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

Montana Democratic Party and Mitch Bohn,
Plaintiffs,

v.

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

Case No. DV 21-0451

FIRST AMENDED COMPLAINT

INTRODUCTION

1. In the wake of the 2020 general election, when voter turnout was the highest Montana has seen in any general election since 1972, and when turnout among young voters in particular between the ages of 18 and 29 increased nearly 40 percent from the prior presidential

election, the Montana Legislature introduced several laws aimed at restricting the rights of Montanans to engage in their democracy. While these new laws will burden all Montana voters, they specifically target the youngest members of the electorate just months after they turned out to vote at record rates. There is no legitimate justification for these restrictions, much less any sufficiently weighty state interest to justify their burdens on the fundamental right to vote. The Court should invalidate each of these new restrictions, described further below, as unsustainable under multiple provisions of the Montana Constitution.

2. First, the Legislature passed House Bill 176, which eliminated the State's longstanding and turnout-driving tradition of election day voter registration ("EDR"). Despite extensive testimony in House and Senate committee hearings detailing how students, the elderly, disabled voters, and indigenous communities have come to rely on EDR to participate in the electoral process, the Legislature passed HB 176 ("Election Day Registration Ban") along strict party lines, thwarting the will of Montana voters who, just seven years ago, firmly rejected a similar effort to eliminate EDR by referendum.

3. That same week, the Legislature passed an even more surgical attack on Montana's youngest voters: SB 169 (the "Voter ID Restrictions") limits the use of student ID cards as proof of identity when voting. The Voter ID Restrictions amended laws that had been in place for nearly 20 years and had long permitted student voters to use their Montana college or university ID card or voter registration confirmation form, among other kinds of ID, to verify their identity at the polls. Under these new Voter ID Restrictions, a Montana college or university photo ID card or voter registration confirmation form is no longer sufficient voter ID at the polls and must be accompanied by other documentary evidence before a voter may cast a regular ballot.

4. Most recently, in the eleventh hour of its legislative session, the Legislature undertook its most transparent attempt to make it harder to vote in Montana by targeting Montana's long-standing absentee ballot assistance programs ("Renewed Ballot Assistance Ban"). The Legislature has tried—but failed—to restrict ballot assistance twice before. Just eight months ago, two Montana district courts found a similar law unconstitutional. *See Driscoll v. Stapleton*, No. DV 20-408, 2020 WL 5441604, at *1 (Mont. Dist. May 22, 2020), *aff'd in part*, 2020 MT 247, ¶ 25, 401 Mont. 405, 417, 473 P.3d 386, 394 ("*Driscoll*"); *Western Native Voice v. Stapleton*, No. DV 20-0377, 2020 WL 8970685, at *1 (Mont. Dist. Sep. 25, 2020) ("*Western Native Voice*"). Those decisions are final: the Secretary of State abandoned her appeal in *Driscoll* and did not even pursue an appeal in *Western Native Voice*. But before the ink on those decisions dried, the Legislature began drafting a very similar version of the unconstitutional ban, and when that failed to garner enough votes in the Senate, the Legislature passed a *third version* of the same ban—this time, nominally changing the language, but not altering the effect.

5. The proponents of the Election Day Registration Ban, Voter ID Restrictions, and the Renewed Ballot Assistance Ban (together, the "Voter Suppression Bills") justified each of these restrictions on the franchise with vague allusions to bolstering "election integrity." Notably, however, the legislative proceedings were marked by a total lack of evidence of even a single instance in which Montana's prior EDR regime, voter ID laws, or ballot assistance practices jeopardized the integrity of Montana's elections or resulted in fraud.

6. In reality, the Voter Suppression Bills are not driven by any legitimate or credible concerns about the "integrity" of the state's elections. Instead, they represent the latest round of legislative shadowboxing aimed at imaginary threats to election integrity amid false accusations

of election fraud orchestrated by those seeking to overturn the results of the 2020 presidential election, now weaponized by the Legislature to impede access to the franchise.

7. Because the Legislature’s pretextual justifications are insufficient to justify the burdens the Voter Suppression Bills impose—individually and collectively—on Montana voters (and particularly on students, the elderly, the disabled, and indigenous communities), the Voter Suppression Bills violate, and should be held invalid pursuant to, the Montana Constitution’s freedom of speech and association, right-to-vote, equal protection, and due process guarantees.

PARTIES

8. Plaintiff Montana Democratic Party (“MDP”) is a political party established pursuant to MCA § 13-38-101 *et seq.* Its mission is to elect Democratic Party candidates in local, county, state, and federal elections. MDP works to accomplish that mission by educating, mobilizing, assisting, and turning out voters throughout the state. These activities include supporting Democratic Party candidates in national, state, and local elections through fundraising and organizing; protecting the legal rights of voters; and ensuring that all voters have a meaningful opportunity to cast ballots in Montana. MDP has thousands of members and constituents from across the state, including Montanans who regularly support candidates affiliated with the Democratic Party and will register and vote in future elections. MDP has expended in the millions of dollars to persuade and mobilize voters to support candidates up and down the ballot who affiliate with the Democratic Party in Montana. MDP again intends to make substantial expenditures to support Democratic candidates in the 2022 election and in future elections. The Chair of MDP, Robyn Driscoll, is a resident of Billings.

9. In past elections, MDP has invested significant resources in voter engagement efforts with the goal of registering and turning out eligible Democratic voters. Through the efforts of employees and volunteers, MDP engages in voter persuasion and mobilization activities,

FIRST AMENDED COMPLAINT

including door-to-door canvassing in Billings and other locations in Yellowstone County, providing information to voters regarding voter registration and the form of ID they must provide to election officials to cast their ballot and have it counted. In particular, MDP works to ensure that students and young voters are registered to vote and have a form of ID that will enable them to do so. MDP has provided trainings to organizers and volunteers regarding voter registration and voter education services at its Billings office. MDP is planning similar activities in Billings for the 2022 November election.

10. A key part of MDP's mission is its extensive get-out-the-vote ("GOTV") efforts. Together, MDP's employees, members, organizers, and volunteers reach as many voters as possible—through text messages, phone calls, and door-to-door canvassing—providing information to voters about how to successfully cast their ballot and encouraging them to do so. Canvassers encourage unregistered voters to go to their county election administrator's office, the only place where voters can register to vote during the month before an election, to register to vote and vote on election day. They encourage registered voters to go to their polling location to cast their ballots, and they ensure that those voters know exactly what they need to bring with them to do so. Canvassers also encourage absentee voters to return their absentee ballots. And when voters are unable to return their ballots on their own, MDP's canvassers offer to return that person's ballot promptly to the county board of elections. On election day, MDP offers rides to voters who lack the ability to get to the polls on their own, and runs a hotline to answer voter questions regarding voting requirements and polling location information.

11. Because of the Election Day Registration Ban, MDP can no longer encourage unregistered voters to register and vote on election day. Instead, it must expend additional resources to contact unregistered voters earlier in the election cycle. Conducting a turnout program

in advance of election day requires more resources. Because the election is not at the forefront of voters' minds, MDP must contact each voter more frequently in order to motivate them to register, and then must contact that voter again to encourage them to turn out and vote. Additionally, because the Election Day Registration Ban also prohibits voters from making changes to their voter registration information on election day, MDP must now inform voters that they can no longer both update their voter registration information and vote on election day. Similarly, because of both the Election Day Registration Ban and the Voter ID Restrictions, MDP will have to expend significant resources on an information campaign to help ensure that its members and constituents understand the changes in the law and have access to sufficient information in order to avoid disenfranchisement, which will require MDP to reallocate resources from other efforts, such as hosting events for Democratic candidates to better inform the electorate about their candidacy and help them raise the resources to be competitive.

12. Because of the Renewed Ballot Assistance Ban, MDP and other civic organizations will no longer be able to help voters request, receive, and return their absentee ballots. In addition to conducting its own efforts to help voters request, receive, and return their ballots as part of its GOTV program, MDP makes decisions about how to allocate its resources based on historical knowledge of ballot assistance programs conducted by other organizations in turning out its voters.

13. The Voter Suppression Bills directly harm MDP by limiting the effectiveness of its GOTV program, making it harder for Montanans who would vote for MDP candidates to successfully register to vote or return their ballots, and thereby making it more difficult for MDP to accomplish its mission of electing members of the Democratic Party in Montana. Because of the Voter Suppression Bills, MDP will be forced to expend more resources, and divert more funds from its other critical priorities, in order to educate and turn out voters.

