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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
COUNTY OF YELLOWSTONE

WESTERN NATIVE VOICE, Montana )  
Native Vote, Assiniboine and Sioux Tribes of )  
Fort Peck, Blackfeet Nation, Confederated )  
Salish and Kootenai Tribes, Crow Tribe, Fort )  
Belknap Indian Community, )

Plaintiffs, )

vs. )

COREY STAPLETON, in his official )  
capacity as Montana Secretary of State, TIM )  
FOX, in his official capacity as Montana )  
Attorney General, JEFF MANGAN, in his )  
official capacity as Montana Commissioner )  
of Political Practices, )

Defendants. )

Cause No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. The Montana Ballot Interference Prevention Act (“BIPA”) harms rural communities, especially Native Americans<sup>1</sup> in rural tribal communities across the seven Indian reservations located in Montana, by impairing access to the absentee and mail-in voting process. In so doing, BIPA violates rights protected by the Montana Constitution, including the right to vote, freedom of speech, freedom of association, and due process.

2. BIPA will effectively end ballot collection efforts on reservations in Montana by severely restricting who may collect and deliver ballots and by creating criminal penalties for any violation.

3. While the majority of Montanans vote through the mail, by either using an absentee ballot or a regular ballot for an all-mail election, Native Americans living on reservations in Montana have unequal access to mail voting.<sup>2</sup>

4. Native Americans living on reservations often lack access to regular mail service, such that many individuals cannot reliably receive mail ballots and they may not personally be able to mail their voted ballots. Residential mail services on reservations are limited due to a widespread lack of at-home delivery by the U.S. Postal Service or other private mail delivery services and scarcity of post offices, post office boxes, and mail drop-off boxes.

5. Native American homes are often overcrowded; it is not uncommon for 10–15 people to live in a single home. Housing can be precarious, with people living in homes on the goodwill of friends or relatives, and individuals may move from home to home to stay housed. These individuals

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<sup>1</sup> The term “Native American”, “American Indian”, and “Indian” are used interchangeably throughout this Complaint to refer to the Indigenous people and tribes of Montana.

<sup>2</sup> Plaintiffs acknowledge each reservation experiences different barriers that vary in severity.

often lack a permanent address and rely on post office boxes (“P.O. box”) to conduct their affairs. People sharing a home may also all share a single P.O. box, especially if their home does not receive mail delivery.

6. Native Americans residing on reservations are more likely to be geographically isolated from polling centers where absentee ballots can be delivered, and they often lack the means to travel to those locations to deliver their ballots. Geographic isolation coupled with higher levels of poverty make it less likely that Native Americans can avail themselves of the mail ballot drop off locations at polling places without the benefit of assistance.

7. Because of these barriers, many Native Americans residing in rural tribal communities in Montana rely on collection and conveyance of their ballots to cast their votes.

8. By penalizing and thus effectively ending ballot collection on reservations, BIPA prevents Native Americans living on reservations from full and equal participation in elections.

9. Western Native Voice and Montana Native Vote are organizations (collectively “Organizational Plaintiffs”) dedicated to protecting Native American voting rights. As part of their work, they engage in get-out-the-vote (“GOTV”) work in tribal communities and in urban areas. A critical part of this work is ballot collection. BIPA has effectively ended those activities. Western Native Voice is a domestic non-profit, non-partisan organization in good standing with the Montana Secretary of State with Yellowstone County as its primary place of business. Montana Native Vote is a domestic non-profit political advocacy organization in good standing with the Montana Secretary of State with Yellowstone County as its primary place of business.

10. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation are a sovereign and federally recognized Indian nation located wholly within the State of Montana. Fort Peck tribal members face difficulties picking up and turning in their ballots and are aided by fellow community

members and third parties that pick up and drop of their ballots for them. BIPA endangers this practice, disproportionately burdens Fort Peck tribal members, and subjects tribal members to possible prosecution. Fort Peck has a transit bus system that does not follow a route – it responds to calls of individuals and takes them to their desired location within the Reservation. Through election season, this transit system assists voters in turning in their ballots. Fort Peck also relies upon Organizational Plaintiffs’ ballot collection to assist its members. If Organizational Plaintiffs are unable to collect ballots, Fort Peck transit bus system will not have the capacity to increase its bus service on Election Day.

11. Blackfeet Nation is a federally recognized sovereign Indian nation located wholly within the State of Montana. Blackfeet tribal members face difficulties picking up and turning in their ballots and are aided by third parties and fellow community members that pick up and drop off their ballots for them. BIPA endangers these practices, disproportionately burdens Blackfeet tribal members, and subjects tribal members to possible prosecution.

12. The Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”) is a sovereign Indian nation located wholly within the State of Montana. CSKT members face difficulties picking up and turning in their ballots and are aided by fellow community members and third parties that pick up and drop off their mail for them. BIPA endangers this practice, disproportionately burdens tribal members, and subjects tribal members to possible prosecution. CSKT also dedicates \$5,000 per year toward GOTV efforts. CSKT relies upon Organizational Plaintiffs’ ballot collection to assist its members. If Organizational Plaintiffs are unable to collect ballots, CSKT will have to expend additional resources to assist tribal members in picking up and dropping off their ballots.

13. Crow Tribe is a federally recognized sovereign Indian nation located wholly within the State of Montana. Crow tribal members face difficulties picking up and turning in their ballots and are

aided by fellow community members and third parties that pick up and drop off their ballots for them. BIPA endangers this practice, disproportionately burdens Crow tribal members, and subjects tribal members to possible prosecution.

14. The Fort Belknap Indian Community is a federally recognized sovereign Indian government comprised of the Gros Ventre and Assiniboine members. Located wholly within the State of Montana, in a very rural location, tribal members face difficulties picking up and turning in their ballots and are aided by third parties and fellow community members that pick up and drop off their ballots for them. BIPA endangers this practice, disproportionately burdens the Gros Ventre and Assiniboine tribes of the Fort Belknap Indian Community and subjects tribal members to possible prosecution. Fort Belknap relies upon Organizational Plaintiffs' ballot collection to assist its members. If Organizational Plaintiffs are unable to collect ballots, Fort Belknap will have to expend additional resources to assist tribal members in picking up and dropping off their ballots.

15. Western Native Voice, Montana Native Vote, the Assiniboine and Sioux Tribes of Fort Peck, the Confederated Salish and Kootenai Tribes, Crow Tribe, and Fort Belknap Indian Community (collectively, "Plaintiffs") seek preliminary and permanent injunctive relief. Plaintiffs also seek a declaratory judgment that BIPA violates their right to vote because it burdens the right of voters on rural reservations to cast their ballots.

#### **JURISDICTION AND VENUE**

16. This Court has jurisdiction to grant declaratory and injunctive relief under the Montana Uniform Declaratory Judgments Act. Mont. Code Ann. § 27-8-201.

17. Venue is proper in Yellowstone County because Plaintiffs Western Native Voice and Montana Native Vote are residents of Yellowstone County. Mont. Code Ann. § 25-2-126(1).

## PARTIES

### *Western Native Voice and Montana Native Vote*

18. Organizational Plaintiffs are Native American-led organizations that organize and advocate in order to build Native leadership within Montana. Though they work closely together, Western Native Voice and Montana Native Vote are separate legal entities, each with their own boards of directors. And while the two Organizational Plaintiffs share staff members, staff differentiate the work they do depending on which organization is funding them.

19. Civic engagement is a crucial part of Organizational Plaintiffs' activities, especially GOTV programs. They conduct GOTV efforts on all seven reservations and in the Native American community in the three urban centers in Montana. Organizational Plaintiffs' GOTV efforts include canvassing reservations and urban Indian centers and discussing the importance of voting and civic participation and how and why to engage in the civic process. Ballot collection and conveyance is core to Organizational Plaintiffs' GOTV work and is vital to voter turnout in the Native American community.

20. Organizational Plaintiffs are able to engage in this work by hiring organizers living on reservations to work in each community. Each organizer participates in several days of training before they begin their GOTV program. This training enables the organizers to be effective once out in the field. The training discusses the history of suppression of the Native American vote and the importance of the Native vote. The organizers then carry the message of the importance of the Native American vote with them when they go out into the community to collect ballots.

21. Organizational Plaintiffs' organizers are paid to collect voted ballots and deliver them to election offices. For example, in 2016 Organizational Plaintiffs had 15–18 organizers working to deliver and collect ballots. During the 2018 election cycle, a non-presidential election, Organizational



Plaintiffs employed 32 organizers, with between 14 and 22 organizers on staff at any given time. In 2018, Western Native Voice and Montana Native Vote collected and conveyed at least 853 ballots.

