

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
raph@graybilllawfirm.com

Abha Khanna*
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0177
akhanna@elias.law

Katie Chamblee-Ryan*
Marcos Mocine-McQueen*
Marisa A. O’Gara*
Elias Law Group LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
kchambleeryan@elias.law
mmcqueen@elias.law
mogara@elias.law

Attorneys for all Plaintiffs

Tal M. Goldin
Disability Rights Montana
1022 Chestnut St.
Helena, MT 59601
(406) 449-2344
tal@disabilityrightsmt.org

*Attorney for Plaintiff Disability Rights
Montana*

**Motions for Admission Pro Hac Vice Forthcoming*

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

Disability Rights Montana and
Big Sky 55+,

Plaintiffs,

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. House Bill (“HB”) 719, signed into law on May 5, 2025, imposes unnecessary requirements on absentee voters that will do nothing other than increase the chances that lawful voters have their ballot rejected, in violation of state and federal protections of the right to vote.

2. Before HB 719, officials confirmed an absentee voter’s identity by matching her signature on the ballot envelope to the signature on her registration and absentee ballot applications. With the enactment of HB 719, a voter must *also* write her date of birth on both her absentee ballot application and the ballot envelope, and officials cannot count her ballot unless *both* the signature *and* the date of birth on the envelope match those on the voter file.

3. The new mandatory date-of-birth requirement is unnecessary. Indeed, HB 719’s proponents offered nothing to suggest that the existing signature verification process was insufficient. Instead, lawmakers argued that requiring voters to also provide their date of birth would serve as an “extra check,” on the theory that there is no such thing as too much election security.

4. But by adding a new complication to a system that is already working, lawmakers will make Montana elections *less* robust and *less* representative, because it will lead to the exclusion of qualified voters’ ballots. HB 719 increases the chances that technical mistakes—either by the voter or an election administrator—cost lawful voters their right to vote. *See, e.g., Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 632 (6th Cir. 2016) (finding that a similar date-of-birth matching requirement would risk “disenfranchis[ing voters] based only on a technicality” like “transposing the location of the month and year numerals of a birthdate [or] writing the current date by mistake”).

5. Experience in other states proves the point. Political scientists studying ballot rejection rates have found (predictably) that, as the number of “verification” requirements for absentee ballots increases, more valid ballots are thrown out. In two states that required signature matching for both the voter and a witness—Louisiana and Mississippi—the rejection rate was more than two-and-a-half times that of states that only require voter signature matching. And, in Arkansas, the only state that currently enforces *both* signature matching and date-of-birth matching on absentee ballots (plus a matching name and address), the rejection rate is more than five times that of states that only require a signature match.

6. Other courts have enjoined the imposition of unnecessary hurdles for absentee voters, either because they violated section 101 of the federal Civil Rights Act of 1965, 52 U.S.C. § 10101 (the “Materiality Provision”), which prohibits denying the right to vote based on paperwork errors that are immaterial to determining a voter’s qualifications, *see, e.g., In re Ga. S.B. 202*, No. 1:21-ml-55555-JPB, 2023 WL 5334582 (N.D. Ga. Aug. 18, 2023), *appeal pending* No. 23-13085 (11th Cir.), or because they constituted an undue burden on the right to vote under the federal constitution, *see, e.g., Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631–34. And in Montana, these effects will be particularly widespread, since absentee voting has become the state’s predominant voting method.

7. Because HB 719 will disenfranchise voters without sufficient justification, it violates article II, section 13 of Montana’s Constitution, which guarantees Montanans the right to suffrage. Mont. Const. art. II, § 13. And because HB 719 will disenfranchise voters for technical errors on their ballot return envelopes that are immaterial to determining their eligibility to vote, it also violates the Materiality Provision of the Civil Rights Act. 52 U.S.C. § 10101.

8. Accordingly, Plaintiffs ask this Court to declare that HB 719's date-of-birth matching requirement violates both the Montana Constitution and federal law and grant permanent injunctive relief against its enforcement.

