

Peter M. Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena, Montana 59624
406-442-8670
mike@meloylawfirm.com

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
akhanna@elias.law

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

Montana Democratic Party, Montanans for
Tester, Macee Patritti,

Plaintiffs,

v.

Christi Jacobsen, in her official capacity as
Montana Secretary of State, Jeffrey
Mangan, in his official capacity as Montana
Commissioner of Political Practices,

Defendants.

Case No. CV-21-119-M-DWM

**PRELIMINARY PRETRIAL
STATEMENT**

Plaintiffs, Montana Democratic Party, Montanans for Tester, and Macee Patriitti, by and through their attorneys, submit herewith, their Preliminary Pretrial Statement.

A) A Brief Factual Outline of Case.

Over the last decade, the youth vote in Montana has increased dramatically. In fact, during the 2020 presidential election, the number of Montanans between the ages of 18 and 29 who voted increased nearly 40% from the 2016 presidential election.

On May 12, 2021, Montana moved to make it harder for young voters to participate in the political process, signing into law Senate Bill 319 (“SB 319”), which, among other things, prohibits any “political committee” from directing, coordinating, managing, or conducting “any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a resident hall, dining facility, or athletic facility operated by a public postsecondary institution.” SB 319, 67th Leg., Reg. Sess. § 21(1) (Mont. 2021).

SB 319 harms the ability of Plaintiffs—Montana Democratic Party, Montanans for Tester, and Macee Patriitti—to participate in the political process and intentionally targets the state’s young voters. Therefore, Plaintiffs brought this action

on October 12, 2021, to challenge SB 319’s restrictions under the First and Twenty-Sixth Amendments to the United States Constitution. ECF No. 1.

B) Issues Concerning Jurisdiction and Venue:

This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States and involve the assertion of deprivations, under color of state law, of rights under the U.S. Constitution. Plaintiffs do not believe there are any issues concerning jurisdiction and venue in this case.

C) Factual Basis of Each Claim:

In 2020, Montana saw its highest voter turnout in nearly 50 years—over 80% of Montanans voted in the 2020 presidential election. Compl. at ¶ 1. This increase was fueled in considerable part by a surge in participation by Montana’s youngest voters. In 2020, the number of Montanans between 18 and 29 who voted increased nearly 40% from the 2016 presidential election. *Id.* at ¶ 2.

In the wake of this notable increase in voter participation, Montana passed a series of suppressive voting laws that eliminated election day voter registration (House Bill 176) and restricted the use of student ID cards for voter identification (Senate Bill 169). *Id.* at ¶ 4. Montana also passed SB 319, which prohibits any “political committee” from directing, coordinating, managing, or conducting “any voter identification efforts, voter registration drives, signature collection efforts,

ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a resident hall, dining facility, or athletic facility operated by a public postsecondary institution.” SB 319, 67th Leg., Reg. Sess. § 21(1) (Mont. 2021). At issue in this litigation is the constitutionality of this restriction on SB 319.

SB 319 harms Plaintiffs’ ability to participate in the political process. Plaintiff Montana Democratic Party (“MDP”) fits the broad definition of a “political committee” falling under SB 319’s restrictions. *See* Mt. Code 13-1-101(31). It has thousands of members and constituents across Montana that it mobilizes to support Democratic candidates through organizing voter registration and get out the vote initiatives. Specifically, MDP has devoted substantial resources mobilizing voters on college campuses. MDP intends to make substantial expenditures to pursue the same activities during the 2022 election.

SB 319 harms MDP by: (1) prohibiting MDP from engaging in core political speech protected by the First Amendment; (2) frustrating MDP’s mission and efforts to elect Democratic candidates in Montana by suppressing the youth vote; and (3) forcing MDP to divert resources from its other efforts to address the effect SB 319 will have on the state’s college campuses. It also harms MDP’s members, including thousands of college students in Montana, by violating their First Amendment free speech rights and surgically targeting the right of college students to vote on the basis of their age in violation of the Twenty-Sixth Amendment.

Plaintiff Montanans for Tester will similarly be injured. Montanans for Tester is the principal campaign committee of Senator Jon Tester and its mission is to support the election and re-election of Jon Tester to the United States Senate. It fits the broad definition of a “political committee” falling under SB 319’s restrictions. *See* Mt. Code 13-1-101(31).

