Austin Knudsen
Montana Attorney General
Michael D. Russell
Thane Johnson
Alwyn Lansing
Michael Noonan
George Carlo L. Clark
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Tel: (406) 444-2026
Michael.Russell@mt.gov
Thane.Johnson@mt.gov
Alwyn.Lansing@mt.gov
Michael.Noonan@mt.gov
George.Clark@mt.gov

Attorneys for Defendants

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

MONTANA FEDERATION OF PUBLIC EMPLOYEES,

Plaintiff,

NORTHERN CHEYENNE TRIBE, BLACKFEET NATION, CONFEDERATED SALISH & 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,

XDDV-25-2025-268
Hon. Adam Larsen

DEFENDANTS' COMBINED RESPONSE IN OPPOSITION TO MOTIONS FOR PRELIMINARY INJUNCTION

[ORAL ARGUMENT REQUESTED]*

* Respecting this Court's time and recognizing jurisdiction is through an out-of-district invitation, the Secretary of State and the State of Montana are willing to travel to this Court's home district for the preliminary injunction hearing.

REPUBLICAN NATIONAL COMMITTEE, and MONTANA REPUBLICAN STATE CENTRAL COMMITTEE,

Defendant-Intervenors.

SUMMARY OF THE ARGUMENT

"Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

"[T]he limited function of a preliminary injunction is to preserve the status quo and to minimize the harm to all parties pending full trial. If a preliminary injunction will not accomplish those purposes then it should not issue." *Porter v. K & S P'ship*, 192 Mont. 175, 183, 627 P.2d 836 (1981). Because it would not minimize the harm to all parties pending a full trial, the Court should not grant a preliminary injunction against SB 490 or SB 276.

Neither the Montana Federation of Public Employees ("MFPE"); nor the Northern Cheyenne Tribe, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Western Native Voice ("the Tribes"); nor Forward Montana and Montana Public Interest Research Group ("the Student Activists") (collectively "the Challengers") assert sufficient facts to establish their irreparable injuries. Rather, they either rely on facts from a different case about a different law, or they assert an economic injury, which is not irreparable harm.

The Challengers posit this case is *Montana Democratic Party v. Jacobsen* 2.0. That is wrong. This case is about a different law, depends on different facts, and involves different parties. Clearly it is easy for the Challengers to simply say they win because the Montana Supreme Court has already settled this matter.[1] But just

[1] The Secretary of State and the State of Montana will more thoroughly address the Challenger's collateral estoppel arguments in the Response to Summary Judgment Brief, but because this case involves different law, different fact, and different parties, their arguments of collateral estoppel fail.

because they say so does not mean it is so. Here there are questions of fact, meaning their summary judgment arguments fail. And because their summary judgment arguments fail, so too does their likelihood of success on the merits argument.

Finally, the Challengers all fail to show that the balance of equities and the public interest independently support a preliminary injunction. When the Legislature, acting on power borrowed from the People, enacts a law, it is always in the public interest for that duly enacted law to remain in effect. When a court enjoins a law, it enjoins the voice of the People.

Just two parties here challenge SB 276: MFPE and the Student Activists. MFPE did not move either for summary judgment or a preliminary injunction against SB 276. Only the Student Activists now move for summary judgment, or in the alternative a preliminary injunction, against SB 276. They combine their arguments to address both laws. For the same reasons their SB 490 arguments fail, the Student Activists' arguments against SB 276 also fail.

BACKGROUND

The Legislature passed Senate Bills 490 and 276 during the 2025 Montana legislative session. Eight months later, the Challengers independently moved for summary judgment and, in the alternative, seek a preliminary injunction against SB 490. Along with SB 490, the Student Activists also move against SB 276. Despite moving independently, Challengers rely on the same statement of undisputed facts. (Doc. 78 at 1, n.1.)

During the Constitutional Convention leading to the 1972 Constitution, the delegates debated at length the issue of same-day (poll booth) registration. Ultimately the delegates rebuffed attempts to insert same-day registration requirements into the Constitution. As Delegate Joyce put it, "[W]hat we're trying to do in the Constitution is set up certain guidelines. We're not supposed to write our own ideas into the Constitution … I'll vote for poll booth registration [in the Legislature], but we have to permit flexibility if we're going to have a Constitution." Mont. Const. Convention Tr. 437. The delegates therefore refused attempts to add same-day registration to the

Constitution, leaving that policy to the political branches to decide. Deference to the legislative process here prevailed.

