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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,

FORWARD MONTANA and MONTANA PUBLIC  
INTEREST RESEARCH GROUP,  
Youth Plaintiff-Intervenors,

v.

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

Cause No. ADV-25-2025-0268

**PLAINTIFF-INTERVENORS'  
BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT OR FOR A  
PRELIMINARY INJUNCTION**

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Plaintiff-Intervenors, through counsel of record, respectfully move the Court for summary judgment under Montana Rule of Civil Procedure 56. Senate Bill 490 (“SB490”), which mostly eradicates election day registration (“EDR”), impermissibly interferes with the right to vote in violation of the Montana Constitution. There are no genuine issues of material fact, and Plaintiff-Intervenors are entitled to judgment as a matter of law. Plaintiff-Intervenors also respectfully move the Court for a preliminary injunction, pursuant to § 27-19-201, MCA, because Plaintiff-Intervenors are likely to succeed on the merits of their claim, are likely to suffer irreparable harm absent preliminary relief, the balance of equities is in their favor, and because a preliminary injunction is in the public interest. With the June 2026 primary looming, injunctive relief is necessary to prevent irreparable injury to the Intervenors in the event their motion for summary judgment is not decided in time.

## INTRODUCTION

With the ink barely dry on a landmark Montana Supreme Court opinion finding that repealing EDR violates the fundamental right to vote because it would “disproportionately affect” Native American voters, who “rely on election day registration because of numerous issues they face in voting, including lack of access to mail, transportation, and the long distances to county seats where they can register,” *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 73, 416 Mont. 44, 545 P.3d 1074 (“*Jacobsen*”), the Legislature enacted a new law that does virtually the same thing. SB490 removes eight critical hours of late voter registration opportunities on Election Day, meaning EDR is not available for the majority of Election Day. This particularly harms Native Americans in rural and reservation tribal communities, who not only disproportionately rely on EDR, but who overwhelmingly use EDR after noon on Election Day, which SB490 forbids. The Legislature may disagree with the Montana Supreme Court, but it is nevertheless bound by its precedent and the Montana Constitution. *Jacobsen* does not countenance significant restrictions on EDR, and provides this Court with a clear roadmap to reach the same result in finding that SB490 is unconstitutional.

The facts on the ground in Montana have not materially changed in any way since the Montana Supreme Court affirmed the exhaustive findings of the Thirteenth Judicial District Court permanently enjoining 2021’s House Bill 176 (“HB176”), which repealed EDR. That the facts, and Montanans’ reliance on EDR, have not changed since the Supreme Court’s recent judgment underscores that this case is ripe for summary judgment striking down SB490 in violation of the

Montana Constitution’s fundamental right to vote. Throughout the legislative process, the only state interest invoked in support of SB490 was the supposed benefit to election administrators—even though all evidence suggests it will have no such effect. *Jacobsen*, ¶¶ 77-79. Regardless, this interest is insufficient as a matter of Montana law to justify a law that infringes on the right to vote guaranteed by the Montana Constitution. *Id.* ¶ 76.

A preliminary injunction is also warranted based on a straightforward application of the Montana Supreme Court’s recent decisions enjoining HB176. With federal primary elections coming this Spring, injunctive relief is necessary to prevent irreparable injury to the Intervenor in the event their motion for summary judgment is not decided in time. As the Court held, “[t]he loss of a constitutional right to vote constitutes harm or irreparable injury for the purposes of issuing a preliminary injunction,” *Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 15, 410 Mont. 114, 518 P.3d 58 [hereinafter “*Jacobsen* PI Decision”], and “a vast majority of these Montanans [who have previously relied on EDR] will in fact be disenfranchised” if it is not available, *Jacobsen*, ¶ 70. Allowing SB490 to remain in place ahead of statewide elections later this year will thus cause Plaintiff-Intervenor’s irreparable harm warranting an injunction.

## BACKGROUND

### I. Importance of EDR

EDR has been a critical feature of Montana’s electoral system for nearly 20 years. EDR contributes to an appreciable increase in voter participation. Over 70,000 Montana voters have relied on EDR in order to access the franchise since its enactment in 2005, and “a vast majority of these Montanans will in fact be disenfranchised” if EDR is made unavailable. *Jacobsen*, ¶¶ 70, 74. Montana voters have not just made use of EDR, but have also decisively rejected its repeal when it was put to them in a legislative referendum. *Id.* ¶¶ 6, 64. Despite the definitive word of the Montana Supreme Court, Montana citizens’ consistent reliance on EDR, and its own legal analysis that the proposed legislation did not conform with the Montana Constitution, the Legislature in 2025 again enacted a law that impermissibly interferes with the right to vote, by stripping away eight critical hours of registration on Election Day.

In a large and rural state like Montana, in-person voting and registration are logistically challenging. The state is geographically the fourth largest in the nation and is among the least densely populated. As such, a large portion of its citizens, especially tribal members living on Montana’s rural reservations, rely on EDR to register and vote at the same time. Given the state’s

size, Montana voters—particularly Native American voters, who have less vehicle access and must travel, on average, greater distances to county seats—are particularly likely to make use of EDR after noon on Election Day. Plaintiffs’ Joint Statement of Undisputed Material Facts (“SUMF”) ¶¶ 49, 58, 153-54, 157-58, 161-65. Election Day itself is, by far, the most utilized day for late voter registration in Montana. *Jacobsen*, ¶ 71; SUMF ¶¶ 48, 70-71.