14. The Voter Suppression Bills also burden and violate the constitutional rights of MDP's members and constituents. Many of MDP's members and constituents will be required to register to vote before future elections, and all of MDP's members and constituents will be required to prove their identity in order to vote. Some of those members and constituents will struggle to obtain a form of ID that satisfies the new Voter ID restrictions. Others will effectively be denied their right to vote by the Election Day Registration Ban. And many of those members will find it difficult, if not impossible, to return their absentee ballot in light of the Renewed Ballot Assistance Ban.

15. Plaintiff Mitch Bohn is a Montana citizen and voter who resides in Billings. Mr. Bohn's disability confines him to a wheelchair and has resulted in numerous health complications over the years. Because of his mobility issues, Mr. Bohn has regularly given his absentee ballot to his parents to return on his behalf. If it were permissible under Montana law, Mr. Bohn would gladly give his ballot to organizers from the MDP, whom he trusts to return ballots on his behalf. Mr. Bohn strongly believes that ballot collection is a valuable and valid method of returning one's ballot, particular for members of the disabled community like himself.

16. Christi Jacobsen, Montana's Secretary of State, is the State's chief elections officer and is responsible for maintaining uniformity in the application, operation, and interpretation of election laws. Section 13-1-201, MCA. In carrying out these responsibilities, the Secretary has the duty of preparing and delivering to election administrators written directives and instructions relating to election law. Section 13-1-202(1)(a), MCA. The Election Code also requires the Secretary to establish uniform standards for analyzing and verifying voter registration information. Section 13-2-109(1)(b), MCA. The Secretary is named as a Defendant solely in her official capacity.

JURISDICTION AND VENUE

17. Plaintiffs bring this action under the Montana Constitution. As a court of general jurisdiction, this Court has authority to hear these claims. Section 3-5-302, MCA.

18. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgment Act. Sections 27-8-101 *et seq.*, 27-8-201 *et seq.*, MCA. It also has jurisdiction to grant injunctive relief. *See* Section 27-19-101 MCA.

19. Venue is proper in this Court, as Plaintiff MDP operates in Billings, Montana, and Plaintiff Bohn resides in Billings. In addition, the unlawful effects of the Voter Suppression Bills directly impact and interfere with the election and voting-related activities that MDP conducts in Yellowstone County. There is direct injury to MDP and its members, as well as Plaintiff Bohn, in Yellowstone County.

FACTUAL ALLEGATIONS

20. For more than two decades, Montana has been ahead of the curve on administering secure and accessible elections. But in the wake of record-breaking turnout in the 2020 general election, and remarkably high young-voter turnout, the Montana Legislature abruptly reversed course, dismantling important voting procedures that were critical in facilitating political participation for thousands of new Montana voters over nearly two decades. The Voter Suppression Bills were not necessary to secure either Montana's voter registration process, in-person voting, or absentee voting, all of which already imposed several safeguards that have successfully operated for decades to prevent voter fraud in Montana.

A. *The Election Day Registration Ban*

21. EDR has a long and successful history in Montana. In 2005, Senate Bill 302, which allowed eligible residents to both register and vote on election day, passed nearly unanimously and with overwhelming bi-partisan support. A total of only 16 votes—in the House and Senate combined—were cast against the bill. The following year, Montana became one of just seven states to implement EDR. That number has tripled.

22. EDR has become an integral part of Montana's voter-registration process. Thousands of Montana voters have relied on EDR to cast their ballots on Election Day. Montana voters have also demonstrated a desire to affirmatively maintain EDR—even when it has come under threat by elected officials. But despite testimony showing voter reliance on and approval of EDR, record-breaking turnout in the past election, and the absence of any evidence of fraud or any other disruption, the Legislature moved to eliminate EDR.

1. *Voter registration in Montana has several safeguards to protect against voter fraud.*

23. To register to vote in Montana, an applicant must prove both their identity and residence by providing their Montana driver's license number or the last four digits of their social security number. Section 13-2-110(3)(a)(c), MCA. If an applicant does not have a Montana driver's license or social security number, the applicant must provide an alternative form of ID: a current and valid photo ID or a current utility bill, bank statement, paycheck, government check, or other government document that shows both the applicant's name and current address. Section 13-2-110(4)(a), MCA.

24. If an election official cannot immediately verify an applicant, the individual is registered only provisionally pending verification. Mont. Admin. R. 44.3.2011. And if an applicant provides insufficient or incorrect information, the election official will mark their application as

incomplete in the statewide voter registration system. *Id.* 44.3.2005. Only when “the information provided by an applicant . . . is verified and the applicant meets all other legal requirements for registration” is the applicant considered a legally registered voter. Section 13-2-110(5)(a), MCA; Mont. Admin. R. 44.3.2012.

25. In addition to immediate verification, election officials also verify registration information on a rolling basis. Election officials “work in conjunction with the office of the Secretary of State, the Department of Justice’s Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of information provided [by voter registration applicants].” Mont. Admin. R. 44.3.2012(2). Election administrators compare the list of registered voters against the United States Postal Service’s national change of address file and take steps to ensure that electors whose addresses appear to have changed are still eligible to vote at their registered address. Section 13-2-220, MCA; Mont. Admin. R. 44.3.2014. Although election administrators currently perform list maintenance on active and inactive voter registration lists every other year, on April 8, 2021, the Governor signed a bill that requires this list maintenance to be performed annually. Section 13-2-220(1), MCA.

26. During the regular registration period, electors may register to vote in person or by mail up to 30 days before an election. Sections 13-2-110(1), 13-2-301(1)(a), MCA. Voters may also register to vote in-person at their election administrator’s office until noon on the day before election day (previously offered through election day pre-HB 176) during a period Montana calls “late registration.” Section 13-2-301(1)(a), MCA; Mont. Admin. R. 44.3.2015(1)(a). Late registration is different from the regular registration period in that registration can only be accomplished in-person, and it is only available at one or two locations within one’s county—typically, the county election office. *Id.* Since 2005, late registration has included EDR.

27. Those who register during the late registration period do not receive a ballot at a traditional polling place. Instead, they receive an absentee ballot in person directly from their county election office at the time they register to vote. Mont. Admin. R. 44.3.2015(2).

28. When voters cast an absentee ballot, Montana's Election Code requires election administrators to confirm the validity of each ballot before it is counted. Election administrators must verify that the signature on the absentee ballot envelope matches the signature on the voter's absentee ballot application or voter registration application. Section 13-13-241(1)(a), MCA. If an election administrator has any other question regarding the validity of a particular ballot, the question must be resolved before the ballot is counted. Section 13-13-241(6), MCA.

29. Separately, if there is some reason to believe that a voter has voted previously in an election, any other registered voter may challenge their right to vote. Section 13-13-301, MCA.

2. Montana voters broadly approve of EDR and have come to substantially rely on it.

30. Montana voters have demonstrated an affirmative desire to maintain EDR. In 2013, the Legislature passed Legislative Referendum 126, which put the fate of EDR in the hands of the electorate in the following November election. A "yes" vote by the majority of the voters participating in that election would have repealed EDR. But the voters of Montana firmly rejected the measure. In fact, they did so statewide—majorities in 80 out of the state's 100 legislative districts voted to maintain EDR.

31. This widespread support of EDR was not surprising, given how popular the process of registering and voting simultaneously on election day has been among Montana voters. Since its enactment, EDR has been utilized by more than 60,000 state citizens to successfully register to vote.

32. Voters in Montana are nearly 16 times more likely to register on election day than on any other day during the late registration period. In 2018, an average of 515 Montanans registered per day during late registration. But that year, 8,053 Montanans registered on election day. Between 2006 and 2018, a total of 61,188 Montanans registered to vote on election day.

33. On top of being widely used by voters, the number of voters who register on election day has also increased steadily over time. When Montana first introduced election day registration in 2006, 4,315 Montanans registered to vote on election day. By 2016, that number nearly tripled, to 12,055. That year, every single county in the state registered voters on election day.

34. Nearly all election experts agree that EDR significantly increases voter participation. Historically, experts have identified the “closing date” (the last day to register before an election) as the legal restriction having the single largest impact on voter turnout.

35. In particular, experts who have carefully studied EDR have concluded that it positively affects voter turnout by as much as three to seven percent, with an average increase of five percentage points. Without the ability to register on election day, thousands of voters might not have voted at all.

3. Despite ample testimony regarding voter reliance on EDR, the Legislature moved to eliminate it.

36. Following the 2020 election, the Legislature moved suddenly to eliminate EDR in 2021. Their proposal to do so immediately met with marked and substantial opposition, including from groups that represent the communities of Montana voters most likely to be adversely impacted. And during legislative hearings on HB 176, the Legislature heard explicit and repeated testimony about how several groups of Montana voters who have historically struggled to overcome obstacles to voting have relied on EDR to access the franchise.

