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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 PROPOSED POST-
TRIAL FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Defendant Secretary of State Christi Jacobsen, through counsel, hereby submits

Defendant's Proposed Post-Trial Findings of Fact and Conclusions of Law and states as follows:

This consolidated case came before the Court for a bench trial beginning on August 15, 2022 and continuing through August 25, 2022. The Montana Democratic Party Plaintiffs were represented Matthew Gordon, Peter M. Meloy, and Henry Brewster. The Western Native Voice Plaintiffs were represented by Jacqueline De Leon, Jonathan Topaz, Samantha Kelty, Alora Thomas, Theresa J. Lee, Alex Rate, and Akilah Lane. The Youth Plaintiffs were represented by Rylee Sommers-Flanagan and Niki Zupanic. The Secretary was represented by Leonard H. Smith, Mac Morris, Lars Phillips, David Knobel, and Dale Schowengerdt.

After hearing the allegations and proofs of the parties, the arguments of counsel, and being fully advised, the Court now finds in favor of Defendant Secretary of State Christi Jacobsen and against Plaintiffs Montana Democratic Party, Mitch Bohn, Western Native Voice, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Northern Cheyenne Tribe, Fort Belknap Indian Community, Montana Youth Action, MontPIRG, and Forward Montana Foundation. The Court makes the following findings of fact and conclusions of law, which constitute the decision of the Court on the various claims made by Plaintiffs that the amendments to Montana law caused by HB 176, SB 169, and HB 530 are unconstitutional.

FINDINGS OF FACT

1. Plaintiffs challenge the constitutionality of the amendments made to Montana's election laws by three bills: HB 176, SB 169, and HB 530.
2. The Montana Constitution explicitly grants the Legislature the authority to "provide by law the requirements for residence, registration, absentee voting, and administration of elections." Mont. Const. art. IV, § 3.

3. Additionally, the Constitution grants the Legislature the discretion to allow election day registration, and requires the Legislature insure the purity of elections and guard against abuses of the electoral process. Mont. Const. art. IV, § 3.

4. The Delegates to Montana's 1972 Constitutional Convention repeatedly made clear their desire to ensure the Legislature was afforded sufficient "flexibility" and "very broad" authority to "pass whatever statutes it deems necessary" to "insure the purity of elections and guard against abuses of the electoral process." Mont. Const. Convention Tr., at 437-38, 444, 450 (Feb. 17, 1972).

5. Senator Greg Hertz testified that the role of the Legislature is, at times, to work on preventative measures. Trial Tr. 1824:18-1825:5. He testified he viewed his votes in favor of HB 176, SB 169, and HB 530 as part of his constitutional duty to guard the purity of Montana's elections and pass laws to administer those elections. Trial Tr. 1804:23-1805:5.

I. Election Practices

6. The Secretary of State is the chief election officer and tries to make election practices uniform in the State. Trial Tr. 1552:24-1553:3.

7. In most counties, the Clerk and Record is also the Elections Administrator. Trial Tr. 1486:11-14.

8. The job of an Election Administrator position is "more than a full-time" position. Trial Tr. 1030:23-25.

9. Election Administrators work year-round on election-related tasks. Trial Tr. 1032:3-5.

10. Election Administration has become more difficult over time. Trial Tr. 1663:19-21.
11. In rural counties, Election Administrators can hold multiple positions at once. *See e.g.* Trial Tr. 1546:11-25.
12. During her time as the Rosebud County Clerk and Recorder, Geraldine Custer served as the chief financial officer for the county and the clerk for the County Commissioners, in addition to handling payroll, retirement, health insurance, human resources, recording documents, and running elections. Trial Tr. 1546:11-25.
13. During his time as the Broadwater County Clerk and Recorder, Doug Ellis was also the County treasurer, the superintendent of schools, and the Election Administrator. Trial Tr. 1652:15-1653:4. As County treasurer, Mr. Ellis was tasked with running the motor vehicle department, registering vehicles, issuing licenses, handing out license plates, printing tax bills, collecting taxes, and collecting other revenue. Trial Tr. 1653:5-4. As the superintendent of schools, Mr. Ellis was tasked with registering homeschool families, maintaining student information, issuing financial reports, and handling bus transportation. Trial Tr. 1654:8-22. Of all the positions he held, running elections was the most challenging. Trial Tr. 1656:12-15.
14. In Montana, there is a vast difference between election administration in a rural county and election administration in an urban county.
15. Counties with larger populations have the financial ability to appoint election administrators. Trial Tr. 1572:2-8.
16. Janel Tucek, the Clerk and Recorder for Fergus County, has only one employee to help her handle all of the work of the Clerk and Recorder's Office as well as election

administration. Trial Tr. 1741:3-23. Ms. Tucek spends more time on elections than on clerk and recorder duties. Trial Tr. 1744:23-25.

A. Registration

17. Registering to vote in Montana is “very easy.” Deposition of Audrey Dozier 23:4-7.

18. Plaintiffs’ witnesses testified they routinely update their voter registration every time they move. *See* Dozier Dep. 23:15-20; Deposition of Amara Reese-Hansell 26:14-17.

19. Regular voter registration occurs from the day after Election Day until thirty days before the next Election Day. Trial Tr. 2140:10-14.

20. Prior to HB 176, the late voter registration period ran from thirty days before Election Day up and until the close of the polls on Election Day. After HB 176, late voter registration occurs from thirty days before Election Day until noon on the Monday before Election Day. Trial Tr. 2140:23-2141:1.

21. There are three eligibility requirements in Montana to be a registered voter: A person must be a U.S. citizen, be 18 years of age by the next election, and be a Montana resident, as defined by § 13-1-112, MCA, for 30 days. Trial Tr. 906:13-22.

22. County election officials do not confirm the eligibility information on voter registration forms. Trial Tr. 906:19-23.

23. During the regular registration period, a person can register to vote in person, by mail, by email, or by fax. Trial Tr. 904:11-25.

24. If a voter does not have a physical address, they may register to vote using a geographical location. Trial Tr. 930:4-11.

25. Federal law requires social services, those provided through the Montana Department of Health and Human Services, including SNAP, WIC, Medicaid, and Medicare, to offer voter registration each time there is an application, renewal, or recertification of those services. Trial Tr. 2141:25-2142:5.

26. Montana allows voters to register to vote and vote on the same day at any time during the late registration period. Trial Tr. 1238:5-11.

27. Montana has one of the longest early voting periods in the United States, and the longest registration period of any state that does not have Election Day Registration. Trial Tr. 1963:20-1964:1, 1969:12-15.

28. Election Administrators' estimates as to how long it takes to register a person to vote vary: Doug Ellis estimated it takes approximately twenty minutes to complete the process, Trial Tr. 1682:23-1683:20; Rep. Custer estimated it takes between two and ten minutes, Trial Tr. 1571:7-16; Bradley Seaman estimated it takes between three to five minutes to register a person to vote. Trial Tr. 909:8-12. And, Bret Rutherford testified it can take up to fifteen minutes. Trial Tr. 2063:17-2065:4.

29. Voter confirmation cards are provided in person or by mail to all newly registered voters. Trial Tr. 1033:8-20.

30. A voter confirmation card is a gender affirming form of ID as long as it reflects the person's correct name. Trial Tr. 1178:5-8.

31. A voter confirmation card is a no-cost form of ID. Reese-Hansell Dep. 103:1-10.

B. Ballots

32. By law, ballots are required to be maintained in a secure fashion, Trial Tr. 1082:20-25, and are kept in locked boxes in the Clerk's office covered by security cameras, Trial Tr. 1550:10-19.

33. For security, there is never one person conducting election related tasks in the County Clerk's office by themselves. They are always accompanied by another person. Trial Tr. 1550:20-23.

34. The chain of custody over ballots is important. The more points of contact that a ballot has between a voter and the election office, the more opportunity for something to go wrong. Corson Dep. 202:11-18. (August 21, 2020).

35. Election Administrators use tamper resistant seals to maintain the chain of custody over ballots. Trial Tr. 1084:5-10.

36. Ballot fraud includes tampering with a ballot or marking another's ballot. Corson Dep. 208:2-13 (August 21, 2020).

37. Reducing the number of people that come into contact with a ballot after it has been voted and before it has been returned to the place of deposit reduces the risk of ballot interference. Corson Dep. 241:7-20 (August 21, 2020).

38. If a ballot is in the hands of another person prior to being deposited, there is an opportunity for fraud. Dana Corson testified that, in Oregon, an election official had filled in areas of the ballot that had not been filled in by the voter. Corson Dep. 274:1-17 (August 21, 2020).

39. Yellowstone County Election Administrator Bret Rutherford has always recommended to voters that they not give their ballot to a stranger. Trial Tr. 2076:22-2077:1.

40. Absentee ballots are mailed to eligible voters 25 days before Election Day. Trial Tr. 887:14-16.

41. Any Montana voter may request an absentee ballot up and until noon the day before Election Day. Trial Tr. 887:10-13.

42. An absentee ballot may be required online, in person, by phone, by mail, or by email. Deposition of Dana Corson 93:1-94:12 (August 21, 2020).

43. An absentee ballot may be delivered via mail or in person. Trial Tr. 887:17-19.

44. Absentee ballots may be dropped off at the county election office during the early voting period and at polling locations on Election Day. Trial Tr. 887:20-888:1.

45. Absentee ballots are counted regardless of whether a voter included a stamp on the envelope because the relevant county would assume the cost of postage for the voter. Corson Dep. 96:10-22 (August 21, 2020).

46. Plaintiffs' witnesses testified that they have always voted absentee and, therefore, have never had to present any sort of identification in order to vote. *See e.g.* Dozier Dep. 24:2-25:8, 41:11-13; Reese-Hansell Dep. 20:17-21:6.