Decades later the Legislature acted on the delegates' invitation to legislate same-day registration. With SB 302 (2005), the Legislature created the statutory framework for a late registration period. Before this law, registration ended 30 days before an election. Under this new law though, voter registration stretched into the 30-day period before an election, with registration ending when the polls closed on election day. 2005 Mont. Laws ch. 286 § 1.

Because of same-day registration, the 2024 general election did not get off without a hitch. On the contrary, through inclement weather voters waited in lines outside for hours, just so they could cast their ballot. As Attorney Michael Eiselein observed, "traffic at the [Gallatin County] courthouse was extremely heavy with very long lines" because "[p]eople who were only voting and people who were both registering to vote and voting were required to wait in line outside the courthouse." Eiselein Decl., ¶ 8. These extended waits caused many voters to leave. Eiselein Decl., ¶¶ 12, 14. Election officials confirmed Attorney Eiselein's observations: "election-day registration at the courthouse and voting at the same location had stretched resources and personnel beyond capacity to handle the number of people who wanted to vote." Eiselein Decl., ¶ 15. These delays with voting and voter registration also delayed vote counting. Eiselein Decl., ¶¶ 16–17. The unduly burdensome same-day registration regime caused "people [to] wait[] for hours in line just to cast their vote. Some left after standing in the cold for what was to them, too long. Many showed up to the Courthouse; took a look at the line and left." Eiselein Decl., ¶ 19.

Unfortunately for Montana voters, the experience of Gallatin County voters was not unique. Attorney Gregg Smith observed the 2024 election at the Cascade County election office. Smith Decl., ¶ 3. Because of the specialized nature of registering a voter, only a limited number of election workers could do so at any given time. Smith Decl., ¶ 5. Even though there were separate lines to vote and to register to vote, Attorney Smith observed these lines were so long they extended outside the building. Smith Decl., ¶ 4. People became confused about which line to be in, and

upon learning they were in the wrong line, became upset. Smith Decl., ¶ 4. Wait time expanded to at least a few hours before a voter could cast his ballot. Smith Decl., ¶ 8. At one point, Attorney Smith observed the line to be 1–3 blocks long. Smith Decl., ¶ 9. Attorney Smith observed voters waiting anywhere from five to eight hours in line just to vote. Smith Decl., ¶ 12. "The biggest contributor to this problem was new voter registrations. It took staff much longer to register voters than it did for voters to simply vote. It also took staff away from helping run the election and process voters because those staff had to devote themselves entirely to registrations." Smith Decl., ¶ 13.

SB 490 amends Montana's late registration period for federal elections. SB 490 § 1(3). This bill preserves same-day registration and "expand[s] opportunities for Montanans who are otherwise unable to register to vote or have difficulty registering to vote." Mar. 1, 2025, Senate Standing Committee Hearing at 13. SB 490 mandates across Montana nine hours of availability for registration for federal elections on the Saturday before the election. SB 490 § 1(3)(b). To offset the burden on election officials, same-day registration for federal elections closes at noon on election day. SB 490 § 1(3)(c). As one county election official put it, these changes "will help mitigate the long lines on election nights, and also will help with less provisional voters." Mar. 1, 2025, Senate Standing Committee Hearing at 21. SB 490 solves a unanimously agreed to problem same-day registration presents for election officials. Mar. 26, 2025, Hearing at 67. Montana's Election Director even said SB 490 will cause "the greatest number of people participating in elections." Mar. 26, 2025, Hearing at 78, 70.

