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MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

MONTANA FEDERATION OF PUBLIC EMPLOYEES, Plaintiff, NORTHERN CHEYENNE TRIBE, BLACKFEET NATION, CONFEDERATED SALISH AND KOOTENAI TRIBES, FORT BELKNAP INDIAN COMMUNITY, and WESTERN NATIVE VOICE, Plaintiff-Intervenors, v. STATE OF MONTANA, and CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State, Defendants.	Cause No. DV-25-268 **BRIEF IN SUPPORT OF MOTION TO INTERVENE**

Pursuant to Montana Rule of Civil Procedure 24(a) ("Mont. R. Civ. P."), proposed Plaintiff-Intervenors, the Northern Cheyenne Tribe, the Blackfeet Nation, the Confederated Salish and Kootenai Tribes ("CSKT"), the Fort Belknap Indian Community ("Fort Belknap"), (collectively, "Tribal Plaintiffs"), and Western Native Voice (all together, "Native American Plaintiffs"), respectfully move to intervene as of right. Alternatively, the Native American Plaintiffs move for permissive intervention under Montana Rule of Civil Procedure 24(b).

INTRODUCTION AND BACKGROUND

The Native American Plaintiffs are four of the sovereign tribal nations within the state of Montana and a Native American-led non-profit organization that organizes and advocates in order to build Native leadership within Montana. Each of the Tribal Plaintiffs has thousands of enrolled members who are entitled to vote. Western Native Voice, meanwhile, organizes and offers assistance to voters on each of the reservations throughout the state. This is the third time in six years Western Native Voice and several of Montana's sovereign tribal nations have been forced to seek redress from the courts for the Legislature's continued insistence on making it more difficult for Native Americans in Montana to vote.

On the heels of the definitive word of the Montana Supreme Court that the past efforts to limit Election Day voter registration ("EDR") impermissibly interfered with the right to vote, *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶¶ 70, 74, 416 Mont. 44, 545 P.3d 1074, and on notice from its own legal analysis that the planned legislation likely did not conform with the Montana Constitution, the Legislature passed Senate Bill 490 ("SB 490"), which does away with eight critical hours of voter registration on Election Day. Native American Plaintiffs seek to intervene in this action because doing away with EDR, as the Montana Supreme Court has recently found, "disproportionately affect[s]" Native American voters, who "rely on election day

registration because of numerous issues they face in voting, including lack of access to mail, transportation, and the long distances to county seats where they can register." *Id*. ¶ 73. Due to the disproportionate barriers placed on tribal voters by SB 490, these tribal members' attempts to vote are more likely to be unsuccessful and the tribes' own political power and ability to advocate for their needs would be reduced by the suppressive effects of this law. Tribal Plaintiffs would also be denied full participation in the state and federal systems through the diminishment of their political power. Similarly, Western Native Voice works to ensure access to the polls for Native voters in the state, including for its thousands of members: Native voters in the state. SB 490 stymies Western Native Voice's core activities of providing registration services. Voter education and facilitation of voter registration are core to Western Native Voice's get-out-the-vote ("GOTV") work and vital to voter turnout across Montana's Native American communities.

The Native American Plaintiffs seek to intervene to ensure that their interests and those of their members are fully and adequately represented. The Native American Plaintiffs' participation will not cause any delay and will provide the Court with important context that will aid in the just resolution of this case. No current party in this action can fully represent the Native American Plaintiffs' unique interests here. As such, their motion for intervention by right under Rule 24(a)—or in the alternative, for permissive intervention under Rule 24(b)—should be granted.

LEGAL STANDARD

Under the Rules of Civil Procedure, a district court must allow intervention by one who "claims an interest relating to the . . . transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest." Mont.