22. BIPA will force Organizational Plaintiffs either to drastically reduce their activities or to significantly increase their fundraising and organizers. To stay under the six-ballot cap per organizer, Organizational Plaintiffs would need to hire more organizers to collect the number of ballots they collected in 2018. Even if they could secure the necessary funding, isolated areas remain where Organizational Plaintiffs struggle to find even one local ballot collector. In order to comply with BIPA, Organizational Plaintiffs would need to find multiple ballot collectors in those hard-to-staff areas. Thus, even if they could secure more funding to hire additional organizers, Organizational Plaintiffs would not be able to find and train the numbers necessary to provide the same level of coverage to rural tribal communities while BIPA remains law.

23. Given the effect BIPA has on their operations, Organizational Plaintiffs have standing to challenge the law on its own behalf. *See New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.*, 2014 MT 69, ¶ 27, 374 Mont. 229, 328 P.3d 586.

24. Also, Western Native Voice and Montana Native Vote are membership organizations. Western Native Voice has over 10,000 members across the state of Montana; Montana Native Vote has over 1,000 members. These members include Native Americans who will be affected by BIPA's limitation on ballot collection and conveyance. Western Native Voice and Montana Native Vote, therefore, also have associational standing to bring claims on behalf of their members. *Id.*

*Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation*

25. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation are a sovereign, federally recognized tribe with over 13,000 enrolled Tribal members. Approximately 7,000 of those members live on the Reservation, and over 4,500 are 18 years of age or older. The Fort Peck

Reservation is home to two separate Indian nations, each composed of numerous bands, and jointly governed a single Tribal Executive Board. The Fort Peck Reservation spans approximately 110 miles from east to west and 40 miles from the Missouri River north towards the Canadian border, covering a little over 2 million acres. The Reservation is intersected by Roosevelt, Valley, Daniels, and Sheridan counties. The Fort Peck Tribes assert claims on behalf of its own injuries and behalf of its members as *parens patriae*.

26. Most houses on the Fort Peck Reservation do not receive home mail delivery. Wolf Point is the only on-Reservation post office that offers some, but not all, in-town residents the option to receive home mail delivery. An even smaller number of members benefit from rural route deliveries that run out of each of the four post offices located across the Reservation. As a consequence, the majority of tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

27. Distance to post offices varies widely among members living on the Reservation. Some members live within a mile of their post office while others live upwards of thirty miles from their post office. Given the limited hours post offices are open, combined with the time it takes members to get to the office and back to work, it may be practically impossible for working members to access their mail during the work week. For example, members that live in Fort Kipp, Brockton, Frazer, and Oswego but who work in Poplar (where the majority of on-Reservation jobs are located) are unable to access their own post office boxes located 13 miles away in Brockton and 40 miles away in Frazer during the work day. Because the Brockton and Frazer post offices are each only open four hours a day Monday



through Friday and are not open on weekends, it is impossible for these members to pick-up their own mail during the work week.

28. Fort Peck suffers from a high poverty rate that generally ranges between 40–60%. Some homes on the Reservation lack indoor plumbing, running water, and electricity. Given the extreme poverty, many members do not own or have access to a reliable vehicle and those who do cannot always afford a tank of gas for a mail run, choosing instead to spend limited funds on necessities such as food or heating.

29. Lack of access to a vehicle or use of shared vehicles is also very common on the Fort Peck Reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs.

30. There is an extreme housing shortage on the Reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have 10–15 people sharing a home. Post offices on the Reservation allow for one P.O. box per physical address free of charge but charge an annual fee for any additional boxes associated with that same physical address. As a result, tribal members living at a single residence often share a single P.O. box.

31. Due to poverty, road conditions, lack of vehicle access, cultural norms, necessity, and convenience, picking up and dropping off mail for family, neighbors, friends, acquaintances, and friends of friends is common on the Reservation. Crowded living conditions facilitate the picking up and dropping off of mail by one person for many people at once. The limited hours of some post offices further incentivize members to drop off and pick up mail for each other.

32. When making a mail run, neighbors, co-workers, and friends may ask a fellow community member to drop off a stack of mail or give that community member their P.O. box key and

have them pick up the mail that is inside for them. In the course of dropping off or picking up mail, the community member may not know every person whose mail they are picking up or dropping off.

33. Organizational Plaintiffs pick up and drop off ballots on the Fort Peck Reservation. If Organizational Plaintiffs were not able to perform this function, the burden of transporting those voters to the polls or to the post office would fall to the Tribes. Fort Peck provides a transit bus system for its members where a member can call in and the bus will pick them up and take them where they need to go. Fort Peck currently does not have the capacity to cover all voting tribal members' transportation needs on Election Day.

34. Native Americans who are enrolled members of the Fort Peck Tribes have voted in Montana elections through the collection and conveyance of their ballots to their local county election offices by third parties and fellow community members. The Fort Peck Tribes seek to vindicate its own rights, the rights afforded to its members, and protect Fort Peck Tribes' political power.

35. Unless a person is a family member or acquaintance, BIPA limits the number of ballots that can be dropped off. Therefore, in instances where a tribal member is dropping off mail for someone they do not know personally, BIPA could make the innocuous collection and drop off of ballots by and for fellow Fort Peck tribal members illegal.

36. Because BIPA fails to adequately define family members and acquaintances, Fort Peck members are likely to be confused about who is restricted from picking up and dropping off ballots. The definition of family by Fort Peck members is more expansive than the nuclear family common in non-Native households and can include distant relatives and community members that may or may not be directly related by blood or marriage. BIPA will likely intimidate members from performing the vital service of picking up and dropping off ballots for fellow members.

37. BIPA makes participation in elections by Fort Peck members substantially more difficult. BIPA also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Due to the disproportionate barriers placed on Fort Peck voters by BIPA, Fort Peck members' attempts to vote are more likely to be unsuccessful and Fort Peck Tribes' political power and ability to advocate for Fort Peck's needs would be reduced by BIPA's suppressive effects. The Fort Peck Tribes would also be denied full participation in the federal system through their diminished political power.

*Blackfeet Nation*

38. Blackfeet Nation is a federally recognized tribe with 17,251 enrolled members. The reservation is located in northwestern Montana and covers approximately 1.5 million acres. The reservation is intersected by Glacier and Pondera counties. The Blackfeet Nation asserts claims based on its own injuries and on behalf of its members as *parens patriae*.

39. Houses on Blackfeet do not receive mail delivery. As a consequence, tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

40. Distance to post offices varies widely among members living on the reservation. Some members live within a mile of the post office while others live upwards of 20 miles from the post office. However, even when a post office is "close," travel to the post office may still be difficult for members that lack access to a vehicle, especially given the harsh weather on the Blackfeet reservation.

41. Snow is present 8–9 months of the year on the Blackfeet reservation. Snow, ice, and mud can make travelling difficult or roads impassable.

42. The Blackfeet Nation has a poverty rate of 35.8%. The median household income in 2017 was \$24,713. Given the extreme poverty, members cannot always afford a tank of gas and instead may choose to spend limited funds on necessities such as food or heating.

43. Lack of access to a vehicle or use of shared vehicles is also very common on the Blackfeet reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs. Dependable vehicles that can manage difficult road conditions are even rarer, making a working vehicle in the election month of November especially difficult to come by.

44. There is an extreme housing shortage on the reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common and there is a lengthy waitlist for housing. It is not uncommon to have upwards of 10 people sharing a home.

45. Due to poverty, road conditions, lack of vehicle access, cultural norms, necessity, and convenience, picking up and dropping off mail for family, neighbors, friends, acquaintances, and friends of friends is common in the Blackfeet Nation. Crowded living conditions facilitate the picking up and dropping off of mail by one person for many people at once. The limited hours of some post offices further incentivize Blackfeet members to drop off and pick up mail for each other.

46. When making a mail run, neighbors and friends may ask the fellow community member to drop off a stack of mail or give a community member their P.O. box key and have them pick up the mail that is inside for them. In the course of dropping off or picking up mail, the community member may not know every person whose mail they are picking up or dropping off.

47. Organizational Plaintiffs pick up and drop off ballots on the Blackfeet Reservation. If Organizational Plaintiffs were not able to perform this function, less Blackfeet members would be able to vote.

