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BY _____

Attorney for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

MONTANA FEDERATION OF PUBLIC
EMPLOYEES, MONTANA AMERICAN
FEDERATION OF LABOR-CONGRESS
OF INDUSTRIAL ORGANIZATIONS,
MONTANA ASSOCIATION OF CENTERS
FOR INDEPENDENT LIVING,
SAMANTHA HARRINGTON, ADAM
CLINCH, PAUL DOUGHERTY, CULLEN
HINKLE, ASHLEY JOHNSON, GREG
WERBER, WYATT MURDOCH,
THERESA FROEHLICH DUTOIT,
JASMINE TAYLOR and KAREN COOK,

Plaintiffs

vs.

STATE OF MONTANA; CHRISTI
JACOBSEN, in her official capacity as
Montana Secretary of State,

Defendants.

Cause No.:

CDV-21-0500

JOHN A. KUTZMAN

COMPLAINT

The Montana Federation of Public Employees (“MFPE”), the Montana American Federation of Labor-Congress of Industrial Organizations (“AFL-CIO”), the Montana Association of Centers for Independent Living (“MTCIL”), Samantha Harrington, Adam Clinch, Paul Dougherty, Cullen Hinkle, Ashley Johnson, Greg Werber, Wyatt Murdoch, Theresa Froehlich Dutoit, Jasmine Taylor, and Karen Cook (collectively, “Plaintiffs”) bring this

Complaint against the State of Montana and Montana Secretary of State Christi Jacobsen, and in support thereof state the following:

PRELIMINARY STATEMENT

1. This is a complaint for declaratory and injunctive relief that challenges the constitutionality of House Bill 176 (“HB176”), which eliminates most forms of election day registration in Montana.

2. HB176 will strip thousands of Montanans of their right to vote.

3. The premise of election day registration is simple: Montanans who prove their identity and eligibility to vote can register—or update their existing registration—on election day and vote.

4. In every statewide election since the inception of election day registration in 2006, thousands of Montanans have voted using election day registration. In the 2020 statewide primary and general elections, over 9,000 Montanans relied on election day registration. Of the ballots processed on election day in November 2020, 11% were from election day registrants. And the 2020 elections were no outlier. Over 9,000 Montanans relied on election day registration during the 2018 statewide elections, and over 15,000 Montanans relied on election day registration during the 2016 statewide elections.

5. Montana voters who use election day registration are not lazy. They are not civically disengaged. They did not fail to plan. Rather, thousands of the Montanans who rely on election day registration are registered voters who have simply moved to a new home. Others must update their registration to fix government-created errors in their registration information, like a name or address misspelled during the transcription of a voter registration card—issues the voter didn’t know existed until they tried to vote on election day. Others who use election day

registration are Montana voters who have been inactivated from the voter rolls by the government—often without their knowledge. Others are first time Montana voters.

6. Election day registration is especially important for working Montanans, including union members. In many counties, election day is the only day in which county election offices are open outside of regular business hours. For Montanans who work during regular business hours, election day may be the only opportunity to update their voter registration in person.

7. Election day registration is also crucial to Montanans who are members of the disability community. Montanans with mobility, vision, and other disabilities face added burdens to voting and voter registration. Many Montanans in the disability community cannot register by mail and must travel to a county elections office to register to vote. By reducing the number of trips necessary to register—and by preserving the option of fixing registration issues and voting in the same day—election day registration ensures the constitutional right to suffrage for Montanans who are members of the disability community.

8. Election day registration has become an essential component of the constitutional right to vote in Montana. Since its inception, Montanans have come to rely on the availability of election day registration. If something about a voter's registration needs to be updated—including things the voter has no awareness of or control over—then the registration can be updated on election day. Election day registration ensures that these Montanans who are eligible voters can still exercise their constitutional right to cast a ballot.

9. HB176 does the opposite. It sends eligible voters home, eliminating election day registration and denying citizens the right to update their registrations and vote on election day.

10. HB176 not only violates the right to vote, it also violates the right to equal

protection under the law. HB176 arbitrarily discriminates against Montanans based on where they move: the bill leaves in place election day registration for Montanans who move *within* a county but repeals it for voters who move to *another* Montana county, for new voters, and for occasional voters. This distinction is arbitrary, discriminatory, and unlawful. There is no state interest in treating Montanans who move inside their county differently from Montanans who move to another county, or who are new or occasional voters.

