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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,

REPUBLICAN NATIONAL COMMITTEE,
and MONTANA REPUBLICAN STATE
CENTRAL COMMITTEE,

Defendant-Intervenors.

Cause No. ADV-25-2025-0268

**PLAINTIFF-INTERVENORS’
REPLY BRIEF IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT AND BRIEF IN
OPPOSITION TO DEFENDANT-
INTERVENORS’ CROSS-
MOTION FOR SUMMARY
JUDGMENT**

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Plaintiff-Intervenors, through counsel of record, submit this reply brief in support of their motion for summary judgment under Montana Rule of Civil Procedure 56, and in opposition to Defendant-Intervenors’ cross-motion for summary judgment. Summary judgment is warranted for Plaintiff-Intervenors because there are no genuine issues of material fact, and Plaintiff-Intervenors are entitled to judgment as a matter of law. Because summary judgment is warranted as a matter of law for Plaintiff-Intervenors, Defendant-Intervenors’ cross-motion for summary judgment should be denied.

INTRODUCTION

Defendants’ summary judgment opposition brief makes clear that the Secretary of State’s true quarrel is not with Plaintiff-Intervenors, but with the Montana Supreme Court. Defendants’ legally deficient Statement of Disputed Facts consists exclusively of questions—rather than factual statements with specific record citations—that (1) the Montana Supreme Court has already affirmatively answered in Plaintiff-Intervenors’ favor in *Montana Democratic Party v. Jacobsen*, 2024 MT 66, 416 Mont. 44, 545 P.3d 1074 (“*Jacobsen*”); (2) the Montana Supreme Court determined were immaterial to resolving the issue of whether the challenged restrictions on Election Day voter registration (“EDR”) violate the constitutional right of suffrage; and (3) are answered by Plaintiff-Intervenors’ uncontested record evidence. Defendants and Defendant-Intervenors repeatedly insist that *Jacobsen* is irrelevant because HB176 and SB490 are different laws. But they do not dispute *any* of the record evidence demonstrating that SB490 will have substantially the same impact on Native American voters as did HB176, nor can they dispute the binding legal framework set out in *Jacobsen* that guides the clear-cut analysis in this case.

SB490 impermissibly interferes with Plaintiff-Intervenors’ constitutional right of suffrage because, for the same reasons that they disproportionately rely on EDR in the first place, Native American voters overwhelmingly make use of EDR in the afternoon hours. Defendants and Defendant-Intervenors do not and cannot refute this, just as they cannot refute the Montana Supreme Court’s findings that tens of thousands of Montana voters would be disenfranchised if they are unable to make use of EDR. *Jacobsen*, ¶ 70. The Montana Supreme Court has explicitly held that *these* are the facts that are material for deciding cases like this one. And no one in this

case disputes them. For these reasons, summary judgment should be entered for Plaintiff-Intervenors and Defendant-Intervenors' cross-motion for summary judgment should be denied.¹

ARGUMENT

I. Defendants' Statement of Disputed Facts is Deficient and Leaves Plaintiff-Intervenors' Statement of Undisputed Facts Fully Intact.

In conjunction with their motions for summary judgment, Plaintiff, Plaintiff-Intervenors, and Youth Plaintiff-Intervenors (collectively, "Plaintiffs") submitted a Joint Statement of Undisputed Material Facts ("SUMF"). Pls.' Joint SUMF, Dkt. 78. Plaintiffs provided 200 paragraphs of facts with citations to the factual record or legal authority, accompanied by numerous supporting affidavits and exhibits. *See id.* In response, Defendants submitted a one-and-a-half-page "Statement of Disputed Facts" ("SDF") that, in actuality, contains no facts whatsoever. Defs.' SDF, Dkt. 104. In it, Defendants submit what could best be described as seventeen questions, only eight of which concern SB490. *See id.* These questions—such as "Whether SB 490 impacted any Montanan's ability to vote," or "Whether SB 490 lessens the number of voters especially given the expected publicity through the outreach campaign of the Montana Secretary of State"—do not address *any* of the factual paragraphs in Plaintiffs' SUMF or include citation to *any* factual or legal authority. *See id.* For their part, Defendant-Intervenors submit *no* Statement of Disputed Facts at all. *See* Def.-Intervenors' Combined Resp. in Opp., Dkt. 98 ("Def.-Intervenors' Br.").