37. For example, the Legislature heard testimony describing the many barriers to registration and voting that impede American Indian voters' access to the franchise. Facing high unemployment, election administrators' offices and polling locations that are far from reservations, and unreliable mail, American Indian voter turnout is approximately 20 percentage points below the state average. Without the help of community organizers that arrange transportation and mobilize voters on election day, these barriers could prohibit many American Indian voters from registering to vote or casting their ballots entirely. To overcome those barriers, American Indian voters often register and vote on election day when organizers arrange transportation to election administrators' offices and polling locations.

38. The Legislature also heard testimony from the Executive Director of the Montana Association of Centers for Independent Living—a disability advocacy organization that works throughout the state on behalf of Montanans with disabilities—who explained that disabled Montanans must overcome many obstacles to vote: they often require special transportation, accessible voting machines, and assistance requesting, completing, and returning their voter registration forms, absentee ballot applications, and ballots. Disabled voters rely on EDR as a means to overcome some of those barriers.

39. The Legislature also heard that, like disabled voters, many elderly voters live in institutionalized settings or rely on direct-care aids. For those institutions and aides, too, aggregating resources on election day allows them to drive some clients to polling locations where they can use accessible, electronic voting machines to vote privately and independently, and others to their election administrator's office, where—prior to the enactment of the Election Day Registration Ban—those clients could register and cast absentee ballots.

40. Several Montanans also testified regarding the impact of HB 176 on low-income, rural, and working voters. They explained that EDR provides working Montanans an opportunity to register and vote that they would not otherwise have. Electors can register to vote only during standard working hours, between 8 a.m. and 5 p.m., in the late registration period. EDR allowed voters to register and vote until 8 p.m. on election day. In other words, it afforded many working Montanans a one-stop opportunity to register to vote and vote without requiring that they take time off work to do so.

41. The Legislature also heard testimony regarding the negative impact of HB 176 on young voters, who rely on EDR to update their voter registration information. The Montana Public Interest Research Group testified that young voters move frequently, often annually. And when voters change their residences, they must update their registration information before they can cast their ballot and have it counted. Given their high levels of residential transience, young voters are more likely than older voters to show up to their polling location on election day without realizing their voter registration information is out of date.

42. EDR has been critical to protecting the voting rights of tens of thousands of Montanans who arrived at the polls on election day only to learn that they were no longer properly registered. Of the Montanan voters who have registered on election day since the inception of EDR, 40 percent had been previously registered; many of those individuals had errors in their registration information that they were able to correct at the polls, which allowed them to vote.

43. In many cases, registration errors result from miscommunications between the Department of Motor Vehicles and election officials, and they often occur without any advance notice to the voter. Since 2006, EDR has ensured that they are not disenfranchised as a result. But no longer.

44. As Vice Chairman Bryce Bennett of the Senate Committee on State Administration noted during a hearing on February 15, 2021, “story after story” describes instances where Montanans believe they have registered to vote at the DMV, “[t]hey do everything right,” but the clerk from the DMV failed to transfer the voter’s registration form to election officials, or failed to do so on time. Prior to HB 176, those voters had a clear remedy. Now, they do not.

45. In addition to the increased risk of disenfranchisement due to registration errors, HB 176 will make the registration process more difficult. The problem with the Election Day Registration Ban is not just that it lessens the amount of time during which Montanans can register to vote, but it is also more burdensome to register on any other day besides election day—a day when there is greater access to free transportation and other resources to assist voters, and election administrators’ offices remain open until 8 p.m., providing access for those who are unable to vote during business hours. HB 176 thus eliminates a procedure on which tens of thousands of previously-registered voters have relied to avoid disenfranchisement.

4. The EDR Ban is not justified by any state interest.

46. Proponents of HB 176 cited election integrity and administrative concerns as justifications for the Election Day Registration Ban. But those purported justifications not only lacked any supporting credible evidence, they were also rebutted by the legislative record itself.

47. There is virtually no evidence of voter fraud resulting from Montanans registering to vote on election day. In fact, a federal judge noted just last year that, “[w]hen pressed during the hearing in this matter,” the state of Montana was “compelled to concede that they cannot point to a single instance of voter fraud in Montana in any election during the last 20 years.” *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 822 (D. Mont. 2020). Proponents of the Election Day Registration Ban conceded the same: testifying before the Senate Committee on State

Administration, bill sponsor Representative Sharon Greef admitted that when she mentioned voter fraud, she “wasn’t talking about Montana specifically.”

48. In the experience of election administrators, EDR in no way undermines the integrity of the election. As Audrey McCue, Elections Supervisor of Lewis and Clark County, testified before the House Committee on State Administration: “The first thing to know is that we don’t have problems with the integrity of our elections and certainly none caused by election day registration.”

49. The Elections Director in the Office of the Secretary of State, Dana Corson, similarly explained to the House Committee on State Administration that election officials verify the information contained on a voter’s registration application immediately, even when a voter registers to vote using EDR. If an applicant provides a driver’s license or social security number, those numbers are entered into the Montana Votes database, the statewide registration system, and automatically verified against the social security database. *See* Mont. Admin. R. 44.3.2011. If the applicant provides an alternative form of ID, which the Election Code requires to be the original document, the document itself is sufficient for the purposes of verification. *Id.* Regardless of whether applicants register during the regular registration period or during the late registration period, including on election day, the mechanics of the verification process are the same. Registering on election day does not mean that an elector’s application is any less scrutinized.

50. In fact, the late registration process (including EDR) *enhances* the integrity of the election. As Director Corson explained, the registration application asks voters to affirm under penalty of perjury that the information on their application is true. During regular registration, applicants may send their applications by mail, but late registration *requires* applicants to appear

in person. The face-to-face interaction required only during late registration and EDR is an additional barrier to fraudulent activity.

51. Additionally, Regina Plettenberg, the Clerk and Recorder of Ravalli County and the President of the Montana Association of Clerks and Recorders, explained that during only the late registration period, including on election day, the Montana Votes database will flag whether an applicant has already received a ballot. For most of the late registration period—and definitely on election day—absentee ballots have already been sent to voters. *See* Section 13-13-205, MCA (requiring absentee ballots to be available 25 days prior to an election). If an applicant has already received an absentee ballot from another county, the Montana Votes database will automatically flag that fact. But because ballots are not sent to voters until after late registration starts, that information is simply not available during the regular registration period. Thus, during late registration and EDR, election officials can *ensure* that registration applicants do not receive ballots from two counties. But during the regular registration period, there is no way for an election official to do so.

52. Although the late registration and EDR process is more secure than the normal registration process, it is no more time consuming. As Director Corson explained during the House Committee on State Administration hearing, voters often appear to register with a completed application in-hand. But even if a voter does not come prepared with a completed application, election officials need only hand the voter an application to fill out. Once the voter has completed the application, the election official merely enters the applicant's information into the Montana Votes database, and that system automatically verifies the applicant's information.

53. Contrary to the claims made by the proponents of the Election Day Registration Ban, the number of voters that take advantage of this opportunity has not been disruptive, even

during the record-turnout 2020 general election. According to former Senate Majority Leader Jon Ellingson, election administrators have offered EDR for 15 years—and more voters have relied on it each year—without encountering any serious administrative problems.

54. When pressed, proponents of the bill admitted that registering voters on election day has not currently caused any serious administrative problems. Senator Mike Cuffe conceded that there are no administrative problems currently burdening Montana’s election administrators. When a member of the House Committee on State Administration asked Senator Cuffe to provide an example of an administrative problem that EDR has caused, he was unable to do so. And the administrators who would have first-hand knowledge of any administrative problems caused by EDR have all but rejected this rationale. When testifying before the Senate Committee on State Administration, Audrey McCue “wanted to be on the record saying that [the Election Day Registration Ban] will not help [her],” and may even create *more* administrative problems.

55. Proponents of the Election Day Registration Ban also claim that the bill was intended to reduce the likelihood of mistakes on election day, despite the absence of evidence that mistakes are currently a problem or that eliminating EDR is a solution. Audrey McCue explained to the Senate Committee on State Administration that EDR is not a novel service—election officials register voters all the time, and from the official’s perspective, the process is no different on election day; thus, the likelihood of mistakes is small.

56. Regina Plettenberg, Clerk and Recorder of Ravalli County, also testified that she was unaware of any errors resulting from EDR. And bill sponsor Representative Sharon Greef pointed to only an “opportunity” for mistakes to occur.

57. Nor does the Election Day Registration Ban reduce wait times at polling locations. Representative Greef claimed that the Election Day Registration Ban is intended “to provide a

solution for citizens discouraged from registering to vote and casting a ballot due to long lines and extended wait times.” But voters registering during late registration, including on election day, must go to their election administrator’s office, not the polling place. Mont. Admin. R. 44.3.2015. In other words, by definition EDR registrations cannot be responsible for long lines at polling places, because that is not where those voters are registering.