SB 276 revises Montana's voter identification laws. First, SB 276 codifies the judicial reversion[2] to HB 103 (2017) that required an elector to present a current, valid, and readable form of identification before receiving a ballot. SB 276 § 1(a). Second, acceptable forms of identification now include "student photo identification card issued by the Montana university system or a school that is a member of the

[2] *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 119, 416 Mont. 44, 545 P.3d 1074 ("*MDP*") (holding the amendatory SB 169 (2021) unconstitutional, thus reverting to the original effective law—HB 103 (2017)).

national association of intercollegiate athletics." SB 276 § 1(a)(i). Third, the law now permits a prospective elector to cast a provisional ballot if there is a deficiency with the elector's identification information. SB 276 § (2). Finally, for fail-safe and provisional voting by mail under Mont Code Ann. § 13-13-602, acceptable forms of identification now include "a Montana concealed carry permit" or a "student photo identification card issued by the Montana university system or a school that is a member of the national association of intercollegiate athletics." SB 276 § 2(1)(b).

LEGAL STANDARD

The MCA governs when a preliminary injunction can be granted. Mont. Code Ann. § 27-19-201(1) (2025). To receive a preliminary injunction, the applicant must establish: (1) likelihood of success on the merits; (2) likelihood of irreparable harm absent the injunction; (3) that the balance of the equities favors the applicant; and (4) granting the injunction is in the public interest. *Id.* This test is conjunctive. *Planned Parenthood of Mont. v. State*, 2024 MT 227, ¶ 12, 418 Mont. 226, 557 P.3d 471.

"When conducting the preliminary injunction analysis, the court shall examine the four criteria in subsection (1) independently. The court may not use a sliding scale test, the serious questions test, flexible interplay, or another federal circuit modification to the criteria." Mont. Code Ann. § 27-19-201(4)(b); *see also Stephenson v. Lone Peak Pres., LLC*, 2025 MT 148, ¶ 13, 423 Mont. 46, 571 P.3d 1042.

ARGUMENT

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. NRDC, Inc.*, 555 U.S. 7, 9 (2008). The Court should deny the Challengers' requests for a preliminary injunction because none of them establish the mandatory preliminary injunction factors. Challengers' different requests for here are an afterthought alternative. Any apparent urgency is illusory.

All Challengers sat on their rights, choosing not to seek a preliminary injunction when they filed their various complaints. Rather, for months they were perfectly content with SB 490 in effect. Indeed, they waited until they could produce artificial need—an impending primary election—before seeking extraordinary relief.

But ironically for the Challengers, "[a]s an election draws closer," the risk increases that "Court orders affecting elections … can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5.

The upcoming primary elections weigh against granting Challengers' requests. As those primary elections draw near, the gears of democracy are already cranking away. This litigation serves only Challengers' purpose to throw a wrench into that machine. Rather than provide Montanans clear directions on how to exercise their right to vote, Challengers' extraordinary preliminary relief, if granted, will confuse and dissuade Montanans from exercising their suffrage rights. That is wrong. And this Court should deny any extraordinary preliminary injunctive relief.

I. Challengers fail to allege sufficient facts to support claims of irreparable injury.

"Plaintiffs seeking preliminary relief must demonstrate that irreparable injury is likely, not merely speculative, in the absence of an injunction." *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200, ¶ 15, 418 Mont. 78, 555 P.3d 759 ("*MAID*") (citing *Winter*, 555 U.S. at 22). "Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted, the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Id.* (quoting 11A C. Wright & A. Miller, Federal Practice & Procedure, § 2948.1 (2013)).

A. MFPE.

MFPE posits two bases for irreparable injury. Both, however, lack factual support. First, it argues absent a preliminary injunction "members will be disenfranchised." (Doc. 77 at 17.) But MFPE offers just sparse, speculative statements for support. For example, it relies on a declaration from Amanda Curtis[3] describing a *former* member's and current member's 2020 election experience. (Doc. 78, ¶¶ 129, 132–33.) These statements amount to the speculative conclusion that election day registration ending "at noon during the November 2020 election" would

[3] Amanda Curtis, the current President of MFPE, repeated Cullen Hinkle's declaration and Wyatt Murdoch's declaration about voting in the 2020 election.

have "prevented [the members] from voting." (*See* Doc. 78, ¶¶ 129, 132.) But these statements do not show an irreparable injury. Indeed, the only takeaway from this evidence is speculation about the 2020 election; not an election under SB 490—which compels expanded registration hours before an election. These declarations are thus unrelated and irrelevant here.