## II. Access to the Franchise on Indian Reservations in Montana

Montana is home to seven Indian reservations: the Blackfeet Indian Reservation, the Crow Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy’s Reservation, that intersect with sixteen counties. SUMF ¶¶ 142, 144, 146, 148. The on-reservation population of the four tribal nations who serve as Plaintiff-Intervenors in this suit is approximately 43,000 people, spread over millions of acres with limited transportation and mail options. SUMF ¶¶ 142, 144, 146, 148, 153-56.

Native American voters residing on rural reservations in Montana experience multiple barriers to the franchise. SUMF ¶¶ 74-75, 153-59. A panoply of socioeconomic factors—the result of centuries of discrimination against Native Americans—make it more difficult for Native Americans living on reservations to register and vote. *Id.* These include higher poverty and unemployment rates, limited internet access, lack of home mail delivery, less stable housing, higher homelessness rates, and lack of access to vehicles. *Id.* As a result of these increased “voter costs”—Native Americans in Montana disproportionately rely on EDR as compared to the rest of the state’s population. SUMF ¶¶ 73-74.

In-person early voting and late registration starts 30 days prior to Election Day. §§ 13-13-205(1)(a)(i), 13-2-301, MCA. Some counties have opened satellite election offices on reservations, but generally those satellite locations are open for only a handful of days (and for limited hours) during the early voting period. SUMF ¶ 158. The fact that on-reservation satellite offices are open for only a fraction of the early voting and late registration periods means that Native American voters living on rural reservations have reduced access to early voting and late registration even if they are able to make it to the satellite office. Given the inaccessibility of mail service and polling locations, many tribal members register and/or change their registration on the same day they vote. SUMF ¶ 159.

Traditionally, Native Americans in Montana vote on Election Day. SUMF ¶ 151. Because Native Americans in Montana experience significantly higher residential mobility than other demographic groups due to limited housing availability and ongoing socioeconomic instability, EDR is especially critical for Native voters, providing a necessary safety net to ensure they can cast a ballot even if they have recently moved or encountered other barriers to timely registration. SUMF ¶¶ 66, 151, 159-61.

Because of housing instability, many Native voters face difficulty maintaining a voter registration and thus face the need to re-register come Election Day. SUMF ¶ 155. Tribal members often arrive at polling places believing they are registered to vote, but do not realize they have to update their voter registration or re-register. SUMF ¶ 160. Northern Cheyenne members in particular commonly have issues with misspellings or incorrect transcriptions of their names given unfamiliarity with Native names, which can lead to the requirement that these members re-register when they arrive at the polls. *Id.* Through no fault of Native voters, these rejections or errors are unbeknownst to them until they go to vote, making EDR indispensable to remedy these registrations. The long distances between polling locations and reservation communities make it nearly impossible for voters who may unknowingly have issues with their ballots or registration to cure those issues before a noon deadline, even with the best-laid plans. SUMF ¶¶ 65, 160-61. Indeed, if poor weather occurs and snowplows have not yet cleared the roads, arrival to the polls before noon may be physically impossible. SUMF ¶ 157.

### **III. Laws that Restrict the Voting Rights of Native Americans in Montana**

#### **A. HB176**

In 2021, the Legislature passed HB 176, which ended EDR entirely. SUMF ¶ 12. Current Plaintiff-Intervenors, Northern Cheyenne Tribe, Blackfeet Nation, CSKT, Fort Belknap Indian Community, and Western Native Voice, brought suit challenging HB176 and another law that discriminatorily burdened Native Americans' right to vote. SUMF ¶ 15. A number of other entities and voters also brought suit against HB176 and other laws that made it harder to vote. *Id.* The Thirteenth Judicial District Court consolidated the cases and tried them together. SUMF ¶ 16.

After a trial with over two dozen witnesses, the court made extensive factual findings regarding the impact of HB176 on Native American Montanans, including that "Native Americans living on-reservation in Montana use EDR at consistently higher rates than the rest of the population, in both primary and general elections" and that "Montanans living on-reservation make

disproportionate use of EDR compared to those living off-reservation, with the prevalence of EDR increasing in on reservation precincts with greater Native American populations.” Findings of Fact & Conclusions of Law, ¶¶ 138-94, 282, 323, *Mont. Democratic Party v. Jacobsen*, DV 21-0451 (Mont. Dist. Ct. Sept. 30, 2022) (Dkt. 265) [hereinafter “*Jacobsen* Trial Decision”], *aff’d Jacobsen*, 2024 MT 66. The trial court permanently enjoined HB176.

Secretary Jacobsen appealed to the Montana Supreme Court, which affirmed the lower court’s injunction and credited the trial court’s factual findings. *See generally Jacobsen*; *see also* SUMF ¶¶ 20-21. The Court held that HB176 “impermissibly interferes with the right to vote due to its effect on numerous Montanans who utilize election day registration to both register and vote at the same time on election day.” *Id.* ¶ 63. The Court found that repealing EDR would disenfranchise many Montanans and that Native American voters would be disproportionately affected. *Id.* ¶¶ 70, 73-74; *see also Jacobsen* PI Decision, ¶ 33 (“Native Americans living on reservations are particularly reliant on EDR—using it at a consistently higher percentage than many other voting groups—and that the elimination of EDR will disproportionately, negatively impact them”).