58. The pretextual and widely de-bunked rationales advanced by proponents of the Election Day Registration Ban reveal their true motive: to restrict voting.

B. *Voter ID Restrictions*

59. Montana has required some form of voter ID for in-person voting since 2003, but the law as it existed for nearly two decades (until it was revised this session) allowed voters to prove their identity with any form of current photo ID that shows the elector’s name. Moreover, the list of forms of ID accepted for voting in Montana explicitly included school district or postsecondary education ID cards.

60. But in the wake of record-breaking turnout in the 2020 general election, and in particular the historically high young-voter turnout, the legislature abruptly reversed course, suddenly restricting the forms of acceptable voter ID. It did so, moreover, despite the lack of any evidence that more strict measures were needed to combat voter fraud (which even the proponents of the bill acknowledge is non-existent in Montana).

1. *Montana’s prior voter ID regime did not create a risk of voter fraud.*

61. Even before this legislative session, Montana already had a voter ID law on the books.¹ Under the pre-existing law, voters were first asked to provide photo ID bearing the voter’s

¹ Before 2003, voters were not required to present any identification at all to cast their ballots. See ELECTIONS—LAWS—REVISION, 2003 Montana Laws Ch. 475 (H.B. 190).

name, including but not limited to “a valid driver’s license, a *school district or postsecondary education photo identification*, or a tribal photo identification.” Section 13-13-114(1)(a), MCA (2003) (emphasis added).

62. If the voter could not provide qualifying photo ID, the voter could instead provide any one of several categories of identifying documents, such as “a current utility bill, bank statement, paycheck, notice of confirmation of voter registration . . . government check, or other government document that shows the elector’s name and current address.” *Id.*

63. If a voter supplied either an acceptable form of photo ID or other identifying document, they could cast a regular ballot. Section 13-13-114(1)(b), MCA. If instead the voter could not produce one of the above forms of ID or identifying documents, they could only vote a provisional ballot. Section 13-13-114(2), MCA. Provisional ballots are counted only if the voter returns with “valid identification or eligibility information” either in person or electronically by 5pm on the day immediately following the election. Section 13-15-107(1), MCA.

64. In the elections that occurred under these longstanding voter ID rules, voter fraud was virtually non-existent. As noted above, just last year, a federal judge noted that, “[w]hen pressed during the hearing in this matter,” the state of Montana was “compelled to concede that they cannot point to a single instance of voter fraud in Montana in any election during the last 20 years.” *Donald J. Trump for President*, 491 F. Supp. at 822.

65. Yet through SB 169, the Legislature imposed more stringent voter ID requirements that make voting less accessible and more difficult for those who lack the preferred forms of ID, including Montana college or university students whose school IDs are no longer sufficient for voting.

2. These new restrictions followed an election in which young voters participated in Montana in historic numbers.

66. Young Montanans want to be involved in their democracy more than ever, as shown by the surge in young voter participation in the 2020 general election, where turnout among voters between the ages of 18 and 29 increased by nearly 40 percent from the prior presidential election.

67. These voters have long relied on the ability to cast their ballots upon presenting either photo ID issued by a Montana college or university, or their Montana voter registration confirmation form. Section 13-13-114(1)(a), MCA (2003).

68. SB 169, however, has relegated Montana college or university ID cards to secondary forms of ID that must be presented in conjunction with an additional identifying document to be deemed acceptable for voter ID purposes.

69. Prior to SB 169, both Montana college or university ID cards and identifying documents such as “a current utility bill, bank statement, paycheck, . . . government check, or other government document that shows the elector’s current name and address” were sufficient independently. Now, in order to satisfy the new voter ID requirements, a voter must present both.

70. Similarly, under SB 169, a voter registration confirmation form is now insufficient by itself and must be accompanied by additional identifying documentation, despite that voters must prove their identity in order to register and obtain a voter registration confirmation form to begin with. *See supra* at ¶ 23.

71. While the Legislature restricted the use of ID traditionally used by young voters, such as student photo ID cards, SB 169 simultaneously added new forms of acceptable ID that young voters are less likely to possess—including, most notably, a Montana concealed carry permit.

72. Eliminating the ability to rely on previously-accepted and widely-held forms of ID will burden thousands of Montana voters who previously relied on student ID or voter registration confirmation forms to vote. Beyond the burden of having to locate and produce additional identifying documentation in the first place, some young voters lack such documentation entirely. Those who live in a university dorm or with their parents, for example, are highly unlikely to be able to produce a utility bill in their name. In practice, young voters also live in a paperless world—even if they do have a paycheck or bank account linked to their address, many will not have a physical paper copy to bring to the polls.

73. Overall, SB 169 will only make it more difficult for Montanans and particularly young voters to cast their ballots, which, based on the forms of ID targeted and the absence of any voter fraud, appears to be a motivating purpose behind the voter ID restriction.

3. The Voter ID Restrictions are not justified by any state interest sufficient to outweigh the injuries they impose on voting rights.

74. In his speech in support of SB 169, the chief sponsor of the bill, Senator Mike Cuffee, a Republican representing Lincoln County, cited “election integrity” as his primary motivation in sponsoring this legislation. “People all over our nation are begging for election integrity,” he said to the Senate Administration Committee—a nod to the false accusations of voter fraud and ongoing misinformation campaign advanced by former President Donald Trump and his supporters in their seditious attempt to overturn the results of the presidential election.

75. The truth is, the 2020 presidential election was “the most secure in American history,” and SB 169—particularly its limitation on the use of student photo IDs—will do nothing

to make Montana's elections more secure.² Montana has allowed students to use their college and university ID cards at the polls for nearly twenty years. Section 13-13-114(1)(a), MCA. In that time, the law has been entirely effective at preventing even a single known instance of voter fraud in the state. *See supra* at ¶ 47.

76. Given the absence of any voter fraud to begin with, a Legislature's reliance on false accusations and cynical attempts to undermine the 2020 election as justification for restrictions on voting is no less an act of voter suppression. The entirely predictable (and all but certainly intended) consequence of SB 169 is clear: it will become much harder for Montana voters, particularly students and indigent Montanans, who lack government-issued photo ID to exercise their most fundamental right.

C. *The Renewed Ballot Assistance Ban*

77. For more than two decades, Montana has been a leader among states across the country in expanding access to absentee voting. Since 1999, Montana has allowed all eligible citizens to vote by absentee ballot, without excuse, in all elections. When Montana adopted no-excuse absentee voting, only 15 other states permitted all registered voters to cast absentee ballots. Today, the tally is almost exactly the opposite, with only 17 states requiring an excuse to vote absentee.

78. Montana's broad acceptance of absentee voting has paid off: Since Montana expanded access to absentee voting, the number of voters who rely on it has steadily increased. And as the number of voters who voted absentee increased, so too did the assistance civic and

² Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees (Nov. 12, 2020), available at <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

political organizations provided to those voters. Among other things, those organizations provide voters with a secure and assessible way to return their ballot—for example, by collecting absentee ballots in secure lock boxes, protected by security measures, and returning those ballots to election administrators within 24 hours. Swaths of voters, including students, disabled and elderly voters, and American Indian voters, relied on those programs to cast their ballots each election.

79. But as the number of voters who relied on absentee ballot assistance programs grew, so, too, did the Legislature’s efforts to significantly impede the practice. In fact, on the heels of record-shattering absentee voting in Montana and across the country, and despite multiple Montana court decisions finding its previous efforts unconstitutional, the Legislature has gone so far as to deviate from its normal legislative process in order to slip an unconstitutional measure into an unrelated bill after the close of public hearings.

1. The Renewed Ballot Assistance Ban is the Legislature’s latest attempt to effectively eliminate organized ballot assistance programs.

80. On March 16, 2017, Republican Senator Albert Olszewski introduced Senate Bill 352 (“SB 352”) to the Montana Senate. SB 352 sought to make it unlawful for a person to take possession of a voter’s absentee ballot unless the person is an election official, a postal worker, the voter’s family member, household member, caregiver, or an acquaintance of the voter. Even then, except for election officials and postal workers, SB 352 sought to criminalize any person assisting more than six voters by collecting and returning their absentee ballots.

81. Scores of Montanans testified in opposition to SB 352 at public hearings before the House and Senate. They described the negative impacts SB 352 would have on the voting rights of American Indian voters, student voters, low-income voters, as well as elderly and disabled voters. No members of the public testified in support of it. Nonetheless, on a heavily partisan basis, SB 352 passed through the Montana Senate and House of Representatives. The measure was

placed on the 2018 midterm election ballot under the title “Montana Ballot Interference Prevention Act” (“BIPA”), and on November 6, 2018, Montana voters approved it.

