

**IN THE 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,

v.

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

Defendant.

Consolidated Case No. DV 21-0451

**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S STATEMENT OF  
UNDISPUTED FACTS**

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**TABLE OF CITED EVIDENCE**

<b>Document Description</b>	<b>Short Cite</b>	<b>Docket Entry No.</b>
Exhibit 20 to Declaration of Matthew Gordon, transcripts of legislative hearings on Senate Bill 169	MDP Ex. 20	69
Exhibit 28 to Declaration of Matthew Gordon, trial transcripts from <i>Driscoll v. Stapleton</i> , DV 20-0408 (Mont. Dist. Ct. 2020)	MDP Ex. 28	69
Declaration of Thomas Bogle in Support of Plaintiffs' Motion for Preliminary Injunction	Bogle Decl.	65
Declaration of Sarah Denson in Support of Plaintiffs' Motion for Preliminary Injunction	Denson Decl.	61
Declaration of Eric Semerad in Support of Plaintiffs' Motion for Preliminary Injunction	Semerad Decl.	66
Declaration of Bradley Seaman in Support of Plaintiffs' Motion for Preliminary Injunction	Seaman Decl.	68
Declaration of Shawn Reagor in Support of Plaintiffs' Motion for Preliminary Injunction	Reagor Decl.	58
Affidavit of Alex Rate in Support of Plaintiffs' Motion for Preliminary Injunction	Rate Aff.	43
Exhibit J to Affidavit of Alex Rate, transcript of House State Administrative Hearing on HB 176	WNV Ex. J	43
Exhibit I to Affidavit of Alex Rate, transcript of House State Administrative Hearing on HB 176	WNV Ex. I	43
Exhibit M to Affidavit of Alex Rate, transcript of House Judiciary Hearing on SB 406	WNV Ex. M	43
Affidavit of Ronnie Jo Horse in Support of Plaintiffs' Motion for Preliminary Injunction	Horse Aff.	50

Affidavit of Dawn Gray in Support of Plaintiffs' Motion for Preliminary Injunction	Gray Aff.	47
Affidavit of Robert McDonald in Support of Plaintiffs' Motion for Preliminary Injunction	McDonald Aff.	49
Affidavit of Councilman Lane Spotted Elk in Support of Plaintiffs' Motion for Preliminary Injunction	Spotted Elk Aff.	48
Expert Report of Daniel McCool in Support of Plaintiffs' Motion for Preliminary Injunction	McCool Rep.	45
Expert Report of Alexander Street in Support of Plaintiffs' Motion for Preliminary Injunction	Street Rep.	44
Exhibit J to Declaration of Rylee Sommers-Flanagan, Declaration of Amara Reese-Hansell in Support of Application For Preliminary Injunction	Reese-Hansell Decl.	70
Exhibit D to Declaration of Rylee Sommers-Flanagan, Declaration of Audrey Dozier in Support of Application For Preliminary Injunction	Dozier Decl.	70
Exhibit M to Declaration of Rylee Sommers-Flanagan, Declaration of Hailey Sinoff in Support of Application For Preliminary Injunction	Sinoff Decl.	70
Expert Report of Yael Bromberg in Support of Plaintiffs' Motion for Preliminary Injunction	Bromberg Rep.	74
Defendant's Brief In Response To Plaintiffs' Preliminary Injunction Motions and In Support of Defendant's Motion For Summary Judgment	Def. Br.	79
Declaration of Monica Eizenzimer	Eizenzimer Decl.	86
Declaration of Janel Tucek	Tucek Decl.	85
Declaration of Doug Ellis	Ellis Decl.	88
Exhibit 1 to Declaration of Matthew Gordon, MIT Election Data + Science Lab, Voter Confidence (April 2021), <a href="https://electionlab.mit.edu/research/voter-confidence">https://electionlab.mit.edu/research/voter-confidence</a>	Ex. 1	Filed concurrently

Exhibit 2 to Declaration of Matthew Gordon, Rebuttal Expert Report of Alex Street in Support of Plaintiffs' Motion for Preliminary Injunction	Street Rebuttal Rep.	Filed concurrently
Exhibit 3 to Declaration of Matthew Gordon, NPR/PBS NewsHour/Marist Poll of 1,209 National	Ex. 3	Filed concurrently
Exhibit 4 to Declaration of Matthew Gordon, Andrew C. Eggers, Haritz Garro & Justin Grimmer, <i>No Evidence for Systematic Voter Fraud: A Guide to Statistical Claims About the 2020 Election</i> , 118 PNAS 1 (2021)	Ex. 4	Filed concurrently
Exhibit 5 to Declaration of Matthew Gordon, Amanda Zoch, <i>Then &amp; Now: How 8 Election Policies Have Changed Since 2000</i> , Nat'l Conference of State Legislatures (Feb. 16, 2021)	Ex. 5	Filed concurrently
Exhibit 6 to Declaration of Matthew Gordon, Wendy Weiser, Justin Levitt, Catherine Weiss, & Spencer Overton, Response to the Report of the 2005 Commission on Federal Election Reform 2, 7 (2005)	Ex. 6	Filed concurrently
Exhibit 7 to Declaration of Matthew Gordon, Enrico Cantoni & Vincent Pons, <i>Strict ID Laws Don't Stop Voters: Evidence from a U.S. Nationwide Panel: 2008-2018</i> , Q.J. Econ. 2615, 2653-54 (2021)	Ex. 7	Filed concurrently
Exhibit 8 to Declaration of Matthew Gordon, Rebuttal Expert Report of Kenneth R. Mayer in Support of Plaintiffs' Motion for Preliminary Injunction	Mayer Rebuttal Rep.	Filed concurrently
Exhibit 9 to Declaration of Matthew Gordon, Michael G. DeCrescenzo & Kenneth R. Mayer, <i>Voter Identification and Nonvoting in Wisconsin—Evidence from the 2016 Election</i> , 18 Election L.J. 342, 342 (2019)	Ex. 9	Filed concurrently
Exhibit 10 to Declaration of Matthew Gordon, John Kuk, Zoltan Hajnal, & Nazita Lajevardi, <i>A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout</i> , Pol. Groups, & Identities 1 (2020)	Ex. 10	Filed concurrently
Exhibit 11 to Declaration of Matthew Gordon, Bernard L. Fraga & Michael G. Miller, <i>Who Does Voter ID Keep from Voting?</i> , 84 J. Pol. 1 (2022)	Ex. 11	Filed concurrently

Exhibit 12 to Declaration of Matthew Gordon, Justin Grimmer & Jesse Yoder, <i>The Durable Differential Deterrent Effects of Strict Photo Identification Laws</i> , Pol. Sci. R. & Methods 1 (2021)	Ex. 12	Filed concurrently
Exhibit 13 to Declaration of Matthew Gordon, Matt A. Barreto, Gabriel R. Sanchez, and Hannah L. Walker, <i>Battling the Hydra: the Disparate Impact of Voter ID Requirements in North Dakota</i> , J. Race, Ethnicity, & Pol. 1 (2022)	Ex. 13	Filed concurrently
Exhibit 14 to Declaration of Matthew Gordon, Expert Report of Barry C. Burden submitted in <i>Andrew Goodman Foundation v. Bostelmann</i> , No. 19-cv-955 (Jan. 20, 2020)	Ex. 14	Filed concurrently
Exhibit 15 to Declaration of Matthew Gordon, Charles Stewart III et al., <i>Revisiting Public Opinion on Voter Identification and Voter Fraud in an Era of Increasing Polarization</i> , 68 Stan. L. Rev. 1455 (2016)	Ex. 15	Filed concurrently
Exhibit 16 to Declaration of Matthew Gordon, Nat'l Public Radio, <i>Here's Why Concerns About Absentee Ballot Fraud are Overhyped</i> (Oct. 20, 2020)	Ex. 16	Filed concurrently
Exhibit 17 to Declaration of Matthew Gordon, Keith Schubert, 'Practically a unicorn': Profs say voter fraud allegations in Phillips Co. not part of larger issue, Daily Montanan (Feb. 14, 2022)	Ex. 17	Filed concurrently
Exhibit 18 to Declaration of Matthew Gordon, Lisa Baumann, <i>Ending Election Day registration sees little support</i> , Associated Press (Oct. 19, 2014)	Ex. 18	Filed concurrently
Exhibit 19 to Declaration of Matthew Gordon, U.S. Election Assistance Commission, <i>Election Crimes: An Initial Review and Recommendations for Future Study</i> 9 (Dec. 2006)	Ex. 19	Filed concurrently
Exhibit 20 to Declaration of Matthew Gordon, Steven H. Huefner, Daniel P. Tokaji, Edward B. Foley, and Nathan A. Cemenska, <i>From Registration to Recounts: The Election Ecosystems of Five Midwestern States</i> 120 (2007)	Ex. 20	Filed concurrently
Exhibit 21 to Declaration of Matthew Gordon, Steven F. Huefner, Nathan A. Cemenska, Daniel P. Tokaji, and Edward P. Foley, <i>From Registration to Recounts Revisited:</i>	Ex. 21	Filed concurrently

<i>Developments in the Election Ecosystems of Five Midwestern States</i> 41 (2011)		
Exhibit 22 to Declaration of Matthew Gordon, Michael W. Sances and Charles Stewart III, <i>Partisanship and Confidence in the Vote Count: Evidence from U.S. National Elections Since 2000</i> , Electoral Studies 40:176-188 (2015)	Ex. 22	Filed concurrently
Exhibit 23 to Declaration of Matthew Gordon, Stephen Ansolabehere, <i>Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day</i> , PS: Political Science & Politics 42:127-130 (2009)	Ex. 23	Filed concurrently
Exhibit 24 to Declaration of Matthew Gordon, Shaun Bowler, Thomas Brunell, Todd Donovan, and Paul Gronke, <i>Election Administration and Perceptions of Fair Elections</i> , Electoral Studies 38:1-9 (2015)	Ex. 24	Filed concurrently
Exhibit 25 to Declaration of Matthew Gordon, Keila Szpaller, <i>Election Security Bill Heads to Gov. Gianforte's Desk</i> (Apr. 27, 2021)	Ex. 25	Filed concurrently

Plaintiffs Montana Democratic Party (“MDP”) and Mitch Bohn (together, “MDP Plaintiffs”); Western Native Voice (“WNV”), Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes (“CSKT”), Fort Belknap Indian Community, and Northern Cheyenne Tribe, (together, “WNV Plaintiffs”); and Montana Youth Action (“MYA”), Forward Montana Foundation, and Montana Public Interest Research Group (together, “MYA Plaintiffs”) (collectively “Plaintiffs”) submit this combined response to the statement of undisputed facts filed by Defendant Montana Secretary of State Christi Jacobsen (the “Secretary”) in support of her motion for summary judgment.<sup>1</sup>

### **PLAINTIFFS’ RESPONSES TO DEFENDANT’S STATEMENT OF FACTS**

1. Recent opinion polls and academic research establish an alarming trend: a substantial and increasing number of Americans lack confidence in their elections. (citations omitted).

**Response:** Undisputed as to the particular cited exhibits, disputed as to the characterization of the trend and disputed as incomplete. As a recent publication by the MIT Election Data and Science Lab explains, “[R]esearch indicates only a weak causal connection between voter confidence and voter turnout, and it does not show clear causal links between certain high-profile election administration practices, such as voter ID laws, and voter confidence . . . How the question about confidence is asked generally determines whether voters are deemed to have high or low confidence in elections. The strongest influence on levels of voter confidence, regardless of how the question is asked, is whether one’s candidate has won or lost an election.” Ex. 1; *see also* Street Rebuttal Rep. at 16 (“[P]ublic perceptions of fraud and confidence in the integrity of the electoral system are not connected to actual state variation in [election laws], of which voters are often poorly-informed, and also showing that survey responses on this issue are influenced, instead, by cues from party leaders.”) (citing Charles Stewart III et al., *Revisiting Public Opinion on Voter Identification and Voter Fraud in an Era of Increasing Polarization*, 68 Stan. L. Rev. 1455 (2016)). Overall voter confidence has been remarkably stable across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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<sup>1</sup> The paragraph numbering corresponds to those in the Secretary’s Statement of Undisputed Facts. Unless otherwise noted, the Secretary’s citations to her exhibits filed in support of her motion for summary judgment have been preserved in those numbered paragraphs. The Secretary’s citations to exhibits refer to those attached to both Defendant’s Brief in Response to Plaintiffs’ Preliminary Injunction Motions and in Support of Defendant’s Motion for Summary Judgment and the Declaration of Dale Schowengerdt. Plaintiffs refer to those exhibits as “Def.’s Ex.” Any exhibits cited in Plaintiffs’ responses refer to the documents outlined in the Table of Cited Evidence.

