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STATE OF MONTANA

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DV-25-2025-0000268-IJ

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EXHIBIT A

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MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

MONTANA FEDERATION OF PUBLIC
EMPLOYEES,
Plaintiff,

NORTHERN CHEYENNE TRIBE,
BLACKFEET NATION, CONFEDERATED
SALISH AND KOOTENAI TRIBES, FORT
BELKNAP INDIAN COMMUNITY, and
WESTERN NATIVE VOICE,
Plaintiff-Intervenors,

v.

STATE OF MONTANA, and CHRISTI
JACOBSEN, in her official capacity as
Montana Secretary of State,
Defendants.

Cause No. DV-25-268

**COMPLAINT IN INTERVENTION
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Once again, the Montana Legislature has enacted a new law that impedes the fundamental voting rights of Native Americans¹ in the state. For the third time in six years Western Native Voice and several of Montana's sovereign tribal nations are again forced to seek redress from the courts for the Legislature's continued insistence on making it more difficult for Native Americans in Montana to vote. Barely a year after the Montana Supreme Court held that multiple laws the Legislature passed unconstitutionally burdened the right to vote of Native Americans in Montana, the Legislature has turned around and passed yet another law that exploits the vulnerabilities faced by Native voters.

2. On the heels of the definitive word of the Montana Supreme Court that the past efforts to limit Election Day voter registration ("EDR") impermissibly interfered with the right to vote, and on notice from its own legal analysis that the planned legislation likely did not conform with the Montana Constitution, the Legislature passed Senate Bill 490 ("SB 490"), which does away with eight critical hours of voter registration on Election Day.

3. In light of the clear holdings of numerous Montana courts since 2020, including the Montana Supreme Court, finding that restrictions on methods of voting disproportionately relied upon by Montana's Native communities are unconstitutional, the subsequent passage of SB 490 is nothing short of discriminatory.

4. SB 490 harms Native Americans in rural tribal communities across the seven Indian reservations located in Montana by impairing access to the voter registration process. In so doing, SB 490 violates the right to vote, equal protection of the laws, and due process ensured by the Montana Constitution.

¹ The term "Native American", "American Indian", "Native," and "Indian" are used interchangeably throughout this Complaint to refer to the Indigenous people and tribes of Montana.

5. As the Montana Supreme Court found, “more than 70,000 Montanans have utilized election day registration to vote since 2005,” and “many of these 70,000 Montanans would be disenfranchised without election day registration.” *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶¶ 70, 74, 416 Mont. 44, 545 P.3d 1074. The Court further found that repealing EDR would “disproportionately affect” Native American voters, who “rely on election day registration because of numerous issues they face in voting, including lack of access to mail, transportation, and the long distances to county seats where they can register.” *Id.* ¶ 73.

6. SB 490 mostly eradicates EDR: it removes eight hours of late voter registration opportunities on Election Day, meaning EDR is not available for the majority of Election Day. This particularly harms Native Americans in rural and reservation tribal communities who not only disproportionately rely on EDR, but who overwhelmingly use EDR *after noon* on Election Day, which is no longer permitted under SB 490.

7. As the Legislature was well aware when it passed SB 490, Native Americans in Montana disproportionately rely on EDR because many Native Americans in Montana have to travel greater distances to access equitable voter services than other Montanans, and they face socioeconomic disparities and higher voter costs than other Montanans as a result of centuries of discrimination.

8. By severely curtailing access to EDR—especially during the time of day that Native American voters typically make use of EDR—SB 490 prevents Native Americans living in rural or reservation communities from full and equal participation in elections.

9. The Northern Cheyenne Tribe, the Blackfeet Nation, the Confederated Salish and Kootenai Tribes, the Fort Belknap Indian Community, (collectively “Tribal Plaintiffs”) and Western Native Voice (all together, “Native American Plaintiffs”) seek preliminary and

permanent injunctive relief. Native American Plaintiffs also seek a declaratory judgment that SB 490 violates their right to vote, right to equal protection, and right to due process.

JURISDICTION AND VENUE

10. Original jurisdiction is conferred on this Court through art. VII, section 4 of the Montana Constitution and § 3-5-302, MCA.

11. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act, §§ 27-8-201 through 202, MCA and Mont. R. Civ. P. 57, and the Court has jurisdiction to grant injunctive relief under § 27-19-101 *et seq.*, MCA

12. Venue is proper in Lewis and Clark County because Defendants are located there. § 25-2-126(1), MCA.

PARTIES

Northern Cheyenne Tribe

13. The Northern Cheyenne Tribe is a sovereign, federally recognized tribe with 12,385 enrolled Tribal members. Approximately 3,133 are 18 years of age or older and live on the reservation. The Northern Cheyenne Reservation spans approximately 444,000 acres. The reservation is intersected by Big Horn and Rosebud counties. The Northern Cheyenne Tribe asserts claims on behalf of its own injuries and on behalf of its members.

14. Most houses on the Northern Cheyenne Reservation do not receive home mail delivery. As a consequence, the majority of tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and

deliver their mail for them. Distance to post offices varies widely among members living on the reservation and many people do not have reliable transportation to access their P.O boxes.

15. Northern Cheyenne suffers from a high poverty rate. According to the most recent American Community Survey, the poverty is 427% in the Northern Cheyenne Reservation. The Reservation experienced an increase in poverty rates (8.5 percent) among the American Indian population from 2015 to 2022. The average per capita income in Lame Deer is \$11,293 compared to \$27,655 for Rosebud County and \$43,289 for the United States.

16. Given the extreme poverty, many members do not own or have access to a reliable vehicle. Many people share vehicles and catch rides or use the Tribal transit if it is running. Those who do have vehicles cannot always afford a tank of gas for a mail run, choosing instead to spend limited funds on necessities such as food or heating. Cost of fuel is a big issue on the Northern Cheyenne Reservation and only Lame Deer and Ashland have available fuel stations.

17. Many homes and buildings on the reservation do not have traditional residential addresses, meaning that they do not have formal, assigned street addresses with sequential numbers and named streets. The lack of standardized addressing makes it difficult for members to complete their voter registration forms and more likely that their voter registration forms will be rejected. At times, Northern Cheyenne members may believe they are registered, only to find out when they attempt to vote that there is an issue with their registration address that requires them to re-register.

18. There is an extreme housing shortage on the Northern Cheyenne Reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have up to 20+ people sharing a home. Many are fearful of

letting it be known that their homes are overcrowded and worry that they will be sanctioned by the Tribal Housing Authority for unauthorized people living in the home. Many people do not have access to documentation proving their addresses.

19. Northern Cheyenne members commonly have issues with misspellings or incorrect transcriptions of their names. For example, when reviewing documentation from the Bureau of Indian Affairs, tribal members with last names like “Shoots Her Gun” has been incorrectly transcribed as “She Shoots First.” Confusion with name spellings and unfamiliarity with Native names may lead to errors on voter registrations that require a voter to re-register.

20. Unreliable broadband service has been a longstanding issue on the Northern Cheyenne Reservation. In many communities on the Northern Cheyenne reservation, as few as 8% of the homes have reliable broadband services, while some homes do not have service at all. Additionally, not all tribal members have access to devices to connect them to the internet or a printer, which makes it difficult if not impossible to verify voter registration details using the online My Voter Page or to print a voter registration application.

21. The Reservation can experience significant weather events, including heavy snowfall in November. For example, in November 2024, a winter storm brought significant snowfall and high winds to the area.