This filing is insufficient. The Montana Rules of Civil Procedure provide that an opposing party "may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial." Mont. R. Civ. P. 56(e)(2). Neither Defendants nor Defendant-Intervenors have done so

¹ Plaintiff-Intervenors already largely responded to the legal arguments undergirding Defendant-Intervenors' cross-motion for summary judgment since Defendant-Intervenors' brief doubled as their response to Plaintiff-Intervenors' motion for a preliminary injunction. *See* Def.-Intervenors' Br. at 2. Accordingly, Plaintiff-Intervenors focus primarily on Defendants' opposition to Plaintiff-Intervenors' motion for summary judgment. But for all the reasons set forth in Plaintiff-Intervenors' opening brief, reply brief in support of their motion for a preliminary injunction, and this instant brief, Defendant-Intervenors' cross-motion for summary judgment should be denied. None of the facts offered by Defendant-Intervenors change the legal analysis or alter the application of binding Montana Supreme Court case law to the facts in this case.

here.² Because Defendants have not responded as required by Rule 56, “summary judgment should, if appropriate, be entered against” them.³ *Id.* None of the affidavits attached to Defendants’ opposition place Plaintiffs’ material facts into dispute nor do they create other genuine issues of material fact that prevent the Court from granting summary judgment to Plaintiffs. By and large, the Declaration of Angela Nunn includes her awareness of facts already established by Plaintiffs’ submissions, *see, e.g.*, Ex. A, Decl. Office of the Montana Secretary of State Christi Jacobsen, ¶ 5, State Defs.’ Combined Resp. to All Pls. Mots. For Summ. J., Dkt. 103 at 21 (“Nunn Decl.”), and a cherry-picked summation of her awareness or understanding of the testimony of proponents of SB490, *see id.* ¶¶ 9, 12–19, 23–40, Dkt. 103 at 22–28. The only other assertions made by Ms. Nunn directly affirm the facts that, under SB490, voter registration would continue throughout Election Day and require the provision of separate ballots for state and federal elections.⁴ *Compare*

² By cross-moving for summary judgment, Defendant-Intervenors admittedly must not be contesting any of Plaintiff-Intervenors’ facts. Defendant-Intervenors supposed “Statement of Undisputed Facts,” Def.-Intervenors’ Br. at 3–6, does not offer any asserted facts that alters the application of governing law to this case, and so Plaintiff-Intervenors need not point out each and every mismatch between the absolute assertions in their Brief and the underlying Declarations cited in support. *Compare* Def.-Intervenors’ Br. at 6 (“If voters were not registering to vote, especially during the latter half of the day, the lines would have been much more manageable at the Courthouse like they were at other voting locations—Zoot Enterprises, Hope Lutheran Church and the Belgrade Special Events Center.”) *with* Decl. of Michael Eiselein ¶¶ 2, 19, Dkt. 100 at 1, 4 (making clear that the Declarant is not an election official and that this assertion was based only on his personal observation and opinion).

³ While the Montana First Judicial District does not specifically lay out procedures for motions for summary judgment in its local rules, the Local Rules for the United States District Court for the District of Montana provide an instructive example of a proper Statement of Disputed Facts. In those rules, the court states that “[a]ny party opposing a motion for summary judgment must file a Statement of Disputed Facts” that “must set forth verbatim the moving party’s Statement . . . adding only (A) whether each fact in the moving party’s Statement is ‘undisputed’ or ‘disputed’; and, (B) if ‘disputed,’ pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit before the court to oppose each fact.” D. Mont. L.R. 56.1(b)(1)(A)–(B). The rules add that “[f]ailure to file a Statement of Disputed Facts will be deemed an admission that no material facts are in dispute.” D. Mont. L.R. 56.1(d).

⁴ The Nunn Declaration, which indicates “her understanding” as opposed to admissible facts, further appears to be at least in tension with Defendants’ own sworn answers in discovery. *Compare* Nunn. Decl. ¶ 44, Dkt. 103 at 29 (referencing voters being given a “blank ballot”) *with* 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 6 (“County officials will not deliver a federal ballot to anyone registering after noon on election day. They will, however, hand the voter *a state election ballot.*” (emphasis added)).