11. Voting is a fundamental right—the first right in a democratic republic. Because HB176 bars otherwise-eligible Montanans from voting, it violates the Montana Constitution and must be enjoined.

PARTIES

A. Plaintiffs

12. MFPE is Montana's largest union. It represents over 21,000 working Montanans. MFPE is politically active and both endorses and opposes candidates and public policy initiatives. It actively informs its members' voting decisions and encourages its members to register and vote. MFPE members are demographically and politically diverse: they are young, old, retirees, active workers, Montanans of color, men and women, Republicans, Democrats, Libertarians, Independents, and Montanans who are members of the disability community. MFPE members utilize election day registration in every statewide election. One hundred and thirty-nine MFPE members utilized election day registration in the 2020 statewide general election. Of these members, 22 updated their registration to a new county, 74 updated their registration to a new precinct, and 43 registered or updated their voter registration for other reasons. Many individual MFPE members will require election day registration in the 2022 statewide primary and general elections to exercise their right to vote and have standing to sue if

they are denied their right to vote. The protection of its members' ability to vote and remain civically engaged is germane to MFPE's purpose as an organization. And neither the claims asserted in this Complaint nor the relief requested require the individual participation of every individual member affected. In addition, MFPE must divert and expend resources to ensure that its members register to vote in advance of election day as a direct result of HB176.

13. The Montana AFL-CIO is a statewide labor organization. It is politically active and both endorses and opposes candidates and public policy initiatives. It actively informs its members' voting decisions and encourages its members to register and vote. The Montana Federation of Labor (AFL) and the Montana State Council of Industrial Organizations (CIO) merged in 1956 and established the current Montana AFL-CIO. Montana AFL-CIO members utilize election day registration in every statewide election. Many individual Montana AFL-CIO members will require election day registration in the 2022 statewide and primary elections to exercise their right to vote. The protection of its members' ability to vote and remain civically engaged is germane to the Montana AFL-CIO's purpose as an organization. And neither the claims asserted in this Complaint nor the relief requested require the individual participation of every individual member affected. In addition, the Montana AFL-CIO must divert and expend resources to ensure that its members register to vote in advance of election day as a direct result of HB176.

14. MTCIL is a partnership of Montana's four Centers for Independent Living: Living Independently for Today & Tomorrow, Montana Independent Living Project, North Central Independent Living Services, and Summit Independent Living. Montana's Centers for Independent Living are non-residential, consumer-controlled, community-based, private, non-profit organizations that provide individual and systems advocacy services by and for persons

with all types of disabilities. Montana's Centers for Independent Living work with individuals with disabilities and their families to obtain the services they need to preserve their right to live and participate in society fully and equally. Montana's Centers for Independent Living serve as a strong, collective voice on a wide range of national, state and local issues and work to assure physical, attitudinal, and programmatic access to housing, employment, transportation, communities, recreation, and health and social services. MTCIL members will use election day registration in the 2022 primary and general statewide elections. The protection of its members' ability to vote and remain civically engaged is germane to MTCIL's purpose as an organization. And neither the claims asserted in this Complaint nor the relief requested require the individual participation of every individual member affected.

15. Samantha Harrington is an employee of the Montana Department of Public Health and Human Services and an MFPE member. She has previously relied on election day registration to exercise her right to vote. She resides in Great Falls.

16. Adam Clinch is a math teacher at Capital High School in Helena and an MFPE member. He has previously relied on election day registration to exercise his right to vote. He resides in Helena.

17. Paul Dougherty is a former educator in Kalispell and is now a law student at the University of Montana. He is an MFPE retired member. He previously relied on election day registration to exercise his right to vote. He resides in Missoula.

18. Cullen Hinkle is the band teacher at Havre High School and an MFPE member. He previously relied on election day registration to exercise his right to vote. He resides in Havre.

19. Ashley Johnson is a high school math teacher in Butte and an MFPE member.

She previously relied on election day registration to exercise her right to vote. She resides in Butte.

20. Greg Werber is a technician for the Montana Department of Agriculture in Great Falls and an MFPE member. He previously relied on election day registration to exercise his right to vote. He resides in Great Falls.

21. Wyatt Murdoch is a social studies teacher in Three Forks and an MFPE member. He previously relied on election day registration to exercise his right to vote. He resides in Three Forks.

22. Theresa Froehlich Dutoit is an MFPE member who works for the Montana Department of Environmental Quality. She previously relied on election day registration to exercise her right to vote. She resides in Helena.