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

**Response:** Undisputed as to the content of the poll, but disputed as immaterial, incomplete, and misleading. The MIT Election Data + Science Lab has explained that “[q]uestions about the mechanical aspects of voting tend to elicit more optimistic responses in public-opinion surveys than vague questions about the honesty of elections.” Additionally, other polling suggests that confidence in elections may be higher than the NPR/Ipsos polling suggests. According to an NPR/PBS/Marist poll conducted in October 2021, 58% of adults trust a great deal or good amount that elections are fair, up from a low of 50% in July 2017. Further, 70% of adults are very confident that their state or local government will conduct a fair and accurate election in 2022. The Secretary’s cited poll data is also misleading: Voters are divided on what they view as the greatest threat to fair elections, with the most common answer being voter suppression as the greatest threat, according to the NPR/PBS/Marist Poll. *See* Ex. 3.

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

**Response:** Disputed as immaterial and misleading. The MIT Election Data + Science Lab has explained that “[q]uestions about the mechanical aspects of voting tend to elicit more optimistic responses in public-opinion surveys than vague questions about the honesty of elections.” Ex. 1. That voters believe fraudulent voting took place likely reflects messaging from public officials, rather than the actual existence of fraudulent voting – very little of which took place during the 2020 election. *See* Ex. 4; Street Rebuttal Rep. at 19-21 (noting that Montana’s data on public confidence in recent elections indicates a “partisan back-and-forth” emblematic of the “winner’s effect,” wherein people are more likely to express confidence in elections when their preferred candidate wins and less likely when their preferred candidate loses).

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

**Response:** Undisputed as to the content of the poll. Disputed as immaterial and misleading. The MIT Election Data + Science Lab has explained that “[q]uestions about the mechanical aspects of voting tend to elicit more optimistic responses in public-opinion surveys than vague questions about the honesty of elections.” Additionally, other polling suggests that confidence in elections may be higher than the NPR/Ipsos polling suggests. According to an NPR/PBS/Marist poll conducted in October 2021, 58% of adults trust a great deal or



good amount that elections are fair, up from a low of 50% in July 2017. *See* Ex. 3. 70% of adults are very confident that their state or local government will conduct a fair and accurate election in 2022. *Id.* Overall voter confidence has been remarkably stable across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

Norris

15

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



Q: 'In this country, do you have confidence in each of the following, or not? How about honesty of elections?' Response options:

Yes/No/Don't know. (% Yes)

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

**Response:** Disputed as incomplete, inaccurate, and misleading. The International Political Science Review did not conduct this study; rather, it published the work of Pippa Norris, a Lecturer and political scientist at the Harvard Kennedy School. Thus, the findings are those of Professor Norris, not the IPSR. And while the 2020 presidential election did not *cause* Americans' already-existing confidence deficit, Defendant's contention neglects to report what Professor Norris points to as the root causes of dissatisfaction with democracy. A page later, Professor Norris writes, "In the US data, the fairness of election officials, the role of money in politics, and equal opportunities to run for office were the most significant predictors." Def.'s Ex. 1-3, p. 16. The contention that the 2020 presidential election exacerbated the confidence deficit is inaccurate—any exacerbation resulted from the misinformation spread about the election. As Professor Norris notes, the messages of political leaders shape public perception about the health of democracy: "These challenges [to public faith in democracy] face all countries, but they are particularly severe in the US where there has been a steady drumbeat of criticism of the electoral process on both sides

of the aisle. This includes repeated cries of ‘massive voter fraud’ by the GOP leadership in successive elections since Florida in 2000 as well as repeated Democratic counter-claims of violations of voting rights through overly-restrictive state registration requirements.” Def.’s Ex. 1-3, p. 19. While it is correct that Professor Norris reports the decline in confidence stretching over the last 22 years, Defendant’s characterization of Professor Norris’s article omits what she points to as the true root cause – a root cause which does not include ballot collection, insufficient voter ID laws, or long lines in polling places. Moreover, overall voter confidence has been remarkably stable across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

**Response:** Disputed as misleading. The International Political Science Review did not conduct this study; rather, it published the work of Pippa Norris, a Lecturer and political scientist at the Harvard Kennedy School. Thus, the findings are those of Professor Norris, not the IPSR. Disputed as incomplete. Overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

**Response:** Disputed as misleading and incomplete. The International Political Science Review did not conduct this study; rather, it published the work of Pippa Norris, a Lecturer and political scientist at the Harvard Kennedy School. Thus, the findings are those of Professor Norris, not the IPSR. Overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20. Further, data from the Survey of the Performance of American Elections (SPAEE) demonstrate that, in Montana, voter confidence in recent elections has in fact been driven by party polarization—indicating how the “winner’s effect” is largely responsible for driving any changes in voter confidence. *Id.* at 19-21.

8. Based on its interpretation of the underlying data and academic analyses of democratic societies, IPSR determined that “if citizens believe, **for whatever reason**, that an election is deeply flawed or even stolen, doubts are likely to spread rapidly to other core political institutions” because “most people regard free and fair elections . . . as the core pillars of democracy.” Exhibit 1-3, p. 7 (emphasis added). That analysis and underlying data supported IPSR’s conclusion that “doubts about electoral integrity do indeed undermine general satisfaction with how democracy works.” Exhibit 1-3, p. 5.

**Response:** Disputed as misleading and incomplete. The International Political Science

Review did not conduct this study; rather, it published the work of Pippa Norris, a Lecturer and political scientist at the Harvard Kennedy School. Thus, the findings are those of Professor Norris, not the IPSR. Professor Norris presents the quotation *not* as an interpretation of the data, but as a summary of existing work, in order to form the basis of her hypothesis, which she then tests in a comparative context and in an American context. Professor Norris noted several causes of doubts about electoral integrity: “Partisan dispute over the outcome of the 2016 US elections . . . the strain of excess money in politics, the lack of gender equality and minority representation in elected office and restriction of effective electoral choice through partisan gerrymandering.” Exhibit 1-3, p. 19.

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

**Response:** Disputed as misleading. The International Political Science Review did not conduct this study; rather, it published the work of Pippa Norris, a Lecturer and political scientist at the Harvard Kennedy School. Thus, the findings are those of a single researcher, Professor Norris, not the IPSR. Disputed as incomplete. Overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

**Response:** Undisputed as to the content of quote cited from *Purcell*, but immaterial. Moreover, overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

**Response:** Disputed as incomplete and misleading. The Montana Secretary of State conduct an audit of the 2020 election and concluded “[n]o discrepancies were found during the Post-Election Audit that exceeded the statutory limits as set by Sec. 13-17-507 MCA.” McCool Rep. ¶ 106. Again, Defendant tries to pass this IPSR publication off as the work of an institute, whereas, once again, it is the work of Professor Norris. The paper here was published by the Electoral Integrity Project but does not represent the work of the project. Defendant further mischaracterizes the conclusion of the paper. After this quotation, Professor Norris goes on to detail issues that actually *did* plague the 2020 Elections:

“Electoral laws and gerrymandered districts favoring incumbents; campaign coverage by local press and TV news lacking fairness and balance while social media amplified misinformation; campaign finance lacking transparency and equitable access; communities of color experiencing difficulties in registering and voting; women and minority candidates encountering barriers to elected office; and, the declaration of results generating lengthy disputes.” Def.’s Ex. 1-4 at 5. Professor Norris also notes that procedural fairness of elections and the work of election authorities were *strengths* in the election process. See Def.’s Ex. 1-4 at 5.

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

**Response:** Disputed as misleading. Most fundamentally, Defendant fails to disclose that the same paper concludes that “problems of fraud in voting and the count . . . are not regarded by experts as the key challenges of electoral integrity facing America.” Def.’s Ex. 1-4 at 13. The table that Defendants quote here is an expert assessment of changes between 2016-2020. Acceptance and public trust have deteriorated in this period, but the authors do not identify these as *problems*. Instead, Professor Norris asked the experts interviewed to identify whether these issues had gotten better or worse between 2016 and 2020. See Def.’s Ex. 1-4 at 16. Additionally, Defendants try to pass this publication off as the work of an institute, whereas, once again, it is the work of Professor Norris. The paper here was published by the Electoral Integrity Project, but does not represent the work of the project. Moreover, overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20.

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

**Response:** Disputed as misleading and incomplete. Most fundamentally, Defendant fails to disclose that the same paper concludes that “problems of fraud in voting and the count . . . are not regarded by experts as the key challenges of electoral integrity facing America.” Def.’s Ex. 1-4 at 13. Again, Defendants try to pass this publication off as the work of an institute, whereas, once again, it is the work of Professor Norris. The paper here was published by the Electoral Integrity Project but does not represent the work of the project. Professor Norris names means of “strengthen[ing] American elections and democracy” in

the following sentence: “This includes passing H.R. 1 (2019) “For the People Act” which would strengthen democracy by making it easier to vote, limiting partisan gerrymandering, fixing the campaign finance system, and strengthening ethics rules.” Def.’s Ex. 1-4 at 6. Later in the article, she details other specific measures: “This includes expanding secure and convenient registration and balloting facilities, improving the independence and professional standards of election management, and strengthening impartial dispute resolution mechanisms.” Def.’s Ex. 1-4 at 18.

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

**Response:** Disputed as incomplete and misleading. First, the PEI data suggest that measures should be taken to shore up faith in elections, but they do not lead to the conclusion that legislative actions are necessary to improve public perception, generally, nor that the specific actions taken by the Montana legislature were either responsive to the issues that Montana faces or necessary to improve public perception in Montana. Second, the table shows that Montana ranks highly in its election procedures but ranks poorly in media and campaign finance. *See* Def.’s Ex. 1-4 at 15.

15. The need for election reform in the United States has been apparent since at least 2004, when former United States President Jimmy Carter and former United States Secretary of State James A. Baker chaired the Commission on Federal Election Reform (“CFER”), a bipartisan effort to strengthen American elections. Exhibit 5. After studying American elections—including issues highlighted by the 2000 recount of the presidential election in Florida—CFER drafted a report (the “Carter-Baker Report”), the purpose of which was to “recommend ways to raise confidence in the electoral system.” Exhibit 1-5, p. ii.

**Response:** Undisputed as to the existence of the report. Disputed as to materiality. The Carter-Baker report dates from more than 15 years ago and its analysis was not specific to the conditions of voting in Montana elections.

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

**Response:** Undisputed as to the bipartisan nature of the committee and the purpose of the committee. Disputed as to materiality. The Carter-Baker report dates from more than 15

years ago and its analysis was not specific to the conditions of voting in Montana elections.

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

**Response:** Undisputed as to the viewpoint of the report and the belief of committee members, disputed as to materiality. The Carter-Baker Report is more than fifteen years old and the United States’s electoral landscape has changed significantly since 2005. More states have adopted no-excuse absentee voting, early in-person voting, and election day registration since 2000, to name just a few changes since the early 2000s. *See* Ex. 5.

18. The Carter-Baker Report began its analysis by noting that “American are losing confidence in the fairness of elections,” as confirmed by numerous polls, and that there was “growing skepticism with our electoral system.” Exhibit 1-5, p. ii-iv. In particular, the Report found that “only one-third of the American people said that they had a lot of confidence that their votes would be counted properly” and “a minority of Americans—only 48 percent—said they were very confident that the votes cast across the country were accurately counted.” Exhibit 1-5, p. 1. “Significant segments of the American public” had lost faith in elections due to concerns “about voter fraud, voter suppression, and the fairness of the election process in general,” including in response to “long lines at polling stations.” Exhibit 1-5, p. 49; *see also* Exhibit 6, p. 10 (“in the American setting, it can be shown that long lines discourage voting, lower voting confidence, and impose economic costs”). The Carter-Baker Report concluded those deep-seated concerns were antithetical to American democracy because the “vigor of our democracy depends on an active and engaged citizenry who believe that their votes matter and are counted accurately.” Exhibit 1-5, p. 69.