SB 319 harms Montanans for Tester in three ways: (1) it prohibits the Committee from engaging in core political speech protected by the First Amendment; (2) it frustrates Montanans for Tester’s mission by suppressing the state’s youth vote which tends to support Democratic candidates; and (3) it forces Montanans for Tester to divert resources to address SB 319’s ban on its ability to mobilize voters in the dormitories, dining halls, and athletic facilities of the state’s colleges.

Finally, Plaintiff Macee Patritti is a 19-year-old resident of, and registered voter in, Jefferson County, Montana, and she’s a freshman at the University of Montana. She has previously served as a student intern for MDP during the 2020 election. SB 319 harms Macee Patritti by prohibiting her from engaging in core political speech on the state’s public college and university campuses and thereby restricting her ability to equally participate in the political process.

D) Legal Theory Underlying Each Claim:

1. Restriction on Core Political Speech: Violation of the First and Fourteenth

Amendments.

SB 319 restricts Plaintiffs' ability to engage in protected speech. The First Amendment bars Montana from targeting "only those" communications "containing speech designed to influence the voters in an election." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995). And courts have long considered voter registration, voter turnout, and signature collection efforts as "the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988).

SB 319 therefore meets the First Amendment at its apogee. It restricts Plaintiffs' rights by barring "political committees . . . from direct[ing], coordinat[ing], manag[ing], or conduct[ing] any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a resident hall, dining facility, or athletic facility operated by" the Montana State University System. SB 319 § (21)(1).

Plaintiffs engage in activities barred by SB 319 to communicate the importance of voting and to organize voting related initiatives in support of measures and candidates with whom they share a common goal. For example, MDP has spent, and will spend in the future, substantial resources mobilizing voters on the state's university and college campuses. Montanans for Tester has targeted, and will target

in the future, Montana's university and college campuses to register voters and advocate for Senator Tester. And Plaintiff Macee Patrilli has devoted her time to assist such efforts and plans to do so in the future. This activity is quintessentially protected speech. The Supreme Court has explained that discussion with "potential signatories" constitute core political speech because they will at least entail "persuad[ing] them that the matter is one deserving of public scrutiny and debate that would attend its consideration by the whole electorate." *Meyer*, 486 U.S. at 421-22; see also *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006) ("The interactive nature of voter registration drives is obvious: they convey the message that participation in the political process through voting is important to a democratic society.").

Because of these burdens, SB 319 is subject to "exacting scrutiny" and may only be upheld if it is narrowly tailored to serve a compelling state interest. *McIntyre*, 514 U.S. at 347. Montana, however, cannot demonstrate a legitimate, let alone, compelling interest in the law to justify encroaching on Plaintiffs' First Amendment protections.

Injunctive and declaratory relief is necessary to prevent the serious and concrete injuries imposed by SB 319 to Plaintiffs' right to free speech guaranteed by the First Amendment.

2. Denial or Abridgement of the Right to Vote on Account of Age: Twenty-

Sixth Amendment.

SB 319 is separately unconstitutional because it denies Plaintiffs' and their members' rights to vote on account of their age. The Twenty-Sixth Amendment of the U.S. Constitution provides in relevant part: "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by . . . any State on account of age."

The Amendment guarantees young voters the right to participate equally with older voters in the electoral process. And while the Amendment "speaks only to age discrimination," it has "particular relevance for the college youth who comprise approximately 50 per cent of all who were enfranchised by this amendment." *Walgren v. Howes*, 482 F.2d 95, 101 (1st Cir. 1973). Laws enacted for the purpose of denying or abridging the right to vote on account of age are unconstitutional. *League of Women Voters v. Detzner*, 314 F. Supp. 3d 1205, 1222-23 (N.D. Fla. 2018).

SB 319 squarely violates Plaintiffs' protections under the Twenty-Sixth Amendment by surgically targeting for its limitations on political speech precisely those places where young voters are most likely to live and organize—college residence halls, dining facilities, and athletic facilities. In this way, SB 319 abridges the right to vote and facially discriminates on the basis of age in violation of the Twenty-Sixth Amendment.

