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*\*Motions for Admission Pro Hac Vice Forthcoming*

**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

Montana Federation of Public Employees,  
Plaintiff,

v.

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

Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

## INTRODUCTION

1. Just last year, the Montana Supreme Court held that the Montana Legislature's elimination of election day registration was "unconstitutional on its face" because it "impermissibly interfere[d] with the right to vote due to its effect on numerous Montanans who utilize election day registration to both register and vote at the same time on election day." *Montana Democratic Party v. Jacobsen* ("MDP"), 2024 MT 66, ¶¶ 63, 84, 416 Mont. 44, ¶¶ 63, 84, 545 P.3d 1074, ¶¶ 63, 84, *cert. denied sub nom. Christi Jacobsen, Montana Sec'y of State v. Montana Democratic Party*, No. 24-220, 2025 WL 247449 (U.S. Jan. 21, 2025). In that same opinion, the Court also struck down the Legislature's attempt to narrow the list of acceptable photo IDs voters may present on election day, finding it an "[un]reasonable restriction off voter's rights" to eliminate voter IDs that have always been "good indicators of someone's identity." *Id.*, ¶¶ 118-19.

2. Undeterred, the Montana Legislature enacted two bills that once again will disenfranchise eligible voters and unreasonably restrict Montanans' voting rights. Senate Bill ("SB") 490 once again repeals election day registration, this time by eliminating the opportunity to register for federal elections after noon on election day. The fact that the bill cuts down election day registration by more than half rather than cutting it out altogether is hardly a saving grace. Like its predecessor, SB 490 institutes a "rollback of election day registration [that] will disenfranchise many

voters, interfering with their right to vote.” *Id.*, ¶ 74. And like its predecessor, SB 490 must fail. *Id.*, ¶ 84.

3. SB 276, signed into law the same day as SB 490, once again needlessly heightens voter ID requirements, while simultaneously eliminating an important failsafe for voters who are unable to furnish an approved ID. SB 276 imposes a new requirement that all forms of voter ID be “current [and] valid,” S.B. 276 § 1, 2024 Leg., 69th Sess. (Mt. 2025), despite the fact that those features have no bearing on whether the ID accurately confirms a voter’s identity. *But see MDP*, ¶ 118 (“As long as [a] person has been registered under Montana law, all they need to do at the polls is to show that they are the person who has been duly registered.”). At the same time, SB 276 eliminates the ability for a “voter who cannot provide photo identification to provide a government document along with a declaration of reasonable impediment that allows them to vote,” *MDP*, ¶ 111. *See* S.B. 276 § 3, 2025 Leg., 69th Sess. (Mt. 2025). SB 276 thus increases the likelihood of disenfranchisement by making it more difficult for voters to furnish an acceptable voter ID and ensuring that those who are unable to do so will have no alternative means of casting a ballot.

4. These bills are plainly unconstitutional and clearly contravene the Supreme Court’s holding in *MDP*. This Court must enjoin the Legislature’s attempted end-run around binding precedent and the voting rights of Montana citizens.

## **PARTIES**

5. The Montana Federation of Public Employees (“MFPE”) is Montana’s largest union of dedicated public employees, representing tens of thousands of members. MFPE’s membership represents every corner of Montana’s electorate; its members include new workers entering the workforce, retirees, and Montanans with disabilities. Election day registration is especially important for working Montanans, including union members like those that MFPE represents. In many counties, election day is the only day when county election offices are open outside of regular business hours. For MFPE members who work non-traditional hours, election day may be the only opportunity they have to update their voter registration or to register to vote because election offices are open on that day until 8:00 p.m. Since 2020, hundreds of MFPE members utilized election day registration in order to cast a ballot. Likewise, some MFPE members, particularly MFPE’s younger and/or newer members, lack access to photo ID and may require the declaration to successfully cast a ballot.

6. As an organization, MFPE also endorses and opposes candidates and public policy initiatives and encourages its members to register and vote in elections. Registering its members to vote is central to MFPE’s mission. For that reason, MFPE has championed election day registration since it was enacted in 2005, helped lead the successful effort to stop its repeal in 2014, and worked to oppose HB 176 in

2021. In fact, MFPE filed suit to halt enforcement of HB 176 in 2021, *Montana Fed’n of Pub. Emps. et al. v. Jacobsen*, No. CDV 21-0500 (Mont. Dist. Sep. 22, 2021), and the supreme court relied in part on an amicus brief filed by MFPE to reach its findings regarding election day registration in *MDP*. See *MDP*, ¶ 72 (noting the law “burdened” two voters named by MFPE in its brief).

7. Now that the Legislature has successfully and dramatically curtailed election day registration, MFPE will need to divert resources from other mission-critical priorities to ensure that its members are able to register, remain registered, and ultimately cast their ballots. Likewise, SB 276 will require MFPE to divert resources to ensure that its members are able to vote consistently with its requirements and are not disenfranchised.