Second, MFPE claims irreparable injury "to its own organizational interest in helping members vote." (Doc. 77 at 17.) But MFPE supports this contention with a spattering of musings unrelated to helping its members vote. For example, MFPE bizarrely states as support its historical partisanship related to election day registration, (Doc. 78, ¶ 136); its electioneering strategies (Doc. 78, ¶¶ 138–39); and its alleged resource reallocation related to its lobbying efforts through the "Decennial Study Leadership Committee." (Doc. 78, ¶¶ 140–41.) None of this, though, supports MFPE's contention that it will be irreparably injured absent a preliminary injunction. "[E]conomic harm alone generally is not considered irreparable." *Cross v. State*, 2024 MT 303, ¶ 47, 419 Mont. 290, 560 P.3d 637.

The only facts MFPE advances to support its contention that its "members will be disenfranchised" come from those three declarants. That is it. MFPE proffers no other evidence to support its alleged irreparable injury of voter disenfranchisement. It does not even allege facts to show that under SB 490 members would lose the right to vote. Instead, MFPE "offer[s] only generalized fears and supposition about the potential effects" of SB 490. *MAID*, ¶ 19. And its purported economic injuries, again unsupported by the facts, do not make a clear showing of irreparable injury. As the U.S. Supreme Court thus concluded in *Winter*, "Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. The Court should reject MFPE's contrived attempt to assert irreparable injury absent factual support.

B. The Tribes.

Next, the Tribes similarly fail in their irreparable injury argument. Their argument is based on the effects of HB 176—a 2021 law not at issue here—where there was *no* election day registration and *no* expanded registration hours before the election, rather than the effects of SB 490. (Doc. 80 at 17.) That alone precludes a preliminary injunction because they fail to establish facts supporting the contention SB 490 causes irreparable injury.

The closest the Tribes get to claiming an irreparable injury is the Tribes "and their members risk near-certain disenfranchisement ahead of the 2026 elections in Montana." (*Id.*) But again the Tribes cite no evidence to support that claim. Indeed, they merely reference an earlier Montana Supreme Court decision rather than establishing such facts here. The Tribes provide no evidence to support their argument that under SB 490 they lose their constitutional rights. There thus is no irreparable harm. The Court should accordingly deny the Tribes' request for a preliminary injunction.

C. Student Activists.

Finally, the Student Activists also fail at their irreparable injury claim. Their argument here relies on collapsing the preliminary injunction test to a single factor, then declaring that single factor dispositive of the whole test. (Doc. 83 at 17.) That is nonsensical though. This self-serving contortion of the preliminary injunction standard renders it meaningless and defies Montana statutes.

First, this Court must consider each factor "independently." Mont. Code Ann. § 27-19-201(4)(b). Yet under the Student Activists' argument, this Court literally cannot do that. "Having demonstrated they are likely to succeed on their constitutional claims, [the Student Activists] necessarily also satisfy the irreparable harm factor." (Doc. 83, at 17.) But the statutes expressly forbid this sort of analysis: "the court may not use a sliding scale, the serious questions test, flexible interplay, or another federal circuit modification to the criteria." 27-19-201(4)(b). The Court instead "shall examine the four criteria … independently." *Id.* The Court should

decline the Student Activists' invitation to collapse the preliminary injunction test to a single factor.

And the Court should not presume irreparable injury. First "[a] preliminary injunction is an extraordinary remedy" and "a matter of equitable discretion" that "does not follow from success on the merits as a matter of course." *Winter*, 555 U.S. at 24, 32. Indeed, "not every constitutional infringement may support a finding of irreparable harm," especially outside the First Amendment context. *MAID*, ¶ 16. Second, courts sitting in equity are "not mechanically obligated to grant an injunction for every violation of law." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982). Third, collapsing the inquiry would force courts to "prejudge the merits" (at least of constitutional claims) "[e]arly in the case" when "the merits are seldom clear"—even though "[t]he other factors" are supposed to be "independent grounds to deny relief." *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 202–03 (3d Cir. 2024); *accord Siegel v. LePore*, 234 F.3d 1163, 1177–78 (11th Cir. 2000) (rejecting the proposition that "the irreparable injury needed for a preliminary injunction can properly be presumed from a substantially likely equal protection violation" (cleaned up)).

