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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Montana Democratic Party,
Montanans for Tester, Macee
Patritti,

Plaintiffs,

v.

Christi Jacobsen, in her official
capacity as Montana Secretary of
State, Jeffrey Mangan, in his
official capacity as Montana
Commissioner of Political
Practices,

Defendants.

CV-21-119-M-DWM

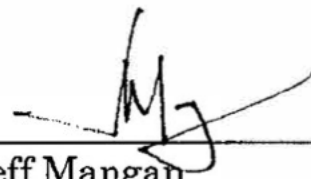
**AFFIDAVIT OF
JEFF MANGAN**

I, Jeff Mangan, being first duly sworn upon his oath, state as follows based on my personal knowledge:

1. I am the Montana Commissioner of Political Practices.
2. On October 14, 2021, Plaintiffs' summons and a copy of the complaint were delivered via process server to the Commissioner of Political Practices office. I received the summons and complaint.
3. Exhibit 2 is a true and accurate copy of the summons and complaint as served on the Commissioner of Political Practices in this matter on October 14, 2021.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 11-3-2021

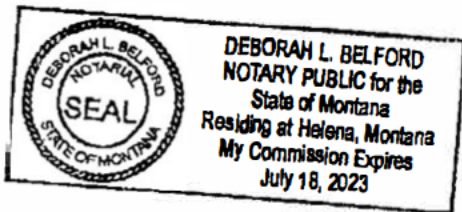


 Jeff Mangan

Subscribed and sworn to before me this 3 day of November, 2021.
by Jeff Mangan, State of Montana / Lewis & Clark County.

(NOTARIAL SEAL)

Deborah L Belford



Printed Name: Deborah L Belford

CERTIFICATE OF SERVICE

I hereby certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: November 3, 2021

/s/ Brent Mead
BRENT MEAD

Exhibit 2

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COMMISSIONER OF
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**Motion for Pro Hac Vice Forthcoming*

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

Montana Democratic Party, Montanans for
Tesor. Macee Patrilli.

Plaintiffs,

v.

Christi Jacobsen, in her official capacity as
Montana Secretary of State, Jeffrey
Mangan, in his official capacity as Montana
Commissioner of Political Practices,

Defendants.

Case No. CV-21-119-M-DWM

TO: Jeffrey Mangan, in his official capacity as Montana Commissioner of Political
Practices

PLEASE TAKE NOTICE:

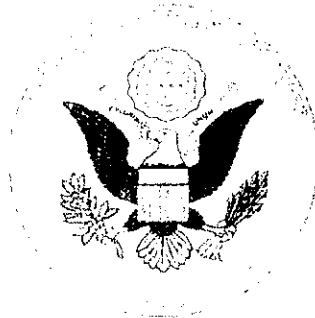
A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff's an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Peter Michael Meloy,
MELLOY LAW FIRM,
P.O. Box 1241,
Helena, MT 59624

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Dated: 10/12/21



[Signature]
Chief Clerk of Deputy Clerk of Court

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Motion for Pro Hac Vice Forthcoming

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

Montana Democratic Party, Montanans for
Tester, Macee Parritti,

Plaintiffs,

v.

Chris Jacobson, in her official capacity as
Montana Secretary of State, Jeffrey
Mangan, in his official capacity as Montana
Commissioner of Political Practices,

Defendants

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff: MONTANA DEMOCRATIC PARTY, MONTANANS FOR

TESTA and MACHE PATRITTI, by and through their undersigned counsel, file this COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against Defendant CHRISTY JACOBSEN, in her official capacity as the Montana Secretary of State (the “Secretary”), and JEFFREY MANGAN, in his official capacity as the Montana Commissioner of Political Practices (the “Commissioner”), and allege as follows:

NATURE OF THE CASE

1. The 2020 general election saw Montana’s highest voter turnout rates in nearly 100 years. Montanans voted in record numbers, with over 80 percent of registered voters casting a ballot.

2. This record voter participation was propelled by a surge in turnout among Montana’s young voters. In 2020, the number of Montanans between the age of 18 and 29 who cast a ballot increased nearly 40 percent from the 2016 presidential election.