8. Defendant Christi Jacobsen is the Montana Secretary of State and is sued in her official capacity. She serves as the state’s chief elections officer and is responsible for maintaining uniformity in the application, operation, and interpretation of election laws, including SB 490 and SB 276. Section 13-1-201, MCA. In carrying out these responsibilities, the Secretary has the duty of preparing and delivering to election administrators written directives and instructions relating to election law. Section 13-1-202(1), MCA. The Election Code also requires the Secretary to establish uniform standards for analyzing and verifying voter registration information, § 13-2-109(1)(b), MCA, and to maintain the state’s

centralized voter registration database used to administer elections, § 13-2-107, MCA.

9. Defendant State of Montana is a governmental entity subject to suit. Mont. Const. art. II, § 18.

## **JURISDICTION AND VENUE**

10. Plaintiff brings this action under the Constitution of the State of Montana. As a court of general jurisdiction, this Court has authority to hear these claims. Mont. Const. art. VII, § 4; § 3-5-302, MCA.

11. This Court has jurisdiction to grant declaratory and injunctive relief under the Montana Uniform Declaratory Judgment Act. Section 27-8-101 *et seq.*, MCA.

12. Venue is proper in this Court under § 25-2-126(1), MCA, as Plaintiff is headquartered in Helena, Montana, and under §§ 25-2-126(1) and 25-2-125, MCA, because the claim arises in Lewis and Clark County. SB 490 and SB 276 prevent Plaintiff's members from registering on election day and will make it harder or impossible for Plaintiff's members to vote in Lewis and Clark County, and thus there is direct injury to Plaintiff and its members in Lewis and Clark County.

## **FACTUAL ALLEGATIONS**

### **I. Restrictions on Election Day Registration**

13. The idea that Montanans should be able to register to vote when they arrive at the polls on election day is enshrined in the state's constitution. Mont.

Const. art IV, § 3 (“The legislature . . . may provide for a system of poll booth registration.”). While the delegates to the constitutional convention used the word “may” rather than “shall” in providing for election day registration, “it is clear that the Framers’ intent was that election day registration should be available as long as it was workable in Montana.” *MDP*, ¶ 68.

14. Consistent with the framers’ intent, election day registration has been available since it was enacted in 2005, Section 13-2-304(1)(a), MCA (2005 Mont. Laws ch. 286, § 1), with near-unanimous, bipartisan support. For the past 20 years, Montanans have been able to “register and vote up until the time polls close[d] on election day,” which, by statute, is 8:00 p.m. Sections 13-21-104(2)(c), 13-1-106(1), MCA. Since its enactment, election day registration has been “wildly popular,” with more than 73,500 Montanans relying on it to register and vote from 2005 through 2022. *MDP*, ¶ 6.<sup>1</sup> In fact, election day registration is so popular in Montana that “the number of people registering on election day alone is nearly equal to the number of people who register in the 29 days leading up to election day combined.” *Id.*, ¶ 71.

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<sup>1</sup> The district court in *MDP* recognized that 70,000 Montanans had used election day registration by the time that court released its decision several weeks prior to the 2022 general election. *Montana Democratic Party v. Jacobsen*, No. DV 21-0451, 2022 WL 16735253, \*39 (Mont. Dist. Sep. 30, 2022). More than 3,500 Montanans relied on election day registration in the 2022 general election. U.S. Election Assistance Commission, *2022 Election Administration and Voting Survey Comprehensive Report*, available at <https://www.eac.gov/research-and-data/studies-and-reports> (last visited Apr. 29, 2025).

15. Despite its popularity with Montana voters, the Legislature has repeatedly attempted to eliminate election day registration. In 2014, the Legislature referred a ballot measure to voters that would have eliminated election day registration for all but a small subgroup of voters. Montanans “soundly rejected” the Legislature’s proposal, defeating the measure by a 14-point margin.<sup>2</sup> *Id.*, ¶¶ 6, 64.

16. The Legislature again attempted to end election day registration in 2021 with House Bill (“HB”) 176, “despite vociferous opposition to the Bill in public hearings,” *id.*, ¶ 64. The Montana Supreme Court enjoined that law, holding that curtailing election day registration “impermissibly interfered” with the right of suffrage guaranteed by Article II, Section 13 of the state’s constitution. *Id.*, ¶ 63. In applying strict scrutiny, the Court rejected the state’s asserted interests in reducing the time needed to tabulate ballots and reducing the administrative burdens on election workers, finding that HB 176 was “far from the least onerous path” to advance those interests. *Id.*, ¶ 84.

17. Less than a year after the Supreme Court struck down HB 176, the Legislature introduced SB 490 to once again curtail election day registration. This time, rather than eliminate election day registration altogether, the bill significantly

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<sup>2</sup> Original text and results available at [https://sosmt.gov/elections/ballot\\_issues/2014-2/](https://sosmt.gov/elections/ballot_issues/2014-2/); see, LR-126 (last visited Apr. 26, 2025).



truncates the hours during which election day registration is available, rendering it inaccessible to many voters.