23. Jasmine Taylor is an MFPE member who works for the Montana Department of Health and Human Services. She previously relied on election day registration to exercise her right to vote. She resides in Great Falls.

24. Karen Cook is a high school science teacher at Butte High School and an MFPE member. She previously relied on election day registration to exercise her right to vote. She resides in Butte.

B. Defendants

25. The State of Montana is a government entity that has waived its immunity from suit under Article II, Section 18 of the Montana Constitution.

26. Defendant Christi Jacobsen is the Montana Secretary of State and is responsible for the administration of election laws in Montana. She is named in her official capacity only.

JURISDICTION AND VENUE

27. This Court has jurisdiction under the provisions of § 27-8-201, MCA, of the Montana Declaratory Judgment Act.

28. Venue is properly laid in Cascade County pursuant to § 25-2-126, MCA, because Plaintiffs Harrington, Taylor, and Werber reside in Cascade County.

FACTUAL ALLEGATIONS

I. Voting and Election Day Registration

a. Background

29. Voting is a fundamental right. Article II, Section 13 of the Montana Constitution provides that, “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

30. The legislature may enact measures to promote fundamental rights secured by the Constitution. Once these rights are expanded, the legislature may not burden an established right without compelling reasons.

31. There is no voter registration deadline in the Montana Constitution. Rather, the Montana Constitution anticipates and expressly authorizes election day registration.

32. The delegates to the 1972 Montana Constitutional Convention determined that changing federal requirements meant it would be preferable to establish election day registration through statute, rather than fixing certain procedures for election day registration in the Constitution itself.

33. At the time of the 1972 Constitutional Convention, there was not widespread computer technology that would allow county clerks to verify instantly whether an election day registrant is eligible to vote.

34. In the time since, federal law has required the use of electronic voter registration systems that allow local election officials to communicate instantly with the Montana Secretary of State's databases and confirm whether a registrant is eligible to vote.

35. Complying with the original intent of Montana's Constitutional Convention delegates, Montana adopted a system of election day registration in 2005 with overwhelmingly bipartisan support. This law entered into effect during the 2006 statewide elections.

36. Since 2006, 70,278 Montanans have utilized election day registration, with thousands of Montanans registering on election day in every statewide election over that time period.

37. Voters from all parts of Montana rely on election day registration. In 2020, 9,790 voters registered on election day from 53 of 56 counties. In 2018, 9,004 voters registered on election day from 54 of 56 counties. And in 2016, 15,401 voters registered on election day from all 56 counties.

38. Many Montanans utilizing election day registration are existing registered voters who need to update their registration to reflect a change in address, a name change, address a government error, or otherwise change a minor part of their current registration to vote.

39. Election day registration protects voters from administrative barriers to voting. For example, thousands of Montanans who use election day registration do so because they are required to update their address after a move. Many of these voters arrive at their polling location on election day under the belief that their registration is up-to-date, only to find that they are still registered at a previous address in another county or neighborhood. Election day registration provides a clear remedy for this situation: it allows these Montanans to update their registration and cast a ballot.

40. Election day registration is also a fail-safe that protects Montanans from government-induced errors in their voter registration. Errors in the processing of voter registration forms are not uncommon. Many steps in the voter registration process in Montana involve the transcription of handwritten voter registration information by government officials. This process not infrequently results in small discrepancies between the information a voter submits and what their voter file says, through no deliberate fault of the voter or the government. A voter's address might be one letter different than the address transcribed into their voter file, for example. However, voters are unlikely to learn about errors introduced inadvertently by the government during the registration process until they show up to vote on election day. Election day registration provides a clear remedy for this situation, too: it is a fail-safe that allows voters to correct their information when they have done their part but suffer an administrative error along the way.

41. Other voters utilize election day registration because the government has inactivated them from the voter rolls, often unbeknownst to the voter. Here, too, election day registration provides a clear remedy: infrequent but eligible voters are permitted to update their registration status and vote on election day.

42. Election day registration also helps working people update their registrations. Election offices are open until at least 8:00 P.M. on election day but only until 5:00 P.M. on most other business days. For this reason, election day is also typically the only time that Montanans can register to vote in person outside typical 8:00 A.M. to 5:00 P.M. working hours.

43. Election day registration is also crucial to Montanans who have registered as overseas or military voters by allowing, for example, service members who have returned from a deployment to update their registration and vote on election day.