48. Native Americans who are enrolled members of the Blackfeet Nation have voted in Montana elections through the collection and conveyance of their ballots to their local county election offices by fellow community members and third parties. The Blackfeet Nation seeks to vindicate its own rights, rights afforded to its members, and protect the Blackfeet Nation's political power.

49. Unless a person is a family member or acquaintance, BIPA limits the number of ballots that can be dropped off. Therefore, in instances where a tribal member is dropping off mail for someone they do not know personally, BIPA could make the innocuous collection and drop off of ballots by and for fellow Blackfeet tribal members illegal.

50. Because BIPA fails to adequately define family members and acquaintances, Blackfeet members are likely to be confused about who is restricted from picking up and dropping off ballots. The definition of family understood by Blackfeet members is more expansive than the nuclear family common in non-Native households and can include distant relatives and clan members that may or may not be directly related by blood or marriage. BIPA will likely intimidate members from performing the vital service of picking up and dropping ballots for fellow members. BIPA makes participation in elections by Blackfeet members substantially more difficult. BIPA also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Because of the disproportionate barriers placed on Blackfeet voters by BIPA, Blackfeet Nation's members' attempts to vote are more likely to be unsuccessful and Blackfeet Nation's political power and ability to advocate for Blackfeet needs

would be reduced by BIPA's suppressive effects. The Blackfeet Nation would also be denied full participation in the federal system through its diminished political power.

*Confederated Salish and Kootenai Tribes*

51. The Confederated Salish and Kootenai Tribes of the Flathead Reservation is a federally recognized tribe with 8,020 enrolled members with approximately 5,500 members living on the Flathead Reservation. Because the Flathead Reservation was opened to homesteading, CSKT members are the minority population on the reservation and make up approximately one fifth of the population. There are also numerous Native Americans that are members of other tribes living on the reservation, with 65 different tribes represented within the reservation boundary. The total Native American population comprises one quarter of the reservation population. The reservation is located in western Montana and spans 1.3 million acres. The reservation is intersected by Lake, Sanders, and Missoula counties. CSKT asserts claims on behalf of its own injuries and behalf of its members as *parens patriae*.

52. Unlike other tribes, CSKT has mail-delivery service on the reservation. However, among the Native population, there is a severe housing shortage and it is common for members to move from home to home. This "couch surfing" results in a lack of a stable mailing address. Consequently, many tribal members use P.O. boxes to conduct their affairs.

53. CSKT members are more likely to live in the foothills and more rural parts of the reservation than non-Natives, making their travel to the post office more burdensome than for non-Natives residing on the parts of the reservation closer to amenities. In the majority Native towns of Elmo and Pablo, the nearest post office is in the rural town of Hot Springs approximately 30 miles away via bumpy, poor roads that are badly lit.



54. CSKT members suffer from poverty. For example, the rates of free and reduced lunch are higher in majority Native towns. In the largely Native town of Pablo, the free and reduced lunch rate for Native students is 100%. In Elmo, another largely Native town, the rate is 80%. 10% of the population lives in severe poverty. Given this poverty, members cannot always afford a tank of gas for a mail run and instead may choose to spend limited funds on necessities such as food or heating.

55. Lack of access to a vehicle or use of shared vehicles is also very common on the Flathead reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs. Vehicle access is so low on the reservation that the number one reason given to health officials for missed appointments is a lack of transportation.

56. Due to poverty, road conditions, lack of vehicle access, cultural norms, necessity, and convenience, picking up and dropping off mail for family, neighbors, friends, acquaintances, and friends of friends is common on the Flathead reservation. Crowded living conditions facilitate the picking up and dropping off of mail by one person for many people at once. The limited hours of some post offices further incentivize CSKT members to drop off and pick up mail for each other.

57. When making a mail run, neighbors and friends may ask a fellow community member to drop off a stack of mail or give a member their P.O. box key and have them pick up the mail that is inside for them. It is conceivable that in the course of dropping off or picking up mail, the community member may not know every person whose mail they are picking up or dropping off.

58. Currently, there are racial tensions between the non-Native and Native communities within the Flathead reservation. Many tribal members do not feel comfortable traveling to majority non-Native areas given the hostility between members and non-members.

59. All polling locations near the Flathead reservation are staffed by non-tribal members and are located in majority non-Native towns. Many CSKT members do not feel comfortable going to in-person polling places. Many tribal members prefer to vote by mail rather than go to an in-person polling place staffed by non-members.

60. To assist CSKT members and encourage them vote, every year CSKT hires a temporary worker for the months leading up to the election for the sum of \$5,000. This election official is tasked with organizing voters, getting people registered, organizing rides to the polls, and getting people engaged through social media. CSKT worked in coordination with Organizational Plaintiffs to assist with GOTV efforts. CSKT depended on Organizational Plaintiffs to collect and drop off ballots on the reservation. If Organizational Plaintiffs are unable to perform ballot collection, CSKT would have to expend additional funds to provide rides to the polls or to the post office to drop off ballots for voters that otherwise would not need CSKT's assistance.

61. Native Americans who are enrolled members of CSKT have voted in Montana elections through the collection and conveyance of their ballots to their local county election offices by third parties and fellow community members. CSKT seeks to vindicate its own rights, the rights afforded to its members, and protect CSKT's political power.

62. Unless a person is a family member or acquaintance, BIPA limits the number of ballots that can be dropped off. Therefore, in instances where a tribal member is dropping off mail for someone they do not know personally, BIPA could make the innocuous collection and drop off of ballots by and for fellow CSKT members illegal.

63. Because BIPA fails to adequately define family members and acquaintances, CSKT members are likely to be confused about who is restricted from picking up and dropping off ballots. The definition of family by CSKT members is more expansive than the nuclear family common in non-

Native households and can include distant relatives that may or may not be directly related by blood or marriage. BIPA will likely intimidate members from performing the vital service of picking up and dropping ballots for fellow members.

64. BIPA makes participation in elections by CSKT members substantially more difficult. BIPA also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Due to the disproportionate barriers placed on CSKT voters by BIPA, CSKT members' attempts to vote are more likely to be unsuccessful and CSKT's political power and ability to advocate for CSKT's needs would be reduced by BIPA's suppressive effects. CSKT would also be denied full participation in the federal system through its diminished political power.

#### *Crow Tribe*

65. The Crow Tribe is a federally recognized tribe with 11,000 enrolled members with approximately 7,900 members living on the Crow reservation. The reservation is located in south central Montana and is the largest reservation in the State spanning approximately 2.2 million acres. The reservation is intersected by Big Horn and Yellowstone counties. The Crow Tribe asserts claims on behalf of its members as *parens patriae*.

66. Houses on the Crow reservation do not receive mail delivery. As a consequence, tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

67. For example, given the lack of mail delivery and the widespread practice of picking up mail for each other, the tribe does not distribute its per capita payments through mail service for many members and instead distributes payments directly through the tribe's enrollment office.

68. Distance to post offices varies widely among members living on the reservation. Travel regularly takes 30–40 minutes to the nearest post office. Even when a post office is “close,” travel to the post office may still be difficult for members that lack access to a vehicle.

69. Given the limited hours post offices are open, combined with the time it takes members to get to the office and back to work, it may be practically impossible for working members to access their mail during the work week.

70. The Crow Tribe has a high poverty rate. Some homes on the reservation lack indoor plumbing, running water, and electricity. Given the extreme poverty, members cannot always afford a tank of gas to go on a mail run and instead may choose to spend limited funds on necessities such as food or heating.

71. Lack of access to a vehicle or use of shared vehicles is also very common on the Crow reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctors' appointments, and all errands including mail runs. Dependable vehicles that can manage difficult road conditions are even rarer, making a working vehicle in the election month of November especially difficult to come by.

72. There is an extreme housing shortage on the reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have four families living in one home.

73. Due to poverty, road conditions, lack of vehicle access, cultural norms, necessity, and convenience, picking up and dropping off mail for family, neighbors, friends, acquaintances, and

friends of friends is common in the Crow Tribe. Crowded living conditions facilitate the picking up and dropping off of mail by one person for many people at once. The limited hours of some post offices further incentivize members to drop off and pick up mail for each other.

74. When making a mail run, neighbors and friends may ask a fellow community member to drop off a stack of mail or give a member their P.O. box key and have them pick up the mail that is inside for them. In the course of dropping off or picking up mail, the community member may not know every person whose mail they are picking up or dropping off.