Nunn Decl. ¶¶ 42–44, Dkt. 103 at 29 *with* Pls.’ Joint SUMF ¶¶ 25, 93, Dkt. 78 at 6, 18. This directly undercuts Defendants’ own assertion that SB490 would make election administration more efficient demonstrating that SB490 is neither the “least onerous path” to achieving the state’s interest nor even “not arbitrary and justified by relevant and legitimate state interests.” *Jacobsen*, ¶¶ 34, 40. Likewise, the Declaration of Lyn Hellegard further undermines Defendants’ own supposed interest in easing election administration, as she avers that prior to SB490, when working as an elections judge in 2024 she never “found any election worker (volunteer or county employee) to be stressed or overworked,” Ex. F, Decl. of Lyn Hellegard, ¶ 8, Dkt. 103 at 52. And the voter declarations submitted by Defendants do not place any facts in dispute as the elections referenced therein did not include federal offices, *see* Defs.’ Exs. B–G, Dkt. 103 at 36–57 (voter declarations that reference their experience in the June 2025 and November 2025 elections), so of course SB490 would not have any impact on voters during those elections.

Defendants and Defendant-Intervenors have filed no meaningful opposition to Plaintiffs’ Statement of Undisputed Facts, let alone one with citations to any record or authority or specific objections to specific facts. Plaintiffs’ Joint Statement of Undisputed Facts thus remains fully intact and unopposed. As Defendants and Defendant-Intervenors have failed to “present material and substantial evidence, rather than mere conclusory or speculative statements,” they have not raised “a genuine issue of material fact.” *Motarie v. N. Mont. Joint Refuse Disposal Dist.* (1995), 274 Mont. 239, 242, 907 P.2d 154, 156; *see also, e.g., Comer v. City of Palm Bay, Fla.*, 265 F.3d 1186, 1192 (11th Cir. 2001) (finding no abuse of discretion and affirming grant of summary judgment for defendant on grounds that plaintiff “provided neither a statement of disputed facts nor evidence to support the disputed facts” in response to defendant’s motion); *Dykeman v. McGill*, No. 14-5411, 2018 WL 6617833, at *6 (D.N.J. Dec. 18, 2018) (court “deems admitted for the purposes of this [summary judgment] motion” defendants’ statement of material facts “insofar as Plaintiff failed to file a responsive statement of disputed facts”).

II. Defendants’ Open Questions in its Disputed Facts Filing Raise No Genuine Issues of Material Fact

Even if this Court construed Defendants’ filing as a “Statement of Undisputed Facts,” it would find that none of the eight questions Defendants pose related to SB490 raise any genuine issues of material fact that would preclude this Court from entering summary judgment in Plaintiff-Intervenors’ favor. Defendants’ questions fall into three main buckets. *First*, there are the questions that are plainly addressed in Plaintiffs’ Joint Statement of Undisputed Facts. Defendants ask, for

example, “Whether SB 490 impacted Plaintiff-Intervenors’ or their members’ ability to Vote,” and later “Whether SB 490 impacted any Montanan’s ability to vote.” Defs.’ SDF ¶¶ 2, 4, Dkt. 104 at 2. While SB490 has not yet been in effect for any federal elections, Plaintiffs’ Joint Statement of Undisputed Facts contains numerous facts—supported by significant and uncontested evidence—that Montana voters, especially Native American voters, will be disenfranchised under SB490. *See, e.g.*, Pls.’ Joint SUMF ¶ 58 (“Montanans continue to rely on [EDR] in the afternoons and evenings because of their work schedule and other obligations, and they will be disenfranchised if it is eliminated during those times”) (citing declarations of expert and fact witnesses), ¶ 73 (noting, with citations to many declarations, that SB490 will “disproportionately disenfranchise Native American voters”), Dkt. 78 at 12, 14.

Second, there are Defendants’ questions that, under the Montana Supreme Court’s holding in *Jacobsen*, are either irrelevant or immaterial. Defendants ask “[w]hether any election administrator observed voters experiencing problems voting as a result of SB 490.” Defs.’ SDF ¶ 5, Dkt. 104 at 2. There have been no federal elections in place since SB490 was passed, so the restriction on EDR has not yet occurred in any elections. More to the point, this question is irrelevant: the Court in *Jacobsen* cited no evidence of election administrators “observ[ing] voters experiencing problems as a result of” HB176, and yet it had no problem holding that the law was unconstitutional, because that question is immaterial to the question of a voting restriction’s constitutionality. The same is true of Defendants’ question of “[w]hether any eligible Montanan was prevented from registering to vote as a result of SB 490,” Defs.’ SDF ¶ 7, Dkt. 104 at 2—even setting aside that SB490 has not yet been in place for a federal election, the Montana Supreme Court held that HB176 was unconstitutional principally because voters “*would* be disenfranchised without election day registration” *in the future*. *Jacobsen*, ¶ 74; *see also id.* ¶ 70 (holding HB176 impermissibly interferes with the constitutional right to vote principally because unspecified and unnamed voters “will in fact be disenfranchised” in the future without EDR); *Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 15, 33 410 Mont. 114, 518 P.3d 58 [hereinafter “*Jacobsen* PI Decision”] (holding plaintiffs had made a prima facie case that HB176 was unconstitutional because “the elimination of EDR will disproportionately, negatively impact” Native American voters in Montana); *Driscoll v. Stapleton*, 2020 MT 247, ¶ 22, 401 Mont. 405, 473 P.3d 386 (preliminarily enjoining a restriction on third-party ballot collection in Montana on similar grounds).