R. Civ. P. 24(a)(2). Intervention may be granted whenever one "has a claim or defense that shares with the main action a common question of law or fact." Mont. R. Civ. P. 24(b)(1)(B). The Court considers the equities, including delay and prejudice to other parties, in making its determination. Mont. R. Civ. P. 24(b)(3). "Montana's rule is essentially identical to the federal rule which is interpreted liberally." *Sportsmen for I-143 v. Mont. Fifteenth Jud. Dist. Ct., Sheridan Cnty*., 2002 MT 18, ¶ 7, 308 Mont. 189, 193, 40 P.3d 400, 402 (citing *Sagebrush Rebellion, Inc. v. Watt* (9th Cir. 1983), 713 F.2d 525, 527).

The court considers four factors in assessing whether intervention by right should be granted: "(1) the application must be timely; (2) the applicant must show an interest in the subject matter of the action; (3) the applicant must show that protection of his interest may be impaired by the disposition of the action; and (4) the applicant must show that his interest is not adequately represented by an existing party." *Enz v. Raelund*, 2018 MT 134, ¶ 57, 391 Mont. 406, 419, 419 P.3d 674, 683.

ARGUMENT

I. Native American Plaintiffs Are Entitled to Intervention as of Right.

Under Montana Rule of Civil Procedure 24, the Native American Plaintiffs must be granted intervention as of right, as they meet each of the elements of the governing standard.

A. The motion is timely.

The instant motion is timely as it comes less than two months after this action was filed and before any responsive pleading has been filed by the Defendants. While timeliness is "determined from the particular circumstances surrounding the action," *Connell v. State Dep't of Soc. & Rehab. Servs*., 2003 MT 361, ¶¶ 21-22, 319 Mont. 69, 73-74, 81 P.3d 1279, 1283, Montana courts regularly determine that motions for intervention sought at times even further

from the filing of the relevant action than this one are timely, *see, e.g.*, *JAS, Inc. v. Eisele*, 2014 MT 77, ¶ 27, 374 Mont. 312, 319, 321 P.3d 113, 118 (holding that motion to intervene sought more than five months after complaint filed and two weeks after judgment was entered was timely).

In considering whether such a motion is timely, courts look at four factors: "(1) the length of time the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances mitigating for or against a determination that the application is timely." *In re Adoption of C.C.L.B.*, 2001 MT 66, ¶ 24, 305 Mont. 22, 30, 22 P.3d 646, 651. Each one of these factors underscores that the current motion is timely. As noted above, just six weeks have passed since the current action was filed and the matter remains in its infancy. As such, there is also no chance that this passage of time would prejudice the original parties. Indeed, the only possible prejudice would inure to the Native American Plaintiffs if their motion was denied. There are no unusual circumstances here and the instant motion was brought within weeks of the beginning of this case. Indeed, the Montana courts have only found intervention motions untimely that were brought much later than this one. *See, e.g.*, *Est. of Schwenke By & Through Hudson v. Becktold* (1992), 252 Mont. 127, 132, 827 P.2d 808, 811 (motion untimely when filed more than 15 months after action filed and a mere week before trial); *Archer v. LaMarch Creek Ranch* (1977), 174 Mont. 429, 433, 571 P.2d 379, 382 (motion untimely when filed over two years after knowledge of promissory note); *Cont'l Ins. Co. v. Bottomly* (1988), 233 Mont. 277, 280, 760 P.2d 73, 75 (motion untimely when filed three years after action filed).

B. Native American Plaintiffs have an interest in the subject matter of the action that will be impaired by the disposition of the action.

The Native American Plaintiffs clearly have an interest in the subject matter of the action. These same parties brought suit against this same Defendant twice in the past six years in response to laws that impermissibly burden the right to vote, just as the currently challenged law, SB 490, does. Indeed, other Montana courts found that these same parties had standing to challenge laws quite similar to the one at issue in this suit, *see, e.g.*, Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motions for Preliminary Injunctions, *Mont. Democratic Party v. Jacobsen*, No. DV 21-0451, ¶¶ 11-13 (Western Native Voice); ¶¶ 26-31 (Tribal Plaintiffs) (Apr. 6, 2022), demonstrating that the proposed Intervenors not only have an interest but indeed have a legally protectable interest that they could have pursued in a suit of their own.

