at 1944. Next, the State cites *Fishman v. Schaffer*, 429 U.S. 1325 (1976), where the challenged statute had been on the books for at least four years and where, before claiming it was unconstitutionally burdensome, plaintiffs actually used the law to get candidates on the ballot. *Id.* at 1330.

To support the claim that as few as 36 days of delay "after learning of an alleged 'irreparable harm'" is enough to deny a preliminary injunction, the State cites a range of cases with no relation to elections. For example, in *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87 (D.D.C. 2014), plaintiffs in a contract and trademark dispute alleged *ongoing* irreparable harm but moved to postpone the

preliminary injunction hearing. *Id.* at 90. Showing how changes to election law will injure voters on a future date certain is not the same as sitting on rights in a contract dispute where the injuries are present and ongoing. And, in the collected cases the State cites, delay generally only weighs against issuing an injunction—it is not the deciding factor. *See, e.g.*, *Funds for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (describing plaintiffs' "nonspecific claims of 'the destruction and loss of wildlife'"); *Mylan Pharms., Inc. v. Shalala*, 81 F. Supp. 2d 30, 44 (D.D.C. 2000) (granting a drug company's summary judgment motion and denying preliminary injunction motion citing delay not as dispositive but as counseling against preliminary relief).

Context matters. *See* MDP Reply Br. § VII (collecting election law cases where courts have rejected delay arguments). While the injury resulting from application of the challenged laws to the 2021 municipal elections is genuine, it is significantly less injurious than the laws' implementation in upcoming elections. The consolidated cases violate more than three constitutional provisions and, if enforced, these laws will alter the status quo for voting and elections in Montana and preclude thousands of Montanans from voting. *See Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 14 (defining "status quo" as "the last actual, peaceable, noncontested condition which preceded the pending controversy"). Plaintiffs' injuries will occur in the month preceding June 7, 2022, the date of the 2022 primary election. Plaintiffs' motions were timely filed consistent with a mutually agreed upon schedule to prevent significant irreparable injury from occurring in upcoming elections and to provide

sufficient factual information to the Court to make an informed decision. *See generally* WNV Declaration of Alex Rate (March 2, 2022). And again, delay is not a factor recognized under Montana's statutory scheme.

Moreover, Youth Plaintiffs have established a prima facie case and are likely to succeed on the merits of their claims that HB506, SB169, and HB176 are unconstitutional, together and separately. Under Montana law's disjunctive test for preliminary relief, meeting this standard is a sufficient standalone reason to grant Youth Plaintiffs' requested relief. *See Driscoll v. Stapleton*, 2020 MT 247, ¶¶ 14–15 (the purpose of a preliminary injunction is to "preserve the status quo and minimize the harm . . . pending final resolution" and applicants need only make a prima facie showing of injury).

III. HB506, SB169, and HB176 unconstitutionally burden young voters and interact, amplifying the burdensome effect.

A. The challenged laws violate the right of suffrage.

Unable to succeed under state law, the State again asks this Court to apply a federal framework—this time to Plaintiffs' right of suffrage claims arising under the Montana Constitution. But the Montana Supreme Court has repeated time and again that "[s]trict scrutiny applies if a suspect class or fundamental right is affected." *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 17; *see also Driscoll*, ¶ 18 ("[S]trict scrutiny[is] used when a statute implicates a fundamental right found in the Montana Constitution's declaration of rights."); *Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 16 ("Legislation that implicates a fundamental constitutional right is evaluated under a strict scrutiny standard, whereby the government must show

that the law is narrowly tailored to serve a compelling government interest.") (*Mont. Cannabis I*); *cf. Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 15 ("[B]ecause voting rights cases involve a fundamental political right, the [U.S.] Supreme Court generally evaluates state legislation apportioning representation and regulating voter qualifications under the strict scrutiny standard." (quoting *Johnson v. Killingsworth*, 271 Mont. 1, 4 (1995))); *Mont. Envtl. Info. Ctr v. Dep't of Envtl. Quality*, 1999 MT 248, ¶ 60 ("[T[he most stringent standard, strict scrutiny, is imposed when the action complained of interferes with the exercise of a fundamental right or discriminates against a suspect class." (quoting *Wadsworth v. State*, 275 Mont. 287, 302 (1996))).

