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IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

Montana Federation of Public Employees,

Plaintiff,

v.

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

Defendants.

Case No. DV-25-268

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Just last year, the Montana Supreme Court held that the Legislature's *second* attempt to eliminate election day registration was "unconstitutional on its face" because it impermissibly burdened Montanans' right to vote. *Mont. Democratic Party v. Jacobsen* ("*MDP*"), 2024 MT 66, ¶¶ 63, 84, 416 Mont. 44, 545 P.3d 1074, *cert. denied sub nom. Christi Jacobsen, Mont. Sec'y of State v. Montana Democratic Party*, 145 S. Ct. 1125 (U.S. 2025). And yet, here we are again.

Less than a year after that decision, the Legislature introduced Senate Bill 490—its latest effort to do what the Court has already said the Constitution forbids. In *MDP*, the Legislature restricted election day registration to a "select category of people." *MDP*, ¶ 6. This time, it has barred election day registration for federal elections after noon. The result is the same: eligible Montanans who rely on election day registration will not be able to vote. This is hardly surprising, since circumventing *MDP* was the goal. As one lawmaker admitted, "We're trying to work around the court's decision." Ex. 1, Graybill Declaration (Jan. 21, 2026) ("Graybill Decl."), Ex. C, Mar. 5, 2025 Hr'g at 18.

But constitutional rights are not obstacles to "work around." The Secretary may disagree with the Montana Supreme Court's decision in *MDP*, but that does not make it any less binding. The State does not—and cannot—dispute any of the material facts at issue, which put SB 490 squarely within the scope of *MDP*. Montanans continue to rely heavily on election day registration, and restricting its availability will once again disenfranchise otherwise eligible voters. And the Secretary offers the same implausible justifications for SB 490 that the Supreme Court has already rejected. Plus, in its effort to curtail election day registration, SB 490 introduces an unprecedented, unworkable bifurcated system—requiring county officials to administer separate ballots for state and federal elections based on the time of day—that will introduce confusion and uncertainty in Montana elections.

Accordingly, summary judgment is warranted. In the alternative, this Court should grant a preliminary injunction to prevent irreparable harm to Plaintiff and the Montanans it serves while this case is pending, and as the 2026 primary election approaches.

BACKGROUND

I. Election day registration has made voting possible for tens of thousands of Montanans.

The Framers of the 1972 Montana Constitution "inten[ded] . . . that election day registration should be available as long as it was workable in Montana." *MDP*, ¶ 68; *see* SUMF ¶ 1.[1] In 2005, the Montana Legislature enacted election day registration with bipartisan support, allowing Montanans to both "register and vote up until the time polls close[d] on election day," which, by statute, is 8:00 p.m. SUMF ¶ 3. Election day registration quickly became "wildly popular" among Montanans, *MDP*, ¶ 6; SUMF ¶ 5, and, as Montana Secretary of State Christi Jacobsen agreed, "led to an improvement in Montana's elections." *MDP*, ¶ 64; SUMF ¶ 9. By 2021, "more than 70,000 Montanans ha[d] utilized election day registration to vote." *MDP*, ¶¶ 64, 70; SUMF ¶ 6. In 2022 and 2024, another 13,816 voters did so. SUMF ¶ 7. The 2024 general election saw a more than 25 percent increase over the previous presidential election year in the number of Montanans who used election day registration to register and vote, from 8,172 to 10,296. SUMF ¶ 8.

For many Montanans, election day registration is more than a convenience; it makes the difference in whether they are able to vote. SUMF ¶¶ 50–52. For example, "many people" rely on election day registration because they "cannot take work off to register and then again to vote." *MDP*, ¶ 71; SUMF ¶¶ 55–58. This includes Montanans who have inflexible work schedules—such as MFPE's members who work as teachers or employees at state prisons or hospitals. *See* SUMF

[1] Plaintiffs jointly submit a statement of undisputed material facts. *See* Pls.' Statement of Undisputed Material Facts in Supp. of Pls.' Mot. for Sum. J. ("SUMF").

