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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'
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 Brief in Support of their Application for Preliminary Injunction, filed concurrently with the Montana Democratic Party (“MDP”) and Western Native Voice (“WNV”) plaintiffs’ Applications for Preliminary Injunctions and Briefs in Support.

Montana’s 2021 legislative session was a wellspring of restrictive laws that unconstitutionally burden young Montanans’ right to vote. Three of these laws—House Bill 506 (“HB506”), Senate Bill 169 (“SB169”), and House Bill 176 (“HB176”)—are the subject of this lawsuit. Separately and together, these laws make it more difficult for everyone in Montana to exercise their constitutional right to vote, but they especially burden young people. The State has no compelling reason for imposing such burdens. To prevent irreparable harm and preserve the status quo for the pendency of this litigation, the Court should issue a preliminary injunction.

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. First, the Montana Constitution guarantees “free and open” elections. All three laws violate that guarantee, because they “interfere to prevent the free exercise of the right of suffrage.” Mont. Const., art. II, § 13. Second, the Montana Constitution promises “[n]o person shall be denied the equal protection of the laws.” Mont. Const., art. II, § 4. But the restrictions imposed by the challenged laws unquestionably land more heavily on certain classes of people, particularly restricting youth from accessing

their ballots and exercising their right to vote. Third, under the Montana Constitution, all fundamental rights operate with equal force to “persons under 18 years of age . . . unless specifically precluded by laws which enhance the protections of such persons.” Mont. Const., art. II, § 15. Instead of enhancing soon-to-be-eligible voters’ rights, HB506 openly discriminates against individuals turning 18 in the month before Election Day by preventing them from accessing their ballots at the same time as similarly situated older adults.

It is well established that constitutional violations give rise to irreparable injury. *Driscoll v. Stapleton*, 2020 MT 247, ¶ 15. Youth Plaintiffs have thus also established that if these laws are allowed to take effect, each will cause irreparable injury to Youth Plaintiffs during the impending 2022 primary and general elections, where Montanans will select two United States Representatives. Stated concretely: if implemented, these laws will prevent thousands of Montanans from voting entirely, and a disproportionate number of those Montanans will be youth aged 18 to 29. Their injury will be irreparable.

Youth Plaintiffs are therefore entitled to a preliminary injunction to prevent SB169, HB506, and HB176 from taking effect while this case is litigated. After a hearing, the Court should enter a preliminary injunction.

BACKGROUND

Because the Court has consolidated this case with MDP and WNV, plaintiffs across all three cases coordinated their preliminary injunction briefing to promote efficiency. Youth Plaintiffs seek to enjoin HB176 and SB169 for reasons that closely

align with MDP, and so focus this brief on reasons for enjoining HB506 and for enjoining all three laws due to their cumulatively burdensome effects.

I. Over the last decade, youth voter turnout in Montana has boomed.

Since 2014, Montana voters aged 18 to 29 have cast ballots at record-breaking levels, growing the share of young people voting in each major election year. Though consistent with a national trend, *see* Ex. A-1, Michael Wines, *The Student Vote Is Surging. So Are Efforts to Suppress It.*, N.Y. Times (Oct. 14, 2019), Montana led all states with a 25% increase in the share of youth voting between 2014 and 2018, Ex. A-2, Kianna Gardner, *Flathead, Montana see big increase in young voters*, Daily Inter Lake (March 13, 2019). Between 2016 and 2020, the portion of young people voting increased from 41% to 56%—a 15-point jump. Ex. A-3, *State-by-State 2020 Youth Voter Turnout: West & Southwest*, CIRCLE (March 24, 2021).¹

In 2020, a fifth of all votes cast in Montana were cast by people aged 18 to 29. Ex. A-4, *Montana Exit Polls: How Different Groups Voted*, N.Y. Times (Nov. 3, 2020).²

II. Facilitative voting laws increase youth turnout; burdensome laws curtail it.

Restrictive voting laws burden young voters more than older populations. Young voters tend to move more often, and to have less well-developed voting habits and less experience voting. As a result, certain burdens that affect all voters to some

¹ The Center for Information and Research on Civil Learning & Engagement (“CIRCLE”) is a non-partisan, independent research organization focused on youth civic engagement in the United States.

