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DEPUTY

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY**

Montana Youth Action; Forward  
Montana Foundation; and Montana  
Public Interest Research Group,

*Plaintiffs,*

vs.

CHRISTI JACOBSEN, in her official  
capacity as Montana Secretary of  
State,

*Defendant.*

Cause No.:

DV 21-1097

*Ashley Harada*

**COMPLAINT**

**INTRODUCTION**

1. In the years since 2014, Montana voters aged 18 to 29 have cast ballots at record-breaking levels. In 2014, only 18% of this age group voted. Four years later, that percentage more than doubled: 42% of young Montanans voted in 2018, making Montana the national leader in growing its share of young people voting. In 2020, the proportion was even greater: 56% of young Montanans voted. That is, in 2020, nearly a fifth of all votes cast in Montana were cast by people aged 18 to 29.

2. This extraordinary increase in civic engagement among young Montanans is no accident. While structural barriers often stand in the way of

young voters, Plaintiff youth civic organizations Forward Montana Foundation and Montana Public Interest Research Group (MontPIRG) have made it their mission to bring young people's political values and concerns to the fore and to facilitate greater and greater youth voter turnout. And, since 2019, Plaintiff Montana Youth Action has added the organizing and educating energy of middle and high school students to the mix, dedicating itself to promoting political understanding, advocating for progress, and providing youth with opportunities for civic engagement.

3. Oblivious to these efforts—or worse, in response to them—during the 2021 legislative session, the Montana legislature passed a cocktail of voter suppression measures that land heavily on the young.

4. But the Montana Constitution guarantees suffrage as a fundamental right, and the legislature cannot infringe on that right without a compelling state interest. The laws at issue here were passed for no reason other than the professed bogeyman of voter fraud, for which legislators did not and could not produce evidence. Indeed, bill sponsors could not identify any benefits of their bills that would justify the adverse impact they will have—together and separately—on the ability of Montana youth to remain active and engaged participants in democracy.

5. Among other measures, the 2021 legislature changed voter identification requirements, limiting the use of student ID in Senate Bill 169 (SB169), prohibited ballot distribution to individuals who will but do not yet meet age- and residency-based voter registration criteria in House Bill 506, Section 2

(HB506), and eliminating election day registration in House Bill 176 (HB176). Each of these laws unconstitutionally burdens Montanans' fundamental right to vote, both subverting the will of Montana voters and upending norms that Montana voters have come to rely on—for no reason, let alone a compelling one.

6. Plaintiffs bring this complaint for declaratory and injunctive relief to challenge the constitutionality of SB169, HB506, and HB176. None of these laws accomplish a compelling state interest and each violates the Montana Constitution.

### **JURISDICTION & VENUE**

7. This Court has original jurisdiction pursuant to the Montana Constitution, Article VII, Section 4, and to § 3-5-302(1)(b), MCA.

8. The Court may grant declaratory relief under §§ 27-8-201, and -202, MCA, and injunctive relief pursuant to § 27-19-101, MCA, *et seq.*

9. Venue is proper under § 25-2-126(1), MCA, because Plaintiff Montana Youth Action operates a chapter in Yellowstone County and Forward Montana Foundation employs year-round staff in Yellowstone County. § 25-2-126(1), MCA.

### **PARTIES**

10. Montana Youth Action is the largest nonpartisan, student-run nonprofit organization in Montana. Founded in 2019 on the belief that a more equitable future for Montana is possible and that the advocacy of middle and high school students in each successive generation is essential to getting the future right, Montana Youth Action's purpose is to promote political understanding, advocate for progress, and provide opportunities for civic engagement among young Montanans.

The organizational mission is to empower youth in Big Sky Country to make a difference through politics, civics, and service to communities in Montana. Montana Youth Action is made up of student chapters across the state, each of which functions locally to put on events, including partnering to fundraise for local, state, and national causes and organizing voter registrations drives for high school students turning 18. Montana Youth Action also developed and runs a legislative fellowship in Helena, where fellows attend workshops and meetings during the legislative session to learn about how state government operates. Montana Youth Action places special emphasis on voter registration, making sure that voter registration is available at every event it hosts. And Montana Youth Action has held events with elected officials to discuss how better access to the ballot box can be accomplished, motivated by the understanding that voter suppression is a real issue that requires advocacy and engagement. Montana Youth Action's members are middle and high school students who prioritize participating in civic life. They are preparing to become active voters when they become eligible.

11. Montana Youth Action plans to continue to engage in the activities described herein, particularly in voter registration efforts, including high school registration events, phone banking to get out the vote, and making registration available at every event its conducts. Montana Youth Action specifically plans to register new voters in advance of elections occurring in 2021, 2022, and beyond.

12. HB506 causes Montana Youth Action members particular harm by making it more difficult for people who are turning 18 in the month before election

day to receive and review their ballots. Many Montana Youth Action members have an interest in being able to vote absentee whether because they plan to move away for college—out of state or to another precinct in Montana—or because they can predict that Election Day will be a hectic time in their lives. For some members, HB506 makes voting absentee literally impossible.

13. SB169 also harms Montana Youth Action members, who do not uniformly plan to have driver's licenses or other forms of standalone ID that SB169 permits. Instead, some Montana Youth Action members hope and intend to rely on MUS-issued student ID to register to vote and to prove their identity when voting in-person. Montana Youth Action members also have an interest in maintaining the availability of student ID as a standalone form of voter ID because it is less burdensome than the combination forms of ID that SB169 now requires.

14. Finally, in eliminating election day registration, HB176 harms Montana Youth Action members who have invested significant time and energy in registering young people in Montana to vote and in educating other youth about how to vote in Montana. While most Montana Youth Action members are themselves aware that HB176 eliminates election day registration, they have a vested interest in preserving the availability of election day voting for young people their organization has been unable to reach and assist with registration. Montana Youth Action is aware that low-income youth may be especially affected by a lack of information about registering to vote. Members are also concerned that their registration could be affected by mistakes in the transmission of voter registration

information from, for example, the Montana Motor Vehicle Division to the Montana Secretary of State. Should an oversight occur, Montana Youth Action members may arrive to vote in person on election day only to discover that, through no fault of their own, their registration has not been properly recorded and that, unable to register to vote on election day, they cannot vote at all. Similarly, members know that as they transition to adulthood, they will enter a phase of life in which they move and travel frequently, making it more difficult to maintain voter registration and increasing their need for and reliance on election day registration.

15. Forward Montana Foundation is a nonpartisan, not-for-profit organization headquartered in Missoula, MT. Forward Montana Foundation is dedicated to educating, engaging, and organizing young Montanans to shape their democracy to improve their lives and the lives of their fellow Montanans. Forward Montana Foundation was established by a group of passionate students at the University of Montana who found there were too many barriers to getting young people involved in civic life in Montana. The organization received 501(c)(3) charitable status in 2011. Its first advocacy projects focused on recycling, renewable energy, sexual assault, and tenant rights at the university and the local level. Since then, Forward Montana Foundation has grown into the largest youth civic engagement organization in Montana, with year-round staff in Kalispell, Billings, Bozeman, and Missoula. At the heart of Forward Montana Foundation's work is empowering young Montanans to exercise their civic rights through voting. As a result, Forward Montana Foundation dedicates itself in significant part to

voter registration and “get out the vote” efforts.