75. Given the difficulties accessing mail, many Crow members go weeks without sending or receiving their mail.

76. Organizational Plaintiffs pick up and drop off ballots on the Crow Reservation. If Organizational Plaintiffs were not able to perform this function, less Crow members would be able to vote.

77. Native Americans who are enrolled members of the Crow Tribe have voted in Montana elections through the collection and conveyance of their ballots to their local county election offices by fellow community members. The Crow Tribe seeks to vindicate rights afforded to its members and protect the Crow Tribe's political power.

78. Unless a person is a family member or acquaintance, BIPA limits the number of ballots that can be dropped off. Therefore, in instances where a tribal member is dropping off mail for someone they do not know personally, BIPA could make the innocuous collection and drop off of ballots by and for fellow Crow tribal members illegal.

79. Because BIPA fails to adequately define family members and acquaintances, Crow members are likely to be confused about who is restricted from picking up and dropping off ballots. The definition of family by Crow members is more expansive than the nuclear family common in non-

Native households and can include distant relatives that may or may not be directly related by blood or marriage. BIPA will likely intimidate members from performing the vital service of picking up and dropping ballots for fellow members.

80. BIPA makes participation in elections by Crow members substantially more difficult. BIPA also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Because of the disproportionate barriers placed on Crow voters by BIPA, Crow members' attempts to vote are more likely to be unsuccessful and Crow Tribe's political power and ability to advocate for the Crow Tribe's needs would be reduced by BIPA's suppressive effects. The Crow Tribe would also be denied full participation in the federal system through its diminished political power.

*Fort Belknap Indian Community*

81. The Fort Belknap Indian Community is a sovereign, federally recognized tribe with over 8,400 enrolled Tribal members. Approximately 4,084 of those members live on the Reservation, and over 2,000 are 18 years of age or older. The Fort Belknap Reservation is home to the Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes and is governed by a tribal council. The Fort Belknap Reservation spans approximately 675,147 acres. The Reservation is intersected by Blaine and Phillips counties. The Fort Belknap Tribes assert claims on behalf of its own injuries and behalf of its members as *parens patriae*.

82. Most houses on the Fort Belknap Reservation do not receive home mail delivery. As a consequence, the majority of tribal members rely on P.O. boxes to send and receive mail. Often, tribal members share P.O. boxes because there is a fee associated with the boxes, because there may not be



enough boxes to service the entire population, and because members often cannot regularly pick up their own mail and must depend on others to pick up and deliver their mail for them.

83. Distance to post offices varies widely among members living on the Reservation. Some members can live within a mile of their post office while others live upwards of 40 miles from their post office.

84. Fort Belknap suffers from a high poverty rate of 33%. Given the extreme poverty, many members do not own or have access to a reliable vehicle and those who do cannot always afford a tank of gas for a mail run, choosing instead to spend limited funds on necessities such as food or heating.

85. Lack of access to a vehicle or use of shared vehicles is also very common on the Fort Belknap Reservation. One vehicle is often responsible for getting many members of a household to and from work or school, to all social engagements, all doctor's appointments, and all errands including mail runs.

86. There is an extreme housing shortage on the Reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have 10–15 people sharing a home. Post offices on the Reservation allow for one P.O. box per physical address free of charge but charge an annual fee for any additional boxes associated with that same physical address. As a result, tribal members living at a single residence often share a single P.O. box.

87. Due to poverty, road conditions, lack of vehicle access, cultural norms, necessity, and convenience, picking up and dropping off mail for family, neighbors, friends, acquaintances, and friends of friends is common on the Reservation. Crowded living conditions facilitate the picking up and dropping off of mail by one person for many people at once. The limited hours of some post offices further incentivize members to drop off and pick up mail for each other.

88. When making a mail run, neighbors, co-workers, and friends may ask a fellow community member to drop off a stack of mail or give that community member their P.O. box key and have them pick up the mail that is inside for them. In the course of dropping off or picking up mail, the community member may not know every person whose mail they are picking up or dropping off.

89. Organizational Plaintiffs pick up and drop off ballots on the Fort Belknap Reservation. If Organizational Plaintiffs were not able to perform this function, the burden of transporting those voters to the polls or to the post office would fall to the Tribes.

90. To assist Fort Belknap members and encourage them vote, every year Fort Belknap provides members financial assistance to help pay for transportation costs to vote. Fort Belknap also pays temporary organizers to provide security and transportation assistance to tribal voters. Fort Belknap also pays to staff alternative satellite election polling offices. Additionally, Fort Belknap has worked in coordination with Organizational Plaintiffs to assist with GOTV efforts. Fort Belknap depended on these groups to collect and drop off ballots on the reservation. If Organizational Plaintiffs are unable to perform ballot collection, Fort Belknap would have to expend additional funds to provide services to voters rides to the polls or to the post office to drop of their ballots that otherwise would not need them.

91. Native Americans who are enrolled members of the Fort Belknap Tribes have voted in Montana elections through the collection and conveyance of their ballots to their local county election offices by third parties and fellow community members. The Fort Belknap Tribes seek to vindicate its own rights, the rights afforded to its members, and protect Fort Belknap Tribes' political power.

92. Unless a person is a family member or acquaintance, BIPA limits the number of ballots that can be dropped off. Therefore, in instances where a tribal member is dropping off mail for

someone they do not know personally, BIPA could make the innocuous collection and drop off of ballots by and for fellow Fort Belknap tribal members illegal.

93. Because BIPA fails to adequately define family members and acquaintances, Fort Belknap members are likely to be confused about who is restricted from picking up and dropping off ballots. The definition of family by Fort Belknap members is more expansive than the nuclear family common in non-Native households and can include distant relatives and community members that may or may not be directly related by blood or marriage. BIPA will likely intimidate members from performing the vital service of picking up and dropping ballots for fellow members.

94. BIPA makes participation in elections by Fort Belknap members substantially more difficult. BIPA also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, access to post offices and post office boxes, and increased burdens on Native voters due to disproportionate rates of poverty and lack of vehicle access. Due to the disproportionate barriers placed on Fort Belknap voters by BIPA, Fort Belknap members' attempts to vote are more likely to be unsuccessful and Fort Belknap Tribe's political power and ability to advocate for Fort Belknap's needs would be reduced by BIPA's suppressive effects. The Fort Belknap Tribes would also be denied full participation in the federal system through their diminished political power.

#### *Defendants*

95. Defendant Corey Stapleton is the Secretary of State for the state of Montana. The Secretary of State is the state's chief election officer. Mont. Code Ann. § 13-01-201. In his role, he is responsible for administration of elections and voter registration in Montana. *Id.* Defendant Stapleton is also responsible for advising, assisting, and training election administrators. *Id.* at § 13-01-202. Additionally, he engages in public outreach and communications regarding the challenged law. In conjunction with Defendant Jeff Mangan, Defendant Stapleton has issued a directive to local election

officials on how to implement BIPA. *See generally* Corey Stapleton, *Election Directive #01-19* (Oct. 09, 2019), <https://sosmt.gov/Portals/142/Elections/Documents/Officials/DIR-1-19.pdf> (accessed Dec. 13, 2019) [hereinafter “Directive 01-19”]. Defendant Corey Stapleton is sued in his official capacity.

96. Defendant Tim Fox is the Attorney General for the state of Montana. The Attorney General has “the power to order and direct county attorneys in all matters pertaining to the duties of their office.” Mont. Code Ann. § 2-15-501(5). The county attorneys, along with the Commissioner of Political Practices, are responsible for investigating and enforcing the challenged law. Mont. Code Ann. §§ 13-37-124, 13-37-125. Defendant Tim Fox is sued in his official capacity.

97. Defendant Jeff Mangan is the Commissioner of Political Practices for the state of Montana. The Commissioner of Political Practices is responsible for monitoring and enforcing campaign finance, lobbying disclosure, and ethics laws. *See* Mont. Code Ann. § 13-37-111(1). Under BIPA, Defendant Mangan is responsible for receiving BIPA ballot registry forms from election administrators. Directive #01-19 at 2. Election officials also report anyone suspected of including incorrect information on their forms to his office. *Id.* Defendant Mangan is also responsible for reviewing complaints by citizens about the ballot collection activities of others. Mont. Code Ann. § 13-37-111(1). In conjunction with county attorneys, Defendant Mangan has authority to investigate potential violations of BIPA. *See id.* If the county attorneys choose not to prosecute violations of BIPA, Defendant Mangan has the power to hire or retain attorneys to prosecute those violations. *See* Mont. Code Ann. §§ 13-37-113, 13-37-124. Defendant Jeff Mangan is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **I. VOTING IN MONTANA**

98. In-person voting in Montana is logistically challenging given the state’s large size and rural nature. In terms of land size, the state is the fourth largest in the nation. Montana is also among

the least densely populated states in the country. It is, therefore, no wonder that a large portion of the state relies on the absentee vote by mail process.