² While certainly these increases reflect a modern phenomenon, Montana has a history of prioritizing and uplifting the youth vote. Expert Report of Yael Bromberg, 3–12 (Jan. 14, 2022). Montana was among the first states to adopt the 26th Amendment. *Id.* at 9. Indeed, Senator Mike Mansfield’s support was so integral to its passage that he is considered by many to be the unsung hero of the 26th Amendment. *Id.* at 8, 19.

extent—including variation in registration requirements, deadlines, and acceptable forms of identification—reduce turnout among young voters more acutely. Ex. A-5, *Half of Youth Voted in 2020, An 11-Point Increase from 2016*, CIRCLE (April 29, 2021) (“interconnected factors,” including whether state voting laws facilitate or burden voting, “shape whether youth electoral participation is high or low”); *see also* MDP Br. at 4, 8–10.

States with four or more facilitative voting policies in place—policies like election day registration, early voting, no-excuse absentee voting, pre-registration, and others—had, in 2021, a combined youth voter turnout rate about 10% higher than states with fewer than four facilitative voting policies. Ex. A-5, at 4; *see also* Expert Report of Michael Herron, ¶ 20 (“[I]n states with higher costs of voting, voter turnout is lower, all things being equal.”). Young people rely particularly on election day registration. Ex. A-6, Grumbach & Hill, *Rock the Registration: Same Day Registration Increases Turnout of Young Voters*, The Univ. of Chicago Press J. (Aug. 9, 2020). Among registered voters aged 18 to 29 who did not vote in the 2016 election, 21% cited voter ID issues and 20% cited voter registration issues as the reason why they did not cast a ballot. Ex. A-7, Alberto Medina, *Broadening Youth Voting: Barriers to Voting Chart*, CIRCLE (2021).

The COVID-19 pandemic also made vote-by-mail laws uniquely critical in 2020, when the share of voters nationwide who cast ballots on election day dropped to 28%—down from 60% in 2016. Ex. A-5, at 4. Vote-by-mail policies are strongly linked to youth voting rates: states that automatically mail ballots to voters had the

highest youth turnout, while states with more restrictive vote-by-mail laws had the lowest. *Id.* This finding is especially relevant given that HB506 will prevent many newly 18-year-old voters from accessing Montana’s no-excuse absentee ballot system.

To make matters worse, first voting experiences predict future voting behavior. Ex. A-8, Perri Klass, *What Really Makes Us Vote? It May Be Our Parents*, N.Y. Times (Nov. 7, 2016) (summarizing research showing that “voting habits are formed early in life; people who vote three times in a row, in the first three elections for which they are eligible, are more likely to be lifelong voters”). So, laws that impose barriers to the ballot and thereby deter first-time voters have lifelong consequences.

What this research reveals is simple: mixing a cocktail of burdensome voting laws reduces youth turnout.³ Expert Report of Yael Bromberg at 41–42.

III. HB506 makes absentee voting an impossibility for some new voters.

Until 2021, election officials could issue ballots at the same time to all registered voters who would be eligible to vote by election day. HB506 prohibits this practice, making it unlawful to issue ballots to registered voters who will be eligible to vote on or before election day, but who are not yet 18 or have not yet lived in their voting precinct for 30 days. Ex. A-9, HB506, §2(2). As a result, HB506 creates significant problems for voters whose vote-eligible date lands in the late registration period, which begins 30 days before election day. Section 13-2-301(a), MCA.