22. Following a snowstorm, tribal members who live on rural, residential roads within the Reservation, are unable to leave their homes until after noon because those roads are plowed last. Snowplows prioritize first clearing the main highways on the Reservation and then clear the secondary rural residential roads, such as Kirby Road and Muddy Creek Road, last.

23. In 2024, members living on the reservation in Big Horn County could only access EDR if they travelled to the County Courthouse in Hardin. A polling place was located on the

reservation in Busby, but it did not offer EDR. Traveling from Busby to Hardin requires an approximate 82-mile roundtrip drive to access EDR.

24. In 2024, members living on the reservation in Rosebud County could only access EDR if they travelled to the Rosebud County Courthouse in Forsyth. A polling place was located on the reservation in Lame Deer, but it did not offer EDR. Members living in Lame Deer must travel over approximately 115 miles roundtrip to Forsyth in order to access EDR.

25. Members overwhelmingly arrive at polling places on the reservation after noon on Election Day and rely on EDR.

26. Most unemployed members and people with lower income on the Reservation do not usually go to a polling location until the afternoon of Election Day due to a lack of transportation. Those who do not have a vehicle need to wait to secure a ride.

27. Often, members will arrive at a polling place to vote believing that they are registered. However, members may need to update their voter registration or travel to a different location if they are in the wrong precinct or county. If a voter is at a polling place on Election Day that does not offer registration, then that voter would need to undertake additional travel to register or update their registration before casting a ballot. If Election Day voter registration hours are reduced a voter will likely not be able to undergo the roundtrip one-hour drive from Busby to Hardin or the two-hour drive from Lame Deer to Forsyth in order to access EDR.

28. SB 490 makes participation in elections by Northern Cheyenne members substantially more difficult. This law disproportionately burdens Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Due to the disproportionate barriers placed on Northern

Cheyenne voters by SB 490, Northern Cheyenne members' attempts to vote are more likely to be unsuccessful and Northern Cheyenne's political power and ability to advocate for Northern Cheyenne's needs would be reduced by the suppressive effects of this law. Northern Cheyenne would also be denied full participation in the state and federal systems through its diminished political power.

Blackfeet Nation

29. Blackfeet Nation is a federally recognized tribe with 17,019 enrolled members. The reservation is located in northwestern Montana and covers approximately 1.5 million acres. The reservation is intersected by Glacier and Pondera counties. The Blackfeet Nation asserts claims based on its own injuries and on behalf of its members.

30. Houses on Blackfeet do not receive mail delivery. As a consequence, tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes; because there may not be enough boxes to service the entire population; and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

31. Not all homes have internet access, and not all tribal members have access to devices to connect them to the internet, which makes it difficult if not impossible to print a registration application or verify voter registration details using the online My Voter Page.

32. Lack of access to a vehicle or use of shared vehicles is also very common on the Blackfeet Reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs. Dependable vehicles that can manage difficult road conditions

are even rarer, making a working vehicle in the election month of November especially difficult to come by.

33. Travel to a county seat to register is difficult for members that lack access to a vehicle, especially given the harsh weather on the Blackfeet Reservation.

34. Snow is present 8-9 months of the year on the Blackfeet Reservation. Snow, ice, and mud can make travelling difficult or roads impassable. When there is snow on the ground, as there often is in November, plows often do not come through until 12 p.m., if at all, thus exacerbating the negative impact by cutting off all EDR after noon.

35. The Blackfeet Nation has a poverty rate of approximately 33%, higher than the state average. According to the most recent American Community Survey, the median household income is \$39,583, lower than the state average. Given the extreme poverty, members cannot always afford a tank of gas and instead may choose to spend limited funds on necessities such as food or heating.

36. There is an extreme housing shortage on the reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common and there is a lengthy waitlist for housing. It is not uncommon to have upwards of 10 people sharing a home. People are often in various states of homelessness or near homelessness, moving often, and without documentation of an address.

37. Blackfeet members have just two locations to cast a ballot in person on Election Day, only one of which offers EDR. Members residing in Glacier County can access EDR in Glacier County's satellite office, located on the reservation in Browning.

38. Members residing in Pondera County do not have an on-reservation satellite office and must travel to the county seat in Conrad to access EDR. The drive from Heart Butte to

Conrad is over a 110-mile drive roundtrip, assuming there are no delays due to dangerous road conditions.

39. Members of Blackfeet particularly rely upon EDR on the reservation in order to exercise their right to vote.

40. The Blackfeet tribe especially values EDR. For example, the Code of Federal Regulations previously required that the tribe's secretarial elections be conducted by mail, including all voter registrations. In 2017, the tribe went through the process of waiving the mail registration requirements in the federal regulatory framework so that Blackfeet members could access EDR specifically for their tribal elections because it recognized that the majority of Blackfeet members would utilize Election Day registration.

41. Due to racial animus and perceived racial animus directed toward Blackfeet tribal members when visiting border towns,² many Blackfeet members do not feel comfortable travelling to the county seat to register to vote or vote and prefer to access their voter services on the reservation, or when that is not available, in as few trips to the county seat as possible. .

42. SB 490 makes participation in elections by Blackfeet members substantially more difficult. This law disproportionately burdens Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Because of the disproportionate barriers placed on voters by SB 490, Blackfeet Nation's members' attempts to vote are more likely to be unsuccessful and Blackfeet Nation's political power and ability to advocate for Blackfeet needs would be reduced by the law's

² See U.S. Commission on Civil Rights 2019 Brief from Montana Advisory Committee, *Bordertown Discrimination in Montana*, available at: <https://www.usccr.gov/pubs/2019/05-29-Bordertown-Discrimination-Montana.pdf>

suppressive effects. The Blackfeet Nation would be denied full participation in the state and federal systems through its diminished political power.

The Confederated Salish and Kootenai Tribes of the Flathead Reservation

43. The Confederated Salish and Kootenai Tribes (“CSKT”) of the Flathead Reservation is a federally recognized tribe with 7,766 enrolled members with approximately 5,200 members living on the Flathead Reservation. The reservation is located in western Montana and spans 1.3 million acres. There are also numerous Native Americans that are members of other tribes living on the reservation, with 65 different tribes represented within the reservation boundary. Due to the history of allotment, whereby the Flathead Reservation was opened to non-Native homesteading, CSKT members are the minority population on the reservation and make up approximately one fifth of the population. The total Native American population comprises one quarter of the reservation population. The reservation is intersected by Lake, Sanders, and Missoula counties. CSKT asserts claims on behalf of its own injuries and on behalf of its members.

44. Unlike other tribes in Montana, CSKT has mail-delivery service on the reservation. However, among the Native population, there is a severe housing shortage. Tribal members experience homelessness or are in need of permanent housing, and it is common for members to move from home to home. This “couch surfing” results in a lack of a stable mailing address. Consequently, many tribal members use P.O. boxes to conduct their affairs. Given the housing instability and usage of P.O. boxes, CSKT members often have issues with their registrations, which leads them to have to re-register to vote.

45. CSKT members are more likely to live in the foothills and more rural parts of the reservation than non-Natives, making their travel to the post office, satellite offices, or the county

seats more burdensome than for non--Natives residing on the parts of the reservation closer to amenities.

46. CSKT members suffer from poverty. For example, the rates of free and reduced lunch are higher in majority Native towns. In the largely Native town of Dixon in Sanders County, the free and reduced lunch rate for Native students is 100%. In Arlee and Pablo, majority Native towns in Lake County, the rate is 90%. Approximately 19% of the population on the Flathead Reservation live in severe poverty. Given this poverty, members cannot always afford a tank of gas for a mail run and instead may choose to spend limited funds on necessities such as food or heating.