**Response:** Undisputed as to statements made in the report, disputed as to materiality. The Carter-Baker Report is more than fifteen years old and the United States’s electoral landscape has changed significantly since 2005. *See* Ex. 5. Additionally, the Carter-Baker Report was not specific to issues in Montana elections. Moreover, overall voter confidence has been remarkably stable (and quite high) across the last three presidential election cycles. Street Rebuttal Rep. at 20. Defendant’s reliance on the Carter-Baker Report—which purportedly found problems of voter confidence predating its publication in 2004—appears to conflict with its claim that there is an acute crisis of public confidence in recent years.

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

**Response:** Disputed as immaterial and misleading. As the Carter-Baker Report itself noted, “[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting.” *See* Def.’s Ex. 1-5 at 18. The Montana Secretary of State conducted an audit of the 2020 election and concluded “[n]o discrepancies were found during the Post-Election Audit that exceeded the statutory limits as set by Sec. 13-17-507 MCA.” McCool Rep. ¶ 106. Disputed as to the characterization that the report found the supposed concerns to be “justified.” *See* Def.’s Ex. 1-5. The Report has also been criticized for its failure to be rigorous with its analysis of the incidence of voter fraud and the way in which “the perception that ID requirements will be unjustly applied” could undermine faith in the electoral system. *See* Ex. 6. Moreover, these conclusions were drawn in the context of justifying a voter ID requirement, after which the commission also advocated for providing all voters with means of identification. *See* Def.’s Ex. 1-5 at 18-20.

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

**Response:** Disputed as to Defendant’s characterization of the report; undisputed as to the statements of the Report, disputed as to materiality. The Carter-Baker report dates from 2005, and the U.S. electoral landscape has changed significantly over time, especially with increased attention being paid to detection of voter fraud. The report also was not specific to issues in Montana elections.

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

**Response:** Undisputed as to the statements of the Report. Disputed as incomplete: the statements neglect to include the full recommendations of the report, which include measures like universal voter registration, a uniform system of voter identification, putting more responsibility on the states to register citizens, facilitating absentee voting, restoring voting for ex-felons, reports on investigations of election fraud, and making local election management bodies be both nonpartisan and more transparent. *See* Exhibit 1-5, pp. iv-v. Disputed as to materiality: the Carter-Baker Report and its recommendations are more than fifteen years old, and it was not specific to issues in Montana elections.

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

**Response:** Undisputed as to the statement of the Report. Disputed as to materiality, as the

Carter-Baker Report and its recommendations are more than fifteen years out of date and the report was not specific to issues in Montana elections.

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

**Response:** Disputed as misleading and inaccurate. According to the Carter-Baker Report, “*Effective* voter registration and voter identification are bedrocks of a modern election system, and “*greater* uniformity in procedures for voter registration and identification is essential to guarantee the free exercise of the vote by all U.S. citizens.” Def.’s Ex. 1-5 at 9-10 (emphasis added).

While Exhibit 1-7 states that findings from one study “provide support for the notion that photo ID restrictions can reduce perceptions of voter fraud,” it also notes that these “results stand in contrast to previous studies that have failed to find a link between strict photo ID requirements and actual or perceived electoral fraud.” Def.’s 1-7 at 5.

At least one recent study has found no link between perceptions of election integrity and voter identification laws. *See* Ex. 7 (finding “no significant effect [of strict voter ID laws] on fraud or public confidence in election integrity[,]” which “weakens the case for adopting such laws in the first place”). *See also* Response to SUF 109.

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

**Response:** Plaintiffs do not dispute that the Carter-Baker Report contains the quotes set forth in paragraph 24 of Defendant’s Statement of Undisputed Facts. Plaintiffs dispute as misleading and inaccurate, however, that voter identification requirements *actually* deter, detect, or eliminate fraud or enhance public confidence. Plaintiffs’ response to SUF No. 109 explains in detail that voter ID laws do not boost voter confidence or election security.

Plaintiffs further dispute the materiality of the Carter-Baker Report because the report and its recommendations are more than fifteen years old and were not specific to issues in Montana elections.

25. Social scientists have used empirical evidence to confirm voter identification laws



do not decrease voting turnout. (citing Exhibit 1-8).

**Response:** Disputed as misleading and inaccurate. “A large body of work has established that voter ID laws have a demonstrable effect on reducing turnout, and more specifically that such laws impose burdens on *individual voters*, even if the aggregate turnout effects are difficult to estimate.” Mayer Rebuttal Rep. at 2. In just the last three years, a number of peer-reviewed articles have demonstrated that voter ID laws reduce turnout or at least burdened individual voters. *Id.* And at least two have “use[d] specific administrative data on *who votes without ID* in states allowing affidavit exceptions to their voter ID requirements. These are directly observable individual effects, do not depend on a statistical model or estimates of aggregate turnout, and show that voter ID has disproportionate effects on minorities and other populations with observably lower possession rates of qualifying IDs.” *Id.* at 3.

For example, a 2020 article found that when strict photo ID “laws are enacted, turnout in racially diverse counties declines, it declines more than in less diverse areas, and it declines more sharply than it does in other states.” Ex. 10. Likewise, a 2019 article found that a voter ID law reduced county level turnout and estimated that the law deterred a mean of 10.2 percent of nonvoting registrants from voting and prevented a mean of 5.8 percent of nonvoters from voting, with these estimates larger “among individuals who are black, earn lower incomes, and have less formal education.” Ex. 9. Another recent article found that “strict voter identification laws prevent otherwise eligible voters from voting . . . and that such laws have disproportionately negative impacts on minority citizens.” Ex. 11. Yet another article found that “photo ID laws differentially deter voters without state identification, relative to voters with identification, . . .” Ex. 12. Still another article found that unique barriers exist for Native Americans to obtain qualifying identification, suggesting that Native Americans are especially affected by voter ID laws, and notes that research into the effects of such laws on particular subgroups is needed. Ex. 12.

Even the authors of the sole study Defendant cites expressly note that they do not “consider their work as settling the question about the effects of voter ID laws on turnout.” Mayer Rebuttal Rep. at 3. The authors “warn that their results ‘should be interpreted with caution’ because voter ID laws are a recent phenomenon and they cannot rule out longer-term effects.” *Id.* (quoting Enrico Cantoni & Vincent Pons, *Strict ID Laws Don’t Stop Voters: Evidence from a U.S. Nationwide Panel, 2008-2018*, 136 Q.J. Econ. 2615, 2664 (2021), <https://doi.org/10.1093/qje/qjab019>). They also “note that their analysis does not account for whether someone possesses an ID or not and does not include complete estimates for nonregistered eligible voters.” *Id.*

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

null or even positive”); *see also* Exhibit 1-8, pp. 22-23.

**Response:** Disputed as misleading and incomplete. *See* Response to SUF 25, incorporated here by reference. Moreover, researchers have found voter ID restrictions, including those that affect the use of student IDs for voting, to have a significant negative impact on voter turnout. For example, Professor Barry Burden of the University of Wisconsin analyzed the impact of Wisconsin’s Act 23, enacted in 2011, which implemented a strict voter ID requirement that prohibits use of college and university IDs unless they meet unique specifications and are accompanied by proof of enrollment. Ex. 14. To understand how the reliance on college student IDs affects young adults who wish to vote in Wisconsin, Professor Burden considered rates of voter turnout among students who attend college in the state. *Id.*

Professor Burden concluded that student voter turnout rates changed in Wisconsin between elections before and after 2015, when the student ID requirements in Act 23 went into continuous effect. *Id.* Compared to national data showing that overall student turnout rose by 3.2 percentage points between the 2012 and 2016 elections, voter turnout among students at Wisconsin’s colleges and universities was consistently well below the national median: Student turnout at UW-Madison dropped by 4.3 percentage points, UW-Superior fell by 6.6 points, UW-Parkside fell by 4.1 points, UW-Whitewater fell by 9.4 points, St. Norbert College fell by 8.0 points, Madison Area Technical College fell by 3.9 points, and Edgewood College dropped 7.3 points. *Id.* Setting aside other factors that may have contributed to a decrease in voter turnout between 2012 and 2016, Professor Burden concluded that student turnout in Wisconsin fell more sharply than among the electorate as a whole. *Id.* Statewide turnout fell from 72.9% of eligible voters to 69.5%, a decline of 3.4 points. *Id.* All of the Wisconsin college turnout rates documented above dropped by a larger amount. *Id.*

In fact, for two elections in a row (the 2016 presidential and the 2018 midterm), student turnout in Wisconsin underperformed relative to the rest of the country, other U.S. college students, and the Wisconsin electorate. *Id.* Wisconsin students withdrew from voting more sharply in 2016 and took to voting less dramatically in 2018. *Id.* Given the common pattern despite the great differences between these two elections (one favoring a Republican presidential candidate and the other favoring Democratic gubernatorial and other statewide candidates), Professor Burden concluded that the student voter ID requirement was one of multiple factors that suppressed student voter participation. *Id.*

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

**Response:** Disputed as misleading and incomplete. *See* Plaintiffs’ response to SUF 25, incorporated here by reference.

While stricter controls *could* be perceived as an improvement in election administration, the cited article repeatedly concludes voter ID laws would not improve election administration, specifically noting they have no effect on fraud, actual or perceived. Def.’s 1-8 at 1, 5-6. Prevailing studies indicate that voter identification laws do not increase voter confidence. *See* Ex. 15; Street Rebuttal Report at 21.

28. The Carter-Baker Report recommended States adopt voter identification laws much more stringent than those recently adopted in Montana. Specifically, the Report “recommend[ed] that states use ‘REAL ID’ cards for voting purposes.” Exhibit 1-5, p. 19. The REAL ID Act—federal legislation signed into law in 2005—“requires states to verify each individual’s full legal name, date of birth, address, Social Security number, and U.S. citizenship before the individual is issued a driver’s license or personal ID card.” Exhibit 1-5, p. 19.

**Response:** Disputed as inaccurate, irrelevant, and misleading. Although Plaintiffs do not dispute that the statements attributed to the Carter-Baker report are in that report, Plaintiffs dispute that the voter identification law recommended in the Carter-Baker Report were more stringent than the laws at issue here. The law the Report recommended, as reflected even in Defendant’s own SUF 28, required states to verify information before issuing an ID—this had nothing to do with the ID requirements for voting. Def.’s Ex. 1-5 at 19. Moreover, the Report recommended that states make “efforts to ensure that all voters are provided convenient opportunities to obtain a REAL ID . . . card” to ensure that the adoption of REAL ID would not “present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, . . . [or] for highly mobile groups of citizens.” *Id.* at 20. These recommendations included that all states “use a mobile office” to conduct “REAL ID card drives” to ensure that marginalized and mobile populations have opportunities to obtain the recommended ID. *Id.* at 33-34.

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

**Response:** Disputed as inaccurate and misleading. According to the Carter-Baker Report, absentee ballots are “the largest source of *potential* voter fraud.” Def.’s Ex. 1-5 at 46. The omission of this word is significant because Defendant’s SUF suggests that absentee voting leads to fraud—a proposition not supported by the Carter-Baker Report. Instead, the Carter-Baker Report states that absentee ballots are “vulnerable” to fraud. *Id.* And despite the significant increase in absentee voting in Montana, there is no evidence of absentee-ballot fraud in Montana.

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

shipper, or election officials. **The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.**") (emphasis added).

**Response:** Disputed as immaterial and misleading. The Carter-Baker Report is more than fifteen years old and its recommendations are not responsive to the election landscape in the United States today, nor is it specific to Montana elections, and there is no evidence of fraud or irregularities associated with third-party ballot return in Montana. While the practice of allowing **candidates** and **party workers** to pick up ballots is condemned by the report, the bill passed in Montana does not prohibit only candidates and party workers, but prohibits third-party organizations and others from returning ballots for others.

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

**Response:** Undisputed as to the statement of the report, but disputed as to completeness and relevance. The Carter-Baker Report is more than fifteen years old, and its recommendations are not responsive to the election landscape in the United States today, nor is it specific to Montana elections. Further, there is no evidence of fraud or irregularities associated with third-party ballot return in Montana. The Carter-Baker report found few, if any, instances of absentee voter fraud, and more recent reports suggest that reports of absentee voter fraud across the country remain exceedingly rare. *See* Ex. 16. Voter fraud is extremely rare compared to total votes cast, and is more common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111.