³ In addition to the laws challenged here, the 2021 legislative session featured House Bill 530, which MDP and WNV challenge, and Senate Bill 319—banning voter registration in residential, athletic, and dining facilities on Montana University System campuses. Senate Bill 319 has already been preliminarily enjoined. Preliminary Inj. Or., *Forward Mont. et al. v. Montana et al.*, Cause No. ADV-2021-611, at 5–6 (Mont. First Jud. Dist. Ct. July 1, 2021).

Timelines for distributing ballots are set by statute. *See* §§ 13-19-207; 13-13-205, MCA. For primary or general elections, absentee ballots must be made available “30 days prior to election day for absentee voting in person,” and “25 days prior to election day for mailing ballots to absentee voters.” *Id.* §§ 13-13-205(1)(a)(i)–(ii). Federal election ballots “requested by an absent uniformed services or overseas elector . . . must be sent . . . not later than 45 days in advance of the election.” *Id.* § 13-13-205(2). All ballots must be mailed “on the same day” to active and provisionally registered voters. *Id.* § 13-19-207. This translates to elections offices sending tens of thousands of ballots on a single day. *See* Ex. A-10, Sec’y of State Official Montana Registered Voters by County (accessed May 17, 2021) (showing more than 70,000 registered voters in Flathead County and more than 85,000 registered voters in Gallatin County). Even in years unaffected by COVID-19, most Montanans vote by absentee ballot: in the 2018 general election, more than 73% voted absentee. Herron Report, ¶ 28, *see also* MDP Br. at 10. And Montanans value and rely on being able to vote absentee. *See, e.g.*, Ex. K, Decl. of Alzada Roche ¶¶ 6, 13 (“I rely on the absentee ballot system.”); Ex. G, Decl. of Scott Lockwood ¶¶ 13–16 (“Mail-in ballots have also been hugely important to me since the start of the COVID-19 pandemic.”); Ex. D, Decl. of Audrey Dozier ¶¶ 4 (“Since [turning 18], I have only voted by mail.”), 9–10; Ex. F, Aff. of Meghan Lockner ¶¶ 11–12 (“I value being able to vote by mail.”); Ex. E, Decl. of Anne Hosefros ¶¶ 11 (“[M]y husband and I genuinely rely on being able to vote by mail.”), 12–15.

Election administrators have well-developed systems for managing absentee

ballots. Ballots are certified 75 days before a general election. *Id.* § 13-12-201. Election administrators then engage in a series of intricate steps to procure ballots, organize bulk mailings, print and prep ballots and envelopes, before they seal, sort by precinct, and mail ballots. *See generally* Ex. A-11, Sec’y of State, *Absentee Ballot Best Practices: Election Administrator Certification Training* (updated Jan. 2018).

HB506 alters this complex process for the worse. Before HB506, officials sent ballots to all registered absentee voters at the same time. *See* §§ 13-13-205(1)(a)(i)–(ii), MCA. Under HB506, officials must identify registered voters who do not yet meet eligibility criteria—before the date when eligibility matters—and must defer mailing the relevant ballots until the pertinent vote-eligible date.

So, HB506 will weigh on hundreds of registered voters with a vote-eligible date in the late registration period who want or need to vote by absentee ballot. Herron Report ¶¶ 50, 57, 60. HB506 needlessly and unduly burdens every voter turning 18 in the two weeks before election day because they will be forced to vote in person even if they register well in advance of the June 2021 primary. Ex. I, Decl. of Isaac Nehring ¶¶ 6–7, 21. For example, with his 18th birthday on June 3, 2022—just four days before the June 7 primary election—Isaac Nehring’s ballot cannot be mailed in time for him to be certain to receive it before election day. *Id.* ¶¶ 7–8; Herron Report ¶¶ 39–41. Nehring has only three days on which he can receive and vote his ballot, one of which is his birthday and final day of high school, and all of which surround his high school graduation and transition to summer obligations. Nehring Decl. ¶¶ 15–19. Nehring would prefer to vote early by absentee ballot. *Id.* ¶¶ 20, 24.