16. Forward Montana Foundation runs the largest third-party voter registration program in the state. Since 2011, the organization has registered over 45,000 voters. The majority of these voters are from the “New American Majority” (young voters, unmarried women, and people of color). The organization has mobilized hundreds of thousands of voters through direct phone calls, text messages, social media posts and ads, and other forms of engagement.

17. Forward Montana Foundation faces harm under SB169, HB506, and HB176 because all three laws will require Forward Montana Foundation to expend significant resources in developing new voter education materials, engaging in campaigns to reeducate young voters with whom they’ve engaged previously, and conducting expanded get out the vote efforts.

18. The Montana Public Interest Research Group (“MontPIRG”) is a student directed and funded nonpartisan organization dedicated to effecting tangible, positive change through educating and empowering the next generation of civic leaders. For 40 years, MontPIRG has been registering young voters, giving them the tools to have their voices heard, and working to eliminate the barriers between young people and their constitutional right to vote. MontPIRG is committed to organizing to ensure that every young person has their voice heard on election day. In 2016, MontPIRG knocked over 23,000 doors, registered over 3,500 voters, distributed 3,000 voter guides, and made over 10,000 calls to voters for its Youth 12K campaign. Their efforts resulted in an increase in voter turnout among

youth voters in Missoula County to increase by 7.4%, so that youth voters ultimately cast 19.2% of all votes in Missoula County. Despite the global pandemic, MontPIRG continued its tradition of empowering young voters in 2020 by registering 5,612 voters across Montana. MontPIRG volunteers and interns also made 73,323 “get out the vote” calls and collected 1,103 “Why I Am Voting Pledges” from students at the University of Montana in Missoula and Montana State University in Bozeman.

19. MontPIRG faces harm under SB169, HB506, and HB176 because all three laws will require MontPIRG to expend significant resources in developing new voter education materials, engaging in campaigns to reeducate young voters with whom they’ve engaged previously, and conducting expanded get out the vote efforts.

20. Defendant Christi Jacobsen is the Montana Secretary of State and is named as the Defendant in this lawsuit in her official capacity. As Secretary of State, she is the chief election officer of this state, and it is her responsibility to oversee the administration of election laws and voter registration in Montana. *See* §§ 13-1-201 and -202, MCA. As a result, Secretary Jacobsen will oversee the implementation and enforcement of all three of the bills challenged in this lawsuit.

21. Secretary Jacobsen was also directly involved in the passage of these three of bills. Her office prioritized both SB169 and HB176 and Secretary Jacobsen testified in person as a proponent of SB169 before the Senate State Administration Committee on February 3, 2021, and as a bill proponent of HB176 before the House State Administration Committee on January 21, 2021. Her office also requested



HB506 and sent Elections Director Dana Corson to testify as a bill proponent before the House State Administration Committee on February 24, 2021.

### **COMMON FACTUAL ALLEGATIONS**

#### **Constitutional Framework of Fundamental Rights**

22. The Montana Constitution is a modern document drafted to “stand on its own footing and . . . to provide individuals with fundamental rights and protections far broader than those available through the federal system” and meant “to meet the changing circumstances of contemporary life.” *Dorwart v. Caraway*, 2002 MT 240, ¶ 94, 312 Mont. 1, 58 P.3d 128 (Nelson, J., concurring) (quoting Dahood, Amicus Br.; Mont. Const. Conv., II Verbatim Trans., *Bill of Rights Comm. Proposal*, at 619 (Feb. 22, 1972)).

23. Popular sovereignty—the principle that government may not exercise any power not granted to it by the people—stands at the center of Montana’s system of government. The Montana Constitution’s Declaration of Fundamental Rights begins with popular sovereignty. It provides,

All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Mont. Const., art. II, § 1.

24. Its corollary, the fundamental right of self-government, is next, stating,

The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Mont. Const., Art. II, § 2.

25. These principles form the foundation on which the Montana Constitution organizes Montanans' fundamental rights. Popular sovereignty and self-government appear first because they come first. Mont. Const., Art. II.

26. Voting manifests these bedrock principles. The people of a republic consent to be governed by participating directly in selecting leaders to head government, who in turn exercise the people's delegated power. The right of suffrage and the act of voting are the real-world embodiment of popular sovereignty and self-government.

27. Naturally, the Montana Constitution includes the right of suffrage among its enumerated fundamental rights:

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. II, § 13; *see Kloss v. Edward D. Jones & Co.*, 54 P.3d 1, 2002 MT 129, ¶ 52 ("The rights included within this 'Declaration of Rights' are 'fundamental rights.'").

28. The Montana Constitution also contemplates election day registration in its text, expressly permitting the legislature to "provide for a system of poll booth registration." Mont. Const., art. IV, § 3.

29. All fundamental rights set forth in the Montana Constitution expressly apply to children as well as to adults:

The rights of persons under 18 years of age shall include, but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Mont. Const., art. II, § 15; see *Matter of S.L.M.*, 287 Mont. 23, 35, 951 P.2d 1365 (Mont. 1997) (“[I]f the legislature seeks to carve exceptions to this guarantee, it must not only show a compelling state interest but must show that the exception is designed to enhance the rights of minors.”).

30. While the Montana legislature is not required to enact every policy that might increase access to the franchise or make voting easier, the Montana Constitution nonetheless guards against policies that burden established access to the franchise or that needlessly make voting more difficult. See *Driscoll v. Stapleton*, 2020 MT 247, ¶ 24, 401 Mont. 405, 473 P.3d 386 (“District Court did not err in finding prima facie evidence that BIPA [Ballot Interference Protection Act] may unconstitutionally burden the right of suffrage . . . or in concluding that the Secretary did not demonstrate an interest that weighed more heavily than the burdens [Plaintiffs] assert.”).

31. In assessing state actions that infringe on Montanans’ fundamental rights, Montana courts employ a framework of tiered scrutiny. See, e.g., *Driscoll*, ¶ 18 (“Under strict scrutiny, statutes will be found unconstitutional ‘unless the State can demonstrate that such laws are necessary to promote a compelling governmental interest.’”) (quoting *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 15, 314 Mont. 314, 65 P.3d 576); *Gulbrandson v. Carey*, 272 Mont. 494, 901 P.2d 573, 579 (1995) (“The most stringent standard, strict scrutiny, is imposed when the action complained of interferes with the exercise of a fundamental right or discriminates against a suspect class.”).

32. The rights of suffrage, popular sovereignty, and self-government are each fundamental rights. When any of these are infringed, courts apply strict scrutiny, and the state may not abridge these rights without a compelling interest.

### **Voting in Montana Is Secure**

33. Montana's preexisting voter identification laws, the ability to issue ballots to voters who comply with registration requirements before election day, and election day registration have not only made voting in Montana vastly more accessible—especially to youth—but have also contributed to Montana's continued success in administering secure elections. *See Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 822 (D. Mont. 2020) (“[T]here is no record of election fraud in Montana's recent history.”).

