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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’
REPLY BRIEF IN SUPPORT OF
MOTION FOR A
PRELIMINARY INJUNCTION**

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Plaintiff-Intervenors, through counsel of record, submit this reply brief in support of their motion 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.¹

INTRODUCTION

Defendants insist that Plaintiff-Intervenors cannot demonstrate irreparable harm because SB490 has not disenfranchised any Montana voters since its enactment in May, 2025. Defs.’ Proposed Order Denying Mot. for Prelim. Inj. at 2. But this is so for a very simple reason: there has not yet been a federal election in which the new restriction applies, because the law creates separate regimes for administering state elections and federal elections. The June, 2026 federal primary is the first election in which SB490 will operate. As “the very purpose of a preliminary injunction is to maintain the status quo pending that final determination,” *Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 20, 410 Mont. 114, 518 P.3d 58 [hereinafter “*Jacobsen PI Decision*”], preventing the law from going into effect prior to that election serves the exact purposes of preliminary relief. The status quo “is the last actual, peaceable, non-contested condition preceding the pending controversy.” *Driscoll v. Stapleton*, 2020 MT 247, ¶ 26, 401 Mont. 405, 473 P.3d 386. Accessing voter registration for the whole of Election Day 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 most recent federal election in November 2024. A preliminary injunction here would preserve Montana’s longstanding status quo while minimizing the risk of mass disenfranchisement before the disposition of final judgment.

Defendants and Defendant-Intervenors never grapple with the Montana Supreme Court’s finding that repealing Election Day voter registration (“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*

¹ Plaintiff-Intervenors maintain that this case is suitable for swift disposition on summary judgment, but move for a preliminary injunction in the alternate in order to preserve the status quo in advance of the 2026 primary elections.

Party v. Jacobsen, 2024 MT 66, ¶ 73, 416 Mont. 44, 545 P.3d 1074 (“*Jacobsen*”). They also ignore the substantial sworn testimony from each of the Tribal Plaintiff-Intervenors and Western Native Voice detailing how SB490 will curtail Native Americans’ access to the ballot in substantially the same way as did HB176, the law invalidated in *Jacobsen*. Stripping eight critical hours of late voter registration opportunities on Election Day, during the times that Native American voters overwhelmingly make use of EDR, impermissibly interferes with the constitutional right to vote.

Plaintiff-Intervenors meet each of the factors necessary for a preliminary injunction to issue under § 27-19-201, MCA. They have demonstrated a likelihood of success on the merits as no matter which level of review is applied, removing eight hours of EDR intrudes on the constitutional right of suffrage. Defendants barely present an argument to the contrary, ignoring previous holdings of the Montana Supreme Court and insisting that SB490 is constitutional based only on their say-so. Further, as “[t]he loss of a constitutional right [to vote] constitutes harm or irreparable injury for the purposes of issuing a preliminary injunction,” *Jacobsen* PI Decision, ¶ 15, the testimony of Plaintiff-Intervenors detailing the overwhelmingly negative impact that removing EDR after noon will have on Native American voters in Montana demonstrates the high likelihood, not mere possibility as Defendants would have it, of irreparable harm. Further, despite Defendants’ claim, keeping an unconstitutional legislative enactment in place is *never* “in the public interest.” Defs.’ Combined Resp. in Opp. to Mots. for Prelim. Inj. at 3, Dkt. 101 (“Def. Br.”). Rather, “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. The government can have no interest in enforcing an unconstitutional law, and therefore both the balance of the equities and the public interest tilt strongly in Plaintiff-Intervenors’ favor.

ARGUMENT

I. Plaintiff-Intervenors are likely to succeed on the merits of their claim.

Defendants misapprehend the application of legal standards to facts that undergird both motions for summary judgment and motions for preliminary relief. Def. Br. at 12. The grant of summary judgment requires actual success on the merits: it is final relief. It is certainly *not* “a lower burden” than the grant of a preliminary injunction, *id.* at 13, which requires only likelihood of success on the merits and which Plaintiff-Intervenors have demonstrated here. Notably, summary judgment does not mean that there are no facts considered, *id.* at 12–13, just that there

is no dispute as to material facts. There are substantial facts, including sworn declarations, that undergird both of Plaintiff-Intervenors' motions.