Young people like Ali Caudle also show how difficult registering and voting in person can be for high school students. Caudle was not aware that she could register to vote before turning 18. Ex. B, Decl. of Ali Caudle ¶ 4. Confusion about how and when to register is not uncommon among new voters. *Id.*; Ex. L, Aff. of Alexa Runnion ¶¶ 5, 8; Ex. M, Decl. of Hailey Sinoff ¶ 3; Ex. N, Decl. of Nathalie Wagler ¶ 13; Lockwood Decl. ¶¶ 4–6. Only when she attempted to register to vote on her 18th birthday—October 3, 2021—did Caudle realize she would need to register in person. Caudle Decl. ¶¶ 3, 5. But Caudle is in school from 8 am to 3:55 pm, followed by extracurricular commitments, including soccer practice, which last until well after 5 pm on weekdays. *Id.* ¶ 10. Thus, the Missoula County Elections Office’s hours—weekdays between 9 am and 5 pm—presented a real challenge. *Id.* ¶¶ 9–12. Caudle only managed to register to vote on October 29, the Friday before election day. *Id.* ¶ 12. Because HB176 eliminated election day registration, that Friday was the last possible day Caudle could register to vote without missing school. *Id.* ¶ 15.

Bill sponsor Representative Paul Fielder claimed that HB506 clarified prior law without offering evidence that issuing ballots to eligible voters was in fact confusing, administratively burdensome, or at all related to unlawful or fraudulent activities. Mont. Leg., House State Admin. Hrg. Video at 10:27:13 & 10:29:42 (Feb. 24, 2021), *available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42591?agendaId=201039>. Quite simply, no reason justifies the passage of HB506, let alone a compelling one.

LEGAL STANDARD

A preliminary injunction is appropriate under § 27-19-201, MCA, on any one of “several enumerated grounds.” *Weems v. State*, 2019 MT 98, ¶ 17. As relevant here, § 27-19-201, MCA, provides that either of the following sets of circumstances will justify issuance of a preliminary injunction:

- (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
- (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant.

In considering a preliminary injunction motion, “the trial court ‘should restrict itself to determining whether the applicant has made a sufficient case to warrant preserving a right in status quo until a trial on the merits can be had.’” *Weems*, ¶ 18 (quoting *Knudson v. McCunn*, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995)). The purpose is “to prevent ‘further injury or irreparable harm . . . pending an adjudication on the merits.’” *Billings v. Cty. Water Dist. of Billings Heights*, 935 P.2d 246, 250, 281 Mont. 219, 227 (1997) (quoting *Knudson*, 894 P.2d at 298). The “status quo” is “the last actual, peaceable, noncontested condition which preceded the pending controversy.” *Porter v. K & S P’ship*, 627 P.2d 836, 839, 192 Mont. 175 (1981).

A sufficient showing requires only “a prima facie case, not entitlement to final judgment.” *Weems*, ¶ 18. “Prima facie’ means literally ‘at first sight’ or ‘on first appearance but subject to further evidence or information.’” *Id.* (quoting *Prima facie*,

Black’s Law Dictionary (10th ed. 2014)). Thus, resolving a request for a preliminary injunction does not involve determining “the underlying merits of the case.” *Id.*

The “loss of a constitutional right constitutes irreparable harm for the purpose of determining whether a preliminary injunction should be issued.” *Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 15 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); see *City of Billings*, 935 P.2d at 251 (“[R]equiring [plaintiff] to prove the statutes unconstitutional beyond a reasonable doubt would be directly at odds with this Court’s holdings that a successful applicant for a preliminary injunction need only establish a prima facie case.”).