Third, there are the questions that are answered jointly by the Montana Supreme Court and Plaintiffs' uncontested record evidence. Defendants wonder "[w]hether SB 490 lessens the number of voters," especially given that SB490 requires counties to provide late registration on the Saturday before Election Day. Defs.' SDF ¶ 6, Dkt 104 at 2. Again, Defendants could satisfy their curiosity simply by reading *Jacobsen*: The Montana Supreme Court found that late registration opportunities "during the 30 days prior to the election" cannot replace EDR because "[EDR] is so popular 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." *Jacobsen*, ¶ 71. "The Secretary's contention that it is otherwise easy to register before election day"—including, say, on the Saturday before Election Day—"does nothing to dispel . . . [that] these people will be disenfranchised without the 'final safeguard' of [EDR]." *Id.*

Other pieces of unrebutted record evidence further confirm *Jacobsen*'s reasoning here. It is uncontested that "[t]ribal members overwhelmingly arrive at polling places on the reservation after noon on Election Day," Pls.' Joint SUMF ¶ 161, Dkt. 78 at 31 (citing declarations), a factual statement supported by actual voting records and data from tribes and get-out-the-vote groups, *id.* ¶¶ 162-65. And it is further uncontested that "some counties in Montana already allow[ed] late registration on the Saturday before election day" prior to the enactment of SB490, meaning that the new law provides no additional hours in those counties. *Id.* ¶ 60.

Ultimately, Defendants' eight musings about SB490 all have easy answers supplied by the Montana Supreme Court or the uncontested factual record in this case, or are immaterial to a finding of summary judgment here. Defendants have failed to demonstrate any genuine issues of material fact.

III. Defendants' Other Attempts to Engineer Genuine Issues of Material Facts All Fail.

Separate and apart from their deficient and unavailing Statement of Disputed Facts, Defendants try a handful of other gambits to concoct some genuine issues of material fact to argue that summary judgment is inappropriate here. None succeed.

Defendants note, for example, that [s]everal Montana voters . . . have submitted declarations stating that SB490 did not impinge upon their ability to vote freely in any manner." State Defs.' Combined Resp. to All Pls. Mots. For Summ. J., Dkt. 103 at 11 ("Defs.' Br.") (citing Exs. B–G, Dkt. 103). By this, Defendants refer to the identical, lawyer-drafted, cookie-cutter

declarations⁵ of six voters who all allege, in the exact same language, that SB490 has not impacted them in any election nor will it impact them in the future. Defs.’ Exs. B-G, ¶ 6, Dkt. 103 at 36–57. These declarations are legally and factually irrelevant. Legally speaking, it is immaterial whether six voters hand-selected by the Montana Secretary of State will be affected by SB490. “The right to vote . . . is a personal and constitutional right.” *Jones v. Judge* (1978), 176 Mont. 251, 254, 577 P.2d 846, 848; *Gill v. Whitford*, 585 U.S. 48, 65 (2018) (“We have long recognized that a person’s right to vote is individual and personal in nature.”) (internal quotation marks omitted). Given that, a right-to-vote claim “is not defeated [even if] 99% of other people can secure the necessary credentials easily.” *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016); *see also, e.g., Crawford v. Marion Cnty.*, 553 U.S. 181, 198 (2008) (“The burdens that are relevant to the issue before us are those imposed on persons who are eligible to vote but do not possess a [photo ID].”); *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016) (*en banc*) (courts assessing constitutional right-to-vote claims must consider “not only a given law’s impact on the electorate in general, but also its impact on subgroups, for whom the burden, when considered in context, may be more severe.”). It is legally inconsequential that in a state with millions of voters, the Secretary could find six who are unaffected. Moreover, each of these Declarants references voting being unaffected in the June 2025 primary and November 2025 general elections: neither of which included federal offices, so by the terms of SB490 were not at all impacted by the enactment at all. None of these voters identify themselves as Native Americans—the voters that Plaintiff-Intervenors represent in this case and who the Montana Supreme Court has found disproportionately rely on EDR and would be disproportionately harmed if they could not make use of it. *See Jacobsen*, ¶ 73. And these six voters are a tiny fraction of the more than 70,000 Montana voters—without even counting the 2022 and 2024 elections—who have made use of EDR since its enactment in 2006, “a vast majority” of whom “will in fact be disenfranchised” if they are unable to make use of EDR. *Id.* ¶ 70.