The Secretary sought certiorari of the Montana Supreme Court’s decision regarding HB176 at the United States Supreme Court. Certiorari was denied on January 21, 2025. Order, *Jacobsen v. Mont. Democratic Party*, No. 24-220 (U.S. Jan. 21, 2025), <https://perma.cc/DND6-GMVS>.

## **B. SB490**

It was against this backdrop, and with clear notice that restricting EDR unconstitutionally interfered with the right to vote and had a disproportionate negative impact on Native American voters, that the Legislature passed SB490. Senator Cuffe requested the bill that would become SB490, describing it as “HB 176 (2021)”—the name of the bill that repealed EDR and which the Montana Supreme Court permanently enjoined. SUMF ¶ 32. SB490 removed eight hours of voter registration on Election Day, for federal elections only. SUMF ¶ 23. The Legislature’s own Legal Review Note acknowledged the Montana Supreme Court’s holding in *Jacobsen* and cautioned that SB490 “may raise a potential constitutional conformity question.” SUMF ¶ 34.

Senator Cuffe introduced SB490 on February 25, 2025; the bill was taken up by the Senate State Administration Committee on March 1, 2025. SUMF ¶ 26; Ex. H (Transcript of Hearing of the Senate Standing Committee on State Administration (Mar. 1, 2025)). At that hearing, Austin James, the Elections Director from the Secretary of State’s Office, the primary drafter of the

unconstitutional HB176, spoke in favor of the bill. Ex. H; *see also, e.g.*, SUMF ¶ 35. Defendant Jacobsen agrees that EDR improves Montana’s elections. SUMF ¶ 9. The proponents of the bill focused on its supposed benefits to election administrators. SUMF ¶¶ 103-05. At the hearing, opponents of SB490 outlined the dangers to electoral participation of removing eight hours of EDR, including the disproportionate impacts on indigenous voters, and SB490’s conflict with the Montana Constitution. SUMF ¶¶ 36-43; *see also* Ex. D (Transcript of Hearing of the House Standing Committee on State Administration (Mar. 26, 2025)).

On March 26, 2025, the House State Administration Committee held a hearing on SB490. Ex. D. Again, proponents focused on the supposed benefits to election administrators. SUMF ¶¶ 103-05. Seven opponents of SB490 testified, detailing that the bill violated the Montana Constitution, that it once again would have disproportionate negative impact on indigenous voters, and that it would burden election administration. SUMF ¶¶ 36-43; *see also* Ex. D at 26-43. At the hearing, addressing the constitutionality of SB490, Senator Cuffe appeared to side with the *Jacobsen* dissent, claiming erroneously that three justices dissented on the law and stating that the dissents “were very strong based on strong legal terms.” SUMF ¶ 35; Ex. D at 48. Senator Cuffe also appeared to suggest that the Legislature need not be concerned with following *Jacobsen* because “there are different people on the Supreme Court.” SUMF ¶ 35; Ex. D at 94. Substantial testimony detailed the way that SB490 would increase election costs, not eliminate them. SUMF ¶¶ 37, 118.

The Legislature passed SB490 on April 25, 2025. SUMF ¶ 44. It was transmitted to the Governor that same day. SB490 was signed by Governor Gianforte on May 5, 2025. SUMF ¶ 45.

SB490’s final language, in relevant part, provides: “(3) In a federal election, an elector may register or change the elector’s voter registration information after the close of regular registration as provided in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector’s voter registration information: (a) prior to the close of business on the Friday before the election; (b) between 8 a.m. and 5 p.m. on the Saturday before the election; and (c) prior to noon on the day of the election.” Ex. A (SB490).

### **ARGUMENT**

The Montana Supreme Court has repeatedly made clear that “[t]he right to vote is a clear and unequivocal fundamental right under the Montana Constitution.” *Jacobsen*, ¶ 13. Because there is no dispute of material fact that SB490 intrudes on the fundamental right to vote, the

presumption of constitutionality does not attach, *Mont. Auto. Ass’n v. Greely* (1981), 193 Mont. 378, 382–83, 632 P.2d 300, 303. “[A]lthough the Legislature is given power regarding elections, it may not exercise that authority in a way that violates the freedom and openness of our elections or interferes with the free exercise of the right of suffrage.” *Jacobsen*, ¶ 30. Here, it is plain that SB490 interferes with the free exercise of the right of suffrage and it cannot survive any of the available levels of constitutional scrutiny provided by the Montana Constitution. Plaintiff-Intervenors are thus entitled to summary judgment or, in the alternative, a preliminary injunction enjoining SB490.

### **I. Plaintiff-Intervenors Are Entitled to Summary Judgment.**

“A motion for summary judgment must be granted when ‘there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law.’” *Weems v. State ex rel. Knudsen*, 2023 MT 82, ¶ 32, 412 Mont. 132, 529 P.3d 798 (quoting M. R. Civ. P. 56(c)(3)); see also *Tin Cup Cnty. Water &/or Sewer Dist. v. Garden City Plumbing & Heating, Inc.*, 2008 MT 434, ¶ 21, 347 Mont. 468, 200 P.3d 60 (“Summary judgment is appropriate when ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact[.]’” (quoting M. R. Civ. P. 56(c)(3))).