PARTIES

9. Plaintiff Disability Rights Montana is a non-profit organization based in Helena, Montana. Disability Rights Montana is the state's designated "protection and advocacy system (P&A)." As the State's P&A, Disability Rights Montana has a federal legislative mandate to "protect and advocate the rights of [individuals with disabilities] through activities to ensure the enforcement of the Constitution and Federal and State statutes." 42 U.S.C. § 10801(b)(2)(A) (Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI Act")).¹

10. The authorizing statutes require P&As to protect the voting rights of people with disabilities alongside their other civil and human rights. *See* 52 U.S.C. § 21061 (requiring that funding be provided to each state's P&A system "to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places")²; *see also, e.g.*, 42 U.S.C. § 15041 (purpose of P&A system is to "protect the legal and human rights of individuals with developmental disabilities") *and* 29 U.S.C. § 794e(a)(1) (same as to individuals with other disabilities).

¹ In addition to the PAIMI Act, P&As have corresponding responsibilities and authorities to protect and advocate for the rights of people with a broad range of other disabilities. *See e.g.*, 42 U.S.C. § 15043 (protection and advocacy for individuals with developmental disabilities) *and* 29 U.S.C. § 794e (protection and advocacy for individuals with disabilities not covered under other P&A authorizing statutes).

² Courts have recognized that designated "protection and advocacy" organizations such as Disability Rights Montana have Article III standing to sue in federal court on behalf on their constituents. *See, e.g., Oregon Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1110 (9th Cir. 2003); *Doe v. Stincer*, 175 F.3d 879, 885 (11th Cir. 1999).

11. Consistent with this role, Disability Rights Montana’s mission is to protect and advocate for the human, legal, and civil rights of Montanans with disabilities while advancing dignity, equality, and self-determination. Key to this mission is empowering Montanans with disabilities to actively participate in the democratic process. To that end, Disability Rights Montana works to address problems that impede democratic participation for people with disabilities.

12. HB 719 directly threatens the rights of Disability Rights Montana’s constituents. For many reasons, including mobility impairments, physical and other access barriers in polling places, and travel restrictions, Montanans with disabilities are often unable to reach polling places and are more likely to rely on absentee voting in order to access the franchise. HB 719 places additional burdens on people with disabilities who utilize absentee voting and increases the risk of disenfranchisement for Disability Rights Montana’s constituents. The new, unnecessary burdens imposed by HB 719 will thus have a disproportionate impact on Disability Rights Montana’s constituency.

13. HB 719 also is fundamentally at odds with Disability Rights Montana’s foundational emphasis on empowerment and self-determination. To fulfill its obligations as a protection and advocacy system to advocate for “full participation in the electoral process” for its constituents—and to serve its mission—Disability Rights Montana is duty-bound to mitigate the impact of HB 719 on people with disabilities.

14. Plaintiff Big Sky 55+ is a non-profit organization based in Helena, Montana. Big Sky 55+ has more than 3,000 members across Montana. Big Sky 55+ and its members advocate for policies that impact older Montanans and make life better for Montanans of all ages. Among the issues Big Sky 55+ seeks to advance are strengthening and expanding Social Security and

Medicare, increasing access to quality long-term care, and strengthening Montana's rural, Native American, and agricultural communities. Among the tools it uses are town halls in which it educates members and the community at large, organized efforts to lobby federal policy makers, and coordinated efforts to provide testimony during state legislative hearings.

15. HB 719 puts Big Sky 55+'s members at risk of being disenfranchised because of a technical mistake on an absentee ballot. Many older Montanans rely on absentee voting to cast their ballots, and many are also more susceptible to making technical errors—like a missing or incorrect date of birth—that will cause their ballots to be rejected. And because of mobility and other health issues, it will be functionally impossible for many older Montanans to cure their rejected ballots in time for them to be counted.

16. Ensuring its members' free and open participation in the voting process is foundational to Big Sky 55+'s organizational purpose and activities. Its members, like many older Montanans, vote overwhelmingly by absentee ballot. These members face a significant risk that their ballots will not be counted, due to the arbitrary administrative hurdle created by HB 719. Big Sky 55+ will be required to divert significant resources toward educating its members and other older Montanans about the new requirements of HB 719. These efforts will include paid communications to members, staff time and resources spent organizing events, and other efforts. This will come at the expense of the organization's efforts to educate members about its priority issues and to engage in other advocacy.

17. 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 HB 719. 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 absentee ballots and envelopes, §§ 13-13-241(1)(c), 13-2-109(1)(b), MCA, and to maintain the state’s centralized voter registration database used to administer elections and verify absentee ballots, § 13-2-107, MCA.