¶ 131. Many other Montanans work long days and rely on the polls being open until 8 p.m. on election day to register and vote. *See* SUMF ¶¶ 129, 132–33 (MFPE members who work as teachers until late afternoon rely on election day registration to register and vote after work). And for Montanans who discover that there is a problem with their registration or that they have been removed from the rolls only when they arrive at the polls on election day, election day registration serves as a "final safeguard," without which their ballots could not be counted. *MDP*, ¶ 71; SUMF ¶ 62.

Election day registration is especially pivotal for certain groups of Montanans, including Native American voters and young voters. *MDP*, ¶ 73; SUMF ¶¶ 72–77. Young voters disproportionately rely on election day registration because they move more frequently than other voters and are more likely to need to register for the first time. *MDP*, ¶ 73; SUMF ¶¶ 76–77. Native Americans "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." *MDP*, ¶ 73; SUMF ¶¶ 73–74. When election day registration is unavailable, "these barriers cannot be overcome, or become too costly to overcome, and thus disenfranchise these voters." *MDP*, ¶ 73; SUMF ¶ 74.

What the Montana Supreme Court deemed "workable" in 2024 with respect to election day registration, *MDP*, ¶ 68, is no less workable today. Defendants have not identified *any* new issues with election day registration—whether related to administrative burdens or elections integrity—that have arisen since *MDP*, much less any evidence that could alter the Court's conclusion. SUMF ¶¶ 52–54. Election day registration remains a successful means of expanding the franchise to those who would otherwise be unable to vote.

II. Election day registration has survived multiple attempts to eliminate or restrict it.

Despite its success—and its importance for Montanans who rely on election day registration—Montana lawmakers have tried repeatedly to eliminate or severely restrict it. SUMF ¶¶ 10–21. In 2014, the Montana Legislature referred an act to the Montana voters that would have eliminated election day registration, purportedly to "protect[] the integrity of Montana elections." SUMF ¶ 10. Montanans "soundly rejected" the referendum by a 14-point margin. *MDP*, ¶¶ 6, 64; SUMF ¶ 11. Then, in 2021, the Montana Legislature passed HB 176, which "eliminated election day registration for all but a select category of people and pushed the registration deadline back to noon the day before the election." *MDP*, ¶ 6; SUMF ¶ 12. Despite "vociferous opposition . . . in public hearings," *MDP*, ¶ 64; SUMF ¶ 13, the bill's proponents in the Legislature insisted that this restriction was necessary to reduce the burden on election workers, *MDP*, ¶ 75; SUMF ¶ 78.

Multiple plaintiffs sued, alleging that HB 176 violated the right to suffrage under the Montana State Constitution. *MDP*, ¶ 3; SUMF ¶ 15. After a nine-day trial, a Montana district court agreed. *MDP*, ¶ 63; SUMF ¶¶ 18–19. In March 2024, the Montana Supreme Court affirmed, holding that HB 176 "impermissibly interfere[d] with the right to vote due to its effect on numerous Montanans who utilize election day registration to both register and vote at the same time on election day," and that the State could not demonstrate that "eliminating election day registration [wa]s the least onerous path to a compelling state interest." *MDP*, ¶ 63; SUMF ¶¶ 20–21. The Secretary filed a petition for certiorari at the U.S. Supreme Court, which was denied. SUMF ¶ 22.

III. The Montana Legislature passed SB 490 to restrict election day registration, despite the recent decision of the Montana Supreme Court.