3. Turnout among young voters in Montana has been rapidly on the rise over the past few years. During the 2018 midterm elections, 42 percent of young voters cast a ballot, up from less than 18 percent of young voters in the 2014 midterm election.

4. Rather than celebrate this laudable increase in youth participation, the Montana Legislature chose instead to pass a suite of voter-suppression laws targeting

young voters and limiting their access to the franchise. Among the bills passed during the state's most recent legislative session were measures that eliminated Montana's longstanding tradition of election day voter registration (House Bill 176) and the widespread use of student ID cards as a form of voter identification (Senate Bill 319).

7. This lawsuit challenges another one of those bills, Senate Bill 319 ("SB 319"), which imposes arbitrary, vague, and onerous restrictions on the rights of college students to undertake political organizing efforts, engage in core political activities, and otherwise participate fully in the political process.

8. As a result of SB 319, SB 319 prohibits any political committee—including student organizations—from directing, coordinating, managing, or conducting any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school district within a residence hall, dining facility, or athletic facility operated by or for the postsecondary institution." SB 319, 67th Leg., Reg. Sess. § 21(1) (House Bill 176 (the "Student Organizing Ban").

9. The Student Organizing Ban is a surgical attack on the successful organizing and accumulated political power of Montana's youngest voters. By targeting only residence halls, dining facilities, and athletic facilities, the Legislature's ban effectively prevents young, newly enfranchised Montanans

from participating fully in the political process. Not only does the Student Organizing Ban prevent political committees from reaching college students in the arena of campus where their efforts are likely to be the most fruitful, it also prohibits college students from engaging in core political speech—including organizing efforts—in conjunction with any political committee.

Plaintiffs bring this action challenging the Student Organizing Ban as unconstitutional under both the First, Fourteenth, and Twenty-Sixth Amendments.¹

JURISDICTION AND VENUE

Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under

¹ Senate Bill 319 is also subject to a challenge in Montana state court, where plaintiffs have challenged several aspects of the bill, including the Student Organizing Ban, under both the First Amendment and multiple provisions of the Montana Constitution. *See Compl. Forward Mont. et al. v. Montana et. al.*, Case No. ADV-2021-611 (Mont. Dist. Ct. June 1, 2021). In that proceeding, the court granted a preliminary injunction enjoining the enforcement of Senate Bill 319 for the pendency of that litigation. *See Prelim. Inj. Order, Forward Mont. et al. v. Montana et. al.*, Case No. ADV-2021-611 (Mont. Dist. Ct. July 1, 2021). That case is still pending, but there has been no final resolution regarding the enforceability or constitutionality of the Student Organizing Ban. Not only are Plaintiffs here not parties to that proceeding, they raise distinct and additional claims for injuries to their First Amendment rights, entitling them to relief from this Court.

the Constitution and laws of the United States and involve the assertion of federal, state, or federal or state law, of rights under the U.S. Constitution.

The Court has personal jurisdiction over Defendants, who are sued in their individual capacities.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, the events that gave rise to Plaintiffs' claims occurred and were resolved in judicial territory.

The Court has the authority to enter declaratory and injunctive relief under the provisions of 28 U.S.C. §§ 2201 and 2202.

PARTIES

MONTANA DEMOCRATIC PARTY ("MDP") is a political party of the state of Montana. Code Ann. § 13-38-101 *et seq.* It meets the broad criteria of a "party" as defined under SB 319's restrictions. *See* Mt. Code Ann. § 13-38-101. MDP is a non-Democratic Party candidate in local, county, and statewide elections within the state of Montana. MDP works to assist voters in Montana by educating, mobilizing, assisting, and turning out voters for the Democratic Party. MDP's activities include supporting Democratic Party candidates in local, national and local elections through fundraising and organizing; protecting the legal rights of voters and ensuring that all voters have a meaningful opportunity to vote in Montana. MDP has thousands of members and

constituents from across the state, including college students in Montana and Montanans who regularly support candidates affiliated with the Democratic Party at all legislative and local election elections. MDP has expended millions of dollars to register and mobilize voters to support candidates up and down the ballot who affiliate with the Democratic Party in Montana. MDP again intends to make significant expenditures to support Democratic candidates in the 2022 election and in future elections.

