

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 22-0172

MONTANA DEMOCRATIC PARTY and MITCH BOHN, WESTERN NATIVE
VOICE et al., MONTANA YOUTH ACTION, et al.,

Plaintiffs and Appellees,

v.

CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,

Defendant and Appellant.

APPELLANT'S APPENDIX IN SUPPORT OF STAY

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Order Re Defendant's Motion to Suspend
Preliminary Injunction Pending Appeal

April 22, 2022

(Doc.142)

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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

Montana Democratic Party, Mitch Bohn,

Plaintiffs,

WESTERN NATIVE VOICE, Montana
Native Vote, Blackfeet Nation,
Confederated Salish and Kootenai Tribes,
Fort Belknap Indian Community, and
Northern Cheyenne Tribe,

Plaintiffs,

Montana Youth Action, Forward Montana
Foundation, and Montana Public Interest
Research Group,

Plaintiffs,

v.

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

Defendant.

Consolidated Case No.: DV 21-0451

Judge Michael G. Moses

**Order Re: Defendant's Motion to Suspend
Preliminary Injunction Pending Appeal**

Defendant Christi Jacobsen (“the Secretary”) submitted a motion and brief in support to suspend the preliminary injunction granted in this matter. (Dkt. 128-129). The Secretary and consolidated Plaintiffs, Montana Democratic Party and Mitch Bohn (“MDP”); Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe (“WNV”); and Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group (“MYA”) (collectively, “Plaintiffs”), agreed to a briefing schedule and requested expedited consideration of the motion to suspend the preliminary injunction. (Dkt. 131). Plaintiffs have submitted their responses to the motion and the Secretary has submitted her reply. (Dkt. 136-140). No party requested oral argument. This matter is ripe for adjudication.

Memorandum

The Secretary requests the Court suspend the injunction it issued against HB 176 and SB 169 during the pendency of the Secretary’s appeal to the Montana Supreme Court pursuant to Mont. R. App. P. 22(1)(a)(iii). That rule provides that “[a] party shall file a motion in the district court for any of the following relief: ... (iii) For an order suspending, modifying, restoring, or granting an injunction pending appeal.” Mont. R. App. P. 22(1)(a)(iii). The Secretary also cites to Mont. R. Civ. P. 62(c) which states: “[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an

injunction on terms for bond or other terms that secure the opposing party's rights."

Under Mont. R. App. P. 22(1)(d), "[t]he district court must promptly enter a written order on a motion filed under this rule and include in findings of fact and conclusions of law, or in a supporting rationale, the relevant facts and legal authority on which the district court's order is based." The Court thus submits its order in the latter form.

I. Legal Standard

Plaintiffs and the Secretary dispute the applicable legal standard to be applied concerning a motion suspending an injunction. The Secretary cited to a federal district court case in southern California to support her argument for the applicable standard to be applied. Specifically, in the case cited by the Secretary, *Strobel v. Witter*, the federal district court described "[t]he standard for granting a stay pending appeal is similar to that employed for deciding whether to grant a preliminary injunction." *Strobel v. Witter* No. 04CV1069 BEN (BEM)(S.D. Cal. Apr. 24, 2007), 2007 U.S. Dist. LEXIS 30407, at *2. Further that "[t]he Ninth Circuit uses two interrelated tests, which represent 'the outer reaches of a single continuum.'" *Id.* (quoting *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). According to the Secretary's standard, "[t]he moving party must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor." *Id.* at *2-3. The Secretary also argues that the Court has considerable discretion in determining whether a stay of an injunction should be granted. *See Henry v. Dist. Court* (1982), 198

Mont. 8, 13, 645 P.2d 1350, 1353; *Intermountain Tel. & Power Co. v. Mid-Rivers Tel.*

Coop. (1982), 201 Mont. 448, 453, 655 P.2d 491, 494.

Plaintiffs cite to cases in Montana district courts applying a strict federal standard. Specifically, Plaintiffs describe that because Rule 62(c) “is based on, and virtually identical in substance to 62(c), Fed. R. Civ. P.” that the Court should examine:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits.
2. Whether the applicant will be irreparably injured absent a stay.
3. Whether issuance of the stay will substantially injure the other parties interested in the proceeding.
4. Where the public interest lies.

Pinnacle Gas Res. v. Diamond Cross Properties, 2008 Mont. Dist. LEXIS 240, *2 (citing Manual of Federal Practice 5th §7.89); *see also State ex rel. McGrath v. Philip Morris*, 2007 Mont. Dist. LEXIS 600, *3 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)).

The Court finds the Secretary has failed to meet her burden under either standard as discussed below.

II. Discussion

A. Status Quo

The Secretary first argues that this Court incorrectly evaluated the status quo. The Secretary contends that the status quo should be evaluated as of the date the Plaintiffs sought injunctive relief. The cases the Secretary cites to in support of this contention are inapposite because in both cases, the act that was requested to be

enjoined had already occurred, thus there was no status quo available to return to and an injunction was not an appropriate remedy. In this case, the acts are ongoing.

Specifically, in *State v. BNSF Ry. Co.*, the Montana Supreme Court stated, “this case is not suitable for issuance of a preliminary injunction” and described that in that case, with the issuance of its preliminary injunction, the district court had effectively “ordered specific performance of the 1984 Agreement under new terms substantially different than the prior agreed upon terms. The new terms severely limit termination of the new interchange agreement and were never part of the 1984 or 1986 Agreements.” *State v. BNSF Ry. Co.*, 2011 MT 108, ¶¶ 22-24, 360 Mont. 361, ¶¶ 22-24, 254 P.3d 561, ¶¶ 22-24. In *Mustang Holdings v. Zaveta*, the Montana Supreme Court describes “although the ditch was already completely destroyed by the time Zaveta sought the injunction, the District Court nonetheless granted Zaveta's request for a preliminary injunction and imposed an order requiring Mustang to restore the ditch.” *Mustang Holdings, LLC v. Zaveta*, 2006 MT 234, ¶ 13, 333 Mont. 471, ¶ 13, 143 P.3d 456, ¶ 13. In *Zaveta*, a return to the status quo was impossible, because the enjoined act had already been completed.

In this case, while the Court recognizes that local elections have already been held, Plaintiffs are not requesting the laws be enjoined retroactively as to those elections but rather are requesting that the application of these laws be enjoined as to future elections pending the determination on the merits of whether these laws are constitutional. The Court evaluated the status quo as that of “the last actual, peaceable,

noncontested condition which preceded the pending controversy.” *Weems v. State*, 2019 MT 98, ¶ 26, 395 Mont. 350, ¶ 26, 440 P.3d 4, ¶ 26 (quoting *Porter v. K & S P’ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839)(internal quotations omitted). Moreover, “[t]hat a statute has been on the books for some time is not the relevant inquiry when entertaining a request to enjoin it.” *Weems*, at ¶ 26. Thus, the Court finds that this argument does not support the Secretary’s request for suspension of the preliminary injunction.

B. Voter Confusion & Work

The Secretary contends that the rationale in *Stapleton v. Thirteenth Judicial District Court* concerning staying an injunction is applicable here. In *Stapleton*, “[t]he District Court entered its preliminary injunction ten days before the June 2, 2020 primary election and two weeks after election administrators mailed ballots to all Montana voters.” Order at 2, *Stapleton v. Thirteenth Judicial District Court*, OP 20–0293 (May 27, 2020)(“*Stapleton Order*”). The Montana Supreme Court in *Stapleton* ultimately decided “there [was] good cause to maintain the election-day deadline for [the] primary election in order to avoid voter confusion and disruption of election administration.” *Stapleton Order* at 3.

In this case, the Court’s preliminary injunction entered on April 6, 2022, more than two months before the June 7, 2022 election. The rationale in *Stapleton*, while

relevant, is not the same given the two months that the Secretary has to manage the enjoining of these laws.

In that same vein, the Secretary's arguments concerning voter confusion are mystifying to the Court. Specifically, regarding the enjoining of HB 176, voters will now be able to register to vote on Election Day as they have been for the last 15 years. If voters function under the theory that they are no longer able to register on election day they will likely register prior to that day, and no harm will come to them. On the other hand, if voters function under the theory that they can register to vote on election day—but HB 176 was not enjoined—they would be harmed because they would be unable to cast their vote. Thus, voter confusion does not support a suspension of the Court's preliminary injunction as to HB 176. Not to mention, the Secretary complains about the additional work required to "train" election officials regarding the enjoining of HB 176. However, the Court does not see the massive effort alleged by the Secretary that is required to let election officials and workers know that voters can now register to vote on election day the same as they have been for the last fifteen years.

Regarding SB 169 the Secretary makes the same arguments concerning voter confusion and extra work for the Secretary and election workers. However, these concerns are more than outweighed by the constitutional rights of Montana voters—which the Court has previously found that Plaintiffs made a prima facie case that constitutional rights are burdened by SB 169 and HB 176.

According to the Secretary's standard, she must demonstrate that serious legal questions are raised and that the balance of hardships tips sharply in its favor.

Regarding the serious legal questions raised the Secretary describes "the injunction is predicated on a novel question of law." (Dkt. 140 at 8). The Court agrees that at issue are serious legal questions however the second part of the Secretary's standard, that the balance of hardships tips sharply in her favor, does not weigh in favor of suspending the preliminary injunction. More specifically, while a legal question concerning constitutional rights is of the utmost seriousness, these issues are not novel. These are classic constitutional matters whereby the Montana Supreme Court will either agree with the level of scrutiny applied by the court, disagree with it and educate the court on the proper level to apply, or not address the appropriate level of scrutiny at all. Nonetheless, the hardships suffered by the Secretary essentially boil down to having to engage in additional work whereas the hardships suffered by Plaintiffs are potentially the burden on or loss of the ability to exercise their constitutional rights.

This Court finds that the potential burden on or loss of the ability to exercise of a constitutional right suffered by Plaintiffs significantly tips the balance of hardships in their favor. The Secretary has ample time to get her work done and by doing so, will preserve the constitutional rights of Plaintiffs and Montana voters pending a determination of the constitutionality of the laws that she has worked to implement.

In sum, the Court finds that the Secretary has not met her burden under the standard she proposes for the Court to suspend its injunction as to SB 169 and HB 176.

Under the standard proposed by Plaintiffs, “the standard for suspending an injunction pending appeal is essentially the same as the standard for granting the injunction in the first place.” *Pinnacle Gas Res. v. Diamond Cross Properties*, 2008 Mont. Dist. LEXIS 240, *2. Apart from alleging hard work and voter confusion which the Court has previously addressed, the only new facts raised by the Secretary concern depositions that have occurred in the interim. The Court does not find that these undermine the case made by the Plaintiffs in their motions for preliminary injunctions at this point but are relevant to a determination on the merits.

The Secretary argues Montana voters will suffer irreparable harm in the absence of a stay because, while SB 169 is enjoined, voters will have to present a “current and valid” ID, when the voter registration confirmation cards issued after the enactment of SB 169 instruct voters to bring a photo ID. However, as described by MDP in their response, “[a]ccording to the Secretary’s own documents, under the prior version of the law, an ‘identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of status.’” (Dkt. 138 at 6 (citing Decl. of Matthew Gordon, No. DV 21-451, Ex. 1 at 84, Apr. 14, 2022)). The Secretary further alleges harm to election administrators given the work they will have to do. The Court recognizes this fact and appreciates all that election administrators do. The

constitutional injuries that Plaintiffs and Montana voters would suffer, if these laws are ultimately found to be unconstitutional, however, are too significant to be outweighed by the harm suffered by election administrators.

Lastly, as to the public interest, the Secretary again cites to the work that will be required to comply with this Court's order. While the Court recognizes the necessity of that work, it is clear to this Court, given the significant question of whether these laws are constitutional, that the public interest lies in these laws remaining enjoined pending a determination on the merits.

Thus, the Court finds the Secretary has not met her burden under the standard proposed by Plaintiffs.

C. Modification of the Preliminary Injunction Order

The Secretary additionally requests the Court modify the injunction granted on April 6, 2022, against the provisions of SB 169, HB 506, and HB 530 that were not challenged by the Plaintiffs in this matter. Plaintiffs do not oppose. This Court did not intend for its preliminary injunction to be read as enjoining SB 169, HB 506, and HB 530 beyond that requested by Plaintiffs as evidenced by the first part of its order stating "1. Plaintiffs' Motions for a Preliminary Injunction are **GRANTED**;" however the Court recognizes the second part of its order could be read to enjoin the laws in their entirety. Therefore, the Court will modify part 2 of its Order Granting Plaintiffs' Motions for Preliminary Injunctions (Dkt. 124) to state the following: "2. The Secretary and her

agents, officers, employees, successors, and all persons acting in concert with each or any of them are IMMEDIATELY restrained and prohibited from enforcing Section 2 of HB 530, Section 2 of HB 506, Section 2 of SB 169, and any aspect of HB 176, according to the prayer of the Plaintiffs' motions for preliminary injunctions pending resolution of the Plaintiffs' request that the Secretary be permanently enjoined from enforcing the statutes cited above;".

The Court, being fully informed, having considered all briefs on file and in-court arguments, makes the following decision:

IT IS HEREBY ORDERED:

1. The Secretary's motion to suspend preliminary injunction pending appeal is **DENIED**;
2. The Secretary's request that the scope of the Court's preliminary injunction order be modified is **GRANTED**; specifically, part 2 of the Court's Order Granting Plaintiffs' Motions for Preliminary Injunctions is modified to state "2. The Secretary and her agents, officers, employees, successors, and all persons acting in concert with each or any of them are IMMEDIATELY restrained and prohibited from enforcing Section 2 of HB 530, Section 2 of HB 506, Section 2 of SB 169, and any aspect of HB 176, according to the prayer of the Plaintiffs' motions for preliminary

injunctions pending resolution of the Plaintiffs' request that the Secretary
be permanently enjoined from enforcing the statutes cited above;".

DATED April 22, 2022

/s/ Michael G. Moses
District Court Judge

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Findings of Fact, Conclusions of Law,
and Order Granting Plaintiff's Motions
for Preliminary Injunctions

April 6, 2022

(Doc. 124)

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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

Montana Democratic Party, Mitch Bohn,

Plaintiffs,

WESTERN NATIVE VOICE, Montana
Native Vote, Blackfeet Nation,
Confederated Salish and Kootenai Tribes,
Fort Belknap Indian Community, and
Northern Cheyenne Tribe,

Plaintiffs,

Montana Youth Action, Forward Montana
Foundation, and Montana Public Interest
Research Group,

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v.

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

Defendant.

Consolidated Case No.: DV 21-0451

Judge Michael G. Moses

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
PLAINTIFFS' MOTIONS FOR
PRELIMINARY INJUNCTIONS**

Consolidated Plaintiffs Montana Democratic Party and Mitch Bohn (“MDP”); Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe (“WNV”); and Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group (“MYA”) (collectively, “Plaintiffs”) submitted motions requesting the Court preliminarily enjoin laws passed during the 2021 Legislative sessions throughout the pendency of this litigation. Specifically, all Plaintiffs seek to enjoin House Bill 176 (“HB 176”), MDP and WNV seek to enjoin House Bill 530 (“HB 530”), MDP and MYA seek to enjoin Senate Bill 169 (“SB 169”), and MYA seeks to enjoin House Bill 506 (“HB 506”). These motions have been fully briefed by all the parties and a hearing on the motions was held on March 10, 2022. These matters are ripe for adjudication.

The Court has considered the briefs, evidence presented, and oral arguments made by counsel. For the reasons discussed below, the Court grants Plaintiffs’ motions and preliminarily enjoins the challenged laws.

FINDINGS OF FACT

I. SB 169

1. Prior to the enactment of SB 169, voters could prove their identity to vote in-person by showing an election judge “a current photo identification showing the elector’s name.” (Decl. of Matthew Gordon (“Gordon Decl.”), Ex. 19, Jan. 13, 2022, No.

DV 21-451)); § 13-13-114(1)(a), MCA (2003). This photo identification was acceptable in forms “including but not limited to a valid driver’s license, a school district or postsecondary education photo identification, or a tribal photo identification.” *Id.* If the voter did not have photo identification, then the voter could “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.” *Id.* This had been the law in Montana since 2004. § 13-13-114(1)(a), MCA (2003).

2. After the enactment of SB 169 in April 2021, to vote in-person a voter must show an election judge:

(i) a 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 current utility bill, bank statement, paycheck, 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(1)(i-ii), MCA (2021).

3. Under the new version of the statute, voters who relied on a student ID as their sole form of identification to vote in previous elections will no longer be able to without a secondary form of identification such as: “a current utility bill, bank statement,

paycheck, government check, or other government document that shows the elector's name and current address." § 13-13-114(1)(ii)(A), MCA.

4. While SB 169 was being debated, Montana Speaker of the House, Wylie Galt, stated, as rationale for making student ID only acceptable as a secondary form of identification, that: "[b]asically, 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...So this just clears it up that they have a little stake in the game." (Gordon Decl., Ex. 35 at 15).

5. Regarding the secondary forms of identification voters using their student ID will have to possess, an expert for MDP, Dr. Kenneth Mayer, testified that "[c]ollege-age students, in general, are less likely than the general population to possess a driver's license or ID...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..." (Gordon Decl., Ex. 35 at 15). Additionally, Dr. Mayer opined that out of state students "who do not possess a Montana driver's license or state ID will be at a particular disadvantage if their student ID no longer qualifies as a primary voter ID." *Id.* Dr. Mayer considered that it would cost students, who may already possess an out of state driver's license, \$62.32 to obtain a REAL ID Montana Driver's license. *Id.* Ultimately, Dr. Mayer concluded that "[r]elegating student IDs to secondary status imposes a burden on college students, who fall into an age group less likely to

possess a driver's license than older voters, and on out-of-state students attending a Montana university who likely will not have a Montana license or ID." (Gordon Decl., Ex. 35 at 18). Further that most of the primary forms of ID acceptable under the new statute "do not actually confirm a voter's eligibility or address, as noncitizens can obtain every form of ID other than a Passport or Tribal ID, and primary IDs are not required to have the voter's current registered address." (Gordon Decl., Ex. 35 at 18-19).

6. MDP provided testimony from the Director of Equality and Economic Justice at the Montana Human Rights Network, Shawn Reagor, who described that transgender students often rely on student ID to vote because "[a]cquiring gender confirming student identification is often a much easier process" than attempting to change their gender marker on Montana identification. (Decl. of Shawn Reagor ("Reagor Decl."), ¶¶ 8-13, Jan. 12, 2022). Under present Montana law, a transgender person desiring to change their gender on their Montana identification would have to get "a court order changing the individual's name, an updated birth certificate, an updated social security card, and finally a Montana license." (Reagor Decl. ¶ 6). To take the first step of updating their birth certificate, a transgender person would have to get a court order indicating they have undergone surgery. *Id.* at ¶ 8.

7. MYA's expert, Yael Bromberg, a law professor at Rutgers School of Law, testified that in 2018, the youth vote in Montana more than doubled (42%) when compared to the youth voting turnout in 2014 (18%). (Decl. of Yael Bromberg, ESQ. ("Bromberg

Decl.”), 19, Jan. 14, 2022, No. DV. 21-451). Ms. Bromberg cited to statistics showing that the Montana youth voting rate has been increasing every year and rose to 56% in 2020, whereas the national youth voting rate in 2020 was only 50%. (Bromberg Decl. at 19).

Ultimately, Ms. Bromberg concluded that going into 2021, “Montana youth were among the most electorally significant in the country, with voting rates consistently above national averages and considerably on the rise.” (Bromberg Decl. at 20).

8. Ms. Bromberg additionally opined that the Montana Legislature, when it enacted SB 169, “implemented a measure known to disproportionately impact youth voters.” *Id.* at 24. She further described that youth voters are a class that “is uniquely vulnerable due to its predominance of first-time voters and highly mobile voters.” *Id.* Ms.

Bromberg cited to statistics showing that “[i]n the 2016 election, 21% of registered young voters (ages 18-29) did not vote due to problems with voter ID.” *Id.* at 24-25. Ms. Bromberg also described that in North Carolina, “the elimination of the availability of student ID and out-of-state government-issued identification at the polls was found to impact 14% of young voters who could not meet the new requirements.” *Id.* at 25.

Further regarding SB 169, Ms. Bromberg opined that “young people and students are disproportionately less likely to have a driver’s license” and are “also unlikely to have and/or carry with them many of the other standalone forms of identification prescribed by SB 169, such as Montana state ID, military ID, tribal photo ID, U.S. passport, or concealed carry permit.” (Bromberg Decl. at 25). Moreover, student voters, “[b]ecause

they live in dormitories and/or are highly mobile...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 Decl. at 25).

9. Defendant, Secretary of State Christi Jacobsen (“the Secretary”), provided testimony from the Chief Legal Counsel for the Montana Secretary of State, who described that the changes to the voter identification were to eliminate ambiguity and confusion. (Decl. of Austin Markus James (“James Decl.”), ¶¶ 17-21, Feb. 17, 2022, No. DV 21-451). Additionally, Mr. James testified that since the adoption of SB 169 “[a]t least 337,581 total votes have been cast and recorded in Montana elections...” *Id.* at ¶ 36. Further that “[a]ll newly registered voters since the implementation of SB 169 have received a confirmation of voter registration in the form of a government document containing their name and address[]” and that a voter registration “card paired with a photo ID containing [the voter’s] name may be used as identification when you vote.” *Id.* at ¶¶ 33-39.

10. The Secretary also provided expert testimony from a Senior Elections Analyst at RealClearPolitics, Sean Trende, who described that “the linkage between photographic identification laws and [voter] turnout is fairly weak.” (Def.’s Expert Rpt. of Sean P. Trende (“Trende Rpt.”), 12, Feb. 17, 2022, No. DV 21-451).

II. HB 176

11. Election Day Registration (“EDR”) was implemented in Montana in 2005. (*See* Gordon Decl., Ex. 3). EDR enabled Montana voters to register to vote and submit their ballot both on election day. *Id.* EDR was used in general elections by 7,547 voters in 2008; 12,055 voters in 2016; and over 8,000 voters in 2018 and 2020. (Gordon Decl., Ex. 35 at 10-11). MDP’s expert, Dr. Mayer, testified that EDR has “an effect greater than any other change to voting procedures.” (Gordon Decl., Ex. 35 at 9). Specifically, because “it reduces the cost of voting by combining both registration and voting into a single administrative step” and “it allows voters who are not activated early in the election period the opportunity to register and vote when attention to the election has peaked on election day.” *Id.*

12. In 2021, the Montana Legislature passed HB 176, which eliminates EDR by moving the deadline to register to vote during late registration to noon the day before the election. (*See* Gordon Decl., Ex. 6). When speaking in support of HB 176, Representative Shannon Greef “claimed that HB 176 would ‘mitigate [sic] against voter fraud,’ ‘ensure voter integrity,’ and ‘reduce the opportunity for mistakes.’” (Aff. of Daniel Craig McCool, Ph.D., in Supp. of Pls.’ Mot. for a Prelim. Injunction (“McCool Aff.”), Ex. 1, ¶ 118, Jan. 12, 2022, No. DV 21-451 (quoting HB 176. 2021. Senate Hearings, Feb. 15, at 16:49)). Additionally, Representative Greef described that when she was talking about voter fraud as a reason for supporting HB 176, that she “wasn’t talking

about Montana specifically.” (Aff. of Alex Rate in Supp. of Pls.’ Mot. for Prelim. Inj. (“Rate Aff.”), Ex. J, 40:4-13, Jan 12, 2022, No. DV 21-451; McCool Aff., Ex. 1, ¶ 118 (quoting Senate Hearing, Feb. 15, at 17:35)).

13. Plaintiffs WNV and MDP provided testimony from Montanans affected by the passage of HB 176. MDP presented a declaration by Malia Bertelsen describing how moving the voting registration deadline to the afternoon before election day prevented her from voting in the November 2021 local Bozeman election. (Decl. of Malia Bertelsen, ¶¶ 6-10, Jan. 12, 2022, No. DV 21-541). MDP presented testimony from the Missoula County Elections Administrator, Bradley Seaman, who testified that due to the law change made by HB 176 and that “[d]espite extensive public outreach about the lack of Election Day Registration, Missoula County had to turn away eight otherwise eligible voters who arrived on November 2nd.” (Decl. of Bradley Seaman (“Seaman Decl.”), ¶ 8, Jan. 12, 2021, No. DV 21-451). Mr. Seaman further confirmed that, under the previous version of the law, “[t]hese voters would have been able to vote...” *Id.* Additionally, MDP presented testimony from the Gallatin County Clerk and Recorder, Eric Semerad, who testified that HB 176 “led to 17 qualified voters being unable to cast ballots in Gallatin County because they arrived after noon on November 1, the day before election day. While these individuals were able to update their registration at that time, they were not permitted to cast a ballot for the 2021 contests.” (Decl. of Eric Semerad (“Semerad Decl.”), ¶ 7, Jan. 12, 2022, No. DV 21-451). Additionally, Mr. Semerad

testified that during the thirty years he has worked in the Gallatin County Clerk's office, he is "not aware of any instance of voter fraud associated with election day registration. Election day registration is, if anything, more secure than other forms of registration..." (Semerad Decl. ¶ 8).

14. WNV presented expert testimony describing that "the percentage of voters using election day registration ("EDR") is consistently higher for people living on-reservation in Montana." (Aff. of Alexander Street, Ph.D., in Supp. of Pls.' Mot. for a Prelim. Inj. ("Street Aff.") ¶ 4, Jan. 12, 2022, No. DV 21-451). WNV's expert further described that tribal members are "more reliant on EDR" and "by removing the option of EDR, HB 176 is likely to have a disparate, negative impact on registration and voting for Native Americans living on reservations in Montana." (Street Aff. ¶¶ 21-23). WNV presented evidence that voting on Indian Reservations in Montana is difficult due to the locations of election offices, the distance Native Americans must travel to vote in person or even by mail, and the socioeconomic factors including that Native Americans are less likely to have a working vehicle, money for gasoline, or car insurance. (See Aff. of Councilman Lane Spotted Elk in Supp. of Pls.' Mot. for Prelim. Inj. ("Spotted Elk Aff."), ¶¶ 5-16, Jan. 12, 2022, No. DV 21-451; Aff. of Robert McDonald in Supp. of Pls.' Mot. for Prelim. Inj. ("McDonald Aff."), ¶¶ 4-9, Jan. 12, 2022, No. DV 21-451; Aff. of Dawn Gray in Supp. of Pls.' Mot. for Prelim. Inj. ("Gray Aff."), ¶ 16, Jan. 12, 2022, No. DV 21-451).

15. On the other hand, the Secretary provided testimony from Montana legislators describing they voted in support of HB 176 due to statements from election administrators describing the challenges that EDR adds to running elections and their belief that moving the deadline back one day will reduce lines at the polls and stop delays in reporting results. (Decl. of Steve Fitzpatrick (“Fitzpatrick Decl.”), ¶¶ 6-7, Feb. 17, 2022, No. DV 21-451; Decl. of Greg Hertz (“Hertz Decl.”), ¶¶ 6-7, Feb. 17, 2022, No. DV. 21-451). The Secretary also provided testimony from the Clerk, Recorder, and Election Administrator for Fergus County who described that “[h]aving to register individuals to vote on election day takes away time from all of the other work, both election-related and non-election related...” (Decl. of Janel Tucek (“Tucek Decl.”), ¶ 11, Feb. 17, 2022, No. DV 21-451; *see also* Decl. of Doug Ellis (“Ellis Decl.”), ¶¶ 15-23, Feb. 17, 2022, No. DV 21-451).

16. The Secretary further provided expert testimony describing that “Montana’s close of voter register at 12:00 noon on the day preceding election day provides substantial benefits, particularly for rural counties. By contrast it imposes a minimal burden on those seeking to register to vote.” (Expert Decl. of Scott Gessler (“Gessler Decl.”), ¶¶ 2, 15-29, Feb. 17, 2022, No. DV 21-451). Additionally, the Secretary’s expert opined that “political science literature finds a relationship between election-day registration and turnout, yet struggles to find a causal linkage between the two” and that “Montana retains same-day registration during voting, which should soften

whatever impact there is to the elimination of election-day registration[.]” (Trende Rpt. at 7).

III. HB 530

17. In 2021, House Bill 406 (“HB 406”) was introduced and was effectually a new attempt at passing a restriction on ballot collection in Montana similar to the Montana Ballot Interference Prevention Act (“BIPA”), which has already been litigated and determined to be unconstitutional in Montana District Courts. *See Courts Findings of Fact, Conclusions of Law, and Order, Western Native Voice v. Stapleton*, Sept. 25, 2020, No. DV 20-0377; *Findings of Fact, Conclusions of Law, and Order, Driscoll v. Stapleton*, Sept. 25, 2020, No. DV 20-0408. HB 406 ultimately failed to pass the Montana Senate; however, HB 530 was amended to include language from HB 406. (Gordon Decl., Ex. 34).

18. HB 530 specifically provides:

(1) On or before July 1, 2022, the secretary of state shall adopt an administrative rule in substantially the following form:

(a) For the purposes of enhancing election security, a person may not provide or offer to provide, and a person may not accept, a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots.

(b) "Person" does not include a government entity, a state agency as defined in 1-2-116, a local government as defined in 2-6-1002, an election administrator, an election judge, a person authorized by an election administrator to prepare or distribute ballots, or a public or private mail service or its employees acting in the course and scope of the mail service's duties to carry and deliver mail.

(2) A person violating the rule adopted by the secretary of state pursuant to subsection (1) is subject to a civil penalty. The civil penalty is a fine of \$100 for

each ballot distributed, ordered, requested, collected, or delivered in violation of the rule.

(Gordon Decl., Ex. 11).

19. WNV and MDP presented testimony from experts describing the effects HB 530 will have on young people, Native Americans, disabled voters, and elderly voters.

WNV and MDP also presented testimony from eligible voters who will be negatively affected by HB 530.

20. WNV presented testimony, as described above, concerning the difficulties faced by Native Americans voting on reservations. Specifically, the mail system on reservations poses significant problems for absentee voting because most Native Americans do not have home mail delivery and some have non-traditional mailing addresses. (McCool Aff., Ex. 1, ¶¶ 74-96; Aff. of Ronnie Jo Horse (“Jo Horse Aff.”) ¶ 16, Jan. 12, 2022, No. DV 21-451). WNV also presented testimony that there is a higher poverty and unemployment rate on reservations than for the State and that Native Americans “have less money in their pocket—less money to spend on a vehicle, gas, car insurance, and maintenance—all of which are necessary to travel to a post office or a ballot box.” (McCool Aff., Ex. 1, ¶ 19). WNV’s expert further testified that “tribal voters are dispersed over a large area, requiring significant driving distances to get to a post office, tribal offices, and election offices.” (McCool Aff., Ex. 1, ¶ 65). Given these difficulties—among others presented through testimony by WNV—WNV’s expert described HB 530 (and HB 176) will have a “disproportionately negative impact and

impose significant voter costs on Native voters, making it more difficult for them to vote, with no discernable public benefit.” (McCool Aff. ¶ 6; *see also* McCool Aff., Ex. 1, ¶¶ 22-52).

21. MDP presented evidence showing that absentee voting in Montana has increased each year. (Gordon Decl., Ex. 27). Plaintiff Mitch Bohn described he prefers voting by absentee ballot given the busyness of Metra Arena on election day, which makes it difficult for a person in a wheelchair to navigate, the November weather in Montana, which can make it more difficult to get to a polling location, and the extra time he gets to have with his ballot. (Decl. of Mitch Bohn (“Bohn Decl.”), ¶ 4, Jan. 12, 2022, No. DV 21-451). Mr. Bohn further described that he has relied on third parties, specifically, his parents, to return his ballot for him. *Id.* at ¶ 5. MDP presented testimony describing how ballot assistance programs have helped Montanans who cannot take time off to cast their ballot due to a variety of issues to include: work commitments, school schedules, family care responsibilities, mobility impairments, lack of access to postal mail service, or lack of access to transportation. (Bohn Decl. ¶ 6; Bolger Decl. ¶ 20; Decl. of Bernadette Franks-Ongoy, ¶ 19, Jan. 12, 2022, No. DV 21-451). Additionally, MDP’s expert estimated, in his 2020 expert report for a case involving BIPA, that between 2016 and 2018 at least 2,500 ballots were collected and conveyed by third parties and concluded “that eliminating third party ballot collection will increase the number of

rejected absentee ballots that arrive late and will do nothing to enhance election security.” (Gordon Decl., Ex. 35 at 17).

22. The Secretary provided testimony from an expert who opined that “[b]y prohibiting individuals from receiving compensation for collecting voted ballots, Montana’s law imposes little burden on voters, reduces opportunity for fraud, and fosters confidence in elections.” (Gessler Decl. ¶ 4). The Secretary also provided testimony from legislators who voted in support of HB 530 describing their motivation for their support was the events in North Carolina during the 2018 congressional race “when a paid political operative was alleged to have illegally gathered up and fraudulently voted absentee ballots.” (Decl. Fitzpatrick at ¶ 17; Decl. of Greg Hertz (“Hertz Decl.”), ¶ 20, Feb. 17, 2022). Additionally, legislators who voted in support of HB 530 testified they had “no intent to harm any particular class or group of voters” when they voted in support of HB 530. (Fitzpatrick Decl. ¶ 21; Hertz Decl. ¶ 24)

IV. HB 506

23. HB 506 amends § 13-2-205(2), MCA, to provide that “[u]ntil the individual meets residence and age requirements, a ballot may not be issued to the individual and the individual may not cast a ballot.” (Expert Report of Dr. Michael Herron, Ph.D. (“Herron Rpt.”) ¶ 33, Jan. 12, 2022, No. DV 21-451).

24. MYA presented testimony from experts describing the impact HB 506 will have on young eligible voters and young people who are about to become eligible to vote.

Additionally, MYA presented testimony from young voters. Specifically, Ali Caudle testified that she turned eighteen on October 3, 2021, and upon turning eighteen, filled out a voter registration form online but realized that she would not meet the deadline to mail her form in at least thirty days prior to the election. (Youth Pls.' Br. in Supp. of Appl. for Prelim. Inj.¹ ("MYA Br."), Ex. B ¶¶ 3-5, Jan. 13, 2022, No. DV 21-451). Ms. Caudle testified that she had difficulties registering in person due to the hours she is in school and commitments she has occupying her until after regular business hours on weekdays and had to "miss an event for the National Honor Society" to register in person and submit her vote. (MYA Br., Ex. B ¶ 12); (*see also* MYA Br., Ex. C ¶¶ 5-14 (describing the difficulties registering to vote and casting a ballot during business hours alongside school commitments and extracurricular activities)).

25. MYA's expert testified that the restriction on when absentee ballots can be mailed to voters in HB 506 burdens four classes of Montana voters and specifically, "[i]n decreasing order of burdens, these classes are as follows: (I) residents who turn 18 on election day itself; (II) residents who turn 18 between one and seven days of election day; (III) residents who turn 18 between eight and 14 days of election day; and (IV) residents who turn 18 between 15 and 25 days of election day." (Herron Rpt. ¶ 2).

MYA's expert describes that each of these groups will have differing access to absentee

¹ MYA Plaintiffs also submitted, on January 14, 2022, a corrected brief in support of their application for a preliminary injunction (Dkt. 73), however, their exhibits were not attached to that filing, so the Court referenced the January 13, 2022, filing (Dkt. 70) to see the attached exhibits.

voting. *See id.* Specifically, residents turning eighteen on election day will be unable to vote absentee due to HB 506. (Herron Rpt. ¶ 3). Similarly, residents turning eighteen between one and seven days before election day will effectually be unable to vote absentee due to the estimated mailing travel time. *Id.* Residents turning eighteen between eight and fourteen days prior to election day will also be unlikely to be able to absentee vote given the time it takes for an absentee ballot to be mailed and for them to return it. *Id.* at ¶ 3. The last class of effected voters, residents turning eighteen between fifteen and twenty-five days of election day, “will receive their absentee ballots later than those who turn 18 more than 25 days before an election.” *Id.*

26. The Secretary presented testimony from Melissa McLarnon, an employee in the Election and Government Services division of the Montana Secretary of State’s Office, who primarily works on the State’s election management systems. (Decl. of Melissa McLarnon (“McLarnon Decl.”), ¶ 3, Feb. 17, 2022, No. DV 21-451). Ms. McLarnon testified that there was “a lack of uniformity in how various Election Administrators” across Montana issued ballots to individuals turning eighteen before election day which raised issues for the development of election and use of election software. (McLarnon Decl. ¶¶ 6-7). The Secretary presented testimony from legislators describing they supported HB 506 because of the “inconsistent practices with respect to mailing absentee ballots to voters before they met age and residency requirements” and HB 506

“ensure[s] that only qualified electors are voting in Montana elections.” (Fitzpatrick Decl. at ¶¶ 23-24; Hertz Decl. at ¶¶ 26-28).

V. Voter Fraud

27. MDP’s expert testified that “voter fraud of any sort is vanishingly rare in Montana, with only a handful of cases over the last 20 years.” (Gordon Decl., Ex. 35 at 6). Further MDP’s expert described there was a case in 2011 where a man submitted his ex-wife’s absentee ballot and in 2021 there was a case where a man pled “guilty to registering to vote” under a false name. (*Id.* at 6-7; *see also* Decl. of Dale Schowengerdt, Ex. 1-16, Feb. 17, 2021, No. DV 21-451). MDP’s expert ultimately concluded that “8,472,202 votes have been cast in Montana elections since 2002, either in person or by a mail or absentee ballot that was accepted. Voter fraud...does not remotely present a problem for or threat to election security in Montana.” *Id.* at 7.

28. In *Driscoll v. Stapleton*, the Secretary at that time “did not present evidence in the preliminary injunction proceedings of voter fraud or ballot coercion, generally or as related to ballot-collection efforts, occurring in Montana.” 2020 MT 247, ¶ 22, 401 Mont. 405, ¶ 22, 473 P.3d 386, ¶ 22. For the purposes of this preliminary injunction, the Court finds the same is true in this matter.

29. Election administrators in Montana are not aware of voter fraud relating to the use of student IDs. (Semerad Decl. ¶ 11; Seaman Decl. ¶ 10).

30. One of the Secretary's experts testified "...although I am not convinced that voter fraud is a substantial problem in Montana, there is some evidence the photographic identification laws bolster confidence in elections." (Trende Rpt. at 12).

31. Another expert for the Secretary opined in regard to HB 530 that "[b]y prohibiting individuals from receiving compensation for collecting voted ballots, Montana's law imposes little burden on voters, reduces opportunity for fraud, and fosters confidence in elections." (Gessler Decl. ¶ 4). However, no instances of fraud relating to ballot collection in Montana were cited to by this expert.

Based on the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact are more properly considered Conclusions of Law, they are incorporated by reference herein as such. To the extent that these Conclusions of Law are more appropriately considered Findings of Fact they are incorporated as such.

I. LEGAL STANDARD

2. Under the Montana Code Annotated (MCA), a preliminary injunction may be granted on five enumerated grounds. § 27-19-201 (1-5). Only two are relevant for the purposes of this matter. Specifically, an injunction may be granted:

(1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

§ 27-19-201(1-2), MCA. Only one of the enumerated grounds needs to be met for an injunction to issue because the subsections are disjunctive. *Four Rivers Seed Co. v. Circle K Farms*, 2000 MT 360, ¶ 13, 303 Mont. 342, ¶ 13, 16 P.3d 342, ¶ 13; *Weems v. State*, 2019 MT 98, ¶ 17, 395 Mont. 350, ¶ 17, 440 P.3d 4, ¶ 17. Importantly, “[t]he purpose of a preliminary injunction is to prevent ‘further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits.’” *City of Billings v. Cty. Water Dist.* (1997), 281 Mont. 219, 226, 935 P.2d 246, 250 (quoting *Knudson v. McDunn* (1995), 271 Mont. 61, 894 P.2d 295, 298). The Supreme Court has defined the “status quo” as “... the last actual, peaceable, noncontested condition which preceded the pending controversy...” *Porter v. K & S P’ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839 (quoting *State v. Sutton* (1946), 2 Wash.2d 523, 98 P.2d 680, 684); see also *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, ¶ 24, 405 P.3d 73, ¶ 24 (quoting *Porter v. K & S P’ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839).

3. While “[a] statute enjoys a presumption of constitutionality... a party need establish only a prima facie violation of its rights to be entitled to a preliminary injunction—even if such evidence ultimately may not be sufficient to prevail at trial.” *Driscoll*, 2020 MT 247, ¶ 16, 401 Mont. 405, ¶ 16, 473 P.3d 386, ¶ 16; see also *Weems*, ¶ 18. “‘Prima facie’ means literally ‘at first sight’ or ‘on first appearance but subject to further evidence or information.’” *Id.* (quoting *Prima facie*, *Black’s Law Dictionary* (10th ed.

2014)). Additionally, “all requests for preliminary injunctive relief require some demonstration of threatened harm or injury, whether under the ‘great or irreparable injury’ standard of subsection (2), or the lesser degree of harm implied within the other subsections of § 27-19-201, MCA.” *BAM Ventures, Ltd. Liab. Co. v. Schiffrman*, 2019 MT 67, ¶ 16, 395 Mont. 160, ¶ 16, 437 P.3d 142, ¶ 16; *see also Weems* ¶ 17. Lastly, “[f]or the purposes of a preliminary injunction, the loss of a constitutional right constitutes an irreparable injury.” *Driscoll*, ¶ 15; *Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 15, 366 Mont. 224, 229, 296 P.3d 1161, 1165.

4. The Secretary, in her response brief, discussed that “Montana law also imposes a higher burden of proof” when a party seeks a “mandatory injunction” rather than a prohibitory injunction. (Def.’s Br. in Resp. to Pls.’ Prelim. Inj. Motions and in Supp. of Def.’s Mot. for Summ. J. (“Def.’s Resp.”) at 4 (citing *Paradise Rainbows v. Fish & Game Comm’n* (1966), 148 Mont. 412, 420, 421 P.2d 717, 721)). A mandatory injunction would “require the undoing of injurious acts” whereas a prohibitory injunction “is a remedy to restrain the doing of injurious acts.” *Newman v. Wittmer* (1996), 277 Mont. 1, 11, 917 P.2d 926, 932 (quoting *In re the “A” Family* (1979), 184 Mont. 145, 153, 602 P.2d 157, 162 (internal quotations omitted)). The Secretary asserts that her actions of taking steps to implement these challenged laws in the months since their passage means that she would have to undo that work such that the enjoining of these laws would effectually be a mandatory injunction.

5. However, Plaintiffs have been clear that the remedy they seek is a return to the status quo that existed prior to the Montana legislature passing HB 176, HB 530, SB 169, and HB 506. Plaintiffs are not requesting that the local elections that occurred in between the passage of these laws and the issuing of this order be re-done or overturned. Plaintiffs are not requesting that the Secretary un-adopt new administrative rules, un-broadcast public service announcements across various media describing the changes, un-train Montana election administrators, un-create and un-implement new components of Montana's voting infrastructure, un-ensure compliance with Montana law during elections that took place on May 4, 2021, September 14, 2021, and November 2, 2021, and un-prepare for upcoming elections scheduled to begin in May 2022. Rather the Plaintiffs are requesting that the Secretary be restrained from enforcing HB 176, HB 530, SB 169, and HB 506 before they have governed a state-wide election.

6. In sum, given that Plaintiffs are requesting the Secretary be restrained from enforcing these contested laws in upcoming elections, rather than undo the local elections that have already occurred, the Court finds a preliminary injunction and the applicable standard is appropriate.²

² In any event, even if a mandatory injunction is proper, the Court finds that based on the evidence presented, Plaintiffs would meet the "higher standard" necessary for a mandatory injunction to issue. Especially considering "the principles upon which mandatory and prohibitory injunctions are granted do not materially differ." *City of Whitefish v. Troy Town Pump*, 2001 MT 58, ¶ 21, 304 Mont. 346, ¶ 21, 21 P.3d 1026, ¶ 21 (quoting *Grosfield v. Johnson* (1935), 98 Mont. 412, 421, 39 P.2d 660, 664 (internal quotations omitted)).

II. DISCUSSION

a. Standing

7. The Secretary argues all Plaintiffs lack standing. The Secretary incorporates her arguments made in her motion to dismiss MDP's Complaint, which the Court has previously ruled on.

8. The law of the case doctrine "expresses generally the courts' reluctance to reopen issues that have been settled during the course of litigation." *Jacobsen v. Allstate Ins. Co.*, 2009 MT 248, ¶ 29, 351 Mont. 464, ¶ 29, 215 P.3d 649, ¶ 29. Under this doctrine, parties are precluded "from re-litigating issues that this Court has already resolved." *Wittich Law Firm, P.C. v. O'Connell*, 2014 MT 23N, ¶ 8, 374 Mont. 540, ¶ 8; *see also State v. Carden* (1976), 170 Mont. 437, 439, 555 P.2d 738, 740 (holding the law of the case doctrine applies to prior rulings of a trial court in the same case).

9. Thus, based on the law of the case doctrine and the fact that the Secretary has raised no new genuine arguments that were not previously addressed by the Court in its order on her motion to dismiss MDP's Complaint, the Court easily dispenses with the Secretary's standing arguments as to MDP. (*See* Dkt. 32). For the second time and incorporating by reference its analysis and holding in its previous Order Re Defendant's Motion to Dismiss, the Court finds MDP has standing to challenge HB 176, HB 530, and SB 169 under organizational and associational standing. *See id.*

10. As to the remaining Plaintiffs, the Secretary has raised the issue of standing for the first time. The Secretary argues Plaintiffs are organizations, not voters, and therefore they cannot challenge “laws that only apply to voters.” (Def.’s Resp. at 6). Rather the Secretary contends Plaintiffs must identify an individual who has suffered or will suffer concrete harm. (Def.’s Resp. at 7). Additionally, the Secretary argues, by incorporating her brief in support of her motion to dismiss MDP’s Complaint and her reply, that WNV and MYA do not have organizational and associational standing. The Court will engage in a similar analysis as to that in its Order RE Defendant’s Motion to Dismiss. (See Dkt. 32 at 3-10).

i. Organizational Standing

11. Under organizational standing, an organization “may file suit on its own behalf to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy...” *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 42, 360 Mont. 207, ¶ 42, 255 P.3d 80, ¶ 42. Thus, an organization has standing if injury has been clearly alleged, the injury is distinguishable from the public generally, and the injury would be alleviated by successfully maintaining the action. *Heffernan*, ¶ 33.

WNV Plaintiffs – Western Native Voice & Montana Native Vote

12. WNV Plaintiffs, Western Native Voice and Montana Native Vote (“Nonprofit Plaintiffs”) are “Native American-led organizations that organize and advocate in order

to build up Native leadership with Montana.” (Compl. for Declaratory and Injunctive Relief (“WNV Compl.”), ¶ 19, May 17, 2021, No. DV 21-560). Nonprofit Plaintiffs point to the fact that HB 176 will require them to “spend additional resources to hire organizers earlier in the election cycle to mobilize turnout.” (WNV Compl. ¶ 30). They further describe that their operations have already been impacted by HB 176. *Id.* Additionally, like MDP, Nonprofit Plaintiffs also engage in Get Out the Vote (“GOTV”) efforts that are (or will be) essentially outlawed by HB 530 due to its ban on gaining pecuniary benefits for ballot collecting. (WNV Compl. ¶ 33).

13. As evidenced by the effect HB 176 and HB 530 will have on their operations, Nonprofit plaintiffs have clearly alleged injury that is distinguishable from the public generally that would be alleviated if they were successful in this matter. The Secretary’s argument that WNV must identify individual voters who will suffer harm because of the challenged laws to have standing is unavailing and disregards Montana law concerning organizational standing. Organizational standing clearly confers standing to an organization that can show it will suffer injury to the organization itself. *Heffernan*, ¶¶ 42-45. Thus, the Court finds that Western Native Voice and Montana Native Vote have standing under organizational standing to challenge HB 530 and HB 176.

MYA Plaintiffs – Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Group

14. The MYA Plaintiffs consist of Montana Youth Action, Forward Montana Foundation, and the Montana Public Interest Group. All three groups are organizations in Montana. (Compl. (“MYA Compl.”), ¶10; ¶ 15; ¶ 18, Sept. 9, 2021, No. DV 21-1097).

15. In MYA’s Complaint, it describes Forward Montana Foundation and Montana Public Interest Research Group “have made it their mission to bring young people’s political values and concerns to the fore and to facilitate greater and greater youth voter turnout.” (MYA Compl. ¶ 2).

16. Additionally, MYA describes in its Complaint that Montana Youth Action is run by students and has the mission to “empower youth in Big Sky Country to make a difference through politics, civics, and service to communities in Montana.” (MYA Compl. ¶ 10). The members of Montana Youth Action “are middle and high school students...preparing to become active voters when they become eligible.” *Id.*

17. Forward Montana Foundation “dedicates itself...to voter registration and ‘get out the vote’ efforts” and will be harmed by SB 169, HB 506, and HB 176 because it will have to “expend significant resources in developing new voter education materials, engaging in campaigns to reeducate youth voters....and conducting expanded get out the vote efforts.” (MYA Compl. ¶ 15).

18. The Montana Public Interest Research Group (“MontPIRG”), “is a student directed and funded nonpartisan organization” that “has been registering young voters,

giving them the tools to have their voices heard, and working to eliminate the barriers between young people and their constitutional right to vote.” (MYA Compl. ¶ 18).

MontPIRG alleges that it will be harmed by SB 169, HB 506, and HB 176 “because all three laws will require MontPIRG to expend significant resources in developing new voter education materials, engaging in campaigns to reeducate young voters with whom they’ve engaged previously, and conducting expanded get out the vote efforts.” (MYA Compl. ¶ 19).

19. Montana Youth Action has alleged in MYA’s Complaint that its members will be harmed by these laws. The Court finds that Montana Youth Action did not sufficiently allege injury to the organization but rather, in its Complaint, alleged injuries to its members, which is more appropriately considered under the doctrine of associational standing. Thus, the Court finds that Montana Youth Action does not have organizational standing.

20. As to Forward Montana Foundation and MontPIRG the Court finds that, as evidenced by the effects of SB 169, HB 506, and HB 176 to their operations that injury to the organizations has sufficiently been alleged and these Plaintiffs have clearly alleged injury that is distinguishable from the public generally that would be alleviated if they were successful in this matter. As described above, the Court disagrees with the Secretary’s argument that MYA must identify individual voters who will suffer harm because of the challenged laws to have standing given that organizational standing

clearly confers standing to an organization that can show it will suffer injury to the organization itself. *Heffernan*, ¶¶ 42-45. Thus, the Court finds that Forward Montana Foundation and MontPIRG have standing under organizational standing to challenge HB 530 and HB 176.

ii. *Associational Standing*

21. Under associational standing, an organization “may assert the rights of its members.” *Heffernan*, ¶ 42. “The doctrine of associational standing ‘recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others.’” *Heffernan*, ¶ 44 (quoting *United Automobile Workers v. Brock*, 477 U.S. 274, 290, 106 S. Ct. 2523, 2533 (1986)). An organization has standing to “bring suit on behalf of its members, even without a showing of injury to the association itself, when (a) at least one of its members would have standing to sue in his or her own right, (b) the interests the association seeks to protect are germane to its purpose, and (c) neither the claim asserted nor the relief requested requires the individual participation of each allegedly injured party in the lawsuit.” *Heffernan*, ¶ 43.

22. Preliminarily, WNV did not argue that it has associational standing. Given that the Court has found it has organizational standing, as discussed above, and standing under *parents patriae*, as discussed below, it is immaterial as to whether WNV also has

associational standing. Thus, the Court does not address associational standing as it relates to WNV.

23. Forward Montana Foundation is not a membership organization and thus, does not have standing under associational standing. The remaining MYA Plaintiffs, Montana Youth Action and MontPIRG have demonstrated that their members would have standing to sue in their own right, the interests sought to be protected are germane to the purposes of Montana Youth Action and MontPIRG, and individual participation of these organization's members is not required based on the claims asserted and the relief requested.

24. Specifically, Montana Youth Action and MontPIRG, as described above, have missions germane to protecting the youth voting and youth civic engagement. (MYA Compl. ¶¶ 2, 10, 18). Members of these organizations would have standing to sue in their own right as evidenced in MYA's Complaint and the declarations submitted by MYA. (MYA Br., Ex. B, ¶¶ 14-15; ¶¶ 5, 8; MYA Br., Ex. D, ¶¶ 3-12; MYA Br., Ex. I, ¶¶ 4-25). Lastly, given that the relief sought is declaratory, the individual participation of these members is not required.

25. In sum, the Court finds Montana Youth Action and MontPIRG have associational standing to challenge HB 176, SB 169, and HB 506.

iii. *Parens Patriae*

26. WNV asserts that WNV Plaintiffs including Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe (“Tribal Plaintiffs”), as sovereign nations, can bring actions as *parens patriae*. (Pl. Western Native Voice et al.’s Reply in Supp. of Mot. for Prelim. Inj. (“WNV Reply”), p. 6-7, Mar. 2, 2022, No DV. 21-451).

27. To have standing under *parens patriae*, the sovereign, first, “must assert an injury to what has been characterized as a ‘quasi-sovereign’ interest...” *Alfred L. Snapp & Son v. Puerto Rico* (1982), 458 U.S. 592, 601, 102 S. Ct. 3260, 3265. Quasi-sovereign interests include “the health and well-being—both physical and economic—of its residents...” and there is “a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system.” *Id.*, 458 U.S. at 607, 102 S. Ct. at 3269.

28. The second requirement for *parens patriae* standing is that, while there has been no definitive limit imposed “more must be alleged than injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well in determining whether the [sovereign] has alleged injury to a sufficiently substantial segment of its population.” *Alfred L. Snapp & Son*, 458 U.S. at 607, 102 S. Ct. at 3269.³

³ See NOTE: PROTECTING NATIVE AMERICANS: THE TRIBE AS PARENS PATRIAE, 5 MICH. J. RACE & L. 665.

29. Here, WNV asserts that Tribal Plaintiffs quasi-sovereign interest is in protecting “their members’ constitutional right to vote from HB 530 and HB 176’s disenfranchising effects...” (WNV Reply at 7). Tribal Council Member Lane Spotted Elk describes that “HB 530 and HB 176 make participation in elections by Northern Cheyenne members substantially more difficult.” (Spotted Elk Aff. ¶ 18; *see also* Gray Aff. ¶ 22 (stating “HB 530 and HB 176 makes participation in elections by Blackfeet Nation members substantially more difficult.”); McDonald Aff., Ex. A). Additionally, WNV describes these laws may diminish tribal members’ political power “through the disenfranchisement of their members through the laws’ discriminating effects.” (WNV Reply at 7).

30. The Secretary did not provide any argument as to why *parens patriae* would not confer standing upon WNV’s Tribal Plaintiffs.

31. The Court finds that WNV’s Tribal Plaintiffs have alleged injury to a sufficient quasi-sovereign interest, specifically that of protecting the constitutional rights of their members which relates to their health and well-being, to substantial segments of their populations such that they have standing under *parens patriae* to challenge HB 176 and HB 530.

32. In conclusion, the Court finds that MYA Plaintiffs have standing to challenge HB 176, SB 169, and HB 506 under the concepts of organizational or associational standing.

WNV Plaintiffs have standing to challenge HB 176 and HB 530 under the concepts of organizational standing or *parens patriae*.

b. Preliminary Injunctions

33. MDP and MYA request that SB 169 be preliminarily enjoined under § 27-19-201(1-2), MCA because they allege SB 169 is unconstitutional under the Montana Constitution's Equal Protection Clause and the right to vote enshrined in the Montana Constitution's Declaration of Rights. MDP, WNV, and MYA request that HB 176 be preliminarily enjoined because they allege it infringes Plaintiffs and their members' fundamental right to vote and Plaintiffs and their members' rights under Montana's equal protection clause. MDP and WNV request that HB 530 be preliminarily enjoined because they allege it infringes the right to vote, equal protection, free speech, and due process. Lastly, MYA requests that HB 506 be preliminarily enjoined because MYA alleges HB 506 infringes MYA Plaintiffs and their members' right to suffrage (right to vote), right to equal protection, and the rights of persons not adults.

A. Right to Vote

34. The right to vote (also called the right of suffrage) is enshrined under the Montana Constitution's Declaration of Rights and provides that "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. Since the right to vote is found within the Declaration of

Rights, it is a fundamental right. *State v. Riggs*, 2005 MT 124, ¶ 47, 327 Mont. 196, ¶ 47, 113 P.3d 281, ¶ 47; see also *Willems v. State*, 2014 MT 82, ¶ 32, 374 Mont. 343, ¶ 32, 325 P.3d 1204, ¶ 32.

35. When the exercise of a fundamental right is interfered with, “[t]he most stringent standard, strict scrutiny, is imposed...” *Wadsworth v. State* (1996), 275 Mont. 287, 911 P.2d 1165, 1174. Strict scrutiny review of a statute “requires the government to show a compelling state interest for its action.” *Mont. Env’tl. Info. Ctr. v. Dep’t of Env’tl. Quality*, 1999 MT 248, ¶ 61, 296 Mont. 207, ¶ 61, 988 P.2d 1236, ¶ 61 (quoting *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174 (internal quotations omitted)). “In addition to the necessity that the State show a compelling state interest for invasion of a fundamental right, the State, to sustain the validity of such invasion, must also show that the choice of legislative action is the least onerous path that can be taken to achieve the state objective.” *Mont. Env’tl. Info. Ctr.*, at ¶ 61 (quoting *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174 (internal quotations omitted)).

36. Similar to the arguments made in *Driscoll v. Stapleton*, the Secretary again asks the Court to apply a “flexible standard” adopted by federal courts referred to as the “*Anderson-Burdick* standard” from *Anderson v. Celebrezze*, 460 U.S. 780, 103 S. Ct. 1564 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 112 S. Ct. 2059 (1992). (Def.’s Resp. at 15). Under this standard, “severe” restrictions on voting rights are subject to strict scrutiny whereas “reasonable, nondiscriminatory restrictions” on voting rights need only be

justified by the “State’s important regulatory interests.” *Burdick*, 504 U.S. 428, 434, 112 S. Ct. 2059, 2063 (quoting *Anderson*, 460 U.S. at 788, 103 S. Ct. at 1569 (internal quotations omitted)).

37. The Court finds that Plaintiffs have made a prima facie case that SB 169, HB 530, HB 176, and HB 506 unconstitutionally burden the right to vote as discussed below.

i. SB 169

38. In making their prima facie case of a constitutional violation, MDP and MYA allege SB 169 unconstitutionally burdens the right to vote of young voters because it denies them the right to vote in the manner that other similarly situated voters enjoy. In support of this, both MDP and MYA’s experts testified that young voters are less likely to have the standalone primary forms of ID acceptable under SB 169. Additionally, both experts testified that students are less likely to have the secondary form of ID now required to be used in conjunction with a student ID. MDP also presented evidence that no voter fraud in Montana has occurred from the use of student IDs to vote. (Gordon Decl., Ex. 35 at 6-8; Semerad Decl. ¶ 11; Seaman Decl. ¶ 10).

39. The Secretary argues that the minor changes SB 169 makes to voter identification requirements do not violate or overly burden the right to vote. The Secretary describes that requiring some other form of identification in conjunction with a student ID is a modest change that the Legislature has authority to implement through the explicit delegation of authority to the Legislature to regulate elections in the Montana

Constitution. Further, the Secretary offers that even if the right to vote is implicated, that the Court should apply the flexible *Anderson-Burdick* standard and that SB 169 would easily pass because SB 169 imposes a minimal burden.

40. The Court finds the expert testimony submitted by MDP and MYA concerning SB 169 to be reliable and informative. In particular, the testimony concerning how the cost of voting determines whether a voter will exercise their right to vote. Here, the cost of voting for students has become more expensive with the passage of SB 169. MDP provided testimony from an expert and from others describing how the additional hoops out-of-state students, transgender students, and young people will have to go through in order to meet the requirements for a secondary form of ID will raise the cost of voting. These additional costs to voting are unique to young voters given their mobility and the fact that they are less likely to possess the primary forms of ID and the forms that must be presented in addition to the student ID. Based on the additional difficulties young voters who rely on using their student ID as a primary form of ID will face, the Court finds that MDP and MYA have established that SB 169 implicates the fundamental right to vote and would thereby be subject to strict scrutiny review.

41. The Secretary essentially describes that SB 169 was passed to clear up confusion among election workers, to increase voter confidence in elections, to ensure compliance with residency requirements, and to prevent voter fraud.

42. Regarding voter fraud, there have been no instances of student ID-related election fraud since the allowance of student IDs as voter identification. (Gordon Decl., Ex. 35 at 6-8; Semerad Decl. ¶ 11; Seaman Decl. ¶ 10; MDP Ex. 20 at 22:5-21). Voter fraud in general is rare in Montana. (Gordon Decl., Ex. 35 at 6-8). Regarding ensuring compliance with residency requirements, there are already laws in place that address this. There are likely less burdensome means than removing student IDs as a primary form of ID to clear up confusion amongst election staff. Lastly, as testified to by experts on both sides, requiring voter identification itself increases voter confidence in elections.

43. Thus, given that MDP and MYA have shown the burden that SB 169 has on the right to vote of young voters, the Court finds that Plaintiffs have made a prima facie showing that SB 169 is unconstitutional and should be preliminarily enjoined to preserve the status quo until a trial on the merits can be had.

44. As discussed above, the status quo is that which existed prior to the passage of these laws, given that was “the last actual, peaceable, noncontested condition which preceded the pending controversy.” *Porter*, 192 Mont. At 181, 627 P.2d at 839.

ii. HB 176

45. Plaintiffs have established a prima facie case that HB 176 unconstitutionally burdens the right to vote because HB 176 eliminates an important voting option for Native Americans and will make it harder, if not impossible, for some Montanans to vote as discussed below.

46. The Secretary argues, for the second time during this litigation, that the Legislature is granted explicit discretion to enact EDR in Article IV, § 3 of the Montana Constitution and therefore the Legislature has the sole discretion to decide whether to allow or disallow EDR. The Court stands by its previous decision in its Order RE Defendant's Motion to Dismiss which is the law of the case. (*See* Dkt. 32 at 16-17). Thus, as stated previously, while the Court recognizes that the Legislature has authority to provide for a system of poll booth registration, the laws passed by the Legislature in order to provide that system are still subject to judicial review and:

Since *Marbury*, it has been accepted that determining the constitutionality of a statute is the exclusive province of the judicial branch. **It is circular logic to suggest that a court cannot consider whether a statute complies with a particular constitutional provision because the same constitutional provision forecloses such consideration.**

Brown v. Gianforte, 2021 MT 149, ¶ 24, 404 Mont. 269, ¶ 24, 488 P.3d 548, ¶ 24 (emphasis added).

44. Having again determined that laws passed by the Legislature are subject to judicial review, the Secretary next argues the right to vote is not burdened by HB 176 because of the concerns with delays, burdens on staff, and long lines stemming from EDR. The Secretary did provide testimony from some election staff describing the extra work that is required on election day when registration is also permitted. However, Plaintiffs submitted testimony from election staff in support of permitting EDR and

describing the steps they take to handle the extra work imposed by having registration in addition to voting on election day.

45. Based on the evidence the Court was presented with concerning Montanan's use of EDR and reliance on it, the Court finds that Plaintiffs have made a prima facie case that HB 176 unconstitutionally burdens the right to vote by eliminating EDR.

iii. HB 530

46. WNV and MDP have established a prima facie case that HB 530 unconstitutionally burdens the right to vote because it burdens the voters who rely on organized absentee ballot assistance as discussed below.

47. The Secretary argues that HB 530 is not ripe given that the Secretary has not adopted the administrative rule as directed in HB 530 § 2(1). Specifically, "[o]n or before July 1, 2022, the secretary of state shall adopt an administrative rule in substantially" the form provided in HB 530 § 2(1)(a-b). However, "[t]he basic purpose of the ripeness requirement is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Reichert v. State*, 2012 MT 111, ¶ 54, 365 Mont. 92, ¶ 54, 278 P.3d 455, ¶ 54. A case is considered "unripe" when "the parties point only to hypothetical, speculative, or illusory disputes as opposed to actual, concrete conflicts." *Id.* Moreover, "[r]ipeness asks whether an injury that has not yet happened is sufficiently likely to happen or, instead, is too contingent or remote to support present adjudication...." *Id.* at ¶ 55.

48. Here, MDP and WNV point to HB 530 § 2(2), which is not subject to administrative rule making by the Secretary and provides that “[a] person violating the rule adopted by the secretary of state pursuant to subsection (1) is subject to a civil penalty. The civil penalty is a fine of \$100 for each ballot distributed, ordered, requested, collected, or delivered in violation of the rule.” Moreover, the portion of HB 530 left to the Secretary to adopt an administrative rule requires that it be in “substantially the same form” as that drafted by the legislature. Thus, at issue in HB 530 is not an abstract disagreement, especially given that it is clear from the statute there will be a civil penalty when engaging in many types of ballot assisting activities. Significantly, Plaintiffs have provided evidence as to how they have already been injured by HB 530 given they have already been attempting to determine whether the activities their organizations have previously engaged in will be subject to civil penalties under HB 530 and spending resources to educate voters about the change in the law.

49. Next, the Secretary argues HB 530 does not unconstitutionally burden the right to vote because, the Secretary alleges, there is no right to vote by absentee ballot or to have that ballot collected in a particular manner. Additionally, the Secretary argues that ballot collection is not banned under HB 530, but rather organizations and people collecting ballots cannot accept “a pecuniary benefit” from, *inter alia*, collecting ballots.

50. While there is no explicit fundamental right to vote by absentee ballot or to have a ballot collected, it is still possible that the fundamental right to vote can be infringed by legislation affecting that right through limiting the voting options available to Montanans. WNV provided expert testimony as described above illustrating the reliance many Native voters have on organizations that engage in paid ballot collection due to many factors discussed above but to restate a few: the distance Native voters have to travel in order to vote in person and the difficulties with the mailing system on reservations. MDP provided testimony describing how paid ballot collection reduces the burdens on voters who many not have the means, ability, or time to get to the polls in-person.

51. In sum, given that banning paid ballot collection will reduce the avenues to vote of many Montanans that rely on ballot collection due to a multitude of reasons as described above and as evidenced by testimony submitted by MDP and WNV, the Court finds that MDP and WNV have made a prima facie showing that HB 530 unconstitutionally burdens the right to vote.

iv. HB 506

52. MYA contends that HB 506 unconstitutionally burdens the right to vote for several reasons. First, MYA alleges that newly eligible voters turning eighteen in the two weeks prior to an election will be unable to absentee vote and thus if they have to rely on that form of voting due to travel, going to school out-of-state, illness, disability,

or for other reasons, they will not be able to vote at all. Second, MYA alleges that requiring newly eligible voters (specifically voters turning eighteen during the late registration period) to vote in person whereas all other eligible voters have other voting options available violates newly eligible voters' right to vote. Lastly, MYA contends that HB 506 needlessly complicates the voting process for voters becoming eligible during the late registration period.

53. The Secretary counters that absentee voting is not included in the constitutional right to vote. The Secretary also argues that the Legislature is specifically authorized to set requirements for absentee voting pursuant to Article IV § 3 of the Montana Constitution. The Secretary provided evidence from Melissa McLarnon describing lack of uniformity regarding election administrators' distribution and counting of ballots from voters turning eighteen during the late registration period. Further the Secretary argues that HB 506 is constitutional due to it providing uniformity and clarity among election administrators as well as ensuring only qualified voters are casting their ballots.

54. The Court finds that MYA has made a prima facie case that HB 506 unconstitutionally burdens the right to vote. While the Secretary claims "only absentee voting options of a small sliver of potential voters" will be affected, these voters previously had a voting avenue open to them that has now been closed by HB 506 and

the Court finds it is proper to enjoin this law until its constitutionality can be determined after a full review on the merits. (*See* Def.'s Resp. at 40).

B. Equal Protection

55. The Equal Protection Clause of the Montana Constitution aims to “ensure that Montana's citizens are not subject to arbitrary and discriminatory state action.” *Mont. Cannabis Indus. Ass’n v. State*, 2016 MT 44, ¶ 15, 382 Mont. 256, ¶ 15, 368 P.3d 1131, ¶ 15. The clause specifically declares: “[n]either the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Mont. Const., Art. II § 4. Additionally, while the Legislature must be given deference when it enacts a law, “it is the express function and duty of this Court to ensure that all Montanans are afforded equal protection under the law.” *Davis v. Union Pac. R.R.* (1997), 282 Mont. 233, 240, 937 P.2d 27, 31.

56. “When presented with an equal protection challenge, we first identity the classes involved and determine whether they are similarly situated.” *Mont. Cannabis Indus. Ass’n*, ¶ 15 (quoting *Rohlf v. Klemenhausen, LLC*, 2009 MT 440, ¶ 23, 354 Mont. 133, ¶ 23, 227 P.3d 42, ¶ 23)(internal quotations omitted). Similarly situated classes are identified by “isolating the factor allegedly subject to impermissible discrimination; if two groups are identical in all other respects, they are similarly situated.” *Hensley v. Mont. State Fund*, 2020 MT 317, ¶ 19, 402 Mont. 277, ¶ 19, 477 P.3d 1065, ¶ 19. If it is determined that

“the challenged statute creates classes of similarly situated persons, we next decide whether the law treats the classes in an unequal manner.” *Mont. Cannabis Indus. Ass’n*, ¶ 15.

57. First, regarding defining the classes, MDP and MYA allege that under HB 176, HB 530, and SB 169 that young voters are treated differently from similarly situated voters. WNV alleges that under HB 176 and HB 530 Native American voters are treated differently than similarly situated voters. The Secretary contends that “young voters” is not an adequately defined class. However, the Court finds that MDP and MYA, for the purposes of making a prima facie case, have defined the class “in a way which will effectively test the statute without truncating the analysis.” *Goble v. Mont. State Fund*, 2014 MT 99, ¶ 34, 374 Mont. 453, ¶ 34, 325 P.3d 1211, ¶ 34.

58. Having determined the classes for the purposes of a preliminary injunction, the Court next considers “if the two classes are similarly situated by isolating the factor subject to the allegedly impermissible discrimination []. If the two groups are equivalent in all respects other than the isolated factor, then they are similarly situated.” *Hensley*, at ¶ 21. Additionally, “[a] law or policy that contains an apparently neutral classification may violate equal protection if ‘in reality [it] constitutes a device designed to impose different burdens on different classes of persons.’” *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 16, 325 Mont. 148, ¶ 16, 104 P.3d 445, ¶ 16 (quoting *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, ¶ 85, 982 P.2d 421, ¶ 85).

59. WNV contends that HB 176 disproportionately burdens the right to vote of Native Americans living on rural reservations in Montana and that HB 530 disproportionately affects Native Americans on the basis of race. Specifically, regarding HB 176, WNV cites to testimony and expert reports showing that Native Americans have to travel further to register to vote, have less access to vehicles, have less access to money for gas and car insurance, and use EDR at higher rates than non-Native voters.

60. The Secretary argues that claims such as those described by WNV were rejected in *Brnovich v. Democratic Nat'l Committee* however, that case is irrelevant given it held that two laws passed in Arizona did not violate a federal statute under a federal legal standard that has not been applied in Montana. *See Brnovich v. Democratic Nat'l Comm.* (2021), 141 S. Ct. 2321, 2338.

61. Regarding HB 530, WNV describes that Native American voters rely on ballot collection more than non-Native voters due to the structural barriers to casting a ballot through mail that they disproportionately face. WNV presented significant evidence describing these barriers, which, to name a few, include lack of residential mail, longer distances to Post Offices, less access to vehicles, and less access to internet.

62. MDP and MYA contend that under HB 176, HB 530, and SB 169 young voters are treated differently because identification and voting methods disproportionately used by them are constrained by these laws. MDP presented evidence, as discussed above, concerning young voters' reliance on EDR—specifically young voters account for 31.2%

of voters who have registered on election day. (Gordon Decl., Ex. 35 at 13). MDP presented evidence concerning the significance of having the option to use a student ID as a primary form of voter identification for young voters due to the likelihood that young voters will not have access to the other forms of primary or secondary identification as now required by SB 169. Moreover, MDP presented evidence that young voters, Native voters, seniors, and voters with disabilities are disproportionately burdened by HB 530 because they already face greater hurdles to participation than other voters.

63. Once the relevant classifications have been defined, “we next determine the appropriate level of scrutiny.” *Snetsinger*, at ¶ 17. As previously described, “[s]trict scrutiny applies if a suspect class or fundamental right is affected.” *Id.* To survive strict scrutiny review, “the State has the burden of showing that the law, or in this case the policy, is narrowly tailored to serve a compelling government interest.” *Id.*

64. The Secretary maintains that Plaintiffs have not stated viable equal protection claims because HB 176 and SB 169 are facially neutral and discriminatory intent has not been established towards any of the classes. Additionally, the Secretary contends that Plaintiffs have not satisfied their prima facie burden to establish a disparate impact claim as to HB 530. The Secretary further asserts that the State’s interest in these three laws which include raising voter confidence in the security and administration of Montana’s elections, reducing the amount of work for election workers on election day,

reducing lines at polling places, reducing delays in reporting election results, and preventing election fraud in Montana would be enough to pass constitutional scrutiny under the *Anderson-Burdick* standard.

65. The Court disagrees with the Secretary that Plaintiffs must establish a disparate impact theory as to the challenged laws. See *Snetsinger*, at ¶ 16. Plaintiffs have rebutted the State's interests in testimony from experts and election staff describing there has been no voter fraud in Montana pertaining to EDR, ballot assistance, or the use of student IDs as voter identification. Additionally, Plaintiffs provided testimony from election staff describing that EDR is not a significant burden and that even if the deadline is moved back, it just moves the burden to that day. Plaintiffs provided evidence showing the significant reliance on ballot assistance and the confusion surrounding the implementation of HB 530.

66. In sum, the Court finds that Plaintiffs have made a prima facie showing that HB 176, HB 530, and SB 169 unconstitutionally burden Plaintiffs' right to equal protection of the laws by treating similarly situated groups unequally.

i. HB 506

67. MYA argues HB 506 violates Montanans' right to equal protection because it disproportionately and disparately abridges the right to vote of young Montana voters. Specifically, MYA describes HB 506 treats those who will be eligible to vote on election day in a different manner based only on the point at which they turn eighteen during

the election cycle. Thus, as described by MYA, the class of voters is those who turn eighteen the month prior to election day.

68. MYA also argues that HB 506 in conjunction with HB 176 and SB 169 creates an interactive effect making the impact of these laws on young voters exponentially worse.

MYA provided testimony, as described above, from young voters and the difficulties they face by the implementation of these laws. MYA provided expert testimony describing that “[c]ombined with their lack of justification, the independent and cumulative effects of the burdens placed on youth and student voters as a result of these laws, along with the timing of their passage on the heels of unprecedented youth electoral engagement nationally and statewide can only be understood as a collective effort to deny or abridge the right to vote of youth voters.” (Bromberg Decl. at 1).

Further MYA described that “a common thread” among HB 506, HB 176, and SB 169 is that they all “target youth and student voters directly and/or single out characteristics that are unique to or disproportionately held by youth and student voters.” (Bromberg Decl. at 21).

69. The Secretary’s primary argument for HB 506 is simply that minors do not have the right to vote and that there is no equal protection claim because the distinguishing factor between the two classes—age—plainly relates to the underlying justification of the statute.

70. MYA counters that these voters turning eighteen in the month prior to election day will have one of the avenues of voting—absentee voting—closed to them simply because of when they turn eighteen during the election cycle and that it treats them differently from everyone else who is eighteen prior to the month before election day. Further MYA describes that in addition to infringing the right to vote of these newly eligible voters, the Rights of Persons Not Adults provision in Montana’s Constitution is similarly infringed by HB 506.

71. In sum, the Court finds that MYA has established a *prima facie* case that HB 506 violates the right to equal protection because it treats voter turning age eighteen in the thirty days before an election in an unequal manner than other eligible voters.

C. Right to Free Speech

72. The right to freedom of speech is a fundamental right given its enshrining in the Montana Constitution’s Declaration of Rights. *Riggs*, ¶ 47; *see also State v. Dugan*, 2013 MT 38, ¶ 18, 369 Mont. 39, ¶ 18, 303 P.3d 755, ¶ 18 (“The right to free speech is a fundamental personal right...”). Freedom of speech “applies to associations, as well as individuals, and protects the right of associations to engage in advocacy on behalf of their members.” *Mont. Auto. Ass’n v. Greely* (1981), 193 Mont. 378, 388, 632 P.2d 300, 305. Political speech is afforded “the broadest protection.” *See McIntyre v. Ohio Elections Comm’n* (1995), 514 U.S. 334, 346, 115 S. Ct. 1511, 1518. In DV 20-0377, Judge Fehr described that “ballot collection activity” falls within “the type of interactive

communication concerning political change that is appropriately described as ‘core political speech.’” Courts Findings of Fact, Conclusions of Law, and Order, *Western Native Voice v. Corey Stapleton*, ¶ 27, Sept. 25, 2020, No. DV 20-0377 (quoting *Meyer v. Grant* (1988), 486 U.S. 414, 421-22, 108 S. Ct. 1886, 1892 (internal quotations omitted)).

i. HB 530

73. WNV and MDP have established a prima facie case that HB 530 unconstitutionally burdens the right to free speech because it restricts the Montana Democratic Party’s, Western Native Voice’s, Montana Native Vote’s, Blackfeet Nation’s, and the Confederated Salish and Kootenai Tribe’s (“CSKT”) ability to engage with voters to encourage and assist them to vote as discussed below.

74. The Secretary contends that no message is communicated by ballot collecting and thereby the right to free speech is not implicated by HB 530. The Secretary cites to a string of federal authorities supporting this proposition.

75. MDP and WNV contend that HB 530 restricts their speech because through ballot collecting activities, they are expressing their belief in civic engagement and voter participation.

76. This Court finds, for the purposes of a preliminary injunction, that Montana Democratic Party, Western Native Voice and Montana Native Vote, “[b]y collecting and conveying ballots, ... are engaged in the ‘unfettered interchange of ideas for the bringing about of political and social changes desired by the people,’ which is at the

heart of freedom of expression protections.” Courts Findings of Fact, Conclusions of Law, and Order, *Western Native Voice*, ¶ 30, No. DV 20-0377 (quoting *Dorn v. Bd. Of Trustees of Billings Sch. Dist. No. 2* (1983), 203 Mont. 136, 145, 661 P.2d 426, 431).

Additionally, as described by WNV, Plaintiffs Blackfeet Nation and CSKT engage in political speech by promoting and facilitating the work of Western Native Voice and Montana Native Vote’s paid organizers or by hiring their own ballot collectors.

77. Thus, WNV and MDP have established a prima facie case that HB 530 unconstitutionally burdens the right to free speech.

D. Right to Due Process of Law

78. The due process clause is contained in Montana’s Declaration of Rights and therefore is a fundamental right. *Riggs*, at ¶ 47. A statute can be challenged for vagueness under two theories: “(1) because the statute is so vague that it is rendered void on its face; or (2) because it is vague as applied in a particular situation.” *State v. Dugan*, 2013 MT 38, ¶ 66, 369 Mont. 39, ¶ 66, 303 P.3d 755, ¶ 66 (citing *State v. Watters*, 2009 MT 163, ¶ 24, 350 Mont. 465, 208 P.3d 408). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Whitefish v. O’Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025.

i. HB 530

79. WNV has established a prima facie case that HB 530 is unconstitutionally vague because it is unclear as to when and to whom it applies. Apart from the Secretary’s

ripeness argument addressed above, the Secretary only offers that a lack of definitions in HB 530 does not render it vague on its face as long as the meaning of the statute is clear, and the defendant has adequate notice of what is proscribed. Further the Secretary argues that she will have the opportunity to define terms during the administrative rule making process.

80. The Court has previously addressed the Secretary's ripeness argument regarding HB 530. WNV provided evidence concerning the ambiguities concerning the governmental exception as it relates to tribal governmental entities. Additionally, WNV describes that the ambiguities concerning what type of conduct relating to ballot collection activity that will trigger the penalties in HB 530 are such that WNV has already had to change their processes in a way that steers far wider than what HB 530 may make unlawful.

81. In sum, the Court finds that WNV has made a prima facie case that HB 530 is unconstitutionally vague.

E. Rights of Persons Not Adults

82. The Montana Constitution provides: "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Mont. Const., Art. II § 15.

83. MYA alleges that because HB 506 effectively limits the ability of minors turning eighteen to participate in voting procedures that adults get to use that it burdens a minor's right to exercise the same rights as adults. MYA's expert testified that a reasonable reading of Art. II § 15 is that "17-year-olds who will be 18 on or before Election Day cannot face unequal access to the ballot compared to adults; if they do, then it must be for some enhanced protection of the 17-year-old." (Bromberg Decl. at 15).

84. The Secretary argues minors do not have the right to vote and therefore Art. II, § 15 is not applicable. The Secretary additionally argues that HB 506 was proposed because "(i) some county election administrators were providing absentee ballots to individuals who did not yet meet Montana's age or residency requirements; and (ii) county election administrators who sent ballots to voters before the voter met age or residency requirements were in some cases 'holding' returned ballots of underage voters until election day or the day the voter turned 18." (Def.'s Resp. at 35; McLarnon Decl. ¶ 6). Thus, the Secretary argues, HB 506 assists in providing uniformity throughout the state.

85. The Court finds that MYA has made a prima facie case that the right to vote is burdened unconstitutionally given that minors have previously enjoyed being able to receive their absentee ballot prior to turning eighteen and under HB 506, will no longer be able to.

F. Great or Irreparable Injury

86. Under § 27-19-201(2), MCA, an injunction may be granted “when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant...” For the purposes of issuing a preliminary injunction, “the loss of a constitutional right constitutes irreparable harm...” *Mont. Cannabis Indus. Ass’n*, ¶ 15.

87. The Court finds that Plaintiffs have established they will suffer a great or irreparable injury if these laws are not preliminarily enjoined until a case on the merits can be had as discussed below.

88. MDP and MYA have shown that their members and the organizations they represent will suffer constitutional harm if SB 169 remains in effect during the pendency of this litigation. Specifically, MDP and MYA have provided testimony from eligible voters describing they will have difficulty locating a secondary form of ID to be presented in addition to their student ID to exercise their right to vote. MDP provided testimony and evidence concerning the significant unlikelihood of out-of-state students to possess a Montana drivers’ license and the similar unlikelihood of even in-state students possessing a driver’s license or state ID. (Gordon Decl., Ex. 35 at 15). The Court found the testimony from Plaintiffs’ experts concerning how raising the “costs” of voting will make it more difficult for voters to submit their ballots and that one of these “costs” is by having the proper identification to be able to vote to be persuasive. Thus,

the Court finds that MDP and MYA have shown that SB 169, by burdening constitutional rights, will cause irreparable harm if SB 169 remains in effect during the pendency of this litigation.

89. MDP and WNV have shown they and the members of the organizations they represent will suffer irreparable harm if HB 530 and HB 176 remain in effect.

Specifically, both Plaintiffs made *prima facie* cases that HB 530 and HB 176 unduly burden the right to vote by making it more difficult for specific groups to exercise their right to vote. Additionally, MDP, WNV, and MYA will be harmed given their participation in ballot collecting and get out the vote activities will be curtailed by HB 176 if it were to remain in effect. Thus, Plaintiffs have shown that HB 530 and HB 176 will cause irreparable injury if these laws are not enjoined during the pendency of this litigation.

90. MYA has shown that HB 506 will cause an estimated 763 new voters to experience an increase in confusion and difficulty when voting. (Herron Rpt. ¶ 60).

MYA provided testimony from a minor who will be turning eighteen four days before the 2022 primary election who will only have the option to vote in person because of HB 506. (MYA Brf., Ex. I, ¶¶ 4-8). This minor, unlike his peers who turn 18 before him, will not have the option to vote by mail nor will he have the opportunity to receive and examine his ballot until four days before the election. *Id.* at ¶ 9. Further he described that HB 506 makes it more difficult for him to exercise his right to vote. *Id.* at ¶ 25. Thus,

MYA has shown that it and the members it represents will suffer harm if HB 506 were to remain in effect during the pendency of this litigation.

G. Delay

91. The Secretary argues Plaintiffs motions should be denied because Plaintiffs have impermissibly delayed in requesting that these laws be preliminarily enjoined given that election officials have already worked to implement the changes these laws made to elections, voters would be confused, and the public's confidence in the electoral process would be "further undermine[d]." (Def.'s Brf. at 9-10). In support of her argument, the Secretary cites to a string of federal cases in which delay as short as thirty-six days after learning of alleged irreparable harm resulted in denial of a preliminary injunction. The Secretary also cites to *Boyer v. Karagacin* for the proposition that a preliminary injunction is typically "granted at the commencement of an action before there can be a determination of the rights of the parties to preserve the subject in controversy in its existing condition pending a determination." 178 Mont. 26, 34, 582 P.2d 1173, 1178.

92. This Court does not interpret § 27-19-201, MCA as requiring that a preliminary injunction be filed at the "commencement" of an action or even right after a law has come into effect. Nonetheless, at this point in time, this consolidated matter is at its commencement and Plaintiffs have not impermissibly delayed in their applications for

preliminary injunctions. Moreover, the Court does not find it persuasive that the Secretary has been taking steps to enact these laws given that is a duty of her job and she has had notice that these laws were contested since before they were signed into law as evidenced in the testimony that occurred in hearings at the legislature and notice soon after they were enacted as evidenced by the Plaintiffs' filing of their complaints. Additionally, Plaintiffs have made this request prior to the holding of the first state-wide election since the enactment of these laws.

93. Thus, the Court finds that Plaintiffs did not impermissibly delay in requesting these laws be preliminarily enjoined.

III. CONCLUSION

84. Plaintiffs have established a prima facie case that they will suffer some degree of harm and are entitled to preliminary relief pursuant to § 27-19-201(1), MCA.

Additionally, Plaintiffs have made a prima facie case that they will suffer an "irreparable injury" through the loss of constitutional rights pursuant to § 27-19-201(2), MCA, if these laws were to remain in effect during the pendency of this litigation.

85. In sum, laws promulgated by the legislature enjoy the presumption of constitutionality. However, in the case of the four laws at issue here, HB 506, SB 169, HB 176, and HB 530, Plaintiffs have demonstrated they are entitled to have these laws temporarily enjoined to preserve the status quo—the last non-contested condition preceding this pending controversy—and prevent potential constitutional injury to the

parties and the voters they represent until the constitutionality of these laws can be thoroughly investigated and a determination of their constitutionality on the merits can be made.

The Court, being fully informed, having considered all briefs on file and in-court arguments, makes the following decision:

IT IS HEREBY ORDERED:

1. Plaintiffs' motions for a Preliminary Injunction are **GRANTED**;
2. The Secretary and her agents, officers, employees, successors, and all persons acting in concert with each or any of them are IMMEDIATELY restrained and prohibited from enforcing any aspect of HB 176, HB 530, SB 169, and HB 506 pending resolution of the Plaintiffs' request that the Secretary be permanently enjoined from enforcing the statutes cited above;
3. The Court waives the requirement that the Plaintiffs post a security bond for the payment of costs and damages as permitted by § 27-19-306(1), MCA.

DATED April 6, 2022

/s/ Michael G. Moses
District Court Judge

cc: Dale Schowengerdt
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Austin James
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Matthew Gordon
John Heenan
Alex Rate
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Declaration of Austin Markus James

February 17, 2022

(Doc. 91)

RETRIEVED FROM DEMOCRACYDOCKET.COM

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*Attorneys for Defendant Christi Jacobsen, in her
official capacity as Montana Secretary of State*

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

Montana Democratic Party,

Plaintiff,

vs.

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

Defendant.

Cause No.: DV-56-2021-451

Hon. Michael Moses

**DECLARATION OF AUSTIN MARKUS
JAMES**

WESTERN NATIVE VOICE, Montana Native
Vote, Blackfeet Nation, Confederated Salish
and Kootenai Tribes, Fort Belknap Indian
Community, and Northern
Cheyenne Tribe,

Plaintiffs,

vs.

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

Defendant.

Montana Youth Action, Forward Montana
Foundation, and Montana Public Interest Group,

Plaintiffs,

vs.

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

Defendant.

I, Austin Markus James, state and affirm that the following facts are true and correct to the
best of my knowledge:

1. I am over 18 years old and I make this declaration based upon my personal
knowledge and experience.

2. I am the Chief Legal Counsel for the Montana Secretary of State. I have held this
position since May 2019.

//

Implementation and Application of HB 176 (changes to late voter registration)

3. Beginning in April 2021 and following the adoption of HB 176, the Montana Secretary of State (“the “Secretary”), began, and eventually completed, intensive work to fully implement the changes to Title 13, applicable Administrative Rules, and corresponding guidance for election officials.

