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 Plaintiff
**Motions for Admission Pro Hac Vice Pending*

IN THE MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

Montana Public Interest Research Group,

Plaintiff,

v.

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

Defendants.

Hon. Jason Marks
Dept. 5
Case No. DV-25-419

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

House Bill 413 ("HB 413") categorically bars certain Montanans from voting, in clear violation of the Montana Constitution. Under the new law, anyone who has moved to *or within* Montana for a "temporary purpose[], such as temporary work, training, or an educational program," is ineligible to register or vote unless they intend to make their place of registration their "permanent home" after the program ends. By contrast, *all other Montana residents* who are qualified to vote may register and vote based on their current place of residence, irrespective of their future plans.

The result will be the total disenfranchisement of countless Montanans—particularly students, who are explicitly targeted by the new law's heightened residency requirement. This exclusion of certain voters based on arbitrary criteria violates the rights to suffrage and equal protection under the Montana Constitution. And because the law's vague terms allow for arbitrary enforcement, HB 413 also violates Montana's constitutional guarantee of due process.

This is not the Legislature's first attempt to suppress the rights of student voters. In 2021, it passed a bill that restricted the use of student IDs as voter identification. That law was struck down as an unconstitutional infringement on the right to vote. *See Mont. Democratic Party v. Jacobsen* ("*MDP II*"), 2024 MT 66, ¶¶ 8–10, 107–19, 416 Mont. 44, 545 P.3d 1074, *cert. denied*, 145 S. Ct. 1125 (2025). HB 413 is no less unlawful, and its disenfranchising effects are even worse. Since going into effect in May, it has already impeded Plaintiff Montana Public Interest Research Group's ("MontPIRG") efforts to register students to vote, and it has

disenfranchised many students altogether. Absent an injunction, HB 413 will continue to irreparably harm MontPIRG and the Montanans it serves.

BACKGROUND

I. HB 413 imposes a heightened residency requirement for students and certain working Montanans.

To be eligible to vote in Montana, a person must be a "citizen of the United States 18 years of age or older" who "meets the . . . residence requirements provided by [Montana] law." Mont. Const. art. IV, § 2. A person's "residence" is "where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning." Section 13-1-112(1), MCA. Until recently, Montanans satisfied the residency requirement so long as they (1) had resided in the county for at least 30 days, *id.* § 13-1-111(1)(c), and (2) intended to "mak[e] that county [their] home" at the time of registration, regardless of whether they planned to remain there *permanently*, *id.* § 13-1-112(5) (2003).

HB 413 changed these requirements—but only for certain Montanans. Under the new law, which went into effect on May 1, 2025, a person who has moved to or within Montana for a "temporary purpose[], such as temporary work, training, or an educational program . . . may *not* gain residency in a county or the state of Montana"—and therefore may not register or vote there—unless the individual has "the intention of making that county or the state the individual's *permanent home* at the conclusion of the temporary work, training, or educational program." Ex. 1 at 1–2 (emphases added).[1]

[1] Exhibit citations refer to the exhibits attached to the Affidavit of Raph Graybill.

When HB 413 was debated in the Legislature, students from across the state testified against the bill, emphasizing that it would bar them from having a voice in the communities where they live. As one MSU student noted, "[a] student from Wyoming who pays Montana taxes[,] works here year[-]round, and volunteers at the Gallatin Valley Food Bank is no less a resident simply because they haven't decided where to live after graduation." Ex. 2 at 6–7. But because of HB 413, "[t]housands of out-of-state students at MSU could lose their right to vote in local elections that shape housing policies, transit systems, and minimum wage laws, all of which are decisions directly impacting their daily lives." *Id.* at 7. Another MSU student emphasized that the bill would mean many students would have "no say in how their communities are run, even if [they] comprise a majority of the population of the towns [where] they reside." Ex. 3 at 39.