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

JURISDICTION AND VENUE

19. Plaintiffs bring this action under the Constitution of the State of Montana, Mont. Const. art II, § 13, and the Civil Rights Act of 1965, 52 U.S.C. § 10101. As a court of general jurisdiction, this Court has authority to hear these claims. Mont. Const. art. VII, § 4; Section 3-5-302, MCA; Mont. R. Civ. P. 4; *Clafin v. Houseman*, 93 U.S. 130, 136–37 (1876) (“Rights . . . under the laws of the United States . . . may be prosecuted in the United States courts, or in the State courts.”).

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

21. Venue is proper in this Court under § 25-2-126(1), MCA, as Plaintiffs Disability Rights Montana and Big Sky 55+ are both headquartered in Helena, Montana, and under §§ 25-2-126(1) and 25-2-125, MCA, because the claim arises in Lewis and Clark County.

FACTUAL ALLEGATIONS

A. Montana citizens overwhelmingly rely on absentee voting to exercise their right to vote.

22. “Absentee voting has transformed elections in Montana.” *Mont. Democratic Party v. Jacobsen* (“MDP”), 2024 MT 66, ¶ 52, 416 Mont. 44, ¶ 52, 545 P.3d 1074, ¶ 52, *cert. denied*

sub nom. Christi Jacobsen, Mont. Sec’y of State v. Mont. Democratic Party, No. 24-220, 2025 WL 247449 (U.S. Jan. 21, 2025). By 2018, absentee voting had become the “predominate form of voting” by Montana citizens, accounting for nearly three quarters of the ballots cast. *Id.* In 2024, the proportion was even higher: more than 80 percent of Montanans who voted used absentee ballots.

23. The prevalence of absentee voting in Montana is, in part, a product of its geography. Nearly half of its citizens live in rural areas of the state, some of which have mostly unpaved, dirt and gravel roads that wind through the mountains.³ And Montana is known to experience extreme weather, with regular hailstorms, blizzards, flooding, and recorded temperatures ranging from -70 to 117 degrees Fahrenheit. Election day in 2024, for instance, was accompanied by a significant winter storm, which blanketed parts of the state in over a foot of snow.

24. These conditions make absentee voting critical to Montanans’ access to the franchise. As U.S. Senator Steve Daines explained in a 2024 letter to the U.S. Postmaster General, “[m]any rural Montanans may live miles from the nearest polling location or may face inclement weather and treacherous roads on Election Day.” Timely processing and delivery of absentee ballots is therefore essential to ensure that Montanans “can exercise their Constitutional right to vote.”

25. Under Montana law, any registered voter can apply for an absentee ballot, and a paper ballot is then sent to the voter by mail.⁴ Section 13-13-201(1), MCA. A voter can request to

³ As of 2000, only 40 percent of Montana’s 73,000 miles of public roads were paved. *See* Mont. State Univ.-Bozeman Dep’t of Civil Eng’g, *Gravel Roads Part II: Back to the Basics* (2000), <https://www.ndltap.org/resources/downloads/2000-montana-gravel.pdf>.

⁴ A voter can also opt to pick up the absentee ballot in person at the county election office or designate another person to pick up the ballot on their behalf. *See* Off. of Mont. Sec’y of State, *Voting by Absentee Ballot*, <https://sosmt.gov/elections/absentee> (last visited May 20, 2025).

receive an absentee ballot for certain upcoming elections or for all elections in which they are eligible to vote. Section 13-13-212(3), MCA.

B. HB 719 imposes an unnecessary hurdle to voting.

26. With HB 719, Montana's lawmakers inject an unnecessary hurdle into the absentee voting process that will disenfranchise qualified voters.

27. Montana law already requires election administrators to confirm a voter's identity by performing two separate rounds of "signature matching." First, when a voter completes and signs an absentee ballot application, an election administrator compares that signature to the signature on the person's voter registration application. Section 13-13-213(3)(a), MCA. If the administrator is "convinced that the individual making the application is the same as the one whose name appears on the registration form," the administrator must send that person an absentee ballot. *Id.* If the application has no signature, or if the administrator is not convinced that the two signatures match, the administrator must contact the voter so that they can attempt to resolve the issue. Sections 13-13-213(3)(b), 13-13-245, MCA.