32. Political operatives have exploited the risks of voting by absentee ballots in recent years, most notably in the 2018 election for North Carolina's 9th Congressional District. *See* John Bowden, *House Dems signal possible probe of disputed North Carolina election*, Capitol Hill Publishing Corp. (Jan. 5, 2019) (Exhibit 1-9); *see also* Max Greenwood, *North Carolina board calls for new election in contested House race*, Capitol Hill Publishing Corp. (Feb. 21, 2019) (Exhibit 1-10); *see also* Michael Graff and Nick Ochsner, *'This Smacks of Something Gone Awry': A True Tale of Absentee Vote Fraud*, Politico Magazine (Nov. 29, 2021), available at <https://www.politico.com/news/magazine/2021/11/29/true-tale-absentee-voter-fraud-north-carolina-523238> (last accessed Feb. 11, 2022) (Exhibit 1-11) (detailing how, as established in North Carolina, **"fraud involving absentee ballots is a real thing"**) (emphasis added).

**Response:** Undisputed as to the incidence of fraud in North Carolina, disputed as to the characterization and to materiality to Montana elections. Voter fraud is extremely rare compared to total votes cast, and is more common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111. There is no evidence of fraud or irregularities associated with third-party ballot return in Montana.

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

**Response:** Disputed as to materiality. The Carter-Baker Report is more than fifteen years old and was not specific to Montana elections. Additionally, bolstering voting laws could call for many sorts of reforms – and indeed, the Carter-Baker Report called for many reforms besides restrictions on absentee ballots and voter ID. Voter fraud has not changed the outcome of any election in Montana. McCool Rep. ¶ 107.

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

**Response:** Undisputed as to the vote of Montanans to enact LR-129, but disputed as to materiality. That Montana voters voted to enact LR-129 does not mean they must necessarily lack confidence in the integrity of their elections. Disputed as to the characterization that LR-129 would have “strengthened” Montana law. Multiple courts concluded that LR-129 violated Montana’s constitution and violated the constitutionally protected rights of Montanans. Defendant does not provide support for her statement that most “Montanans support stronger election laws,” nor does she define what laws or legislative proposals constitute “stronger” election laws.

35. Polls conducted after the general election in 2020 showed that young voters voted more often for Republican candidates than for Democratic candidates. (citations omitted).

**Response:** Undisputed as to the fact of the polls, disputed as to materiality. That young voters voted more often for Republican candidates has no bearing on whether the measures adopted by the Montana legislature are legal.

36. There are various valid reasons why Montanans distrust elections. First and foremost, it is indisputable that voter fraud occurs in Montana. For example, two “foreign residents working in Phillips County on temporary visas were recently cited with falsifying their voter registration information prior to the 2021 Dodson municipal election.” (citing Exhibits 1-14, 1-15). Both individuals were “cited for deceptive election practices and for violating the state’s law requiring U.S. citizenship to register to vote.” Exhibit 1-14; *see also* Exhibit 1-15. Notably, the election those two individuals voted in was decided by two votes, with “[i]ncumbent mayor Angel Arocha [winning] by 21-19 over Glenn Dolphay, according to the county’s official canvass of the results.” Exhibit 1-14.

**Response:** Disputed as misleading. The cited article references allegations that have not

been proven—neither individual in the Phillips County case has been convicted of any crime, and both pleaded not guilty. Even if these allegations were true, that two instances of improper voting occurred does not demonstrate any relationship to supposed Montanan distrust of elections. Moreover, the article cited itself notes that the Phillips County incident was an outlier, and in one clerk’s experience had never happened before. *See* Def.’s Ex. 1-14; *see also, e.g.,* Ex. 17. Voter fraud in Montana is exceptionally rare. *See* McCool Rep. ¶¶ 106-08.

37. Similarly, “Michael Winters of Gallatin County pleaded guilty . . . to falsifying information on voter registration application in early 2020.” (citing Exhibit 1-16). Winters, who previously had “talked about how easy it would be to commit voter fraud” in Montana, successfully submitted “a voter registration application under the name Miguel Raton, a rough Spanish translation of Mickey Mouse” and received “ballots for two elections” under that name. Exhibit 1-16. District Judge Peter Ohman, who sentenced Winters, reportedly stated: “This was a serious offense and, obviously, with all that’s going on with elections now and election integrity, this is something that is obviously front and center[.]” Exhibit 1-16.

**Response:** Undisputed as to the guilty plea. Disputed as to materiality. A single falsification of a voter registration form does not prove widespread voter fraud in Montana, nor does it demonstrate any relationship to supposed Montanan distrust of elections. Voter fraud in Montana is exceptionally rare, *see* McCool Rep. ¶¶ 106-08, and this example has nothing to do with ballot collection, voter identification, election day registration, or any issues implicated by the challenged laws.

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

**Response:** Disputed as incomplete and speculative. Defendant provides no support for this claim. Disputed as to materiality. Defendant does not demonstrate that the isolated instances of fraud justify the measures taken, or that the measures passed by the Montana Legislature would actually combat these sorts of instances of fraud.

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

**Response:** Undisputed as to the incidence of the guilty plea. Disputed as to materiality. Voter fraud in Montana is exceptionally rare, *see* McCool Rep. ¶¶ 106-08, and this example has nothing to do with ballot collection, voter identification, election day registration, or any issues implicated by the challenged laws. Voter fraud is more common in states that ban ballot collection than those that allow ballot collection. *Id.* ¶ 111

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

**Response:** Disputed as misleading. The Carter-Baker report was not specific to Montana

elections and the report is from 2005. Disputed as speculative.

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

**Response:** Disputed as misleading and immaterial. This article evaluates nationwide measures and does not provide state-by-state data and is not useful for an analysis of Montana voting specifically. Voter fraud in Montana is exceptionally rare, and sponsors of the challenged laws were unable to provide any evidence of voter fraud. McCool Rep. ¶¶ 109

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

**Response:** Disputed as misleading, incomplete, and unsupported. Defendant provides no evidence to support this claim. Voters’ concerns about voter fraud do not equate to actual instances of fraud. Moreover, consistent political literature demonstrates that voter confidence is driven not by any election procedures but by cues from party elites and partisanship. Street Rebuttal Report at 16-20.

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

**Response:** Undisputed that election administrators have first-hand knowledge; disputed that the cited examples reflect the view of any Montana election administrators other than the affiants, and thus disputed as incomplete and misleading. These election administrators represent a small percentage of all counties in Montana.

44. Montana election administrators have concluded it was “very challenging to run

organized elections” under prior Montana law. Exhibit 4, ¶ 4; Exhibit 6, ¶¶ 4-11; *see also* Exhibit 5, ¶¶ 5-8.

**Response:** Disputed as misleading. That a handful of Montana election administrators have concluded it was challenging to run organized elections does not mean all administrators have reached the same conclusion. Additionally, the Montana election administrators interviewed represent only a small percentage of all counties in Montana and are not a representative set. The testimony of election administrators Bradley Seaman and Eric Semerad directly dispute Defendant’s contention. *See* Seaman Decl.; Semerad Decl.

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

**Response:** Undisputed as to the reports of some election administrators. Disputed as to materiality. Additionally, the Montana election administrators interviewed represent only a small percentage of all counties in Montana and are not a representative set.

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

**Response:** Undisputed as to the reports of some election administrators. Disputed as to completeness and to materiality. The administrators interviewed represent only a small percentage of all counties in Montana and do not account for a representative subset of Montana counties. Additionally, the Montana election administrators interviewed are not a representative set. Other election administrators have testified to the critical importance of EDR. *See* Seaman Decl.; Semerad Decl.

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

**Response:** Disputed as incomplete. Most Montana voters do not vote at the election office, but at polling places. Disputed as to materiality. The Montana election administrators quoted represent only a small percentage of all counties in Montana and are not a representative set. Moreover, one of Defendant’s own witnesses testified that a new registration takes only 5-10 minutes to complete. *See* Eisenzimer Decl.

48. Montana election administrators need additional time to focus on voting—and not



election-day registration—on Election Day because “many individuals who have worked on elections for years are retiring due to the added stress” and the “loss of this institutional knowledge makes administering elections much more difficult.” Exhibit 6, ¶ 11.

**Response:** Disputed as misleading and immaterial. Montana election administrators would also have additional time to focus on voting if they received more funding to hire more election administrators, or if Montana took a variety of other measures. The testimony of a single administrator on which Defendant relies does not bear out this contention. See Seaman Decl.; Semerad Decl.

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

**Response:** Disputed as misleading and incomplete. Defendant refers to administrators (plural) but quotes only a single election administrator. Any lines due to election-day registration are at election offices, and are not widespread across polling places. Additionally, an extremely small percentage of Montana voters—and far less than the national average—have to wait more 10 minutes to vote. Street Rebuttal Report at 12-13.

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

**Response:** Disputed as misleading. Some administrators have stated they believe this, but they are not a large percentage, or a representative set of, Montana election administrators. See Seaman Decl.; Semerad Decl. Further, Audrey McCue, Elections Department Supervisor in Lewis and Clark County, testified that ending election day registration was “not . . . helpful administratively” and “will not help [her]” in her job administering elections. Rate Aff. ¶ 9; WNV Ex. J at 9-11.

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

**Response:** Disputed as misleading. Some administrators have stated they believe this, but they are not a large percentage, or a representative set, of Montana election administrators. See Seaman Decl.; Semerad Decl. Additionally, the statements in the exhibits were about lines at *offices*, not polling places, because election day registration typically takes place at

election offices.

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

**Response:** Disputed as misleading. Some administrators have stated they believe this, but they are not a large percentage, or a representative set of Montana election administrators. *See* Seaman Decl.; Semerad Decl. Audrey McCue, Elections Department Supervisor in Lewis and Clark County, testified that ending election day registration was “not . . . helpful administratively” and “will not help [her]” in her job administering elections. Rate Aff. ¶ 9; WNV Ex. J at 9-11.

53. Montana election administrators have communicated their concerns regarding the state of Montana election law—including the practical problems with election-day registration—directly to the Montana Legislature in various ways, including by: (i) testifying in support of the legislation Plaintiffs have challenged; and (ii) speaking directly with Montana legislators. Exhibit 4, ¶¶ 27-28; *see also* Declaration of Steve Fitzpatrick, Montana Senator, ¶¶ 4, 6 (Feb. 11, 2022) (Exhibit 7); *see also* Declaration of Greg Hertz, Montana Senator, ¶¶ 5, 7 (Feb. 11, 2022) (Exhibit 8).

**Response:** Disputed as misleading. Some administrators communicated concerns, but not a representative subset of Montana election administrators. Additionally, numerous other Montana election administrators spoke directly with the legislators in support of the pre-legislation status quo in Montana elections. For example, Elections Administrator Regina Plettenberg testified that EDR’s repeal would result in fewer people being able to vote. Rate Aff. ¶ 9; WNV Ex. I at 54-55. Audrey McCue, Elections Department Supervisor in Lewis and Clark County, testified in opposition to HB 176, stating that “continuing [EDR] to the voters is important, and taking it away is a disservice to them.” Rate Aff. ¶ 9; WNV Ex. J at 10.

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

**Response:** Partially disputed as to the fact of the content of affidavit. The affiant nowhere states that election day registration leads to long lines on election day. Disputed as speculative. The affiant identifies no empirical data in support of her contention about the cause of long lines on election day.

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

**Response:** Undisputed as to content of affidavit, but disputed as speculative and incomplete. Janel Tucek has only worked as an election administrator for Fergus County since

February 2021 and thus has only served in that role during an off-year election. Other election administrators have testified that repealing election day registration is “not . . . helpful administratively.” Rate Aff. ¶ 9; WNV Ex. J at 11.

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

**Response:** Undisputed as to content of affidavits; disputed as misleading and incomplete. The cited exhibits support the assertion that two members of the Montana Legislature believe the laws to be important, but fail to prove that the entire legislature acted with an intent to restore confidence and trust, let alone that the challenged laws were the product of considered judgment about those issues. Further, the exhibits do not grapple with the contradictory evidence that removing election day registration will not solve perceived administrative issues.