The bill's proponents offered little justification for its dramatic and restrictive revision to existing law. Representative Jane Gillette, who introduced the bill, stated that its purpose was to "clarif[y] the definition of temporary residency," Ex. 2 at 2, but the bill does not define that term. Instead, it singles out certain categories of Montanans (including those enrolled in "educational program[s]") and imposes a new substantive requirement on them and only them, barring them from registering to vote unless they intend to make their *current* residence their "*permanent*" residence. The term "permanent" is also not defined in the new law. Indeed, even the Legislature seemed confused as to what it actually means. Representative Gillette, for example, suggested that the HB 413 would *not* prevent students from voting where they study just because it "may[] not be[] their forever home"—a

reading of the law that appears contrary to its express terms. Ex. 3 at 7; *see also id.* at 6 (Rep. Gillette stating that factors determining a student's residency include where "they do their laundry," who watches their cat, and where the student's boyfriend lives).

Although the bill's sponsor was coy about its impact, the few people who testified in support of the law made clear its impetus and intent: suppressing the student vote in their communities. One proponent, who said he had "brought this [issue] to [the bill sponsor's] attention," complained that student voters were "affecting elections." Ex. 3 at 16, 21; *see generally id.* at 8–22. "These kids . . . show up last minute at the courthouse [to vote]," he lamented. "[T]hey've been in the State for six weeks. They're not part of the community." *Id.* at 21.

II. The new law will disenfranchise the Montanans that it targets.

By its terms, HB 413 prohibits students from registering or voting in the communities where they live if they intend to reside elsewhere—or have simply not decided where to live—after graduation. It will therefore exclude students who move to attend years-long educational programs, work and pay taxes where they live and study, and serve as active members of the local community. *See, e.g.*, Ex. 4 ¶¶ 2–3, 8–11; Ex. 5 ¶¶ 3–7; Ex. 6 ¶¶ 2, 4–7. Despite otherwise satisfying the requirements to register and vote, these prospective voters will be fenced out of voting in the communities they call home. Indeed, because of HB 413, student members of MontPIRG have already missed an opportunity to vote in Montana's municipal primary, which was held on September 9, 2025. *See* Ex. 13 at 6; Ex. 5 ¶ 8 (student

stating she has not registered to vote because of HB 413); Ex. 6 ¶ 9 (student stating she did not vote in municipal primary elections because of HB 413).

Moreover, the law will render some Montanans ineligible to vote *anywhere*. For example, Josephine "Josie" Kleman moved to Missoula from Kentucky three years ago to attend college at the University of Montana. Ex. 4 ¶¶ 2–4. Missoula has since become Josie's home—where she lives, works, volunteers, and pays taxes. *Id.* ¶¶ 2–3, 8–11. Josie registered to vote in Missoula and voted there in the 2024 election. *Id.* ¶ 6. As a result, Josie is no longer eligible to vote in Kentucky. *See* Ky. Rev. Stat. Ann. § 116.035(3) (a person loses residency under Kentucky law if she moves to another state "to reside there an indefinite time, or by voting there"). However, because Josie plans to move out of state after graduation, Ex. 4 ¶ 11, she is *also* ineligible to vote in Missoula under HB 413, as she does not have "the intention of making [it] [her] *permanent home* at the conclusion of [her] . . . educational program." Ex. 1 (emphasis added). Thus, HB 413 effectively renders Montanans like Josie without *any* legal residence to claim for purposes of voting.

Many lifelong Montanans who move *within* Montana for college will also be entirely disenfranchised. Under Montana law, students who leave their counties of origin "with the intention of remaining" in the counties where they attend school during the duration of their educational programs are disqualified from registering or voting "where [their] family resides." Section 13-1-112(7)–(8), MCA. As a result of the enactment of HB 413, these individuals are now *also* ineligible to vote where they live and study unless they plan to make it their *permanent* home *after* graduation. *See id.* § 13-1-112(5); Ex. 1.