4. In Montana, the administration of voter registration is typically governed by regular registration rules, with one exception. Specifically, Montana law requires the election administrator to close regular registration for 30 days before any election. At all other times, regular registration is available to all eligible electors. § 13-2-301, MCA.

5. After the close of regular registration, any prospective elector may register or change the existing elector’s voter information and be eligible to vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information prior to noon the day before the election. § 13-2-304(1)(a), MCA; ARM 44.3.2015.

6. Additionally, even after late registration closes at noon on the day before the election, on Election Day safeguards exist to ensure registered electors can exercise their right to vote. For example:

- a. An elector who is registered in one county but has moved to another county within thirty days of an election may update their residence to the new county of residence while being able to vote in their previous county either by absentee or in person. ARM 44.3.2015 (1)(B)(i);
- b. An inactive elector may reactivate their registration on Election Day. ARM 44.3.2015 (1)(B)(iv);

- c. A registered voter in Montana may update their residence to a different precinct within the voter's county. ARM 44.3.2015 (1)(B)(ii);
- d. Active and inactive voters may change their voter registration name for future elections and vote under the elector's former name and vote; and
- e. Additionally, by administrative rule, the Secretary has created a failsafe process for voters that discover, on Election Day, their registration was not updated to reflect a timely change through administrative error.

7. For example, if an elector updates their registration address with the Department of Motor Vehicles at some point prior to the close of registration, only to find out on Election Day that their voter registration does not reflect the change, the election official will follow the process provided for when an Elector's name is not in the Register.

8. The election official will call the elections office to verify whether the elector's name should be on the register. If, for example, the elector updated their address at the Department of Motor Vehicles to a new county, the elector's name should be in the register for the county and precinct applicable to the updated address.

9. Thus, if an elector indicates that a timely update to their registration occurred prior to Election Day, but the registration database does not reflect the change, the election official will call the election office to verify whether the elector's update was erroneously omitted.

10. Upon receiving a call, the election office will verify and confirm whether the elector was erroneously omitted from the register.

11. Although Election Day is a holiday for state employees, the Department of Motor Vehicles deploys personnel staffing to ensure availability to address any situations that may arise

across the state, such as administrative errors in forwarding voter registrations, until after the polls close.

12. If confirmed the elector was omitted erroneously from the Register, after completion of *Certificate of Erroneous Omission* form, the elector votes a regular ballot.

13. If the election office cannot confirm the elector was erroneously omitted from the Register, the elector can vote a provisional ballot. If the elector chooses not to vote provisionally at the polls, the election official will direct the voter to the election office or designated location to resolve the problem.

14. The Secretary of State's Office has trained, and continues to train, Election Administrators to complete this process when electors have errors in their voter registrations to make sure voters are not unable to vote because of administrative error.

15. The Secretary of State's Office trained Election Administrators on this process at the Election Certification training on February 14, 2022. This training included a presentation regarding the administrative rule implementation adopted in January 2022.

16. The Montana Election Judge Handbook provides election officials with a resource tool to navigate the administrative error process.

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Implementation and Application of SB 169 (changes to voter ID requirements)

17. SB 169 clarified confusing conditional language in Montana's identification laws. For example, prior to SB 169, § 13-2-110, the voter identification for voter registration statute instructed that an applicant "shall provide the applicant's driver's license number." § 13-2-110 (3)(a), MCA (2019). Prior statute then instructed applicants shall provide the last four digits of

the applicants social security number “*if the applicant does not have a Montana’s drivers license.* § 13-2-110 (3)(b), MCA (2019) (emphasis added). Finally, the former statute commanded “*if an applicant does not have a Montana driver's license or social security number, the applicant shall provide as an alternative form of identification.*” § 13-2-110 (4)(a), MCA (2019) (emphasis added). A reasonable interpretation of the prior statute by an election official, particularly in light of the mandatory language (“shall”) along with “does not have” conditional language, is (1) all applicants that have a driver’s license are required to provide their driver’s license number on their voter registration application; (2) all applicants that do not have a driver’s license shall provide the last four numbers of their social security number; and (3) the use of a secondary-alternative form of identification is limited to those applicants that do not have either a driver’s license or social security number.

18. At the same time, the plain language of whether an applicant “does not have a drivers license or social security number” is ambiguous, thus interpreted differently. It is unclear whether “does not have” applies only to applicants that have never been issued a driver’s license or social security number, or whether the condition is satisfied by an applicant that has a driver’s license but does not have the applicant’s driver’s license number in the applicant’s current possession. SB 169 clarified the identification laws by expanding the identification options subject to the mandatory clause in (3)(a), while at the same time clarifying the language regarding the ability to use alternative forms in situations where the applicant is *unable to provide* one of the mandatory forms of primary identification. Doing so eliminated the ambiguity presented by the prior statute’s “does not have” conditional language.

19. In similar fashion, SB 169 clarified confusion by election officials regarding the manner and form of alternative identification copies pursuant to § 13-2-110 (4), MCA.

20. Under the prior voter identification law, it was unclear to state and county election officials as to what would be deemed as an insufficient form of alternative identification.

21. Under the prior voter identification law, conditional language related to the use of tribal identification for registration and voting purposes was a source of confusion for election officials and the public.

22. Under current law, Montana permits voters with a wide variety of options to identify themselves for voting purposes. §§ 13-2-109, 13-2-110, 13-13-114, MCA. ARM 44.3.2005.

23. Under Montana law, voters may verify their identity in the voter registration process in person, by mail, or as otherwise provided by law by providing a Montana driver's license number, Montana state identification card number issued pursuant to § 61-12-501, MCA, or the last four digits of the applicant's Social Security number; military identification card, tribal photo identification card, United States passport, or Montana concealed carry permit; or the combination of a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address along with any other form of photo identification that shows the individual's name. The photo identification may include a school district photo identification, postsecondary education photo identification, or any other identification that includes the name and photo of the individual. §§ 13-2-109, 13-2-110, MCA. ARM 44.3.2005.

24. A voter may identify themselves at a polling place by presenting any one of the following government-issued forms of identification: (1) Montana Driver's License, (2) Montana state identification card issued pursuant to 61-12-501, (3) Military Identification card, (4) Tribal

photo identification card, (5) United States Passport, or (6) Montana concealed carry permit. § 13-13-114, MCA.

25. Similarly, a voter may identify themselves by presenting any combination of identification forms that meet the following criteria:

- a. Any other form of photo ID showing the elector's name, (For instance, a ski area season pass, health club membership card, school enrollment card, or shopping membership card, etc., so long as the identification contains both the elector's name and photo); and
- b. A current utility bill, bank statement, paycheck, government check, or other government document that shows the elector's name and current address. (For example, a voter registration confirmation card, vehicle registration, WIC documentation, etc., that contains the elector's name and address).

26. Montana law and rule provide additional processes for reasonable identification impediments (*see* Identification section starting on page 93 for information on Polling Place Elector Identification form and Declaration of Reasonable Impediment form). Exhibit 2–1.

27. The reasonable impediment process provides a mechanism for voters that cast a provisional ballot due to being unable to produce identification to cure their ballot through an alternative process after the election.

28. By law, election administrators are required to provide each elector with a notice confirming registration along with providing the location of the elector's polling place. § 13-2-207, MCA.

29. At some point, an automated process was developed for election administrators to fulfill § 13-2-207, MCA, notice obligations.

30. The current system, MTVotes, automates a mailed government document that contains the required information pursuant to § 13-2-207, MCA, along with additional information for the voter, including but not limited to the name and address of the elector.

31. All Confirmation of Registrations issued by Election Administrators are generated as a mailed government document that contains the elector's name and address.

32. Following the adoption of SB 169, employees with the Secretary of State's Office 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.

33. Since that time, voters throughout Montana have received voter confirmation cards indicating that the same may be used appropriately for voting purposes. As an example, my redacted voter registration card is attached as Exhibit 2-2. The voter registration card informs voters that it may be used as a form of voter ID: "SAVE THIS CARD- This card paired with a photo ID containing your name may be used as identification when you vote. You may also cut out and save the wallet-sized ID card."

34. The Voter Identification online information page produced by the Secretary is intended to provide the public with a user friendly, visually attractive resource regarding the options for voter identification in Montana. The *VOTER ID REGISTRATION OPTIONS* and *VOTER ID IN-PERSON OPTIONS* both specifically indicate to voters that the combination of a student identification card and a voter confirmation card is authorized for both registration and in-person voting purposes.

35. In the fall of 2021, election administrators across the state presided over numerous city and county elections, facilitating numerous voter registration changes. The Secretary of State received ballot plans for fifty-two (52) different elections conducted as Chapter 19 mail ballot elections for the general election. The mail ballot elections were in addition to polling place elections administered by approximately seventy-three (73) different municipalities throughout the state, including tribal lands.

36. At least 337,581 total votes have been cast and recorded in Montana elections to date since the adoption of HB 176 and SB 169. For perspective, 382,072 votes were cast in the 2020 primary election.

37. Although the 2022 federal primary election will take place in June, several local elections must be administered prior to that time. Exhibit 2-3 is a copy of a mail ballot plan submitted the Secretary of State for an election in Flathead County scheduled on May 3. By the June 2022 primary, hundreds of thousands of votes will have been cast in elections administered since the implementation of SB 169 and HB 176.

38. Thereafter, in January, election administrators completed voter registration maintenance requirements. For example, election administrators utilized the National Change of Address database from the United States Postal Office to ensure all voters who indicated to the postal service that they moved throughout that year were notified about updating their voter registration to their new address.

39. All newly registered voters since the implementation of SB 169 have received a confirmation of voter registration in the form of a government document containing their name and address.

40. All registered voters that performed updates to their voter registration receive a government document containing their name and address confirming their registration, which also specifically indicates the same may be used as an identification method as applicable.

41. In fact, a voter is permitted to pair a voter registration card along with an elementary, middle school, high school enrollment card, or any other educational institution photo identification, so long as it contains the individuals name and photo, and vote.

42. As such, I am able to use my voter registration card with another photo ID. For example, although I graduated from the University of Montana in 2012, I still have my student ID. I am permitted under Montana law to present my student ID and my voter registration card at the polling place and vote.

43. Even if a voter presented a voter registration card with identification issued by an out-of-state school institution containing the individuals name and photo, that individual voter would be entitled to vote under Montana law.

44. Similarly, a voter is permitted to present a school photo identification with the individuals name and photo, along with their vehicle registration and satisfy Montana's ID requirements. Vehicle registrations are government documents that contain an individual's name and address.

45. A voter may also use a Costco card, Snowbowl ski pass, or a number of other photo IDs, paired with voter registration or any other qualifying secondary document containing the voter's name and voter registration address and vote.

46. In summary, a host of documents, readily available to students and others, qualify as secondary ID. For example, the Free Application for Federal Student Aid (FAFSA) is just one

example of an easily accessible government documents containing a name and address available to current students or former students.

47. 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. Mont. Code Ann. § 13-15-107.

48. Under Montana law, even if they are unable to produce appropriate ID by 5PM the day after the Election, the elector is afforded additional fail-safe provisions set forth by SB 169.

49. Prior to SB 169, a fail-safe did not exist for those with a reasonable impediment to producing identification. Thus, the reasonable impediment process alleviates voting costs in a manner unprovided for prior to SB 169.

50. The reasonable impediment process provides an additional method for voters to identify themselves that did not exist prior to adoption of SB 169. Since SB 169, the newly created reasonable impediment process has offered an additional fail-safe for voters.

51. While states with significantly more strict voter identification requirements provide for reasonable impediment protections, Montana's is the first of its kind and unique.

52. The Reasonable Impediment process adopted by Montana pursuant to SB 169 ensures that voters that cast a provisional ballot but are unable to provide identification under the requirements are still able to vote.

53. As part of implementing SB 169, the Secretary of State developed a *Declaration of Impediment* form pursuant to § 13-15-107. Exhibit 2-4.

54. The Secretary of State Election and Voter services staff worked with our website design team to provide a secure, digitally available copy to all voters. The form is located at: <https://sosmt.gov/wp-content/uploads/Declaration-of-Impediments-For-Elector.pdf>.

55. The Secretary of State circulated copies of the *Declaration of Impediment* form to all county election officials. In addition to digitally available copies, a copy of the form may be obtained at the county election office.

56. Additionally, the *Declaration of Impediment* form was added to the Election Official Forms Resource used by county election officials.

57. The Election and Voter Services Division provided county governments with copies of outdated forms along with a reminder to replace outdated official election forms on county websites as part of the implementation of SB 169 or HB 176.

58. Prior to SB 169, state law provided that “current and valid tribal identification” was an acceptable form of identification for voting purposes.

59. At the request of the State Tribal Relations Committee (“STRC”), the Secretary of State reminded county election administrators to educate election officials in advance of the 2020 elections that state law allows current and valid tribal identifications may be used for voting identification purposes. Additionally, the Secretary of State amended its sample voter registration form to include tribal identification in the printed list of acceptable forms of ID.

60. During the STRC’s study, committee members heard testimony from tribal leaders related to Tribal Identification acceptance as a primary barrier to voting for American Indians in Montana.

61. Chairwoman CSKT Tribal Council Chairwoman Shelly Fiat provided testimony to the STRC, May 7, 2020. She testified anecdotally that she personally had experienced questioning from election officials about the validity of her tribal identification presented.

62. CSKT Councilman Len Two Teeth stated he would like to see the Governor's office clarify that tribal IDs are valid forms of IDs and discussed anecdotally that questions concerning the validity of tribal IDs continue to be a problem.

63. In August of 2020, the STRC identified that the acceptance of tribal identification for voter identification is a key barrier to voting for American Indians in Montana, in the State and Tribal Relations Committee Final Report to the 67th Montana Legislature: HJ10 Barriers to Voting for American Indians in Montana (August 2020).

64. To alleviate this potential barrier to Tribal voting, SB 169 removed the requirement that an ID be "current and valid." The Secretary of State's office recommended that change in response to concerns raised by Tribes concerning the questions referenced above about whether Tribal IDs were "current and valid." In other words, SB 169 removed that language to remove a potential barrier to Tribal voting.

Statistical information offered by the Plaintiffs is misleading.

65. Plaintiffs allege 8,053 individuals used election day registration to register on election day in 2018. MDP Brief at 3 (Dkt. 57).

66. The Secretary publishes information related to Late Registration activities on the Office's website: <https://sosmt.gov/elections/latereg/>. The published information reflects that 8,053 individuals did engage in some type of late registration activity on the date of the 2018 General Election. However, this number includes individuals that engaged in precinct-to-precinct changes within a county, individuals that changed their voting status from inactive to active,

individuals that cancelled their registrations, individuals that updated their name but voted within the same county or precinct, and individuals engaged in other election-related administrative matters. Many of these activities are still available to voters under the current law. In short, it is inaccurate to state that 8,053 individuals registered to vote on the date of the 2018 General Election.

HB 530 requires the Secretary to engage in the administrative rulemaking process.

67. HB 530 directs the Secretary to engage in the administrative rule making process and implement a rule in “substantially” the form provided by HB 530, § 2, by July 1, 2022.

68. As of the date of this Declaration, the Secretary has not yet begun the process of adopting an administrative rule giving effect to the provisions of HB 530, § 2.

69. The Secretary follows a well-establish process for adopting administrative rules, and this process will apply to the administrative rule contemplated by HB 530, § 2, just as it applies to all other rules issued by the Secretary.

70. The Secretary’s administrative rule process will include notice of the proposed rule change, the reasons for the change, the date and location of a public hearing regarding the change if one is scheduled, the deadline for the submission of written comments, among other information. Notices of final rule actions are posted after the public comment period ends.

71. The administrative rule process allows the Secretary the flexibility to, for example, define specific terms and rely on the experience and knowledge of the Secretary’s staff to adopt processes that best implement the Legislature’s directive.

Significant work by the Secretary of State’s Office to Implement new election laws and educate voters.

72. 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.

73. For example, in April 2021 the Election and Voter Services Division of the Secretary of State's Office ("EVS") worked with a vendor to perform system changes concerning the voter registration card. In May 2021 the Secretary of State Election and Voter Services Division conducted an initial review of affected administrative rules to identify rules that required implementation of the new laws. Also in May of 2021, EVS conducted an initial review of website and system changes to identify rules that required implementation of the new laws. The voter registration form can be accessed in multiple occasions on the Secretary of State's website, as well as other websites. The Secretary of State's Office used link tracking technology to ensure that all internal and external link traffic sources since the law's adoption replaced the voter application with the version containing the implemented voter registration and identification laws.

74. In August 2021, the Secretary of State conducted training for all election administrators, as well as other county election staff, in August 2021 at the Montana Clerk and Recorder Conference to train them on the new requirements discussed above for late voter registration and voter ID.

75. The new laws also required significant work to develop administrative rules to implement them. In May 2021 the Secretary of State created an informal work group to begin drafting administrative rules and administrative rule amendments pursuant to some of the legislative changes.

76. For example, the Secretary of State sent out the sponsor notification on May 26, 2021.

77. The Secretary of State completed a draft Notice of Rulemaking on June 11, 2021.

78. The Secretary of State circulated a copy of the initial draft rules to county election officials on September 16, 2021.

79. The Secretary of State notified sponsors on September 20, 2021.

80. After considering and incorporating feedback from election officials the Secretary of State formally noticed the proposed rules on October 8, 2021.

81. The Secretary of State conducted a hearing on October 28, 2021.

82. A notice with the hearing details was published on the website, transmitted to interested parties, as well as all county election officials.

83. Comment period ended November 5. The Secretary of State received several written comments.

84. The Secretary of State notified and furnished a copy of the proposed administrative rules to the sponsors of applicable legislation addressed by the administrative rule package, specifically SB 169 and HB 176, on November 5, 2021.

85. The State Administration and Veterans Affairs Interim Committee of the Montana Legislature is empowered with legislative oversight of the Secretary of State's rulemaking authority to carryout adopted legislation. The Committee is vested with the authority to object and reject proposed rules by the agency they do not comport with legislative sentiments. The Secretary of State provided members of the oversight committee with a copy of the administrative rules proposed by the Secretary's office for review via staff on December 21, 2021.

86. The Secretary submitted the Notice of Final Adoption to the Administrative Rules specialist for publication in the Montana Registrar on January 18, 2022.

87. The Notice of Adoption of the administrative rules package was published in the Montana Administrative Registrar on January 28, 2022, in the Montana Administrative Registrar.

88. In April 2021, the Secretary of State updated the voter registration to implement the 2021 Legislature's revisions to Montana's elections. At this time, the Secretary published a revised voter registration application to the Office's website.

89. The Secretary of State's revised voter registration form has been accessible by voters since April of 2021 to download and transmit to the applicable county office.

90. The Secretary is unaware of a single instance where a voter was unable to complete the voter registration form due implementation of the voter identification requirements pursuant to adoption of SB 169. Nonetheless, the Secretary continues to train and answer questions from Election Administrator's on application of the statutes and rules.

91. The Secretary provided the EAC, AARP, NBC, and others with guidance regarding Montana registration and identification requirements to provide to members and the public during the 2022 elections.

92. The Secretary conducted substantial outreach efforts to voters regarding the election law changes.

93. Although it is impossible to specifically calculate, I estimate that several hundreds of hours of state worker time went into the Secretary of State's voter outreach campaign, involving state employees from a variety of different departments and divisions—including elections, operations, communications, web and digital development, and IT personnel.

94. The Secretary produced Public Service Announcements television ads related to HB 176 and SB 169.

95. The Secretary of State partnered with the Montana Broadcasters Association to maximize television and radio broadcast outreach efforts across Montana.

96. To do so, the Secretary of State contracted with a media company capable of producing high resolution, informative, and engaging ad reels within a small window of time in order to ensure that outreach efforts deployed in advance of upcoming elections scheduled soon after the legislation was signed into law.

97. In addition to the media content, the Secretary of State also worked to provide broadcasters with an accurate transcription to accommodate caption viewer needs and/or preferences.

98. The Secretary's outreach effort consisted of a television and radio ad script highlighting that "Montana has several options when it comes to voter ID—some common examples include a Montana driver's licenses, state identification card, military identification, and tribal identification. Just to name a few."

99. The audio script of the voter identification and registration television and radio ads directed viewers to a website prominently displaying voter identification options, the voter registration application, an option to check voter registration status, and county election office information. In addition to the audio script directing voters to this website, the television ad features the website in text layered as a graphic over the video footage, providing voters with an auditorial and visual means to capture the information.

100. The Secretary spent significant time and resources to ensure the 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.

101. The Voter Identification Information page referenced in the public service announcement has been viewed several hundred times since it was launched on April 20, 2021, as part of implementation after SB 169 was signed into law.

102. It was important to the Secretary that outreach to voters regarding identification provide awareness 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.

103. In conjunction with the voter identification outreach effort, the Secretary published 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 the day before the election.

104. The registration PSA directs voters to check their registration using Montana's My Voter Page. Prior to the broadcast of the PSA, the Montana Secretary of State procured several changes to the site by the vendor. The My Voter Page homepage directs voters to update their information using the voter registration form if the voters' information has changed. Additionally, the MyVoterPage was updated to include a prominent notice to streamline the process for voters to update their information. The updates to the MyVoterPage are part of a larger outreach effort by the Secretary of State to ensure that voter registration information is accurately recorded prior to Election Day and act as an additional failsafe for voters requiring a status change.

105. The PSA's ran in every television media market in Montana leading up to every Montana election conducted in 2021, including airtime for both the primary and general election. To date, the PSA's have been aired approximately 14,240 times on broadcast television.

106. The value of the television advertising received by the Public Service Announcements to date is approximately \$742,915.

107. In addition to television advertising, the Secretary of State also conducted a massive outreach effort through radio public service announcements to inform Montana voters about the laws in Montana for voter registration and identification.

108. In the lead up to the 2021 primary and general election, over 18,102 radio ads aired to inform voters about Montana's voter registration and identification requirements. The total broadcast value of the radio outreach efforts conducted is approximately \$298,848.00.

109. Along with the radio and television broadcasts of two public service announcements statewide, the Secretary of State published Notice of the Close of Voter Registration Deadline.

110. The Secretary's staff combed through the Montana Secretary of State website to remove all outdated information related to voter identification and voter registration and replace the same with applicable law.

111. The Secretary's staff made countless changes to website content, downloadable content, forms, and other online changes made during the implementation of the law.

112. As part of the implementation, the Secretary launched the Montana Vote Ready website, which provides resources to make sure voters are ready come election time in Montana. The Vote Ready page includes links to the My Voter Page, where voters can check registration status and address information, resources for voter registration, voter identification information, the voter registration application, and facilitates voters with contacting county election administrators. Exhibit 2-5 is an authentic copy of the Vote Ready page, accessible at sosmt.gov/voteready.

113. The Secretary of State's outreach efforts included a mailing to every voter's residential address regarding the voter registration deadlines.

114. The Secretary's Office received several communications relating to this mailing effort. *See* Exhibit 2-6 (an example of communication received by the Secretary of State regarding the mailing).

115. The cost to mail Montana voters about the implemented election laws amounted to \$221,316.61. Exhibit 2-7.

116. It would pose insurmountable challenges to reverse the monumental effort to implement voter registration and identification law in advance of the 2021 municipal primary elections, with no ability to identify the laundry list of election material changes performed beginning in April 2021 related to the legislation. Election officials in the Secretary's Office fear that widespread voter confusion and conflicting information will result from a sudden change before the 2022 primary or general elections.

117. The Secretary and county election officials, among others, regularly rely upon printed copies of Montana Code Annotated Title 13 to navigate through the election administration process. The Secretary of State contracted printing production of 1,950 copies for this purpose at a cost of \$5,176.68. Exhibit 2-8.

118. The Secretary finalized the 2022 Election Judge Handbook for state and county election officials use in the upcoming elections. The Election Judge Handbook is a resource guide used by county and state election officials to navigate the process of administering an election from start to finish. Producing the 2022 Election Judge Handbook involved a collaborative process with state and county election officials.

119. Prior to finalizing the 2021 Election Judge Handbook, the Secretary requested feedback from all county election officials on the final draft. Every county election official requested a specific number of handbooks based on the needs of their county. For example, Flathead County requested 300 copies of the 2022 Election Judge Handbook for election officials to use as guidance for the 2022 elections.

120. The 2022 Election Judge Handbook is currently in print production at Montana State Print and Mail. The estimated cost of producing the 2022 Election Judge Handbook is \$8,014.55.

121. Included in the Election Judge Handbook is a copy of the Polling Place Quick Reference Guide for the 2022 elections. Exhibit 2-9. Printed copies of the guide are provided to every polling place on election day. The guide is the resource used by poll workers to navigate through common situations experienced by election officials in the polling place setting. The guide addresses the common situations identified by detailing the process under Montana's current election laws as implemented.

122. Voter registration and updates to voter registration is routinely offered by several public service agencies as a component of public assistance offerings.

123. A genuine and authentic copy of a monthly voter registration report concerning voter registrations conducted at all statewide DPHHS-Blind and Vision Services for the month of January is attached as Exhibit 2-10.

124. Montana Vocational Rehabilitation and American Job Center offices in Billings, Bozeman, Great Falls, Miles City, Butte, Missoula, Havre, and Kalispell provide voter registration throughout the year in the process of providing services to customers. Exhibit 2-11 is

a genuine and authentic copy of the voter registration from the Flathead office in November 2021.

125. Voter registration outreach efforts by organizations have adapted to the implemented changes related to registration and identification. For instance, Plaintiff Western Native Voice had begun placing voter registration kiosks in tribal offices, clinics, colleges and stores last month with plans to install two or three kiosks in each tribal community before the general election this November. https://mtstandard.com/news/state-and-regional/govt-and-politics/western-native-voice-sets-up-voter-registration-kiosks/article_7012bd99-ee35-58c8-853f-9b0e8ca12ce7.html

126. Per the Secretary's Directive 1-15, county governments in counties with tribal lands and tribal governments are currently engaged in collaborative efforts to provide voting access opportunities to tribal voters. Exhibit 2-12.

127. In some cases, the counties and tribal governments engaged in these discussions are parties to the settlement in *Wandering Medicine*, the terms of which provide mutually agreed upon voting access opportunities for tribal voters during the election. In response, the Secretary of State's Election Director, Dana Corson, expressly communicated to county election officials and tribal governmental partners the Secretary of State's willingness to assist in the discussion where it is appropriate to do so. Exhibit 2-13 is a genuine and authentic copy of an example of Mr. Corson's correspondence with county and tribal governments related to tribal voting access.

//

HB 506

128. Montana's Constitution states an individual must be eighteen years of age or older to vote. Mont. Const. art. II, § 2. Montana's election laws defined a "voted ballot" as a ballot

that is deposited in the ballot box at a polling place, received at an election administrator's office, or returned to a place of deposit. § 13-1-101(54), MCA.

129. Before the implementation of HB 506, some counties would issue ballots to individuals before they had turned eighteen years of age as long as those individuals would turn eighteen by the date of the related election.

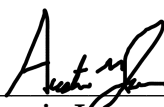
130. This practice at times resulted in seventeen-year-old individuals receiving a ballot and returning that ballot to their local election office before they turned eighteen. Because Montana's election laws define a "voted ballot" as a ballot that has been returned to the local election's office, this practice resulted, at times, in illegal votes.

131. In the months leading up to the 2020 General Election, the Secretary's office learned that county election administrators had developed their own procedures to remedy this issue. Lewis and Clark County, for example, would send a letter warning individual under the age of eighteen not to submit their ballots until they turned eighteen. Missoula County would hold these ballots in a vault until they "cured" on the date of the election. And Yellowstone County simply refused to issue a ballot to individuals under the age of eighteen.

132. HB 506 resolved this disparate treatment of seventeen-year-old voters by requiring that a person meet both the residency requirement set by the Legislature and the age requirement set by the Constitution before being issued a ballot.

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

02/16/2021 Helena, MT
Date and Place


Austin James

Second Declaration of Austin James

April 8, 2022

(Doc. 130)

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EXHIBIT 1

SECOND DECLARATION OF AUSTIN JAMES

RETRIEVED FROM DEMOCRACYDOCKET.COM

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official capacity as Montana Secretary of State*

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

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,
Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

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

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

Second Declaration of Austin James

I, Austin Markus James, state and affirm that the following facts are true and correct to the best of my knowledge:

1. I am over 18 years old and I make this declaration based upon my personal knowledge and experience.
2. I am the Chief Legal Counsel for the Montana Secretary of State. I have held this position since May 2019.
3. School board elections in Montana are scheduled to occur May 3, 2022.
4. Montana's state-wide primary is scheduled to occur June 7, 2022.
5. There are a record number of individuals volunteering to assist election administrators as poll workers for the upcoming 2022 election cycle.
6. The Secretary's Office has already delivered approximately 4,400 copies of the 2022 Election Judge Handbook to various election administrators.
7. Below is a true and accurate copy of a statement published by Gallatin County on April 7, 2022, regarding the close of Election Day Registration. This information was last accessed April 8, 2022.



8. Below is a true and accurate depiction of the information stated on Missoula County's website (<https://www.missoulacounty.us/government/administration/elections-office/frequently-asked-questions>) regarding the close of Late Registration. This information was accessed on April 8, 2022.

Q: What are the deadlines for the close of regular registration for elections?

Answer: Regular registration closes 29 days before any election. Late registration begins the next day, and ends at noon the day before Election Day. Late registration occurs at the Missoula County at 140 N Russell St.

9. Below is a true and accurate depiction of the information stated on Missoula County's website (<https://www.missoulacounty.us/government/administration/elections-office/frequently-asked-questions>) regarding what forms of ID are acceptable to vote. This information was accessed on April 8, 2022.

Q: What forms of ID are acceptable to vote?

Answer: All voters will be required to show one form of identification at the polls on Election Day. Acceptable forms of identification are:

- Driver's License
- MT State ID
- Military ID Card
- Tribal Photo ID
- US Passport
- MT Concealed Carry Permit

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

4/8/2022
Helena

Date and Place



Austin James

CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit to the following on 04-08-2022:

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Electronically Signed By: Dale Schowengerdt
Dated: 04-08-2022

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Defendant's Brief in Support of Motion
to Suspend Preliminary Injunction
Pending Appeal

April 8, 2022

(Doc. 129)

RETRIEVED FROM DEMOCRACYDOCKET.COM

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official capacity as Montana Secretary of State*

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

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

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

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

**DEFENDANT'S BRIEF IN
SUPPORT OF MOTION TO
SUSPEND PRELIMINARY
INJUNCTION PENDING APPEAL**

**EXPEDITED REVIEW
REQUESTED**

Defendant Montana Secretary of State Christi Jacobsen (“Secretary”) respectfully requests the Court suspend its preliminary injunction of HB 176 and SB 169 pending the Secretary’s appeal to the Montana Supreme Court of the Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs’ Motion for Preliminary Injunctions, Dkt. 124. Due to Plaintiffs’ delays, the injunction was entered only 62 days before Montana’s June 2022 primary elections and upends the status quo by invalidating nearly a year’s worth of efforts by the Secretary to implement the challenged laws, educate voters, train election officials, and update Montana’s election infrastructure. To avoid those serious consequences—especially the voter confusion that certainly will result—the Court should exercise its discretion by suspending the preliminary injunction pending the Secretary’s expedited appeal. Suspending an injunction pending appeal is consistent with well-settled law. Both the U.S. Supreme Court and the Montana Supreme Court have strongly discouraged courts from modifying election administration on the eve of an election to avoid the very consequences that will result here. *See Republican National Comm. v. Democratic National Comm.*, 140 S. Ct. 1205, 1207 (2020) (“This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election”); *Order, Stapleton v. Thirteenth Judicial District Court*, OP 20-0293 (May 27, 2020).

Additionally, the Secretary moves the Court to modify the scope of its injunction as to HB 506 and HB 530 (and, in the alternative to the relief requested above, as to HB 176 and SB 169) to apply only to the provisions that Plaintiffs challenged in their respective preliminary injunction motions. Montana Rule of Appellate Procedure 22(1)(a)(iii) authorizes the Court to suspend and/or modify the preliminary injunction order.

Secretary Jacobsen respectfully requests the Court conduct an expedited review and issue an order (either granting or denying this motion) so that expedited relief may be sought from the Montana Supreme Court, if necessary, pursuant to Montana Rule of Appellate Procedure 22(2).

Legal Standard

A party may file a motion in the district court to “suspend” or “modify” an injunction “pending appeal.” Mont. R. App. P. Rule 22(1)(a)(iii). Further, the Court may suspend or modify an injunction to “secure the opposing party’s rights.” Mont. R. Civ. P. Rule 62(c). There is no precise formula governing when a stay of an injunction should be granted—such decisions fall within the Court’s considerable discretion. *See generally Intermountain Tel. & Power Co. v. Mid-Rivers Tel. Coop.*, 201 Mont 448, 453–454, 655 P.2d 491, 494 (Mont. 1982). The Court possesses inherent power to stay proceedings to ensure the economy of time and effort for litigants. *See Henry v. District Court*, 198 Mont. 8, 13, 645 P.2d 1350, 1352 (Mont. 1982).

I. The preliminary injunction impermissibly alters the status quo and will cause widespread voter confusion.

The limited purpose of a preliminary injunction is to “preserve the status quo and minimize the harm to all parties pending final resolution on the merits.” *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386 (citations omitted). This Court’s preliminary injunction fundamentally alters the status quo: fifty-two different elections occurred in the Fall of 2021, Declaration of Austin James, Dkt. 91 at ¶ 35, and approximately 337,581 votes have been cast following the passage of these laws, Dkt. 91 at ¶ 36. Instead of preserving the status quo, the Court’s preliminary injunction not only alters the fundamentals of the upcoming election at the last moment, but will inevitably lead to widespread confusion among voters.

A. Indisputably, the Court’s preliminary injunction will confuse voters by undoing the Secretary’s efforts to educate Montanans on HB 176 and SB 169.

Over the past year, the Secretary has taken innumerable actions to implement the changes directed by HB 176 and SB 169 and educate voters on the changes to polling place identification and voter registration prescribed by these laws. *See* Dkt. 91 at ¶¶ 17–18, 32–36, 39, 48–49, 55, 58–64, 72, 74–75, 78–87, 94–99, 105–106, 108, 113, 118–121. A large portion of the Secretary’s work has been dedicated to preparing voters for the upcoming elections and ensuring information transmitted to voters was consistent with changes made by HB 176 and SB 169. Montana’s May 2022 school board elections are now less than one month away, and Montana’s state-wide June 2022 primary elections are two months away. Second Declaration of Austin James, Exhibit 1 at ¶¶ 3–4 (April 8, 2022). Accordingly, much of this preparation has already been implemented by either the Secretary and/or various county election officials.

Consider the following: by statute, county election officials are required to publish notice specifying the days on which regular and late voter registration will close. Mont. Code Ann. § 13–2–301(b). Montana county election administrators are already publishing notices regarding the close of the late registration period with respect to the upcoming school board elections. For example, on Thursday, April 7, 2022—less than 24 hours after the Court issued its injunction—Gallatin County published notice that the late registration period would close at noon the day before the upcoming school board election. Ex. 1 at ¶ 7. But, as the Court has enjoined HB 176, this is no longer correct. The election administrator for Gallatin County submitted a declaration in support of Plaintiffs in this case, and even he failed to accurately inform voters as to when late registration now closes. *See* Declaration of Eric Semerad, Dkt 66 . And the information currently provided by the Missoula County election administrator, who also submitted a Declaration in

support of Plaintiffs in this case, *see* Declaration of Bradley Seaman, Dkt. 68, is also incorrect. As of April 8, 2022, Missoula County is still advising voters that late registration closes “at noon the day before Election Day.” Ex. 1 at ¶¶ 8–9. If Montana election officials are confused about Montana election law following the Court’s injunction, voters necessarily will be as well. But the difficulty in revising the information county election officials must provide to voters ahead of the upcoming elections is not the only issue.

The Secretary has created and distributed new voter registration cards. Dkt. 91 at ¶¶ 32–34. These cards have been issued to individuals to confirm their voter registration has been processed. Dkt. 91 at ¶ 39. Following passage of SB 169, the Secretary updated the voter registration card to reflect that the card, along with “a photo ID containing [the voter’s] name,” was sufficient documentation to allow an individual to vote. Dkt. 91 at ¶¶ 32–34. These voter cards have been widely distributed. Dkt. 91 at ¶ 39. But, following the injunction, that statement is no longer valid because the previous version of the law (reimplemented by the Court) required that the photo identification card be “current and valid.” Because it is impossible to inform every voter who has received such a card that they now must bring a “current and valid” photo identification card, some voters—and especially voters possessing tribal IDs, as discussed below—may rely to their detriment on SB 169’s revision.

And it does not end there. The Secretary has spent an extraordinary amount of time and effort informing Montana voters of the changes made by the laws the Court now enjoins, in particular SB 169 and HB 176. *See* Dkt. 91 at ¶¶ 105–106 (the Secretary has aired public service announcements over 14,000 times on broadcast television regarding registration and identification requirements), ¶ 108 (the Secretary has aired over 18,000 radio ads information

voters about registration and identification requirements). Additionally, every Montana voter has been mailed information regarding the change to voter registration caused by HB 176. Dkt. 91 at ¶ 113. This Court’s injunction renders the information provided to voters incorrect. And the immediate nature of this injunction will cause voter confusion, which will be amplified if the Court’s decision—or even parts of it—are ultimately overturned by the Montana Supreme Court on appeal. Beyond voter confusion, these consequences will undermine public confidence in Montana elections by highlighting the unsettled and ever-changing rules governing the upcoming elections. Ironically, a primary goal of the challenged legislation was to strengthen voter confidence in Montana elections. It benefits all Montanans to wait until the Supreme Court decides whether a preliminary injunction is appropriate before fundamentally altering the now-established, and widely-broadcast, election requirements.

The Secretary intends to ask for expedited appellate review of the preliminary injunction order prior to the June primary election. Given the proximity of the June primary election, immediate enforcement of this injunction simply does not serve the public interest. Thus, the Court should suspend its injunction pending appeal. Time and time again, the U.S. Supreme Court has strongly cautioned against decisions modifying election administration on the eve of elections. *See Republican National Comm.*, 140 S. Ct. at 1207; *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (“Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”). To be clear, it was Plaintiffs’ delay in seeking injunctive relief that caused the preliminary injunction to be issued at this late date. But the consequences of the Court failing to heed the U.S. Supreme Court’s warnings will be especially grave in this case. That

disenfranchisement will be the result of a lawsuit purporting to vindicate voting rights is a grave result that should give Plaintiffs, and the Court, pause.

B. The preliminary injunction infuses chaos into the administration of Montana's elections by undoing the Secretary's efforts to implement HB 176 and SB 169 and train Montana election officials on HB 176 and SB 169.

Unfortunately, it is not just voters who are facing a litany of consequences due to the timing of the Court's Order. The issuance of the injunction less than one month prior to the May school board elections and two months prior to the June primary disregards, and undoes, the extensive work by the Secretary and Montana election administrators who have been preparing for the 2022 election cycle.

The Secretary has already promulgated guidance to election administrators ahead of the upcoming elections and has engaged in extensive training of election administrators across Montana, many of whom are administering an election for the first time. The Secretary has issued an Election Judge Handbook, a Polling Place Situation Quick Guide, and other Election Judge Training materials. *See e.g.* Dkt. 91 at 118–121. The Election Judge Handbook, for example, was delivered to election administrators last week. Ex. 1 at ¶ 6. In total, 4,400 copies were transmitted by the Secretary to various election administrators, election officials, and poll workers in Montana. *See* Ex. 1 at ¶ 6. The Election Judge Handbook contains information specific to HB 176 and SB 169—information that, due to the Court's injunction—is no longer correct. *See* Dkt. 91 at ¶ 118–121. As a practical matter, it is impossible for the Secretary to revise and re-publish the Election Judge Handbook and redistribute it ahead of the upcoming elections. But even if there were time to do so, the broad scope of the Court's injunction leaves the Secretary unsure as to precisely what revisions must be made. One goal of § 1 of SB 169 was to make it

easier for Montana tribal members to vote with expired tribal ID. Must the Secretary now disallow the use of tribal photo identification cards as stand-alone forms of voter identification if they are not “current and valid”? The Court’s Order suggests she must.

Relatedly, there are record numbers of new poll workers volunteering to assist election administrators this year. Ex. 1 at ¶ 5. As they are new, the only training these new poll workers have received to date is based on Montana election laws as modified by HB 176 and SB 169. But because the injunction comes so close to the upcoming elections, it leaves insufficient time to for: (i) the Secretary to issue new training guidance; and (ii) election administrators in all fifty-six counties to re-train these new poll workers ahead of the elections set for May and June 2022.

Additionally, the Court’s Order likely mothballs the new election software being developed by the Secretary: ElectMT. After delay caused, in part, by a lack of clarity in Montana’s election laws—and subsequently (but, given this Court’s order, only temporarily) resolved by HB 506—election officials were slated to run a parallel test of the ElectMT system in the upcoming elections. But this system is based on Montana election law as amended by HB 176, SB 169, and HB 506, *see generally* Declaration of Melissa McLarnon, Dkt. 81, and, as a practical matter, cannot be changed prior to the upcoming elections, particularly because the Secretary’s staff must now focus on reverting the changes made to the existing MTVotes system. Given the extraordinarily broad scope of the injunction, the Secretary is likely now prohibited from further implementing this system. Thus, the parallel test likely will be cancelled leading to further delay of the implementation of this long-awaited system, which is designed to harden Montana’s election infrastructure and increase voter confidence.

C. It is impossible to foresee all consequences of the Court’s preliminary injunction due to its effect on the administrative rules promulgated by the Secretary over the past year.

Over the past year, the Secretary has engaged in an extensive effort to overhaul administrative rules interpreting Montana’s election laws. Dkt. 91 at ¶¶ 75, 78–87. This process concluded in January 2022. Dkt. 91 at ¶¶ 78–87. One purpose of the Secretary’s efforts was to implement SB 169 and HB 176. Dkt. 91 at ¶ 75. As a result, administrative rules that interpreted previous versions of the statutes modified by both SB 169 and HB 176 were repealed. Thus, the injunction puts Montana election officials in the untenable position of administering an election without the benefit of any guidance from Montana’s administrative rules, which historically have included detailed instructions for election administration.

Most importantly, new administrative rules promulgated by the Secretary implemented SB 169 and HB 176, and—at the same time—clarified issues with the then-existing administrative rules. These revisions were completed in packages, meaning there is no practical way for the Secretary to parse which administrative rules were implemented as a direct result of SB 169 or HB 176, and which administrative rules were unrelated. That is especially true given the short timeframe before the upcoming elections. As a result, the preliminary injunction has the practical effect of invalidating broad swathes of administrative rules developed and implemented over the last year—including administrative rules unrelated to the underlying litigation. And the Secretary lacks sufficient time to adopt administrative rules that are consistent with the Montana election laws restored by the Court in its Order.

II. Procedural issues warrant the Court’s modification of the scope of the preliminary injunction pending appeal.

An injunction must be fashioned to the specific circumstances of a particular case.

Simpkins v. Speck, 2019 MT 120, ¶ 19, 395 Mont. 509, 443 P.3d 428 (internal quotations and citations omitted). But the Court’s preliminary injunction grants relief not requested by any Plaintiff. Plaintiffs only challenged specific sections of the legislation at issue in this case, but the Court enjoined enforcement of the legislation in its entirety. The Court must, at minimum, modify the injunction issued to apply only to the specific sections of the bills at issue—HB 176, SB 169, HB 506, and HB 530—that were actually challenged by Plaintiffs. If the Court does not do so, the Montana Supreme Court likely will because a district court is “only empowered to grant [injunctive relief] no broader than necessary to cure the effects of the harm caused by the violation.” *Simpkins*, ¶ 19.

A. The Court’s Order restrains and prohibits the Secretary from enforcing any aspect of SB 169 § 1, SB 169 § 3, and SB 169 § 4 even though Plaintiffs did not seek injunctive relief against these sections.

SB 169 consists of four relevant parts. SB 169 § 1 amends Montana Code Annotated § 13–2–110, to revise the documentation an individual may use to register to vote. SB 169 § 2—challenged by the Montana Democratic Party Plaintiffs and the Montana Youth Action Plaintiffs—amends Montana Code Annotated § 13–13–114 to revise the documentation an individual may provide in order to vote. SB 169 § 3 amends Montana Code Annotated § 13–13–602 to revise the information an individual may provide when voting by mail. SB 169 § 4 amends Montana Code Annotated § 13–15–107 to create a new fail-safe that allows an elector who is unable to provide the necessary identification to vote additional methods of proving their identity to allow them to cast their ballot. In both their complaints and preliminary injunction motions,

Plaintiffs ignored SB 169 § 1, SB 169 § 3, or SB 169 § 4, and never requested any relief from the Court regarding those specific subsections. And similarly, no Plaintiff offered any argument as to why SB 169 § 1, SB 169 § 3, or SB 169 § 4 should be enjoined. In fact, the Montana Democratic Party Plaintiffs specifically asked the Court to only enjoin the changes made by Section 2 of SB 169 to Montana Code Annotated § 13-13-114(1). Dkt. 71 at 2. While the Montana Youth Action Plaintiffs failed to offer similar specificity, they similarly offered no argument against either provision.

Despite no challenge being mounted to either SB 169 § 1, SB 169 § 3, or SB 169 § 4—and with no factual record or legal support to establish that statutory changes made by SB 169 § 1, SB 169 § 3, or SB 169 § 4 were unconstitutional—the Court’s preliminary injunction order restrains and prohibits the Secretary, her agents, employees, successors, and “all persons acting in concert with each or any of them,” from enforcing “any aspect” of the amendments made by these provisions. Dkt. 124, Order at 57.

The harm that will be caused to Montana voters by this overly broad preliminary injunction is concrete and impending. For example, SB 169 § 1 significantly modified the documentation that individuals—and particularly Native Americans—could rely on when registering to vote. Previously, an individual was allowed to rely on alternative forms of identification to register to vote only if they did not have a Montana driver’s license or a social security number. *See* Mont. Code Ann. § 13-2-110(3)-(4) (2019). SB 169 § 1 allowed alternative forms of identification to be used if the applicant was “unable to provide” a primary form of identification—removing the barrier that required individuals to demonstrate they did not, in fact, have a driver’s license or social security number.

Additionally, SB 169 § 1 allowed a tribal photo identification card to be used as a stand-alone form of identification. Mont. Code Ann. § 13-2-110(4) (2021). Previously, such documentation was required to be “current and valid.” Mont. Code Ann. § 13-2-110(4) (2019). SB 169 § 1 reflected the Montana Legislature’s intention to dismantle barriers to Native Americans attempting to register to vote by removing the requirement that “tribal photo identification cards” be “current and valid” for voter registration purposes. However, because the Court’s order enjoins the entirety of SB 169—instead of only SB 169 § 2—expired “tribal photo identification cards” can no longer be used as stand-alone forms of ID when an individual is attempting to register to vote.

In short, the preliminary injunction grants relief not requested by any party and goes far beyond what is necessary to prevent the harms alleged by Plaintiffs. *See Simpkins*, ¶ 19 (a district court is “only empowered to grant relief no broader than necessary to cure the effects of the harm caused by the violation”). Indeed, the unnecessarily broad scope of the injunction harms the third parties Plaintiffs all ostensibly seek to protect. Additionally, because SB 169 contains a severability clause, there can be no argument that enjoining enforcement of the entire statute is necessary to protect Plaintiffs from the alleged harm. *See* SB 169, § 6. For these reasons, the Court should modify the scope of the preliminary injunction.

B. The Court should modify its preliminary injunction as to HB 506 and HB 530.

1. The Court’s Order restrains and prohibits the Secretary from enforcing any aspect of HB 506 § 1 and HB 506 § 3 even though Plaintiffs did not seek injunctive relief against these sections.

The injunction against the Secretary is also overly broad as to HB 506. HB 506 contains three relevant sections. HB 506 § 1 amends Montana Code Annotated § 5-1-115 to revise the

redistricting criteria utilized to establish legislative and congressional districts. HB 506 § 2—the only provision challenged by a Plaintiff in this case—amends Montana Code Annotated § 13–2–205 to revise when ballots may be issued to individuals. HB 506 § 3 amends Montana Code Annotated § 13–15–401 to revise the timeframe within which county canvassers must meet to complete the canvas of returns. The argument stated above as to SB 169 applies with equal force here. The Montana Youth Action Plaintiffs—the sole challenger to HB 506—did not offer any argument as to why either HB 506 § 1 or HB 506 § 3 are unconstitutional, nor did the Montana Youth Action Plaintiffs target these provisions in their request for injunctive relief. Additionally, because HB 506 contains a severability clause, there can be no argument that enjoining enforcement of the entire statute is necessary to protect Plaintiffs from the alleged harm. *See* HB 506, § 5. The Court should also modify its injunction to the specific circumstances of this case. *Simpkins*, ¶ 19 (citations omitted).

2. The Court’s Order restrains and prohibits the Secretary from enforcing any aspect of HB 530 § 1 even though Plaintiffs did not seek injunctive relief against this section.

HB 530 consists of two parts. HB 530 § 1 directs the Secretary to (i) “adopt rules defining and governing election security”; (ii) annually assess compliance with election security rules; and (iii) provide an annual summary report on statewide election security. Meanwhile, HB 530 § 2 directs the Secretary to adopt an administrative rule regulating certain aspects of third-party ballot collection in Montana. The Montana Democratic Party Plaintiffs are the sole challengers to HB 530 § 1, but they offered no argument as to why injunctive relief was warranted and made no showing of immediate harm. But the Court’s Order restrains and prohibits the Secretary from taking any action under HB 530 § 1. As stated above, an injunction that is not tailored to remedy

the specific harm alleged by the moving party is invalid. *See Simpkins*, ¶ 19 (citations omitted). Additionally, because HB 530 contains a severability clause, there can be no argument that enjoining enforcement of the entire statute is necessary to protect Plaintiffs from the alleged harm. *See* HB 530 § 4. The Court should modify its injunction as to HB 530 to target only HB 530 § 2—the provision analyzed by the Plaintiffs in their request for injunctive relief.

Conclusion

For the reasons stated above, the Secretary requests the Court: (i) suspend the preliminary injunction issued on April 6, 2022 pending the Secretary’s pending appeal to the Montana Supreme Court; and/or (ii) modify the scope of the Court’s preliminary injunction order. The Secretary respectfully requests expedited review of this motion.

Dated this 8th day of April, 2022.

By Dale Schowengerdt

CROWLEY FLECK PLLP

*Attorneys for Defendant Christi Jacobsen, in her
official capacity as Montana Secretary of State*

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WNV Brief in Opposition to Defendant's
Motion to Suspend Preliminary
Injunction Pending Appeal

April 14, 2022

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)	
)	
Plaintiffs,)	Cause No. DV 21-0451
)	
Western Native Voice, Montana Native Vote,)	Hon. Michael Moses
Blackfeet Nation, Confederated Salish and)	
Kootenai Tribes, Fort Belknap Indian)	
Community, and Northern Cheyenne Tribe,)	
)	
Plaintiffs,)	WESTERN NATIVE VOICE
)	PLAINTIFFS' BRIEF IN
)	OPPOSITION TO DEFENDANT'S
)	MOTION TO SUSPEND
Montana Youth Action, Forward Montana)	PRELIMINARY INJUNCTION
Foundation, and Montana Public Interest)	PENDING APPEAL
Research Group,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
CHRISTI JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
)	
Defendant.)	
)	

INTRODUCTION¹

The people of the State of Montana have relied upon Election Day Registration (“EDR”) for over fifteen years, rejecting previous attempts to limit it as recently as 2014. EDR contributes to an appreciable increase in the number of people who are able to vote in each election, sometimes at a number greater than margins of victory for certain offices. The Secretary, ignoring the standards under Montana law for the suspension of an injunction, spills ink almost exclusively on administrative concerns, while ignoring the fundamental nature of the right to suffrage under the Montana Constitution. Even with this limited and misguided focus on administrative burden, the Secretary ignores the fifteen years of experience that voters, election

¹ *Western Native Voice* Plaintiffs challenged only HB 176 and HB 530, § 2, so only offer response as it relates to those two enactments. Defendant does not seek to stay the injunction of HB 530, § 2, and the *Western Native Voice* Plaintiffs commend the Secretary’s decision in light of Native voters’ proven reliance on absentee ballot assistance.

administrators, and the Secretary's Office have with EDR. The Secretary and election administrators know how to run elections with EDR in place, have done so smoothly for over a decade, and any claims to the contrary should be viewed with utmost skepticism. Reversion to the status quo as a factual matter is straightforward: Simply run the 2022 elections in the same way that the last statewide elections were run.

As she did in opposition to Plaintiffs' granted motions for preliminary injunction, the Secretary ignores governing Montana law as to what constitutes the status quo. The "status quo" is the state of Montana law before the challenged enactments were passed, as that is the "last actual, peaceable, non[-]contested condition which preceded the pending controversy." *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 414, 473 P.3d 386, 392 (quoting *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 14, 334 Mont. 86, 90, 146 P.3d 714, 717). These laws have been "contested" since their passage, with the instant suits filed shortly thereafter. Not a single state-wide election has occurred since HB 176 was passed. Under Montana law, the status quo is thus the same system that preserves Montanans' constitutional rights: EDR.

ARGUMENT

A. Standard of Review

The Secretary utterly ignores the standard she must meet in order for the Court to suspend the preliminary injunction pending appeal. Rule 62(c) of the Montana Rules of Civil Procedure is "based on, and virtually identical in substance to" current Federal Rule of Civil Procedure 62(d). *Pinnacle Gas Res. v. Diamond Cross Props.*, Cause No. DV 07-150, 2008 Mont. Dist. LEXIS 240, *2 (Mont. Dist. Ct. 16th Dist.). And so, district courts consider four factors when deciding whether to suspend an injunction pending appeal—namely: "1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits. 2. Whether the applicant will be irreparably injured absent a stay. 3. Whether issuance of the stay will substantially injure the other parties interested in the proceeding. 4. Where the public interest lies." *Id.* (citation omitted).; *see also Taylor v. Mont. High Sch. Ass'n*, Cause No. CDV-2015-719, 2015 Mont. Dist. LEXIS 68, *3 (Mont. Dist. Ct. 1st Dist.) (relying on comparison to Fed. R. App. P. 8(a), instead of Fed. R. Civ. P. 62(d), to set the same four factor test). Indeed, "the standard for suspending an injunction pending appeal is essentially the same as the standard for granting the injunction in the first place." *Pinnacle Gas*, 2008 Mont. Dist. LEXIS 240, at *2.

A stay pending appeal is an “extraordinary remedy.” *Lohmeier v. Gallatin County*, 2003 ML 2035, ¶ 28; *see also Alaska Central Express, Inc. v. United States*, 51 Fed. Cl. 227, 229 (2001); *Brotherhood of Ry. & S.S. Clerks, Freight Handlers, Express & Station Employees v. Nat’l Mediation Bd.*, 374 F.2d 269, 275 (D.C. Cir. 1966).

The Secretary has not even tried to make the showing that she is entitled to such relief. She is not.

B. The Preliminary Injunction Should Not Be Suspended.²

While the Secretary has not tried to meet the four factors relevant to suspending an injunction pending appeal, Plaintiffs have made a clear showing as to each in the briefing on their preliminary injunction.

1. Defendant Has Not Made a Strong Showing That She is Likely to Succeed on the Merits Regarding HB 176.

Defendant did not even attempt to meet her burden of establishing a strong showing that she is likely to succeed on the merits. Indeed she cannot, because Plaintiffs have already demonstrated that they are likely to succeed on the merits of their claims. HB 176 unlawfully burdens Plaintiffs’ fundamental rights to vote and equal protection. Strict scrutiny applies when evaluating both claims, because the Montana Supreme Court has consistently held that “strict scrutiny [is] used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.” *Driscoll*, ¶ 18; *see also State v. Riggs*, 2005 MT 124, ¶ 47, 327 Mont. 196, 206, 113 P.3d 281, 288 (“A right is ‘fundamental’ under Montana’s Constitution if the right . . . is found in the Declaration of Rights.”); *Wadsworth v. State* (1996), 275 Mont. 287, 302, 911 P.2d 1165, 1174. It is uncontested that “[t]he right of suffrage is a fundamental right.” *Willems v. State*, 2014 MT 82, ¶ 32, 374 Mont. 343, 352, 325 P.3d 1204, 1210; *see also Oberg v. City of Billings* (1983), 207 Mont. 277, 280, 674 P.2d 494, 495 (“Examples of fundamental rights include . . . right to vote”); Mont. Const. art. II, § 13. As such, given that HB 176 implicates Plaintiffs’ fundamental rights, strict scrutiny applies under binding Montana

² In the interests of brevity and recognizing that the Court just considered these issues in its comprehensive decision on the multiple motions for preliminary injunction in the consolidated cases, Plaintiffs do not retread all of the same ground they covered in their briefing in support of the preliminary injunction and incorporate by reference those filings. *See Western Native Voice Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction*, Dkt. No. 42; *Western Native Voice Plaintiffs’ Reply Memorandum in Support of Motion for Preliminary Injunction*, Dkt. No. 98.

Supreme Court precedent. *See Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 17, 325 Mont. 148, 154, 104 P.3d 445, 449–50 (noting that strict scrutiny applies where a law implicates a fundamental right); *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 21, 314 Mont. 314, 322, 65 P.3d 576, 581 (applying strict scrutiny to voting restriction).

HB 176 unlawfully “burdens the right to vote” for Native Americans living in rural tribal communities because it “eliminate[es] [an] important voting option[.]” for those communities: EDR. *Driscoll v. Stapleton*, Cause No. DV 20-408, slip op. at 23, ¶ 7. Native American voters face numerous barriers to the franchise including rampant poverty, worse educational and health outcomes, less stable housing and higher homelessness rates, long distances to regular access to polling places and post offices, lack of internet or residential mail services, and inadequate transportation. *See, e.g.*, McCool Rep. ¶¶ 18-21, 41-46, 67 & tbls. 32-33, 83-85 (Dkt. No. 45). Native Americans living on reservations also use EDR at a consistently higher rate than other Montanans. Street Aff. ¶ 4 (Dkt. No. 44). Consequently, HB 176 denies a vital service for Native American voters whose right to vote will be severely burdened, if not altogether eliminated, without EDR.

HB 176 also violates Plaintiffs’ fundamental right to equal protection. In considering Plaintiffs’ equal protection claim, the first step is to “identify the classes involved and determine whether they are similarly situated,” as even a facially neutral classification may constitute an equal protection violation “if in reality it constitutes a device designed to impose different burdens on different classes of persons.” *Snetsinger*, ¶ 16 (citations and brackets omitted). For purposes of the equal protection analysis, Native American voters and non-Native voters are similarly situated. And as discussed *supra*, HB 176 disproportionately burdens the right to vote of Native American voters in Montana. McCool Rep. ¶¶ 160, 165 (Dkt. No. 45); Street Aff. ¶¶ 4, 6 (Dkt. No. 44).

Any governmental infringement on a fundamental right cannot be justified unless strict scrutiny is satisfied—in other words, the law must be narrowly tailored in service of a compelling government interest. *Mont. Cannabis Indus. Ass’n v. State* (“MCIA”), 2012 MT 201, ¶ 16, 366 Mont. 224, 229, 286 P.3d 1161, 1165. Strict scrutiny “is seldom satisfied.” *Butte Cmty. Union v. Lewis* (1986), 219 Mont. 426, 431, 712 P.2d 1309, 1312. Whether a compelling state interest exists is a question of law. *State v. Pastos* (1994), 269 Mont. 43, 47, 887 P.2d 199, 202. “[T]o sustain the validity of [an] invasion [upon a fundamental right]” the Secretary “must

also show that the choice of legislative action is the least onerous path that can be taken to achieve the state objective.” *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174 (citation omitted). Such a showing cannot merely be stated, it must be demonstrated and proven via “competent evidence.” *Id.* at 303, 1174. The Secretary has not and cannot demonstrate that HB 176 is narrowly tailored to a compelling government interest.

The government interests cited by proponents of HB 176 during the legislative session leading to its adoption have not been proven via competent evidence. Bill sponsor Rep. Greef stated that the legislation would help combat voter fraud; however, when pressed, she was unable to provide any evidence of voter fraud. McCool Rep. ¶¶ 117-118 (Dkt. No. 45). When asked to provide an example of voter fraud, Representative Greef said, “[w]hen I talked about voter fraud I wasn’t talking about Montana specifically,” and then claimed, without any corroborating evidence, that voter fraud was a national problem. *Id.* ¶ 118. In reality, the data show clearly that voter fraud is infinitesimally small in both Montana and the nation more broadly. *Id.* ¶¶ 105-113. As the Montana Supreme Court made clear in *Driscoll*, the government cannot justify HB 176 under any standard, let alone strict scrutiny, without meaningful “evidence . . . of voter fraud or ballot coercion” for such an interest to be relied upon. *Driscoll*, ¶ 22. “Necessarily, *demonstrating* a compelling interest entails something more than simply saying it is so. . . . Simply because the State alleges a compelling interest, does not obviate the necessity that the State prove the compelling interest by competent evidence.” *Wadsworth*, 275 Mont. at 303, 911 P.2d at 1174.

The State’s claim that HB 176 will reduce wait times for voters is likewise without merit. The legislative record contained no evidence that eliminating EDR would alleviate long lines at the polls. McCool Rep. ¶ 117 (Dkt. No. 45). In fact, EDR simply could not have contributed to lines at polling places, as the process was only available at county election offices. Wait times to vote in Montana are extremely low, with the vast majority of voters not even having to wait 10 minutes to vote. *See* Street Rebuttal Rep. at 10-13 (Dkt. No. 123). Wait times in Montana are much lower than the national average, and have actually *decreased* in recent years as a greater percentage of Montana voters have relied on absentee voting. *See id.* There is no problem of wait times in Montana, and no evidence that HB 176 would solve such a problem.

Similarly, the State’s claim that HB 176 will reduce administrative burdens is unavailing. It is well established that the Secretary’s interest in easing administrative burdens on some election

officials cannot outweigh the fundamental right to vote. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State’s] office and other state and local offices involved in elections.”); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2012) (finding that administrative, time, and financial burdens on the State are “minor when balanced against the right to vote, a right that is essential to an effective democracy”); *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1348 (N.D. Ga. 2015) (granting injunction under Section 2 of Voting Rights Act, even though county board of commissioners face administrative burdens from injunction, because “the harm [plaintiffs] would suffer by way of vote dilution outweighs the harm to the [board]”). Further, as Plaintiffs noted in their opposition to Defendant’s motion for summary judgment, many election administrators have testified that EDR did not impose significant administrative burdens and that ending EDR might actually make things harder for them. Just last year the State held up EDR as a “helpful provision” and a reason that Montana’s election framework is “robust” and “highly convenient” in “offer[ing] electors a versatile set of options to exercise the franchise.” Rate Aff. ¶¶ 11, 12; Ex. K, at 4, 19; Ex. L ¶¶ 2, 5, 8 (Dkt. No. 43). The Secretary’s predecessor cited EDR as a reason Montana’s “voting model empowers voters” and made no mention of concern about fraud or efficiency. Def.’s Br. in Support of Mot. for Summ. J. at 2, *Western Native Voice v. Stapleton*, No. DV 20-0377 (Mont. Dist. Ct. July 30, 2020).

Defendant declined even to make a showing, let alone a strong one, that she is likely to succeed on the merits. Because it is Plaintiffs who are likely to succeed on the merits of their claims challenging HB 176 (as this Court has already recognized), this factor weighs against suspending the preliminary injunction pending appeal.

2. The Secretary Will Not be Irreparably Injured Absent Suspension of the Preliminary Injunction.

The Secretary will suffer no injury if HB 176 remains enjoined, much less an irreparable one. While the Secretary lists money spent and administrative tasks already undertaken, none of these rise to the level of irreparable harm. *Am. Music Co. v. Higbee*, 1998 MT 150, ¶ 15, 289 Mont. 278, 283, 961 P.2d 109, 112 (monetary outlays do not constitute irreparable harm). Indeed, the injunction of HB 176 merely reverts the operation of voter registration in Montana to the way it has functioned for the past 15 years. Having the Secretary and other elections officials

in the state undertake their duties in the way that they had for over a decade in no way constitutes irreparable injury. Moreover, as HB 176 does not actually advance the interests offered by the Secretary, *see supra* Section B.1, enjoining its operation does not injure the Secretary.

As a constitutional officer, Mont. Const. art. VI, § 1, the Secretary cannot be injured by an injunction that is necessary to protect the rights protected by that very same Constitution. Indeed, all branches of the state government are charged with faithfully executing the Constitution, and so Plaintiffs' likelihood of success ensures that there is no injury to any officer of the state in enjoining operation of HB 176. This Court has already rejected the Secretary's arguments that efforts undertaken to implement HB 176 result in injury:

"Moreover, the Court does not find it persuasive that the Secretary has been taking steps to enact these laws given that is a duty of her job and she has had notice that these laws were contested since before they were signed into law as evidenced in the testimony that occurred in hearings at the legislature and notice soon after they were enacted as evidenced by the Plaintiffs' filing of their complaints. Additionally, Plaintiffs have made this request prior to the holding of the first statewide election since the enactment of these laws."

Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motions for Preliminary Injunctions ("PI Order"), ¶ 92 (Dkt. No. 124).

The Secretary also rehashes her arguments concerning supposed delay, but this Court just determined that "Plaintiffs have not impermissibly delayed in their applications for preliminary injunctions." PI Order ¶ 92. Thus, the timing of the preliminary injunctions does not contribute to any possible harm to the state.

The Secretary has not established irreparable harm absent suspension of the injunction, and so this factor weighs against suspending the preliminary injunction pending appeal.

3. Suspending the Preliminary Injunction Would Substantially Injure Plaintiffs.

This Court has found that "that Plaintiffs have established they will suffer a great or irreparable injury if these laws are not preliminarily enjoined until a case on the merits can be had," PI Order, ¶ 87, and this remains true for a suspension of those same preliminary injunctions. Specifically, the Court determined that Plaintiffs and their members would be irreparably harmed if HB 176 remained in effect during the pendency of the litigation. *Id.* ¶ 89. This is no surprise, as denial of a constitutional right constitutes irreparable harm. *See MCIA*, ¶ 15. And "[b]ecause there can be no 'do-over' or redress of a denial of the right to vote after an

election, denial of that right weighs heavily in determining whether plaintiffs would be irreparably harmed absent an injunction.” *Fish*, 840 F.3d at 752; *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (noting that once an election comes and goes, “there can be no do-over and no redress. The injury to these voters is real and completely irreparable”). “A restriction on the fundamental right to vote therefore constitutes irreparable injury.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also id.* (“When constitutional rights are threatened or impaired, irreparable injury is presumed.”).

The fundamental importance of Plaintiffs’ constitutional rights demonstrates that to suspend the injunction in advance of the 2022 statewide elections would substantially injure Plaintiffs, their members, and the communities they serve, and so this factor weighs against suspending the preliminary injunction pending appeal.

4. The Public Interest Is Served by Denial of the Secretary’s Motion.

While the Secretary did not attempt to tailor her arguments to the governing standard, Plaintiffs understand the bulk of her argument as though it relates to the public interest. As an initial matter, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted).

The Secretary’s claimed concern for voter confusion is perplexing as a factual matter. It is far more likely that voters will be confused by the sudden elimination of EDR, on which they have relied for the past 15 years, rather than voters who became used to its absence during the local elections of 2021. At worst, this latter group will be pleasantly surprised by their ability to rely upon EDR if they so choose. Changes to voting laws do not automatically mean that voters will be confused, and the concern articulated by the U.S. Supreme Court in this context is the risk of the sort of confusion that would provide “incentive to remain away from the polls.” *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006). It is ludicrous to suggest that the law operating in the manner that Montana voters relied upon for over 15 years would cause the sort of confusion that would prevent voters from attempting to vote. This is especially true in the case of EDR, which only makes it easier for Montana voters to access the franchise. The critical factor in the reasoning of *Purcell* included deference to the district court’s discretion. *Id.* Here, if anything, this Court deserves the same deference for its detailed factual findings, including those about the timing of upcoming elections and the relative burdens on voters and election administrators.

The Secretary spills the bulk of her ink on activities undertaken by her office. This is not the test for what constitutes the status quo, *see Driscoll*, ¶ 14, nor does it illustrate any voter confusion of any kind. As the Montana Supreme Court has made clear and as this Court just found in granting the preliminary injunctions, the status quo in question is the law as it existed prior to the enactment of the challenged statutes. As a legal matter, the status quo is the “last actual, peaceable, non[-]contested condition which preceded the pending controversy.” *Driscoll*, ¶ 14 (quoting *Benefis Healthcare*, ¶ 14). And as this Court found, the Secretary “has had notice that these laws were contested since before they were signed into law as evidenced in the testimony that occurred in hearings at the legislature and notice soon after they were enacted as evidenced by the Plaintiffs’ filing of their complaints.” PI Order, ¶ 92. Consistently, “Plaintiffs have been clear that the remedy they seek is a return to the status quo that existed prior to the Montana legislature passing HB 176 . . .”, *id.* ¶ 5, and the administrative duties undertaken by the Secretary are simply “a duty of her job,” *id.* ¶ 92. That the Secretary has undertaken work does not alter the conclusion that the public interest lies in enjoining HB 176. Preventing HB 176 from operating during the upcoming statewide elections is in the clear interest of Montana voters, thousands of whom who have relied upon EDR for over a decade. *See McCool Rep.* ¶ 60 & tbl. 28.

The Secretary’s arguments try to elevate administrative concerns over the fundamental rights of all Montanans, thus improperly assessing the public interest or balance of the equities. Of course, all elections require rules under which they are carried out, but mere invocation of purported “administrative burdens” does not outweigh the disenfranchising effects of HB 176. *Cf. Fish v. Kobach*, 189 F. Supp. 3d 1107, 1150 (D. Kan.), *aff’d*, 691 F. App’x 900 (10th Cir.), *aff’d*, 840 F.3d 710 (10th Cir. 2016), *order enforced*, 294 F. Supp. 3d 1154 (D. Kan. 2018). The Secretary’s assertion that the preliminary injunction will lead to chaos for the upcoming elections is entirely unavailing. EDR was a common and heavily relied upon feature of Montana’s election administration for 15 years. The Secretary and the election administrators can simply conduct voter registration for the 2022 statewide elections under the same rules that operated during the last statewide election. In light of the statewide operation of EDR less than two years ago, the Secretary’s alarmism rings hollow.

Additionally, as a factual matter, the Secretary does not cite a single administrative rule required by HB 176, Def. Br. at 9, and her citation to the highly disputed facts, Def. SUF ¶¶ 75,

78-87, provides no further clarity. The citations to the James Declaration therein likewise do not cite a single administrative rule implementing HB 176, and items printed for use polling locations referenced are likewise unrelated as EDR can never take place at a polling location (only at the county elections office). *See* James Decl. ¶¶ 3, 6-16, 53, 72-127. All of the materials related to polling locations are not implicated by HB 176, so the Secretary’s invocation of these materials has no relationship to that law. Additionally, the Secretary cites the McLarnon Declaration for the contention that the ElectMT system relies on the operation of HB 176. But nothing in the McLarnon Declaration suggests that either ElectMT or MTVotes requires the continuing operation of HB 176. In fact, it does not cite HB 176 or reference EDR at all. *See generally* McLarnon Decl. Finally, in the deposition of Fergus County Clerk and Recorder just this week, she testified that the new system that the Secretary claims is being mothballed has nothing at all to do with the 2022 elections, and would never have been in effect for the upcoming elections that are impacted by the grant of the preliminary injunction.

Finally, the Secretary’s claim that the injunction of HB 176 could cause “disenfranchisement,” Def. Br. at 17, is absurd. There is quite literally no way this could be true. To date—across several rounds of preliminary injunction and summary judgment briefing—Defendant has not even attempted to contest Plaintiffs’ detailed factual findings that HB 176 will significantly increase voter costs and reduce turnout among Montana voters, especially Native American voters. The injunction of HB 176 ensures that the “ultimate failsafe”³ of EDR is available for all Montana voters. As Plaintiffs have shown, it is the suspension of this injunction that would lead to any “disenfranchisement.”

It is plain that the public interest and the balance of the equities counsel in favor of leaving the preliminary injunction undisturbed as this case proceeds to a final hearing on the merits.

* * *

Defendant’s motion falls well short of anything that could justify such an “extraordinary remedy.” *Lohmeier*, ¶ 28. While the application of the four-factor test is not a mechanical one

³ In 2014, when Montana voters affirmed their continued support for EDR, then-Secretary of State described EDR as “the ultimate failsafe.” Lisa Baumann, *Ending Election Day Registration Sees Little Support*, Great Falls Trib., (Oct. 19, 2014, 4:17 PM), <https://www.greatfallstribune.com/story/news/local/2014/10/19/ending-election-day-registration-sees-little-support/17583087/>.

and rests in the discretion of the Court, in this instance, each of the four factors weighs in Plaintiffs' favor, and so the preliminary injunction should remain in place pending appeal.

C. Plaintiffs Do Not Oppose Modification of the Preliminary Injunction with Respect to HB 530.

In their Complaint, Plaintiffs sought relief from the provisions of HB 530 that relate to their ballot assistance efforts—that is, Section 2 of HB 530. *See Western Native Voice Compl.*, Prayer for Relief (DV 21-0560, Dkt. No. 1). Thus, WNV Plaintiffs do not have an objection if the Court modifies the preliminary injunction as it relates to HB 530 to enjoin only Section 2 of that enactment. Plaintiffs defer to the other parties in the consolidated actions who have challenged other sections of HB 530 and the discretion of the Court.

CONCLUSION

For the foregoing reasons, the Secretary's motion to suspend the preliminary injunction should be denied.

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MT Youths Brief in Opposition to
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April 14, 2022

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

<p>Montana Democratic Party, Mitch Bohn, <i>Plaintiffs,</i> Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe, <i>Plaintiffs,</i> Montana Youth Action; Forward Montana Foundation; and Montana Public Interest Research Group, <i>Plaintiffs,</i> vs. CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State, <i>Defendant.</i></p>	<p>Cause No. DV 21-0451 Hon. Michael Moses YOUTH PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO SUSPEND PRELIMINARY INJUNCTION PENDING APPEAL</p>
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Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group (“Youth Plaintiffs”), submit this Brief in Opposition to Defendant’s Motion to Suspend Preliminary Injunction Pending Appeal (“Def.’s Mot.”), and join in full the briefs in opposition also filed on April 14, 2022, by the Montana Democratic Party (“MDP”) and Western Native Voice (“WNV”) plaintiffs.

While the Secretary argues that there “is no precise formula governing when a stay of injunction should be granted,” Def.’s Mot. at 3, there are four established principles to guide the Court’s order: “1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits. 2. Whether the applicant will be irreparably injured absent a stay. 3. Whether issuance of the stay will substantially injure the other parties interested in the proceeding. 4. Where the public interest lies.” *Pinnacle Gas Res. v. Diamond Cross Props.*, Cause No. DV 07-150, 2008 Mont. Dist. LEXIS 240, *2 (Mont. Dist. Ct. 16th Dist.). So, the court “determines whether to grant a stay by balancing competing interests and considering whether the public welfare or convenience will be benefitted by a stay.” *State v. Mont. First Jud. Dist. Ct.*, 361 Mont. 536, 264 P.3d 518 (2011) (citing *Henry v. Seventeenth Jud. Dist. Ct.*, 198 Mont. 8, 13, 645 P.2d 1350, 1353 (1982)). Moreover, the bar for Defendant’s motion is high. *Pinnacle Gas*, 2008 Mont. Dist. LEXIS 240, at *2 (Rosebud County) (“[The] standard for suspending an injunction pending appeal is essentially the same as the standard for granting the injunction in the first place.”).

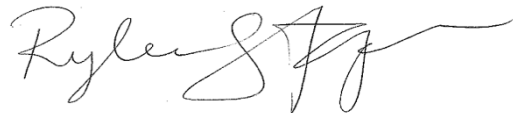
The Secretary bears the burden of showing that she is entitled to a stay of the preliminary injunction, and she has failed to do so.

With respect to House Bill 506 (“HB506”), Youth Plaintiffs do not oppose Defendant’s request that the Court narrow its injunction to prohibit enforcement only of Section 2. *See* Def.’s Mot. at 12–13. Youth Plaintiffs sought relief to ensure that registered voters who will be eligible to vote on or before election day, but who are not yet 18 or have not yet lived in their voting precinct for 30 days, will have equal access to the ballot as other similarly situated voters. *See* Youth Plaintiffs Compl., ¶¶ 5, 68–78. Only Section 2 of HB506 impedes that objective. Youth Plaintiffs therefore do not object to modification of the preliminary injunction so that it enjoins only HB506, Section 2.

CONCLUSION

For the reasons set forth above and in MDP and WNV Plaintiffs’ opposition briefs, the Secretary’s motion to suspend the preliminary injunction should be denied.

Respectfully submitted this 14th of April, 2022.



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MDP Opposition to Defendant's Motion
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Pending Appeal

April 14, 2022

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**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

**MONTANA DEMOCRATIC PARTY
AND MITCH BOHN'S
OPPOSITION TO DEFENDANT'S
MOTION TO SUSPEND
PRELIMINARY INJUNCTION
PENDING APPEAL**

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INTRODUCTION

Plaintiffs Montana Democratic Party (“MDP”) and Mitch Bohn (together, “MDP Plaintiffs”) submit this opposition to Defendant Secretary of State Christi Jacobsen’s Motion (“Mot.”) to Suspend this Court’s May 22, 2022, Order Granting Plaintiffs’ Motion for Preliminary Injunction (“Order”).

The Secretary’s extraordinary request for a stay of this Court’s judgment pending appeal should be denied. The Secretary disregards the controlling standard for such relief and does not even attempt to make the required “strong showing” that she is likely to succeed in overturning on appeal this Court’s thorough and well-reasoned decision. She also ignores the fundamental constitutional rights that the Court’s injunction is meant to preserve and the impairment of those rights a stay would cause. Instead, consistent with her reported public statements characterizing this Court’s decision as “chaotic” and suggesting that the Court has been “bought,” the Secretary’s Motion relies on overheated and unsupported rhetoric about supposed calamities that will befall Montana voters if the Court’s decision stands.¹ Preserving the Court’s Order would allow Montana voters to register on Election Day—as they have, without chaos ensuing, in every statewide election since 2005—and allow Montana college students to use their student IDs to vote—as they have, without incident, in every statewide election since 2003. If the Secretary’s Motion is granted, the direct result will be the disenfranchisement of lawful Montana voters—the precise harm this lawsuit sought to avoid and that this Court’s Order will prevent.

LEGAL STANDARD

The Secretary’s motion ignores the applicable legal standard and the high bar that stands in her way, instead insisting merely that the district court has “considerable discretion” to suspend or modify an injunction. But discretion “does not mean that no legal standard governs that

¹ Peter Christian, *Montana Secretary of State Plans to Fight Court’s Election Decision*, Newstalk KGVO (Apr. 11, 2022), <https://newstalkkgvo.com/montana-secretary-of-state-plans-to-fight-courts-election-decision/>.

discretion.” *Clark Fork Coal. v. Tubbs*, No. BDV-2010-874, 2015 WL 13614529, at *1 (Mont. 1st Jud. Dist. Ct. May 8, 2015). Instead, the court’s judgment on such a motion “is to be guided by sound legal principles.” *Id.*

The applicable legal principles distill down to four factors that guide the evaluation of a motion to stay: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *id.*; *Taylor v. Mont. High Sch. Ass’n*, No. CDV-2015-719, 2015 Mont. Dist. LEXIS 68 (Mont. 1st Jud. Dist. Oct. 7, 2015); *BNSF Ry. Co. v. Cringle*, No. BDV-2009-1016, 2010 Mont. Dist. LEXIS 228, at *12-13 (Mont. 1st Jud. Dist. July 12, 2010); *State v. Philip Morris, Inc.*, No. CDV-1997-306, 2007 Mont. Dist. Lexis 600 (Mont. Jud. Dist. Ct. Dec. 11, 2007); *see also State v. Mont. First Judicial Dist. Court*, 361 Mont. 536, 264 P.3d 518 (2011) (“[The] court determines whether to grant a stay by balancing competing interests and considering whether the public welfare or convenience will be benefitted by a stay.”) (citing *Henry v. Seventeenth Judicial Dist. Ct.*, 198 Mont. 8, 13, 645 P.2d 1350, 1353 (1982)).

The moving party bears the burden of showing that she is entitled to a stay. *Id.* And because a stay is an “intrusion into the ordinary processes of administration and judicial review . . . [it] is not a matter of right, even if irreparable injury might otherwise result.” *Clark Fork Coal.*, 2015 WL 13614529, at *1 (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)).²

ARGUMENT

I. The Secretary has not met her burden.

The Secretary’s Motion meets none of the four criteria for granting a stay: it makes no showing of a likelihood of success or irreparable injury, and it ignores how a stay would in fact

² To determine whether to grant a stay pending appeal, Montana courts look to federal cases interpreting Rule 8 of the Federal Rules of Appellate Procedure. *See Taylor*, No. CDV-2015-719, 2015 Mont. Dist. LEXIS 68 (Mont. 1st Jud. Dist. Oct. 7, 2015); *BNSF Ry. Co.*, 2010 Mont. Dist. LEXIS 228, at *12-13; *Philip Morris, Inc.*, 2007 Mont. Dist. Lexis 600.

substantially and irreparably injure MDP Plaintiffs and many other Montana voters by infringing their constitutional rights, a result directly adverse to the public interest.

A. The Secretary has not made a strong showing that her appeal is likely to succeed on the merits.

First, the Secretary's failure to demonstrate a "strong showing" that her appeal is likely to succeed on the merits requires the denial of her Motion. *See Taylor*, 2015 Mont. Dist. LEXIS 68, at *3. Not only does the Secretary fail to make the necessary "strong showing" of a likelihood of success on the merits, the Secretary does not even argue that she is likely to succeed on appeal at all. That failure alone dooms her motion. *See BNSF Ry. Co.*, 2010 Mont. Dist. LEXIS 228, at *11 (denying motion to stay execution of judgment when moving party failed to show likelihood of success on the merits of appeal).

B. The Secretary has not shown that she will be irreparably injured absent a stay.

Second, the Secretary's Motion should be denied because the Secretary has failed to prove that she or anyone else will be irreparably harmed by the Order. *See in re Matter of Gruenig*, 2001 ML 4604, at *3 (denying motion to stay when moving parties failed to prove that they would be irreparably harmed). Despite the Secretary's cataclysmic prophecies and protestations about the impossibility of guiding election administrators, this Court's preliminary injunction requires only that election officials maintain the familiar rules they have comfortably operated under for years. Moving the registration deadline back to election day and allowing student voters to present student IDs without additional identifying documents are hardly the sort of earth-shattering changes the Secretary's Motion suggests. Moreover, the Secretary's complaints are exceedingly generalized: she notably fails to identify anything particular about the injunction that would actually lead to voter confusion, or that would actually be impossible to provide guidance on.

In search of an injury, the Secretary speculates about supposed calamities if long-existing voting rights are maintained. But her assertions of "chaos," and "widespread voter confusion" do

not support a stay because they are hypothetical, lack evidentiary support, and in any event, are insufficient to prove irreparable harm in the context of a motion to stay. *See, e.g., Campaign for S. Equal. v. Bryant*, 64 F. Supp. 3d 906, 953 (S.D. Miss. 2014) (rejecting argument that the state will be irreparably harmed absent a stay because allegations of “confusion and practical difficulties” of implementing the injunctive relief were “speculative”); *see also Taylor*, 2015 Mont. Dist. LEXIS at * 3 (“The [Montana stay] rule is similar to Federal Rule of Appellate Procedure Rule 8(a), and federal authority is therefore instructive.”). Likewise, the administrative burdens the Secretary alleges would not constitute irreparable harm even if they existed. *See Fish v. Kobach*, 2016 U.S. Dist. LEXIS 68727, at *8-*9 (D. Kan. May 25, 2016) (“disagree[ing] that the administrative burdens on the State constitute irreparable harm”).

1. The Secretary’s arguments about the status quo fail.

The Secretary’s claim that the injunction “fundamentally alters the status quo,” Mot. at 3, evinces a misguided attempt to reframe the status quo as the state of the law *after* the implementation of these challenged restrictions. As this Court correctly explained, the Montana Supreme Court has defined “status quo” as “the last actual, peaceable, noncontested condition which preceded the pending controversy” Order ¶ 2 (quoting *Porter v. K & S P’ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839 (internal quotations omitted)). Here, that is Montana’s election code “prior to the Montana legislature passing HB 176, HB 530, SB 169, and HB 506.” *Id.* ¶ 5. Because this Court’s Order restored the status quo, the Secretary’s arguments against changing election rules immediately prior to an election, Mot. at 2, actually cut in favor of MDP Plaintiffs. This is aptly illustrated by the Secretary’s reliance on the Montana Supreme Court’s order in *Stapleton v. Thirteenth Judicial District Court*, OP 20-0293 (May 27, 2020). *See id.* In that case, the district court enjoined a provision of the election code that had existed for decades, and in staying that injunction, the Supreme Court *restored* the status quo. *Stapleton*, OP 20-0293 (citing *Weems v. State*, 2019 MT 98, ¶ 26, 395 Mont. 350, 440 P.3d 4). Here, the Court’s Order

restored the election law landscape as it existed for years before the enactment of the Challenged Restrictions and is thus on all fours with the Montana Supreme Court’s decision in *Stapleton*.

The Secretary’s suggestion that the U.S. Supreme Court has discouraged state courts from deciding whether state election laws conform with the rights afforded by state constitutions months before an election, Mot. at 6, is similarly unsupported. The Secretary cites *Republican National Committee v. Democratic National Committee* for the proposition that courts should not alter election rules on the eve of an election, Mot. at 2 (citing 140 S. Ct. 1205, 1207 (2020)), but the Supreme Court has applied that limitation only to *federal* courts considering whether state election laws conflict with the federal constitution. *Republican Nat’l Comm.*, 140 S. Ct. at 1207 (holding “lower federal courts” are prohibited from “alter[ing] . . . [State] election rules on the eve of an election”). That doctrine is animated by federalism concerns that simply do not apply when a state court is considering the constitutionality of a state election law under that state’s own constitution. *Grove v. Emison*, 507 U.S. 25, 32 (1993). *Cf. Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (noting that “[i]t is one thing for a State on its own to toy with its election laws close to a State’s elections”). That distinction is further supported by the U.S. Supreme Court’s recent differential treatment of appeals of state-court judgments, on the one hand, and appeals of federal-court judgments, on the other. *Compare Republican Party of Pa. v. Boockvar*, 141 S. Ct. 1 (2020), with *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28 (2020). And even if the federal authority were controlling—it is not—it is not applicable here. In *Republican National Committee*, the Supreme Court disapproved of the district court’s preliminary injunction because it issued *five days* before an election and articulated a brand-new election administration standard that had never previously been in effect. *Id.* at 1206-07. The Supreme Court’s concerns there about upending the long-standing status quo less than one week before an election are not applicable to the Court’s *restoration* here of the long-existing status quo two months before the statewide primary.

2. The Secretary's arguments about voter confusion fail.

The Secretary's claims of "indisputabl[e]" voter confusion are similarly under-supported and overwrought. The Secretary contends that election administrators will be confused following this Court's Order, and "voters necessarily will be as well." Mot. at 4-5. But in support, the Secretary points only to a notice from Gallatin County and a screenshot indicating that another county had not updated its "Frequently Asked Questions" page within two days of this Court's Order. Two examples of election administrators apparently failing to update all information within 48 hours of this Court's Order does not come close to establishing that election administrators are confused, let alone that voters are. In any event, there is no suggestion that any immediate confusion from the Court's order—even if it exists—will not be remedied in the coming weeks, and the Secretary's speculation to the contrary is entirely unsupported.

The Secretary's assertion that failing to stay the Court's injunction of SB 169 will cause confusion because the Secretary has distributed new voter registration confirmation cards that inform voters that, to vote in-person on election day, they must bring their registration card and a photo ID displaying the voter's name, Mot. at 5, is similarly sensational. According to the Secretary, because the prior version of the applicable law required a "current and valid" ID, the statement on the new voter registration confirmation cards instructing voters to bring a photo ID is "no longer valid." *Id.* But that statement is, at worst, incomplete, not incorrect, because it is still true that voters must bring a valid photo ID displaying the voter's name to the polling place. Moreover, the omission of the "current and valid" requirement restored by the Court's injunction is not as significant as the Secretary portrays. According to the Secretary's own documents, under the prior version of the law, an "identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of status." Ex. 1 at 84. And the Secretary once again fails to provide any evidence or reasoned argument supporting her counterintuitive claim that voters are likely to be confused by returning to the law that was in effect during the last statewide election—and for more than a dozen years before.