Neither Senator Fitzpatrick nor Senator Hertz cite any evidence other than personal opinion that HB 176 will assist in reducing long lines at polling places. Def.’s Ex. 7, ¶¶ 7, 8; Def.’s Ex. 8, ¶ 8. Neither senator addresses whether the Legislature could have remedied any purported problem of long lines at polling places with less restrictive measures, such as hiring more staff members. *See* Def.’s 7, ¶ 9. Def.’s Ex. 8, ¶ 10.

Neither senator cites to any instances of voter fraud in Montana.

57. The 67th Montana Legislature heard concerns from various stakeholders regarding Montana election law, including: (i) concerns regarding voters’ lack of confidence in the security and administration of Montana elections; (ii) election administrators’ concerns regarding the administrative burdens placed on them by Montana law, including election-day registration; (iii) concerns regarding long lines at polling places in Montana; (iv) concerns regarding delays associated with, and the accuracy of, tabulating election results; and, (v) concerns of Montanans who opposed the Legislature’s proposed changes to Montana election law. *See generally* Exhibits 7–8.

**Response:** Disputed as incomplete and misleading. Senator Fitzpatrick and Senator Hertz refer to generalized concerns allegedly from voters in their districts. Def.’s Ex. 7, ¶ 5; Def.’s Ex. 8, ¶ 5. However, Defendants fail to address the reality that the vast majority of those who testified at the legislative hearings vigorously opposed HB 176, outlining the specific dangers to electoral participation of repealing EDR, and particularly highlighting the disproportionate harms to Indigenous voters. Rate Aff. ¶¶ 9-10; WNV Exs. I, J.

58. In particular, the Montana Legislature sought to improve public confidence in Montana elections by “ensur[ing] fair and safe elections in Montana.” Exhibit 7, ¶ 4; Exhibit 8, ¶

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

**Response:** Disputed as incomplete and misleading. Defendants refer only to the intent of two legislators who do not purport to reflect the general intent of the legislature and use language asserting their personal opinions and hopes. Def.’s Ex. 7, ¶¶ 8, 16; Def.’s Ex. 8, ¶¶ 9, 19. Defendant ignores that the Legislature heard the testimony of Audrey McCue, Elections Department Supervisor in Lewis and Clark County, who opposed HB 176 and stated that “continuing [EDR] to the voters is important and that taking it away is a disservice to them.” Rate Aff. ¶ 9; WNV Ex. J at 10.

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

**Response:** Disputed as to the characterization of “strong.” Undisputed that each bill passed with a majority vote.

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

**Response:** Disputed. Defendants refer only to the personal opinions of two legislators of rural counties that represent less than 4% of the state’s population and cite to no other evidence that the legislation enjoys broad support. The vast majority of those who testified at the legislative hearings vigorously opposed the challenged laws, outlining the specific dangers to electoral participation of repealing EDR, and particularly highlighting the disproportionate harms to Indigenous voters. Rate Aff. ¶¶ 9-10; WNV Exs. I, J.

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

**Response:** Disputed. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views of the entire legislature. Def.’s Ex. 7, ¶¶ 8, 16; Def.’s Ex. 8, ¶¶ 9, 19. Moreover, HB 530 was passed in the waning days of the legislative session, with no hearing or opportunity for the public to be heard. The legislature had knowledge that a very similar law was found by multiple courts less than two years prior to harm and disadvantage Native voters among others. Moreover, comments from the sponsor of SB 169 indicate an intent to reduce student voting. *See* Mayer Rep. at 15.

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

19 through 1–22.

**Response:** Plaintiffs dispute this statement because it is a legal conclusion, not a statement of fact.

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

**Response:** Disputed. The legislation disproportionately burdens the right to vote of Native Americans living on rural reservations in Montana. *See, e.g.,* McCool Rep. ¶¶ 160, 165; Street Aff. ¶¶ 4, 6. Native voters use EDR at consistently higher rates than the general population, so eliminating EDR disproportionately affects Native communities. The legislature had knowledge that a very similar law was found by multiple courts less than two years prior to harm and disadvantage Native voters among others. The vast majority of those who testified in legislative hearings vigorously opposed the challenged laws, outlining the specific dangers to electoral participation of repealing EDR, and particularly highlighting the disproportionate harms to Indigenous voters. Rate Aff. ¶¶ 9-10; WNV Exs. I, J. The legislature had real time knowledge of the discriminatory nature of the laws, and passed them anyway. Moreover, comments from the sponsor of SB 169 indicate an intent to reduce student voting. *See* Mayer Rep. at 15.

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

**Response:** Disputed. As explained in more fulsome detail in Plaintiffs’ memoranda of law and reply memoranda of law in support of their motion for a preliminary injunction, the Legislation cannot be called reasonable since it is not sufficiently linked to a legitimate government interest. Moreover, the Legislation is likely to decrease voter participation in Montana elections. Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Spotted Elk Aff. ¶18; McCool Rep. ¶¶ 57, 61, 165; Street Rep. ¶ 15. When testifying in opposition to the HB 530 amendments, Representative Tyson Running Wolf said that the bill “effectively ends the legal practice of ballot collection,” which is heavily relied on by Native voters in Montana and would result in “en masse” disenfranchisement.

There is no evidence that the Legislation will increase public confidence in Montana elections, and all evidence suggests that it would not. Street Rebuttal Report at 16-21.

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

**Response:** Disputed. Defendants provide no evidence that the Legislation will have any effect on voter confidence or that EDR or paid ballot collection have any impact on voter

confidence. All evidence suggests that the legislation is not likely to increase voter confidence in Montana. Street Rebuttal Report at 16-21.

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

**Response:** Disputed. Defendant provides no meaningful definition for what it means for voting in a state to be “relatively easy” or not. Defendant does not provide a comprehensive evaluation of election and voting laws in all 50 states, nor does she explain how comparing election and voting laws in other states determines the ease of voting in Montana. Disputed as immaterial to the issue of whether the Legislature in question violates Plaintiffs’ fundamental right to vote. As explained in more fulsome detail in Plaintiffs’ memoranda of law and reply memoranda of law in support of their motion for a preliminary injunction, the Legislation severely and disproportionately burdens Native voters, among others. Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Spotted Elk Aff. ¶ 18; *see generally* Street Rep.

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

**Response:** Disputed as misleading and incomplete. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.’s Ex. 7, ¶ 4; Def.’s Ex. 8, ¶ 4.

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

**Response:** Disputed and unsupported. The Legislation is not straightforward, does not clarify, and is ambiguous in its application to Montana voters. The affidavit of Austin James does not support the contention.

As explained in more fulsome detail in Plaintiffs’ memoranda of law and reply memoranda of law in support of their motion for a preliminary injunction, the text of HB 530 is ambiguous in three separate ways, making the statute vague and chilling organizers’ attempts to support voters while avoiding violating state law. In her motion for summary judgment, Defendant did not even attempt to resolve any of these ambiguities; Defendant could not do so because the statute is vague. Defendant has already concede that the administrative rulemaking “process designed to provide [statutory] clarity has yet to occur.” Far from adding clarity, HB 530—seemingly by Defendant’s own admission—creates uncertainty and confusion. This delay and uncertain prevents tribes and civic organizations from planning their efforts in the months leading up to an election. McDonald Aff. ¶¶ 12, 16; Horse Aff. ¶ 34.

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

**Response:** Disputed. Montana has had election day registration for nearly 20 years. By removing election day registration, the State may disenfranchise thousands of voters. Ending election day registration is not a modest change, given that EDR is highly utilized by Montana voters: it was used by 6,547 voters in 2008, 12,055 voters in 2016, and over 8,000 voters in both 2018 and 2020. McCool Rep. ¶ 60 & tbl. 28; *see also* Street Rep. ¶¶ 20-23 & fig.1-2

EDR also acts as a fail-safe for voters who have previously registered but who, due to an administrative error, are unable to vote without reregistering: forty percent of EDR voters were not new registrants. Rate Aff. ¶10

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

**Response:** Undisputed, but immaterial, and a substantial number of states (twenty-one of fifty) do provide some form of election day registration.

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

**Response:** Disputed. Thousands of voters rely on EDR every year. Rate Aff. ¶ 10, Ex. J, at 11, 36-39. Removing access to EDR has the potential to substantially burden these voters given the habitual nature of voting patterns and the causal relationship between EDR and turnout. Rate Aff. ¶ 27. As explained in more fulsome detail in Plaintiffs’ memoranda of law and reply memoranda of law in support of their motion for a preliminary injunction, repealing EDR will severely burden the voting rights of several groups of voters, including Native voters.

Defendant fails to demonstrate how HB 176 will provide substantial benefits to Montana election administrators. The legislative record contained no evidence that eliminating EDR would alleviate long lines at the polls. McCool Rep. ¶ 117. The election administrator for Lewis and Clark County testified in opposition to HB 176 and explained that moving the last day to register to vote would simply make lines longer on an earlier date. Rate Aff. ¶ 10; WNV Ex. J at 11, 36-39. Defendant relies on only a small number of election administrators who believe HB 176 would provide any benefits to them.

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

**Response:** Disputed as misleading and incomplete. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views or intentions of the

entire legislature. Def.'s Ex. 8, ¶ 4; Def. Br. at 25. The vast majority of those who testified in legislative hearings vigorously opposed the challenged laws, outlining the specific dangers to electoral participation of repealing EDR, and particularly highlighting the disproportionate harms to Indigenous voters. Rate Aff. ¶¶ 9-10; WNV Exs. I, J. The election administrator for Lewis and Clark County testified in opposition to HB 176 and explained that moving the last day to register to vote would simply make lines longer on an earlier date. Rate Aff. ¶ 10, WNV Ex. J at 11, 36-39. In any event, Defendant fails to show that election administrators did not previously have "plenty of time to finalize registration rolls" or "run organized and efficient elections on election day."

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

**Response:** Disputed as misleading and incomplete. Defendants refer to the personal opinions of three election administrators who do not claim to reflect the views of all administrators. Def.'s Exs. 4, 5, 6. Defendants refer to the personal opinions of one legislator who points only to the requests of one election administrator, whose views are already reflected in a separate declaration. Def.'s Ex. 8, ¶¶ 5-7; *see also* Def.'s Ex. 4. Other election administrators opposed or did not support HB 176. For example, Elections Administrator Regina Plettenberg testified that EDR's repeal would result in fewer people being able to vote. Rate Aff. ¶ 9; WNV Ex. I at 54-55. And the election administrator for Lewis and Clark County testified in opposition to the bill and explained that moving the last day to register to vote would simply make lines longer on an earlier date. Rate Aff. ¶ 10; WNV Ex. J at 11, 36-39.

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

**Response:** Disputed and unsupported. Defendant's claims about "election experts" relies on the untested claims of a single individual who is not qualified as an expert and whose experience is from outside Montana. There is no consensus that HB 176 facilitates effective election administration. WNV Ex. J. at 11, 36-39. Other election administrators testified to the contrary. WNV Ex. I at 54-55; WNV Ex. J at 11, 36-39.

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



**Response:** Disputed as misleading and incomplete. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.'s Ex. 7, ¶ 4; Def.'s Ex. 8, ¶ 4.

Disputed as to sentence two. Defendant's claims about "election experts" again relies on the untested claims of a single individual who is not qualified as an expert and whose experience is from outside Montana. There is no consensus among election experts that eliminating election day registration reduces wait times, and evidence suggests it will not. *See* Street Rebuttal Report at 12-14. Additionally, election day registration is only available at elections offices or satellite locations whereas the vast majority of Montanans vote at precinct polling places. *Id.*

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

**Response:** Disputed as misleading and incomplete. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.'s Ex. 7, ¶ 4; Def.'s Ex. 8, ¶ 4.

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

**Response:** Undisputed, but immaterial.

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

**Response:** Disputed as misleading and incomplete. Defendant refers only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.'s Ex. 7, ¶ 4; Def.'s Ex. 8, ¶ 4. Given that the vast majority of those who testified at the legislative hearings vigorously opposed the bill, outlining the specific dangers to electoral participation of repealing EDR, and particularly highlighting the disproportionate harms to Indigenous voters, *see* WNV Exs. I, J, the legislative record does not contain evidence of compromise addressing the removal of EDR. According to the state's own data, since 2008, there have been approximately 23 times more registrations on Election Day as compared to the average pre-election day during the same-day voting period. Street Rebuttal Report at 8.