Defendants misleadingly claim that Plaintiff-Intervenors “rely solely on their summary judgment argument to support their likelihood of success on the merits argument,” citing a mere introductory sentence from Plaintiff-Intervenors' brief. Def. Br. at 12. It is in fact Defendants who offer mere conclusory assurances—dedicating just a page to the merits, grappling with *none* of the legal arguments and factual record underpinning Plaintiff-Intervenors' claim, and merely insisting that because SB490 is a different law than HB176, the outcome must necessarily be different. *See id.* at 9. But Plaintiff-Intervenors' argument as to the likelihood of success does not depend on insisting that SB490 and HB176 are identical, but rather on the application of the *legal* test for whether the right to suffrage has been violated, as recently laid out in *Jacobsen*, to the facts in this case.

The facts in this case, which neither Defendants nor Defendant-Intervenors contest in their opposition to the motion for a preliminary injunction, demonstrate that Native Americans in Montana predominantly rely upon EDR after noon on Election Day. Election Day itself is, by far, the most utilized day for late voter registration in Montana. *Jacobsen*, ¶ 71; Ex. 2, Decl. of Kenneth R. Mayer (“Mayer Decl.”), ¶ 23, Dkt. 78 at 753–79. Independent of SB490, Native Americans living in Montana already face many obstacles to voting. Because of these substantial barriers, SB490 has a substantial outsized negative impact on the Native Americans in the state. *See* Ex. 6, Decl. of Ronnie Jo Horse (“Horse Decl.”), ¶¶ 12, 16, 30–31, 33, Dkt. 78 at 796–801; Ex. 7, Decl. of Melissa Lonebear (“Lonebear Decl.”), ¶¶ 4–12, 15–18, Dkt. 78 at 803–06; Ex. 8, Decl. of Rodney Gervais Jr. (“Gervais Decl.”), ¶¶ 5–11, 14–17, Dkt. 78 at 810–13; Ex. 9, Decl. of Michael Dolson (“Dolson Decl.”), ¶¶ 4–15, 19–22, 25, Dkt. 78 at 815–21; Ex. 10, Decl. of Delina M. Cuts The Rope (“Cuts The Rope Decl.”), ¶¶ 4–9, 11–16, Dkt. 78 at 823–26.

Plaintiff-Intervenors have set forth uncontested evidence that the *exact same* factors that the Montana Supreme Court found led to Native Americans disproportionately relying on EDR—“including long distances between voters and election offices and limited access to transportation,” *Jacobsen* PI Decision, ¶ 33—explain why Native Americans overwhelmingly make use of EDR after noon on Election Day. *See, e.g.*, Ex. 6, Horse Decl. ¶¶ 18–19, 25, 30, Dkt. 78 at 799–800; Ex. 9, Dolson Decl. ¶¶ 7, 20, Dkt. 78 at 817, 819. Further, because Native Americans in Montana experience significantly higher residential mobility than other demographic groups, expansive