47. If a person votes absentee, they can avoid the costs associated with making a trip to vote in person. Reese-Hansell Dep. 117:14-118:2.

C. Election Day Preparation

48. Election related work first increases in intensity approximately 190 days before Election Day, Trial Tr. 1035:7-11, and increases again in intensity 45 days before an election. Trial Tr. 1036:23-25.

49. Before election day, election administrators must conduct voter list maintenance, absentee voter maintenance, process petition signatures, order supplies, and prepare equipment. Trial Tr. 930:18-931:11.

50. In the month before an election, election administrators must mail ballots, receive ballots, track ballots, verify signatures, certify and test equipment, prepare equipment for polling places, and certify ballots. Trial Tr. 931:12-933:9.

51. Election Administrators are required to hire staff to run an election and staff polling locations. See Trial Tr. 1661:7-13. Mr. Rutherford noted it is a challenge to find poll workers for Election Day. Trial Tr. 2048:12-24.

52. Election judges must be trained for a minimum of three hours. Trial Tr. 1037:21-24.

53. Election officials must prepare for long lines on Election Day. Trial Tr. 1081:1-5.

54. The Monday before Election Day is very busy as well. In Broadwater County, election staff would usually work from 8 a.m. to 10 p.m. Trial Tr. 1681:2-4.

D. Election Day Procedure

55. Election Day starts early because the Election Administrator is in charge of all the polling places and needs to deliver voting machines to the precincts, test the machines, set the machines up, and swear in poll workers. Trial Tr. 1674:9-1675:13. Additionally, the Clerk has to

be available to answer questions and run various election-related errands, such as going to the Post Office to pick up absentee ballots. Trial Tr. 1566:2-1568:3. Mr. Ellis testified that driving to a post office to pick up ballots sometimes meant driving from Townsend to East Helena, a roundtrip of about an hour. Trial Tr. 1678:17-1679:9.

56. Issues on Election Day are unpredictable. Mr. Ellis testified that a voter in Broadwater County had dropped a blueberry muffin on a ballot, which subsequently caused the voting machine that scanned the ballot to stop working and shut down the precinct for a period of time. Trial Tr. 1677:6-19. Ms. Tucek testified that she had issues on Election Day in June 2022, which required her to travel to the central polling location, stop voting in the precinct for 45 minutes, and figure out the issue. Trial Tr. 1751:7-23.

57. Every time the Election Administrator needs to leave the office to fix a problem or run an errand, there are less staff available to handle Election Day tasks, such as Election Day Registration. Trial Tr. 1678:17-1679:9, 1752:5-10.

58. New, inexperienced election judges add more stress to election administration. Trial Tr. 1676:20-1677:5.

59. Ms. Plettenberg testified that additional temporary workers would not alleviate the stress Election Administrators experience on Election Day because temporary workers do not have the necessary skill, training, and experience. Trial Tr. 1512:3-1513:9

60. Bringing in temporary employees to work on Election Day does not alleviate the burden posed by Election Day Registration because it takes a while for workers to be trained and understand all of the processes. Trial Tr. 1634:12-19.

61. Election Day is the busiest day in the Clerk and Recorder's office. Trial Tr. 2053:10-12.
62. Election Day Registration "absolutely" increases the amount of work on Election Day. Trial Tr. 948:23-25.
63. Yellowstone County moved elections operations to the Metra due to the difficulty caused by late registrations on Election Day. Trial Tr. 2056:17-2057:7. In 2016, Yellowstone County received three times as many late registrations as they did in 2012, and staff worked for four days to process all of the late registration paperwork and enter the associated data. Trial Tr. 2065:9-14, 2066:12-17. Of all the ballots issued Yellowstone County at the Metra on Election Day in 2020, two-thirds were late registrations. Trial Tr. 2069:1-3. Due to the sheer amount of late registrants, Yellowstone County was forced to develop a process of issuing all late registrations a provisional ballot. Trial Tr. 2071:8-22.
64. Election Day Registration delays counting ballots. Trial Tr. 1686:15-1687:2.
65. The Secretary of State's Office receives complaints if there is a delay in vote tabulation. Trial Tr. 2197:21-2198:5.
66. Even a small number of Election Day Registrations impact the Clerk's office on Election Day. Trial Tr. 1671:14-24.
67. To register a new voter on Election Day, staff must check their ID, give them a voter registration card, input their information into the database, determine which precinct they are in, issue a ballot for that precinct and then distribute and receive that ballot. Trial Tr. 1682:1-22.

68. A voter registration card can take up to ten minutes to fill out. Reese-Hansell Dep. 88:9-15.

69. To register a voter from a different county as a new registrant on Election Day requires staff identify the voter in the database, check to see if they have been issued a ballot by the other county. If the ballot has been issued, staff must call the issuing county to determine whether the ballot has been voted or not. If the ballot has not been voted, the issuing county will cancel the ballot and the voter, and the new county will issue the voter a ballot for their precinct. Trial Tr. 1683:3-21. Mr. Rutherford noted it can take up to fifteen minutes just to void a ballot when processing a person who has moved from one county to another as a new registrant on Election Day. Trial Tr. 2064:20-2065:4.

70. Unless the new county to county voter has already been issued a ballot by another county, the county-to-county registration process is generally faster than the new registrant process. Trial Tr. 1683:3-21.

71. The process to complete a precinct-to-precinct change, which is allowed under HB 176 on Election Day, is generally faster than completing a county-to-county change or registering a new voter. Trial Tr. 1684:16-1685:9.

72. A precinct-to-precinct change is easier than a county-to-county change because you do not have to contact the other county to complete the process. Trial Tr. 2078:5-19.

73. Following HB 176, new registrations that occur on Election Day will likely be processed after Election Day. Trial Tr. 1688:3-14.

74. A provisional ballot is the “final failsafe” to ensure an individual is able to vote on Election Day. Trial Tr. 968:3-4.

75. The Declaration of Impediment Form, created after SB 169, allows a voter to cast a provisional ballot if they are unable to present an ID at the polls and allows the voter to avoid presenting an ID if there is an impediment preventing them from doing so. Trial Tr. 985:1-13. A reasonable impediment, as contemplated by the Declaration of Impediment Form, is whether you have your photo ID or is it hard for you to provide a photo ID. Trial Tr. 990:11-25.

76. The Polling Place Elector ID form can be filled out and created at the polls to serve as the supporting documentation for a non-primary photo ID, as defined by SB 169. Trial Tr. 988:2-989:3.

77. The Certificate of Erroneous Omission is the process by which a voter who indicates they registered to vote but is unable to have that registration confirmed by an election worker is still able to vote a provisional ballot. Trial Tr. 2142:15-2143:8, 2146:8-14, Election staff then has seven days to resolve the situation for the voter. 2146:8-14, Trial Tr. 2148:1-4.

78. Montana Department of Motor Vehicle staff is available on Election Day in order to remedy any administrative error that may have occurred if an individual attempted to register through the DMV. Trial Tr. 2144:6-25.

79. The United States Postal Service provides dedicated elections staff persons throughout the year and on Election Day. Trial Tr. 2147:3-16.

80. Election Administrators work long hours on Election Day. Representative Custer testified that if she got home at 2 a.m. it was a good day. Trial Tr. 1568:4-7. Mr. Ellis testified that, during his first election, he worked from 5 a.m. until 4 a.m. then next morning. Trial Tr. 1674:1-3. Ms. Tucek testified that on Election Day in 2020, she had completed her responsibilities as election administrator for Petroleum County by 8:30 p.m. but had to remain at

the office until after 11 p.m. because other counties were reporting that they had long lines of voters waiting to register and she needed to be able to void a ballot if a voter from Petroleum County attempted to register in a new county. Trial Tr. 1739:3-1740:7. Mr. Seaman generally works from 5 a.m. to midnight on federal general election days. Trial Tr. 1039:17-21.

81. Plaintiffs' witness Amara Reese-Hansell testified that, based on her personal experience, county election officials are overburdened, overworked, and at capacity on Election Day. Reese-Hansell Dep. 123:13-124:16.

E. Voting

82. Generally, voting is a low time commitment. Reese-Hansell Dep. 39:5-8.

83. Voting and registering to vote are individual choices. Trial Tr. 139:9-10; Trial Tr. 140:17-19.

84. There are multiple reasons why a person might not vote. Trial Tr. 1234:22-25.

85. Many different variables impact whether someone chooses to vote or registers to vote. Trial Tr. 139:11-13; Trial Tr. 140:20-22.

86. Experts find that it is difficult to determine a person's true reason for not voting; an experiment in North Dakota found that people blamed their decision not to vote on restrictive registration requirements despite the fact that North Dakota does not have a voter registration law. Trial Tr. 1961:14-1962:25.

87. All voting regulations, including age and residency requirements, limit voting to some degree. Trial Tr. 1436:16-1437:11.

88. In 2019, Montana was ranked third in increased voter turnout. Corson Dep. 28:11-20 (August 21, 2020).

89. A person can register to vote, fill out their ballot, and vote it without ever presenting a photo ID. Trial Tr. 699:9-13.
90. Absentee voting is easier than in person voting. Trial Tr. 689:6-11.
91. A person can access a sample ballot through the My Voter Page on the Secretary of State's website before voting. Reese-Hansell Dep. 24:6-16.
92. There are additional resources that a voter can use to determine which candidates and issues are on the ballot before receiving their ballot. Reese-Hansell Dep. 23:13-23.
93. HB 176 and SB 169 were in force for the June 2022 federal primary election.
94. The voter turnout in the June 2022 federal primary election was higher than the 2018 federal primary turnout, and considerably higher than the primary turnout in 2014 and 2010. Trial Tr. 1067:1-24.
95. As Mr. Seaman recognized, human error in the administration of elections is expected, and it is important to have processes that reduce the potential for human error in the administration of elections. Trial Tr. 1039:22-1040:8. For example, Sarah Denson was not informed by an election worker that there was a process by which she could vote. Trial Tr. 657:11-658:3-5. The Election Administrator should have provided Ms. Denson with a provisional ballot. Trial Tr. 2149:12-22. And, Mr. Bogle was not informed by election workers of the various processes he could have relied on in order to vote, including a provision ballot, a certificate of error, a certificate of erroneous omission, and others. Trial Tr. 506:18-507:11. The Election Administrator should have provided him with a certificate of erroneous omission and given him a regular ballot because, as Mr. Bogle testified, election staff was able to confirm his registration was in the system. Trial Tr. 2148:14-20.