The Secretary also argues that the Order should be stayed because she undertook some effort to educate administrators and voters about the changes effected by HB 176 and SB 169. Mot. at 5. But despite the Secretary's self-congratulatory rhetoric about her "innumerable" and "extraordinary" voter education efforts, Mot. at 4-5, she presents no evidence of any voter whom she actually educated about the changes effected by SB 169 and HB 176 or who would actually be confused by this injunction. Indeed, the only salient evidence in the record about voter understanding is from voters who were not aware of the elimination of EDR and who were disenfranchised as a result. *See* Bogle Decl. ¶ 8; Denson Decl. ¶¶ 4-5. Overlooking that evidence, the Secretary barely even attempts to explain how, in light of any efforts she made to educate voters about the elimination of EDR, the Court's Order would harm voters by restoring it. *See generally* Mot. at 4-7. Her silence on this point makes sense: If a Montana voter understands that EDR has been restored by the Court's Order, or is unaware that EDR was ever eliminated in the first place, and shows up to register and vote on election day, she would be able to register and vote. Or if a Montana voter believes that EDR has been eliminated, and as a result shows up to register and vote before election day, she could still register and vote. In this light, the Court's Order protects confused voters, and the Secretary's newfound concern about disenfranchisement, *see Id.* at 6-7, rings particularly hollow, especially because she fails to explain how a Montana voter could be disenfranchised if EDR were restored.

3. The Secretary's arguments about chaos and unforeseen consequences are not well founded.

The Secretary's claims of "chaos," Mot. at 7-8, are similarly under supported and overstated. This Court has already decisively rejected the Secretary's claims that an injunction would "undo" anything. *See* Order at ¶¶ 4-6. The Court similarly rejected the Secretary's assertions about the work she has done:

the Court does not find it persuasive that the Secretary has been taking steps to enact these laws given that is a duty of her job and she has had notice that these laws were contested since before they were signed into law as evidenced in the

testimony that occurred in hearings at the legislature and notice soon after they were enacted as evidenced by the Plaintiffs' filing of their complaints.

Id. ¶ 92.

The Secretary's attempt to blame the Court for purportedly "impossible to foresee" consequences likewise misses the mark. The Secretary's vague hand-waving at unspecified repealed or promulgated administrative rules, Mot. at 9, ignores the simple solution that follows from this court's Order: "a return to the status quo that existed prior to the Montana legislature passing HB 176, HB 530, SB 169, and HB 506." Order ¶ 5. The Secretary's insistence that Montana election officials are in an "untenable" position of administering an election without administrative guidance is irreconcilable with her claim that she "has already promulgated guidance to election administrators" and "has engaged in extensive training of election administrators." Mot. at 7. But, in any event, any administrative burden that may result from the need to clarify these rules is simply not the kind of irreparable harm that justifies staying a preliminary injunction. *See Fish*, 2016 U.S. Dist. LEXIS 68727, at *8-*9. Nor does the entirely speculative, "likely" delay in the implementation of new election software constitute irreparable harm to the Secretary. Mot. at 8.

Because the Secretary has failed to show harm—let alone irreparable harm—her Motion should be denied.

C. Issuance of the stay will substantially injure MDP Plaintiffs and the public interest at large.

Finally, the stay should be denied because the Secretary's request would substantially injure MDP Plaintiffs and the interests of the public at large. As this Court correctly found, Plaintiffs made a prima facie case that SB 169 and HB 176 unconstitutionally burden the right to vote. Order ¶ 37. Therefore, the Court's Order is strongly in the public interest. *See Am. Beverage Ass'n v. City & Cnty. of S.F.*, 916 F.3d 749, 758 (9th Cir. 2019) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights.")).

Moreover, the public interest unquestionably favors enfranchisement of Montana voters, including those Native, elderly, disable, rural, working, and young voters who disproportionately relied on Election Day registration, and student IDs as identification at the polls, and who would have a harder time voting if the Order were stayed. For this additional reason, the Secretary has failed to establish grounds for granting his Motion.

II. MDP Plaintiffs are largely unopposed to narrowing the Court's preliminary injunctions.

MDP Plaintiffs do not oppose Defendant's request that the Court modify its injunction with respect to SB 169, HB 530, and HB 506 to prohibit enforcement of only Section 2 of each bill. *See* Mot. at 10-14. To the extent Defendant seeks modification of the Court's injunction with respect to HB 176, MDP Plaintiffs oppose such request because the Plaintiffs in this matter collectively sought a preliminary injunction of HB 176 in its entirety.³

CONCLUSION

For the foregoing reasons, the Secretary's Motion should be denied.

³ In the section of her motion addressing modification of the injunction, Defendant references HB 176 but makes no argument as to why the injunction of that bill should be modified.

Respectfully submitted,

By: /s/ Matthew P. Gordon

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Dated: 04-14-2022

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**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

**DECLARATION OF MATTHEW
GORDON**

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I, Matthew Gordon, declare as follows:

My name is Matthew Gordon. I am over 18 years old and am an attorney with the law firm of Perkins Coie LLP. I am admitted to practice law in the State of Montana and am an attorney for Plaintiffs Montana Democratic Party and Mitch Bohn in this matter. In connection with Montana Democratic Party and Mitch Bohn's Opposition to Defendant's Motion to Suspend Preliminary Injunction Pending Appeal, Montana Democratic Party and Mitch Bohn submit the following:

1. Exhibit 1 is a true and correct copy of the cover page and page 84 of the 2020 Montana Election Judge Handbook, which the Secretary produced to Plaintiffs as Bates No. SOS-MT017382-488. Because the full Election Judge Handbook is 107 pages long, Exhibit 1 includes only relevant excerpts.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated this 14th day of April, 2022.



Matthew Gordon

Exhibit 1

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MONTANA ELECTION JUDGE HANDBOOK 2020



Montana Secretary of State
Elections & Voter Services Division
1301 E. 6th Avenue
State Capitol Building, Room 260
PO Box 202801
Helena, MT 59620

soselections@mt.gov • sosmt.gov
(406) 444-9608

INACTIVE ELECTORS

([13-2-222, MCA](#))

1. An Inactive elector is someone who has not exercised their right to vote in a Federal General Election, (every even numbered year), and is someone who did not respond to confirmation mailings from the election office.

An individual can also be placed on the Inactive list because a ballot in a mail ballot election was returned to the election office undeliverable, and a subsequent forwardable notice mailed by the election office also came back as undeliverable.

2. An elector designated as Inactive in the register is eligible to vote a regular ballot in any election by reactivating the voter registration.
3. An Inactive elector may reactivate their voter registration by appearing at the polls and confirming registration information or updating registration information, and may vote a regular ballot at that time. Also, an Inactive elector may reactivate their registration by requesting an absentee ballot or providing an updated voter registration form.
4. An Inactive elector may reactivate by affirming their residential address and by signing the precinct register. An Inactive elector should fill out a new voter registration form if information in their voter registration record has changed.
5. If the elector's updated address information indicates that the elector is registered in a precinct other than the precinct in which the elector now resides, the elector may vote a regular ballot once at the old precinct.

IDENTIFICATION (ID)

Consistent with [13-13-114, MCA](#), before an elector is permitted to receive a ballot and vote, they shall present to the election judge one of the required forms of ID. "Identification" for the purpose of voting at the polling place means any of the following:

A current photo ID showing an elector's name including, but not limited to:

1. a valid Driver's License,
2. a school district or postsecondary education photo ID,
3. a tribal photo identification, or
4. a current utility bill, bank statement, paycheck, notice of confirmation of elector registration issued pursuant to [13-2-207, MCA](#), government check, or other government document that shows the elector's name and current address.

Note: Only an elector's name and photo are checked when an elector submits a photo ID. Election judges do not check picture IDs to see whether the address on the identification is current. A Driver's License or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of status.

CERTIFICATE OF SERVICE

I, Matthew Prairie Gordon, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit in Support to the following on 04-14-2022:

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Defendant's Reply Brief in Support of
Motion to Suspend Prelim Pending
Appeal

April 15, 2022

(Doc. 140)

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

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

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

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

**DEFENDANT'S REPLY BRIEF IN
SUPPORT OF MOTION TO
SUSPEND PRELIMINARY
INJUNCTION PENDING APPEAL**

**EXPEDITED REVIEW
REQUESTED**

Defendant Montana Secretary of State Christi Jacobsen respectfully submits this Reply Brief in Support of her Motion to Suspend Preliminary Injunction Pending Appeal in response to WNV's Brief in Opposition to Defendant's Motion to Suspend Preliminary Injunction Pending Appeal, MYA's Brief in Opposition to Defendant's Motion to Suspend Preliminary Injunction Pending Appeal, and MDP's Opposition to Defendant's Motion to Suspend Preliminary Injunction Pending Appeal.

Plaintiffs' concede this Court's injunction is overbroad. WNV Brief at 11; MYA Brief at 3; MDP Brief at 9. Thus, the question posed by this Motion is not whether the injunction should be modified, but what pieces of it should remain in force—if any—pending the Secretary's appeal to the Montana Supreme Court.

I. This Court incorrectly evaluated the status quo as of a date prior to passage of HB 176 and SB 169, rather than the date Plaintiffs' sought injunctive relief.

The limited, and only, purpose of a preliminary injunction is to preserve the status quo and minimize harm to all parties prior to a final resolution on the merits. *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386 (citations omitted). Plaintiffs have led this Court down a path contrary to Montana law, and now attempt to redefine "status quo" in the context of a preliminary injunction proceeding ahead of review by the Montana Supreme Court.

In the context of a preliminary injunction, the status quo is "the last actual, peaceable, uncontested condition preceding the controversy at issue." *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73 (citation and internal quotations omitted). Plaintiffs contend the 'status quo' in this case is "the state of Montana law before the challenged enactments were passed." WNV Brief at 2. Plaintiffs argue that the laws at issue were "contested since their passage," and that these three lawsuits were "filed shortly thereafter." WNV Brief at 2. Thus,

Plaintiffs believe the status quo must be calculated as of the date the laws were passed, rather than as of the date they sought injunctive relief. And this Court agreed, finding the status quo as the conditions that existed prior to the Montana legislature passing HB 176 and SB 169. Dkt. 124, Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motions for Preliminary Injunctions at 22, 36, 56 (hereinafter "Preliminary Injunction Order").

But, under the Montana Supreme Court's interpretation of a district court's obligations when evaluating a preliminary injunction request—specifically, the Court's interpretation of the timeframe a district court must consider when evaluating the status quo—it is appropriate to evaluate the status quo as of the date the Plaintiffs sought injunctive relief.

For example, in *State v. BNSF Railway Company*, the Montana Supreme Court considered a dispute over the status quo in the context of a preliminary injunction. 2011 MT 108, ¶¶ 20–22, 360 Mont. 361, 254 P.3d 561. BNSF and the State had entered into a settlement agreement in September 1984. *Id.*, ¶ 20. Over twenty years later, a dispute arose as to the obligations BNSF owed to the State under that agreement. *Id.*, ¶ 20–22. The State filed suit in November 2009 and sought injunctive relief against BNSF on June 2, 2010. *Id.*, ¶¶ 8, 22. The district court found the status quo—the last peaceable condition—was the position BNSF and the State were in the day after the September 1984 agreement was signed and granted the State's motion on the basis that BNSF could render any final judgment ineffectual in the absence of a preliminary injunction. *Id.*, ¶ 20. The Montana Supreme Court reversed, finding the district court abused its discretion by failing to evaluate the status quo at the time the State sought the preliminary injunction. *Id.*, ¶¶ 22–23.

Consider, too, *Mustang Holdings, LLC v. Zaveta*, 2006 MT 234, 333 Mont. 471, 143 P.3d 456. There, the Court considered the status quo with respect to a dispute over whether Zaveta could use an irrigation ditch that crossed property owned by Mustang Holdings. *Id.*, ¶ 7. Mustang Holdings filed a complaint against Zaveta in July 2003 and destroyed the irrigation ditch at issue in late 2004. *Id.*, ¶¶ 5–9. Zaveta moved for a preliminary injunction in March 2005. *Id.*, ¶ 9. The district court granted the injunction and imposed an order requiring Mustang to restore the irrigation ditch. *Id.*, ¶ 13. The Court reversed, finding that mandatory injunctive relief was inappropriate. *Id.*, ¶ 16. As then-Justice Morris noted in dissent, the Court interpreted the status quo as the condition between the parties at the time of the filing of a motion for preliminary injunction, rather than at the time of the filing of a complaint. *Id.*, ¶ 39 (Morris, J., dissenting); see also *Bouma v. Bynum Irrigation District*, 139 Mont. 360, 364 P.2d 47 (Mont. 1961).

By adopting Plaintiffs’ argument wholesale, this Court gave short shrift to the nearly year-long gap between passage of HB 176 and SB 169 and its grant of injunctive relief. But more importantly, by evaluating the status quo as of a date prior to the passage of these laws, this Court did not adequately consider the fifty-two elections and 370,000 votes that were cast between the date the Montana Democratic Party filed the instant complaint and this Court enjoined these laws.

Perhaps most importantly, by evaluating the status quo as of a date prior to the passage of these laws, this Court did not give appropriate weight to the prima facie presumption of constitutionality that immediately applied to HB 176 and SB 169 upon enactment. *Powell v. State Compensation Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877 (citing *Stratemeyer v. Lincoln County*, 259 Mont. 147, 150, 855 P.2d 506, 508–509 (Mont. 1993)) (“[t]he question of

constitutionality is not whether it is possible to condemn, but whether it is possible to uphold the legislative action[.]”). Once these laws were passed, they were presumed constitutional. By evaluating the status quo as of a date prior to the passage of HB 176 and SB 169, this Court necessarily avoided confronting the immediate change to the status quo that occurred upon passage of these laws.

II. The Secretary easily meets the four-factor *Hilton* test.

While Plaintiffs urge this Court to apply the four-factor test adopted by federal courts to determine whether to suspend the injunction pending appeal, WNV Brief at 2, that test has not been adopted by the Montana Supreme Court. Further, as the Ninth Circuit has noted, “[t]he standard for granting a stay is a ‘sliding scale.’” *Arizona Democratic Party v. Hobbs*, 976 F.3d 1081, 1086–87 (9th Cir. 2020) (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020)). To that end, the Montana Supreme Court has granted a stay in an election law case without analyzing the four-factor test Plaintiffs now offer (i.e. adopting the Secretary’s original analysis). See Order at 2–3, *Stapleton v. Thirteenth Judicial District Court*, OP 20–0293 (May 27, 2020) (hereinafter “Stapleton Order”). There, the Court granted the stay because “the injunction disrupts the status quo, is likely to cause voter confusion, and interferes with the ability of the State to administer an orderly general election process already under way.” *Id.*, at 2. As the Secretary asserts, and Plaintiffs’ do not persuasively contest, the same rationale applies here. Plaintiffs’ delay in filing their preliminary injunction motion disrupts the status quo, is likely to cause voter confusion at this late date given the State’s extensive voter-education, and the Court’s preliminary injunction interferes with the State’s ability to administer the fast-

approaching elections in an orderly way. As the Secretary has noted, that is precisely why the State explicitly requested Plaintiffs file their motion for preliminary injunction motion earlier:

The State has a strong preference that plaintiffs file their preliminary injunction motion earlier. Scheduling a hearing on a motion for preliminary injunction six months from now, and a year after the case is filed, is highly unusual. Typically in Montana a preliminary injunction motion is filed at the beginning of the case. I still don't understand the delay in filing the motion, **and the longer plaintiffs delay in filing it, the more difficult and prejudicial it is to the State. There is obviously a lot of work that goes into implementing the laws, which is already well underway.** But as I've said from the beginning of the case, it's your decision when you file it.

Doc. 105, Ex. 1 (emphasis added).

Plaintiffs nonetheless delayed filing their motion for preliminary injunction, forcing this Court to decide the motion just before the upcoming May and June elections.¹ The delay calls into serious question their alleged irreparable harm, and ignores the Montana Supreme Court's disfavor of preliminary injunctions on the eve of an election. *See Stapleton Order*, at 2–3.

But even if the four-factor test applied to motions to stay filed under Rule 22 of the Montana Rules of Appellate Procedure, Plaintiffs recite the wrong standard and ignore the impact their delay has on the analysis. The four factors under the federal test in determining whether to issue a stay include: “(1) whether [Defendants have] made a strong showing on the

¹ MDP cites a news article purporting to quote Secretary Jacobsen. Even if accurate, the Defendant's statement, in context, was referring to the chaos to the upcoming elections because the State has had “record turnover in the jobs of election officials with numerous new election officials trained to run their first election in the coming weeks. This decision destroys the training that they had just received over the past year to confidently run their upcoming elections.” Peter Christian, *Montana Secretary of State Plans to Fight Court's Election Decision*, Newstalk KGVO (April 11, 2022). And Secretary Jacobsen referred to the “big money political groups attempting to overthrow” Montana's election laws, not to the Court itself.

merits; (2) whether [Defendants] will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Leiva-Perez v. Holder*, 640 F.3d 962, 964, 967 (9th Cir. 2011) (citations omitted); *see also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).² The Secretary meets this test and Plaintiffs’ analysis suffers from several flaws.

A. Defendant has made a strong showing on the merits.

As a preliminary matter, as all Plaintiffs concede the scope of this Court’s injunction must be modified, it is indisputable that—absent action from this Court—the Secretary will prevail, at least in part, on appeal. To that end, Plaintiffs’ arguments that the Secretary has not made a strong showing on the merits is confusing at best.

But even absent Plaintiffs’ concession as to the overbreadth of this Court’s injunction, the Secretary has made a strong showing on the merits of Plaintiffs’ claims. Plaintiffs confuse the standard, arguing that the Secretary must prove a “likelihood of success on the merits.” WNV Brief at 3. As federal courts have reasoned, such a strict standard is not an accurate recitation of the test under the first prong and instead have used various formulations for this factor, including “reasonable probability,” “fair prospect,” “substantial case on the merits,” and “serious legal questions raised,” all of which are largely interchangeable. *Leiva-Perez*, 640 F.3d at 967-68. The bottom line is that the party requesting a stay must only show a “substantial case for relief on the merits,” i.e., “more than a mere possibility of success.” *Id.* The standard does not require the

² In support of their request for injunctive relief, Plaintiffs argued decisions from federal courts interpreting requests for injunctive relief were inapplicable. Dkt. 98 at 4–5. As the Secretary informed this Court, the federal courts generally treat long delays between filing a complaint and requesting injunctive relief negatively. Thus, it appears Plaintiffs’ only find federal law valuable when they believe it supports their position.

petitioners to show that “it is more likely than not that they will win on the merits.” *Id.* at 966. Under Plaintiffs’ proposed formulation of the standard, a district court would never grant a stay, having just concluded the opposite. In other words, the standard does not require this Court to essentially reverse itself to grant the stay. “When a request for a stay is made to a district court, common sense dictates that the moving party need not persuade the court that it is likely to be reversed on appeal. Rather, the movant must only establish that the appeal raises serious and difficult questions of law in an area where the law is somewhat unclear.” *Strobel v. Moran Stanley Dean Witter*, No. 04CV1069BEN, 2007 WL 1238709, *1 (S.D. Cal. Apr. 24, 2007) (citation and quotation omitted). The Secretary has met that standard, especially given that Plaintiffs’ theories are largely untested under Montana Supreme Court precedent.

First, as demonstrated above, this Court abused its discretion in evaluating the status quo as of a date prior to the passage of HB 176 and SB 169—as opposed to when the Plaintiffs’ sought injunctive relief. While the Montana Supreme Court has not directly addressed this precise question, recent decisions involving this issue distinguish between preliminary injunctions sought at the beginning of the case and those sought at a later date, as noted.

Second, the injunction is predicated on a novel question of law. If the decision on a preliminary injunction was based on legal conclusions, the Montana Supreme Court reviews those conclusions to determine if the district court’s interpretation of the law is correct. *City of Whitefish v. Bd. of Cty. Comm’rs of Flathead Cty.*, 2008 MT 436, ¶ 7, 347 Mont. 490, 199 P.3d 201. This Court found that the laws at issue subject to strict scrutiny because they “implicate[] the fundamental right to vote.” Dkt. 124, Preliminary Injunction Order at 35. But the Montana Supreme Court has held that “[t]he extent to which the Court’s scrutiny is heightened depends

both on the nature of the interest and the degree to which it is infringed.” *Wadsworth v. State*, 275 Mont. 287, 302, 911 P.2d 1165, 1173 (Mont. 1996) (citing *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 254-56, 94 S. Ct. 1076, 1080-81, 39 L.Ed.2d 306 (1974)). Thus, this Court’s Order describes a new theory: that any voting regulation is subject to strict scrutiny if it “implicates” the right to vote in any way. As all election-related regulations burden the right to vote to some extent, *Burdick v. Takushi*, 504 U.S. 428, 433–435 (1992), this Court’s determination is a departure from Montana Supreme Court precedent. *See also Driscoll v. Stapleton*, 2020 MT 247, ¶ 18, 401 Mont. 405, 473 P.3d 386 (“Strict scrutiny of a statute is required when the classification impermissibly interferes with the exercise of a fundamental right.”) (quoting *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1173); *id.*, ¶ 39 (J. Sandefur, dissenting) (“Only statutes that substantially interfere with the ‘exercise of a fundamental right’ are subject to strict scrutiny.”). And Plaintiffs’ join that argument in full force. WNV Brief at 4 (“Any governmental infringement on a fundamental right cannot be justified unless strict scrutiny is satisfied.”). Accordingly—due to the novel and untested nature of the legal theory upon which this Court’s injunction is based—the Secretary has raised serious questions on the merits and has shown more than a mere possibility of success on appeal.

Third, the declarations relied upon by this Court in issuing the injunction are contradicted by the declarant’s own testimony, as is quickly becoming evident. For example, this Court cited the Declaration submitted by Ali Caudle in support of its finding of fact that Caudle had “difficulties registering in person due to the hours she is in school and commitments she has occupying her until after regular business hours.” Dkt. 124, Preliminary Injunction Order at 16. But at her deposition, Caudle admitted that she, in fact, registered in person after regular

business hours on October 29, 2022, and knew at the time she signed her declaration that her local county election office had extended hours of operation the week leading up to Election Day. Exhibit 1, Caudle Depo. 27:11–28:11.

Similarly, Amara Reese-Hansell submitted a Declaration which Plaintiffs relied on in support of their contention that classification of student IDs as a secondary form of identification “is a barrier for anyone who relies on their [student ID] as their sole or primary form of identification.” Dkt. 102, Youth Plaintiffs’ Reply Brief in Support of Application for Preliminary Injunction at 15. But, Reese-Hansell testified that at least some student IDs cannot be obtained without government-issued photo IDs and that she possessed the documentation necessary to vote in person as required by SB 169 when she first registered to vote in Montana. Exhibit 2, Reese-Hansell Depo. 39:5–8, 48:19–49:4, 100:20–101:11, 104:9–21, 105:4–20.

And Hailey Sinoff, whose Declaration Plaintiffs’ relied on as providing a “concrete example[]” of a person who had suffered a concrete constitutional injury due to the relegation of student IDs to a secondary form of ID, Dkt. 102, Youth Plaintiffs’ Reply Brief in Support of Application for Preliminary Injunction at 4, testified that she did not know she could vote with her student ID card until counsel informed her of the fact while preparing for her deposition, that she doesn’t view student ID as an “acceptable form of identification for something serious.” Exhibit 3, Sinoff Depo. 36:15–22. She also testified that she possessed documentation necessary to vote under SB 169 § 2 when she turned eighteen, including a passport. *Id.* at 52:8–53:11.

Additionally, Gavin Zaluski, whose Declaration was relied on by Plaintiffs in support of the premise that Election Day Registration had “already disenfranchised otherwise eligible voters,” Dkt. 57, MDP Memorandum in Support of Motion for Preliminary Injunction at 8,

testified that his statement in his Declaration that he registered to vote ahead of the November 2021 election was not true, and that he did not update his voter registration—which would have allowed him to vote in November 2021—because workers at a voter registration table incorrectly told him he was already registered. Exhibit 4, Zaluski Depo. 105:3–8, 117:24–118:5, 121:15–122:6, 122:14–22, 128:8–25.

Finally, Plaintiff Mitch Bohn, whose Declaration was relied on by this Court in support of its conclusion that HB 530 is unconstitutional, Dkt. 124, Preliminary Injunction Order at 14, testified he has never utilized election day registration in Montana or paid ballot collection, and that he had no preference as to whether his ballot was collected by a paid ballot collector or a volunteer. Exhibit 5, Bohn Depo. 28:25–29:3; 30:10–13; 31:13–17; 36:21–25; 38:19–23; 43:15–44:12.

These repudiations of the factual allegations made by Plaintiffs in support of their request for injunctive relief were obtained during the first depositions completed by the Secretary. The resulting inaccuracies in the factual representations made to this Court call into doubt not just the very foundation upon which this Court’s injunction against HB 176 and SB 169 is based, but the factual predicate for Plaintiffs’ claims in this case in general.

For these reasons, the Secretary has demonstrated substantial case on the merits in her appeal of the preliminary injunction to the Montana Supreme Court.

B. Montana voters will suffer irreparable harm in the absence of a stay.

The Western Native Voice Plaintiffs argue the Secretary cannot establish that irreparable harm will occur in the absence of a stay because election officials in Montana have administered election day registration previously, the Secretary “cannot be injured by an injunction,” and this

Court's determination that Plaintiffs' have not impermissibly delayed in seeking injunctive relief renders the Secretary's concerns regarding the timing of the injunction moot. WNV Brief at 6–7. For their part, the Montana Democratic Party Plaintiffs argue the concrete examples provided by the Secretary of the catalysts for potential voter confusion—for example, now-incorrect information on the voter registration cards—is “hypothetical, lack evidentiary support, and in any event, are insufficient to prove irreparable harm in the context of a motion to stay.” MDP Brief at 3–4. This argument is particularly incredible given both the Montana Democratic Party Plaintiffs and the Western Native Voice Plaintiffs refusal to identify a single voter allegedly harmed by SB 169 or HB 176. This Court based its preliminary injunction on, in part, alleged harm to seventeen voters in Gallatin County. Dkt. 124, Preliminary Injunction Order at 9. Voter registration cards that contain now-incorrect information regarding the documentation sufficient to vote have now been sent to every registered voter in Montana. It defies logic to argue that, out of the hundreds of thousands of individuals who have received this notice, less than seventeen will be rely to their detriment on the information provided by the card. Further, in a case where Plaintiffs contend they are seeking to vindicate voting rights, it is beyond the pale to argue that the risk of disenfranchisement as to these voters is less important than the risk of disenfranchisement to the voters Plaintiffs' represent. The harm to voters caused by the inability to inform them that “current and valid” photo IDs are now required in order to vote in person is imminent, almost certain to occur, and a direct result of this Court's injunction against SB 169 almost a year after it was passed.

But the late nature of this Court's injunction as to SB 169 also harms Montana's electoral system as well. Fergus County Clerk and Recorder Janel Tucek, who also serves as the local

Election Administrator, elaborated on this harm during her recent deposition. *See* Exhibit 6, Second Declaration of Janel Tucek. Ms. Tucek stated that, prior to this Court’s injunction, she had trained approximately one hundred and fifteen individuals to serve as poll workers in the upcoming primary election in June 2022. *Id.*, ¶ 3. Ms. Tucek testified she trained these poll workers on Montana’s election law as it existed prior to the injunction and that she had trained poll workers as to the documentation an individual may use to register to vote following passage of SB 169 and the documentation an individual may use to vote following passage of SB 169. *Id.*, ¶ 7. This Court’s injunction renders that training moot just before the upcoming elections and adds significant potential confusion.

Relatedly, Plaintiffs also completely miss the point of the harm caused by this Court’s injunction as to HB 176. Prior to this Court’s injunction, HB 176 alleviated serious administrative burdens on election administrators throughout Montana—particularly, those in rural counties. For example, Ms. Tucek also testified that, on Election Day in November 2020, she remained at the Petroleum County Courthouse until 11:30 p.m. at night—well after the last voter and her election staff had gone home—solely to be able to process issues relating to voter registration. Exh. 6, ¶ 8. In short, when processing a county-to-county change on election day, a local election administrator is required to confirm the voter’s information with the voter’s previous county. Thus, even though there were no lines in Petroleum County on Election Day 2020, Ms. Tucek was required to work late into the night specifically because of election day registration. *See id.*

As the Ninth Circuit recently reiterated, “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion,’ and the risk increases ‘[a]s an

election draws closer.’” *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 952–54 (9th Cir. 2020) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4–5, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006)). With the June primary election less than two months away—and due, in particular, to the nature of the laws enjoined—this Court’s injunction will result in voter confusion and the injunction should be suspended pending appeal.

C. The State of Montana’s Compelling Interest in the Orderly Administration of Elections Easily Outweighs the Wholly Speculative Injuries Plaintiffs Claim Will Occur if a Stay is not Granted Pending Appeal.

The Court’s preliminary injunction order must be stayed to avoid injecting chaos into Montana election law. Montana’s statewide primary elections are scheduled to occur on June 7, 2022, a mere 53 days from today. Montana’s election officials already conducted elections in 2021 pursuant to HB 176 and SB 169; notably, Plaintiffs have failed to identify a **single** instance in which a Montanan was unable to vote in the 2021 elections because of those laws. What’s more, Montana’s election officials have trained election workers to conduct the 2022 elections pursuant to HB 176 and SB 169. Plaintiffs do not—and in fact cannot—dispute with evidence that forcing Montana election officials to retrain election workers pursuant to a set of different election laws prior to the 2022 elections would: (i) be all but impossible, given the limited time and financial resources available to Montana election officials; and (ii) inject confusion into Montana’s upcoming elections. Under these circumstances, Plaintiffs cannot establish “substantial injury” if additional elections are held pursuant to HB 176 and SB 169. And the State’s well-established interest in the orderly administration of election easily outweighs Plaintiffs’ alleged injuries, which are wholly speculative in nature.

1. *The Public's Interest In Election Administration Strongly Supports A Stay.*

The State of Montana's interest in the orderly administration of elections—standing alone—should compel the Court to grant Defendant's motion. It is blackletter law that states like Montana have a compelling public interest in election administration. *See, e.g., Purcell*, 549 U.S. at 4 (“‘A State indisputably has a compelling interest in preserving the integrity of its election process’” because “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy”) (citations omitted); *see also Larson v. State By & Through Stapleton*, 2019 MT 28, ¶ 40, 394 Mont. 167, 434 P.3d 241 (“Montana has a compelling interest in imposing reasonable procedural requirements tailored to ensure the integrity, reliability, and fairness of its election processes.”). Appellate courts considering constitutional challenges to election laws consistently have concluded that orders enjoining election laws should be stayed pending appeal to avoid “throw[ing] a previously stable system into chaos.” *Lair v. Bullock*, 697 F.3d 1200, 1214–16 (9th Cir. 2012); *see also* Stapleton Order at 2–3 (staying order enjoining Montana election law because it would “interfere[] with the ability of the State to administer an orderly general election process”).

The public's interest in implementing and enforcing duly-enacted Montana laws is self-evident. *See Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined”). Citing the public's interest in election administration, the Ninth Circuit recently concluded an order enjoining election laws roughly “two months” before an election should be stayed pending appeal. *See Arizona Democratic Party*, 976 F.3d at 1084. The Ninth Circuit's reasoning is instructive:

And, as we rapidly approach the election, **the public interest is well served by preserving Arizona’s existing election laws, rather than by sending the State scrambling to implement and to administer a new procedure for curing unsigned ballots at the eleventh hour.** Indeed, the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” (citing cases)

Arizona Democratic Party, 976 F.3d at 1086–86 (quotations and citations in original) (emphasis added). The Ninth Circuit reached that same conclusion in a subsequent case. *Mi Familia Vota*, 977 F.3d at 953–954 (citation omitted) (“As to the fourth factor, the public interest favors orderly administration of the election” because “States have ‘an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes.’”). The Ninth Circuit’s conclusion was supported by facts that are similar to those facing this Court. Specifically, the Ninth Circuit noted that the “administrative burdens” imposed on the State by the injunction were “significant,” including that the injunction “suddenly forced the County Recorders in local election offices—some with limited staffs of only two or three people in rural counties,” to oversee elections pursuant to a different set of election laws. *Id.* (emphasis added).

As established above, Montana’s election officials—including Defendant and Fergus County Clerk and Recorder Janel Tucek—have commented on the significant administrative burden the Court’s Order places on Montana election officials, especially those in rural counties with fewer resources, given the proximity of Montana’s 2022 elections. Accordingly, a stay of the Court’s preliminary injunction order is justified, both factually and legally, by the State of Montana’s compelling interest in election administration.

2. *A Stay Would Not Substantially Injure Plaintiffs.*

If the Court stays its preliminary injunction order, Montana voters would participate in Montana’s 2022 elections pursuant to the same election laws that governed Montana’s 2021

elections. Plaintiffs repeatedly have failed to show that HB 176 and SB 169 prevented any Montanan from voting. Accordingly, Plaintiffs' allegation that HB 176 and SB 169 will "substantially injure" Montanans in the 2022 elections is wholly speculative. *See Nat'l Urb. League v. Ross*, 977 F.3d 770, 781 (9th Cir. 2020) (granting stay of district court injunction when alleged "resulting injury" was "still speculative"). Moreover, Plaintiffs' inexplicable delay in seeking a preliminary injunction until the eleventh hour undermines their claims of irreparable injury if Montana's 2022 elections are conducted pursuant to HB 176 and SB 169. *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018).

The Court should disregard MDP's arguments to the contrary, which are circular and conclusory. MDP's position is that if the Court's conclusion that "SB 169 and HB 176 unconstitutionally burden the right to vote" is correct, then Plaintiffs necessarily would experience substantial injury if a stay is granted. MDP's Response, p. 8. But that merely restates MDP's analysis of the merits of the Court's preliminary injunction order (the first factor of the test proposed by MDP), without providing any factual support for MDP's position that Montanans will be "substantially injured" if a stay is issued pending appeal. Staying enforcement of the Court's preliminary injunction order would not harm—let alone "substantially injure"—any Montanans.

Conclusion

For these reasons, the Secretary respectfully requests this Court suspend its preliminary injunction entered April 6, 2022, as to SB 169 and HB 176. Additionally, because it is undisputed that this Court's preliminary injunction is overbroad, the Secretary requests the injunction be

suspended as to the portions of HB 176, HB 506, HB 530, and SB 169 that Plaintiffs did not challenge in these preliminary injunction proceedings.

Dated this 15th day of April, 2022.

/s/ Dale Schowengerdt

CROWLEY FLECK PLLP

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party, et al. Cause No.: DV-56-2021-451
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 Group,
Plaintiffs,
vs.
Christi Jacobsen, in her official capacity as
Montana Secretary of State,
Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF ALI CAUDLE

Taken at:
Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 6, 2022
8:32 a.m.

1 APPEARANCES OF COUNSEL (by videoconference):
2
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12 NATIVE VOTE, BLACKFEET NATION, CONFEDERATED SALISH AND
13 KOOTENAI TRIBES, FORT BELKNAP INDIAN COMMUNITY and
14 NORTHERN CHEYENNE TRIBE:
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1 ALI CAUDLE
 2 APRIL 6, 2022; BUTTE, MONTANA
 3 - - -
 4 BE IT REMEMBERED THAT, pursuant to Notice, the
 5 Deposition of Ali Caudle was taken at the time and
 6 place and with the appearances of counsel hereinbefore
 7 noted before Jonny B. Nordhagen, Court Reporter -
 8 Notary Public for the State of Montana.
 9 It was further stipulated and agreed by and
 10 between counsel for the respective parties that this
 11 deposition was taken pursuant to the Montana Rules of
 12 Civil Procedure.
 13
 14 The following proceedings were had:
 15
 16 COURT REPORTER: The time is 8:32 a.m. We
 17 are on the record.
 18 This is the Videoconference Video-Recorded
 19 Deposition of Ali Caudle taken by the attorneys for
 20 the defendant in the matter of Montana Democratic
 21 Party, et al., Plaintiffs, vs. Christi Jacobsen, in
 22 her official capacity as Montana Secretary of State,
 23 Defendant.
 24 This is Cause No.: DV-56-2021-451 in the
 25 Montana Thirteenth Judicial District Court,

Page 5

1 Yellowstone County.
 2 This deposition is being taken on
 3 Wednesday, the 6th day of April, 2022, from Nordhagen
 4 Court Reporting, 1734 Harrison Avenue in Butte,
 5 Montana.
 6 My name is Jonny Nordhagen. I am the
 7 court reporter and recording operator.
 8 Counsel will now introduce themselves,
 9 after which I will swear in the witness.
 10 MR. MORRIS: This is Mac Morris on behalf
 11 of Christi Jacobsen.
 12 MS. SOMMERS-FLANAGAN: This is Rylee
 13 Sommers-Flanagan --
 14 MR. MELOY: Mike Meloy on --
 15 MS. SOMMERS-FLANAGAN: Mike, you go ahead.
 16 MR. MELOY: No, you go ahead.
 17 MS. SOMMERS-FLANAGAN: This is Rylee
 18 Sommers --
 19 MR. MELOY: Mike Meloy on behalf of the
 20 Montana Democratic -- there's a delay.
 21 MS. SOMMERS-FLANAGAN: I think there's a
 22 delay in your connection, Mike. So, I'm sorry, I
 23 spoke over you again.
 24 MR. MELOY: I don't think -- I think --
 25 Jonny, did you hear me?

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1 COURT REPORTER: I did. Thank you, Mike.
 2 MR. MELOY: Okay, we're good.
 3 MS. SOMMERS-FLANAGAN: This is Rylee
 4 Sommers-Flanagan on behalf of Plaintiffs Montana Youth
 5 Action, the Montana Public Interest Research Group,
 6 and Forward Montana Foundation.
 7 And I have with me today off camera Jacob
 8 Linfesty.
 9 And I'm representing Ali Caudle.
 10
 11 ALI CAUDLE,
 12 having been called as a witness by the
 13 defendant, being first duly sworn, was
 14 examined and testified as follows:
 15
 16 EXAMINATION
 17 BY MR. MORRIS:
 18 Q. Hi. Good morning, Ali. My name is Mac
 19 Morris. I want to thank you for being here. I do
 20 have -- could you just state your name for the record?
 21 A. Yeah. My name is Ali Caudle.
 22 Q. And you live in Missoula; is that right?
 23 A. Yes, I do.
 24 Q. And what's your address?
 25 A. 1609 Angelina Way.

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1 Q. How long have you lived at that address?
 2 A. I've lived there for almost exactly five
 3 years.
 4 Q. Okay. And I think you probably heard Ms.
 5 Sommers-Flanagan at the beginning. She said that she
 6 was representing you today. Did you hear that?
 7 A. Yes, I did hear that.
 8 Q. You don't have like a lawyer-client
 9 relationship with Ms. Sommers-Flanagan, do you?
 10 A. Not besides this case.
 11 Q. And you haven't sort of made an
 12 arrangement with her where she's representing you
 13 today, have you?
 14 A. No, I have not.
 15 Q. Have you ever had your deposition taken
 16 before?
 17 A. No, I have not.
 18 Q. Okay. So there's a few sort of guideposts
 19 on this. And you're doing a great job and maybe
 20 you've discussed these with someone before, but just
 21 so you're aware, during this deposition, everything's
 22 being taken down and you're under oath. And the court
 23 reporter is taking down everything everyone says, so
 24 it's important that we try not to talk over one
 25 another. Okay?

Page 8

1 A. Okay.
 2 Q. And if you just let me finish the question
 3 and I will strive to let you finish your answer, that
 4 way the court reporter can get everything down. Do
 5 you understand that?
 6 A. Hm-hmm [affirmative], okay.
 7 Q. All right. And in depositions like this
 8 with a court reporter, we can't always use sort of
 9 head nods or hm-hmm's or uh-uh's. So I'm not trying
 10 to be rude, but if you say "hm-hmm" or something like
 11 that, I might say, "Is that a 'yes'?" just so that the
 12 record is clear. And it's the same thing like with an
 13 "uh-uh" or -- you know, I might say, "Is that a 'no'?"
 14 Okay?
 15 A. Okay.
 16 Q. And is there any reason why you can't tell
 17 the truth today and give complete and honest
 18 testimony?
 19 A. No.
 20 Q. And what I'm getting at, you're not on any
 21 sort of medication or something that would affect your
 22 memory or your ability to tell the truth this morning,
 23 right?
 24 A. No, I'm not.
 25 Q. One important thing is: If I ask you a

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1 conference room in the school.
 2 Q. Okay. And so do you typically have a
 3 class that you attend at this hour; that is, in the
 4 morning around 8:30 on a Wednesday?
 5 A. I would be entering IB history as my class
 6 first period.
 7 Q. Okay. I'm sorry, what did you say? "IV
 8 history"?
 9 A. "IB," international baccalaureate.
 10 Q. Okay. And typically --
 11 A. It's a different version of AP,
 12 essentially.
 13 Q. Got you, all right. And typically on a
 14 Wednesday morning, you would be attending that class
 15 at this hour; is that right?
 16 A. Yes, that is correct.
 17 Q. And how were you able to be out of class
 18 at this hour today?
 19 A. I emailed my teachers and some
 20 administrative members here at the school, the
 21 principal and the counselors, and let them know that I
 22 had to do this, and asked if there was a private place
 23 I could go, and informed them that I would have to
 24 miss class. It's the fourth quarter of my senior
 25 year, so it's pretty easy at this point.

Page 11

1 question and you don't understand the question, will
 2 you please just ask me -- or tell me that you don't
 3 understand the question?
 4 A. Okay, I can do that.
 5 Q. All right, thanks. So you said you've
 6 been in Missoula for about five years. Where did you
 7 grow up before Missoula?
 8 A. I grew up in San Francisco, California.
 9 Q. And since moving to Montana, have you
 10 always had the same address?
 11 A. Yes.
 12 Q. And what prompted the move from San
 13 Francisco to Montana?
 14 A. My mother got a new job here in Missoula.
 15 Q. Okay. What does your mother do?
 16 A. She runs a healthcare conversion
 17 foundation.
 18 Q. A healthcare -- I'm sorry, what did you
 19 say?
 20 A. A healthcare conversion foundation,
 21 Headwaters.
 22 Q. And you're in high school, right?
 23 A. Yes. I'm a senior in high school.
 24 Q. And are you at a high school right now?
 25 A. Yes, I am. I'm sitting in a closed

Page 10

1 Q. Got you. And so Hellgate is on a quarter
 2 system; is that right?
 3 A. Yes, although we only report grades at
 4 semesters.
 5 Q. What did you say?
 6 A. We only report grades at semesters.
 7 Q. I see. And so is this an excused absence
 8 today for you to appear for this deposition?
 9 A. Yes, it is.
 10 Q. You gave me your address, but now I can't
 11 remember it. Do you live close to school, to Hellgate
 12 High School?
 13 A. It depends how you define "close." It's
 14 about a 15- to 20-minute drive.
 15 Q. Okay. And do you drive to school?
 16 A. Yes, I do.
 17 Q. And where do you park?
 18 A. It depends on where there are parking
 19 spots. Hellgate does not have a parking lot, so we
 20 all just parallel park on the neighborhood streets
 21 around here.
 22 Q. I see. Do you have to have like a parking
 23 pass to do that, or something?
 24 A. No.
 25 Q. And has that been your practice, to drive

Page 12

1 to school and park close by this whole year, school
2 year?

3 A. Yes.

4 Q. Tell me, how did you get involved in this
5 lawsuit?

6 A. I serve as a board member for Montana
7 Youth Action, one of the plaintiffs, and I run several
8 programs for them, and so that's how I was informed of
9 this case. And Montana Youth Action's initiatives
10 chair, Scout McMahon, connected me with Rylee
11 Sommers-Flanagan.

12 Q. Okay. And how long have you been doing
13 that --

14 A. I began --

15 Q. -- that is, serving as a board member on
16 Montana Youth Action?

17 A. I began serving in the summer of 2020.

18 Q. Okay. And did you say that someone within
19 Montana Youth Action got in touch with Ms.
20 Sommers-Flanagan?

21 A. Yes, our initiatives chair.

22 Q. Got it. I did not know that you were on
23 the board.

24 Have you ever been a witness in any other
25 lawsuits?

Page 13

1 Q. You signed this under penalty of perjury.

2 Do you see that on my screen?

3 A. Yes, I do.

4 Q. And what does that mean to you?

5 A. That means perjury is lying under oath,
6 and it's a crime.

7 Q. What did you believe was the purpose of
8 this declaration that you signed?

9 A. Can you clarify what you're asking by
10 that?

11 Q. Yeah. Well, what was your expectation
12 about how your declaration would be used in this
13 lawsuit?

14 A. I was hoping it would provide a
15 perspective from someone who was actually affected,
16 who was 18 years old and attempted to vote in the
17 state of Montana.

18 Q. And did you expect that your declaration
19 would be submitted to the Court in this case?

20 A. Yeah, I did.

21 Q. And did you expect that the Court would
22 potentially rely on the statements in your declaration
23 in making decisions about this case?

24 A. Yes, I was aware that was possible.

25 Q. Did Ms. Sommers-Flanagan explain to you

Page 15

1 A. No, I have not.

2 Q. And have you ever submitted a declaration
3 like the one you did in this case in any other
4 lawsuits?

5 A. No, I have not.

6 Q. Okay. Since we're over Zoom, I'm going to
7 show you some documents.

8 MR. MORRIS: Jonny, let's mark this one, I
9 believe it should be Deposition Exhibit 34.

10 (Document subsequently marked Deposition
11 Exb. 34 for identification.)

12 Q. (By Mr. Morris) Can you see the first page
13 of your declaration on the screen?

14 A. Yes, I believe I can see your computer
15 view.

16 Q. Okay. And I'm just going to scroll
17 through this so that you can see it.

18 All right. Deposition Exhibit 34 is a true and
19 correct copy of the declaration that you submitted in
20 this case, correct?

21 A. Yes, it is.

22 Q. And you said you've never signed a
23 declaration like this before in any other lawsuit,
24 right?

25 A. No, I have not.

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1 that she would be submitting this declaration to the
2 Court?

3 A. Yes, she did.

4 Q. And did she, did Ms. Sommers-Flanagan warn
5 you that you needed to be careful and make sure that
6 everything in it was accurate?

7 A. Yes, she did.

8 Q. Did you draft this declaration, Deposition
9 Exhibit 34?

10 A. Can you clarify what you mean by the word
11 "draft"?

12 Q. Yeah. Did you sit down at your computer
13 and type out the words that are on Deposition
14 Exhibit 34?

15 A. No, I did not.

16 Q. So how was this declaration put together?

17 A. I called Rylee Sommers-Flanagan and her
18 colleague, Jake Linfesty, and told them my story over
19 a Zoom call. They took notes and drafted a
20 regulation. I did not write it because I had never
21 done this before and did not know what it should look
22 like. After they drafted it, they sent it to me to
23 review and make sure everything was accurate. I
24 informed them of a couple changes, they made the
25 changes, and then it was finalized.

Page 16

1 **Q. And did you have any concerns about**
 2 **anything in this declaration in terms of the accuracy**
 3 **of its content?**

4 A. No, I did not.

5 **Q. And as you sit here right now, do you have**
 6 **any concerns with the accuracy of anything in the**
 7 **declaration?**

8 A. No, I do not.

9 **Q. Okay. Did you vote in the fall -- I'll**
 10 **take this down, I'm sorry. Ms. Caudle, do you have a**
 11 **copy of this declaration with you, by chance?**

12 A. I do.

13 **Q. Okay, great. I might get you to refer to**
 14 **that. I'm going to stop sharing my screen for a**
 15 **second.**

16 A. Okay.

17 **Q. Sorry. I was asking you: Did you vote in**
 18 **the fall 2021 municipal election in Missoula?**

19 A. Yes, I did, as it says in the declaration.

20 **Q. And how did you find out about the fact**
 21 **that there was a municipal election in the fall of**
 22 **2021?**

23 A. I would consider myself very informed and
 24 connected to a lot of people who were engaged in the
 25 civic engagement sphere, and so I just knew that there

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1 **candidates?**

2 A. At first through social media and then
 3 through reading articles online.

4 **Q. Did you attend any of the debates or**
 5 **presentations for that mayoral seat in Missoula?**

6 A. No, I did not.

7 **Q. Did you follow any of the candidates on**
 8 **social media?**

9 A. I did not "follow" them in the term that
 10 you like click that button that says "follow," but I
 11 have looked at their pages multiple times.

12 **Q. Okay. And are you referring to Facebook**
 13 **pages?**

14 A. Instagram, primarily.

15 **Q. I see. What about Twitter?**

16 A. I do use Twitter, and I believe I did use
 17 Twitter to look at both candidates.

18 **Q. And did you feel strongly about voting for**
 19 **Mr. Engen instead of Mr. Elder?**

20 A. Yes, I did.

21 **Q. And so were you looking forward, then, to**
 22 **voting in the 2021 election?**

23 A. Yes, both for that reason and because it
 24 was going to be the first election I was eligible to
 25 vote in.

Page 19

1 was going to be an election.

2 **Q. So talking with other people sort of in**
 3 **your peer group? Is that what you're saying?**

4 A. Yes, both within my peer group and people
 5 I know who are older than me.

6 **Q. Okay. And did you read any news articles**
 7 **about the municipal election?**

8 A. Yes, I'm sure I did.

9 **Q. When did you learn that there was going to**
 10 **be a municipal election in the fall of 2021?**

11 A. I cannot recall a specific moment. I'm
 12 assuming -- I knew months in advance.

13 **Q. And were there candidates or issues that**
 14 **you were interested in voting for or against?**

15 (Interruption in proceedings.)

16 THE WITNESS: Apologies, that's the bell
 17 ringing.

18 **Q. (By Mr. Morris) That's okay.**

19 A. There were, yes.

20 **Q. And who were those candidates or issues**
 21 **that you were interested in?**

22 A. There were several examples. I suppose
 23 one significant one was for mayor of Missoula. I was
 24 interested in voting for John Engen over Jacob Elder.

25 **Q. Okay. And how did you find out about the**

Page 18

1 **Q. Got it. And you said that you are pretty**
 2 **active, so you knew you needed to register to vote**
 3 **before you could vote in the 2021 election?**

4 A. Yes, I did know that voter registration
 5 was required in Montana.

6 **Q. And do you recall seeing any information**
 7 **from the candidates on Instagram or Twitter about**
 8 **voting or registering to vote?**

9 A. I don't remember anything specific, but
 10 I'm sure they must have posted something.

11 **Q. Do you recall any of the candidates**
 12 **encouraging voters to get registered to vote?**

13 A. I do not recall that.

14 **Q. Do you recall seeing any information in**
 15 **newspapers about the deadline to register to vote?**

16 A. I may have read an article about it, yes.

17 **Q. Did you encounter anyone in Missoula**
 18 **asking you if you were registered to vote?**

19 A. Yes, I did.

20 **Q. And who is that?**

21 A. Frequently, people at like a booth on the
 22 street or in my high school.

23 **Q. And anyone in your friend group that you**
 24 **recall offering to help you register to vote or asking**
 25 **if you were registered to vote?**

Page 20

1 A. No.
 2 **Q. Okay. When you encountered someone in**
 3 **Missoula at a booth or at your school asking you if**
 4 **you are registered to vote, what did you tell them?**
 5 A. Often that was before I was 18, and so I
 6 would say, "I'm not 18 yet."
 7 **Q. Do you recall any conversations with**
 8 **anyone about that?**
 9 A. No, I do not.
 10 **Q. Okay. So you turned 18 on October 3,**
 11 **2021, right?**
 12 A. Yes, that is correct.
 13 **Q. And you wanted to register to vote on that**
 14 **day.**
 15 A. Yes, that is correct.
 16 **Q. And I think you said that you realize now**
 17 **that you could have registered before your 18th**
 18 **birthday, but back then you didn't realize that.**
 19 **Right?**
 20 A. Yes, that is correct.
 21 **Q. And did you just assume that you couldn't**
 22 **register before you were eligible to vote?**
 23 A. Yes. That was just what I had assumed.
 24 It seemed to me like one of those things like when you
 25 turn 18, you can buy a lottery ticket, you can

Page 21

1 Exhibit 35.
 2 (Document subsequently marked Deposition
 3 Exb. 35 for identification.)
 4 **Q. (By Mr. Morris) Let's see, let's go back**
 5 **to your declaration, Deposition Exhibit 34. And you**
 6 **just sort of alluded to this, but you say on**
 7 **Paragraph 5 of your declaration, you say:**
 8 **"after filling it out, I realized that**
 9 **voter registration forms must be mailed to the**
 10 **Elections Office at least 30 days before the**
 11 **election."**
 12 **Right? Do you see that?**
 13 A. Yes.
 14 **Q. And so when you were filling out that**
 15 **voter registration form, were you planning to mail it**
 16 **in via the mails, like the U.S. mails?**
 17 A. Yes. Because it had been available online
 18 and because that date was still 30 days before the
 19 election, there was nothing that said it was too late
 20 to be mailed at that time.
 21 **Q. Okay. After mailing your registration**
 22 **form in, how were you going to vote? What was your**
 23 **plan in terms of voting after you had mailed your**
 24 **registration form in?**
 25 A. I had requested an absentee ballot.

Page 23

1 register to vote, you can sign a permission slip
 2 without your parents.
 3 **Q. And did you believe that you couldn't vote**
 4 **on a ballot before you turned 18 as well?**
 5 A. Yes. I was unaware of how that worked.
 6 **Q. So what did you do to attempt to register**
 7 **to vote on your 18th birthday?**
 8 A. That night, I looked up "registering to
 9 vote in Montana" online, and I found an online form
 10 that you could fill out. And I printed it out, I
 11 filled it out, and then I set it on my desk because I
 12 realized I could not mail it in.
 13 **Q. Okay. Did you have anyone help you with**
 14 **that?**
 15 A. No, I did not.
 16 **Q. And you said you went online. Did you go**
 17 **to the Secretary of State's web page to get that form?**
 18 A. I do not remember the specific website.
 19 **Q. Okay. Ms. Caudal, I've just shared my**
 20 **screen with you. Can you see what's on my screen?**
 21 A. Yes, I can.
 22 **Q. And does this appear to be the type of**
 23 **form that you found online?**
 24 A. Yes, it is.
 25 MR. MORRIS: We'll mark that Deposition

Page 22

1 **Q. Okay. So, and how did you do that?**
 2 A. There was an option on the form I
 3 submitted.
 4 **Q. Okay.**
 5 A. Or I filled out.
 6 **Q. So you were going to -- and, I'm sorry,**
 7 **I'm sharing my screen with you and we're looking back**
 8 **now at Deposition Exhibit 35. And there's this option**
 9 **on the form where it says "Receive Your Ballot in the**
 10 **Mail," and you had filled it out to say: "Yes, I**
 11 **request an absentee ballot."**
 12 **And so that was your plan?**
 13 A. Yes, that was.
 14 **Q. Okay. I'm showing you back your**
 15 **declaration at Paragraph 7, and you say -- you're**
 16 **talking in Paragraph 7 about being worried that your**
 17 **registration form may get lost in the mail or not**
 18 **accepted. Do you recall being worried about that?**
 19 A. Yes, I do.
 20 **Q. And tell me about that.**
 21 A. I was concerned because I knew that I had
 22 requested an absentee ballot. And especially since
 23 the pandemic, the post service has not always been the
 24 speediest, and I was not sure if it would get there in
 25 time to receive that absentee ballot sent back to me.

Page 24

1 Q. With your concerns about sort of the
2 timing of the mailing, were you contemplating turning
3 in your registration form in person then?

4 A. No, because I was not aware that that was
5 possible.

6 Q. Okay. So in Paragraph 8 of your
7 declaration, you say:

8 Because I was unable to mail my
9 registration form, I needed to register in person at
10 the Missoula County Elections Office.

11 Do you see that?

12 A. Yes, I do see that.

13 Q. And how did you learn that that's what you
14 needed to do?

15 A. Because I found it online as well.

16 Q. Okay. And where did, where did you go
17 online for that information?

18 A. I cannot recall a specific web site.

19 Q. Okay.

20 A. It might have been the Missoula County
21 Elections Office page because I do remember I
22 referenced that multiple times.

23 Q. Got you. And is that the same as Missoula
24 Votes? Is that the same web page or is that something
25 different?

Page 25

1 on November 1st until noon to register?

2 A. Yes, I was aware of that.

3 Q. And so did you try to pencil in a time in
4 your schedule where you could make that trip?

5 A. Yes, I did try. I was hoping that I could
6 make it one day after school, but I'm an incredibly
7 busy high school senior, and especially in the fall
8 when I have commitments such as soccer practice, Model
9 UN, Academic WorldQuest, it just was really hard to
10 find the time.

11 Q. Okay. Isn't it true that in the week
12 before the election, the Election Office actually had
13 extended hours?

14 A. Yes. Ultimately, that was the only reason
15 I was able to make it in time.

16 Q. Well, the Missoula Election Office
17 actually was open on Saturdays before -- between
18 October 5th and the election, right?

19 A. I was not aware of that.

20 Q. Okay. Did you know that in the week
21 leading up to the election, that the Election Office
22 was open from 7 a.m. to 6 p.m. on Thursday and Friday?

23 A. Yes, I did know that.

24 Q. And did you know that on Monday through
25 Wednesday of that week, it was open from 8 a.m. to 6

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1 A. I am not sure.

2 Q. In Paragraph 9 of your declaration, you
3 say:

4 I then discovered that the Missoula County
5 Elections Office would only be open Monday through
6 Friday between 9 a.m. and 5 p.m.

7 Do you see that?

8 A. Yes, I do see that.

9 Q. And how did you learn that information?

10 A. That would also be from the Elections
11 Office website.

12 Q. Okay. And so did you -- so you learned,
13 sort of at the same time that you need to go to the
14 Elections Office to register, that you learned of its
15 hours, when it was open?

16 A. Yes.

17 Q. What day was that? Do you know?

18 A. I am guessing it was probably October 4th
19 or October 5th, that Monday or Tuesday.

20 Q. So at that point, you needed to just
21 figure out a time, sometime between October 5th and
22 October 29th between 9 a.m. and 5 p.m., that you could
23 go to the Elections Office and register, correct?

24 A. Yes.

25 Q. And were you aware that you could also go

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1 p.m.?

2 A. Yes, I believe I knew that.

3 Q. And you actually utilized those extended
4 hours; is that right?

5 A. Yes, I did.

6 Q. So you voted after 5:00 p.m. on October
7 29th; is that right?

8 A. Yes.

9 MS. SOMMERS-FLANAGAN: Objection; asked
10 and answered.

11 THE WITNESS: Yes, I did.

12 Q. (By Mr. Morris) Okay. And why didn't you
13 mention those extended hours in your declaration?

14 A. Can you clarify what you mean?

15 Q. Sure. Your declaration says that: I then
16 discovered that the Missoula County Elections Office
17 would only be open Monday through Friday between 9
18 a.m. and 5 p.m.

19 Right?

20 A. (Nodding head affirmatively.)

21 Q. But in actuality, the Missoula County
22 Election Office was open more hours than that between
23 October 4th and Election Day, right?

24 A. Yes, at -- after the moment I realized
25 that I would need to register in person, those were

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1 the only hours listed on the website.

2 **Q. Yeah. And you wrote this declaration**
3 **after you voted, right, after you were aware of those**
4 **extended hours, right?**

5 A. Yes, I did.

6 **Q. And you actually wrote an article for your**
7 **school newspaper where you mentioned those extended**
8 **hours, right?**

9 A. Yes, I did.

10 **Q. And in that article, you discussed the**
11 **fact that you voted at 5:45 p.m. on October 29th,**
12 **right?**

13 A. Yes, I did.

14 **Q. But your declaration says that you**
15 **discovered that the Missoula County Election Office**
16 **would only be open Monday through Friday between nine**
17 **and five.**

18 MS. SOMMERS-FLANAGAN: Objection;
19 mischaracterizes the declaration.

20 THE WITNESS: I would point out that the
21 verb "I then 'discovered'" implies that it's what
22 happened at that moment. That is what I knew at that
23 moment.

24 **Q. (By Mr. Morris) Okay. And nowhere,**
25 **nowhere in your declaration do you acknowledge the**

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1 **fact that that's only half true that it was only open**
2 **between nine and five, right?**

3 MS. SOMMERS-FLANAGAN: Objection; form.

4 THE WITNESS: The declaration does not say
5 that, that is correct.

6 **Q. (By Mr. Morris) I mean, I don't know, do**
7 **you think that that's sort of misleading to not**
8 **include the fact that the Missoula County Election**
9 **Office was actually open at times other than Monday**
10 **through Friday between 9 and 5 p.m.?**

11 A. No, I don't think it's necessarily
12 misleading.

13 **Q. Okay. Were you encouraged by anyone to**
14 **leave that fact out of your declaration?**

15 A. No, I was not.

16 **Q. So when you signed your declaration, were**
17 **you aware of the fact the Missoula County Election**
18 **Office was actually open on Saturday, October 23rd,**
19 **and Saturday, October 30th of 2021?**

20 A. No, I was not aware of that.

21 **Q. Okay. So the Missoula County Elections**
22 **Office is just off Russell Street on Wyoming Street,**
23 **right?**

24 A. Yes, that is the correct location.

25 **Q. And how far is that from your house?**

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1 A. I don't know the exact distance. I would
2 guess it's about a 10-, 15-minute drive.

3 **Q. And so when you went on October 29th and**
4 **registered, you registered and you voted at the same**
5 **time, right?**

6 A. Yes, that is correct. I was the last
7 person remaining in the Elections Office that day.

8 **Q. Okay. And did you sign up to vote**
9 **absentee?**

10 A. Yes, I did, for future elections.

11 **Q. Okay, thank you. And how did you get to**
12 **the Elections Office?**

13 A. I drove there.

14 **Q. And from where did you drive?**

15 A. That's a little complicated. I recall
16 that that day, I got out of school at 3:55.

17 Then I would have driven my little brother home
18 to our house, which takes about 25 minutes, or so,
19 with the traffic after school at that time.

20 After that, I had to go to the grocery store to
21 pick up desserts to take to an event that NHS, the
22 National Honor Society I am a part of here at Hellgate
23 High School, was hosting.

24 So I went to the grocery store to pick up
25 muffins, then I drove back to Hellgate High School to

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1 drop off those muffins for the event, and to check in
2 with our coordinator and say that I had to go vote so
3 I would have to miss the event.

4 And then I drove from Hellgate to the Elections
5 Office.

6 **Q. Got you. So from school is where you**
7 **ultimately departed to get to the Election Office.**

8 A. Yes, that is correct.

9 **Q. And how long was it of a drive from**
10 **Hellgate to the Elections Office?**

11 A. Also probably between 10 and 15 minutes.

12 **Q. And what was the National Honor Society**
13 **event that you were able to attend?**

14 A. It was a Halloween movie night that we
15 were hosting for the community, and the proceeds were
16 benefitting Watson's Children's Shelter, which is a
17 nonprofit here in Missoula.

18 **Q. And what was your role in that event?**

19 A. As a National Honor Society member, we're
20 required to plan all these group and individual
21 projects and then attend them.

22 **Q. Okay. So were all the other members, to**
23 **your knowledge, of the Honors Society at Hellgate in**
24 **attendance that night?**

25 A. Yes, to my knowledge.

Page 32

1 Q. And did anyone go with you to the Missoula
2 County Elections Office to register and vote?

3 A. No. I went on my own.

4 Q. And once you arrived, how long did it take
5 you to register and vote?

6 A. The entire process probably took about 15
7 minutes.

8 Q. Okay. So from the time you left Hellgate
9 High School to the time you completed voting, it took
10 about 30 minutes, including registration, right?

11 A. Yes.

12 Q. In Paragraph 10 of your declaration -- you
13 said you have a copy of that in front of you?

14 A. Yeah, I do.

15 Q. You say: "I am in school from 8 am to
16 3:55 pm."

17 Do you see that?

18 A. Yes, I do.

19 Q. And is that accurate?

20 A. Yes, that is.

21 Q. And what is your current school schedule?

22 A. Currently, my schedule has changed. Since
23 the semester switch, I dropped a couple of classes. I
24 have -- how detailed would you like me to explain
25 this?

Page 33

1 Q. And at what time did you have to be
2 present at school to, to attend that class?

3 A. 8 a.m.

4 Q. And was that every single day of the week?

5 A. Yes, it was.

6 Q. I understand that there were other
7 students that typically started their day at, what,
8 8:50 or something like that?

9 A. Yes. IB theory of knowledge is considered
10 a zero period.

11 Q. A zero period, got it. And did you have
12 an early release on any days?

13 A. No, I did not.

14 Q. And did you have a late start on any days
15 of the week?

16 A. Officially, Hellgate High School runs on a
17 late start on Thursdays; however, theory of knowledge
18 would run at the same time.

19 Q. Okay. And did you have any free periods
20 in the fall of 2021?

21 A. No, I did not.

22 Q. Did you have a lunch hour?

23 A. Yes, I did.

24 Q. And are kids allowed to leave Hellgate
25 High School during their lunch hour to go get a bite

Page 35

1 Q. Well, actually, just what's your first
2 class?

3 A. IB history.

4 Q. Okay. The bell rings for that at what
5 time?

6 A. 8:50.

7 Q. And is there some other class that you
8 have to be present at school to attend before 8:50?

9 A. In the fall, it's IB theory of knowledge.

10 Q. Okay. So that's what you were saying, is
11 that when the semester switched --

12 A. Yes.

13 Q. -- you now start later?

14 A. Yes, I start later.

15 Q. Okay.

16 A. But I do not take another class, so I have
17 a free period between 11:30 and 12:15.

18 Q. So currently, you have a free period
19 between 11:30 and 12:15; is that right?

20 A. Yes, that is correct, but that is only as
21 of January 21st.

22 Q. All right. So let's talk, then, about
23 your school schedule in October. What was the first
24 class you had to attend in October of 2021?

25 A. IB theory of knowledge.

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1 in downtown Missoula or anything like that?

2 A. Yes, they are.

3 Q. And do you ever leave school to do that?

4 A. Yes, occasionally I will.

5 Q. Did you ever ask anyone in October about
6 leaving school during your lunch hour or otherwise to
7 go register and vote?

8 A. No, I did not.

9 Q. Do you take like a government class -- or
10 were you taking a government class in the fall of 2021
11 or a social sciences or -- I'm trying to think of like
12 what you take and --

13 A. Yes. I am taking an AP government class,
14 I am also taking IB history and IB philosophy, which
15 are all social sciences.

16 Q. Okay. And did your teacher in government
17 offer to allow you guys time to go and register to
18 vote or vote?

19 A. No, she did not.

20 Q. Okay.

21 MS. SOMMERS-FLANAGAN: Hey, Mac?

22 MR. MORRIS: Yeah.

23 MS. SOMMERS-FLANAGAN: Could we just take
24 a five-minute break?

25 MR. MORRIS: Sure.

Page 36

1 **Q. (By Mr. Morris) So, Ms. Caudle, are you**
 2 **still needing to leave this deposition right at 10:30?**

3 A. No, I don't have to.

4 MR. MORRIS: Okay. Sure, let's take a 5
 5 -- or however long of a break. We can go off the
 6 record.

7 COURT REPORTER: The time is 9:19 a.m. We
 8 are off the record.

9 (A brief recess was taken.)

10 COURT REPORTER: Okay. The time is 9:27
 11 a.m. We are on the record.

12 BY MR. MORRIS:

13 **Q. Ms. Caudle, we just took a really short**
 14 **break. And we were talking about your school**
 15 **schedule, but I wanted to go back just a little bit.**
 16 **I'm going to share my screen with you again.**
 17 **Can you see what's on my screen?**

18 A. Yes, I can.

19 MR. MORRIS: And let's mark this
 20 Deposition Exhibit 36.

21 (Document subsequently marked Deposition
 22 Exb. 36 for identification.)

23 **Q. (By Mr. Morris) Deposition Exhibit 36 is a**
 24 **true and correct copy of a Facebook post from Missoula**
 25 **Votes. Have you ever seen this before?**

Page 37

1 newspaper.

2 **Q. Okay, sure. And how did you find out**
 3 **about the extended hours?**

4 A. From the official Missoula County
 5 Elections Office website.

6 **Q. Okay. So did you call the Missoula County**
 7 **Elections Office?**

8 A. No, I did not.

9 **Q. Did you go to the web page of the Missoula**
 10 **County Elections Office?**

11 A. Yes, I did.

12 **Q. And information about the extended hours**
 13 **was posted on their web page; is that right?**

14 A. Yes, that is correct.

15 **Q. And when did you learn about the extended**
 16 **hours?**

17 A. I believe it was that final week of
 18 October.

19 **Q. So when you saw that there were extended**
 20 **hours as posted on the Missoula County Elections**
 21 **Office web page, you were aware that from 7 a.m. to 6**
 22 **p.m. on Thursday and Friday, you could go and register**
 23 **and vote; is that right?**

24 A. Yes, that is right.

25 **Q. And you're also aware that you could go**

Page 39

1 A. No, I have not.

2 **Q. And did you follow or look at the Facebook**
 3 **page for the Missoula County Elections Office or**
 4 **Missoula Votes?**

5 A. No, I did not.

6 **Q. Okay. And do you read the newspaper in**
 7 **Missoula?**

8 A. Occasionally I'll look at it, but I don't
 9 like thoroughly read it.

10 MR. MORRIS: Let me see, and let's mark
 11 this Deposition Exhibit 37.

12 (Document subsequently marked Deposition
 13 Exb. 37 for identification.)

14 **Q. (By Mr. Morris) Deposition Exhibit 37 is a**
 15 **copy of a newspaper article in Missoula from October**
 16 **25, 2021. Do you see that?**

17 A. I do see it.

18 **Q. And this also has information about the**
 19 **extended hours at the Missoula County Elections**
 20 **Office. Do you recall reading stories in the**
 21 **newspaper about the extended hours for the Missoula**
 22 **County Elections Office in October of 2021?**

23 A. No, I do not remember seeing any of these.

24 But I would also like to point out that this is
 25 from KPAX, which is our broadcast service, not the

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1 **and register and vote anytime between 8 a.m. and 6**
 2 **p.m. that week, right?**

3 A. Yes, that is right.

4 **Q. And you're just saying that you don't**
 5 **recall seeing posted on the Missoula County Election**
 6 **Office website information about their Saturday hours?**

7 A. Yes, I said I did see that on their
 8 website.

9 **Q. Oh, I'm sorry. So you were aware that on**
 10 **Saturday, October 30th, you could go and register and,**
 11 **and vote.**

12 A. Oh, no, I had no idea that Saturday was
 13 open. I saw the adjusted hours Monday through Friday.

14 **Q. Okay. And did you not notice, when you**
 15 **saw extended hours posted on the Missoula County**
 16 **Election Office website, information about their**
 17 **Saturday hours on October 30th?**

18 A. No, I did not notice that.

19 **Q. Do you think that that information about**
 20 **Saturday hours wasn't -- didn't appear on the web**
 21 **page?**

22 A. I am not sure, I might have. I may not
 23 have seen it, it might have been in a different spot.
 24 I do not know.

25 **Q. Okay. In the fall, I understand you play**

Page 40

1 soccer. Is that right?

2 A. Yes, that is correct.

3 Q. And are you on the Hellgate High soccer
4 team?

5 A. Yes.

6 Q. And is that a varsity team?

7 A. Yes.

8 Q. And do you have practice every day after
9 school?

10 A. Yes, except for days that we have games.

11 Q. Got you. And how long is practice?

12 A. Practice is an hour and a half on pregame
13 and two hours otherwise.

14 Q. You mentioned in your declaration that you
15 also have other commitments besides soccer. And what
16 are those other commitments?

17 A. For starters, it's all of my work with
18 journalism. I am the editor of the Hellgate newspaper
19 and also volunteer as part of the Peace Corps for
20 Student Voice, which is a national education
21 nonprofit. I compete in multiple different Hellgate
22 activities such as Model UN and Academic WorldQuest.
23 I am part of NHS and I serve on the executive board
24 for our Key Club. Also at that time of year, I was
25 completing my college applications.

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1 not you had school on October 21st or 22nd of 2021?

2 A. Seeing it there, I'm sure we most likely
3 did not, but I still don't remember that specifically.

4 Q. Okay. Was there some reason why you
5 couldn't go and register and vote on those days when
6 you didn't have school in October?

7 A. I do not recall. October was a blur for
8 me.

9 Q. And was there some reason on Thursday or
10 Friday, the week before the election, that you
11 couldn't have gone before school when the Election
12 Office was open at seven?

13 A. No, but I do have to take my little
14 brother into school, so it would have required some
15 re-arranging of my schedule.

16 Q. And you agree you could have gone to the
17 Election Office to register and vote during your lunch
18 hour one day?

19 A. Possibly; however, in October, I do have a
20 lot of commitments during my lunch hour. For example,
21 Model UN competition is over Thanksgiving break, so
22 until Thanksgiving break I have a club meeting for
23 Model UN every Friday at lunch; Thursdays at lunch, I
24 had Key Club meetings; Tuesdays at lunch, I had NHS
25 meetings. So it was not always possible.

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1 Q. Were there any other ones that you were
2 referring to in your declaration besides the ones that
3 you were just telling me about?

4 A. I believe those are the primary ones
5 besides just ordinary parts of being a teenager and
6 helping out with my family.

7 Q. So did you have school on October 21st or
8 22nd of 2021?

9 A. I do not recall.

10 MR. MORRIS: We'll mark this Deposition
11 Exhibit 38.

12 (Document subsequently marked Deposition
13 Exb. 38 for identification.)

14 Q. (By Mr. Morris) And Deposition Exhibit 38
15 is a true and correct copy of the Missoula County
16 Public Schools 2021 through 2022 school calendar,
17 including for Hellgate, correct?

18 A. Yes.

19 Q. And you can see that there is a box there
20 showing the school schedule in October of 2021, right?

21 A. Yes.

22 Q. And on October 21st and 22nd, there are
23 these boxes around it which indicates that that was a
24 staff development/prep day and there was no school.
25 Does that refresh your recollection about whether or

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1 Q. Okay. Did you say you had -- I think you
2 maybe just cut out for a second. Did you say you had
3 something on Fridays at one? Is that what you said?
4 I just --

5 A. Fridays --

6 Q. -- didn't hear you.

7 A. Fridays, I had Model United Nations
8 meetings --

9 Q. Okay.

10 A. -- during the lunch hour.

11 Q. Got you. If you look at Paragraph 15 of
12 your declaration, you say: After school on Friday,
13 October 29th, was my last chance to register to vote
14 without missing school.

15 And you now recognize that that's not
16 necessarily the case because the Election Office was
17 open on Saturday, right?

18 A. At this moment, yes.

19 Q. Okay. And you say that's because of the
20 new law that illuminated Election Day registration.
21 Do you see that?

22 A. Yes, I do. And I believe what I was
23 referring to is that it was my last convenient chance
24 because I had to go after school. Before school was
25 just too difficult, and considering it stopped at noon

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1 on Monday, there was no opportunity to go after school
2 on Monday.

3 **Q. Okay. I can't remember, could you have**
4 **gone over there on Monday before school?**

5 MS. SOMMERS-FLANAGAN: Objection; asked
6 and answered.

7 THE WITNESS: I do not recall if I
8 could --

9 **Q. (By Mr. Morris) Okay.**

10 A. -- but again, it would have been extremely
11 difficult to arrange. My family also only has two
12 cars, and there are six of us who live together.

13 **Q. And were you aware of the deadline to**
14 **register to vote in October of 2021?**

15 A. Yes.

16 **Q. And you were able to comply with the**
17 **registration deadline.**

18 A. Yes.

19 **Q. Do you know anyone else in your school**
20 **that voted in the 2021 municipal elections?**

21 A. Currently in my school, no, but I do know
22 other people or people who graduated last year.

23 **Q. And you talk about some of your**
24 **extracurricular -- a lot of your extracurricular**
25 **activities that you engage in. And I understand you**

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1 November 1st because I applied early decision to
2 school.

3 **Q. And did you get your application in on**
4 **time?**

5 A. Yes, I did.

6 **Q. What about the UN activity? How much time**
7 **do you spend each week engaging in that?**

8 A. Usually, only about an hour or two each
9 week until the competition week when it's like all
10 day.

11 **Q. And so compared to kind of all those**
12 **commitments, the time you spent registering to vote**
13 **and voting was a lot less of a commitment. Do you**
14 **agree with that?**

15 A. Yes, that is true.

16 **Q. Can you go to Paragraph 14 of your**
17 **declaration, please?**

18 So you say: "I would have preferred to have
19 more time with my ballot, but because my birthday was
20 during the late registration period, even if I had
21 pre-registered to vote, I am not sure whether I would
22 have received my absentee ballot in time to return it
23 by mail."

24 **Did I read that correctly?**

25 A. Yes, you did.

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1 **make time for those things in your life. Right?**

2 A. Yes, I do.

3 **Q. And you do that because those things are**
4 **important to you, correct?**

5 A. Yes, I do.

6 **Q. And voting is one of those things that's**
7 **important to you, right?**

8 A. Yes.

9 **Q. During the soccer season, how much time do**
10 **you think you dedicate each week to soccer?**

11 A. Oh, so much. On a usual week, we would
12 have two games, usually a Saturday and a Tuesday or
13 Thursday. On travel game days, we leave at noon and
14 we don't come back until like 8 p.m. I would spend at
15 least two hours every day, no matter what, with
16 practice and team dinners.

17 **Q. And how much time each week do you**
18 **dedicate to the school newspaper?**

19 A. Besides in-class time, usually a few extra
20 hours as well, probably eight-ish hours.

21 **Q. You said that you spent time applying for**
22 **college. How long did you spend engaging in, you**
23 **know, sort of that application process?**

24 A. Countless time. It wasn't even really
25 measured. My first deadline and my only deadline was

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1 **Q. So I'm just -- what are you saying there?**
2 **I'm just kind of confused by what you mean there.**

3 A. I mean that I got to the Elections Office
4 at approximately 5:45 when they closed at 6:00, and
5 elections officer -- like the people who worked there
6 were leaving as I was still there, and they closed the
7 doors immediately after me. I felt that I had, I had
8 to vote while I was there, so I registered and then I
9 sat down with my ballot and took like five minutes to
10 fill it out without -- I mean, I knew who I wanted to
11 vote for in certain races, but I felt I hadn't done
12 sufficient research to my satisfaction for some of the
13 other ones.

14 **Q. Okay. When you went to the Election**
15 **Office on October 29th and you registered, was it your**
16 **understanding that you could have taken your ballot**
17 **with you, gotten a ballot and then taken it back home**
18 **with you after you were registered?**

19 A. That was not explained to me.

20 **Q. Okay. No one told you that you couldn't**
21 **do that, right?**

22 A. No, I was not told that I couldn't. I was
23 given a ballot and told to fill it out at that moment.

24 **Q. Okay, all right. And you said that you**
25 **already knew some of the candidates and who you wanted**

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1 to vote for, like I guess Mr. Engan, right?

2 A. Yes, that is correct.

3 Q. And before you went on October 29th, did
4 you try to figure out what else was going to be on the
5 ballot besides the mayoral race?

6 A. Yes. I knew that city council
7 representatives would be on the ballot, I knew there
8 were several ballot initiatives, I knew -- I can't
9 remember the exact name of the position, but something
10 to do with the judicial system here.

11 Q. Okay. How did you get that information
12 about what else was going to be on the ballot?

13 A. From talking to people, talking to my
14 parents.

15 Q. And did you read any news articles or
16 anything online or talk to anyone about any of the
17 candidates?

18 A. I likely did.

19 Q. And so besides Mr. Engan, did you already
20 know any other candidates that you were going to vote
21 for when you arrived?

22 A. Yes. I knew who I would vote for, for our
23 city council representative for my district.

24 Q. Do you recall anything else that was on
25 the ballot?

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1 A. I think there was something to do with the
2 city bus system.

3 Q. And did you have a sense of how you would
4 vote on either of those initiatives before you arrived
5 at the Election Office?

6 MS. SOMMERS-FLANAGAN: Objection; asked
7 and answered.

8 THE WITNESS: I did not necessarily.

9 Q. (By Mr. Morris) Was there something --
10 well, let me ask you this: The city bus system
11 initiative, was that one that you were uncertain of?

12 A. Yes. I did not know much about it ahead
13 of time.

14 Q. And were you also -- did you have some
15 uncertainty about the marijuana one?

16 A. I was a little more certain about that
17 one. That one was implementing the tax on medical and
18 nonmedical use.

19 Q. And the city bus initiative, do you recall
20 how you voted on that?

21 A. Not at this moment. If I saw it again, I
22 would.

23 Q. Okay. Do you know if you left it blank?

24 A. No, I believe I voted.

25 Q. All right. So in Paragraph 14, one of the

Page 51

1 A. I believe I answered that already. There
2 was a judge position or judicial position and there
3 were the ballot initiatives.

4 Q. And before you arrived, did you look at --
5 I'm sorry, before you arrived at the Election Office,
6 did you look at the candidates for that judge position
7 or those ballot initiatives and what they were about?

8 MS. SOMMERS-FLANAGAN: Objection --

9 THE WITNESS: I --

10 MS. SOMMERS-FLANAGAN: Sorry. Objection;
11 asked and answered.

12 THE WITNESS: I had heard about them, yes.

13 Q. (By Mr. Morris) And did you know who you
14 were going to vote for, for that, the judge position?

15 A. I was fairly sure, yes.

16 Q. And did you know how you were going to
17 vote with respect to the ballot initiatives?

18 A. Not ahead of time. I made my decision in
19 the voting booth.

20 Q. And do you recall what those ballot
21 initiatives were?

22 A. I believe it was legalization of
23 marijuana, was one of them.

24 Q. Do you recall any others that were on the
25 ballot?

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1 things you say is -- sorry, let me get back to it.

2 You say - it's sort of after the second comma there -
3 you say:

4 "even if I had pre-registered to vote, I
5 am not sure whether I would have received my absentee
6 ballot in time to return it by mail."

7 Do you see that?

8 A. I do see that.

9 Q. And what do you -- what's the concern
10 there?

11 A. That was similar to what I referenced
12 earlier on. I just, I did not have the most trust in
13 the postal service at that time.

14 Q. Okay. Anything else that you're sort of
15 referencing or talking about in that part of that
16 paragraph in terms of preregistration other than your
17 concern with the postal service?

18 A. I just did not know very much about how
19 preregistration worked. It was not explained as a
20 common option to me.

21 Q. Understood. And you know now, obviously,
22 that preregistration is this thing where you can
23 register to vote so long as you're going to be 18 in
24 the next election, right?

25 A. Yes.

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1 Q. And so that means -- I think you said that
2 you knew about this fall of 2021 municipal election
3 several months before it occurred, right?

4 A. Yes, that is correct.

5 Q. And so under Montana law, you could have
6 preregistered to vote as soon as you learned about
7 that election because you knew you were going to be 18
8 by the time it came around, right?

9 MS. SOMMERS-FLANAGAN: Objection; form.

10 THE WITNESS: If I had been aware of
11 preregistration, yes.

12 Q. (By Mr. Morris) Yeah, yeah. That's --
13 sorry, I should have said that.

14 Yeah, if you had been aware when you learned of
15 it, the law would have allowed you to preregister.
16 That's something that you recognize now that you
17 didn't back then, right?

18 A. Yes.

19 Q. And in terms of preregistration, is it
20 your understanding that you can do that by mail?

21 A. I still don't know very much about how it
22 works.

23 Q. Okay. So let me, let me just -- I want to
24 go back because I think what you're saying in
25 Paragraph 14 is like "I'm concerned that, I am

Page 53

1 concerned that even if I had preregistered, I wouldn't
2 have received my ballot in time to return it in the
3 mail." Right?

4 A. Yes.

5 Q. Okay. And so as you sit here today, you
6 remain concerned that even if you had preregistered,
7 you might not have been able to return that, your
8 absentee ballot, via the mail; is that accurate?

9 A. Yes, that is accurate.

10 Q. So explain to me what, what you are
11 concerned about in that regard.

12 A. Can you clarify? That's kind of a vague
13 question.

14 Q. Sure, yeah. I just don't understand why
15 you, why you are concerned that even if you had
16 preregistered, you wouldn't have received your ballot
17 in time to return it by the mail.

18 A. I think a key part is because my birthday
19 was so close to the deadline and I wasn't sure how
20 mailing them out worked. I didn't know how any of
21 that happened. And so I was worried that if they
22 mailed them out ahead of time, I would not be 18 by
23 that date so I would not be sent an absentee ballot
24 until later on, and if I was sent one later on, I
25 would receive it late.

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1 Can you see where I was concerned?

2 Q. Sort of, yeah. And I guess I'm -- I just
3 want to make sure: Are you still concerned about
4 that, or was that something that you were concerned
5 about and you kind of have worked through it and you
6 no longer are?

7 A. I don't see how it's applicable now
8 considering that like it's something that happened in
9 the past. So it's strange to be concerned currently
10 about something in the past, but yes, I was concerned
11 in the past.

12 Q. Okay, all right. So I think I see what
13 you're saying. But your birthday, I think you
14 mentioned the fact that your birthday has something to
15 do with this concern that you had, that even if you
16 preregistered, you wouldn't have maybe been able to
17 return your ballot in time. Am I hearing that right?

18 A. Yes.

19 Q. And what about your birthday makes you
20 concerned about that?

21 MS. SOMMERS-FLANAGAN: Objection; asked
22 and answered.

23 THE WITNESS: Because my birthday is so
24 close to the deadline. And for me, it was 30 days
25 before, but I have friends with birthdays October

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1 12th, October 18th. And so at that point, even if
2 you've preregistered to vote, are you going to get a
3 ballot in time?

4 Q. (By Mr. Morris) Well, do you know when the
5 Missoula County Election Office mailed out ballots in
6 the fall, the 2021 election?

7 A. No, I do not.

8 Q. And let me just show you this.

9 MR. MORRIS: And we'll mark this
10 Deposition Exhibit 39.

11 (Document subsequently marked Deposition
12 Exb. 39 for identification.)

13 Q. (By Mr. Morris) And can you see what's on
14 my screen, Ms. Caudle?

15 A. Yes, I can.

16 Q. Okay. And this is a Facebook post from
17 Missoula Votes dated October 12, 2021. Do you see
18 that?

19 A. I do.

20 Q. And it says that the Missoula County
21 Elections Office will mail approximately 73,506
22 ballots for the November 2nd general election on
23 Wednesday, October 13th. Do you see that?

24 MS. SOMMERS-FLANAGAN: Hey, Mac, could you
25 just zoom in a little bit? I'm sorry, I'm just having

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1 trouble seeing it.

2 MR. MORRIS: Yeah, of course. I think I
3 can. I don't know why it's -- hang on, I think I can
4 just do this.

5 MS. SOMMERS-FLANAGAN: Oh, thank you.

6 MR. MORRIS: Yeah.

7 **Q. (By Mr. Morris) Can you see that okay, Ms.**
8 **Caudle?**

9 A. Yes, I can.

10 **Q. Okay. So if you were preregistered to**
11 **vote and the ballots were mailed out on October 13th,**
12 **then your ballot would have gone out with all the rest**
13 **of them on October 13th. That all adds up and makes**
14 **sense to you, right?**

15 A. Yes, it does.

16 **Q. Okay. So given that the ballots in this**
17 **election were mailed out on October 13th, 10 days**
18 **after your birthday, do you still, as you sit here**
19 **today, have the same concerns about being able to**
20 **return your ballot in time even if you're**
21 **preregistered?**

22 A. No, not for myself.

23 **Q. Okay. Do you know the last four digits of**
24 **your Social Security number?**

25 A. I did in October, and I have forgotten

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1 **license?**

2 A. In January 2020.

3 **Q. Okay. And how did you go about getting a**
4 **Montana driver's license?**

5 A. I took the drivers' ed course offered
6 through my high school the summer between my freshman
7 and sophomore year, and then six months later I went
8 to the DMV and took the test and got my license.