On the heels of the Montana Supreme Court's decision concluding that Montana's restriction of election day registration violated the right to suffrage, the Montana Legislature passed SB 490, which bars election day registration for federal elections after 12 p.m. SUMF ¶¶ 22,

45. In many parts of Montana, this will effectively eliminate election day registration altogether, since the polls do not open until noon. SUMF ¶ 59 ("In 2024, 101 of Montana's 729 precincts did not open until noon, and five Montana counties had *no* polling places open until noon."). SB 490 also requires that Montanans be permitted to register "late" on the Saturday prior to the election, which many Montana counties offered already. SUMF ¶¶ 60–61. Because SB 490 is limited to federal elections, SUMF ¶ 24, it creates a new, bifurcated registration system in Montana: Those who register before noon on election day may vote in all elections on the ballot, while those who register after noon on election day will be permitted to vote only in federal elections. SUMF ¶ 25.

SB 490 was sponsored by Senator Mike Cuffe, who had championed HB 176, the Legislature's previous effort to limit election day registration. SUMF ¶¶ 26–27. Senator Cuffe and other proponents acknowledged that SB 490 was drafted in response to the Montana Supreme Court's decision invalidating HB 176. SUMF ¶¶ 29–33. After admitting his last effort was "shot down" in *MDP*, Senator Cuffe explained that, with SB 490, he hoped to "get this resolved" before he retired. SUMF ¶ 31. Another legislator put it plainly: "We're trying to work around the court's decision." SUMF ¶ 33.

Like HB 176 before it, SB 490 faced substantial opposition during legislative hearings. SUMF ¶¶ 13, 36–42. Members of the public warned that SB 490 would prevent Montanans from voting—and would particularly impact Montanans from disadvantaged groups, like Native Americans. SUMF ¶¶ 39–43. As a representative from Western Native Voice explained, "[T]he fact of the matter is, if this goes in place, these folks will then be denied their right to vote." SUMF ¶ 39.

Despite these concerns, the Legislature passed SB 490 on April 25, 2025. SUMF ¶ 44. On May 5, 2025, the Governor signed it into law. SUMF ¶ 45. One week later, on May 12, 2025,

Plaintiff Montana Federation of Public Employees ("MFPE") filed this lawsuit, alleging that SB 490 violates the right to suffrage, for the same reasons the Montana Supreme Court had recently articulated in *MDP*. *See* Compl. (May 12, 2025).

In the course of discovery, Plaintiff asked Defendants to identify any changes to the procedures governing election day registration, the practical circumstances surrounding it, or its consequences since September 30, 2022, when *MDP* was tried. SUMF ¶ 54. Defendants identified none. SUMF ¶ 54. Defendants also admitted that—contrary to the representations by the Secretary's office during legislative hearings—administering SB 490 will require counties to create separate ballots for state and federal elections, then decide which to distribute and collect based on the time of day. SUMF ¶ 86.

Plaintiff now moves for summary judgment against SB 490 or, in the alternative, a preliminary injunction of the Legislature's latest attempt to restrict election day registration.

LEGAL STANDARD

"Summary judgment is appropriate when there are no genuine issues of material fact." *Brishka v. Dep't of Transp.*, 2021 MT 129, ¶ 9, 404 Mont. 228, 487 P.3d 771. "Once the party moving for summary judgment meets its burden of establishing an absence of genuine issues of material fact, the opposing party must present substantial evidence to raise a genuine issue of material fact," *i.e.*, "more than 'speculative, fanciful, or conclusory statements.'" *BNSF Ry. Co. v. Eddy*, 2020 MT 59, ¶ 7, 399 Mont. 180, 459 P.3d 857. If no genuine issue of fact exists, the Court determines "whether the moving party is entitled to judgment as a matter of law." *Buckley v. W. Mont. Cmty. Mental Health Ctr.*, 2021 MT 82, ¶ 12, 403 Mont. 524, 485 P.3d 1211.