“Once the moving party has met its burden, the non-moving party must present substantial evidence essential to one or more elements of the case to raise a genuine issue of material fact. Conclusory statements are insufficient to raise a genuine issue of material fact.” *Styren Farms, Inc. v. Roos*, 2011 MT 299, ¶ 10, 363 Mont. 41, 265 P.3d 1230 (citation omitted); see also *Tin Cup*, ¶ 54 (nonmoving party has “affirmative duty to respond by affidavit or other testimony containing material facts that raise genuine issues”).

### **II. SB490 Violates the Montana Constitution’s Fundamental Right to Vote.**

#### **A. SB490 impermissibly interferes with the fundamental right to vote and thus strict scrutiny applies.**

Just as did HB176, SB490 “impermissibly interferes with the right to vote due to its effect on numerous Montanans who utilize election day registration to both register and vote at the same time on election day.” *Jacobsen*, ¶ 63. “The right to vote is a clear and unequivocal fundamental right under the Montana Constitution.” *Jacobsen*, ¶ 13. “As such, when a law impermissibly interferes with the right to vote, we will apply strict scrutiny,” meaning that “the State must show that a law is the least onerous path to a compelling state interest.” *Id.* ¶ 34.

Courts determine “whether a law impermissibly interferes with a fundamental right by examining the degree to which the law infringes upon” the right. *Id.* ¶ 34. The Montana Supreme Court has already found that more than 70,000 Montanans were able to vote because of EDR and that “voluminous record evidence . . . shows that a vast majority of these Montanans will in fact be disenfranchised” without it. *Id.* ¶ 70. That number does not account for the 2022 and 2024 elections, and thus has only increased since the Montana Supreme Court’s findings in *Jacobsen*. Just like HB176, SB490 “impermissibly interferes with the right to vote due to its effect on numerous Montanans who utilize election day registration to both register and vote at the same time on election day.” *Jacobsen*, ¶ 63. This fact has not changed since the decision in *Jacobsen* and cannot be disputed here. *See* SUMF ¶¶ 6-8, 48, 52, 75. And just like HB176, SB490 “will disproportionately affect . . . Native Americans” because “[m]any Native Americans also rely on election day registration because of numerous issues they face in voting”—issues that “cannot be overcome, or become too costly to overcome, and thus disenfranchise these voters.” *Jacobsen*, ¶ 73.

The is no material factual dispute that SB490—which strips access to eight hours of EDR, rather than completely eliminating it as did HB176—will have substantially the same impact and impermissibly interfere with the right to vote of thousands of Montanans, especially Native American voters. SUMF ¶¶ 6-8, 43, 48, 52, 75, 143, 145, 147, 149, 150. In particular, SB490 impermissibly interferes with the right to vote because it targets the precise hours during which Native American voters have most often needed to make use of it: the afternoon. As the record makes clear, Native American voters living on reservations “overwhelmingly arrive at polling places on the reservation after noon on Election Day.” SUMF ¶ 161. For example, at the Gray Wolf satellite office and polling location that serves CSKT members, Missoula County issued more than four times as many ballots after 12 PM than before 12 PM. SUMF ¶ 163. Indeed, some satellite voting locations are not even open until after noon or just before on Election Day. SUMF ¶ 162. Simply put, for Native Montanans in particular, eliminating EDR after noon on Election Day is largely indistinguishable from eliminating it altogether. *Jacobsen* thus compels the finding that this deprivation of the right to vote constitutes impermissible interference, warranting strict scrutiny. *Jacobsen* controls the outcome here. That binding precedent establishes that severely limiting EDR will have a significant disenfranchising effect on Montanans, and Native Americans

in particular. SB490 thus impermissibly infringes on the right to vote and is subject to strict scrutiny.

**B. Removing eight hours of EDR for federal elections is not the least onerous path to advance a compelling government interest.**

Strict scrutiny “is seldom satisfied.” *Butte Cmty. Union v. Lewis* (1986), 219 Mont. 426, 431, 712 P.2d 1309, 1312. Whether a compelling state interest exists is a question of law. *State v. Pastos* (1994), 269 Mont. 43, 47, 887 P.2d 199, 202. “[T]o sustain the validity of [an] invasion [upon a fundamental right]” Defendant “must also show that the choice of legislative action is the least onerous path that can be taken to achieve the state objective.” *Wadsworth v. State* (1996), 275 Mont. 287, 302, 911 P.2d 1165, 1174. Such a showing cannot merely be stated, it must be demonstrated and proven via “competent evidence.” *Id.* at 303, 911 P.2d at 1174. The burden demonstrating both that an interest is compelling and that the challenged legislative action is the least onerous path to achieving it rests on Defendants.

The only interest advanced in support of SB490 was the purported benefit to election administrators. SUMF ¶¶ 103-05. At the very same time that proponents of SB490 invoked the supposed benefit to election administrators, they admitted the importance of EDR for Native Americans in Montana, acknowledging it can be “very difficult” for Native Americans to vote absent EDR. *Id.* ¶ 43; Ex. D at 11. SB490 does not come close to satisfying strict scrutiny for three reasons—(1) improving election administration is not a compelling interest, (2) SB490 does not even serve that purpose, (3) even if it did, it is not “the least onerous path” to achieving that interest. Further, Defendants’ hodgepodge of conclusory, post-hoc justifications—advanced for the first time during this litigation—are foreclosed by binding Montana Supreme Court precedent.