28. When a voter returns an absentee ballot, an election administrator performs signature matching again. This time, the administrator compares the signature that the voter places on the envelope that contains their absentee ballot to the signature on the voter's absentee ballot application or voter registration application. Section 13-13-241(1)(a), MCA. If the signature on the envelope matches either of the other signatures, the ballot is counted. *Id.* If not, the administrator contacts the voter, and the voter has until 5 p.m. on the day after election day to

correct the issue—otherwise, their vote will not be counted. Sections 13-13-245(1)–(3), 13-15-107, MCA.⁵

29. HB 719 changes Montana election law in two ways, both of which make it harder for voters to successfully navigate the absentee voting process and have their ballots counted.

30. First, HB 719 requires voters to provide their date of birth on their absentee ballot application, and then again on the outside of the ballot envelope when they return their voted ballots to election officials to be counted.

31. Second, HB 719 requires that, at both phases of signature matching—when a voter submits their absentee ballot application and then again when they submit their voted ballot to be counted—election administrators will now be required to “match” the date of birth field too.

32. Thus, when a voter applies for an absentee ballot, the election administrator can provide the voter with the requested ballot only if the signature *and* the date of birth on the absentee ballot application match the signature and date of birth on the voter’s registration application; otherwise the voter is to be notified and must fix the problem before she can receive a ballot. *See* Sections 13-13-213(3) (as amended May 5, 2025), 13-13-245, MCA. Prior to HB 719, election administrators could approve absentee ballot applications, even if they had a missing or mismatched date of birth, so long as they were “convinced that the individual signing the application is the same as the one whose name appears on the [voter’s] registration form.” Section 13-13-213(3)(a), MCA.

⁵ This time period includes two separate deadlines. First, a voter has until 8 p.m. on election day to resolve the issue by (for example) providing a new signature after presenting identification, either by mail, facsimile, electronically, or in person. Sections 13-13-245(1)–(3), MCA. If the voter does not do so, the ballot is treated as provisional and is not counted unless the voter resolves the issue in person at the county election board by 5 p.m. the next day. Section 13-15-107, MCA.

33. More importantly, when a voter submits her absentee ballot, election officials can only count that ballot if both the signature *and* the date of birth on the ballot envelope match those provided on the absentee ballot application or voter registration form. Section 13-13-241(1), (6), MCA (as amended May 5, 2025). If the voter cannot “cure” the problem by, at the latest, 5 p.m. on the date after the election, their ballot must be rejected. Sections 13-13-245, 13-15-107, MCA.

C. The new date-of-birth requirements will disenfranchise lawful, qualified voters.

34. When HB 719 was discussed in the Legislature, legislators raised concerns that its new requirements would inevitably disenfranchise lawful, qualified voters for technical mistakes. “I’m trying to imagine how many good ballots would . . . therefore not get counted, say, in the next election,” one legislator said. Feb. 27, 2025, House State Admin. Hr’g at 09:02:25. Another described the bill as a “huge change to the voters” that would “require a lot of education” and result in “a tremendous number of provisional ballots.” Apr. 7, 2025, Senate State Admin. Hr’g at 16:26:05.

35. Shelley Turner, the executive director of the Montana Association School Business Officials, testified against the bill and predicted that its new requirements would not only disenfranchise lawful voters, but also make the election system slower and less reliable. “Additional requirements . . . increase the chance of clerical error where a legitimate ballot could be rejected or marked as provisional,” Ms. Turner explained. Feb. 27, 2025, House State Admin. Hr’g at 08:57:55. “Errors in handling provisionals can lead to delays in counting and potential disputes over the election results.” *Id.*

36. Regina Plettenberg, the Ravalli County Clerk and Recorder who testified on behalf of the Montana Association of Clerks and Recorders, agreed that HB 719 would cause “an uptick with some rejected ballots.” *Id.* at 09:00:27.⁶

37. These predictions reflect common sense: the date-of-birth requirements introduce new opportunities for voters and election officials to make technical mistakes that could cost citizens their right to vote. The risk of error is especially high since so many standard forms require people to put the *current date* next to their signature. Thus, as Ms. Plettenberg noted, many voters will likely “put the current date instead of their date of birth.” *Id.* at 09:03:27.