Defendants then offer a legally confused argument that Plaintiff-Intervenors must show that they “were actually prevented from casting their votes in violation of one person, one vote, as a result of SB 490” Defs.’ Br. at 12, Dkt. 103. Defendants appear to erroneously conflate the standards for vote dilution—in which a voter is still able to cast a vote but that vote is diluted

⁵ Exhibit F is the lone, slight exception, insofar as it has an additional Paragraph 8 not included in the other voter declarations.

because of unlawful districting, for example, *see, e.g., Thornburg v. Gingles*, 478 U.S. 30, 36 (1986)—and vote denial, in which a law makes it harder or impossible for certain voters to exercise their fundamental right to vote, *see, e.g., Jacobsen*, ¶ 70. Defendants’ confusion aside, their argument is factually and legally immaterial. Factually speaking, SB490 has not been in place for any federal elections, so it is literally impossible to find a voter who *already* has had their right to vote violated under the statute. And as a legal matter, courts need not identify specific examples of disenfranchisement to hold that a law impermissibly interferes with the constitutional right to vote. *See Jacobsen*, ¶ 70 (holding HB176 impermissibly interferes with the constitutional right to vote principally because unspecified and unnamed voters “will in fact be disenfranchised” in the future without EDR); *Jacobsen* PI Decision, ¶ 15, 33 (holding plaintiffs had made a prima facie case that HB176 was unconstitutional because “the elimination of EDR will disproportionately, negatively impact” Native American voters in Montana); *Driscoll*, ¶ 22 (preliminarily enjoining a restriction on third-party ballot collection in Montana on similar grounds). As in the *Jacobsen* and *Driscoll* decisions from the Montana Supreme Court, Plaintiff-Intervenors here have demonstrated uncontested evidence that SB490 will have a disproportionate disenfranchising effect on Native Americans in Montana. Time and again, binding Montana Supreme Court precedent has shown that this is sufficient to find a constitutional violation as a matter of law.

Defendants then note that the district court in the previous legal challenge to HB176 denied summary judgment for plaintiffs, Defs.’ Br. at 12 & Ex. H, ultimately granting plaintiffs a permanent injunction against the law after trial. In that decision, the district court found that it was premature to grant summary judgment because there were three main categories of genuine issues of material fact: (1) “the nature and extent of the burdens imposed by” HB176, (2) “the Secretary’s interest in enforcing” HB176, and (3) whether HB176 is “subjected to heightened scrutiny under the precedential standard or” the federal *Anderson-Burdick* standard that the Secretary had been advocating. Ex. H, Order Regarding Defs.’ Mot. for Summ. J. and Youth Pls.’ Cross Mot. for Summ. J., at 20, Dkt. 103. That was the correct decision at the time. Unfortunately for Defendants, however, the Montana Supreme Court’s subsequent holding in *Jacobsen* provided definitive answers to all these questions. Binding precedent from *Jacobsen* demonstrates that tens of thousands of voters, disproportionately Native American, would be disenfranchised if EDR is repealed, and that offering extra hours of opportunities elsewhere in the late registration period cannot prevent that disenfranchisement. *Jacobsen*, ¶¶ 70–71. And neither Defendants nor

Defendant-Intervenors contest *any* of the record evidence demonstrating that eliminating EDR after noon under SB490 will have substantially the same impact on Native American voters as did eliminating it altogether under HB176. Pls.’ Joint SUMF ¶¶ 73, 161–65, Dkt. 78 at 14, 31. *Jacobsen* also directly forecloses any arguments about the Secretary’s interest. This is true as a legal matter, because *Jacobsen* held that “reducing the administrative burden on election workers . . . is an ‘important’ rather than ‘compelling’ state interest,” which cannot satisfy strict scrutiny. *Jacobsen*, ¶ 76. It is also true as a factual matter, given that the Court found that eliminating EDR would not reduce work for election administrators and indeed “may increase administrative burdens,” directly contrary to the stated purpose. *Jacobsen*, ¶¶ 77–78. And the Montana Supreme Court definitively answered the district court’s third question, expressly “declin[ing] to adopt the federal *Anderson-Burdick* standard” because it “provides less protection” than the Montana Constitution, *id.* ¶ 32, and instead setting out a clear and binding legal framework for deciding constitutional right-to-vote claims, *see id.* ¶ 46. In other words, after the district court raised these open questions when denying summary judgment, the Montana Supreme Court followed up by definitively answering them in its opinion in *Jacobsen*.