1. Reducing burdens on election workers is an important, not compelling, state interest.

As a matter of law, a state’s interest in reducing burdens on elections workers is an “important” interest, rather than a compelling one. *Jacobsen*, ¶ 76 (citing *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1181 (9th Cir. 2021); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 635 (6th Cir. 2016)). “To rise to the level of ‘compelling,’ a state interest must be ‘at a minimum, some interest of the highest order and . . . not otherwise served.’” *Weems*, ¶ 44 (citation omitted, alteration in original). Shifting burdens on government employees simply is not an “interest of the highest order.” *Jacobsen*, ¶ 79. As such, the interest offered by the state cannot even clear the first hurdle to overcoming strict scrutiny.

2. SB490 actually increases burdens on election administrators.

Even assuming that reducing burdens on election administrators was a compelling interest, SB490 does not reduce these burdens, and indeed increases them. SUMF ¶¶ 79-97. The Montana Supreme Court has already determined that regardless of when voter registration ends, “election workers still have the same amount of work.” *Jacobsen*, ¶ 77. Limiting “[EDR] decreases election administrators’ work only if voters are disenfranchised.” *Id.* ¶ 79. In fact, the Montana Supreme Court held that the wholesale elimination of EDR in HB176 actually increased administrative burdens on elections officials. *Id.* ¶ 78.

Here, the undisputed facts demonstrate that—even more than HB176—SB490 increases the burdens on elections workers, directly contrary to its purported purpose. By its own terms, SB490 creates separate registration systems for federal and state elections. SUMF ¶¶ 84, 93; Ex. A. Specifically, SB490 leaves EDR undisturbed for state elections, while it eliminates EDR after noon for purposes of federal elections.

Before SB490, election administrators had a clear rule: EDR in all elections. Yet now, election administrators will need to train their workers and volunteers on two different election systems: state elections, where EDR is undisturbed, and federal elections, where EDR ends at 12:00pm on election day. This arbitrary and unjustified distinction between state and federal elections will result in considerably *more* work for election administrators, who will be forced to change and add to their training materials, and election workers, who need to master different rules for different elections. SUMF ¶¶ 79-97. This will be particularly burdensome, chaotic, and irrational when state and federal elections are held on the same day, as they are in November of every even year. In this common instance, election administrators and workers will be forced to determine whether a particular voter is voting in the state election, the federal election, or both, before determining whether or not they can make use of EDR. This chaos will include needing additional ballots, given that a voter who registers after noon on Election Day will be able to vote in the state election, but not the federal one. Whereas one ballot that includes all state and federal candidates now suffices in Montana, such ballots are no longer suitable for Election Day because some voters will be legally able to vote in the state election but not the federal election. In short, the plain text of SB490 actually frustrates the only purported state interest the Legislature actually advanced.

3. SB490 is not the least onerous path to easing administrative burdens.

Since SB490 does not serve the invoked government interest, it is certainly not the “least onerous path” to achieving that end. Moreover, there are numerous other, better methods for decreasing administrative burdens, including “better training, better equipment, streamlined protocols, and more election workers.” *Jacobsen*, ¶ 79. These options remain available but the State has not pursued them. SUMF ¶ 117-19. Because there are better methods to address the state’s purported interest—ones that do not intrude at all on the constitutional right of suffrage—SB490 is not the “least onerous path” to advancing the state’s interest.

4. SB490 does not serve any of Defendants’ other, post-hoc asserted interests.

Finally, Montana Supreme Court precedent forecloses Defendant’s post-hoc, conclusory justifications for SB490 advanced for the first time in this litigation. In a single line in her interrogatory responses in this litigation, Defendant Jacobsen claims that SB490 “preserv[es] election integrity, maintain[s] confidence in the State’s elections, and insur[es] timely federal election results on election day.” Ex. B (No. ADV-25-2025-268, Secretary Jacobsen’s Corrected Responses to Plaintiff’s First Set of Requests for Admission and Interrogatories, *MFPE v. State*) at 5. The Legislature identified none of these interests in the process of introducing and passing SB490.

As to election integrity and voter confidence, the Montana Supreme Court in *Jacobsen* already found that the Secretary had identified just “two cases in the last several decades regarding voter fraud in Montana,” and “[n]one of the cases had anything to do with election day registration.” *Jacobsen*, ¶ 105. The Court also separately credited expert testimony finding that “voter fraud of any sort is vanishingly rare in Montana, with only a handful of cases over the last 20 years, during which time over eight million votes were cast, and that voter fraud does not remotely present a problem for or threat to election security in Montana.” *Jacobsen* PI Decision, ¶ 29 (internal quotation marks and citation omitted). On several occasions, the Montana Supreme Court has held that the Secretary’s “fail[ure] to present evidence of voter fraud generally in Montana, or as related to the specific measure at issue,” forecloses her ability “to support an asserted interest in ensuring voter confidence in the electoral process and guarding against that process.” *Id.* (internal quotation marks and alterations omitted); *see also Driscoll*, 2020 MT 247, ¶ 22 (failing to credit Secretary’s interest in protecting against “voter fraud or ballot coercion” based on lack of evidence).