MDP's past and future activities have been significant efforts to register and mobilize voters on college campuses, including by retaining staff whose responsibilities specifically include on-campus organizing. The Student Organizing Ban Act of 2021 (SOBA) in three ways. First, it prohibits MDP from engaging in core political activities protected by the First Amendment, targeting MDP's core political organizing efforts designed to influence the voters in an election. SOBA's prohibitions impact the safety by frustrating MDP's mission and efforts to connect with voters on campus by suppressing the access of young voters, voters who support Democratic candidates, to the franchise. Third, due to the SOBA's prohibitions, SOBA will prohibit MDP from registering and mobilizing voters on campus. The access to college and university campuses such as dorms, dining halls, and other facilities. MDP will inevitably have to dedicate more staff to voter registration and mobilization on campus in order to reach the same number of

potential voters, diverting both staff and monetary resources away from other mission-critical efforts.

(c) MDP's members—including thousands of college students in Montana, and its injury by the Student Organizing Ban as it violates their First Amendment freedom of speech—would directly target the right of college students to vote on the basis of their age in violation of the Twenty-Sixth Amendment.

(d) MONTANANS FOR TESTER is the principal campaign committee of Senator Jon Tester. It meets the broad definition of a “political committee” under MDP’s restrictions. *See* Mont. Code Ann. § 13-1-100(1)(a)(i). In order to support the election and re-election of Jon Tester to the United States Senate in fulfillment of his mission, Montanans for Tester expends millions of dollars to mobilize, assist, and turn out voters throughout the state, including on college campuses.

(e) The Student Organizing Ban injures Montanans for Tester in three ways. First, it prevents Montanans for Tester from engaging in core political speech protected by the First Amendment, targeting Montanans for Tester’s candidates and activities specifically designed to influence the voters in an election. Second, it causes significant injury by frustrating Montanans for Tester’s efforts to elect Jon Tester to the United States Senate in Montana by suppressing the turnout of young voters, who tend to tend to support Democratic

candidates, so the franchise. Third, due to the Student Organizing Ban—which prohibits Montanans for Tester from registering and mobilizing voters in high-traffic areas of college and university campuses such as dorms, dining halls, and athletic facilities—Montanans for Tester will inevitably have to dedicate more staff to voter registration and mobilization on campus in order to reach the same number of potential voters, diverting both staff and monetary resources away from other critical voter efforts.

Finally, the ban on the efforts of Montanans for Tester and MDP to register young voters on college campuses is a particularly poignant example of the inevitable impact of the Student Organizing Ban. Prior to the 2018 election, Montanans for Tester—working in high-traffic areas of college campuses—registered over 2,000 new voters on college campuses through a field program that targeted high-traffic campus areas such as dorms and dining halls. The Student Organizing Ban would make such efforts illegal.

Ms. PATRITTI is a resident of, and registered voter in, Montana. Ms. PATRITTI is 19 years old and a freshman at the University of Montana. Ms. PATRITTI has worked on the polls and was a student intern for the Montana Election Administration in the 2020 election. As part of her responsibilities as an intern, Ms. PATRITTI worked on the campus of Montana Technological University in Butte, Montana, and high-traffic areas, including in facilities such as dining halls. Due to the Student Organizing Ban, Ms. Patritti would seek to conduct the

same activities again in coordination with a political committee such as MDP or Montarens for Tester. These activities would now be prohibited by the Student Organizing Ban, injuring Ms. Parrilli by restricting her ability to engage in core political expression protected by the First Amendment. The Student Organizing Ban also injures Ms. Parrilli by abridging her right to vote due to her age in violation of the First Amendment.

2. Defendant CHRYSTI JACOBSON is the Secretary of State of Montana and is sued here as Plaintiff in her official capacity. The Secretary is Montana's chief election officer, serving with the authority "to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those of chapters 35, 36, or 37." Mont Code Ann. § 13-1-201.