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. Ex. 6, Horse Decl. ¶¶ 19, 22, 25, 28, 30–31, Dkt. 78 at 799–801; Ex. 9, Dolson Decl. ¶¶ 14, 19–21, Dkt. 78 at 818–20; Ex. 10, Cuts The Rope Decl. ¶¶ 13–14, Dkt. 78 at 825–26; Ex. 7, Lonebear Decl. ¶¶ 7, 15–17, Dkt. 78 at 805, 807. Because Native American often rely on voting on Election Day, they need to rely on EDR to address any issue with their registrations that day. Ex. 6, Horse Decl. ¶¶ 18, 21, Dkt. 78 at 799–800. Tribal members will often travel considerable distances at significant expense to arrive at a polling place believing that they are registered because they attempted to register or were previously registered, but do not realize that their registration was rejected or erroneously processed, requiring them to update their voter registration or re-register in order to vote. Ex. 10, Cuts The Rope Decl. ¶ 14, Dkt. 78 at 825–26; Ex. 7, Lonebear Decl. ¶ 17, Dkt. 78 at 807; Ex. 9, Dolson Decl. ¶ 14, Dkt. 78 at 818; Ex. 6, Horse Decl. ¶¶ 21, 30, Dkt. 78 at 800–01. 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. Ex. 7, Lonebear Decl. ¶ 9, Dkt. 78 at 806. Lack of conventional residential addressing on many tribal homes also leads to confusion and processing errors on registrations, necessitating re-registrations. Ex. 7, Lonebear Decl. ¶ 7, Dkt. 78 at 805; Ex. 6, Horse Decl. ¶¶ 12, 30, Dkt. 78 at 798, 800–01. Tribal members overwhelmingly arrive at polling places on the reservation after noon on Election Day. Ex. 6, Horse Decl. ¶¶ 27–28, Dkt. 78 at 800; Ex. 7, Lonebear Decl. ¶ 15, Dkt. 78 at 807; Ex. 9, Dolson Decl. ¶¶ 7, 19–21, Dkt. 78 at 817, 819–20; Ex. 10, Cuts The Rope Decl. ¶ 13, Dkt. 78 at 825. When such voters learn of issues with their registration or that they are not registered, it is already after noon. This is especially true when—as is common in elections taking place in November—winter weather makes roads to and from the reservation unusable earlier in the day, when tribal members must wait for the roads to be plowed. Ex. 7, Lonebear Decl. ¶¶ 11–12, Dkt. 78 at 806; Ex. 8, Gervais Decl. ¶ 9, Dkt. 78 at 811–12; Ex. 9, Dolson Decl. ¶ 9, Dkt. 78 at 817; Ex. 10, Cuts The Rope Decl. ¶ 11, Dkt. 78 at 825.

As such, Plaintiff-Intervenors’ now-uncontested evidence demonstrates that SB490 functionally has the same impact as a full repeal of EDR. Because of this, 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. 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. Ex. 6, Horse Decl. ¶ 28, Dkt. 78 at 800; Ex. 7, Lonebear Decl. ¶ 15, Dkt. 78 at 807; Ex. 9, Dolson Decl. ¶¶ 7, 19–21, Dkt. 78 at 817, 819–20; Ex. 10, Cuts The Rope Decl. ¶ 13, Dkt. 78 at 825. Because the right to vote is fundamental under the Montana Constitution, the Court should thus apply strict scrutiny to assessing SB490. *Jacobsen*, ¶¶ 13, 34.

Defendant-Intervenors insist that only middle-tier scrutiny applies because SB490 is less onerous than HB176 on grounds that the former still “provid[es] meaningful opportunity for late registration,” including allowing people “who could not take off work to register during regular business hours” the opportunity to register on the Saturday before Election Day. Def.-Intervenors’ Combined Resp. in Opp. at 9, Dkt. 98 (“Def.-Intervenors’ Br.”). But this again demonstrates an unwillingness to engage with the uncontested factual record and black-letter law—both this significant record evidence about SB490’s substantially similar impact to HB176 on Native Americans and the Montana Supreme Court’s finding that “the number of people registering on election day alone is nearly equal to the number of people who register in the 29 days leading up to election day combined,” such that the “contention that it is otherwise easy to register before election day does nothing to dispel . . . [that] these people will be disenfranchised without the ‘final safeguard’ of [EDR].” *Jacobsen*, ¶ 71.

In order to meet the strict scrutiny standard, Defendants “must show that a law is the least onerous path to a compelling state interest.” *Jacobsen*, ¶ 34. This showing must be demonstrated and proven via “competent evidence.” *Wadsworth v. State* (1996), 275 Mont. 287, 303, 911 P.2d 1165, 1174. Defendants cannot do that here.

Defendants and Defendant-Intervenors—pointing solely to two declarations, neither submitted by election administrators—contend that SB490 advances the state’s interest in more efficient election day administration. But as a preliminary matter, the Montana Supreme Court has made clear that a state’s interest in reducing burdens on elections workers is an “important” interest, rather than a compelling one necessary to satisfy strict scrutiny. *Jacobsen*, ¶ 76. Thus, their argument fails at the first gate of the analysis.