38. There is no need to guess the law’s effects. For example, after Ohio passed a similar law that required a matching date of birth on absentee ballots, the requirement “directly and measurably disenfranchise[d]” hundreds of voters. *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 631.

39. Data further confirms the predictable result of piling one technical requirement upon another. Only one other state requires its election officials to verify an absentee voter’s identity by matching both their signature and date of birth: Arkansas, which forbids counting an absentee ballot unless the name, address, birthdate, *and* signature match those provided on the voter’s absentee ballot application. Ark. Code. Ann. § 7-5-416(b)(1)(F)(ii).⁷ Arkansas is a stark outlier in the number of absentee ballots it rejects. In 2022, the average rejection rate for absentee

⁶ Ms. Plettenberg testified as an “informational witness” and took no position on the bill. Across committee hearings in the two chambers, no one other than the bill’s sponsor and a representative of the Secretary’s office spoke in its favor.

⁷ Arkansas’s law was challenged as unconstitutional under federal law, but—in contrast to other federal courts in similar cases—the court allowed it to go into effect. *League of Women Voters of Arkansas v. Thurston*, No. 5:20-CV-05174, 2023 WL 6446015 (W.D. Ark. Sept. 29, 2023).

ballots across all states was 1.5 percent. Montana’s rate was even lower, at 0.6 percent. Arkansas rejected 6.8 percent of its absentee ballots—more than four-and-a-half times the national average.

40. Research shows that this is no accident. An analysis by MIT’s Election Data and Science Lab tracked the rejection rates of absentee ballots by state using data from the 2020 election. The researchers found that, as the number of “verification” requirements increases, so do ballot rejection rates. States that conducted signature matching but did not impose additional requirements on voters had an average rejection rate of 0.77 percent. The two states that required signature matching for both the voter *and* a witness—Louisiana and Mississippi—had more than two-and-a-half times the rejection rate as the voter-only states. Arkansas, the only state to include even more verification requirements, had more than five times the rejection rate of the signature-only states.

41. Nor does the opportunity to cure defective absentee ballots mitigate HB 719’s harm to Montana voters. Although Montana allows voters to attempt to “cure” identity verification issues with their ballots, they must do so within a short timeframe—by 5 p.m. on the day after the election.⁸ As of 2022—the most recent year for which the U.S. Election Assistance Committee has released data—Montana did not track information on the number of ballots that were successfully cured. But data from 25 other states shows that less than half of ballots that were initially rejected were ultimately counted. And since Montana has among the shortest time-periods for ballot curing—some states give voters two weeks or more—the proportion of cured ballots will likely be even lower.⁹

⁸ See *supra* note 5.

⁹ See, e.g., 10 Ill. Code § 5-19-8 (giving voters 14 days after the election to cure their ballots); Md. Elec. Code. Ann. § 11-302 (10 days); Or. Rev. Stat. § 254.431 (21 days); Wash. Admin. Code § 29A.60.165 2 (21 days); see also Nat’l Council of State Leg., *Voting Outside the Polling*

42. HB 719 may impair the right to suffrage in other ways as well. By requiring voters to include both their dates-of-birth and signatures on the outer envelope of their absentee ballots, HB 719 may put Montanans at risk of identity theft. Indeed, in its guidance to the public on preventing identity theft, the Montana Department of Justice warns, “Information like your . . . date of birth should be guarded.”¹⁰

43. Legislators raised this concern during discussions of the bill. “I vote absentee and my signature is on the outside of this envelope for all to see,” one said, asking, “How are we protecting that data?” Feb. 27, 2025, House State Admin. Hr’g at 09:10:15. The bill offers no answer. As a result, HB 719 may chill Montanans—especially those who rely on absentee ballots—from participating in their democracy because doing so would risk identity theft.

44. HB 719’s new requirements will not impact Montana’s population equally. People who rely the most on absentee voting are the most at risk of being disenfranchised for minor, immaterial errors.

45. For instance, voters with mobility restrictions often rely on absentee voting because their polling places lack accessible entrances, voting machines, and parking. At the same time, people with certain disabilities may be at greater risk of making errors on their absentee ballots.

46. Montana also has the nation’s highest percentage of population of eligible voters who live in rural counties. For these voters—who may live miles from the nearest polling place and may have to face unpaved roads in treacherous weather conditions to vote in person—absentee voting is often the safest, most accessible way to cast their ballots.