HB 413 will also directly chill and obstruct MontPIRG and organizations like it from engaging in voter registration activities. Under Montana law, it is a crime to "cause . . . [a] person to be registered" despite "knowing that the person is not entitled" to do so. *See* § 13-35-209(1), MCA. As a result, MontPIRG is concerned about exposing its staff and volunteers to criminal liability if they give students advice about their eligibility that is inconsistent with however the State decides to interpret the law, hampering MontPIRG's efforts to encourage all eligible students to register. This concern is particularly acute given the lack of clear definitions of critical terms in the bill, leaving much to individual interpretation and raising a serious risk of arbitrary or discriminatory enforcement. Ex. 7 ¶ 15; *see also infra* at 14–17, 19. This risk of criminal liability will also make it more difficult for MontPIRG to recruit volunteers to assist with its voter registration efforts. Ex. 7 ¶ 15.

The scope and effects of HB 413 are significant. Montana has 16 public colleges and universities, serving over 47,000 students. Ex. 8. Overall, these students compose approximately 37 percent of Montana's population between the ages of 18 and 24. Ex. 9. And in some communities, college students make up a significant portion of residents. In Bozeman, for example, MSU students account for nearly a third of the city's population. Ex. 10. If students cannot vote where they live—or in many cases, cannot vote at all—because of HB 413, these communities and Montana as a whole will be deprived of a democracy that reflects the will of its people.

ARGUMENT

To obtain a preliminary injunction, an applicant must show (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent an injunction; (3) that the balance of equities tips in the applicant's favor; and (4) that an injunction is in the public interest. Section 27-19-201, MCA (amended Mar. 25, 2025). Here, all four factors favor relief.

I. MontPIRG is likely to succeed on the merits because the Student Residency Restriction is unconstitutional.

MontPIRG is likely to succeed on its claims that HB 413 violates the rights to suffrage, equal protection, and due process under the Montana Constitution. HB 413's arbitrary distinction between people who move for "temporary" purposes and everyone else is subject to strict scrutiny, and the State cannot come close to justifying it. Moreover, its vague terms invite arbitrary enforcement, in violation of due process.

A. The Student Residency Restriction violates the right to suffrage.

"The right to vote is a clear and unequivocal fundamental right under the Montana Constitution." *MDP II*, ¶ 13; *see* Mont. Const. art. II § 13. And although the Legislature has certain responsibilities regarding elections—including setting "the requirements for residence" and "registration," Mont. Const. art. IV, § 3—"the Legislature's responsibility must be carefully scrutinized against our most basic right to vote, which is 'the pillar of our participatory democracy,' . . . 'without which all other[] [rights] are meaningless.'" *MDP II*, ¶ 14 (second and third alterations in

original) (quoting *Mont. Democratic Party v. Jacobsen* ("*MDP I*"), 2022 MT 184, ¶ 19, 410 Mont. 114, 518 P.3d 58).

To assess the constitutionality of a law that implicates the right to vote, courts determine the appropriate level of scrutiny based on the degree of infringement. *MDP II*, ¶ 34. Laws that "impermissibly interfere" with "all electors' right to vote generally" or "certain subgroups' right to vote specifically" are subject to strict scrutiny and survive only if the State establishes that "the law is the least onerous path to a compelling state interest." *Id.* By contrast, laws that "minimally burden" the right are subject to a "middle-tier analysis," which "balances the rights infringed and the government interest served by the infringement." *Id.*, ¶ 36. A law minimally burdens the right to vote when "[n]o person is prevented from voting" by the challenged law. *Id.*, ¶ 51.

Applying this test, strict scrutiny applies. On its face, HB 413 denies a subset of Montanans the right to vote in the communities where they live. *See supra* at 4–5; *MDP II*, ¶ 34 (laws that "grant[] the right to vote to some citizens and den[y] the franchise to others" are subject to strict scrutiny (alteration omitted) (quoting *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶¶ 17–19, 314 Mont. 314, 65 P.3d 576)). Indeed, it will leave some Montanans without *anywhere* they can legally register and vote, fencing them out from the franchise entirely. *Supra* at 4–5.