82. Just last year, however, two Montana district courts held that BIPA violated the Montana Constitution. Among other things, those courts held that BIPA unconstitutionally burdened the right to vote and unconstitutionally infringed on speech and association rights. *See Driscoll*, 2020 WL 5441604, at *1; *Western Native Voice*, 2020 WL 8970685, at *1. Those courts specifically noted overwhelming evidence that BIPA made it more difficult for disabled, elderly, American Indian, working, low-income, and student voters to cast their ballots.

83. Within mere months of those holdings, members of the Legislature attempted to pass a virtually identical ban. On February 12, 2021, Republican Representative Mark Noland introduced House Bill 406 (“HB 406”) to the Montana House of Representatives. HB 406 purported to walk back the burdens imposed by BIPA by authorizing a voter’s caregiver, family member, household member, or acquaintance to collect more than six ballots. But HB 406 maintained the same general ban on ballot return assistance that would dismantle organized ballot collection in the state.

84. Just as a chorus of Montanans testified against SB 352 in 2017, Montanan voices rang out against HB 406. Once again, the Legislature heard testimony illustrating how a ban on ballot assistance would operate to disenfranchise students and young voters, rural and American Indian voters, disabled and elderly voters, as well as low-income and working voters from many representatives of those communities.

85. Testimony about the overlap with BIPA also echoed throughout the legislative hearings. For example, legal counsel for the Office of the Commissioner of Political Practices (“COPP”)—the agency tasked with implementing and enforcing BIPA—testified about the

numerous ways in which HB 406 replicated BIPA's unconstitutional aspects. And the similarity between BIPA and HB 406 was not lost on the legislators. One Senator described HB 406 as "basically the same bill as [SB 352]," noting that "the six-ballot restriction was never even the linchpin of the rulings that found BIPA to be unconstitutional."

86. The bill's opponents weren't the only ones who recognized its similarity to BIPA—when asked during a hearing how he thought HB 406 was going to survive constitutional scrutiny, sponsoring Representative Noland acknowledged that HB 406 presented "many" of the "exact same issues" that made BIPA unconstitutional. But even "if it [took] another little bit of a look at through the court system," he claimed HB 406's supporters were "willing to do that again."

87. Over the course of three committee hearings on HB 406, Montanans testified in opposition to the bill's ban on organized ballot assistance 46 times. Nonetheless, HB 406 passed out of all three committees and received 153 "yes" votes on the floor of the House and Senate. But on April 14, the bill failed, by a final vote of 23 to 27, to pass through a second reading on the floor of the Senate.

88. That failure did not end the Legislature's push to limit organized ballot assistance programs in Montana, however. Twelve days later, an entirely unrelated bill—House Bill 530 ("HB 530")—was amended to include new prohibitions on, among other things, ballot return assistance.

89. When initially introduced in early February 2021, HB 530 made no reference to, nor included any curtailment of, ballot assistance. At the first committee hearing for HB 530, the original sponsor of the bill testified that HB 530 principally required the Secretary of State "to adopt rules defining and governing election security." "This bill is very plain on its face," the

sponsor continued: it mandated the promulgation of rules on election security and nothing else. HB 530 passed through the House unanimously in its original form.

90. But just days after HB 406 met its end in the Senate, Republican Senator Steve Fitzpatrick requested to amend HB 530 to include the Renewed Ballot Assistance Ban on the Senate floor (and not during the regular committee process).

91. The request to add the Renewed Ballot Assistance Ban to HB 530 came not just during an unusual proceeding—it also came six days too late. The deadline for transmitting amendments to pending bills from one chamber to the other was April 20. Senator Fitzpatrick admitted that his amendment had “come late” in the legislative process. Nevertheless, he urged his colleagues to adopt the amendment because of a single instance of fraud in a *North Carolina* congressional race in 2018.³ Another senator rose in “strong opposition” to the amendment, noting that the amendment sought to fix a problem of which there was no evidence in Montana. The opposing senator noted that “this late attempt to try to hijack a bill” included no definitions of key terms, which would result in unclear and confusing law.

92. Because HB 530 was transmitted to the House after the amendment deadline, the House was able to consider it only if two-thirds of its members voted to suspend the rules. The first vote to suspend the rules failed to garner the necessary approval. But that same day, a second vote to suspend the rules and accept the late return of the amended bill passed with a vote of 68 to 31. The House then voted to adopt the amendment by a vote of 66 to 34. The Senate followed

³ The Secretary relied on this same incident to support the same alleged interest in guarding against voter fraud or ballot coercion in last year’s litigation over the constitutionality of BIPA. *See, e.g.,* Def.’s Resp. Pl.’s Mot. Prelim. Inj. at 7, *Driscoll v. Stapleton*, No. DV 20-408. But without evidence of similar conduct occurring in Montana, both the district court and the Montana Supreme Court found the Secretary failed to present evidence sufficient to uphold that interest. *See Driscoll*, 2020 WL 5441604, at *5; *Driscoll*, 2020 MT 247, ¶ 22, 401 Mont. at 416, 473 P.3d at 39.

suit—largely on a party line vote. With just seven session days remaining, the Renewed Ballot Assistance Ban was transmitted to the Governor. And on May 14, 2021, the Governor signed it into law.

93. Like its unconstitutional predecessor, BIPA, and BIPA's doppelganger, HB 406, the Renewed Ballot Assistance Ban effectively bans organized absentee ballot assistance efforts. The Renewed Ban prohibits ballot assistance performed in exchange for a "pecuniary benefit." Although the Ban does not define "pecuniary benefit," it carves out from its prohibition certain paid employees—including election administrators and mail delivery service employees—who, in the scope of their employment, help voters request or return absentee ballots. But it does not exclude paid staff members of MDP or other organizations who similarly, in the scope of their employment, help voters request and return absentee ballots. Thus, the lone definition embedded in the Renewed Ban indicates that paid staff members of MDP and other organizations may not assist voters with their absentee ballots.

94. While its unconstitutional predecessors affected just ballot return assistance, the Renewed Ban goes even further. The Renewed Ban imposes a civil penalty of \$100 each time a person receiving a "pecuniary benefit" "distribute[s], order[s], request[s], collect[s], or deliver[s]" ballots. In other words, the Renewed Ban does not just apply to assisting a voter in returning their completed ballot, it also applies to assisting a voter in requesting and receiving their ballot in the first place.

95. To the extent there is any ambiguity as to whether HB 530 prohibits the paid staff members of MDP and other organizations from helping voters request and return their absentee ballots, this lack of clarity poses real problems for political organizations like MDP that need to plan and allocate resources to ballot assistance efforts well in advance of the next election.

Moreover, any further guidance on the issue is unlikely at least until the Secretary promulgates regulations just months before the 2022 general election. Meanwhile, organizations and individuals are left to guess about the scope of the prohibition and whether it will prevent someone like an aid or nurse, who is paid to assist elderly or disabled voters, from helping their patients request, receive, or complete their absentee ballots.

96. The Ban not only prevents MDP and others from helping voters cast their ballots, it also severely and arbitrarily limits their political speech and expression. The Renewed Ballot Assistance Ban, by its plain terms, specifically targets and penalizes protected political speech and associational activity by restricting the types of people who may permissibly assist voters in requesting, receiving, or delivering their ballots. Organizations that provide absentee ballot assistance services, such as MDP, often do so through their representatives, including paid staff, any one of whom may interact with hundreds of voters in different communities through door-to-door canvassing and other forms of voter contact. The restrictions on absentee ballot collection services specifically target this form of large-scale, sustained associational activity by representatives of organized groups, prohibiting political speech and expressive conduct.

2. The Legislature's repeated attempts to eliminate organized ballot assistance coincide with increases in both absentee voting and organizing around absentee voting.

97. In 2000, just 15.68 percent of Montana voters cast absentee ballots. In the following presidential election, an additional 6 percent of voters voted absentee. But in recent years, the numbers have increased dramatically to a point where a *majority* of Montanans vote absentee. By the 2016 election, 65.38 percent of Montana voters cast absentee ballots. In 2018, 372,400 votes—more than 73 percent of votes cast in Montana—were cast by absentee ballot. In 2020, that number nearly doubled to 604,042.

98. Naturally, the increase in the volume of absentee voting accompanied an increase in organizing around absentee ballots. In the wake of Montana's decision to expand absentee voting, numerous organizations that focused on GOTV, like MDP, undertook efforts to help Montana voters request, receive, and return their absentee ballots.

99. Over time, those efforts grew to include providing voters with convenient drop-off locations and door-to-door absentee ballot return assistance. In both cases, voters voluntarily chose to provide their sealed and signed absentee ballot return envelope to trusted representatives of community organizations or campaigns, who then transported the sealed absentee ballot return envelope to the county elections office or other county drop-off site. And the ballot assistance services operated without incident in Montana.