The laws in question are unconstitutional because, while they profess to address administrative burdens on election staff, long lines at polling places, and a desire for greater uniformity, all three impose significant burdens on voters and choose more restrictive paths to accomplishing their professed ends despite having available non-discriminatory options that would have accomplished the same ends. In the case of HB506, the House passed a version of the bill that replaced the language prohibiting the "issuance to and voting of" ballots with language that merely delayed the "processing and counting" of ballots until age and residency requirements were met. Expert Report of Yael Bromberg, 34 (Jan. 14, 2022) (quoting HB506 Version 2, § 1(2), available at https://leg.mt.gov/bills/2021/HB0599/HB0506_2.pdf). But the Senate rejected that amendment, instead passing a version of the bill that restored the original discriminatory language with no explanation for the reversion. *Id.* at 34–35 (citing HB506 Senate Floor Session Video,

at 14:47:31 (April 14, 2021)). The same type of change occurred with SB169—though a version of the bill added Montana university issued student ID as a form of standalone identification, it was later excluded from the final bill. Bromberg Report, 26 (comparing SB169, Version 3, §§ 1(4)(a)(I), 2(1)(a)(I), available at https://leg.mt.gov/bills/2021/SB0199//SB0169 _3.pdf (adding Montana College ID as standalone), with SB 169, Version 4, §§ 1(4)(a)(I), 2(1)(a)(I), available at https://leg.mt.gov/bills/2021/SB0199//SB0169 _4.pdf (removing Montana College ID as standalone), and SB 169, Final Version, §§ 1(3)–(4), 2(1)(a)). The State turns to out-of-state case law to support its view that SB169 is an "eminently reasonable" restriction, Opp. at 21, but offers no *reason* why driver's licenses from other states or student photo ID issued by the Montana University System—both forms of ID largely relied on by students—are not reliable forms of identification.

The State's purported goals advanced by HB506 and SB169 could have been achieved without imposing discriminatory burdens on subsets of youth voters.

HB176 also violates the Montana Constitution. The State claims that the Montana Constitution expressly permits, but does not require, the legislature to "provide for a system of poll booth registration." Mont. Const. art. IV, § 3; Opp. at 27. It's true the language in the Montana Constitution is permissive. But this language does not operate in a vacuum. The other relevant constitutional provision, Article II, Section 13 guarantees no "interfere[nce] to prevent the free exercise of the right of suffrage," and election day registration has proven an utter success. *See generally* Expert Report of Kenneth R. Mayer at 2, Ex. 35 to MDP Prelim. Inj. Br. (hereinafter

Mayer Report) ("Since 2006, over 70,000 Montanans registered to vote on election day; elimination of election day registration would almost certainly have prevented most (it not nearly all) of these voters from being able to have cast a ballot. This is over 1% of total turnout across the entire period. Of voters currently registered as of April 2021, over 7% had registered on election day at least once since 2008."). No party disputes that the Montana Constitution empowered the legislature to enact election day registration in the first place. But, working in conjunction with the fundamental right of suffrage contained in Article II, it is equally clear that the legislature cannot burden suffrage (here, through repealing election day registration), without satisfying the requirements of strict scrutiny that come into play any time an Article II fundamental right is burdened by a state statute. *See, e.g.*, *Mont. Cannabis I*, ¶ 16.