Moreover, the new heightened residency requirement that HB 413 imposes on students—a commitment to reside in the same place "permanent[ly]"—is precisely the sort that selectively excludes voters from the franchise. *Cf. Lloyd v. Babb*, 296 N.C. 416, 445, 251 S.E.2d 843 (1979) ("[I]n these days of an increasingly mobile

society, it would be the rare citizen who could swear honestly that he intended to reside at his present address permanently . . . .” (citation omitted)). And since approximately 37 percent of Montana’s population between the ages of 18 and 24 is enrolled in the state’s secondary institutions, suppressing the student vote also means suppressing young Montanans’ access to the franchise. *See* Ex. 9. These circumstances, where a voting restriction has a disparate impact on a particular group of voters, demand strict scrutiny. *See, e.g.*, *Driscoll v. Stapleton*, 2020 MT 247, ¶ 21, 401 Mont. 405, 473 P.3d 386 (affirming the application of strict scrutiny to an election law that would disproportionately impact certain groups, including students), *superseded by statute on other grounds by* 2023 Mont. Laws ch. 43, § 1; *see also MDP II*, ¶ 34 (stating that laws are subject to strict scrutiny when they “interfere[] with certain subgroups’ right to vote”); *id.*, ¶ 99 (finding impermissible interference where a law removed the only meaningful option to vote “for a significant number of Native Americans living on reservations”).

HB 413 cannot survive strict scrutiny. It advances no legitimate state interest, let alone a “compelling” one, *MDP II*, ¶ 34. The only justification the law’s sponsor offered was that it “clarif[ied] the definition of temporary residency” *See* Ex. 2 at 2. But HB 413 does not define “temporary” at all. In fact, the Legislature rejected a proposed amendment that would have actually clarified the scope and duration of the term “temporary” to mean “lasting fewer than 14 days.” Ex. 11 at 2. Instead, HB 413 subjects a subset of voters to an entirely new substantive requirement regarding their “permanent” residence—introducing an additional undefined term that is itself subject to variable interpretation. *See infra* at 14–16. If defining the existing law

were indeed the objective, one presumes that actually doing so would be the "least onerous path" toward this goal. *MDP II*, ¶ 34; *see id.*, ¶ 77 (finding that the state's interest in reducing election workers' administrative burdens could not justify a law that did not actually reduce those burdens); *Planned Parenthood of Mont. v. State*, 2024 MT 227, ¶ 30, 418 Mont. 226, 557 P.3d 471 (finding that state's interest in preventing a health risk could not justify an abortion ban that did not address any health risk).

After this litigation was filed, the State offered a laundry list of additional purported interests, including "protecting election integrity, maintaining an accurate Montana voter file, preventing double voting, preventing fraud, and promoting confidence in the results of Montana's elections." Ex. 12 ¶ 80. But none can justify this discriminatory law. As an initial matter, none of these interests was raised by the bill's proponents in the Legislature, and this Court need not credit the State's *post hoc* rationalizations. *See, e.g.*, *Roe v. Critchfield*, 137 F.4th 912, 922 (9th Cir. 2025) (explaining that even under intermediate scrutiny, "the justification must be genuine, not hypothesized or invented *post hoc* in response to litigation" (citation omitted)). In fact, the legislative record contradicts the State's assertion that this law somehow responds to election misconduct, as the bill's sponsor expressly denied that HB 413 related to any "criminal action going on" like fraud. Ex. 2 at 21.