96. Get out the vote efforts by third parties can cause confusion among Montana voters. Corson Dep. 91:19-92:22 (August 21, 2020).
97. Voter fraud does occur, but it is not widespread. Trial Tr. 1978:11-25.
98. Preventing voter fraud is important. Trial Tr. 700:1-7.
99. Public confidence in the integrity of the vote is important. Trial Tr. 702:18-22.
100. Montanans having confidence in the integrity of their elections is important. Trial Tr. 700:8-11.
101. It is reasonable to try to prevent voter fraud before it happens, and that includes taking action to prevent voter fraud before it happens. Trial Tr. 700:22-701:3.
102. Part of building confidence in the integrity of elections is preventing voter fraud before it happens. Trial Tr. 701:5-8.

I. HB 176

103. Montana's Constitutional Convention Delegates stated that if the Legislature chose to enact a law allowing election day registration, they were "not locked in." Mont. Const. Convention Tr., at 450 (Feb. 17, 1972).
104. There have been a variety of bills over the last decade to revise the late registration timeline. Trial Tr. 2119:4-5.
105. HB 176 was passed by the Montana Legislature and was signed into law by the Governor on April 19, 2021. It was effective upon enactment. Dkt. 207, Final Pretrial Order ¶ 1.
106. On January 15, 2021, Representative Sharon Greef introduced HB 176. Dkt. 207, Final Pretrial Order ¶ 2.

107. On January 21, 2021, the House Committee on State Administration conducted a hearing to consider HB 176. Dkt. 207, Final Pretrial Order ¶ 3.

108. On February 15, 2021, the Senate Committee on State Administration conducted a hearing to consider HB 176. Dkt. 207, Final Pretrial Order ¶ 4.

109. The Secretary of State's Office was a proponent of HB 176 and testified in favor of it at the legislative hearing on January 21, 2021. Dkt. 207, Final Pretrial Order ¶ 5.

110. HB 176 changed the close of the late registration period from 8 p.m. on Election Day to noon the day before the election. Dkt. 207, Final Pretrial Order ¶ 6.

111. Counties are able to offset the hours removed from the late registration period by HB 176, by offering extended hours for registering and voting on the Saturday and Sunday before Election Day. Trial Tr. 943:3-16.

112. The challenged statute states: "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 noon the day before the election." § 13-2-304(1)(a), MCA.

113. HB 176 removes certain late registration activities from being allowed on Election Day and ends the late registration period at the time when the registration lists are finalized at noon on the Monday before Election Day. Trial Tr. 2118:2-7.

114. Ms. Plettenberg testified that HB 176 will reduce the stress and strain on the staff that administers elections. 1528:21-1529:12.

115. Plaintiff Western Native Voice testified that HB 176 relieves Election Administrators of some of the tasks they must handle on Election Day. Western Native Voice (Perez) Dep. 161:25-162:3.

116. Plaintiffs' expert Dr. Mayer opined that HB 176 affects only a small percentage of the voter population in Montana. Trial Tr. 1414:23-1415:8.

117. HB 176 was enacted to ease the burden posed by election day registration and to give election administrators time to tabulate votes and run organized and efficient elections. Trial Tr. 1235:18-1236:9.

118. From an administrative perspective, Ms. Plettenberg supported closing the late registration period at noon on the Friday before Election Day. Trial Tr. 1495:17-1496:2.

119. Based on her experience as an Election Administrator and based on her experience working on elections when the late registration period closed 30 days before an Election, Ms. Plettenberg found moving the close of the late registration period to noon the day before Election Day to be a reasonable change. Trial Tr. 1496:9-19.

120. Senator Hertz testified he voted in favor of HB 176 because he had heard from election administrators that they were having difficulty administering elections on Election Day. Trial Tr. 1802:17-23.

121. Senator Hertz testified that he voted in favor of HB 176 to give election administrators more time to tabulate results on Election Day because any time there is a delay in counting the public grows concerned and that hinders the integrity of Montana's election process. Trial Tr. 1804:23-1805:16.

122. Representative Custer, who had been the election administrator for Rosebud County for 36 years, testified that if she had voted on HB 176 based on her experience as an election administrator in a small county without much help she would have voted in favor of it. Trial Tr. 1616:4-20.

123. The Montana Association of Clerk and Recorders and Election Administrators remained neutral on HB 176. 1488:1-5. Ms. Plettenberg surveyed the members of the Montana Association of Clerks and Recorders as to whether they supported, opposed, or were neutral towards closing the late registration period at noon the Friday before Election Day. 1488:14-1489:15. Twenty-five counties supported closing the late registration period on the Friday before Election Day. 1494:12-16. Twenty-two counties were neutral as to whether to close the late registration period at noon the Friday before Election Day. Trial Tr. 1494:17-20. Eight counties opposed moving the close of the late registration period to noon the Friday before Election Day. Trial Tr. 1494:21-24.

124. One of the central issues driving the policy debate over HB 176 was the belief held by some Legislators that because Montana law allows Election Administrators to begin processing ballots on the Friday before Election Day, new registrations should be cut off at that time. Trial Tr. 2125:19-2126:24. Other Legislators believed that noon on Monday before an Election Day was a more appropriate deadline because that is when the Election Administrators would finalize the registration lists used by poll workers at precincts. Trial Tr. 2125:19-2126:24.

125. The elimination of Election Day Registration aligns Montana with a majority of States. Trial Tr. 1994:16-18

126. Sponsor Representative Sharon Greef described the purpose of HB 176 as follows:

The intent of HB176 is to provide a solution for citizens discouraged from registering to vote and casting a ballot due to long lines and extended wait times by making the process more efficient for the benefit of all Montanan's The focus of 176 is not to burden, it's not to disenfranchise, and it's not to provide a forum for a historical debate. But it is important to administer an election with complete fairness for all voters.

Plaintiffs Exhibit 70 at 3:7-20.

127. Bradley Seaman, the Missoula County Election Administrator testified "Nobody wants to wait in line for an hour and a half to vote." Trial Tr. 918:6-7.

128. Lines at the Missoula County election center on Election Day in November 2020 were an hour and a half to two hours long. Trial Tr. 917:12-14.

129. On Election Day in 2012, late registrants had to wait four and a half hours to vote in Yellowstone County. Trial Tr. 2060:18-2062:13. And, in 2016, voters waited in line for two hours to vote in Yellowstone County. Trial Tr. 2065:9-14, 2066:7-11.

130. Mr. Rutherford's testimony was confirmed by the testimony of Mitch Bohn who stated he had personally witnessed long lines in Yellowstone County on Election Day at the Metra and describes the Metra on Election Day as extremely busy. Trial Tr. 187:4-16.

131. Ms. Gray testified that people were deterred from voting in Browning due to the long lines on Election Day in November 2020. Trial Tr. 601:15-18.

132. Ms. Iwai testified that long lines at the polls "definitely dissuade" people from voting, Trial Tr. 698:4-11, and that it was important for the State to try to limit the length of lines on Election Day. Trial Tr. 698:17-699:2.

133. Plaintiffs' witness Hailey Sinoff testified she had observed long lines to vote in Gallatin County which has deterred her from in person voting. Sinoff Dep. 81:9-82:16.

134. Ms. Reese-Hansell testified that she has seen "very significant" lines at the Gallatin County Election Office on Election Day which impeded voting. Reese-Hansell Dep. 120:21-121:3.

135. The Legislature enacted HB 176, in part, to reduce long lines at the polls, which are common on Election Day, and can lead to potential error, mistake, the perception of disorganized elections and/or the potential for fraud, and to give election administrators sufficient time to tabulate and report election results.

136. Based on conversation with constituents, Montana Legislators are aware that delays in the tabulation of votes breed suspicion regarding the integrity of the election process.

137. Montana's same day registration law reduces the voter costs of HB 176. Trial Tr. 144:15-19.

138. Registering to vote in Montana is relatively easy for voters. Numerous witnesses testified that, for the voter, the registration process in Montana can be accomplished with ease. Trial Tr. 497:3-9, 639:22-25.

139. Any burden imposed by HB 176 on Native Americans is alleviated by the polling locations set up by various counties within the boundaries of Montana's reservations. *See e.g.* Trial Tr. 738:9-12.

140. If a tribal member votes absentee, they do not need to travel to their respective county seat on Election Day. Trial Tr. 737:4-7.

141. There are opportunities for tribal members to register to vote before Election Day. Trial Tr. 737:17-20.

142. Causation is difficult to prove in the voting and elections universe. Trial Tr. 1944:7-12. Establishing that the elimination of Election Day Registration lowers voter turnout is difficult. Trial Tr. 1946:14-19, 1951:14-20.

143. Senator Hertz testified that he did not believe HB 176 would reduce voter turnout. Trial Tr. 1806:14-21.

144. Senator Hertz testified that he believed people would adapt to new laws and that belief was confirmed by the high turnout in the recent election. Trial Tr. 1807:3-5.

145. Senator Hertz testified that there are many election laws that require voters to change their behavior to match the law, including those governing absentee ballots, voter registration, and voting in person. Trial Tr. 1901:19-1902:2.

146. Senator Hertz testified that high voter turnout is good for him and good for the State in general. Trial Tr. 1809:14-18.