Police Rep., Table 15 (last updated Jan. 6, 2025), available at <https://www.ncsl.org/elections-and-campaigns/table-15-states-with-signature-cure-processes>.

¹⁰ Office of Consumer Protection, Montana Department of Justice, *Identity Theft and Security Freeze*, <https://dojmt.gov/office-of-consumer-protection/identity-theft-and-security-freeze/> (last visited May 21, 2025).

47. In addition, many Native Americans who live on Montana’s Indian Reservations lack an accessible option for in-person voting. *See MDP*, ¶ 97 (noting “the unique circumstances in Indian country that make it much more difficult to access polling places or post offices”).

48. Aside from the problems it will cause for voters, HB 719 will burden election administrators too. When the Legislature considered the bill, Ms. Turner explained that the Montana Association of School Business Officials opposed it because it would burden administrators, particularly for school elections, where ballots are mostly processed by hand. *See, e.g.*, Feb. 27, 2025, House State Admin. Hr’g at 08:56:18. “We’re very concerned regarding school elections and that increased workload, especially during peak election periods,” she explained, adding that the new date-of-birth requirements would demand additional resources for training, additional personnel, and new envelopes and forms. *Id.*

49. Ultimately, burdening election administrators impacts voters as well. Ms. Turner told legislators that the new requirement would also result in a higher number of provisional ballots, requiring more processing by elections staff and “leading to delays and potential disenfranchisement of the voters,” since staff would have less time to follow up with voters to resolve issues with their ballots. This, in turn, could undermine voter confidence and depress participation as “[v]oters may feel their ballots are more likely to be challenged or not counted.” *Id.* at 08:57:58.

D. HB 719 does not serve any important government interest.

50. The lawmakers who promoted the bill offered little to explain why adding the new requirement was necessary or even helpful. Representative Braxton Mitchell, who sponsored HB 719, offered vague bromides about improving “election integrity,” but provided no specifics as to what needed improvement, let alone how HB 719 would address it.

51. Nor could he: Montana’s elections, including its absentee ballot verification process, are secure. Montana law requires an integrity audit after every federal election, where certain precincts and races are randomly selected for a hand recount. Section 13-17-503, MCA. Montana’s last publicly reported audit from the 2022 election reflected precisely *zero* issues. And although hundreds of thousands of Montanans vote absentee in each election, the Heritage Foundation’s election fraud tracker, which includes convictions dating back to 1997, shows only one case that involved a Montana absentee ballot: a 2011 conviction of a man who submitted his wife’s ballot without her permission.¹¹

52. When Ms. Plettenberg of the Montana Association of Clerks and Recorders was asked if she could identify a single instance “where a birthday would’ve stopped a bad ballot from being counted,” she stated that she was not aware of one. Feb. 27, 2025, House State Admin. Hr’g at 09:00:45.

53. Nor did the bill’s proponents argue that the signature matching requirement—or the absentee ballot process in general—was somehow deficient. Instead, state officials repeatedly characterized the new date-of-birth requirements as a “double check.” *See, e.g.*, Apr. 7, 2025, Senate State Admin. Hr’g at 16:08:00 (Austin James testifying on behalf of the Montana Secretary of State that “[w]e already have the ability to analyze this stuff and [HB 719] adds another check”); *id.* at 16:16:35 (Ms. Plettenberg from the Clerks’ Association testifying, “I think that the signature does provide very good information, but this . . . is just another layer.”).

54. Although the bill’s proponents did not point to any substantiated issues with Montana’s current procedures, legislators repeatedly justified the bill by invoking a scenario where

¹¹ The husband presumably had knowledge of or access to his wife’s date of birth, and so even this isolated case demonstrates HB 719’s lack of utility.

a man who shares his father's name voted with his father's ballot instead of his own. *See, e.g.*, Feb. 27, 2025, House State Admin. Hr'g at 09:09:25 (Mr. James testifying that "[i]f Junior votes Senior's ballot, then Junior doesn't get to vote his dad's or vice versa, he's deprived of his right to vote").

55. But Montana's security procedures for absentee ballots are already adequate to prevent this. In addition to signature verification, Montana uses a detailed system of checks to confirm the identities of people casting absentee ballots (and to ensure that no one votes with another person's ballot).