Montana courts regularly resolve constitutional challenges to election statutes on summary judgment. *Montana Democratic Party v. Jacobsen*, No. DV 21-0451 (Mont. 13th Jud. Dist. Ct. 2022); *McDonald v. Jacobsen*, No. DV-21-120 (Mont 2nd Jud. Dist. Ct. 2022). Whether a

"challenged statutory provision substantially interferes with a fundamental right, facially or as applied, is a question of law." *Clark Fork Coal. v. Mont. Dep't of Nat. Res. & Conservation*, 2021 MT 44, ¶ 48, 403 Mont. 225, 481 P.3d 198 (emphasis added); s*ee also Comm'r of Pol. Pracs. ex rel. Mangan v. Wittich*, 2017 MT 210, ¶ 71, 388 Mont. 347, 400 P.3d 735; *State v. Hamilton*, 2018 MT 253, ¶ 22, 393 Mont. 102, 428 P.3d 849 (explaining that the constitutionality of statute "is a question of law that may be resolved before trial"). Likewise, whether an asserted government interest is constitutionally compelling and whether a challenged statute is narrowly tailored to further that interest are questions of law. *See State v. Pastos*, 269 Mont. 43, 47, 887 P.2d 199, 202 (1994); *Wadsworth v. State*, 275 Mont. 287, 295–98, 911 P.2d 1165, 1170–71 (1996).

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(1), MCA.

ARGUMENT

In *Montana Democratic Party v. Jacobsen* ("*MDP*"), the Montana Supreme Court held that the Legislature's decision to eliminate election day registration violated the right to suffrage protected by the Montana Constitution. *MDP*, ¶¶ 63–85. That decision controls here. Like the law in *MDP*, SB 490 will disenfranchise Montanans who rely on election day registration to vote, and the Secretary offers no plausible justification for it.

I. The Montana Supreme Court has already decided this issue.

In *MDP*, the Montana Supreme Court concluded that HB 176, which ended election day registration "for all but a select category of people," violated the right to suffrage under the Montana Constitution. *MDP*, ¶¶ 6, 63. SB 490 is squarely within the scope of *MDP*'s holding, and

MDP's legal and factual considerations apply with equal force here. The Secretary identifies no factual or legal development that would distinguish this case from the one the Supreme Court decided just a year ago.

The *MDP* Court first determined what standard applies to alleged violations of the Montana Constitution's right to vote. Although the Secretary urged the Court to adopt the federal *Anderson-Burdick* framework—a balancing test that weighs the burden on the right against the state's justifications for it—the Montana Supreme Court rejected this standard, concluding that it too "often gives undue deference to state legislatures." *MDP*, ¶ 15; *see id.*, ¶¶ 16–33. The Montana Constitution's "explicit constitutional guarantee of the right to vote" is more protective than the federal right. *Id.*, ¶ 33. To meaningfully protect that guarantee, the Court held that Montana must use a framework grounded in its own Constitution, not the federal one. *Id.*

Under that state constitutional framework, any law that prevents eligible Montanans from voting "impermissibly interferes" with the right to vote and must survive strict scrutiny—that is, it must be "the least onerous path to a compelling state interest." *Id.*, ¶¶ 34, 70. Lesser burdens trigger "middle-tier analysis," which "balances the rights infringed and the government interest served by the infringement." *Id.*, ¶ 36.

At the first step in this analysis, the Court concluded, based on record evidence, that restricting election day registration would disenfranchise Montanans who rely on it, triggering strict scrutiny. *Id.*, ¶ 70. As for the State's asserted interests—reducing administrative burdens and ensuring election integrity—the Court found them unsupported by the record. There was no evidence that restricting election day registration to a small subset of voters would further these interests at all, much less that the Legislature had chosen the "least onerous path" to advancing them. *Id*., ¶¶ 76–84.