147. In every election, a certain number of people fail to timely register to vote regardless of whether election day registration is available.

148. All counties in Montana are statutorily mandated to publish notices informing voters of the voter registration deadline.

149. HB 176 is facially neutral.

150. HB 176 is a generally applicable, nondiscriminatory regulation of Montana's election processes.

151. HB 176 was not enacted to disadvantage any particular class or group of voters.

152. There is no evidence, much less “substantial evidence,” of discriminatory intent towards any particular class or group of voters in the legislative record of HB 176.

II. SB 169

153. Montana adopted voter identification laws in 2003 to comply with federal mandates requirement all states to enact voter identification laws. 2003 Montana Laws Ch. 475 (HB 190).

154. SB 169 was passed by the Montana Legislature and signed into law by the Governor on April 19, 2021. It was effective upon enactment. Dkt. 207, Final Pretrial Order ¶ 7.

155. On January 28, 2021, Senator Mike Cuffe introduced SB 169. Dkt. 207, Final Pretrial Order ¶ 8.

156. On February 3, 2021, the Senate Committee on State Administration conducted a hearing to consider SB 169. Dkt. 207, Final Pretrial Order ¶ 9.

157. On February 19, 2021, the House Committee on State Administration conducted a hearing to consider SB 169. Dkt. 207, Final Pretrial Order ¶ 10.

158. The Secretary of State’s Office was a proponent of SB 169 and testified in favor of it at the legislative hearing on February 3, 2021. Dkt. 207, Final Pretrial Order ¶ 11.

159. The Secretary supported SB 169 because it brought consistency among identification requirements. Trial Tr. 2158:4-14.

160. The Secretary had heard concerns from voters regarding the lack of regulations governing voter ID requirements; for example, the Secretary had heard concerns that the identification required to obtain a library card was more strict than the identification required to vote. Trial Tr. 2161:6-9.

161. Senator Hertz testified that he voted in favor of SB 169 because he believed it helped election administrators understand the different forms of identification that individuals could use to vote. Trial Tr. 1810:8-17.

162. Senator Hertz testified that constituents told him they supported strong voter ID laws in advance of his vote on SB 169. Trial Tr. 1811:24-1812:4.

163. Senator Hertz testified that SB 169 increases public confidence in Montana's elections because it helps ensure that the individuals who are voting are actually the people who are supposed to be voting, and they are voting in the correct state and district. Trial Tr. 1913:18-24.

164. SB 169 amended the primary ID requirement by making government-issued federal or Montana ID primary, and all other ID non-primary. Currently, 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 (i-ii), MCA.

165. SB 169 removed conditional language that resulted in people being able to use expired versions of documents for identification purposes. Trial Tr. 2159:6-22.

166. The purpose of showing ID at the polls is so election judges can tell who you are. Trial Tr. 1591:8-18.

167. The purpose of requiring an ID when you vote is to identify the voter specifically to the voter roll and increase the likelihood that the person is entitled to vote and eligible to vote. Trial Tr. 2168:12-25.

168. Election judges appreciated the changes made by SB 169. Trial Tr. 1763:24-1764:2.

169. The drafting process for SB 169 was bipartisan and the intent was to make the best ID law in the land and one that was fair and workable. Trial Tr. 1585:11-20.

170. Many witnesses testified that they have only voted absentee in Montana elections and, as a result, have never had to show any identification to vote in Montana elections. Ms. Sinoff has always voted by absentee ballot since she registered to vote in 2018. Sinoff Dep. 62:7-63:25. Ms. Dozier has always voted absentee. Dozier Dep. 24:2-25:8, 41:11-13. Ms. Reese-Hansell has always voted absentee. Reese-Hansell Dep. 20:17-21:6.

171. A student ID is not indicative of a student's residency. Trial Tr. 1242:11-13.

172. Out of state students that move to Montana might not view Montana as their home state. Reese-Hansell Dep. 106:20-23.

173. Some college students have been misled into believing that to vote in Montana requires only that a person live in Montana for 30 days. Sinoff Dep. 60:12-22.

174. Ms. Sinoff began attending Montana State University and obtained a student ID in the fall of 2017 but did not consider Montana to be her residence at that time. Sinoff Dep. 34:1-8. Ms. Sinoff obtained a Montana driver's license, and registered her vehicle in Montana, in order

to gain residency for the purposes of obtaining in-state tuition. Sinoff Dep. 33:1-13. Prior to 2019, Ms. Sinoff considered California to be her home state. Sinoff Dep. 33:14-17.

175. A student who resides in Montana and drives is required to obtain a Montana driver's license. Trial Tr. 1242:1417.

176. There are many activities that college students must do that require a form of ID other than a student ID. Trial Tr. 1244:10-13.

177. Ms. Sinoff testified that she has never seen anyone use their student ID as an acceptable form of identification for something serious. Sinoff Dep. 53:8-10. She never believed her student ID was an acceptable form of identification for anything other than getting into the gym. Sinoff Dep. 52:15-19.

178. Student identification cards can be used with another qualifying document showing name and address, such as the voter registration card the Secretary's office sends to each registered voter.

179. Montana voter registration cards explicitly state: "This card paired with a photo ID containing your name may be used as identification when you vote."

180. A driver's license is an indicator of residency. Trial Tr. 1242:11-13.

181. After SB 169, a person may use an expired or void Montana driver's license to vote. Trial Tr. 1087:18-1088:6.

182. Requiring voters to show a government-issued ID does not burden voters, including students, and it is an important election integrity measure that fosters confidence in elections.

183. A student ID card with a federal application for student aid would be acceptable ID at the polls. Trial Tr. 1089:16-25.

184. Any document with a name and photo along with the Polling Place Elector ID form is sufficient ID to vote. Trial Tr. 1090:5-9.

185. Isaac Nehring voted early, in person, the day he turned 18. Trial Tr. 1113:16-17, 1116:20-24. He had a driver's license, a passport, had a bank account, and received a paycheck, all before he turned 18. 1129:15-1130:8.

186. Mitch Bohn testified that he has had a Montana driver's license since he was 18 and that he does not know any Montana adults over the age of 18 who do not have a Montana driver's license. Trial Tr. 187:17-24. Mr. Bohn never used his college ID to vote. Trial Tr. 189:10-11. Mr. Bohn affirmed that it would be weird if a college student did not have a driver's license and that "[f]or the most part, anyone over 18 has one." Trial Tr. 189: 12-18.

187. No witness testified in this case that they have ever used a student ID to vote or would need to use a student ID to vote.

188. Mr. Bohn testified that he has no personal experience on which to challenge the constitutionality of SB 169. Trial Tr. 190:3-5.

189. Shawn Reagor has never had a problem voting with gender-affirming identification, and has no knowledge of any specific transgender individual being unable to vote because of identification. Trial Tr. 1171:16-18. Mr. Reagor votes absentee and does not have to present any identification in order to do so. Trial Tr. 1174:4-11.

190. Gender affirming identification has three components: the person's correct name, an accurate picture, and an accurate gender marker. Trial Tr. 1158:18-23, 1177:18-24.

191. Obtaining a gender affirming ID can be as simple as updating the photo on a photo ID. Trial Tr. 1177:6-9.

192. At least one of Plaintiffs' witnesses described photo ID as "great." Trial Tr. 1582:7-8.

193. Some legislators enacted SB 169 to prevent illegal voting, increase voter confidence in elections, and make it easier for election administrators to administer elections. Trial Tr. 1245:9-20.

194. Election experts have concluded that voter identification laws increase voter confidence in elections. Trial Tr. 1960:3-6.

195. A recent experiment performed in Virginia found that people who were informed of photo ID laws were more likely to believe that their ballots were counted fairly as compared to people who were not so informed. Trial Tr. 1960:7-17

196. SB 169 makes it easier for Native Americans to vote. Trial Tr. 1244:17-1245:4.

197. Before SB 169, a tribal member could not use an expired tribal ID to vote. Trial Tr. 743:20-22.

198. Student identification cards are easier to forge than government issued identification such as a passport or Montana driver's license.

199. Individuals that come to Montana from other states for college can be misled to believe that they can vote in Montana elections even if they do not consider Montana their home state. Sinoff Dep. 60:12-22.

200. Student identification cards do not connect with election system voter verification software like a Montana driver's license or social security number.

201. Student identification cards do not show a person's address.

202. Plaintiffs have not identified a single individual who was unable to vote due to SB 169. Trial Tr. 1245:21-24.

III. HB 530

203. HB 530 was passed by the Montana Legislature and signed into law by the Governor on May 14, 2021. Dkt. 207, Final Pretrial Order ¶ 12.

204. On February 19, 2021, Representative Wendy McKamey introduced HB 530. Dkt. 207, Final Pretrial Order ¶ 13.

205. On February 25, 2021, the House Committee on State Administration conducted a hearing to consider HB 530. Dkt. 207, Final Pretrial Order ¶ 14.

206. On March 31, 2021, the Senate Committee on State Administration conducted a hearing to consider HB 530. Dkt. 207, Final Pretrial Order ¶ 15.

207. On April 26, 2021, HB 530 was amended on the floor of the Senate. Dkt. 207, Final Pretrial Order ¶ 16.

208. HB 530 passed 67-34. Dkt. 207, Final Pretrial Order ¶ 17.

209. HB 530, Section 1, titled "Statewide elections infrastructure – rulemaking," states:

(1) (a) On or before July 1, 2022, the secretary of state shall adopt rules defining and governing election security.

(b) The secretary of state and county election administrators shall annually assess their compliance with election security rules established in accordance with subsection (1)(a). County election administrators shall provide the results of the assessments to the secretary of state in January of each year to ensure that all aspects of elections in the state are secure. Security assessments are considered confidential information as defined in 2-6-1002(1).