56. When a voter applies for an absentee ballot, she is required to include her full name, birthdate, and address on the application. When an absentee ballot is issued, it includes a unique bar code, linked to that individual voter. Then, when the voter returns the ballot, an election administrator scans the bar code, which pulls up the voter's information and signature. Next, an administrator trained in signature matching compares the signature on the envelope to the signatures on the voter's registration and ballot applications.

57. In the father-son mix-up scenario the proponents invoked, the two would have to share the same address, fail to identify themselves as Jr. or Sr. on their ballot applications, and then—when the ballot's unique bar code is scanned upon its return—have indistinguishable handwritten signatures.

58. But even if legislators were truly concerned about this hypothetical, there is a far less onerous way for them to address it: they could require absentee voters to provide a date of birth, but not reject ballots just because the voter does not correctly do so. In other words, they could use the date-of-birth field as an additional opportunity for voters to *verify* valid ballots rather than as additional basis for elections officials to *reject* absentee ballots.

59. Notably, no one suggested that HB 719 does anything to limit elections to eligible voters or otherwise combat voter fraud. That is for good reason. Montana already has a process in place to ensure that all voters are qualified—and HB 719’s additional requirements have nothing to do with it.

60. A person is eligible to vote in Montana elections if she: (1) is 18 years of age or older; (2) has been a resident of the state of Montana and the county in which she will vote for at least 30 days; (3) is a citizen of the United States; and (4) is not currently incarcerated for a felony or adjudicated to be of unsound mind. *See* Section 13-1-111, MCA. When a voter registers in Montana, she must affirm that she satisfies the first three requirements under penalty of perjury. The voter must also provide her full name, date of birth, address, and either a Montana driver’s license number, or the last four digits of her social security number. Section 13-2-110(3), MCA. If the voter does not have a Montana driver’s license or social security card, she must provide a copy of a valid photo ID or another form of identification that shows the voter’s name and current address, like a paystub, utility bill, or government document. Section 13-2-110(4), MCA.

61. Once a registration application has been submitted, an election administrator works in conjunction with the Montana Secretary of State, the Motor Vehicles Division of the Montana Department of Justice, and the Social Security Administration to “ensure the verification of the accuracy of the information provided.” ARM 44.3.2012(2); *see also* Section 13-2-109, MCA. Once the information is verified, if the voter meets the legal requirements, the official registers the voter as a legally registered elector. Section 13-2-110(5), MCA.

62. Only legally registered voters can request or cast absentee ballots in Montana. Montana election administrators check the voter’s registration status before sending a voter an absentee ballot.

63. Ultimately, in its effort to fix a non-existent problem, HB 719 creates a problem that is very real: the exclusion of qualified voters. And while it was vaunted by its proponents as an election integrity measure, HB 719 undermines democracy in Montana by excluding qualified voters from the process.

64. Accordingly, Plaintiffs ask this Court to enjoin HB 719 as a violation of the Montana Constitution and federal law.

CLAIMS FOR RELIEF
FIRST CLAIM
Montana Constitution, Article II, § 13
Violation of the Right to Suffrage

65. Plaintiffs hereby reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

66. 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.

67. As the Montana Supreme Court has explained, this guarantee “affords greater protection” than the U.S. Constitution. *See, e.g., MDP*, ¶ 16.

68. Thus, when a law impermissibly interferes with the fundamental right to vote—meaning that it either “interferes with all electors’ right to vote generally, or interferes with certain subgroups’ right to vote specifically”—Montana courts apply strict scrutiny, and the law can stand only if “a law is the least onerous path to a compelling state interest.” *Id.* ¶ 34 (citing *Wadsworth v. State*, 275 Mont. 287, 302, 911 P.2d 1165, 1173 (1996)).

69. When a law only “minimally burdens” the right to vote, Montana courts apply a “middle-tier analysis,” which balances the rights infringed and any governmental interest the infringement serves. *Id.* ¶ 40. Under that approach, the law can survive if government can show

that (1) the law is reasonable, and (2) the government's asserted interest is more important than the burden on the right to vote. *Id.* ¶ 41.