44. In 2014, Montanans overwhelmingly rejected a ballot initiative that would have ended election day registration, by a margin of 57% to 43%. Opposition to ending election day registration was geographically widespread, with voters in 80 out of 100 legislative districts opposing the measure.

b. Individual Montanans rely on election day registration

45. Samantha Harrington grew up in Great Falls and went to college in Missoula. She turned 18 while in Missoula and voted there in the 2008 election. After school, she moved back to Great Falls in 2012 to work as a Comprehensive School and Community Treatment professional. Busy with her new job helping kids with addiction and mental health challenges, Ms. Harrington did not realize that she needed to change the address on her voter registration. She went to vote in Great Falls on election day in November 2012 after finishing her workday at C.M. Russell High School. Election officials in Cascade County offered her the opportunity to update her registration to Great Falls. She remembers how busy it was that day and how long it took to get registered. But she waited, updated her registration, and cast her ballot. By the time Ms. Harrington reached the polls that night, she could not have made it to Missoula in time to vote if officials in Cascade County turned her away and required her to return to her previous polling place, some three hours away. Had HB176 been in effect, she would have been unable to vote.

46. Adam Clinch grew up in Helena, went to college in Missoula, then got a job as a high school math teacher back in his hometown. He was registered to vote in Missoula when he graduated college in 2014. Mr. Clinch's new job as a Helena teacher had him exceptionally busy preparing for classes, helping students after hours, and so forth. On election day in November 2014, Mr. Clinch arrived at his polling place in Helena before school at around 7:00 a.m.

Because he was working that day, he could not have driven to Missoula to vote if election officials turned him away. Mr. Clinch updated his registration and cast his ballot. Had HB176 been in effect, he would not have been able to vote.

47. Paul Dougherty began working as a substitute teacher in Kalispell and was eventually hired into a full-time teaching position. He fell in love with Montana after working seasonally in Glacier National Park. When he made Montana his home, he believed it was important to vote in his community. Though Mr. Dougherty had a Montana driver's license, lived in Montana, and worked in Montana, his voter registration before the 2014 election remained in Ohio. Mr. Dougherty utilized election day registration to register in Montana and vote the same day. He did so for the 2014 general election, registering at a polling place because the county elections office was under construction. He would not have been able to return to Ohio by close of business on election day if election officials in Kalispell turned him away. Had HB176 been in effect, Mr. Dougherty would not have been able to vote.

48. Cullen Hinkle is the high school band teacher in Havre. Mr. Hinkle's days are long. Most days, he begins work at 6:30 A.M. and works until around 7:00 P.M., far outside the working business hours of the county election office. 2020 was a tough year for all educators, and it made no exception for Mr. Hinkle: he oversaw over 200 students, many of whom were going into and out of mandatory quarantines. With his responsibilities at the school growing, Mr. Hinkle's schedule simply did not allow time for a trip to the local elections office during business hours. Voting is exceptionally important to him, so on general election day in November 2020 he left school early so that he could go and vote. Because Mr. Hinkle recently moved to Havre from Louisiana, he registered as a new Montana voter on election day and cast his ballot. He could not have made it back to Louisiana if election officials turned him away on

election day. Had HB176 been in effect and were election day registration not available to him, he would have been turned away from the polls despite meeting all the eligibility criteria to vote in Montana.

49. Ashley Johnson grew up in Great Falls and went to school at Montana State University in Bozeman. She turned 18 while in college and was registered to vote in Bozeman. She was tremendously busy at the time: going to college full time and working a job. She happened to be home in Great Falls on primary election day in 2008. Her father reminded her to vote. She did not know at the time that she needed to update her registration from Bozeman to Great Falls. When she went to the polls, she updated her registration and cast a ballot. If HB176 had been in effect, Ms. Johnson would not have been able to vote.

50. Greg Werber is a technician with the Montana Department of Agriculture in Great Falls. He was registered to receive an absentee ballot in the 2020 general election but never received one. So he went to vote in person on election day. He stood in line for hours at the fairgrounds in Great Falls. When it was his turn to be served, Mr. Werber learned that the county had marked him as an inactive voter. Relying on election day registration, Mr. Werber updated his registration and voted. Had HB176 been in effect, he would not have been able to vote.