Moreover, the State cannot provide any facts or evidence in support of these newly identified (and highly generalized) interests. "[I]t is incumbent upon the state to *demonstrate* a compelling interest," which "entails something more than simply saying it is so." *Wadsworth v. State*, 275 Mont. 287, 303, 911 P.2d 1165, 1174

(1996). But in response to Plaintiff's discovery requests, the State could not identify *any* "facts [that] support[] [its] contention" that HB 413 serves these interests, Ex. 14 at 3, and it admitted that "[t]here exist no documents" supporting these interests, Ex. 15 at 3. The State cannot survive strict scrutiny merely by reciting potential justifications by rote. *Cross ex rel. Cross v. State*, 2024 MT 303, ¶¶ 35–38, 419 Mont. 290, 309, 560 P.3d 637 (affirming district court's conclusion that a law failed strict scrutiny review because "the State did not demonstrate on the preliminary injunction record" that the law served a compelling state interest).

Even if HB 413 did serve a compelling (or even plausible) state interest, it would nevertheless fail strict scrutiny because it is so poorly tailored. *See MDP II*, ¶ 37. HB 413's broad sweep invites absurd results that serve no conceivable interest: lifetime Montanans are excluded from voting simply because they are students who have moved within the state for a "temporary" program, while others who have been in the state far less time can register and vote—even if they plan to move to another state the day after the election. *See Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 632 (1969) (finding a voting restriction unconstitutional because it "d[id] not meet the exacting standard of precision we require of statutes which selectively distribute the franchise" where it "permit[ted] inclusion of many persons who have, at best, a remote and indirect interest" to vote in school district elections while "exclud[ing] others who have a distinct and direct interest").

Although strict scrutiny is the appropriate standard, HB 413 fails middle-tier analysis too. Under middle-tier analysis, the State must show that a statute is (1) "reasonable (i.e., not arbitrary and justified by relevant and legitimate state

interests),” and (2) “that its asserted interest is more important than the burden on the right to vote.” *MDP II*, ¶¶ 40, 46. HB 413 is not “reasonable” because it arbitrarily distinguishes between “temporary” residents—who must satisfy additional residency requirements—and other Montanans, who need not do so, regardless of their actual ties to the state. *See id.*, ¶ 58 (rejecting distinction as arbitrary where it served no logical purpose). Moreover, the requirement HB 413 imposes—an intent to stay permanently—is itself arbitrary, since this is irrelevant to whether a person is *currently* a resident. *See, e.g.*, *Newburger v. Peterson*, 344 F. Supp. 559, 563 (D.N.H. 1972) (“In this day of widespread planning for change of scene and occupation we cannot see that a requirement of permanent or indefinite intention to stay in one place is relevant to responsible citizenship.”). In any event, the government has not proffered *any* legitimate interests actually served by HB 413, which alone suffices to resolve this Court’s analysis. *See supra* at 9–11.

B. The Student Residency Restriction violates the right to equal protection of the laws.

HB 413 independently runs afoul of the Montana Constitution’s equal protection guarantee. The equal protection clause “embod[ies] a fundamental principle of fairness: that the law must treat similarly-situated individuals in a similar manner.” *A.J.B. v. Mont. Eighteenth Jud. Dist. Ct., Gallatin Cnty.*, 2023 MT 7, ¶ 24, 411 Mont. 201, 523 P.3d 519 (citation omitted); *see* Mont. Const. art. II, § 4. Courts evaluate potential equal protection violations in three steps. *A.J.B.*, ¶ 25. First, the court “identif[ies] the classes involved and determine[s] if they are similarly

situated"; second, it "determine[s] the appropriate level of scrutiny to apply"; and third, it applies that level of scrutiny. *Id.*