34. Voting in Montana is secure. To begin, registering to vote has historically required providing proof of identity or residence using documentation specified in §§ 13-2-110(3)–(4), MCA. Where election officials could not immediately verify someone's identity or residence, they provisionally register the individual under Montana Administrative Rule 44.3.2011, pending verification of the documentation provided. Montana Administrative Rule 44.3.2012 provides that election administrators shall “work in conjunction with the office of the Secretary of State, the Department of Justice's Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of the information provided.” Incomplete or incorrect registration applications are marked as “pending - incomplete” in Montana's “statewide voter

registration system until the required information is provided.” Mont. Admin. R. 44.3.2005. Individuals are only considered legally registered to vote when “the information provided. . . is sufficient to be accepted and processed and verified” pursuant to applicable law. § 13-2-110(5)(a), MCA.

35. In addition, election officials carefully maintain the lists of active and inactive voter registrations and will do so even more frequently pursuant to the recently enacted Senate Bill 170, which requires annual voter registration list maintenance. § 13-2-220(1), MCA.

36. Regular registration ends 30 days before an election. § 13-2-301(1)(a), MCA. Late registration may only occur in person, usually at the county election office. *See* Mont. Admin. R. 44.3.2015(1)(a).

37. Since 2005 until the passage of HB176 this year, late registration ended at the close of the election. Late registration now ends at noon on the day before the election. § 13-2-304(1)(b), MCA.

38. Election officials issue an absentee ballot directly to voters who register during late registration period. Mont. Admin. R. 44.3.2015(2). These ballots are subject to a signature verification process when returned. § 13-13-241(1)(a), MCA. Finally, election officials may ensure any ballot’s validity by following the procedure set forth in § 13-13-245, MCA, and any registered voter may challenge the legitimacy of any other voter’s right to vote under § 13-13-301, MCA.

39. Testifying in response to questions about HB176, informational witness Regina Plettenberg, Clerk and Recorder of Ravalli County and the

President of the Montana Association of Clerk and Recorders explained in detail how the Montana Votes system works to ensure that those registering to vote during the late registration period are not able to vote more than one ballot. House State Admin. Hrg. Video at 9:42:26.

40. The rules and procedures existing before the passage of SB169, HB506, and HB176 have ensured secure elections in Montana for time immemorial. There is no evidence of a single instance of fraud or genuine administrative problems resulting from the administration of elections in Montana under prior law. *See Driscoll*, ¶ 22 (noting that the Secretary of State “did not present evidence . . . of voter fraud or ballot coercion, generally or as related to ballot-collection efforts, occurring in Montana”). Unnecessary changes to the laws regulating elections are likely to cause confusion, to decrease voter turnout, and to lead voters and election officials to make mistakes, causing real problems without fixing the imaginary ones that the legislature professed to set out to solve.

#### **A Cocktail of Burdensome Voting Laws Reduces Youth Turnout**

41. Voter suppression laws burden young voters more than older populations. Young voters have less well-developed voting habits, less experience voting, and certain burdens—including varying registration requirements, deadlines, and acceptable forms of identification—have been shown to reduce turnout among youth voters more acutely than among older voters.

42. In other words, lower rates of voting among young adults are the result of systemic barriers and issues that specifically plague and challenge young people.

43. Compounding this problem, a person's first voting experience predicts future voting behavior. By introducing new barriers and building other barriers higher, the legislature will especially affect the voting behavior of first-time voters, potentially deterring them from voting at other times in the future by making it so difficult at the beginning of their voting lives.

44. The Center for Information and Research on Civil Learning & Engagement ("CIRCLE") is a non-partisan, independent research organization focused on youth civic engagement in the United States. CIRCLE found that among registered voters age 18 to 29 who did not vote in the 2016 election, 21% cited issues with voter identification, 20% cited issues with voter registration, 19% of youth with college experience and 27% of youth without college experience cited long lines at their polling places, while 15% of youth with college experience and 32% of youth without college experience cited inconvenient hours at the polling station, as the reason why they did not cast a ballot. Alberto Medina, *Broadening Youth Voting: Barriers to Voting Chart*, CIRCLE (2021).<sup>1</sup>

45. When the legal landscape for accessing the franchise is complicated—whether because of laws changing often and arbitrarily or because of laws that restrict access and increase barriers to the franchise—young people are less likely to vote. Election day registration is a conspicuous example of this phenomenon. Youth tend to change addresses frequently and have less frequent contact with

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<sup>1</sup> Available at <https://circle.tufts.edu/our-research/broadening-youth-voting#barriers-to-voting>.

government agencies that provide voter registration services. It is therefore unsurprising that when election day registration is available, turnout among individuals aged 18 to 24 increases consistently and significantly. Grumbach & Hill, *Rock the Registration: Same Day Registration Increases Turnout of Young Voters*, The Univ. of Chicago Press Journals (Aug. 9, 2020).<sup>2</sup>

46. The key, however, is that it is the mixing and stacking of complicated voting laws that together work to reduce youth turnout. In combination with other measures like House Bill 530, which prohibits paid ballot collectors, and Senate Bill 319 (SB319),<sup>3</sup> which bans election-related speech in residential, athletic, and dining facilities on Montana University System campuses, the statutes challenged here are together an attack on young Montana voters. SB319 has already been preliminarily enjoined. *See Preliminary Inj. Or., Forward Mont. et al. v. Montana et al.*, Cause No. ADV-2021-611, at 5–6 (Mont. First Jud. Dist. Ct. July 1, 2021).

### **Voter Identification in Montana**

47. Montana law was first amended in 2003 to require that voters present

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<sup>2</sup> Available at <https://www.journals.uchicago.edu/doi/pdf/10.1086/714776>.

<sup>3</sup> When introducing the amendment governing election-related speech, the amendment sponsor stated:

I have no problem if kids vote, but I think . . . we got to quit treating . . . our university students like they're some kind of [*inaudible*] to be exploited for, you know, really activist causes. . . . If you want to go run your 'get out the vote' plan, do it . . . like we did in the old days, where you set up a booth in the student union building.

Free Conf. Comm. Hrg. on SB319, at 15:03:34 (April 27, 2021), available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/43496?agendaId=215509>.



certain forms of identification in order to cast a regular ballot. §§ 13-13-114(1)(a)–(b), MCA. Before 2003, Montana voters could vote without providing any form of identification. From 2003 until this year, the list of acceptable forms of standalone ID included “a school district or postsecondary education photo identification” as well as many other official documents—generally state-issued—reflecting a voter’s name and address.

48. Provisional ballots became part of the voting infrastructure along with ID requirements in 2003. Where a voter is unable to provide sufficient identification to prove their eligibility to vote, the voter may instead “sign the precinct register and cast a provisional ballot.” § 13-13-114(2), MCA. Individuals who cast a provisional ballot have until “the day after the election to provide valid identification or eligibility information” to ensure their vote counts. §§ 13-15-107(1), MCA.

49. When individuals provide ID that shows either their name and photo or their name and address, election officials can easily verify their identity.

50. For nearly two decades, these rules have been effective, and Montana has administered safe and secure elections. In the fall, when the Trump Campaign argued that Montana’s use of mail ballots would likely result in “widespread voter fraud,” they were unable to “point to a single instance of voter fraud in any election during the last 20 years.” *See Trump for President*, 491 F. Supp. 3d at 822. And in the months since the 2020 election, it remains true that not a single instance of fraud has been documented in Montana.