47. Lack of access to a vehicle or use of shared vehicles is also very common on the Flathead Reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs. Vehicle access is so low on the reservation that the number one reason given to health officials for missed appointments is a lack of transportation. Often, the only vehicle in the household is in use in the mornings by those going to work. Collective errands and activities like voting are more likely to occur during the afternoon after working hours.

48. No bus system or regularly running public transportation exists to transport members to the county seats to register or to the polling places to vote.

49. Severe winter weather, including white out blizzards, is common in early November. During the 2022 General Election, a snowstorm impacted voter turnout and voter services at the Gray Wolf Casino satellite office.

50. The town of Arlee is a split precinct. For members living on the southern side of Arlee, it is an approximate 51-mile drive roundtrip to the Missoula County seat in Missoula in

order to register or re-register to vote. For members living on the northern side of Arlee, it is at least an approximate 86-mile drive roundtrip to Polson, the Lake County seat, in order to register or re-register to vote.

51. Highway 93 is the sole road between Arlee and Missoula. Delays on Highway 93 are common in both the summer and winter months. In the summer, traffic and delays are common due to high tourism and road construction. In the winter, ice and snow conditions impact road conditions, make driving dangerous, and require delayed openings while plows clear the roads. For members who live in Dixon, it is at least an approximate 116-mile drive roundtrip to the Sanders County seat of Thompson Falls. For members who live in Hot Springs, it is at least an approximate 93-mile roundtrip drive to Thompson Falls.

52. For a tribal member to travel from any one of these communities on the reservation to register or update voter registration information would require, at minimum, about one-hour round-trip just to drive to the county seat. At most, it would require over two hours round-trip, assuming there are no delays due to road construction, tourism traffic, or winter weather—and assuming that the member brings the correct identification information and travels to the correct location.

53. Often, members will arrive at a polling place to vote believing that they are registered. However, members typically need to update their voter registration or travel to a different location if they are in the wrong precinct or county. If a voter is at a polling place on election day that does not offer EDR, then that voter would need to undertake additional travel to register or update their registration before casting a ballot.

54. All three County Election Offices near the Flathead Reservation are largely staffed by non-tribal members and are located in majority non-Native towns. Because many

tribal members do not feel comfortable traveling to majority non-Native areas given the hostilities between members and non-members, some choose to register and vote at the same time to cut down on trips to these unfriendly towns.

55. In 2022 and 2024, CSKT worked with Missoula County to open satellite offices where members can register and vote early or on Election Day so that members would not need to drive to Missoula. These offices were open for the 2022 and 2024 Primary and General Elections.

56. In 2022 and 2024, CSKT worked with Sanders County to open satellite offices where members can register and vote early or on Election Day so that members would not need to drive to Thompson Falls. These offices were open for the 2022 and 2024 Primary and General Elections.

57. In 2022 and 2024, CSKT worked with Lake County to open satellite offices where members can register and vote early so that members would not need to drive to Polson. These offices were open for the 2022 General Election and the 2024 Primary and General Elections.

58. Data collected during the 2022 and 2024 Primary and General Elections demonstrate that members used satellite office services after noon during the early registration period.

59. For the 2022 Primary Election, CSKT observed that very few members showed up in the morning during Missoula and Sanders Counties' satellite office hours. As a result, CSKT rescheduled satellite office hours for the 2022 General and 2024 Primary and General Elections, opening later at 11:30 a.m. or 12:30 p.m. so that people could register and/or vote during their lunch hour or after work.

60. For the 2024 General Election, members overwhelmingly used Election Day voter services after noon on Election Day. At the Gray Wolf satellite office and polling place on Election Day, Missoula County issued 29 ballots before 12 p.m. They issued 122 ballots after noon on Election Day.

61. A Lake County satellite office was not open on Election Day. Therefore, tribal members who live in Lake County must travel to the majority non-Native town of Polson to register and vote on Election Day.

62. To assist CSKT members and encourage them to vote, every year CSKT hires a temporary worker as a get-out-the-vote (“GOTV”) coordinator for the months leading up to the election. CSKT spent \$27,965 total on GOTV and satellite office expenses in 2024, including \$15,001 on the coordinator, \$10,156 on advertising for the satellite offices, and \$2,807 on other GOTV and satellite office expenses, including GOTV t-shirts, facility rental fee for satellite office, “I voted” stickers in Salish and Kootenai, gas cards for volunteer GOTV drivers.

63. Western Native Voice also provides rides for Native voters on the Flathead Reservation.

64. SB 490 makes participation in elections by CSKT members substantially more difficult. This law disproportionately burdens Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Due to the disproportionate barriers placed on CSKT voters by SB 490, CSKT members’ attempts to vote are more likely to be unsuccessful and CSKT’s political power and ability to advocate for CSKT’s needs would be reduced by the suppressive effects of this law.

CSKT would also be denied full participation in the state and federal systems through its diminished political power.

Fort Belknap Indian Community

65. The Fort Belknap Indian Community is a sovereign, federally recognized tribe with over 8,667 enrolled Tribal members. The Fort Belknap Reservation is home to the Assiniboiné (Nakoda) and Gros Ventre (Aaniiih) Tribes and is governed by a tribal council. The Fort Belknap Reservation spans approximately 698,478 acres. The reservation is intersected by Blaine and Phillips counties. The Fort Belknap Tribes assert claims on behalf of its own injuries and behalf of its members.

66. Most houses on the Fort Belknap Reservation do not receive home mail delivery. As a consequence, the majority of tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

67. Distance to post offices varies widely among members living on the reservation. Some members can live within a mile of their post office while others live upwards of 40 miles from their post office.

68. Fort Belknap suffers from a high poverty rate of approximately 36%, which is more than double the state poverty rate. Given the extreme poverty, many members do not own or have access to a reliable vehicle and those who do cannot always afford a tank of gas for a mail run, choosing instead to spend limited funds on necessities such as food or heating.

69. Not all homes have internet access, and not all tribal members have access to devices to connect them to the internet, which makes it difficult if not impossible to verify voter registration details using the online My Voter Page or to print a voter registration application.

70. Lack of access to a vehicle or use of shared vehicles is also very common on the Fort Belknap Reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs and voting.

71. There is an extreme housing shortage on the reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have 10-15 people sharing a home.

72. Fort Belknap cares about increasing voter registration. For example, to assist Fort Belknap members and encourage them to vote, Fort Belknap would rely on a third party organization, the Snake Butte Voter Coalition to perform GOTV, including ballot collection and voter registration.

73. By November, winter weather can be extreme with low temperatures, snow accumulation, and strong winds. At times, it can be too dangerous to plow the roads and gale force winds drift snow back onto cleared roads. Snow removal is complicated on the reservation due to split highway jurisdiction between the state and Tribe. Fort Belknap do not have control over when the plows will come. The Reservation lacks the necessary manpower and equipment to clear all of the roads. Elderly members and those with medical needs receive snow plow priority. As a result, it is unlikely that all tribal members will be plowed out before noon.

74. Fort Belknap has three alternate offices that are available for tribal members to vote on Election Day. Alternate offices do not offer EDR. No satellite offices exist on the reservation where tribal members can access EDR.