The Student Activists alternatively claim they are irreparably harmed because they must "diver[t] [] resources necessary to counteract the challenged laws." (Doc. 83 at 18.) Again though, "economic harm alone generally is not considered irreparable." *Cross v. State*, 2024 MT 303, ¶ 47, 419 Mont. 290, 560 P.3d 637.

For either argument, the Student Activists simply do not cite any facts to support their purported irreparable injury. That precludes a preliminary injunction. For example, in *First Interstate Bank of Commerce v. Ward*, the district court granted a preliminary injunction in a dissolution action to prevent removal of cattle from a ranch. 282 Mont. 266, 267, 937 P.2d 470. On appeal, the defendant contended that the district court improperly granted a preliminary injunction because the court failed to make a specific finding that the removal of cattle would cause irreparable harm to the plaintiff. *Id.*, at 268. Before the district court, the plaintiff argued removal of the cattle would jeopardize its security for a third party's loan. *Id.* The defendant

responded that the plaintiff's collateral exceeded the debt of third party's loan, so removal of the cattle would not affect the plaintiff's security. *Id.* The district court ultimately did not address this factual dispute in granting a preliminary injunction. *Id.* The Montana Supreme Court, however, determined this erroneous. *Id.*, at 269. The Court accordingly held that the district court erred when it granted the preliminary injunction "without specifically finding that [the plaintiff] would suffer a 'great or irreparable injury.'" *Id.* No facts sustain the Student Activists' argument that absent a preliminary injunction they will suffer irreparable injury.

In *MAID*, the Montana Supreme Court again demanded factual support when considering the irreparable injury factor. *See MAID*, ¶ 19 (finding that the district court abused its discretion by granting a preliminary injunction on the possibility of harm). Contrasting an earlier case, *Heffernan v. Missoula City Council*, with the plaintiff's arguments there, the *MAID* Court asserted generalized fears and supposition are not enough to support a claim for irreparable injury. In *Heffernan*, the plaintiff seeking a preliminary injunction filed an affidavit emphasizing "the likely impacts from a new subdivision, including an estimated 259 to 370 additional vehicle trips per day for new homes, as well as increased noise, more pets, and less wildlife." *MAID*, ¶ 18 (citing *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 38, 360 Mont. 207, 255 P.3d 80). The Court in *Heffernan* determined "that these averments are sufficient to establish that [the plaintiff] … is likely to be specially and injuriously affected by the subdivision." *Id.* (quoting *Heffernan* ¶ 38) (second modification in original). The plaintiff in *MAID*, by contrast, only alleged "the possibility of finding a multi-unit building or a duplex, or an accessory dwelling unit going up next door." *Id.*, ¶ 19 (citations omitted). Relying on *Winter*, the *MAID* Court asserted that "possibility … is not enough to support a preliminary injunction." *Id.* (citing *Winter*, 555 U.S. at 22). Because they make no supporting factual showings, the Court should deny their request for extraordinary relief.

II. Likelihood of success on the merits.[4]

A. Because Challengers tie their likelihood of success on the merits to their summary judgment arguments, they fail at this factor.

The Challengers each rely solely on their summary judgment argument to support their likelihood of success on the merits argument. (Doc. 77, at 17) ("First, for the reasons detailed above, [MFPE] is likely to succeed on the merits. *See supra* Sections I-II."); (Doc. 80, at 14) ("For the same reasons discussed in Argument II, [the Tribes] are likely to succeed on the merits of their claim that SB490 violates the fundamental right to vote."); (Doc. 80, at 17) ("[Student Activists] are likely to succeed on the merits of their claims for the reasons stated in Part II."). But that is wrong.

First, this seemingly straightforward argument simply defies logic. And it is self-defeating. If the Challengers are correct in their summary judgment arguments, then that ends the need for a preliminary injunction. The ultimate issue in this case would be resolved, and the Court could issue a final judgment. But if Challengers are incorrect in their summary judgment argument, then they are all hoist by their petard. Following their logic, if Challengers' summary judgment arguments fail—which they will because questions of fact exist and their theories of injury are incorrect—then they are not likely to succeed on the merits. That was, after all, the extent of their arguments here. Because they rely solely on prevailing on their summary judgment arguments, when those arguments fail, so too then must their requests for a preliminary injunction.