## Senate Bill 169

51. Nevertheless, in presenting SB169 to the Senate State Administration Committee, bill sponsor Senator Mike Cuffe argued that “Election integrity is truly the rock. It’s the cornerstone of our nation, the cornerstone of our governments. People all over our nation are begging for election integrity.” Mont. Leg., Senate State Admin. Hrg. Video at 15:07:50 (Feb. 3, 2021).<sup>4</sup> But SB169 does not and cannot improve election integrity because Montana elections are free from fraud, free from corruption, and no evidence exists to the contrary.

52. Instead, SB169 makes several confusing changes to existing voter identification requirements, significantly increasing the threshold for proving a voter’s identity with no concomitant benefit. It also irrationally prioritizes certain forms of identification over others.

53. Specifically, SB169 changes and reduces the list of documents that suffice as standalone identification. Historically, registering to vote required *any one* of the following: a driver’s license number, the last four digits of the voter’s social security number, *any* current and valid photo identification that reflects both an individual’s name and photo, *or any* of an open-ended set of official documents showing the individual’s name and current address, including a current utility bill, bank statement, paycheck, or government check, among others. 2003 Mont. Leg.,

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<sup>4</sup> Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41471?agendaId=222308>.

HB190, at 7.<sup>5</sup> That is, a single one of these documents would suffice both to register to vote, *id.*, and to vote in person, *id.* at 15–16.

54. Again, identification that shows *either* a name and photo *or* a name and address combination provides information that is both easy to verify and difficult to fabricate, making either sufficient to prove identity.

55. Under SB169, Montanans can present any one of the following specific forms of identification: a Montana driver's license number, Montana state ID card number, the last four digits of the voter's social security number, a military ID card, a tribal photo ID card, a United States passport, or a Montana concealed carry permit. But if a voter does not have one of these standalone forms of identification at hand, they must provide both a form of photo identification *and* any of a set of official documents showing the individual's name and current address. 2021 Mont. Leg., SB169, at 2.<sup>6</sup> In other words, the list of qualifying standalone identification is dramatically reduced, and voters must navigate a confusing list of ands and ors to ensure their ability to register to vote. Many will be unable to comply with this new burden.

56. The problems with these changes are manifold. To begin, the law burdens Montanans' right of suffrage—a fundamental right—for no reason at all.

57. Moreover, on its face, the law is discriminatory, elevating the right to vote among individuals with certain characteristics—those who travel

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<sup>5</sup> Available at <https://leg.mt.gov/bills/2003/billpdf/HB0190.pdf>.

<sup>6</sup> Available at <https://leg.mt.gov/bills/2021/sesslaws/ch0254.pdf>.

internationally or carry concealed weapons, for example—over others, including students and indigent Montanans, who possess historically valid photo identification or valid proof of residence. *See also*, Senate State Admin. Hrg. Video at 15:14:10 (Secretary of State Jacobsen stating that “photo ID is already required for routine activities like traveling on a plane or purchasing a cell phone; photo ID should also be required to vote.”).

58. Montana’s voter identification scheme pre-SB169 provides sufficient security in Montana elections without discriminating against particular voting populations. SB169 introduces discrimination into the system and imposes gratuitous barriers to voting. *See* Vanessa M. Perez, *Americans with Photo ID: A Breakdown of Demographic Characteristics*, Project Vote Research Memo (Feb. 2015) (“Young adults are less likely to have photo ID: 15 percent of 17–20 year-olds lack photo ID, and 11 percent of those ages 21–24 lack photo ID.”) (citing 2012 American National Elections Study).<sup>7</sup>

59. Asked why some forms of photo ID and documentation would no longer suffice as standalone forms of identification, Senator Cuffe responded, “[W]hat we’re looking for is the people you need a photo ID and something indicating that you do have a residence here and that you have had it for a certain period of time. That’s just simply trying to say hey, this is how we establish the citizens of Montana, the residents, the folks that would be eligible to vote.” Senate State Admin. Hrg. Video

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<sup>7</sup> Available at <http://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf>.

at 15:54:09. This is no answer. He could not explain why some forms of photo or documentary identification suffice while others do not. Nor could he explain why some classes of Montanans—those with a concealed carry license or a passport—should face a lighter burden in registering to vote than other Montanans, specifically students and those with fewer resources. *See, e.g.,* Sari Horwitz, *Getting a photo ID so you can vote is easy. Unless you're poor, black, Latino, or elderly*, Wash. Post (May 23, 2016).

60. As to students, the law's purpose is conspicuous. In the 2020 general election, turnout among young voters—ages 18 to 29—increased from about 45% in 2016 to about 53% in 2020. Lili Pike, *Why so many young people showed up on Election Day*, Vox (Nov. 7, 2020). Many young voters rely on the ability to vote using their student ID. Eliminating student ID as a standalone form of identification burdens tens of thousands of Montanans. The types of documentation that SB169 authorizes for use with a student ID are often unavailable to students, or difficult to locate.

61. What's more, study after study shows that making voting convenient increases turnout. *See* Michael Wines, *The Student Vote Is Surging. So Are Efforts to Suppress It.*, N.Y. Times (Oct. 24, 2019).<sup>8</sup>

62. Discriminating against students based on prejudiced views relating to their state of origin and or their likely longevity in the state violates the Montana

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<sup>8</sup> Available at <https://www.nytimes.com/2019/10/24/us/voting-college-suppression.html>.

Constitution's equal protection clause. *Cf. Symm v. United States*, 439 U.S. 1105 (1979) (striking down county official's policy of registering only those students who had grown up in the county, whose family lived in the county, or who had been promised a job in the county); *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 21, 314 Mont. 314, 65 P.3d 576 (concluding that "elections to determine who may impose and enforce building codes in a given area are general interest rather than special interest elections," making the "law restricting the franchise" only constitutional if the state could show a compelling interest, which it could not). SB169 makes voting more difficult for younger Montanans who are likelier to have student IDs and less likely to have access to other forms of identification.

63. When applying to vote in a particular precinct in Montana, individuals affirm under penalty of perjury that they "will have been a resident of Montana at least 30 days prior to the next election," that they are "not serving a felony conviction in a penal institution nor have been found to be of unsound mind by a court." Mont. Voter Registration Application.<sup>9</sup> This system of affirmation works. SB169's changes serve no purpose but to make it more difficult for many Montanans to vote.

64. More broadly, requiring multiple documents to prove identity is likeliest to burden Montanans with access to fewer resources and less education. The unequal force of the law, evident on its face, violates equal protection and

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<sup>9</sup> Available at [https://sosmt.gov/wp-content/uploads/Montana\\_Voter\\_Registration\\_Application.pdf](https://sosmt.gov/wp-content/uploads/Montana_Voter_Registration_Application.pdf).

unduly burdens the right to vote.

65. Laws that burden the right to vote burden a fundamental right and accordingly should be subject to strict scrutiny, but even if SB169 were subject only to a rational basis inquiry, it would certainly fail as insofar as it alters the status of student ID. The Montana University System, a state entity, is responsible for issuing more than 90% of student identification in the state. In other words, a state entity issues 90% or more of student IDs. To disallow without justification a certain subset of state-issued ID for purposes of voter registration and voting is simply irrational.