9 **Q. Do you have a passport?**

10 A. Yes, I do.

11 **Q. When did you get a passport?**

12 A. Long before I can remember, probably when
13 I was one year old - two years old.

14 **Q. Do you have a bank account?**

15 A. Yes, I do.

16 **Q. And is that a Montana bank account?**

17 A. Yes, it is.

18 **Q. Do you receive a paycheck or do you work**
19 **and receive a paycheck from anyone?**

20 A. Yes, I did.

21 **Q. Okay. And how long have you been**
22 **receiving a paycheck?**

23 A. I started receiving a paycheck from my
24 first job in May 8, 2019, and then I got my last
25 paycheck -- I quit my second job last August, so I

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1 them at this moment.

2 **Q. And do you have access to your Social**
3 **Security card?**

4 A. Yes, I do.

5 **Q. And do you have your last four digits of**
6 **your Social Security number saved somewhere, on your**
7 **phone or anything like that?**

8 A. I do not have it saved on my phone.

9 **Q. Where do you keep your Social Security**
10 **card?**

11 A. In a folder in my house with all of our
12 important documents.

13 **Q. And did you need your Social Security**
14 **number in order to apply for college?**

15 A. Yes, I did.

16 **Q. And I assume there wasn't any difficulty**
17 **in, in getting that number for that college**
18 **application. Is that right?**

19 A. Yeah, that is correct, it was not
20 difficult. And that is why I still had it memorized
21 at the time I went to register to vote.

22 **Q. Got you. And do you have a Montana**
23 **driver's license?**

24 A. Yes, I do.

25 **Q. When did you get a Montana driver's**

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1 haven't received one since then.

2 **Q. Where did you work?**

3 A. My first job was at Dairy Queen and my
4 second one was as a lifeguard for the City of Missoula
5 at our pools.

6 **Q. Dairy Queen gets busy in Missoula.**

7 A. (Nodding head affirmatively.)

8 **Q. It's good stuff, though. Do you have a**
9 **student ID card from Hellgate High School?**

10 A. Yes, I do.

11 **Q. And did you get a voter registration card**
12 **when you registered to vote?**

13 A. I don't recall getting one, actually.

14 **Q. Are you familiar with the My Voter Page on**
15 **the Secretary of State's website?**

16 A. No, I'm not.

17 **Q. Okay. Do you know a way that you can find**
18 **out whether or not your vote or ballot has been**
19 **accepted by the election officials?**

20 A. No, I'm not sure how you would do that.

21 **Q. Do you know a way to check whether or not**
22 **your registration is up to date or accurate, your**
23 **voter registration?**

24 A. No. I have not been informed of a way to
25 do that.

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1 **Q. Can you tell me a little bit about what**
 2 **you do as a board member at -- I'm sorry, is it**
 3 **Montana Youth Action?**

4 A. Yes, it is.

5 **Q. Okay, sorry. Can you tell me about what**
 6 **you do as a board member at Montana Youth Action?**

7 A. Yeah. Well, I attend the monthly board
 8 meetings and participate in all regular board duties.
 9 For example, I went to our board retreat, I believe it
 10 was last October or September.

11 Then I also am the Amplify chair. Amplify
 12 Montana Youth is a little side project that the
 13 nonprofit started in 2020. And I launched it with a
 14 friend, and that -- interviewed a bunch of candidates
 15 for office ahead of the 2020 elections and basically
 16 coordinated a social media presence. So a lot of the
 17 work I do with Montana Youth Action is related to
 18 social media - we have a podcast on Spotify - and just
 19 that side of engagement stuff, especially as it
 20 relates to my interests in journalism.

21 **Q. Yeah. What's sort of your -- well, what**
 22 **do you take to be sort of the goals of -- or the**
 23 **mission of Montana Youth Action?**

24 A. Montana Youth Action is a nonprofit that
 25 -- a nonpartisan nonprofit that aims to educate youth

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1 future?

2 A. Not currently.

3 **Q. You said you edited some YouTube videos**
 4 **for Montana Youth Action.**

5 A. (Nodding head affirmatively.)

6 **Q. And what were those about?**

7 A. Like, for example, there was one that we
 8 released just ahead of the 2020 election that was a
 9 little bit about voting, what the election was, and
 10 just kind of like a general breakdown of like:
 11 "Here's why elections matter."

12 **Q. And can you recall any other videos since**
 13 **that 2020 election that you've helped out at for**
 14 **Montana Youth Action?**

15 A. That was the main one that I put the most
 16 time into.

17 **Q. In terms of social media content, I think**
 18 **you said that you've helped out with some of that. Is**
 19 **that right?**

20 A. Yes, that is correct.

21 **Q. And what social media content do you**
 22 **recall working with?**

23 A. We attempted to start a Tiktok; we posted
 24 a lot on Instagram; we have both a Montana Youth
 25 Action Instagram page and an Amplify Montana Youth

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1 - we usually define it as like middle school, high
 2 school, college-age students - throughout the state or
 3 Montana about civic engagement, voting, just how to
 4 engage with politics in the state.

5 **Q. And what's your focus in terms of your**
 6 **work or engagement with Montana Youth Action? Is it**
 7 **focused on voting issues or something else?**

8 A. Primarily, content creation. So a lot of
 9 the stuff I was doing was contacting candidates for
 10 different offices and requesting an interview with
 11 them. I would do it over Zoom. And then we would
 12 record them, and edit them, and post them on YouTube
 13 and Instagram for people to watch if they were curious
 14 about candidates.

15 The other work I've done is I've edited together
 16 YouTube videos, for example, that just kind of
 17 describe information about different issues that will
 18 be on the ballot.

19 **Q. Did you interview any of the candidates in**
 20 **the 2021 municipal election?**

21 A. No, I did not. We concluded our series of
 22 interviews after the 2020 general election. We did
 23 both the primaries and the generals that year.

24 **Q. And do you have any interviews with any**
 25 **sort of political candidates lined up in the near**

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1 specific page, so just all sorts of content for both
 2 of those.

3 **Q. And is some of that content related to**
 4 **voting?**

5 A. Some of it is, yes.

6 **Q. And is it related to the process of voting**
 7 **in terms of registration, how to do it, voting, and**
 8 **what the requirements are?**

9 A. I'm sure some of it is, but we also keep
 10 in mind that our audience starts at like 12 years old.
 11 So it's not all "here's how to register to vote"
 12 centered, it's more about making them interested in
 13 political engagement.

14 **Q. And have you worked on social media**
 15 **content that's sort of specifically related to how you**
 16 **register to vote?**

17 A. I don't believe so.

18 **Q. Have you worked on social media content**
 19 **about deadlines for registering to vote?**

20 A. No.

21 MS. SOMMERS-FLANAGAN: Objection; asked
 22 and answered.

23 THE WITNESS: No.

24 **Q. (By Mr. Morris) Have you worked on social**
 25 **media content about the deadline to vote?**

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1 A. No.

2 **Q. Okay. So when you talk about social media**

3 **content, are you referring to -- well, what social**

4 **media outlets are you referring to?**

5 A. Primarily Instagram.

6 **Q. Can you tell me a little bit more about**

7 **Amplify Montana Youth and what you do, like kind of**

8 **what the focus of that is and what your involvement in**

9 **that is?**

10 A. That was a project launched during spring

11 of 2020 and carried out through summer, and it's

12 continued until now. It was in coordination with

13 Isaac Nehring, who is the former executive director of

14 Montana Youth Action and currently one of the key

15 leaders of the board; and Gilly Sherrill, who

16 graduated from Hellgate High School in 2021 and was a

17 high school junior at the time I was a high school

18 sophomore.

19 And it was during quarantine, and we realized a

20 lot of events for candidates to just voice their

21 thoughts and their policies and what they stood for

22 had been canceled, and so we wanted to have some way

23 to like provide that opportunity for them to share

24 their platforms. And so we started emailing people,

25 calling people, and asking if they wanted to do an

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1 the people in the organization aren't even eligible to

2 vote.

3 MR. MORRIS: Okay, all right. I'm going

4 to look over my notes and take a quick break, but I

5 think we're pretty much done. So we can go off the

6 record.

7 COURT REPORTER: Okay. The time is 10:17

8 a.m. We are off the record.

9 (A brief recess was taken.)

10 COURT REPORTER: The time is 10:28 a.m.

11 We are on the record.

12 MR. MORRIS: Ms. Caudle, I don't have any

13 more questions for you at this time, so thanks very

14 much for your time. I'm not sure if Ms.

15 Sommers-Flanagan does.

16 MS. SOMMERS-FLANAGAN: I believe that

17 actually Mr. Meloy has a couple of questions he'd like

18 to ask.

19 MR. MELOY: I just turned my camera back

20 on.

21

22 BY MR. MELOY:

23 **Q. Ali, I'm Mike Meloy. I represent the**

24 **Montana Democratic Party in the consolidated cases of**

25 **which Montana Youth Action is a part.**

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1 interview with us.

2 **Q. Very cool. And is Isaac Nehring -- where**

3 **does he go to high school?**

4 A. He lives in Helena. He goes to Helena

5 High.

6 **Q. Okay, okay. And do you know who the**

7 **current executive director of Montana Youth Action is?**

8 A. We restructured the organization at the

9 start of this fiscal year, so instead of having an

10 executive director position, we have three board

11 chairs. So he is one of the three board chairs, but

12 he works with two other people now.

13 **Q. Are you one of the board chairs or just**

14 **board members?**

15 A. I am just a board member.

16 **Q. Okay. How many board members are there?**

17 A. Approximately 15.

18 **Q. And are there board members -- are all the**

19 **board members young people?**

20 A. Yes. You age out once you graduate high

21 school, and you cannot serve on the board once you've

22 graduated.

23 **Q. Oh, okay. I didn't realize that.**

24 A. We're a completely youth-run organization.

25 That's kind of the whole point. So actually, most of

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1 **I have to say that I am totally blown away by**

2 **the number of activities in which you've been involved**

3 **as a high schooler, and my faith in the future of**

4 **democracy has been renewed.**

5 **Where are you --**

6 MR. MORRIS: I'll just object to the

7 sidebar.

8 MR. MELOY: Well, that's fine. I think

9 you'd probably join me with that comment, wouldn't

10 you, Mac?

11 **Q. (By Mr. Meloy) But where are you going to**

12 **school in the fall?**

13 A. I'm going to Northeastern University in

14 Boston.

15 **Q. And while you're back there, are you**

16 **planning on keeping your Montana residency?**

17 A. Yes, that is the plan.

18 **Q. And will you continue to vote in Montana?**

19 A. Yes, most likely; yeah.

20 **Q. Did you -- the Hellgate High soccer**

21 **team -- (interruption in proceedings.)**

22 A. Oh, apologies. It's the announcements

23 right now.

24 **Q. Uh-oh.**

25 A. It should be over in just a minute. Okay.

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1 Q. So Hellgate High trains -- do they train
2 up on the Rattlesnake Field?

3 A. Yes, we do.

4 Q. And how far -- how long does it take you
5 to get from high school up to those fields?

6 A. Usually, like 10 -- it's like a 10-minute
7 drive, but that doesn't count time getting from your
8 classes, getting your soccer stuff, getting in your
9 car, and then walking from the parking lot across
10 where you start.

11 Q. If you can get up there in 10 minutes, you
12 must be driving pretty fast.

13 A. Yeah, yeah. It depends on traffic, too.
14 If you get stuck behind a school bus, it can take you
15 like 20.

16 Q. And what time does practice start?

17 A. 4:30.

18 Q. And you go for two hours except for
19 pre-games?

20 A. Yes.

21 Q. So what time do you typically get -- and
22 that's Monday through Friday, right?

23 A. Yes, hm-hmm.

24 Q. And so what time, what time do you, do you
25 get back home after practice?

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1 6, 2022. We are off the record.
2 (Signature reserved.)

3 * * * * *

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1 A. Oh, usually like 7:15 to 7:30.

2 Q. And that's for the entire season, which
3 ends the end of October; is that right?

4 A. Yes, hm-hmm. Our final -- we were
5 eliminated in the semifinals on October 26th.

6 Q. And Hellgate High had as a goal to make it
7 to the state championship and to win the state
8 championship; isn't that right?

9 A. Yes, that is correct.

10 Q. And so the training sessions must have
11 been pretty, pretty stressful, particularly toward the
12 playoff weeks, correct?

13 A. Hm-hmm, yes.

14 Q. How did you manage to do everything and
15 still, and still pay attention to soccer during that
16 late October time period?

17 A. It was, it was definitely difficult. I
18 developed a bad habit of going to bed around 2 a.m.

19 MR. MELOY: Well, thanks. I think that's
20 all I had.

21 MR. MORRIS: I don't have any follow-up.

22 COURT REPORTER: Okay, all right. This
23 concludes the Videoconference Video-Recorded
24 Deposition of Ali Caudle.

25 The time is 10:33 a.m. The date is April

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1 STATE OF MONTANA)
2 : ss.

3 County of Silver Bow)

4 I, Jonny B. Nordhagen, Court Reporter - Notary
5 Public in and for the County of Silver Bow, State of
6 Montana, do hereby certify:

7 That the witness in the foregoing deposition,
8 Ali Caudle, was by me first duly sworn according to
9 law in the foregoing cause; that the deposition was
10 then taken before me at the time and place herein
11 named; that the deposition was reported by me in
12 machine shorthand and later transcribed by computer,
13 and that the foregoing seventy-one (71) pages contain
14 a true record of the witness, all done to the best of
15 my skill and ability.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and affixed my notarial seal this _____ day of
18 _____, 2022.

19 _____
20 Jonny B. Nordhagen
21 Notary Public for the State of
22 Montana residing at Butte,
23 Montana. My commission
24 (NOTARIAL SEAL) expires May 8, 2022.
25

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1 DEPOSITION OF: ALI CAUDLE
2 DEPOSITION DATE: APRIL 6, 2022
3 IN RE: MONTANA DEMOCRATIC PARTY, et al.,
4 vs. JACOBSEN
5 COURT REPORTER: JONNY B. NORDHAGEN
6 I have read my deposition and make the following
corrections or additions:

7
8 PAGE # LINE CORRECTION

9

10

11

12

13

14

15

16

17

18

19

20

21

22 Signed under penalty of perjury this _____ day
of _____, _____.

23

24

25

ALI CAUDLE

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EXHIBIT 2

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party, et al. Cause No.: DV-56-2021-451
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 Group,
Plaintiffs,
vs.
Christi Jacobsen, in her official capacity as
Montana Secretary of State,
Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF AMARA REESE-HANSELL

Taken at:
Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 6, 2022
1:06 p.m.

APPEARANCES OF COUNSEL (by videoconference):

FOR THE DEFENDANT CHRISTI JACOBSEN:

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I N D E X

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42	100	MSU CatCard information
43	127	LSD Authorized Print Version - SB 169

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1 AMARA REESE-HANSELL
 2 APRIL 6, 2022; BUTTE, MONTANA
 3 - - -
 4 BE IT REMEMBERED THAT, pursuant to Notice, the
 5 Deposition of Amara Reese-Hansell was taken at the
 6 time and place and with the appearances of counsel
 7 hereinbefore noted before Jonny B. Nordhagen, Court
 8 Reporter - Notary Public for the State of Montana.
 9 It was further stipulated and agreed by and
 10 between counsel for the respective parties that this
 11 deposition was taken pursuant to the Montana Rules of
 12 Civil Procedure.

13
 14 The following proceedings were had:

15
 16 COURT REPORTER: The time is 1:06 p.m. We
 17 are on the record.

18 This is the Videoconference Video-Recorded
 19 Deposition of Amara Reese-Hansell taken by the
 20 attorneys for the defendant in the matter of Montana
 21 Democratic Party, et al., Plaintiffs, vs. Christi
 22 Jacobsen, in her official capacity as Montana
 23 Secretary of State, Defendant.

24 This is Cause No.: DV-56-2021-451 in the
 25 Montana Thirteenth Judicial District Court,

Page 5

1 Yellowstone County.
 2 This deposition is being taken on
 3 Wednesday, the 6th day of April, 2022, from Nordhagen
 4 Court Reporting, 1734 Harrison Avenue in Butte,
 5 Montana.

6 My name is Jonny Nordhagen. I am the
 7 court reporter and recording operator.

8 Counsel will now introduce themselves,
 9 after which I will swear in the witness.

10 And we can start with Mac.

11 MR. MORRIS: Okay. This is Mac Morris on
 12 behalf of the Montana Secretary of State.

13 COURT REPORTER: And Rylee?

14 MS. SOMMERS-FLANAGAN: This is Rylee
 15 Sommers-Flanagan. I represent Plaintiffs Montana
 16 Youth Action, Forward Montana Foundation, and the
 17 Montana Public Interest Research Group.

18 COURT REPORTER: Okay, and Mike.

19 MR. MORRIS: Mike Meloy for the Montana
 20 Democratic Party.

21
 22
 23
 24
 25 ///

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1 AMARA REESE-HANSELL,
 2 having been called as a witness by the
 3 defendant, being first duly sworn, was
 4 examined and testified as follows:

6 EXAMINATION

7 BY MR. MORRIS:

8 Q. Good afternoon. And I'm going to
 9 pronounce your name "Amara Reese-Hansell." Is that
 10 right?

11 A. Yes.

12 Q. Okay. And can you tell me your address,
 13 please?

14 And should I refer to you as "Ms.
 15 Reese-Hansell"? Is that how you'd like to be referred
 16 to during the deposition?

17 A. "Ms. Reese-Hansell" or "Amara" is just
 18 fine.

19 Q. Okay, thanks. What's your address?

20 A. It's 2220 Remington Way, Apartment 213, in
 21 Bozeman. And the ZIP code is 59718.

22 Q. Have you ever had your deposition taken
 23 before?

24 A. I have not.

25 Q. So you might have gone over all these with

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1 someone already, but there's some kind of rules or
 2 guideposts.

3 We'll try our best, during the course of this
 4 deposition, not to talk over one another. The reason
 5 for that is obviously we have a court reporter here
 6 who's trying to take down everything we say. And even
 7 though you might know exactly what I'm asking before I
 8 finish my question and even though I know what you're
 9 going to say, for purposes of the record, if we could
 10 just give a pause and try not to talk over one
 11 another. Okay?

12 A. (Nodding head affirmatively.)

13 Q. And you realize, obviously, that you're
 14 under oath during the course of this deposition,
 15 correct?

16 A. I do.

17 Q. And is there any reason why you can't give
 18 accurate and truthful testimony today?

19 A. No.

20 Q. Okay. And what I'm asking is: You're not
 21 on any sort of medication or anything like that that
 22 would affect your memory or otherwise impair your
 23 ability to give accurate, truthful testimony, right?

24 A. I'm not.

25 Q. Okay. If I ask you a question in the

Page 8

1 deposition and you don't understand it, will you tell
 2 me that you don't understand my question?
 3 A. Yes.
 4 Q. All right. When did you move to -- oh,
 5 let me just tell you one other thing. And Rylee is
 6 really good about this, but if you need a break during
 7 the deposition at all, just say so, and we can take a
 8 break, you know, for whatever reason, typically. The
 9 only exception to that is like if I ask you a
 10 question, I'll usually get you to answer the question
 11 before we go on a break. Okay?

12 A. Okay.

13 Q. All right. When did you move to Montana?

14 A. About, it will be nine years ago this
 15 summer, so nine years ago in August, but eight years.

16 Q. So was that August of 2013?

17 A. Yes, I believe so.

18 Q. And since moving to Montana, have you
 19 always lived in Gallatin County?

20 A. I have.

21 Q. Where did you live before moving to
 22 Montana?

23 A. I lived in Wisconsin.

24 Q. Where in Wisconsin?

25 A. I lived in Fort Atkinson, which is kind of

Page 9

1 A. She did not.

2 Q. What do you mean when you say your family
 3 splits time between various places?

4 A. Yeah. So my grandparents who have a
 5 residence here, they also reside other places parts of
 6 the year. They spend a lot of time in California,
 7 Mexico, places like that. They don't reside here
 8 year-round.

9 Q. And did you live with your grandparents
 10 when you first moved to Bozeman?

11 A. I did for a few months.

12 Q. And were you intending to start college
 13 in, in Bozeman after you first moved here?

14 I didn't intend to when I first moved here. I
 15 took a year off and then I went to college after
 16 living in Bozeman for a year.

17 Q. Did you have a job in Bozeman when you,
 18 when you moved out here?

19 A. Not really. I was doing some odd jobs,
 20 babysitting a little bit, things like that; mostly
 21 just spending time with my family, though.

22 Q. When did you get sort of your first job
 23 after moving to Bozeman?

24 A. It would have been when I was an intern at
 25 Forward Montana, which I think was maybe my second

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1 in between Madison and Milwaukee.

2 Q. What brought you to Montana?

3 A. I always wanted to move. I have some
 4 family here, so it just seemed like a good natural fit
 5 after high school.

6 Q. And you didn't move out with your entire
 7 family. You moved out after finishing high school; is
 8 that right?

9 A. Yes.

10 Q. You said you have some family here?

11 A. I do.

12 Q. And what of your family members live in
 13 Bozeman?

14 A. Most of my family splits their time
 15 between here and other places, but I have -- I guess
 16 they would technically be my step-grandparents still
 17 live here, I have an aunt that lives here, some other
 18 distant relatives, maybe a great-aunt.

19 Q. And have your parents ever lived in
 20 Montana?

21 A. Yeah. My mom grew up here.

22 Q. And where did she grow up?

23 A. In the Bozeman area.

24 Q. And did she live in the Bozeman area when
 25 you first moved to Montana in August of 2013?

Page 10

1 year of college.

2 Q. And that would have been 2015, maybe?
 3 Somewhere in there?

4 A. Yeah, that sounds right. It's hard to say
 5 the exact, but yeah, that sounds right.

6 Q. And you started school at MSU in the fall
 7 of 2014?

8 A. Yes.

9 Q. So between August of 2013 and the start of
 10 school in 2014, what were you doing in Bozeman?

11 A. Yeah. Again, mostly just spending time
 12 with my family, things like that. I hadn't seen them
 13 in a very long time. So just taking it easy, getting
 14 ready for school to start, things like that.

15 Q. Are you a skier or a snowboarder?

16 A. I am not.

17 Q. So did you ever go up and ski or snowboard
 18 that year?

19 A. No.

20 Q. Missed opportunity.

21 A. Totally.

22 Q. Did you have a car when you moved to
 23 Montana?

24 A. Not my own, no. I had grandparents at the
 25 time who let me borrow their vehicle for a little bit

Page 12

1 and I did ultimately acquire that vehicle as my own,
2 but I wouldn't say it was until maybe, maybe 2015 that
3 that happened. I couldn't be totally sure.

4 **Q. Did you fly out from Wisconsin to Bozeman,**
5 **then?**

6 A. I did.

7 **Q. Did you have a lot of luggage?**

8 A. No, I didn't.

9 **Q. Those were the days. Did you get a**
10 **driver's license after moving to Montana?**

11 A. I did, but not when I first lived here.
12 It would have been just whenever my license needed to
13 be renewed, which I honestly think could have been
14 when I was turning 21, but I could be wrong. I could
15 have gotten one before then, but I certainly didn't
16 have it when I first moved here and not within my
17 first year or two.

18 **Q. How did you get around Bozeman and other**
19 **places after you moved to Bozeman in August of 2013?**

20 A. Sorry, maybe I should clarify. I did have
21 a driver's license, I had a Wisconsin driver's
22 license. I didn't receive a Montana driver's license
23 until I had been living here, but I did have a
24 driver's license.

25 So like I said, I used my grandparents' vehicle

Page 13

1 longer, but yeah, at the time.

2 **Q. Okay, yeah. And so when you got that car**
3 **from your grandparents, did you register it in your**
4 **name and title it in your name?**

5 A. Yes, when it officially became my vehicle.

6 Like I said, I was sharing it for awhile, and then it
7 became kind of mine fully in school. And, yes, it was
8 registered and titled in my name.

9 **Q. After you moved to -- did your parents**
10 **ever -- or your grandparents ever talk to you about a**
11 **requirement in Montana law that after you've been**
12 **residing in Montana for 60 days, you need to get a**
13 **Montana driver's license in order to drive in Montana?**

14 A. No, my grandparents never talked to me
15 about that.

16 **Q. And are you aware, as you sit here today,**
17 **that Montana law requires people who have resided in**
18 **Montana for 60 days to get a Montana driver's license?**

19 A. I'm not aware of that, no.

20 **Q. And you said you registered your vehicle**
21 **once you purchased it from your grandparents. And do**
22 **you know whether or not your vehicle registration**
23 **shows your name and current address?**

24 MS. SOMMERS-FLANAGAN: Objection; form.

25 THE WITNESS: I don't have the vehicle

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1 at the time, walked, things like that, had friends
2 come and pick me up.

3 **Q. When did you acquire your -- did you say**
4 **you acquired your grandparents' vehicle in 2015?**

5 A. I can't be exactly sure. 2015 sounds
6 right. Yeah, somewhere within kind of my first or
7 second year, that became my personal vehicle.

8 **Q. And why did you get a vehicle at that**
9 **time?**

10 A. Like I said, I had been borrowing it. It
11 kind of was shared between a bunch of different family
12 members, kind of just an extra car that they had. And
13 then like I said, they kind of started spending more
14 time in other areas, not being in Montana so often, so
15 they thought it would be a good natural fit for me to
16 continue using it.

17 **Q. Were you a student at the time that you**
18 **acquired that vehicle?**

19 A. I think so, yeah. Again, it's really hard
20 for me to define the exact date in which, you know,
21 the car became mine, but I was definitely in school
22 when it happened.

23 **Q. Is the car registered and titled in your**
24 **name at this time?**

25 A. At that time, yes. I don't have it any

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1 anymore so it's hard for me to say, but yes, I imagine
2 that it would have.

3 **Q. (By Mr. Morris) Do you have --**

4 A. I --

5 **Q. I'm sorry, go ahead.**

6 A. I was just going to say, I know that there
7 was -- it was an older vehicle, so it had a permanent
8 registration. Again, I'm not like very familiar with
9 cars and how those things work, but I guess I don't
10 know when I would have had to reregister it.

11 **Q. Do you have a car right now?**

12 A. I do.

13 **Q. And you obviously have that registered in**
14 **Montana, right?**

15 A. I do.

16 **Q. And do you know whether or not that**
17 **vehicle registration shows your name and current**
18 **address?**

19 A. I just moved a few months ago, so no, it
20 does not.

21 **Q. Okay. It shows your name and previous**
22 **address before you moved?**

23 A. Yes.

24 **Q. When did you, when did you say you got a**
25 **Montana driver's license?**

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1 A. I cannot be sure. I want to say that it
2 would have been the next time you like needed to have
3 it renewed, so when my license was like about to
4 expire.

5 From my recollection, I think that would have
6 been when I turned 21 because I remember getting the
7 printed-out license so I could go out with my friends.
8 But again, I'm not very familiar with like those types
9 of laws. So had it expired before then, I certainly
10 would have gotten it renewed, but I can't recall.

11 **Q. And when you turned 21, you had been**
12 **living in Montana for three years?**

13 A. Yes.

14 **Q. And it never occurred to you that you may**
15 **need to get a Montana driver's license after living in**
16 **Montana for that long of a period of time?**

17 MS. SOMMERS-FLANAGAN: Objection; asked
18 and answered.

19 THE WITNESS: Not necessarily, no. And
20 again, maybe I did, but I just can't recall.

21 **Q. (By Mr. Morris) You don't recall thinking**
22 **to yourself that you might need to get a Montana**
23 **driver's license, seeing as how you had been in**
24 **Montana for more than two years?**

25 MS. SOMMERS-FLANAGAN: Objection; asked

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1 BY MR. MORRIS:

2 **Q. Did you register to vote in 2014 in**
3 **Montana?**

4 A. It is really hard for me to remember when
5 I first registered to vote. It would have been 2014
6 or when I became an intern at Forward Montana and
7 realized how important it was. So it would have been
8 2014 or 2015, but my first experience registering to
9 vote is not very memorable to me.

10 **Q. Were you registered to vote in Wisconsin?**

11 A. I was not. My birthday was in May and I
12 knew that I was moving, so I didn't register within --
13 you know, just there wasn't an election happening in
14 that time before I moved.

15 **Q. The first time that you voted in Montana,**
16 **do you recall any of the candidates that were on the**
17 **ballot?**

18 A. Not from my first election, no. More
19 recent elections, the candidates are very memorable to
20 me, but not for my first election.

21 **Q. Do you recall registering to vote in**
22 **Montana, though?**

23 A. Definitely.

24 **Q. And how did you register to vote?**

25 A. Yeah. So I've typically registered to

Page 19

1 and answered.

2 THE WITNESS: Again, I can't recall. It
3 was a really long time ago. It feels like a long time
4 ago to me.

5 **Q. (By Mr. Morris) Did anyone ever say to you**
6 **anything about that, like "Hey, you need to get a**
7 **Montana driver's license since you've been living here**
8 **for this long"?**

9 A. Not that I can recall.

10 **Q. You don't take the position that students**
11 **who reside in Montana for more than 60 days are exempt**
12 **from Montana driver's license or Montana vehicle**
13 **registration laws, do you?**

14 A. Can you repeat just the first half of that
15 question?

16 **Q. Yeah.**

17 MR. MORRIS: Jonny, can you read that back
18 for me, please?

19 (The record was read back as follows:

20 "QUESTION: You don't take the position
21 that students who reside in Montana for more than 60
22 days are exempt from Montana driver's license or
23 Montana vehicle registration laws, do you?")

24 THE WITNESS: I do not agree that those
25 folks should be exempt.

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1 vote through Forward Montana each time using either my
2 Montana driver's license once I had it or the last
3 four of my Social Security number; definitely used the
4 last four of my Social Security number more times,
5 though.

6 **Q. And the first time that you registered to**
7 **vote in Montana, you did that with the assistance of**
8 **Forward Montana?**

9 A. I believe so.

10 **Q. And you believe you used your Social**
11 **Security number or the last four digits of your Social**
12 **Security to do that?**

13 A. Yes.

14 **Q. And did you sign up for no-excuse absentee**
15 **voting?**

16 A. I did.

17 **Q. And you've always voted absentee?**

18 A. I have.

19 **Q. Do you agree that absentee voting is a**
20 **convenient option for voting in Montana?**

21 A. Yeah, convenient and necessary,
22 definitely.

23 **Q. When you vote absentee, you don't need to**
24 **show any identification when you actually vote if you**
25 **vote at a polling place, right?**

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1 MS. SOMMERS-FLANAGAN: Objection; form.
2 THE WITNESS: Can you repeat the question?

3 **Q. (By Mr. Morris) Yeah. When you vote**
4 **absentee, you don't need to show any ID, correct?**

5 A. Right, if you just stick it in your
6 mailbox or drop it off, yeah.

7 **Q. And do you always mail your absentee**
8 **ballot in when you vote?**

9 A. I don't. I've probably mailed it in half
10 the time, walked it over to my County Elections Office
11 the other half. I usually miss the mail deadline, so
12 I've got to walk it in.

13 **Q. And have you ever used like a polling**
14 **place drop-box location?**

15 A. I don't know if the Gallatin County
16 Elections Office would be considered a polling place
17 drop-off location. It's not my polling place, it just
18 is a drop-off location, so I don't know, but I've
19 definitely seen polling place drop-off locations.

20 **Q. Yeah. Do you always drop yours off at the**
21 **Gallatin County Election Office?**

22 A. (Nodding head affirmatively.)

23 **Q. That's been what you used where you've**
24 **dropped off your ballot?**

25 A. Yes. When I've dropped it off, I've used

Page 21

1 A. Right; although, the window would then,
2 you know, become shorter for you to mail it in.

3 **Q. Yeah, or drop it off, or whatever.**

4 A. Right.

5 **Q. So one of the things that I think you've**
6 **said in your declaration is that you like the absentee**
7 **voting because you can spend some time researching and**
8 **understanding the options on your ballot, right?**

9 A. That is correct.

10 **Q. And besides looking at your own personal**
11 **ballot -- (interruption in proceedings.) I'm sorry.**
12 **Sorry about that.**

13 **Besides looking at your own personal ballot, are**
14 **you aware of other ways that a voter in Montana can**
15 **learn about what's on the ballot before Election Day**
16 **or before they go to the Election Office to do early**
17 **voting?**

18 A. Yeah. I'm aware of some resources that
19 exist. Organizations like my own may put out a voter
20 guide, sometimes your local papers may do profiles on
21 the candidates, there may be candidate forums that you
22 can attend. Are those the things that you're
23 referring to?

24 **Q. Sure, yeah, all of those. And are there**
25 **others besides that that you're aware of?**

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1 the Gallatin County Elections Office drop box.

2 **Q. Do you know anything about the option to**
3 **do early voting in Montana?**

4 A. I know a little bit about it, yeah.

5 **Q. And how does that work?**

6 A. It's my understanding that you can go in
7 early; once the absentee ballots are ready to go, that
8 you're able to vote and kind of cast it all at the
9 same time. And I think that opens up around a month
10 prior to Election Day.

11 **Q. And you can register and vote during that**
12 **early voting period starting about 30 days before the**
13 **election. That's your understanding, right?**

14 A. That is my understanding.

15 **Q. And if you do the early voting like that,**
16 **you can, you can go to the Election Office, and pick**
17 **up your ballot, and take it home with you, and then**
18 **mail it in or return it, right?**

19 A. That is my understanding if you've like,
20 you know, got enough buffer time to get it back in the
21 mail, yeah.

22 **Q. Right. Like if you wanted to really kind**
23 **of study your ballot or anything like that, you could**
24 **go pick up your ballot during that early voting period**
25 **and take it home. That's your understanding, right?**

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1 A. I'm sure there are lots of things that I'm
2 not aware of. Those are the things that I've
3 typically used, but I don't know the breadth of
4 programming that other organizations may do in that
5 space.

6 **Q. Are you familiar with the My Voter Page**
7 **with the Montana Secretary of State?**

8 A. I am.

9 **Q. And are you familiar with the option to**
10 **access a sample ballot through the My Voter Page on**
11 **the Secretary of State's website?**

12 A. I am aware of that option. I didn't -- I
13 don't have the understanding that they cover all
14 elections. I thought maybe it was only federal and
15 statewide elections in which you could view a sample
16 ballot. That's my understanding. I could be wrong.

17 **Q. So you said Forward Montana provides a**
18 **voter guide?**

19 A. That has been a historic part of our
20 programming, yes.

21 **Q. So do you do that for, in Bozeman at**
22 **least, all the elections?**

23 A. No, not all the elections. It depends on
24 kind of the staff capacity that we have, you know, if
25 we can maybe identify races that we think would be

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1 more low information. We're more inclined to cover
2 statewide races, but yes, we have definitely covered
3 some Bozeman local issues when possible.

4 **Q. Did Forward Montana put out an information**
5 **or a voter guide relating to the fall 2021 municipal**
6 **elections?**

7 A. We did, we did.

8 **Q. And did you do that for municipal**
9 **elections in Bozeman -- and, I'm sorry, I said "you,"**
10 **but I meant "did Forward Montana?"**

11 A. Yes. It's really hard for me to recall -
12 we do a lot of these - but, yes, I believe that we did
13 it in Bozeman, Billings, and Missoula.

14 **Q. You've lived in Bozeman how long? Is it**
15 **eight years? Is that right?**

16 A. Hm-hmm [affirmative].

17 **Q. And you said you've moved a number of**
18 **times?**

19 A. Yes, a ton of times.

20 **Q. A ton. So it's a --**

21 A. (Nodding head affirmatively) -- it feels
22 like it.

23 **Q. How many times have you moved?**

24 A. Oh, man, it would be hard to say. I think
25 I'm on maybe my sixth move.

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1 **right, in the mail?**

2 A. Right. It makes sense to me, as someone
3 who's got a lot of understanding of election and
4 voting rights.

5 **Q. You recognize that even after passage of**
6 **one of the laws that's at issue in this case, SB 169,**
7 **a person can update their voter registration if they**
8 **move within a county even on Election Day. You**
9 **understand that?**

10 MS. SOMMERS-FLANAGAN: Objection; calls
11 for a legal conclusion.

12 THE WITNESS: I think --

13 **Q. (By Mr. Morris) And just to be clear, I'm**
14 **just asking about what your understanding is of SB**
15 **169, which is one of the laws at issue in this**
16 **lawsuit.**

17 A. Sorry. To clarify, you're asking about my
18 understanding of 169?

19 **Q. Correct.**

20 A. Yeah. My understanding of SB 169 is that
21 it removes one of the no-cost photo ID options
22 available for young people and students.

23 **Q. I'm sorry, I'm not asking you about SB**
24 **169; I'm asking you about HB 176.**

25 **Are you familiar with HB 176?**

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1 **Q. Sixth?**

2 A. Yeah. I think at the time that my
3 declaration was submitted, I have moved four times,
4 and I've moved twice since submitting that
5 declaration.

6 **Q. You must like to move. So you think**
7 **you've moved twice since January 12th of 2022?**

8 A. I would have moved once right before
9 submitting the declaration, and then I've just
10 recently moved again a few months ago.

11 **Q. Got you. In all the places you've moved,**
12 **has it always been within the city limits of Bozeman?**

13 A. I believe so, yes.

14 **Q. And you've updated your voter registration**
15 **when you've moved to a new address in Bozeman each**
16 **time?**

17 A. Yes.

18 **Q. And does that make sense to you, that a**
19 **person should update their voter registration when**
20 **they move?**

21 A. It makes sense to me, as somebody who's
22 got a lot of understanding of election law.

23 **Q. Well, especially since you are voting**
24 **absentee, it makes sense that you'd need to update**
25 **that so that you can receive your absentee ballot,**

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1 A. Yes.

2 **Q. Okay, sorry. That was really confusing,**
3 **and that was my fault.**

4 **Do you recognize that even after passage of HB**
5 **176, a person can update their voter registration if**
6 **they move within the county? Even on Election Day,**
7 **they can update that registration.**

8 A. I don't know that that is my specific
9 understanding. I thought that it was potentially
10 within your precinct, which may or may not include
11 your whole county; I may have that wrong, though.

12 **Q. Okay. Have you looked into that since**
13 **this, since HB 176 was passed, whether or not a person**
14 **can update their registration on Election Day if**
15 **they've moved within the county?**

16 A. Our organization has looked into that, to
17 some degree, to be able to offer voters guidance. I
18 don't know that that's something I've personally
19 looked into. Again, my understanding is within a
20 precinct.

21 **Q. Okay. And have you provided information,**
22 **in your capacity as a program director for Forward**
23 **Montana, about that issue to voters or trainees at**
24 **Forward Montana?**

25 A. Yes, I would have.

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1 Q. And about that specific issue as to
2 whether or not voters could update their voter
3 registration on Election Day if they've moved within a
4 county -- within the county?

5 A. I would have during election time and so
6 would other members of our team.

7 Q. And do you have any recollection of what
8 you, with Forward Montana, have informed voters about
9 that issue?

10 A. We would have informed them with whatever
11 is legally accurate.

12 Q. And as you sit here today, do you know
13 whether or not you would tell a voter, if they've
14 moved within the county, if they can update their
15 registration on Election Day?

16 A. We would and we have.

17 Q. And you would tell those voters, "Even
18 after passage of HB 176, it's okay for you to go and
19 update your registration on Election Day if you've
20 changed address within the county"; is that right?

21 MS. SOMMERS-FLANAGAN: Objection; form.

22 THE WITNESS: Yes, we would have, but from
23 my recollection, that is a very small amount of people
24 who had that circumstance.

25 Q. (By Mr. Morris) You would be one of those

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1 the dorms to some other location in Missoula, what
2 would you advise students about whether or not they
3 could update their registration on Election Day?

4 MS. SOMMERS-FLANAGAN: Objection; form.

5 THE WITNESS: Again, we would advise them
6 to do whatever is most accurate and applicable to
7 their circumstance. If that is doing an in-county
8 voter registration update, that is what we would
9 advise.

10 Q. (By Mr. Morris) When you say "that," what
11 are you saying?

12 A. Sorry, when I say what?

13 Q. When you say "that is what we would
14 advise," what are you -- what does "that" mean?

15 A. Whatever is most legally accurate for
16 their situation. If that's utilizing, in county, a
17 voter registration update to their address and that's
18 what they're able to do on Election Day, that is what
19 we would advise.

20 Q. And it's your understanding that Forward
21 Montana would advise that updating in-county voter
22 registration on Election Day is still possible for
23 voters, correct?

24 A. Right, if that specific set of
25 circumstances applied to them.

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1 people, potentially, because all the moves that you've
2 done have been within the county, right?

3 A. Right.

4 Q. Okay. And so for students who may move
5 from the dorms to another place in Bozeman or within
6 Gallatin County, they can still update their
7 registration with a new address even on Election Day,
8 correct?

9 MS. SOMMERS-FLANAGAN: Objection; calls
10 for a legal conclusion, and I think asked and
11 answered.

12 THE WITNESS: Yes. In this specific set
13 of circumstances, yes, that sounds right to me.

14 Q. (By Mr. Morris) And the same would apply
15 and you would advise people, as part of Forward
16 Montana, if they were at the dorms of University of
17 Montana in Missoula and they moved to another address
18 off campus in Missoula County, that would also be true
19 for them as well, right?

20 MS. SOMMERS-FLANAGAN: Objection; form.

21 THE WITNESS: Right. We would advise
22 people on what is most legally accurate for their
23 specific set of circumstances.

24 Q. (By Mr. Morris) Yeah. And for that
25 specific set of circumstances with a voter moving from

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1 Q. When you started school at MSU in the fall
2 of 2014, you say in your declaration that you were
3 issued a student ID at that time. Do you recall that?

4 A. Can you point me to where exactly I say
5 that?

6 Q. For sure. You have a copy of your
7 declaration in front of you, right?

8 A. I do.

9 Q. Let's mark your declaration as Deposition
10 Exhibit 40.

11 (Document subsequently marked Deposition
12 Exb. 40 for identification.)

13 MS. SOMMERS-FLANAGAN: Mac, if you have an
14 easy copy of it that you can drop in the chat so that
15 -- I don't know if Mike -- unless, Mike, if you have
16 one handy, no big deal, but just in case Mike wants to
17 follow along.

18 MR. MELOY: I'm good. I've got it.

19 MS. SOMMERS-FLANAGAN: Okay.

20 MR. MELOY: Thanks.

21 Q. (By Mr. Morris) Okay. You have Deposition
22 Exhibit 40 in front of you, right?

23 A. (Nodding head affirmatively.)

24 Q. And that's a copy of the declaration that
25 you submitted in this case, and it's dated January 12,

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1 2022, right?

2 A. Yes.

3 Q. And you have a complete copy of that in
4 front of you, right?

5 A. Yes.

6 Q. Okay. So I was referring to Paragraph 11
7 of your declaration, and it says:

8 I started school at Montana State
9 University the following year, in 2014. I was then
10 issued a student ID at that -- a student ID.

11 A. (Nodding head affirmatively.)

12 Q. So do you recall what you had to do in
13 order to get the student ID?

14 A. You had to be a registered student taking
15 some level of classes at the university, and then you
16 had to attend the orientation period in which they
17 were putting these together and handing them out.

18 Q. Did you have to go anywhere to get the
19 student ID?

20 A. I picked mine up on campus. That's my
21 recollection, and I'm not aware of any other way that
22 you can receive it other than picking it up.

23 Q. And where did you go on campus to pick it
24 up?

25 A. It's hard for me to say exactly, but I

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1 Montana, but I can't, I can't recall.

2 Q. Look at Paragraph 12 of your declaration.

3 And Paragraph 11 says: I started school the
4 following year in 2014.

5 And Paragraph 12 says: "At that point, I had
6 also established an account with a local bank."

7 Is that still your recollection, that at that
8 point, in the fall of 2014, you had established a
9 local bank -- an account with a local bank?

10 A. That sounds correct to me. Again, I would
11 have used my bank back home, I guess, for the first
12 year that I lived here.

13 Q. Okay. And that local bank account
14 reflected your address in Bozeman, right?

15 A. Yes; not probably my current address as I
16 moved within my first year of starting at MSU, but it
17 did reflect a Bozeman address, yes.

18 Q. Why did you get an account with a local
19 bank in the fall of 2014 or thereabouts?

20 A. I can't recall. I know that my bank back
21 home in Fort Atkinson actually closed, so that might
22 have been the catalyst for needing a different bank,
23 but I can't remember the exact reason.

24 Q. Do you remember what bank it was?

25 A. Yes, First Interstate.

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1 know it was in the Strand Union Building, kind of like
2 the student hub, and it was one of the offices on the
3 ground floor. But again, that was in 2014. I'm not
4 sure if that office has moved or still remains in the
5 same place.

6 Q. Do you recall whether there was a fee
7 associated with obtaining your student ID?

8 A. In my recollection, there was no fee
9 associated. Again, that may have changed since 2014.

10 Q. Do you recall whether you had to show any
11 ID in order to get your student ID?

12 A. I cannot recall. I do remember them
13 verifying your information in some way, but I can't
14 say what that could have been.

15 Q. You don't recall whether or not you had to
16 show like your Wisconsin driver's license or something
17 along those lines in order to get your student ID?

18 A. I do not recall.

19 Q. When you started school in the fall of
20 2014, you had established an account with a local bank
21 in Montana?

22 A. It's hard to say when I would have
23 established an account with a local bank in Montana as
24 I did continue banking with my bank that was in Fort
25 Atkinson. It felt like several years after I moved to

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1 Q. And was it more convenient to have, since
2 you were living in Montana, to have a local bank?

3 A. I don't know that it was more convenient.
4 It was just a debit card.

5 Q. Could you avoid like ATM fees, and stuff,
6 by going to the local bank in order to withdraw funds?

7 A. I really cannot recall the last time I've
8 used an ATM and been charged ATM fees. Again, I've
9 mostly just always used a debit card.

10 Q. And you can't recall really any reason,
11 then, that you established a local bank account in
12 Bozeman; is that right?

13 A. I think that's right. Maybe I needed some
14 more checks to pay rent. I can't recall.

15 Q. You didn't have a job when you started
16 school at MSU in the fall of 2014; is that right?

17 A. I didn't.

18 Q. I think you said your first job was with
19 Forward Montana as an intern. Right?

20 A. Right, and that wasn't an official job. I
21 didn't receive a paycheck. I received a stipend but
22 not a paycheck, or anything.

23 Q. What was the form of the -- what was the
24 stipend? Can you tell me about that?

25 A. It was my recollection it was a very small

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1 amount. It might have been \$250 paid in two checks at
2 the beginning and end of the internship. That sounds
3 right to me. My memory could be mistaken. It was a
4 very small amount.

5 **Q. And so was it like in the form of a check**
6 **that you received those funds?**

7 A. I think it would have been a check;
8 potentially a direct deposit, but I think a check.

9 **Q. Where did you live your freshman year at**
10 **MSU?**

11 A. It's my recollection that I lived part of
12 the year still at my grandparents', but then I think I
13 moved, at some point my freshman year, to an
14 apartment. I could not be recalling that. It could
15 have been maybe my second year of school. It's hard
16 to say.

17 **Q. That's okay. Did you ever live in the**
18 **dorms when you were at MSU?**

19 A. No, thankfully not.

20 **Q. What's wrong with the dorms?**

21 A. Smelly.

22 **Q. So I want to talk to you again about the**
23 **first election that you voted in in Montana. And I**
24 **take it that you can't piece together right now when**
25 **your internship with Forward Montana started. Is that**

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1 way?

2 A. I don't know that I've always found voting
3 to be low commitment, but generally I would say that's
4 correct.

5 **Q. And what I mean is a relatively low**
6 **time-commitment way.**

7 A. Again, I would say that voting is not
8 always a low time commitment, but yes, generally.

9 **Q. And that was your impression about your**
10 **first voting in Montana, correct?**

11 A. I believe so, yeah.

12 **Q. So, I'm sorry, how old are you?**

13 A. I'm 26. I'm 27 next month.

14 **Q. And do you know the last four digits of**
15 **your Social Security number?**

16 A. I do; I didn't always, though.

17 **Q. When do you think you put that to memory?**

18 A. That's a great question.

19 **Q. That's what I'm good at.**

20 A. It's hard to say. I mean, I know that,
21 which I don't think you're supposed to do this, but I
22 did have it like on a note in my phone to reference
23 when I needed it, and I remember doing that for a very
24 long time.

25 It was -- yeah, I would say probably throughout

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1 right?

2 A. That is right. I could find out, but I
3 don't know off the top of my head.

4 **Q. How would you find out?**

5 A. I would imagine that Forward Montana has,
6 in their records somewhere --

7 **Q. Sure.**

8 A. -- when my internship was.

9 **Q. Okay. And I don't want you to guess, but**
10 **do you think it's more likely that it was the second**
11 **semester of your freshman year or that it was in your**
12 **sophomore year?**

13 A. If I can't guess, I don't know that I can
14 answer. I'm really not sure.

15 **Q. That's okay.**

16 A. Sorry. I had a very nontraditional
17 college experience, so it's sometimes hard for me to
18 recall these things.

19 **Q. You're okay. So, but in any event, you**
20 **voted absentee at your first election in Montana,**
21 **right?**

22 A. Right.

23 **Q. And was it your impression, after voting**
24 **that first time, that voting was a way for you to show**
25 **up for your community in a relatively low-commitment**

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1 the duration of my college experience, I utilized that
2 note. And even sometimes now, I feel like when I'm
3 asked to recall it, I'm like, Wait a second, is it in
4 this order or that order?

5 So, yeah, I would say I certainly have it
6 memorized now. I did not always, probably until I was
7 maybe well into my college experience and I had been
8 utilizing it pretty often.

9 **Q. Okay. Do you recall if you needed your**
10 **Social Security number in order to apply for college?**

11 A. I believe that you did, yes.

12 **Q. And you got access to your Social Security**
13 **card and number for that purpose, right?**

14 A. I did not have access to a Social Security
15 card. I actually had to get a new one several years
16 ago when I was getting my passport because I didn't
17 have it. But, yes, I asked my mom for it, and she
18 gave it to me.

19 **Q. And you have a passport?**

20 A. I do now. I didn't when I first moved to
21 Montana, not for several years after living here.

22 **Q. How long, how long have you had the**
23 **passport?**

24 A. When I was a -- oh, man, when I was maybe
25 a junior, I wanted to go to Australia, so I got a

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1 passport then, I believe.

2 **Q. Did you go to Australia?**

3 A. I did. It was really fun.

4 **Q. Sounds awesome. And do you receive**
5 **utility bills?**

6 A. I do now; I didn't my, my first several
7 years living in Montana, though.

8 **Q. When you were living in an apartment the**
9 **second semester of your freshman year, you didn't have**
10 **utility bills?**

11 A. No. I moved into the apartment with an
12 existing roommate, so the utility bills were in her
13 name.

14 **Q. Currently, you receive a paycheck from**
15 **Forward Montana?**

16 A. I do.

17 **Q. Do you have a Costco card?**

18 A. I wish.

19 **Q. Don't do it. Do you have a ski pass?**

20 A. No, much to my friends' dismay.

21 **Q. Have you ever had a ski pass?**

22 A. No.

23 **Q. Do many of your friends ski at Bridger?**

24 A. Yes, many.

25 **Q. And you know a lot of students at Montana**

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1 **Q. Have you ever signed a declaration or an**
2 **affidavit for purposes of any other lawsuit?**

3 A. I don't think so, no.

4 **Q. Have you ever been named as a witness in**
5 **any other lawsuit?**

6 A. Not to my knowledge, no.

7 **Q. Did you know Ms. Sommers-Flanagan before**
8 **this lawsuit was filed?**

9 A. I don't think so.

10 **Q. So this was -- and, I'm sorry, before or**
11 **since you signed this declaration, Deposition Exhibit**
12 **40, have you signed any other declarations or**
13 **affidavits in connection with any lawsuits?**

14 A. I'm not sure of the exact timing, but yes,
15 my organization is involved in another lawsuit.

16 **Q. And did you sign a declaration or**
17 **affidavit in connection with that other lawsuit?**

18 A. I think that's what it was.

19 **Q. You're just not sure. So there is one**
20 **other declaration that you believe you've signed in**
21 **connection with another lawsuit, right?**

22 A. Yes.

23 **Q. And are those, are those the only two that**
24 **you've ever signed in connection with any lawsuits?**

25 A. To my recollection right now, yes, I

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1 **State University like to ski?**

2 A. Do I know that?

3 **Q. I mean, "do you know a lot of students at**
4 **Montana State University that like to ski?" is what I**
5 **should ask.**

6 A. Sure, yeah.

7 **Q. And they have ski passes up at Bridger?**

8 A. I don't know what student can afford a ski
9 pass, but sure, yeah, if they, if they have one, they
10 have one, I guess. I would imagine that most students
11 go up for the day, or something, but again, I'm not a
12 skier, so it's hard for me to know for sure.

13 **Q. Yeah, that's okay. Do you know friends**
14 **that ski down in Big Sky that live in Bozeman?**

15 A. I don't have a lot of friends that ski in
16 Big Sky, no.

17 **Q. Do you have any?**

18 A. My partner went up there for the day one
19 day last month but is not a regular skier there. But
20 that's the only person I can recall.

21 **Q. You submitted a declaration that we've**
22 **already talked about, which is Deposition Exhibit 40.**
23 **And have you ever signed a declaration like that**
24 **before in any other lawsuit?**

25 A. Not to my knowledge. No.

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1 believe so.

2 **Q. And this declaration, Deposition Exhibit**
3 **40, you signed this under a penalty of perjury,**
4 **correct?**

5 A. Correct.

6 **Q. And you say -- it says: I declare, under**
7 **penalty of perjury and under laws of the state of**
8 **Montana, that the foregoing is true and correct.**

9 **And it has your signature on the last page,**
10 **right?**

11 A. Right.

12 **Q. What does that mean to you, to declare**
13 **under penalty of perjury that something is true and**
14 **correct?**

15 A. That something is true and correct at the
16 time that I've signed it or is something that's well
17 within my understanding.

18 **Q. Signing it under penalty of perjury like**
19 **that, did you want to make sure that everything was,**
20 **was accurate and true before you signed it?**

21 A. Definitely.

22 **Q. What did you believe was the purpose of**
23 **the declaration, your declaration?**

24 A. I believe the purpose was to outline my
25 specific experience as it relates to SB 169 and what

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1 my understanding of that is and how it's to be shown
2 up in my life.

3 **Q. Was it your expectation that Deposition**
4 **Exhibit 40, your declaration, would be submitted to**
5 **the Court in this case?**

6 A. Yes, that was my understanding.

7 **Q. And did you expect that the Court would**
8 **rely on what is your -- what is in your declaration in**
9 **making decisions about this case?**

10 A. I'm not sure. I don't know how, how a
11 court works, really. I'm not a court expert. So if
12 that's how they typically utilize depositions, then
13 yes, that's my understanding.

14 **Q. Okay.**

15 MR. MELOY: Hey, Mac, could we take a
16 little break?

17 MR. MORRIS: Yeah, no problem.

18 MR. MELOY: You've been really good about
19 that, and I need to talk to Riley.

20 COURT REPORTER: The time 2:08 p.m. We
21 are off the record.

22 (A brief recess was taken.)

23 COURT REPORTER: The time is 2:20 p.m. We
24 are on the record.

25 /// ///

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1 **Q. And with that, you can register to vote in**
2 **Montana, right?**

3 A. Yes, that's my understanding.

4 **Q. And you say in Paragraph 7 of your**
5 **declaration that when you had, when you first moved to**
6 **Bozeman:**

7 I had none of the forms of ID that are now
8 the exclusive acceptable forms of standalone ID for
9 registering to vote and for voting in person under SB
10 169.

11 **Do you see that?**

12 A. I do.

13 **Q. But like we just covered, I mean, at least**
14 **in terms of registration when you first moved here,**
15 **you did have the acceptable form of, if you want to**
16 **call it "ID" that you need to register to vote, right?**

17 A. Right, specifically just for voter
18 registration and for voting in the polls.

19 **Q. Understood. And for you personally, you**
20 **signed up for absentee voting when you personally**
21 **signed up, right?**

22 A. Right.

23 **Q. And so you didn't ever really need any**
24 **other ID in order to vote absentee except that four**
25 **digits of your Social Security number, right?**

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1 BY MR. MORRIS:

2 **Q. All right. We just took a short break.**
3 **Ms. Reese-Hansell, but you recognize you are still**
4 **under oath, correct?**

5 A. I do.

6 **Q. All right. And we were talking about your**
7 **declaration, and I was asking you about that. Did you**
8 **draft the words that are in the declaration, in**
9 **Deposition Exhibit 40?**

10 A. Rylee and I drafted them together, yes.

11 **Q. Okay. And did Sommers-Flanagan send you a**
12 **copy of it for you to review?**

13 A. She did, yes.

14 **Q. And did you make any edits to it after you**
15 **received it?**

16 A. I can't remember. Maybe small things,
17 like word-choice things, but I can't recall.

18 **Q. Did you have any concern about the**
19 **accuracy of anything that's in there, that's in your**
20 **declaration?**

21 A. No.

22 **Q. When you first moved to Bozeman, you had**
23 **access to the last four digits of your Social Security**
24 **number, correct?**

25 A. I did, yeah.

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1 A. Right.

2 **Q. But I guess what you're saying is that if,**
3 **instead, you had wanted to vote at the polls when you**
4 **first arrived, you didn't have, you know, the**
5 **standalone forms like a Montana driver's license or a**
6 **passport or the other ones that are listed in SB 169,**
7 **right?**

8 A. Right.

9 **Q. Is that kind of what you're saying in**
10 **Paragraph 7?**

11 A. Right.

12 **Q. Okay. But not having the standalone form**
13 **doesn't mean you couldn't vote if you wanted to**
14 **actually go vote at the polls, right?**

15 A. Right.

16 MS. SOMMERS-FLANAGAN: Sorry. Objection;
17 form.

18 THE WITNESS: That's right.

19 **Q. (By Mr. Morris) Yeah. I guess what I'm**
20 **getting at is: You had your Wisconsin driver's**
21 **license, right?**

22 A. Right, which is not an acceptable
23 standalone form of ID.

24 **Q. Yeah. But with your Wisconsin driver's**
25 **license and a voter registration card, which you would**

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1 have got when you registered, you could have voted at
2 the polls, right?

3 A. At that time, and had I been able to hold
4 onto my voter registration card, yes.

5 Q. You say in Paragraph 10 of your
6 declaration that your personal experience regarding
7 possession of ID is not uncommon for many students at
8 Montana colleges and universities. Do you see that?

9 A. Yes.

10 Q. So, then, we just went over this, but
11 you're saying that it's common for students of Montana
12 colleges and universities to have driver's licenses
13 from another state, right?

14 A. Right, or no driver's license at all.

15 Q. Okay. But if they have that driver's
16 license and access to the last four digits of their
17 Social Security number, they can register, can get a
18 voter registration card, and they can vote in Montana
19 elections under SB 169, right?

20 A. Sorry, can you repeat the question?

21 Q. Yeah. If they, like you when you first
22 moved to Bozeman, have an out-of-state driver's
23 license and the last four digits of their Social
24 Security number, they can register to vote, and then
25 vote at the polls with their driver's license and

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1 print that confirmation of registration, and then you
2 would have a government document showing your name and
3 your address which you could use at the polls, right?

4 A. I don't know, to be honest. I'm not an
5 election administrator. I'm not sure if that's
6 something they would allow.

7 Q. Okay. As you sit here today, do you know
8 any particular eligible voters in Montana that don't
9 have any of the various forms of ID that would satisfy
10 SB 169 voter ID requirements?

11 A. During my time conducting voter
12 registration for Forward Montana, yes, I ran into many
13 of these people.

14 Q. And do you know the names of any of such
15 people?

16 A. I don't know their names. We don't record
17 information that way.

18 Q. And tell me about these people that you
19 were just referring to.

20 A. Totally. So these are out-of-state folks
21 who my not have a driver's license, just haven't ever
22 had to get one, and now are on campus, which is
23 relatively close to downtown, close to grocery stores.
24 They don't see any need for one.

25 Because they've just moved here, they don't have

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1 their voter registration card, right?

2 A. Right.

3 Q. Or they could -- and if they didn't have
4 an out-of-state driver's license, if they are
5 students, a lot of them could vote using their student
6 ID and that voter registration card, right?

7 A. If they've been able to hang onto their
8 voter registration card and then, in return, register
9 to vote in the first place, yes.

10 Q. Yeah, yeah. And in order to vote, you've
11 got to register.

12 A. Yes.

13 Q. So do you know that besides a voter
14 registration card, SB 169, which concerns voter
15 identification, allows a person to use any other
16 government document that shows their current address
17 as ID?

18 A. I am aware of that.

19 Q. And if a voter wasn't able to locate their
20 voter registration card, they could go to their My
21 Voter Page and confirm whether or not they're
22 registered to vote, right?

23 A. Right.

24 Q. And from the My Voter Page, you could
25 print that, that -- if you're registered, you could

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1 another form of Montana ID. They're living in the
2 dorms. They don't have a concealed carry permit.
3 They're not a part of a tribe, so they don't have a
4 tribal ID.

5 And then in terms of the secondary sources that
6 they could be using, they don't have a utility bill
7 because they're living in the dorms. I can't recall
8 kind of all the forms of ID that are under that, but
9 yeah, they're really up against a wall.

10 Q. So in order to be eligible to vote, you
11 have to register to vote, right? We just said that.

12 And then you should get a voter registration
13 card, right?

14 A. You should. It has been my experience
15 that lots of people don't receive theirs.

16 Q. Okay.

17 A. So that can be tricky.

18 Q. And what can a voter do, if they don't
19 receive a voter registration card, in order to get it?

20 A. I suppose that they could call the
21 Gallatin County Elections Office and ask for it.

22 Q. And, then, so you said that a lot of
23 people don't receive it - that's your experience - a
24 voter registration card?

25 A. That's been my experience when talking to

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1 students on campus, yes.

2 **Q. And have you ever discussed with them**
3 **their options for getting a voter registration card?**

4 A. I can't recall a specific scenario in
5 which that's come up, but if that was a barrier to
6 voting or casting a ballot, yes, we would have talked
7 to somebody about that.

8 **Q. And have you ever advised them about using**
9 **the My Voter Page to get a government document in lieu**
10 **of a voter registration card?**

11 A. I don't know that I have specifically.

12 **Q. Are you familiar with what's called a**
13 **"polling place elector identification form"?**

14 A. I am not.

15 **Q. Have you ever heard of a process where, at**
16 **a polling place, an election administrator can create**
17 **a form for a voter that serves as a government**
18 **document that would satisfy SB 169?**

19 A. I have not heard of that, no.

20 **Q. So the people that you were referring to**
21 **earlier when you said you didn't think that they had**
22 **any of the forms of ID that would satisfy SB 169 --**
23 **and those were people you said you've encountered in**
24 **helping people register to vote; is that right?**

25 A. Sorry. Can you repeat the question?

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1 continued to meet in my role at Forward Montana who
2 are first coming to school.

3 **Q. Okay. And so you're just saying that when**
4 **you've been working for Forward Montana -- and are you**
5 **talking about recently when you're working for Forward**
6 **Montana, you've encountered people that don't have any**
7 **forms of identification that would satisfy SB 169's**
8 **voter ID requirements?**

9 A. It depends on what you define as "recent."
10 The last time I did voter registration was orientation
11 weekend last fall, and yes, I ran into those people
12 then.

13 **Q. Okay. And what did, what did they tell**
14 **you about the types of ID that they had, these people?**

15 A. They told me that they didn't have a
16 Montana driver's license or a concealed carry permit
17 or any of the other things that serve as a standalone
18 form of voter ID.

19 **Q. And, sorry, I might not have been clear in**
20 **my question. I'm asking you about a person who you've**
21 **met or who you know, a particular person who you've**
22 **met or you know that doesn't have any of the various**
23 **forms of ID that, whether standalone or together,**
24 **would satisfy SB 169's voter identification**
25 **requirements.**

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1 **Q. Yeah. So I think a moment ago, I said --**
2 **I asked you if you were aware of any, any particular**
3 **eligible voter in Montana who does not have any of the**
4 **various forms of ID that would satisfy SB 169's voter**
5 **identification requirements. Do you recall that?**

6 A. I do.

7 **Q. And I think what you said was, "I don't**
8 **know anybody in particular, but I've encountered**
9 **people like that."**

10 **Is that basically what you said?**

11 MS. SOMMERS-FLANAGAN: Objection;
12 mischaracterizes testimony.

13 THE WITNESS: I do know people in
14 particular. I can't recall their specific names.

15 **Q. (By Mr. Morris) Okay. And so you don't**
16 **know their names, but do you have any other**
17 **identifying information about these people?**

18 A. Not outside of that they were
19 first-semester college students, as most of these
20 experiences happened around orientation weekend and
21 within the first few weeks of school starting.

22 **Q. Okay, so let's talk about that. So are**
23 **you talking about people that you met when you were a**
24 **freshman in college in 2014?**

25 A. No. I'm talking about people that I

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1 MS. SOMMERS-FLANAGAN: Objection; asked
2 and answered.

3 THE WITNESS: The people that I'm
4 referring to are those in which I met doing my last
5 round of voter registration, and yes, those were folks
6 that didn't have any of the forms of voter ID, if I'm
7 understanding your question correctly. And I would
8 say I met 7 to 10 people during that voter
9 registration shift who fit that category.

10 **Q. (By Mr. Morris) Okay. And 7 to 10 people**
11 **who told you, "I don't have any form of ID whatsoever**
12 **that would satisfy SB 169"; is that right?**

13 A. They may have had a, well, a Social
14 Security number, but they may not have been able to
15 recall it in that moment. We run into that a lot with
16 students.

17 **Q. Okay. And so, I mean, every, every U.S.**
18 **citizen has a Social Security number, generally,**
19 **right?**

20 A. That's my understanding, yes.

21 **Q. And obviously, you have to be a U.S.**
22 **citizen to be an eligible voter in Montana, right?**

23 A. Right.

24 **Q. Okay, so they may have had a Social**
25 **Security number. And what forms of ID besides a**

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1 Social Security number did these 7 to 10 people have?

2 A. None that I can recall or we would have
3 registered them to vote that way.

4 Q. And I'm not talking about registration;
5 I'm talking about voter identification requirements at
6 the polls.

7 A. I may be misunderstanding. I'm talking
8 about people that I met during voter registration.

9 Q. Okay.

10 A. I'm not talking about people that I met
11 during voting or an election season.

12 Q. Yeah, and maybe we are having a
13 misunderstanding. What I'm asking you about is: Like
14 do you know of anyone that you've met at voter
15 registration drives or that you know that has no --
16 none of the forms of ID that are available to be
17 utilized to vote in person at the polls?

18 A. Because of the nature of voter
19 registration, I don't know that we would have gotten
20 into that conversation. We were there to offer the
21 service of voter registration, and we weren't
22 necessarily chatting with people about what they would
23 need to bring if they go in person to vote.

24 Q. And outside of chatting with people about
25 voter registration, are you aware of any person who

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1 doesn't have any of the forms of ID that are
2 acceptable, that would satisfy the voter
3 identification requirements under SB 169 for voting at
4 the polls?

5 MS. SOMMERS-FLANAGAN: Objection; form.

6 MR. MORRIS: Sorry, Rylee, what was the
7 form?

8 MS. SOMMERS-FLANAGAN: I'm just having a
9 lot of trouble following it, and so that's why. To
10 me, it's an ambiguous question, but --

11 MR. MORRIS: Okay.

12 Q. (By Mr. Morris) Ms. Reese-Hansell, do you
13 understand what I'm asking you now?

14 THE WITNESS: Can you repeat the question?

15 Q. (By Mr. Morris) Yeah -- actually, let's
16 just have Jonny read it back and see if that helps.

17 (The record was read back as follows:

18 "QUESTION: And outside of chatting with
19 people about voter registration, are you aware of any
20 person who doesn't have any of the forms of ID that
21 are acceptable, that would satisfy the voter
22 identification requirements under SB 169 for voting at
23 the polls?")

24 THE WITNESS: If I'm understanding the
25 question correctly, yes, I have had conversations with

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1 these voters.

2 BY MR. MORRIS:

3 Q. And you've had conversations with voters.
4 How many?

5 A. It's very hard to say. I could speculate
6 or guess, if you'd like me to.

7 Q. How about estimate?

8 A. It's really hard to say. I've been
9 working here a long time. Upwards of 100.

10 Q. So you think there's 100 people that
11 you've encountered in your time living in Bozeman that
12 don't -- that would not have any of the forms of ID
13 that would satisfy SB 169 voter identification
14 requirements for voting at the polls?

15 A. I think I've probably encountered a lot
16 more people than that who don't have the required ID.
17 Those are just the ones who have expressly told me
18 that they don't.

19 Q. Okay. And so what do they tell you about
20 the ID that they had or that they didn't have?

21 A. Maybe I'm not understanding the question,
22 but just that they didn't have it.

23 Q. Didn't have what?

24 A. Any form of ID that would be acceptable
25 under 169 or any of the combinations of ID.

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1 Q. Okay. So they -- you're telling me that
2 you've encountered 100 or more voters that had no form
3 of photo ID that they could use in coordination with
4 any of the other documents that are used and available
5 under SB 169?

6 A. Upwards of 100 people who, yes, either
7 didn't have the specified ID or didn't know that they
8 did because it is very confusing. I would say those
9 people fit one of those categories.

10 Q. So they might have had it, but they didn't
11 know it, and you're including that in your description
12 of the 100 people?

13 A. Right. I would potentially not be able to
14 tell, from a conversation, the entire slate of IDs
15 available to them.

16 Q. And you've encountered these people, but
17 -- I take it you believe you've encountered these
18 people, but you can't, as you sit here today, identify
19 any of them by name or otherwise.

20 MS. SOMMERS-FLANAGAN: Objection;
21 mischaracterizes testimony, asked and answered.

22 THE WITNESS: I can identify them by
23 certain characteristics, including -- I think a lot of
24 people who fit this category include new students to
25 MSU, but like I mentioned, we don't record personal

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1 information in this way, so no, there's no way for me
2 to recall their exact names.

3 **Q. (By Mr. Morris) Okay. So you were telling**
4 **me a moment ago about your experiences registering**
5 **people to vote, right?**

6 A. (Nodding head affirmatively.)

7 **Q. And can you describe kind of a thumbnail**
8 **sketch of your experience registering people to vote**
9 **in Montana?**

10 A. Are you asking about just my specific
11 experience registering voters?

12 **Q. Yeah.**

13 A. Definitely. When I started at the
14 organization as an intern, my primary function was to
15 register voters, so I did that about three times a
16 week for a semester.

17 I then came back to Forward Montana in a variety
18 of different roles, all related to voter registration,
19 and I continued registering voters a minimum of three,
20 upwards of five or six times a week in various
21 locations and settings.

22 I then was the Bozeman field manager where I was
23 not only in charge of registering voters but setting
24 up the events, recruiting the volunteers and training
25 them, things like that.

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1 **Q. Cascade.**

2 A. Cascade.

3 **Q. Yeah, you got it.**

4 A. There's probably a few more that I can't
5 recall.

6 **Q. Understood. And in Gallatin County, you**
7 **can email or fax your voter registration form into the**
8 **Election Office, right?**

9 A. I think so.

10 **Q. And have you ever done that, where you**
11 **tell a voter he or she can take a picture of their**
12 **completed voter registration form and email it in?**

13 A. I'm sure that we have told people that,
14 but by the function of our work, we turn the forms in
15 for them. So that's not really a situation that we
16 run into, if that makes sense.

17 **Q. Sure. But that's a useful tool, to be**
18 **able to do that, right, for voters who want to**
19 **register?**

20 A. If you have a phone with access to
21 internet or a computer you can utilize, absolutely.

22 **Q. And Montana forward foundation has an**
23 **online portal for helping voters register?**

24 A. We do.

25 **Q. Tell me about that.**

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1 I was in kind of a more direct field role until
2 July of 2019 where I was then promoted to program
3 director. And in my role now, I manage the teams who
4 conduct our voter registration and support them in
5 whatever ways needed, but I do less of the day-to-day
6 voter registration myself.

7 **Q. How many times have you been out in the**
8 **field helping people register to vote since you moved**
9 **to Montana?**

10 A. I could provide an estimation, if you'd
11 like me to, but I don't know.

12 **Q. Okay.**

13 A. What's that?

14 **Q. That's fine.**

15 A. Hundreds.

16 **Q. And has that always been in Gallatin**
17 **County?**

18 A. No. I've registered voters in many other
19 counties.

20 **Q. What other counties?**

21 A. Missoula, Lewis & Clark, Yellowstone.
22 What county is Butte in? Silver Bow?

23 **Q. Yeah.**

24 A. Silver Bow. What county is Great Falls
25 in? That one.

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1 A. Yeah. So in response to the COVID-19
2 pandemic, obviously we weren't able to be directly in
3 the field as much as we would have liked to be. In
4 addition to that, Montana does not, as I'm sure we all
5 know, have true online voter registration like some
6 states do.

7 So in coordination with some of our voting
8 rights partners, we created kind of a
9 middle-of-the-road solution where a voter can use this
10 portal to fill out most of their voter registration
11 card, everything besides their signature, obviously.

12 Then our team in Missoula kind of gets the back
13 end of those forms, they print them out, they mail
14 them directly to the voter with a prepaid envelope.
15 So in theory, all they have to do is sign it and put
16 it back in their mailbox, and that goes directly to
17 their County Elections Office to be processed.

18 MS. SOMMERS-FLANAGAN: Mac, would it make
19 sense to take a quick break right now? Just because
20 you seemed like you were maybe in a moment of
21 transition.

22 MR. MORRIS: I can keep going. If you
23 guys want a break, that's okay, too.

24 MS. SOMMERS-FLANAGAN: Amara, do you want
25 to take a break? I'm fine either way.

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1 THE WITNESS: I would take five.
 2 MS. SOMMERS-FLANAGAN: Great. If that's
 3 okay, let's take five.
 4 MR. MORRIS: Okay.
 5 COURT REPORTER: The time is 2:52 p.m. We
 6 are off the record.
 7 (A brief recess was taken.)
 8 COURT REPORTER: The time is 3:02 p.m.
 9 We're on the record.
 10 BY MR. MORRIS:
 11 **Q. Okay. Ms. Reese-Hansell, we just took a**
 12 **break. Did you have an opportunity to speak with Ms.**
 13 **Sommers-Flanagan during the break?**
 14 A. Yes. We chatted briefly.
 15 **Q. And based on your conversation, do you**
 16 **want to change or modify any of the testimony you've**
 17 **given?**
 18 A. No.
 19 **Q. Okay. So you said that you believe you**
 20 **have encountered like 100 or more people that don't**
 21 **have or might not have any of the forms of**
 22 **identification, whether separately or combined, that**
 23 **would satisfy SB 169; is that right?**
 24 A. Yes. I'd offer maybe a slight
 25 clarification, that they may not know that they have,

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1 you know, one of the forms that they could piece
 2 together.
 3 **Q. Right, okay. And so with your**
 4 **conversations, you're not sort of saying that for sure**
 5 **these 100 people didn't have any of the forms of ID to**
 6 **satisfy SB 169, but that based on your interaction**
 7 **with them, it was unclear to you whether or not they**
 8 **did.**
 9 MS. SOMMERS-FLANAGAN: Objection;
 10 mischaracterizes testimony.
 11 THE WITNESS: That's not necessarily how I
 12 would characterize it. We typically run them through
 13 all of the standalone forms of ID, and if not, we may
 14 mention things like, you know, a utility bill,
 15 anything like that, but I mean we're not going through
 16 people's purses or backpacks trying to scrape an ID
 17 together.
 18 So through those conversations, it
 19 ultimately appears that they have none of the
 20 standalone forms and/or aren't sure if they have some
 21 of the other forms, would maybe need to look around,
 22 call their mom, something like that.
 23 **Q. (By Mr. Morris) Okay. And when do you**
 24 **have these conversations?**
 25 A. When do I have those conversations?

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1 **Q. Yeah. When have you had a conversation**
 2 **like that?**
 3 A. It would be hard to describe all the
 4 various venues and settings in which I've had these
 5 conversations, but they happen a lot in the field when
 6 we're doing voter registration; they happen a lot
 7 during get out the vote, which is when we're making
 8 peer-to-peer phone calls or text messages with voters;
 9 they happen a lot -- young people often seek out
 10 Forward Montana when they have a voting rights or
 11 election-related question.
 12 So sometimes it's just a cold call that comes in
 13 like, "Hey, I'm trying to register to vote. I'm
 14 feeling a little confused. Can somebody help me out?"
 15 So I would say those are probably the top three
 16 venues in which we have those conversations, but there
 17 are so many others as well.
 18 **Q. Okay. And can you think of any others**
 19 **besides the voter registration drives, the**
 20 **get-out-the-vote phone calling that you've done, or**
 21 **young people calling into Forward Montana when you've**
 22 **encountered people who, based on your conversation**
 23 **with them, it's unclear whether or not they have the**
 24 **requisite IDs to vote at the polls?**
 25 A. I'd maybe add the addition of events that

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1 we host. Somebody may come, and there may be a
 2 conversation about voting. I think other staff on my
 3 team have a lot, have a lot more venues in which these
 4 conversations happen. Maybe it's a one-on-one with a
 5 volunteer or another community member or another
 6 venue.
 7 **Q. Okay. And to be clear, I'm asking about**
 8 **your personal knowledge, not what may have been said**
 9 **to some other person on Forward Montana. Okay?**
 10 A. Got it.
 11 **Q. And so events, young people calling in,**
 12 **voter registration drives, and get-out-the-vote phone**
 13 **calls that you've made at Montana forward foundation,**
 14 **right -- or Forward Montana Foundation. Sorry.**
 15 A. Yes, that's right.
 16 **Q. And that's about as complete of a list as**
 17 **you can give me right now, right?**
 18 A. As I can give you right now, yes, but
 19 there are, there are definitely other venues in which
 20 I've had these conversations that I probably just
 21 can't recall at this time.
 22 **Q. When you do get-out-the-vote phone calls,**
 23 **you keep a record, Forward Montana keeps a record of**
 24 **who they contact, correct?**
 25 A. We do.

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1 **Q. And you keep a record of who you're going**
2 **to contact, correct?**

3 A. Can you say more about what you mean? I
4 would be happy to describe the process in which we
5 make these calls, if that's helpful.

6 **Q. Well, there's a list of people that you**
7 **intend to reach out to in these calls. Right?**

8 A. Right; it's not a list that we maintain
9 ourselves, though.

10 **Q. Okay. But you have a list, right?**

11 A. Yes. You can make a list, yes.

12 **Q. And then you reach out and you make these**
13 **calls and you keep a record of those calls, right?**

14 A. Yes. The database that we use keeps this
15 record for us.

16 **Q. And so then, presumably, if there was a**
17 **person who, during a call, informed you about that**
18 **they believe they had none of the forms of ID that**
19 **would satisfy SB 169, you would have a record of that,**
20 **right?**

21 A. Can I confirm that I'm understanding your
22 question correctly? If we ran into somebody on the
23 phone who identified that they didn't have an ID under
24 SB 169, we would have a record of that?

25 **Q. Yeah.**

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1 **and what you do with it.**

2 A. Yeah. So it's utilized by a lot of
3 different organizations, and it is home to the voter
4 file, so the public voter rolls.

5 My understanding of VAN is a little limited, but
6 my understanding includes that VAN kind of serves as a
7 hub for organizations like ours to be able to do
8 direct voter contact. So on top of them getting the
9 voter file list, which is public information, they
10 also purchase maybe commercial lists or things like
11 that so that you can have a really robust network of
12 people to call. And so we utilize that platform to
13 kind of find and target the voters that we want to be
14 chatting with during election season.

15 **Q. And if you make a call and you reach a**
16 **person and you talk to them, do you record that in**
17 **VANs?**

18 A. Yes.

19 **Q. Okay. And is that the only information**
20 **that you typically record, is that you've made a call**
21 **and you've reached the voter on your list?**

22 A. It depends. So I'm realizing this is a
23 very confusing platform to describe, but there's
24 usually a script of some kind, so the person making
25 the call can kind of, you know, follow along, know

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1 A. If -- no, we would not.

2 **Q. Okay. What kind of information do you**
3 **keep in your records on these calls?**

4 A. So we use something called the "Voter
5 Action Network," which is also called "VAN," and VAN
6 maintains this database for us. And beyond like a
7 little "notes" column, we're actually not able to
8 record a lot of information in this platform. It's
9 used by many organizations. And so our, like our edit
10 abilities are very, very small.

11 **Q. And what information do you input into the**
12 **VANs?**

13 A. I haven't ever input anything, to my
14 knowledge, but like I said, there is a "notes" field,
15 so if you wanted to capture a note or something like
16 that, you could.

17 If a voter has a specific scenario that is maybe
18 timely or we have a resource that we can connect them
19 to, we might jot down their number somewhere else and,
20 you know, help them remedy the situation outside of
21 the database, but we aren't recording this information
22 on a daily basis, if that makes sense.

23 **Q. So what is the purpose of VANs if you**
24 **don't put any information into it? I'm just kind of**
25 **having a hard time understanding what, what is VANs**

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1 what to say.

2 And then there may be, depending on what we're
3 calling about, the election, a set of questions that
4 we'd like the person to answer. And some examples of
5 those include, "Do you commit to turning in your
6 ballot by Election Day?" "Do you have a plan to
7 vote?" questions around kind of their plan to vote,
8 their intention to vote.

9 And so we may also fill out those things, and
10 those are called "survey questions."

11 **Q. So people that are on this list are**
12 **already registered voters?**

13 A. No, not necessarily. The VAN also keeps
14 track of folks who may be unregistered or who don't
15 have an active voter registration.

16 **Q. Okay. And so you have a script that you**
17 **follow when you're doing these get-out-the-vote calls,**
18 **right?**

19 A. Right.

20 **Q. And in that script, are there questions**
21 **about voter identification?**

22 A. No, not necessarily. I would be happy to
23 talk about what like a standard GOTV phone call looks
24 like, if that's helpful.

25 **Q. Do you encourage voters that you reach**

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1 through these get-out-the-vote phone calls to sign up
2 for absentee voting in Montana?

3 A. So when we're making -- I guess I'm a
 4 little confused by the question.

5 When we're making get-out-the-vote phone calls,
 6 we're typically calling right near an election, so
 7 we're hoping to contact already-registered voters
 8 about their plan to vote. We have made voter
 9 registration phone calls and pushed people towards our
 10 voter registration tool, but that would be different
 11 in nature than our get-out-the-vote phone calls.

12 Q. Okay. And when you do the voter
13 registration calls that are different than the
14 get-out-the-vote calls, you push people towards
15 registration, correct?

16 MS. SOMMERS-FLANAGAN: Objection; form.

17 THE WITNESS: We encourage people to think
 18 about the benefits of absentee voting when they
 19 register to vote, but it is a personal decision and we
 20 would never like really push someone in that direction
 21 if that isn't their preferred method of voting.

22 Q. (By Mr. Morris) Understood. I didn't mean
23 to say you were being pushy. I think "encourage" is
24 the better word. That's the word I was trying to use
25 and didn't.

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1 Q. (By Mr. Morris) So when you're talking to
2 registered voters about their plan to vote, it's your
3 testimony that you've encountered people during those
4 calls who have told you that they do not have any of
5 the forms of ID that would allow them to vote at the
6 polls.

7 A. We have come across those folks --

8 Q. Let me just be clear. I'm asking about
9 you. You keep saying "we," and I want you to speak
10 from your own personal experience, just so I'm clear.

11 A. I have come across those folks on the
 12 phone, but those experiences are certainly fewer than
 13 some of the other venues for these conversations that
 14 I described because we're trying to connect with
 15 already-registered voters and help them make a plan to
 16 vote.

17 Q. So they're fewer. Can you recall any
18 specific ones within the last two years?

19 A. I can't recall a specific scenario that I
 20 have encountered on the phones.

21 Q. Okay. And when you're doing voter
22 registration, you're primarily having a conversation
23 with voters about registration, right? You said that
24 earlier.

25 MS. SOMMERS-FLANAGAN: Objection; form.

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1 So, but in these other get-out-the-vote phone
2 calls that are occurring closer to the election,
3 you're primarily reaching already-registered voters;
4 is that right?

5 A. Yes. I would say most of the people we
 6 chat with are already registered and just need to make
 7 a plan to vote.

8 Q. And are you encouraging those voters to
9 vote early, if possible?

10 A. If we're contacting voters who vote at the
 11 polls, yes, we would describe to them their options
 12 for voting, including early voting.

13 Q. And for early voting, if you're
14 registered, you can get your ballot and vote it
15 without showing voter ID like you would need at the
16 polls, right?

17 A. Yes, that's my understanding.

18 Q. And so if a person, during these
19 get-out-the-vote phone calls, told you that, "I'm
20 registered, but I don't have any of the forms of ID at
21 all that would satisfy SB 169," a solution to that
22 would be to go and vote early, right?

23 MS. SOMMERS-FLANAGAN: Objection; form.

24 THE WITNESS: I don't know. I may not be
 25 understanding the question.

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1 THE WITNESS: That's right.

2 Q. (By Mr. Morris) Okay. And so in those
3 conversations during voter registration, you don't
4 typically get involved in asking voters or potential
5 voters about all the sort of forms of ID that they
6 might need at the polls because you're more focused on
7 getting the voter registered, right?

8 MS. SOMMERS-FLANAGAN: Objection;
 9 mischaracterizes testimony.

10 THE WITNESS: I guess, yes, if it comes
 11 up, we would certainly talk to a voter about that.

12 Q. (By Mr. Morris) And it's your testimony
13 that you personally, during voter registrations, have
14 had conversations with voters where they have told
15 you, effectively, they don't know or don't believe
16 that they have any of the forms of ID that would
17 satisfy SB 169.

18 MS. SOMMERS-FLANAGAN: Objection; asked
 19 and answered.

20 THE WITNESS: Yes, that has been my
 21 experience.

22 Q. (By Mr. Morris) Okay. And within the last
23 two years, how many people have you talked to during a
24 voter registration situation like this that have
25 indicated to you that they don't know or they don't

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**1 believe that they have any ID that would satisfy SB
2 169?**

3 MS. SOMMERS-FLANAGAN: Objection; asked
4 and answered.

5 THE WITNESS: In the last two years?

6 Q. (By Mr. Morris) Yeah.

7 A. It would be hard to say. I know of the 7
8 to 10 that I've described during the orientation
9 weekend last fall, but I can't recall the amount of
10 times that I've done voter registration in the last
11 two years.

**12 Q. And for those 7 to 10, you don't actually
13 know whether or not, in fact, they lacked ID
14 sufficient to satisfy SB 169, right?**

15 MS. SOMMERS-FLANAGAN: Objection;
16 mischaracterizes testimony.

17 THE WITNESS: Not necessarily. I do know
18 for a fact that they lacked all of the standalone
19 forms, but --

**20 Q. (By Mr. Morris) Let me be clear in my
21 question. I'm asking about all of the forms of ID
22 that, either combined or standalone, would satisfy SB
23 169. Do you understand that?**

24 A. Yes.

25 Q. Okay. And so the 7 to 10, are you just

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**1 voter, a person who calls into Forward Montana, and
2 you personally had this call, and this voter explained
3 to you or said to you or indicated to you that they
4 didn't have any of the forms of ID that would satisfy
5 SB 169.**

6 A. I can't recall.

**7 Q. You can't recall the last time that
8 occurred.**

9 A. No.

**10 Q. And that -- okay. But more generally,
11 even if you can't recall when, do you have an estimate
12 of when the last time such a call occurred?**

13 A. No.

**14 Q. Are you confident that you have, in fact,
15 had such a call?**

16 A. I'm extremely confident.

**17 Q. So in these calls, I know you can't
18 recollect when they occurred, but these people have
19 indicated to you this lack of ID, but you don't know
20 whether, in fact, they did lack the sufficient ID to
21 satisfy SB 169, correct?**

22 MS. SOMMERS-FLANAGAN: Objection; asked
23 and answered.

24 THE WITNESS: Right. I don't know that
25 there would be any way for us to -- for me to verify

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**1 saying that there's 7 to 10 that lacked the standalone
2 forms?**

3 A. Not necessarily. I'm saying that those 7
4 to 10 people definitely lacked all of the standalone
5 forms, and I guess it would be unknown to me if they
6 did really have a utility bill or something like that.

**7 Q. You also mentioned that sometimes people,
8 young people call into Forward Montana to talk about
9 their voter situation. And have you personally had a
10 call with a voter who called into Forward Montana, and
11 based on that call, you believe that they lack all of
12 the forms of ID, whether standalone or combined, to
13 satisfy SB 169 for voting at the polls?**

14 A. Since SB 169 was passed or just generally
15 in my time at Forward Montana?

16 Q. Generally.

17 A. Yes.

18 Q. Okay.

19 A. I can't recall a specific scenario,
20 though, but I know that I've had these conversations.

**21 Q. When was the last time you had such a
22 call?**

23 A. Specific to SB 169 or specific to a voter
24 having a general question for us?

25 Q. Specific to a voter -- a call with a

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1 that on my own. Yes, we just have to take the voter's
2 word for it.