The Montana Supreme Court has also already rejected the Secretary’s argument about timely election results, stating that the Secretary “misstate[d] the effect of the evidence in the record” about purported reporting delays caused by EDR and finding no clear error in the district court’s finding “that the Secretary had not provided any evidence that election day registration had ever delayed vote tabulation past statutory deadlines for tabulating votes.” *Jacobsen*, ¶ 82. The Court also found that “there are a number of other factors that lead to delays in tabulation, which have nothing to do with election day registration and are not affected by its elimination.” *Id.* ¶ 83. Even if the Legislature had identified these interests—which it did not—SB490 does not serve them in any way.

### **III. Even Under Middle-Tier Scrutiny, SB490 Does Not Survive Constitutional Muster.**

Even were the court to conclude that SB490 amounts to a minimal burden on the fundamental right to vote, it still must fail as a matter of law because it cannot meet the middle-tier scrutiny as required under the Montana Constitution. *Jacobsen*, ¶ 112. Under middle-tier scrutiny, courts first assess “whether the State has shown that the classification is reasonable,” that is, “not arbitrary and justified by relevant and legitimate state interests.” *Jacobsen*, ¶ 40. Courts then “whether the asserted government interest is more important than the infringement of the right.” *Id.* ¶ 41.

While reducing burdens on elections officials is a legitimate state interest, SB490 does not actually advance that interest, *see supra* Argument II.B, so it is arbitrary. EDR has been the law in Montana for nearly 20 years, and never in that time has the state demonstrated that limiting the number of hours of EDR available will ease the work of elections administrators, and all court-tested facts demonstrate that it would not. Moreover, the piecemeal availability of EDR under SB490 guarantees additional burdens, including requiring separate trainings for state and federal elections and creating separate ballots for voters who do not register in time for the federal election, but under the plain text of the law are entitled to vote in state elections. *See id.* SB490 thus only increases the burdens both on elections officials and voters. Similarly, and for reasons explained in Argument II.B.4, the Montana Supreme Court has already foreclosed Defendants’ post-hoc argument that SB490 advances election integrity, increased voter confidence, or timely election results, finding there is no evidence to support such arguments. Because SB490 is both arbitrary and unreasonable, it fails at the first step of middle-tier scrutiny.

SB490 likewise fails at the second step of middle-tier scrutiny because it does not actually advance the State’s asserted interests. As such, those interests cannot outweigh the guaranteed burden that SB490 places on Montanans. Where the state fails to demonstrate that a challenged enactment actually advances the interests put forward to support it, the State’s “purported purposes carry little, if any, weight.” *Jacobsen*, ¶ 118.

Even under the less exacting review that attaches when laws minimally burden the right to vote—which should not apply here—SB490 still fails.

#### **IV. In the Alternative, Plaintiff-Intervenors Satisfy the Requirements for a Preliminary Injunction.**

A preliminary injunction should be granted when the applicant “establishes that: (a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant's favor; and (d) the order is in the public interest.” § 27-19-201(1) MCA. When conducting this analysis, courts are directed to “closely follow United States supreme court case law” and “examine the four criteria . . . independently.” *Id.* § 27-19-201(4). This amendment of the Montana preliminary injunction standard calls for the application of the test from *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Even prior to the amendment, the Montana Supreme Court often considered irreparable injury, the balance of the equities, and an assessment of the public interest. *See, e.g., Van Loan v. Van Loan* (1995), 271 Mont. 176, 182, 895 P.2d 614, 617. In any event, all four, now-statutory factors weigh in favor of issuing Plaintiff-Intervenors’ requested injunction here.

Critically, “the United States Supreme Court, other federal courts, and [the Montana Supreme] Court have remained resolute that the purpose of a preliminary injunction is ‘to preserve the relative positions of the parties until a trial on the merits can be held.’” *Stensvad v. Newman Ayers Ranch, Inc.*, 2024 MT 246, ¶ 28, 418 Mont. 378, 557 P.3d 1240, (citing *Starbucks Corp. v. McKinney*, 602 U.S. 339 (2024); *City & Cnty. of S.F. v. U.S. Citizenship & Immigr. Servs.*, 944 F.3d 773, 789 (9th Cir. 2019)). The Montana Supreme Court has made clear that in deciding whether to enter a preliminary injunction, the district court “should restrict itself to determining whether the applicant has made a sufficient case to warrant preserving a right in status quo until a trial on the merits can be had.” *Cross by & through Cross v. State*, 2024 MT 303, ¶ 52, 419 Mont. 290, 560 P.3d 637 (citations and quotation marks omitted).

Here, there has not been a federal election since the passage of SB490, and it is plain that the status quo is permitting voters continued access to voter registration for the entirety of Election Day. Plaintiff-Intervenors recognize this precise need to preserve the status quo in seeking this alternative relief at all. This preservation of the status quo, coupled with Plaintiff-Intervenors satisfying each of the four preliminary injunction factors, requires entry of this temporary relief as the case proceeds to the extent this Court does not grant summary judgment.

**A. Plaintiff-Intervenors are likely to succeed on the merits of their claim that SB490 violates the right to vote.**

For the same reasons discussed in Argument II, Plaintiff-Intervenors are likely to succeed on the merits of their claim that SB490 violates the fundamental right to vote. The Montana Supreme Court, in permanently enjoining HB176, has already determined that “the vast majority” of the “more than 70,000 Montanans [who] have utilized election day registration to vote since 2005 . . . will in fact be disenfranchised” by its repeal. *Jacobsen*, ¶ 70. In particular, the Court found “that SB 176 will disproportionately affect . . . Native Americans,” who disproportionately “rely on [EDR] because of numerous issues they face in voting.” *Id.* ¶ 73.