66. Indeed, when pressed on whether the existing system is working, Senator Cuffe said, “We’ve seen in other states there have been numerous instances of fraud . . . we are just trying to tighten up our system. I’m not saying it’s a bad system. I’m not saying it’s not working.” Senate State Admin. Hrg. Video at 15:52:30. Such a reflection calls into question the need for any change at all, let alone such a dramatic change that burdens a fundamental right.

67. Proclaiming that voter fraud exists and that election integrity is at risk does not make it so. When legislators seek to restrict access to the franchise, they must do so for compelling reasons. However compelling a purpose election integrity may be, the need for it cannot be demonstrated with gestures and storytelling. Empty fabrication is not evidence. And without evidence, it is not a compelling state interest that can justify burdening a fundamental right.

## House Bill 506

68. Until 2021, election officials were allowed to issue ballots to all registered voters who would, by election day, be eligible to vote.

69. HB506 now prohibits elections officials from issuing ballots to registered voters who will be duly qualified electors on or before election day if an individual is not yet 18 or has not yet lived in their voting precinct for 30 days.

70. In other words, HB506 takes an otherwise simple process and complicates it, requiring election officials to withhold ballots from registered voters who will be qualified to vote on election day simply because of the timing of their birthdays.

71. HB506 likewise prohibits election officials from issuing ballots to individuals who have moved recently until these individuals have lived in the voting precinct for a full thirty days.

72. Both elements of HB506 needlessly increase the burden on election officials, requiring the distribution of ballots outside of the normal course, after election officials have normally begun issuing absentee ballots to the more than 72 percent of Montana voters that vote absentee.

73. The Montana Constitution prohibits discrimination against persons under 18, affirming that all fundamental rights set forth in Article II apply to all persons, not only to adults. Mont. Const., art. II, § 15. Where the legislature makes an exception, it must both be for a compelling reason and to “enhance the protection of such persons.” *Id.*; *S.L.M.*, 287 Mont. at 35.



74. Not only does HB506 create unnecessary complications for voters in the midst of transition and election workers at the busiest time in the election cycle, it expressly burdens 17-year-olds with birthdays in the two weeks to one month before election day who *will be* legal voters on election day.

75. Youth on the precipice of adulthood cannot be excluded from the opportunity to 1) vote absentee; 2) examine their ballot in the privacy of their own home before voting; and 3) engage in early voting if eligible, simply because of the arbitrary timing of their birthdays. Distinguishing young people from adults in this way imposes discrimination on top of a tumultuous life stage.

76. Although bill sponsor Representative Paul Fielder characterized HB506 as clarifying prior law when presented to the legislative committees, no evidence was presented of confusion or unlawful activities related to issuing ballots to voters who will be qualified to vote on or before election day. Mont. Leg., House State Admin. Hrg. Video at 10:27:13 & 10:29:42 (Feb. 24, 2021).<sup>10</sup>

77. What is more, rather than supporting election officials, HB506 shifts the onus of legal compliance from individual voters onto election officials. Under HB506, election officials must identify who will be eligible to vote when and must withhold ballots from voters until they meet requirements even though they are registered and *will be* eligible to vote by election day.

78. Again, the ultimate purpose is clear. Rather than making the law

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<sup>10</sup> Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42591?agendaId=201039>.

simpler and access easier, the legislature chose to impose a more difficult process on young voters and voters who have moved recently, which will reduce voter turnout with no benefit of reduced administrative burden on election officials and certainly without any reduction in nonexistent fraud.

### **Election Day Registration in Montana**

79. In 2005, Montana lawmakers passed Senate Bill 302 (SB302), expanding access to the franchise and ensuring that all Montanans—from seniors to workers of all professions, from Native Americans and rural voters to disabled individuals and students—would be able to register and vote on election day in Montana.

80. SB302 passed by an extraordinary margin. In the Senate, the final vote was 46 to 4. In the House, it passed by a vote of 89 to 8. In other words, 135 out of 147 lawmakers voted for the bill. Supporters included an array of nonpartisan groups.

81. Election day registration was not a passing fancy, but rather the culmination of long deliberation.

82. Although unusual in 1972, delegates to Montana's constitutional convention wanted to see "poll booth registration"—another term for election day registration—implemented in Montana. Many advocated guaranteeing poll booth registration in the new Constitution, while others worried that a relatively untested practice should not become the first constitutional imperative of its kind. *See, e.g.,* Mont. Const. Convention, III Verbatim Transcript, at 403 (Feb. 17, 1972) (Delegate

Habedank) (“[I]f we lock [poll booth registration] into the Constitution . . . and for some reason or other it does not work out in Montana, we are stuck with it because of the Constitution.”); *see generally id.* at 400–413, 428–452.

83. At the time, only North Dakota used poll booth registration, implemented by statute. *See id.* at 405 (Delegate Berg) (“[I]f it has not been included in North Dakota’s Constitution, where it is the only state to employ it, it seems to me very risky to undertake it in constitutional reform here.”).

84. Most of Montana’s convention delegates who spoke on the issue took the view that the question centered on how best to implement poll booth registration, not whether to do so. *See, e.g.,* Mont. Const. Convention, III Verbatim Transcript, at 401 (Delegate Vermillion) (“[V]oting is not a privilege that the state merely hands out, but it is a basic right . . . that in no way should be infringed unless for very good reasons. . . . We feel that you can have poll booth registration, which is, in essence, registering at the time and place of election, and still prevents frauds.”); *id.* at 437 (Delegate Choate) (“[T]he question is . . . whether the Legislature shall have the right to adopt something like poll booth registration or whether we direct them to do so, and I think that they’ll take enough note of these debates today so that they’ll take it as a clear mandate that they better do something about it.”).

85. No one imagined that a future legislature might seek to eliminate election day registration despite clear evidence of its utility and popularity and the complete absence of evidence of any associated harm.

86. Instead, the ultimate bipartisan passage of SB302 reflected the framers' view that "[i]t is not a privilege to vote. It is a fundamental, basic right inherent in the quality of citizenship in a free society." Mont. Const. Convention, III Verbatim Transcript, at 406 (Delegate Dahood). Even in 1972, even lacking certainty about the logistical challenges election day registration might present, the debate reflected that it was no failure for people "perhaps that have forgotten to register or perhaps did not have sufficient interest . . . [to later] find that they want to participate" because "if more people can participate in this particular function of citizenship . . . the lesser the dissatisfaction is with the governmental process." *Id.*

87. In the fifteen years since its implementation, election day registration has a proven record of exceptional success. Tens of thousands of Montanans have registered and voted on the same day in each election year that followed its passage.

88. Between 2006 and 2018, more than 51,000 Montana voters registered to vote on election day.

89. In 2020, more than 8,000 Montanans used election day registration.

#### **Montanans Have Cast Their Ballots in Favor of Election Day Voting**

90. HB176 is only the most recent of several failed attempts to eliminate election day registration. First, in 2011, the legislature tried to eliminate election day registration by passing a lookalike bill that was vetoed by then Governor Schweitzer.

91. Next, in 2014, the legislature referred Legislative Referendum No. 126 (LR126), an act "protecting the integrity of Montana elections by ending late voter

registration on the Friday before Election Day and eliminating Election Day registration,” to Montanans for their consideration.