75. Members overwhelmingly arrive at polling places on the reservation after noon on Election Day.

76. Often, members will arrive at a polling place to vote believing that they are registered. However, members may need to update their voter registration or travel to a different location if they are in the wrong precinct or county. If a voter is at a polling place on Election Day that does not offer registration, then that voter would need to undertake additional travel to register or update their registration before casting a ballot. If Election Day voter registration hours are reduced, a voter will likely not be able to travel approximately 128 miles roundtrip to register at the county seat. Tribal members would have to drive more than two hours roundtrip from Lodge Pole on the reservation to the Blaine County seat in Chinook.

77. Additionally, Fort Belknap has worked in coordination with Western Native Voice to assist with GOTV efforts. Fort Belknap depended on these groups to provide rides to EDR services. If EDR is no longer available, Fort Belknap would have to expend additional funds to provide services to voters.

78. SB 490 makes participation in elections by Fort Belknap members substantially more difficult. This law disproportionately burdens Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Fort Belknap historically cares about Tribal members' access to the polls. Due

to the disproportionate barriers placed on Fort Belknap voters by SB 490, Fort Belknap members' attempts to vote are more likely to be unsuccessful and Fort Belknap's political power and ability to advocate for Fort Belknap's needs would be reduced by the suppressive effects of this law. Fort Belknap would also be denied full participation in the state and federal systems through its diminished political power.

Western Native Voice

79. Western Native Voice is a Native American-led organization that organizes and advocates in order to build Native leadership within Montana.

80. Western Native Voice is a domestic non-profit organization in good standing with the Montana Secretary of State with Yellowstone County as its primary place of business.

81. Western Native Voice is a membership organization, with over 10,000 members across the state of Montana. These members include Native Americans who will be affected by SB 490.

82. Civic engagement is a crucial part of Western Native Voice's activities, especially through get-out-the-vote ("GOTV") programs. Western Native Voice conducts GOTV efforts on all seven reservations and in Native American communities in the three urban centers in Montana. Western Native Voice's GOTV efforts include canvassing reservations and urban Indian centers and discussing the importance of voting and civic participation and how and why to engage in the civic process. Voter education and facilitation of voter registration are core to Western Native Voice's GOTV work and vital to voter turnout across Montana's Native American communities.

83. Western Native Voice is able to engage in this work by hiring organizers living on reservations to work in each community. Each organizer participates in several days of training

before they begin their GOTV program. This training enables the organizers to be effective once out in the field. The training discusses the history of suppression of the Native American vote and the importance of the Native vote. The organizers then carry the message of the importance of the Native American vote with them when they go out into the community.

84. Western Native Voice engages in robust election day activities, including door knocking, ballot collection, and providing rides to the county seat for same day voter registration and voting.

85. In prior election cycles, Western Native Voice has hired hundreds of individuals to work exclusively on Election Day.

86. Each general election, Western Native Voice provides rides for voters to the county seat so that they may register and vote.

87. Since 2018, Western Native Voice organizers have provided rides to the county election office on election day in order to register voters, including between noon and 8 p.m.

88. Providing rides to the county seat is a key component of Western Native Voice's strategy to increase voter turnout.

89. Providing rides to the county seat on Election Day is particularly important on rural reservations, where polling places do not offer EDR, and many individuals lack access to transportation to travel to the county seat.

90. Many Native American voters, who often experience significantly high residential mobility, also do not understand that if their address changes they will need to re-register to vote. They often find out about the necessity to re-register on Election Day itself, and rely on Western Native Voice and partners to provide a ride to the county seat.

91. In 2022 and 2024, the vast majority of the rides provided by Western Native Voice were after noon. In 2024 alone, 82% of the rides we gave across the state were provided after the new 12 p.m. deadline. That means the vast majority of Native voters we assisted would have arrived too late to cast a ballot under SB 490, despite having the clear intent and eligibility to vote.

92. In the last four years, Western Native Voice has assisted close to one hundred voters with voter registration on Election Day alone.

93. By doing away with eight hours of voter registration, including during the time of day that Native American voters typically make use of EDR, SB 490 will stymie Western Native Voice's efforts to expand voter turnout among Montana's Native American population. Likewise, SB 490 will require Western Native Voice to increase its staff and number of cars in order for the organization to even try to serve the same number of voters in the severely limited number of hours during which EDR is now available.

State of Montana

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

Montana Secretary of State Christi Jacobsen

95. Defendant Christi Jacobsen is the Secretary of State for the state of Montana. The Secretary of State is the state's chief election officer. § 13-1-201, MCA. In her role, she is responsible for administration of elections and voter registration in Montana. *Id.* Defendant Jacobsen is also responsible for advising, assisting, and training election administrators. *Id.* § 13-1-202. Additionally, she engages in public outreach and communications regarding the challenged law.

96. Defendant Jacobsen was directly involved with SB 490. The bill was a legislative priority for her office, and her Elections Director was involved in the drafting and advancement of the bill. Representatives from her office testified in favor of SB 490, and the bill will be implemented by her office.

FACTUAL ALLEGATIONS

97. In-person voting and registration in Montana is logistically challenging given the state's large size and rural nature. In terms of land size, the state is the fourth largest in the nation. Montana is also among the least densely populated states in the country. It is, therefore, no wonder that a large portion of the state, especially tribal members living on Montana's rural reservations, relies on EDR, to register and vote at the same time. Given the state's size, Montana voters—particularly Native American voters, who have less vehicle access and must travel, on average, greater distances to county seats—are particularly likely to make use of EDR after noon on Election Day.

Voting and Registering to Vote on Reservations in Montana

98. Montana is home to seven Indian reservations: the Blackfeet Indian Reservation, the Crow Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation. These reservations intersect with sixteen counties: Glacier and Pondera Counties (the Blackfeet Indian Reservation), Big Horn and Yellowstone Counties (the Crow Reservation), Lake, Sanders, and Missoula Counties (the Flathead Reservation), Blaine and Phillips Counties (the Fort Belknap Reservation), Valley, Daniels, Roosevelt, and Sheridan Counties (the Fort Peck Indian Reservation), Big Horn and Rosebud Counties (the Northern Cheyenne Indian Reservation), and Hill and Chouteau Counties (the Rocky Boy's Reservation).

99. The total on-reservation population of all seven reservations is approximately 70,000. This population is spread over millions of acres with limited transportation and mail options. Each of the seven reservations contains hundreds of thousands of acres of land: the Blackfeet Indian Reservation encompasses 1.5 million acres, the Flathead Reservation encompasses 1.3 million acres, the Fort Belknap Reservation encompasses 698,478 acres, and the Northern Cheyenne Reservation encompasses 444,000 acres.

Barriers Faced by Native Voters

100. There is a long history of disenfranchising Native voters in Montana. For example, in 1906 the Montana Attorney General issued an opinion expressly mandating that Native American reservations not be included in voting precincts and that, because Native Americans were considered wards to the government, they could not register to vote or vote at all.

101. Today, Native American voters residing on rural reservations in Montana experience multiple barriers to the franchise:

102. One barrier is the mail system on Indian reservations. Many Native Americans living in rural Montana lack home mail service. There are limited mail routes and drop-off mail locations on rural reservations. Mail service does not exist on many parts of rural reservations. A significant percentage of the Native Americans living on rural reservations have non-traditional mailing addresses and do not receive mail at home.

103. On many reservations, residents rely upon post office boxes for mail service. On portions of reservations in Montana, residents must drive many miles one-way to get to their local P.O. box.