100. Ballot return assistance services have been invaluable to Montana voters whose work commitments, school schedules, family care responsibilities, mobility impairments, lack of access to postal mail service, or lack of access to transportation made returning their absentee ballot difficult or even impossible. Although access to absentee voting is invaluable to those voters, many of the same barriers to voting in-person also apply to the process of obtaining and returning an absentee ballot itself, particularly for voters voting by absentee ballot during the week prior to an election, when postal delivery timeframes make the on-time delivery of a mailed-in absentee ballot far from certain. Absentee ballot return services helped reduce these barriers by allowing voters to choose to give their absentee ballot to a trusted representative of a community organization or campaign, who then transported the sealed absentee ballot return envelope to the county elections office or other county drop-off site.

101. American Indian voters in particular rely on organized absentee ballot assistance. Many American Indian voters live in remote areas with limited access to transportation, often

located far from county elections offices. Mailing absentee ballots can be difficult for American Indian voters because they often have limited access to postal services, and mail sent from tribal nations may face a longer transit time to and from postal service processing centers than mail sent from elsewhere in the state. In order to help overcome these obstacles, American Indian voters have relied upon organized ballot return assistance programs provided by civic and political organizations.

102. Similarly, many senior and disabled voters rely on organized absentee ballot assistance. These voters' varying capabilities with mobility can make obtaining and returning absentee ballots challenging. It can also be difficult for these voters to stand in line at polling locations or elections offices. And these voters may not have a caregiver, family member, or acquaintance who has the time and ability to make sure that their absentee ballots make it to the polls on time.

103. Students, too, have come to rely on ballot assistance programs. Many young voters must navigate voting for the first time while balancing schoolwork and jobs. Additionally, those voters often do not have access to personal transportation. To help mitigate the burden students face in voting, for years organizations have run ballot return assistance programs on college campuses to assist college students. These groups provide secure lock boxes on campuses where students can drop off their absentee ballots, as well as door-to-door assistance programs.

104. To assist these groups of voters, MDP engages in voter turnout efforts including campaigns and drives during which its staffers, members, and volunteers offer to help submit absentee ballots for voters who indicate that they will have difficulty returning their ballot on time. These efforts are among the most important mediums through which MDP communicates its belief in the power and importance of participating in democratic elections, including for voters who

have experienced historically low turnout rates when compared to the rest of the population, or who for various reasons—disability, advanced age, or lack of access to transportation—would have difficulty voting. And these initiatives facilitate the political participation of such voters.

105. MDP engages in protected political speech and association when its organizers interact with Montana voters to encourage them to cast their absentee ballots and offer to assist voters in requesting and submitting absentee ballots, including, at the voter's request, collecting and returning a voter's absentee ballot to an appropriate election official by the deadline. Encouraging voters to participate in the democratic process through voting and assisting voters in requesting and submitting their ballots are forms of political speech and expressive conduct inherently tied to MDP's mission.

3. No state interest justifies the Legislature's repeated attempts to make it more difficult for those voters to vote.

106. The only state interest proponents of HB 530 identified was to “enhance election security.” However, Montana's elections are—and have always been—secure, and there is no evidence that organized ballot assistance in Montana has ever undermined election security in any way.

107. Montana has long had a robust statutory scheme that criminalizes and punishes voting misconduct. Only legally registered voters may apply for absentee ballots. Section 13-13-201(1), MCA. To do so, voters must complete an application for an absentee ballot before noon on the day before the election. Section 13-13-211(1), MCA. The application must be addressed to the appropriate county election office and either mailed or hand-delivered directly to the election administrator. Section 13-13-213(1)-(2), MCA.

108. Once election administrators receive absentee ballot applications, the Election Code requires election administrators to compare the signature on the application with the applicant's signature on their registration form. Section 13-13-213(3)(a), MCA.

109. When marking an absentee ballot, voters must mark the ballot in the specified manner, place the ballot in the secrecy envelope, which must be free of any identifying marks, place the secrecy envelope inside an outer envelope, execute the affirmation on the outer envelope, and return the envelope with all enclosures by 8 p.m. on Election Day. Section 13-13-201(2), MCA. The Election Code requires election administrators to ensure that absentee ballots do not contain any deficiencies. Section 13-13-245, MCA (concerning notification of an elector with a deficiency in her ballot); Section 13-15-107, MCA (concerning the timeline for a provisionally registered elector to cure any deficiencies in his ID or eligibility information).

110. The Election Code also imposes requirements on the time and manner in which voters return their absentee ballots. For instance, absentee ballots must be returned by mail or by hand-delivery to an election office or polling location. Section 13-13-201(e), MCA. Regardless of how a voter returns their ballot, absentee ballots must be received by 8 p.m. on the day of the election. Section 13-13-211(3), MCA.

111. Even after absentee voters complete all of these steps, the Election Code requires election administrators to confirm the validity of each ballot before it is counted. Election administrators again engage in signature matching, comparing the signature on the absentee ballot envelope to the signature on the voter's absentee ballot application or voter registration. Section 13-13-241(1)(a), MCA. If an election administrator has any other question regarding the validity of a particular ballot, the question must be resolved before the ballot is counted. Section 13-13-241(6), MCA.

112. The Election Code ensures that voters cast only one ballot. If a voter requests an absentee ballot but chooses to vote in-person instead, the voter must appear at the appropriate polling place on Election Day and may cast a regular ballot only after an election administrator has marked the voter's absentee ballot as void. Section 13-13-204, MCA. If there is some reason to believe that a voter has voted previously in an election, any other registered voter may challenge their right to vote. Section 13-13-301, MCA.

113. Similarly, the Election Code ensures that absentee ballots are sent only to qualified voters who continue to reside at the address provided in their initial application. Although voters may request that election administrators mail them an absentee ballot for each subsequent election in which the voter is eligible to vote, election administrators must first confirm that the voter has not changed their address since initially applying for an absentee ballot. Section 13-13-212(b)(i), MCA.

114. Most significantly, the Election Code criminalizes attempts to coerce voters or fraudulently manipulate ballots. Section 13-35-205, MCA. In other words, the Election Code ensured the security and integrity of absentee voting long before the enactment of the Voter Suppression Bills.

115. That statutory scheme is not only robust, it is effective: voter fraud is virtually non-existent in Montana. Despite their purported interest in combating it, no sponsor of any of the bills targeting ballot assistance has produced any evidence of voter fraud in Montana, let alone in the context of ballot collection and conveyance. Last year, representatives from both the Secretary's office and COPP testified that there is no evidence that any third party has failed to return or has interfered with a voter's absentee ballot. *Western Native Voice*, 2020 WL 8970685,

at *14. Even the Attorney General’s Office acknowledged that “Montana does not have a problem with voter fraud.” *Id.*

CLAIMS FOR RELIEF

COUNT I

Montana Constitution, Article II, § 4 *Voter ID Restrictions, Election Day Registration Ban, Renewed Ballot Assistance Ban - Equal Protection, Discrimination Based on Age*

116. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

117. Article II, § 4 of the Montana Constitution guarantees that no person shall be denied the equal protection of the laws. Notably, Montana’s equal protection clause “provides for even more individual protection” than the federal equal protection clause of the United States Constitution. *Cottrill v. Cottrill Sodding Serv.*, 229 Mont. 40, 42, 744 P.2d 895, 897 (1987).

118. The Voter ID Restrictions, Election Day Registration Ban, and Renewed Ballot Assistance Ban violate the Equal Protection Clause by imposing heightened and unequal burdens on the right to vote, particularly for Montana’s youngest voters.

119. The Voter ID Restrictions’ prohibition on student ID cards and registration confirmation forms—two forms of ID which had been accepted for years without resulting in a single known instance of fraud—will disproportionately and disparately abridge the right to vote of young Montana voters by making it more difficult for them to participate in our democracy. This is compounded by the Voter ID Restrictions’ elimination of a state-issued registration confirmation form, which is issued to every registered voter (though a process that already requires a voter to identify themselves), as an acceptable form of primary ID. As a result of the Voter ID Restrictions, young Montana voters who lack a Montana driver’s license, military ID card, tribal ID card, passport, or Montana concealed carry permit will be forced to rely on a poorly defined

and confusing hodgepodge of acceptable identifying documentation in hopes of casting their ballots. Beyond the burden of having to locate and produce additional ID in the first place, some young voters may lack those forms identifying documentation entirely.

120. The Election Day Registration Ban will similarly disproportionately abridge the right to vote of young Montana voters by making it more difficult for them to register and to cast an effective ballot. As research shows, young voters are much more likely than the general electorate to use EDR—a simple result of the fact that young voters are highly mobile, and thus need to register to vote with much more frequency than the rest of the electorate.