99. Even in elections where Montanans may cast a ballot in-person, the majority of ballots in Montana's elections are cast through the absentee mail process. For example, in the general election in 2018, 73.13% of total ballots cast were absentee ballots. Montana Secretary of State, *2018 Federal General: Number of Absentee Ballots Sent, Accepted, Percentage of Votes Cast, Percentage of Registered Voters* (Mar. 12, 2019), <https://sosmt.gov/Portals/142/Elections/Documents/Absentee-Turnout-2000-Present.xlsx> (accessed Dec. 13, 2019). In the 2018 primary election, of 282,704 votes, 222,190 were absentee votes (78.59%). *Id.* In the 2017 special election, of 383,301 votes, 280,269 were absentee votes (73.12%). *Id.*

100. Montana law also allows certain elections to be conducted entirely by mail. Mont. Code Ann. § 13-19-104(2). For example, municipal-level elections in the state are generally conducted entirely by mail.

## II. VOTING ON RESERVATIONS IN MONTANA

101. Montana is home to seven Indian reservations: the Blackfeet Indian Reservation, the Crow Reservation, the Flathead Reservation, the Fort Belknap Reservation, the Fort Peck Indian Reservation, the Northern Cheyenne Indian Reservation, and the Rocky Boy's Reservation. These reservations intersect with sixteen counties: Glacier and Pondera Counties (the Blackfeet Indian Reservation), Big Horn and Yellowstone Counties (the Crow Reservation), Lake, Sanders, and Missoula Counties (the Flathead Reservation), Blaine and Phillips Counties (the Fort Belknap Reservation), Valley, Daniels, Roosevelt, and Sheridan Counties (the Fort Peck Indian Reservation), Big Horn and Rosebud Counties (the Northern Cheyenne Indian Reservation), and Hill and Chouteau Counties (the Rocky Boy's Reservation).

102. The total on-reservation population of all seven reservations is approximately 70,000. This population is spread over millions of acres with limited transportation and mail options. Four reservations each contain over a million of acres of land: the Blackfeet Indian Reservation encompasses 1.5 million acres, the Crow Reservation encompasses 2.2 million acres, the Flathead Reservation encompasses 1.3 million acres, and the Fort Peck Indian Reservation encompasses 2 million acres.

103. Native American voters residing on rural reservations in Montana experience multiple barriers to casting their votes:

**A. Mail-Service**

104. One barrier is the mail system on Indian reservations. Many Native Americans living in rural Montana lack home mail service. There are limited mail routes and drop-off mail locations on rural reservations. Mail service does not exist on many parts of rural reservations. A significant percentage of the Native Americans living on rural reservations have non-traditional mailing addresses and do not receive mail at home.

105. On many reservations, residents rely upon post office boxes for mail service. On portions of reservations in Montana, residents must drive up many miles one-way to get to their local P.O. box.

106. Post office hours in rural areas like reservations are often limited.

107. P.O. boxes are often shared and are not regularly checked. Many tribal members check their mail between once per week and once per month. When mail is collected from a P.O. box, it is not uncommon for it to be pooled among individuals.

108. If mail-in ballots are received at a P.O. box, the person responsible for handling the mail of multiple individuals (or even multiple families) as part of a trip to the post office could handle more than six ballots. Further, given the large extended families living closely together—or together—on



reservations, it is common that a person may handle mail, including ballots, for more than six family members. A single tribal community member may collect and convey ten to twenty voted ballots for other reservation residents.

109. Neighbors and friends may ask that a person making a mail run pick up or drop off mail for them by giving them stacks of mail or their P.O. box key. Consequently, the person collecting mail may not personally know all of the people whose mail they pick up.

### **B. Poverty**

110. Native Americans experience higher poverty rates compared to the rest of Montana's population. For example, according to census data, the median household income of the populations living in Blackfeet, Fort Belknap, and Rocky Boy's reservations is near the federal poverty level for a household of four. See United States Census Bureau, *American Community Survey 2013-2017 American Community Survey 5-Year Estimates for Blackfeet Indian Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/?st=30&aianihh=0305> (accessed Jan. 8, 2020); United States Census Bureau, *American Community Survey 2013-2017 American Community Survey 5-Year Estimates for Fort Belknap Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/?st=30&aianihh=1150> (accessed Dec. 13, 2019); United States Census Bureau, *American Community Survey 2013-2017 American Community Survey 5-Year Estimates for Rocky Boy's Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/?st=30&aianihh=3205> (accessed Jan. 8, 2020). In contrast, Montana's total rate of people living below the poverty line is 14.4%, and 9.1% for families. United States Census Bureau, *American Community Survey 2013-2017 American Community Survey 5-Year Estimates for Selected Economic Characteristics, MT*, (accessed Jan. 8, 2020). Thus, sizable numbers of Native Americans living on reservations are unemployed and live below the poverty level.

111. On reservations throughout Montana some Native Americans live in abject poverty. Homes often lack indoor plumbing, electricity, heat, and running water.

### **C. Traveling to Vote**

112. Higher poverty levels result in a lack of working vehicles, money for gasoline, or car insurance, making travel difficult. Challenging weather also makes travel difficult, particularly in the election month of November. In the Blackfeet reservation, there is snowfall 8 to 9 months of the year. Snow, ice, and wind create hazardous road conditions which make travel difficult or impossible.

113. Vehicles are scarce and often shared. A single vehicle is therefore often responsible for getting a household to and from work, to all social engagements, doctor's office visits, as well as any mail runs or ballot drop offs. In winter months only the most reliable vehicles, if any, can traverse the poor roads from homes to the main roads.

114. Thus, many Native Americans living on rural reservations without home mail access, or who utilize P.O. boxes because they are moving from home to home because they lack a permanent address, may have serious difficulties getting to their P.O. box due to distance, socioeconomic conditions, lack of reliable transportation, and weather.

115. Ballots may also be dropped off at county election offices during the full early voting period. County election offices are generally open from 8 a.m. or 9 a.m. to 5 p.m., five days per week. The county election offices are only located in county seats. With the exception of Lake County and Roosevelt County, all county seats are towns located outside reservations.

116. In-town voting locations are geographically distant from many residents on the reservations. Native Americans living on the reservation wanting to avail themselves of the full 30-day in-person voting period option using county election offices would likely have to travel further distances than their non-Native counterparts. For example, in Big Horn County, non-Native American

voters had to travel an average of 11.6 miles to register to vote, while Native American voters had to travel on average 22 miles. In Yellowstone County, non-Native American voters traveled an average of 9.7 miles as opposed to 31.5 miles on average for Native American voters.

117. Further, “border towns,” or towns that border reservations, are also notorious for their racism and discrimination toward Native Americans. *E.g.*, United States Commission on Civil Rights, *Bordertown Discrimination in Montana* (May 2019), <https://www.usccr.gov/pubs/2019/05-29-Bordertown-Discrimination-Montana.pdf> (accessed Dec. 13, 2019). Thus, Native American voters experience an additional burden when voting outside of a reservation.

#### **D. Satellite Polling Locations**

118. Other barriers faced by Native Americans living on rural reservations means that in-person voting is not an adequate alternative to the mail-in system.

119. In-person early voting starts 30 days prior to Election Day. Mont. Code Ann. § 13-13-205(1)(a)(i). Some counties have opened satellite election offices on reservations, but generally those satellite locations are open for only a few of the days (and for limited hours) of the early voting period.

120. The two exceptions are (1) the Blackfeet Indian Reservation, which has two satellite locations, one open during the early voting period and one for Election Day, and (2) the Fort Belknap Reservation, which has multiple satellite locations that are open for a fraction of the days. In 2018, one location was open only one day and another only two days. Defendant Stapleton also lists the courthouse at 420 Ohio Street as a satellite location, but it is located at the county seat in the town of Chinook, over twenty miles from the Fort Belknap Reservation border.

121. The fact that on-reservation satellite offices are open only a fraction of the early voting period means that Native American voters living on rural reservations have reduced access to early voting even when they are able to make it to the satellite office.