Even if this asserted interest were indeed compelling, nothing in these declarations suggests that the removal of eight hours of voter registration on Election Day is “the least onerous path” to efficient election administration, for a number of reasons. The Montana Supreme Court has already

determined that limiting “[EDR] decreases election administrators’ work only if voters are disenfranchised.” *Id.* ¶ 79. Moreover, the facts demonstrate that SB490 will actually increase the work of election administrators, including through requiring increased training and developing two sets of ballots—one for state and one for federal elections. Additionally, because SB490 still permits EDR during the whole of Election Day for state contests, there is no basis to conclude that it will do anything to make the work of elections officials more efficient. Since SB490 does not serve its supposed end, it certainly cannot be the least onerous path to doing so. Indeed, Defendants have continued to deny counties the tools that the Montana Supreme Court recognized would actually ease election administration difficulties: including “better training, better equipment, streamlined protocols, and more election workers.” *Id.* ¶ 79. Indeed, Defendant and Defendant-Intervenors’ own factual submission makes this clear: In Cascade County, Mr. Smith testified that he was told that “new registrations involved specialized training,” so “there were limited [people] who could perform that function.” Decl. of Gregg Smith (“Smith Decl.”), ¶ 5, Dkt. 99 at 2. By their own factual contentions, a less onerous path to smooth election administration would be to provide “better training” and “more election workers.” *Jacobsen*, ¶ 79.

And even were this Court to ignore the evidence demonstrating SB490’s impermissible interference with the right of suffrage, *see supra* at 3–5, Plaintiff-Intervenors are still likely to succeed because SB490 does not even meet middle tier scrutiny. In applying middle-tier scrutiny, Courts 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. And then turn to “whether the asserted government interest is more important than the infringement of the right.” *Id.* ¶ 41. While easing burdens on election officials is certainly a legitimate interest, SB490 does not do that. By the State’s own admission, it requires counties to run two sets of elections whenever there are both state and federal offices on the ballot. *See Ex. B to Decl. of Raph Graybill, Interrog. Resp. No. 2, Sec’y. Jacobsen’s Corrected Resps. to Pl. Mont. Fed’n. of Pub. Emps.’ First Set of Requests for Admis. and Interrogs.*, Dkt. 78 at 57. This fact further does nothing to decrease burdens on elections officials, as they will still have to conduct voter registration for state offices through the whole of Election Day. Further, because it treats voters differently in the middle of the day, “otherwise qualified voters who show up ready to vote may respond poorly to election workers who explain the new law to them and why they cannot vote in that election—this takes time and increases stress.” *Jacobsen*, ¶ 78. And despite the declarations’ vague allusions to EDR causing

delays and unnamed voters leaving lines at county courthouses, they do nothing to challenge the Montana Supreme Court’s findings that EDR “typically increases voter turnout by 2-7% compared to not having it,” *id.* ¶ 71, and that there is no evidence “that [EDR] had ever delayed vote tabulation past statutory deadlines for tabulating votes,” *id.* ¶ 82. They certainly provide nothing to suggest that EDR—which “has become wildly popular” in Montana over the past 20 years, *id.* ¶ 6—is suddenly no longer “workable,” Def.-Intervenors’ Br. at 12. Indeed, their own declarations indicate that there were separate lines for folks already registered and those who needed to make use of EDR, Smith Decl. ¶ 4, Dkt. 99 at 1, so the long lines referenced were composed mainly of people who would have been disenfranchised entirely if not for being able to wait in that line to make use of EDR. *See Jacobsen*, ¶ 79. As such, SB490 does not advance any state interest, is arbitrary, and thus cannot meet middle-tier review.

Finally, in a legally confused Hail Mary attempt, Defendant-Intervenors suggest that this Court enjoining SB490 would so “transgress the ordinary bounds of judicial review” that it would violate the Elections Clause of the federal Constitution. *See* Def.-Intervenors’ Br. at 12 (quoting *Moore v. Harper*, 600 U.S. 1, 36 (2023)). To date, no federal court has *ever* found a state court decision so outlandish that it merited this extraordinary exception to ordinary judicial review under *Moore*. One would presume Defendant-Intervenors should know that, as the United States Supreme Court rejected this precise theory under *Moore* in rejecting the Secretary’s petition for a writ of certiorari of the *Jacobsen* case enjoining HB176. *Jacobsen v. Mont. Democratic Party*, 145 S. Ct. 1125 (2025).