Here, the first step is straightforward. HB 413 facially discriminates against Montanans who have relocated for "temporary purposes," and in particular those who relocate to or within Montana for "temporary work, training, or an educational program." Ex. 1 at 1–2; *see State v. Spina*, 294 Mont. 367, 391, 982 P.2d 421 (1999) (explaining that a law is facially discriminatory when the law "by its own terms classifies persons for different treatment"). And the classes it creates are "similarly situated," *A.J.B.*, ¶ 26, since they are "equivalent in all [other] relevant respects," *id.* People who reside in a place for "temporary purposes" are no different than, for instance, people who move to or within Montana with no job or education prospects, those who move for a non-temporary job, and those who have always resided in Montana but intend to move elsewhere in the future. *See Lloyd*, 296 N.C. at 444–45 (finding a similar law violated federal equal protection guarantee because students are no different from "prospective voters in other walks" who intend to stay "until they [a]re promoted, until they g[e]t a new or different job, until they retire[], until a contract [i]s finished, until a term of office [i]s over, until an election [i]s won or lost, and so on"); *Worden v. Mercer Cnty. Bd. of Elections*, 61 N.J. 325, 348, 294 A.2d 233 (1972) (holding similar law violated state and federal equal protection guarantees because students "are no more transient than many other groups whose right to vote in communities where they arere short-term residents is never questioned").

Here, too, strict scrutiny applies because HB 413 infringes on a fundamental right. *See A.J.B.*, ¶ 28 ("We apply strict scrutiny review if a fundamental right is affected."); *MDP II*, ¶ 13 ("The right to vote is a clear and unequivocal fundamental right under the Montana Constitution."). And as described above, HB 413 fails both strict scrutiny and middle-tier review. *See supra* at 9–12.

C. The Student Residency Restriction is unconstitutionally vague.

HB 413 is also independently invalid because it is unconstitutionally vague in violation of the Montana Constitution's due process clause. Mont. Const. art. II, § 17. As a matter of basic fairness, laws must provide people "a reasonable opportunity to know what is prohibited, so that [they] may act accordingly." *State v. Stanko*, 1998 MT 321, ¶ 23, 292 Mont. 192, 974 P.2d 1132 (1998) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972)). Under the Montana Constitution, "[a] statute is void on its face if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." *Id.*, ¶ 22 (quoting *State v. Woods*, 221 Mont. 17, 22, 716 P.2d 624, 627 (1986)). And particularly where criminal penalties may attach, due process requires "sufficient definiteness . . . in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Thirteenth Jud. Dist. Ct.*, 2009 MT 163, ¶ 24, 350 Mont. 465, 208 P.3d 408 (2009).

HB 413 fails this test. Its key language—limiting the franchise to those "temporary" residents who intend to stay "permanently"—supports divergent definitions and thus variable enforcement. The term "temporary" could encompass a range of different durations, from a few days to a few years. Similarly, the term "permanent" could be interpreted to require an intent to remain in the same county

or state for a long time, indefinitely, or forever. *See, e.g.*, *Permanent*, *Black's Law Dictionary* (12th ed. 2024) (defining "permanent" as "enduring indefinitely"); *Permanently*, *Merriam-Webster Dictionary* (Sep. 30, 2025), https://www.merriam-webster.com/dictionary/permanently (defining "permanently" as "in a way that continues without changing or ending"). As a result, HB 413 has a "standardless sweep" that permits officials to decide who is and is not eligible to vote based on "their personal predilections"—precisely what the void-for-vagueness doctrine forbids. *Stanko*, ¶ 21 (quoting *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983)).

Even the bill's supporters in the legislature appear to recognize that, to apply HB 413, officials will need to rely on additional and highly subjective factors. According to the bill's sponsor, a person's "permanent" home is "where her husband is . . . her children are, her dogs are, her plants are," but if a student "live[s] in the dorms" and "[t]heir parents watch their cat," she may be a "temporary" resident under the law. *See* Ex. 3 at 5–6. Another legislator supporting the bill asserted that one's permanent home is determined by factors including "where your vehicle is licensed," "where you've got land," and "where your family lives." *Id.* at 52. And the Legislature as a whole refused to place any parameters on the temporal scope of the term "temporary," rejecting an amendment that proposed one without replacing it with any other timeframe or even guidance on how the term should be applied. *See supra* at 9–10.