### **E. Organized Ballot Collection and Conveyance**

122. Because of these many barriers, Native American voters in rural reservation communities rely on third parties' collection and conveyance of their ballots to cast their votes. Groups like Western Native Voice and Montana Native Vote play an integral role in facilitating voting access for tribal community members, by providing a range services from hosting voter registration drives to collecting and conveying their absentee ballots.

123. In 2018, Western Native Voice and Montana Native Vote had between 14 and 22 local community organizers on staff to collect and convey ballots for Native American voters on reservations.

124. Nine percent of the absentee ballots returned from tribal nations within Montana alone during the 2018 election were delivered by Organizational Plaintiffs.

### **III. THE LEGISLATIVE HISTORY OF BIPA**

125. Montana state senator Albert Olszewski introduced BIPA as Senate Bill 352 on March 16, 2017, as a legislative act subject to referendum. Mont. Sen. 352, 65th Legis., Reg. Sess. (Mar. 16, 2017).

126. On March 22, 2017, the Senate Committee on State Administration conducted a hearing to consider the bill. Mont. Sen. Comm. State Admin., *Referendum on prohibition of ballot collection by certain individuals: Hearing on Sen. Bill 352*, 65th Legis., Reg. Sess. (Mar. 22, 2017), Exhibit A [hereinafter SB-352 Sen. Hearing].

127. In his opening statement at the State Senate Administration Committee Hearing, Senator Olszewski stated that the purpose of the bill was to ask the people of Montana to determine whether “unsolicited absentee ballot collection is legal.” SB-352 Sen. Hearing at 3:2–5. Senator Olszewski identified no other purposes of BIPA.

128. At the Senate Hearing on the bill, a member of the Plaintiff CSKT testified that:

This bill does not align with how many of us in my community vote. There are a lot of barriers to voting for tribal people. Many tribal members live in remote areas. Many have limited resources making transportation and even the ability to get stamps difficult. This already makes voting difficult enough for many of us, however SB-352's limit to who can pick up a ballot and the limit of picking up six ballots creates even more obstacles to voting for us. While there are exceptions for who can pick up ballots, that includes acquaintances and family members, this ignores how many Native people vote. Groups like Western Native Voice goes out and collects ballots for Natives. This bill could eliminate that vital service for Native people. The limit to six collected ballots does not align with how many of our Indian families are structured. I have one of the smallest Indian families I know, it's just me, my mom, my uncle, and my 117 cousins. Families are structured differently and we take care of each other, especially our elders. If I am collecting ballots for my family, I don't want to leave any of my cousins out when I am taking ballots in for them. To pass this bill would be to ignore many of the votes of Montana citizens in my community.

*Id.* at 14:15–15:24.

129. At the Senate hearing, following a lengthy discussion with a senator about the need to consider the law's impact on individuals in counties who are 40 miles away from a post office, who have no access to public transportation and only unreliable roads, and whether BIPA "put[s] an[] additional burden onto our [Native American] community members that's beyond their control," Senator Olszewski stated that he felt that the disproportionately long distances Native Americans must travel "does not hinder them." *Id.* at 37:2–4.

130. At the Senate hearing, in response to a different senator's question about whether tribal extended families fit within BIPA's definition of "family member," Senator Olszewski stated that "family relations, although enhanced by the different cultural situation of your tribes, you still have a mother, a father, you have grandparents, you have aunts and uncles, you have siblings, you have cousins, you have second cousins. And we could go on, it's called consanguinity, and we could go through a chart, and we could go first degree, second degree, third degree, all the way up to tenth degree if you wish. This bill . . . does not deal with that. If you in your good judgment say that this person is your relative and you . . . ask them, please take my ballot in, that's fine." *Id.* at 38:25–39:14.

131. In his closing statement at the Senate hearing, Senator Olszewski stated that the practice of collecting and convey ballots “is more prevalent than I thought . . . . From what I’m hearing behind here it happens . . . on the Tribal lands [and] reservations.” *Id.* at 49:11–14.

132. Audrey McCue also testified against the bill on behalf of the Montana Association of Clerk and Recorders and Election Administrators as part of the Senate hearing. BIPA would, in their opinion, target voters who “are doing things right, rather than creating a deterrent for the people who would do things wrong.” *Referendum on Prohibition of Ballot Collection by Certain Individuals: Hearing on S.B. 352 before Senate State Administration in Senate, 2017 65<sup>th</sup> Sess. (Mont. 2017) Exhibit B (Testimony in opposition to SB 352 on behalf of Montana Association of Clerk and Recorders and Election Administrators)*. She testified that BIPA needed to be specific and clear in defining “ballot interference” and make only that conduct illegal. *Id.*

133. She testified further that BIPA was unnecessary to prevent unsolicited ballot collection and undelivered ballots. *Id.* Prior to the enactment of BIPA, county election officials already kept records of all ballots delivered to their offices. *Id.* Voters could also track their ballots by going online or calling local election officials to make sure collected ballots were in fact delivered. *Id.* To the extent others perceived a problem with unlawful ballot interference, including failure to deliver a collected and voted ballot or other harassment of voters in an effort to collect a ballot, Montana’s laws already punish individuals for coercing voters or for preventing other voters from casting their ballots. *Id.*; *see also*, *e.g.*, Mont. Code Ann. § 27-1-1501 *et seq.*

134. On March 30, 2017, SB-352 passed the Senate and was transmitted to the House.

135. On April 6, 2017, the House Committee on the Judiciary conducted a hearing to consider the bill. Mont. H.R. Comm. on Judic., *Referendum on prohibition of ballot collection by certain*



*individuals: Hearing on Sen. Bill 352, 65th Legis., Reg. Sess. (Apr. 6, 2017), Exhibit C [hereinafter SB-352 H.R. Hearing].*

136. In his opening statement at the House of Representatives, Senator Olszewski explained again that the purpose of the bill was to bring a referendum to determine whether or not “unsolicited absentee ballot collection is legal.” SB-352 H.R. Hearing at 2:10–16. Again, Senator Olszewski identified no other purposes of BIPA.

137. At the April 6, 2017, House Judiciary Committee hearing, Plaintiff Western Native Voice testified that:

[O]ur Get Out to Vote program is vital to the voter turnout in Indian Country. Native Americans face numerous obstacles when it comes to getting to the polls. So, ballot collection is one of the main components of our GOTV program. It ensures that everyone who wants to vote has that ability. In election years, we hire ten community organizers across the state, that includes all seven reservations and three major urban areas. Each organizer participates in a total of five days of training before they begin our Get Out to Vote program. So, they are well-trained and do a great job of collecting ballots. To this date we do not have any problem with their ballot collection. So, our work matters. If Senate Bill 352 passes it will have a detrimental effect on [Western Native Voice’s] job and on the Native vote.

*Id.* at 20:8–25.

138. In response to a question of “how did you decide on the number of six,” regarding the maximum number of ballots that may be collected under BIPA, and “why wasn’t it ten, why wasn’t it fifteen, why wasn’t it three,” and the observation that “it seems like just kind of an arbitrary number,” Senator Olszewski stated that he performed a “small survey sample. *Id.* at 28:24–29:8.

139. Senator Olszewski was queried about the “small survey sample,” whom he had surveyed and what group allowed him to come up with that number. Senator Olszewski responded that he “talked to friends, talked to constituents, talked to members I worked with, talked to some people down here in Helena, long before I put in this bill that were also fellow legislators.” *Id.* at 46:18–22.

140. Senator Olszewski was asked whether he had “sp[oken] with any of these other organizations that are sitting behind you today,” which would have included Plaintiff Western Native Voice. Senator Olszewski clarified that “no, I did not.” *Id.* at 47:2–6.

141. The Montana Association of Clerk and Recorders and Election Administrators again testified against BIPA in House. This time Linda Stoll testified on behalf of the Association. She reiterated earlier testimony that the clerks did not believe Montana had a problem with ballot interference. She testified that when a law concerning ballot interference was previously introduced in the Montana legislature, the clerks investigated voter concerns. *Id.* at 48:1-50:11. They found that voters were concerned that their ballots were collected and not delivered, but the ballots had in fact been delivered to the election office. *Id.* She further testified that the clerks had offered amendments intended to narrow the bill to the target only the alleged wrongdoing. *Id.* These amendments had been rejected. *Id.*

142. The Montana legislature passed Senate Bill 352, and it was filed with Defendant Stapleton’s office on May 3, 2017.

143. In November 2018, Montana voters went to the polls to vote on LR-129. The language on the ballot read as follows:

The 2017 Legislature has submitted this proposal for a vote. LR-129 prohibits a person from collecting another voter’s ballot, with certain exceptions. The prohibition would not apply to an election official, postal worker, caregiver, family member, household member, or an acquaintance. Any such individuals that are caregivers, family members, household members or acquaintances would be required to sign a registry at the polling place or the election administrator’s office when delivering the ballot and are required to provide the following information: the individual’s name, address, and phone number; the voter’s name and address; and the individual’s relationship to the voter. An individual who violates any provision within LR-129 could be fined \$500 for each ballot unlawfully collected.  YES on Legislative Referendum LR-129  NO on Legislative Referendum LR-129.