18. Specifically, SB 490 eliminates election day registration to vote in federal elections after noon on election day. SB 490 § 1, 2025 Leg., 69th Sess. (MT 2025).

19. SB 490 was introduced by Senator Mike Cuffe on February 26, 2025, the last day on which bills could be introduced in the legislative session. SB 490 was heard in the Senate Committee on State Administration where only a representative of the Secretary of State and the bill's sponsor spoke in favor before it was forwarded to the full Senate, where it was passed on March 6th. In the House of Representatives, the bill was also heard in the State Administration Committee, where representatives of the Native American community, young voters, and voting rights organizations testified in opposition. Nonetheless, the bill was forwarded to the full House where it was passed on April 11th. The Governor signed the bill into law on May 5, 2025.

20. SB 490 imposes several levels of harm on Montana voters by limiting election day registration for federal elections to a few morning hours, between 7:00 a.m. and noon. *Id.*, First, it will disenfranchise many voters. The Supreme Court considered “voluminous record evidence” in reaching the conclusion that those relying on election day registration cannot simply “register at another time” and that

instead “a vast majority of these Montanans will be disenfranchised.” *MDP*, ¶ 70. In particular, election day registration is a failsafe for voters who arrive at the polls not realizing that their earlier registration had been rejected or inactivated due to some error. *MDP*, ¶ 71. These voters will have no recourse if they head to the polls in the afternoon or after work on election day.

21. Second, because SB 490 reduces the availability of registration from thirteen hours spread across the full day to a few morning hours, even those who are able to both anticipate errors in their voter registration and adjust their election day plans will face longer lines and wait times. It is also unclear whether a voter who arrives before noon but who does not reach the front of the line until after noon will be allowed to register, as SB 490 requires that the voter’s registration be “receive[d] and verifie[d] . . . *prior* to noon on election day.” Section 13-2-304(3)(c) (emphasis added).

22. Third, SB 490 creates a confusingly complex and bifurcated system, whereby voters who register *before* noon may vote in *all* elections on the ballot while voters who register *after* noon may vote *only* in state and local elections. Section 13-2-304(3)(c), MCA; SB 490 § 1, 2025 Leg., 69th Sess. (MT 2025); 13-2-304(a), MCA (effective Oct. 1, 2019 to Apr. 18, 2021). SB 490 provides no guidance or explanation on how this will work in practice. Under Montana law, federal, state, and local elections all appear on the same ballot. Sections 13-12-202, 13-25-101(5),

MCA. How are voters who register in the afternoon on election day supposed to know which elections they are permitted to vote in? How are election administrators canvassing ballots supposed to know which votes “count” for which races? SB 490 provides no answers. The inevitable result will be confusion among voters and poll workers alike, increasing the likelihood that even those voters who are permitted to register on election day to vote in some elections will opt out of voting altogether or be erroneously turned away by poll workers attempting to interpret and administer these nonsensical rules. The end result in either event will be widespread voter disenfranchisement. *MDP*, ¶ 74 (“The rollback of election day registration will disenfranchise many voters.”).

23. In response to the suggestion that the bill would create a new track for non-federal voters, Austin James from the Secretary of State’s office “disagreed,” explaining that his understanding of the bill is that all voters who seek to register after noon on election day will be prohibited from voting in *any* contest, federal and non-federal. *Mar. 26, 2025 H’rg of the House of Reps. Comm. on State Affairs*, 69th Sess. at 10:51:20–10:53:00 (“If you were not there until well after noon, no, you wouldn’t be able to vote.”).<sup>3</sup> While the text of the bill does not specify how the law

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<sup>3</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/53293?startposition=20250326105120&mediaEndTime=20250326105300&viewMode=3&globalStreamId=4>.

will operate, if Mr. James is correct about the intent and impact of the SB 490, the bill is even more onerous than critics warned. *Id.*

24. In addition to the confusion surrounding which voters will be able to vote in which elections, many Montanans testified to the substantive harms SB 490 will impose, particularly on those communities that already face challenges voting. For instance, Alissa Snow, who testified against the bill on behalf of the Blackfeet Tribe, the Fort Belknap Indian Community, and the Chippewa Cree Tribe of Rocky Boy's Reservation, noted that the bill would "limit the ability to access voter services" while failing to "address the issues that create the need for same day voter registration" in the first place. *Id.* at 10:30:27–10:31:35.<sup>4</sup> As one witness testified, election day registration was "a lifeline for folks who work nine to five, juggle unpredictable schedules, or are just voting for the first time" and its elimination "would create unnecessary confusion and limit access to the ballot for the very people our democracy should be welcoming in." *Id.* at 10:39:00–10:41:38. (testimony of John Bazant, Forward Montana).<sup>5</sup>

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<sup>4</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/53293?startposition=20250326103027&mediaEndTime=20250326103135&viewMode=3&globalStreamId=4>.