To justify eliminating a voting tool that has allowed thousands of Montanans to vote in every major election since 2005, the State relies on three election officials' claims that they suffer administrative burdens associated with election day registration in their counties. Opp. at 25–26. But as Regina Plettenberg, President of the Montana Association of Clerks and Recorders testified, there have been no errors in vote processing related to election day registration. Bromberg Report, 38 (citing House State Admin. Hrg. Video, 9:52:21 (Jan. 21, 2021)). Audrey McCue, then the Election Administrator for Lewis & Clark County, also testified in response to bill proponents talking about HB176 helping election administrators and election officials, saying: "I wanted to be on the record saying that this will not help me." *Id.*

(quoting Senate State Admin. Hrg. Video, at 16:59:29 (Feb. 15, 2021)). The State has no answer to this testimony because the legislature made no attempt to engage with points that either election official raised. *See also* MDP Br. at § III(B)(2).

The question is not whether the Montana Constitution expressly requires election day registration, but whether the legislature can—without a legitimate let alone compelling justification—burden the right of suffrage. Importantly, the State offers no evidence to show that moving the deadline earlier in time would in fact reduce the burden on election officials—unless that reduction is caused by fewer people voting. And if reducing the number of people voting is the *purpose* of the legislation, as it appears to be, then it straightforwardly violates the right to suffrage.

To be sure, the challenged laws also fall when examined under the *Anderson-Burdick* standard, *see* MDP Br. § III(B), but the Montana Constitution differs from the United States Constitution in its treatment of voting rights, *id.* § III(A).

Searching for a reason to justify adopting a new standard, the State argues that when "litigation implicates competing constitutional interests," the Court directs that they should be balanced and *Anderson-Burdick* is the answer to balancing. Opp. at 17. But because the standard for assessing burdens on fundamental rights provided in Article II is clear and well-established, this argument is only confusing. Moreover, the Montana Constitution gives no indication that the right to suffrage should be treated differently than other fundamental rights set forth in Article II.

Finally, the level of scrutiny applied is not likely dispositive of the preliminary injunction motion, *see Driscoll*, ¶ 20, because the State has essentially failed to

respond to Plaintiffs' evidence that the challenged laws disproportionately affect voters aged 18 to 29 and specifically burden newly 18-year-olds. Granting a preliminary injunction "will minimize harm to all parties and maintain the status quo pending final resolution on the merits." *See id.* ¶ 24.

B. The challenged laws violate the right to equal protection of the laws.

HB506, SB169, and HB176 violate the Montana Constitution's guarantee to equal protection of law, too. Mont. Const., art. II, § 4. The State argues the laws are facially neutral, although they are not, and therefore claims that Youth Plaintiffs must show both disparate impact and discriminatory intent.

1. HB506

HB506 creates a class of individuals who turn 18 in the month before election day and prevents those individuals from accessing their ballots at the same time as similarly situated older adults. The State levels three inadequate responses: First, without acknowledging that a nondiscriminatory option for achieving uniformity was proposed and rejected without explanation, *see* Bromberg Report, 34 (quoting HB506 Version 2, § 1(2)), the State claims that HB506 is justified because it renders a formerly chaotic system uniform, Opp. at 34. Second, Montanans are not guaranteed the right to vote absentee so being required to vote in person on election day or at any other time is not a burden. *Id.* at 35–38. Third, minors do not have the right to vote and so it is not possible to burden them until they are adults. *Id.* at 35, 38.

The State resists understanding Youth Plaintiffs' position because to acknowledge that the distinction between a 17-year-old turning 18 in the month

before election day and anyone older is an arbitrary one would be to admit an equal protection violation. But it is simply true that being a minor before becoming eligible to vote does not render a voter any different from older voters come election day.

Regarding uniformity, during the Senate State Administration hearing, the Secretary's Elections Director Dana Corson testified in support of the House version of HB506 which reflected the amendment that delayed the "processing and counting" of ballots until age and residency requirements were met. Bromberg Report, 34 (quoting HB506 Version 2, § 1(2)). The legislature chose to pass the discriminatory version by making uniformity turn on ballot issuance rather than ballot processing. *Cf. Veasey v. Abbott*, 830 F.3d 216, 262 (5th Cir. 2016) (passing discriminatory ID law despite testimony about the likely disparate impact was not proof of improper intent, but "nonetheless supports a conclusion of lack of responsiveness").