121. The Renewed Ballot Assistance Ban will also disproportionately affect young voters. Many college-aged voters rely on organizations to request, receive, and return their ballots.

122. It is no accident that the Voter ID Restrictions, Election Day Registration Ban, and Renewed Ballot Assistance Ban were passed just months after Montana's youngest voters turned out to vote at record rates. Montana's legislators knew that Voter Suppression Bills would place heightened burdens on Montana's youngest voters when it passed all three laws. The Montana Legislature heard direct testimony from both student voters and advocacy organizations that restrictions like these would impose barriers on the franchise for young voters; it passed the bills anyway in direct contravention of Montana's Equal Protection Clause.

123. The Montana Legislature passed the Voter ID Restrictions, Election Day Registration Ban, and Renewed Ballot Assistance Ban with the intent and effect of placing increased barriers on young Montanans who wish to exercise their fundamental right to vote. The laws are, in other words, “device[s] designed to impose different burdens on different classes of persons.” *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, ¶ 85, 982 P.2d 421, ¶ 85.

124. Furthermore, the State cannot show that the Voter ID Restrictions' prohibition on using photo ID issued by a Montana college or university as a primary ID to cast a ballot advances a compelling state interest, or that the prohibition on student IDs is the "least onerous path" the State can take to ensure electoral integrity—to the extent the State maintains that "electoral integrity" was the motivating force behind the Voter ID Restrictions—or even that the restrictions are justified by any legitimate purpose. To the contrary, there is no evidence of voter fraud in Montana in recent history, let alone any kind of voter fraud perpetuated by young voters using their student IDs to vote.

125. Nor can the State show that the Election Day Registration Ban advances a compelling (or even legitimate) state interest. Not only have election administrators refuted the Legislature's reliance on administrative burdens to justify the ban, but courts have also made clear that administrative efficiency is not a compelling state interest. *See, e.g., Frontiero v. Richardson*, 411 U.S. 677, 690 (1973). Even if this Court found that electoral integrity was a compelling state interest, the State cannot show that banning EDR is the least onerous path to accomplishing any permissible goal given that Montana voters used EDR seamlessly for fifteen years. Indeed, the lack of voter fraud in Montana indicates that the Election Day Registration Ban fails constitutional scrutiny under any standard.

126. Finally, the State cannot demonstrate a need for the Renewed Ballot Assistance Ban, particularly in light of two identical court decisions last year striking down as unconstitutional a similar law in part because of the absence of any demonstrated state interest in limiting organized ballot collection. Ballot collection has never once resulted in fraud in Montana, and the Secretary of State's designee admitted at trial that ballot collection is good for democracy because it helps more people vote.

127. For all of these reasons, the Voter ID Restrictions, the Election Day Registration Ban, and the Renewed Ballot Assistance Ban violate young Montanans’ constitutional right to equal protection under the law.

COUNT II

Montana Constitution, Article II, § 13

Election Day Registration Ban - Undue Burden on the Right of Suffrage

128. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

129. Article II, § 13 of the Montana Constitution provides that “[a]ll 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.” Because it is protected by the Declaration of Rights in the Montana Constitution, the right to vote is a fundamental right in Montana. *See State v. Riggs*, 2005 MT 124, ¶ 47, 327 Mont. 196, 206, 113 P.3d 281, 288 (“A right is ‘fundamental’ under Montana’s Constitution if the right . . . is found in the Declaration of Rights”); *accord Oberg v. Billings*, 207 Mont. 277, 674 P.2d 494 (1983) (“Examples of fundamental rights include privacy, freedom of speech, freedom of religion, right to vote and right to interstate travel.”); *see also Western Native Voice v. Stapleton*, 2020 WL 8970685, at *20 (noting that the right to vote is a fundamental right); *Driscoll v. Stapleton*, No. DV 20-408, at *6 (Mont. Dist. Sept. 25, 2020) (same).

130. By eliminating election day voter registration, the Election Day Registration Ban severely burdens the right to vote of Montana voters, particularly students, the elderly, the disabled, and indigenous communities. At no point during the month before an election will voters be able to register outside of normal working hours—between 8 a.m. and 5 p.m. And unregistered voters who rely on services that are widely available on election day, like organized transportation, will no longer be able to do so. Additionally, previously-registered voters who discover errors in their voter registration information on election day—as tens of thousands of voters have over the

last 15 years—will no longer be able to update their registration information and cast a ballot at their polling location on election day. Many are likely to only discover that there is an issue with their voter registration (that they can no longer correct, because of the elimination of EDR) when it is too late.

131. The Election Day Registration Ban’s burdens are not justified by any compelling—or even legitimate—state interests. The Election Day Registration Ban does not enhance election integrity because the verification process applied to late registration applications differs from that applied to regular registration applications only in that it includes *additional* security measures. In any event, EDR has not led to a single known instance of voter fraud, *see supra* at ¶¶ 47-48, nor has it caused any serious administrative problems on election day, *see supra* at ¶¶ 53-54.

COUNT III

Montana Constitution, Article II, § 13

Voter ID Restrictions - Undue Burden on the Right of Suffrage

132. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

133. The Voter ID Restrictions’ exclusion of registration confirmation forms and photo ID cards issued by Montana colleges and universities as acceptable forms of primary voter ID burdens the right to vote, particularly among students and indigent Montanans.

134. The burdens imposed by the Voter ID Restrictions are not justified by any compelling—or even legitimate—state interests; accepting registration confirmation forms and photo ID cards issued by Montana colleges and universities as primary ID did not result in a *single* known instance of voter fraud. *See supra* at ¶ 74.

135. While ramping up restrictions under Montana’s voter ID law was wholly unnecessary to prevent fraud, the new law makes it harder for certain groups of voters, particularly students, to participate in our democracy.

COUNT IV

Montana Constitution, Article II, § 13

Renewed Ballot Assistance Ban - Undue Burden on the Right to Suffrage

136. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

137. The Renewed Ballot Assistance Ban severely burdens the right to vote of absentee voters in Montana, and particularly burdens seniors, students, disabled voters, and American Indian voters, who may have limited mobility, lack access to personal or public transportation, or face financial and time constraints that make traveling to a polling location to drop off an absentee ballot challenging. HB 530 threatens to eliminate access to organized absentee ballot assistance services on which those voters have come to rely.

138. And the Renewed Ballot Assistance Ban fails to advance any compelling—or even legitimate—state interest. HB 530 is not necessary to prevent coercion or ballot tampering because Montana law already criminalizes attempts to coerce voters or fraudulently manipulate ballots. *See* Section 13-35-205, MCA. But even if the law were not redundant, there is no evidence that interference with absentee ballots is an issue in Montana. Nor is there any evidence of any problems with organized absentee ballot assistance in Montana. HB 530 is yet another attempt to address a problem that has not and does not exist.

COUNT V

Montana Constitution, Article II, §§ 6, 7

Renewed Ballot Assistance Ban - Infringement on Speech and Expression Rights

139. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

140. Article II, § 6 of the Montana Constitution provides that “[t]he people shall have the right peaceably to assemble, petition for redress or peaceably protest government action.” And Article II, § 7 provides that “[n]o law shall be passed impairing the freedom of speech or

expression.” Together these provisions, like the First Amendment to the United States Constitution, protect “the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Dorn v. Bd. of Trs. of Billings Sch. Dist. No. 2*, 203 Mont. 136, 145, 661 P.2d 426, 431(1983). Collecting and conveying ballots for voters involves that very type of interactive communication and civic engagement that the Montana Constitution protects as core political speech. See *Western Native Voice*, 2020 WL 8970685, at *23; *Driscoll*, No. DV 20-408, at *6.

141. Other state and federal courts interpreting analogous provisions of state and federal constitutions have similarly held that activities aimed at encouraging voters to participate in the political process are constitutionally protected speech and association. See *Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 186 (1999); *Meyer v. Grant*, 486 U.S. 414, 421 (1988). That includes activities performed by paid election staff. *Meyer*, 486 U.S. at 425 (noting that Colorado’s prohibition of paid petition circulators “restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication”).

142. For example, the U.S. Supreme Court has applied “exacting scrutiny” to review laws governing election-related speech. See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995); see also *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 722 (M.D. Tenn. 2019) (“[L]aws that govern the political process surrounding elections—and, in particular, election-related speech and association—go beyond merely the intersection between voting rights and election administration, veering instead into the area where ‘the First Amendment has its fullest and most urgent application.’”) (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). Thus, restrictions on such speech are unconstitutional when

they “significantly inhibit” election-related speech and association and are “not warranted by the state interests . . . alleged to justify [the] restrictions.” *Buckley, Inc.*, 525 U.S. at 192.