<sup>5</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/53293?startposition=20250326103900&mediaEndTime=20250326104138&viewMode=3&globalStreamId=4>.

## **II. Heightened Voter ID Requirements and Elimination of Declaration of Reasonable Impediment**

25. The purpose of the ID requirement is to verify the voter's identity and ensure that the person casting the ballot is, in fact, the registered voter. *See, e.g.*, Section 13-13-114(1)(c), (2); *MDP*, ¶ 109 ("The purpose of showing an ID at the polls is to confirm that you are the person that has registered to vote."). The ID is not used to assess the voter's eligibility by, for example, establishing the person's age or residence. *MDP*, ¶ 112.

26. Montana requires in person voters to present a photo ID to verify their identity. Section 13-13-114, MCA. They can show either a Montana driver's license or state ID card, a passport, a military ID, a tribal ID, a Montana concealed carry permit, or a student ID from a Montana college or university. Section 13-13-114(1)(a)(i), MCA. If a voter has none of these, they must show some other form of photo identification along with a bank statement, utility bill, paycheck, or other government document that shows the voter's name and current address. Section 13-13-114(1)(a)(i), MCA.

27. Mail voters, too, are required to furnish proof of identity. They can do so by providing the ID number from their Montana driver's license or ID card or the last four digits of their social security number. Section 13-13-602(1)(a), MCA. If they cannot provide one of those numbers, they must provide a physical copy of a military ID, a tribal ID, a Montana concealed carry permit, or a student ID from a

Montana college or university. Section 13-13-114(1)(b). A voter who cannot furnish one of those must provide some other form of photo ID along with a copy of bank statement, utility bill, paycheck, or government document that shows the voter's name and current address. Section 13-13-114(1)(c), MCA.

28. SB 276 arbitrarily heightens the requirements for acceptable voter IDs, adding that identification must be “current” and “valid.” *Id.* § 1. Prior to SB 276, any qualifying ID could serve to verify the voter's identity, regardless of whether it was current or expired.<sup>6</sup> A voter who provides, for example, a passport which includes a clearly recognizable photograph and the voter's name as it appears in the polling register will be unable to cast a standard ballot if that passport is expired. The same is true of a driver's license that has been suspended for a traffic infraction or medical condition.

29. Senator Mike Cuffe, who sponsored SB 490, also sponsored SB 276. When first introduced on February 6, 2025, the bill made no mention of requiring an ID be “current, valid, and readable.” That language was added by amendment after a brief conversation between Theresa Manzella, the Senate State Affairs Committee

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<sup>6</sup> See Montana Secretary of State, 2022 Election Judge Handbook, pp 6, 67, 97, available at <https://www.parkcounty.org/uploads/files/pages/185/2022ElectionJudgeHandbookFINAL.pdf>. (“Since **only an elector's name and photo are checked** when an elector submits photo identification, election judges do not check photo IDs to see whether the address on the identification is current. For example, an out-of-state Driver's License is a valid form of photo identification, **even if the license is expired or suspended**, as long as it has the person's name and photo and is issued by a government agency.”) (emphasis added).

Chair, and Austin James, the Secretary of State's elections director, regarding the possibility that a voter might present a document so "crinkled" it would be illegible, but there was no discussion of why the ID would need to be current or otherwise valid. *Feb. 19, 2025 H'rg of the Senate Comm. on State Admin.*, 69th Sess. at 16:39:30–16:40:41.<sup>7</sup>

30. The committee forwarded the bill to the full Senate, which passed it without commentary on March 6th. The amended bill received a brief hearing in the House Committee on State Administration and was forwarded to the full House which adopted it April 11th. It was signed into law by the Governor on May 5, 2025.

31. At the same time SB 276 imposes more stringent voter ID requirements, it also eliminates an important safety net for those who are unable to meet them. Prior to SB 276, recognizing that some eligible voters will be unable to meet the voter requirements, the state provided an additional safeguard—the ability to sign a Declaration of Reasonable Impediment ("Declaration") under penalty of perjury in which the voter verified their identity and explained the impediment which had prevented them from being able to provide an acceptable photo IDs.<sup>8</sup> An enumerated

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<sup>7</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250219/-1/52563?startposition=20250219163930&mediaEndTime=20250219164041&viewMode=3&globalStreamId=4>.