Defendants, for their part, have offered no coherent interpretation of HB 413's heightened residence requirement. In response to discovery requests asking defendants to set forth their "complete understanding" of the term "permanent

home," Defendants stated that they "currently understand[]" it by reference to its "dictionary meaning" (which is variable), its "statutory construction meaning" (which is circular), and the "meaning assigned to the[] term[] by the judiciary" (without citation to any such judicial interpretation). Ex. 14 at 3. Defendants further assert that the term is somehow "defined by reference to Mont. Code Ann. §§ 13-1-111, 13-1-112(1)-(8) and 13-1-113." *Id.* But the first and last statutes in this list make no reference to the term "permanent," and the second is the actual language of HB 413 that MontPIRG challenges in this suit as unconstitutionally vague.

Ultimately, as the record here makes clear, the meaning of HB 413 is at worst nonsensical and at best in the eye of the beholder. Even the Attorney General, the state's chief law enforcement officer, cannot define terms that are *essential* to the law's enforcement. And because HB 413's language supports such divergent interpretations, it is ultimately left to individual officials to decide how to enforce it. As one student leader pointed out in the Legislature, this "invites arbitrary decisions about who counts as a Montanan." Ex. 2 at 7. Due process does not tolerate this "impermissib[le] delegat[ion]" of basic enforcement questions to officials who may decide them based on arbitrary or even discriminatory factors. *Stanko*, ¶ 23 (quoting *Grayned*, 408 U.S. at 108–109); *see also State v. Bush*, 195 Mont. 475, 478, 636 P.2d 849 (1981) ("A statute . . . must provide standards for law enforcement personnel so as to prevent arbitrary or discriminatory [enforcement] . . . ."). Absent clear standards, statutes like HB 413 invite the "arbitrary and discriminatory enforcement that arises when government officials can enforce ill-define laws on an *ad hoc* and subjective basis." *Stanko*, ¶ 23 (*quoting Grayned*, 408 U.S. at 108–109).

The uncertainty the law invites as to how it may be enforced chills organizations like MontPIRG from carrying out their missions to register eligible student voters. MontPIRG is left to guess at what type of intent—or indicia of intent—qualifies a student to register and vote where they attend school. If its staff and volunteers guess wrong, they face potential criminal penalties. *See* § 13-35-209, MCA. This looming threat exemplifies how vague laws can chill the exercise of people's constitutional rights. *See Grayned*, 408 U.S. at 109 ("Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." (internal quotation marks and citation omitted)); *Bush*, 195 Mont. at 478 ("A statute is required to be specific enough . . . to prevent the chilling of constitutionally protected activity.").

II. Absent an injunction, MontPIRG and its members will suffer irreparable harm.

Unless enjoined, HB 413 will exclude many of MontPIRG's constituents from the franchise. *See supra* at 4–5. This "deprivation of constitutional rights unquestionably constitutes irreparable injury." *Brown v. Jacobsen*, 345 F.R.D. 490, 495 (D. Mont. 2022) (quoting *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 837 (9th Cir. 2020)); *see also MontPIRG v. Jacobson*, No. 24-2811, 2024 WL 4023781, at *2 (9th Cir. Sep. 3, 2024) ("[B]ecause [the challenged law] would discourage individuals from registering to vote in Montana . . . [it] carries the risk of irreparable harm to [MontPIRG]."); *see also MDP I*, ¶ 32 (finding "irreparable injury through the loss of the constitutional right to vote"); *Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 15, 366 Mont. 224, 286 P.3d 1161 (stating that the

infringement of constitutional rights "constitutes irreparable harm for the purpose of determining whether a preliminary injunction should be issued"). This harm is not hypothetical. HB 413 has already deterred some Montana students from registering for and voting in the September 9th primaries for municipal elections. *See* Ex. 5 ¶ 8; Ex. 6 ¶ 9; Ex. 13 at 6. Unless this Court intervenes, the disenfranchisement will continue through the next election cycle. Ex. 7 ¶ 12.