Under whatever standard is applied, Plaintiff-Intervenors are likely to succeed on the merits of their claim, so this element weighs strongly in favor of the grant of a preliminary injunction.

II. Plaintiff-Intervenors will suffer irreparable injury absent an injunction.

Defendants are wrong in asserting that Plaintiff-Intervenors have cited no evidence to support their claimed irreparable injury.² Def. Br. at 9. Rather, Plaintiffs-Intervenors detailed the way in which the removal of eight hours of voter registration would operate to disenfranchise members of Plaintiff-Intervenors. *See* Pl.-Intervenors’ Br. in Supp. of Mot. for Summ. J. or for a Prelim. Inj. at 3–4, 7–8, Dkt. 80; Ex. 6, Horse Decl. ¶¶ 12, 16, 27–28, 30–31, 33, Dkt. 78 at 798–

² Defendants’ argument may boil down to that Plaintiff-Intervenors did not repeat the specifics of the disenfranchisement already detailed throughout the brief in Plaintiff-Intervenors’ effort not to burden the Court with repetition of assertions already made.

801; Ex. 7, Lonebear Decl. ¶¶ 4–12, 15–18, Dkt. 78 at 804–08; Ex. 8, Gervais Decl. ¶¶ 5–11, 14–17, Dkt. 78 at 811–13; Ex. 9, Dolson Decl. ¶¶ 4–15, 19–22, 25, Dkt. 78 at 816–20; Ex. 10, Cuts The Rope Decl. ¶ 4–9, 11–16, Dkt. 78 at 824–26.

Defendant-Intervenors argue that the purported “delay in filing their motions for preliminary injunction . . . undermines their claim to irreparable harm.” Def.-Intervenors’ Br. at 15. Not so. SB490 applies only to federal elections, so the irreparable injury can accrue only ahead of a federal election. If Plaintiff-Intervenors had sought preliminary relief at the time of their intervention, the coming injury would have been more than a year in the future and Defendant-Intervenors may well have argued that the alleged injury was premature. There is still substantial time for the Court to act in advance of the first election in which SB490 will be in effect—in June of this year. The sort of delay which courts have found to be prohibitive of preliminary relief are situations with much longer delay or in which the challenged activity has already ripened past court intervention. *See Benisek v. Lamone*, 585 U.S. 155, 157 (2018); *Fishman v. Schaffer*, 429 U.S. 1325, 1330 (1976); *cf. Boyer v. Karagacin* (1978), 178 Mont. 26, 34, 582 P.2d 1173, 1178 (“a period of over one and one-half years” elapsing did not cause court to deny preliminary relief). To wit, the cases Defendant-Intervenors cite are far afield. In *Zamfir v. Casperlabs, LLC*, the movant “wait[ed] until less than a week before” the event that allegedly would cause it irreparable harm, 528 F. Supp. 3d 1136, 1152 (S.D. Cal. 2021); here, by contrast, the next federal election is months away. Similarly, in *Oakland Tribune, Inc. v. Chronicle Publishing Co.*, the Ninth Circuit noted that the movant had waited so long that the event that “made its situation desperate [] is now moot.” 762 F.2d 1374, 1377 (9th Cir. 1985). Here, Plaintiffs seek the maintenance of the status quo because the injury of the deprivation of a constitutional right is still pending: Not a single election in which SB490 was operational has come to pass, so the timing of this motion does in no way indicate that the threatened injury is not irreparable. And even if this Court did find that Plaintiff-Intervenors delayed in bringing their motion—which it should not—“delay is but a single factor to consider in evaluating irreparable injury; courts are loath to withhold relief solely on that ground.” *Arc of Cal. v. Douglas*, 757 F.3d 975, 990 (9th Cir. 2014) (internal quotation marks omitted).