<sup>8</sup> See also, Montana Secretary of State, 2022 Election Judge Handbook, pp 6, 67, 97; available at <https://www.parkcounty.org/uploads/files/pages/185/2022ElectionJudgeHandbookFINAL.pdf> (last visited Apr. 29, 2025).

list of “reasonable impediment[s]” included lack of transportation, lack of birth certificate or other document needed to obtain identification, work schedule, lost or stolen identification, disability or illness, family responsibilities, and awaiting photo identification. Section 13-15-107 (3), MCA (effective Apr. 19, 2021 to May 5, 2025). A voter who lacked an acceptable voter ID would be permitted to cast a provisional ballot and an opportunity to “cure” that ballot by signing the Declaration and showing a document such as a bank statement, paycheck, or government document with their name and address, allowing the ballot to be counted. Section 13-15-107(3), MCA.

32. The Declaration included “a notice that the elector is subject to prosecution for false swearing under 45-7-202 for a false statement or false information on the declaration.” Section 13-15-107(3), MCA. Conviction under that statute carries a penalty of up to six months imprisonment. Section 45-7-202(3), MCA.

33. SB 276 eliminates the Declaration option, leaving a voter facing a “reasonable impediment” to obtaining a voter ID unable to vote altogether. S.B. 276 § 3, 2025 Leg., 69th Sess. (MT 2025). This will disenfranchise voters who are unable to obtain satisfactory ID even when they have done everything in their power to do so.



34. The Declaration recognized, for example, that a voter may have had their ID stolen or may have completed the process for obtaining an ID but might still be awaiting its arrival. Although these voters are technically permitted to cast a provisional ballot, there will be little chance for a victim of theft or a person who is awaiting delivery of a new ID to cure their ballot and have it counted because ID must be presented in person by 5:00 p.m. the day after the election or postmarked on the day after the election. Sections 13-13-114(2), 13-15-107(5), MCA.

35. As a result of both of these provisions of SB 276, a voter who, for example, discovers on election day that his passport has expired will be unable to vote altogether.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM**

#### **Montana Constitution, Article II, § 13**

#### ***The restriction on election day registration violates the right to suffrage.***

36. Plaintiff hereby realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

37. The Montana Constitution guarantees 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.

38. The Montana Supreme Court has repeatedly affirmed that this provision affords greater protection of the right to vote than the U.S. Constitution. *See, e.g., MDP*, ¶ 17 (“We must first decide whether the Montana Constitution affords greater protection of the right to vote than the United States Constitution. We hold that it does.”).

39. In assessing a right-to-vote claim brought under the Montana Constitution, the court must first determine whether a law “impermissibly interfere[s]” with the right to vote or “minimally burdens” that right. *Id.*, ¶ 38. When a law impermissibly interferes with the right to vote, the court must apply strict scrutiny; if it minimally burdens the right, a “middle-tier analysis” is applied. *Id.*

40. A law minimally burdens the right to vote when “[n]o person is prevented from voting” by the challenged law. *Id.*, ¶ 51. In contrast, a law impermissibly interferes with the right to vote when it “grants the right to vote to some citizens and denies the franchise to others.” *Id.*, ¶ 34 (citing *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶¶ 17–19, 314 Mont. 314, ¶¶ 17–19, 65 P.3d 576, ¶¶ 17–19) (cleaned up).

41. Strict scrutiny requires that “the State must show that a law is the least onerous path to a compelling state interest.” *Id.* (citing *Wadsworth v. State*, 275 Mont. 287, 302, 911 P.2d 1165 (1996)).

42. SB 490 impermissibly interferes with the right to vote by preventing eligible Montanans who must register on election day from voting. SB 490 reduces the time for election day registration by more than half, from 13 hours to 5 hours. SB 490 § 1, 2025 Leg., 69th Sess. (MT 2025). This “rollback of election day registration will disenfranchise many voters.” *MDP*, ¶ 74.

43. Voters rely on election day registration for a number of reasons, including busy work schedules, the inability to make separate trips first to register and then to vote, and because it affords the ability to register until 8:00 p.m. in contrast to the remainder of the late registration period, during which Montana residents can only register to vote during standard working hours. *Id.*, ¶ 78. SB 490 will also disenfranchise voters who arrive at the polls believing themselves to be registered only to find that some error has kept them off the rolls. *Id.*

44. The fact that SB 490 significantly reduces, rather than fully eliminates, election day registration, does nothing to change the fact that “these people will be disenfranchised,” *MDP*, ¶ 71, particularly those who do not learn of their need to re-register until they arrive at the polls on election day. Irrespective of how it is packaged, curtailing election day registration will deny many Montanans their right to vote.

45. SB 490 must overcome strict scrutiny but it cannot do so because it does not advance any legitimate, let alone compelling, state interest. During

legislative debate, proponents of SB 490 identified the same state interests for eliminating election day registration as did the state defendants in *MDP*: namely that it will reduce election worker fatigue and overwork and otherwise ease administrative burdens on elections officials and will allow for faster tabulation of election results. *See, e.g., Mar. 26, 2025 H'rg of the House of Reps. Comm. on State Affairs*, 69th Sess. at 10:06, 10:14–10:15.<sup>9</sup>

46. But any purported interest in reducing burdens on election workers rings hollow for at least three reasons. *First*, for the reasons set forth above, *supra* ¶ 22, the added complexity of processing registrations differently for different voters and different elections based on the time of day voters register is likely only to *increase* election worker confusion and delay, not to decrease it.