143. Voter turnout efforts, including organized efforts to help voters request, return, and submit their absentee ballots, are a means by which MDP communicates its belief in the power and importance of participating in democratic elections. Federal courts have held that such activity is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer*, 486 U.S. at 422-23; *see also League of Women Voters*, 400 F. Supp. 3d at 720 (“Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity.”) (internal quotation marks and alterations omitted). The act of assisting voters to request and submit ballots is inherently expressive, and an individual or organization that conducts such activities engages in protected speech by encouraging voting. *See Bernbeck v. Moore*, 126 F.3d 1114, 1115 (8th Cir. 1997) (rejecting the argument that regulating an election “process” raises no First Amendment concerns).

144. Under analogous provisions of the United States Constitution, First Amendment rights “include the right to band together for the advancement of political beliefs.” *Hadnott v. Amos*, 394 U.S. 358, 364 (1969). “An organization’s attempt to broaden the base of public participation in and support for its activities is conduct ‘undeniably central to the exercise of the right of association.’” *Am. Ass’n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1202 (D.N.M. 2010) (citing *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214-15 (1986)).

145. The conversations and interactions between MDP, its paid staff, members, and voters surrounding the submission of absentee ballots are forms of protected political speech and association under the Montana Constitution, as they are under analogous provisions of the U.S. Constitution. *See Western Native Voice*, 2020 WL 8970685, at *23 (“By collecting and conveying

ballots, Plaintiffs are engaged in the unfettered interchange of ideas for the bringing about of political and social changes desired by the people, which is at the heart of freedom of expression protections.”) (cleaned up); *Driscoll*, No. DV 20-408, at *6-7 (noting that ballot collectors engage in free speech and association when they “discuss the voter’s plan to vote, review mailing deadlines and in-person delivery options, signature requirements, and whether the voter needed help with delivering their ballot in time to be counted”); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (describing the “overlapping” rights “of individuals to associate for the advancement of political beliefs” and “of qualified voters . . . to cast their votes effectively”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (explaining that “participation in voter registration implicates a number of both expressive and associational rights which . . . belong to—and may be invoked by—not just the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls”).

146. The Renewed Ballot Assistance Ban effectively bans organized absentee ballot assistance efforts. By mandating a civil penalty of \$100 each time a person other than an elections official “distribute[s], order[s], request[s], collect[s], or deliver[s]” ballots in exchange for a “pecuniary benefit,” the Renewed Ban prevents MDP, and at least its paid staff members, from assisting a voter in requesting and receiving their ballot.

147. To the extent there is any ambiguity as to whether HB 530 prohibits the paid staff members of MDP and other organizations from helping voters request and return their absentee ballots, MDP and organizations like it are burdened in their ability to plan to conduct voter engagement activities that may be prohibited by the time they employ them. HB 530’s murkiness alone imposes burdens on the ability of MDP and similar organizations to budget and plan for ballot assistance programs.

148. The restrictions on absentee ballot collection services also specifically target MDP's and other organizations' political speech and expressive conduct precisely because they are engaging in disfavored speech and associational conduct.

149. No legitimate state interest, let alone a compelling interest, justifies the Renewed Ballot Assistance Ban's infringement on speech and association. The Renewed Ballot Assistance Ban is not necessary to protect election integrity because interfering with a voter's ballot is already criminal conduct under the election code. In any event, ballot assistance has not led to a single known instance of voter fraud. *See supra* at ¶ 115.

150. These burdens are severe, and the Renewed Ballot Assistance Ban is not related to any legitimate state interest, let alone narrowly tailored to advance a compelling state interest. Thus, HB 530 represents an unconstitutional infringement on political speech and political organizing.

COUNT VI

Montana Constitution, Article II, § 17

Renewed Ballot Assistance Ban - Denial of Procedural Due Process

151. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

152. Article II, § 17 of the Montana Constitution prohibits the state from depriving a person of "life, liberty, or property without due process of law." Deciding what protections are due in a case requires a careful analysis of the importance of the rights and the other interests at stake. *See Goble v. Montana State Fund*, 2014 MT 99, ¶ 46, 374 Mont. 453, 467-68, 325 P.3d 1211, 1223 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)). Specifically, it requires considering: (1) the nature of "the interest that will be affected" by the government's action, (2) "the risk of an erroneous deprivation of such interest through the procedures used" as well as the "probable value, if any, of additional or substitute procedural safeguards," and (3) the government's interest. *Id.*

(quoting *Mathews*, 424 U.S. at 347). Overall, “due process is flexible and calls for such procedural protections as the particular situation demands.” *Mathews*, 424 U.S. at 334 (quotation and citation omitted).

153. The right to vote—and the right to have that vote counted—is a precious liberty interest. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). And the degree of potential deprivation is at its height because Montana’s absentee voting procedures do not adequately protect against complete disenfranchisement. Voters who rely on voting absentee because they have work, school, or childcare obligations, live prohibitively far from polling locations, lack reliable mail service, or do not have access to personal or public transportation, can no longer rely on organized assistance in requesting, receiving, or returning their absentee ballot. Those voters face complete deprivation of the most important liberty interest: the liberty interest that protects all other basic civil and political rights.

154. Further, Montana’s absentee voting procedures will result in erroneous deprivation because the terms are arbitrary and vague. The Renewed Ballot Assistance Ban applies to assistance provided in exchange for a “pecuniary benefit.” But “pecuniary benefit” is not defined in the election code. Neither is “in exchange for.” One voter could sincerely believe an aid, nurse, or political organization representative may not assist in requesting, receiving, or returning their absentee ballot. Another voter might not.

COUNT VII

Montana Constitution, Article V, § 1

Renewed Ballot Assistance Ban - Unconstitutional Delegation of Legislative Power

155. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

156. Article V, Section 1, of the Montana Constitution provides that “[t]he legislative power is vested in a legislature consisting of a senate and a house of representatives.” That

law-making power “may not be granted to an administrative body to be exercised under the guise of administrative discretion.” *Bacus v. Lake Cnty*, 138 Mont. 69, 78, 354 P.2d 1056 (1960). Accordingly, in delegating powers related to the administration of statutes, the legislature must prescribe “a policy, standard, or rule” for the administrative body’s guidance. *Id.* That policy, standard, or rule must be “sufficiently clear, definite, and certain to enable the agency to know its rights and obligations.” *White v. State*, 233 Mont. 81, 88, 759 P.2d 971, 975 (1988). The law must leave “nothing with respect to a determination of what is the law” in order to be a proper delegation. *Id.* If the legislature fails to do so, “its attempt to delegate is a nullity.” *Bacus*, 138 Mont. at 79, 354 P.2d at 1061.

157. By providing no definition, let alone a policy, standard, or rule for the term “pecuniary benefit,” the Renewed Ballot Assistance Ban leaves the Secretary to determine what the law is. The Secretary must decide whether “pecuniary benefit” includes, for example, an organizer’s regular base salary, and whether the Renewed Ballot Assistance Ban prevents someone like an aid or nurse, who is paid to assist elderly or disabled voters, from helping their patients request, receive, or return their absentee ballots. Without an objective standard for the Secretary to follow, the Secretary must decide the scope of the Renewed Ballot Assistance Ban’s prohibition without the required policy, standard, or rule to use for guidance. Such a delegation violates Article V, Section 1 of the Montana Constitution, and the Renewed Ballot Assistance Ban is therefore void.

COUNT VIII
Montana Constitution, Article V, § 1
HB 530, Section 1 - Unconstitutional Delegation of Legislative Power

158. Plaintiffs reallege and reincorporate by reference all prior paragraphs and the paragraphs in the counts below as though fully set forth herein.

159. By directing the Secretary to “adopt rules defining and governing election security,” without describing any policy, standard, or rule by which the Secretary should do so, Section 1 of HB 530 contains an unconstitutional delegation of law-making power.

160. Section 1 of HB 530 is also void because it “fails to prescribe with reasonable clarity the limits of power delegated.” *White*, 233 Mont. at 90-91. The Montana Constitution “does not allow for an administrative board to legislate the limits of its own power.” *Id.* By failing to delineate the boundaries of the Secretary’s authority, Section 1 of HB 530 violates Article V, Section 1 of the Montana Constitution, and is therefore void.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that the Voter Suppression Bills violate the Montana Constitution;
- B. Permanently enjoining the Secretary of State and her agents, officers, employees, successors, and all persons acting in concert with each or any of them, from enforcing the Voter Suppression Bills; and
- C. Granting Plaintiffs such other and further relief that the Court deems necessary and proper.

Dated: May 14, 2021

Respectfully submitted,

By: /s/ Peter Michael Meloy

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