**3 Q. (By Mr. Morris) And so you said you're
4 really confident that you've had these calls. Why are
5 you so confident about that?**

6 A. Forward Montana works directly with folks
7 who are experiencing houselessness, so the forms of ID
8 available to them are obviously very few as they don't
9 have something that would reflect their physical
10 address.

**11 Q. And have you looked into regulations
12 relating to houseless individuals in voting?**

13 A. Not recently, but we definitely have in
14 the past, and we've consulted with election
15 administrators on how best they'd like us to handle
16 this.

**17 Q. Okay. And is it your position that you
18 actually need sort of like a mailing address or a
19 physical home address in order to satisfy voter
20 identification requirements at the polls?**

21 A. Not necessarily, but if the solution for
22 this person is doing one of the combined forms of ID
23 like a voter registration card, how are they to
24 receive their voter registration card without an
25 address in which they can pick up mail?

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1 **Q. So you don't believe that you actually**
 2 **need a physical mailing address or a home address in**
 3 **order to satisfy voter ID requirements at the polls,**
 4 **right?**

5 A. Sorry, I misspoke. No, you need a
 6 physical address.

7 **Q. And you raised a point that it may be hard**
 8 **for someone who is houseless to receive their voter**
 9 **confirmation card because they don't have an address.**
 10 **Is that sort of the point you were making?**

11 A. Yes.

12 **Q. And have you ever advised voters on -- I**
 13 **think you've already said you've advised voters on how**
 14 **you can get a voter confirmation card, right?**

15 A. Our organization has generally, yes. It's
 16 hard for me to recall a specific circumstance, me
 17 personally.

18 **Q. And if a houseless -- if you spoke with a**
 19 **houseless person who had concerns about voter ID that**
 20 **are registered, they could go to the Election Office**
 21 **and get that voter confirmation card, right? It**
 22 **wouldn't need to be mailed to them, in other words.**

23 A. If they happen to live within walking
 24 distance to our Elections Office, sure, they could go
 25 in person. My sense is that folks experiencing

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1 **people who have called into Forward Montana?**

2 MS. SOMMERS-FLANAGAN: Objection; asked
 3 and answered.

4 THE WITNESS: Yes, there have been other
 5 calls that have come in to me personally and to
 6 Forward Montana.

7 **Q. (By Mr. Morris) And specifically calls**
 8 **that have come in to you at Forward Montana where a**
 9 **voter has indicated to you that they would -- he or**
 10 **she did not have any of the forms of voter ID that**
 11 **would satisfy SB 169 for voting at the polls.**

12 MS. SOMMERS-FLANAGAN: Objection; asked
 13 and answered.

14 THE WITNESS: Yes.

15 **Q. (By Mr. Morris) Can you describe any of**
 16 **those other situations?**

17 A. Yeah. Some of the general situations we
 18 run into are often with students or other young --

19 **Q. Hang on, hang on. I just want to make**
 20 **sure that you're talking about your own experience and**
 21 **not some general experience of Forward Montana. And**
 22 **you keep saying "we," and I just want you to be clear**
 23 **in your testimony and speak for yourself because**
 24 **that's what I'm asking about.**

25 A. Definitely. Well, it's hard to say

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1 houselessness likely have a lot of barriers to doing
 2 something like that.

3 **Q. Besides a houseless person who called into**
 4 **Forward Montana and spoke to you, any other types of**
 5 **calls into Forward Montana that you can recall?**

6 **And I don't know if I was specific enough with**
 7 **my question, but again, I'm getting back to this calls**
 8 **into Forward Montana regarding voting ID. Do you**
 9 **understand that?**

10 A. (Nodding head affirmatively.)

11 **Q. Yeah, okay.**

12 A. I've certainly had experience with a
 13 variety of extremely tricky situations where, yes,
 14 somebody doesn't have access to any of the forms of
 15 voter ID or they're back home with their parents or
 16 they're -- you know, there's a slate of circumstances
 17 in which I've personally spoke with people, yes.

18 **Q. Well, if a voter is back home with their**
 19 **parents, they wouldn't be voting in person at the**
 20 **polls, right?**

21 MS. SOMMERS-FLANAGAN: Objection; form.

22 THE WITNESS: Right, right.

23 **Q. (By Mr. Morris) And so besides the**
 24 **houseless aspect of this, anything else that's coming**
 25 **to mind with specific calls that you've had from**

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1 because I can't recall what situations in which I've
 2 maybe like supported somebody else on staff in helping
 3 to answer a question versus which ones I've had
 4 directly; I can try my best, though.

5 Specific calls to myself would include, like I
 6 mentioned, students and other young people who have
 7 just moved here who maybe don't have a job yet, again,
 8 they don't have a tribal ID, they don't have a Montana
 9 ID yet. They're, you know, trying to find a way to
 10 register to vote, but yes, they lack the specific
 11 forms of ID even if they have been living here for 30
 12 days.

13 And we ultimately just have to tell those
 14 people, "Bummer."

15 **Q. Okay. So you're telling me that you've**
 16 **had a call with someone who's called into Forward**
 17 **Montana and said, "I'm a registered voter. I want to**
 18 **vote at the polls, but I don't have the ID to vote at**
 19 **the polls," and your response has been, ultimately,**
 20 **"Bummer"?**

21 MS. SOMMERS-FLANAGAN: Objection;
 22 mischaracterizes testimony, asked and answered.

23 THE WITNESS: No. As I noted, these are
 24 people who are calling to figure out how to register
 25 to vote and cast a ballot.

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1 **Q. (By Mr. Morris) Okay, okay. So let me**
 2 **rephrase, then.**
 3 **So is it your testimony that you've had a call**
 4 **with a person that has said, "I want to register to**
 5 **vote. I've been in Montana for more than 30 days,**
 6 **I've been residing in Montana for more than 30 days,**
 7 **and I don't have any way of registering to vote, and I**
 8 **don't have the ID to vote at the polls."**

9 **And you've told that person, "Bummer," to your**
 10 **recollection.**

11 A. We wouldn't literally tell a voter,
 12 "Bummer." We would tell them to get in touch with
 13 their county Elections Office.

14 **Q. Okay. And can you describe any specific**
 15 **call like that that you've had in the last two years?**

16 A. No, I wouldn't be able to recall a
 17 specific conversation.

18 **Q. How about the last four years?**

19 A. Again, it would be hard to recall a
 20 specific conversation, but yes, I had a few of these
 21 calls in 2020 and in the years before.

22 **Q. How many?**

23 A. I couldn't recall.

24 **Q. Tell me everything you can remember about**
 25 **one of these calls.**

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1 A. I could not recall a specific year.

2 **Q. Can you recall a specific conversation?**

3 A. Not with specificity. There are obviously
 4 scenarios that stand out to me, but I couldn't
 5 necessarily tell you when they happened or the
 6 circumstances surrounding it. By nature of my job,
 7 I'm having these conversations all of the time,
 8 constantly, not necessarily in relation to SB 169 but
 9 in relation to voting rights and election law that I
 10 can -- it's -- yeah.

11 **Q. And even though you're having these**
 12 **conversations constantly, you can't tell me about any**
 13 **specific one that you've ever had?**

14 MS. SOMMERS-FLANAGAN: Objection;
 15 argumentative.

16 THE WITNESS: Not in this moment, no.

17 MS. SOMMERS-FLANAGAN: Mac, would it make
 18 sense to take a quick break, just five minutes?

19 MR. MORRIS: Sure.

20 COURT REPORTER: Okay. The time is 3:40
 21 p.m. We are off the record.

22 (A brief recess was taken.)

23 COURT REPORTER: The time is 3:47 p.m. We
 24 are on the record.

25 ///

///

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1 A. Again, it --

2 **Q. Where were you?**

3 A. Where was I when I was having a
 4 conversation with a voter?

5 **Q. Yeah, the voter that you were just**
 6 **describing.**

7 A. I would have been at the Forward Montana
 8 office, wherever that would have been at the time.

9 **Q. And do you recall whether or not this**
 10 **person was a man or a woman?**

11 A. What person?

12 **Q. Well, that's what I'm asking about. Do**
 13 **you have any information about this person that you**
 14 **were kind of trying to describe to me a minute ago?**

15 A. Not that I could describe in any specific
 16 way.

17 **Q. You also mentioned that at events that**
 18 **Forward Montana hosts, you've had encounters with**
 19 **people who fall within this category of not having any**
 20 **of the forms of ID that would satisfy SB 169; is that**
 21 **right?**

22 A. Yes, in my recollection.

23 **Q. Okay. What events?**

24 A. I couldn't tell you a specific event.

25 **Q. What year?**

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1 BY MR. MORRIS:

2 **Q. Ms. Reese-Hansell, do you agree that --**
 3 **well, actually, let me just ask you this: When you're**
 4 **registering people to vote at these registration**
 5 **drives, when you're doing them in person, do you just**
 6 **ask them to fill out a form that you have with you?**

7 A. Yes, we use just a printed voter
 8 registration form.

9 **Q. And how long does it take a person to fill**
 10 **out one of those forms, typically?**

11 A. It depends. I'd say it could take anyone
 12 60 seconds to 10 minutes. Some folks need to like
 13 pull up a picture in their phone to get like an ID
 14 number, but yeah, it can range anywhere from like 60
 15 seconds to 10 minutes.

16 **Q. And then when you're at these registration**
 17 **drives, do you take those forms, put them in**
 18 **something, and mail them off to the Election Office**
 19 **for the voter, or how does that work?**

20 A. So typically, we bring them back to our
 21 office first and we quality-control them. That's a
 22 process to ensure that, you know, a voter isn't
 23 missing a piece of information that we could help them
 24 reconcile before turning it in, or that like somebody
 25 didn't, you know, fill out one and maybe stop and walk

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1 away and forget.

2 So we reconcile those in our office, and then
3 typically where we have an office in Billings,
4 Bozeman, or Missoula, we'll just walk them over. I
5 have walked them over myself to the Gallatin County
6 Elections Office.

7 If I or my team is doing a voter registration
8 event in another community, yes, we'll have to mail
9 them.

10 **Q. Okay. And so in addition to sort of being**
11 **able to register through that sort of process, voters**
12 **can also go onto the Secretary of State's website and**
13 **access that voter registration application there,**
14 **right?**

15 A. Yes. They would then have to print it out
16 and mail it in themselves.

17 **Q. And it's the same form that you all use**
18 **that takes, you know, 2 to 10 minutes to fill out --**
19 **or 1 to 10, I'm sorry.**

20 A. It is, yeah.

21 **Q. And, then, let me just pull something up**
22 **quick.**

23 MS. SOMMERS-FLANAGAN: Hey, Mac, what's
24 your sense for how much time we have? I'm not trying
25 to rush you, but I just -- and I know we've taken some

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1 Montana Foundation, and it looks like it was posted on
2 our Instagram.

3 MR. MORRIS: Okay. Let's mark this
4 Deposition Exhibit 41.

5 (Document subsequently marked Deposition
6 Exb. 41 for identification.)

7 **Q. (By Mr. Morris) And so this says at the**
8 **top: "did you know? You can register to vote from**
9 **your couch - it's that easy."**

10 **What is Forward Montana indicating there?**

11 A. I'm not a member of our communications
12 team, but I would be happy to speculate that it looks
13 like they're saying that by using our online voter
14 registration tool, you can register to vote from your
15 couch.

16 **Q. And the same is true, I suppose, if you**
17 **use the voter registration form on the Secretary of**
18 **State's website, right?**

19 A. The same is not necessarily true in this
20 context, but yes, you could fill out the voter
21 registration form from your couch as well.

22 **Q. And it says there on the side:**
23 **"Registering to vote is easier than ever and takes two**
24 **minutes tops."**

25 **Do you think that's basically accurate when**

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1 breaks, so I just wanted to ask if you have a sense.

2 MR. MORRIS: I hope to be done within an
3 hour.

4 MS. SOMMERS-FLANAGAN: I hope so.

5 **Q. (By Mr. Morris) Okay. Ms. Reese-Hansell,**
6 **can you see what's on my screen?**

7 A. Yes.

8 **Q. And are you familiar with this document?**

9 A. Yes.

10 **Q. And what is it?**

11 A. It looks like this is a -- could you
12 scroll down a little bit?

13 **Q. Sure.**

14 A. Sorry, just so I can see the whole thing.
15 And then maybe back up one more time.

16 **Q. No problem.**

17 A. Thank you, thank you, thank you. This
18 looks like a post that was a part of our kind of
19 online Democracy Days event. I'd be happy to tell you
20 what Democracy Days is, but it looks like this is
21 that.

22 **Q. Well, where did you post it -- I'm sorry,**
23 **where did Forward Montana this? Can you tell from**
24 **looking at it?**

25 A. I do want to be clear that this is Forward

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1 **you're using that online registration portal?**

2 A. Basically, like I said, I would
3 characterize it personally as 1 to 10 minutes, but I
4 would say most folks are on the lower end of that
5 scale, definitely.

6 **Q. Okay. Let's go and look at your**
7 **declaration again, please. And do you have a copy of**
8 **that? You do, right?**

9 A. I do, yeah.

10 **Q. And would you turn to Paragraph 18? You**
11 **say:**

12 **In my experience, most students and young**
13 **people rely on the last four digits of their Social**
14 **Security number to register to vote.**

15 **Do you know, like do you have an estimation of**
16 **like what percentage, in your experience?**

17 MS. SOMMERS-FLANAGAN: Objection;
18 speculation.

19 **Q. (By Mr. Morris) And if you don't know, if**
20 **you don't have a -- if you couldn't create a**
21 **percentage, you don't need to guess. I'm just --**

22 A. I could only guess. I don't have a fact
23 at the top of my head, no.

24 **Q. In Paragraph 18, the second sentence says:**
25 **"It is rare that a young person or student who is new**

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1 to Montana has a Montana driver's license."

2 Do you see that?

3 A. Yes.

4 MS. SOMMERS-FLANAGAN: Objection. I'm
5 sorry, I think you said "Paragraph 18."

6 MR. MORRIS: Oh, if I did, I meant 19.

**7 Q. (By Mr. Morris) And do you ever encounter
8 people who are in Montana as university students but
9 don't really plan to live in Montana?**

10 A. To clarify, do you mean like live in
11 Montana after they have completed their schooling or
12 something like that?

**13 Q. Either while they're in schooling or
14 after, and you're at one of these registration drives
15 or otherwise, and they tell you, you know, "I'm just
16 here as a student. I don't plan to live here."**

17 You ever encounter anybody like that?

18 A. Not necessarily in the context that you're
19 describing.

**20 Q. So you don't recall encountering someone
21 who essentially tells you, "I'm just going to school
22 here, my home is in another state, so I don't have a
23 Montana driver's license"?**

24 A. We certainly run into people who live here
25 because they go to school here and don't plan to get a

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1 not they can vote in Montana elections?

2 MS. SOMMERS-FLANAGAN: Objection;
3 speculation.

4 THE WITNESS: Again, it's hard to say
5 because our voter registration conversations and then
6 our like, "How do you vote in person?" conversations
7 happen typically very distinctly from one another.

8 But in this scenario, if this person was
9 registering to vote, we would then direct them to
10 using the last four of their Social Security number if
11 they happen to know it off the top of their head.

**12 Q. (By Mr. Morris) And if a person is just
13 going to school here and they consider another state
14 their home state, do you tell them that they can vote
15 in Montana elections?**

16 A. Yes. We run into this specific situation
17 very often, and I would be happy to talk about how we
18 approach it, if it's helpful.

19 Q. Sure.

20 A. So it is super often that, especially new
21 students that we run into who say, "Register to vote?
22 Oh, I can't do that. My home is Washington," but
23 those students don't understand residency requirements
24 as it relates to voter registration.

25 A lot of students assume that residency for

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1 driver's license. Those people may certainly consider
2 somewhere else their home, but I don't know that
3 somebody has like reiterated that specifically to me.
4 But, yes, we run into people who are just coming to
5 MSU for school, plan to get home as much as they can,
6 stuff like that.

**7 Q. And you don't recall anybody explaining to
8 you like, "I don't have a Montana driver's license
9 because, I mean, I'm just here for school. I really
10 live back in, you know, Vermont," or wherever else?**

11 MS. SOMMERS-FLANAGAN: Objection; asked
12 and answered.

13 THE WITNESS: It's never been described to
14 me that way, but yes, we've ran into people who go to
15 school here and who don't have a driver's license and
16 who don't plan to get one.

**17 Q. (By Mr. Morris) Okay. So you've never had
18 anybody describe it to you in the way I've sort of
19 presented it?**

20 A. No, I haven't.

**21 Q. What would you tell a person if they told
22 you, you know, "I'm just going to school here. My
23 home state is elsewhere, so I don't have a Montana
24 driver's license"?**

25 What would you tell that person about whether or

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1 school purposes -- I think at MSU, you have to be
2 living here for a year to get in-state tuition, and a
3 lot of students assume that residency requirement is
4 the same for voting. So when we hear that, like we --
5 I know personally from conversations with voters that
6 that's kind of what they're referring to.

7 And how we would handle that is saying like, you
8 know, "No worries, totally understand." We might ask
9 them, "Are you going to be living in Montana for the
10 next four years while you're going to school? You are
11 eligible to vote here, if you'd like to. Totally
12 understand if you'd like to keep voting in your home
13 state," and then we kind of describe to them the
14 residency requirements for voting.

15 And sometimes folks choose to register here and
16 sometimes they don't. It's a personal choice. But
17 that's typically like how those conversations look
18 like for us.

**19 Q. Yeah. And if, so like if a voter is like,
20 "Yeah, my home state is in Washington," you'd say,
21 "Not a problem" -- you'd effectively tell them, "Not a
22 problem. You could still register and vote in
23 Montana."**

24 MS. SOMMERS-FLANAGAN: Objection; asked
25 and answered.

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1 **Q. (By Mr. Morris) Am I understanding that**
2 **correctly?**

3 A. Generally. I think we'd spend a little
4 bit more time communicating like what a personal
5 decision it is and, you know, kind of the pros and the
6 cons to registering to vote in a new state, but yes,
7 we would make sure they understand that if they're
8 going to be living here for 30 days before the next
9 election, they are eligible to vote here if they'd
10 like.

11 **Q. Okay. Let me just - I'm sorry I have to**
12 **keep saying this - let me just remind you I want to**
13 **make sure that I'm getting your testimony about your**
14 **experience. So when I'm asking you questions, I'm**
15 **asking about you, and I don't want you to try to speak**
16 **for, you know, "we" and "Forward Montana Foundation"**
17 **generally and what you think other people might do.**
18 **Okay?**

19 A. Got it.

20 **Q. In Paragraph 20 of your declaration, it**
21 **reads: "Student ID is the only form of no-cost ID**
22 **available to students."**

23 **Do you see that?**

24 A. Yes.

25 **Q. And did you write that statement to be**

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1 A. Yes, that's my understanding.

2 **Q. And what student ID are you referring to,**
3 **then?**

4 MS. SOMMERS-FLANAGAN: Objection; form.

5 **Q. (By Mr. Morris) Are you talking about**
6 **college student IDs or university student IDs in**
7 **Paragraph 20?**

8 A. Yes, yes.

9 **Q. And before you signed your declaration,**
10 **did you do any investigation as to whether or not a**
11 **university student ID is actually a no-cost form of**
12 **student ID?**

13 A. I mean, research like outside of my own
14 personal experience, no.

15 **Q. Okay. Sorry, just a second. I'm sharing**
16 **my screen with you, Ms. Reese-Hansell. Can you see**
17 **what's on my screen?**

18 A. Yes, I can just see a picture.

19 **Q. Those guys are pretty handsome.**

20 **So this is a web page on the Montana State**
21 **University website, and it's talking about MSU**
22 **CatCards. "Get Your CatCard," do you see that?**

23 A. Hm-hmm, yes.

24 MR. MORRIS: Let's mark this Deposition
25 Exhibit 42.

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1 **included in your declaration?**

2 A. Rylee and I drafted it together, so yes, I
3 would have said this to her, and she would have
4 dictated it.

5 **Q. And are you confident that that was true**
6 **when you signed this declaration?**

7 A. Yes. That was my understanding when I
8 signed this.

9 **Q. Okay. And what was that understanding**
10 **based on?**

11 A. Just how I understood voter photo ID -- or
12 just voter ID generally.

13 **Q. And what was that understanding, how you**
14 **understood it, based on?**

15 A. Well, it would be hard to say specifically
16 where I learned this, but I'm sure from my time at
17 Forward Montana or maybe looking into this myself on
18 the Secretary of State website.

19 **Q. So it's your belief, as you sit here**
20 **today, that student ID is a no-cost ID available to**
21 **students in Montana.**

22 A. Sorry, can you repeat the question?

23 **Q. It's your belief, as you sit here today,**
24 **that student ID is a no-cost ID available to students**
25 **in Montana.**

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1 (Document subsequently marked Deposition
2 Exb. 42 for identification.)

3 **Q. (By Mr. Morris) Do you see where it says:**

4 "New students will receive their first
5 CatCard after arrival to campus their first semester.

6 New undergraduate or graduate students will be charged
7 a \$20.00 fee on their first semester student bill?"

8 **Do you see that?**

9 A. Yes.

10 **Q. So a student ID, at least at MSU, is not a**
11 **no-cost form of ID, is it?**

12 MS. SOMMERS-FLANAGAN: Mac, would you mind
13 scrolling down to the bottom just so we can see the
14 rest of -- I don't mean to be annoying, but --

15 MR. MORRIS: No problem. I should have
16 already done that.

17 MS. SOMMERS-FLANAGAN: Thank you.

18 THE WITNESS: Sorry, can you repeat the
19 question?

20 **Q. (By Mr. Morris) Yeah. A student ID at MSU**
21 **in Bozeman is not actually a no-cost form of ID, is**
22 **it?**

23 A. I mean, in a sense, but it looks like,
24 from what I can see on this page, that it's a fee
25 that's included within your first-semester student

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1 bill.

2 **Q. Right. So there's a fee associated with**
3 **getting it that appears on your bill as a student,**
4 **right?**

5 A. Yeah, from what I can see here.

6 **Q. And so there is a cost for getting a**
7 **student ID at MSU.**

8 MS. SOMMERS-FLANAGAN: Objection; asked
9 and answered.

10 THE WITNESS: Yes, from what I can see
11 here.

12 **Q. (By Mr. Morris) And obviously, it's not**
13 **free to go to college or to a university, right?**

14 A. For some people, it is.

15 **Q. For most people, it's not, is it?**

16 A. I mean, I can't speak to how many people
17 have scholarships or other scenarios, so I'm not sure.

18 **Q. You're not sure whether or not for most**
19 **people, college costs money? You can't say?**

20 MS. SOMMERS-FLANAGAN: Objection; asked
21 and answered.

22 THE WITNESS: I'm aware that college costs
23 money, but I don't know how many students rely on
24 scholarships or who have people in their life that
25 will pay for it for them, and I guess I would consider

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1 **Q. So you say in Paragraph 20 that:**

2 **"Student ID is the only form of no-cost ID available**
3 **to students."**

4 **And, I mean, why do you say it's the only form**
5 **of no-cost ID available to students?**

6 A. At the time in which this was submitted,
7 that was my understanding.

8 **Q. Do you have a different understanding now?**

9 A. Yes. I would consider a voter
10 registration card to be a no-cost form of ID.

11 **Q. So you would acknowledge that Paragraph 20**
12 **is inaccurate.**

13 MS. SOMMERS-FLANAGAN: Objection;
14 mischaracterizes testimony.

15 THE WITNESS: It is a form of no-cost ID,
16 but no, it isn't the only. And that was my
17 understanding then.

18 **Q. (By Mr. Morris) So what do you mean it is**
19 **a form of no-cost ID? We just looked at Deposition**
20 **Exhibit 42, and you can see that there's a charge for**
21 **it. So why do you say that it's a form of no-cost ID?**

22 A. At the time when I submitted this, I was
23 relying on my personal expertise, and I don't remember
24 any cost associated with my student ID when I was at
25 MSU.

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1 that experience to be free for that student.

2 **Q. (By Mr. Morris) Yeah. I mean, there are**
3 **-- you're aware that there are some people who are**
4 **lucky enough that someone else pays for their college**
5 **or university. That's what you're saying?**

6 A. Yes.

7 **Q. But that would be outside of the norm in**
8 **your experience, wouldn't it?**

9 A. It's hard to say. I have a lot of friends
10 whose family or somebody else in their life helped
11 with their schooling.

12 **Q. Okay. Well, at the same time, it would be**
13 **-- you know, a Costco card, for instance, it's a**
14 **picture ID. I don't get charged for it, but I've got**
15 **to become a member of Costco in order to get one,**
16 **right?**

17 A. I think so. I don't have a Costco card,
18 so I'm not totally sure.

19 **Q. Well, assuming that that's the case, it**
20 **would be inaccurate to say that a Costco card is free**
21 **just because you don't have to pay a separate fee for**
22 **it when you have to pay for the membership, right?**

23 A. It's hard to say. I think that I would
24 consider something that comes with a membership to be
25 free in some circumstances.

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1 **Q. Yeah, but I'm asking about your**

2 **understanding now having looked at Deposition**
3 **Exhibit 42. I mean, you acknowledge that if MSU is**
4 **charging \$20 for the student ID, it's not a no-cost**
5 **form of ID, right?**

6 MS. SOMMERS-FLANAGAN: Objection; asked
7 and answered.

8 THE WITNESS: Sure.

9 **Q. (By Mr. Morris) Okay. So do you**
10 **acknowledge that Paragraph 20 of your declaration is**
11 **inaccurate?**

12 MS. SOMMERS-FLANAGAN: Objection;
13 mischaracterizes testimony.

14 THE WITNESS: Sure, it's not the only.

15 **Q. (By Mr. Morris) Well, and it's not**
16 **no-cost, is it?**

17 MS. SOMMERS-FLANAGAN: Objection; asked
18 and answered.

19 THE WITNESS: Sure.

20 **Q. (By Mr. Morris) That's correct, isn't it?**

21 A. Yes.

22 **Q. You also need a valid government-issued**
23 **photo ID to obtain a student ID at MSU, right?**

24 A. I don't recall that being my experience.

25 **Q. I know that. Look at -- I'm sorry, I'm**

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1 going to show you Deposition Exhibit 42 again. Can
2 you see Deposition Exhibit 42?

3 A. Yes.

4 Q. And the, in the first paragraph there, the
5 second-to-last sentence reads: "Please bring a valid
6 government-issued photo ID with you to the CatCard
7 office."

8 Do you see that?

9 A. Yes.

10 Q. And then the next sentence reads: "A
11 CatCard cannot be issued without identity
12 verification."

13 Right?

14 A. Yes.

15 Q. So based on that, it's your understanding
16 that in order to get a student ID at MSU, you would
17 also have to have a valid government-issued photo ID,
18 right?

19 A. It is. Without knowing more about the
20 process, it's hard for me to comment on.

21 Q. Okay, yeah. So in Paragraph 21, you say:
22 "Many students living on campus don't immediately
23 acquire a Montana driver's license."

24 Right?

25 A. Right.

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1 Q. And it's also true that many students
2 living on campus at MSU already have a Montana
3 driver's license, isn't it?

4 MS. SOMMERS-FLANAGAN: Objection; form.

5 THE WITNESS: It would be hard for me to
6 say. I don't know how many students come to MSU from
7 other states versus like the instate student split.

8 Q. (By Mr. Morris) Yeah, I'm just using the
9 same word that you did in your declaration.

10 When you say: "Many students living on campus
11 don't immediately acquire a Montana driver's license,"
12 isn't it also true that many students living on campus
13 already have a Montana driver's license?

14 A. I suppose, sure.

15 Q. And in Paragraph 21, you're just talking
16 about out-of-state students.

17 A. Yes, but I also think that this could
18 apply to young people who just don't have a plan to
19 get a driver's license.

20 Q. And out-of-state students that move to
21 Montana for school, they might not necessarily view
22 Montana as their home state, right?

23 A. Yeah, sure.

24 Q. In Paragraph 22, you say: "Many students
25 who live in the dorms have little to no use for owning

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1 a vehicle."

2 You've not done any sort of survey on how many
3 students that live in the dorm own a vehicle, have
4 you?

5 A. Not to my recollection. At one point in
6 time, as a part of an economic justice campaign, we
7 did collect stories about people generally like facing
8 hardship in the Bozeman community. So we may have
9 some stories of these specific folks, but no, no
10 continuous survey that we've done.

11 Q. What were you just referring to?

12 So let me just ask: Are you referring to
13 something that you've done recently?

14 A. Not recent. I can't recall the exact time
15 that we did this. It may have been -- it was
16 certainly in my time at Forward Montana, so within the
17 last five to six years.

18 Q. And what was this that you're referring
19 to? Can you tell me a little bit more about it?

20 A. Yeah. It was called an inappropriate name
21 that I won't say now, but it was focused on economic
22 justice.

23 And just generally, Forward Montana will often
24 do kind of story-collection projects where we just
25 want to hear from young people about what's going on

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1 with them, so this was just one of those campaigns.
2 We collected stories from young people about the
3 hardships that they might be facing.

4 And these stories focused on a broad range of
5 issues which, you know, I don't have them top of mind,
6 so I don't totally feel comfortable speaking to them
7 now, but some of them did include young people who
8 don't own a vehicle and might have trouble getting to
9 work, things like that. That is something I can look
10 into, but I don't have them top of mind right now.

11 Q. Okay. And this statement about: "Many
12 students who live in the dorms have little to no use
13 for owning a vehicle," what's that based on? Is it
14 based on this project of collecting stories that
15 you've just described?

16 A. It is not. That project was in reference
17 to you asking a question about if we've ever done a
18 survey about this. But this statement at the time was
19 crafted just based on the experience I personally have
20 talking to students and young people at MSU.

21 Q. So it's based on -- how many people that
22 you've talked to have told you that they have little
23 to no use for owning a vehicle?

24 A. I couldn't say a specific number.

25 Q. What about an estimate?

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1 A. It would be hard to say. All I can say is
2 that a lot of the students that live in the dorms
3 don't have a vehicle, but I couldn't say how many
4 conversations I've had.

5 Q. Okay. So there's a difference between not
6 having a vehicle and not having any use for a vehicle,
7 right?

8 A. I don't know. What do you mean?

9 Q. Well, your statement in Paragraph 22 is
10 that: "Many students who live in the dorms have
11 little to no use for owning a vehicle," right?

12 And you just said, "All I can tell you is that
13 many students -- or a lot of students don't have a
14 vehicle."

15 I mean, there's a distinction there, right?

16 A. Not one that I was thinking about when I
17 wrote this. So to be clear, because they don't need
18 one.

19 Q. Okay. So is it your testimony that there
20 are a lot of people that live in the dorms that don't
21 have a vehicle because they have little to no use for
22 a vehicle?

23 A. Yes. In my personal experience, that's
24 what I've encountered.

25 Q. And that isn't actually your personal

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1 experience. When you were a freshman or when you were
2 at MSU, you did own a vehicle, right, and you had
3 access to a vehicle?

4 A. I did. I also noted that I had a very
5 untraditional college experience as I didn't live in
6 the dorms or anything like that.

7 Q. So what do you mean when you say, "Based
8 on my own personal experience, a lot of students have
9 little to no use for owning a vehicle"?

10 MS. SOMMERS-FLANAGAN: Objection; asked
11 and answered.

12 THE WITNESS: That would be based on
13 conversations that I've had with voters or with young
14 people on campus.

15 Q. (By Mr. Morris) And that's not some sort
16 of like statistical survey; it's just anecdotal
17 conversations that you've had, right?

18 MS. SOMMERS-FLANAGAN: Objection; asked
19 and answered.

20 THE WITNESS: Yes.

21 Q. (By Mr. Morris) And you don't know how
22 many conversations fall in that category, right?

23 MS. SOMMERS-FLANAGAN: Objection; asked
24 and answered.

25 THE WITNESS: No.

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1 Q. (By Mr. Morris) And that's also true -- at
2 the last sentence of Paragraph 22, you say:

3 "Quite simply, students are unlikely to
4 prioritize acquiring a driver's license solely for the
5 purpose of being able to vote in person."

6 Do you see that?

7 A. Yes.

8 Q. And that's also just based on
9 conversations or what is that based on?

10 A. Yes, conversations that I've had with
11 voters and also my personal experience. I would be
12 unwilling to go and pay for an ID just for the purpose
13 of one specific activity.

14 Q. Yeah, but you're talking about students
15 generally. And are you talking about students
16 generally all over the state of Montana?

17 A. I'm talking about the students and young
18 people I've had experience speaking with, so those
19 would be folks centered around the MSU campus.

20 Q. So, and you don't know how many students
21 you've had conversations with that fall within that
22 category?

23 MS. SOMMERS-FLANAGAN: Objection; asked
24 and answered.

25 THE WITNESS: No.

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1 Q. (By Mr. Morris) Paragraph 23 reads: "The
2 cost of acquiring an ID is a particular burden for
3 students and young people. It's also an unnecessary
4 cost where students have readily accessible photo ID
5 in the form of their student ID."

6 Correct?

7 A. Yes.

8 Q. And did you write those two sentences in
9 Paragraph 23?

10 A. Yes. Rylee and I drafted this together.

11 Q. And did you do the first, did you take the
12 first crack at those two sentences in Paragraph 23?

13 A. Yes. I spoke, and Rylee dictated what I
14 was saying.

15 Q. Okay. And would you agree with me that
16 Paragraph 23 just reflects your own personal opinion
17 on this issue?

18 A. Yes.

19 Q. In Paragraph 25, you say: "Students rely
20 on being able to use their student ID."

21 Correct?

22 A. Yes.

23 Q. And are you saying that students rely on
24 being able to use their student ID to vote?

25 A. That has been my specific experience, yes.

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1 **Q. And what do you mean by that's been your**
2 **specific experience?**

3 A. That prior to SB 169 being passed, I had
4 many conversations with voters about their ability to
5 use their student ID and found it to be true that
6 students did rely on that.

7 **Q. Anything else besides those conversations**
8 **that is the basis of that statement?**

9 A. I don't, I don't think so, no.

10 **Q. And how many conversations do you think**
11 **fall in that category?**

12 A. I couldn't recall a specific number.

13 **Q. Do you have an estimate?**

14 A. No.

15 MS. SOMMERS-FLANAGAN: Hey, Mac?

16 MR. MORRIS: Yeah.

17 MS. SOMMERS-FLANAGAN: Can we check in on
18 time? Because I know -- I don't want to be difficult,
19 but we did say roughly three hours, and I just want to
20 see where we're at.

21 MR. MORRIS: Okay.

22 MS. SOMMERS-FLANAGAN: Jonny, do you
23 happen to have the time that we've been on the record?

24 COURT REPORTER: I don't have it. I can
25 get that, but it would take a recess figure it out.

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1 MR. MORRIS: We can do that.

2 MS. SOMMERS-FLANAGAN: I'm willing to keep
3 going, though, Mac. Like if we're talking about 15
4 minutes, I think it's fine, but if we're talking about
5 more than that, I think I think we have to -- we just
6 need to figure out what we're going to do because I --
7 it's -- everybody's got other obligations coming up.

8 MR. MORRIS: Yeah, I don't think that
9 there's a basis in the rules to stop the deposition at
10 three hours just because that's what we estimated it
11 would take.

12 MS. SOMMERS-FLANAGAN: I'm trying to be
13 reasonable about this. I'm not trying to make
14 it difficult.

15 MR. MORRIS: And I am, too. So if we want
16 to just keep moving, we'll go until we're done, and
17 I'm going to try to get done with the rest of this as
18 quick as I can. Okay?

19 MS. SOMMERS-FLANAGAN: Okay. I'm going to
20 speak up again in 15 minutes because I'm aware of sort
21 of, you know, what we discussed.

22 MR. MORRIS: Yeah. And I'm telling you
23 that there's not a basis in the rules to stop the
24 deposition just because we estimated a certain amount
25 of time for it.

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1 **Q. (By Mr. Morris) Okay. In Paragraph 25,**
2 **you also say: "The ability to use student ID is**
3 **common knowledge on campus at MSU."**

4 **Correct?**

5 A. Yes.

6 **Q. And again, are you saying that the ability**
7 **to use a student ID to vote is common knowledge on**
8 **campus at MSU?**

9 A. Yes.

10 **Q. And what's the basis of that statement?**

11 A. Conversations that I've had with young
12 people on the MSU campus.

13 **Q. How many?**

14 A. Couldn't say.

15 **Q. Anything else besides your conversations**
16 **that is the basis for this statement about what is**
17 **common knowledge on campus at MSU?**

18 A. I guess the only thing I could add is that
19 prior to the passage of SB 169, I know that the
20 university had communicated this opportunity to
21 students to use their student ID, and in some certain
22 ways -- I can't talk specifically about those, what
23 those ways were, but I knew that, you know, your
24 school would communicate that to you. So that would
25 be the only other thing, that the university also, you

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1 know, talked about it or had it somewhere in some
2 degree if you went looking.

3 **Q. Okay. And in terms of whether or not that**
4 **message that the university sent out was actually**
5 **received and understood by students at MSU and became**
6 **common knowledge, you don't know, right?**

7 A. I don't know. I always read the emails
8 and voting guidance that came from our university
9 president, but maybe I was just a great student.

10 **Q. In Paragraph 26, you say: "Student voting**
11 **is already a complicated experience at MSU."**

12 **Right?**

13 A. Yes.

14 **Q. And you acknowledge there's a polling**
15 **place on campus?**

16 A. Yes; there wasn't always, though.

17 **Q. But there is now, typically?**

18 A. There is; although, not all students vote
19 on -- the precinct of campus is kind of cut up kind of
20 weird.

21 **Q. Is it your expectation that there's going**
22 **to be a polling place on the MSU campus in future**
23 **elections?**

24 A. Are you talking about in addition to the
25 one that's already there or just the one that is there

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1 now?

2 **Q. Oh, the one that's there now.**

3 A. Oh, yeah, I would hope that that's
4 continued into the future.

5 **Q. And you say: Students have to find time
6 to vote and may have to miss out on other obligations
7 or make a special trip.**

8 **Right?**

9 A. Yeah.

10 **Q. And what do you mean by "make a special
11 trip"?**

12 A. Make a special trip to campus when they
13 otherwise wouldn't.

14 **Q. And if you're voting in person, I mean,
15 you always have to make a special trip whether you're
16 a student or not. I mean, you've got to go to the
17 polls and vote, right?**

18 A. Yes; that doesn't mean that it can't be
19 burdensome, though.

20 **Q. I mean, it's just inherent in the process
21 of voting in person. You've got to go and you've got
22 to vote, right?**

23 A. Yes.

24 **Q. And it's -- and if you vote absentee, if
25 you don't mail it in, you've got to go and drop it off**

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1 **at a polling location or otherwise, right?**

2 A. Yes.

3 **Q. In Paragraph 27, you talk about students
4 that are turned away at the polls.**

5 A. (Nodding head affirmatively.)

6 **Q. And have you actually observed a student
7 that was turned away at the polls?**

8 A. Yes. And I would be happy to talk about a
9 specific scenario; although, I don't remember their
10 names.

11 **Q. And when was the last time you saw someone
12 turned away at the polls?**

13 A. I personally, in my role now, don't do a
14 lot of line support or other in-person things at
15 polling locations. So it certainly has been a few
16 elections, but other members of the team at Forward
17 Montana have seen this more recently.

18 **Q. And how do you know that other members
19 have seen that more recently?**

20 A. Because we talk about it as a team when it
21 comes up.

22 **Q. And you said you recall a specific person
23 in these many elections ago that was turned away at
24 the polls.**

25 A. (Nodding head affirmatively.)

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1 **Q. What was that situation?**

2 A. There was two students at MSU who had gone
3 to the MSU polling location anticipating that they
4 could vote there, right? Which I think is a pretty
5 intuitive response for students. You know, if you've
6 got a polling location on campus, why wouldn't you be
7 able to vote there? They did live in a part of the
8 precinct that they couldn't.

9 These folks didn't have a car, so at the time,
10 we were coordinating rides to the polls and we helped
11 get them a ride to the polls. I think they needed to
12 update their voter registration as well, and this was
13 back, you know, ahead of the 2021 legislative session
14 when we still had same-day voter registration.

15 So we were able to coordinate a ride to the
16 polls for them. I remember it was two students. They
17 got dropped off. It was like 5 or 6 p.m. The line to
18 the Gallatin County Elections Office was around the
19 block.

20 They waited in line, they got up there, they
21 didn't have something that they needed - I want to say
22 it was a form of voter ID - and they were turned away
23 and told, "You can get it and you can come back."

24 And we did everything they could -- we did
25 everything that we could, as an organization, to

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1 encourage them like, you know, "Go back to your dorm,
2 get your stuff. We'll drive you back, and like it
3 will be fine."

4 And these two students were like, "No way, no
5 way. Like we've been here for two to three hours.
6 Like we're not going back to our dorms, getting these
7 materials, and going back."

8 Like they probably wouldn't have even made it.
9 And so that, that's kind of the specific experience
10 that I can recall. Those, those two students did not
11 end up voting.

12 **Q. And do you know what the ID was that
13 they -- first of all, do you know whether or not it
14 was ID that was the problem?**

15 A. It's hard to say. I think it was, but I
16 can't be 100 percent sure. I can't remember.

17 **Q. And so was -- did this person have to wait
18 in line at the polling place on campus?**

19 A. Yes, to be then turned away, to be turned
20 away again at the Gallatin County Elections Office.

21 **Q. Okay. And so you recall seeing there were
22 significant lines at the Gallatin County Election
23 Office on that occasion.**

24 A. Very significant, yeah.

25 **Q. And those lines at the, at the Gallatin**

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1 **County Elections Office, that was like an impediment**
 2 **to them voting for multiple reasons, right?**

3 A. Definitely.

4 **Q. I mean, they had to wait, and then**
 5 **ultimately the line itself deterred them from going**
 6 **back and trying to vote once they resolved the**
 7 **problem, right?**

8 MS. SOMMERS-FLANAGAN: Objection;
 9 mischaracterizes testimony.

10 THE WITNESS: That's not necessarily my
 11 understanding. Resolving the problem -- getting back
 12 and forth to campus when you don't have a vehicle was
 13 the problem. The burden was created when they were
 14 turned away, not by the line. They waited through the
 15 line twice.

16 **Q. (By Mr. Morris) So you said you were at**
 17 **the on-campus polling location, right?**

18 A. No. I was back at my office fielding
 19 these phone calls as they came in.

20 **Q. Okay. So did you have a personal**
 21 **interaction with either of these two people?**

22 A. Over the phone, yes.

23 **Q. And you're saying that someone else at**
 24 **Forward Montana besides yourself shuttled them from**
 25 **the polling place on campus to the Gallatin County**

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1 **Q. And any other occasions that you can**
 2 **recall where a person was turned away at the polls?**

3 A. Yes. It would be hard for me to recall a
 4 specific conversation, but I can recall general
 5 circumstances in which this has happened. So in
 6 Paragraph 29, you say:

7 "SB169 also puts elections officials in
 8 the position of educating voters about the changes to
 9 our voting laws despite the fact that they are often
 10 overburdened and at capacity on election day."

11 Correct?

12 A. (Nodding head affirmatively.)

13 **Q. And so it's been your experience and**
 14 **observation that election officials are overburdened**
 15 **and at capacity on Election Day?**

16 MS. SOMMERS-FLANAGAN: Objection;
 17 mischaracterizes testimony and asks for a legal
 18 conclusion.

19 THE WITNESS: That is my personal
 20 experience of interacting with election officials,
 21 yes.

22 **Q. (By Mr. Morris) And you also say in your**
 23 **experience, election officials don't have time, in the**
 24 **days leading up to elections, to spend explaining**
 25 **changes and carefully instructing voters about new ID**

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1 **Election Office?**

2 A. I can't recall if it would have been
 3 someone at Forward Montana. We often partner with
 4 other organizations to coordinate rides to the polls,
 5 so it may have been somebody or a volunteer from
 6 another organization.

7 **Q. Okay, I see. And so are you saying that**
 8 **you got one call from them -- you were at, you were at**
 9 **your office. You got one call from one or -- did you**
 10 **get one call from one person in this incident?**

11 A. Yes. I remember getting one initial call
 12 from the person who was with their friend, and they
 13 were kind of like talking to me together.

14 **Q. Okay. And then you helped sort of**
 15 **coordinate a ride shuttle for that person over to the**
 16 **Gallatin County Election Office, right?**

17 A. Yes.

18 **Q. Okay. And then are you saying that after**
 19 **they got turned away at the Gallatin County Election**
 20 **Office, that they called you back?**

21 A. Yes. I believe their ride had left, so
 22 they needed a ride back to campus and they wanted me
 23 to help coordinate that as well.

24 **Q. Okay, all right. And did you do that?**

25 A. Yes.

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1 **requirements, right?**

2 A. Right.

3 **Q. What's that based on?**

4 A. A lot of experience getting yelled at by
 5 election administrators that they don't have time to
 6 be answering my questions and a lot of other personal
 7 experiences that I'd be happy to describe.

8 **Q. So you've had sort of like hostile**
 9 **conversations with election officials where they're**
 10 **like, "I don't have time."**

11 A. (Nodding head affirmatively.)

12 **Q. Is that kind of what you're saying?**

13 A. Absolutely.

14 **Q. Okay. They seem sort of put out and**
 15 **impatient and overworked; is that right?**

16 A. That has been my experience, yes.

17 **Q. In Paragraph 31, you talk about updating**
 18 **educational materials related to voting. You say:**

19 "We also have to update all of our
 20 educational materials related to voting, which is
 21 costly."

22 **Do you see that?**

23 A. Yes.

24 **Q. And when you say "we," you're talking**
 25 **about Forward Montana, right?**

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1 A. Right.
 2 **Q. So in your experience, does Forward**
 3 **Montana routinely update its educational materials?**
 4 A. In the event that we have to, yes.
 5 **Q. Yeah. I mean, don't doesn't Forward**
 6 **Montana like update that material as it learns what**
 7 **works and what doesn't, and what engages voters and**
 8 **what doesn't?**
 9 A. So our education materials would just be
 10 communicating things about voting and about how to
 11 navigate elections, so that wouldn't be focused on
 12 like things that we're learning in the field about
 13 what works, if that makes sense.
 14 **Q. Yeah, I see your point. And part of the**
 15 **sort of work of Forward Montana is staying up to date**
 16 **on election laws and that sort of thing, right?**
 17 A. Yes.
 18 **Q. And in some cases, like with SB 169, you**
 19 **might need to update educational materials with**
 20 **respect to voting laws becoming more lenient, correct?**
 21 A. Sorry, can you repeat the question?
 22 **Q. Yeah -- let me see if I can phrase it a**
 23 **different way.**
 24 **So SB 169, under SB 169, you no longer need a**
 25 **current and valid photo ID to register if you're**

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1 **unable to provide a Social Security number. Do you**
 2 **know that?**
 3 A. I don't know if I knew that or not.
 4 **Q. Okay. Let me just -- well, are you aware**
 5 **that under SB 169, you no longer need a current**
 6 **driver's license, state ID card, passport, that sort**
 7 **of thing?**
 8 MS. SOMMERS-FLANAGAN: Objection; asked
 9 and answered.
 10 THE WITNESS: I don't know that I was
 11 aware of that, but I'm aware of it now.
 12 **Q. (By Mr. Morris) Okay, okay. So you're**
 13 **aware of it, as you sit here today, even before I**
 14 **asked you that question. Is that what you were**
 15 **saying?**
 16 A. No, not necessarily. I don't know if I
 17 knew it before today. I am aware of it now because
 18 you've told me it.
 19 **Q. Okay. Let me show you what's on my**
 20 **screen. Ms. Reese-Hansell, can you see what's on my**
 21 **screen?**
 22 A. Yes.
 23 MR. MORRIS: I'm sorry, Jonny, what
 24 exhibit number are we on?
 25 COURT REPORTER: The next one will be 43,

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1 Mac.
 2 MR. MORRIS: Let's mark this Exhibit 43.
 3 (Document subsequently previously marked
 4 Deposition Exb. 43 for identification.)
 5 **Q. (By Mr. Morris) Now, I'm just going to**
 6 **scroll through this, Ms. Reese-Hansell, so you can get**
 7 **a look at it. We'll go back up.**
 8 **And have you ever seen this document or a**
 9 **document like Deposition Exhibit 43 that describes SB**
 10 **169?**
 11 A. I have seen this; I have never read it in
 12 full or anything like that, though.
 13 **Q. Okay. I'm going to scroll down. Sorry.**
 14 **All right. So you see in this, in Deposition**
 15 **Exhibit 43, it shows changes to existing Montana law**
 16 **regarding voter identification and specifically**
 17 **Montana Code Annotated 13-13-114. Do you see that?**
 18 A. Yes.
 19 **Q. Okay. And you can see where there's been**
 20 **cross-outs is where language has been eliminated from**
 21 **the previous statute and underlined language has been**
 22 **added to the previous statute. You understand that?**
 23 A. Yes. I hate to be difficult, this is
 24 extremely hard for me to read. Is there a way for me
 25 to pull up a copy of this myself?

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1 **Q. Yeah, there is. We can put it in the**
 2 **chat. I think that's the easiest way to do it.**
 3 MR. MORRIS: Rylee, do you have any better
 4 ideas?
 5 MS. SOMMERS-FLANAGAN: No, I think that's
 6 great.
 7 MR. MORRIS: Okay.
 8 THE WITNESS: Thank you.
 9 **Q. (By Mr. Morris) Yeah, for sure.**
 10 MS. SOMMERS-FLANAGAN: So, Mac, I will
 11 make myself be available as long as Amara is, but I do
 12 think it's a little bit unfair to agree to something
 13 and then just go significantly over that time.
 14 MR. MORRIS: We're almost done.
 15 MS. SOMMERS-FLANAGAN: We're almost done?
 16 MR. MORRIS: Yeah.
 17 MS. SOMMERS-FLANAGAN: Okay.
 18 THE WITNESS: I do hate to be difficult,
 19 but if at some point before five, if we could take a
 20 few minutes. I did have a commitment at five.
 21 **Q. (By Mr. Morris) We can take a break right**
 22 **now.**
 23 A. Okay, cool. That would be great. Thank
 24 you.
 25 **Q. Yeah, for sure.**

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1 COURT REPORTER: The time is 4:54 p.m. We
2 are off the record.

3 (A brief recess was taken.)

4 COURT REPORTER: The time is 4:58 p.m. We
5 are on the record.

6 BY MR. MORRIS:

7 Q. Ms. Reese-Hansell, were you able to get
8 that document that I sent over via the chat?

9 A. I was. Thank you.

10 Q. And that's Deposition Exhibit 43. And can
11 you go to the third page of that, please -- and
12 actually, it's the bottom of the second page and going
13 onto the third.

14 A. I got it.

15 Q. And have you read this before or looked at
16 it before?

17 A. I have looked at it before; I have not
18 read this in full.

19 Q. Okay. You can see that at the bottom
20 there, the statute is 13-13-114, which is about voter
21 identification before an elector votes, right?

22 A. (Nodding head affirmatively.)

23 Q. Okay. And it's your understanding that
24 that's the statute that relates to what ID a person
25 needs if they go and vote at the polls, right?

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1 A. Right.

2 Q. Okay. And can you see there in Section 1,
3 it starts out -- so you can see that it used to read:
4 "before an elector is permitted," but "before" has a
5 strike-through?

6 A. Yeah.

7 Q. And other terms that have been stricken
8 from that language are "'current photo'
9 identification." Do you see that?

10 A. Hm-hmm [affirmative].

11 Q. So one of the changes in SB 169 is that
12 you don't need a current photo ID like you used to
13 before its passage, right?

14 A. Yes.

15 Q. And additionally, you don't need a "valid"
16 Montana driver's license as one of the other primary
17 forms of ID, either, right?

18 A. Yes.

19 Q. And so in that way, SB 169 actually makes
20 it more lenient in some respects in terms of the ID
21 you need to vote at the polls, right?

22 MS. SOMMERS-FLANAGAN: Objection; form.

23 THE WITNESS: That is not my
24 characterization of the bill.

25 Q. (By Mr. Morris) Okay. Well, if you were a

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1 person who had a tribal ID that was expired before,
2 that wouldn't serve as a primary form of ID before
3 passage of SB 169, right?

4 A. Yes.

5 Q. And now if you have an expired or
6 not-current tribal ID, you can still use that as a
7 form of voter ID, primary ID, right?

8 A. That looks correct to me.

9 Q. So that makes it a little bit easier on
10 those people who might not have a current or valid
11 Montana driver's license, passport, tribal ID card,
12 etc., right?

13 A. If you happened to have held onto your
14 expired ID, sure.

15 Q. Yeah, yeah. And do you know whether or
16 not your passport is still current and valid?

17 A. My passport?

18 Q. Yeah.

19 A. It should be. I just got it a few years
20 ago.

21 Q. Okay. But if it's not, I mean, you could
22 still use that ID, right?

23 A. Right, but I wouldn't need to because I
24 have a current form of ID.

25 Q. Let's go up to page 1 on Deposition

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1 Exhibit 43. And this first section is amending
2 Montana Code Annotated 13-2-110, which is concerned
3 with the ID you need to register to vote, correct?

4 A. I see that.

5 Q. And if you scroll down to the second page,
6 you can see that if a voter doesn't have their first
7 four digits of their Social Security number or
8 driver's license or a Montana State ID, you don't need
9 a current and valid form of any photo ID as a second -
10 (inaudible) - right?

11 COURT REPORTER: You cut out at the very
12 end there, Mac. I'm sorry.

13 MR. MORRIS: I'm glad that I did because I
14 think I butchered that question. I think I'm just
15 going to move on. I don't think we need to go over
16 this anymore.

17 Q. (By Mr. Morris) Let me just ask you: Do
18 you know, has Forward Montana received any invoices
19 from Upper Seven Law for its work in this case?

20 A. I wouldn't be aware of that.

21 Q. Do you know if Forward Montana has
22 received any invoices from any of the experts hired in
23 this case?

24 MS. SOMMERS-FLANAGAN: I'm just going to
25 object to sort of outside the scope of her potential

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1 knowledge, but you can ask on that.

2 THE WITNESS: Yeah, that's far outside the
3 scope of my knowledge --

4 **Q. (By Mr. Morris) Okay.**

5 A. -- and the information that I have.

6 **Q. Okay.**

7 MS. SOMMERS-FLANAGAN: Don't worry, Mac,
8 Kiersten will know.

9 MR. MORRIS: That's fine. Yeah, you don't
10 have to know.

11 **Q. (By Mr. Morris) Let me just do one last**
12 **share screen here. Can you see what's on my screen,**
13 **Ms. Reese-Hansell?**

14 A. I can.

15 **Q. And I'm just going to scroll through it so**
16 **you can see it. Have you ever seen this document**
17 **before?**

18 A. Hard to say. We send a lot of emails.
19 This doesn't look totally familiar to me. I may have
20 read it at some point.

21 **Q. It's talking about the expert witness**
22 **budget and the expert expenses associated with Dr.**
23 **Herron and Ms. Bromberg. Does that refresh your**
24 **recollection as to whether or not you've seen it?**

25 A. No.

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1 **that, was there anything on your mind that was sort of**
2 **making it difficult to explain the conversations that**
3 **you were having?**

4 A. Definitely. And I apologize for any
5 confusion. I think the kind of tension that I'm
6 rubbing up against with those questions is that SB 169
7 just passed not that long ago, so when we were having
8 conversations with voters, it was in a very different
9 vein, right? Because student ID was always allowed,
10 it was always on the table, and so now we're having
11 different conversations with voters now that, in my
12 opinion, like a hurdle has been enacted.

13 Also, I appreciate the opportunity to clarify:
14 Our voter registration conversations and then our
15 election "how do you cast a ballot?" happened at
16 distinctly different times. We have to stop our voter
17 registration 30 days before an election, which means
18 we've already wrapped up our voter registration
19 efforts even before an election is on young people's
20 minds, so we just haven't had very many opportunities
21 to be discussing with voters that we're registering in
22 the moment like, "Okay. Come election time, this is
23 what you've got to keep in mind."

24 Like that just isn't an experience that has
25 happened. I bet it will happen more often now due to

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1 MR. MORRIS: Okay, all right. I think
2 we're done, but I just want to go over my notes really
3 quick and then we will wrap up. Thank you

4 COURT REPORTER: The time is 5:06 p.m. We
5 are off the record.

6 (Pause in proceedings.)

7 COURT REPORTER: The time is 5:07 p.m. We
8 are on the record.

9 MR. MORRIS: Ms. Reese-Hansell, I don't
10 have any more questions for you at this time. Thanks
11 so much.

12 THE WITNESS: Thank you.

13
14 BY MS. SOMMERS-FLANAGAN:

15 **Q. I am just going to ask a couple of very**
16 **small questions that I think might clarify some of the**
17 **exchanges we had today, which not -- nothing**
18 **significant, so we'll be really, really quick.**

19 **One thing that I just want to sort of recall us**
20 **back to, Amara, is the conversation related to**
21 **conversations that you have had with potential voters**
22 **related to ID and registration. You remember that**
23 **part of the deposition today?**

24 A. Definitely.

25 **Q. Great. So when you were talking about**

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1 the passage of 169, but because of COVID, you know,
2 throughout the scope of 2021, we weren't in the field
3 as much and we just didn't have those opportunities.

4 Does that make sense?

5 **Q. It does and it's helpful. I think that**
6 **you hit some of those things when you all were talking**
7 **earlier, but it just seemed helpful to maybe clarify**
8 **that.**

9 **The other question that I wanted to ask you**
10 **about is related to a paragraph in your declaration**
11 **that we talked about, the student ID. It's**
12 **Paragraph 20: "Student ID is the only form of no-cost**
13 **ID available to students."**

14 A. Right.

15 **Q. And so I wanted to just make sure: When**
16 **you and I spoke about this declaration, it was your**
17 **understanding or sort of sense at the time that**
18 **student ID was a no-cost form of ID.**

19 MR. MORRIS: Objection; leading, form.

20 THE WITNESS: That was 100 percent my
21 understanding.

22 **Q. (By Ms. Sommers-Flanagan) Okay. And so**
23 **one, one thing that I just want to understand is:**
24 **When you were talking about the Costco card, you**
25 **mentioned, if I remember correctly, that there are**

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1 some things for which you pay for a membership, and
2 you don't consider the card or the associated sort of
3 identification to be a separate cost. Do you remember
4 saying something along those lines?

5 A. Yes.

6 Q. Can you tell me how you view voter -- or,
7 I'm sorry, student ID in that context? Can you kind
8 of draw that metaphor out?

9 A. Totally. I mean, look at a student
10 tuition bill. The amount of line items for like
11 associated fees -- like I think at the time, I paid
12 for like part of the gym, like maybe you pay a cost to
13 use the library. Like there are so many costs
14 associated with your tuition.

15 I think it's kind of common knowledge that it
16 isn't just like, "This is your class cost and like
17 what you have to pay to like go to your class"; it's
18 like for use of facilities, for everything related to
19 the campus grounds.

20 And so it totally makes sense to me that there
21 would be a line item fee on your tuition bill, 20
22 bucks for a student ID. That's the cost of going to
23 school now. If you want to get into your dorm, I
24 think use the library, you're scanning your student
25 ID. It's a necessary thing to go to school.

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1 that student ID is a tuition cost?

2 A. I think it said explicitly on the website
3 you showed me that it does show up as a line item in
4 your tuition. I may have recalled that wrong.

5 Q. Okay. And I'm just asking you whether or
6 not the \$20 fee that a person has to pay at Montana
7 State for a GrizCard, whether or not you consider that
8 a tuition cost.

9 A. I think that's how MSU outlines it, so
10 yes, I would agree with their designation. Like I
11 said, there's lots of fees that you're paying and
12 participating in to be able to use the campus grounds.
13 This is one of those necessary costs.

14 Q. And you're not, you're not like an expert
15 in whether or not certain fees charged at colleges or
16 at MSU should be categorized as tuition or otherwise,
17 right?

18 A. I'm definitely not an expert in that, no.

19 Q. And you're just offering your personal
20 opinion about how you view it, right?

21 A. Right. I also think generally, people pay
22 their tuition in a lump sum. You know, I didn't pull
23 up my tuition bill and go line by line item.

24 Q. And what do you base that on, that people
25 pay their tuition in a lump sum?

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1 It makes sense to me that there is a line item
2 in your tuition budget, but that's your tuition at the
3 end of the day. That's a tuition bill that you're
4 paying. That's not like an extra associated cost, in
5 my opinion. Like that is part and parcel of going to
6 school and having to pay for things.

7 And in terms of like tuition and how people pay
8 tuition, like we kind of touched on, that can vary so
9 significantly from person to person, but I think to
10 call a student ID a costly form of ID -- or an ID
11 that's associated with a cost, it doesn't make a lot
12 of sense to me.

13 Q. Just one last question: Do you know if
14 you can refuse to pay for your student ID and then not
15 get one? It's okay if you don't know.

16 A. I don't know. No, I don't know.

17 MS. SOMMERS-FLANAGAN: Okay. I think, I
18 mean, that's all. I just wanted to make sure we were
19 clear.

20 Mac, do you have anything you want to
21 follow up on?

22 MR. MORRIS: Just a couple.

23
24 BY MR. MORRIS:

25 Q. So is it your testimony that you believe

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1 A. I don't know many people who combed
2 through their tuition bills like that. I didn't. It
3 seems a little wild to me, but I mean, I guess that
4 doesn't mean that some people don't do it.

5 Q. Right. You're just speculating about the
6 way people pay their bills, right?

7 A. Right.

8 MS. SOMMERS-FLANAGAN: Objection;
9 mischaracterizes testimony.

10 Q. (By Mr. Morris) I think what you
11 established, that you think there is something in what
12 I showed you that indicated that student -- the charge
13 for a student ID card was part of your tuition. Is
14 that what you were saying?

15 A. From my recollection of the web page you
16 showed me, it looked like MSU specifically indicated
17 where you would find that cost, and I thought that it
18 had recalled that that would be in your tuition bill.

19 MR. MORRIS: Jonny, can you tell me what
20 deposition exhibit was this web page about the --

21 MS. SOMMERS-FLANAGAN: It was 42.

22 MR. MORRIS: Forty-two, okay, thank you.
23 Thanks.

24 Q. (By Mr. Morris) I'm just going to show
25 you, real quick, Deposition Exhibit 42 again. So can

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1 you see **Deposition Exhibit 42?**

2 A. I can.

3 **Q. And I'm going to scroll down to this page.**

4 **And what are you referring to in terms of the charge**
5 **being part of your tuition?**

6 A. It says explicitly in the second sentence:
7 on your first semester student bill.

8 **Q. Okay. So that's it?**

9 A. Hm-hmm [affirmative].

10 **Q. All right. And so if it's on your bill,**
11 **in your view, that's just part of the tuition; is that**
12 **right?**

13 A. Yes, yes.

14 MR. MORRIS: Okay, all right. That's all
15 I have. Thanks so much. I don't know if Rylee has
16 any follow-up.

17 MS. SOMMERS-FLANAGAN: No, no. I didn't
18 mine to create an issue, but I appreciate you being
19 patient.

20 COURT REPORTER: Okay. This concludes the
21 Videoconference Video-Recorded Deposition of Amara
22 Reese-Hansell.

23 The time is 5:18 p.m. The date is April
24 6, 2022. We are off the record.

25 (Signature reserved.)

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1 DEPOSITION OF: AMARA REESE-HANSELL

2 DEPOSITION DATE: APRIL 6, 2022

3 IN RE: MONTANA DEMOCRATIC PARTY, et al.
4 vs. JACOBSEN

5 COURT REPORTER: JONNY B. NORDHAGEN

6 I have read my deposition and make the following
7 corrections or additions:

8 PAGE # LINE CORRECTION

9

10

11

12

13

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21

22

23

24

25

Signed under penalty of perjury this _____ day
of _____, _____.

AMARA REESE-HANSELL

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1 STATE OF MONTANA)

: ss.

2 County of Silver Bow)

3

4 I, Jonny B. Nordhagen, Court Reporter - Notary
5 Public in and for the County of Silver Bow, State of
6 Montana, do hereby certify:

7

8 That the witness in the foregoing deposition,
9 Amara Reese-Hansell, was by me first duly sworn
10 according to law in the foregoing cause; that the
11 deposition was then taken before me at the time and
12 place herein named; that the deposition was reported
13 by me in machine shorthand and later transcribed by
14 computer, and that the foregoing one hundred forty-one
15 (141) pages contain a true record of the witness, all
16 done to the best of my skill and ability.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and affixed my notarial seal this _____ day of
19 _____, 2022.

20

21

22

23

24

25

Jonny B. Nordhagen
Notary Public for the State of
Montana residing at Butte,
Montana. My commission

(NOTARIAL SEAL) expires May 8, 2022.

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Nordhagen Court Reporting

1734 Harrison Avenue, Butte, Montana - 406.494.2083 - QA@MTQA.NET

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EXHIBIT 3

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,
Plaintiffs, Consolidated Case No. DV-21-0451
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 Group,
Plaintiffs,
vs.
Christi Jacobsen, in her official capacity as
Montana Secretary of State,
Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF HAILEY SINOFF

Taken at:
Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 11, 2022
10:02 a.m.

1 APPEARANCES OF COUNSEL (by videoconference):

2

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14

15 Also present:

16 Jacob Linfesty, Impact Associate, Upper Seven

17 Law (by videoconference)

18 John Nordhagen, Recording Operator

19

20

21

22

23

24

25

Page 3

1 APPEARANCES OF COUNSEL (by videoconference):

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1 I N D E X

2 Witness:

Page:

3 HAILEY SINOFF

4 Examination by Mr. Morris . . . 7

5

6 E X H I B I T S

7 NO. PAGE DESCRIPTION

8 44 48 Sinoff declaration

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Page 4

1 HAILEY SINOFF
 2 APRIL 11, 2022; BUTTE, MONTANA
 3 - - -
 4 BE IT REMEMBERED THAT, pursuant to Notice, the
 5 Deposition of Hailey Sinoff was taken at the time and
 6 place and with the appearances of counsel hereinbefore
 7 noted before Jonny B. Nordhagen, Court Reporter -
 8 Notary Public for the State of Montana.
 9 It was further stipulated and agreed by and
 10 between counsel for the respective parties that this
 11 deposition was taken pursuant to the Montana Rules of
 12 Civil Procedure.
 13
 14 The following proceedings were had:
 15
 16 RECORDING OPERATOR: The time is 10:02.
 17 We are on the record -- 10:02 a.m.
 18 This is the Videoconference Video-Recorded
 19 Deposition of Hailey Sinoff taken by the attorneys for
 20 the defendant in the matter of Montana Democratic
 21 Party, et al., Plaintiffs, vs. Christi Jacobsen, in
 22 her official capacity as Montana Secretary of State,
 23 Defendant.
 24 This is Cause No.: DV 21-0451 in the
 25 Montana Thirteenth Judicial District Court,

Page 5

1 Yellowstone County.
 2 This deposition is being taken on Monday,
 3 the 11th day of April, 2022, from Nordhagen Court
 4 Reporting, 1734 Harrison Avenue in Butte, Montana.
 5 The recording operator is John Nordhagen.
 6 The court reporter Jonny Nordhagen.
 7 Counsel will now introduce themselves,
 8 after which the court reporter will swear in the
 9 witness.
 10 MR. MORRIS: Good morning. This is Mac
 11 Morris on behalf of the Montana Secretary of State.
 12 MS. SOMMERS-FLANAGAN: And this is Rylee
 13 Sommers-Flanagan on behalf of Montana Youth Action,
 14 Montana Public Interest Research Group, and Forward
 15 Montana Foundation.
 16 MR. MELOY: And Mike Meloy for the Montana
 17 Democratic Party and Mitch Bohn.
 18 MR. AIKEN: This is Ryan Aiken on behalf
 19 of Montana Youth Action, Forward Montana Foundation,
 20 and Montana Public Interest Group, but I will not be
 21 participating, just observing today.
 22
 23
 24
 25 ///

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1 HAILEY SINOFF,
 2 having been called as a witness by the
 3 defendant, being first duly sworn, was
 4 examined and testified as follows:
 5
 6 EXAMINATION
 7 BY MR. MORRIS:
 8 Q. Good morning, Hailey. My name is Mac
 9 Morris.
 10 Can you state your name and address for the
 11 record, please?
 12 A. Yeah. My name is Hailey Sinoff; and my
 13 address is 320 South Black, Bozeman.
 14 Q. Thanks. And what's your date of birth?
 15 A. June 6, 1999.
 16 Q. So how old does that make you?
 17 A. Twenty-two.
 18 Q. Have you ever had your deposition taken
 19 before?
 20 A. No.
 21 Q. Just briefly, there's some rules and sort
 22 of guidelines that we'll go over.
 23 Jonny is the court reporter and is he's taking
 24 down everything that we say, so it's important that we
 25 try not to talk over one another. Okay?

Page 7

1 A. (Nodding head affirmatively.)
 2 Q. If I ask you a question today that you
 3 find confusing, will you let me know?
 4 A. (Nodding head affirmatively.)
 5 Q. I'm going to need you to give verbal or
 6 oral responses to all of my questions, so head nods,
 7 uh-huh's, or uh-uh's doesn't work because there's no
 8 record on the transcript of that. So was that a
 9 "yes"?
 10 A. That was.
 11 Q. Okay, thanks. And if you need a break
 12 today, you just let me know or let Rylee know, and we
 13 can take a break whenever. All right?
 14 A. Okay, yes.
 15 Q. And the only exception to that is if I ask
 16 you a question, I'll get you to answer the question
 17 before we go on a break. Okay?
 18 A. Okay.
 19 Q. All right. And do you understand that
 20 you're under oath?
 21 A. Yes.
 22 Q. And is there any reason why you can't give
 23 accurate or truthful testimony this morning?
 24 A. No.
 25 Q. Okay. And what I'm getting at is: You're

Page 8

1 not on any type of medication or anything like that
2 that affects your memory or --

3 A. (Shaking head negatively.)

4 Q. Is that a "no"?

5 A. (No audible response.)

6 COURT REPORTER: That didn't come through,
7 Hailey. I'm sorry.

8 THE WITNESS: No, I'm not on any
9 medication or things that would affect my memory.

10 Q. (By Mr. Morris) Great, thanks. And is
11 there anyone else in the room with you?

12 A. No.

13 Q. And do you live in a house at that address
14 that you gave me on Black Street?

15 A. I do.

16 Q. And does anyone else live with you at that
17 house?

18 A. Yes, three other people.

19 Q. And who are they?

20 A. Toni Hardy, Phia Swart, and Grant Adams.

21 Q. How long have you lived at that address?

22 A. Almost three years.

23 Q. And do you get trash pickup there?

24 A. I do.

25 Q. And do you get utility bills there?

Page 9

1 think there were four other people in the building.

2 Q. Why were you there for just three months?

3 A. I lived in a house like that full year
4 before those three months and I didn't like my
5 roommate, so I moved there before moving into the
6 house I live in now.

7 Q. Got you. And so before you lived in the
8 house on College Street, where did you live?

9 A. I lived on Garfield.

10 Q. Was that student housing?

11 A. No. That was off campus.

12 Q. That was an off-campus house?

13 A. Yeah, it was off campus.

14 Q. And you lived there for a year, you
15 said --

16 A. Around --

17 Q. -- approximately?

18 A. Yeah.

19 Q. And did you live with anyone else in the
20 house on Garfield?

21 A. Yes.

22 Q. How many people?

23 A. One person.

24 Q. Did you get a utility bill at that house
25 on Garfield?

Page 11

1 A. Yes.

2 Q. Are they in your name?

3 A. They have been since last November.

4 Q. And before last November, whose name were
5 the utility bills in?

6 A. Ruby Hale.

7 Q. And who is Ruby Hale?

8 A. She was a former roommate.

9 Q. How long have Toni, Phia, and Grant lived
10 there?

11 A. Grant moved in end of December, Phia and
12 Toni moved in fall of 2020.

13 Q. Before you moved into the house on Grant
14 Street, where did you live?

15 A. You mean Black Street?

16 Q. I'm sorry, yeah, Black Street.

17 A. That's funny. I lived on College Street.

18 Q. And was that in a house?

19 A. That was also a house.

20 Q. About how long did you live in the house
21 on College Street?

22 A. Three months.

23 Q. And did you live with anyone else there?

24 A. Yes. That house was divided into three
25 living units, so two people lived with me and then I

Page 10

1 A. My roommate did the utilities, and I think
2 she was set up for paperless.

3 Q. Do you know whether or not your name was
4 on that utility bill?

5 A. I don't know.

6 Q. Did you guys have trash pickup there?

7 A. Yes.

8 Q. And did you receive the bill for the trash
9 pickup?

10 A. No. She did all the utilities, and I
11 would Venmo her.

12 Q. Got you. Did you all have a phone there
13 besides a cell phone?

14 A. No.

15 Q. Did you have an internet connection?

16 A. Yes.

17 Q. And did you get a bill for internet?

18 A. Again, it was my roommate. She had all
19 the utilities in her name, and then I would Venmo her.

20 Q. And what about currently, do you have
21 internet at your house?

22 A. Yes.

23 Q. And do you get a bill for that?

24 A. Yes.

25 Q. And is that in your name?

Page 12

1 A. Yes.
 2 **Q. You moved or came to Montana in 2017; is**
 3 **that right?**
 4 A. Yes.
 5 **Q. Have you always lived in Gallatin County?**
 6 A. Yes.
 7 **Q. Are you still in college?**
 8 A. Yes.
 9 **Q. And have you earned any degrees since**
 10 **coming to Bozeman in 2017?**
 11 A. No. I'm finishing up my degree.
 12 **Q. And what's your major?**
 13 A. Political science and sociology.
 14 **Q. When do you expect to get your degree?**
 15 A. May 15th.
 16 **Q. Have you taken a full load of classes in**
 17 **each of the semesters since you've been here?**
 18 A. Every semester except for this semester --
 19 oh, and there was a year I wasn't in school because I
 20 had a concussion, so not that year.
 21 **Q. What year was that?**
 22 A. The concussion happened in the fall of
 23 2018, so then I wasn't in school all of 2019.
 24 **Q. How did you get a concussion?**
 25 A. Mountain biking.

Page 13

1 **freshman year?**
 2 A. Yes.
 3 **Q. Have you had any jobs in Bozeman besides**
 4 **Lawson's Greenhouse and nannyng?**
 5 A. Yeah. I ski coached at Big Sky, which I
 6 guess isn't in Bozeman but while I was living in
 7 Bozeman; and then I ski instructed at the Yellowstone
 8 Club.
 9 **Q. And are those the only jobs you've had?**
 10 A. Yeah, and then nannyng throughout all of
 11 it.
 12 **Q. Have you nannyng for the same family,**
 13 **primarily, or several?**
 14 A. Yes. It's been the same two families for
 15 the whole five years I've been here, which is fun.
 16 **Q. And do those families live in Bozeman?**
 17 A. They do.
 18 **Q. Have you had any volunteer positions while**
 19 **you've been living in Bozeman?**
 20 A. Yes.
 21 **Q. Who have you volunteered for?**
 22 A. The Sunrise Movement Gallatin County;
 23 Forward Montana - there's been a lot - Gallatin County
 24 Land Trust; Campus Climate Coalition; and then HATCH,
 25 it's a thing out of Big Sky. I think that's it.

Page 15

1 **Q. Where were you?**
 2 A. Leverich.
 3 **Q. Ouch. Did you stay in Bozeman for that**
 4 **year, 2019?**
 5 A. I did.
 6 **Q. And did you stay -- at that time, were you**
 7 **living at the house on Garfield?**
 8 A. Yeah.
 9 **Q. Did you work at all that year, in 2019?**
 10 A. Yes. I think I was mostly nannyng, and
 11 then I worked at Lawson's Greenhouse in the summer.
 12 **Q. Where is Lawson's Greenhouse?**
 13 A. It's over by Story Mill.
 14 **Q. And that was just a summer job?**
 15 A. Yeah; and into the fall, but pretty much
 16 done in the summer.
 17 **Q. Before you moved into the house on**
 18 **Garfield, where did you live?**
 19 A. I lived in the dorms.
 20 **Q. And did you live in separate dorms or just**
 21 **in one like --**
 22 A. Oh, one dorm.
 23 **Q. Okay. And which dorm was that?**
 24 A. Roskie.
 25 **Q. And were you there for like your whole**

Page 14

1 **Q. I think I got most of those down. You**
 2 **said Sunrise Movement?**
 3 A. Yes.
 4 **Q. Gallatin County?**
 5 A. Or Sunrise Movement of Gallatin County, so
 6 that's --
 7 **Q. Okay, got it. Sunrise Movement of**
 8 **Gallatin County, Forward Montana, Campus Coalition?**
 9 A. Campus - (inaudible) - Coalition.
 10 **Q. You cut out for just a second. What did**
 11 **--**
 12 A. Campus Climate Coalition.
 13 **Q. Got you. And HATCH?**
 14 A. HATCH.
 15 **Q. And am I missing any?**
 16 A. And Bozeman United for Racial Justice.
 17 **Q. What's Sunrise Movement of Gallatin**
 18 **County?**
 19 A. It's a climate organization.
 20 **Q. And what kind of a position did you hold**
 21 **with Sunrise Movement?**
 22 A. Mostly recruitment.
 23 **Q. And besides recruitment, what?**
 24 A. General planning.
 25 **Q. When did you do that?**

Page 16

1 A. I've done that since 2019.
 2 **Q. You're still doing that?**
 3 A. Hm-hmm [affirmative].
 4 **Q. And what about Forward Montana?**
 5 A. I was an intern also in 2019.
 6 **Q. And are you still doing that? Are you**
 7 **still interning at Forward Montana?**
 8 A. No.
 9 **Q. How long did you intern with Forward**
 10 **Montana?**
 11 A. Four months.
 12 **Q. And then Campus Climate Coalition.**
 13 A. I have been involved with them since 2020.
 14 **Q. And what was your position there?**
 15 A. I am a coleader, so it's more like general
 16 planning and, yeah, orientation.
 17 **Q. Have you had that same sort of position**
 18 **with Climate Coalition the whole time since 2020?**
 19 A. Yeah.
 20 **Q. And what is HATCH?**
 21 A. HATCH is: They put on leadership summits,
 22 and they do one in Montana every year. It's usually
 23 at Big Sky. So I was on the food-prep team, and then
 24 I got to participate in the talks and stuff, as well.
 25 **Q. Okay. And was that just sort of like one**

Page 17

1 from Sunrise as well.
 2 **Q. And is that in the form of a check?**
 3 A. For Forward Montana, it was a check; for
 4 Sunrise, it's direct deposit.
 5 **Q. Have you ever done any volunteer work or**
 6 **work for Montana Youth Action?**
 7 A. No. I was a plaintiff in another case of
 8 Rylee's, but I haven't -- (inaudible.)
 9 COURT REPORTER: You cut out at the very
 10 end there.
 11 THE WITNESS: I haven't volunteered for
 12 them.
 13 **Q. (By Mr. Morris) So you said you were a**
 14 **plaintiff in another case of Ms. Sommers-Flanagan?**
 15 A. Yes.
 16 **Q. What case was that?**
 17 A. That was -- I don't think I know the
 18 official title of the case, actually.
 19 **Q. That's okay.**
 20 A. It was for redistricting some of the
 21 Public Service Commission voting zones.
 22 **Q. Any others where you've been a plaintiff?**
 23 A. No.
 24 **Q. And why were you a plaintiff in that case?**
 25 A. I was introduced to Rylee by Kiersten

Page 19

1 conference that you volunteered for and then
 2 participated in or is it more of an ongoing thing?
 3 A. Yeah, it was one. It was some prep
 4 before, but then it was just the one conference.
 5 **Q. When was that?**
 6 A. 2018.
 7 **Q. And then the last one I think you**
 8 **mentioned was Bozeman United for Racial Justice.**
 9 A. Hm-hmm [affirmative].
 10 **Q. What's that?**
 11 A. That's a racial justice group in town.
 12 **Q. And what have you done for Bozeman United**
 13 **for Racial Justice?**
 14 A. Just general support, whatever tasks or
 15 errands kind of need to get done.
 16 **Q. Are you still currently kind of**
 17 **participating or working or volunteering for that**
 18 **organization?**
 19 A. Yeah.
 20 **Q. How long have you been doing that?**
 21 A. Since 2020.
 22 **Q. Do you ever receive a stipend or any form**
 23 **of payment from any of these organizations at all?**
 24 A. I received a stipend from Forward Montana
 25 when I was interning, and then I receive a stipend

Page 18

1 Iwai, I think is how you say her last name. And I
 2 heard about the case, and it sounded interesting, and
 3 they were looking for plaintiffs.
 4 **Q. And Kiersten Iwai, is she -- she's at**
 5 **Forward Montana; is that right?**
 6 A. Yeah.
 7 **Q. And is she someone that you know? Like**
 8 **are you friends with her?**
 9 A. I wouldn't say we're "friends" but
 10 definitely friendly acquaintances.
 11 **Q. And Ms. Iwai introduced you to Ms.**
 12 **Sommers-Flanagan?**
 13 A. Hm-hmm [affirmative].
 14 **Q. When was that?**
 15 A. Fall 2021.
 16 **Q. And you said that for purposes of that**
 17 **redistricting case, they were looking for plaintiffs,**
 18 **Ms. Sommers-Flanagan was?**
 19 A. Yes.
 20 **Q. And what made you want to be a plaintiff**
 21 **in that suit?**
 22 A. I thought it was interesting.
 23 **Q. What was that case -- what did it have to**
 24 **do specifically with you?**
 25 A. So it talked about the Montana

Page 20

1 Constitutional right for one person, one vote. And
2 because of the way certain populations have grown and
3 certain populations have shrunk, different districts
4 kind of had more sway than others. And I was -- I'm a
5 voter in Bozeman, so I was affected by that.

6 **Q. Got you. And does anything with sort of**
7 **the Public Service Commission, does anything about**
8 **sort of its role interest you or --**

9 A. Well, yeah. I mean, I pay utilities, and
10 they influence a lot of those rates.

11 **Q. And you said you first started paying**
12 **utilities when you moved into your house now on Black**
13 **Street; is that right?**

14 A. Yeah -- or, well, I mean I've always paid
15 utilities since living here, but that's the first time
16 it's been in my name.

17 **Q. Got you. Sorry, I can't remember, when**
18 **did it start -- the utility bills start being in your**
19 **name?**

20 A. When did that start? Probably since like
21 fall of 2020.

22 **Q. Where did you live before coming to**
23 **Bozeman?**

24 A. Truckee, California.

25 **Q. So how did, how did you get involved in**

Page 21

1 **this lawsuit?**

2 A. Because I was a plaintiff for the other
3 one, I heard about this one, and it sounded like my
4 experience as a voter would be relevant, so I was
5 asked if I would do a declaration.

6 **Q. And who asked you to do that?**

7 A. Rylee.

8 **Q. Do you have a bank account in Montana?**

9 A. I have a U.S. Bank account, so that has a
10 branch in Montana.

11 **Q. How long have you had a bank account in**
12 **Montana?**

13 A. I had a U.S. Bank account since 2015.

14 **Q. Do you receive statements?**

15 A. I don't have paper statements.

16 **Q. But you can access them online?**

17 A. Hm-hmm [affirmative].

18 **Q. And do they show your current address?**

19 A. I don't think so.

20 **Q. Why do you say you don't think so?**

21 A. My billing address is still my parents'
22 address in California.

23 **Q. Your billing address is?**

24 A. Yeah.

25 **Q. And why is that?**

Page 22

1 A. Because I'm young and I'm moving around a
2 lot and it's stressful trying to track down mail from
3 different houses, so I just figured I would keep it
4 that one.

5 **Q. So if anybody wants to send you a bill,**
6 **they send the bill to your parents' house in**
7 **California?**

8 A. Most of my bills are paperless now, and
9 then - (inaudible) - I do get a bill, it goes there.

10 **Q. Sorry, what did you say?**

11 A. Most of my bills --

12 MR. MORRIS: Can we actually just take a
13 quick break? I need to tell people to be quiet. Hang
14 on.

15 COURT REPORTER: The time is 10:30 a.m.

16 We are off the record.

17 (Pause in proceedings.)

18 COURT REPORTER: The time is 10:31 a.m.

19 We are on the record.

20 (The record was read back as follows:

21 "QUESTION: So if anybody wants to send
22 you a bill, they send the bill to your parents' house
23 in California?")

24 THE WITNESS: Yes. So I've been moving
25 around a lot since I've been here, different houses.

Page 23

1 And it's stressful trying to track down mail between
2 different houses with different 20-year-olds that
3 don't check their mail, so I just keep it with my
4 parents' address.

5 BY MR. MORRIS:

6 **Q. Do you, at your current address, do you**
7 **have a mailbox out front?**

8 A. We have, yeah, like a little mailbox
9 that's kind of attached to the front door.

10 **Q. And was that also the case that you had a**
11 **mailbox at your house on College Street?**

12 A. We had, I think like a mail slot,
13 actually.

14 **Q. Okay. What about your house on Garfield?**
15 **How did you check your mail?**

16 A. Yeah, there was also a mailbox there.

17 **Q. And was that right out front by the, by**
18 **the driveway?**

19 A. It was on the side of the house.

20 **Q. And at your current house, you said -- do**
21 **you have a mail like slot or do you have an actual**
22 **mailbox?**

23 A. We have a little box that's attached to
24 the side of the house.

25 **Q. Okay. And the mailman comes and puts the,**

Page 24

1 puts the mail in there?

2 A. Yeah.

3 Q. And if you wanted to send mail, you could
4 just lift a flag up, and the mailman could grab it?

5 A. No. We would have to drop it off
6 somewhere.

7 Q. Your mailbox doesn't have one of those
8 little flags on it?

9 A. No.

10 Q. Okay. Have you ever tried to do that?

11 A. No. I actually haven't ever tried to do
12 that with this mailbox.

13 Q. Okay. Did you do anything to prepare for
14 this deposition?

15 A. Yeah. Rylee helped me answer practice
16 questions.

17 Q. Did you review any documents?

18 A. I looked back over my declaration.

19 Q. Any other documents besides your
20 declaration?

21 A. No.

22 Q. And you met with Rylee?

23 A. Yes.

24 Q. Did you all meet over Zoom?

25 A. Yes.

Page 25

1 discussions with Rylee on the first occasion that you
2 talked with her on Friday evening?

3 A. We just talked about kind of like --

4 because I didn't know what a deposition really would
5 be like, so she talked about how it would work, and
6 what types of questions might be asked, and yeah, that
7 all I really had to do was answer the questions and
8 not yell at you, and we would be fine.

9 Q. Yeah. And what types of questions did she
10 say you would be asked today?

11 A. Basically, the ones you've been asking,
12 and then probably questions getting into like the
13 nitty-gritty of how I vote and my voting experience.

14 Q. Okay. And did you say that she went over
15 some practice questions with you?

16 A. Yes.

17 Q. And tell me about that.

18 A. It was a lot like this, yeah.

19 Q. So she pretended to be the questioner, and
20 you were fielding questions from her?

21 A. Yes.

22 Q. And then did she tell you, after you did
23 those practice questions, sort of strategies for how
24 to answer in a more effective way?

25 A. Kind of. She told me my instinct was

Page 27

1 Q. Was there anybody else -- and how many
2 times did you meet with Rylee?

3 A. We met twice.

4 Q. How long did you meet for?

5 A. About an hour each time.

6 Q. When was that?

7 A. On Friday evening and Sunday evening.

8 Q. Did you discuss or talk about any of the
9 other depositions that have been taken in this case?

10 A. Kind of. She mentioned other people's
11 experiences with depositions.

12 Q. And whose experiences?

13 A. It was referred to as the "high schooler."

14 Q. And what did she tell you about that
15 deposition?

16 A. She said the high schooler did a really
17 good job answering the questions quickly so that it
18 wouldn't take too long.

19 Q. Anything else?

20 A. That was kind of it, just that she had
21 like good, concise answers that were to the point but
22 not too long.

23 Q. Did you review any deposition transcripts?

24 A. No.

25 Q. And what do you recall from your

Page 26

1 good, and yeah, that I could answer the questions with
2 as much detail as I wanted but that would make it all
3 take longer, so just stay on point.