ARGUMENT

I. Youth Plaintiffs have established a prima facie case that HB506, SB169, and HB176 are unconstitutional.

A. Constitutional Framework

The Montana Constitution is a modern document drafted to “stand on its own footing and . . . to provide individuals with fundamental rights and protections far broader than those available through the federal system” and meant “to meet the changing circumstances of contemporary life.” *Dorwart v. Caraway*, 2002 MT 240, ¶ 94 (Nelson, J., concurring) (quoting Dahood, Amicus Br.; Mont. Const. Conv., II Verbatim Trans., *Bill of Rights Comm. Proposal*, at 619 (Feb. 22, 1972)). The firmly democratic principles of popular sovereignty and self-government appear first among Montana’s enumerated fundamental rights and underpin the rights that follow. Mont. Const., art. II, §§ 1, 2.

Naturally, the right of suffrage—the tangible embodiment of popular

sovereignty and self-government—is among the declared rights: “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const., art. II, § 13. The Declaration of Rights likewise guarantees “equal protection of the laws,” Mont. Const., art. II, § 4, and expressly provides that minors’ rights include “all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons,” Mont. Const., art. II, § 15.

The rights of suffrage and to equal protection are fundamental rights under the Montana Constitution. *Kloss v. Edward D. Jones & Co.*, 2002 MT 129, ¶ 52 (“[R]ights included within this ‘Declaration of Rights’ are ‘fundamental rights.’”). The state may not abridge any fundamental right without a compelling interest. *Driscoll v. Stapleton*, 2020 MT 247, ¶¶ 18; 40. Strict scrutiny applies to any law that “impermissibly interferes with the exercise of a fundamental right” and, to survive, a statute must be “narrowly tailored to further a compelling government interest”).

B. HB506 plainly violates three fundamental constitutional rights.

HB506 will burden hundreds of newly 18-year-old voters and will prevent some from voting at all. The bill violates their right to suffrage by limiting their use of the no-fault absentee system, and their right to equal protection by creating an age-based class that is otherwise indistinguishable from older voters, and their rights as minors to the same protections under the Montana Constitution as adults.

Every year, hundreds of people turn 18 in the thirty days before either the primary election or the general election. Take the two most recent election cycles.

In 2018, 655 registered voters turned 18 in the month before either the primary or general elections. Herron Report ¶ 60. Of these new voters, 281 registered voters turned 18 in the two weeks before an election, and 24 turned 18 on the actual primary or general election day itself. *Id.* Under HB506, these 24 individuals would have had to pre-register to vote before turning 18 *and* would have had no choice but to vote in person on election day. *Id.* HB506 would have made it nearly impossible for the other new voters to vote absentee with any assurance that their ballot would arrive in time—just as HB506 will prevent Isaac Nehring from voting absentee in the 2022 primary. Similarly, in 2020, 759 registered voters turned 18 in the month before one of the elections. *Id.* Of them, 341 of them turned 18 in the two weeks before the two elections and 19 had their 18th birthdays on an election day. *Id.*

HB506 violates hundreds of newly 18-year-old voters' right to suffrage. Anyone turning 18 in the two weeks before an election who must rely on an absentee ballot for any reason—travel, school out-of-state, illness, injury, disability, a global pandemic, etc.—will be prevented from voting entirely. *See* Herron Report ¶¶ 3–4; Nehring Decl. ¶¶ 23–24; Caudle Decl. ¶¶ 4, 15. This result, on its own, shows that HB506 violates Youth Plaintiffs' right to vote because it burdens some people right out of voting. *See, e.g., Driscoll*, ¶ 23 (concluding the district court did not err in finding evidence to support a preliminary injunction where the law disproportionately burdened Native American voters' right to vote).

But HB506 also unconstitutionally restricts the right to suffrage of anyone who turns 18 in the late registration period because it effectively requires them to vote in

person and so denies them the right to vote absentee that all other Montanans enjoy. *See Big 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 (2000)).

HB506 also unnecessarily complicates voting for anyone who turns 18 during the late registration period. Typically, election officials issue ballots directly to individuals who register to vote in person during the late registration period. *See Caudle Decl.* ¶ 13. But HB506 would require some young voters to make two trips to access their ballots. If, a person like Declarant Nehring—with a birthday within two weeks of or on election day—goes to register in person before turning 18, he may register, but he cannot receive his ballot.