3. Defendant TERRY MANGAN is the Montana Commissioner of Elections. He is sued here as a Defendant in his official capacity. The Commission is charged with "investigating all of the alleged violations of the election laws of this state [chapter 35 of this title or [chapter 37] and in conjunction with the attorney general, who shall be responsible for enforcing these election laws." Mont Code Ann. § 13-1-211. This includes, among other things, the regulation of election law, including election law, *id.* 13-37-229, and the regulation of election law, including election law, *id.* 13-35-225.

STATEMENTS OF FACTS AND LAW

29. For years, Montana has been a leader in administering secure and accessible elections. The record-breaking turnout that Montana saw in the 2020 general election—especially among young voters—is evidence that when it is easier to cast one's ballot, more people vote. And the increased participation of young voters, in particular, was striking: over 40% more Montanans between the age of 18 and 29 cast a ballot compared to the 2016 presidential election. In response, the Montana Legislature sought to dismantle a number of the procedures and practices that made it difficult for young Montanans to participate in the political process.

30. But the Montana Legislature did not stop at voting procedures. In the wake of successful organizing and mobilization efforts by a number of organizations, including the DP and Montanans for Tester, the Legislature passed the Student Organizing Day with the intent to hamstring political committees aimed at increasing the engagement of college students across Montana.

31. The Legislature used a series of rare procedural maneuvers to transform SB 107 from a relatively innocuous campaign finance bill to one with profound implications for the political rights of Montana's college students.

32. In the House, State Senator Greg Metz introduced SB 319 on February 19, 2021. The bill was titled "Student Organizing Day Bill." The substance of the bill related entirely to

campaign finance regulations—specifically, the use of and reporting requirements for joint fundraising committees.

27. On the day Senator Herz introduced the bill, it was referred to the Senate Finance Administration Committee. The bill received a hearing on February 26, 2021, passed out of the State Administration Committee on March 1, 2021, and passed the Senate Finance Committee on March 2, 2021.

28. When SB 319 reached the Montana House of Representatives, it was referred to the House Administration Committee. The bill received a hearing in the morning of March 17, 2021, passed out of the State Administration Committee with amendments on March 23, 2021, and was returned to the Senate—as an amended bill—on March 24, 2021.

29. Because the House has not acted on SB 319 for more than two weeks, the Senate requires the bill to be read twice on April 23, 2021.

30. It is the general practice of the Montana Legislature to resolve any discrepancies between the versions of a bill using a conference committee, composed of three members of the House and three members of the Senate. The conference committee is limited to accepting, rejecting, or amending the disputed amendments.

31. If the conference committee fails to reconcile the disputed amendments, a conference committee can convene to salvage the bill.

32. A free conference committee has a broader mandate than a typical conference committee and is empowered to consider and adopt any amendment within the scope and title of the bill, even if such an amendment was not included in either chamber's version of the original bill.

33. In an unusual procedural move, the Legislature never appointed a conference committee to resolve the discrepancies between the House and Senate version of SB 319. Instead, in the last days of the legislative session, the Legislature sent the bill directly to a free conference committee.

34. On April 27, 2021, the free conference committee convened to consider potential amendments to SB 319.

35. During a terse 45-minute meeting that lasted just under eighteen minutes, the members of the free conference committee adopted four amendments that fundamentally altered the scope and substance of SB 319.

36. The free conference committee did not seek or allow public comment on the amendments, nor were they subject to the scrutiny of the relevant House or Senate committee.

37. One of the most controversial of these amendments, the Student Organizing Bill (S.O.B.) (Section 21 of SB 319), prohibits political committees from directly or indirectly managing or conducting any "voter identification efforts, voter registration efforts, signature collection efforts, ballot collection efforts, or

vote in any election for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution.” §§ 319 § 21(1).

14. The Student Organizing Ban is designed to limit the ability of newly-enfranchised students to fully exercise the franchise by limiting the information available to them and by stopping them from engaging in constitutionally protected political speech on college campuses.

15. The author of the Student Organizing Ban, State Senator Steve Fitzgerald, explained that he had “no problem if kids vote,” but he wanted to protect them “from being exploited” by “really activist causes.”