MDP's legal conclusions and the factual findings on which they were based are not subject to relitigation before this Court. The doctrine of collateral estoppel, or issue preclusion, "bars litigants from reopening" an identical factual or legal issue "that was litigated and determined in a prior suit." *Brishka v. Dep't of Transp.*, 2021 MT 129, ¶ 11, 404 Mont. 228, 487 P.3d 771. Specifically, collateral estoppel applies when (1) "an identical issue raised was previously decided in a prior adjudication"; (2) "a final judgment on the merits was issued" in the earlier case; (3) "the party against whom collateral estoppel is asserted was a party . . . in the prior adjudication"; and (4) "the party against whom issue preclusion is asserted was afforded a full and fair opportunity to litigate any issue that may be barred." *Id. MDP* was a final adjudication against the same Defendant, decided after a nine-day trial on the merits. SUMF ¶¶ 18–22. Accordingly, the *MDP* Court's determinations on "identical" issues, such as the governing legal framework or the impact of election day registration up until that case was tried, cannot be relitigated now. *See Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267 (explaining that the collateral estoppel doctrine is designed to "prevent parties from incessantly waging piecemeal, collateral attacks against judgments"). The limited issue before this Court is thus whether any differences between SB 490 and HB 176 or changes in circumstances since *MDP* was tried support a different legal conclusion. As described below, they do not.

II. SB 490 violates the right to suffrage.

The Legislature's latest restriction on election day registration is no less illegal than the one that preceded it. No material facts have changed in the few short years since the *MDP* trial in May 2022. Nor do the differences between HB 176 and SB 490 justify different conclusions. The Court's determinations in *MDP* apply to SB 490 with equal force.

A. SB 490 impermissibly interferes with the right to vote.

To assess the constitutionality of voting restrictions, Montana courts "examin[e] the degree to which the law infringes upon [the right to vote]." *MDP*, ¶ 34. When a law prevents Montanans from voting—whether by the law's terms or for practical reasons—or "interferes with certain subgroups' right to vote," the law "impermissibly interferes with the right" and is subject to strict scrutiny. *Id.* ¶¶ 34, 69–70, 74. SB 490 does both.

The Montana Supreme Court has already found that severely restricting election day registration disenfranchises Montanans. The same reasoning holds for SB 490's restriction of election day registration to a handful of hours. Today—just like when *MDP* was decided—tens of thousands of Montanans rely on election day registration to vote. *See MDP*, ¶ 70 ("[M]ore than 70,000 Montanans have utilized election day registration to vote since 2005"); SUMF ¶¶ 7–8 (same expert attesting that, in addition to those 70,000, another 13,816 voters used election day registration in 2022 and 2024). In fact, the number of people relying on election day registration has only grown since *MDP* was decided at trial, increasing from approximately 8,100 registrants in the 2020 election to 10,200 in 2024—an increase of over 25 percent. SUMF ¶ 8.

For many of these Montanans, election day registration is the only practical option for them to be able to exercise their right to vote. "[M]any people cannot take work off to register and then again to vote." *MDP*, ¶ 71; *see* SUMF ¶¶ 46–47. "[E]lection offices are open late on election day, allowing some who are not able to take off work during regular business hours to register and

vote." *MDP*, ¶ 71; *see* SUMF ¶¶ 55–56. And some people "who thought they were registered do not recognize there is a problem until they show up to vote on election day." *MDP*, ¶ 71; *see* SUMF ¶ 62. As the Court concluded in *MDP*, "these people will be disenfranchised without the 'final safeguard' of election day registration." *MDP*, ¶ 71; *see* SUMF ¶ 62.