These unnecessary complications are even worse for a voter who turns 18 on election day, as HB506 and HB176 interact to require this new voter—unlike any other eligible voter—to register to vote before election day and also to vote in person on election day. Bromberg Report at 41; *see also* Herron Report ¶¶ 11–12 (explaining the “calculus of voting”). Even if she registers to vote 30 days before the election and requests an absentee ballot, she simply will not receive her ballot in the mail because officials cannot send it to her until she has actually turned 18, on election day. And if she registers during the late registration period, she will be required—again, unlike any other eligible voter—to appear in person twice.

Next, HB506 violates Youth Plaintiffs’ right to equal protection under the Montana Constitution, which states that “[n]o person shall be denied the equal

protection of the laws.” Mont. Const. art. II, § 4. HB506’s differential treatment of similarly situated voters serves no compelling state interest.

That is, for no reason other than her age, a Montanan who turns 18 during the late registration period will face significant burdens and restrictions on the fundamental right to suffrage that Montana voters who turn 18 earlier will not face. Ultimately, the closer a voter’s birthday lands to election day, the greater the burden voting will impose on them. *See* Herron Report ¶¶ 11–21 (describing the calculus of voting and the interaction between associated benefits and costs).

HB506 treats similarly situated individuals—those who will be eligible to vote on election day—in a different manner based solely on the point at which they turn 18 during the election cycle. This violates Youth Plaintiffs’ right to equal protection under the Montana Constitution. *See Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15 (“[T]he law must treat similarly situated individuals in a similar manner.”).

Finally, as Youth Plaintiffs are denied the advantages of the same voting procedures enjoyed by their adult counterparts, including absentee voting, HB506 violates their rights as minors by unconstitutionally burdening a minor’s right to exercise the same rights as adults. Mont. Const., art. II, § 15; Bromberg Report at 15. *See Matter of S.L.M.*, 287 Mont. 23, 35, 951 P.2d 1365 (Mont. 1997) (“[I]f the legislature seeks to carve exceptions to this guarantee, it must not only show a compelling state interest but must show that the exception is designed to enhance the rights of minors.”). Denying these advantages is not an enhancement of the rights of minors, and it does not protect them. *See id.*

Accordingly, Youth Plaintiffs have established a prima facie case that HB506 is unconstitutional and are therefore entitled to a preliminary injunction to prevent HB506 from taking effect while this matter is pending.

C. Together, all three laws unconstitutionally burden the youth vote.

While HB506, HB176, and SB169 each separately violate Youth Plaintiffs' rights under the Montana Constitution, *see supra* at 11–14; MDP Br. at 17, 18, together these laws especially target and disproportionately curtail young Montanans' right to vote.

When applying the Montana Constitution's equal protection provision, “[s]trict scrutiny applies if a suspect class or fundamental right is affected.” *Snetsinger*, ¶ 17; *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 . . . regulating voter qualifications under the strict scrutiny standard.”). Here, all three laws burden the youth’s right to vote. *See Snetsinger*, ¶ 16 (“A law or policy that contains an apparently neutral classification may violate equal protection if ‘in reality it constitutes a device designed to impose different burdens on different classes of persons.’”) (quoting *State v. Spina*, 1999 MT 133, ¶ 85) (cleaned up). While each law standing alone has negative consequences for youth voter turnout, *supra* 11–14; MDP Br. at 4, 17, the interactive effect of the three laws is exponentially worse, Bromberg Report at 41–42. Young voters who are trying to navigate voting for the first time won’t receive an absentee ballot if their 18th birthday falls in the week before election day (HB506), can’t register to vote on

election day (HB176), can't update their registration on election day unless they've remained in the same precinct (HB176), even though young people are the likeliest demographic to move frequently, *see, e.g.*, Roche Decl. ¶ 8 (“In the last six years, I have had about eight different residential addresses.”); Decl. of Amara Reese-Hansell ¶¶ 7–8, 16; MDP Br. at 4, and can no longer rely on the most readily accessible form of ID (SB169). Any one of these burdens could trip up young voters, but all three together create a web. Bromberg Report at 41–44; *see also* Ex. A-5, at 4.