16. In addition to its problematic purpose, the Student Organizing Ban will chill constitutionally protected speech far outside the activities specifically enumerated in it.

17. For example, the Student Organizing Ban fails to provide any guidance as to what a “justification effort” means. The possibilities cover a range of constitutionally protected activity, from commonplace election-related undertakings like door-to-door canvassing or one-on-one advocacy, to information about how to acquire

such as identification to cast a ballot, to conversations about candidates, issues, and policies that supported or opposed by a particular political committee.

Finally, the ban enacted through the Student Organizing Ban purports to allow independent organizing efforts provided the activity is undertaken “at [an] individual’s expense” under 13-31-107(2)(E). Neither SE 319 nor the Montana Election Code clearly explain when it wants to undertake such activities at an “individual’s expense.”

47. The Student Organizing Ban would prohibit any college student who lives in a dorm or regularly eats in a dining hall from undertaking or participating in any activity prohibited by the Student Organizing Ban if that student undertakes that activity in conjunction with any political committee. Put another way, the Student Organizing Ban will prohibit students from engaging in constitutionally protected activities and free speech in the place they call home.

48. The Student Organizing Ban’s definition of a “political committee” encompasses a broad range of political and civil rights organizations, *see* Mont. Code Ann. § 13-31-107(2)(E). The Student Organizing Ban will significantly hamper student-organizing efforts throughout the state.

49. The Student Organizing Ban also does not exempt student groups who meet the definition of “political committee” from the rules and regulations governing such organizations. If a student organization becomes an “incidental political

conducting a single expenditure supporting or opposing a candidate or ballot initiative, the Student Organizing Ban will have significant consequences for any student group that chooses to take a stand on the most important political and social issues of this era. *Mo. Code Ann. § 13-1-101(23)*.

The Student Organizing Ban's chilling is particularly pronounced because of the severe penalties that accompany a violation of the Student Organizing Ban. Any person or organization that violates the Student Organizing Ban is subject to a “fine of up to \$1,000 for each violation” and “[e]ach day of a continuing violation constitutes a separate offense.” SB 319 § 21(4).

Therefore, the Student Organizing Ban violates the First Amendment’s core political speech, organizing, and suppressing political speech. And, because it does so by mandating special in-state attempt to suppress the voting power of college students and their organizations—it also violates the Twenty Sixth Amendment.

PRAYER FOR RELIEF

COUNT 1

First Amendment and Fourteenth Amendment
U.S. Const. Amend. 1 and XIV, 42 U.S.C. § 1983, 28 U.S.C. § 2201, 28 U.S.C. § 2202
Restriction on Core Political Speech

Plaintiffs, AFF/DFB, Moremans for Texas, and Macee Parritti reallege and incorporate by reference paragraphs 1 through 49 as though fully set forth herein.

Montana's vast Amendment, by way of the Fourteenth Amendment, bars Montana from abridging the right to free expression. The right is at its most protected when the speech is political, serving “to ensure that the individual citizen will be enabled to participate in and contribute to our republican system of self-government.” *Shelton v. Texas Suprem. Ct.*, 457 U.S. 596, 604 (1982).

Montana's Amendment “Categorically” sees the First Amendment at its apogee. Montanans have a 12th Amendment right to “participate in and contribute to” our system of government, including “political committees” like MDP and Montanans from “coordinat[ing], coordinat[ing], coordinat[ing], coordinat[ing], or conduct[ing] any voter information drive, door-to-door canvassing drives, signature collection efforts, ballot collection efforts, or voter mail-off” is for a federal, state, local, or school election in “a residence hall, dining facility, or athletic facility operated by” the Montana State University System. §§ 310 § 121(1). It has also unconstitutionally restricted the ability of a woman (Missouri’s *Missouri Patriot*) to associate with organizations such as “22nd Amendment Action Team” in undertaking these expressive acts.