92. Voters roundly rejected the referendum by a vote of 206,584 to 155,153. SOS Website, Election & Voter Services/Ballot Issue Overview, Forms & Guidelines/2014 Ballot Issues, *2014 Election Results*.<sup>11</sup> That is, 57% of the more than 361,000 Montanans who voted rejected the legislature’s attempt to eliminate election day registration.

93. Senator Jon Ellingson sponsored SB302’s expansion of voter registration in 2005. In 2014, he described the bipartisan nature of the decision at the time: “We believed then, that it is better for our democracy if more of our citizens vote, and not less. We believed in that legislative session that our government can better serve all of us when more of us are heard through the exercise of the most fundamental of our political rights: The right to cast a meaningful and effective vote.” Jon Ellingson, *Keep same-day voter registration*, Helena Independent Record (Sept. 18, 2014).

94. HB176 not only upends Montanans’ express preference to retain election day voting, but also unconstitutionally burdens established norms for accessing the franchise for no reason at all, let alone a compelling one.

### **House Bill 176**

95. HB176 eliminates election day registration. It pushes the deadline back to noon the day before election day, providing that electors “may register or

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<sup>11</sup> Available at [https://sosmt.gov/elections/ballot\\_issues/2014-2/](https://sosmt.gov/elections/ballot_issues/2014-2/).

change [their] voter registration information” late—after the close of regular registration 30 days before election day—if their voter registration information is received and verified “prior to noon the day before the election” instead of by the close of voting on election day.

96. When introducing HB176 to the House Floor, the bill sponsor Representative Sharon Greef made several unsupported claims about why HB176 was a necessary measure. To begin, she claimed that the right to vote comes with “the responsibility of registering to vote,” and that “to assure good clean elections, election officials should concentrate on one thing the day of the election, and that is the election.” Mont. Leg., House Floor Session Video at 13:24:07 (Feb. 4, 2021).<sup>12</sup> She could give no evidence of administrative problems in Montana on election day, let alone resulting from the option to register on election day.

97. Representative Greef made similarly unsupported arguments before the Senate State Administration Committee, suggesting that the bill would “provide a solution for citizens that are discouraged from registering to vote and casting a ballot due to long lines and extended wait times by making the process more efficient for the benefit of all Montanans. And it will reduce the opportunity for mistakes.” Senate State Admin. Hrg. Video at 16:49:18.<sup>13</sup> Again, the sponsor could

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<sup>12</sup> Available at [http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41050?agendaId=222415#agenda\\_](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41050?agendaId=222415#agenda_).

<sup>13</sup> Available at [http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41476?agendaId=201693#agenda\\_](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41476?agendaId=201693#agenda_).

not point to a single mistake that has occurred related to election day registration in Montana. When asked, she stated, “When I talked about voter fraud, I wasn’t talking about Montana specifically.” *Id.* at 17:35:46.

98. No legislator supporting the bill addressed concerns expressed repeatedly by stakeholders across the political spectrum that ending election day registration would disenfranchise thousands of voters each election cycle. Asked what would happen when mistakes inevitably occur in, for example, the transmission of voter registration documents from the Department of Motor Vehicles to the Secretary of State’s Office (as has occurred in the past), Representative Greef at first had no answer and then implied that states are increasingly eliminating election day registration when in fact, the trend is the opposite. *See* Mont. Leg., Senate State Admin. Hrg. Video at 17:39:55 (Feb. 15, 2021) (“Most of the states in the country do not have same day registration and it works very very well.”); *compare* Zachary Green & Andrew Mach, *Interactive Map: Does same-day registration affect voter turnout in the U.S.?*, PBS Newshour (Oct. 4, 2015) (“13 states currently offer same-day voter registration.”)<sup>14</sup> *with* Nat’l Conf. of State Legislatures, *Same Day Voter Registration* (May 7, 2021) (“As of 2021, a total of 20 states and Washington, D.C., have implemented same-day registration.”)<sup>15</sup>

99. Representative Greef then stated: “Again, we’re not trying to take

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<sup>14</sup> Available at <https://www.pbs.org/newshour/nation/day-registration-affects-voter-turnout-u-s>.

<sup>15</sup> Available at <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

away anyone's vote. That would be—I wouldn't carry this bill if I thought that I was taking away the vote of one person. I couldn't do it." *Id.* at 17:40:13; *but see, e.g.*, Mont. Leg., House State Admin. Hrg. Video at 9:13:15 (Jan. 21, 2021)<sup>16</sup>

(informational testimony of Regina Plettenberg, Clerk & Recorder of Ravalli County & the President of the Montana Association of Clerk & Recorders) (explaining that eliminating registration on election day and the Monday before "would have meant that about 200 people would not have voted in Ravalli County"); Barry C. Burden et al., *The Effects & Costs of Early Voting, Election Day Registration, & Same Day Registration in the 2008 Elections*, Report to the Pew Charitable Trusts, at 3 (Dec. 21, 2009) ("Research consistently shows that [election day registration] boosts turnout. . . . Careful analyses of the causal effects of [election day registration] produce estimates that range from three to seven percentage points.").<sup>17</sup>

Representative Greef's response failed entirely to address what would happen to those who, despite completing their paperwork, arrived at the polls on election day only to discover that they are not in fact registered to vote. *See* Senate State Admin. Hrg. Video at 17:37:23.

100. Audrey McCue, Election Supervisor in Lewis & Clark County, testified before the Senate State Administration Committee that while "[a] lot of the

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<sup>16</sup> Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/39873?agendaId=178249>.

<sup>17</sup> Available at [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2009/uwisconsin1pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2009/uwisconsin1pdf.pdf).



proponents of the bill are talking about this as helping election administrators and election officials, I wanted to be on the record saying that this will not help me.” *Id.* at 16:59:56. She went on to explain that “[c]ontinuing this service to the voters is important and taking it away is a disservice to them.” *Id.* at 17:00:20. While acknowledging that any time a voter registers to vote, it inherently causes more work for election administrators, Ms. McCue pointed out that the appropriate response to that need is not to “limit[] who may vote in the election” but to “scal[e] to meet the demand.” *Id.* at 17:01:06.

101. Responding to claims that HB176 would ensure election integrity, Ms. McCue stated:

The first thing to know is that we don’t have problems with the integrity of our elections and certainly none caused by election day registration. The second thing to keep in mind is that [late registration is] not a novel service on election day. It’s the service we provide the month before the election and continue to provide on election day.

*Id.* at 17:01:25.

102. The Senate State Administration Committee Chair asked whether updates to information qualify as new registrations—which will no longer be permitted on election day. Ms. McCue explained, “We do consider any changes to key voter registration information after the close are considered late registrations. So it’s new or it’s changing your residential address or changing your name.” *Id.* at 17:51:53.

103. When HB176 was presented to the House State Administration Committee, two members of the public testified in favor of its passage, while sixteen

individuals testified representing twelve different organizations testified in opposition. Before the Senate State Administration Committee, one member of the public testified in favor of HB176, while seventeen testified in opposition, representing eight different organizations.