(2) Beginning January 1, 2023, and each year after, the secretary of state shall provide an annual summary report on statewide election security. The report must be provided to the state administration and veterans' affairs interim committee in accordance with 5-11-210.

210. HB 530, Section 2, titled "Direction to secretary of state – penalty," states:

(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.

211. Senator Hertz testified he voted in favor of HB 530 due to his understanding of problems with ballot collection in other States and to comply with his constitutional duty to ensure the purity of Montana's elections and make sure elections are free from abuse. Trial Tr. 1821:5-23.

212. Senator Hertz testified that he is concerned about paid ballot collection because any time compensation is introduced into the equation, people's behavior changes, and they may do something different than what they normally would have done. Trial Tr. 1820:6-1821:4.

213. Senator Hertz testified that, in his experience, when the public sees issues arise in other states, such as the issues that arose in North Carolina with respect to paid ballot collection, the public begins to question the integrity of Montana's elections as well. Trial Tr. 1821:5-23.

214. The process for implementing a new administrative rule from a new law includes reading relevant statutes, gathering information from election administrators, reviewing the practices of other States, reviewing historical information, and incorporating expertise from the Secretary's Office. Trial Tr. 2117:8-24.

215. As to the rulemaking process contemplated by HB 530, Section 2, the Secretary is considering forming a scoping committee, bringing in interested parties, discussing their interests, and creating a rule that accomplishes the goal of the statute. Trial Tr. 2193:12-18.

216. The rulemaking process contemplated by HB 530, Section 2, has not yet occurred.

217. Plaintiffs' expert Dr. Street opined that it is impossible to know what the terms included in HB 530, Section 2, mean until the administrative rulemaking process occurs. Trial Tr. 436:20-25.

218. To date, the civil penalty contemplated by HB 530, Section 2, has not been imposed, and has not been threatened to be imposed, on any individual because the law is not operative until the Secretary adopts rules implementing the law.

219. No Plaintiff, including Western Native Voice, is currently prohibited from engaging in paid ballot collection.

220. Ballot collection necessarily requires the individual voter to have first received an absentee ballot.

221. In previous elections in Montana, voters have reported feeling intimidated by paid partisan ballot collectors and concerns about whether ballots provided to paid partisan ballot collectors were faithfully delivered to the appropriate election office. Some voters concerned about the collection of their ballots by partisan ballot collectors cancelled their collected ballot

and filled out a new ballot as a result of their concerns with the ballot collection. *See* Trial Tr. 1260:8-1262:8.

222. During the 2016 general election, a resident of Livingston called the police due to workers for the Montana Democratic Party going door to door to gather ballots. Trial Tr. 1260:8-1262:8.

223. The State of Montana has a compelling interest in preventing absentee ballot fraud. Trial Tr. 1247:9-11.

224. Ballot collection is not a political statement for the ballot gatherer. Trial Tr. 867:11-14.

225. HB 530 § 2 was enacted in part in response to voter concerns that money in elections and politics had an outsized and potentially corrupting influence and to prevent the same.

226. HB 530 § 2 was enacted in part in response to legislature concerns that paid ballot collection practices can lead to voter intimidation and undermine voter confidence in elections and to prevent the same.

227. HB 530 § 2 was enacted in part to protect the integrity and security of the ballot.

228. HB 530 § 2 was enacted in part in response to reports of voter fraud in other states, including North Carolina, perpetrated in connection with paid partisan ballot collection activities, including the illegal voting of and destruction of collected ballots and voter intimidation.

229. There is no evidence of a discriminatory intent towards any class of persons or group of voters in the legislative record of HB 530.

230. The Montana Democratic Party has never had its workers, staff, or volunteers collect ballots in exchange for money. Trial Tr. 1248:8-11. If the final rule defines HB 530 to prohibit paying ballot collectors per ballot, such a rule would not impact any plaintiff in this case.

231. The Montana Democratic Party agrees it will be able to voice its concerns regarding HB 530 during the administrative rulemaking process and also agrees those concerns may be resolved during that process. Trial Tr. 1248:22-1249:5.

232. Ms. Dozier has collected ballots for Plaintiff MontPIRG. She testified it is not necessary to get paid for ballot collection and is unsure whether people should be paid to collect ballots. She testified that being an unpaid ballot collector did not make her less effective. Dozier Dep. 29:1-13.

CONCLUSIONS OF LAW

233. To the extent 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 Framework

A. Constitutional Provisions at Issue

234. Article II, § 4, of Montana's Constitution states: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither 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."

235. Article II, § 7, of Montana’s Constitution states: “No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.”

236. Article II, § 13, of Montana’s Constitution states: “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

237. Article III, § 1, of Montana’s Constitution states: “The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

238. Article IV, § 2 of Montana’s Constitution states in full: “Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.”

239. Article IV, § 3 of Montana’s Constitution states in full: “The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.”

240. Article V, § 1, of Montana's Constitution states: "The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum."

B. Applicable Law

241. Statutes are presumed constitutional. *Bd. of Regents of Higher Educ. v. State by & through Knudsen*, 2022 MT 128, ¶ 10, ___ Mont. ___, ___ P.3d ___. This presumption applies even if an earlier, related version of the statute was declared unconstitutional. *Kenneth & Kari Cross v. Warren*, 2019 MT 51, ¶ 12 n.1, 395 Mont. 62, 435 P.3d 1202 ("when a statute determined to be unconstitutional by the Court is revisited and revised by the Legislature, it returns to the Court in subsequent litigation with the presumption of constitutionality").

242. This Court is obligated to avoid an unconstitutional interpretation [of the challenged statutes] if possible." *Brown v. Gianforte*, 2021 MT 149, ¶ 32, 404 Mont. 269, 488 P.3d 548. "The question of constitutionality is not whether it is possible to condemn, but whether it is possible to uphold the legislative action." *Duane C. Kohoutek, Inc. v. State, Dep't of Revenue*, 2018 MT 123, ¶ 14, 391 Mont. 345, 417 P.3d 1105 (citations omitted).

243. "When interpreting constitutional provisions, [Montana courts] apply the same rules as those used in construing statutes." *Brown*, ¶ 33; *see also Shockley v. Cascade Cnty.*, 2014 MT 281, ¶ 19, 376 Mont. 493, 336 P.3d 375. "[J]ust as with statutory interpretation, constitutional construction should not 'lead to absurd results, if reasonable construction will avoid it.'" *Brown*, ¶ 33 (citations omitted).

244. The "intent of the Framers controls the Court's interpretation of a constitutional provision." *Nelson v. City of Billings*, 2018 MT 36, ¶ 14, 390 Mont. 290, 412 P.3d 1058.

245. “Even in the context of clear and unambiguous language . . . [the Montana Supreme Court has] long held that [courts] must determine constitutional intent not only from the plain meaning of the language used, but also in light of the historical and surrounding circumstances under which the Framers drafted the Constitution, the nature of the subject matter they faced, and the objective they sought to achieve.” *Brown*, ¶ 33.

246. “In determining the meaning of the constitution, the Court must keep in mind that it is not the beginning of law for the state, but a constitution assumes the existence of a well understood system of law which is still to remain in force and to be administered, but under constitutional limitation.” *Nelson*, ¶ 15.

247. Constitutional provisions must be read in “coordination with the other sections” so they form a consistent whole, *Howell v. State*, 263 Mont. 275, 286–87, 868 P.2d 568, 575 (Mont. 1994), and “the specific prevails over the general.” *Ditton v. Dep’t of Just. Motor Vehicle Div.*, 2014 MT 54, ¶ 22, 374 Mont. 122, 319 P.3d 1268.

248. The Montana Supreme Court has instructed courts not to second-guess the wisdom of the Legislature’s policy decisions, including with respect to election laws. *Kohoutek*, ¶ 24. This Court “has no license to psychoanalyze” the Legislature or engage “in a lengthy examination of the evidence presented to the Legislature”; the role of a district court “is not to determine the prudence of a legislative decision.” *Rohlfs v. Klemenhausen, LLC*, 2009 MT 440, ¶ 20, 354 Mont. 133, 227 P.3d 42. The Legislature is entitled to a presumption of good faith.

249. The party challenging the constitutionality of a statute bears “the heavy burden of proving” each statute “is unconstitutional ‘beyond a reasonable doubt.’” *Brown v. Gianforte*, 2021 MT 149, ¶ 32, 404 Mont. 269, 488 P.3d 548 (citations omitted).

250. Courts analyze challenges to the constitutionality of challenged statutes by applying the appropriate level of scrutiny. *Montana Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 16, 366 Mont. 224, 286 P.3d 1161.

251. Montana courts only apply strict scrutiny to statutes that “substantially” or “impermissibly” burden fundamental rights. *Driscoll*, ¶ 18; *Wadsworth v. State*, 275 Mont. 287, 302, 911 P.2d 1165 (1996) (“Strict scrutiny of a statute is required only when the classification impermissibly interferes with the exercise of a fundamental right.”); the level of scrutiny “depends both on the nature of the interest and the degree to which it is infringed.”); *see also Montana Cannabis Indus. Ass'n*, ¶¶ 17-24 (reversed district court’s conclusion that law “substantially interferes” with fundamental right).

252. A right may be “fundamental” under Montana’s Constitution if the right is either found in the Declaration of Rights or is a right “without which other constitutionally guaranteed rights would have little meaning.” *Butte Community Union v. Lewis*, 219 Mont. 426, 430, 712 P.2d 1309, 1311-1313 (Mont. 1986). Under strict scrutiny, statutes will be found unconstitutional unless the State can demonstrate that such laws are necessary to promote a compelling governmental interest. *Driscoll*, ¶ 18 (citations omitted). However, the Montana Supreme Court does not always apply strict scrutiny if a statute interferes with a fundamental right. *See, e.g., Willems*, ¶ 33 n. 3 (declining to apply strict scrutiny when concluding Article II, § 13 “right of suffrage” outweighed by Article V, § 14, which requires legislative districts). The plaintiffs have the burden to prove “that the disputed statutory provision substantially interferes with the subject fundamental right,” which is a question of law. *Clark Fork Coalition v. Montana Department of Natural Resources*, 2021 MT 44, ¶ 48, 403 Mont. 225, 481 P.3d 198. Without

meeting that threshold burden, the statute is subject to rational basis review and the State must only show that the statute is rationally related to a legitimate government interest. *Id.* ¶ 61.