104. Post office hours in rural areas like reservations are often limited.

105. A panoply of socioeconomic factors—the result of centuries of discrimination against Native Americans—make it more difficult for Native Americans living on reservations to register and vote. These include higher poverty and unemployment rates, worse health outcomes, worse educational outcomes, including much lower high school and college graduation rates, less internet access, lack of home mail delivery, less stable housing, higher homelessness rates, and overrepresentation in the criminal justice system.

106. Quantitative analysis confirms that—as a result of these increased “voter costs”—Native Americans in Montana disproportionately rely on EDR as compared to the rest of the state’s population.

107. Native Americans experience higher poverty rates compared to the rest of Montana’s population. While 7.1% of families have income below the poverty level, 28.8% of all Native families have income below the poverty level. These numbers are even more stark on certain reservations: for example, on the Northern Cheyenne Indian Reservation, 32.7% of families are below the poverty level and on Rocky Boy’s Reservation, 37.1% of families are below the poverty level. On every reservation in Montana, the percentage of families with income below the poverty level is much higher than the state average.

108. Native Americans in Montana also face disproportionately high unemployment rates, disproportionately low incomes, and disproportionately high rates of food assistance.

109. On reservations throughout Montana, some Native Americans live in abject poverty. Homes often lack indoor plumbing, electricity, heat, and running water.

110. Higher poverty levels result in a lack of working vehicles, money for gasoline, or car insurance, making travel especially difficult on reservations, where road quality is often poor. Challenging weather makes travel particularly onerous in the election month of November. In the

Blackfeet reservation, for example, there is snowfall 8 to 9 months of the year. Snow, ice, and wind create hazardous road conditions that make travel difficult or impossible.

111. Vehicles are scarce and often shared. A single vehicle is therefore often responsible for getting a household to and from work, all social engagements, doctor's office visits, as well as any mail runs or ballot drop offs. In winter months only the most reliable vehicles, if any, can traverse the poor roads from homes to the main roads.

112. Thus, many Native Americans living on rural reservations without home mail access, or who utilize P.O. boxes because they are moving from home to home because they lack a permanent address, may have serious difficulties getting to their P.O. box, post office, or to the county seat due to distance, socioeconomic conditions, lack of reliable transportation, and weather.

113. County election offices are generally open from 8 a.m. or 9 a.m. to 5 p.m., five days per week. The county election offices are only located in county seats. With the exception of Lake County and Roosevelt County, all county seats are towns located off reservation.

114. In-town locations at which voter registration can be accessed are geographically distant from many residents on the reservations. Native Americans living on the reservation wanting to avail themselves of late registration at county election offices likely have to travel further distances than their non-Native counterparts. For example, in Big Horn County, non-Native American voters had to travel approximately an average of 12 miles to register to vote, while Native American voters had to travel on average approximately 22 miles. In Yellowstone County, non-Native American voters traveled an average of approximately 10 miles as opposed to approximately 32 miles on average for Native American voters.

115. Native Americans in Montana have lower home ownership rates and higher homelessness rates than the state's general population.

116. Native Americans in Montana have worse health outcomes than any other racial group in the state.

117. Native Americans in Montana have significantly lower levels of educational attainment than white Montanans, including in high school and college graduation rates, both of which are strongly correlated with income and poverty levels and political participation.

118. Native Americans living on reservations in Montana have limited access to computers and broadband internet, which further reduces their ability to obtain information about voting opportunities and deadlines. Internet access is important to access opportunities to register to vote, including downloading voter registration forms, obtaining information about the process to register, and checking registration status.

119. The rates of computer access and internet subscriptions are lower on Native American reservations in Montana as compared to the general state population.

120. In-person early voting and late registration starts 30 days prior to Election Day. §§ 13-13-205(l)(a)(i), 13-2-301, MCA. Some counties have opened satellite election offices on reservations, but generally those satellite locations are open for only a handful of days (and for limited hours) during the early voting period.

121. The fact that on-reservation satellite offices are open for only a fraction of the early voting and late registration periods means that Native American voters living on rural reservations have reduced access to early voting and late registration even when they are able to make it to the satellite office.

122. Given the inaccessibility of mail service and polling locations, many tribal members register and/or change their registration on the same day they vote. The number of Native Americans who use EDR compared to the Montana population as a whole is statistically significant.

123. Traditionally, Native Americans in Montana vote on Election Day.

124. Native Americans in Montana experience significantly higher residential mobility than other demographic groups due to ongoing socioeconomic instability, contributing to barriers in voter registration and participation. As a result, EDR is especially critical for Native voters, providing a necessary safety net to ensure they can cast a ballot even if they have recently moved or encountered other barriers to timely registration.

125. The long distances between polling locations and reservation communities make it nearly impossible for voters who may unknowingly have issues with their ballots or registration to cure those issues before a noon deadline, even with the best-laid plans. Transportation challenges, job, weather, childcare obligations, and limited election infrastructure make it unreasonable to expect voters to navigate a complex process under a compressed timeline.

History of EDR

126. EDR has a long and successful history in Montana. § 13-2-304, MCA was introduced by then-Senator Jon Ellingson as part of Senate Bill 302 on January 26, 2005. The bill that included the EDR provision ultimately received bipartisan support in the Legislature. Secretary of State and Chief of Elections Officer at the time, Linda McCulloch, said, “Virtually everyone supported it [because] election day registration is the ultimate failsafe.” Montana Conservation Voters reports that the bill was the result of cooperation amongst groups including

“Montana Association of Clerks and Recorders, the Montana Secretary of State, AFL-CIO, the Montana Democratic Party, AARP, Montana Women Vote, the League of Women Voters, Associated Students of the University of Montana, and the Montana Advocacy Program.” MONTANA LEGISLATIVE SCORECARD at 12. Senator Ellingson has since published editorials describing SB 302’s purpose and the bipartisan coalition that once stood behind it. *See* Jon Ellingson, “Bipartisan coalition created Montana’s Election Day Registration,” *Montana Standard* (July 31, 2015); Jon Ellingson, “House Bill 176 is Voter Suppression,” *Missoulian* (Feb. 25, 2021).

127. In 2014, Montana voters rejected a ballot referendum (LR 126) that would have ended EDR. Voters rejected LR 126 in 80 out of 100 legislative districts. At the time, Montana Secretary of State Linda McCulloch said. “You don’t fix administrative problems by turning people away from the polls . . . You just don’t do that.”

HB 176

128. In 2021, the Legislature again undertook to end EDR in Montana, passing House Bill 176 (“HB 176”), which ended EDR entirely.

129. Current Native American Plaintiffs, Northern Cheyenne Tribe, Blackfeet Nation, CSKT, Fort Belknap Indian Community, and Western Native Voice, brought suit challenging HB 176 and another law that discriminatorily burdened Native Americans’ right to vote. A number of other entities and voters also brought suit against HB 176 and other laws that made it harder to vote. The Thirteenth Judicial District Court consolidated the cases and tried them together.

130. In a 199-page opinion, the trial court made extensive factual findings regarding the impact of HB 176 on Native American Montanans, including that “Native Americans living on-reservation in Montana use EDR at consistently higher rates than the rest of the population, in

both primary and general elections” and that “Montanans living on-reservation make disproportionate use of EDR compared to those living off-reservation, with the prevalence of EDR increasing in on reservation precincts with greater Native American populations.”

131. The trial court found that HB 176 severely burdened the right to vote of Montana voters, particularly for Native Americans and other groups, and that none of the state’s proffered interests was sufficient to justify this burden.

132. In addition to intruding on the constitutional right to vote, the trial court also determined that HB 176 violated the Montana Constitution’s guarantee of equal protection.