Injunctive and declaratory relief is needed to prevent the serious and concrete injuries imposed by SB 319 on Plaintiffs' fundamental right to vote.

E) Computation of Damages:

Plaintiffs seek only injunctive relief in this case and therefore do not have damages to calculate.

F) Pendency of Related State or Federal Litigation:

Forward Montana, et al. v. State of Montana, DV-25-2021-0000611-OC, is currently pending before the Montana First Judicial District Court, Lewis & Clark County. The case challenges SB 319 under several provisions of the Montana Constitution and under the First Amendment of the United States Constitution. The state court has issued a preliminary injunction which remains in effect. The plaintiffs in that case have moved for summary judgment on two counts alleging violations of the Montana constitution. A hearing on the motion is schedule for January 25, 2022, at 9:00 a.m. Discovery in that proceeding is stayed pending the outcome of the court's summary judgment hearing.

G) Proposed Stipulations of Fact and Law:

Plaintiffs refer the Court to their separately submitted list of stipulated facts and incorporate that list herein. In addition, Plaintiffs are willing to stipulate to the following points of law:

1. The Court possesses personal and subject matter jurisdiction over the parties and claims involved in this lawsuit.
2. The First Amendment bars Defendants from restricting political speech.
3. Violations of Plaintiffs' rights to engage in core political speech are subject to "exacting scrutiny."
4. The Twenty-Sixth Amendment bars Montana from enacting legislation for the purpose of restricting the right to vote of young Montanans.
5. Plaintiffs have suffered redressable injuries under Article III of the United States Constitution.
6. The Court has jurisdiction to impose injunctive relief if it concludes that Defendants are liable under Plaintiffs' claims for relief.
7. Plaintiffs' claims are not barred by sovereign immunity.

H) Proposed Deadlines for Joinder of Parties or Amendment of Pleadings:

Plaintiffs propose that the deadlines for joinder of parties and amendment of pleadings be those dates set forth in the Report of Parties' Planning Meeting.

I) Identification of Controlling Issues of Law Suitable for Pretrial Disposition:

Both of Plaintiffs' claims are suitable for disposition on summary judgment.

(J) The name and residence of individuals with information about claims.

NAME	CONTACT INFORMATION
Christi Jacobsen	Secretary of State Montana State Capitol 1301 E 6th Avenue Helena, MT 59620
Jeffrey Mangan	Commissioner of Political Practices 1209 8th Avenue Helena, MT 59601
Sheila Hogan	Executive Director, Montana Democratic Party <i>Contact through undersigned counsel</i>
Dylan Laslovich	Senior Advisor, Montanans for Tester <i>Contact through undersigned counsel</i>
Patrick Eisenhauer	Former Montanans for Tester and MDP Employee <i>Contact through undersigned counsel</i>
Macee Patritti	Plaintiff <i>Contact through undersigned counsel</i>

(K) Substance of any insurance coverage.

Plaintiffs do not have any insurance agreement under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action; nor do Plaintiffs have any insurance agreements pursuant to which any person or entity carrying on an insurance business may be

liable to indemnify or reimburse Plaintiffs for payments made to satisfy the judgment.

L) Status of Settlement Discussions and Prospects for Compromise of the Case:

No settlement discussions have taken place, and Plaintiffs believe that prospects for compromise or settlement are not good.

M) Special Procedures:

Plaintiffs do not believe any special procedures are necessary or appropriate. They believe the case should be ready for trial in 2022 as set forth in the Report of Parties' Planning Meeting.

DATED this 29th day of December.

/s/ Peter Michael Meloy
Peter Michael Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena MT 59624-1241

Abha Khanna
Elias Law Group LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
Phone: (206) 656-0177
Email: AKhanna@elias.law

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2021, a true and exact copy of the foregoing document was served electronically via the CM/ECF system which will generate a Notice of Electronic Filing on:

AUSTIN KNUDSEN

Montana Attorney General

KRISTIN HANSEN

Lieutenant General

DAVID M.S. DEWHIRST

Solicitor General

BRENT MEAD

Assistant Solicitor General

ALWIN LANSING

Assistant Attorney General

215 North Sanders

P.O. Box 201401

Helena, MT 59620-1401

Attorneys for Defendants

/s/ Peter Michael Meloy

Peter M. Meloy