But also, summary judgment arguments cannot support a preliminary injunction because the applicable standards require opposite consideration. *Compare* Mont. R. Civ. P. 56 (requiring no dispute of fact and judgment as a matter of law) *with Davis v. Westphal*, 2017 MT 276, ¶ 23, 389 Mont. 251, 405 P.3d 73 ("The grant or denial of permanent or preliminary injunctive relief is highly discretionary and critically dependent on the particular facts, circumstances, and equities of each

[4] The Secretary of State and the State of Montana will file a separate response brief to the Challengers' summary judgment arguments according to the Court's February 2, 2026 Order (Doc. 89). Neither waives any argument or defense related to Challengers' arguments here.

case.") (citations omitted). A preliminary injunction motion thus requires the Court to weigh evidence while a summary judgment motion prohibits the Court from weighing evidence. Indeed, under Mont. Code Ann. § 27-19-303, a court may issue a preliminary injunction only after "each party [] present[s] affidavits or oral testimony" at the hearing. A preliminary injunction is necessarily fact-driven and requires the parties to present such arguments in court. A summary judgment argument is thus a lower burden. So resting on a summary judgment argument for a preliminary injunction is an inversion of the standards. Rather than properly arguing for a preliminary injunction through affidavits and oral testimony, the Challengers hope this Court puts on blinders and ignores the different standards of their motions. That is wrong. A preliminary injunction is an extraordinary remedy. This Court should thus receive Challengers' arguments accordingly.

But Challengers' likelihood of success on the merits arguments do not just fail because their summary judgment arguments will fail. Challengers' arguments here fail because neither SB 490 nor SB 276 violate the right to suffrage.

B. SB 490 and SB 276 do not violate the right to suffrage.

The Secretary of State and State of Montana anticipate producing at the preliminary injunction hearing affidavits and oral testimony refuting the Challengers' asserted facts and arguments supporting their likelihood of success on the merits arguments. As they collect that evidence, they will respond to Challengers' arguments here to their best ability while preserving all arguments and defenses.

Article II, § 13 of the Montana Constitution provides: "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." *Willems v. State*, 2014 MT 82, ¶ 32, 374 Mont. 343, 325 P.3d 1204 (quoting Mont. Const. art. II, § 13). "[T]he right to suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Burns v. Cnty. of Musselshell*, 2019 MT 291, ¶ 19, 398 Mont. 140, 454 P.3d 685 (*citing Big Spring v. Jore*, 2005 MT 64, ¶ 18, 326 Mont. 256, 109 P.3d 219).

The Legislature enacted SB 490 and SB 276 according to the Montana Supreme Court's decision in *MDP*. Of the challenged laws most pertinent here are HB 176 (2021) (banning same-day voter registration) and SB 169 (2021) (creating distinct classification of "primary" and "secondary" identification, with the latter requiring from electors more identification documents). Those laws are plainly different from SB 490 and SB 276.

The laws here, SB 490 and SB 276, cooperate with the Montana Supreme Court's decision in *MDP*. SB 490 keeps same-day voter registration but modifies it according to the needs of election officials. *See supra* 2–6. And SB 276 addresses the voter identification deficiencies within the Montana Supreme Court's legal framework. Both laws result in an administrative shifting to facilitate more efficient election day administration. These laws fall into *MDP*'s constitutional sweep, properly balancing the State's compelling interests with Montanans' suffrage rights.

III. Balance of Equities and the Public Interest.

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *MAID*, ¶ 21 (quoting *Winter*, 555 U.S. at 24). To qualify for injunctive relief, Challengers must also establish that "the balance of equities tips in his favor." *Winter*, 555 U.S. at 20. This factor requires an "evaluation of the severity of the impact on defendant should the temporary injunction be granted and the hardship that would occur to plaintiff if the injunction should be denied." 11A C. Wright & A. Miller, Federal Practice & Procedure, § 2948.2. But "where an injunction is asked which will adversely affect a public interest … the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff." *Weinberger*, 456 U.S. at 312–13; *see also Purcell*, 549 U.S. at 4–5. "If [] the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant[.]" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009). "The public interest also may be declared in the form of a statute." 11A C. Wright & A. Miller, Federal Practice & Procedure, § 2948.4.