133. The trial court therefore permanently enjoined HB 176.

134. The Secretary appealed to the Montana Supreme Court.

135. The Montana Supreme Court affirmed the lower court’s injunction, holding that HB 176 “impermissibly interferes 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.” *Mont. Democratic Party*, ¶ 63.

136. In discussing the impacts of HB 176, the Court noted, “Many Native Americans also rely on election day registration because of numerous issues they face in voting, including lack of access to mail, transportation, and the long distances to county seats where they can register. Many of these barriers cannot be overcome, or become too costly to overcome, and thus disenfranchise these voters.” *Id.* ¶ 73.

137. The Court found that repealing EDR would disenfranchise many Montanans and that Native American voters would be disproportionately affected. *Id.* ¶¶ 70, 73-74.

138. The Montana Supreme Court also found that repealing EDR would not ease administrative burdens on election administrators, who “still have the same amount of work” no

matter “when registration ends.” *Id.* ¶ 77. In fact, the Court found that “the record shows several ways in which the elimination of election day registration may *increase* administrative burdens.” *Id.* ¶ 78 (emphasis added). The Court concluded that “eliminating election day registration decreases election administrators’ work only if voters are disenfranchised.” *Id.* ¶ 79.

139. The Secretary sought certiorari at the United States Supreme Court of the Montana Supreme Court’s decision regarding HB 176. Certiorari was denied on January 17, 2025.

140. The Legislature thus was on notice that restricting EDR unconstitutionally interfered with the right to vote and had a disproportionate negative impact on Native American voters.

Legislative History of SB 490

141. Nevertheless, Senator Cuffe requested the bill that would become SB 490.

142. Senator Cuffe described the bill he was requesting simply as “HB 176 (2021),” demonstrating the intent to flout the holdings of the Montana Supreme Court.

143. The initial draft of SB 490, as of January 30, 2025, added only that “No ballot will be issued after 8 p.m. the day of a federal election to an elector who registers or changes the elector’s voter information on the same day that a federal election is held.”

144. This change was apparently insufficient, as the subsequent draft of SB 490, as of February 20, 2025, removed the earlier added language, and instead removed eight hours of voter registration on Election Day, for federal elections only.

145. The Legal Review Note acknowledged the Montana Supreme Court’s holding in *Montana Democratic Party v. Jacobsen* and cautioned that SB 490 “may raise a potential constitutional conformity question.”

146. Senator Cuffe introduced SB 490 on February 25, 2025.

147. On March 1, 2025, the Senate's State Administration Committee held a hearing on the bill. Senator Cuffe's introduction of SB 490 focused on the supposed benefit to election administrators.

148. At the hearing, Austin James, the Elections Director from the Secretary of State's Office, spoke in favor of the bill. Mr. James was the primary drafter of HB 176, which the Montana Supreme Court held unconstitutionally repealed EDR in Montana. Mr. James has already admitted that the Secretary has no evidence: (i) of voter fraud or intimidation related to EDR, (ii) that eliminating EDR will deter voter fraud, or (iii) that EDR decreased public confidence in the legitimacy or security of Montana's elections. In the litigation challenging HB 176, Mr. James acknowledged that the Secretary has found that EDR improved Montana's election practices.

149. An election administrator from Broadwater County also spoke in favor of the bill. As of the 2020 Census, Broadwater County has a total population of 6,774, just 1.3% Native American population, and no tribal lands within its borders.

150. Similar to Senator Cuffe, the proponents of the bill focused on the supposed benefit to election administrators. Mr. James also invoked the federal Constitution but entirely ignored what the Montana Supreme Court had made clear with respect to the Montana Constitution.

151. The opponents of SB 490 clearly outlined the dangers to electoral participation of removing eight hours of EDR, including the disproportionate impacts on Indigenous voters, and SB 490's conflict with the Montana Constitution.

152. In particular, Henry Seaton, Patrick Yawakie, and Keaton Sunchild all spoke in opposition to SB 490. Mr. Seaton of the ACLU of Montana highlighted the impact that removing EDR would have on Indigenous voters and other marginalized groups. He further underscored the holding of the Montana Supreme Court and the insufficiency of the purported state interest to justify burdening voters with the removal of eight hours of EDR.

153. Mr. Yawakie spoke on behalf of the Blackfeet Tribe, the Fort Belknap Indian Community, and the Rocky Boy Tribe and detailed the additional obstacles faced by Native American voters in Montana. He testified about the fact that the availability of voter registration throughout Election Day is the difference between many Native voters being able to have their voice heard in an election or not.

154. Mr. Sunchild with Plaintiff Western Native Voice, after echoing the testimony of the other opponents regarding the impact on indigenous voters, reminded the committee of the previous lawsuits, underscoring the unconstitutionality of SB 490.

155. SB 490 passed the Senate on March 6, 2025, and was transmitted to the House the next day.

156. On March 26, 2025, the House's State Administration Committee held a hearing on SB 490.

157. Senator Cuffe's introduction again focused on the purported benefit to election administrations, claiming—without evidence—that voters in Gallatin County were casting ballots at 4 a.m. after Election Day. Senator Cuffe also confirmed that he did not write SB 490.

158. The same two proponents—Mr. James and Angie Paulsen, Clerk and Recorder for Broadwater County—spoke in favor of the bill, in addition to Senator Cuffe. Ms. Paulsen noted that many voters in her county have used EDR. Mr. James noted the importance of EDR for

Native Americans in Montana, acknowledging it can be “very difficult” for them to voter absent EDR.

159. Seven opponents of SB 490 testified. Amy Grimales, an attorney at Crowley Fleck—the law firm that defended HB 176 in the previous litigation—testified that SB 490 “doesn’t appear to be allowed under Montana Supreme Court case law.” She also warned that the bill would create “more election costs” for election administrators and “create[] much more confusion” for voters. In the question-and-answer period, Ms. Grimales asked the members to consider a voter who arrives at 1 p.m. on Election Day for a state and federal election. That voter, Ms. Grimales noted, must either not vote entirely in that election or vote a separate state ballot. “Well, who’s going to pay for that? It’s going to be the county. There’s no fiscal note,” she highlighted.

160. Several opponents—including Mr. Sunchild of Western Native Voice, Alyssa Snow on behalf of several Montana tribes, and John Bazant of Forward Montana—spoke about how the bill would harm Native American voters. In particular, Mr. Sunchild noted that many tribal governments give employees the afternoon off to vote on Election Day, so SB 490 would disenfranchise those voters because they would vote in the afternoon and not the morning.

161. Ms. Snow testified about the housing issues facing Native Americans in Montana, and how those voters often do not know that they must update their voter registrations when they move. When Native American voters register on Election Day, Ms. Snow explained, “we aren’t doing so because we’re waiting until the last minute.” And she noted that most of these voters are not aware that they need to re-register until they go to vote on Election Day.

162. Connor Fitzpatrick, the Clerk and Recorder for Lewis and Clark County, testified in opposition principally because SB 490 would confuse voters, who “tend to thrive on

consistency.” Mr. Fitzpatrick noted that inconsistency of having different rules for federal versus state elections. He also testified that in some years, there is a federal primary election that occurs right after local school board elections. Mr. Fitzpatrick testified that it would be a “gear shift to train” election workers for these two elections with different rules.

163. The proponents of the bill received several questions about SB 490’s constitutionality in light of the Montana Supreme Court decision permanently enjoining HB 176. Senator Cuffe appeared to side with the dissent, claiming erroneously that three justices dissented on the law and stating that the dissents “were very strong based on strong legal terms.” Senator Cuffe also appeared to suggest that the Legislature need not be concerned with following the law as made clear by the Montana Supreme Court because “there are different people on the Supreme Court.”