51. Wyatt Murdoch is a social studies teacher in Three Forks. At the time of the 2020 general election, he taught in Wolf Point but had recently moved from Bozeman, some six hours and twenty-five minutes from Wolf Point. Mr. Murdoch arrived at the county elections office in Wolf Point on election day in November 2020 after finishing school. His teaching contract required him to be present until 4:30 P.M. He updated his registration to Wolf Point and voted. Without election day registration, Mr. Murdoch would only have been permitted to vote in

Bozeman—no longer his residence, and over six hours away. Because he arrived at the county elections office in Wolf Point after school, Mr. Murdoch physically could not have made it to Bozeman by the time polls closed at 8:00PM. Had HB176 been in effect, Mr. Murdoch would not have been able to vote.

52. Theresa Froehlich Dutoit had moved from Helena to Butte at the time of the 2020 general election. But her job remained in Helena, where she commuted each day from Butte. Her responsibilities and schedule left no time during business hours to update her registration. On election day itself, she was unable to make it to the polling place in Butte until after work. She arrived at the county elections office in Butte on election day in November 2020, updated her registration, and voted. It was about 7:00 P.M. when she got to the polls in Butte. She could not have made it to Helena—her old polling location in a city where she no longer lived—if officials in Butte turned her away. If HB176 had been in effect, Ms. Froelich Dutoit would not have been able to vote.

53. Jasmine Taylor works for the Montana Department of Public Health Human Services in Health Policy and Quality Assurance. While in college, she moved multiple times. Finding time to register and vote was hectic. During the 2010 general election, she updated her registration and voted on election day.

54. Karen Cook is a classroom teacher in Butte. When she first became a teacher, she moved to Kalispell where she worked for 11 years with her husband, also a teacher. She was registered to vote there. Her husband died suddenly in 2013 and Ms. Cook moved to Bozeman to be closer to her family. The time following the loss of her husband was chaotic—she moved several times, first to a rental in Bozeman and then into a house she purchased. Ms. Cook believes it is very important to vote. On election day in the 2016 general election, she went to

the courthouse in Gallatin County, updated her registration, and voted. Had election officials turned her away in Bozeman, she could not have made it back to her old polling location in Kalispell in time to vote that day. If HB176 had been in effect, she would not have been able to vote.

c. Election day registration makes voting accessible for Montanans with disabilities

55. Election day registration also makes voting accessible for Montanans with disabilities.

56. Though the disability community in Montana is large, Montanans with disabilities vote at a lower rate than the population as a whole.

57. Members of the disability community in Montana may face special barriers to voter registration and voting. For example, Montanans with vision or other disabilities may be unable to register to vote by mail, necessitating an in person visit where one would not be required for Montanans not in the disability community.

58. Many Montanans have multiple and overlapping disabilities—like a combination of mobility, vision, and mental health disabilities—that create severe impediments to in person voter registration or voting. The prospect of having to make multiple trips to a new location in a new county to register and return later may deter such Montanans from voting altogether.

59. As a result, nationally and in Montana, members of the disability community are less likely to register and vote than the population as a whole. The United States Election Assistance Commission determined that in the 2020 elections nationally, “[p]eople with disabilities were 7 points less likely to vote than those without disabilities after adjusting for age” and that “[t]he voting gaps were largest for people with vision and cognitive

impairments.”¹

60. Election day registration is a key component of voting accessibility for members of the disability community in Montana because it reduces the number of physical trips necessary for many Montanans with disabilities to vote.

61. Conversely, repealing election day registration decreases voting accessibility by increasing the number of trips, which creates added burdens and barriers to voting for Montanans with disabilities than for the population as a whole.

d. Election day registration statistics

62. Plaintiffs’ stories are exceptionally common across Montana: working men and women devoted to their communities who cannot access a county election office during business hours; voters whose ballots never appeared; voters who moved to another county for a new opportunity to serve. For 14 years, from 2006 to 2020, each could rely on the ability to update their registration on election day and vote.

63. Election day registration has secured the right to vote for tens of thousands of Montanans. Between its inception in the 2006 statewide elections and the 2020 statewide elections, 70,278 Montanans utilized election day registration. In the 2020 statewide primary and general elections, 9,790 voters registered or updated their registration on election day. In the 2018 statewide primary and general elections, 9,004 voters registered or updated their registration on election day. In the 2016 statewide primary and general elections, 15,401 voters registered or updated their registration on election day.