The Montana Supreme Court found that these barriers to voting that Native Americans disproportionately bear “includ[e] lack of access to mail, transportation, and the long distances to county seats where they can register.” *Id.* For years, the Montana Supreme Court has repeatedly acknowledged these voting barriers facing Native Americans—in 2020, *Driscoll*, 2020 MT 247, ¶ 6 (identifying “limited access to transportation,” “higher rates of poverty,” and long driving distances” as “significant barriers to voting” for Native Americans); 2022, *Jacobsen* PI Decision, ¶ 33 (identifying “numerous, severe barriers to voting” for Native Americans “including long distances between voters and election offices and limited access to transportation”); and 2024, *Jacobsen*, ¶ 73. It is precisely “because of these barriers [that] Native Americans living on reservation are particularly reliant on EDR—using it at a consistently higher percentage than many other voting groups—and that the elimination of EDR will disproportionately, negatively impact them.” *Jacobsen* PI Decision, ¶ 33.

There are no material changes to these factual circumstances—which the Montana Supreme Court has repeatedly found dispositive in invalidating several elections laws, including HB176—since 2020, 2022, or 2024. As Plaintiff-Intervenors’ declarations make clear, Native Americans in Montana face: high poverty rates, limited vehicle access, limited ability to pay for gas, high rates of homelessness and/or substandard housing, and unreliable internet access. SUMF

¶¶ 153-59. These socioeconomic disparities that the Montana Supreme Court repeatedly cited in at least three decisions in the past half decade remain today.

In *Jacobsen*, in other words, the Montana Supreme Court held that this combination—the disenfranchising effects of removing EDR generally, and its particularly severe impact on Native Americans specifically—rendered HB176 unconstitutional. SB490 is unconstitutional for the exact same reason. As noted *supra*, tribal leaders across Montana attest that “[m]embers overwhelmingly arrive at polling places on the reservation after noon on Election Day,” SUMF ¶ 161; for example, during the 2024 general election, the Gray Wolf satellite office and polling location that serves CSKT members issued more than four times as many ballots after 12 PM than before 12 PM. SUMF ¶ 163.

Indeed, the same factors and socioeconomic disparities that make Native American voters disproportionately rely on EDR also largely explain why they overwhelmingly use EDR after noon on Election Day, as opposed to in the morning. *First*, the same socioeconomic disparities facing Native Americans that made HB176 a particular and severe burden also exist for SB490—poor road quality that make drives longer, lack of vehicle access that forces voters to wait for someone to drive them, limited satellite polling options that in some cases do not even open to voters until the afternoon or just before. SUMF ¶¶ 153-63. *Second*, winter weather in November often makes roads to and from the reservation unusable earlier in the day, when tribal members must wait for the roads to be plowed. SUMF ¶ 157. *Third*, voters in the fourth-most populous state in the country, and in particular Native Americans living on reservations, must often make long and time-consuming drives to access EDR, meaning they arrive later in the day. SUMF ¶¶ 74, 158. For Native Americans in particular, SB490 will have a substantially similar disenfranchising effect to HB176, meaning that *Jacobsen* controls. As such, SB490 constitutes an impermissible interference on the right to vote and warrants strict scrutiny.

For the same reasons discussed in Argument II-III, SB490 cannot satisfy strict scrutiny or even middle-tier scrutiny, should this court disagree that SB490 is an impermissible infringement on the right to vote. As to the Legislature’s only asserted interest of alleviating administrative burdens on elections officials, the Montana Supreme Court has already found that “regardless of when registration ends, election workers still have the same amount of work,” and that if anything, there are “several ways in which the elimination of [EDR] may increase administrative burdens on election officials,” including administrators needing to explain to otherwise qualified voters that,

and why, they are unable to vote in the election, which “takes time and stress.” *Jacobsen*, ¶¶ 77-78.

The same is true here—eliminating EDR can eliminate any administrative burdens “only if voters are disenfranchised.” *Id.* ¶ 79. And even more so than HB176, SB490 is more administratively burdensome than the status quo. By its plain text, SB490 creates two different systems: state elections, where EDR is undisturbed, and federal elections, where EDR ends at 12:00pm on election day. Having different rules for these two types of elections will force counties to train employees and volunteers on two different systems. The Legislature heard testimony from election administrators that SB490 would be “confusing and inconsistent” for voters and election administrators because it creates separate rules for federal and state elections. SUMF ¶¶ 99, 101. This is especially true when state and federal elections are held on the same day, given that the statute itself does not explain how this would be implemented without needing separate ballots. To wit, the Legislature heard testimony from an attorney at Crowley Fleck—the law firm that defended HB176—that SB490 would create “more election costs” for election administrators and counties themselves, who might be obligated to pay for the additional ballots themselves given that SB490 did not include a fiscal note. SUMF ¶¶ 101.

In this way, SB490 cannot satisfy *any* standard of review, because it is self-defeating as to its sole stated purpose. And it certainly cannot be the “least onerous path”—as is required to survive strict scrutiny, which is the appropriate standard of review here—when the Montana Supreme Court has already determined that “the best way to decrease administrative burdens . . . is with better training, better equipment, streamlined protocols, and more election workers.” *Jacobsen*, ¶ 79. This is consistent with testimony the Legislature heard during debate on SB490, when election administrators testified as to other ways to reduce administrative burdens without disenfranchising voters, such as implementing automatic voter registration. SUMF ¶¶ 79-97.