While Defendants and Defendant-Intervenors are forced to admit that “[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*, ¶ 15 (“For the purposes of a preliminary

injunction, the loss of a constitutional right constitutes an irreparable injury.”), they continue to insist that the threatened injury here is speculative. They can only do so by ignoring the substantial sworn evidence, referenced *supra*, supporting the conclusion that SB490 guarantees disenfranchisement of Native Americans in Montana if it is not enjoined prior to the next pending federal election. Defendants’ insistence that Plaintiff-Intervenors are referencing the past injuries of HB176, Def. Br. at 9, ignores this uncontested evidence entirely.

The factual support offered by Plaintiff-Intervenors demonstrates the surety of irreparable harm, in the form of a loss of a constitutional right that will befall Plaintiff-Intervenors absent preliminary relief against SB490 ahead of the 2026 elections in Montana. *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200, 418 Mont. 78, 555 P.3d 759 (“*MAID*”), is not to the contrary. In *MAID*, the Court required factual support to conclude that there was irreparable injury. *MAID*, ¶¶ 18–19. Plaintiff-Intervenors have robustly provided that support here. *See, e.g.*, Ex. 6, Horse Decl. ¶¶ 12, 16, 27–28, 30–31, 33, Dkt. 78 at 798–801; Ex. 7, Lonebear Decl. ¶¶ 4–12, 15–18, Dkt. 78 at 804–08; Ex. 8, Gervais Decl., ¶¶ 5–11, 14–17, Dkt. 78 at 811–13; Ex. 9, Dolson Decl. ¶¶ 4–15, 19–22, 25, Dkt. 78 at 816–820; Ex. 10, Cuts The Rope Decl. ¶¶ 4–9, 11–16, Dkt. 78 at 824–26. As such, Plaintiff-Intervenors have demonstrated irreparable harm and thus meet this factor of the test to determine whether preliminary relief should issue.

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

In instances where “the government opposes a preliminary injunction, [the balance of equities and assessment of the public interest] merge into one inquiry.” *Planned Parenthood*, ¶ 34 (citation omitted). To argue that the balance of the equities or the public interest weighs in their favor, Defendants and Defendant-Intervenors must studiously set aside the constitutional harm demonstrated by the Plaintiff-Intervenors. While invoking federal caselaw to stress that the state suffers irreparable harm if a statute is enjoined, Def. Br. at 16, Defendants fail to contend with binding Montana precedent that “the government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.” *Planned Parenthood*, ¶ 36. As Plaintiff-Intervenors have demonstrated that they are likely to succeed in their claim that SB490 violates their constitutional right to suffrage, the balance of the equities weighs in favor of granting the injunction. And the requested injunction is also in the public interest “because it is always in the public interest to prevent a violation of a party’s constitutional rights.” *Id.*, ¶ 37.

Defendants make a hodge-podge of other arguments for why a preliminary injunction is in the public interest that have been foreclosed by the Montana Supreme Court. They insist—without a shred of evidence—that enjoining SB490 “would undermine the State’s compelling interests related to ensuring that Montanan electors’ voices are not diluted through fraud, protecting election integrity . . . preventing doubt voting, preventing fraud, and promoting confidence in the results of Montana’s elections.” Def. Br. at 15. Yet the Montana Supreme Court has 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 has also 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 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 abuses of that process.” *Id.* (internal quotation marks and alterations omitted); *see also Driscoll*, ¶ 22 (failing to credit Secretary’s interest in protecting against “voter fraud or ballot coercion” based on lack of evidence). The same is true here. The Montana Supreme Court’s holdings make clear that Defendants need actual evidence to support any interest in preventing voter fraud or preserving election integrity, and they have again presented none here. Further, Defendants’ appeal to the public’s interest in “maintaining an efficient system of election administration,” Def. Br. at 15, fail for the same reasons mentioned *supra*: if anything, SB490 will increase work for election administrators and create inefficiencies because it needlessly creates two different sets of rules for state elections versus federal elections.