Banning election day registration after noon will likewise disenfranchise Montanans who cannot get to the polls before then. People who can only register and vote when the polls are "open late on election day" will not be able to register and vote at all. *MDP*, ¶ 71; *see* SUMF ¶¶ 56–58; Ex. 1, Graybill Decl., Ex. D, Mar. 26, 2025 Hr'g at 41 (citizen stating, in opposition to SB 490, that election day registration is "a lifeline for folks who work nine to five"). Nor will the many people who rely on election day registration but live in parts of Montana where the polls do not even *open* until noon—after the new registration cutoff. *See* SUMF ¶ 59; Ex. 2, Mayer Decl. (Jan. 21, 2026), ¶¶ 43–44 (citing data showing that in 2024, 101 of Montana's 729 precincts did not open until noon, and five Montana counties had *no* polling places open before noon). And those who arrive after noon on election day only to discover that they need to re-register will have no recourse whatsoever. *See* SUMF ¶¶ 62–66; *see also MDP*, ¶ 64 n.11 (explaining that "[e]lection day registration is a failsafe" for voters who have registration issues, which "may occur on election day due to our sometimes-confusing labyrinth of election laws"). For all of these categories of Montana voters, SB 490 imposes the same burdens on the right to vote as HB 176.

Moreover, like the law at issue in *MDP*, eliminating election day registration after noon "will disproportionately affect . . . first-time voters and Native Americans." *MDP*, ¶ 73. Since both groups heavily rely on election day registration, substantially restricting availability of election day registration will have the same exclusionary effects as eliminating it altogether, suppressing these groups' right to vote. Many young and first-time voters rely on election day registration to

vote because they move more frequently than other voters and are more likely to need to register for the first time, SUMF ¶¶ 76–77; *see MDP*, ¶ 73 (noting that voters who registered on election day were disproportionately young). Likewise, Native Americans heavily "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." *MDP*, ¶ 73; SUMF ¶¶ 74–75; *see also* SUMF ¶¶ 42–43 (representative of Native American tribes testifying a "very large number of Native Americans utilize same day voter registration," so SB 490 would "disproportionately impact" them). When election day registration is unavailable, "these barriers cannot be overcome, or become too costly to overcome, and thus disenfranchise these voters." *MDP*, ¶ 73; SUMF ¶ 74.

B. SB 490 fails strict scrutiny.

Because SB 490 "will disenfranchise many voters," it is subject to strict scrutiny. *MDP*, ¶ 74. Under that framework, the State's burden is to "show that the law is the least onerous path to a compelling state interest." *Id.*, ¶ 75 (citing *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1165). To satisfy this burden, the Secretary offers the same justifications that the Court found lacking in *MDP*—and they fare no better this time. To the contrary, SB 490 imposes a suite of new administrative burdens on Montana's election administration that render it even worse than the law struck down in *MDP*.

First, the Secretary insists that SB 490 serves its interest in reducing administrative burdens on elections officials. SUMF ¶ 78; *see MDP*, ¶ 75. As an initial matter, Montana courts have never held that reducing administrative burdens is a "compelling" interest that can satisfy strict scrutiny. *MDP*, ¶ 76. Regardless, SB 490 will make election administration harder, not easier. *See* SUMF ¶¶ 79–97. To start, it will force counties to print and administer two ballots instead of one. Before SB 490, county officials printed a single ballot that included both federal and state elections.

SUMF ¶ 85. And during the legislative hearing on SB 490, a representative of the Secretary's office assured legislators that this would not need to change. Ex. D, Mar. 26, 2025 Hr'g at 19 ("I've also heard another concern I want to address in advance . . . [that] because it's specific to federal elections, that would mean there would be two separate ballots. This will all be on one ballot."). In response to discovery requests, however, the Secretary now admits that county officials *will* indeed have to print two separate ballots—one for state elections and one for federal elections—in order to administer SB 490. SUMF ¶ 86 (Secretary attesting, "County officials will not deliver a federal ballot to anyone registering after noon on election day. They will, however, hand the voter a state election ballot.").