Extraordinary injunctive relief against SB 490 would undermine the State's compelling interests related to ensuring that Montanan electors' voices are not diluted through fraud, protecting election integrity, maintaining an efficient system of election administration, preventing double voting, preventing fraud, and promoting confidence in the results of Montana's elections. Indeed, "a State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). So much so the Montana Constitution requires the Legislature "insure the purity of elections and guard against abuses of the electoral process." Mont. Const. art. IV, § 3. Comparing this to Challengers' thin and speculative evidence, the balance of equities plainly goes against granting the preliminary injunction.

The Challengers primarily rely on their purported likelihood of success on their constitutional claim to satisfy this factor. But Challengers have failed to demonstrate that SB 490 will violate their fundamental rights. Indeed, Challengers' arguments rest on declarations minimally showing self-imposed inaction and speculation rather than actual evidence of disenfranchisement. And Challengers' alleged organizational burdens like resource diversion—again, factually unsupported—are insufficient for irreparable harm analysis or to tip the balance of the equities in Challengers' favor. SB 490, having been in effect since May 2025, has never created documented disenfranchisement or enforcement issues. The public interest in election integrity—embodied in SB 490's solution to well-documented same-day registration problems—heavily outweighs speculative harms, favoring denial of extraordinary relief.

"Court orders affecting elections," like granting a preliminary injunction, "can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4–5; *see also Montana Conservation Voters v. Jacobsen*, Op. and Orders on Mots., at 47–50, No. DDV-2023-702 (Mont. First Jud. Dist. Feb. 29, 2024) (denying a preliminary injunction because the balance of the equities regarding an upcoming election). In the same vein, the Montana Supreme Court has held that agencies are not required to immediately implement district court orders which modify agency decisions pending

appeal. For example, in *Whitehall Wind, LLC v. PSC*, the Supreme Court determined that "[t]o force the PSC to recalculate the rate in accordance with the District Court's specific instructions before allowing it to appeal would undermine the PSC's right to appeal under § 2-4-711, MCA." 2010 MT 2, ¶ 18, 355 Mont. 15, 223 P.3d 907. "As a matter of judicial economy, a reversal by [the Montana Supreme] Court could well revise the instructions upon remand that were entered by the District Court." *Mays v. Sam's Inc.*, 2019 MT 219, ¶ 9, 397 Mont. 248, 448 P.3d 1096.

"Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (stay of injunction granted because reasonable probability U.S. Supreme Court would grant certiorari). An injunction barring a constitutional enactment harms the State. *Abbott v. Perez*, 585 U.S. 579, 602 (2018); *Golden Gate Rest. Assn. v. City of S.F.*, 512 F.3d 1112, 1126 (9th Cir. 2008) ("The public interest may be declared in the form of a statute."); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (a State "suffers a form of irreparable injury" any time a court prevents it from "effectuating" laws "enacted by representatives of the people."). The Court cannot "strike down" laws "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955) (citations omitted) (emphasis added).

"[A] bedrock tenet of election law [is]: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others." *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). If this Court issues a preliminary injunction, the State may not employ duly enacted provisions to ensure efficient election administration. Without this duly enacted provision, the State will not be able to insure the purity of elections and guard against abuses of the electoral process. Mont. Const. art. IV, § 3. The people spoke. The Court should listen.

A court may not deprive Montanans of the right for their opinions to be expressed through duly enacted statutes. And oscillating policies about election administration makes efficient election administration difficult and confuses voters to the point of disenfranchisement. *See Purcell*, 549 U.S. at 4–5. Because a preliminary injunction goes against the balance of the equities and the public interest, the Court should not grant a preliminary injunction.