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

**Response:** Disputed as misleading, vague, and incomplete. Defendants refer only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.'s Ex. 7, ¶ 4; Def.'s Ex. 8, ¶ 4. As explained in more fulsome detail in Plaintiffs' memoranda of law and reply memoranda of law in support of their motion for a preliminary injunction, HB 176 does not serve any compelling state interest.

80. Social scientists have found no causal link between election-day registration and increased voter turnout. Exhibit 14, pp. 7-10; Exhibit 15, pp. 15-18. HB 176 is unlikely to have any statistically significant impact on voter participation in Montana elections, especially when considering the fact that Montana election law still permits voters to simultaneously register and vote until the day before Election Day, i.e. same-day registration. Exhibit 14, pp. 7, 10; Exhibit 15, pp. 15-17 (any impact on turnout is "likely low").

**Response:** Disputed. The state of the political science "literature is that EDR tends to increase turnout, and, correspondingly, that eliminating EDR is likely to reduce turnout. This question has been intensely studied, resulting . . . in a set of empirical findings that are among the more consistent in the political science literature on voting." Street Rebuttal Report at 5; *see also* McCool Report ¶ 57 ("Findings from numerous studies indicate that EDR . . . increases turnout."). HB 176 is likely to decrease voter participation in Montana elections. Social science research also demonstrates that disrupting voting habits has a negative effect on turnout: this strongly implies that removing EDR will reduce turnout. Street Rep. ¶¶ 15, 23; *see also* Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Spotted Elk Aff. ¶ 18; Grey Aff. ¶ 17.

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

**Response:** Undisputed, as Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Disputed as immaterial, misleading, and inaccurate. The existence of failsafes for certain limited categories of voters does not mitigate the impact that HB 176 will have in stripping away the most critical failsafe that existed under Montana law. As the then-Montana Secretary of State put it in 2014, "virtually everyone supported [EDR]" because "Election Day voter registration is the ultimate failsafe." Ex. 18. HB 176 has already disenfranchised Montana voters who encountered administrative errors on election day that could have been remedied if EDR had still been in place. *See* Bogle Decl. ¶¶ 3-4; Denson

Decl. ¶¶ 4-5.

Further, provisional ballots also do not mitigate the harm, since provisional ballots must be validated at a later date and require voters to verify their voter eligibility. Such a process would implicate similar disparate impacts on disadvantaged populations who lack consistent access to transportation.

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

**Response:** Disputed as misleading, incomplete, and containing an improper legal conclusion. Senator Fitzpatrick’s opinion that HB 506 “ensures that only qualified electors are voting in Montana elections” is an immaterial legal conclusion, not a material fact, and ignores that many factors contribute to ensuring only qualified electors are voting. Additionally, his contention that HB 506 ensures consistent practices with respect to mailing and accepting absentee ballots ignores that allowing election administrators to issue absentee ballots to all registered voters at the same time, as the law prior to the passage of HB 506 allowed, provides greater consistency than HB 506’s requirement that election administrators determine the specific eligibility date of each voter and issue their absentee ballots one-by-one.

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

**Response:** Disputed as misleading. Senators Fitzpatrick’s and Hertz’s statements mischaracterize HB 506 as a mere clarification of when absentee ballots could be sent, but Defendant’s own evidence demonstrates that, under the prior law, election administrators employed several reasonable options for issuing absentee ballots, and HB 506 could have resolved any disagreement as to when absentee ballots could be sent by adopting some other method than delaying the issuance of ballots. Def.’s Ex. 2, ¶¶ 129, 131; Def.’s Ex. 9, ¶ 6; *see also* Bromberg Rep. at 33-34. In fact, HB 506 was amended at one point to remove the language prohibiting election administrators from issuing ballots before voters met age and residency requirements and to replace it with “language that prohibited only the processing and counting of ballots submitted by such young voters until they met the age and residency requirements.” Bromberg Rep. at 34. The fact that the Montana Legislature eventually adopted the final language of HB 506 and “rejected a less discriminatory amendment which would have satisfied the purported justifications for the bill without creating a burden on affected youth and student voters” was a choice, not a clarification. Bromberg Rep. at 34.

85. HB 506 resolved an apparent uncertainty in Montana law regarding whether election administrators could provide absentee ballots to individuals before they satisfied Montana’s age and residency requirements. Exhibit 7, ¶ 23; Exhibit 8, ¶ 26; Exhibit 2, ¶¶ 125-128. Election

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

**Response:** Undisputed.

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

**Response:** Undisputed.

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

**Response:** Undisputed that the Defendant requested the introduction of HB 506 and as to the text of Mont. Code Ann. § 13-1-20; but disputed that the request was “consistent with Montana law,” as this is a legal conclusion, and Plaintiffs have presented evidence that Defendant's requested resolution unconstitutionally burdens the rights of voters who turn 18 in the month before election day, in violation of Mont. Const., art. II, § 15.

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

**Response:** Undisputed.

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

**Response:** Undisputed.

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

**Response:** Disputed. HB 530 places a substantial burden on voters and is likely to decrease participation in elections. Street Rep. at 18-27; McCool Rep. ¶ 165. There is no evidence that HB 530 will reduce fraud or increase public confidence in elections. Street Rebuttal Rep. at 16-21.

Voter fraud is extremely rare in Montana and the broader United States, and is more

common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111. There is no evidence of voter fraud in Montana associated with third-party ballot collection, *see* McCool Rep. ¶ 111, and the Secretary's own Elections Director has admitted that third-party ballot collection boosts turnout and is good for democracy, MDP Ex. 28 (*Driscoll* trial transcript) 537-38.

The Legislation is likely to decrease voter participation in Montana elections. Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Spotted Elk Aff. ¶18; McCool Rep. ¶ 165. When testifying in opposition to the HB 530 Amendments, Representative Tyson Running Wolf said that the bill "effectively ends the legal practice of ballot collection," which is heavily relied on by Native voters in Montana and would result in "en masse" disenfranchisement. He added, "[b]allot collection is a lifeline to democracy for rural indigenous communities" due to the unique barriers these communities face. Social science supports the conclusion that HB 530 is likely to deter individuals from registering and voting. Street Rep. ¶15; McCool Rep. ¶ 165.

There is no evidence that HB 530 will increase public confidence in Montana elections, and all evidence suggests that it would not. Street Rebuttal Rep. at 16-21.

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

**Response:** Disputed. While it is undisputed that some other states may have laws that impede paid ballot collection, the existence of such laws does not make HB 530 relatively modest. HB 530 is a substantial cutback on ballot collection that will greatly impact the ability of certain voters to exercise their vote. Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Lane Spotted Elk Aff. ¶18. The nature of Native voters' reliance on ballot collection from groups with paid organizers was known at the time of the enactment of HB 530 due to the trial enjoining BIPA.

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

**Response:** Disputed. Defendant has not identified a single voter fraud conviction in Montana linked to ballot collection. McCool Rep. ¶¶105-106. Voter fraud is extremely rare in Montana and the United States, and is more common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111. Defendant has provided only two examples of voter fraud convictions in Montana history, neither of which concerns ballot collection.

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

**Response:** Disputed. Defendant has not identified a single voter fraud conviction in Montana linked to ballot collection. McCool Rep. ¶¶ 105-106. Voter fraud is extremely rare in Montana and the United States, and is more common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111. Defendant has provided only two examples of voter fraud convictions in Montana history, neither of which concerns ballot collection.

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

**Response:** Disputed. While Sponsor McKamey may have testified on the floor that HB 530 would improve election integrity, there is no evidence that removing paid ballot collection will actually improve the integrity of elections. Voter fraud is extremely rare in Montana and the United States, and is more common in states that ban ballot collection than those that allow ballot collection. McCool Rep. ¶ 111. Defendant has not identified a single voter fraud conviction in Montana related to ballot collection. McCool Rep. ¶¶ 105-106. Defendant has provided only two examples of voter fraud convictions in Montana history, neither of which concerns ballot collection.

95. The Montana Legislature also identified various other problems that could be associated with ballot collection, including: (i) “tampering or destroying or not returning ballots”; (ii) experienced political operatives “discard[ing] ballots” returned to them if they suspected the individual’s vote would be contrary to the operative’s political interests; and (iii) the “perception among voters that an election may be tainted by the influence of money on the process” associated with paid ballot collection. Exhibit 7, ¶¶ 18-20; Exhibit 8, ¶¶ 21-23; *see also* Exhibit 1-5, pp. 46-47 (Carter-Baker Report establishing why “[a]bsentee ballots remain the largest source of potential voter fraud”).

**Response:** Disputed as misleading and incomplete. Defendant has not provided any evidence that ballots in Montana have been tampered with or destroyed, or that political operatives have discarded ballots. *See* McCool Rep. ¶¶ 117-118. Defendant has provided no evidence beyond speculation that eliminating paid ballot collection will improve confidence in elections or change voter’s perception of election integrity. The purported problems identified in ¶ 95 are already illegal under Montana law. *See* Street Rebuttal Rep. at 14-15.

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

**Response:** Disputed as misleading and incomplete. Defendant refers only to the personal opinions of two legislators who do not claim to represent the views or intentions of the entire legislature. Def.'s Ex. 7, ¶ 4; Def.'s Ex. 8, ¶ 4.

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

**Response:** Undisputed, as Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Disputed as misleading and incomplete. SB 169 eliminated secondary or postsecondary student IDs and out-of-state driver's licenses as a form of primary voter ID (which qualifies as a single form of ID allowing a voter to cast a ballot). Student IDs were relegated to secondary status, requiring anyone presenting a student ID as verification of identity to also show an additional form of documentation – a current utility bill, bank statement, paycheck, government check, or "other government document" that shows the voter's name and current address. SB169 also elevated a Montana concealed carry permit to primary status for voter ID purposes.

Defendant refers only to the personal opinions of a few legislators who do not claim to represent the views or intentions of the entire legislature. Additionally, other statements from legislators indicate that their votes for SB 169 were motivated, not by practical sense, but by contempt for student voters. During debate on the bill, the Montana Speaker of the House Wylie Galt made this explicit, defending his successful effort to relegate student IDs to secondary status: "Basically, it makes that if you're a college student in Montana and you don't have a registration, a bank statement or a W-2, it makes me kind of wonder why you're voting in this election anyway" Galt said during the debate on his amendment. "So this just clears it up that they have a little stake in the game." Mayer Rep. at 15.

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

**Response:** Disputed as misleading and incomplete. The options afforded by SB 169 are not available equally to all Montana voters, and for many Montana voters, do not represent "a wide variety of options." College-age students, in general, are less likely than the general population to possess a driver's license or ID, reflecting age cohort differences. In Montana, 71.5% of the population aged 18-24 has a Montana driver's license, well behind the total license possession rate of 94.7% among the 18 or older population in Montana, and behind the national 18-24 possession rate (76.7%). Mayer Rep. at 15. Additionally, out-of-state students attending college are far less likely to possess a Montana driver's

license or state ID. Mayer Rep. 15. Youth and student voters are also unlikely to have and/or carry with them many of the other standalone forms of identification permitted by SB 169, such as Montana state ID, military ID, tribal photo ID, U.S. passport, or concealed carry permit. Bromberg Rep. at 25. Many students live in dormitories where their lives revolve mostly around the college and the college campus. Bromberg Rep. at 25. Because they live in dormitories and/or are highly mobile, students often do not own the secondary proof of identification with current residence listed therein which SB 169 requires to accompany a Student Photo ID—i.e., a current utility bill, bank statement, paycheck, government check, or other government document. Bromberg Rep. at 25. In many cases, students do not receive mail directly to their college dormitory residence. Bromberg Rep. at 25. If they do receive campus mail, it is often directed to a post office box which is distinct from their dormitory residence. Bromberg Rep. at 25.