Last, Defendants appeal to three seemingly random cases in which the Montana Supreme Court held that summary judgment was inappropriate because there were genuine issues of material fact. *See* Defs.’ Br. at 13–16. None of these cases involve the constitutional right to vote or any of the parties, legal issues, or factual issues in this case. At best, their only relevance here is their uncontroversial articulation of the legal standard that summary judgment is unwarranted if there are genuine issues of material fact—an analysis guided closely by the relevant binding law and factual record. As Plaintiff-Intervenors argued in their opening brief and argue here, summary judgment is appropriate in this case because of the binding precedent set out in the Montana Supreme Court’s decision in *Jacobsen* and the careful and uncontested factual record demonstrating that Native American voters will face a substantially similar disenfranchising effect from SB490 as they did from HB176. On this point, Defendants’ cases offer nothing to the contrary.

IV. Defendants-Intervenors’ Statement of Undisputed Facts Raises No Genuine Dispute of Material Facts.

Finally, while Plaintiff-Intervenors issued a fuller response to Defendant-Intervenors’ Statement of Undisputed Facts in their reply memorandum in support of their motion for a preliminary injunction, *see* Pl.-Intervenors’ Reply Br. at 5–7, Dkt. 108, they note here that the statement presents no genuine dispute of material facts. The *entirety* of Defendant-Intervenors’

statement comes from the declarations of two individuals—neither of whom are election administrators—who served as volunteer poll watchers for the November 2024 election in Cascade and Gallatin Counties. *See* Decl. of Gregg Smith (“Smith Decl.”), Dkt. 99, Eiselein Decl., Dkt. 100. These declarations—and by extension, Defendant-Intervenors’ statement—are immaterial for several reasons: *First*, as a preliminary matter, these declarations cover observations from just two of Montana’s 56 counties, meaning that they provide no insight at all into the voting processes and experiences in the vast majority of the state. *Second*, these declarations focus almost exclusively on election administration which, as noted *supra*, the Montana Supreme Court has already said is an insufficient interest for satisfying strict scrutiny. *See Jacobsen*, ¶ 76.

Third, the declarations often undercut Defendant-Intervenors’ own arguments. For example, the declarations indicate that there were separate lines for already-registered voters versus those who needed to make use of EDR, Smith Decl. ¶ 4, Dkt. 99 at 1, meaning that the purportedly long lines referenced in the declaration were overwhelmingly comprised of people who would have been disenfranchised entirely if not for being able to wait in that line to make use of EDR. This is in keeping with the finding in *Jacobsen* that EDR “typically increases turnout by 2-7% compared to not having it,” *Jacobsen*, ¶ 71, and that there is no evidence “that [EDR] had ever delayed vote tabulation past statutory deadlines for tabulating votes,” *id.* ¶ 82. Further, the Cascade County declaration notes that “new registrations involved specialized training,” so “there were limited [people] who could perform that function,” Smith Decl. ¶ 5, Dkt. 99 at 1–2—providing more support for the Montana Supreme Court’s finding that a less onerous path to improving election administration would be to provide “better training” and “more election workers.” *Jacobsen*, ¶ 79. And *fourth*, the declarations do nothing to change the factual findings from the Montana Supreme Court that restricting EDR does not actually eliminate work for election administrators and that eliminating it “may increase administrative burdens.” *Id.* ¶¶ 77–78.

Ultimately, just as with Defendants themselves, Defendant-Intervenors do not even attempt to contest Plaintiff-Intervenors’ detailed factual record showing that SB490 will have a substantially similar negative effect on Native Americans’ right to vote as HB176. Absent any such genuine disputes of material fact, this case can and should be resolved as a matter of law in Plaintiff-Intervenors’ favor.

CONCLUSION

For the forgoing reasons, the Court should grant Plaintiff-Intervenors' motion for summary judgment and deny Defendant-Intervenors' cross-motion for summary judgment.

DATED: March 13, 2026

Respectfully submitted,

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DATED: March 13, 2026

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