Montana Secretary of State, *Ballot Language for Legislative Referendum No. 128 (LR-128)*, <https://sosmt.gov/wp-content/uploads/LR-128.pdf> (last accessed Mar. 11, 2020)

144. Notably, the summary of the measure stated that caregivers, family members, household members, and acquaintances were exempt from the law and would have to sign a registry. The ballot language did not state that these individuals would be limited to the collection of just six ballots.

145. On November 6, 2018, voters approved LR-129 by a vote of 301,172 in favor to 178,324 opposed. See Corey Stapleton Montana Secretary of State, *2018 General Election November 6, 2018 – Legislative Referendum No. 129 – Prohibition of Ballot Collection by Certain Individuals*, <http://mtelectionresults.gov/resultsSW.aspx?type=BQ&map=CTY> (accessed Mar. 10, 2020).

#### IV. IMPLEMENTATION OF BIPA

146. BIPA is codified at Mont. Code Ann. § 13-35-701 *et seq.*

147. BIPA prohibits the knowing collection of a voter’s voted or unvoted ballot. Mont. Code Ann. § 13-35-703(1).

##### A. BIPA Exemptions

148. BIPA’s prohibition “does not apply” to six categories of individuals: acquaintance, family member, caregiver, household member, postal service worker, or election official. Mont. Code Ann. § 13-35-703(2).

149. Each exempted individual who collects ballots is limited to collecting six ballots, unless they are a postal service worker or election official. Mont. Code Ann. § 13-35-703(3).

150. An “acquaintance” is exempt from the provisions of BIPA. Mont. Code Ann. § 13-35-702(1). BIPA defines an “acquaintance” as “an individual known to the voter.” *Id.* The statutory definition fails to provide any further clarification about who might qualify as an acquaintance. For example, it is unclear whether an “acquaintance” can include an individual whom a voter became

acquainted with for the purposes of ballot collection. *See id.* Assuming that the answer is yes, the statute further fails to clarify whether a ballot collector must meet the person prior to that party's collection of the voter's ballot. Further, the definition of "acquaintance" in BIPA does not explain or clarify whether an individual may collect and convey a voter's ballot if that individual and the voter had not previously met in person but share common acquaintances or had previously communicated by telephone. *See id.* The statute also fails to clarify whether a party who has had a single in-person meeting with a voter could qualify as an acquaintance. *See id.* The absence of a clear definition of what it means to qualify as an "acquaintance" makes the description vague and causes voter and ballot collector confusion.

151. A "family member" is also exempt from the provisions of BIPA. Mont. Code Ann. § 13-35-702(1). BIPA defines "family member" as "an individual who is related to the voter by blood, marriage, adoption, or legal guardianship." *Id.*

152. Under BIPA's definition, it is unclear what type of family relationship, as that term is understood by Native American voters, qualifies as a "family member" of the voter. For example, close members of the community might be considered family but not be related through blood, marriage, adoption or legal guardianship. Further, family relationships are traced back many generations and it is unclear if these relationships would be sufficiently close to constitute family under BIPA. The sponsor of the bill indicated that all that was required was the good judgment of the voter. However, improperly checking that a person is a family member on the registry form could, under the text of the registry form and BIPA, result in a perjury charge. The absence of a clear definition of what it means to qualify as a "family member" makes the description vague and causes voter and ballot collector confusion.

153. The Montana Commission of Political Practices has similarly failed to provide additional guidance on what is sufficient to qualify an individual as an "acquaintance" or whether a "family

member” contemplates family relationships in Indian Country in its implementation and administration of BIPA. Commissioner of Political Practices, *Montana Ballot Interference Prevention Act – 5.0, Implementation and Administration of Act* (Mar. 1, 2019), [http://politicalpractices.mt.gov/Portals/144/2019%20Communication%20assets/PDFs%20for%20website/COPP%20policy%20on%20Montana%20Ballot%20Interference%20Prevention%20Act\\_LR%20129.pdf?ver=2019-03-13-104424-453](http://politicalpractices.mt.gov/Portals/144/2019%20Communication%20assets/PDFs%20for%20website/COPP%20policy%20on%20Montana%20Ballot%20Interference%20Prevention%20Act_LR%20129.pdf?ver=2019-03-13-104424-453) (accessed Mar. 10, 2020); *see also* Directive #01-19.

### **B. Registry Forms**

154. Following the passage of BIPA, all individuals engaging in ballot collection and conveyance (apart from postal workers and election officials) must now submit a registry form for all ballots they deliver to an election administrator’s office or a designated polling place. Mont. Code Ann. § 13-35-704.

155. As part of the registry form, the ballot collector who delivers ballots must register their name and contact information. *Id.* They also must report their association to each voter whose ballot they collect, as well as that voter’s name, address, and phone number. *Id.*

156. Ballot collectors must affirm the veracity of the information they supply on the registry form “under penalty of perjury.” Perjury is punishable by up to 10 years in prison and a \$50,000 fine. Mont. Code Ann. § 45-7-201(2).

157. The requirement to sign a ballot and attest to the contents of that registry form under penalty of perjury has burdened and will continue to burden any party who collects and conveys ballots.

### **C. Enforcement of BIPA**

158. After the registry forms have been collected by county election officials, they are sent to Defendant Mangan’s office. Directive #01-19 at 2.

159. Individual citizens may file a complaint with Defendant Mangan's office if they believe a ballot collector has violated BIPA. Mont. Code Ann. § 13-37-111(2)(a) ("Upon the submission of a written complaint by any individual, the commissioner shall investigate any other alleged violation of the [BIPA]"); Commissioner of Political Practices: Montana's Ballot Interference Act, <http://politicalpractices.mt.gov/BIPA> (last accessed Mar. 10, 2020) (providing a link to an individual complaint form and email address to transmit the complaint to Defendant Mangan's office).

160. Defendant Mangan and county attorneys each have the responsibility to investigate violations of the law. *See* Mont. Code Ann. §§ 13-37-111(1); 13-37-125. Once it has been determined that a violation of the law has occurred, the county attorneys have the ability to prosecute; if they fail to prosecute then Defendant Mangan may prosecute. Mont. Code Ann. § 13-37-124.

161. Any violation of BIPA is subject to "a fine of \$500 for each ballot unlawfully collected." Mont. Code Ann. § 13-35-705. The statute fails to delineate whether this penalty is civil or criminal in nature. *Id.*

## V. BIPA'S IMPACT ON NATIVE AMERICAN VOTERS

162. BIPA will impact all Montana voters and ballot collectors; however, Native American voters will be disproportionately impacted. In Montana's 2018 general election, at least 73.13% of all registered voters in the State submitted absentee ballots to cast their votes. *See* Montana Secretary of State, *2018 Federal General: Number of Absentee Ballots Sent, Accepted, Percentage of Votes Case, Percentage of Registered Voters* (Mar. 12, 2019), <https://sosmt.gov/Portals/142/Elections/Documents/Absentee-Turnout-2000-Present.xlsx> (accessed Mar. 10, 2020). But Native Americans previously had a disproportionately difficult time accessing mail voting and primarily voted absentee through ballot collection and conveyance.



163. Defendant Mangan and Defendant Stapleton have interpreted BIPA only to apply to hand-delivered ballots and not to ballots cast by mail. *See* The Offices of the Montana Secretary of State and the Commissioner of Political Practices Remind Voters that BIPA Regulation in Effect, Montana.gov, <https://news.mt.gov/the-offices-of-the-montana-secretary-of-state-and-the-commissioner-of-political-practices-remind-voters-that-bipa-regulations-in-effect> (Oct. 11, 2019) (“BIPA does not apply for ballots returned by mail.”); Commissioner of Political Practices: Montana’s Ballot Interference Act, <http://politicalpractices.mt.gov/BIPA> (last accessed Mar. 11, 2020) (“BIPA does not [apply] to mailed ballots or ballots voted in-person.”).