As to access to absentee voting, the Montana Constitution requires the legislature to "provide by law the requirements for residence, registration, absentee voting, and administration of elections." Mont. Const., art. IV, § 3. The inclusion of absentee voting in Article IV, dedicated to Suffrage and Elections would seem to counsel against the State's reading that no such constitutional right exists. But whether or not absentee voting is itself constitutionally guaranteed to Montanans at large, HB506 identifies a specific group of eligible voters based on age alone and deprives them from accessing a vital voting tool available to all other Montanans. *See Spring v. Jore*, 2005 MT 64, ¶ 18 ("The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of

its exercise.") (quoting *Bush v. Gore*, 531 U.S. 98, 104–05); *see also, e.g.*, Ex. K, Roche Decl. ¶¶ 6, 13 ("I rely on the absentee ballot system."); Ex. D, Dozier Decl. ¶¶ 4 (same); Ex. F, Lockner Aff. ¶¶ 11–12 (same); Ex. E, Hosefros Decl. ¶¶ 11 (same); Ex. G, Lockwood Decl. ¶¶ 13–16 ("Mail-in ballots have also been hugely important to me since the start of the COVID-19 pandemic.").

The State justifies the distinction by saying essentially that minors are minors—and minors can't vote. *See* Opp. at 39–40 (quoting *Mont. Cannabis Indus. Ass'n v. State*, 2016 MT 44, ¶ 18 (*Mont. Cannabis II*)). But everyone affected by HB506 will be eligible to vote on or before election day. *See Caldwell v. MACo Worker's Comp. Trust,* 2011 MT 162, ¶ 19 (holding "age was 'unrelated to a person's ability to engage in meaningful employment.'"). More importantly, Article II, Section 15 of the Montana Constitution defeats this argument completely because it provides that "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Ultimately, the Montana Constitution's Equal Protection guarantee requires that "persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment." *Gazelka v. St. Peter's Hosp.*, 2018 MT 152, ¶ 15 (citations omitted). The only date relevant to determining a voter's eligibility is election day. All voters eligible to vote on election day are similarly situated with respect to their constitutional right to suffrage—they all possess it, fully and unequivocally. If a voter will be qualified on election day, she must be allowed the

same access to the franchise as any other qualified voter. HB506 creates a class of Montanans based exclusively on their age, not at the time when it matters (election day), but in the month before. This violates Youth Plaintiffs' right to equal protection and, because the violation implicates the fundamental right to vote, strict scrutiny applies. *See Wadsworth*, 275 Mont. at 302. But the State's interest in HB506—"uniformity," or ensuring local elections administrators follow uniform rules regarding when and to whom to mail absentee ballots—is not compelling. *See* Opp. at 40–42. Moreover, this purported interest would have been achieved in equal measure by mandating that absentee ballots be sent to all voters who will be eligible on election day and requiring that any ballot returned before a voter's date eligible be processed on election day.

Youth Plaintiffs have made a prima facie case that HB506 violates their right to equal protection and minors' guaranteed equal access to fundamental rights.

2. SB169 and HB176

The State argues that SB169 is facially neutral because it does not single out discrete sets of individuals for disparate treatment. The law does, however, elevate certain forms of identification—military identification, tribal identification, U.S. passports, and Montana concealed carry permits—over others, such as student ID and out-of-state driver's licenses. This classification is a barrier for anyone who relies on their student identification as their sole or primary form of identification. *See* Ex. D, Dozier Decl ¶¶ 7–9.; Ex. J, Reese-Hansell Decl. ¶¶ 8–11.