64. In the 2020 statewide general election alone, 8,172 Montanans utilized election

¹ United States Election Assistance Commission, “Disability and voting accessibility in the 2020 elections.” February 16, 2021. Available at: https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf

day registration. Of these election day registration voters in the general election in 2020, 1,983 updated their voter registration from one precinct to another precinct in the same county. Another 866 of updated their voter registration from one county to another county. The remaining 5,323 registered or updated their voter registration for other reasons—new voters, new Montanans, infrequent voters, inactive voters, and a host of other situations.

65. In 2020, younger Montanans were more likely to register on election day in Montana; 60% of election day registrations were for Montanans under the age of 35. Men were also more likely to register on election day in Montana than women.

66. Hundreds of union members utilize election day registration in Montana in every statewide election. In the 2020 statewide general election, 139 members of MFPE alone utilized election day registration. Since 2006, more than 1,200 MFPE members have utilized election day registration.

67. Hundreds of Plaintiffs' members will require election day registration to exercise their right to vote in the 2022 statewide primary and general elections.

68. Every voter who utilized election day registration in 2020 was required to abide by Montana's identity and eligibility verification requirements, including instantaneous communication with the State's voter registration database to confirm eligibility.

II. House Bill 176

a. Provisions

69. During the 2021 legislative session, Representative Sharon Greef sponsored HB176. The Governor signed HB176 into law on April 19, 2021. The bill has an immediate effective date.

70. HB176 eliminates election day registration in Montana under most circumstances.

In its place, the bill creates a new registration deadline of noon the day before an election—upending more than 14 years of common practice in Montana.

71. HB176 has no provision to publicize the change in registration requirements.

72. HB176 contains no findings, statement of purpose, or other information on the state's interest in removing election day registration.

73. During legislative debate on HB176, proponents offered non-specific testimony about vague threats to election integrity and election fraud.

74. In repealing the core components of election day registration in Montana, HB176 leaves behind a patchwork of laws that still permit some registration on election day, but subject Montanans to different requirements and burdens based on arbitrary characteristics.

75. For example, HB176 does not repeal the provision that Montanans who change their name or move within their county may submit an updated voter registration on election day under § 13-2-512, MCA. But Montanans who move to another county are required to return to their old county on election day (an impossibility for Montanans like Mr. Murdoch) or they simply cannot vote. *See* § 13-2-514, MCA. New voters are prohibited entirely from registering on election day.

76. Curiously, HB176 retains the requirement that county election administrators maintain a central location to process election day voter registrations, but the bill effectively limits their use to voters who have name changes or move within a county. Section 13-2-512(1), MCA (requiring “a central location designated by the election administrator” for precinct change voters). Counties will therefore maintain the same physical footprint they employed before HB176 to accommodate election day registration, but must refuse the vast majority of would-be election day registrants.

77. HB176 makes no accommodations for Montanans with disabilities.

b. HB176 is unconstitutional

78. Had HB176 been in effect during the 2020 statewide primary and general elections, thousands of the 9,790 eligible Montana voters who used election day registration would not have been able to vote. The bill is unconstitutional for at least two independent reasons.

79. *First*, HB176 directly burdens and interferes with the right to suffrage. The Montana Constitution requires that “[a]ll elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const. Art. II, § 13.

80. The freedom from interference in the free exercise of the right of suffrage is a fundamental constitutional right in Montana. It is also a corollary of the fundamental rights of popular sovereignty and self-government. Mont. Const. Art. II, §§ 1-2.

81. Election day registration is a core component of the franchise in Montana. For the past eight statewide primary and general election cycles, over 70,000 Montanans have used election day registration. Montanans rely on its provisions to exercise their right to vote. In its absence, thousands of otherwise-eligible Montana voters will be directly denied the right to vote—even though they showed up to the polls, even though they were otherwise eligible to vote, and even though a simple administrative change would permit the full exercise of their constitutional rights.

82. The elimination of election day registration therefore restricts the “free and open” nature of the franchise in Montana and “interfere[s] to prevent the free exercise of the right of suffrage.” *Id.*

83. *Second*, HB176 violates the Montana Constitution's guarantee to equal protection of the laws. Mont. Const. Art. II, § 4.

84. HB176 discriminates against new Montanans and Montanans who move to a new county by denying them the right to register and vote on election day in their county of residence, while permitting Montanans who have moved within a county to register and vote on election day.

85. HB176 also discriminates against new or infrequent Montana voters by denying them the right to exercise the franchise on election day unless they undergo additional registration burdens not imposed on routine voters or voters who move within the same county.

c. HB176 does not advance any state interest.