4 Q. Anything else you remember from speaking
5 with Ms. Sommers-Flanagan?

6 A. That's pretty much it.

7 Q. Were there any questions that Ms.

8 Sommers-Flanagan asked you that you found were
9 difficult to answer?

10 A. No.

11 Q. Was there anything that Ms.

12 Sommers-Flanagan spoke to you about sort of not
13 mentioning unless I specifically asked you?

14 A. No.

15 Q. How old were you when you first came to
16 Bozeman?

17 A. I was 18.

18 Q. And you came to Bozeman in August of 2017?

19 A. Yeah, end of August.

20 Q. And you came here for school at MSU,
21 right?

22 A. Yes.

23 Q. You didn't take any summer classes that
24 first summer in 2017?

25 A. No.

Page 28

1 **Q. What made you want to come to school in**
 2 **Montana at MSU?**
 3 A. I grew up ski racing, so skiing has been a
 4 big part of my life, and I didn't want to go somewhere
 5 I couldn't ski.
 6 **Q. And did you join the ski racing team at**
 7 **MSU?**
 8 A. No. I stopped ski racing when I was 16,
 9 so just recreationally.
 10 **Q. And do you ski up at Bridger?**
 11 A. I do.
 12 **Q. Do you have a ski pass up there?**
 13 A. Yes.
 14 **Q. Did you get a ski pass your freshman year?**
 15 A. Yes.
 16 **Q. Was that an annual ski pass?**
 17 A. Yes.
 18 **Q. Did it have your picture on it?**
 19 A. Yes. I think that was the last year it
 20 had my picture on it.
 21 **Q. I can't remember, do the ski passes have**
 22 **your pictures on them anymore at Bridger?**
 23 A. They do not.
 24 **Q. You just submit that over the internet?**
 25 A. Yeah.

Page 29

1 it was like 10-year-old boys. And I would set up
 2 gates for them every weekend and then help.
 3 **Q. Got you. Anything else besides skiing**
 4 **that made you want to come to school at MSU?**
 5 A. Yeah. I guess I just really liked
 6 Bozeman. I visited it, and it was -- everybody was
 7 nice. It had all the things I wanted to do.
 8 **Q. And you mountain bike?**
 9 A. Yeah.
 10 **Q. Were you mountain biking when you moved or**
 11 **first came to Bozeman in 2017?**
 12 A. Yes.
 13 **Q. Did you have a car when you came to**
 14 **Bozeman in 2017?**
 15 A. Yes.
 16 **Q. Why did you have a car?**
 17 A. Because it's hard to get around Montana
 18 without a car.
 19 **Q. And did you bring your skis and your bike**
 20 **with you?**
 21 A. I brought my skis. I didn't bring my bike
 22 that first year because I figured it would snow really
 23 soon and it would be hard to keep in the dorms.
 24 **Q. And do you have a car now?**
 25 A. I do.

Page 31

1 **Q. And have you gotten an annual ski pass at**
 2 **Bridger every year that you've been in Bozeman?**
 3 A. Yes.
 4 **Q. Have you also gotten a ski pass at Big Sky**
 5 **or, well, I guess would you have a ski pass at the**
 6 **Yellowstone Club when you're instructing there?**
 7 A. Yeah. You have a scan card at the
 8 Yellowstone Club so that you can't sneak in on your
 9 days off, and I did have a ski pass at Big Sky when I
 10 was coaching there.
 11 **Q. Sorry, when did you say you coached at Big**
 12 **Sky?**
 13 A. 2019, 2018 - 2019.
 14 **Q. Did you ever do any instructing at**
 15 **Bridger?**
 16 A. No.
 17 **Q. How did you get a job ski instructing at**
 18 **the Yellowstone Club?**
 19 A. I had heard a bunch of my friends really
 20 liked it and it had a more flexible schedule than
 21 coaching at Big Sky, so I just applied.
 22 **Q. And when you were ski coaching in Big Sky,**
 23 **was that sort of like taking people out for individual**
 24 **lessons or was it group lessons?**
 25 A. No. So I was coaching the race team, so

Page 30

1 **Q. The same one that you had when you first**
 2 **came here in 2017?**
 3 A. No, a different car.
 4 **Q. When did you get your new car?**
 5 A. I got my new car the summer of 2020.
 6 **Q. And before that, you had consistently had**
 7 **the prior car?**
 8 A. Yeah.
 9 **Q. Did you register -- let me ask you: What**
 10 **kind of car did you have before?**
 11 A. I had a 2003 Audi A4.
 12 **Q. And what kind of car do you have now?**
 13 A. A Subaru.
 14 **Q. What year is it?**
 15 A. 2012.
 16 **Q. Is it an Outback?**
 17 A. What is it -- a Legacy.
 18 **Q. Is that like an SUV type of deal or is it**
 19 **more of a car?**
 20 A. Like the Crosstrek but a little different.
 21 **Q. Okay. The Audi, did you register that car**
 22 **in Montana?**
 23 A. I did in like January or February of 2019.
 24 **Q. 2019?**
 25 A. Yes.

Page 32

1 Q. Did you get a driver's license in Montana?

2 A. Yes, also in 2019.

3 Q. Why did you wait so long to get with your
4 vehicle registered in Montana?

5 A. I got my vehicle registered when I was
6 trying to gain residency for tuition, which happened
7 -- that decision happened after my concussion because
8 I had to drop out of school and I was afraid I was
9 going to lose my scholarships because I wouldn't be
10 able to finish in four years anymore. So I went
11 through the process of gaining residency for MSU
12 standards, and part of that included having to
13 register your car and get a Montana driver's license.

14 Q. Before January of 2019, did you consider
15 Montana as your home state?

16 A. Yeah. I guess I still considered
17 California my home state, too.

18 Q. So both?

19 A. Yeah.

20 Q. When did you begin to consider Montana as
21 your home state?

22 A. I guess I kind of -- quickly. I really
23 like it here, so yeah, my first year here, probably.

24 Q. Sometime during your first year?

25 A. Yeah.

Page 33

1 college?

2 A. They are not.

3 Q. Do you pay fees for various things
4 associated with college?

5 A. Oh my God, there's so many fees. Yeah,
6 like so much - (inaudible) - the fees, yes.

7 COURT REPORTER: You cut out at the very
8 end. "So much" - something - "fees." Sorry.

9 THE WITNESS: So much of the tuition is
10 the fees.

11 Q. (By Mr. Morris) Sorry, I actually didn't
12 understand what you just said.

13 A. Yeah. So I'll get like my tuition bill,
14 and it will be like, you know, \$3,000, or whatever,
15 and then you go into the breakdown, and a third of it
16 typically is the fees.

17 Q. Okay. And if you're charged a fee for
18 something, do you consider that item to be free?

19 A. No.

20 Q. Do your parents still live in California?

21 A. They do.

22 Q. In Truckee?

23 A. Yes.

24 Q. Do you go back home?

25 That first winter or first year in college, did

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1 Q. When you started school at MSU in the fall
2 of 2017, did you, at that point, already consider
3 Montana as your home state?

4 A. When I started school, did I consider
5 Montana my home state? I think not instantly when I
6 started school, but definitely, yeah, probably within
7 the first couple of months of moving here, it felt
8 like home.

9 Q. Okay. And you said you lived in the dorm
10 that first full year of college?

11 A. Yes.

12 Q. And then the first place you moved to
13 after that was the house on Garfield; is that right?

14 A. Yes.

15 Q. And have we talked about all the places in
16 Bozeman or in Montana that you've lived?

17 A. Yes.

18 Q. Are you paying for college?

19 A. Yes.

20 Q. You don't have a full-ride scholarship?

21 A. No. I lost all my scholarships when I got
22 my concussion, so I have in-state tuition, and then I
23 have like return-to-learning scholarships which are
24 like \$500.

25 Q. And your parents aren't paying for your

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1 you go back home for winter break?

2 A. I did. I went back and coached at the
3 Squaw Valley ski team for my time off.

4 Q. For a little over a month, or something?

5 A. Yeah.

6 Q. And what about for spring break? Did you
7 go to California for spring break?

8 A. No. I went to Canada.

9 Q. In your freshman year?

10 A. Yes.

11 Q. What did you do in Canada?

12 A. I went skiing at Whitewater in Nelson.

13 Q. How did you get there?

14 A. We drove.

15 Q. Did you use a passport to get across the
16 border?

17 A. Yes.

18 Q. When did you get your passport?

19 A. I got my passport in early 2017.

20 Q. When you say "early 2017," do you mean
21 February, January, March?

22 A. Yeah, February or January.

23 Q. Did you go home to California for the
24 summer after your freshman year?

25 A. Yeah, at some point.

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1 **Q. What did you do?**
 2 A. I visited, and then I worked a job there
 3 as well for a bit.
 4 **Q. What job did you have?**
 5 A. I was a camp counselor at a summer camp
 6 there.
 7 **Q. What camp?**
 8 A. Gateway Mountain School.
 9 **Q. Where is that?**
 10 A. It's on Donner Pass in Truckee.
 11 **Q. How long were you a camp counselor there?**
 12 A. A month.
 13 **Q. And you spent some additional time in**
 14 **California that summer of, I guess it would have been**
 15 **2018.**
 16 A. Yes.
 17 **Q. Living in Truckee with your parents?**
 18 A. I was there for a couple of weeks right
 19 after my first semester because the house I was going
 20 to move into wasn't ready yet. So I lived with them
 21 for a couple weeks, and then I came back, and then I
 22 went back in July.
 23 **Q. I was asking about the summer after your**
 24 **freshman year.**
 25 A. Oh.

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1 end, the other lease for whoever lived there before.
 2 So I went home, hung out with my parents, and then
 3 came back when the house -- when our lease was ready.
 4 **Q. In Bozeman.**
 5 A. Yes.
 6 **Q. Okay. And then you went back to**
 7 **California like in July to work at the summer camp?**
 8 A. Yes.
 9 **Q. Okay. Did you spend the remainder of the**
 10 **summer, then, in California?**
 11 A. No.
 12 **Q. Did that take you up until basically the**
 13 **start of the school year after working at that --**
 14 A. No. Then I came back for August, I
 15 believe.
 16 **Q. Okay.**
 17 A. So it was just July.
 18 **Q. So I might have missed a word there.**
 19 A. Just July, is when --
 20 **Q. Okay.**
 21 A. Yeah.
 22 **Q. And then how about in your sophomore year?**
 23 **Did you go back to California for a winter break?**
 24 A. Yes, I did.
 25 **Q. And coach at Squaw Valley?**

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1 **Q. Is that what you're talking about?**
 2 A. Yes, yeah.
 3 **Q. Okay, all right. So you finished your**
 4 **second semester at MSU?**
 5 A. No. If I said "second semester," I was --
 6 **Q. Okay.**
 7 A. Yeah, sorry -- oh, wait, no.
 8 **Q. You're okay. I'm just thinking after your**
 9 **first semester at MSU would have been winter break,**
 10 **but maybe I'm mistaken.**
 11 A. I was saying "second semester" and --
 12 yeah, I'm getting all jumbled.
 13 **Q. You're okay.**
 14 A. Definitely - (inaudible) - that first
 15 year.
 16 COURT REPORTER: You cut out at the end
 17 there.
 18 THE WITNESS: So, yeah, the summer of 2018
 19 right after my second semester but my first year.
 20 **Q. (By Mr. Morris) Got you, got you. All**
 21 **right. And so what you're saying is after your first**
 22 **year, you went back to California for a couple of**
 23 **weeks, and then something with a house wasn't ready?**
 24 A. Yeah. I think our house -- we couldn't
 25 move into our house until June 1st because it had to

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1 A. No. I was super concussed at that point,
 2 so I just kind of hung out on the couch.
 3 **Q. Okay. Did you get medical treatment in**
 4 **California for your concussion?**
 5 A. No. I saw an MSU doctor kind of after it
 6 happened; and then I went to a PT one time and it
 7 didn't feel really helpful, so I stopped going; and I
 8 didn't really seek help other than that.
 9 **Q. Did you have any other injuries besides**
 10 **the head injury?**
 11 A. No. It was just the head injury.
 12 **Q. And so that winter break of sort of 2018 -**
 13 **2019 you spent in California with your parents?**
 14 A. Yes.
 15 **Q. And then the spring semester, you weren't**
 16 **in school, right?**
 17 A. I was not.
 18 **Q. Where did you live?**
 19 A. I lived at the house on Garfield.
 20 **Q. Do you recall like what month it was that**
 21 **you got the concussion?**
 22 A. Yeah. It was October of 2018.
 23 **Q. Have you had any jobs in California other**
 24 **than coaching at Squaw Valley and the summer camp**
 25 **since 2017?**

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1 A. No.
 2 **Q. Did you get a student ID when you started**
 3 **school at MSU in 2017?**
 4 A. Yes.
 5 **Q. And how did you go about getting that?**
 6 A. It was part of the orientation, like one
 7 of the things you had to check off, "go get your
 8 student ID."
 9 **Q. Where did you go, have to go to get it?**
 10 A. I think it was in one of the big like
 11 ballrooms in the sub.
 12 **Q. Did you have to pay a fee for it?**
 13 A. I don't remember.
 14 **Q. You were talking about your tuition bill**
 15 **and your fees that you see on there.**
 16 A. (Nodding head affirmatively.)
 17 **Q. How do you get those?**
 18 A. You go -- so there's this thing called "my
 19 info," and then you go into that, and then you go into
 20 the "student services" in "tuition and billing," and
 21 then you click on the semester, and it pulls up like
 22 the breakdown of everything you're paying for.
 23 **Q. And that's all online for you?**
 24 A. Hm-hmm, yeah. I've never received that in
 25 paper, always online.

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1 anything to vote for yet.
 2 **Q. So you're headed to Spain this fall?**
 3 A. Yes.
 4 **Q. And what are you doing there?**
 5 A. I'm probably going to be doing, it's
 6 called "WWOOFing." So you like work on an organic
 7 farm, and they house you. And mostly just trying to
 8 learn Spanish, that's the goal.
 9 **Q. How long are you planning to be in Spain?**
 10 A. Three months.
 11 **Q. Is that a program through the school that**
 12 **you found out about or is it completely separate?**
 13 A. Completely separate.
 14 **Q. And, sorry, you'll be done completely with**
 15 **your schooling in May, right?**
 16 A. Yes.
 17 **Q. Have you been to Spain before?**
 18 A. Nope.
 19 **Q. And other than the trip to Canada, have**
 20 **you been out of the country before?**
 21 A. Yes. Like in my whole life, or --
 22 **Q. Yeah.**
 23 A. Yeah. I spent three months in Nepal after
 24 I graduated high school, and I spent a couple weeks in
 25 Indonesia in 2018, and then I've been to Mexico a few

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1 **Q. When you got your student ID, did you have**
 2 **to show an ID in order to get that?**
 3 A. I don't think so, but I really don't
 4 remember.
 5 **Q. What are some of the things you've used**
 6 **your student ID for?**
 7 A. You needed it to get into the building,
 8 into the dorms my freshman year, and then I still use
 9 it for printing at the library.
 10 **Q. Nice. Anything else?**
 11 A. Getting into the dining halls, the gym,
 12 kind of accessing, yeah, a lot of the amenities.
 13 **Q. Do you actually need it in order to get**
 14 **into the dining hall or just to pay?**
 15 A. You do need your code. Like if you have a
 16 meal plan, you need at least your code to get in.
 17 It's very convenient to have it and not to tell them.
 18 But you can always pay like a day fee with a credit
 19 card, or something.
 20 **Q. Got you. When you came to Montana in**
 21 **2017, were you registered to vote in California?**
 22 A. No, I was not.
 23 **Q. And had you ever voted before when you**
 24 **came to Montana?**
 25 A. No. I turned 18 in June, so there wasn't

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1 times as well.
 2 **Q. When did you graduate high school?**
 3 A. January of 2017.
 4 **Q. And you were in Nepal, then, from like --**
 5 **well, tell me, when were you in Nepal?**
 6 A. I was in Nepal April through end of June
 7 2017.
 8 **Q. You said you've also been to Indonesia?**
 9 A. Yeah.
 10 **Q. When did you go there?**
 11 A. 2019.
 12 **Q. How long were you in Indonesia?**
 13 A. Three weeks.
 14 **Q. What were you doing in Indonesia?**
 15 A. Surfing.
 16 **Q. Surfing?**
 17 A. (Nodding head affirmatively.)
 18 **Q. Nice. And what time of year was that?**
 19 A. That was June -- or May, it was May.
 20 **Q. And you've been to Mexico a few times?**
 21 A. Yeah.
 22 **Q. When have you been to Mexico?**
 23 A. I went to Mexico in January of 2021, and I
 24 went there this past March for a couple weeks.
 25 **Q. So just like a month ago?**

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1 A. Yeah, super recently.
 2 **Q. Okay. And what were you doing in Mexico**
 3 **in January of '21?**
 4 A. My partner at the time, his sister lives
 5 down there, so we went and stayed with her.
 6 **Q. And whereabouts in Mexico?**
 7 A. It's called "Tepoztlán." It's south of
 8 Mexico City probably 100 miles.
 9 **Q. Did you like recreate when you were down**
 10 **there?**
 11 A. Yeah. We were kind of -- she's an artist,
 12 she does murals, so we were kind of just following her
 13 around and painting walls for her to then paint over.
 14 **Q. Cool. And then you said you were just**
 15 **down there recently as well?**
 16 A. Yeah.
 17 **Q. And what were you doing that time?**
 18 A. I was climbing.
 19 **Q. Where were you?**
 20 A. El Potrero Chico.
 21 **Q. So you first got a passport in advance of**
 22 **your trip to Nepal?**
 23 A. Yes.
 24 **Q. You didn't have a passport before then?**
 25 A. I must have gotten it renewed. I think I

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1 did have a passport before then.
 2 **Q. And why did you have a passport before**
 3 **going to Nepal? Like why do you think you got that**
 4 **renewed?**
 5 A. Oh, I had a passport because I had been to
 6 Canada a couple times for like school field trips, and
 7 stuff, so yeah.
 8 MS. SOMMERS-FLANAGAN: Would it make sense
 9 to potentially take a short break now?
 10 MR. MORRIS: That's fine.
 11 MS. SOMMERS-FLANAGAN: I'm checking mostly
 12 with Hailey.
 13 Hailey, would you like to take a quick
 14 break or should we go a little bit longer?
 15 THE WITNESS: Maybe go a little bit
 16 longer, and then we can take a break.
 17 MS. SOMMERS-FLANAGAN: Great.
 18 **Q. (By Mr. Morris) Ms. Sinoff, you said that**
 19 **you went to Canada your freshman year, didn't you?**
 20 A. Yeah.
 21 **Q. Sorry. And when was that?**
 22 A. That was spring 2018.
 23 **Q. Who did you go with?**
 24 A. My friends.
 25 **Q. How many friends did you go with?**

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1 A. Eight friends.
 2 **Q. Eight?**
 3 A. Eight.
 4 **Q. Did you all take multiple vehicles?**
 5 A. We did.
 6 **Q. All of you were skiing up there?**
 7 A. Yeah.
 8 **Q. Had any of the folks that you went with**
 9 **ever been to Canada before, that you recall?**
 10 A. I think it was the first time for a couple
 11 people, but some of them had.
 12 MR. MORRIS: Why don't we take five.
 13 THE WITNESS: Okay.
 14 COURT REPORTER: The time is 11:09 a.m.
 15 We are off the record.
 16 (A brief recess was taken.)
 17 COURT REPORTER: The time is 11:18 a.m.
 18 We are on the record.
 19 BY MR. MORRIS:
 20 **Q. All right. Ms. Sinoff, we just took a**
 21 **short break, but you realize you're still under oath,**
 22 **right?**
 23 A. Yes.
 24 **Q. You submitted a declaration in this case.**
 25 **Do you recall that?**

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1 A. Yes.
 2 **Q. And did you and Ms. Sommers-Flanagan**
 3 **discuss your declaration in preparation for this**
 4 **deposition?**
 5 A. Yes.
 6 **Q. And what specifically did you discuss**
 7 **about your declaration that you can recall?**
 8 A. We read through the whole thing together,
 9 and yeah, she -- yeah, we kind of just read through it
 10 together.
 11 **Q. Okay. Anything else that you can recall**
 12 **about your discussions with Ms. Sommers-Flanagan about**
 13 **your declaration?**
 14 A. She, yeah, asked me practice questions
 15 prompted by reading through the declaration.
 16 **Q. And any questions in particular that you**
 17 **recall about that?**
 18 A. No.
 19 **Q. Okay. I'm going to share my screen with**
 20 **you.**
 21 MR. MORRIS: And we'll mark this
 22 Deposition Exhibit 44.
 23 (Document marked Deposition
 24 Exb. 44 for identification.)
 25 **Q. (By Mr. Morris) Ms. Sinoff, can you see**

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1 the first page of your declaration now on your screen?

2 A. Yes.

3 Q. I'm just going to scroll through it. And
4 Deposition Exhibit 44, that's a true and correct copy
5 of your declaration, correct?

6 A. Yes.

7 Q. And you signed your declaration on January
8 10th of 2022?

9 A. Yes.

10 Q. And you signed it under penalty of
11 perjury. Do you see that?

12 A. Yes.

13 Q. What does that mean to you, to sign
14 something under penalty of perjury?

15 A. That I'm guaranteeing that everything in
16 it is correct, and if it's incorrect, it's -- or if
17 I'm lying about it, it's illegal.

18 Q. And before you signed this declaration,
19 did you do anything to make sure that the things --
20 that the content of it was accurate and true?

21 A. I mean, I read back through it and
22 approved it.

23 Q. And what do you -- what did you take to be
24 the purpose of signing this declaration in this case?

25 A. Just providing more, yeah, more

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1 on your declaration when making decisions in this
2 case?

3 A. "Rely" seems like an aggressive word in
4 this situation, but yeah, I figured they would take it
5 into consideration.

6 Q. And do you have any concerns about the
7 accuracy of the content of your declaration as you sit
8 here today?

9 A. No. I -- where does it say -- in No. 5, I
10 talk about like having forms of acceptable
11 identification. And I think like really thinking
12 about on what utility bills I had, and stuff, like I
13 don't know if -- I definitely didn't have all of these
14 things at once, I might have had some of them at
15 different times. But I still think it's accurate.

16 Q. Okay. And do you have an understanding of
17 what the forms of acceptable identification are under
18 Senate Bill 169?

19 A. I believe so.

20 Q. And what are the forms of acceptable
21 identification under Senate Bill 169, in your view?

22 MS. SOMMERS-FLANAGAN: Objection; form.

23 THE WITNESS: In my view --

24 Q. (By Mr. Morris) Hang on. Actually, let me
25 just restate that question.

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1 experiences about voting for the people that might be
2 affected by the bill.

3 Q. And who were you providing that
4 information about your experience to, in your view?

5 A. The lawyers in the case.

6 Q. Do you have a copy of your declaration
7 with you?

8 A. Yeah. I have it pulled up right now.

9 Q. Okay. So that we can talk a little bit
10 easier, I'm going to stop sharing. I also have a
11 copy.

12 So you said the lawyers in the case?

13 A. Yeah.

14 Q. Anyone else that you had in mind that
15 would want to know about your experiences voting?

16 A. I mean, I guess whoever wants to know more
17 about the voters' experience. I don't know if this is
18 like public record, but that would be fine with me if
19 it was.

20 Q. And did you expect that your declaration
21 would be submitted to the Court in this case?

22 A. I did expect that, yeah.

23 Q. And to the judge, right?

24 A. Yes.

25 Q. And did you expect that the Court may rely

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1 What do you believe to be the acceptable forms
2 of identification under Senate Bill 169?

3 A. When giving this declaration, I believed
4 they were like a Social Security card and a passport
5 and a driver's license, anything with like my name,
6 picture, and address, like the combination of those
7 three.

8 Q. And that was your understanding when
9 you submitted this declaration?

10 A. Yes.

11 Q. And as you sit here today, has that
12 understanding changed at all?

13 A. In reviewing for this, Rylee said maybe my
14 student card could be an acceptable form of
15 identification, which I had never heard before. I've
16 never thought of like my student ID card as an
17 acceptable form of identification for anything other
18 than getting into the gym because it just has my
19 picture and my name on it, but -- and I guess I'm
20 still unclear if that actually would be an acceptable
21 form of identification for something like voting or
22 registering to vote, but yeah, I guess my
23 understanding is a little different now.

24 Q. Okay. Besides the student ID issue --
25 which I think what you're telling me is that before

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1 you signed the declaration, you didn't view your
2 student ID as something that you could use to vote.
3 Is that right?

4 A. Yeah.

5 Q. And, but now you think that perhaps you
6 can use it? Is that what you're saying?

7 A. Yeah, yeah. I'm still a little unclear
8 because I've never seen anyone use their student ID
9 card as like an acceptable form of identification for
10 something serious, but yeah, my understanding is
11 different now.

12 Q. Okay. And, then, besides your student ID
13 card, do you have any other modifications of your
14 understanding of your belief about what's acceptable
15 under SB 169?

16 A. Yeah. In a similar vein, like my ski
17 pass, the one that used to have my picture on it,
18 that, I guess, would also have like my name and my
19 picture, same sort of thing.

20 Q. Okay. Anything else?

21 A. I don't think so.

22 Q. So before you signed this declaration, did
23 you actually read the text of SB or Senate Bill 169?

24 A. I skimmed it.

25 Q. And where did you skim it?

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1 Q. And that's someone who works in Ms.
2 Sommers-Flanagan's office. Is that your
3 understanding?

4 A. Yes.

5 Q. So he wrote it and then sent it to you?
6 Is that what happened?

7 A. Yes.

8 Q. And did you talk with Jacob about Senate
9 Bill 169 and its content?

10 A. Again, I'm sure we talked about it, but I
11 don't really remember that conversation.

12 Q. Have you gone back and tried to read
13 Senate Bill 169 in preparation for this deposition or
14 at any time since signing this declaration?

15 A. I had that thought this week, and I
16 didn't.

17 Q. Okay. So are you actually sure whether or
18 not Paragraph 5 of your declaration is true and
19 accurate?

20 A. I think I might have actually been able to
21 vote. I would have had to have my parents send me a
22 passport, is what I'm realizing in reflecting on this,
23 so no, it's not completely accurate.

24 Q. Okay.

25 A. I now understand.

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1 A. Like the location I was in when I skimmed
2 it?

3 Q. Yeah.

4 A. I don't remember.

5 Q. How did you access it or --

6 A. Probably like my phone, or something,
7 yeah.

8 Q. And before you signed this declaration,
9 did Ms. Sommers-Flanagan talk to you about SB 169 and
10 its content?

11 A. I'm sure she did; I don't specifically
12 remember that conversation, though.

13 Q. Okay. And did you sign this declaration
14 in Ms. Sommers-Flanagan's office?

15 A. I signed it electronically, so -- and,
16 yeah, at my house. I think it says that on the
17 declaration, too.

18 Q. Who wrote this declaration, Deposition
19 Exhibit 44?

20 A. I believe it was Jacob - I forget how to
21 say it - Linfesty, is his last name. I forget exactly
22 how --

23 Q. Right, someone at -- Jacob Linfesty
24 [pronouncing], I think, is --

25 A. Linfesty.

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1 Q. So you say in Paragraph 5 that: "If
2 Senate Bill 169 had been applicable in Spring 2018, I
3 would not have had any form of acceptable
4 identification besides my Social Security Number,
5 which I understand is not generally used for in
6 person voting."

7 I read that accurately?

8 A. You read that accurately.

9 Q. You also say: "I had no utility bills, no
10 bank statement reflecting my address, no paycheck, and
11 no other government document showing my current
12 address that would supplement my student ID or then
13 out-of-state driver's license."

14 I read that accurately?

15 A. Yeah. So I had no utility bills or no
16 bank statements or, yeah, other government documents
17 that would have showed my current address; I might
18 have had a paycheck at that point, though.

19 Q. But you understand, as you sit here today,
20 that you could have used your passport that you had in
21 the spring of 2018 in order to vote in person under
22 Senate Bill 169. Is that what you're telling me?

23 A. Yeah. That wouldn't have my Montana
24 address on it, but I think I could have used it.

25 Q. And you had that with you in the spring of

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1 2018 because you went to Canada, correct?

2 A. Yes.

3 Q. Okay. And what you're saying is at the
4 time that you signed this declaration, you just didn't
5 realize that that was something that you could use,
6 your passport.

7 A. Yes. Also, a lot of -- so my like Social
8 Security card and my passport at various times I would
9 leave with my parents, especially like when I was in
10 the process of a lot of moves because I didn't want to
11 lose track of that or, yeah, misplace it. I'm a good
12 student, but I have a very hard time staying
13 organized.

14 Q. Okay. But you did have it with you in the
15 spring of 2018, your passport?

16 A. I believe so. I honestly can't say for
17 sure whether or not I had it or left it back home when
18 I went home. Yeah, I'm not certain. I know for
19 certain I had it for my spring break.

20 Q. Okay. So you would agree with me, then,
21 that Paragraph 5 of your declaration is inaccurate,
22 correct?

23 MS. SOMMERS-FLANAGAN: Objection;
24 mischaracterizes testimony.

25 THE WITNESS: If I knew for certain that

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1 eligible."

2 Do you see that?

3 A. Yes.

4 Q. And I read that correctly, didn't I?

5 A. You did.

6 Q. What was on the ballot in the 2017
7 municipal elections that you wanted to vote for?

8 A. I don't remember at all.

9 Q. Did you know about the fall 2017 municipal
10 election before it occurred?

11 A. Probably.

12 Q. Why do you say that?

13 A. I guess I just like assume there's
14 something to vote for every November.

15 Q. You had never voted before, right?

16 A. No.

17 Q. But it's your testimony that you wanted to
18 vote in the fall 2017 municipal elections in Bozeman.

19 A. Yeah. You know, I was studying sociology.
20 I wanted to be a part of -- you know, a good citizen
21 and all that.

22 Q. What did you do to figure out whether or
23 not you could vote or register to vote using your
24 campus address before the fall 2017 municipal
25 elections?

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1 my passport was with me at the time, which I'm not
2 sure that I do, then it would be inaccurate.

3 Q. (By Mr. Morris) Okay. And in 2018, what
4 election were you wanting to vote in?

5 A. I believe that was -- or, wait, 2018. I
6 don't really remember, actually. I think it was
7 something local. I don't think it was -- maybe a
8 state or local thing. I don't think there was a
9 federal rule thing I was following at that point.

10 Q. There wasn't, to your memory, an election
11 in the spring of 2018, was there?

12 A. I don't --

13 MS. SOMMERS-FLANAGAN: Objection;
14 mischaracterizes testimony.

15 THE WITNESS: Yeah, I don't remember.

16 Q. (By Mr. Morris) Okay. You don't recall an
17 election in the spring of 2018, right?

18 A. No.

19 Q. In Paragraph 3 of your declaration -- do
20 you have that in front of you?

21 A. Yes.

22 Q. You say: "I did not vote in the 2017
23 municipal elections because I did not realize that I
24 could register to vote in Montana using my campus
25 address. I would have voted had I known I was

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1 A. Because of like when I was applying to
2 college and figuring out tuition stuff, there was such
3 a big emphasis that you can only get residency if you
4 had like a year of living in the state, not going to
5 school, showing pay stubs, having a driver's license
6 and your car registered in there, in Montana, and a
7 U.S. bank -- or a Montana or U.S. bank.

8 So my understanding of residency was really tied
9 to that. I thought that was like the only way you
10 could be a resident, and I assumed that was then the
11 only way you could be a -- like vote in Montana.

12 So then I registered to vote spring 2018 at a
13 Music on Main concert because Forward Montana had a
14 booth there and did a thing where they asked if I was
15 registered to vote.

16 And I said, "No, I can't register to vote. I'm
17 not a Montana resident."

18 And then they asked me if I had lived here for
19 more than 30 days and had like an address here.

20 And I said, "Yes."

21 And they were like, "Well, that's all you need
22 as long as you're like over 18 and a U.S. citizen."

23 So I didn't do anything to challenge my
24 perception, yeah.

25 Q. So, yeah, so my question was a little bit

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1 more narrow, and that's fine.

2 But my question is basically like: What did you
3 do to figure out whether or not you could vote using
4 your campus address --

5 A. Yeah, I --

6 Q. -- before the fall, before the fall 2017
7 election?

8 And I think what you said is that you didn't do
9 anything in particular because you had a belief that
10 you couldn't.

11 A. Yeah. I believed that I couldn't, so I
12 didn't do anything.

13 Q. And in the fall of 2017, you had been
14 living in Montana for -- at the time of these
15 elections in November of 2017, you had been living in
16 Montana for like five months or something like that.

17 A. Yeah. August to November, so yeah,
18 whatever -- however many months.

19 Q. And you had a car here that you were
20 driving in Montana that entire time, right?

21 A. Yes.

22 Q. And did you take any steps to try to
23 register to vote in the fall 2017 municipal elections
24 in Bozeman?

25 A. No.

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1 yeah, I got my absentee ballot in the fall.

2 Q. Did you get a voter registration or voter
3 confirmation card after you registered to vote?

4 A. I don't remember.

5 Q. And you said your ballot arrived in the
6 mail in the fall of 2018?

7 A. Yes.

8 Q. And did that arrive at your mailbox then?

9 A. Yeah. I did have to update my address, I
10 remember, at one point because I had moved, and it
11 arrived at my mailbox.

12 Q. And did you vote in that fall of 2018
13 election?

14 A. I think so. That was also when I was
15 super concussed, so yeah, I don't totally remember.

16 Q. Sorry. Do you remember where you were
17 living at that time?

18 A. Fall of 2018, I was living on Garfield.

19 Q. Have you since voted absentee in Montana?

20 A. Yeah. I've voted absentee every election
21 since then.

22 Q. And to do that, have you ever had to show
23 any ID?

24 A. My absentee ballot comes in the mail and I
25 fill that out, so no.

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1 Q. Did you take any steps to try to vote in
2 the fall 2017 municipal elections?

3 A. No.

4 Q. Were you interning for Forward Montana in
5 the spring of 2018 when you registered with them?

6 A. No.

7 Q. When you registered with Forward Montana,
8 what did you use to register?

9 A. I had my California driver's license.

10 Q. And what was the process for registering?
11 Do you remember?

12 A. Yeah. It was super easy. So they asked
13 me if I was registered, I told them what I told them,
14 and then they had a form where I just like put my name
15 and my address.

16 And I don't remember if I actually even had to
17 put my driver's license number down. I think it might
18 have just been like my name and my address, yeah.

19 And then, yeah, they took the form and I walked
20 away.

21 Q. And, then, how did you know that that was
22 effective; in other words, that you actually got
23 registered through that process?

24 A. I did not double-check at all. I just
25 assumed that they had done it in good faith, and then,

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1 Q. Have you ever used the My Voter Page to
2 check whether or not you're registered or whether or
3 not your vote has been accepted?

4 A. Yeah.

5 Q. And what have you used the My Voter Page
6 for?

7 A. I believe I've used it to make sure my
8 ballot got there.

9 Q. Have you ever used it to make sure you're
10 registered still?

11 A. No, because I've assumed that I would be.
12 Yeah, so I've never used it to check my registration,
13 and it's worked out because I have been registered.

14 Q. You said you updated your voter
15 registration to reflect a new address in 2019, right?

16 A. Yeah, I had to do it then, too.

17 Q. Is that the only time that you've had to
18 update your registration to reflect a new address that
19 you recall?

20 MS. SOMMERS-FLANAGAN: Objection --

21 THE WITNESS: I think I might have put my
22 dorm address the first time I registered to vote; and
23 then I moved, so I had to change it to my Garfield
24 address; and then when I moved to my house on Black, I
25 changed it. I didn't double-check it for that time in

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1 the house in the summer because I figured I wouldn't
2 be there very long.

3 **Q. (By Mr. Morris) How did you know to do**
4 **that?**

5 A. How did I know to update my voting
6 address?

7 **Q. Yeah.**

8 A. I don't know. I guess I just assumed,
9 because I had voted absentee, that if I wanted it to
10 be mailed to my current address, I would have to
11 change it.

12 **Q. In Paragraph 8 of your declaration, you**
13 **say: "I prefer to drop off my ballot in a Post Office**
14 **drop box on MSU's campus."**

15 **Do you see that?**

16 A. Yeah.

17 **Q. Which P.O., post office drop box on campus**
18 **have you used?**

19 A. Around election times, there was typically
20 like a little box at the Ask Us Desk in the student
21 union building, so I would drop it off there.

22 **Q. Have you used any others besides that one?**

23 A. I dropped it off at -- like in the box
24 outside at the courthouse, too. I've also done that.

25 **Q. Have you ever sent anything through the**

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1 **Q. In Paragraph 9, you say: "I have helped**
2 **my friends vote by taking their absentee ballots to**
3 **Post Office drop boxes."**

4 **Do you see that?**

5 A. Yeah.

6 **Q. And these friends, are these all friends**
7 **like people you know?**

8 A. Yeah. In the last election, I took my
9 roommates' ballots when I went to drop them off.

10 **Q. Is that four roommates?**

11 A. I have three roommates.

12 **Q. And besides that occasion where you took**
13 **your -- and did you take all three of your roommates'**
14 **to the --**

15 A. (Nodding head affirmatively.)

16 **Q. And besides --**

17 A. Yes.

18 **Q. Yes, thank you.**

19 A. I nodded.

20 **Q. Yeah. No, thanks.**

21 **Besides that occasion, have you dropped off**
22 **ballots for anyone else?**

23 A. Yeah. Two thousand -- yeah, I think in
24 2019 and 2020, I dropped off some of my friends' as
25 well.

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1 **mail by going to a mailbox, putting it in the mailbox,**
2 **and then raising the flag?**

3 A. No. I have only dropped them off,
4 actually.

5 **Q. And I don't mean just a ballot. I mean**
6 **any, any piece of mail.**

7 A. Oh, yeah, I've sent mail. Yeah, there's,
8 like on the corner of my street, there's a mailbox --

9 **Q. And you could --**

10 A. -- like a --

11 **Q. Sorry, I cut you off. What were you**
12 **saying?**

13 A. Like one of those big blue ones where you
14 just, yeah, you put them in there.

15 **Q. Okay. And on the corner of your street,**
16 **there's one of those big blue kind of P.O. box deposit**
17 **things?**

18 A. Yes.

19 **Q. And what about like have you ever just put**
20 **something, a piece of mail in your own residence**
21 **mailbox and then lifted the flag?**

22 A. No, I've never done that.

23 **Q. How far away is that big blue post office**
24 **drop box from your house?**

25 A. Like a quarter-mile, maybe.

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1 **Q. And in 2019, were those also roommates?**

2 A. Yeah, they might have also been roommates;
3 yeah.

4 **Q. Can you think of anyone besides roommates**
5 **in 2019?**

6 A. Yes.

7 **Q. And who's that?**

8 A. It was my friend, which -- Evelyn Power, I
9 believe I took hers.

10 **Q. And how do you know her?**

11 A. The climbing gym, we met at the climbing
12 gym.

13 **Q. And in 2020, you also took some other**
14 **people's ballots to a P.O. box?**

15 A. Yeah.

16 **Q. And who was that?**

17 A. Who was it -- one of my friends, Jocelyn,
18 whose last name I actually forget; and then Daisy as
19 well.

20 **Q. And what's Daisy's last name?**

21 A. I don't think I know her last name,
22 either.

23 **Q. Are those all the times that you've taken**
24 **other people's ballots to P.O. boxes: 2019, 2020 --**

25 A. Yes.

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1 Q. -- and then your three roommates recently?
 2 A. Yes.
 3 Q. So most of your friends choose to vote
 4 absentee like you?
 5 A. Yes.
 6 Q. And have you taken ballots for people --
 7 you said you have taken ballots for people other than
 8 roommates; is that right?
 9 A. Yes.
 10 Q. And how do you collect those ballots?
 11 A. Usually, it comes up in conversation that
 12 I'm, you know, planning on dropping mine off, and then
 13 I'll -- you know, when I see them, they'll hand them
 14 to me.
 15 Q. And how do you make sure you don't forget
 16 to turn in your, your or your friends' ballots?
 17 A. You know, that's a good question. I just
 18 focus on it that day because I definitely could
 19 forget. That would be in my character to forget
 20 something like that.
 21 Q. Have you ever -- well, have you ever lost
 22 anyone's ballots that they have given you?
 23 A. No.
 24 Q. And have you turned all of them in at the
 25 same drop box?

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1 boxes on MSU's campus be removed."
 2 Are you talking about more than one?
 3 A. Well, I used to -- I heard that they were
 4 kind of all over the place in years past, and then,
 5 yeah, then I heard that there was just the one, and
 6 then I heard that they removed it; although, I didn't
 7 double-check because I wasn't voting there, yeah.
 8 Q. Have you actually ever seen any post
 9 office drop boxes on MSU's campus that have been
 10 removed?
 11 A. Post office drop boxes?
 12 Q. Yeah.
 13 A. Oh, sorry, a phone call came through on my
 14 phone, and it --
 15 Q. You're okay.
 16 A. No. I guess I've just heard from like
 17 staff, and stuff, that they've been removed, but I
 18 wasn't really keeping track.
 19 Q. And do you think that there are -- there
 20 has been more than one post office drop box on MSU's
 21 campus that's been removed?
 22 A. That's what I heard.
 23 Q. You haven't actually seen it?
 24 A. No.
 25 Q. In Paragraph 11 of your declaration --

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1 A. No.
 2 Q. Which drop boxes have you used?
 3 A. Well, it depended on the year, I think.
 4 Like there was that one year I used the one on campus;
 5 and then I think the last couple of years, I've been
 6 using the one at the courthouse because it's just so
 7 close to my house.
 8 Q. And you used the one on campus for your
 9 own ballot, I think in 2018. Is that right?
 10 A. Yeah, I believe so.
 11 Q. And then did you also drop anyone else's
 12 ballot off in 2018 at that on-campus drop box?
 13 A. I might have dropped off - my roommate at
 14 the time - Sofia Whitefields' as well.
 15 Q. And then the rest of the times, you've
 16 used the one by the courthouse; is that right?
 17 A. Yes.
 18 Q. And you've never been paid to drop off
 19 anyone's ballot, have you?
 20 A. No.
 21 Q. Have you ever made a special trip to drop
 22 off someone's ballot other than your own?
 23 A. Not really, no.
 24 Q. In Paragraph 10, you say: "Over the past
 25 three years, I have seen many of the Post Office drop

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1 A. Yeah.
 2 Q. -- you're discussing attending this
 3 Bozeman City Commission meeting in the fall of 2020
 4 about the upcoming general election, correct?
 5 A. Yes.
 6 Q. Do you recall the date of that meeting?
 7 A. No.
 8 Q. Do you recall what month it was?
 9 A. I think it would have been October.
 10 Q. And you gave public comment at that
 11 meeting?
 12 A. Yes.
 13 Q. And you're sure it was a Bozeman City
 14 Commission meeting?
 15 A. Yes.
 16 Q. How did you find out about that meeting?
 17 A. One of my friends, Emma Bode, told me it
 18 was happening.
 19 Q. Had you ever spoken at a Bozeman City
 20 Commission meeting before then?
 21 A. Yeah. I go to the city commission
 22 meetings somewhat regularly.
 23 Q. About how many have you attended?
 24 A. Total, maybe around five.
 25 Q. And how many times have you spoken or

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**1 offered public comment at a Bozeman City Commission
2 meeting?**

3 A. Three times-ish, probably around three.

**4 Q. Did you do anything to prepare for
5 offering that public comment at the meeting in the
6 fall of 2020?**

7 A. Yeah. I mean, I was following everything
8 that was going on at the time, and talking to
9 different people, yeah, about the city commission
10 stuff, and then I kind of like jotted down things I
11 was thinking and -- yeah.

**12 Q. Do you remember about how long you spoke
13 for?**

14 A. Yeah. It was brief, probably about 30
15 seconds.

**16 Q. Did you receive any like compensation from
17 any organization to offer that public comment?**

18 A. No.

**19 Q. Were you there in your capacity as a
20 representative of any organization?**

21 A. No.

**22 Q. Have you ever appeared at a Bozeman City
23 Commission meeting as a representative of any
24 organization you're volunteering for or otherwise?**

25 A. No.

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**1 restrict absentee voting in the fall of 2020
2 elections?**

3 A. Yeah, I was really confused why they
4 wanted to do that. It didn't make sense to me. That
5 was part of why I went to the city commission meeting,
6 is I wondered why they were thinking of doing that.

**7 Q. And had you read like a newspaper article
8 or something that had suggested that that was what
9 might occur in the fall 2020 elections in Bozeman?**

10 A. I think I read some update somewhere, but
11 don't really remember.

12 Q. So what occurred at that meeting?

**13 I mean, you offered your public comment. How
14 did the Bozeman City Commission respond, if at all?**

15 A. Yeah. There were, there were so many
16 people offering public comment. So I think, yeah, you
17 would just like send in your -- I think you raised
18 your hand, or however it works on Zoom.

19 And then they would say, "Okay, now you can
20 talk."

21 So I'd say my comment, and then I, you know,
22 re-muted myself, and then a bunch of other people said
23 their comment.

24 And I don't think they responded individually to
25 the comments.

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**1 Q. And what did you say at this particular
2 meeting in the fall of 2020?**

3 A. Something along the lines of, you know, in
4 my experience as a voter, absentee makes it more
5 acceptable for me. And, yeah, because they were, I
6 think they were considering whether or not to make it
7 all in person, so I just, you know, talked about my
8 experience and why that would make it more challenging
9 for me to vote.

**10 Q. So it was your understanding that in the
11 fall of 2020, Bozeman was thinking of making the
12 election all in person?**

13 A. Yes.

**14 Q. Okay. And what did you, what did you
15 believe that to mean? That no one could vote
16 absentee, or what do you mean?**

17 A. Yeah. I believed that to mean that no one
18 could send in their votes by mail or vote absentee.

19 Q. What about appear early and vote absentee?

20 A. Yeah, I thought that wasn't going to be a
21 thing, either.

22 Q. And why did you think that?

23 A. That is what I heard at the time.

**24 Q. What was the reason -- did you understand
25 that there was some reason why Bozeman wanted to**

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1 I think they were like, "Okay, thank you for
2 your time. We're going to consider this now and" --
3 yeah.

**4 Q. Okay. Did the city commission vote on
5 like anything with regard to having an in-person-only
6 election for the fall of 2020 elections when you were
7 there that day?**

8 A. I don't remember if it was the day of.

**9 Q. Okay. You say in that paragraph,
10 Paragraph 11: "I knew I would need to vote early by
11 mail."**

12 Do you see that?

13 A. Yeah.

14 Q. And what do you mean there?

15 A. Well, I guess what I meant by "mail" is by
16 like either dropping it off at the postbox or like,
17 yeah, at the courthouse. And I was supposed to be
18 nannying like the days of the election. Which, you
19 know, as someone putting themselves through school and
20 supporting themselves, I was not really in a position
21 to take a day off work to go stand in line to vote,
22 especially if I have the option to drop it off ahead
23 of time.

**24 Q. So what's your current schedule like in
25 terms of your weekly current schedule?**

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1 A. Yeah, it varies quite a bit week to week.
 2 So since I'm a ski instructor, it's -- when
 3 there's snow, it's really heavy on that. So that's
 4 pretty much done now, but I would often ski instruct
 5 on the weekends.
 6 And then I have class Tuesday, Thursday in the
 7 morning, and so I'll sometimes instruct Monday,
 8 Wednesdays as well, sometimes Monday, Wednesday,
 9 Fridays.
 10 And then I typically have meetings in the
 11 afternoon for Sunrise or the Campus Climate Coalition.
 12 And then I also babysit in the evenings twice a
 13 week.
 14 **Q. Okay. Anything else?**
 15 A. I mean, yeah. I have a lot of -- you
 16 know, I try to exercise every day and see friends, see
 17 mentors, you know, all the life things and errands,
 18 and stuff.
 19 **Q. Okay. So your work schedule is weekends,**
 20 **primarily?**
 21 A. Weekends primarily, yeah.
 22 **Q. When you're --**
 23 A. And the --
 24 **Q. I'm sorry. When you're ski instructing?**
 25 A. Yes.

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1 **instruct on Monday, Wednesday, and Friday, and the**
 2 **weekend, do you?**
 3 A. No. There was one week I did that, and --
 4 or there's been a couple weeks I've done that. It was
 5 just terrible, just super exhausting. So I'll do like
 6 one or two days in a week, not usually every day.
 7 **Q. And then you said you have class on**
 8 **Tuesday and Thursday in the morning?**
 9 A. Yes.
 10 **Q. How many classes do you have on Tuesday?**
 11 A. So at this point in school, I'm only in
 12 three classes and I only have one that's in person.
 13 So I'll go to my in-person class that's 9:25 to 10:40.
 14 And then my other class is asynchronous, so I'll
 15 usually try to spend some time on campus at that time
 16 and do my work for that class then.
 17 **Q. And since it's online, can you kind of --**
 18 **there's not like a schedule where you have to be there**
 19 **for a class. Is that what you're saying?**
 20 A. Yeah. It's asynchronous. So there's just
 21 work I have to get done by certain due dates, but
 22 there's no particular time that I have to meet for the
 23 class.
 24 **Q. And that class that goes 9:25 to 10:40, is**
 25 **that only on Tuesday?**

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1 **Q. Okay. And when you ski instruct, do you**
 2 **go the whole day?**
 3 A. Yeah. So it's -- we have to be there
 4 usually around 8:00-ish - 8:30. So it depends on the
 5 weather, how long that drive is going to take. If
 6 it's clear roads, it's an-hour-and-15. There's some
 7 days it snows and it takes you four hours to get home,
 8 which is terrible; yeah, not a lot of that this year.
 9 And, yeah, and then I instruct typically until 4:00
 10 and take 30 minutes to get my stuff together and then
 11 drive back.
 12 **Q. Okay. And then you said sometimes you do**
 13 **ski instructing on Monday, Wednesday, or Fridays,**
 14 **right?**
 15 A. Yes.
 16 **Q. And how often do you do that?**
 17 A. As needed, so kind of -- I'm on call
 18 during the week, and then they'll call me up. So, you
 19 know, every, every other week, or so.
 20 **Q. And when you're -- so you're just on call**
 21 **on Mondays, Wednesdays, and Fridays; is that right?**
 22 A. Yeah. And then they'll, they'll typically
 23 tell me like the night before if they need me, and
 24 then I can always say "no." I often say "yes."
 25 **Q. You don't, you don't typically ski**

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1 A. Tuesday and Thursday.
 2 **Q. What are the meetings that you're**
 3 **referring to that you sometimes go to in the**
 4 **afternoons?**
 5 A. For example, so the Campus Climate
 6 Coalition, we just did an event where an
 7 environmentalist named Bill McKibben came to MSU. So,
 8 you know, stuff like that where we're organizing like
 9 the rooms that we're going to get and, you know, when
 10 he's going to be there, setting up tech stuff, just it
 11 never sounds like it's going to be that much work, and
 12 then the details take a lot longer to sort out than
 13 you think, stuff like that.
 14 **Q. You don't have like regular scheduled**
 15 **meetings for that, do you?**
 16 A. Yeah. Those are Mondays in the afternoon
 17 at four, and then I also have a class Wednesday nights
 18 from six to nine.
 19 And then also - I forgot to say this earlier -
 20 I'm on the board of Mountain Time Arts, which is a
 21 nonprofit. So I'll have meetings on Wednesdays from
 22 12 to 2 every Tuesday of the month, and then sometimes
 23 we'll have subcommittee meetings that are in between
 24 then.
 25 **Q. Okay. And you said you babysit?**

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1 A. And I babysit.
 2 **Q. How often do you babysit?**
 3 A. Typically, twice a week - three evenings a
 4 week. And that family is really -- I've known them
 5 for awhile, and they're really flexible. So I'll
 6 typically, at the beginning of the week, text them
 7 which nights I can do, which two are the most
 8 convenient, and that's what I'll do.
 9 **Q. Okay. In Paragraph 12, you say: "For me,**
 10 **voting in person feels borderline impossible."**
 11 **Have you ever tried to vote in person?**
 12 A. I've never tried to vote in person. I
 13 brought my friend water, a water bottle one time when
 14 she was waiting in line to vote in person, and that
 15 looked terrible. She was there for so long.
 16 **Q. Okay. And where was your friend waiting**
 17 **in line?**
 18 A. She was at the fairgrounds. I think that
 19 was 2020.
 20 **Q. Have you ever tried to vote in line at the**
 21 **Gallatin County Election Office downtown on Main?**
 22 A. No.
 23 **Q. Have you ever seen lines there?**
 24 A. I have seen lines there, yeah.
 25 **Q. Is that a deterrent for you --**

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1 A. Yes.
 2 **Q. How do you learn about candidates and**
 3 **issues?**
 4 A. So when I get my ballot, you know, I'll
 5 open it and I'll see all the things, and then I'll
 6 like Google it as I'm filling it out. Typically, I
 7 don't usually do it in one sitting. I'll like start
 8 filling it out and Google some things, go do something
 9 else.
 10 And Forward Montana makes a really good voter
 11 guide that I look at sometimes.
 12 And then I'll like often Google the candidates'
 13 web page and like, yeah, what they're saying on their
 14 web page.
 15 I've also been to candidate forums. Those are
 16 pretty fun.
 17 **Q. Do you ever read like news articles about**
 18 **candidates or issues?**
 19 A. I don't get a newspaper, so I'll, yeah,
 20 I'll -- like sometimes it will be like the Bozeman
 21 Daily Chronicle, is what comes up when I'm Googling
 22 things, and I'll read that.
 23 **Q. Have you ever used like the My Voter Page**
 24 **to access a sample ballot?**
 25 A. No.

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1 A. Yeah.
 2 **Q. -- from trying to vote in person?**
 3 A. Yeah. And I can be a forgetful person, so
 4 it's -- you know, I want to vote, so me doing it ahead
 5 of time I think is the most for-sure way I can make
 6 that happen.
 7 **Q. Have you talked to other people about**
 8 **their experiences voting in line -- or, I'm sorry,**
 9 **voting in person on Election Day?**
 10 A. Yeah. I have talked to a couple people
 11 that got stuck in the lines.
 12 And then a couple of my friends have volunteered
 13 to -- I forget what it's called, but you're there kind
 14 of like helping usher people like through the lines,
 15 and stuff, on Election Day, and they'll be there for
 16 the full day. There's a lot of people.
 17 **Q. In Paragraph 13, in the last sentence you**
 18 **write:**
 19 **"Elections are extremely important and**
 20 **from my perspective, the best way to participate is to**
 21 **examine my ballot closely and to make careful**
 22 **decisions about who and what I vote for."**
 23 **Do you see that?**
 24 A. Yes.
 25 **Q. And did I read that accurately?**

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1 **Q. Have you used that Forward Montana voter**
 2 **guide before?**
 3 A. Have I used the Forward Montana voter
 4 guide?
 5 **Q. Yeah.**
 6 A. Yes.
 7 **Q. And is that put out before the election?**
 8 A. Yes.
 9 MR. MORRIS: Okay. Can we take a few
 10 minutes? I'm just going to look over my notes.
 11 THE WITNESS: Sounds good.
 12 MR. MORRIS: Let's take 10.
 13 MS. SOMMERS-FLANAGAN: Okay. Thanks, Mac.
 14 MR. MORRIS: Yeah.
 15 COURT REPORTER: The time is 12:18 p.m.
 16 We are off the record.
 17 (A brief recess was taken.)
 18 COURT REPORTER: The time is 12:34 p.m.
 19 We are on the record.
 20 BY MR. MORRIS:
 21 **Q. Ms. Sinoff, we just took a really short**
 22 **break, I think. You understand you're still under**
 23 **oath?**
 24 A. Yes.
 25 **Q. I just have a couple more questions for**

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1 you, I think.
 2 Before you signed the declaration that you
 3 submitted in this case, did anyone ask you whether or
 4 not you had a passport?

5 A. I don't remember; I don't think so,
 6 though.

7 Q. And did you tell anyone before you signed
 8 your declaration in this case that you did have a
 9 passport?

10 A. I don't think so.

11 Q. Since you registered to vote in Montana in
 12 the spring of 2018, have you found voting to be a
 13 pretty straightforward process?

14 A. I have, yeah.

15 Q. And is there anything that we haven't
 16 discussed today that you think is important that we
 17 should discuss?

18 A. No -- I did -- I was thinking about it,
 19 though, and I didn't drop off my friend Evelyn's
 20 ballot; I dropped off Sofia Whitefields' ballot. So I
 21 do want to clarify that.

22 Q. Sure. And when was that?

23 A. That would have been 2018.

24 MR. MORRIS: Okay. That's all the
 25 questions I have for you at this time.

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1 STATE OF MONTANA)
 : ss.

2 County of Silver Bow)
 3

4 I, Jonny B. Nordhagen, Court Reporter - Notary
 5 Public in and for the County of Silver Bow, State of
 6 Montana, do hereby certify:

7
 8 That the witness in the foregoing deposition,
 9 Hailey Sinoff, was by me first duly sworn according to
 10 law in the foregoing cause; that the deposition was
 11 then taken before me at the time and place herein
 12 named; that the deposition was reported by me in
 13 machine shorthand and later transcribed by computer,
 14 and that the foregoing eighty-six (86) pages contain a
 15 true record of the witness, all done to the best of my
 16 skill and ability.

17 IN WITNESS WHEREOF, I have hereunto set my hand
 18 and affixed my notarial seal this _____ day of
 19 _____, 2022.
 20
 21

22
 23 Jonny B. Nordhagen
 24 Notary Public for the State of
 Montana residing at Butte,
 Montana. My commission
 25 (NOTARIAL SEAL) expires May 8, 2022.

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1 THE WITNESS: Oh, thank you.

2 MR. MORRIS: Rylee, I don't know -- or,
 3 Mike, do you all have any questions?

4 MR. MELOY: I don't have any questions.

5 MS. SOMMERS-FLANAGAN: I don't have any
 6 questions, either.

7 COURT REPORTER: This concludes the
 8 Videoconference Video-Recorded Deposition of Hailey
 9 Sinoff.

10 The time is 12:36 p.m. The date is April
 11 11, 2022. We are off the record.

12 (Signature reserved.)
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1 DEPOSITION OF: HAILEY SINOFF
 2 DEPOSITION DATE: APRIL 11, 2022
 3 IN RE: MONTANA DEMOCRATIC PARTY, et al.,
 4 vs. JACOBSEN
 5 COURT REPORTER: JONNY B. NORDHAGEN
 6 I have read my deposition and make the following
 corrections or additions:

7
 8 PAGE # LINE CORRECTION
 9

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Signed under penalty of perjury this _____ day
 of _____, _____.

HAILEY SINOFF

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HAILEY SINOFF

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EXHIBIT 4

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,
Plaintiffs, Consolidated Case No. DV-21-0451
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 Group,
Plaintiffs,
vs.
Christi Jacobsen, in her official capacity as
Montana Secretary of State,
Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF GAVIN ZALUSKI

Taken at:
Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 12, 2022
9:03 a.m.

1	I N D E X		
2	Witness:		Page:
3	GAVIN ZALUSKI		
4	Examination by Mr. Knobel	. . .	6
5	Examination by Mr. Gordon	. . .	136

8	E X H I B I T S		
9	NO.	PAGE	DESCRIPTION
10	45	69	Zaluski declaration

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1 APPEARANCES OF COUNSEL (by videoconference):

3 FOR THE PLAINTIFF MONTANA DEMOCRATIC PARTY:

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23 Also present (in-person):

24 John Nordhagen, Recording Operator

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1 GAVIN ZALUSKI
2 APRIL 12, 2022; BUTTE, MONTANA

3 ---
4 BE IT REMEMBERED THAT, pursuant to Notice, the
5 Deposition of Gavin Zaluski was taken at the time and
6 place and with the appearances of counsel hereinbefore
7 noted before Jonny B. Nordhagen, Court Reporter -
8 Notary Public for the State of Montana.

9 It was further stipulated and agreed by and
10 between counsel for the respective parties that this
11 deposition was taken pursuant to the Montana Rules of
12 Civil Procedure.

14 The following proceedings were had:

16 RECORDING OPERATOR: The time is 9:03 a.m.
17 We are on the record.

18 This is the Videoconference Video-Recorded
19 Deposition of Gavin Zaluski taken by the attorneys for
20 the defendant in the matter of Montana Democratic
21 Party, et al., Plaintiffs, vs. Christi Jacobsen, in
22 her official capacity as Montana Secretary of State,
23 Defendant.

24 This is Cause No.: DV 21-0451 in the
25 Montana Thirteenth Judicial District Court,

Page 4

1 Yellowstone County.

2 This deposition is being taken on Tuesday,
3 the 12th day of April, 2022, from Nordhagen Court
4 Reporting, 1734 Harrison Avenue in Butte, Montana.

5 The recording operator is John Nordhagen.

6 The court reporter is Jonny Nordhagen.

7 Counsel will now introduce themselves,
8 after which the court reporter will swear in the
9 witness.

10 MR. KNOBEL: This is David Knobel. I'm
11 here on behalf of the defendant, Secretary of State.

12 MR. GORDON: This is Matt Gordon on behalf
13 of Plaintiffs Montana Democratic Party and Mitch Bohn.

14 And for the record, Counsel stipulated
15 that objections will be reserved except as to form.

16 MR. MELOY: And this is Mike Meloy also
17 representing MDP and Mitch Bohn.

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19
20
21
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23
24
25 ///

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1 A. No, I have not.

2 **Q. Do you understand that you're under oath**
3 **right now?**

4 A. Yes, sir.

5 **Q. Will you, will you agree to try to answer**
6 **audibly and wait until I'm done speaking so that the**
7 **court reporter can take down your answer accurately?**

8 A. Yes, sir.

9 **Q. And will you agree to tell me if you, if**
10 **you don't hear or you don't understand one of my**
11 **questions?**

12 A. Yes, sir.

13 **Q. Okay. And if you answer one of my**
14 **questions, can I presume that you understood the**
15 **question?**

16 A. Yes, sir.

17 **Q. Any reason you can't tell the truth today?**

18 A. No.

19 **Q. Any reason you won't be able to remember**
20 **anything today?**

21 A. Possibly, but I don't, I don't believe so.

22 **Q. Can you say that again?**

23 A. Possibly, but I don't believe so.

24 **Q. Okay. What possible reason could there be**
25 **that you might have problems remembering things today?**

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1 GAVIN ZALUSKI,
2 having been called as a witness by the
3 defendant, being first duly sworn, was
4 examined and testified as follows:

6 EXAMINATION

7 BY MR. KNOBEL:

8 **Q. Gavin, can you hear me?**

9 A. I can hear you.

10 **Q. Okay. Can you state your name for the**
11 **record, please?**

12 A. My name is Gavin Zaluski.

13 **Q. Okay. What's your middle name?**

14 A. Oh, Andrew; Gavin Andrew Zaluski.

15 **Q. Okay. And what's your address?**

16 A. 210 South 15th Avenue, Apartment No. 24.

17 **Q. Okay. In Bozeman, Montana, correct?**

18 A. In Bozeman, Montana, yes.

19 **Q. And is that where you're at right now?**

20 A. Yes. I'm in my bedroom right now.

21 **Q. Okay. Is there anybody in your room with**
22 **you besides just you?**

23 A. No, no one in my room.

24 **Q. Have you ever had your deposition taken**
25 **before?**

Page 6

1 A. I just might have forgotten a small detail
2 of something.

3 **Q. Okay. And you understand that the court**
4 **reporter is here taking down everything that we say,**
5 **correct?**

6 A. Yes, sir.

7 **Q. Okay. What did you do to prepare for this**
8 **deposition?**

9 A. I talked to Matthew last -- or yesterday,
10 and that was it.

11 **Q. Okay. And what did you say to Matthew?**

12 A. We just talked about my declaration, and
13 he kind of explained to me what a deposition is and
14 how I should go with this and what type of questions
15 might be asked.

16 **Q. Okay. And what specifically did he say**
17 **about the types of questions?**

18 A. He basically told me if I know the
19 question, tell the truth; if I don't know the
20 question, ask again or say, "I don't know."

21 **Q. Okay. Did you talk about the merits of**
22 **the lawsuit at all?**

23 A. No.

24 **Q. Okay. Do you understand how your**
25 **testimony is being used by the Montana Democratic**

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1 **Party in this case?**

2 A. Not completely.

3 **Q. Okay. Did you review any documents to**
4 **prepare for the deposition?**

5 A. I just read over my declaration.

6 **Q. Okay. Any other documents?**

7 A. No, sir.

8 **Q. Have you talked to anybody else about this**
9 **deposition besides Mr. Gordon?**

10 A. I told my roommates that I was in it, but
11 no, other than Mr. Gordon, no.

12 **Q. Okay. What did you tell your roommate?**

13 A. I told him I'm in a deposition tomorrow
14 for the State of Montana. That was it.

15 **Q. Where were you born?**

16 A. I was born in Missoula, Montana.

17 **Q. Okay. And where did you go to middle**
18 **school?**

19 A. Middle school, I hopped around a lot. I
20 started in South Carolina; and then I came back to the
21 Bitterroot Valley, Florence, Montana.

22 **Q. Is that just because your parents were**
23 **moving for jobs, or what?**

24 A. My parents -- yeah, pretty much. My mom
25 got a better job in Missoula and my dad wanted to do

Page 9

1 skied. That was about it.

2 **Q. Okay. What did you do after you graduated**
3 **high school?**

4 A. The first six months, I did construction,
5 went to MSU for a semester.

6 When COVID happened, I moved to Missoula. And
7 then for the year of 2020, I was in Missoula and then
8 -- or 2020 to 2021 until May.

9 And then like late July - early August of 2021,
10 I moved to Bozeman to finish school here.

11 **Q. Where did you do construction work?**

12 A. RZ Construction. It's out of the
13 Bitterroot. It's my dad's company.

14 **Q. Okay. And why did you leave that job?**

15 A. Because I don't like building in the cold.

16 **Q. And why did you decide to move to Bozeman?**

17 A. School. I wanted to be an engineer at
18 first, but now I'm here on management. And I -- the
19 reason that like kind of I came back was Missoula is
20 just so close to the Bitterroot, and where I lived, it
21 was only 15 minutes away. So it was just seeing the
22 same people every day, and I wanted something a little
23 different.

24 **Q. Okay. So why did you originally, when --**

25 **you know, after you got done working construction and**

Page 11

1 construction again, so we came back to Missoula -- or
2 to the Bitterroot.

3 **Q. Okay. And how old were you when you moved**
4 **back to the Bitterroot?**

5 A. Either 11 or 12.

6 **Q. And how old were you when you had moved to**
7 **-- did you say "North Carolina"?**

8 A. South Carolina. I was nine.

9 **Q. Okay. So you had lived in Missoula from**
10 **when you were born until nine, then you moved to South**
11 **Carolina for three years, then moved back to the**
12 **Bitterroot?**

13 A. No. I lived in Florence from zero to 3,
14 Bozeman from 3 to 6, Anaconda from 6 to 7, Philipsburg
15 from 7 to 8, South Carolina 9 to 11 or 12, and then
16 Florence until I graduated high school.

17 **Q. And you graduated high school from**
18 **Florence?**

19 A. Florence, yeah, Florence-Carlton High.

20 **Q. And you played sports in high school?**

21 A. Yes. I was year-round. I did softball,
22 football, golf, and basketball.

23 **Q. Okay. What other extracurriculars did you**
24 **do in high school?**

25 A. I coached soccer teams, I played -- I

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1 **you moved to Bozeman, you said you went to MSU; is**
2 **that right?**

3 A. Yes, sir.

4 **Q. And you were doing engineering at the**
5 **time?**

6 A. Hm-hmm [affirmative].

7 **Q. And that's a "yes"?**

8 A. Yes. Sorry.

9 **Q. And how long were you in Bozeman at that**
10 **time when you were studying engineering?**

11 A. Until March. Then I was in Mexico for
12 spring break, and I got an email telling me I wasn't
13 allowed to come back because of the COVID-19 breakout.

14 **Q. Come back to, to what? Campus, or --**

15 A. Come back to campus, my dorm, yeah. So --

16 **Q. What was the --**

17 A. Go ahead. I'm sorry.

18 **Q. What was the reasoning?**

19 A. What was the reasoning to going back home?

20 **Q. No, that they told you you couldn't come**
21 **back.**

22 A. Oh, the COVID-19 breakout.

23 **Q. Okay. There was specific breakout on --**
24 **in Bozeman?**

25 A. It was the main -- when they were shutting

Page 12

1 down borders, when -- it was about March 15th or 16th
2 of 2020, so it was right when there was starting to
3 become like 300,000 cases in America, or something
4 like that. And they decided to cancel all public
5 school and make it online.

6 **Q. Okay. So did you continue going to the**
7 **MSU classes online?**

8 A. I finished MSU online that semester, and
9 then I registered for Missoula for the next semester
10 so I could be closer to family.

11 **Q. Okay. So you originally left Bozeman to**
12 **go back to Missoula to be closer to family, and**
13 **then --**

14 A. Yeah.

15 **Q. -- you left Missoula to come back to**
16 **Bozeman to be further away from everybody you kind of**
17 **grew up with.**

18 A. Yeah.

19 **Q. Okay. Now, where did you -- when you**
20 **first moved to Bozeman, where did you live?**

21 A. The dorms -- or originally, like when I
22 was a child?

23 **Q. No. Good clarification. After you left**
24 **the construction job, I assume you were 18 or 19, and**
25 **you first moved --**

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1 A. Oh. I --

2 **Q. -- and you moved to Bozeman then.**

3 A. I lived in North Hedges, the dorms, yeah.

4 **Q. Okay. And how long did you live in the**
5 **dorms?**

6 A. Three months. I was there from December
7 to March.

8 **Q. Okay.**

9 A. Like end of December.

10 **Q. And where did you -- did they not allow**
11 **you to live in the dorms during the COVID-19 shutdown**
12 **that happened in March of 2020?**

13 A. The only way you were allowed to live in
14 the dorms is if you never left for spring break and
15 you weren't able to get back home. So they would let
16 -- there was -- I had probably eight friends that were
17 in the dorms still after the COVID-19 breakout, but
18 most people went home. And if they didn't go home
19 then, they went home before spring break and
20 weren't -- didn't come back.

21 **Q. Okay. And who did you go to spring break**
22 **with?**

23 A. My family: My parents, grandparents,
24 aunts and uncles, and brother.

25 **Q. Okay. And so what did, what did MSU**

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1 **expect somebody in your situation to do if you didn't**
2 **have somewhere else to live other than the dorms? Do**
3 **you know?**

4 A. I'm not sure. It was kind of just
5 something that happened all of a sudden. I was
6 fortunate enough to be close so I was just able to go
7 home after, but like I said, I had a few friends who
8 didn't get to go home right away, so they stayed in
9 the dorms just for a couple months. I think they kept
10 one of the dining halls open, but yeah, I'm not
11 completely sure.

12 **Q. Okay. So at that time, did you move back**
13 **in with your parents temporarily in Missoula or where**
14 **did you go?**

15 A. I moved back to my parents' in Florence,
16 the Bitterroot. And that's also where my grandparents
17 live, so occasionally I would just bounce back and
18 forth from their house to my grandparents' house.

19 **Q. Okay. And then, and then that's where you**
20 **were doing your online MSU Bozeman engineering**
21 **classes?**

22 A. Yes. That's why I was at my
23 grandparents', because my parents don't have Wi-Fi at
24 their home. So we were doing all Zoom meetings and
25 Zoom calls, and everything had turned online, so I had

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1 to be at my grandparents' to use their Wi-Fi.

2 **Q. Okay. But you were sleeping at your**
3 **parents' house?**

4 A. Sleeping at my parents', yes.

5 **Q. Okay. So, then, where did you, where did**
6 **you move after that? You moved to Missoula; is that**
7 **right?**

8 A. Yeah. It was 541 Eddy Avenue. It was
9 right across the -- like on Eddy and Arthur right
10 across the street from the University of Montana.

11 **Q. Okay. And is that a single-family**
12 **residence?**

13 A. It was a fourplex, I think. I'm not sure.
14 It was one normal house that the landlord had turned
15 into four different apartments, little areas. So we
16 were Apartment A.

17 **Q. Okay. And who did you live with at the**
18 **time?**

19 A. My friend from high school, Jared Thomas;
20 and then my friend that I met at Montana State, Isaac
21 Mills. And he was one of the reasons that like kind
22 of convinced me to move to Missoula.

23 **Q. Okay. And what were you studying?**
24 **Were you a registered student at University of**
25 **Montana at that time?**

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1 A. For the first -- like the fall semester of
2 2020, I was, yes. I was a business student. I had
3 switched my major.

4 **Q. Say that again. You said you switched**
5 **your major?**

6 A. I switched my major and became a business
7 student, yes, for the fall semester of 2020 at
8 University of Montana.

9 **Q. Okay. Why did you do that?**

10 A. Bad at math. Engineering has a lot of
11 math.

12 **Q. Have you been -- I mean, were you, when**
13 **you were at MSU, were you actually taking engineering**
14 **classes or just general education?**

15 A. Just like pre-rec classes for engineering,
16 so a lot -- like I was taking like two or three math
17 classes, and I had to take probably eight more or nine
18 more.

19 **Q. Okay. And so then what classes, what**
20 **classes were you taking during that fall semester at**
21 **University of Montana?**

22 A. A math class, it was like a co-rec between
23 algebra and calculus; an African-American studies
24 class; anthropology; and a business general -- or two
25 business general classes.

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1 he had a four-bedroom, so that's where I'm at now.

2 **Q. Okay. And where was your two-bedroom**
3 **apartment?**

4 A. It was on Black in Bozeman, I think Black
5 and Garfield. I can't -- I'm not exactly sure which
6 street it was on. It was kind of secretive until you
7 moved in.

8 **Q. Okay. Was it, was it a single-family**
9 **residence?**

10 A. No. It was, I think, four or six
11 apartment complexes in this little apartment area.

12 **Q. Okay. And who paid for the utilities**
13 **there?**

14 A. Nobody because we never moved in. We had
15 to pay a fee to get out of it, actually.

16 **Q. So you never actually moved into it.**

17 A. No.

18 **Q. Okay. Why did you -- did you just decide**
19 **to not move there because you preferred the**
20 **four-bedroom place that you're at now?**

21 A. Pretty much. The four bedroom is a better
22 location, it was a lot better price. We were -- I did
23 the math. We would have saved \$4,000 in a year, but
24 we still had to pay, each, a \$1,000 fee for moving
25 out, which was a little silly in my opinion.

Page 19

1 **Q. Okay. Who paid for the utilities at your**
2 **house on Eddy?**

3 A. The utilities? It was the, our landlord.
4 We just paid rent, and he paid for everything else.

5 **Q. Okay. And how long did you live at that**
6 **house on Eddy -- or that fourplex on Eddy?**

7 A. From July 1, 2020, to May 1, 2021 -- or it
8 was either May 1st or June 1st. I can't remember.

9 **Q. Okay. Did you have a yearlong lease?**

10 A. It was like a 10- or 11-month-long lease.
11 He was looking for people in May but wasn't able to
12 find anyone until the end of June when I gave him a
13 call.

14 **Q. Okay.**

15 A. Excuse me.

16 **Q. Okay. So then that was -- you said you**
17 **left the -- you stopped living at the fourplex on Eddy**
18 **in May of 2022 -- or no.**

19 A. No, 2021.

20 **Q. I'm sorry. 2021, okay. And then where**
21 **did you -- and then you moved to Bozeman.**

22 A. I moved back to my parents for -- from
23 that May to end of July. And then my roommate
24 Sebastian and I had just a two-person apartment, but
25 then my roommate Oscar gave us a call and was -- said

Page 18

1 **Q. It was what?**

2 A. A little silly. I got him tenants the day
3 before we were supposed to move in, but he still
4 charged us \$2,000.

5 **Q. Had you signed a contract that --**

6 A. Yeah, I signed a contract --

7 **Q. -- allowed them to do that?**

8 A. -- but it pretty much said if I was able
9 to find tenants before the lease, it wouldn't have
10 happened, but it still happened.

11 MR. GORDON: Hey, Gavin?

12 **Q. (By Mr. Knobel) Okay.**

13 MR. GORDON: Sorry. Just please make sure
14 that you allow Mr. Knobel to finish his question
15 before you answer --

16 THE WITNESS: Oh, sorry.

17 MR. GORDON: -- so you're not talking over
18 each other.

19 **Q. (By Mr. Knobel) Who pays for the utilities**
20 **at your current house?**

21 A. My roommate Oscar.

22 **Q. Okay. And is your current four-bedroom**
23 **place, is that a single-family residence?**

24 A. It's a townhouse. So we have two other
25 people's garages connected to our home, but it's a

Page 20

1 townhouse in the middle of like an apartment complex.
 2 So for us, yeah, it's a single-residence home, but
 3 around us, there's apartments.

4 **Q. Okay. And do you receive mail at that**
 5 **location?**

6 A. Yes.

7 **Q. Okay. And you've got a mailbox out front?**

8 A. Yeah. It's like a P.O. box.

9 **Q. What do you mean by, what do you mean by**
 10 **that?**

11 A. There's just everybody's apartment -- like
 12 all the mail is sent to this box for the whole
 13 apartment section.

14 **Q. Okay. But when you give your mailing**
 15 **address, you don't give a P.O. box, you give the**
 16 **actual --**

17 A. No.

18 **Q. -- street address, correct, in the**
 19 **apartment?**

20 A. Yes, yes.

21 **Q. In the apartment, okay. Were you able to**
 22 **receive mail at your house where you lived in Missoula**
 23 **on Eddy?**

24 A. Yes.

25 **Q. Do you have a lease for your current**

Page 21

1 **living arrangements?**

2 A. I do.

3 **Q. Okay. And is that a yearlong lease, or**
 4 **what?**

5 A. Yes, it is a yearlong lease.

6 **Q. Okay. And is there four of you that live**
 7 **there?**

8 A. Yes, there's four of us.

9 **Q. And all four of you have signed the lease?**

10 A. Yes.

11 **Q. And is Oscar an MSU student?**

12 A. Yes. All four of us are MSU students.

13 **Q. Okay. Why are the utilities in Oscar's**
 14 **name?**

15 A. They're under all of our names, but it's a
 16 virtual payment. So we just Venmo Oscar, and then
 17 Oscar pays the, like pays our landlord company.

18 **Q. Okay. So what utilities are, are you guys**
 19 **paying for at that location?**

20 A. Heat, gas, and I believe garbage, but I'm
 21 not sure about the garbage one.

22 **Q. And why did you guys decide to put all**
 23 **four of your names on the utilities?**

24 A. It was a last-minute thing. We were
 25 trying to get the apartment and make us look as

Page 22

1 like -- I'm not sure why. Oscar kind of handled that
 2 part.

3 **Q. Okay. And did you sign up for electronic**
 4 **delivery of your utility bills?**

5 A. Yes, we did.

6 **Q. So do you get, do you get emails monthly**
 7 **with utility bills?**

8 A. Yes.

9 **Q. And you can think of at least three that**
 10 **you get, right?**

11 A. Yes.

12 **Q. And how long do you plan to live in that**
 13 **location?**

14 A. Not completely sure. We want to live here
 15 until we probably graduate, but depending on rent
 16 increase for price or if our landlord decides to let
 17 us keep the place just in case he has a kid, or
 18 something, who is coming up to college -- I called two
 19 weeks ago asking about keeping the place, and they
 20 said they would send us a letter towards the end of
 21 April -- beginning of May.

22 **Q. You must feel pretty grateful to have a**
 23 **good living location in Bozeman of all places, huh?**

24 A. Yeah, I'm very grateful. I have friends
 25 that are moving here right now that are struggling,

Page 23

1 and I feel pretty bad. We pay a pretty good price
 2 here, too.

3 **Q. All right, that's great. So your first**
 4 **job, I guess, after you turned 18 was construction,**
 5 **working for your dad's company, right?**

6 A. Yes.

7 **Q. Okay. And did you get paychecks from that**
 8 **job or did you get direct deposit?**

9 A. Paychecks.

10 **Q. Okay. And would you get a pay stub with**
 11 **your paychecks?**

12 A. Yes.

13 **Q. Okay. And what was your next job after**
 14 **that?**

15 A. It was when I came to Bozeman, I became a
 16 mattress salesman.

17 **Q. Where, where was that?**

18 A. It's called -- it's a little local shop
 19 called "Nights Delight Sleeping Boutique."

20 **Q. Okay. And how long did you work there?**

21 A. The three months before I got sent back
 22 for COVID.

23 **Q. And was that an hourly job or commission**
 24 **or both?**

25 A. Both.

Page 24

1 **Q. Did you get direct deposit there or**
 2 **paychecks?**
 3 A. Paychecks.
 4 **Q. Did you have the, did you have the option**
 5 **to do direct deposit and you chose paychecks or was it**
 6 **the only option?**
 7 A. It was the only option.
 8 **Q. Okay. And did you get a pay stub with**
 9 **your paychecks?**
 10 A. Yes.
 11 **Q. Okay. What was your next job after that?**
 12 A. I went and worked for my dad again when I
 13 was living back home, but after that, when I was
 14 living in Missoula, I worked for him until about
 15 August, I would say, the middle of August. And when I
 16 started school, I started a job at Bridge Pizza --
 17 **Q. Okay. And where does --**
 18 A. -- as a line cook. I'm sorry.
 19 COURT REPORTER: I didn't catch what you
 20 said at the very end there.
 21 THE WITNESS: I cut out?
 22 COURT REPORTER: Right after "Bridge
 23 Pizza," I didn't hear what you said, yeah.
 24 THE WITNESS: I was a line cook.
 25 **Q. (By Mr. Knobel) And where is Bridge Pizza?**

Page 25

1 the mornings. And, yeah, I was just a line cook
 2 there.
 3 **Q. Okay. And what town is that place in?**
 4 A. That was in Florence.
 5 **Q. And did you get a paycheck there or direct**
 6 **deposit?**
 7 A. Direct deposit.
 8 **Q. Okay. And did they send you a pay stub?**
 9 A. Via email.
 10 **Q. You would get it in an email?**
 11 A. I would get an email and through the app
 12 that we used.
 13 **Q. Okay. And it would be just like a normal**
 14 **pay stub that showed your wages and your taxes that**
 15 **had been taken out, and that kind of a thing?**
 16 A. Yes, sir.
 17 **Q. Okay. And you could have printed it if**
 18 **you wanted to?**
 19 A. Yes.
 20 **Q. And you have a printer?**
 21 A. I do.
 22 **Q. Okay. Do your roommates have printers?**
 23 A. No. They all use mine.
 24 **Q. When did you get a printer?**
 25 A. My old roommate Isaac was moving into his

Page 27

1 A. It's on, if you're -- if you know
 2 Missoula, it's on like Higgins Bridge, right at the
 3 end of Higgins Bridge, right next to the Missoulain
 4 store.
 5 **Q. Okay. And how long did you work there?**
 6 A. Until June of 2021.
 7 **Q. Okay. So you pretty much worked there the**
 8 **entire time you were in Missoula; is that fair?**
 9 A. Yes.
 10 **Q. Okay. And did you get a paycheck there or**
 11 **direct deposit?**
 12 A. Paycheck.
 13 **Q. Okay. Did you have an option for direct**
 14 **deposit?**
 15 A. No.
 16 **Q. Okay. And did you get a pay stub with**
 17 **your paycheck?**
 18 A. Yes.
 19 **Q. And then after that, what was your next**
 20 **job?**
 21 A. When I was living with my parents for a
 22 little -- like the two months of the summer, I was
 23 working construction again, and then I was also
 24 working at this place called "Backyard Tap House." I
 25 was making food there and doing construction during

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1 truck out of nowhere, so he gave me a bunch of free
 2 stuff, and one of the things he gave me was a printer.
 3 **Q. Okay. And it works fine?**
 4 A. Works great.
 5 **Q. Okay, okay. And then after that time**
 6 **period where you're -- the summer you were doing**
 7 **construction and working at the place in Florence,**
 8 **then what was your next job after that?**
 9 A. I worked at Plonk Wine Shop for two -
 10 three weeks. I left because they kind of lied to me a
 11 little bit about hours and about like if I request
 12 days off, I would get those days off, but they were
 13 just scheduling me the days I requested off. And I
 14 was working like 10-1/2 hours for \$8.50.
 15 **Q. For \$8.50 an hour?**
 16 A. For \$8.50, yes, sir.
 17 **Q. Really, in Bozeman?**
 18 A. Yeah, really, in Bozeman.
 19 **Q. Okay. So, then, what did you do after,**
 20 **after that, those two or three weeks, in terms of**
 21 **work?**
 22 A. I explained to them that I had to find a
 23 better job for school.
 24 And I talked to my roommate Oscar, who was
 25 working at Red Tractor Pizza at the time, and I got a

Page 28

1 job at Red Tractor Pizza. And that's where I'm at
2 right now.

3 **Q. Okay. And how long have you been working**
4 **at Red Tractor Pizza?**

5 A. Since about August, end of August of 2021.

6 **Q. And how many hours a week do you work at**
7 **Red Tractor Pizza?**

8 A. It kind of depends. Right now, I'm
9 working more because my manager tore his ACL skiing,
10 but normally I work about 25 to 30 hours a week.

11 **Q. Okay. Kind of going back to all of your**
12 **previous jobs, were any of those jobs that required**
13 **you to work at least 40 hours a week?**

14 A. None of them were required, but when I was
15 working for my dad, I was definitely working 40 to 60
16 hours a week.

17 **Q. Okay. Any of the other jobs that you**
18 **mentioned where you did more than 40 hours a week?**

19 A. Possibly Bridge. I don't remember because
20 the spring of 2020, I wasn't going to school because I
21 wasn't enjoying online schooling and wasn't -- I
22 didn't think it was worth what I was paying. So I
23 just worked at Bridge then, and I was
24 probably working, I think I was working four to five
25 shifts a week.

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1 **Q. Do you still have that email somewhere?**

2 A. Yes, I think so, I believe so.

3 **Q. Okay. Did you ever talk to anybody about**
4 **that email?**

5 A. No.

6 **Q. Do you recall what website the email**
7 **directed you to to register?**

8 A. No.

9 **Q. Did you know who the person was that sent**
10 **you the email?**

11 A. Yes. He was the one who called me about
12 this, all of this. He's the one who wrote my
13 declaration.

14 **Q. Okay. Do you get paychecks or direct**
15 **deposit from your current job?**

16 A. Direct deposit.

17 **Q. Do they provide you with electronic access**
18 **to a pay stub?**

19 A. Yeah, through email and through an app,
20 just like the last job.

21 **Q. And you could print those if you wanted**
22 **to?**

23 A. Yes.

24 **Q. Have you ever had occasion to print any of**
25 **your pay stubs?**

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1 **Q. Okay. Are you getting paid to be a**
2 **witness in this lawsuit?**

3 A. I have to register to be paid, but I'm not
4 completely sure.

5 **Q. What do you mean by you have to register**
6 **to be paid?**

7 A. I got an email in January saying if I
8 wanted to get money out of this, I would have to
9 register myself up. And I --

10 **Q. Register on what, though?**

11 A. Just a website, I believe. I didn't think
12 I would be here in March -- or I mean April, so I
13 never did it.

14 **Q. Why did you think that?**

15 A. I'm not sure. I didn't think I would get
16 a call back.

17 **Q. Okay. Who was the email from that you're**
18 **referencing?**

19 THE WITNESS: Matt, what was his name?
20 Hans?

21 **Q. (By Mr. Knobel) What was the first name?**

22 A. I'm not sure of his -- I can't remember
23 his first name at the moment. It's --

24 **Q. Okay. Do you --**

25 A. I'm not sure.

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1 A. Yeah. I had to do it for my mom once
2 because she wanted to know about taxes.

3 And also, a couple of the houses I was trying to
4 apply for, I had to print my pay stubs so I could show
5 them I was making -- what monthly income I was making
6 at the time.

7 **Q. Okay. So your understanding is that**
8 **you're not getting paid to be a witness in this**
9 **lawsuit, correct?**

10 A. Correct.

11 **Q. And your understanding is that's because**
12 **you didn't register?**

13 A. Yeah, yeah.

14 **Q. Is that right?**

15 A. Correct.

16 **Q. Okay. Any other jobs that you've had that**
17 **we haven't talked about?**

18 A. No -- I mean, the occasional -- I'm always
19 looking on Craigslist for a little bit of work, just
20 helping like rake leaves, or something, but nothing --
21 no major jobs.