Most fundamentally, “the very purpose of a preliminary injunction is to maintain the status quo pending that final determination.” *Jacobsen* PI Decision, ¶ 20. Defendants suggest that enjoining SB490 would create confusion, *see* Def. Br. at 16, when in fact the reality is just the opposite. For 20 years, Montana voters have been able to make use of EDR in the afternoons on Election Day. SB490 disrupts that longstanding, accepted practice, and a preliminary injunction is necessary to preserve this status quo and ensure normalcy until disposition of final judgment. Defendants acknowledge that preserving the status quo is indeed the purpose of preliminary relief,

Def. Br. at 2, they fail to acknowledge the obvious: the status quo here is the law as it existed for nearly two full decades prior to SB490.

IV. Federal equitable standards that spring from the authority of the federal courts under Article III of the federal Constitution are inapplicable to the authority of the state judiciary under the Montana Constitution.

Defendants invoke the so-called *Purcell* principle to urge this Court to allow SB490 to deprive Montanans of their constitutional right to suffrage because there is an election months in the future. Def. Br. at 15. But the federal equitable doctrine that the United States Supreme Court has espoused in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), and its subsequent application thereof, is based specifically on federalism concerns. See *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (describing *Purcell* principle as “lower *federal* courts should ordinarily not alter the election rules on the eve of an election” (emphasis added)); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring) (describing the *Purcell* principle as “*federal* courts ordinarily should not enjoin a state’s election laws in the period close to an election” (emphasis added)). The use of “federal” in these cases is not incidental, but underscores that this assessment is based on the relationship of the *federal* courts to state enactments. Cf. *Grove v. Emison*, 507 U.S. 25, 34 (1993) (holding that federal courts should defer to state courts in election context and reversing lower court conclusion that state court decision amounted to interference in the election process, describing state court intervention as “precisely the sort of *state* judicial supervision of redistricting we have encouraged” (emphasis added)). Additionally, as noted *supra*, Defendants’ invocation of *Purcell* here to suggest that the injunction will cause voter confusion, Def. Br. at 7, 15, is undermined by Montanans’ long reliance on EDR. See *Jacobsen*, ¶¶ 6, 70 (noting that—without even accounting for the November 2024 election—more than 70,000 Montana voters have relied on the “wildly popular” EDR since it came into effect in 2006, and that the “vast majority of these Montanans will in fact be disenfranchised” if EDR was repealed). SB490, by contrast, has not been the governing rule in any election. The new law being in effect in this year’s coming elections is far more likely to confuse voters than would preserving the status quo and ensuring Montanans can access EDR throughout the day, as they have been able to for the past 20 years.

Finally, Defendants’ argument that the injunction should only apply to the parties in the instant case likewise springs from the particular authority of the federal courts. Def. Br. at 17. Defendants cite *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), to contend the injunction should apply

only to the instant parties. Def. Br. at 17. But that decision was specifically based on the power of federal courts under the Judiciary Act of 1789, *CASA*, 606 U.S. at 841, and so does not provide a basis to suggest state courts power is limited in the same ways. And while the Montana Supreme Court has indeed cautioned that injunctions should not “sweep[] any more broadly than necessary,” *St. James Healthcare v. Cole*, 2008 MT 44, ¶ 31, 341 Mont. 368, 178 P.3d 696, when there is a violation of constitutional rights, it is necessary that the violation be relieved for all Montanans, not merely those who have brought the issue to the Court. And as Defendants proffered interest here is to ease burdens on election administrators, an injunction that applies only to the instant parties would create even more administrative problems for elections officials than SB490 itself already does. *See supra* at 5–7.

CONCLUSION

For the forgoing reasons, the Court should grant Plaintiff-Intervenors’ motion for a preliminary injunction to preserve the status quo ahead of the 2026 elections. Plaintiff-Intervenors contend that this case is ripe for adjudication on the merits following their motion for summary judgment. But as the Court is required to hold a hearing before the grant of preliminary relief, Plaintiff-Intervenors respectfully request that the Court hold a joint hearing on both motions,³ as the Court may grant Plaintiff-Intervenors’ motion for summary judgment and not need to assess the preliminary injunction factors.

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Respectfully submitted,

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³ Undersigned counsel, Alex Rate, will be out of the country and unavailable between March 27 and April 7, 2026, and so here provides notice of his unavailability between those dates.

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