47. *Second*, the bill does nothing to shorten the time required for election workers to process an application, so even if all election day registrants shifted to the morning hours, counties would still need the same total number of election worker hours to process those applications. *See MDP*, ¶ 77 (“[R]egardless of when registration ends, election workers still have the same amount of work. . . . The only thing that changes is when they do this work.”). Forcing a whole day’s worth of

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<sup>9</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/53293?startposition=20250326101432&mediaEndTime=20250326101536&viewMode=3&globalStreamId=4>.

registrants to arrive during the same few morning hours will simply result in longer lines and wait times during the compressed registration window. The only way the bill will result in faster completion of the county's registration process is by reducing the number of election day registrants. *See MDP*, ¶ 79 (“The record is replete with evidence that eliminating election day registration decreases election administrators’ work only if voters are disenfranchised.”).

48. *Third*, despite legislators’ professed concern about election worker fatigue and resulting errors, the Legislature rejected a bill that election administrators had endorsed to address that very issue. Montana requires marathon “continuous tabulation” once ballot counting begins, § 13-15-101, MCA. Clerks from across the state supported HB 187 which would have allowed election workers to pause tabulation with the permission of the Secretary. *Id.* at 11:15:55–11:16:34<sup>10</sup> (statement of Regina Pettenberg, Chair, Montana Association of Clerk and Records and Election Administrators). Missoula County election administrator Bradley Seaman, for instance, testified that allowing counting to be paused for rest periods would mean officials could then “have experienced and rested judges come in and proceed forward.” *Jan. 21, 2025 H’rg of the House of Reps. Comm. on State Affairs*,

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<sup>10</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250326/-1/53293?startposition=20250326111555&mediaEndTime=20250326111634&viewMode=3&globalStreamId=4>.

69th Sess. at 10:38:27–10:39:00.<sup>11</sup> The election administrator from Lewis and Clark County described election workers being on the job for more than 24 hours including one who “ran off the road . . . on her way home.” *Id.* at 10:45:08–10:45:25<sup>12</sup> (statement of Amy Reeves, Election Administrator, Lewis and Clark County). Allowing poll workers rest when needed, Mr. Seaman testified, was a way to “prioritize accuracy” and “potentially increase the speed of election results.” *Id.* at 10:36:25–10:36:45.<sup>13</sup> When asked by Representative Kathy Love “how much same day registration and late registration” created election day delays, meanwhile, Mr. Seaman did not indicate that cutting back registration hours would solve the problem, instead explaining that “we want to encourage people to participate in the election” and that easing administrative burdens “really boils down to resources.”

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<sup>11</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250121/-1/52375?startposition=20250121103827&mediaEndTime=20250121103900&viewMode=3&globalStreamId=4>.

<sup>12</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250121/-1/52375?startposition=20250121104508&mediaEndTime=20250121104525&viewMode=3&globalStreamId=4>.

<sup>13</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250121/-1/52375?startposition=20250121103625&mediaEndTime=20250121103645&viewMode=3&globalStreamId=4>.

*Id.* at 11:17:06–11:18:20.<sup>14</sup> Despite this, the Legislature rejected HB 187 when it tabled the bill without an up or down vote.<sup>15</sup>

49. The testimony of these and other election officials echoed the reasoning of the Montana Supreme Court which rejected the idea that turning away voters in the midst of election day was an acceptable way to ease administrative burdens. The Court pointed to several less onerous paths to decrease administrative burdens “besides disenfranchising voters,” including “better training, better equipment, streamlined protocols, and more election workers.” *MDP*, ¶ 79. The Legislature availed itself of none of these options, choosing instead to pass a law that imposes many of the same burdens—along with some new ones—on Montana voters without actually addressing or alleviating the burdens on Montana’s election workers.

50. Because SB 490 impermissibly interferes with the right to vote and is not the least onerous path to reduce the administrative burden on election administrators or to expedite tabulation, it violates Montana’s right of suffrage.

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<sup>14</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250121/-1/52375?startposition=20250121111706&mediaEndTime=20250121111820&viewMode=3&globalStreamId=4>.

<sup>15</sup> Bill status available at [https://bills.legmt.gov/#/laws/bill/2/LC2114?open\\_tab=status](https://bills.legmt.gov/#/laws/bill/2/LC2114?open_tab=status) (showing HB 187 was “tabled in committee on Jan. 1, 2025 and “missed deadline for general bill transmittal” on Mar. 12, 2025).