86. The State of Montana has no interest in denying eligible voters the right to vote. Mont. Const. Art. II, § 4.

87. HB176 does not promote election integrity. Montana's elections are exceptionally secure. There have been no widespread issues with election integrity in Montana.

88. Denying eligible voters the right to vote on election day does not increase the integrity or security of Montana's elections.

89. Denying eligible voters the right to vote on election day does not increase Montanans' perception of the integrity or security of Montana's elections. Montanans overwhelmingly rejected an initiative seeking to end election day registration in 2014.

90. The 9,790 Montanans who utilized election day registration in the 2020 primary and general elections were eligible to vote. They did not vote improperly.

91. HB176 is not tailored in a way that advances any state interest.

92. Election day registration did not overburden election officials in Montana.

93. HB176 does not reduce an administrative burden on election officials in Montana that election officials are not otherwise prepared to handle.

COUNT ONE

Declaratory Judgment – Violation of Constitutional Right to Vote

94. Plaintiffs incorporate herein all of the foregoing allegations as if set forth in full.

95. This is an action by Plaintiffs, pursuant to §§ 27-8-101 through 27-8-313, MCA, for judgment declaring that HB176 violates Art. II, Section 13 of the Montana Constitution.

96. The Montana Constitution provides that “[a]ll elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const. Art. II, § 13.

97. HB176 prevents Montanans from voting if they are otherwise-eligible on election day but their registration status requires election day registration.

98. HB176 therefore “interfere[s] to prevent the free exercise of the right of suffrage.” Mont. Const. Art. II, § 13.

99. HB176 burdens a fundamental right secured by the Montana Constitution.

100. HB176 does not advance any state interest, nor is it tailored to any state interest.

101. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs contend HB176’s elimination of election day registration denies Montana citizens, who are otherwise eligible to vote, the right to vote, and thus HB176 violates Article II, Section 13 of the Montana Constitution.

102. Defendants contend that HB176 does not violate Article II, Section 13 of the Montana Constitution.

COUNT TWO

Declaratory Judgment – Violation of Constitutional Right to Equal Protection

103. Plaintiffs incorporate herein all of the foregoing allegations as if set forth in full.

104. This is an action by Plaintiffs, pursuant to §§ 27-8-101 through 27-8-313, MCA, for judgment declaring that HB176 violates Article II, Sections 4 and 13 of the Montana Constitution.

105. The Montana Constitution provides that,

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.

Mont. Const. Art. II, § 4.

106. HB176 discriminates against Montanans who move to another county, creating additional voting burdens for them, and establishing an arbitrary distinction between these Montanans and the rest of the voting population (including Montanans who move within a county, and Montanans who have not moved).

107. HB176 also discriminates against new Montana voters, infrequent Montana voters, and inactive Montana voters, creating additional voting burdens for them, and establishing an arbitrary distinction between these Montanans and the rest of the voting population.

108. Under the Montana Constitution, statutes that draw distinctions based on the exercise of fundamental rights are subject to strict scrutiny. *See Snetsinger v. Montana Univ. Sys.*, 2004 MT 390, ¶ 17, 325 Mont. 148, 154, 104 P.3d 445, 450.

109. The right to vote is a fundamental right.

110. HB176 does not survive any level of scrutiny because it does not advance any state interest, nor is it tailored to any state interest.

111. HB176 therefore “discriminate[s] against” Montanans “in the exercise of [their] civil or political rights on account of . . . social origin or condition.” Mont. Const. Art. II, § 4.

112. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs contend HB176’s elimination of election day registration denies Montana citizens, who are otherwise eligible to vote, equal protection rights.

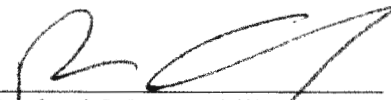
113. Defendants contend that HB176 does not violate Article II, Sections 4 and 13 of the Montana Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court enter:

1. As to Count One, entry of declaratory judgment that HB176 unconstitutionally violates the right to vote.
2. As to Count Two, entry of declaratory judgment that HB176 unconstitutionally violates the right to equal protection.
3. An order enjoining Defendant from enforcing any aspects of HB176.
4. An award of costs and attorney fees, and any other further relief as the Court deems just and appropriate.

Respectfully submitted this 22nd day of September, 2021.


Raphael J.C. Graybill
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