The same is true of Defendants’ post-hoc, conclusory arguments that SB490 combats voter fraud, increases voter confidence, and ensures timely tabulation of election results. *See supra* Argument II.B.4. As previously discussed, the Montana Supreme Court has already foreclosed these arguments, finding that the Secretary has failed to document any instances of voter fraud related to EDR that would support SB490’s supposed interest in election integrity and/or voter confidence, or any sufficient evidence to suggest that EDR has contributed to meaningful delays in election tabulation.

Plaintiff-Intervenors are thus likely to succeed on the merits of their claim that SB490 violates the constitutional right to vote.

**B. Plaintiff-Intervenors will suffer irreparable injury absent an injunction.**

Under Montana Supreme Court precedent, “[t]he loss of a constitutional right constitutes harm or irreparable injury for the purposes of issuing a preliminary injunction.” *Jacobsen* PI Decision, ¶ 15; *see also Driscoll*, 2020 MT 247, at ¶ 15 (“For the purposes of a preliminary injunction, the loss of a constitutional right constitutes an irreparable injury.”). The same is true under federal law. *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (when voting rights “are threatened or impaired, irreparable injury is presumed.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”); *see also id.* (“[O]nce the election occurs, there can be no do-over and no redress.”).

In upholding a preliminary injunction against HB176, the Montana Supreme Court held that “HB176 would cause Appellees irreparable harm by unconstitutionally burdening their right to vote.” *Jacobsen* PI Decision, ¶ 34. In so doing, the Court—crediting similar evidence here about the widespread use of EDR among Native Americans in particular and Montanans in general—found that “HB 176 would eliminate an important voting option for Native Americans and would make it harder, if not impossible, for some Montanans to vote.” *Id.* (internal quotation marks omitted). If anything, the record is far stronger here, now that the Montana Supreme Court has gone on to find more definitive evidence that tens of thousands of voters would likely be disenfranchised without EDR. *Jacobsen*, ¶ 70. Absent preliminary (or permanent) relief against SB490, Plaintiff-Intervenors and their members risk near-certain disenfranchisement ahead of the 2026 elections in Montana. This alone establishes irreparable injury.

**C. The balance of equities weighs in favor of Plaintiff-Intervenors and the injunction would not be adverse to the public interest.**

“[T]he balance of the equities favor prevent[ing] the violation of a party’s constitutional rights.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (internal quotation marks omitted). Courts find that, for purposes of the balance of the equities analysis, even “a potential deprivation of [a plaintiff’s] constitutional right” outweighs a state’s legitimate interest. *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (emphasis added). This is particularly the case here, where the State’s only asserted interest in SB490 is easing administrative burdens; as courts have held, administrative burdens cannot overcome and oust constitutional rights. *See, e.g.,*

*Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State’s] office and other state and local offices involved in elections.”); *United Utah Party v. Cox*, 268 F. Supp. 3d 1227, 1254 (D. Utah 2017) (“Reducing administrative burdens is . . . not a sufficient state interest to outweigh Plaintiffs’ First and Fourteenth Amendment rights.”); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2012) (finding that administrative, time, and financial burdens are “minor when balanced against the right to vote, a right that is essential to an effective democracy”).

Here, in contrast to the irreparable constitutional injury Plaintiff-Intervenors face to their fundamental right to vote, Defendant will suffer no harm at all if SB490 is enjoined because, as noted *supra*, SB490 will actually increase the burdens on election officials, rather than ameliorate them. *See supra* Argument II.B.2. The balance of equities favors Plaintiff-Intervenors.

An injunction here is also in the public interest “because it is always in the public interest to prevent a violation of a party’s constitutional rights.” *Planned Parenthood of Mont. v. State by and through Knudsen*, 2024 MT 227, ¶ 37, 418 Mont. 226, 557 P.3d 471; *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (same). Relatedly, “the public interest therefore favors permitting as many qualified voters to vote as possible.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). By contrast, “the government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.” *Planned Parenthood of Mont.*, ¶ 36.

Perhaps most fundamentally, “the very purpose of a preliminary injunction is to maintain the status quo pending that final determination.” *Jacobsen* PI Decision, ¶ 20. The status quo “is the last actual, peaceable, non-contested condition preceding the pending controversy.” *Driscoll*, 2020 MT 247, ¶ 26. EDR has been a mainstay of Montana elections for nearly 20 years, during which time more than 70,000 Montanans have relied upon it, including during the November 2024 presidential election. A preliminary injunction here would preserve Montana’s longstanding status quo while minimizing the risk of mass disenfranchisement before the disposition of final judgment.

## CONCLUSION

In light of a binding decision by the Montana Supreme Court that is but a few years old, this case is neither difficult nor close. SB490 burdens Montana’s fundamental right to vote, and—bound by *Jacobsen*—this Court must apply strict scrutiny and strike it down in its entirety. For the

foregoing reasons, the Court should grant Plaintiff-Intervenors' motion for summary judgment and find that SB490 violates the fundamental right to vote contained in Montana's Constitution. In the alternative, this Court should grant Plaintiff-Intervenors' motion for a preliminary injunction to preserve the status quo ahead of the 2026 elections.

DATED: January 22, 2026

Respectfully submitted,

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