253. The Secretary asks this Court to adopt the *Anderson-Burdick* standard to determine which level of review is appropriate. Under *Anderson-Burdick*, strict scrutiny applies when voting rights “are subjected to ‘severe’ restrictions.” *Burdick v. Takushi*, 504 U.S. 428, 433, 434 (1992) (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). But when an election regulation imposes only reasonable, nondiscriminatory restrictions on voting rights, a lesser standard of review is appropriate and the “State’s important regulatory interests are generally sufficient to justify the restrictions. *Id.*; *Feldman v. Arizona Sec’y of State’s Off.*, 843 F.3d 366, 387–88 (9th Cir. 2016). Thus, the “general rule” is “‘evenhanded restrictions that protect the integrity and reliability of the electoral process itself’ are not invidious” and, thus, satisfy constitutional scrutiny. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189–91 193, 197 (2008) (plurality).

254. This Court finds it appropriate to utilize *Anderson-Burdick* to determine the appropriate level of scrutiny to be applied to the legislation at issue in this case. This first-step review is inline with the Montana Supreme Court’s well-established conclusion that a court must “first determine which of the established levels of scrutiny is appropriately applied.” Further, utilizing *Anderson-Burdick* allows this Court to draw on a wide range of federal cases evaluating various election regulations.

C. Scope of Plaintiffs’ Challenge

255. Plaintiffs bring facial challenges to HB 176, SB 169, and HB 530.

256. A facial challenge “to a legislative act is of course the most difficult challenge to mount successfully” because the challenger “must show that ‘no set of circumstances exists under which the [challenged sections] would be valid, i.e., that the law is unconstitutional in all of its applications.’” *Mont. Cannabis Indus. Ass’n v. State (MCIA II)*, 2016 MT 44, ¶ 14, 382 Mont. 256, 368 P.3d 1131 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)).

257. To prevail on a facial challenge, Plaintiffs must prove that “either that no set of circumstances exists under which the statute would be valid or that the statute lacks a plainly legitimate sweep.” *State v. Smith*, 2021 MT 148, ¶ 56, 488 P.3d 531 (citations omitted).

258. If Plaintiffs fail to carry their “heavy burden” of proof, their claims necessarily fail. *See Alexander v. Bozeman Motors, Inc.*, 2010 MT 135, ¶ 36, 356 Mont. 439, 234 P.3d 880 (holding that plaintiffs had “failed to meet their burden of demonstrating beyond a reasonable doubt that [challenged statute was] unconstitutional”).

ANALYSIS

259. Whether a statute is constitutional is a question of law. *Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (Mont. 1996).

260. Whether a statute unconstitutionally infringes on a fundamental right is a question of law. *Id.* at 297.

261. Whether a fundamental right is implicated by a statute is a question of law.

262. Whether a compelling interest exists in the context of a constitutional challenge to a statute is a question of law. *W. Tradition P’ship, Inc. v. Att’y Gen. of State*, 2011 MT 328, ¶ 35, 363 Mont. 220, 271 P.3d 1, *cert. granted, judgment rev’d sub nom on other grounds by Am. Tradition*

P'ship v. Bullock, 567 U.S. 516 (2012); *see also Driscoll v. Stapleton*, 2020 MT 247, ¶ 40, 401 Mont. 405, 473 P.3d 386 (“questions of whether an asserted government interest is constitutionally compelling and whether a challenged statute is narrowly tailored to further that compelling interest are questions of law”) (Sandefur & Rice, JJ., concurring and dissenting).

II. HB 176

263. Plaintiffs allege HB 176 violates the equal protection guarantee found in Article II, § 4, of Montana’s Constitution and unduly burdens the right of suffrage guaranteed by Article II, § 13, of Montana’s Constitution.

A. HB 176 – Equal Protection Analysis

264. The principal purpose of the Montana Constitution’s Equal Protection Clause, art. II, § 4, is to ensure that Montana’s citizens are not subject to arbitrary and discriminatory state action. *Montana Cannabis Indus. Ass’n v. State*, 2016 MT 44, ¶ 15, 382 Mont. 256, 368 P.3d 1131.

265. To prevail on an equal protection claim, an injured party must first be able to demonstrate that the law or governmental action at issue discriminates by impermissibly classifying persons and treating them differently on the basis of that classification. *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, 982 P.2d 421.

266. An equal protection classification may be established in one of three ways: (1) the law may, by its own terms, classify persons for different treatment; (2) the law may be being administered in differing levels of severity to different groups of persons, or (3) the law may be neutral but, in reality, constitute a device designed to impose different burdens on different classes of persons. *Spina*, ¶ 85.

267. Plaintiffs do not argue HB 176 creates classifications pursuant to its terms. Nor do Plaintiffs allege that government officials are applying HB 176 in differing levels of severity to different groups of persons.

268. Thus, HB 176 is neutral and must be evaluated to determine whether a classification exists because the law constitutes a device designed to impose different burdens on different classes of persons.

269. A facially neutral law may be subject to an equal protection claim if (1) the law imposes a disparate impact on a specific class of persons and (2) there is substantial evidence of discriminatory intent towards that specific class of persons. *Gazelka v. St. Peter's Hosp.*, 2018 MT 152, ¶ 16, 392 Mont. 1, 420 P.3d 528.

270. Plaintiffs bear the burden of proving these two elements are met. *Gazelka*, ¶ 16.

271. Plaintiffs have not established that HB 176 imposes a disparate impact on young people, Native Americans, or any other class of persons.

272. Plaintiffs have not established that there is substantial evidence of a discriminatory intent towards young people, Native Americans, or any other class of persons in the legislative record of HB 176.

273. Because Plaintiffs have not established that HB 176 imposes a disparate impact on any class of persons, and because Plaintiffs have not established there is substantial evidence of a discriminatory intent towards any specific class of persons in the legislative record of HB 176, Plaintiffs equal protection claim against HB 176 fails as a matter of law.

274. Even if Plaintiffs had established that HB 176 imposes a disparate impact on a particular class of persons or had demonstrated the existence of substantial evidence of a

discriminatory intent towards a specific class of persons in the legislative record of HB 176, Plaintiffs equal protection claim would still fail because HB 176 satisfies even strict scrutiny.

B. HB 176 – Right of Suffrage analysis

275. Plaintiffs allege HB 176 impermissibly interferes with the right of suffrage guaranteed by Article II, § 13, of Montana’s Constitution.

276. To determine whether HB 176 impermissibly interferes with the right of suffrage, this Court must first interpret Article II, § 13, in the context of the Constitution as a whole. *Howell v. State*, 263 Mont. 275, 286, 868 P.2d 568, 575 (Mont. 1994).

277. Article IV, § 3, explicitly grants the Legislature the authority to determine whether election day registration will be allowed.

278. The Framers intent controls the interpretation of a constitutional provision and, here, the Framers were clear: “if the Legislature provides [for election day registration], they’re not locked in.” Montana Constitutional Convention, Verbatim Transcript, Feb. 17, 1972, Vol. III, p. 450. The Framers repeatedly made it clear their desire to ensure the Legislature was afforded sufficient “flexibility” and “very broad” authority to “pass whatever statutes it deems necessary” to “insure the purity of elections and guard against abuses of the electoral process.” *Id.* pp. 437-38, 444, 450. It is clear from the constitutional text and the Con-Con debates that the Framers intended to give the Legislature discretion to enact EDR in the first place, and later abolish EDR if it determined that was the better legislative policy.

279. Further, “a direct power conferred upon one [co-equal branch of government by Montana’s Constitution] necessarily excludes the existence of such power in the other” co-equal

branch of government. *Board of Regents*, ¶ 19 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-77, 2 L. Ed. 60, 73 (1803)).

280. Thus, in order to give meaning to Article IV, § 3, the right of suffrage guaranteed by Article II, § 13, cannot include the right to election day registration. To hold otherwise would result in a decision rendering one provision of Montana’s Constitution meaningless.

281. For this reason, HB 176 does not impermissibly interfere with any right granted by Article II, § 13.

C. HB 176 – Application of *Anderson-Burdick*

282. But even if Article II, § 13, did grant Plaintiffs the right to register to vote on election day, this Court must still determine the appropriate level of scrutiny to apply. For the reasons stated above, this Court applies the *Anderson-Burdick* test.

283. The *Anderson-Burdick* test first asks whether the targeted regulation imposes a severe burden on voters. *Burdick*, 504 U.S. at 433-34; *Democratic Nat’l Committee v. Reagan*, 904 F.3d 686, 703 (9th Cir. 2018).

284. HB 176 does not severely burden Montanans’ Article II, § 13 “right of suffrage.”

285. As recognized by the Ninth Circuit, registration deadlines—as a rule—do not severely burden voting rights. *Barilla v. Ervin*, 886 F.2d 1514, 1524-25 (9th Cir. 1989). The Ninth Circuit noted registration deadlines do not “totally deny” or “ban” individuals from voting. *Id.* Instead, they merely place “a ‘time limitation’ on when the plaintiffs had to act in order to be able to vote.” *Id.* And a reasonable time limitation, standing alone, could never impose a burden on voting rights that was “‘substantial’ enough to require strict scrutiny.” *Id.* (citations omitted).

286. Additionally, Plaintiffs have failed to support their theory that HB 176 imposes a “severe burden” on Montanans with “quantifiable evidence,” as is required by *Anderson-Burdick. Reagan*, 904 F.3d 706.