Even putting earlier standing decisions aside, the Native American Plaintiffs plainly have a significantly protectable interest in ensuring their members' right to vote. "[S]uch interests are routinely found to constitute significant protectable interests." *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) *see also, e.g.*, *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020). Indeed, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014). Tribal Plaintiffs are "sovereign nations with substantial populations" seeking to "vindicat[e] the voting rights of their members." *Rosebud Sioux Tribe v. Barnett*, 603 F. Supp. 3d 783, 789 (D.S.D. 2022). "It is their prerogative to do so." *Id*.

And beyond the protected interests of their members, the Native American Plaintiffs own interests will be impaired by an adverse decision in the current case. The Tribal Plaintiffs' own

political power and ability to advocate for their members' needs would be reduced by the suppressive effects of this law and they would also be denied full participation in the state and federal systems through diminished political power resulting from the challenged law. Each of the sovereign tribal nations, acting as *parens patriae* to protect their members' general welfare and their right to vote, as well as to safeguard their own role in the federal system, has an interest in ensuring that its members maintain voter registration services that their members rely upon to exercise their fundamental right to vote. Western Native Voice's interest in carrying out its mission will be impaired as a practical matter by an adverse outcome in this case. *See, e.g.*, *Paher*, 2020 WL 2042365, at *2 (finding that intervenors' interests in promoting the franchise and the election of the Democratic Party candidates, as well as individual intervenor's interest in voting by mail, would be impaired by plaintiff's challenge to Nevada's all mail election provisions); *see also S.E.C. v. Navin*, 166 F.R.D. 435, 440 (N.D. Cal. 1995) (intervenor need only show "potential adverse impact" on the interest).

An adverse decision in the current case will impair the Native American Plaintiffs' interests. If the challenged law is in effect during future elections, Native Americans in Montana, including enrolled members of the Tribal Plaintiffs and members of Western Native Voice, will disproportionately have their right to vote burdened. Given that both their members' and their own rights would be directly impeded if SB 490 governs Montana elections, the Native American Plaintiffs have shown that an adverse disposition of the current case would impair their interests. Indeed, Native American Plaintiffs could have brought a separate action, as their legal interests in the instant suit are sufficient to ensure standing under Montana law. But they sought to intervene instead in order to "promote efficiency and avoid delay and multiplicity of suits," *Cont'l Ins. Co*., 233 Mont. at 280, 760 P.2d at 76, including by ensuring that facts relevant

to the impacts that SB 490 will have on Montana's Native American voters is before the court hearing any challenge to that law.

C. Native American Plaintiffs have a unique perspective that may not be adequately represented by the current parties.

Here, the interests of Native American Plaintiffs are not adequately represented by the existing parties. "The requirement of inadequacy of representation is satisfied if an applicant shows that representation of its interests 'may be' inadequate and the burden of making this showing is minimal." *Sportsmen for I-143*, ¶ 14. In particular, access to the ballot for Native Americans in the United States more broadly, and specifically in Montana, has been an area of historic concern and struggle. For example, in 1906, the Montana Attorney General issued an opinion expressly mandating that Native American reservations not be included in voting precincts and that, because Native Americans were considered wards of the government, they could not register to vote, or vote, at all. And the continued disproportionate burdening of Native Americans' right to vote in Montana continues to this day. *See, e.g.*, *Mont. Democratic Party*, ¶ 73. While other litigants seek to challenge this same law, they are not able to stand in the shoes of Native American Plaintiffs, who have a specific and particularized interest in ensuring their members' rights. The proposed Intervenors are the only parties seeking involvement in this case that have the unique historical perspective and interest in protecting voting options for Native Americans. Because their interest diverges from the general public in that regard, they have demonstrated that their interests may not be adequately represented. This is particularly true for the Tribal Plaintiffs who seek to intervene *parens patriae* on behalf of their members. No one other than sovereign tribal nations can stand in this role for tribal members and as such no other litigant can possibly adequately protect their interests, which include safeguarding the tribes' own role in the federal system.