22 **Q. Have you done sort of odd jobs like, like**
23 **that before?**

24 A. Yeah. I've done that since I was probably
25 18. Just with like a construction background a little

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1 bit, it's kind of easy to just go and hammer something
 2 back together and get paid for it.
 3 **Q. Okay. Would you, would you say that your**
 4 **parents are politically involved?**
 5 A. Sort of -- no, not really, I wouldn't.
 6 **Q. Why would you --**
 7 A. I would say my grandparents more.
 8 Oh, sorry. Go ahead.
 9 **Q. No, I didn't mean to cut you off. Sorry.**
 10 A. No, that's okay.
 11 **Q. Did you say your grandparents?**
 12 A. I would say my grandparents are more, but
 13 not my parents too much.
 14 **Q. What political involvement are you aware**
 15 **of that your parents have done?**
 16 A. Honestly, they care probably -- I mean, if
 17 you consider school or like golf board, that's about
 18 it. I'm not sure what political things they've done.
 19 **Q. Okay. And what political involvement**
 20 **about your grandparents are you aware of?**
 21 A. My grandma is just really vocal about her
 22 beliefs. I don't know if she has a lot of
 23 involvement, but she just talks about what her
 24 political beliefs are all the time.
 25 **Q. Okay. And is she a Democrat?**

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1 they want to be and who they want.
 2 **Q. Okay. Have you ever been involved in any**
 3 **political campaigns?**
 4 A. No. I helped, well, I helped my friend
 5 run for school president once, but that was it.
 6 **Q. Okay. Have you ever been to any political**
 7 **meetings?**
 8 A. I went to a couple board meetings for my
 9 high school, but -- I don't know, just political high
 10 school stuff, not --
 11 **Q. What board?**
 12 A. The Florence-Carlton High School board.
 13 **Q. Say that again. Sorry.**
 14 A. The Florence-Carlton High School board.
 15 **Q. Okay. Is that like student, is that like**
 16 **student council or is that different?**
 17 A. It's like, it's different. There's
 18 student council there, but then there's like the old
 19 higher-up people who have a say.
 20 **Q. Okay. Did you ever run for student**
 21 **council or the board?**
 22 A. No.
 23 **Q. Okay. Have you ever been to a college**
 24 **Democrats or college Republican meeting?**
 25 A. Uh-uh; no, sir.

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1 A. No.
 2 **Q. Do you know what political party she would**
 3 **characterize herself as?**
 4 A. Very Republican, yeah.
 5 **Q. Okay.**
 6 A. Yeah, yeah.
 7 **Q. And do you know the political leanings of**
 8 **your parents?**
 9 A. Sometimes -- I don't know, my parents are
 10 pretty 50/50.
 11 **Q. Okay. And you're, you're a Democrat,**
 12 **right?**
 13 A. Probably swing more Democrat than
 14 Republican.
 15 **Q. Do you consider yourself a member of the**
 16 **Democrat party?**
 17 A. Not necessarily.
 18 **Q. And why not?**
 19 A. Just certain things I believe in that go a
 20 little differently.
 21 **Q. Do you mind sharing what those are?**
 22 A. Taxes, just giving away free things I
 23 don't think is right.
 24 **Q. Okay.**
 25 A. But I also think everybody should be what

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1 **Q. Okay. What hobbies do you have?**
 2 A. I skateboard, I ski, mountain bike, I'm on
 3 a soccer team right now, play volleyball, I was on --
 4 I want to play softball this summer, just sports
 5 anything, that's active. I like watching movies and
 6 music.
 7 **Q. Okay. Do you play music or --**
 8 A. No. Occasionally will sing in the shower,
 9 but that's it.
 10 **Q. Okay. And are you taking classes right**
 11 **now?**
 12 A. Yes.
 13 **Q. Okay. And did you take classes last**
 14 **semester?**
 15 A. Yes.
 16 **Q. And when I say "last semester," that's**
 17 **referring to fall of 2021. Is that right?**
 18 A. Yes, that's what I was -- yes.
 19 **Q. Okay. And how many credits did you take**
 20 **in fall of 2021?**
 21 A. Fourteen or fifteen. I'm not -- I can't
 22 remember.
 23 **Q. How many credits are you taking right now?**
 24 A. I'm part-time, so I'm taking only seven.
 25 **Q. And why are you part-time now?**

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1 A. Just money. I wanted -- I needed more
2 money, so I'm working more -- or trying to work more.

3 **Q. Okay. In the fall of 2021 when you were**
4 **taking 14 or 15 credits, how many hours were you**
5 **working at that time per week?**

6 A. Per week, probably 10 to 15, or maybe 15
7 to 20 depending on just what week it was, what shifts
8 I got.

9 **Q. Do you remember what your class schedule**
10 **was in the fall of 2021?**

11 A. Roughly, I had a class Monday -- Monday,
12 Wednesday, Friday, I had like a 10 a.m. class, a 1
13 p.m. class, and then a 3 p.m. class.

14 And then Tuesday, Thursdays, I had like a 12:00
15 class, I think, that was like an hour and a half.
16 That was it on Tuesday and Thursdays.

17 **Q. Okay. So then when did you, when did you**
18 **do your 10 to 15 or 15 to 20 hours at work?**

19 A. I would do those on Tuesday, Thursday.
20 And then -- or it was more like a Tuesday, Sunday, and
21 occasional Thursday.

22 **Q. Okay. And would that be just afternoon or**
23 **would you work in the morning, too?**

24 A. Just afternoon.

25 **Q. Okay. So you would -- what would you**

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1 Saturday, Sunday, Monday, Tuesday was playoff and
2 championships.

3 And then for volleyball, it was Sundays -- or
4 Mondays at like 8 p.m. or something like that.

5 **Q. Just once a week, or --**

6 A. Just once a week for volleyball.

7 **Q. And how long was that?**

8 A. Two months, I want to say.

9 **Q. Okay. And like how many hours were the,**
10 **the once-a-week volleyball?**

11 A. Two hours, probably, a week.

12 **Q. Okay.**

13 A. But my math class was five credits, so it
14 was like a 30-hour-a-week class. We'd get two
15 assignments a night, and the homework -- like she, our
16 professor, was very avid on having three to five hours
17 a night of study.

18 **Q. Was that one of the Monday, Wednesday,**
19 **Friday classes?**

20 A. Yeah. But that class went -- I'm sorry, I
21 -- the Tuesday and Thursday was also on those days.
22 It was Monday, Tuesday, Wednesday, Thursday, Friday.

23 **Q. So you had math class every day of the**
24 **week.**

25 A. Every day of the week.

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1 **do -- last fall, what were you doing on the mornings**
2 **of Tuesday and Thursday?**

3 A. Either finding little odd jobs or doing
4 homework.

5 **Q. Okay. Were you doing any like formal**
6 **extracurriculars at the, at the fall 2021 time period?**

7 A. I was on a soccer and a volleyball team.

8 **Q. Intramural or --**

9 A. Intramural, but they were advanced
10 intramural. I don't know if that makes a difference.

11 **Q. What does that mean?**

12 A. It just means like if you actually know
13 how to play the sport rather than just wanting to play
14 a sport. I'm not sure.

15 **Q. Okay.**

16 A. It's just a difference in skill levels.

17 **Q. You said you were doing soccer and --**

18 A. Volleyball.

19 **Q. Okay. And what was your schedule for, for**
20 **those two?**

21 A. Monday and Fridays, soccer was like -- or
22 I don't know, for regular season, soccer was Monday,
23 Friday at five or four.

24 And then play-offs, it was throughout the whole
25 weekend, and then like -- it would be like Fridays,

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1 **Q. Okay. And then you were doing homework**
2 **for that class pretty much every day, too?**

3 A. Yeah. We would have two assignments, one
4 online and one on paper.

5 **Q. And did you complete all that, the**
6 **homework?**

7 A. Yes.

8 **Q. What grade did you get in that class?**

9 A. I don't remember, like a high "C" - low
10 "B."

11 **Q. Was there any other hobbies or**
12 **extracurriculars that you were doing in the fall of**
13 **2021 besides the soccer and volleyball?**

14 A. Just skateboarding, getting ready for ski
15 season.

16 **Q. Okay. And how much, how much time were**
17 **you spending skateboarding in the fall of 2021,**
18 **approximately, per week?**

19 A. I'd try to skateboard an hour or two a
20 day --

21 **Q. Okay.**

22 A. -- so 7 to 14 hours, I guess.

23 **Q. Okay. And then you mentioned some of your**
24 **other hobbies were music and watching movies; is that**
25 **right?**

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1 A. Yeah.
 2 **Q. And you were doing some of that in the**
 3 **fall of 2021 as well?**
 4 A. Occasionally. I mean, I listen to music
 5 every chance I can get, but movies was a little
 6 different. I don't watch as much movies as I used to.
 7 **Q. Okay. In the fall of 2021 --**
 8 A. Oh, sorry.
 9 **Q. -- were you doing much then?**
 10 A. I was probably watching two movies a week,
 11 a movie a week.
 12 **Q. Okay. So in the fall of 2021, you're**
 13 **taking 14 or 15 credits of schooling.**
 14 A. (Nodding head affirmatively.)
 15 **Q. You're doing approximately 15 hours a week**
 16 **at Red Tractor Pizza, give or take.**
 17 A. Hm-hmm [affirmative].
 18 **Q. You're doing volleyball and soccer.**
 19 A. Hm-hmm [affirmative].
 20 **Q. You're doing maybe an odd job sort of here**
 21 **and there, correct?**
 22 A. Correct.
 23 **Q. Okay. Go ahead.**
 24 A. With the soccer and volleyball, they
 25 weren't at the same time. I'd like to clarify that.

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1 **Q. Okay.**
 2 A. As soon as we had our championship game
 3 for soccer, the next day was the start of volleyball,
 4 so then I transitioned to that.
 5 **Q. Okay. Do you smoke marijuana?**
 6 A. Yeah, sometimes.
 7 **Q. Okay. Were you doing that at all in the**
 8 **fall of 2021?**
 9 A. Sometimes.
 10 **Q. How often, approximately, in the fall of**
 11 **2021?**
 12 A. Two - three times a week.
 13 **Q. Okay. Any other, any other activities**
 14 **that you were doing in the fall of 2021 other than the**
 15 **ones that, you know, we just talked about?**
 16 A. Not that I can think of, no.
 17 **Q. Okay. So how many, how many hours a week**
 18 **are you working this semester?**
 19 A. This semester, 25 to 30 a week, probably.
 20 **Q. Okay. And then --**
 21 A. I was pushing more 25.
 22 **Q. Okay. And then you're doing seven**
 23 **credits.**
 24 A. Yes.
 25 **Q. Are you doing any extracurriculars this**

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1 **semester?**
 2 A. Yes. I'm on a soccer team.
 3 **Q. Are you trying to get more hours than,**
 4 **than 25?**
 5 A. Yeah, occa -- well, I just pick up shifts
 6 like as much as much as possible.
 7 **Q. Okay. Do you know how many credits your**
 8 **roommates are taking?**
 9 A. I think they're each -- or two of them are
 10 taking 16, one of them is taking 14.
 11 **Q. And do they have jobs?**
 12 A. Yes, two of them do.
 13 **Q. Do you know how many hours a week they're**
 14 **working?**
 15 A. No. One of them is a ceramics major, so
 16 he just goes to the studio at night and makes stuff
 17 for his work; and then the other one works at a
 18 different pizza place, and I think he's working just
 19 Friday and Saturday.
 20 **Q. Okay. Would you say you're busier now or**
 21 **were you busier in the fall of 2021?**
 22 A. I would say fall of 2021, and that's why
 23 -- I registered for next semester, and I'm taking 17
 24 credits next semester because it's just, 7 is too
 25 little.

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1 **Q. So here in the, in the fall of 2022,**
 2 **you're going to be taking 17 credits?**
 3 A. Yes.
 4 **Q. And what are your plans for the summer?**
 5 A. For the summer, for the month of May, I'll
 6 be back in Florence working for construction, and then
 7 I'm planning on coming back here in June and working
 8 at a golf course until August.
 9 **Q. Okay. And you're going to quit the Red**
 10 **Tractor Pizza job?**
 11 A. Yes, but I already talked to my boss and
 12 told him, like depending on my availability, I could
 13 pick up shifts this summer or -- and if that's not the
 14 case, I would love to get the job back next year when
 15 I am back at school.
 16 **Q. Okay. Ever had any difficulties**
 17 **registering for your classes?**
 18 A. Yes, I have. I was up -- I woke up at
 19 5:55 or 5:45 the other day and waited until 6:00 so I
 20 could get my classes.
 21 And then when I like -- well, the day before
 22 that, two of the classes that I wanted were completely
 23 filled, and then at 6:00 that day when I registered
 24 for my class -- if I didn't register at 6:00, three of
 25 my classes would have been filled.

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1 **Q. Okay. So you --**
 2 A. It's really competitive.
 3 **Q. Okay. Can you explain how you, how you go**
 4 **about registering?**
 5 A. Depending on like what your level of
 6 credits are, you get a certain day, and at 6 a.m. you
 7 open up -- or your -- you get, you get opened up to
 8 pick your classes. I think mine was Wednesday, my day
 9 was Wednesday.
 10 And I just went to my advisor the day before,
 11 had a chat with her, asked her if she agreed and
 12 thought my classes that I chose were okay. And then
 13 she gave me a pin number and told me that 6 a.m. was
 14 when they opened.
 15 **Q. And is it all online?**
 16 A. Schooling or registering?
 17 **Q. No, like the registering.**
 18 A. Pretty much, yeah, it is online. If you
 19 don't get a class, you could talk to the professor and
 20 try to -- like in person and try to get into their
 21 class, but --
 22 **Q. Okay. What's the platform or website**
 23 **called that you use to register for classes?**
 24 A. CatCourse.
 25 **Q. Okay. And you have to log in, I presume.**

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1 **Q. Okay. And do -- did you have to show**
 2 **identification to get your Griz Card?**
 3 A. No. They just search me up and see if I'm
 4 a registered student, and if I'm a registered student,
 5 they give me a Griz Card.
 6 **Q. And do they charge you a fee?**
 7 A. If you lose it and get another one
 8 printed.
 9 **Q. The first one is free, though?**
 10 A. The first one's free.
 11 **Q. Okay. Did you have to -- do you know if**
 12 **you ever had to show an ID to become a registered**
 13 **student at University of Montana in Missoula?**
 14 A. I don't recall. There's a chance that I
 15 had to take a picture and like turn it into a pdf and
 16 send it, because when I was signing up for the U of M,
 17 it was all through COVID -- or it was during COVID, so
 18 it was all online. But I'm, I'm not 100 percent sure
 19 if I sent a picture of my ID or not.
 20 **Q. Okay. Do you know how they determined**
 21 **that you were who you said you were when you went to**
 22 **the UM bookstore to get your student ID?**
 23 A. I had to give them my student ID number
 24 that was sent to my email, so I -- they were just --
 25 that was, that was it.

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1 A. You have to log in with your account, and
 2 then like I was saying, then the advisor gives you a
 3 pin number that you can use to register for classes.
 4 **Q. And has that process changed or is that**
 5 **kind of how it's always been in your experience?**
 6 A. That's how it's always been in my
 7 experience. Even with the University of Montana,
 8 that's pretty much how it was.
 9 **Q. Okay. And did you have a University of**
 10 **Montana ID card?**
 11 A. I did, but I don't have it anymore.
 12 **Q. Why don't you have it anymore?**
 13 A. Some kid grabbed it from me and threw it,
 14 yeah.
 15 **Q. Okay. And do you have a -- is it called a**
 16 **"CatCard"?**
 17 A. Yeah, it's a CatCard. I have my CatCard.
 18 **Q. Okay. Tell me what it required to get**
 19 **your Griz Card.**
 20 A. You just sign up for classes and you go to
 21 the, the sub. I'm not sure what the building is
 22 called at the University of Montana with the
 23 bookstore, but the one at MSU is called the "sub." So
 24 you just go to UM's bookstore area and get a picture
 25 taken, and they print you out a card.

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1 **Q. Okay.**
 2 A. Yeah.
 3 **Q. Do you know if, do you know if, when you**
 4 **gave them your student ID, if they punched it in, and**
 5 **it showed a picture of you, and then they looked at**
 6 **you and determined if it was you?**
 7 A. Possibly.
 8 MR. GORDON: Objection; calls for
 9 speculation.
 10 Go ahead, Gavin.
 11 THE WITNESS: Possibly. I'm not sure.
 12 **Q. (By Mr. Knobel) You just don't know?**
 13 A. I don't know. I just gave -- I remember
 14 going up, giving them my student ID number that was
 15 sent to my email, and they took a picture of me and
 16 printed out a card.
 17 **Q. Okay. Did you ever lose your Griz Card**
 18 **and go to get another one?**
 19 A. No.
 20 **Q. Okay. Tell me what was required to get**
 21 **the CatCard.**
 22 A. Just the same thing. Theirs is under
 23 Miller Dining Hall, if you know where that's at.
 24 But I just went there, I was like, "My name is
 25 Gavin Zaluski. My student ID is this," and they took

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1 a picture of me and printed it out.
 2 **Q. Do you remember if you had to show them an**
 3 **identification card?**

4 A. No, I don't think I had to.

5 **Q. Okay. Do you know if you had to pay a**
 6 **fee?**

7 A. No, I didn't have to pay a fee. He just
 8 told me if I lose it, next time it will be \$15.

9 MR. KNOBEL: Okay. Well, we've been going
 10 for an hour here. Do you guys mind if we take a
 11 five-minute break?

12 MR. GORDON: Yeah. Can we make it 10
 13 minutes, Counsel? I just have to run to --

14 MR. KNOBEL: Yeah, let's make it 10
 15 minutes. Let's go off the record. Thank you.

16 COURT REPORTER: Okay. The time is 10:00
 17 a.m. We are off the record.

18 (A brief recess was taken.)

19 COURT REPORTER: Okay. The time is 10:12
 20 a.m. We are on the record.

21 BY MR. KNOBEL:

22 **Q. Gavin, do you have your phone near you?**

23 A. Yeah. It's in my pocket.

24 **Q. All right. Would you be able to find that**
 25 **email that you referenced earlier in your deposition?**

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1 **Q. Okay. Did you --**

2 A. Sorry about that.

3 **Q. Did you do anything to provide documents**
 4 **or to bring documents with you to this deposition?**

5 A. I brought my declaration.

6 **Q. Okay. Were you, were you aware that there**
 7 **was a request for you to bring certain documents to**
 8 **this deposition?**

9 A. Yes. And I brought my IDs, like what --

10 **Q. Say that again.**

11 A. I brought my IDs as well, but the other
 12 documents I did not have.

13 **Q. Okay. So did you review a document that**
 14 **was titled "Notice of Deposition of Gavin Zaluski"?**

15 A. No.

16 **Q. Okay. So how did you know which documents**
 17 **were requested?**

18 A. Matthew and I talked about it.

19 **Q. Okay. So one of the, one of the requested**
 20 **documents was communications with the plaintiffs'**
 21 **attorneys in this case. Didn't you testify that the**
 22 **email that you were just looking for was a**
 23 **communication with the plaintiffs' attorneys?**

24 A. Yes.

25 **Q. Okay. Do you have any other written**

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1 A. Yeah, sure. Let me --

2 **Q. Would you look for it?**

3 MR. GORDON: Counsel, can you clarify
 4 which email you're asking him to look for?

5 MR. KNOBEL: Yeah. Gavin testified
 6 earlier about an email he had received about
 7 registering.

8 **Q. (By Mr. Knobel) Do you know, Gavin, do you**
 9 **know what email I'm talking about?**

10 A. Yeah, I know what you're talking about.
 11 Let me see -- (perusing cellular phone.)

12 **Q. And once you find it, just let me know,**
 13 **and I'll ask you -- I've got a couple questions.**

14 A. Yeah, sounds good. Sorry, it was awhile
 15 ago -- (perusing cellular phone.)

16 I'm having trouble finding it.

17 **Q. Okay. Are you not able to find it or do**
 18 **you just -- would you need more time to do so?**

19 A. I'm not -- just I don't think I'm able to
 20 find it right now. I'm still looking, but -- (pause.)

21 **Q. Okay. Well, if you get to a point where**
 22 **you don't believe you're going to be able to find it,**
 23 **tell me.**

24 A. Yeah -- (perusing cellular phone.)

25 Yeah, I'm not finding it.

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1 **communications with the plaintiffs' attorneys?**

2 A. Yeah. I have -- (videoconference
 3 malfunction.)

4 COURT REPORTER: And I think we might have
 5 -- at least on my end, I lost you there. Okay.

6 **Q. (By Mr. Knobel) Yeah. Can you say that**
 7 **again, Gavin? You cut out.**

8 **Can you hear us, Gavin?**

9 A. Oh, there. Yeah, I can hear you guys now.

10 **Q. Okay. You cut out there for a second, so**
 11 **if you could repeat your answer to my question about**
 12 **your, your written communications with Plaintiffs'**
 13 **attorneys.**

14 A. Yes. I got two emails from him. One was
 15 just an email of our -- my declaration, and then the
 16 other email just says: Perfect. Many thanks.

17 **Q. Okay. And then, and then also the one**
 18 **that you had mentioned about registration, correct?**

19 A. Yes, but I can't find that.

20 **Q. Okay. And do you know who sent you that**
 21 **one?**

22 A. It should be from Henry Brewster.

23 **Q. Okay. And is that the -- is Henry**
 24 **Brewster the person you worked with on your**
 25 **declaration?**

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1 A. Yes, I think so.
 2 **Q. Okay. What other attorneys have you**
 3 **worked with on your declaration?**
 4 A. I think just Henry, but -- and Matt, but I
 5 didn't really work -- just Henry -- or he goes by
 6 "Hal." That's what I was thinking of.
 7 **Q. Okay. And have you had any written**
 8 **communications with anybody else besides the attorneys**
 9 **with respect to this lawsuit?**
 10 A. No.
 11 **Q. Okay. Do you have an understanding of who**
 12 **the plaintiff is in the lawsuit?**
 13 A. No.
 14 **Q. Okay. Do you know who the defendant is?**
 15 A. I think so, maybe, know.
 16 **Q. Okay. And do you have, do you have any**
 17 **written communications with anybody about voter**
 18 **registration issues?**
 19 A. No.
 20 **Q. Okay. You've never, you've never sent any**
 21 **emails or received any emails that relate to voter**
 22 **registration?**
 23 A. No. I only -- Hal called me after I
 24 wasn't able to vote and asked me some questions.
 25 **Q. Okay. Any written communications with the**

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1 go to vote yesterday? Were you able to? Are you
 2 upset that you couldn't? Why weren't you able to?"
 3 pretty much questions like that.
 4 **Q. Okay. Did he explain to you who he was or**
 5 **who he was representing?**
 6 A. Yeah. We talked about it a little bit.
 7 **Q. Okay. What did he say?**
 8 A. He said he was fighting to make it able to
 9 register the day of voting.
 10 **Q. Okay. What date did he call you? Do you**
 11 **remember?**
 12 A. No, I don't remember the exact date. Let
 13 me see. It was --
 14 **Q. And what document are you looking at now?**
 15 A. I'm just looking at my declaration,
 16 looking at the date that I went to vote -- (perusing
 17 document.)
 18 He either called me on November 2nd or November
 19 3rd.
 20 **Q. Okay. Did you, did you ask him -- or let**
 21 **me, let me go back.**
 22 **When he called you, did a number show up on your**
 23 **phone that he was calling from?**
 24 A. I think it just came up as "Hal Brewster."
 25 **Q. Okay. Did it --**

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1 **County about voter registration?**
 2 A. No, none that I know of.
 3 **Q. Okay. So how did, how did you get**
 4 **involved with this lawsuit?**
 5 A. I went to vote and they wouldn't let me,
 6 so I registered, and then the next day I got a phone
 7 call.
 8 **Q. Who did you get a phone call from?**
 9 A. Hal.
 10 **Q. How did he, how did Hal know to call you?**
 11 MR. GORDON: Objection; foundation,
 12 speculation.
 13 Go ahead, Gavin.
 14 THE WITNESS: I'm not sure. I guess he
 15 just saw - (inaudible, videoconference malfunction) -
 16 registered.
 17 **Q. (By Mr. Knobel) Can you say that one more**
 18 **time? You broke up here.**
 19 A. I'm not sure. I guess he just saw that I
 20 wasn't able to vote but I had registered.
 21 **Q. Did he call you on your cell phone?**
 22 A. Yes.
 23 **Q. Okay. Did he -- what did he say to you?**
 24 A. He just asked some simple questions and
 25 that like were on the line of, "Where did -- did you

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1 A. Yeah.
 2 **Q. Did it say the location where the number**
 3 **was from?**
 4 A. Yeah, it said "Billings."
 5 **Q. Okay. So you got a call from a Billings**
 6 **number that said it was Hal Brewster?**
 7 A. Yes.
 8 **Q. Okay. And at that, at the time that he**
 9 **had called, who had you told, at that point who had**
 10 **you told that you didn't -- you weren't able to vote**
 11 **in the November 2021 election?**
 12 A. Just my roommates. I was with them at the
 13 time. We were all -- or not "all" of us, but three of
 14 us, so two of my roommates and I went to go vote, and
 15 I wasn't able to. That's all I told other than the
 16 person who made me register while I was there.
 17 **Q. Okay. Do you remember who that was?**
 18 A. No. It was, I think, a college student or
 19 just some -- it was just a girl, that's all I
 20 remember.
 21 **Q. Okay. Are your roommates Democrats?**
 22 A. Yes.
 23 **Q. Okay. Are they politically active?**
 24 A. No.
 25 **Q. Why do you, why do you say that they're**

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1 Democrats?

2 A. Two of them are from Portland, one is from
3 Boulder, Colorado.

**4 Q. Okay. And how did you, how did you meet
5 your current roommates?**

6 A. I met Sebastian, one of the two from
7 Portland, freshman year of college. And when I was
8 living in Missoula, he came and stayed at my house a
9 couple times. And he said he was going to move back
10 to Bozeman, I told him I was going to move back to
11 Bozeman, and then he introduced me to my two other
12 roommates.

13 Q. Okay. Where did you meet the first one?

14 A. Oh, sorry, in the dorms.

15 Q. Okay. Do you party?

16 A. Sometimes.

**17 Q. Okay. You didn't meet them at a party or
18 anything like that?**

19 A. No. My friend -- Sebastian is a film
20 major, and my friends are really into skiing, so
21 they're pretty -- they do hardcore stuff and were
22 trying to get someone to film them.

23 Q. Okay.

24 A. And he just happened to walk in the room
25 while I was in there.

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1 A. It either, it either came up as "Hal" or
2 "Henry," but yes, it came up with a name, not a
3 number.

4 Q. Okay.

5 A. It didn't say anything when I got a call
6 from Matt.

**7 Q. Okay. Did you have, did you have any of
8 those numbers saved in your phone as a contact?**

9 A. No.

**10 Q. Okay. Did you ask Hal -- or -- Hal how he
11 got your number?**

12 A. Yeah, I did.

13 Q. Okay. What did he say?

14 A. He just saw I wasn't able to vote and was
15 able to get my number through there.

**16 Q. When he said "through there," did you have
17 an understanding of what that meant?**

18 A. Yeah. I think it meant -- well, I guess
19 not a complete understanding, but I believe it meant
20 like when I registered because I had to put my phone
21 number down, my Social Security, and all that.

**22 Q. Okay. And when you say you registered and
23 you put your phone number down, are you talking about
24 the November 2021 registration?**

25 A. Yes.

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**1 Q. Okay. Did you, did you guys hit it off
2 well because you also ski, or did that come into it?**

3 A. Sort of. We didn't really -- I wouldn't
4 say we hit it off like perfect. Like we didn't have
5 anything against each other; it just, it kind of took
6 time to become friends. We would see each other on
7 the occasion, but I don't know, we just got along
8 fine.

9 So I told him if he ever needed a place to stay
10 in Missoula, he had one. And he stayed twice, and
11 that's kind of how we got to know each other a little
12 more.

13 And honestly, moving in together, we weren't
14 really like very close at the time. It was kind of
15 just like we both knew we needed a roommate and we
16 both knew we had things in common, so we'd just work
17 out.

**18 Q. Okay. When you got the phone call from
19 Hal Brewster, why did you answer?**

20 A. I was just sitting on my couch. And I
21 normally answer the phone.

22 Q. Okay. And what kind of phone do you have?

23 A. An iPhone.

**24 Q. Okay. And it actually came up with his
25 name? It wasn't just a number?**

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1 Q. Okay. And what's your phone number?

2 A. It's 406-360-6561.

**3 Q. Okay. Were you upset at all that he had
4 called you, at all?**

5 A. No. I don't know, I think I was just
6 doing homework or studying, or something.

**7 Q. Did you ask him how he found out that you
8 weren't able to vote?**

9 A. At first it caught me on surprise -- it
10 was surprising. I didn't know how he would know and
11 how it was so soon after. But he kind of just
12 explained to me his job, and it made more sense.

13 Q. Okay. What did he, what did he say?

14 A. He just said he's part of the Democratic
15 team trying to get -- make it so that you can register
16 the day of and then vote, and I guess what -- my
17 reason I wasn't able to vote is because I was a day
18 late to register.

**19 Q. Okay. What else, what else do you
20 remember about that, that first phone call?**

21 A. He just said he was going to call me back
22 a couple other times and just have a couple more
23 conversations, and then he would -- then I like didn't
24 hear from him until probably January, and that's when
25 he called me again.

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1 He asked if I would give out a declaration.
 2 And I said, "Yes."
 3 And then he sent me an email, which that was the
 4 email I was able to find, was the declaration, and
 5 then I found that other email which was what I said
 6 earlier. And then we haven't really talked since.
 7 **Q. So he didn't ask you to sign a declaration**
 8 **in that first phone call in November?**
 9 A. No.
 10 **Q. How --**
 11 A. It was later.
 12 **Q. Well, okay. What was the -- how did that**
 13 **conversation end in November?**
 14 A. He just asked questions and I gave him
 15 answers -- or I just -- he just asked me about voting.
 16 And I told him what happened, and I told him
 17 that I would have voted if I could have.
 18 And he just asked if I could get another call
 19 from him in the future.
 20 And I said, "Yes."
 21 **Q. Okay. So to this day, you don't, you**
 22 **don't have a specific understanding of exactly how he**
 23 **figured out your informa -- your phone number and the**
 24 **fact that you hadn't voted; is that fair?**
 25 A. Yeah, that's fair. I guess I don't know

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1 like questions that I could answer on the declaration.
 2 **Q. Okay. And then he wrote the declaration**
 3 **and then emailed it to you?**
 4 A. Yes.
 5 **Q. Okay. And was that in January as well?**
 6 A. Yes.
 7 **Q. Did you responded and say "perfect" or**
 8 **"looks good," or what?**
 9 A. I said it looked fine, but -- yeah, I just
 10 said it looked fine.
 11 He called me back and asked if I got it.
 12 I said, "Yeah. I just read it. I'll sign it
 13 and send it over."
 14 **Q. Okay. So then, what, did you print it off**
 15 **on your home printer or what did you do?**
 16 A. Yeah, I printed it off on my home printer.
 17 **Q. Okay. And then you signed it. And then**
 18 **did you scan it and send it back, or what?**
 19 A. I used, I used DocuSign to sign it.
 20 **Q. Okay. And then you emailed it back to**
 21 **Hal?**
 22 A. Yes.
 23 **Q. And then did you hear from him again?**
 24 A. No, I don't think so.
 25 **Q. Okay. Are you -- go ahead.**

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1 exactly, but --
 2 **Q. Okay. So why did you agree to sign a**
 3 **declaration?**
 4 A. I don't know. I just said "yes" because
 5 he said it would help, but --
 6 **Q. Okay. So you personally support being**
 7 **able to register to vote and vote on the same day,**
 8 **whether that's the day of the election or the day**
 9 **before?**
 10 A. Yeah.
 11 **Q. Had you thought about that issue much**
 12 **prior to this incident in November?**
 13 A. No, because I didn't think it would be an
 14 issue.
 15 **Q. Okay. And why do you support Election Day**
 16 **registration?**
 17 A. For people who are busy. I don't know, I
 18 had exams that week, and work, so it's kind of hard
 19 sometimes to get certain places or find the time. So
 20 when I found the time, I took advantage of it.
 21 **Q. Okay. So during that January phone call,**
 22 **is that -- did he ask you more questions then about**
 23 **what had happened or did he already have enough**
 24 **information? Do you know?**
 25 A. He asked me questions, but it was more

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1 A. Yeah. He called me back -- or, yeah, he
 2 just got ahold of me and told me about Matthew one
 3 other time, and I think that was in March.
 4 **Q. Okay. And, then, since then have you been**
 5 **dealing more with Matthew or Hal?**
 6 A. I didn't hear from Hal since and I've
 7 talked to Matthew twice.
 8 **Q. And that was about this deposition?**
 9 A. Yeah. And on the first time, he was just
 10 calling me to introduce himself.
 11 **Q. Okay. You said earlier that your**
 12 **roommates are not politically active. How do you know**
 13 **that?**
 14 A. They're just, I don't know, they're not
 15 doing anything politically active at the moment.
 16 **Q. Okay. Are you familiar with Montana Youth**
 17 **Action?**
 18 A. Yes.
 19 **Q. Okay. How?**
 20 A. My old roommate Isaac kind of supported
 21 it.
 22 **Q. Okay. What's Isaac's last name?**
 23 A. Mills.
 24 **Q. Okay. And what's your understanding of**
 25 **what is Montana Youth Action?**

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1 A. I'm not -- I don't have a huge
2 understanding on it, but he like was part of under --
3 or people without majors, or something. I'm not sure.
4 **Q. Okay.**
5 A. It was pretty -- when he was doing it or
6 was kind of part of it, it was right when I first had
7 met him, so I didn't ask a lot about it.
8 **Q. And have you ever, have you ever joined**
9 **Montana Youth Action?**
10 A. No.
11 **Q. Ever been to their website?**
12 A. No.
13 **Q. Ever been to their social media pages?**
14 A. No.
15 **Q. Do you know if Isaac is a Democrat?**
16 A. Yes.
17 **Q. And he is a Democrat?**
18 A. Yes.
19 **Q. Okay. Do you have any other knowledge**
20 **about Montana Youth Action other than what you have**
21 **said?**
22 A. No.
23 **Q. Are you familiar with Forward Montana?**
24 A. A little bit, yes.
25 **Q. Okay. What's your understanding of**

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1 **does, or --**
2 A. Uh-uh [negative]. It says: Click here to
3 find more information.
4 **Q. Okay. And why haven't you ever clicked on**
5 **it?**
6 A. I don't know.
7 **Q. Okay. Ever been to Forward Montana's**
8 **social media pages or web page?**
9 A. No.
10 **Q. Are you familiar with Montana Public**
11 **Interest Group?**
12 A. No.
13 **Q. Are you familiar with MontPIRG?**
14 A. Say that again. Sorry.
15 **Q. MontPIRG.**
16 A. No.
17 **Q. Okay. You've never heard of the Montana**
18 **Public Interest Research Group?**
19 A. Uh-uh [negative].
20 **Q. Okay. Are you familiar with the Montana**
21 **Democratic Party?**
22 A. A little bit.
23 **Q. Okay. What's your understanding of, of**
24 **the Montana Democratic Party?**
25 A. It's the Montana Democratic group. I

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1 **Forward Montana?**
2 A. I don't know too much about it. I just
3 know of it through the school. They'll send emails
4 about it sometimes.
5 **Q. The university will send emails about**
6 **Forward Montana?**
7 A. Yes.
8 **Q. Okay. From what part of the school or**
9 **from who?**
10 A. Just maybe advisors. I'm not sure. Just
11 the school, I think -- I couldn't give you like a
12 solid answer on that.
13 **Q. Okay.**
14 A. I don't know all the people who email me.
15 **Q. Say that last part again.**
16 A. I don't know all the people who email for
17 MSU.
18 **Q. Okay. What's your --**
19 A. They're not always my advisor.
20 **Q. Okay. If you're a member, what are sort**
21 **of -- what do those emails say about Forward Montana?**
22 A. There's always like a little tiny
23 description and then a "click here," and I haven't
24 clicked there.
25 **Q. Okay. Does it say what Forward Montana**

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1 don't know other than that.
2 **Q. Okay.**
3 A. Not too much research.
4 **Q. Okay. Have you ever, have you ever been**
5 **involved with the Montana Democratic Party in any way?**
6 A. No.
7 **Q. Other than this lawsuit, I mean.**
8 A. Yeah; other than this lawsuit, no.
9 **Q. Okay. Do you consider yourself involved**
10 **with the Montana Democratic Party as a result of your**
11 **involvement in this lawsuit?**
12 A. Other than this, no, not really.
13 **Q. Have you communicated with any other**
14 **attorneys other than the ones you've already**
15 **mentioned?**
16 A. No.
17 MR. KNOBEL: Okay. I'm going to mark
18 Gavin Zaluski's declaration as Exhibit 45. Matthew,
19 if you've got your copy - I know Gavin has his copy -
20 I won't share my screen, if that's okay with you.
21 MR. GORDON: That's fine with me.
22 Just, Gavin, you have your copy of the
23 declaration?
24 THE WITNESS: Yeah, I do.
25 MR. GORDON: Okay. Yeah, that's fine.

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1 (Document subsequently marked Deposition
2 Exb. 45 for identification.)
3 **Q. (By Mr. Knobel) Okay. So let's just start**
4 **with Paragraph, Paragraph 1. And the second sentence,**
5 **the second part of the second sentence says that you**
6 **make this declaration based -- or:**
7 **"based upon my personal knowledge and**
8 **experience, and in support of Plaintiffs' application**
9 **for preliminary injunction in the above-captioned**
10 **matter."**
11 **Do you see that?**
12 A. Yeah.
13 **Q. What's your understanding of what that**
14 **means?**
15 A. My understanding, my personal knowledge at
16 the time when I was talking to Henry about this -- or
17 Hal, was just what he had told me about how like when
18 I wasn't -- when I went to vote and I wasn't able to.
19 That was about my personal experience.
20 **Q. Okay. Do you know, do you know what**
21 **"Plaintiffs' application for preliminary injunction"**
22 **means?**
23 A. Not exactly.
24 **Q. Okay. Do you know, do you know what the**
25 **plaintiffs were requesting in their application for**

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1 **the plaintiffs' application for preliminary**
2 **injunction?**
3 A. No.
4 **Q. Okay. So when you reviewed the, when you**
5 **reviewed your declaration, you didn't have any**
6 **concerns about the Paragraph 1 stating that you make**
7 **the declaration in support of Plaintiffs' application**
8 **for preliminary injunction?**
9 A. I just didn't ask. I should have.
10 **Q. Okay. Can you -- okay, that's all right.**
11 **Do you have an understanding of how the**
12 **plaintiffs used your declaration in this lawsuit?**
13 A. A little bit, yeah.
14 **Q. And what's your understanding of that?**
15 A. They're using it to -- like my voice or my
16 experience as proof. I'm not sure, I guess.
17 **Q. Okay. Are you still 20 years old?**
18 A. Yes.
19 **Q. Okay. And when's your birthday?**
20 A. June 6th.
21 **Q. 2001?**
22 A. Yes, sir.
23 **Q. Okay. Do you know what it means to**
24 **preregister to vote?**
25 A. I think I have an understanding of it,

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1 **preliminary injunction?**
2 A. No -- like to make the change to law on
3 voting days or voting registration days.
4 **Q. Okay. So make it so that people can vote**
5 **on Election Day; is that right?**
6 A. Yes.
7 **Q. And do you have an understanding about the**
8 **status of Plaintiffs' application for preliminary**
9 **injunction?**
10 A. No.
11 **Q. Have you seen any news articles about this**
12 **lawsuit?**
13 A. I have not.
14 **Q. Okay. Do you have any plans to do another**
15 **declaration?**
16 A. No.
17 **Q. Okay. Do you plan to testify at trial, if**
18 **there is one?**
19 A. Possibly. Henry asked me about it.
20 **Q. And what did you say?**
21 A. I said, "Maybe, if I have, if I have the
22 time when it happens."
23 He said it was like June 20-something. Is that
24 right?
25 **Q. Sounds right. Did you talk to Hal about**

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1 yeah.
2 **Q. Okay. What's your understanding of what**
3 **it means to preregister to vote?**
4 A. Register -- going to like a registration -
5 what's the word I'm looking for - like a registration
6 booth somewhere outside before voting -- like not
7 "outside" but just outside of the voting area. Like
8 MSU has registration booths set up throughout campus.
9 **Q. Okay. Did you register to vote before you**
10 **turned 18?**
11 A. No.
12 **Q. Okay. When did you first register to**
13 **vote?**
14 A. I'm not sure what month, but I went with
15 my mom in Ravalli County when I was 18.
16 COURT REPORTER: I didn't catch after you
17 said with your mom. Sorry.
18 THE WITNESS: Oh, it was in Ravalli County
19 when I was 18.
20 **Q. (By Mr. Knobel) And do you remember when,**
21 **when exactly that was?**
22 A. No, I do not.
23 **Q. Was it, I mean was it like right after you**
24 **turned 18 or months later, or do you know?**
25 A. I think it was like either August or

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1 September.

2 **Q. Okay. And why did you go to register to**
3 **vote that first, that first time?**

4 A. My mom was doing it and she asked if I
5 wanted to go register, so I said "yes."

6 **Q. Were you in high school at the time or had**
7 **you -- you had graduated.**

8 A. I had graduated. That's when I was
9 working construction with my dad.

10 **Q. And you were about to go to University of**
11 **Montana, is that right, or no?**

12 A. Montana State.

13 **Q. Okay.**

14 A. I was going to go to Montana State three
15 months later. That was about the time I was
16 registering and picking out classes.

17 **Q. Okay. So where did you go to register to**
18 **vote that first time in Ravalli County?**

19 A. The school.

20 **Q. Okay. Why did you go to the school?**

21 A. That's where they were holding it.

22 **Q. That's where there was what?**

23 A. In the high school gym is one of the
24 places they were holding registrations.

25 **Q. Okay. And when you say "they" were**

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1 A. I think -- I'm not sure. I think it was
2 the County, but I don't know.

3 **Q. Okay. Did you fill out a registration**
4 **form?**

5 A. Yes.

6 **Q. And did you use your Ravalli County**
7 **address?**

8 A. Yes.

9 **Q. Do you remember what that was?**

10 A. 5608 Trinity Way.

11 **Q. Okay. Did you ever receive a voter**
12 **registration card in Ravalli County?**

13 A. I don't know. I think, maybe. I'm not
14 sure.

15 **Q. Okay. Did you ever vote in any elections**
16 **in Ravalli County?**

17 A. No, because by the -- I already moved to
18 Bozeman.

19 **Q. Okay. So when you're talking about that**
20 **sort of late summer - early fall time period when you**
21 **registered in Ravalli County, that was when you were**
22 **18, which would have made it sometime in late 2019,**
23 **correct?**

24 A. Yes.

25 **Q. Okay. And do you know if there was an**

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1 **holding registrations, who were you referring to?**

2 A. I don't know, whoever deals with that.
3 They just -- it's a small town, so they always do it
4 in the high school gym.

5 **Q. Was there, was there an election that day?**

6 A. No, but there was an election coming up.

7 **Q. Okay. And was it a, was it a one-time**
8 **thing that a registration was available in the gym or**
9 **was that like an everyday thing?**

10 A. It was like an everyday thing for a week.

11 **Q. Do you know if you successfully registered**
12 **to vote that time?**

13 A. Yes.

14 **Q. Okay. And how do you know that?**

15 A. My mom told me. I don't know.

16 **Q. Okay. During that week time period that**
17 **they were holding the voter registrations in the gym,**
18 **how soon before the election was that?**

19 A. A month, I think; two months, maybe.

20 **Q. Okay. And do you have an understanding of**
21 **why they chose that particular week to do it?**

22 A. No, I have no idea.

23 **Q. Okay. Is it your understanding that it**
24 **was, it was the County that was doing that or was it a**
25 **third-party organization?**

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1 **election in Montana in 2019?**

2 A. No. I think there was, but I'm not sure.
3 I wasn't -- I had already left by then if there was.

4 **Q. Okay. When you registered in Ravalli**
5 **County, did you check the box on the registration form**
6 **to vote absentee?**

7 A. To vote what?

8 **Q. To vote absentee.**

9 A. Maybe. I don't remember. I was --

10 **Q. Okay.**

11 A. That was awhile ago.

12 **Q. Who did you talk to about your voter**
13 **registration in Ravalli County during that time period**
14 **when you registered?**

15 A. I don't know.

16 **Q. Okay. Did you talk to the people that**
17 **were helping you register?**

18 A. The people working there, yeah.

19 **Q. And what do you remember about that?**

20 A. I just asked them what to do. They sent
21 me like to a table, and then basically just talked to
22 my mom about it for the rest of the time.

23 **Q. Okay.**

24 A. Yeah.

25 **Q. And do you know if there were municipal**

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1 **primary elections in September of 2019?**

2 A. No, I don't remember.

3 **Q. Okay. And is it fair to say that by**
4 **November 5th of 2019, you had already moved away from**
5 **Ravalli County?**

6 A. No. I was probably still, I was probably
7 still in Ravalli -- or I was in Ravalli County by then
8 still.

9 **Q. Okay. And you don't know if there were**
10 **municipal elections in Ravalli County in November of**
11 **2019, or do you?**

12 A. No, I don't remember. I just registered
13 because I was 18.

14 **Q. Do you think it's possible that you did**
15 **not register in Ravalli County ever?**

16 A. I mean, unless I messed something up, but
17 I remember going and filling out a registration sheet.
18 But I --

19 **Q. Okay.**

20 A. -- I think I registered.

21 **Q. But you don't --**

22 A. I don't, I don't know if it didn't -- like
23 I said, messed up. I don't know.

24 **Q. Okay. But you don't specifically remember**
25 **getting a registration confirmation card, correct?**

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1 A. I think that's where -- what he's talking
2 about.

3 **Q. Okay. So when you're -- during that time**
4 **period when you went to Bozeman and then came back,**
5 **you never registered to vote in Bozeman; is that**
6 **right?**

7 A. That's right.

8 **Q. At least that time.**

9 A. Yeah, not at that time.

10 **Q. Okay. So then you moved back to Florence**
11 **and then you moved to Missoula. And that was the next**
12 **time you registered to vote, was in Missoula.**

13 A. Yes, for the main presidential election.

14 **Q. Of 2020.**

15 A. Yeah.

16 **Q. Okay. And when did you register to vote**
17 **in Missoula, approximately?**

18 A. September, I think --

19 **Q. Okay.**

20 A. -- or October. I can't remember.

21 **Q. Okay. And how did you register to vote in**
22 **Missoula?**

23 A. I did it through the mail.

24 **Q. Okay. Did you print the form off**
25 **yourself?**

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1 A. No. I remember getting one when I was in
2 Missoula, but I don't remember getting one in Ravalli.

3 **Q. Okay. And you've never voted in Ravalli**
4 **County, correct?**

5 A. No.

6 **Q. Okay. So in Paragraph 2 of your**
7 **declaration, it says: When I turned 18, I registered**
8 **to vote in Ravalli County, where I resided at the**
9 **time.**

10 **Do you see that?**

11 A. Yeah, I see that.

12 **Q. Okay. And then it says: "Shortly after**
13 **my 19th birthday, I moved to Missoula, Montana and**
14 **updated my registration to that address."**

15 **Do you see that?**

16 A. Yes.

17 **Q. Okay. Did you move from Ravalli County to**
18 **Missoula or from Ravalli County to Bozeman at that**
19 **time?**

20 A. I was, I was at -- well, originally when I
21 was 18, I was from Missoula to Bozeman, but then I
22 came back to -- or not "Missoula"; Florence to
23 Bozeman. Then I came back to Florence and moved to
24 Missoula.

25 **Q. Okay.**

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1 A. No. They sent it to me.

2 **Q. Okay. And how did they, how did they know**
3 **to send it to you?**

4 A. I don't know. I was 18 -- or I was 19.

5 **Q. You didn't request a voter registration**
6 **form to be sent to you?**

7 A. No. All three -- or two of my roommates
8 at the time, so three of us, we all got one in the
9 mail.

10 **Q. Okay. And who was it from? Do you know?**

11 A. No. The main voting -- I don't know. I
12 don't have the envelope.

13 **Q. Say that again.**

14 A. I don't know where -- it just said: "Vote
15 registration 2020" on it. I don't know the --

16 **Q. Do you know if -- was it Missoula County**
17 **that sent it or somebody else?**

18 A. It could have been Missoula County. I
19 think it was Missoula County. I'm not sure.

20 **Q. Okay. At that time when you registered,**
21 **were you intending to stay in Missoula long term?**

22 A. At that time, yeah, I was. And then
23 around December --

24 **Q. Okay. So September 2020, you get the**
25 **voter registration form in the mail, and you filled it**

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1 out and then mailed it back; is that right?

2 A. Yes. And then I, when I went to vote, I
3 voted in person.

4 Q. Okay. When you did your 2020 voter
5 registration in Missoula, did you check the box to
6 receive your ballot in the mail?

7 A. Yes. I did receive a ballot in the mail,
8 but I still voted in person.

9 Q. Okay. And why did you check the box to
10 receive your ballot in the mail when you registered in
11 Missoula in 2020?

12 A. Because I didn't think I was going to go
13 to the booth because of COVID, but I decided to
14 because I was just right next to it at the time. I
15 don't know, it was next to the skate park.

16 Q. Okay. And did you have any difficulties
17 filling out your voter registration form and mailing
18 it?

19 A. No, not that I remember.

20 Q. Okay. Do you remember where you dropped
21 it off in terms of mailing it?

22 A. Yeah. I went to the post office in
23 Missoula and dropped it off in there.

24 Q. Okay.

25 MR. GORDON: Counsel, is there a good time

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1 A. No.

2 Q. Okay. And I think you said you do
3 remember getting the registration confirmation card in
4 the mail from Missoula. Is that right?

5 A. That is right.

6 Q. Okay. And what did you do with that voter
7 registration card?

8 A. I kept it at my desk at the time. I don't
9 have it anymore. I have my Bozeman one.

10 Q. Okay. Did you eventually throw it out,
11 or --

12 A. Yeah, I just threw it away.

13 Q. Okay. How did you -- okay, let me ask you
14 this: Would you have registered to vote in Missoula
15 in 2020 even if they hadn't mailed you the voter
16 registration form?

17 A. Yes.

18 Q. And why do you say that?

19 A. It was a presidential race.

20 Q. Okay. So you were going to -- you were
21 planning to register anyway, and it just was easy that
22 they had mailed you the form?

23 A. Yes.

24 Q. Okay. Have you ever checked your voter
25 registration status online?

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1 -- is now a good time for a break or sometime in the
2 next few minutes?

3 MR. KNOBEL: Yeah, we can take another
4 break. Let's go off the record.

5 COURT REPORTER: The time is 11:05
6 Mountain Time. We are off the record.

7 (A brief recess was taken.)

8 COURT REPORTER: The Time is 11:17 a.m.
9 Mountain Time. We are on the record.

10 BY MR. KNOBEL:

11 Q. You have a Montana driver's license,
12 correct?

13 A. Yes, sir.

14 Q. Okay. And you've got a Social Security
15 number as well, correct?

16 A. Yes.

17 Q. And when you registered to vote in 2020 in
18 Missoula via mail, you filled out your driver's
19 license number and the last four of your Social
20 Security number on your voter registration form,
21 correct?

22 A. Yes.

23 Q. Okay. And so you didn't, you didn't have
24 to show an ID, a photo ID to register to vote in
25 Missoula in 2020, right?

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1 A. No.

2 Q. Are you aware that in Montana, you can,
3 you can check your voter registration status online?

4 A. Yeah, I would assume so, but I didn't,
5 just didn't ever do it.

6 Q. Okay. Why not?

7 A. I don't know, just didn't. I didn't
8 think, think about it.

9 Q. So after you received your voter
10 confirmation card in the mail that you said you put at
11 your desk, then you also received the 2020 general
12 election ballot in the mail; is that right?

13 A. Yes.

14 Q. Okay. And what did you do with the ballot
15 when you got it?

16 A. I filled it out, and then it got like
17 water all over it because I left it on my dining room
18 table. And then I -- that's why I voted in person.

19 Q. Okay. So did you just throw out your
20 ballot that got water on it?

21 A. Yes.

22 Q. Okay. And then did you wait until
23 Election Day 2020 to vote in person?

24 A. No. It was a few, a few days before, I
25 believe.

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1 **Q. Okay. And where did you go to vote?**
2 A. It was like a warehouse ordeal. I'm not
3 -- it was on -- it was near Broadway and Orange
4 Street.
5 **Q. Okay. Is it your understanding that that**
6 **was not the normal Missoula County Elections Office?**
7 A. Yeah. They were doing it because of
8 COVID.
9 **Q. And what did you, what did you say when**
10 **you got there?**
11 A. What did I say when I got there? I don't
12 know. It was, it was weird. We had to drive in a
13 line, and they gave it to us in our car.
14 **Q. And, then, is that because of COVID?**
15 A. Yes.
16 **Q. Okay. Did you tell them that, "Hey, my**
17 **other ballot got damaged. I want a new one"?**
18 A. Oh, yeah. And then I got the --
19 **Q. What else did you say to them?**
20 A. That was it. I kept it pretty short.
21 **Q. And what was their response?**
22 A. "Okay. Here's a new one."
23 **Q. Okay. Did they ask you for an ID?**
24 A. Maybe. I think so. I don't remember.
25 **Q. Okay. If they did, you would have just**

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1 **Q. Okay. So do you understand the difference**
2 **between a primary election and the general election?**
3 A. No.
4 **Q. Okay. So when you say that you voted in**
5 **2020, you're talking about the election that was in**
6 **November of 2020.**
7 A. Yes.
8 **Q. Did you vote in the election that was in**
9 **June of 2020?**
10 A. No.
11 **Q. Okay. So what other elections had you**
12 **voted in before the November 2020 vote?**
13 A. Just -- well, I don't think any. I --
14 **Q. Okay.**
15 A. Yeah.
16 **Q. So the first time you ever voted was in**
17 **the November 2020 presidential election?**
18 A. Yes.
19 **Q. Okay. And did you, did you fill out your**
20 **ballot completely?**
21 A. Yes.
22 **Q. You voted on every candidate and every**
23 **issue.**
24 A. I voted on everything, yes.
25 **Q. And how old were you as of November 2020?**

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1 **shown them your driver's license?**
2 A. Yes, which I have with me right now.
3 **Q. Okay. Why did you go vote a couple of**
4 **days before the election instead of, instead of voting**
5 **on Election Day?**
6 A. I didn't know who I wanted to vote for,
7 but -- and, I don't know, I just had time, or
8 something. I really don't remember why.
9 **Q. Okay, okay. Did you vote in the 2020**
10 **primary?**
11 A. Yes.
12 **Q. And where did you vote in the 2020**
13 **primary?**
14 A. The drive-through place.
15 **Q. Okay. In Missoula?**
16 A. In Missoula, yes.
17 **Q. So what was, what was the date that you**
18 **had registered in Missoula? Do you recall?**
19 A. No, I don't recall.
20 **Q. Okay. It was before the primary. Is that**
21 **what you're saying?**
22 A. Yes, it was before the primaries.
23 **Q. Okay. And do you know when the primaries**
24 **were in 2020?**
25 A. November.

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1 A. I was 19.
2 **Q. And, then, did you have any difficulties**
3 **voting in Missoula in 2020?**
4 A. Difficulties in like who I was choosing or
5 just difficulties in general?
6 **Q. Difficulties as in like the process of**
7 **actually voting.**
8 A. No. It was really simple.
9 **Q. Okay. Did you have any issues or**
10 **difficulties in getting registered to vote in Missoula**
11 **in 2020?**
12 A. Not that I remember, no.
13 **Q. Okay. Would you agree with the**
14 **characterization that registering to vote was easy?**
15 A. Yes.
16 **Q. And would you agree with the**
17 **characterization that voting in Missoula in 2020 was**
18 **easy?**
19 A. Yeah.
20 **Q. So, then, after that, after the November**
21 **2020 election, you moved back to Bozeman. And when**
22 **you moved back to Bozeman, did you intend to stay in**
23 **Bozeman long term?**
24 A. Yes. I'm intending on staying in Bozeman
25 until I finish school.

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1 Q. Okay. And you didn't register to vote in
2 Bozeman right away after you moved to Bozeman; is that
3 right?

4 A. That's right.

5 Q. And why not?

6 A. It wasn't my first concern.

7 Q. And other than that sort of one place that
8 you were going to live but ended up not living, you've
9 lived in your current place since you moved to Bozeman
10 after the 2020 election, right?

11 A. Correct.

12 Q. That's a "yes"?

13 A. Yes.

14 Q. Okay. So let's go back to your
15 declaration.

16 A. Okay.

17 Q. In Paragraph 2, you mention a voter
18 registration table on campus, and it says: "Shortly
19 after returning to college this past semester."

20 Do you see that?

21 A. Yeah, I -- (pause.)

22 Q. Okay. So when you say: "Shortly after
23 returning to college this past semester," you're
24 referencing --

25 A. I was referencing --

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1 Q. -- the fall?

2 A. Yes.

3 Q. Go ahead.

4 A. Sorry. Yes, the fall semester. So after
5 around September - October, they started having booths
6 coming out to register to vote.

7 Q. Okay. And when you say "they," who are
8 you referring to?

9 A. It was either through the State or through
10 the school. I'm not sure. It was just, there were --
11 they would be by Montana Hall, by the dining halls.
12 There would just be booths where people were sitting
13 at, and it would say: "Register to vote."

14 Q. And what organizations were running the
15 tables?

16 A. I don't know.

17 Q. Okay. Would you, would you agree that
18 most students at MSU were asked if they're registered
19 to vote by people working at those tables?

20 MR. GORDON: Objection; foundation,
21 speculation.

22 You can answer, Gavin.

23 THE WITNESS: Oh, possibly. I don't know.
24 I would assume that they were all asked. I mean, I
25 got waved over like 12 times.

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1 Q. (By Mr. Knobel) Right. So, I mean, that's
2 kind of what I'm getting at is, is --

3 A. Oh.

4 Q. Yeah. I mean, the voter registration
5 tables are pretty prevalent, and they ask students
6 quite regularly about registering, correct?

7 A. Yes.

8 MR. GORDON: Objection; speculation,
9 foundation.

10 Q. (By Mr. Knobel) Okay. And you would, you
11 would estimate that you were asked if you're
12 registered approximately 12 times or more, or what?

13 A. Or more, yeah.

14 Q. Okay. You don't, you don't remember if
15 these were organizations that were running these
16 tables? Is that what you said?

17 A. Yeah, I don't remember. There was -- they
18 were booths, but they were also like Bobcat-colored
19 and -- (pause.)

20 Q. Okay. And who was working at the booths?
21 Do you know?

22 A. Students, I was assuming. I don't know.

23 Q. Okay. And why would you, why would you
24 assume that it was students?

25 A. They looked young.

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1 Q. Okay. And is that for all of the voter
2 registration tables?

3 MR. GORDON: Objection; foundation.

4 THE WITNESS: Possibly, at least what I
5 remember.

6 Q. (By Mr. Knobel) Okay. So was it -- so how
7 many times had you passed by a voter registration
8 table before you decided to stop and actually fill out
9 the form?

10 A. Like three times. But I never filled out
11 the form because when I got there, they said I was
12 already registered.

13 Q. When you got where?

14 A. When I went to the booth, they said I was
15 already registered as a -- for Montana, and then they
16 let me get --

17 Q. Okay.

18 A. Yeah, so --

19 Q. So let me ask you this: Is what's in your
20 declaration accurate?

21 A. This: "I filled out a voter registration
22 form updating," I misread that when I was reading
23 this.

24 I thought they meant -- or I thought what Hal
25 meant, when I read that, was when I went to actually

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1 vote because that was when I actually registered at a
2 table. But that was on me. I misread this
3 Paragraph 2 towards the end.

4 Because when I went up to the booth, I asked --
5 I was like, "I need to register."

6 And they said, "Oh, you're already registered,
7 so you're okay."

8 And after that, I didn't go back to the booths.

9 **Q. Okay. Do you have any understanding about**
10 **what they did to determine whether or not you were**
11 **registered already?**

12 A. I gave them my name, and they searched me
13 up and they -- what I'm assuming is they didn't read
14 "Missoula," they probably just read Montana. But I
15 can't assume. I don't know.

16 **Q. Okay. So this part of Paragraph 2 where**
17 **it says that you came upon a voter registration table**
18 **on campus and:**

19 "decided to update my registration to my
20 off-campus address so that I could vote in Bozeman in
21 the 2021 election."

22 **Do you see that?**

23 A. Yes. And that's, that's where I misread.
24 I don't know. When I went up to the booth originally,
25 they told me I was already registered. That was how I

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1 **Q. Okay. So that's why you stopped at the**
2 **tables, because you knew you needed to update your**
3 **voter registration address, correct?**

4 A. Correct.

5 **Q. Okay. And then they tell -- they told you**
6 **at the table, "You're already voted" -- or, "You're**
7 **already registered."**

8 **Correct?**

9 A. Correct.

10 **Q. Okay. And did you not, did you not say to**
11 **them, "Well, yeah, I'm registered, but I'm registered**
12 **in Missoula, not Bozeman"?**

13 A. No, I didn't say that because they told me
14 I was.

15 And I was going to class, so I just was like,
16 "Oh, cool," and left.

17 **Q. Okay. So in your mind, were you thinking**
18 **that it was possible that, that somehow your voter**
19 **registration had already been updated to Bozeman?**

20 A. Yes.

21 **Q. Okay. And is that -- or I guess why would**
22 **you, why would you have thought that?**

23 A. Because they told me I was already
24 registered.

25 **Q. Okay. And, I mean, I guess is it -- are**

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1 read that.

2 **Q. Okay. Well, is that the part that you**
3 **misread or is it the next sentence where it says:**

4 "I filled out a voter registration form
5 updating my address and returned it to the person
6 staffing the table?"

7 A. The second one.

8 **Q. Okay.**

9 A. Because I was going there to like change
10 my address from the Eddy Avenue -- or Eddy Street to
11 15th and -- (pause.)

12 **Q. Okay. So when you were, when you were on**
13 **campus in the fall semester of 2021 and you saw the**
14 **voter registration tables, you knew at that point that**
15 **you needed to update your voter registration address,**
16 **right?**

17 A. Yes, I knew I was because I was living in
18 Missoula prior.

19 **Q. Okay. And how did you know that you were**
20 **required to update your voter registration address to**
21 **your Bozeman address?**

22 A. My roommates told me.

23 **Q. Okay. What did they say?**

24 A. They said, "You need to switch to Bozeman
25 if you were in Missoula last year."

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1 **you saying that maybe, you thought maybe something**
2 **with registering as a student, you know, got you**
3 **registered to vote, or what was in your mind in terms**
4 **of thinking, you know, How would it be possible that**
5 **my registration was updated?**

6 MR. GORDON: Objection; compound.

7 THE WITNESS: I don't know how I -- or
8 what I was, I just -- when I went to the table, they
9 said I was registered, so I went with it because I was
10 busy going to classes.

11 **Q. (By Mr. Knobel) Okay. And what would you**
12 **have done if they had not incorrectly told you that**
13 **you were already registered?**

14 A. I would have registered.

15 **Q. Okay. And do you remember how many people**
16 **were at that voter booth?**

17 A. Ten, maybe. There was like three -- or
18 two or three people working it, and then there was
19 people around me and in line.

20 **Q. Okay. And they had the forms right there?**

21 A. Yeah.

22 **Q. Okay.**

23 A. Or they had them in like a folder. They
24 would give them to you.

25 **Q. Do you remember the names of anybody that**

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1 was working at that voter table?

2 A. No, I do not.

3 Q. Do you remember if there were any signs
4 around the, the registration table?

5 A. Yes. There was a sign that was connected
6 to the booth that said "register here" with an arrow
7 pointing down.

8 Q. Okay. Did you ask them any questions
9 about who they are?

10 A. No. I just, I kind of already knew who
11 they were -- or like not the people, but like I knew
12 why they were there.

13 Q. Okay. It wasn't important to you to know
14 what the organization was that was running the table?

15 A. No.

16 Q. Okay. And why is that?

17 A. Because I was on my way to class.

18 Q. Okay. So is it fair to say that you
19 believed that the people working at the table were a
20 legitimate voter registration group because they were
21 allowed on campus?

22 A. Yes. My roommate registered there, from
23 Portland.

24 Q. Okay. Had you, at that point in time, had
25 you received a voter registration confirmation card in

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1 Q. Okay. Have you ever gone to the United
2 States Postal Service and updated your address with
3 the, with the post office?

4 A. Yes.

5 Q. Okay. And when did you do that?

6 A. After I moved from Missoula so I would
7 stop getting mail to that address.

8 Q. Okay. Did you do, did you do mail
9 forwarding?

10 A. Mail forwarding? I'm not sure if I know
11 what that means. Like -- (pause.)

12 Q. Okay. When you were -- when you moved to
13 Bozeman, why did you go to the post office to update
14 your address with the post office?

15 A. Oh, because my mom told me to.

16 Q. Okay. And do you recall what kind of form
17 you filled out at the post office?

18 A. No, I don't recall. They were certain --
19 like I just kind of like changed -- like got stuff
20 sent to my new address, and it started working from
21 that.

22 And then when I went to the post office, I
23 explained to them that I was moving. And they did
24 make me fill out a sheet, but I don't know what kind
25 of sheet it was.

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1 the mail for your Bozeman address?

2 A. No.

3 Q. Okay.

4 A. But I received like a list of who to vote
5 for and their credentials.

6 Q. Okay. And that was sent directly to you?

7 A. It was sent directly to me, yes.

8 Q. Okay. And who sent you that?

9 A. The State or the -- I don't know, Bozeman.

10 Q. Okay.

11 A. It was like a --

12 Q. Was it -- go ahead.

13 A. It was a pamphlet, basically. You opened
14 it up, and it showed you who, like faces of who you
15 could vote for.

16 You flipped another page, it would tell you what
17 their credentials were.

18 And then it was just that for about 12 pages
19 going back and forth through who was running to be
20 voted for.

21 Q. Okay. Let me ask you this: Had you
22 updated your address on your Montana driver's license
23 at any point in time?

24 A. No. It's not even where my parents live
25 anymore.

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1 Q. Okay. Did you, after you had filled out
2 that sheet, did you start receiving mail at your
3 Bozeman address that was actually addressed to any of
4 your previous addresses?

5 A. No, I don't think so. Like do you mean
6 like it was addressed to my old address and then came
7 there instead?

8 Q. Correct.

9 A. No.

10 Q. Okay.

11 A. I didn't have anything that said 5 -- my
12 Eddy address.

13 Q. Okay. I mean, because typically if you go
14 to the post office and you say, "Hey, I moved," and
15 you want to update your address, they'll usually give
16 you an option of saying, "Do you want your mail
17 forwarded so that if somebody mails something to your
18 old address, we'll send it to your new address?"

19 A. Oh.

20 Q. Did that happen?

21 A. Kind of. I just don't, I don't get a lot
22 of mail.

23 Q. Okay. So when you got the, I guess I'll
24 call it the "voter information packet" from the State
25 in 2021, was that addressed to your Missoula address?

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1 A. It was addressed to my Bozeman address,
2 but it was under my name.
3 **Q. Okay. And do you have any understanding**
4 **about how the State got your Bozeman address for that?**

5 MR. GORDON: Objection; foundation,
6 speculation.

7 THE WITNESS: Through the post office, but
8 I don't know.

9 **Q. (By Mr. Knobel) Okay. So if you had to**
10 **guess, you would guess it was from the post office.**

11 A. Yeah.

12 MR. GORDON: Objection; speculation.

13 **Q. (By Mr. Knobel) Okay. Because you hadn't,**
14 **you hadn't done a -- you hadn't updated your driver's**
15 **license with your new address, correct?**

16 A. Right.

17 **Q. Okay. And you hadn't, you hadn't filled**
18 **out an address update for your voter registration**
19 **information, correct?**

20 A. Correct.

21 **Q. Okay. And you hadn't, you hadn't filled**
22 **out any other forms that would be sent to the State of**
23 **Montana that would provide them with your new Bozeman**
24 **address, or did you?**

25 A. I don't think so.

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1 told me I was registered, so I just -- I don't know.

2 **Q. Okay.**

3 A. I didn't, I didn't feel -- didn't know to
4 check, didn't -- (pause.)

5 **Q. Can you, can you say -- approximately, how**
6 **often would you see the voter registration tables on**
7 **campus at MSU in the fall of 2021?**

8 A. Between like a week prior to election and
9 like for like three weeks, I'd probably see them four
10 times a day.

11 **Q. Okay. So did they -- did those tables**
12 **only start appearing once, once it got closer to the**
13 **election? Is that what you're saying?**

14 A. Yes.

15 **Q. Okay. And you said approximately how many**
16 **weeks before the election did the voter registration**
17 **tables start appearing?**

18 A. Sorry, say that again.

19 **Q. How many weeks prior to the election did**
20 **you start noticing the voter registration tables?**

21 A. Oh, like three weeks - a month.

22 **Q. Okay. And did you -- when you -- your**
23 **incident at the voter registration table, did that**
24 **happen kind of right away or was it closer to the**
25 **election?**

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1 **Q. Okay. So the only sort of form you filled**
2 **out updating your address was the post office one.**

3 A. Yes.

4 **Q. Okay. When they -- well, let me ask you**
5 **this: Do you feel that the workers at the voter**
6 **registration table on campus gave you incorrect**
7 **information?**

8 A. Yes.

9 **Q. Okay. And do you blame them for your**
10 **inability to be registered in time to vote in 2021?**

11 A. Not entirely, but partially, yeah. Just
12 like, like I said, I went to the booth, and they said
13 I was registered. And if I wasn't, I would have been
14 able to vote -- or if they told me I wasn't, I would
15 have been able to vote.

16 **Q. Okay. Now, you said you've never gone to**
17 **the Secretary of State's website to check your voter**
18 **registration status, right?**

19 A. Right.

20 **Q. Okay. When they told you that you are**
21 **already registered to vote, why didn't you**
22 **double-check what they had told you, you know, later**
23 **and verified whether you're actually registered to**
24 **vote under your Bozeman address?**

25 A. Because they -- I don't know, because they

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1 A. Kind of sooner, probably like three weeks
2 or two weeks from election.

3 **Q. Okay. So two or three weeks prior to the**
4 **election, you were informed that you were already**
5 **registered, and you went about your business and**
6 **didn't check whether that was correct or not at any**
7 **point up until the day before the election, correct?**

8 A. Correct.

9 **Q. Do you remember anything else about the**
10 **conversation you had with anybody working at the voter**
11 **registration table?**

12 A. No.

13 **Q. Would you have updated your voter**
14 **registration information to Bozeman even if you had**
15 **never seen the voter registration tables on campus?**

16 MR. GORDON: Objection; speculation.

17 THE WITNESS: Yeah, but seeing the tables
18 made it easier.

19 **Q. (By Mr. Knobel) Okay. But you think that**
20 **-- well, let me ask you this: Do you consider being**
21 **registered to vote to be an important thing?**

22 A. Yeah.

23 **Q. Okay. And do you consider voting**
24 **important?**

25 A. Yes.

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1 Q. And why?

2 A. Because every vote counts.

3 Q. So going back to Paragraph 2 of your
4 declaration, that last sentence where it says: "I
5 filled out a voter registration form updating my
6 address and returned it to the person staffing the
7 table," that is not correct. Fair?

8 A. Yeah, that's not correct.

9 Q. Did you talk to the people at the voter
10 registration table about absentee voting?

11 A. No.

12 Q. Okay.

13 A. Like I said, I was rushing to class, so I
14 just made it as quick as possible. When they told me
15 I was registered, I just left because it was like a
16 10-minute gap I had.

17 Q. Okay. At that point, your understanding
18 was, is that you were registered, right?

19 A. Correct.

20 Q. Did you believe that you were registered
21 to vote absentee?

22 A. Yes.

23 Q. Okay. You never got a ballot in the mail
24 for the November 2021 election, correct?

25 A. Correct.

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1 Q. Okay. Do you remember talking to anybody
2 about their receipt of their ballot in the mail for
3 the November 2021 election?

4 A. Sorry, could you say that again? All my,
5 all my electricity just disconnected from my house for
6 like two seconds.

7 Q. Oh, okay. Did you talk to anybody about
8 anybody else's receipt of their 2021 ballots in the
9 mail?

10 A. No.

11 Q. Okay. Did you know when people received
12 their 2021 ballots in the mail?

13 A. No.

14 MR. GORDON: Objection; speculation,
15 foundation.

16 THE WITNESS: No, I did not.

17 Q. (By Mr. Knobel) Okay. Did you ever have
18 any concerns that you had not yet received your
19 ballot?

20 A. No.

21 Q. Okay. Why not?

22 A. Because I wasn't thinking about it. I
23 voted in person before, so I thought I was just going
24 to vote in person again.

25 Q. Do you have any understanding about how

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1 Q. Okay. Do you know if Missoula sent a
2 ballot to your old address for the November 2021
3 address?

4 A. I do not know. I don't think so.

5 Q. Okay. And why do you say you don't think
6 so?

7 A. I guess I shouldn't say "I don't think
8 so." I don't know.

9 Q. Okay. You were still registered to vote
10 in Missoula and to vote absentee in Missoula, correct?

11 A. Correct.

12 Q. Okay. So you have no reason to believe
13 that Missoula County did not send your 2021 ballot to
14 your old Missoula address, right?

15 A. Right.

16 MR. GORDON: Objection; speculation,
17 foundation.

18 Q. (By Mr. Knobel) You can answer.

19 A. I said "right."

20 Q. I'm sorry?

21 A. I said "right." Sorry.

22 Q. Okay. Do you remember, in that 2021
23 election, your roommates' receiving their ballots in
24 the mail?

25 A. No.

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1 the people that were at the voter registration table
2 actually returned the voter registration forms?

3 A. No.

4 Q. Okay. Are you aware that you can fill out
5 a form, take a picture of it, and email it to the
6 County to register to vote?

7 A. No, I did not know that.

8 Q. Okay. Are you aware of any assurances
9 that the people at the voter registration table were
10 providing to people about the services that they were
11 providing?

12 MR. GORDON: Objection; speculation,
13 foundation.

14 THE WITNESS: No, I do not.

15 Q. (By Mr. Knobel) Okay. You are aware that
16 you can print a voter registration form, fill it out,
17 mail it, and be registered to vote that way, correct?

18 A. No, I don't think so.

19 Q. Okay. You didn't know that you could do
20 that.

21 A. I don't think so, no.

22 Q. All right. If you go to Paragraph 3 of
23 your declaration, it says:

24 "Although I have only been eligible to
25 vote for a few years, I have voted in every election

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1 since my 18th birthday."

2 Do you see that?

3 A. Yeah, I see that.

4 Q. Okay. Is that correct?

5 A. I thought so, but I don't think I ever
6 voted in that Ravalli County election.

7 Q. Okay. And are you -- and that was the
8 twenty -- there was a couple of elections in Ravalli
9 County in --

10 A. The 2019, yeah, when I --

11 Q. Okay. And then you don't know if you
12 voted in the June of 2020 election, correct?

13 A. Correct.

14 Q. Or do you know that you did not vote in
15 the June 2020 election?

16 A. I don't know. I can't remember.

17 Q. Okay. So the only election that you are
18 confident that you voted in is the November 2020
19 election, right?

20 A. Right.

21 Q. Okay.

22 A. I believe I voted in the June one, but I
23 just don't remember exactly.

24 Q. Okay. Do you drive as part of your job?

25 A. Not for my job.

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1 A. My Costco card.

2 Q. Okay. And your Costco card has your
3 picture on it and your name, correct?

4 A. Yes.

5 Q. Okay. Any other documents that you have
6 that show your picture and your name?

7 A. Not that I can think of, no.

8 Q. You have a bank account in your name,
9 correct?

10 A. Yes, multiple.

11 Q. How many bank accounts do you have?

12 A. Three or four.

13 Q. Okay.

14 A. One is -- my mom takes care of because
15 it's money from my great-grandfather.

16 Q. Okay. Do you personally know any students
17 at MSU who do not have a bank account?

18 MR. GORDON: Objection; foundation,
19 speculation.

20 THE WITNESS: I'm not sure if they don't
21 own a bank -- or have a bank account. It was -- I
22 think they would, but I know a lot of people that
23 don't have credit cards.

24 Q. (By Mr. Knobel) No, I'm asking you if you
25 have personal -- do you have personal knowledge of

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1 Q. Do you personally know any students at MSU
2 who do not have a vehicle?

3 A. Yes.

4 Q. Okay. How many people?

5 A. I don't know that -- I don't know. One of
6 my best friends doesn't have a car. That's mainly
7 like most of my friends from like Chicago or New York
8 or LA.

9 Q. Okay. You have a vehicle registration
10 card, don't you?

11 A. Yes.

12 Q. And you've got a passport?

13 A. Yeah, but it's expired right now.

14 Q. Okay. You've got a Montana driver's
15 license?

16 A. Yes.

17 Q. You've got a university ID?

18 A. Yes.

19 Q. Do you have a season ski pass?

20 A. Yes.

21 Q. And does that have your photo on it?

22 A. No, it doesn't.

23 Q. Do you have any other forms of photo
24 identification other than your passport, your Montana
25 driver's license, and your university ID?

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1 anybody that you can think of specifically that you
2 know for a fact they do not have a bank account?

3 A. No.

4 Q. Okay. Do you know any students at MSU
5 that do not have a job?

6 A. Yes.

7 Q. Okay. Do you know any students at MSU
8 that do not have a driver's license?

9 A. No.

10 Q. Okay. So even, even the people that don't
11 have a vehicle there at MSU, to your knowledge those
12 people likely have a driver's license. Is that what
13 you're saying?

14 A. Yeah.

15 MR. GORDON: Objection; foundation,
16 speculation.

17 THE WITNESS: Yes, they have IDs to prove
18 who they are.

19 Q. (By Mr. Knobel) Okay. Do you know any MSU
20 students that do not have a university ID?

21 MR. GORDON: Objection; foundation.

22 THE WITNESS: No, unless they lost it, but
23 no.

24 Q. (By Mr. Knobel) Okay. Have you ever --
25 COURT REPORTER: I'm sorry, I didn't catch

Page 112

1 that answer.

2 THE WITNESS: I said: No, unless they
3 lost it, but I don't think so.

4 **Q. (By Mr. Knobel) Have you ever had any**
5 **conversations with anybody about difficulties in**
6 **obtaining a driver's license?**

7 A. Yes.

8 **Q. Okay. Who?**

9 A. My roommate Oscar.

10 And my friend Nicky, he's the one from Chicago
11 who doesn't have a car. He's been struggling for six
12 months to get his driver's license.

13 **Q. Okay. And do you know why?**

14 A. Because they've been on such a -- they've
15 been on like a three-month schedule. And he got a
16 staph infection, so he missed his first appointment
17 and had to get -- three months for the next
18 appointment to happen.

19 **Q. Okay. What about the other person you**
20 **mentioned?**

21 A. Well, my friend Luke just got on that long
22 list, so his license expired, so he can't buy beer
23 anymore. So he's on that list.

24 My roommate Oscar, he got on that list but went
25 in and asked if he could take a picture. They said

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1 **Q. Okay. So you agree that you were very**
2 **busy in --**

3 A. Yeah.

4 **Q. Okay. And why does your declaration**
5 **reference trips to the county clerk's office?**

6 A. I'm not sure. I didn't -- I just told him
7 I don't even have really enough time to visit my
8 family who lives in Bozeman.

9 **Q. Okay. But what does a trip to the county**
10 **clerk's office have to do with what your declaration**
11 **is about?**

12 A. Because I wasn't able to register in time,
13 or the one time I went to the county clerk's office
14 they told me "no." I don't know.

15 **Q. Okay. Is it your understanding that you**
16 **have to take the trip to the county clerk's office to**
17 **register?**

18 A. No, but that's what I did when I did
19 register.

20 **Q. Well, wasn't that trip to the county**
21 **clerk's office more about going to vote?**

22 A. Yes.

23 **Q. Okay.**

24 A. But then I had to -- I registered instead
25 because they said I couldn't vote.

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1 "no," so he's still on that list.

2 Pretty much everybody that I know that's turning
3 21 is struggling to get an ID.

4 **Q. And is that just because the schedule of**
5 **trying to get an appointment?**

6 A. That, and the rules are different now
7 because of COVID.

8 **Q. Okay.**

9 A. It's the same reason I don't have a
10 passport right now or a --

11 **Q. Okay. If you look at Paragraph 4 of your**
12 **declaration, it says:**

13 **"Between work and school, I am very busy,**
14 **and trips to the county clerk's office take valuable**
15 **time away from my other responsibilities."**

16 **Do you see that?**

17 A. Yeah.

18 **Q. Do you know why that's included in your**
19 **declaration?**

20 A. I told him that with school, like my math
21 class I was telling you guys about, the teacher
22 expected 25 to 30 hours, plus work, plus when I was
23 playing soccer and volleyball. I was pretty low on
24 time. And then I had also all my other classes and
25 I'm in school from nine to four.

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1 **Q. Okay. So when you say in your declaration**
2 **that going to the county clerk's office would take**
3 **valuable time, what do you mean by "valuable"?**

4 A. Either time of studying or time I can be
5 making money.

6 **Q. Okay. Did you know at the time, in the**
7 **fall of 2021, that you didn't have to take a trip to**
8 **the county clerk's office to register?**

9 A. Yes.

10 **Q. Okay. In your opinion, does it, does it**
11 **take too much time to register to vote in Montana?**

12 A. No, but I had already been told I was
13 registered, so I didn't really -- I don't know, I
14 don't think it takes too much time.

15 **Q. Okay.**

16 A. But at the time, I was probably the
17 poorest I've been in my life and I was struggling to
18 pay rent, so I was trying to work as much as possible
19 plus go to school.

20 **Q. Okay. So, then, going to Paragraph 5 of**
21 **your declaration, it says you arrived at the Bozeman**
22 **clerk's office around 4 p.m. on November 1, 2021, the**
23 **day prior to Election Day. Do you see that?**

24 A. Yes, yes.

25 **Q. Okay. What made you decide to go to the**

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1 clerk's office at 4 p.m. on November 1st?

2 A. I was studying for an exam, and my
3 roommates came into the living room where I was
4 studying. I was reading my math equations, or
5 whatever I was studying.

6 And my roommates came in and said, "We're going
7 to go vote if you want to come with us. It will only
8 be like 20 minutes."

9 And I said, "Okay."

10 Q. Okay. What was your, what was your plan
11 to vote before your roommates brought it up?

12 A. I was going to vote the next day.

13 Q. And so as of, as of that November 1, 2021
14 date, you had not received a voter registration
15 confirmation card in the mail, correct?

16 A. Correct.

17 Q. You hadn't received any kind of
18 confirmation that you were registered to vote in
19 Bozeman, correct?

20 A. Correct.

21 Q. And you had never checked online to check
22 your registration status at that point, correct?

23 A. Correct.

24 Q. But you still believed that you were
25 registered to vote in Bozeman because that's what the

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1 speculation.

2 THE WITNESS: I don't know. It's really
3 hard to answer. I don't know. I mean, my dad works
4 like 80 hours a week, so he might be busier than I am,
5 but I also was trying to study all night -- or not
6 "all night" but like during nights and still make
7 money. And I was, I was on the busier level.

8 Q. (By Mr. Knobel) Do you consider your job
9 more important than voting?

10 A. At the time, yeah. I mean, I needed to
11 make, I needed to make money. I seriously couldn't
12 afford rent at the time, and I had to still eat food.

13 Q. Okay. And has your -- has that changed
14 now? Like now do you believe that voting is more
15 important than your job?

16 A. No.

17 Q. You still, you still think your job is
18 more important than voting, right?

19 A. Right.

20 Q. Okay. And wouldn't you agree that your
21 studies at MSU are more important than voting?

22 A. Yeah.

23 Q. Okay. Would you say that your intramural
24 sports are more important than voting?

25 A. No.

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1 people at the table on campus told you, correct?

2 A. Correct.

3 Q. Okay. Did you have any other reasons to
4 believe that you were already registered to vote?

5 A. No, just that, just from the table.

6 Q. Do you know who was living in your old
7 Missoula address in the fall of 2021?

8 A. The people who took over?

9 Q. So in the fall of 2021, you know, you're
10 living in Bozeman.

11 A. (Nodding head affirmatively.)

12 Q. Do you know who was living in your old
13 house in Missoula?

14 A. No, I don't know who they were.

15 Q. Okay. The reason I ask is because if it
16 was your friends that were still living in that
17 house in Missoula, I was going to ask if they ever
18 told you that your Missoula ballot showed up.

19 But nobody ever told you that your Missoula
20 ballot showed up, right?

21 A. No. It was a group of girls that I didn't
22 know who moved in.

23 Q. Do you think your schedule in the fall of
24 2021 was busier than the average Montanan?

25 MR. GORDON: Objection; foundation,

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1 Q. Would you say skateboarding is more
2 important than voting?

3 A. No, I guess not, you know?

4 Q. Okay. So let me just ask it this way: Do
5 you believe that anything in your busy schedule in the
6 fall of 2021 was more important than voting other than
7 your job and your studies?

8 A. No but yes. I mean, I just -- like with
9 the sports, I was in a commitment. I couldn't really
10 get out of it to go vote because at that time we were
11 in play-offs.

12 Skateboarding, I wasn't really doing that much
13 because it was November and it was cold.

14 Q. Okay.

15 A. But I guess like school and work
16 definitely go before voting for me, but -- I wouldn't
17 say normally intramural sports would, but at that time
18 it was because it was part of a commitment I made, and
19 the exercise --

20 Q. Okay. Had you ever been to the Bozeman
21 clerk's office prior to November 1st?

22 A. No.

23 Q. And where was the, where was the Bozeman
24 clerk's office that you went to on November 1st?

25 A. It was on Main Street across the street

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1 from an elementary school. I can't remember which one
2 it was.

3 **Q. Okay. And was there a line there?**

4 A. There were people, but it wasn't -- there
5 was not a line.

6 **Q. Okay. Was there a line when you voted in**
7 **Missoula?**

8 A. Yes.

9 **Q. Okay. And how long was that line?**

10 A. I don't know. It was a line of cars that
11 wrapped around a building, so maybe like 20 - 30.

12 **Q. And how long did it take you to get**
13 **through the line?**

14 A. Forty-five minutes - hour.

15 **Q. Okay. So tell me about what happened at 4**
16 **p.m. on November 1st. You walk into the Bozeman**
17 **clerk's office, and what happened?**

18 A. I walked in and I go upstairs to where
19 they told me, like where the signs were pointing. I
20 walked into the building, I talked to the lady in the
21 front, and I tell her my name, I give her my ID.

22 And she says, "You're not registered to vote.
23 You can go to that table over there and register for
24 next election."

25 **Q. Okay. And what did you say?**

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1 **Q. You had made no effort to, to vote in**
2 **Missoula in the 2021 election.**

3 A. No, because I thought I was going to vote
4 from Bozeman.

5 **Q. Okay. Did you ask if you could vote in**
6 **Missoula or did she just voluntarily tell you that you**
7 **could?**

8 A. She said I could, but I wasn't -- I had an
9 exam the next day. Like I wasn't going to drive six
10 hours to vote.

11 **Q. Okay. Did you contact anyone in Missoula**
12 **about voting?**

13 A. No.

14 **Q. Did you make any effort to vote in**
15 **Missoula in 2021 after you learned that you were**
16 **registered to vote in Missoula?**

17 A. No, because like I said, I had an exam the
18 next day. And it was Tuesday and I usually work
19 Tuesdays, so I wouldn't have been able to go.

20 **Q. Okay. What exam did you have?**

21 A. A math exam.

22 **Q. And who was the professor?**

23 A. Carah Pearson.

24 **Q. Okay. And what was the class?**

25 A. It was an algebra class.

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1 A. I said, "Why am I not registered to vote?"
2 I was told I was registered."

3 She said, "Well, you're registered at the
4 Missoula" -- or "in Missoula County."

5 And I said, "Okay," and then walked over and
6 registered.

7 **Q. Okay. Did you ask for a provisional**
8 **ballot?**

9 A. I don't know what that is.

10 **Q. Okay. Did she offer you a provisional**
11 **ballot?**

12 A. Maybe. I don't know if she did. I don't
13 know what it is.

14 **Q. Okay. Did you tell her that, "There must**
15 **be an error. I should be registered to vote in**
16 **Bozeman"?**

17 A. Yeah. I told her I registered at the MSU
18 booth.

19 And she said, "I'm sorry, you're not. You're
20 registered for Missoula. You could drive to Missoula,
21 if you like, and could vote."