287. Registration deadlines like HB 176 are routine burdens requiring voters to take reasonable actions to vote. If a voter’s resulting “plight can be characterized as disenfranchisement at all, it was not caused by [the registration deadline], but by their own failure to take timely steps to effect their enrollment.” *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973).

288. Because HB 176 imposes only minimal burdens on Montana voters, the State need only (1) articulate specific interests and (2) show that those interests are addressed by the regulation. *See Crawford*, 553 U.S. at 191.

289. The Secretary has identified the following interests furthered by HB 176: (1) imposing reasonable procedural requirements designed to ensure the integrity, reliability and fairness of Montana’s election processes, and promoting an orderly election, *see Larson*, ¶ 40; and (2) reducing administrative burdens on election officials and burdens on voters by reducing long lines and delays in voting.

290. HB 176 addresses the State’s compelling interest in imposing reasonable procedural requirements designed to ensure the integrity, reliability and fairness of Montana’s election processes and the State’s compelling interest in reducing administrative burdens on election officials because it removes a particular issue—election day registration—that was a direct cause of a substantial burden on Montana election administrators on Election Day, particularly in rural counties. Further, the removal of this burden on election administrators increases the reliability of Montana’s elections by allowing election staff to focus on tasks relating

specifically to voting on Election Day, and reduce long wait times for voting, especially in rural counties.

D. HB 176 – Application of Strict Scrutiny

291. And even if HB 176 did severely burden Montana voters and strict scrutiny was appropriate under *Anderson-Burdick*, HB 176 survives such review.

292. Strict scrutiny requires that a law be narrowly tailored to a compelling state interest. *See Driscoll*, ¶ 18

293. The Montana Supreme Court has established that the State has a compelling interest in imposing reasonable procedural requirements designed to ensure the integrity, reliability and fairness of Montana’s election processes. *Larson*, ¶ 40.

294. Additionally, the State has a compelling interest in reducing administrative burdens on election officials. *See Arizona Democratic Party v. Hobbs*, 18 F.4th 1179, 1181 (9th Cir. 2021) (“the State has an important regulatory interest in reducing the administrative burden on poll workers”); *see also Diaz v. Cobb*, 541 F. Supp. 1319, 1339-40 (S.D. Fla. 2008) (noting State’s compelling interest in easing burdens that “disproportionately” fall on election officials “in small counties”).

295. Further, maintaining order in election administration also is a compelling interest that justifies registration deadlines. *Diaz*, 541 F. Supp. 2d at 1335.

296. Finally, the State has a compelling interest in detecting fraud and preventing fraud, which likewise justifies registration deadlines. *Lemons v. Bradbury*, 538 F.3d 1098, 1104–05 (9th Cir. 2008); *see also Ohio Dem. Party v. Husted*, 834 F.3d 620, 633-35 (6th Cir. 2016) (same).

297. HB 176 is narrowly tailored to these compelling interests.

298. By imposing a late-registration deadline of noon the day before Election Day, HB 176 made the most limited change that would still adequately address the concerns of Montana election officials, especially in rural counties, maintain order in election administration, reduce long lines that discourage voting, and further the integrity, reliability, and fairness of, and confidence in, Montana's elections.

299. Therefore, because it is narrowly tailored to a compelling state interest, HB 176 survives strict scrutiny review.

III. SB 169

300. Plaintiffs' allege SB 169 violates Montana's equal protection clause and unduly burdens their right of suffrage.

A. SB 169 - Equal Protection Claim

301. The Court incorporates the standards set forth above governing an equal protection claim under Montana law.

302. Plaintiffs do not argue SB 169 creates classifications pursuant to its terms. Nor do Plaintiffs allege that government officials are applying SB 169 in differing levels of severity to different groups of persons.

303. Thus, SB 169 is neutral and must be evaluated to determine whether a classification exists because the law constitutes a device designed to impose different burdens on different classes of persons.

304. Plaintiffs have not established that SB 169 imposes a disparate impact on young people, Native Americans, or any other class of persons.

305. Plaintiffs have not established that there is substantial evidence of a discriminatory intent towards young persons in the legislative record of SB 169.

306. Plaintiffs rely primarily on the testimony of one Legislator in an attempt to meet this burden. This evidence does not indicate an intent by the Legislature to discriminate against certain classes and, even if it did constitute evidence of a discriminatory intent is not “substantial.”

307. Because Plaintiffs have not established that SB 169 imposes a disparate impact on any class of persons, and because Plaintiffs have not established there is substantial evidence of a discriminatory intent towards any specific class of persons in the legislative record of SB 169, Plaintiffs equal protection claim against SB 169 fails as a matter of law.

308. Even if Plaintiffs had established that SB 169 imposes a disparate impact on a particular class of persons or had demonstrated the existence of substantial evidence of a discriminatory intent towards a specific class of persons in the legislative record of SB 169, Plaintiffs equal protection claim would still fail because SB 169 satisfies even strict scrutiny as set forth below.

B. SB 169 – Right of Suffrage Claim

309. Plaintiffs allege SB 169 impermissibly interferes with the right of suffrage guaranteed by Article II, § 13, of Montana’s Constitution.

310. To determine whether SB 169 impermissibly interferes with the right of suffrage, this Court must first interpret Article II, § 13, in the context of the Constitution as a whole.

Howell v. State, 263 Mont. 275, 286, 868 P.2d 568, 575 (Mont. 1994).

311. Article IV, § 3, of Montana’s Constitution explicitly requires the Legislature to pass laws governing the requirements for voter registration and the administration of elections.

312. Further, Article IV, § 3, of Montana’s Constitution also mandates that the Legislature must “insure the purity of elections and guard against abuses of the electoral process.”

313. The language of Article II, § 13, which states “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage” must be interpreted in conjunction with the provisions of Article IV, § 3. *Howell v. State*, 263 Mont. 275, 286, 868 P.2d 568, 575 (Mont. 1994).

314. Plaintiffs contend Article II, § 13, prohibits the Legislature from determining that student identification cards cannot be used as stand-alone forms of identification sufficient, by themselves, to allow an individual to prove their identity at a polling location and cast a ballot.

315. This interpretation renders meaningless Article IV, § 3’s express directive requiring the Legislature to both pass laws governing the administration of elections and to guard against abuses of the electoral process.

316. Thus, when read together with the provisions of Article IV, Article II, § 13 cannot be interpreted to prohibit the Legislature from restricting primary ID to government-issued Montana or federal ID to prove their identity at a polling place and cast a ballot.

317. For this reason, SB 169 does not impermissibly interfere with any right granted by Article II, § 13.

C. SB 169 – Application of Anderson-Burdick

318. For the reasons stated above, this Court applies the *Anderson-Burdick* test and concludes that SB 169 does not impose a substantial or severe burden on the right to vote.

319. Plaintiffs do not challenge the concept of Montana’s voter ID laws in general, implicitly conceding any burdens imposed by Montana’s original voter ID laws were constitutionally permissible and supported by legitimate and/or compelling State interests. They only challenge the Legislature’s decision to make government-issued federal and Montana ID primary, and other identification, including student identification cards, nonprimary.

320. Further, individuals are not entirely precluded from relying on a student identification card to vote as such voter may still use a student identification card (or other photo ID) in conjunction with a host of other document options, including a voter registration card, utility bill, bank statement, or other government document with name and address.

321. Participation in American life routinely requires personal identification. Government-issued ID is required to board a plane or enter a federal building. *Crawford*, 533 U.S. at 194. TSA prohibits passengers using student ID to board a plane.

322. “[T]he inconvenience of making a trip to the [MVD], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Crawford*, 533 U.S. at 198.

323. Thus, SB 169 does not severely burden Montanans’ Article II, § 13 “right of suffrage.”

324. Because HB 176 imposes only minimal burdens on Montana voters, the State need only (1) articulate specific interests and (2) show that those interests are addressed by the regulation. *See Crawford*, 553 U.S. at 191.

325. The Secretary has identified the following compelling interests furthered by SB 169: (1) imposing reasonable procedural requirements designed to ensure the integrity, reliability, and fairness of Montana's election processes; (2) promoting and safeguarding voter confidence in the security of Montana's elections; (3) deterring and detecting voter fraud; (4) ensuring voters satisfy Montana's voter qualification standards, as established by Article IV, § 2 of the Montana Constitution; and, (5) modernizing voter requirements. *Larson*, ¶¶ 30, 40.

326. Each of these interests are addressed by SB 169.

327. First, SB 169 addresses the compelling interest in imposing reasonable procedural requirements designed to ensure the integrity, reliability, and fairness of Montana's election processes, promoting and safeguarding voter confidence in the security of Montana's elections by requiring that primary ID be Montana or federal identification issued by governmental agencies.

328. Student IDs and other non-primary IDs are not equivalent to government-issued ID, and States are justified in treating them differently than government-issued ID. As a federal district court recently noted:

Unlike other IDs used for voting, student IDs aren't otherwise regulated by federal, state, or tribal law, so any school's ID may be different from another's.

* * *

The content of nearly all of the other voter IDs is regulated by another state or federal statute, making them more recognizable and uniform, and potentially making them harder to fake. That's not the case for student IDs. [Plaintiff] doesn't identify any uniform standards that

Wisconsin colleges and universities have adopted, which other courts have found to be a reason to treat student IDs differently.

Common Cause v. Thomsen, 2021 WL 5833971, at *6 (W.D. Wis. Dec. 9, 2021) (citing *Nashville Student Organizing Committee v. Hargett*, 155 F.Supp.3d 749, 756 (M.D. Tenn. 2015) (reasonable to believe student IDs are more likely to be falsified)). X

329. Second, SB 169 addresses the State's compelling interest in deterring and detecting voter fraud and promoting voter confidence because voter identification laws can reduce perceptions of voter fraud.