While HB176, which eliminates election day registration, is facially neutral, Plaintiffs have put forward substantial evidence that HB176 and SB169 will disparately impact young voters, and that both laws were motivated by a discriminatory purpose. *See, e.g.*, Bromberg Report, 24–26 (citing studies indicating problems with voter ID are a substantial barrier to youth voting, and that young voters are less likely to possess or carry other forms of identification preferred under SB169); *id.* at 26–31 (concluding the "only logical explanation is that Student Photo IDs were directly singled out for elimination and treated differently from other forms of photo identification, and that Montana College IDs were removed from inclusion in the bill to make the process of voting more difficult for youth and student voters, thereby intentionally discriminating against them."); MDP Br. § IV.

Indeed, the State fails even to attempt to justify its decision to elevate certain other forms of identification over student ID, pushing for the Court to apply rational basis review because it claims SB169 is motivated by a generalized State interest in regulating voting. Opp. at 20–24. But even rational basis review requires the State to rationally relate its decision to discriminate against student ID holders, who are largely young people between 18 and 29 years old, to a legitimate government interest to survive. Yet the State musters only a Wisconsin federal district court opinion suggesting that Wisconsin student IDs may be less reliable than other forms of identification. Opp. at 22 (citing *Common Cause v. Thomsen*, 2021 WL 5833971, at *6 (W.D. Wis. Dec. 9, 2021)). The State has no evidence showing that identification issued by the Montana University System—a government entity—is less reliable

than the forms of identification preferred under SB169. And the State makes no attempt to respond to Plaintiffs' evidence that the secondary forms of ID are especially onerous if not impossible for students living on campus to produce. *See, e.g.*, Ex. J, Reese-Hansell Decl. ¶ 11; MDP Br. § III(B)(1).

But these arguments are generally of a theme in the State's response: the perspective advanced is one that says no matter how viable alternative approaches may be, the legislature has no duty at all to choose a route that both protects access to the franchise while reducing burdens on election workers. It is entirely possible to cope with the challenges that the State claims motivated passage of these laws, but the State has elected to restrict access to ballots, reduce opportunities to register to vote, and generally to throw up hurdles for voters to clear in order to both register and vote. And not just any voters: these laws, separately and together, burden young people in particular.

Youth Plaintiffs have made out a prima facie case that SB169 and HB176 violate young voters' right to equal protection by providing substantial evidence of both disparate impact and discriminatory intent. Given the fundamental rights at stake, and the State's failure to demonstrate either law is rationally related to any legitimate government interest—let alone narrowly tailored to a compelling one—a preliminary injunction is appropriate.

3. Cumulative Effect

The State appears to concede that HB506, SB169, and HB176 together unconstitutionally burden the youth vote. *See* PI Br. at 8, 13, 15–16; Bromberg

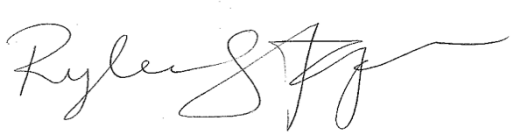
Report at 41 ("While each barrier presents its own set of challenges, youth and student voters must experience this stripped election administration system as a whole, the combination of which severely restricts their access to the ballot."); Expert Report of Michael Herron, 20 ("[I]n states with higher costs of voting, voter turnout is lower, all things being equal."); Ex. I, Nehring Decl. ¶¶ 2, 4–24; Ex. J, Reese-Hansell Decl. ¶¶ 2, 7–10, 17–31. Indeed, "[a] panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition." *Clingman v. Beaver*, 544 U.S. 581, 607–08 (2005) (O'Connor J., concurring).

Youth Plaintiffs have thus established a prima facie case that absent a preliminary injunction, HB176, SB169, and HB506 will together cause Youth Plaintiffs irreparable injury.

CONCLUSION

For the reasons set forth above, Youth Plaintiffs respectfully request that this Court grant Youth Plaintiffs' application and enter a preliminary injunction.

Respectfully submitted this 2nd day of March, 2022.



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