While intervention in federal courts proceeds under a different set of rules, the Montana Supreme Court has recognized that "Montana's rule is essentially identical to the federal rule," *Sportsmen for I-143*, ¶ 7, thus highlighting the utility of federal court rulings with respect to intervention. In the Ninth Circuit, courts assess three factors in evaluating adequacy of representation: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (cleaned up). Here, due to the unique position of Montana's sovereign tribal nations, it is evident that the existing parties will not "undoubtedly" make all of the Native American Plaintiffs' arguments because they simply cannot —that is, they are not "capable" of doing so—as the Tribal Plaintiffs occupy a unique position with respect to other governments, including the state of Montana. As to the third factor, the Native American Plaintiffs would also offer the unique perspectives of Native American voters in Montana, a group that the Montana Supreme Court has recognized as being particularly burdened by laws such as that challenged here. *See Mont. Democratic Party*, ¶ 73. As such, Native American Plaintiffs meet each of the three factors assessed at the federal level in considering adequacy of representation.

As the Native American Plaintiffs satisfy each element contemplated by Rule 24(a), they are entitled to intervene as of right in this action.

II. In the Alternative, Native American Plaintiffs Are Entitled to Permissive Intervention.

Were the Court to conclude that Native American Plaintiffs have not met the standard for intervention as of right, the Court should still exercise its broad discretion to grant permissive

intervention. Under the terms of Rule 24(b), on this "timely motion," Native American Plaintiffs claims plainly share "a common question of law or fact" with the existing action. First, as explained above, Native American Plaintiffs timely sought intervention. The only difference between mandatory and permissive intervention when it comes to timeliness is that courts generally apply the factors "more leniently" when evaluating mandatory intervention. *See United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984). However, that distinction makes no difference here because Native American Plaintiffs have sought intervention in the nascent stages of this case. Second, current Plaintiffs and Native American Plaintiffs both challenge SB 490 as violative of the Montana Constitution, thus sharing questions of both law and fact.

In exercising its discretion in this context, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Mont. R. Civ. P. 24(b)(3). Courts also consider other factors, including, "the nature and extent of the intervenors' interest," the "legal position [the intervenors] seek to advance," and "whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Sullivan v. Ferguson*, No. 3:22-cv-05403-DGE, 2022 WL 10428165, at *4 (W.D. Wash. Oct. 18, 2022) (quoting *Spangler v. Pasadena City Bd. of Educ*., 552 F.2d 1326, 1329 (9th Cir. 1977)). Here, all of these factors weigh in favor of granting permissive intervention.

As explained above, there will be no prejudice to any existing party if Native American Plaintiffs are permitted to intervene, nor will there be any delay, because this case is still in the early stages, and there are still weeks to go before any responses are due. Further, as also discussed above, Native American Plaintiffs represent a unique and informed point of view that would not otherwise be before the Court and that will aid the Court in its consideration of the

matter. As such, there is no question that Native American Plaintiffs "will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Sullivan*, 2022 WL 10428165, at *4.

As such, in the alternative to intervention as of right, Native American Plaintiffs should be permitted to intervene under Rule 24(b) to advance their members' rights and their own unique role in the federal system.

CONCLUSION

For the foregoing reasons, the Court should grant Native American Plaintiffs intervention as of right under Rule 24(a), or in the alternative, permissive intervention under Rule 24(b). Counsel for the Plaintiffs consent to the Native American Plaintiffs' Motion to Intervene. Counsel for the Defendants oppose the Native American Plaintiffs' Motion to Intervene. A proposed order is attached.

DATED THIS 24th day of June 2025.

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I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 06-24-2025:

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