SB 490's new dual system will also require detailed choreography on election day—and addressing voters' inevitable confusion. Elections officials will need to closely monitor the time and then offer *only* the ballot for state elections to anyone who registers after 12 p.m. SUMF ¶ 96. And since SB 490 provides that a person can register on election day only if an elections official "receives *and verifies*" their registration "prior to noon," officials will have to turn away any number of people who endeavored to comply with the noon cutoff, including those who arrive at the polls before noon but whose registrations are not received and verified until noon or later. SUMF ¶ 99. Compounding these issues, county administrators attest that they have not received any guidance from the Secretary about how to implement this new bifurcated system. SUMF ¶ 98. By forcing officials to administer two sets of complicated rules without meaningful guidance—all while compressing a whole day's worth of registrants into the morning hours—SB 490 will generate confusion and longer lines. SUMF ¶¶ 99, 112–13. And those longer lines could in turn disenfranchise more voters who—due to no fault of their own—cannot have their applications submitted and verified by the noon cut off. A state interest in reducing administrative burdens

cannot justify a law that multiplies them. *See MDP*, ¶ 77; *see also 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).

Even setting aside the complications SB 490 introduces, nothing in the record suggests that moving the cut-off for registration actually mitigates election workers' burdens. As the court concluded in *MDP*, rolling back the registration deadline does not reduce the work—it merely shifts it. *See* SUMF ¶ 80; *MDP*, ¶¶ 77–79. If all election day registrants arrived at the polls in the morning hours, counties would still need the same total number of election worker hours to process those applications. As the Court explained in *MDP*, "regardless of when registration ends, election workers still have the same amount of work. . . . The only thing that changes is when they do this work." ¶ 77. Nor will elections officials be freed from election day registration duties at noon. Under SB 490, people may continue to register throughout Election Day—the only difference is whether they are permitted to vote in all elections or disenfranchised from federal elections. Ultimately, "eliminating election day registration" after 12 p.m. "decreases election administrators' work only if voters are disenfranchised." *MDP*, ¶ 79; SUMF ¶ 81. That is not a constitutionally acceptable tradeoff.

Even if SB 490 did reduce administrative burdens for elections workers, it would still fail strict scrutiny because the Legislature ignored obvious, less onerous alternatives. *MDP*, ¶ 75; SUMF ¶¶ 115–19. As the Court in *MDP* emphasized, there are several straightforward options for decreasing administrative burdens, including "better training, better equipment, streamlined protocols, and more election workers." *MDP*, ¶ 79; SUMF ¶ 116. And despite legislators' professed concern about election worker fatigue and resulting errors, the Legislature *rejected* a bill endorsed by election administrators to address that very issue. SUMF ¶ 119; *see* Ex. 1, Graybill

Decl., Ex. P, HB 187 Status Report (Legislature rejecting HB 187 which would have allowed election workers to pause tabulation with the permission of the Secretary to alleviate exhaustion during the counting process).

The Secretary's second justification—preserving election integrity and voter confidence—also cannot save SB 490 from invalidation. Election day registration, which has been available to Montana voters for twenty years, has not resulted in any documented instances of voter fraud. SUMF ¶¶ 122–24. And while SB 490's proponents in the Legislature insisted that it would increase voter confidence by allowing for shorter lines and faster tabulation of election results, these bald assertions are unsupported by any evidence. SUMF ¶ 124; *accord MDP* ¶¶ 81–84 (finding no evidence that election day registration caused any delay in tabulating votes).

If anything, SB 490 is far more likely to erode voter confidence than bolster it. SUMF ¶ 100. It will force voters who register after noon to accept a partial ballot—one that lets them vote for state offices but bars them from voting in federal contests. SUMF ¶ 25. The restricted hours for election day registration will inevitably lead to longer lines in the morning on election day. SUMF ¶ 112. Some people in those lines will likely leave without voting so they can get to work, losing their chance to register and vote. Others may get in line well before noon but remain waiting when the 12 p.m. cut-off arrives. And still others may even *submit* their registration applications before noon but be refused a federal ballot because their applications had not yet been "verified." SUMF ¶ 99. Elections officials must then explain to these voters that they are permitted to vote for some offices, but not others. The State cannot increase voter confidence by imposing such an unprecedentedly complicated voting process.