164. The proponents also received several questions about the need for multiple ballots in the event that state and federal elections fall on the same day. Ms. Paulsen testified that it was her “understanding” that separate ballots would not be necessary because the voter would be wholly disenfranchised—unable to vote in either the state or federal election. That said, Ms. Paulsen said she “might have to refer to legal on” that question. She did not explain how to square that opinion with the text of SB 490, which only restricts EDR in a “federal election.”

165. Regina Plettenberg, testifying on behalf of the Montana Association of Clerk and Recorders, received a question about whether there were other ways than SB 490 to alleviate administrative burdens on election administrations—including automatic voter registration, online voter registration, expanding the pool of election judges, and making Election Day a holiday. Ms. Plettenberg said that was “absolutely” true and that “there are a lot of ways you could ease the burden” on election administrators other than SB 490.

166. SB 490 passed the House on April 11, 2025.

167. The bill was signed by the Senate President on April 21, 2025 and by the Speaker of the House on April 25, 2025. It was transmitted to the Governor that same day.

168. SB 490 was signed by Governor Gianforte on May 5, 2025.

169. SB 490's final language, in relevant part, provides: "(3) In a federal election, an elector may register or change the elector's voter registration information after the close of regular registration as provided in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information: (a) prior to the close of business on the Friday before the election; (b) between 8 a.m. and 5 p.m. on the Saturday before the election; and (c) prior to noon on the day of the election."

Importance of Accessible EDR

170. Since its enactment, more than 70,000 Montanans have relied on EDR and would have been disenfranchised without it. *Mont. Democratic Party*, ¶ 70.

171. Election day itself is, by far, the most utilized day for late voter registration in Montana. In the 2020 General Election, for example, half of all late registrants registered to vote on Election Day. On average, in Montana, twenty-three times as many people use EDR than make use of late registration on the average pre-election day of the late registration period.

172. Many people who make use of EDR in Montana do so after noon. This includes voters who testified in earlier litigation against HB 176 about being unable to register and vote during the November 2021 municipal elections.

173. EDR has the largest effect on increasing turnout than any other singular elections administrative practice, with empirical studies showing EDR boosts voter participation between two and seven percentage points.

174. There is a clear consensus in the empirical political science literature that EDR is likely to increase voter turnout, and repealing EDR is likely to reduce voter turnout.

175. EDR increases voter turnout more than any other single voting procedure because it reduces the cost of voting by combining both registration and voting into a single administrative step, and it allows voters who are not activated early in the election period the opportunity to register and vote when attention to the election has peaked on Election Day.

176. Montanans living on-reservation make disproportionate use of EDR compared to those living off-reservation, with the prevalence of EDR increasing in reservation precincts with greater Native American populations.

177. Montana's size and lower population density make it particularly important that EDR is not limited only to the morning hours, as transit to the county seat can take substantial time, especially for those without access to a personal vehicle.

178. This is especially true for Native Americans in Montana, who disproportionately lack vehicle access, disproportionately live on reservations with poor road quality, and on average live farther away from their county seats than the general population. For example, in November when there is snow on the ground, plows often do not serve the Blackfeet reservation until later in the day, if at all, thus limiting the ability of those on reservation from attending to the polling place before work, and making it critical that EDR is also available in the evening.

179. Native American voters in Montana demonstrate significantly higher turnout in federal elections compared to state and local contests. However, SB 490 curtails EDR after noon

exclusively for federal elections, thereby disproportionately burdening Native voters who are more likely to engage in these elections and rely on EDR to cast their ballots.

180. Montana does not require employers to provide time off for employees to vote, unlike many other states that mandate such accommodations. As a result, many voters, including Native Americans, must vote after standard work hours. By eliminating EDR after noon during federal elections, SB 490 disproportionately burdens Native voters who are more likely to vote later in the day due to work obligations and rely on EDR to be able to cast their ballots.

The Administrative Burdens Imposed by SB 490

181. As noted above, the Montana Supreme Court has already found that repealing EDR does not alleviate any administrative burdens on election workers. *See Mont. Democratic Party*, ¶ 77 (“The record shows that regardless of when registration ends, election workers still have the same amount of work.”); *id.* ¶ 78 (“the record shows several ways in which the elimination of election day registration may increase administrative burdens.”); *id.* ¶ 79 (“The record is replete with evidence that eliminating election day registration decreases election administrators’ work only if voters are disenfranchised.”).

182. Even more so than HB 176, SB 490 *creates* additional burdens on election workers, directly contrary to its purported purpose.

183. By its own terms, SB 490 creates separate registration systems for federal and state elections. Specifically, SB 490 leaves EDR undisturbed for state elections, while it eliminates EDR after noon for purposes of federal elections.

184. Before SB 490 passed, election administrators had a clear rule: EDR in all elections. Yet now, election administrators will need to train their workers and volunteers on *two different* election systems: state elections, where EDR is undisturbed, and federal elections,

where they need to cut off EDR after noon. This amounts to considerable more work for election administrators, who will be forced to change and add to their training materials, and election workers, who need to master different rules for different elections.

185. This will be particularly burdensome, chaotic, and irrational when state and federal elections are held *on the same day*. In this common instance, election administrators and workers will be forced to determine whether a particular voter is voting in the state election, the federal election, or both, before determining whether or not they can make use of EDR.

186. This will likely result in election administrators needing to create separate *ballots* for voters, given that a voter who registers after noon on Election Day will be able to vote in the state election but not the federal election. Whereas one ballot that includes all state and federal candidates now suffices in Montana, such ballots are no longer suited for Election Day because some voters will be legally able to vote in the state election but not the federal election.

187. At the House Administration hearing on SB 490, Ms. Grimaldes pointed out this need for separate ballots, which would create “more election costs” for election administrators and “much more confusion” for voters. She also noted that “the county” will be forced to pay for separate ballots because there is no fiscal note included in SB 490. In this way, counties might incur a literal monetary cost associated with SB 490, in addition to the increased burden.

188. Proponents of SB 490 have appeared to suggest that separate ballots would be unnecessary, but they provide no explanation for how that will work in practice or how to square that with the plain text of SB 490. The only other option would be to wholly disenfranchise voters for both the state and federal elections by denying them a ballot, which would dramatically expand the meaning of SB 490 and disenfranchise voters for state elections, as well.

189. Under SB 490, election administrators and workers will also be forced to create a system to determine when a voter arrives on Election Day to determine if they are eligible to use EDR. Under the system prior to SB 490, election workers had no need to determine *when* a voter arrived at the county seat, other than at the very end of the Election Day's voting period. Yet now, election workers must devise a system to determine whether, say, a voter in line arrived at 11:59 a.m. (in which case they can make use of EDR) or at 12:01 p.m. (in which case they cannot make use of EDR).

190. The way SB 490 will function is unclear as to whether a voter who arrives at the county seat before noon, but does not actually make it to the front of the line and attempt to make use of EDR until after noon, is eligible to do so under SB 490. This ambiguity will likely lead to confusion among election administrators and different counties administering the statute in different ways.

191. This ambiguity also burdens individuals who do not know how far in advance of noon they may need to arrive in order to be able to register and vote, as no individual has control over the length of the line or how quickly each registrant in front of them on line is processed.