Montana’s Amendment is also governing “the mechanics of the electoral process” and thus “a regulation of pure speech,” targeting “only those” communications “relating to speech designed to influence the voters in an election.” *Booth v. State Election Comm’n*, 514 U.S. 334, 345 (1995). And it does so on compelling grounds that require a government open to free and robust expression. *See*

Wideman v. University of Wisconsin, 454 U.S. 263, 267 n.5 (1981) (“The college classroom with its surrounding environs is peculiarly ‘the marketplace of ideas.’”).

Montana’s Student Organizing Ban singles out the voting-related expression of college students and those who work with them—for regulation. Voter registration and signature collection efforts constitute “the type of [independent] political activity promoting political change that is appropriately deferred to the political arena.” *Boyer v. Grant*, 486 U.S. 414, 421-22 (1988), *cert. denied*, 494 U.S. 1015. Her MDP and Montanans for Tester express the intent to register and vote with voters with whom they share common goals, so that they can “address [the] issue.” The ban is therefore faced not “with an ordinary exercise of political expression that targets and restricts political expression.” *Boyer*, 486 U.S. at 421-22.

Montana’s ban targets precisely those activities barred by Montana to encourage the registration of voters and to facilitate signature collection for ballot initiatives and political candidates with whom they share a common goal. For example, MDP has spent, and will, in the future, substantial resources in efforts to mobilize and register voters across Montana’s college campuses. As a result of these efforts, MDP has helped register thousands of young college students whose First Amendment rights are restricted by SB 219. Montanans for Tester has similarly targeted and mobilized, in the future, college campuses, registering 3,000 voters on

campaigns was done in the lead up to the 2018 election. And Plaintiff Macee Parfitt has devoted her time to assist in these efforts on Montana's campuses and political events of the future.

18. The Supreme Court and the lower federal courts have explained that the right to receive, including, incidental political speech. *See, e.g., Meyer*, 486 U.S. at 421 (regarding political discussions with "potential signatories" constitute core First Amendment activity); at least email "persuad[ing] them that the matter [is] worthy of their public scrutiny and debate that would attend its consideration by the legislature." *Tr. of the Hon. Blumenthal v. Blumenthal*, 455 F. Supp. 2d 694, 706 (N.D. Cal. 2006). The central objective of voter registration drives is obvious: they encourage and facilitate participation in the political process through voting is *fundamental to our democratic society*.

19. The Student Organizing Fund, therefore, restricts Plaintiffs from participating in registration drives copies core to First Amendment protections. This burden on Plaintiffs is a grave constitutional infringement. But the Student Organizing Fund's burden is made worse by its effect on young voters.

20. The law, restricting young college students (a population of newly-minted voters) from receiving and receptive to voter outreach and the political speech that accompanies it. This burden is a voting-related expression where they are most easily influenced and even, if not vaguely describes the people, programs, and

places a limit on each. It chills these same students from speaking on political issues as readily as they would were the law not in place.

Thus, in light of these burdens, the Student Organizing Ban is subject to “strict scrutiny” and may only be upheld if it is narrowly tailored to serve a compelling government interest. *Regan v. Los Angeles*, 456 U.S. at 347.

The Student Organizing Ban cannot withstand such scrutiny.

The government cannot demonstrate even a legitimate interest—let alone a compelling one—behind imposing content-based restrictions on Plaintiffs’ interactions with the press. *See* *Regan v. Los Angeles*, 456 U.S. at 347. At least because of the roughshod way the Student Organizing Ban was implemented, *see supra* ¶¶ 25-37.

The government has also *not* admitted that its purpose was to chill speech. The government has admitted to keep students from being “exploited” by “unscrupulous” individuals. *See* *Regan v. Los Angeles*, 456 U.S. at 347. The government has fully admitted that through the Student Organizing Ban, the speech that the government feared was too effective to suppress in the first place. *See* *Regan v. Los Angeles*, 456 U.S. 552, 580 (2011) (“The State has been unable to identify a precedent or provision that it found too persuasive. At the same time, the State has itself excluded those speakers whose messages are in accord with its own views. This the First Amendment cannot do.”). This makes it a content-based restriction, and such restrictions are presumptively unconstitutional. *See, e.g., Reed v. Town of Gilbert*, 139 S.Ct. 1679, 1688 (2015) (“[B]eing even if a law is facially content neutral,