Youth Plaintiffs have thus established a prima facie case that HB176, SB169, and HB506 together violate the Montana Constitution's right to vote and right to equal protection under law, Mont. Const., art. II, §§ 4, 13. Accordingly, the Court should issue a preliminary injunction.

II. Plaintiffs have shown that these laws will cause irreparable harm if applied in the 2022 primary election.

A preliminary injunction is intended “to prevent ‘further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits.’” *City of Billings*, 281 Mont. at 226, 935 P.2d at 250 (*quoting Knudsen*, 894 P.2d at 297–98). The status quo is “the last actual, peaceable noncontested condition which preceded the pending controversy.” *Weems*, ¶ 26. Here, preserving the status quo means reinstating Montana's voting rules and procedures as they stood prior to the passage of the restrictive laws at issue in this case. *See Driscoll*, 2020 MT 247, ¶¶ 23–28 (affirming preliminary injunction of changes created by new voting laws in controversy, but reversing injunction of ballot deadline that had been in effect for at least 20 years).

While statutes enjoy a presumption of constitutionality, where plaintiffs are able to make “a prima facie showing [they] will suffer a harm or injury—‘whether under the ‘great or irreparable injury’ standard of subsection (2), or the lesser degree of harm implied within the other subsections of § 27-19-201, MCA,” they are entitled to a preliminary injunction. *Driscoll*, ¶ 15–16.

HB506 gives rise to a constitutional harm under Article II, Sections 4, 13, and 15 of the Montana Constitution. When the injury alleged at the time of a motion for preliminary injunction is a constitutional violation, it “unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373. Ongoing constitutional violations produce injuries that “cannot effectively be remedied by a legal judgment.” *City of Billings*, 281 Mont. at 231, 935 P.2d at 253. The evidence suggests that upwards of 763 new voters, *see* Herron Report ¶ 60, may be irreparably injured by the increased confusion and difficulty in voting that HB506 creates, Nehring Decl. ¶¶ 20–22; *see also* Reese-Hansell Decl. ¶¶ 19, 24. That injury is concrete and irreparable—Nehring and others like him should not be treated differently because of their age and the timing of their birthdays. *See* Mont. Const. art. II, §§ 4, 13, 15.

What is more, some will be deterred from voting. Nehring Decl. ¶ 23; Ex. A-7, at 10. Even if the number of young people actually deterred from voting were just 10% of registered voters with a vote-eligible date in the 30 days before the June 2022 primary election, it would mean that HB506 will stop as many as three dozen 18-year-olds from voting. *See* Herron Report ¶¶ 58, 60. This presents a grievous harm. Denial of the right to cast a timely ballot cannot be undone. And such denial has

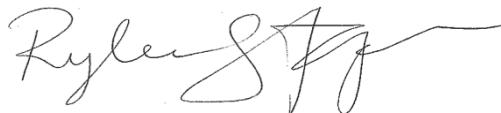
potential long-term consequences for the young people it restricts from voting. *See* Bromberg Report at 15; Ex. A-8, at 2.

Youth Plaintiffs have established a prima facie case that absent a preliminary injunction enjoining HB506, they will suffer irreparable harm. They have likewise established a prima facie case that HB176, SB169, and HB506 together violate Youth Plaintiff's rights to suffrage and equal protection and so must all be preliminarily enjoined because their cumulative effect will cause irreparable injury.

CONCLUSION

For the reasons set forth above, Youth Plaintiffs respectfully request that, following the hearing set for March 10, 2022, this Court grant Youth Plaintiffs' application and enter a preliminary injunction.

Respectfully submitted this 12th day of January, 2022.



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I HEREBY CERTIFY that the above was duly served upon the following on the 12th day of January, 2022, by email.

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