104. One of the most disturbing aspects of HB176 is the effect it will have on young voters in Montana. Providing election day registration is, on its own, likely to increase youth voter turnout. Grumbach & Hill, *Rock the Registration: Same Day Registration Increases Turnout of Young Voters*, The Univ. of Chicago Press Journals (Aug. 9, 2020). While it is less easy to show the individual impact of other laws—multiple barriers are difficult to disambiguate from one another— young voters take advantage of election day registration at rates higher than other demographic populations, meaning that it specifically benefits the young and that its elimination specifically disadvantages the young.

105. Young people move more often than older adults, they are often less likely to have a driver's license, they are less likely to be contacted by get-out-the-vote organizers because, without prior voting records, they are less easy to identify, and they can struggle with transportation to the polls and awareness of the rules and deadlines for registering to vote and actually voting. *Broadening Youth Voting: Barriers to Voting*, CIRCLE (2021); see also *id.*, *Chart: Young People Were More Likely to Miss the Registration Deadline, Not Know How to Register*.<sup>18</sup>

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<sup>18</sup> Available at <https://circle.tufts.edu/our-research/broadening-youth-voting#barriers-to-voting>.

106. Election day registration is an essential mechanism for helping young voters overcome other structural barriers that make voting more difficult. Ending registration on noon the day before election day is confusing and will mislead established voters while ensuring a decreased youth voter turnout.

## **COUNT ONE**

### **(Violation of the Right of Suffrage, art. II, § 13)**

107. Plaintiffs incorporate herein all the foregoing allegations as if set forth in full.

108. The Montana Constitution guarantees that “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. II, § 13.

109. SB169 impermissibly restricts Plaintiffs’ fundamental right of suffrage, set forth in the Montana Constitution, Article II, § 13, by reducing the number of standalone forms of identification that can be used to vote and for registering to vote. SB169 also makes voting and registering to vote more complicated by requiring two forms of identification where before only one was required.

110. The Montana Supreme Court applies strict scrutiny to any law that “impermissibly interferes with the exercise of a fundamental right.” *Driscoll*, ¶ 18 (citing *Wadsworth v. State*, 275 Mont. 287, 302, 911 P.2d 1165 (1996)). To survive, the statute must be “narrowly tailored to further a compelling government interest.” *Id.* ¶ 40. This is the “most stringent level of scrutiny,” to be “used when a

statute implicates a fundamental right found in the Montana Constitution's declaration of rights." *Id.* ¶ 18 (citing *Mont. Cannabis Indus., Ass'n v. State*, 2012 MT 201, ¶ 16, 366 Mont. 224, 286 P.3d 1161).

111. This Court should apply strict scrutiny to SB169 because it unquestionably constricts access to the franchise, a fundamental right under the Montana Constitution.

112. The legislature had no evidence before it that existing voter identification laws in Montana are anything but effective. There is no record of fraud in the state and no reason to believe that Montana elections lack integrity. Therefore, no compelling state interest can justify the decision to suppress voters who lack access to dual forms of identification.

113. Moreover, the bill's legislative history lacks any evidence that legislators considered the ramifications of requiring different forms of identification or determined that SB169 was the narrowest possible approach to addressing "election integrity" concerns, a term which also lacks the specificity necessary to form a compelling reason that would justify infringing Montanans' fundamental right of suffrage.

114. Because SB169 violates the Montana Constitution, Article II, Section 13, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## COUNT TWO

### (Violation of the Right to Equal Protection Under Law, art. II, § 4)

115. Plaintiff incorporates herein all the foregoing allegations as if set forth in full.

116. By burdening students and individuals without ready access to the forms of standalone identification that SB169 requires, SB169 violates Plaintiffs' right to equal protection of the laws, set forth as part of the right to individual dignity. Mont. Const., art. II, § 4.

117. The Montana Constitution provides: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas." Mont. Const., art. II, § 4.

118. "Article II, Section 4, of the Montana Constitution provides even more individual protection than the Equal Protection Clause in the Fourteenth Amendment of the United States Constitution." *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15, 325 Mont. 148, 104 P.3d 445. Even laws containing apparently neutral classifications may nonetheless "violate equal protection 'if in reality it constitutes a devise designed to impose different burdens on different classes of persons.'" *Id.* ¶ 16 (quoting *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 327, 982 P.2d 421).

119. SB169 expressly and unjustifiably prefers individuals who have a concealed carry license over individuals with student IDs. *Reesor v. Mont. State Fund*, 2004 MT 370, ¶ 10, 325 Mont. 1, 103 P.3d 1019 (“When addressing an equal protection challenge, this Court must first identify the classes involved, and determine if they are similarly situated.”). No member of the legislature articulated a reasoned difference between these two forms of identification.

120. SB169 also burdens indigent individuals who lack the resources or ability to produce dual forms of identification. *See* Mont. Const., art. II, § 4 (prohibiting discrimination on account of “social origin or condition”); *McClanathan v. Smith*, 186 Mont. 56, 69, 606 P.2d 507 (1980) (“[T]he words ‘social condition’ were intended to include and refer to ‘discriminations based on status of income and standard of living.’”).

121. As a result, SB169 imposes unequal burdens on different classes of Montanans, disproportionately affecting young and indigent Montana voters.

122. Because SB169 violates the Montana Constitution, Article II, Section 4, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

### **COUNT THREE**

#### **(Violation of the Right of Suffrage, art. II, § 13)**

123. Plaintiffs incorporate herein all the foregoing allegations as if set forth in full.

124. HB506 impermissibly restricts Plaintiffs’ fundamental right of

suffrage, Mont. Const., art. II, § 13, by making it more difficult for a subset of registered voters to access their ballots. Specifically, HB506 prohibits election officials from distributing ballots to individuals who will but do not yet meet age- and residency-based voting requirements by election day. In so doing, HB506 especially burdens young voters and individuals who have recently moved.

125. The Montana Constitution provides that “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. II, § 13.

126. The Montana Supreme Court applies strict scrutiny to any law that “impermissibly interferes with the exercise of a fundamental right.” *Driscoll*, ¶ 18 (citing *Wadsworth*, 275 Mont. at 302). To survive, the statute must be “narrowly tailored to further a compelling government interest.” *Id.* ¶ 40. This is the “most stringent level of scrutiny,” to be “used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.” *Id.* ¶ 18 (citing *Mont. Cannabis*, ¶ 16).

127. This Court should apply strict scrutiny to HB506 because it unquestionably constricts access to the franchise, a fundamental right under the Montana Constitution.

128. The legislature had no evidence before it that issuing a ballot to a soon-to-be qualified voter has ever before undermined election integrity in Montana or imposed administrative burdens on election officials. Therefore, no compelling state interest can justify the decision to suppress new voters and voters who have

moved recently.

129. Because HB506 violates the Montana Constitution, Article II, Section 13, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## **COUNT FOUR**

### **(Violation of the Prohibition Against Age Discrimination, art. II, § 15)**

130. Plaintiffs incorporate herein all the foregoing allegations as if set forth in full.

131. HB506 impermissibly violates Plaintiffs' fundamental right not to be discriminated against on the basis of youth, Mont. Const., art. II, § 15, by making it more difficult for young people just becoming adults to access their ballots. Specifically, HB506 prohibits election officials from distributing ballots to individuals who will but do not yet meet age- and residency-based voting requirements by election day. In so doing, HB506 especially burdens young voters and individuals who have recently moved.