it will also be deemed to be an unconstitutional content-based restriction if (1) it “cannot be justified without reference to the content of the regulated speech,” or (2) it was “adopted by the government because of disagreement with the message [the speech] conveys.” (quotation marks omitted); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), explaining that when determining whether a provision of a provision of the First Amendment is content neutral, courts must consider “whether the government has adopted a regulation of speech *because of* disagreement with the message it conveys” (emphasis added); see also *R.A.V. v. City of Boulder*, 505 U.S. 377, 384 (1992) (holding that the mere “possibility that the [regulation] might be used to suppress the expression of particular ideas . . . would automatically render [it] presumptively invalid”).

Even if the University’s interests are “undisputed” interests, they will not be sufficient to justify the University’s ban on FOIA’s right to free expression.

The Court will therefore grant injunctive and declaratory relief to prevent the University from enforcing FOIA’s right to free expression by the Student Organizing Ban to Plaintiff’s right to free speech guaranteed by the First Amendment.

COUNT II

Twenty-Sixth Amendment

U.S. Const. Amend XXVI, 42 U.S.C. § 1983, 28 U.S.C. § 2201, 28 U.S.C. § 2202

Denial or Abridgement of the Right to Vote on Account of Age

§ 1. Plaintiff's recitege and incorporate by reference paragraphs 1 through 49 as being fully set forth herein.

§ 2. The Twenty-Sixth Amendment to the U.S. Constitution provides in relevant part the right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by any State on account of age. The purpose of the Amendment was not merely to empower voting by our youths but also to ensure the enjoyment of the right of the voting, through the elimination of the age barrier, that the vigor and idealism could be brought into the political and social life of our Nationally co-located institutions." *Worden v. Board of Election*, 374 F.2d 233, 243 (N.J. Sup. 1972).

§ 3. The Twenty-Sixth Amendment guarantees young, qualified voters a substantial equal opportunity with other qualified voters in the electoral process. While the Amendment speaks only of age discrimination, it has "particular importance to young people who comprise approximately 50 per cent of all who vote in our Nation." *Walgren v. Howes*, 482 F.2d 95, 101 (1st Cir. 1973), 53-1 USTC ¶13,717, 5 (25).

As a result, laws that have the purpose, even in part, of denying or abridging the right to vote on account of age are unconstitutional. *League of Women Voters v. Denver*, 2018 U.Supp. 3d 1213, 1222-23 (N.D. Fla. 2018) (holding plaintiffs substantially likely to succeed on merits of Twenty-Sixth Amendment challenge to restrictive state guidance “unexplainable on grounds other than age”); *See Project-Common Cause v. Anderson*, 495 P.2d 220, 222 (Colo. 1972) (holding, based on “[h]istory and reason” that the Twenty-Sixth Amendment “guarant[ies] the right to vote to anyone eighteen years of age or over” and that “[t]he right applies to the entire process involving the exercise of the franchise”); *See* [https://www.uscourts.gov/press-release/2018/08/2018-08-20-18-1117](#)).

The Student Organizing Ban targets Montana’s college-age voters with significant and targeted speech in college residence halls, dining facilities, and other public buildings, or other type of public building—in a time and place where the ban’s committees from reaching young, college-age voters is especially high. In this way the Student Organizing Ban amounts to a significant and targeted discrimination on the basis of age in violation of the Equal Protection Clause.

Therefore, the relief requested is needed to prevent the serious and continuing harm caused by the Student Organizing Ban on Plaintiffs’ fundamental rights to equal protection of the law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a) declaring, under the authority granted to this Court by 28 U.S.C. § 2201, that the Student Organizing Ban violates the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution;
- b) enjoining the Secretary and Commissioner of Political Practices, under the authority granted to this Court by 28 U.S.C. §2202, from enforcing the Student Organizing Ban;
- c) awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- d) granting such other and further relief as the Court deems just and proper.

Dated: October 12, 2021

Respectfully submitted,

/s/ Peter Michael Meloy

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