Finally, the State contends that SB 490 will allow *more* people to vote by replacing the bulk of election-day registration with additional late-registration hours on the Saturday before the

election. But many Montana counties (including Missoula, its third most populous) already offer this option, meaning SB 490's elimination of election day hours will result in a net loss of available registration hours overall. SUMF ¶¶ 41, 60. And regardless, while Montanans would surely benefit from any additional opportunities to register, *no* evidence suggests that allowing Saturday registration could fill the gap truncating election-day registration would cause. Indeed, the record proves the opposite. In *MDP*, the Court found that "late" registration prior to election day was no substitute for election day registration, observing that "the number of people registering on election day alone is nearly equal to the number of people who register in the 29 days leading up to election day combined." *MDP*, ¶ 71. This has not changed; in 2024, more than eight times as many Montanans registered on election day as compared to the average pre-election registration day. SUMF ¶ 71. And many Montanans, including members of Plaintiff MFPE, work on Saturdays and would still need to take off work twice to register and vote. SUMF ¶ 131–33. A law that purports to expand voting access by disenfranchising thousands does not pass constitutional muster. *See supra* Section I.B.

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In sum, the Montana Supreme Court has already held that taking away election day registration violates the right to suffrage. Nothing material has changed since then. SB 490 imposes the same burdens for the same discredited reasons. The Constitution does not bend to legislative persistence. SB 490 violates the law, and this Court should grant summary judgment and enjoin it.

III. In the alternative, this Court should grant a preliminary injunction.

If this Court declines to enter summary judgment, it should grant a preliminary injunction to prevent SB 490 from harming Plaintiff and disenfranchising the Montanans that Plaintiff serves in the upcoming 2026 primary and general elections. All four preliminary injunction factors favor relief. Section 27-19-201(1), MCA.

First, for the reasons detailed above, Plaintiff is likely to succeed on the merits. *See supra* Sections I-II. Second, absent an injunction, Plaintiff will suffer irreparable harm. Many of Plaintiff's members rely on election day registration to vote, particularly in the afternoon and evenings, since they typically work during normal business hours. Without it, these members will be disenfranchised. SUMF ¶¶ 128–29, 132–33. 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 Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 32, 410 Mont. 114, 518 P.3d 58 (finding "irreparable injury through the loss of a constitutional right to vote"). Plaintiff will also suffer irreparable injury to its own organizational interest in helping its members vote, since SB 490 directly impedes its ability to turn out the vote among its membership. SUMF ¶¶ 135–41.

The final two factors—the balance of harms and the public interest—also support a preliminary injunction. Absent an injunction, Plaintiff and its members face irreparable harm and the deprivation of constitutional rights. Granting an injunction, by contrast, will merely maintain the status quo that elections officials have implemented and Montana voters have come to rely upon since 2005—and prevent Defendants from enforcing an unconstitutional statute. *See Keene v. City & County of S.F.*, No. 24-1574, 2025 WL 341831, at *3 (9th Cir. Jan. 30, 2025) ("[T]he equitable purpose of a preliminary injunction is to preserve the 'status quo ante litem,'" meaning "the last uncontested status which preceded the pending controversy" (citations omitted)); *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).

Most importantly, the 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." (citation modified)). The likelihood of disenfranchisement is not just a hypothetical for MFPE's members and other Montana voters. After HB 176 was passed but before it was enjoined, Montana voters—including MFPE's members—were unable to cast their ballots because election day registration was unavailable; that is, they were *actually disenfranchised*. *MDP*, ¶ 72; SUMF ¶ 50. A preliminary injunction would prevent SB 490 from similarly excluding Montanans from the franchise while this case is pending.

CONCLUSION

For the reasons set forth above, Plaintiff's Partial Motion for Summary Judgment should be granted. In the alternative, this Court should grant a preliminary injunction against SB 490 during the pendency of this case.

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Respectfully submitted,

By: */s/ Raph Graybill*

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