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

**Response:** Disputed as incomplete. Although Montana law does provide a provisional balloting option for voters who are unable to produce acceptable identification at the polls, that option imposes additional hurdles that the voter must overcome in order to have their ballot counted. Montana law requires that voters who cast a provisional ballot because they lack ID must provide acceptable identification by 5 p.m. on the day after the election *and* have their signatures match:

(2) If a legally registered individual casts a provisional ballot because the individual failed to provide sufficient identification as required pursuant to 13-13-114(1)(a):

(a) the elector has until 5 p.m. on the day after the election to provide identification information pursuant to the requirements of 13-13-114 or as provided in subsection (3) of this section; and

(b) the election administrator shall compare the signature of the individual or the individual's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the individual's voter registration form or the agent's designation form. If the signatures match, the election administrator shall handle the ballot as provided in subsection (7). If the signatures do not match and the individual or the individual's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.



Section 13-105-107, MCA.

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

**Response:** Disputed. The explicit changes SB 169 made to Montana law undermine the Secretary’s claim that confirmation of registration may be used as a secondary form of identification. the Legislature expressly removed notice of confirmation of voter registration from the list of documents that may be used in combination with a college or university ID:

**provisional voting.** (1) (a) ~~Before~~ Except as provided in subsection (2), before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge ~~a one of the following forms of current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to:~~

(i) a valid Montana driver's license, Montana state identification card issued pursuant to 61-12-501, military identification card, tribal photo identification card, United States passport, or Montana concealed carry permit; or

(ii) (A) a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address; and

(B) photo identification that shows the elector's name, including but not limited to a school district or postsecondary education photo identification.

§ 13-13-114, MCA (available at <https://leg.mt.gov/bills/2021/billpdf/SB0169.pdf>) (highlighting added).

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

**Response:** Disputed. The explicit changes SB 169 made to Montana law undermine the Secretary’s claim that confirmation of registration may be used as a secondary form of identification. the Legislature expressly removed notice of confirmation of voter registration from the list of documents that may be used in combination with a college or university ID:

**provisional voting.** (1) (a) ~~Before~~ Except as provided in subsection (2), before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge ~~a one of the following forms of current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to:~~

(i) ~~a valid Montana driver's license, Montana state identification card issued pursuant to 61-12-501, military identification card, tribal photo identification card, United States passport, or Montana concealed carry permit; or~~

(ii) (A) ~~a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address; and~~

(B) ~~photo identification that shows the elector's name, including but not limited to a school district or postsecondary education photo identification.~~

§ 13-13-114, MCA (available at <https://leg.mt.gov/bills/2021/billpdf/SB0169.pdf>) (highlighting added).

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

**Response:** Disputed as misleading and incomplete. Although SB 169 did remove the language requiring IDs to be “current” and “valid” from the law, for the reasons explained above in Plaintiffs’ response to SUF Nos. 98 and 99, the balance of changes do not make the voting ID requirements “easier.”

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

**Response:** Disputed. Statements from legislators indicate contempt for student voters. During debate on the bill, the Montana Speaker of the House Wylie Galt made this explicit, defending his successful effort to relegate student IDs to secondary status: “Basically, it makes that if you’re a college student in Montana and you don’t have a registration, a bank statement or a W-2, it makes me kind of wonder why you’re voting in this election anyway” Galt said during the debate on his amendment. “So this just clears it up that they have a little stake in the game.” Mayer Rep. at 15.

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

**Response:** Disputed. As explained in Plaintiffs’ response to SUF No. 26, social scientists have found evidence that voter ID requirements, specifically those affecting the use of student IDs for voting, contribute to negative effects on voter turnout. Professor Barry Burden of the University of Wisconsin concluded that the student voter ID requirement was one of multiple factors that suppressed student voter participation. *See* Ex. 14. Further, as explained in Plaintiffs’ response to SUF No. 99, the expert reports of Dr. Kenneth R. Mayer and Yael Bromberg describe the unique burdens SB 169 places on young voters.

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

**Response:** Disputed as inaccurate and incomplete. During a legislative hearing before the House State Administration Committee, the Secretary’s representative, Dana Corson, testified regarding the difference between student IDs and other forms of government-issued IDs. *See* MDP Ex. 20 (transcript of legislative hearing). According to Corson, the only categorical difference is that student IDs do not provide residency and citizenship information. *Id.* at 44:17-45:15. However, other than a U.S. passport or Tribal ID, none of the primary forms of identification prove that an individual is eligible to vote. Mayer Rep. at 17. Noncitizens can obtain a Montana driver’s license or state ID card, a concealed carry permit, and a military ID as a member of the U.S. armed forces. Mayer Rep. at 17. Moreover, none of the primary forms of ID proves physical residence, and there is no requirement that an address on a primary ID matches the voter’s registered address. Mayer Rep. at 17. Accordingly, relegating student ID’s to secondary status and requiring those using a student ID to vote to provide additional documentation has no effect other than to make it more difficult for students who are otherwise eligible to vote where they attend school. Mayer Rep. at 17.

Additionally, statements from legislators undermine the Secretary’s contention that those requirements were imposed “because non-government issued ID’s like ‘student id’s are categorically different from government issued ID’s” [sic]. During debate on the bill, the Montana Speaker of the House Wylie Galt made this explicit, defending his successful effort to relegate student IDs to secondary status: “Basically, it makes that if you’re a college student in Montana and you don’t have a registration, a bank statement or a W-2, it makes me kind of wonder why you’re voting in this election anyway” Galt said during the debate on his amendment. “So this just clears it up that they have a little stake in the game.” Mayer Rep. at 15.

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

**Response:** Disputed as inaccurate. As explained in Plaintiffs’ responses to SUF Nos. 98 and 99, the expert reports of Dr. Kenneth R. Mayer and Yael Bromberg describe the unique burdens imposed on students by the requirement to show the types of government-issued IDs permitted by SB 169. Defendant cites no competent evidence that relegating student IDs to second-tier status fosters confidence in elections.

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

**Response:** Disputed and inaccurate and incomplete. Statements from legislators undermine the Secretary’s contention that those requirements were imposed because they “make it easier for election administrators and workers to administer and understand what constitutes a proper voter ID.” During debate on the bill, the Montana Speaker of the House Wylie Galt made this explicit, defending his successful effort to relegate student IDs to secondary status: “Basically, it makes that if you’re a college student in Montana and you don’t have a registration, a bank statement or a W-2, it makes me kind of wonder why you’re voting in this election anyway” Galt said during the debate on his amendment. “So this just clears it up that they have a little stake in the game.” Mayer Rep. at 15.

Additionally, Plaintiffs have submitted declarations from election administrators undermining the premise of the Secretary’s contention that SB 169 will make it “easier for election administrators and workers to administer and understand what constitutes proper voter ID.” Bradley Seaman, Missoula County Elections Administrator, stated that Missoula County is home to the University of Montana and has a large number of student voters. Seaman Decl. ¶ 10. Accordingly, his office has had many students who have voters while presenting only their student ID. *Id.* Nonetheless, Seaman and his staff “have never had any issue verifying the identity of a voter who came to vote with only their student identification.” *Id.* Similarly, Eric Semerad, Gallatin County Clerk and Recorder, stated that Gallatin county is home to Montana State University and its more than 17,000 students. Semerad Decl. ¶ 11. As a result, Gallatin County has had a large number of student voters. *Id.* Nonetheless, Semerad and his staff have “experienced no problems with voters using student identification at the polls.” *Id.*

The Secretary also submitted declarations from three election administrators in support of her motion for summary judgment. But none of those administrators expressed any problems with the use of student IDs at the polls. *See generally* Ellis Decl.; Tucek Decl.; Eisenzimer Decl.

109. Election experts have concluded that voter identification laws “help[] prevent

illegal voting in the local district” and “increases voter confidence in elections.” Exhibit 15, pp. 22-23.

**Response:** Disputed as inaccurate and unsupported. Defendant’s claims about “election experts” again relies on the untested claims of a single individual who is not qualified as an expert and whose experience is from outside Montana. The balance of scholarly research indicates that voter ID requirements target some of the rarest kinds of election crimes and have no overall effect on public confidence in election integrity. For example, a bipartisan study of election crimes by the U.S. Election Assistance Commission found that “[m]any [experts] asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.” Ex. 19.

A report by researchers at the Ohio State University law school explored this issue in Wisconsin and four other Midwestern states. They interviewed state and local election officials and attorneys in the Milwaukee district attorney’s office. Despite the fact that “[t]here are few states in which allegations of voter fraud have received greater scrutiny than Wisconsin...On the whole, voting fraud is exceedingly rare.” Ex. 20 at 120. Their follow-up report on Wisconsin concluded that “[t]here is no evidence of any serious problem with voter impersonation fraud, the only form of illegal voting that a strict ID law could hope to address.” Ex. 21 at 41.

The academic literature similarly finds little to no evidence that voter ID laws buoy public confidence in election systems or motivate more citizens to participate as a result of public perception that the integrity of the voting system is improved. Even the article on which Defendant relies so heavily “found no significant effect [of strict voter ID laws] on fraud or public confidence in election integrity[,]” which “weakens the case for adopting such laws in the first place.” Ex. 7 at 2653-54. Extensive research instead finds that public confidence in the voting system is largely colored by partisanship, such that supporters of losing candidates have less trust in the election system than do supporters of winning candidates. Ex. 22 at 176-188. More to the point, research by Professor Stephen Ansolabehere shows that there is no overall relationship between the strictness of state voter ID laws and voter confidence. Ex. 23 at 127-130; *see also* Ex. 24 at 1-9.

As a recent publication by the MIT Election Data and Science Lab explains, “[R]esearch indicates only a weak causal connection between voter confidence and voter turnout, and it does not show clear causal links between certain high-profile election administration practices, such as voter ID laws, and voter confidence . . . . How the question about confidence is asked generally determines whether voters are deemed to have high or low confidence in elections. The strongest influence on levels of voter confidence, regardless of how the question is asked, is whether one’s candidate has won or lost an election.” Ex. 1; *see also* Street Rebuttal Rep. at 16 (“[p]ublic perceptions of fraud and confidence in the integrity of the electoral system are not connected to actual state variation in [election laws], of which voters are often poorly-informed, and also showing that survey responses on this issue are influenced, instead, by cues from party leaders.”) (citing Charles Stewart

III et al., *Revisiting Public Opinion on Voter Identification and Voter Fraud in an Era of Increasing Polarization*, 68 Stan. L. Rev. 1455 (2016)). Overall voter confidence has been remarkably stable across the last three presidential election cycles. Street Rebuttal Rep. at 20.

To the extent that there is a problem with voter confidence in Montana, it likely reflects messaging from public officials, rather than the actual existence of fraudulent voting – very little of which took place during the 2020 election. *See* Ex. 4.

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

**Response:** Disputed as inaccurate and incomplete. Legislators heard first-hand testimony from individual voters who lack the forms of ID necessary to vote under SB 169. *See* MDP Ex. 20 (Senate State Admin. Hearing) at 13:6-15. (House State Admin. Hearing) at 19:6-8.

For example, Madison Morgan, a voter in Montana, testified before the House State Administration Committee on February 22, 2021, that she does not have a Montana drivers’ license or state ID, and cannot obtain one because she does not have a valid birth certificate. *Id.* at 16:23-18:14. Because of her father’s military service, she was born in Puerto Rico. *Id.* But because her birth certificate was issued before 2009, it is considered invalid. *Id.* Because she had a student ID, she was able to vote in prior elections. *Id.* But if SB 169 had been in place at the time, she would not have had a secondary ID that would have enabled her to use her student ID to vote. *Id.* She testified, “I was living in dorms on campus and if I had my utility bill and it did not reflect my current address after moving into the dorm, nor did I have a job immediately upon moving to college where I would receive stubs, nor do I receive government checks or other documents would work in lieu of these items.” *Id.* Additionally, although she had been voting in Montana since 2019, she did not receive her voter registration card until February 2021. *Id.*

Similarly, Montana voter Ruthie Barbour testified during that same legislative hearing. *See id.* at 18:17-19:19. She testified that she came to Montana as an out-of-state student. *Id.* She did not have a Montana drivers’ license, nor did she have any of the forms of secondary ID that SB 169 permits voters to use in conjunction with a student ID or out-of-state drivers’ license. *Id.* She stated, with SB 169 in place, “If my first year of college had been an election year, . . . I would have been eligible yet unable to vote.” *Id.*

The Secretary cites the affidavit of Caleb Lowe, a single student voter, who claims without elaboration or explanation as to the extent of his inquiries into the topic, that he does not “know any university students at MSU or other Montanans in my age range who would be

unable to satisfy voter identification requirements.” Plaintiffs submitted declarations from students that Mr. Lowe does not know. Audrey Dozier, Amara Reese-Hansell, and Hailey Sinoff each stated that they would not have had the proper forms of identification when they were student voters. *See* Dozier Decl.; Reese-Hansell Decl.; Sinoff Decl. Further, Alex Runnion stated that most out-of-state students that she knows do not possess qualifying identification under SB 169. *See* Runnion Decl.