IV. Any granted relief should be limited to the Challengers.

For the reasons above, the Court should deny Challengers' motions. But if the Court determines that a preliminary injunction is appropriate, it should limit its scope to only the parties involved. *See*, *e.g.*, *Trump v. CASA, Inc.*, 606 U.S. 831 (2025); *see also St. James Healthcare v. Cole*, 2008 MT 44, ¶ 28, 341 Mont. 368, 178 P.3d 696 (an injunction must not "sweep any more broadly than necessary" but must be "precisely and narrowly tailored." (cleaned up)). Challengers fall short of establishing need for a preliminary injunction beyond the parties here.

CONCLUSION

"Allowing the election to proceed without enjoining the statutory provisions at issue will provide the courts with a better record on which to judge their constitutionality … Given the importance of the constitutional issues, [by denying the injunction] the Court wisely takes action that will enhance the likelihood that [the factual issues] will be resolved correctly on the basis of historical facts rather than speculation." *Purcell*, 549 U.S. at 6 (Stevens, J., concurring). The Court should deny every request for a preliminary injunction. Neither MFPE, nor the Tribes, nor the Student Activists meet every preliminary injunction factor in Section 27-19-201(1). "Findings and conclusions directed toward the resolution of the ultimate issues are properly reserved for final trial on the merits." *Porter*, 192 Mont. at 183.

DATED this 20th day of February 2026.

Austin Knudsen
Montana Attorney General

/s/ *George Carlo L. Clark*
George Carlo L. Clark
Michael D. Russell
Thane Johnson
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, George Carlo Lempke Clark, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 02-20-2026:

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: Republican National Commitee
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana, Montana Secretary of State
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: State of Montana, Montana Secretary of State
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana, Montana Secretary of State
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522
Representing: State of Montana, Montana Secretary of State
Service Method: eService

Alexander H. Rate (Attorney)
P.O. Box 1968
Missoula MT 59806
Representing: Fort Belknap Indian Community, Confederated Salish And Kootenai Tribes, Western Native Voice, Blackfeet Nation, Northern Cheyenne Tribe
Service Method: eService

Ashlee Nichole Rossler (Attorney)
P.O. Box 1968
Missoula MT 59806
Representing: Fort Belknap Indian Community, Confederated Salish And Kootenai Tribes, Western Native Voice, Blackfeet Nation, Northern Cheyenne Tribe
Service Method: eService

Justin Oliveira (Attorney)
115 N. Broadway, Suite 410
Billings MT 59101
Representing: Montana Republican State Central Committee
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: Montana Republican State Central Committee
Service Method: eService

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Montana Federation of Public Employees
Service Method: eService

Molly Elizabeth Danahy (Attorney)
P.O Box 31
Helena MT 59624
Representing: Forward Montana
Service Method: eService

K.N. McCleary (Attorney)
P.O. Box 31
Helena MT 59601
Representing: Forward Montana
Service Method: eService

Rylee Sommers-Flanagan (Attorney)
P.O. Box 31

Helena MT 59624
Representing: Forward Montana
Service Method: eService

Theresa J. Lee (Attorney)
125 Broad Street, 18th Floor
New York NY 10004
Representing: Fort Belknap Indian Community, Confederated Salish And Kootenai Tribes, Western Native Voice, Blackfeet Nation, Northern Cheyenne Tribe
Service Method: Email

Jacqueline De Leon (Attorney)
250 Arapahoe Avenue
Boulder CO 80302
Representing: Fort Belknap Indian Community, Confederated Salish And Kootenai Tribes, Western Native Voice, Blackfeet Nation, Northern Cheyenne Tribe
Service Method: Email

Allison A. Neswood (Attorney)
250 Arapahoe Avenue
Boulder CO 80302
Representing: Fort Belknap Indian Community, Confederated Salish And Kootenai Tribes, Western Native Voice, Blackfeet Nation, Northern Cheyenne Tribe
Service Method: Email

Marcos Mocine-McQueen (Attorney)
250 Massachusetts Avenue NW Suite 400
Washington DC 20001
Representing: Montana Federation of Public Employees
Service Method: Email

Katherine Chamblee-Ryan (Attorney)
250 Massachusetts Avenue NW Suite 400
Washington DC 20001
Representing: Montana Federation of Public Employees
Service Method: Email

Electronically signed by Deborah Bungay on behalf of George Carlo Lempke Clark
Dated: 02-20-2026