192. This system that creates different rules for state and federal elections, and which institutes a new, previously unused noon deadline for EDR in certain elections, is almost certain to cause confusion for voters, election workers, and election administrators alike. The Legislature heard testimony from individuals who opposed SB 490 on these grounds, including the Lewis and Clark County Clerk and Recorder.

193. SB 490 creates an administrative nightmare for elections officials, which directly contravenes the only stated purpose of the bill.

CLAIMS FOR RELIEF

First Claim for Relief: Right to Vote, Mont. Const. art II, § 13

Declaratory and Injunctive Relief on behalf of Native American Plaintiffs against Defendants

194. Native American Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

195. Montana's Constitution explicitly protects the right to vote. Indeed, the "Montana Constitution has contained a clear, explicit, unequivocal, and strong protection of the right to vote since before statehood." *Mont. Democratic Party*, ¶ 19.

196. The Montana Constitution states: "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mont. Const. art. 11, § 13.

197. "The right to vote is a clear and unequivocal fundamental right under the Montana Constitution." *Mont. Democratic Party*, ¶ 13

198. "[W]hen a law impermissibly interferes with a fundamental right," Montana courts "apply a strict scrutiny analysis." *Id.* ¶ 34.

199. SB 490 impermissibly interferes with the right to vote of Native Americans living on rural reservations in Montana.

200. Native Americans living on rural reservations are the most isolated group in the state.

201. The isolation is due both to geographic factors, such as the rural and remote nature of some reservations, and socioeconomic factors, including the disproportionate levels of poverty on reservations.

202. Native Americans living on reservations disproportionately rely on EDR to register to vote, and need to make use of EDR after noon, given the long distances to polling

places and post offices, lack of transportation, poor mail service, and poverty on Montana's reservations.

203. SB 490 burdens the right to vote of Native Americans living on rural reservations relative to the rest of Montana voters.

204. Legislative testimony made clear that SB 490 would impair the ability of Native American voters to exercise their right to vote.

205. As SB 490 impermissibly interferes with the free exercise of the right of suffrage of Native American voters, in violation of Article II, section 13 of Montana's Constitution, this triggers the highest level of judicial scrutiny.

206. Montana's Constitution does not have a voter registration deadline and the unnecessary elimination of eight hours of EDR places an additional voter eligibility qualification that violates Article II, section 13.

207. Legislative testimony made clear that EDR was not a pressing issue in current elections.

208. No compelling state interest could possibly justify the infringement upon the voting rights of Native Americans affected by SB 490.

209. Even assuming the state had a compelling interest, SB 490 is plainly not narrowly tailored to meet this interest as it creates a host of administrative burdens. Indeed, "eliminating election day registration is far from the least onerous path to the State's interest in reducing administrative burdens on election workers." *Mont. Democratic Party*, ¶ 79.

210. Regardless of the burden on Montana voters, SB 490 cannot satisfy any level of judicial scrutiny because it has no rational basis. As noted above, the Montana Supreme Court has already found that repealing EDR does not alleviate any administrative burdens on election

workers. And SB 490 will be extremely burdensome on election administrators, election workers, and voters alike, insofar as it creates different rules for state and federal elections that are difficult to administer.

Second Claim for Relief: Equal Protection, Mont. Const. art II, § 4

Declaratory and Injunctive Relief on behalf of Native American Plaintiffs against Defendants

211. Native American Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

212. Article II, § 4 of the Montana Constitution guarantees that no person shall be denied the equal protection of the laws. It is a fundamental right under Montana's Constitution and it "provides for even more individual protection" than the federal equal protection clause of the United States Constitution. *Cottrill v. Cottrill Sodding Serv.* (1987), 229 Mont. 40, 42, 744 P.2d 895, 897.

213. The first step in an equal protection analysis is determining what classifications are at issue. *Snetsinger v. Montana Univ. Sys.*, 2004 MT 390, ¶ 16, 325 Mont. 148, 154, 104 P.3d 445, 449. "A law or policy that contains an apparently neutral classification may violate equal protection if in reality [it] constitut[es] a device designed to impose different burdens on different classes of persons." *Id.* (quoting *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, 982 P.2d 421) (alterations in original).

214. After the relevant classification has been identified, courts then determine the appropriate level of scrutiny. *Id.* Strict scrutiny applies if a suspect class or fundamental right is affected. *Id.*; see also *In re Adoption of A.W.S.*, 2014 MT 322, ¶ 16, 377 Mont. 234, 238, 339 P.3d 414, 417.

215. "Under the strict scrutiny standard, the State has the burden of showing that the law, or in this case the policy, is narrowly tailored to serve a compelling government interest."

Snetsinger, ¶ 17; *see also In re Adoption of A.W.S.*, ¶ 17 (“Ordinarily, the burden of proof falls on the State.”).

216. Here, Native Americans living on rural reservations in Montana disproportionately rely on EDR in order to exercise their fundamental right to vote given the remote locations of these reservations, poverty, and poor mail service. Due to the remote locations of these reservations, limiting EDR to only the morning hours will have an outsized impact on Native Americans living on rural reservations due to the amount of time it takes to travel to the county seat.

217. The Legislature was well aware of the burden it was placing on Montana’s Native voters when passing SB 490 due to the previous holdings of the Montana Supreme Court and district courts, copious amount of legislative history, and prior voting rights litigation on behalf of Montana’s Native voters. The law is, in other words, a “device designed to impose different burdens on different classes of persons.” *Spina*, ¶ 85.

218. There is no compelling state interest to justify SB 490’s denial of Montana’s Native American voters equal protection of the laws.

219. Thus, SB 490 violates the equal protection of laws protected by the Montana Constitution.

Third Claim for Relief: Void-for-Vagueness, Mont. Const. art II, § 4
Declaratory and Injunctive Relief on behalf of Native American Plaintiffs against Defendants

220. Native American Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

221. The Montana Constitution provides that “[n]o person shall be deprived of life, liberty, or property without the due process of law.” Mont. Const. art. II, § 17.

222. A statute is unconstitutionally vague and void on its face if it fails to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *State v. Dugan*, 2013 MT 38, ¶ 166, 369 Mont. 39, 63, 303 P.3d 755, 772. “Vague laws may trap the innocent by not providing fair warning.” *City of Whitefish v. O’Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025.

223. “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Dugan*, ¶ 166.

224. SB 490 is unclear as to whether a voter who arrives at the county seat before noon, but does not actually make it to the front of the line and attempt to make use of EDR until after noon, is eligible to do so under SB 490.

225. As such, individuals governed by SB 490 do not know how to “act accordingly,” *Dugan*, ¶ 166, in order to be able to register and vote on Election Day.

226. An individual seeking to make use of EDR does not know how far in advance of noon they may need to arrive in order to be able to register and vote, as no individual has control over the length of the line ahead of them or how quickly each registrant in front of them in line is processed.

227. Thus, SB 490 should also be declared void for vagueness.

REQUEST FOR RELIEF

Wherefore, Native American Plaintiffs request that the Court:

- A. Order Defendant to cease all implementation and enforcement of SB 490;
- B. Issue a judgment declaring that SB 490 violates the Montana constitutional right to vote;
- C. Issue a judgment declaring that SB 490 violates the Montana constitutional right to equal protection of law;

- D. Award interim and permanent injunctive relief against the application of SB 490;
- E. Award attorney's fees and costs associated with this litigation; and
- F. Provide any additional relief that the Court deems just and proper.

DATED THIS 24th day of June 2025.

/s/ Alex Rate

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CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Complaint - Complaint in Intervention to the following on 06-24-2025:

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