**SECOND CLAIM**  
**Montana Constitution, Article II, § 13**  
***The elimination of the Declaration of Reasonable Impediment violates the***  
***right to suffrage.***

51. Plaintiff hereby realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

52. SB 276 contains a severability clause (section 5) which “is an indication that the drafters desired judicial severability to apply.” *Sheehy v. Pub. Emps. Ret. Div.* (1993), 262 Mont. 129, 141, 864 P.2d 762, 770. The unchallenged portions of a law “must be sustained” so long as if, after striking the unconstitutional portions, the unchallenged portion “is complete in itself and capable of being executed in accordance with the apparent legislative intent.” *Id.*

53. Because the elimination of the Declaration will completely disenfranchise voters without access to ID, it “impermissibly interferes” with the right to vote and so must pass strict scrutiny. *MDP*, ¶ 74. The provision must, in other words, be the least onerous path to achieve a compelling state interest. *Id.*

54. Proponents of SB 276 identified virtually no state interests served by eliminating the Declaration of Reasonable Impediment. Austin James from the Secretary of State’s office stated simply that the Declaration was “complicated.” *Feb. 19, 2025, H’rg of the Senate Comm. on State Admin.*, 69th Sess. at 11:17:06–11:18:20 (statement of Austin James, Election Director, Office of the Secretary of



State).<sup>16</sup> But with no further explanation, the state’s purported interest in merely avoiding a complicated task can hardly be deemed a compelling reason for eliminating a protection for voters. Moreover, to the extent the Secretary believes the Declaration was too “complicated,” the Secretary could have simply provided election officials with guidance to reduce and eliminate any confusion. In fact, the Secretary is charged by statute to “advise and assist” election administrators on the “application, operation, and interpretation” of the election code and to “prepare and distribute training materials for election judges.” Section 13-1-203, MCA. Ironically, the Secretary appears to have done the opposite, leaving the Declaration of Reasonable Impediment available to election officials on its website<sup>17</sup> but excising all guidance as to how to properly utilize it from the 2024 elections manual.<sup>18</sup>

55. Denying voters access to the franchise by eliminating the Declaration is far from the “least onerous” path to reducing any alleged confusion. Facilitating

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<sup>16</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250121/-1/52375?startposition=20250121111706&mediaEndTime=20250121111820&viewMode=3&globalStreamId=4>.

<sup>17</sup> Available at [https://docs.google.com/viewer?url=https%3A%2F%2Fsosmt.gov%2Fwp-admin%2Fadmin-ajax.php%3Fjuwpfisadmin%3Dfalse%26action%3Dwpfd%26task%3Dfile.download%26wpfd\\_category\\_id%3D56%26wpfd\\_file\\_id%3D57725%26token%3D%26preview%3D1&embedded=true](https://docs.google.com/viewer?url=https%3A%2F%2Fsosmt.gov%2Fwp-admin%2Fadmin-ajax.php%3Fjuwpfisadmin%3Dfalse%26action%3Dwpfd%26task%3Dfile.download%26wpfd_category_id%3D56%26wpfd_file_id%3D57725%26token%3D%26preview%3D1&embedded=true).

<sup>18</sup> In fact, the Secretary scrubbed the manual of any mention of the Declaration whatsoever, including removing it from the checklist of documents election officials were to have on hand on election day. Available at [https://sosmt.gov/wpfd\\_file/election-handbook/](https://sosmt.gov/wpfd_file/election-handbook/).

improved training and support for election administrators and judges would have been a far less onerous path to reducing confusion than was entirely denying voters without ID the ability to vote.

56. Because the state has identified no legitimate, let alone compelling, state interest, and because eliminating the Declaration was far from the least onerous path to reducing any alleged confusion about the Declaration, SB 276 fails to survive strict scrutiny and so violates Montana's right of suffrage.

### **THIRD CLAIM**

#### **Montana Constitution, Article II, § 13**

#### ***Rejecting expired and invalid official IDs violates the right to suffrage.***

57. Plaintiff hereby realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

58. SB 276 heightens the requirements for voter identification by requiring that voter's ID be "current, valid, and readable." In *MDP*, the supreme court rejected as unconstitutional heightened ID requirements that would have limited the use of student IDs as a valid form of voter identification. *MDP*, ¶ 119. The court applied "middle-tier analysis" in large part because of the availability of the Declaration of Reasonable Impediment, which provided a failsafe for voters who could not meet the ID requirements. *Id.*, ¶ 111. Now, however, because the Legislature has eliminated that failsafe, heightened ID standards will "impermissibly interfere" with

the right to vote by disenfranchising voters with expired or otherwise invalid ID, and so strict scrutiny must be applied. *Id.*, ¶ 34.