111. Montana legislators “also voted in favor of SB 169 because it was clear to [them] that [their] constituents support strong voter identification laws” and hoped that “passing SB 169 will help boost voter confidence in the integrity and security of Montana elections.” Exhibit 7, ¶ 16; Exhibit 8, ¶¶ 18-19; *see also* Exhibit 1-5, p. 17-20 (Carter-Baker Report detailing why strong voter identification laws are “bedrocks of a modern election system”); *see also* Exhibit 1-8, p. 5 (strong voter identification laws can increase voter confidence and participation); *see also* Exhibit 10, ¶ 13 (college student “more likely to vote—and to trust the legitimacy of Montana election results—if voter identification laws are in place”); *see also* Aff. Dennison Rivera, ¶¶ 4, 17-21 (Feb. 9, 2022) (Exhibit 11) (Latino voter in Montana “support[s] Montana’s voter ID laws” because “[r]equiring voter ID to vote is basic, minimal security, and common sense” and he is “more inclined to vote knowing that there are election integrity laws such as identification requirements”).

**Response:** Disputed as inaccurate and incomplete. Plaintiffs’ response to SUF No. 109 explains that voter ID laws do not boost voter confidence or election security. Further, statements from legislators undermine the Secretary’s contention that legislators voted for SB 169 for those reasons. During debate on the bill, the Montana Speaker of the House Wylie Galt made this explicit, defending his successful effort to relegate student IDs to secondary status: “Basically, it makes that if you’re a college student in Montana and you don’t have a registration, a bank statement or a W-2, it makes me kind of wonder why you’re voting in this election anyway” Galt said during the debate on his amendment. “So this just clears it up that they have a little stake in the game.” Mayer Rep. at 15.

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

**Response:** Disputed as inaccurate and misleading. The REAL ID law the Carter-Baker Report recommended, as reflected even in Defendant’s own SUF 28, required states to verify information before issuing an ID—it contained no restrictions on voting or even requirements for voting. Def.’s Ex. 1-5 at 19. The Report recommended that states adopt the use of these IDs for voting, but only alongside “efforts to ensure that all voters are provided convenient opportunities to obtain a REAL ID . . . card” to ensure that the adoption of REAL ID would not “present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, . . . [or] for highly mobile groups of citizens.” *Id.* at 20. These recommendations included that all states “use a mobile office” to conduct “REAL ID card drives” to ensure that marginalized and mobile populations have opportunities to obtain the recommended ID. *Id.* at 33-34. Therefore, the Carter-Baker Report’s recommendations included steps to mitigate the suppressive effects of its

recommended system of ID.

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

**Response:** Disputed as incomplete. Although Montana law does provide a provisional balloting option for voters who are unable to produce acceptable identification at the polls, that option imposes additional hurdles that the voter must overcome in order to have their ballot counted. Montana law requires that voters who cast a provisional ballot because they lack ID must provide acceptable identification by 5 p.m. on the day after the election *and* have their signatures match:

(2) If a legally registered individual casts a provisional ballot because the individual failed to provide sufficient identification as required pursuant to 13-13-114(1)(a):

(a) the elector has until 5 p.m. on the day after the election to provide identification information pursuant to the requirements of 13-13-114 or as provided in subsection (3) of this section; and

(b) the election administrator shall compare the signature of the individual or the individual's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the individual's voter registration form or the agent's designation form. If the signatures match, the election administrator shall handle the ballot as provided in subsection (7). If the signatures do not match and the individual or the individual's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

Section 13-105-107, MCA.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.



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

**Response:** Undisputed as to the Secretary’s knowledge because Plaintiffs lack knowledge and information necessary to respond to this statement. By way of further response, Plaintiffs note that the proof of identification requirements for voter registration differ from the proof of identification requirements for voting. Voter registration applicants can satisfy the proof of identification requirement for voter registration by providing the last four digits of their social security number. § 13-13-110(3)(c), MCA. Voters are not permitted to use the last four digits of their social security numbers for the purpose of casting their ballot. § 13-13-114(1)(a), MCA.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

by all digital device types.” Exhibit 2, ¶ 100.

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

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

**Response:** Plaintiffs lack knowledge and information necessary to respond to this statement. Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding.

By way of further response, Plaintiffs dispute the assertion that the Legislation strengthens Montana election law. Voting is a fundamental right, and election law should support individuals in their efforts to exercise that right. Instead, this legislation is likely to decrease voter participation in Montana elections. McCool Rep. ¶ 165; Horse Aff. ¶¶ 15-19; McDonald Aff. ¶ 16; Spotted Elk Aff. ¶18; Street Rep. ¶15.

124. “It would pose an insurmountable challenge to reverse the monumental effort to implement” the Legislation, and there is no clear “ability to identify the laundry list of election material changes performed beginning in April 2021 related to the legislation.” Exhibit 2, ¶ 116. Election officials in the Montana Secretary of State’s Office “fear that widespread voter confusion and conflicting information will result from a sudden change before the 2022 primary or general elections.” Exhibit 2, ¶ 116.

**Response:** Disputed. There is no evidence to suggest that enjoining the challenged laws and returning to the status quo would lead to voter confusion. Moreover, the Montana State Constitution provides a clear guarantee that “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. Defendant has an obligation to not violate Montanans’ fundamental right to vote regardless of prior expenditures.

Plaintiffs have served discovery requests on the Secretary related to the implementation of the Challenged Provisions. Those discovery requests are outstanding

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

**Response:** Disputed. Plaintiffs have cited testimony from the legislative hearings from voters who would be, or would have been, prevented from voting because of the requirements of SB 169. *See* MDP Ex. 20 at 16:23-18:14; 18:17-19:19. Additionally, Plaintiffs submitted declarations from Audrey Dozier, Amara Reese-Hansell, and Hailey Sinoff, each of whom stated that they would not have had the proper forms of identification when they were student voters. *See* Dozier Decl.; Reese-Hansell Decl.; Sinoff Decl. Further, Alex Runnion stated that most out-of-state students that she knows do not possess qualifying identification under SB 169. *See* Runnion Decl. Plaintiffs also submitted the declaration of Shawn Reagor, director of Montana Gender Alliance (part of Montana Human Rights Network), which describes the impacts of SB 169 on transgender individuals. *See* Reagor Decl. Additionally, Plaintiffs have submitted the expert report of Dr. Kenneth R. Mayer, which concludes that thousands of students may be prevented from voting because of the voter ID restrictions imposed by SB 169. Mayer Rep. at 16.

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

**Response:** Disputed. Plaintiffs have cited testimony from the legislative hearings from voters who would be, or would have been, prevented from voting because of the requirements of SB 169. *See* MDP Ex. 20, 16:23-18:14; 18:17-19:19. Additionally,

Plaintiffs submitted declarations from Audrey Dozier, Amara Reese-Hansell, and Hailey Sinoff, each of whom stated that they would not have had the proper forms of identification when they were student voters. *See* Dozier Decl.; Reese-Hansell Decl.; Sinoff Decl. Further, Alex Runnion stated that most out-of-state students that she knows do not possess qualifying identification under SB 169. *See* Runnion Decl. Plaintiffs also submitted the declaration of Shawn Reagor, director of Montana Gender Alliance (part of Montana Human Rights Network), which describes the impacts of SB 169 on transgender individuals. *See* Reagor Decl. Additionally, Plaintiffs have submitted the expert report of Dr. Kenneth R. Mayer, which concludes that thousands of students may be prevented from voting because of the voter ID restrictions imposed by SB 169. Mayer Rep. at 16.

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

**Response:** Disputed. Plaintiffs have cited testimony from the legislative hearings from voters who would be, or would have been, prevented from voting because of the requirements of SB 169. *See* MDP Ex. 20, 16:23-18:14; 18:17-19:19. Additionally, Plaintiffs submitted declarations from Audrey Dozier, Amara Reese-Hansell, and Hailey Sinoff, each of whom stated that they would not have had the proper forms of identification when they were student voters. *See* Dozier Decl.; Reese-Hansell Decl.; Sinoff Decl. Further, Alex Runnion stated that most out-of-state students that she knows do not possess qualifying identification under SB 169. *See* Runnion Decl. Plaintiffs also submitted the declaration of Shawn Reagor, director of Montana Gender Alliance (part of Montana Human Rights Network), which describes the impacts of SB 169 on transgender individuals. *See* Reagor Decl. Additionally, Plaintiffs have submitted the expert report of Dr. Kenneth R. Mayer, which concludes that thousands of students may be prevented from voting because of the voter ID restrictions imposed by SB 169. Mayer Rep. at 16.

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

**Response:** Disputed. Plaintiffs submitted the expert report of Dr. Kenneth R. Mayer, which notes that only 71.5% of the Montanans aged 18-24 have a Montana driver’s license, well behind the total license possession rate of 94.7% among the 18 or older population in Montana, and behind the national 18-24 possession rate of 76.7%. Mayer Rep. at 15.

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

**Response:** Disputed. Plaintiffs submitted the expert report of Dr. Kenneth R. Mayer, which notes that 10.4% of all Montana registrants are age 18-24. Since 2008, those voters have accounted for 31.2% of voters registering on election day. Mayer Rep. at 13. Further, the average age of Montana voters is 50 years, 6 months. *Id.* While the average age of an election day registrant from 2008-2020 is 33 years, 6 months. *Id.*

130. Plaintiffs do not present any evidence demonstrating that HB 176 or HB 530 was

enacted with discriminatory intent towards Native Americans.

**Response:** Disputed. HB 176 disproportionately burdens the rights of Native Montanans. Street Report at 14-17. The record reflects that the Legislature was aware of the disparate negative burdens of HB 176, and despite this knowledge intentionally repealed this critical failsafe for these discrete groups. WNV political director Keaton Sunchild explained why EDR is so important to Montana’s Native voters, including having to overcome long distances to travel and the tradition of voting in person. WNV Ex. I at 17-18. WNV organizer Lauri Kindness described how her team had assisted 150 voters with registering on Election Day and that taking away EDR would add another barrier to a system that already disenfranchises Native voters. WNV Ex. I at 37-39. Likewise, HB 530 disproportionately burdens the rights of Native Montanans. *Driscoll* ¶ 21; Street Rep. at 17-27. The record reflects that the Legislature was aware of the disparate negative burdens of HB 530, and despite this knowledge intentionally repealed this critical failsafe for these discrete groups. Following the *Western Native Voice* and *Driscoll* trials in 2020, in which two separate courts in this county struck down an earlier restriction on ballot return assistance, the Legislature was plainly on notice of the discriminatory impact of HB 530 and other ballot assistance bans. During the legislative session, Representative Tyson Running Wolf testified in opposition to the HB 530 amendments. He explained that Section 2 of HB 530 “effectively ends the legal practice of ballot collection,” which is heavily relied upon by Native voters in Montana and would result in “en masse” disenfranchisement. In his words, “[b]allot collection is a lifeline to democracy for rural indigenous communities” because of social and economic barriers such as long distances to election offices and lack of access to transportation in Indian Country. *See* Ex. 25. An earlier ballot assistance ban, HB 406, did not advance in the Legislature following testimony by Plaintiffs’ groups and chief legal counsel for the Office of Commissioner of Political Practices, who spoke motivated by her “keep-us-out-of-court job duties.” WNV Ex. M at 4-6. After the failure of HB 406 to advance, in the same legislative session in which protections for Native American voting rights were rejected, HB 530 was advanced at the last moment without any committee hearings or opportunity for public comment. This irregular procedure is indicative of discriminatory intent.

Dated: April 5, 2021

Respectfully submitted,

By: /s/ Matthew P. Gordon

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of April, 2022, I served a true and correct copy of the foregoing Response via electronic and U.S. mail to the following:

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I, Matthew Prairie Gordon, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 04-05-2022:

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