132. The Montana Constitution provides that "The rights of persons under 18 years of age shall include, but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons." Mont. Const., art. II, § 15; *see S.L.M.*, 287 Mont. at 35 ("[I]f the legislature seeks to carve exceptions to [the Article II, § 15] guarantee, it must not only show a compelling state interest but must also show that the exception is designed to enhance the rights of minors.").



133. The Montana Supreme Court applies strict scrutiny to any law that “impermissibly interferes with the exercise of a fundamental right.” *Driscoll*, ¶ 18 (citing *Wadsworth*, 275 Mont. at 302). To survive, the statute must be “narrowly tailored to further a compelling government interest.” *Id.* ¶ 40. This is the “most stringent level of scrutiny,” to be “used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.” *Id.* ¶ 18 (citing *Mont. Cannabis*, ¶ 16).

134. This Court should apply strict scrutiny to HB506 because it unquestionably discriminates against youth based on their age, violating the Montana Constitution’s guarantee that fundamental rights shall apply equally to people of all ages.

135. Because HB506 violates the Montana Constitution, Article II, Section 15, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## **COUNT FIVE**

### **(Violation of the Right to Equal Protection Under Law, art. II, § 4)**

136. Plaintiff incorporates herein all the foregoing allegations as if set forth in full.

137. HB506 violates Plaintiffs’ right to equal protection of the laws, set forth as part of the right to individual dignity. Mont. Const., art. II, § 4.

138. The Montana Constitution provides that “The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws.

Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Mont. Const., art. II, § 4.

139. HB506 imposes additional burdens particularly on youth who are turning 18 years old in the month before an election and on young people more generally, who tend to move more frequently than older people. *See also* Mont. Const., art. II, § 15.

140. The Montana Supreme Court applies strict scrutiny to any law that “impermissibly interferes with the exercise of a fundamental right.” *Driscoll*, ¶ 18 (citing *Wadsworth*, 275 Mont. at 302). To survive, the statute must be “narrowly tailored to further a compelling government interest.” *Id.* ¶ 40. This is the “most stringent level of scrutiny,” to be “used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.” *Id.* ¶ 18 (citing *Mont. Cannabis*, ¶ 16).

141. This Court should apply strict scrutiny to HB506 because violates the Montana Constitution’s right to equal protection.

142. Because HB506 violates the Montana Constitution, Article II, Section 4, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## COUNT SIX

### (Violation of the Right of Suffrage, art. II, § 13)

143. Plaintiff incorporates herein all the foregoing allegations as if set forth in full.

144. HB176 impermissibly restricts Plaintiffs' fundamental right of suffrage, Mont. Const., art. II, § 13, by eliminating election day registration and disenfranchising tens of thousands of Montana voters, especially young voters. *See Driscoll*, ¶ 23 (explaining that the Montana Secretary of State failed to demonstrate "an interest that weighed more heavily than the burdens [plaintiffs] assert[ed]").

145. The Montana Constitution provides that "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. II, § 13.

146. The Montana Supreme Court applies strict scrutiny to any law that "impermissibly interferes with the exercise of a fundamental right." *Driscoll*, ¶ 18 (citing *Wadsworth*, 275 Mont. at 302). To survive, the statute must be "narrowly tailored to further a compelling government interest." *Id.* ¶ 40. This is the "most stringent level of scrutiny," to be "used when a statute implicates a fundamental right found in the Montana Constitution's declaration of rights." *Id.* ¶ 18 (citing *Mont. Cannabis*, ¶ 16).

147. HB176 makes voting in Montana more difficult. For Plaintiffs, the harm is great and it is certain. For young Montana voters who are working or

studying, who live in remote places, or who face challenges in getting to the polling place, HB176 increases the burden to vote, and offers no advantage, as election administrators testified clearly. Indeed, this restriction on voting may actually increase election officials' administrative work.

148. This Court should apply strict scrutiny to HB176 because it unquestionably constricts access to the franchise. Were it not enough that suffrage is a fundamental right enumerated in the Montana Constitution, election day registration has already been put to Montana voters and won resounding support.

149. Moreover, little to no justification was offered to justify rescinding access that Montanans have had since 2005, which was expressly contemplated by the framers of the Constitution. *See* Mont. Const., art. IV, § 3.

150. Because HB176 violates the Montana Constitution, Article II, Section 13, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## **COUNT SEVEN**

### **(Violation of the Right to Equal Protection Under Law, art. II, § 4)**

151. Plaintiff incorporates herein all the foregoing allegations as if set forth in full.

152. HB176 violates Plaintiffs' right to equal protection of the laws, set forth as part of the right to individual dignity. Mont. Const., art. II, § 4.

153. The Montana Constitution provides: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither

the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Mont. Const., art. II, § 4.

154. “Article II, Section 4, of the Montana Constitution provides even more individual protection than the Equal Protection Clause in the Fourteenth Amendment of the United States Constitution.” *Snetsinger*, ¶ 15. Even laws containing apparently neutral classifications may nonetheless “violate equal protection ‘if in reality it constitutes a devise designed to impose different burdens on different classes of persons.’” *Id.* ¶ 16 (quoting *Spina*, ¶ 85).

155. Moreover, the Montana Constitution provides that “The rights of persons under 18 years of age shall include, but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.” Mont. Const., art. II, § 15; *see S.L.M.*, 287 Mont. at 35 (“[I]f the legislature seeks to carve exceptions to [the Article II, § 15] guarantee, it must not only show a compelling state interest but must also show that the exception is designed to enhance the rights of minors.”).

156. Eliminating same day registration will reduce young voter turnout, violating Plaintiffs’ right to equal protection, and make registering to vote impossible for anyone who turns 18 on election day, who may not realize that they are able to register to vote in advance of eligibility, particularly given the needlessly confusing changes that HB176 makes to ballot distribution.

157. This Court should apply strict scrutiny to HB176 because it discriminates against young people, violating Plaintiffs' fundamental right to equal protection enumerated in the Montana Constitution.

158. Moreover, little to no justification was offered to justify rescinding access that Montanans have had since 2005, which was expressly contemplated by the framers of the Constitution. *See* Mont. Const., art. IV, § 3.

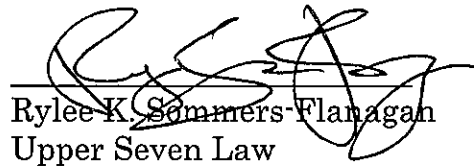
159. Because HB176 violates the Montana Constitution, Article II, Section 4, Plaintiffs request that the Court declare it unconstitutional and unenforceable.

## PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Court enter:

1. A declaratory judgment that SB169 is unconstitutional.
2. A declaratory judgment that HB506 is unconstitutional.
3. A declaratory judgment that HB176 is unconstitutional.
4. An order enjoining Defendant from enforcing any aspects of SB169.
5. An order enjoining Defendant from enforcing any aspects of HB506.
6. An order enjoining Defendant from enforcing any aspects of HB176.
7. An award of costs and attorneys' fees, as the Court deems just and appropriate.

Respectfully submitted this 9th day of September, 2021.

  
Rylee K. Sommers-Flanagan  
Upper Seven Law

*Attorney for Plaintiffs*