330. Third, SB 169 addresses the State's compelling interest in modernizing voter requirements because government forms of identification are subject to revision by the state and federal agencies and Montana law, which necessarily allows such forms of identification to evolve over time.

331. For these reasons, SB 169 survives *Anderson-Burdick* review.

D. SB 169 - Application of Strict Scrutiny

332. And even if HB 176 did severely burden Montana voters and strict scrutiny was appropriate under *Anderson-Burdick*, HB 176 survives such review.

333. The State has a compelling interest in imposing reasonable procedural requirements designed to ensure the integrity, reliability, and fairness of Montana's election processes. *Larson*, ¶ 40.

334. The State has a compelling interest in promoting and safeguarding voter confidence in the security of Montana's electoral process. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 378-79 (1995) (citations omitted).

335. The State has a compelling interest in deterring and detecting voter fraud.

336. The State has a compelling interest in ensuring voters satisfy Montana’s voter qualification standards, as established by Article IV, § 2 of the Montana Constitution.

337. The State has a compelling interest in modernizing voter requirements. Montana law requires the Secretary to implement, and assist election administrators in the operation of, the National Voter Registration Act of 1993 (“NVRA”) and the Help America Vote Act of 2002 (“HAVA”) among others. § 13-1-203(1), MCA.

338. SB 169 is narrowly tailored to imposing reasonable procedural requirements designed to ensure the integrity, reliability, and fairness of Montana’s election processes, promoting and safeguarding voter confidence in the security of Montana’s electoral process because strong voter identification laws increase voter participation, are supported by a large majority of the population, increase voter confidence in the integrity and security of Montana’s elections.

339. Further, SB 169 is narrowly tailored to the State’s compelling interest in deterring and detecting voter fraud because the voter identification requirements can “deter, detect, or eliminate several potential avenues of fraud—such as multiple voting or voting by individuals using the identities of others or those who are deceased—and thus it can enhance confidence.”

340. Finally, SB 169 is narrowly tailored to these interests, in general, because it allows individuals to still rely on student identification cards, and other non-governmental forms of identification, to vote subject to certain requirements, and provides alternative means of establishing identification for voters without qualifying identification. *See* § 13-15-107(4) (Declaration of Impediment for an Elector affidavit); ARM 44.3.2102(7); ARM 44.3.2103(1)(f) (Polling Place Elector Identification Form).

341. For these reasons, SB 169 survives strict scrutiny review.

IV. HB 530

342. Plaintiffs allege HB 530 § 2 violates Montana's equal protection clause, infringes on their freedom of speech, unduly burdens their right to vote, violates due process, and constitutes an unconstitutional delegation of legislative power.

A. HB 530 - Equal Protection Analysis

343. The Court incorporates the standards set forth above governing an equal protection claim under Montana law.

344. Plaintiffs do not argue HB 530 creates classifications pursuant to its terms. Nor do Plaintiffs allege that government officials are applying HB 530 in differing levels of severity to different groups of persons.

345. Thus, HB 530 is neutral and must be evaluated to determine whether a classification exists because the law constitutes a device designed to impose different burdens on different classes of persons.

346. Plaintiffs have not established HB 530 imposes a disparate impact on any class of persons.

347. Plaintiffs have not established the existence of substantial evidence of discriminatory intent towards a specific class of persons in the legislative record of HB 530.

348. Because Plaintiffs have not established that HB 530 imposes a disparate impact on any class of persons, and because Plaintiffs have not established there is substantial evidence of a discriminatory intent towards any specific class of persons in the legislative record of HB 530, Plaintiffs equal protection claim against HB 530 fails as a matter of law.

349. Even if Plaintiffs had established that HB 530 imposes a disparate impact on a particular class of persons or had demonstrated the existence of substantial evidence of a discriminatory intent towards a specific class of persons in the legislative record of HB 530, Plaintiffs equal protection claim would still fail because HB 530 satisfies even strict scrutiny.

B. HB 530 – Right of Suffrage Analysis

350. Plaintiffs allege HB 530 impermissibly interferes with the right of suffrage guaranteed by Article II, § 13, of Montana’s Constitution.

351. Article II, § 13, states “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

352. Concurrently, Article IV, § 3, grants the Legislature explicit authority to “provide by law the requirements for . . . absentee voting[] and administration of elections.”

353. Plaintiffs contend Article II, § 13, protects their ability to engage in paid ballot collection.

354. This interpretation renders meaningless Article IV, § 3’s express grant of authority specifically allowing the Legislature to regulate absentee voting.

355. Thus, when read together with the provisions of Article IV, Article II, § 13, cannot be interpreted to guarantee an individual the ability to engage in paid ballot collection.

356. For this reason, HB 530 does not impermissibly interfere with any right granted by Article II, § 13.

C. HB 530 – Freedom of Speech Analysis

357. Plaintiffs claim HB 530, Section 2, violates their freedom of speech under Article II, Sections 6 and 7 of Montana’s Constitution.

358. The right to freedom of speech is not absolute. *City of Whitefish v. O'Shaughnessy*, 216 Mont. 433, 439–40, 704 P.2d 1021, 1025 (Mont. 1985)

359. Within the context of a First Amendment analysis, the conduct regulated by HB 530, Section 2, is paid ballot collection.

360. The First Amendment protects only conduct that “is intended to convey a ‘particularized message’ and the likelihood is great that the message would be so understood.” *Knox v. Brnovich*, 907 F.3d 1167, 1181 (9th Cir. 2018).

361. Individuals claiming the protection of the First Amendment must demonstrate that their nonverbal conduct meets this standard. *Id.* at 1181.

362. Because HB 530, Section 2, allows unpaid ballot collection, Plaintiffs must establish that specific act of being paid to collect a ballot conveys a particularized message protected by the First Amendment.

363. Plaintiffs do not meet this burden. There is no particularized message contained within the act of receiving money for conveying a ballot to a place of deposit that renders such conduct expressive within the meaning of the First Amendment.

364. And federal courts have also rejected the contention that ballot collection in general constitutes expressive conduct protected by the First Amendment. *Knox v. Brnovich*, 907 F.3d 1167, 1181 (9th Cir. 2018)

365. As Plaintiffs have not established that paid ballot collection is expressive conduct, their claims based on Mont. Const. art. II, § 6 and art. II, § 7 fail.

D. HB 530 – Strict Scrutiny Analysis

366. But even if Plaintiffs had sufficiently alleged a violation of Article II, Sections 4, 6, 7, or 13, HB 530 survives strict scrutiny review.

367. The State has a compelling interest in imposing reasonable procedural requirements designed to ensure the integrity, reliability, and fairness of Montana’s election processes. *Larson*, ¶ 40.

368. The State has a compelling interest in promoting and safeguarding voter confidence in the security of Montana’s electoral process. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 378–79 (1995) (citations omitted).

369. The State has a compelling interest in regulating the collection of absentee ballots due to the potential for abuse connected with paid ballot gathering.

370. The State has a compelling interest in regulating the expenditure of money in politics.

371. HB 530 is narrowly tailored to these interests because it restricts only the receipt of a “pecuniary benefit” in connection with absentee ballot collection and allows unpaid ballot collection to continue.

372. Thus, HB 530 survives strict scrutiny review.

D. HB 530 – Due Process Analysis

373. Plaintiffs contend HB 530 violates their right to due process because its terms, including governmental entity and pecuniary benefit, are impermissibly vague.

374. Procedural due process requires that parties be given reasonable notice and reasonable opportunity to be heard. *Matter of Peila*, 249 Mont. 272, 280–281, 815 P.2d 139, 144 (Mont. 1991).

375. Procedural due process requirements are reflected in the procedures set forth in the Montana Administrative Procedures Act. *Id.*

376. By its terms, HB 530, Section 2, requires the Secretary to engage in the administrative rulemaking process.

377. As recognized in *Matter of Peila*, 249 Mont. at 280–281, 815 P.2d at 144, the administrative rulemaking process exists to resolve Plaintiffs’ due process concerns.

E. HB 530 – Delegation of Legislative Power Analysis

378. Plaintiffs contend both HB 530, Section 1, and HB 530, Section 2, are unconstitutional delegations of legislative power.

379. A delegation of legislative power is constitutional if the Legislature “prescribe[s] a policy, standard, or rule for their guidance” and does not vest the receiving agency with “arbitrary and uncontrolled discretion.” *Duck Inn, Inc. v. Montana State Univ.-N.*, 285 Mont. 519, 525, 949 P.2d 1179, 1183 (1997).

380. HB 530, Section 1, does not require the Secretary to engage in the administrative rulemaking process and requires those rules to be limited to election security. Thus, HB 530, Section 1, does not vest the Secretary with uncontrolled and arbitrary discretion.

381. Further, because the Secretary is already allowed by law to adopt rules for the effective administration of her duties, § 2-15-401(2)(b), MCA, and is the chief election officer of

the State, § 13-1-201, MCA. Thus, HB 530, Section 1, does not expand the scope of the Secretary's rulemaking power.

382. HB 530, Section 2, contains an express statement of the standard the Secretary must follow when developing the rule it contemplate while granting the Secretary discretion to navigate the specific contours of the final rule.

383. For these reasons, neither HB 530, Section 1, or HB 530 Section 2 constitute unconstitutional delegations of legislative power.

PROPOSED JUDGMENT

384. Plaintiffs have failed to carry their heavy burden of proving HB 176, SB 169, and HB 530 are unconstitutional beyond a reasonable doubt.

385. The injunctive relief previously granted by this Court is vacated.

386. Plaintiffs' claims for relief and causes of action in these consolidated causes relating to HB 176, SB 169, and HB 530 are dismissed, with prejudice, in their entirety.

387. Each party shall pay their own costs and attorneys' fees.

Dated this 2nd day of September, 2022.

/s/ Leonard H. Smith

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