59. The heightened requirements cannot pass strict scrutiny because they serve no legitimate state interest, much less a compelling one. The proponents of SB 276 made no effort to justify the requirement that an ID be “current and valid.” In fact, the only discussion of any portion of the “current, valid, and readable” clause was the fleeting assertion that voters sometimes presented proof of identity that was “crinkled paper that you can’t really read.” *Feb. 19, 2025 H’rg of the Senate Comm. on State Admin.*, 69th Sess. at 16:39:30–16:40:41<sup>19</sup> (statement of Austin James, Office of the Secretary of State). This explanation omits any mention of the “current and valid” requirements and in doing so fails to draw any connection between the requirements and function of the ID: to confirm the voter’s identity.

60. The Secretary of State updated the election manual in 2024 to suggest that an ID serves to confirm a voter’s eligibility, but this is contradicted by both statute and practice, as eligibility is established at the time of registration. Sections 13-2-206–08, MCA (requiring a person applying to register to provide evidence of age, residence, and citizenship); 13-2-110, MCA (establishing the process for

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<sup>19</sup> Available from the Montana Legislature at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250219/-1/52563?startposition=20250219163930&mediaEndTime=20250219164041&viewMode=3&globalStreamId=4>.

assessing the sufficiency of an applicant's registration). By the time a voter shows their ID at the polls, they have *already* proven their eligibility to vote. *MDP* 416 Mont. at ¶ 118 ("Evaluation of whether a person is a qualified elector is conducted in a separate registration process."). Notably, some of the accepted forms of ID could not verify a voter's eligibility even were they intended to do so because they lack the necessary information. A U.S. passport, for example, lacks the holder's address and thus cannot serve to verify the holder's residence. *MDP*, 416 Mont. ¶112. Military IDs commonly lack an address and a date of birth. *Id.* That these forms of ID are insufficient to prove a voter's eligibility but are nonetheless accepted makes clear that their function is merely to ensure that the person casting the ballot is, in fact, the registered voter.

61. Because an ID's expiration date and validity bear no relationship to the identity of the ID holder, the requirements that an ID be unexpired and valid serve no legitimate government interest, much less a "compelling" one, and so cannot survive strict scrutiny.

62. Even if this Court were to apply the less demanding "middle-tier analysis," the heightened ID requirements would still fail. To survive middle-tier analysis, the state must prove that a law is "(1) reasonable, and (2) that its asserted interest is more important than the burden on the right to vote." *MDP*, ¶ 45.

63. The heightened ID requirements are unreasonable because they serve no purpose other than to trip up voters. Like the student ID requirements rejected in *MDP*, these heightened ID requirements “d[o] not ensure electors [are] qualified voters, ease administrative burdens, nor improve voter confidence.” *MDP*, ¶ 117.

64. As discussed *supra*, ¶¶ 3, 28, an expired or otherwise invalid government-issued ID can effectively prove a voter’s identity because it contains both the voter’s photograph and name. Under SB 276, a registered voter whose driver’s license expires the day before an election would be turned away from the polls. But should that same person cast a vote during early voting on the preceding Saturday, their ID would be deemed acceptable. In both scenarios, the voter is a qualified elector providing the same document displaying the same picture and name, but due to a date that is entirely unrelated to their qualifications to vote or their identity, they will be unable to vote on election day.

65. Nor will the expiration and validity requirements ease administrative burdens. Previously, election workers were not required to examine any portions of the ID other than the name and photograph. Now, however, they will have to assess the document’s expiration date and validity. In cases they deem the ID insufficient, they will have to explain why to frustrated voters and offer guidance on other acceptable forms of ID.

66. Proponents of SB 276 made no suggestion that voters lacked faith in the current ID system, and in any event the *MDP* Court affirmed that strict voter ID laws “have no effect on voter confidence.” *MDP*, ¶ 115.

67. Because the heightened ID requirement serves no legitimate government interest, it also fails at the second step of middle-tier analysis: that the interests served must be *more important* than the right to vote. Because the heightened ID requirements serve no legitimate government interests those interests cannot possibly outweigh the constitutional right of suffrage. *See MDP*, at ¶ 119.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Court:

- A. Declare that SB 490 violates the right of suffrage guaranteed under Article Two, Section 13 of the Montana Constitution;
- B. Declare that Section 3 of SB 276 violates the right of suffrage guaranteed under Article Two, Section 13 of the Montana Constitution;
- C. Declare that the requirement of that a voter’s identification be “current [and] valid” contained in SB 276, Section 1 violates the right of suffrage guaranteed under Article Two, Section 13 of the Montana Constitution;
- D. Enjoin Defendants, as well as their agents and successors in office, from executing the election day registration restrictions in SB 490;

- E. Enjoin Defendants, as well as their agents and successors in office, from eliminating the Declaration of Reasonable Impediment;
- F. Enjoin Defendants, as well as their agents and successors in office, from requiring that identification provided by voters be current and valid;  
and
- G. Grant Plaintiff such other and further relief that the Court deems appropriate, including but not limited to an award of Plaintiff's attorneys' fees and reasonable costs.

Dated: May 12, 2025

Respectfully submitted,

By: /s/ Raph Graybill

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