70. HB 719's date-of-birth requirements impermissibly interfere with the right to vote because they interpose unnecessary hurdles to voting that will burden lawful, qualified voters who, because of otherwise inconsequential mistakes, will have to either navigate the cure process or have their ballots rejected. These burdens will fall particularly hard on communities such as Plaintiffs' members and constituents that rely heavily on absentee voting in order to access the franchise.

71. But even if HB 719 posed a minimal burden, it could not survive. There is simply no good justification for adding yet another requirement on Montana voters to fix a system that is already working perfectly well, where the only impact it will ultimately have is to burden or exclude lawful, qualified voters.

72. Indeed, even when federal courts have applied the more demanding *Anderson-Burdick* standard to assess election regulations under the federal constitution, they have found that similar requirements constituted an unlawful burden on the right to vote. *See, e.g., Ne. Ohio Coalition for the Homeless*, 837 F.3d at 631–34 (finding date-of-birth matching requirement for absentee ballots violated the federal constitution even where the number of voters it would impact was “small”); *Eakin v. Adams Cnty. Bd. of Elections*, No. 1:22-CV-340, slip op. at 14–19 (W.D. Pa. Mar. 31, 2025), ECF No. 438 (finding that a requirement that voters sign *and* correctly date their absentee ballot envelopes imposed a “minimal” burden but nevertheless violated the federal constitution).

73. Because HB 719 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.

SECOND CLAIM
52 U.S.C. § 10101; 42 U.S.C. § 1983
Violation of Section 101 of the Civil Rights Act of 1964

74. Plaintiffs hereby reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs below as though fully set forth herein.

75. The Materiality Provision of the Civil Rights Act of 1964 provides:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

52 U.S.C. § 10101(a)(2).

76. The right to "vote" protected by the statute is expansively defined to include:

all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.

Id. § 10101(a)(3)(A), (e).

77. HB 719 requires Defendants to deny the "right of an[] individual to vote" by refusing to count otherwise legitimate ballots cast by qualified electors because they did not satisfy the date-of-birth matching requirement. *Id.* § 10101(a)(2)(B).

78. This denial of the right to vote is based upon an omission on a "record or paper" relating to an "act requisite to voting," *id.* § 10101(a)(2)(B), including "casting a ballot, and having such ballot counted," *id.* § 10101(a)(3)(A)(e). The omission in question is the failure of an elector

to write the correct date on the outer envelope for their ballot. The “record or paper” is the outer envelope in which an elector’s mail ballot is enclosed.

79. Whether a voter correctly writes her date of birth on the outer envelope of her absentee ballot is immaterial to determining whether she is qualified to vote in Montana. A voter’s date of birth bears no relationship to a voter’s citizenship, residence, carceral status, or mental soundness and is irrelevant to determining whether a voter satisfies those qualifications. While a date of birth is related to whether a voter has reached the age of 18, the date of birth as written on the *absentee envelope* does not because the voter’s age was verified at the time of *registration*, prior to casting the ballot. Section 13-2-110(5)(a), MCA. *Cf. In re Ga. S.B. 202*, 2023 WL 5334582, at *8 (“Notably, the determination of whether an individual is *qualified* to vote occurs through the absentee ballot application process and is therefore complete before a voter ever receives an absentee ballot.”).

80. Defendants’ enforcement of the date-of-birth matching requirements of HB 719 will therefore deprive Montanans—including Plaintiffs and their members and constituents—of the rights secured to them by 52 U.S.C. § 10101(a)(2)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that HB 719 violates the right of suffrage guaranteed under Article Two, Section 13 of the Montana Constitution;
- B. Declare that HB 719 violates and Section 101 of the Civil Rights Act;
- C. Enjoin Defendants, as well as their agents and successors in office, from enforcing HB 719;

D. Grant Plaintiffs such other and further relief that the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: May 23, 2025

Respectfully submitted,

By: /s/ Raph Graybill

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
raph@graybilllawfirm.com

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

Katie Chamblee-Ryan*
Marcos Mocine-McQueen*
Marisa A. O'Gara*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
kchambleeryan@elias.law
mmcqueen@elias.law
mogara@elias.law

Attorneys for all Plaintiffs
**Motions for Pro Hac Vice Forthcoming*

Tal M. Goldin
Disability Rights Montana
1022 Chestnut St.
Helena, MT 59601
(406) 449-2344
tal@disabilityrightsmt.org

Attorney for Plaintiff Disability Rights Montana