HB 413 also directly burdens and impedes MontPIRG's constitutionally-protected voter registration activities. Helping people register to vote and encouraging broad voter turnout—particularly at Montana's colleges and universities—is a core component of MontPIRG's mission of "effecting tangible, positive change through educating, engaging and empowering the next generation of civic leaders." Ex. 7 ¶¶ 4, 5–10, 14. HB 413 makes this work significantly more difficult. *See id.* ¶¶ 12–18. The people MontPIRG typically serves are precisely the people HB 413 will exclude from the franchise: "young voters who have recently moved within or to Montana to attend college," *id.* ¶ 11, and "intend to live elsewhere after graduation but consider Montana their home while they attend school," *id.* ¶ 13; *see also, e.g.*, Ex. 4 ¶¶ 4, 11; Ex. 5 ¶¶ 6, 24; Ex. 6 ¶ 3, 7. Thus, under HB 413, a far lower proportion of students MontPIRG contacts are eligible to register and vote. Ex. 7 ¶ 14. This "interfer[ence] with [Plaintiff's] 'primary mission of registering voters'" plainly constitutes irreparable harm, since "after the registration deadlines . . . pass, 'there can be no do over and no redress.'" *League of United Latin Am. Citizens v. Exec. Off. of the Pres.*, 780 F. Supp. 3d 135, 201 (D.D.C. 2025) (third alteration in original) (citation omitted); *see also MontPIRG v.*

Jacobsen, 731 F. Supp. 3d 1175, 1191–92 (D. Mont. 2024) (finding irreparable harm where voting restrictions impeded MontPIRG's ability to register and turn out voters), *affirmed by* No. 24-2811, 2024 WL 4023781 (9th Cir. Sept. 3, 2024) (mem.).

In addition, HB 413 will chill MontPIRG, its staff, and its volunteers from their constitutionally-protected activities registering students to vote. Montana law imposes criminal penalties for "causing" an ineligible voter to be registered. *See* Section 13-35-209, MCA. Because HB 413 is vague in many respects, MontPIRG's employees and volunteers run the risk of misinterpreting the law's requirements when advising students about their eligibility to register in the communities where they live. Ex. 7 ¶ 15. Ultimately, MontPIRG must either expose its staff and volunteers to the risk of prosecution or read the law as restrictively as possible, which will inevitably hinder them from registering otherwise qualified voters. *See MontPIRG*, 731 F. Supp. at 1191 (finding irreparable harm where voting restrictions would "chill [MontPIRG's] voter registration activities" by requiring MontPIRG to make "a proverbial Hobson's choice" between continuing their efforts and risking legal violations or "greatly reduc[ing] their voter registration activities").

Finally, the harms facing MontPIRG and the Montanans it serves are immediate. MontPIRG's robust efforts to register students to vote begin when students return to campus in fall. Ex. 7 ¶ 16. HB 413 has already hampered MontPIRG's ability to advise students by injecting confusing new requirements into the eligibility standard, which discourages students from registering for fear that they may be ineligible, impedes MontPIRG's ability to give them clear answers about

who is eligible and who is not, and makes the registration assistance MontPIRG provides more resource-intensive and less effective. *Id.* ¶¶ 12–20.

III. The balance of harms and the public interest favor injunctive relief.

The final two factors—the balance of harms and the public interest—also support a preliminary injunction. MontPIRG and its members face irreparable harm and the deprivation of constitutional rights, while an injunction will merely prevent Defendants from enforcing an unconstitutional statute. *See Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012) (finding the equities favored plaintiffs where the injunction did not bar the defendants from enforcing any valid laws). Plus, "[t]he public interest . . . favors permitting as many qualified voters to vote as possible." *Obama for Am. v. Husted*, 697 F.3d 423, 437(6th Cir. 2012); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam) (The public has a "strong interest in exercising the fundamental political right to vote." (internal quotation marks and citation omitted)).

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin HB 413's Student Residency Restriction.

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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, 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 Plaintiff
**Motions for Pro Hac Vice Pending*