22 And I said, "I can't do that."

23 **Q. Okay. Had you thought about voting in**
24 **Missoula before that day?**

25 A. No.

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1 **Q. Okay. Did you ask that professor to**
2 **accommodate your attempt to vote?**

3 A. No, because I didn't think she would. I
4 don't know, I don't think that would have been an
5 acceptable reason to miss an exam.

6 **Q. Okay. You didn't ask, though?**

7 A. Uh-uh [negative].

8 **Q. That's a "no"?**

9 A. "No." Sorry.

10 **Q. Have you ever heard of any professors at**
11 **MSU make an accommodation so that people can vote?**

12 A. No.

13 MR. GORDON: Foundation.

14 **Q. (By Mr. Knobel) Any other reasons you**
15 **didn't go to that professor and ask for some kind of**
16 **accommodation so that you could go vote in Missoula?**

17 A. I mean, I had work that night, so it
18 wouldn't have worked out anyway.

19 **Q. Okay. If, if you had, if you had placed**
20 **voting in importance above work and above school, you**
21 **could have driven to Missoula and voted, right?**

22 MR. GORDON: Objection; speculation.

23 THE WITNESS: I guess, I mean, but that
24 just -- I wouldn't have done that.

25 **Q. (By Mr. Knobel) Okay. There was no, to**

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1 **your knowledge, there was no law that prevented you**
2 **from driving to Missoula and voting; is that fair?**

3 A. No, there was -- I don't, I -- yeah,
4 that's fair. Sorry, I answered.

5 **Q. Okay, okay. So your understanding was**
6 **that you were legally entitled to vote in Missoula,**
7 **right?**

8 A. Yes.

9 **Q. Okay. And you made the, you made the**
10 **personal choice to not drive to Missoula to vote,**
11 **right?**

12 A. Right, because school and money go first.

13 **Q. Any other, any other reasons besides**
14 **school and work that you chose not to drive to**
15 **Missoula to vote?**

16 MR. GORDON: Objection; asked and
17 answered.

18 THE WITNESS: Six-hour drive, wouldn't
19 want to do that.

20 **Q. (By Mr. Knobel) Okay. If you did not have**
21 **that exam on November 2nd, would you still not have**
22 **driven to Missoula to vote?**

23 MR. GORDON: Objection; speculation.

24 THE WITNESS: No, because I had work.

25 **Q. (By Mr. Knobel) Okay. If you didn't have**

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1 **work and you didn't have the exam, would you have**
2 **driven to Missoula to vote?**

3 MR. GORDON: Objection; speculation.

4 THE WITNESS: I don't know, maybe.

5 That's -- I don't know.

6 **Q. (By Mr. Knobel) So is it your testimony**
7 **that you were unable to vote in 2021?**

8 A. Yeah, I did not vote in 2021.

9 **Q. Okay. I asked something a little bit**
10 **different, which is: Are you testifying under oath**
11 **that you were unable to vote in 2021?**

12 A. Well, I guess I was able to if I skipped
13 an exam and skipped work.

14 **Q. Okay.**

15 A. I don't know. I don't think anyone,
16 unless you're very avid about voting, would do that.

17 **Q. Right. So it's accurate to say that you**
18 **didn't vote because you had an exam and you had to**
19 **work, right?**

20 MR. GORDON: Objection; mischaracterizes
21 testimony.

22 THE WITNESS: Correct, and it was three
23 hours away.

24 **Q. (By Mr. Knobel) Okay. So --**

25 A. -- and in the middle of the week.

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1 **Q. Okay. So you didn't --**

2 COURT REPORTER: I didn't hear what you
3 said about the week. Sorry.

4 THE WITNESS: I just said "and it was the
5 middle of the week."

6 **Q. (By Mr. Knobel) Okay. So you didn't vote**
7 **in 2021 because you had an exam, you had to work, and**
8 **it was in the middle of the week, right?**

9 MR. GORDON: Objection --

10 THE WITNESS: And it was three hours away.

11 MR. GORDON: Gavin, just a sec, please.

12 If you hear me making an objection, please pause until
13 I'm finished with the objection.

14 THE WITNESS: Oh, I'm sorry.

15 MR. GORDON: That's okay.

16 Objection; mischaracterizes testimony,
17 speculation.

18 Go ahead now.

19 THE WITNESS: I could have voted if I
20 risked failing the exam, risked getting fired, and
21 drove three hours, but I wasn't going to risk that, so
22 I didn't vote.

23 **Q. (By Mr. Knobel) Okay. If you had been**
24 **registered to vote in Bozeman, you would have been**
25 **able to vote in Bozeman in 2021, right?**

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1 A. Yes.

2 **Q. Okay. If you had, if you had filled out a**
3 **voter registration form at the table on campus, then**
4 **you would have been able to vote in 2021, right?**

5 A. Yes.

6 MR. GORDON: Objection; speculation.

7 THE WITNESS: Yes.

8 **Q. (By Mr. Knobel) Okay. And I think you,**
9 **you had testified earlier that if, if the table had**
10 **not given you incorrect information, that you would**
11 **have registered. Right?**

12 A. Yes.

13 **Q. Okay. So, then, it's fair to say that if**
14 **the people at the voter registration table had not**
15 **given you incorrect information, then you would have**
16 **voted, right?**

17 MR. GORDON: Objection; speculation.

18 THE WITNESS: Right.

19 **Q. (By Mr. Knobel) Okay. So, fair to say**
20 **that the reason you didn't vote was because the voter**
21 **registration table gave you incorrect information.**

22 MR. GORDON: Same objection: Speculation.

23 THE WITNESS: Yes, and because I wasn't
24 able to register -- or the law with registering and
25 voting the day prior before 12 p.m. was -- (pause.)

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1 Q. (By Mr. Knobel) Okay. Were you aware, in
2 the fall of 2021, that you could check your voter
3 registration online?

4 MR. GORDON: Objection; asked and answered
5 multiple times.

6 THE WITNESS: No.

7 Q. (By Mr. Knobel) Okay. If you had known at
8 the time that you could check your registration
9 online, would you have done so?

10 MR. GORDON: Objection; speculation, asked
11 and answered.

12 THE WITNESS: Possibly. I mean, I thought
13 I -- yeah, if I had known, maybe. I don't know.
14 Again, like I said earlier, they said I was registered
15 when I went to the booth.

16 Q. (By Mr. Knobel) So you were not the one
17 that wrote this line in your declaration that you were
18 unable to vote as a result of the new Montana law,
19 correct?

20 A. "The clerk also told me that because of a
21 recent change in Montana law, I was too late to update
22 my registration."

23 Is that what you're talking about?

24 Q. Okay. In Paragraph 8 of your declaration,
25 you say that you were surprised that you had not heard

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1 Q. Okay. So you'll be able to vote going
2 forward because you're registered in Bozeman now,
3 right?

4 A. Correct.

5 MR. GORDON: Objection; speculation.

6 THE WITNESS: Sorry. Correct.

7 Q. (By Mr. Knobel) Okay. So it's fair to
8 characterize this incident in 2021 as a one-time
9 event?

10 MR. GORDON: Objection; foundation,
11 speculation.

12 THE WITNESS: Personally for me but not
13 for everybody in Montana.

14 Q. (By Mr. Knobel) Okay. In Paragraph 8 of
15 your declaration, you say that you keep up to date on
16 the news. Why do you say that?

17 A. I just watch the news, read the news on
18 the internet sometimes.

19 Q. Where do you, where do you watch the news?

20 A. KPAX.

21 Q. Okay. And when do you watch the news on
22 KPAX?

23 A. Like three times a week at like five.

24 Q. Okay. Like at the 5:30 news or 10:00
25 news, or what?

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1 about the law change earlier. Do you see that?

2 A. Yeah, I see that. That's what it says.

3 Q. Okay. Why were you surprised?

4 A. Because if I heard about it earlier, I
5 would have made sure I registered or -- if I had
6 like -- it's just like I say, if I had ever heard of
7 the website, I probably would have made sure I was
8 registered.

9 Q. Okay. Had you heard of any other voting
10 law changes prior to November 1, 2021?

11 A. No.

12 Q. Okay. Had you done any research on your
13 own into how to register to vote in Montana?

14 A. No, but I was -- it was -- my research was
15 mainly on who I was going to vote for.

16 Q. So you don't anticipate that this, the
17 Election Day registration law, will impact you going
18 forward, right?

19 MR. GORDON: Objection; speculation,
20 foundation.

21 THE WITNESS: I don't know about going
22 forward because, I mean, I'm registered for Bozeman
23 now. But at the time, it did affect me because if I
24 would have been able to register while I was there, I
25 would have been able to vote.

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1 A. 5:30 news, yeah.

2 Q. Okay. And, then, what other news sources
3 do you follow?

4 A. VICE World News. I don't know, there's
5 the internet, you know, mostly. I get a Reddit.

6 Q. Did you say "VICE news"?

7 A. Their world news, yes, VICE, but mostly
8 Reddit.

9 Q. Mostly Reddit. And which subreddits?

10 A. I don't know. I just click from one
11 subreddit to the other.

12 Q. Okay. So VICE World News, KPAX on TV, and
13 Reddit. Any other ways that you follow the news?

14 A. When I was in Missoula, I'd occasionally
15 read the Missoulian, but that's about it.

16 Q. Okay. Do you think that the news is the
17 best place to get information about voter
18 registration?

19 A. No, I don't.

20 Q. Okay. You don't claim that those news
21 sources you mentioned, the Montana ones, never ran a
22 story about the changes in voting laws in 2021, right?

23 A. I mean, not that I know of, but they could
24 have.

25 Q. Is it your testimony that if you had seen

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1 the news story about that change, then you would have
2 been able to vote in 2021?

3 A. Possibly, but again, it goes back to like
4 when I went up to the booth and they told me I was
5 registered. I didn't really think much after that
6 about registering until it was time to actually vote.

7 Q. Okay. So the fact that you didn't see the
8 news stories about the change in voting laws, that
9 didn't impact whether or not you voted in 2021. Is
10 that what you're saying?

11 MR. GORDON: Objection; speculation.

12 THE WITNESS: I don't think so, no.

13 Q. (By Mr. Knobel) Okay. Because like you
14 said, you went up to the table and they said you were
15 registered. You know, if you had seen a news story
16 that said: "Registration closes at noon the day
17 before," that wouldn't have changed how you behaved in
18 terms of when you went to vote, right?

19 A. Right.

20 MR. GORDON: Objection; speculation.

21 THE WITNESS: I'm sorry. Right.

22 Q. (By Mr. Knobel) Okay. So do you know why
23 there's this Paragraph 8 in your declaration talking
24 about how you were surprised and you keep up to date
25 on the news?

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1 A. I told Hal that I watch and read the news
2 sometimes.

3 Q. Okay.

4 A. And then I was surprised at the law change
5 because he told me it was a recent change.

6 Q. Okay. And then that last sentence in
7 Paragraph 8 says:
8 "I hope the Court will return the law to
9 the previous status quo and allow Montana's citizens
10 to register to vote on election day as has been the
11 tradition for more than a decade."

12 Do you see that?

13 A. Yes.

14 Q. And then the previous sentence, you
15 mention: "Montana's long-standing practice." Do you
16 see that?

17 A. Yes.

18 Q. What is the basis of your knowledge to
19 testify that Election Day registration is a
20 long-standing practice and a tradition for more than a
21 decade?

22 A. What Hal told me, and that was about it.

23 Q. Okay. Before you -- before Hal told you,
24 did you have a basis for knowing that Election Day
25 registration was a long-standing practice in Montana?

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1 A. Not necessarily.

2 Q. Okay. And did you know, before you spoke
3 to Hal, about whether Election Day registration has
4 been a tradition in Montana?

5 A. I wouldn't say "tradition," but kind of,
6 yeah. But --

7 Q. Okay, okay. And why wouldn't you say
8 "tradition"?

9 A. It just wouldn't be the word I would use,
10 but -- I don't know.

11 Q. How long were you at the clerk's office
12 when you went there on November 1, 2021, at 4 p.m.?

13 A. Thirty minutes.

14 Q. Okay. And how much of that time was spent
15 waiting?

16 A. Ten, maybe five.

17 Q. And the rest of the time was spent talking
18 to the people and filling out the registration form?

19 A. Yes.

20 Q. Anything else about your experiences in
21 registering and voting that you think is important
22 that I haven't asked you about?

23 A. No.

24 MR. KNOBEL: Okay. That's all I've got.

25 Thank you so much, Gavin, for your time. I appreciate

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1 it.

2 THE WITNESS: Yeah. Thank you.

3

4 BY MR. GORDON:

5 Q. Gavin, I have a couple questions for you.

6 A. Sounds good.

7 Q. Counsel asked you a couple questions about
8 what was more important and -- what things were more
9 important than voting. Do you recall those questions?

10 A. Yes.

11 Q. If I understand your testimony correctly,
12 you did make time to go and attempt to vote on
13 November 1, 2021.

14 A. I did do that, yes.

15 Q. And did I understand your testimony
16 correctly that if your roommates hadn't asked you to
17 go vote on November 1st, you would have -- you had
18 planned to make time to go vote on the next day,
19 November 2nd?

20 A. Yes, after my math exam.

21 Q. Counsel asked you a number of questions
22 about the last sentence of Paragraph 2 in your
23 deposition -- I'm sorry, your declaration. Do you
24 recall that discussion?

25 A. Yes.

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1 Q. And that sentence says that you filled out
2 a voter registration form updating your address and
3 returned it to the person staffing the table, correct?

4 A. Correct.

5 Q. Did you fill out a voter registration form
6 updating your address and return it to the person
7 staffing the table at the clerk's office?

8 A. The clerk's office, yes. I have my
9 voter's card right here.

10 Q. Okay. So this, the sentence here is
11 accurate insofar as you did fill out a voter
12 registration form updating your address and returned
13 it to the person staffing the table; it's just that it
14 wasn't the person staffing the table on campus. Do I
15 have that right?

16 A. Correct, yes.

17 Q. Counsel asked you a number of questions
18 about emails you had received from Hal Brewster. Do
19 you recall that?

20 A. Yes.

21 Q. And you were -- you searched through your
22 phone for a number of minutes looking for emails from
23 Mr. Brewster during the deposition?

24 A. Yes.

25 Q. And you identified, was it one email from

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1 Q. And during the deposition, you checked
2 both email in-boxes for the email that you had
3 referenced -- for any emails from Mr. Brewster?

4 A. Yes.

5 Q. And that included the junk, deleted, all
6 sub-folders for each email in-box?

7 A. Yes.

8 Q. And you didn't, during that search you
9 didn't find that email that you had testified you had
10 believed you had received from Mr. Brewster regarding
11 signing up, registering, and getting paid; is that --

12 A. Yeah, I did not find that.

13 MR. GORDON: Okay. Thank you for your
14 time, Gavin. I appreciate it.

15 THE WITNESS: Yes. Thank you. Do I just
16 leave now?

17 MR. KNOBEL: Yeah. Let's go off the
18 record.

19 COURT REPORTER: This concludes the
20 Videoconference Video-Recorded Deposition of Gavin
21 Zaluski.

22 The time is 12:35 Mountain Time. The date
23 is April 12, 2022. We are off the record.

24 (Signature reserved.)

25 * * * * *

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1 Mr. Brewster?

2 A. Two. One of them was my declaration, the
3 other one was just a sentence.

4 Q. So one email from Mr. Brewster was sending
5 your declaration?

6 A. Yes.

7 Q. And the second one was, I think you said
8 he said "perfect." Is that the sentence?

9 A. It was something along those lines, yes.

10 Q. And that second --

11 A. It was: Perfect. Many thanks.

12 Q. And that was after you had returned the
13 declaration or after you had signed the declaration?

14 A. Yes.

15 Q. And those are the only two emails that --
16 from Mr. Brewster that you found anywhere in your
17 email address or your email in-boxes?

18 A. Yes. I checked both emails' in-box,
19 draft, junk, deleted.

20 Q. Okay. And so to be clear, in the -- you
21 checked -- I'm sorry, how many in-boxes do you have?

22 A. Emails?

23 Q. Yeah. How many email in-boxes do you
24 have?

25 A. Two.

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1 STATE OF MONTANA)
: ss.

2 County of Silver Bow)
3

4 I, Jonny B. Nordhagen, Court Reporter - Notary
5 Public in and for the County of Silver Bow, State of
6 Montana, do hereby certify:

7
8 That the witness in the foregoing deposition,
9 Gavin Zaluski, was by me first duly sworn according to
10 law in the foregoing cause; that the deposition was
11 then taken before me at the time and place herein
12 named; that the deposition was reported by me in
13 machine shorthand and later transcribed by computer,
14 and that the foregoing one hundred thirty-nine (139)
15 pages contain a true record of the witness, all done
16 to the best of my skill and ability.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and affixed my notarial seal this ____ day of
19 _____, 2022.

20
21
22
23 _____
24 Jonny B. Nordhagen
Notary Public for the State of
Montana residing at Butte,
Montana. My commission
25 (NOTARIAL SEAL) expires May 8, 2022.

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1 DEPOSITION OF: GAVIN ZALUSKI
2 DEPOSITION DATE: APRIL 12, 2022
3 IN RE: MONTANA DEMOCRATIC PARTY, et al.
4 vs. JACOBSEN
5 COURT REPORTER: JONNY B. NORDHAGEN
6 I have read my deposition and make the following
corrections or additions:

7
8 PAGE # LINE CORRECTION
9
10
11
12
13
14
15
16
17
18
19
20
21

22 Signed under penalty of perjury this _____ day
23 of _____, _____.
24
25

GAVIN ZALUSKI

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<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$1,000 19:24 \$15 49:8 \$2,000 20:4 \$4,000 19:23 \$8.50 28:14,15,16</p> <hr/> <p style="text-align: center;">(</p> <hr/> <p>(139) 140:14</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 18:7 37:12 69:4 71:6 116:22 117:13 130:10 135:12 136:13 10 37:6,12,18 49:12,14 10- 18:10 10-1/2 28:14 10-minute 105:16 100 47:18 10:00 49:16 131:24 10:12 49:19 11 10:5,15 11-month-long 18:10 11:05 82:5 11:17 82:8 12 4:2 10:5,15 90:25 91:12 98:18 128:25 139:23 141:2 12:00 37:14 12:35 139:22 12th 5:3 14 37:4 40:22 41:13 43:10 15 11:21 37:4,6, 18 41:13,15 15th 6:16 13:1 94:11 16 43:10 16th 13:1</p>	<p>17 43:23 44:2 1734 5:4 18 13:24 24:4 32:25 72:10, 15,19,24 75:22 77:13 78:7,21 80:4 18th 109:1 19 13:24 80:4 88:1 19th 78:13 1st 18:8 117:1 120:21,24 121:16 136:17</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 78:6 89:17 93:3,16 105:3 136:22 20 37:7,18 71:17 117:8 121:11 20-something 70:23 2001 71:21 2019 75:22 76:1 77:1,4,11 109:10 2020 11:7,8 13:2 14:12 17:2,7 18:7 29:20 79:14 80:15,24 81:4, 11 82:17,25 83:15 84:11,23 86:9,12,24 87:5,6,9,12,17, 25 88:3,11,17, 21 89:10 109:12,15,18 2021 11:8,9 18:7,19,20 26:6 29:5 36:17,20 37:3, 10 38:6 40:13, 17 41:3,7,12 42:8,11,14 43:21,22 56:11 59:24 93:21 94:13 100:25</p>	<p>102:10 103:7 105:24 106:2, 13,22 107:3,8, 12 116:7,22 117:13 118:7, 9,24 120:6 123:2,15 126:7,8,11 127:7,25 128:4 129:2 130:10 131:8 132:22 133:2,9 135:12 136:13 2022 4:2 5:3 18:18 44:1 139:23 140:19, 25 141:2 21 114:3 21-0451 4:24 210 6:16 24 6:16 25 29:10 42:19, 21 43:4 114:22 2nd 55:18 125:21 136:19</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 10:13,14 37:13 108:22 30 29:10 42:19 114:22 121:11 30-hour-a-week 39:14 300,000 13:3 3rd 55:19</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 114:11 116:22 117:1 121:15 135:12 40 29:13,15,18 406-360-6561 60:2 45 68:18 69:2</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 100:11 116:20 50/50 34:10</p>	<p>541 16:8 5608 75:10 5:30 131:24 132:1 5:45 44:19 5:55 44:19 5th 77:4</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 10:14 45:6,13 60 29:15 6:00 44:19,23, 24 6th 71:20</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 10:14,15 40:22 43:24</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 10:15 39:4 129:24 131:14 133:23 134:7 140:25 80 119:4</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 10:15 9:03 4:16</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 4:16 37:12 45:6,13 49:17, 20 82:8 ability 140:16 above- captioned 69:9 absentee 76:6,8 105:10,21 106:10 acceptable 124:5 access 31:17 accommodate 124:2 accommodation 124:11,16</p>	<p>account 46:1 111:8,17,21 112:2 accounts 111:11 accurate 92:20 126:17 137:11 accurately 7:7 ACL 29:9 Action 64:17,25 65:9,20 active 36:5 56:23 64:12,15 activities 42:13 actual 21:16 additions 141:6 address 6:15 21:15,18 75:7 78:14 93:20 94:5,10,15,20, 21 95:3 98:1, 22 99:2,7,14,20 100:3,6,12,15, 18,25 101:1,4, 15,18,24 102:2, 24 105:6 106:2,3,14 118:7 137:2,6, 12 138:17 addressed 100:3,6,25 101:1 addresses 100:4 advanced 38:9 advantage 62:20 advisor 45:10 46:2 66:19 advisors 66:10 affect 130:23 affirmative 12:6 41:17,19 affirmatively 41:14 118:11 affixed 140:18 afford 119:12 African- american 17:23 afternoon 37:22,24</p>
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EXHIBIT 5

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The certified transcript is the only official transcript which may be relied upon for the purposes of verbatim citation of testimony.

EXAMINATION

BY MR. SEMMENS:

Q. All right, Mr. Bohn -- and how do you pronounce your last name, just to start with?

A. You're right with Bohn. Very few people

Q. Third, our wonderful court reporter Lisa is transcribing everything but she can only transcribe one person talking at a time, so it's important that we don't speak over each other. I'll let you finish when you're speaking and I would just ask that you do the same. Is that fair?

A. Yeah.

Q. And please answer my questions verbally so that Lisa can transcribe them. Nonverbal responses like uh-huh or uh-uh are not clear and they make Lisa's job more difficult. So would you please use verbal responses?

A. Yes.

Q. And we'll try and take a break every hour or so. I'm hoping today's deposition won't go too long.

So let's talk about your background, Mr. Bohn. What did you do to prepare for today's deposition?

A. I spoke with my attorney a few days ago and then I read over the complaint and my -- what is it called -- my declaration.

Q. Your declaration that's been filed in these proceedings?

A. Yes.

do.

Q. Perfect. My name is John Semmens. I'm here on behalf of -- and I'm an attorney here on behalf of defendant Secretary of State.

Have you ever been deposed before, Mr. Bohn?

A. No.

Q. Have you ever testified at trial?

A. No.

Q. You've probably discussed these with MDP's attorneys already, but I'd like to offer some guidelines to help make today's deposition go smoothly. First, tell the truth. And I say that just because I want to make sure you understand that if you testify differently at trial than you do today, we can use the transcript of your deposition today at trial to show that you testified differently during your deposition. Do you understand that?

A. Yes.

Q. Second, if I ask you a question and you don't understand what I'm asking, please ask me to clarify. I don't want you to answer any questions that you don't understand. Is that fair?

A. Yeah.

Q. Did you review any documents other than the complaint and the declaration that you just referenced?

A. No.

Q. Mr. Bohn, do you have any reason why you wouldn't be competent to testify today?

A. No.

Q. Are you on any medication that could affect your ability to testify accurately?

A. No.

Q. How old are you, Mr. Bohn?

A. I'm 26.

Q. And did you attend college?

A. Yes.

Q. What college?

A. Montana State University Billings.

Q. Did you graduate from Montana State university Billings?

A. I have not because my health has made me have to take breaks, so I'm in the process of still going through college.

Q. Do you anticipate graduating in the near future?

A. Yeah.

Q. And do you have a degree that you are

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1 hoping to obtain from Montana State University
2 Billings?
3 A. Political science education.
4 Q. Where do you live, Mr. Bohn?
5 A. I live in Billings, Montana.
6 Q. And how long have you lived in Billings?
7 A. Since I was 11, so 15 years now.
8 Q. So before you lived in Billings where did
9 you live?
10 A. In Great Falls, Montana.
11 Q. Do you currently live with anyone?
12 A. I live with my parents, yes.
13 Q. Do you live with anyone other than your
14 parents?
15 A. My brother when he's not in college
16 himself.
17 Q. Are you married, Mr. Bohn?
18 A. No.
19 Q. Do you have any kids?
20 A. No.
21 Q. Are you currently employed?
22 A. I am not, no.
23 Q. When was the last time you were employed?
24 A. 2018.
25 Q. With whom were you employed in 2018?

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1 A. I worked with Senator Tester's campaign
2 here in Billings.
3 Q. And how long did you work for Senator
4 Tester's campaign?
5 A. Five months.
6 Q. I'm sorry. You broke up. Did you say
7 five months?
8 A. Five months.
9 Q. Okay. Was that a paid position when you
10 worked for Senator Tester's campaign?
11 A. Yes.
12 Q. And how much were you paid by Senator
13 Tester's campaign in 2018?
14 A. I am not 100 percent sure. I can't
15 remember.
16 Q. Can you give me a rough sense?
17 A. I think it was around 3,000 a month but
18 I'm not -- I can't remember.
19 Q. And what was your job title for Senator
20 Tester's campaign in 2018?
21 A. So my job title was -- I think it was
22 deputy finance officer and then that transitioned
23 when it got closer to the campaign working in the
24 field office in Billings getting volunteers and
25 ramping up for the end of the election.

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1 Q. And can you describe your role as deputy
2 finance director or officer for Senator Tester?
3 A. Yeah. It really was just if he had an
4 event in Great Falls, for example let's say, I would
5 call prospective people to invite them to the event
6 and then email them details about the event.
7 Q. And I just want to make sure that I'm
8 clear on the amounts you were paid and, again, this
9 was an estimate on your part. But I believe you
10 testified that you worked for Senator Tester for
11 around five months and were about \$3,000 per month?
12 A. Correct.
13 Q. Is that fair? So about \$15,000 was paid
14 to you by Senator Tester in 2018?
15 A. Correct, yes, roughly.
16 Q. Prior to your position with Senator
17 Tester's campaign in 2018, did you have any
18 employment with any other employers?
19 A. No. The only other work I have done is I
20 did work for Governor Bullock's campaign in 2016 and
21 then Zoo Montana in high school.
22 Q. How long did you work for Governor
23 Bullock's campaign in 2016?
24 A. That again was around the same five or six
25 months.

Page 8

1 Q. And what was the title of your position
2 with Governor Bullock's campaign?
3 A. It was -- I can't remember. It was
4 something with organizing though. I can't remember
5 my exact.
6 Q. Was that a paid position, organizer --
7 A. Yes, that was a paid position.
8 Q. Can you give me a general sense of how
9 much you were paid --
10 A. I think it was like \$1,500.
11 Q. A month?
12 A. A month.
13 Q. Have you ever been employed by any other
14 political campaigns?
15 A. No.
16 Q. Have you ever been employed by the Montana
17 Democratic Party?
18 A. No.
19 Q. Has the Montana Democratic Party ever paid
20 you for any work that you've done?
21 A. No.
22 Q. Do you have a podcast, Mr. Bohn?
23 A. I do, yeah.
24 Q. What's the name of your podcast?
25 A. Wide Left Sports.

2 (Pages 5 to 8)

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1 **Q. Wide Left Sports. And what do you talk**
2 **about on Wide Left Sports?**

3 A. It's mainly in-state people that I've had
4 on that I just -- I love sports so I talk about
5 their careers in sports and sometimes high school
6 athletes that want to go on to the next level.
7 Sometimes it's college athletes that have gone on to
8 the next level. It's really just a lot of people
9 that I know that I want to try to get their stories
10 out.

11 **Q. How often do you publish podcasts**
12 **typically?**

13 A. It honestly depends. Sometimes it's more
14 than one a week, sometimes it's every couple weeks.
15 It really depends.

16 **Q. And were you one of Montana's Democratic**
17 **delegates in the 2020 presidential election?**

18 MR. SEMMENS: Did it freeze up on us?

19 MR. GORDON: It looks like we may have
20 lost Mitch.

21 (Zoom connection lost. Off the
22 record briefly.)

23 A. So what was the question?

24 **Q. (By Mr. Semmens) So we went off the**
25 **record so we'll hop back on record now and I'll just**

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1 **Q. -- along with Democrats in Billings to get**
2 **their votes and be elected to become a delegate. Is**
3 **that accurate?**

4 A. Yes.

5 **Q. What did you do as a delegate for the**
6 **Montana Democrats in 2020?**

7 A. What we did was, again, because everything
8 was virtual, we virtually attended the -- oh, what
9 it's called -- the Democratic --

10 **Q. Convention?**

11 A. -- Convention. Thank you. And there were
12 different meetings throughout the day and then we
13 virtually voted for who we wanted as president.

14 **Q. Who did you vote for?**

15 A. Joe Biden.

16 **Q. All right.**

17 MR. SEMMENS: Can we go off the record for
18 just one minute?

19 (Discussion off the record.)

20 **Q. (By Mr. Semmens) Mr. Bohn, do you have a**
21 **LinkedIn profile?**

22 A. I do, yeah.

23 **Q. I'd like to share an exhibit with you in**
24 **the chat function. I apologize, let's go off the**
25 **record for a second.**

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1 **reask the question.**

2 Mr. Bohn, were you one Montana's
3 Democratic delegates in the 2020 presidential
4 election?

5 A. I was, yes.

6 **Q. How did you become a Montana Democratic**
7 **delegate for the 2020 election?**

8 A. I was asked by one of my friends who was a
9 big part of the Yellowstone Democratic Party to run
10 and that's kind of how it went.

11 **Q. So you had to run to become a delegate for**
12 **the Montana Democrats in 2020?**

13 A. Yes.

14 **Q. And what does that process look like,**
15 **running to become a delegate for a --**

16 A. Well, I think it was a little different in
17 2020 since everything was virtual. So there was
18 like 30 people in the city of Billings and
19 surrounding area that ran. I think 30, roughly that
20 number. And then if you got in -- I can't remember
21 again -- the top I think six, then you went on to
22 the state and they voted on that at the state
23 convention.

24 **Q. So you had to campaign locally --**

25 A. Uh-huh.

Page 12

1 (Off the record briefly.)

2 **Q. (By Mr. Semmens) Mr. Bohn, you just**
3 **testified that you do have a LinkedIn profile. I've**
4 **shared with you a document containing a LinkedIn**
5 **profile with your name on it. Is this your LinkedIn**
6 **profile?**

7 A. Yep.

8 MR. SEMMENS: Would the court reporter
9 please mark the LinkedIn profile of Mitch Bohn
10 as Deposition Exhibit 55.

11 (Deposition Exhibit 55 marked
12 for identification.)

13 **Q. (By Mr. Semmens) Mr. Bohn, did you draft**
14 **the information contained in the LinkedIn profile**
15 **we've marked as Deposition Exhibit 55?**

16 A. Correct. That's me, yeah.

17 **Q. And have you had a chance to review the**
18 **information contained in your LinkedIn profile,**
19 **Deposition Exhibit 55?**

20 A. Yeah.

21 **Q. Is this information in Deposition Exhibit**
22 **Number 55 accurate to the best of your knowledge?**

23 A. To the best of my knowledge, yeah.

24 **Q. So let's go through your experience listed**
25 **in Deposition Exhibit Number 55. The first one is**

3 (Pages 9 to 12)

1 deputy finance director for Montanans for Tester,
2 correct?

3 A. Correct.

4 Q. And I believe we've already discussed
5 that. Is that accurate?

6 A. Correct, that is accurate.

7 Q. The next position listed is political
8 organizer for John Heenan for Congress. Is that
9 accurate?

10 A. That is accurate. That was not a paid
11 position. That was a volunteer position and so that
12 is why I did not mention it when you asked for paid
13 positions.

14 Q. Is the John Heenan for Congress the
15 individual listed in the second experience in
16 Deposition Exhibit Number 55, is that the same John
17 Heenan who has appeared as counsel of record for
18 plaintiff Montana Democratic Party?

19 A. Yes.

20 Q. What was your position, Mr. Bohn, when you
21 worked for Mr. Heenan's congressional campaign?

22 A. It was kind of along the same lines as it
23 was for Governor bullock, I was making phone calls
24 to volunteers and prospective voters.

25 Q. And you were not paid by Mr. Heenan?

1 says your name, right?

2 A. One second. I clicked out of it on
3 accident. There we go. Yes.

4 Q. And is that your picture at the top?

5 A. Yep.

6 Q. And underneath your name could you read
7 that for me?

8 A. Deputy field organizer at Montana
9 Democratic Party.

10 Q. And my understanding of how LinkedIn works
11 is that the title listed under the name is a
12 person's current position. Is that consistent with
13 your understanding?

14 A. I honestly -- I don't know when I created
15 this that probably was my current. I don't use
16 LinkedIn that often, to be honest with you, and so
17 that probably was my current at the time that I put
18 it up, yes.

19 Q. So how long were you deputy field
20 organizer for the Montana Democratic Party?

21 A. I was deputy field organizer, like I said,
22 for six months and it was for Governor Bullock's
23 campaign and I believe that may have been -- I don't
24 even think it was the Democratic Party itself. I
25 believe it was Governor Bullock's campaign. I just

1 A. I was not paid on his campaign, no.

2 Q. The third experience listed in your
3 LinkedIn profile is political organizer for the
4 Montana Democratic Party. Is that accurate?

5 A. And that, that is semi accurate. Do you
6 remember that special election we had where it was
7 like a two-month dash for Rob Quist and I believe it
8 was now Governor Gianforte?

9 Q. I don't remember that.

10 A. Oh, okay. Well, that is what that was,
11 that mad like two-, three-month dash of a
12 congressional campaign. I helped volunteer and,
13 again, it was the same kind of capacity I had for
14 Heenan.

15 Q. So you have worked for the Montana
16 Democratic Party in the past?

17 A. I did not receive any payment, so it was a
18 volunteer position.

19 Q. Is it accurate to say that you've worked
20 for the Montana Democratic Party in the past in a
21 volunteer capacity?

22 A. In a voluntary capacity, yes, but I have
23 never received payment from the Democratic Party.

24 Q. And, Mr. Bohn, if you look at the top of
25 the LinkedIn profile we've marked as Exhibit 55 it

1 could not find a Governor Bullock for Governor, or
2 Steve Bullock for Governor on here and so, yeah.

3 Q. If you flip to page 2 of Deposition
4 Exhibit Number 55, there is a section identified as
5 education. Do you see that, Mr. Bohn?

6 A. Yeah.

7 Q. And that lists your education at Montana
8 State University Billings, correct?

9 A. Correct.

10 Q. And is it accurate that you were the
11 president of MSU Billings Democrats?

12 A. I was for one semester prior to COVID and
13 then since COVID it has become defunct.

14 Q. And is that College Democrats the
15 organization?

16 A. Yeah, it's -- yes, our chapter of that.

17 Q. And you served as president for six
18 months?

19 A. Correct.

20 Q. How did you become the president of the
21 MSU Billings chapter of College Democrats?

22 A. Well, actually, it was just kind of by
23 default. There were three members, two were
24 graduating. I was the only one left.

25 Q. And what did you do as president of

College Democrats at MSU Billings?

A. Tried my hardest to get students involved. It didn't work out. The only thing that I really did that was big was I did put on a governor's forum right at the end of -- well, actually, it was in the spring semester like a week before COVID.

Q. Did you do anything else as president of the College Democrats?

A. I held meetings every other week and that was it.

Q. When you were working in the capacity as president of College Democrats at MSU Billings, did you ever work with the Montana Democratic Party?

A. No. And this was also not a paid position. It was just fill a need basically.

Q. You've had a chance to review this LinkedIn profile?

A. Correct.

Q. Have you worked for the Montana Democratic Party in any other capacity other than what's listed in Deposition Exhibit 55, again, paid or unpaid?

A. No.

Q. Is the Montana Democratic Party paying you to be a plaintiff in this litigation?

A. No.

Deposition Exhibit Number 56?

A. "I'm a Montana citizen and voter residing in Billings. I have a disability that confines me in a wheelchair and has resulted in numerous health complications over the years."

Q. Before I ask this question, I just want to clarify. I'm not seeking detailed medical history.

I understand that's personal. But would you generally describe your disability which you've referenced in paragraph 2 of this declaration?

A. Sure. So in basic terms, I have spina bifida. I have a different form of it. It's myelomeningocele, but basically it's spina bifida.

Q. And, Mr. Bohn, how does spina bifida affect your day-to-day life generally?

A. I'm in a wheelchair so, for one, I can't get around easily. As you guys know, we got completely dumped on in snow so that does not help being a wheelchair user. And then I just have days where my health isn't great because of my spina bifida. I mean, I have kidney issues, I have a bunch of other issues that have stemmed from my spina bifida.

Q. And has your spina bifida ever prevented you from working for political campaigns in the**Q. Has the Montana Democratic Party ever made a payment to you?**

A. No.

Q. You referenced earlier a declaration that you signed in this litigation. Do you recall that?

A. Yes.

Q. And I believe I've shared a copy of that declaration with you.

A. Yes, I have it up right here.

Q. Are you familiar with this document?

A. Yes.

MR. SEMMENS: Could the court reporter please mark the Declaration of Mitch Bohn as Deposition Exhibit Number 56.

(Deposition Exhibit 56 marked for identification.)

Q. (By Mr. Semmens) Mr. Bohn -- and do you want to take a chance, an opportunity to read through the declaration?

A. I actually read through this earlier today, so we're good.

Q. Is the information contained in this declaration, again Exhibit 56, accurate?

A. Yes, it is.

Q. Would you please read aloud paragraph 2 of**past?**

A. It has. I've been in the hospital -- just this last year I was in the hospital for five months and, yeah, I mean, there are times when I'll be in the hospital for weeks on end. I know one of the times I was working I was in the hospital for two weeks and thankfully it was just one of my volunteer positions but, yeah.

Q. Has your spina bifida ever prevented you from voting in a Montana election?

A. Thankfully it has not to this point, no.

Q. Let's talk about the First Amended Complaint in these proceedings. Mr. Bohn, why did you decide to join the MDP complaint as a plaintiff?

A. I'm sorry. Can you repeat that? My internet kind of cut out.

Q. Why did you decide to join Montana Democratic Party's First Amended Complaint as a plaintiff?

A. I decided to join this because I felt like in my circumstance living with my family, yes, I right now am able to get my absentee ballot out but if my circumstances change, which they very easily could, the laws that have been -- what's the word I want to look for here -- the laws that have been

1 proposed would hamper that.

2 **Q. In what way would the laws at issue hamper**
3 **your ability to return an absentee ballot?**

4 A. Well, even as it is now, living at home, I
5 can't get to my mailbox. And so even though I live
6 at home, I have to have my mom or my dad or my
7 brother take my ballot out to the mailbox and so if,
8 God forbid, they weren't here, how would I even get
9 it to the mailbox? I can't get to our mailbox of
10 how it is and so I would then want someone to be
11 able to come and pick up my ballot.

12 **Q. Did your personal political beliefs play**
13 **any role in your desire to join this complaint as a**
14 **plaintiff?**

15 A. No.

16 **Q. How would you describe your political**
17 **beliefs?**

18 A. I would say I'm definitely more Democratic
19 leaning but I'm open minded as well.

20 **Q. And I believe you testified earlier that**
21 **your podcast name is Wide Left Sports; is that**
22 **right?**

23 A. Yes.

24 **Q. Does the phrase wide left have any**
25 **relation to your political beliefs?**

1 **loud?**

2 A. Plaintiff Mitch Bohn is a Montana citizen
3 and voter who resides in Billings. Mr. Bohn's
4 disability confines him to a wheelchair and has
5 resulted in numerous health complications over the
6 years. Because of his mobility issues, Mr. Bohn has
7 regularly given his absentee ballot to his parents
8 to return on his behalf. If it were permissible
9 under Montana law, Mr. Bohn would gladly give his
10 ballot to organizers from the MDP, whom he trusts to
11 return his ballot on his behalf. Mr. Bohn strongly
12 believes that ballot collection is a valuable and
13 valid method of returning one's ballot, particularly
14 for members of the disabled community like himself."

15 **Q. Is paragraph 15 accurate to the best of**
16 **your knowledge?**

17 A. Yes.

18 **Q. Then is paragraph 15 of this Deposition**
19 **Number Exhibit 57, does it identify the reasons why**
20 **you are challenging the constitutionality of the**
21 **statutes identified in this First Amended Complaint?**

22 A. Yes.

23 **Q. I'm sorry. It broke up.**

24 A. Yes.

25 **Q. Thank you. Are there any other reasons**

1 A. No, it is -- my friend that started it
2 with me is a huge Vikings fan and it's kind of an
3 omen to their wide left kicking.

4 **Q. Are you familiar with the Montana**
5 **Democratic Party's First Amended Complaint?**

6 A. Yes.

7 **Q. When was the last time you read the**
8 **Montana Democratic Party's First Amended Complaint?**

9 A. I just read it in full a couple days ago.

10 **Q. And I believe I've shared a copy of that**
11 **First Amended Complaint with you. Is that accurate?**

12 A. Yes.

13 MR. SEMMENS: Would the court reporter
14 please mark Montana Democratic Party's First
15 Amended Complaint as Deposition Exhibit
16 Number 57.

17 (Deposition Exhibit 57 marked
18 for identification.)

19 **Q. (By Mr. Semmens) And, Mr. Bohn, would you**
20 **please turn to page 7 of what we've marked as**
21 **Deposition Exhibit 57?**

22 A. Yep, I'm there right now.

23 **Q. Do you see paragraph 15?**

24 A. I do.

25 **Q. Would you please read paragraph 15 out**

1 **that you know of for why you are challenging the**
2 **constitutionality of the statutes identified in this**
3 **First Amended Complaint?**

4 A. Not that I can think of, no.

5 **Q. Is it fair to say then that you are only**
6 **challenging the constitutionality of House Bill 530**
7 **which regulates third-party ballot collection**
8 **practices in Montana?**

9 A. Correct.

10 MR. SEMMENS: Can we go off the the record
11 for just one moment?

12 (Break taken.)

13 **Q. (By Mr. Semmens) Mr. Bohn, let's talk**
14 **about your voting history. And for this I'll ask**
15 **you to please refer back to your declaration, which**
16 **we have marked as Deposition Exhibit 56. Do you**
17 **have that document in front of you?**

18 A. Yeah.

19 **Q. Would you please read out loud paragraph 3**
20 **of your declaration?**

21 A. I'm sorry. Can you repeat that? The
22 internet cut out really badly again.

23 **Q. Would you please read out loud paragraph 3**
24 **of your declaration?**

25 A. Yep. "I first registered to vote in 2014.

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1 My high school government teacher gave me a voter
2 registration form on my 18th birthday and I filled
3 it out right away. I have voted in every election
4 for which I have been eligible since. I believe
5 voting in an incredibly important civic
6 responsibility and the best way to have a say in our
7 government."

8 **Q. Is the paragraph you just read factually**
9 **accurate?**

10 A. Yes.

11 **Q. When is your birthday, Mr. Bohn?**

12 A. It's October 13th and then 1995.

13 **Q. If your birthday is October 13 of 1995 and**
14 **you filled out your voter registration form on your**
15 **18th birthday, is it fair to say you did not**
16 **register to vote on election day when you were 18?**

17 A. I did not vote, or register on election
18 day, no.

19 **Q. I'd like to share another document with**
20 **you, Mr. Bohn. I meant to -- and it has -- we'll go**
21 **off the record for just a moment while that comes**
22 **through.**

23 (Off the record briefly.)

24 **Q. (By Mr. Semmens) So, Mr. Bohn, I've just**
25 **shared a document with you. It's your Montana Voter**

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1 **Q. And that's your correct date of birth?**

2 A. Yes.

3 **Q. And it lists your original registration**
4 **date in the middle as October 4th of 2013. Do you**
5 **see that?**

6 A. Yeah, I do.

7 **Q. And is that consistent with your**
8 **recollection of when you registered to vote?**

9 A. You know, I'm going to be honest, it's
10 been what, eight, nine years since I registered to
11 vote. It probably is but I don't remember
12 100 percent.

13 **Q. And we agree you did not register to vote**
14 **in 2013 on election day, correct?**

15 A. That is correct. I've never been down to
16 the Metra to vote.

17 **Q. This Deposition Exhibit 58 lists your**
18 **address as 3174 Viola Lane in Billings, Montana. Is**
19 **that correct?**

20 A. That is correct.

21 **Q. I understand that you registered to vote**
22 **initially, gosh, nearly nine years ago at this**
23 **point. I'd like to go back to that date that you've**
24 **referenced in your declaration. Was it inconvenient**
25 **for you to register on a date prior to election day?**

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1 **Profile Report. Do you have that document in front**
2 **of you?**

3 A. Uh-huh. Yeah.

4 MR. SEMMENS: Would the court reporter
5 please mark Mr. Bohn's Voter Profile Report as
6 Deposition Exhibit Number 58.

7 (Deposition Exhibit 58 marked
8 for identification.)

9 **Q. (By Mr. Semmens) Have you ever seen this**
10 **document, Mr. Bohn?**

11 A. No, I have not.

12 **Q. And I'll represent to you that this is a**
13 **publicly available record maintained by the Montana**
14 **Secretary of State's Office and. I'm happy to give**
15 **you a minute to read through that. And just let me**
16 **know when you've had a chance to review it.**

17 A. Okay, I have.

18 **Q. To the best of your knowledge, Mr. Bohn,**
19 **is the information contained in this Deposition**
20 **Exhibit 58 factually accurate?**

21 A. Probably. I'm going to guess so.

22 **Q. And if you look at the top right corner,**
23 **it lists your date of birth as 10-13-1995; is that**
24 **correct?**

25 A. Yep, that's correct.

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1 A. You know, I don't remember why I did it
2 the way I did, to be honest with you. Like you
3 said, it was nine years ago so I probably was I
4 think -- like I said, my teacher gave it to me and I
5 think I just did it there out of ease of having it
6 there.

7 **Q. But you don't recall any problems that you**
8 **experienced due to your decision to register prior**
9 **to election day. Is that fair?**

10 A. Again, I was -- it was -- I was 18, almost
11 nine years ago. No, I don't.

12 **Q. Do you recall what identification you used**
13 **to register to vote back in 2013?**

14 A. I don't, but if I had to guess, probably
15 my driver's license.

16 **Q. How long have you had a driver's license?**

17 A. I got it my senior year of high school.

18 **Q. Do you recall how old you were when you**
19 **first obtained a driver's license?**

20 A. I was 18.

21 **Q. Did you register to vote in person again**
22 **back in 2013?**

23 A. I don't 100 percent recall if I did or
24 not.

25 **Q. Have you ever registered to vote on**

7 (Pages 25 to 28)

1 election day using election day registration in
 2 Montana?
 3 A. No, I have not.
 4 Q. I'll refer you back to your declaration
 5 that, again, that's Deposition Exhibit 56. And in
 6 paragraph 3 you stated that you voted in every
 7 election for which you have been eligible, correct?
 8 A. Correct.
 9 Q. Did you vote in any Montana elections in
 10 2021?
 11 A. Yes.
 12 Q. I'm sorry, it broke up.
 13 A. Yes.
 14 Q. What elections did you -- what Montana
 15 elections did you vote in in 2021?
 16 A. I can't remember exactly what it was for
 17 100 percent. I think it was for city council if I
 18 I'm remembering correctly.
 19 Q. And if you refer to Deposition Exhibit 58
 20 at page 2, do you see at the top there voting --
 21 A. Yeah.
 22 Q. -- in the municipal general election in
 23 November of 2021?
 24 A. Yep.
 25 Q. Does that stick with your recollection?

1 A. Yes.
 2 Q. Did you experience any difficulties voting
 3 in the November 2021 municipal elections?
 4 A. Since I voted absentee, my only thing I
 5 have is I have my parents take my ballot to the
 6 mailbox since I cannot get to the mailbox.
 7 Q. Did you experience any other difficulties
 8 voting in the November election?
 9 A. I did not.
 10 Q. And so if your parents took your ballot to
 11 the mailbox for the 2021 municipal election, you
 12 didn't vote in person, correct?
 13 A. No. I have never voted in person.
 14 Q. Mr. Bohn, if you read through again this
 15 page 2 of Deposition Exhibit 58, it lists the past
 16 elections that you voted in. Is that fair?
 17 A. Yep. Yeah.
 18 Q. And does this all look accurate to you?
 19 A. To the best of my knowledge.
 20 Q. Do you recall experiencing any
 21 difficulties when you voted in any of the past
 22 elections listed on page 2 of Deposition Exhibit 58?
 23 A. There was one. It was in 2018. I believe
 24 it was a general. I had -- I was working for
 25 Senator Tester at the time, as I have said, and I

1 did not fill out my ballot fast enough I felt to get
 2 it in through the mail and so then I had my parents
 3 drop it off downtown at the courthouse.
 4 Q. And is it fair to say that ultimately you
 5 were able to vote in that 2018 election?
 6 A. Ultimately in that election I was, yes.
 7 MR. GORDON: I'm sorry, Counsel. Mitch,
 8 just please make sure that you let Mr. Semmens
 9 finish his question all the way before you
 10 answer, just so you're not talking over each
 11 other.
 12 THE WITNESS: Okay.
 13 Q. (By Mr. Semmens) And I just want to
 14 understand your testimony correctly, Mr. Bohn. Is
 15 it your testimony that you have never voted in
 16 person in a Montana election?
 17 A. Correct.
 18 Q. And at least according to page 2 of
 19 Deposition Exhibit 58, in each election that you
 20 have voted absentee your ballot has been accepted,
 21 correct?
 22 A. Correct. It looks like it, yes.
 23 Q. Let's refer back to Deposition Exhibit 56,
 24 which is your declaration, Mr. Bohn. And I'm going
 25 to refer you to the second and third sentences of

1 paragraph 4. Do you see that?
 2 A. Yes.
 3 Q. Would you please read those two sentences
 4 again, the second and third sentence of paragraph 4
 5 out loud?
 6 A. "Billings typically only has one polling
 7 location at the Metra Arena on election day. I note
 8 from past experience that the arena can be extremely
 9 busy on election day, making it even more difficult
 10 for a person in a wheelchair to navigate."
 11 Q. Mr. Bohn, what is the basis for your
 12 statement that, "I know from past experience that
 13 the arena can be extremely busy on election day"?
 14 A. From working elections, I have, myself,
 15 driven down just to see the lines and I have had
 16 other coworkers that have driven down to see the
 17 lines at the Metra, and I just know that being in a
 18 wheelchair it would be more difficult than the ease
 19 of voting at home.
 20 Q. So even though you haven't personally
 21 voted at the Billings Metra on election day, you
 22 have gone down to the Billings Metra to see who how
 23 long the election lines were. Is that fair?
 24 A. Correct. Yes.
 25 Q. And how many times have you done that on

1 election day in the past?

2 A. Probably twice.

3 Q. And I believe you used the phrase
4 extremely busy in your declaration to describe the
5 scene at the Billings Metra on election day. Is
6 that fair?

7 A. That is correct.

8 Q. And what do you mean by that phrase
9 extremely busy?

10 A. Long lines and, I mean, as we know,
11 November can be kind of cold so being in a
12 wheelchair out in those extreme colds in a line
13 could be detrimental to somebody in a wheelchair.

14 Q. Do you know how long the people who are
15 waiting in line to vote in person at the Billings
16 Metra on the occasions when you went down to view
17 the lines, do you know how long those folks had to
18 wait in line to vote?

19 A. I do not know.

20 Q. Would it be your preference for in person
21 voting lines at the Billings Metra to be shorter on
22 election day?

23 A. Yes, but it would also be my preference
24 for them to be more polling locations in Billings.

25 Q. Do you think election officials should try

1 to make in person voting lines shorter?

2 A. That's not my job. I can't say.

3 Q. I'm just asking for your opinion.

4 A. I don't really think it's anything they
5 can control, to be honest with you.

6 Q. So referring back to Exhibit 56, your
7 declaration, would you please read the first
8 sentence of paragraph 4 out loud?

9 A. "I have a preference for voting by
10 absentee ballot."

11 Q. Okay. Why do you have a preference for
12 voting by absentee ballot?

13 A. Well, there is a lot of reasons. One is,
14 as I've mentioned, the just hubbub of the Metra on
15 election day, my health could be good or bad on
16 election day. It kind of is an up in the air thing
17 so I don't want to leave that up to chance. And
18 then also another thing that is just left up to
19 chance is Montana weather. I mean, the day before
20 election day it could be sunny and 65 and the next
21 day we have two feet of snow like we have now.

22 Q. And I believe your testimony is that every
23 time that you voted in Montana elections in the past
24 you have voted absentee, correct?

25 A. That is correct.

1 Q. How do you typically return your ballot,
2 Mr. Bohn, when you vote absentee?

3 A. Typically what I do is I fill it out and
4 then I have either my mom, dad, or brother take it
5 out to the mailbox and it is taken through the U.S.
6 Mail.

7 Q. And in your declaration you reference this
8 occasion in 2018. And I'm referencing paragraph 5
9 of Deposition Exhibit 56. In 2018 you had your
10 parents deliver your ballot for you to the election
11 offices; is that correct?

12 A. That is correct.

13 Q. Is that the only time your parents have
14 hand-delivered your absentee ballot directly back to
15 the election offices?

16 A. Yes, because that was the only time that I
17 haven't filled it out I felt in adequate time to
18 have it delivered by mail.

19 Q. So other than this one election in 2018,
20 is it fair to say that every time you have voted
21 absentee in Montana elections it's been by U.S.
22 Mail?

23 A. That I can remember.

24 Q. This instance in 2018 when your parents
25 returned your absentee ballot directly to the

1 elections office, did you pay your parents to do
2 that?

3 A. No.

4 Q. I'm sorry. I didn't hear the answer.

5 A. No, I did not.

6 Q. Mr. Bohn, when you've returned your
7 absentee ballot by mail in the past, have there ever
8 before any difficulties that you've experienced with
9 that ballot being delivered to the election office
10 by U.S. Mail?

11 A. Thankfully not up until this point, no.

12 Q. Have you ever asked a third party other
13 than your parents to deliver your absentee ballot
14 directly to the election office in the past Montana
15 election?

16 A. I have not needed to use that, no.

17 Q. Have you ever paid a third party to
18 deliver your absentee ballot directly to the
19 election office in a past Montana election?

20 A. No.

21 Q. To the best of your knowledge has a third
22 party ever paid someone to deliver your absentee
23 ballot directly to the election office in a past
24 Montana election?

25 A. Not to my knowledge, no.

1 **Q. So we're still on Deposition Exhibit 56,**
2 **your declaration. I'm going to refer you to**
3 **paragraph 6. Do you see that?**

4 A. Yes.

5 **Q. Would you please read the second and third**
6 **sentences of paragraph 6 out loud?**

7 A. "If it were legal I would prefer to give
8 my ballot to a paid employee of the Montana
9 Democratic Party or other similarly reliable ballot
10 collection groups to return on my behalf. I trust
11 the party's employees to return my ballot safely and
12 probably more promptly than the U.S. Postal
13 Service."

14 **Q. If I understand your testimony correctly,**
15 **Mr. Bohn, you've never actually given your ballot to**
16 **a paid employee of the Montana Democratic Party to**
17 **deliver directly to an election office in a past**
18 **Montana election. Is that accurate?**

19 A. That is accurate.

20 **Q. And you've never actually given your**
21 **ballot to a paid employee of any other ballot**
22 **collection group to deliver directly to the election**
23 **office in a past Montana election. Is that accurate**
24 **as well?**

25 A. That is accurate, yes.

1 **Q. And you've never had any difficulty**
2 **returning your absentee ballot by mail?**

3 A. No.

4 **Q. And so why, Mr. Bohn, would you prefer to**
5 **have the Montana Democratic Party return your ballot**
6 **for you?**

7 A. Well, I would like to have it as an option
8 because right now, yes, I'm able to have either my
9 parents take it in or my parents take it to the
10 mailbox for me but, again, God forbid they're not
11 with me anymore, I would not be able to. And so
12 having that ability to have someone come and get it
13 and collect it for me is a great thing to have.

14 **Q. Paragraph 6 in Exhibit 56 that you just**
15 **read, it states that you would prefer to give your**
16 **ballot to a "paid employee of the Montana Democratic**
17 **Party." Is that accurate?**

18 A. Yes.

19 **Q. Why is it important to you that the**
20 **Montana Democratic Party representative be paid to**
21 **collect your ballot?**

22 A. It is not. I just used that as a term.
23 It could be a volunteer as well.

24 **Q. You trust the Montana Democratic Party to**
25 **deliver your ballot for you. Is that fair?**

1 A. That is fair, yes.

2 **Q. Would you trust a paid employee of the**
3 **Montana Republican Party to return your ballot on**
4 **your behalf?**

5 A. Yeah.

6 **Q. And why do you say that?**

7 A. Because I feel like we all at the end of
8 the day are wanting the same things. We're wanting
9 our people in, whether it's Democrat or Republican,
10 we all want everybody to vote.

11 **Q. Mr. Bohn, why do you think the Montana**
12 **Democratic Party could return your ballot, "more**
13 **promptly than the U.S. Postal Service"?**

14 A. Well, this statement was taken in 2022
15 when there was a lot of issues with delays in the
16 postal service timing of things due to COVID and so
17 at that given time I was probably thinking yes, they
18 would be able to get it to the post office -- or not
19 to the post office, sorry -- to the election office
20 more promptly just due to the delays that we've had
21 in the postal service recently.

22 **Q. Sitting here today, do you still believe**
23 **that the Montana Democratic Party could deliver your**
24 **ballot more promptly than the U.S. Postal Service?**

25 A. If there is an office here in Billings,

1 yes, because I believe that the person from the
2 Democratic Party could pick it up and take it there
3 in less than an hour when the post office could take
4 a week. Who knows how long?

5 **Q. But, again, you've never had any problems**
6 **with the U.S. Postal Service delivering your ballot**
7 **in past Montana elections?**

8 A. No, I have not.

9 **Q. Let's talk about identification. You**
10 **testified previously that you have had a Montana**
11 **driver's license since he were 18, correct?**

12 A. Correct.

13 **Q. Do you know any adults -- and by adult I**
14 **mean somebody whose 18 or older -- who don't have a**
15 **Montana driver's license?**

16 A. Not off the top of my head that I can
17 think of.

18 **Q. And I'm not asking for the specific number**
19 **here, just to clarify, but do you have a Social**
20 **Security number?**

21 A. Yes.

22 **Q. Do you know any adults in Montana who**
23 **don't have a Social Security number?**

24 MR. GORDON: Objection, foundation. You
25 can answer, Mitch.

1 A. Not off the top of my head, no.
 2 **Q. (By Mr. Semmens) Do you have a U.S.**
 3 **passport?**
 4 A. I do.
 5 **Q. Do you currently sitting here before us**
 6 **today have a student ID card?**
 7 A. I do not currently because I lost my
 8 wallet a few months back and had to redo everything.
 9 So, no, I do not have a student ID on me at this
 10 moment.
 11 **Q. Did you have a student ID card when you**
 12 **were a student --**
 13 A. I did in my old wallet that I lost, yes.
 14 **Q. And when did you first get that student ID**
 15 **card from MSU Billings?**
 16 A. I think it was -- somewhere in 2014.
 17 **Q. Do you recall what the process was like**
 18 **for you back in 2014 when you got the student ID**
 19 **card from MSU Billings?**
 20 A. Not off the top of my head, no.
 21 **Q. Was it a pretty easy process for you to**
 22 **get one?**
 23 A. Yeah. Yes, it was.
 24 **Q. Do you recall, Mr. Bohn, did you have to**
 25 **prove your identity in any way to get that student**

1 A. Not off the top of my head, no.
 2 **Q. Did you ever use the student ID card for**
 3 **something that wasn't directly related to your**
 4 **status as a student at MSU Billings?**
 5 A. Not off the top of my head that I can
 6 remember, no.
 7 **Q. When you were a student at MSU Billings,**
 8 **Mr. Bohn, did you personally know any students who**
 9 **did not have a driver's license?**
 10 A. Are you saying a Montana driver's license
 11 or just a driver's license in general?
 12 **Q. Just a driver's license in general.**
 13 A. I don't know.
 14 MR. GORDON: Objection, foundation.
 15 **Q. (By Mr. Semmens) Given your past**
 16 **experiences and your past interactions with students**
 17 **at MSU Billings, would it strike you as unusual for**
 18 **a student not to have a driver's license?**
 19 MR. GORDON: Objection, foundation. Go
 20 ahead and answer.
 21 A. Can you repeat that question? I'm sorry.
 22 MR. SEMMENS: Would you read it back,
 23 please, Lisa?
 24 (Previous question read.)
 25 MR. GORDON: Same objection. And

1 **ID card back in 2014?**
 2 A. I don't recall.
 3 **Q. And when you did have that student ID card**
 4 **from MSU Billings, for what purposes did you use**
 5 **that student ID card when you were a student at MSU**
 6 **Billings?**
 7 A. To get into the basketball games.
 8 **Q. Anything else that you can think of?**
 9 A. My very first semester I lived in the
 10 dorms so I think meal plans were off of that.
 11 **Q. So if I understand your testimony**
 12 **correctly, you used the student ID card you received**
 13 **from MSU Billings to attend basketball games and to**
 14 **access your meal plan at MSU Billings. Is that**
 15 **accurate?**
 16 A. Yes, that is correct.
 17 (Reporter clarification.)
 18 **Q. (By Mr. Semmens) So, Mr. Bohn, if I**
 19 **understand your testimony correctly, you used your**
 20 **student ID card that you received from MSU Billings**
 21 **in 2014 to attend basketball games and to access**
 22 **your meal plan from MSU Billings. Is that accurate?**
 23 A. Yes, to the best of my knowledge.
 24 **Q. Are there any other purposes that you used**
 25 **that student ID card that you can recall?**

1 remember, Mitch, you can answer after I object
 2 unless I tell you not to.
 3 THE WITNESS: Yeah, I was just thinking.
 4 Sorry.
 5 MR. GORDON: Okay.
 6 A. I didn't really think of that, I guess, as
 7 anything so I guess it's not -- I guess I
 8 wouldn't -- I don't know. I wouldn't think it to be
 9 weird that -- I don't know what I'm trying to say
 10 here. I'm sorry. I would find it weird I guess if
 11 somebody didn't have a driver's license in college,
 12 yeah.
 13 **Q. (By Mr. Semmens) Let's talk about**
 14 **election day registration, Mr. Bohn. If I**
 15 **understand your testimony correctly, you've never**
 16 **used election day registration, correct?**
 17 A. That is correct.
 18 **Q. Do you personally know anyone who has used**
 19 **election day registration to register to vote for**
 20 **the first time on election day in a Montana**
 21 **election?**
 22 MR. GORDON: Objection, foundation.
 23 A. Not off the top of my head.
 24 **Q. (By Mr. Semmens) Let's talk about ballot**
 25 **collection. Mr. Bohn, have you ever worked as a**

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<p>1 paid ballot collector?</p> <p>2 A. No.</p> <p>3 Q. Do you personally know anyone who has</p> <p>4 worked as a paid ballot collector?</p> <p>5 A. No.</p> <p>6 Q. Do you personally know anyone who has used</p> <p>7 a paid ballot collector to return their ballot?</p> <p>8 MR. GORDON: Objection, foundation.</p> <p>9 A. No, I do not.</p> <p>10 MR. SEMMENS: Should we take another</p> <p>11 break?</p> <p>12 MR. GORDON: Sure.</p> <p>13 MR. SEMMENS: And I don't have a ton left.</p> <p>14 (Break taken.)</p> <p>15 Q. (By Mr. Semmens) Mr. Bohn, do you have a</p> <p>16 Twitter profile?</p> <p>17 A. I do.</p> <p>18 Q. And what is your Twitter handle?</p> <p>19 A. I think it's mitch_bohn0. I'm not</p> <p>20 entirely sure. I think it's what they just give you</p> <p>21 generically.</p> <p>22 Q. I'm going to share, hopefully. Do you see</p> <p>23 that, Mr. Bohn?</p> <p>24 A. Yep, that's me.</p> <p>25 Q. That's your Twitter handle?</p>	<p>1 A. Let me get out of the other one. Sorry.</p> <p>2 Yes.</p> <p>3 Q. Do you recall sending this tweet?</p> <p>4 A. No. That was almost two years ago now.</p> <p>5 Q. You did send this tweet from your account</p> <p>6 though, correct?</p> <p>7 A. Possibly. And I probably did, yeah, but I</p> <p>8 don't recall.</p> <p>9 MR. SEMMENS: Would the court reporter</p> <p>10 please mark this tweet from Mr. Bohn dated</p> <p>11 October 21st, 2019 a deposition Exhibit 60.</p> <p>12 (Deposition Exhibit 60 marked</p> <p>13 for identification.)</p> <p>14 Q. (By Mr. Semmens) Mr. Bohn, would you</p> <p>15 please read the tweet at the top from Alexis, it</p> <p>16 looks like Haridopolos, dated October 19, 2019 out</p> <p>17 loud?</p> <p>18 A. "As a female college student on a liberal</p> <p>19 campus, I will probably be voting Republican and</p> <p>20 standing with President Trump in 2020. Democrats</p> <p>21 claim that they are the party of the youth and the</p> <p>22 party of women but they don't represent me or my</p> <p>23 values."</p> <p>24 Q. Do you know Alex Haridopolos, the author</p> <p>25 of this tweet that you responded to?</p>
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<p>1 A. Yep.</p> <p>2 Q. And that's your picture?</p> <p>3 A. Yep.</p> <p>4 Q. So it looks like your Twitter handle is</p> <p>5 @mitch_bohn1013?</p> <p>6 A. Oh, yeah. Sorry.</p> <p>7 Q. No worries. And I assume that the 1013 is</p> <p>8 a reference to your birthday of October 13th?</p> <p>9 A. Yeah, probably.</p> <p>10 Q. Does anyone else have access to your</p> <p>11 Twitter account, Mr. Bohn?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. And do you author the tweets that are sent</p> <p>14 from your Twitter account to the best of your</p> <p>15 knowledge?</p> <p>16 A. To the best of my knowledge.</p> <p>17 Q. I'm going to share, hopefully --</p> <p>18 MR. SEMMENS: And would the court reporter</p> <p>19 please mark Mr. Bohn's Twitter handle as</p> <p>20 Deposition Exhibit 59.</p> <p>21 (Deposition Exhibit 59 marked</p> <p>22 for identification.)</p> <p>23 Q. (By Mr. Semmens) And, Mr. Bohn, I'm just</p> <p>24 going to ask you about one tweet from your Twitter</p> <p>25 profile. Has that tweet showed up on your screen?</p>	<p>1 A. No. It must have just come up on my feed.</p> <p>2 Q. And you were not a college student in</p> <p>3 2019 -- is that accurate -- or were you?</p> <p>4 A. I've been off and on. I think I was but</p> <p>5 I'm not entirely sure.</p> <p>6 Q. Why did you respond to this tweet?</p> <p>7 A. I honestly almost two years ago, I don't</p> <p>8 remember.</p> <p>9 Q. Would you please read your reply to Alexis</p> <p>10 out loud?</p> <p>11 A. "Then you're a dumb privileged white</p> <p>12 girl."</p> <p>13 Q. And what did you mean when you tweeted</p> <p>14 then you're a dumb privileged white girl?</p> <p>15 A. Again, it was almost two years ago. I</p> <p>16 don't remember what I was thinking at the time.</p> <p>17 Q. Sitting here today, do you generally think</p> <p>18 that people who vote for Republican candidates are</p> <p>19 dumb?</p> <p>20 A. No.</p> <p>21 Q. Sitting here today, do you generally think</p> <p>22 that people who vote for Republican candidates are</p> <p>23 privileged?</p> <p>24 A. No.</p> <p>25 Q. Thank you for your time today, Mr. Bohn.</p>

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<p>1 I don't have any other questions for you, unless 2 Matt does. 3 MR. GORDON: Thanks, Counsel. 4 5 EXAMINATION 6 BY MR. GORDON: 7 Q. Mr. Bohn, just a couple quick questions 8 for you. 9 Counsel asked you some questions about 10 your knowledge of other people's circumstances. He 11 asked you about what you know about other students 12 and driver's licenses. Do you recall that question? 13 A. Yes, I do. 14 Q. Mr. Bohn, did you do any comprehensive 15 surveys of other students as potentially whether or 16 not they possessed driver's licenses? 17 A. No. 18 Q. And do you have personal knowledge about 19 the status of all other students that you know 20 insofar as whether or not they have a driver's 21 license? 22 MR. SEMMENS: Objection, foundation. 23 A. No. 24 Q. (By Mr. Gordon) Counsel asked you some 25 questions about what you knew about whether people</p>	<p>1 MR. SEMMENS: Objection, form. 2 A. No, I do not. 3 Q. Nothing further. Thank you, Mr. Bohn. 4 (The deposition was concluded at 5 2:50 p.m.) 6 (Signature required.) 7 * * * * * 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 that you know registered to vote on election day. 2 Do you recall that? 3 A. Yes, I do. 4 Q. Have you done any comprehensive surveys of 5 your friends and acquaintances with respect to how 6 they registered to vote? 7 A. No, I have not. 8 Q. Do you know with respect to your friends 9 and acquaintances and generally the people you know, 10 do you know how each of those people registered to 11 vote? 12 MR. SEMMENS: Objection, foundation. 13 A. No, I do not. 14 Q. (By Mr. Semmens) Counsel asked you some 15 questions about whether people you know had utilized 16 third parties to return their ballots. Do you 17 recall that question? 18 A. Yes, I do. 19 Q. Mr. Bohn, have you done any comprehensive 20 surveys of the people you know with respect to how 21 they have voted? 22 A. No, I have not. 23 Q. And do you know with respect to the people 24 you know, do you know how each of them has voted in 25 each of the elections in which they voted?</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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EXHIBIT 6

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*Lead Attorneys for Defendant Christi Jacobsen, in her
official capacity as Montana Secretary of State*

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

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

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

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

Second Declaration of Janel Tucek

I, Janel Tucek, state and affirm that the following statements are true and correct to the best of my knowledge:

1. I am over 18 years old. I reside in Fergus County, Montana. I make this declaration based on my personal knowledge and experience.
2. I was deposed on April 13, 2022. I am aware a transcript has not been prepared. To the best of my understanding the answers I gave were true and correct. To the best of my recollection, my testimony included the statements contained in this Declaration.
3. I have administered fifteen elections in Montana, including twelve elections in Petroleum County and three elections in Fergus County.
4. I am aware that an injunction was issued by the Montana Thirteenth Judicial District Court enjoining the enforcement of HB 176, HB 506, HB 530, and SB 169.
5. It is my understanding that the injunction changes the documentation an individual may rely on to register to vote.
6. It is my understanding that the injunction changes the documentation an individual may rely on in order to vote.
7. Prior to the issuance of the injunction, I had trained approximately one hundred and fifteen poll workers in preparation for the upcoming primary election in June 2022. Because I trained these poll workers prior to the injunction being issued, the training I administered was based on Montana election law as amended by HB 176, HB 506, HB 530, and SB 169. The training I administered included training on the amendments made by SB 169 to Montana law as to the documentation an individual may use to register to vote and the documentation an individual may use to vote. I certified one hundred and nine poll workers following this training.

Of those one hundred and nine poll workers, eighty-seven will participate in the administration of the upcoming primary election in June 2022.

8. On election night in November 2020, I remained at the Courthouse in Petroleum County until 11:30 p.m. in order to be available to assist with voter registration issues encountered by other county election administrators.

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

4.15.2022 Lewistown, MT
Date and Place

Janel Tucek
Janel Tucek

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CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 04-15-2022:

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Electronically Signed By: Dale Schowengerdt
Dated: 04-15-2022

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Email from Dale Schowengerdt to
Matthew P. Gordon, Alex Rate, and
Mike Meloy, *RE: PI Hearing*
(Nov. 3, 2021).

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From: Dale Schowengerdt
Sent: Wednesday, November 3, 2021 12:43 PM
To: Gordon, Matthew P. (Perkins Coie); Alex Rate; Mike Meloy
Subject: RE: PI Hearing

Follow Up Flag: Follow up
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The State has a strong preference that plaintiffs file their preliminary injunction motion earlier. Scheduling a hearing on a motion for preliminary injunction six months from now, and a year after the case is filed, is highly unusual. Typically in Montana a preliminary injunction motion is filed at the beginning of the case. I still don't understand the delay in filing the motion, and the longer plaintiffs delay in filing it, the more difficult and prejudicial it is to the State. There is obviously a lot of work that goes into implementing the laws, which is already well underway. But as I've said from the beginning of the case, it's your decision when you file it.

The other option, which I again noted in my email yesterday, is that the preliminary injunction hearing be completed in one day rather than two. That's also more typical in Montana, since a PI can't resolve the merits. In any event, you have both options to get the motion decided earlier. I'd strongly encourage you to utilize both of them.

Absent that, we are available either April date. I also note that we've indicated our availability for three of the four proposed hearing dates.

Dale Schowengerdt
406.457.2040

From: Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>
Sent: Wednesday, November 3, 2021 11:33 AM
To: Alex Rate <ratea@aclumontana.org>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; Mike Meloy <mike@meloylawfirm.com>
Subject: RE: PI Hearing

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That being said, we have a strong preference for March 10-11 to give the courts more time to address the matter in advance of the primary. I recognize that not all attorneys on all sides are conflict-free on those dates, but lead counsel for all three parties are available, and it may not be possible to find a time that works for all attorneys' schedules.

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Visit our Covid-19 resource page: www.perkinscoie.com/coronavirus

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April 7-8 works for me, but not April 21-22.

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Sent: Wednesday, November 3, 2021 9:01 AM

To: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; Gordon, Matthew P. (SEA)

<MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>

Subject: Re: PI Hearing

According to Deanne, Judge Moses has the following dates in April available. I can make either of these options work:

April 7-8

April 21-22

Alex Rate | Legal Director

(pronouns he/him)

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From: Alex Rate <ratea@aclumontana.org>
Sent: Wednesday, November 3, 2021 9:51 AM
To: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>
Subject: Re: PI Hearing

Then I suppose we are going to need to look for alternate dates, perhaps in April, to accommodate multiple schedules.

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From: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>

Sent: Wednesday, November 3, 2021 9:47 AM

To: Alex Rate <ratea@aclumontana.org>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>

Subject: RE: PI Hearing

It's not. My co-counsel, Ian McIntosh, who is taking lead on all witnesses, is leading a large legal conference in Taos, New Mexico and it is not possible to reschedule.

Dale Schowengerdt
406.457.2040

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From: Alex Rate <ratea@aclumontana.org>

Sent: Wednesday, November 3, 2021 9:33 AM

To: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>

Subject: Re: PI Hearing

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Can the March 10-11 conflict be mitigated or resolved? As you no doubt know, rescheduling a trial before Judge Molloy is not really a possibility.

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From: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>

Sent: Wednesday, November 3, 2021 9:30 AM

To: Alex Rate <ratea@aclumontana.org>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>

Subject: RE: PI Hearing

I emailed Matt and Mike yesterday that we have a conflict March 10 and 11 and cannot make that work, but that we are available March 24 and 25.

Dale Schowengerdt
406.457.2040

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From: Alex Rate <ratea@aclumontana.org>

Sent: Wednesday, November 3, 2021 9:08 AM

To: Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Mike Meloy <mike@meloylawfirm.com>

Subject: PI Hearing

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Dale, Matt and Mike - I spoke with our team yesterday and the March 10-11 dates work for the PI hearing. I have a week-long trial before Judge Molloy the week of March 21 so the alternate dates proposed by Deanne don't work for me.

Please let me know if we can lock in the March 10-11 dates.

Thanks.

Alex Rate | Legal Director

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

H.B. 176, 67th Montana Legislature
(Apr. 19, 2021)

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AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-2-301, MCA, is amended to read:

"13-2-301. Close of regular registration -- notice -- changes. (1) The election administrator shall:

- (a) close regular registrations for 30 days before any election; and
- (b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.
- (2) Information to be included in the notice must be prescribed by the secretary of state.
- (3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).
- (4) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, ~~except as otherwise as~~ provided in 13-2-304."

Section 2. Section 13-2-304, MCA, is amended to read:

"13-2-304. Late registration -- late changes. (1) Except as provided in 13-21-104 and subsection (2) of this section, the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration as provided in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to ~~the close of the polls on election day.~~

~~(b) Late registration is closed from noon to 5 p.m. on the day~~ noon the day before the election.

~~(c)(b)~~ Except as provided in 13-2-514(2)(a) and subsection ~~(4)(d)~~ (1)(c) of this section, an elector who registers or changes the elector's voter information pursuant to this section may vote in the election if the elector obtains the ballot from the location designated by the county election administrator.

~~(d)(c)~~ With respect to an elector who registers late pursuant to this section for a school election conducted by a school clerk, the elector may vote in the election only if the elector obtains from the county election administrator a document, in a form prescribed by the secretary of state, verifying the elector's late registration. The elector shall provide the verification document to the school clerk, who shall issue the ballot to the elector and enter the verification document as part of the official register.

~~(e)(d)~~ An elector who registers late and obtains a ballot pursuant to this section may return the ballot as follows:

(i) before election day, to a location designated by the county election administrator or school clerk if the election is administered by the school district; or

(ii) on election day, to the election office or to any polling place in the county where the elector is registered to vote or, if the ballot is for a school election, to any polling place in the school district where the election is being conducted.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office, or received by the school district if the district is administering the election, and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration system, or by the school district if the district is administering the election, prior to the change."

Section 3. Section 13-13-301, MCA, is amended to read:

"13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, except as provided in 13-2-514;

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter; or

(h) does not meet another requirement provided in the constitution or by law.

(3) When a challenge has been made under this section, unless the election administrator determines without the need for further information that the challenge is insufficient:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of regular registration under 13-2-301 ~~or on election day~~, the election administrator or, on election day, ~~the either the election administrator or an~~ election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election

administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

- (i) within 5 days of the filing of the challenge if the election is more than 5 days away; or
- (ii) on or before election day if the election is less than 5 days away.
- (c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.
- (5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors."

Section 4. Section 13-19-207, MCA, is amended to read:

"13-19-207. When materials to be mailed. (1) Except as provided in 13-13-205(2) and subsection (2) of this section, for any election conducted by mail, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day.

(2) ~~(a)~~ All ballots mailed to electors on the active list and the provisionally registered list must be mailed the same day.

~~(b)~~ (3) (a) At any time before noon on the day before election day, a ballot may be mailed or, on request, provided in person at the election administrator's office to:

~~(i)~~ an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

~~(ii)~~ an individual who registers under the late registration option provided for in 13-2-304.

~~(c)~~ (b) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

~~(d)~~ (4) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office."

Section 5. Section 13-21-104, MCA, is amended to read:

"13-21-104. Adoption of rules on electronic registration and voting -- acceptance of funds. (1)

The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement this chapter. The rules are binding upon election administrators.

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a covered voter as soon as the ballots are available pursuant to 13-13-205;

(c) a covered voter may, ~~subject to 13-2-304,~~ register and vote up to the time that the polls close on election day;

(d) a covered voter is allowed to cast a provisional ballot if there is a question about the elector's registration information or eligibility to vote;

(e) a covered voter with a digital signature is allowed the option of using the digital signature as provided in 13-21-107; and

(f) a ballot cast by a covered voter and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(f) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter."

Section 6. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 176, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 176

INTRODUCED BY S. GREEF, D. ANKNEY, M. BLASDEL, B. BROWN, M. CUFFE, J. ELLSWORTH, S. FITZPATRICK, C. FRIEDEL, T. GAUTHIER, B. GILLESPIE, C. GLIMM, G. HERTZ, S. HINEBAUCH, B. HOVEN, D. HOWARD, D. KARY, B. KEENAN, T. MANZELLA, T. MCGILLVRAY, B. MOLNAR, K. REGIER, W. SALES, D. SALOMON, J. SMALL, R. TEMPEL, G. VANCE, J. WELBORN, F. ANDERSON, B. BEARD, M. BERTOGLIO, M. BINKLEY, J. DOOLING, P. FIELDER, R. FITZGERALD, J. FULLER, S. GALLOWAY, F. GARNER, C. HINKLE, K. HOLMLUND, M. HOPKINS, W. MCKAMEY, B. MITCHELL, J. PATELIS, J. READ, J. SCHILLINGER, D. SKEES, K. WALSH, K. WHITMAN, C. SMITH

AN ACT REVISING LATE VOTER REGISTRATION; CLOSING LATE VOTER REGISTRATION ON THE FRIDAY AT NOON THE DAY BEFORE THE ELECTION; PROVIDING AN EXCEPTION SO MILITARY AND OVERSEAS ELECTORS MAY CONTINUE TO REGISTER THROUGH THE DAY OF THE ELECTION; AND AMENDING SECTIONS 13-2-301, 13-2-304, 13-13-301, 13-19-207, AND 13-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

S.B. 169, 67th Montana Legislature
(Apr. 19, 2021)

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AN ACT GENERALLY REVISING VOTER IDENTIFICATION LAWS; REVISING CERTAIN IDENTIFICATION REQUIREMENTS FOR VOTER REGISTRATION, VOTING, AND PROVISIONAL VOTING; AMENDING SECTIONS 13-2-110, 13-13-114, 13-13-602, AND 13-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-2-110, MCA, is amended to read:

"13-2-110. Application for voter registration -- sufficiency and verification of information -- identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail, postage paid, by completing and signing the standard application form for voter registration provided for in 13-1-210 and providing the application to the election administrator in the county in which the elector resides.

(2) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(3) Except as provided in subsection (4):

(a) an applicant for voter registration shall provide the applicant's:

(a) Montana driver's license number; or

(b) Montana state identification card number issued pursuant to 61-12-501; or

~~(c) if the applicant does not have a Montana driver's license, the applicant shall provide the last four digits of the applicant's social security number~~
(b) the last four digits of the applicant's social security number.

(4) (a) ~~If an applicant does not have a Montana driver's license or social security number~~ is unable to provide information in accordance with subsection (3), the applicant shall provide as an alternative form of identification:

(i) a military identification card, a tribal photo identification card, a United States passport, or a

Montana concealed carry permit; or

~~(i)(ii)~~ (A) ~~a current and valid any other form of photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, including but not limited to a school district or postsecondary education photo identification with the individual's name; or and~~

~~(ii)(B)~~ a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or
(ii) a readable copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(5) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (3) or (4) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(6) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(7) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(8) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-221, and 61-5-107 and as provided for in federal law."

Section 2. Section 13-13-114, MCA, is amended to read:

"13-13-114. Voter identification and marking precinct register book before elector votes --

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.

~~(b)(b)~~ An elector who provides the information listed in subsection ~~(1)(a)~~ (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

~~(e)(c)~~ If the information provided in subsection ~~(1)(a)~~ (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a new registration form to correct the elector's voter registration information, and vote.

~~(d)(d)~~ An election judge shall write "registration form" beside the name of any elector submitting a form.

(2) If the elector is unable to present the information required by subsection (1) or if the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register or appears in the register as provisionally registered and this provisional registration status cannot be resolved at the polling place, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-

116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601."

Section 3. Section 13-13-602, MCA, is amended to read:

"13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer signature envelope, together with the voted ballot in the secrecy envelope, ~~a copy of a current and valid photo identification with the elector's name or;~~

(a) a Montana driver's license number, Montana state identification card number issued pursuant to 61-12-501, or the last four digits of the applicant's social security number;

(b) a readable copy of a military identification card, a tribal photo identification card, a United States passport, a photo identification card issued by a Montana college or university, or a Montana concealed carry permit; or

(c) (i) any other form of readable photo identification with the individual's name; and

(ii) a copy of 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 or other information necessary to determine the elector's eligibility to vote.

(2) The elector's ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or

(c) the elector's name does not appear on the precinct register."

Section 4. Section 13-15-107, MCA, is amended to read:

"13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered individual who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) ~~(a)~~—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.

~~(b)~~—If the signatures match, the election administrator shall handle the ballot as provided in subsection ~~(5)~~ (7).

~~(c)~~—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.

(3) If a legally registered individual casts a provisional ballot but is unable provide the identification information pursuant to the requirements of 13-13-114, the elector may verify the elector's identity by:

(a) presenting a current utility bill, bank statement, paycheck, government check, or other government document that shows the elector's name and current address; and

(b) executing a declaration pursuant to subsection (4) that states that the elector has a reasonable impediment to meeting the identification requirements.

(4) The secretary of state shall prescribe the form of the declaration described in subsection (3). The form must include:

(a) a notice that the elector is subject to prosecution for false swearing under 45-7-202 for a false statement or false information on the declaration;

(b) a statement that the elector swears or affirms that the information contained in the declaration is true, that the person described in the declaration is the same person who is signing the declaration, and that the elector faces a reasonable impediment to procuring the identification required by 13-13-114;

(c) a place for an elector to indicate one of the following impediments:

(i) lack of transportation;

(ii) lack of birth certificate or other documents needed to obtain identification;

(iii) work schedule;

(iv) lost or stolen identification;
(v) disability or illness;
(vi) family responsibilities; or
(vii) photo identification has been applied for but not received;
(d) a place for the elector to sign and date the declaration;
(e) a place for the election administrator or an election judge to sign and date the declaration;
(f) a place to note the polling place at which the elector cast a provisional ballot; and
(g) a place for the election administrator or election judge to note which form of identification required by subsection (3)(a) the elector presented.

~~(3)(5)~~ A provisional ballot must be counted if the election administrator verifies the individual's identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the individual's identity or eligibility under the rules, the individual's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the individual is of unsound mind or serving a felony sentence in a penal institution, the individual's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the individual is of unsound mind or that the individual has been convicted and sentenced and is still serving a felony sentence in a penal institution.

~~(4)(6)~~ The election administrator shall provide an individual who cast a provisional ballot but whose ballot was or was not counted with the reasons why the ballot was or was not counted.

~~(5)(7)~~ A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the individual's voter information is:

- (a) verified before 5 p.m. on the day after the election; or
- (b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

~~(6)(8)~~ Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election."

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

- END -

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I hereby certify that the within bill,
SB 169, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 169

INTRODUCED BY M. CUFFE, E. BUTTREY, D. SKEES, D. SALOMON, J. READ, S. FITZPATRICK, R. OSMUNDSON, D. KARY, T. MCGILLVRAY, D. HOWARD, K. REGIER, C. SMITH, G. VANCE, J. WELBORN, B. HOVEN, M. BLASDEL, D. ANKNEY, L. JONES, B. KEENAN, B. MOLNAR, C. GLIMM, G. HERTZ, M. LANG, D. LENZ, W. GALT, S. BERGLEE, B. BROWN, F. GARNER, J. HINKLE, K. HOLMLUND, T. MANZELLA, W. MCKAMEY, M. NOLAND, B. TSCHIDA, S. HINEBAUCH, S. GUNDERSON, M. REGIER, D. LOGE, R. FITZGERALD, F. ANDERSON, L. SHELDON-GALLOWAY, J. TREBAS, D. BARTEL, C. KNUDSEN, B. USHER, S. VINTON, W. SALES, T. WELCH, J. SMALL, T. GAUTHIER, M. HOPKINS, R. TEMPEL, F. FLEMING, J. ELLSWORTH, N. DURAM, J. FULLER, R. KNUDSEN, J. DOOLING, K. BOGNER, J. KASSMIER, B. MERCER, T. MOORE, D. BEDEY, S. GREEF, B. LER, B. PHALEN, F. NAVE, J. CARLSON, L. BREWSTER, K. ZOLNIKOV, B. MITCHELL, A. REGIER, L. REKSTEN, P. FIELDER, S. KERNS, S. GALLOWAY, S. GIST, E. HILL, J. SCHILLINGER, K. SEEKINS-CROWE, M. STROMSWOLD, M. MALONE, J. GILLETTE, C. HINKLE, K. WALSH, M. BERTOGLIO, G. FRAZER, M. BINKLEY, R. MARSHALL, K. WHITMAN

BY REQUEST OF THE SECRETARY OF STATE

AN ACT GENERALLY REVISING VOTER IDENTIFICATION LAWS; REVISING CERTAIN IDENTIFICATION REQUIREMENTS FOR VOTER REGISTRATION, VOTING, AND PROVISIONAL VOTING; AND AMENDING SECTIONS 13-2-110, 13-13-114, AND 13-13-602, AND 13-15-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.