164. BIPA’s exemption of mail ballots disproportionately impacts Native American communities living on reservations. Given the poor mail service in these communities, ballots have been historically collected and hand-delivered to polling places and election centers rather than posted by mail.

165. However, individuals and organizations will now be deterred from continuing the practice of ballot collection and conveyance. Out of fear of reprisal to their organizations and to individual organizers, Western Native Voice and Montana Native Vote have had to suspend their ballot collection activities while BIPA is in effect.

166. For the aforementioned reasons, mail and satellite voting locations are not sufficient alternatives to ballot collect and conveyance on reservations.

167. Native American voters residing on rural reservations will endure the disenfranchising impact of BIPA most acutely.

## CLAIMS FOR RELIEF

### **First Claim for Relief**

#### Right to Vote, Mont. Const. art. II, § 13

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Assiniboine and Sioux Tribes of Fort Peck, Plaintiff Blackfeet Nation, Plaintiff Crow Tribe, Plaintiff Confederated Salish and Kootenai Tribes, and Plaintiff Fort Belknap Indian Community against all Defendants

168. Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

169. Montana's Constitution explicitly protects the right to vote. It states: "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." Mont. Const. art. II, § 13.

170. The right to vote is a "fundamental right." *Willems v. State*, 2014 MT 82, ¶ 32, 374 Mont. 343, 325 P.3d 1204.

171. As a fundamental right, "any infringement of [the right] will trigger the highest level of scrutiny, and, thus, the highest level of protection by the courts." *Kloss v. Edward D. Jones & Co.*, 2002 MT 129, ¶ 52, 310 Mont. 123, 54 P.3d 1, *AFFIRMED on reh'g in part*, 2002 MT 129A, ¶ 52, 57 P.3d 41.

172. "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Big Spring v. Jore*, 2005 MT 64, ¶ 18, 326 Mont. 256, 109 P.3d 219.

173. Native Americans living on rural reservations are the most isolated group in the state. The isolation is due both to geographic factors, such as the rural and remote nature of some reservations, and economic factors, including the disproportionate levels of poverty on reservations.

174. Many Native Americans living on rural reservations are only able to cast their vote by relying on the collection and conveyance of their ballot by an individual who is not their caregiver or household member and who may not qualify as their “acquaintance” or “family member” under BIPA.

175. As a logistical matter, those individuals who assist Native Americans living on rural reservations with the casting of their ballots regularly collect and convey more than six ballots.

176. BIPA prohibits anyone except a caregiver, family member, household member, acquaintance, postal worker, or election official from collecting a ballot.

177. BIPA prohibits any caregiver, family member, household member, or acquaintance from collecting more than six ballots.

178. As BIPA burdens collection and conveyance of ballots, BIPA will burden the ability to vote for any individual that relies on the collection and conveyance of their ballots to cast their votes.

179. Without being able to rely on the collection and conveyance of their ballot, many Native Americans living on rural reservations will be effectively unable to vote.

180. BIPA thus burdens the right to vote of Native Americans living on rural reservations relative to the rest of Montana voters.

181. Legislative testimony made clear that BIPA would affect the ability of Native American voters to exercise their right to vote.

182. That BIPA infringes upon the free exercise of the right of suffrage of Native American voters, in violation of Article II, section 13 of Montana’s Constitution, triggers the highest level of scrutiny.

183. The sole justification offered for BIPA was to consider whether unsolicited ballot collection was illegal.

184. Legislative testimony made clear that unsolicited ballot collection was not a pressing issue in current elections.

185. Thus, no compelling state interest could possibly justify the infringement upon the voting rights of Native Americans affected by BIPA.

186. Even assuming that unsolicited ballot collection was a compelling interest, as illustrated by the legislative history, BIPA is not narrowly tailored to meet this interest.

### **Second Claim for Relief**

#### Freedom of Speech, Mont. Const. art. II, § 7

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, and Plaintiff Confederated Salish and Kootenai Tribes, and Fort Belknap Indian Community against all Defendants.

187. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

188. Montana's Constitution explicitly protects the freedom of speech. "No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty." Mont. Const. art. II, § 7.

189. Freedom of speech protections extend not only to individuals, but also to organizations. *Mont. Auto. Ass'n v. Greely*, 193 Mont. 378, 388, 632 P.2d 300, 305 (1981).

190. "The constitutional guaranty of free speech provides for the opportunity to persuade to action, not merely to describe facts." *Id.* at 387.

191. A statute may be deemed overbroad in violation of freedom of speech when it causes a "real [and] substantial" infringement of freedom of expression within the "legitimate sweep" of the act.

*State v. Lance*, 222 Mont. 92, 100, 721 P.2d 1258, 1264 (1986); *City of Whitefish v. O'Shaughnessy*, 216 Mont. 433, 440, 704 P.2d 1021, 1026 (1985).

192. The Montana Supreme Court has concluded that the Montana free speech provision provides the same level of protection as the First Amendment of the U.S. Constitution. *City of Billings v. Laedeke*, 247 Mont. 151, 158, 805 P.2d 1348 (1991), 1352; *see also*, *City of Helena v. Krautter*, 258 Mont. 361, 363–64, 852 P.2d 636, 368 (1993) (holding that if the statute in question was constitutional under the First Amendment, it was also constitutional under Article II, Section 7 of the Montana Constitution).

193. Core political speech is constitutionally shielded. It is accorded “the broadest protection.” *E.g.*, *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995).

194. BIPA directly restricts Organizational Plaintiffs’ and CSKT’s core political speech and expressive conduct in communicating their belief in the importance of civic engagement and voter participation in the Native American community. The Organizational Plaintiffs do this through multiple avenues including giving presentations educating voters on the history of the suppression of the Native American vote, current obstacles to voting for Native Americans, and importance of present-day participation in voting and other civic engagement activities. Advocating for their belief in the importance of the Native American vote through their endeavors to assist others in submitting their votes is in itself a political and philosophical statement.

195. To assist CSKT and Fort Belknap Indian Community members and encourage them vote, every year the tribes hire temporary workers to the election specifically to work GOTV activities. This election official is tasked with organizing voters, getting people registered, organizing rides to the polls, and getting people engaged through social media. The tribes have previously worked in coordination with Organizational Plaintiffs to assist with GOTV efforts. The tribes depended on

Organizational Plaintiffs to collect and drop off ballots on the reservation. If Organizational Plaintiffs are unable to perform ballot collection, the tribes would have to expend additional funds to provide voters rides to the polls or to the post office to drop of their ballots that otherwise would not need them.

196. Like the circulation of an initiative petition for signatures, ballot collection activity is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 422–23 (1988); *see also Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999) (citing *Meyer* for this same proposition).

197. Whether individuals should submit their ballots and ultimately participate in an election is a “matter of societal concern that [Plaintiffs] have a right to discuss publicly without risking criminal sanctions.” *Meyer*, 486 U.S. at 421; *see also Buckley*, 525 US at 186–87 (quoting *Meyer*, 486 U.S. at 422).

198. The collection and conveyance of ballots is part of an “unfettered interchange of ideas for the bringing about of political and social changes desired by the people,” which is at the heart of freedom of expression protections. *Dorn v. Bd. of Trustees of Billings Sch. Dist. No. 2*, 203 Mont. 136, 145, 661 P.2d 426, 431 (1983); *see also McIntyre*, 514 U.S. at 346 (core political speech is given the broadest protection “‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’”) (citations omitted) (alterations in the original).

199. On its face BIPA limits the number of ballots each organizer can collect and thus “limits the size of the audience they can reach” and is a restriction on political expression. *Meyer*, 486 U.S. at 423 (finding a law that limited core political speech by “limit[ing] the size of the audience [the plaintiffs could] reach” unconstitutional).



200. In effect, BIPA's severe financial and criminal penalties have effectively ended Organizational Plaintiffs' ballot collection activities and thus ended a core part of core political speech and expressive conduct.

201. As BIPA burdens core political speech, it must be narrowly tailored to meet a compelling state interest. *Myers v. Thompson*, 192 F. Supp. 3d 1129, 1140 (D. Mont. 2016); *McIntyre*, 514 U.S. at 347 ("When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.").

202. Further, "there must be a direct causal link between the restriction imposed and the injury to be prevented." *Myers*, 192 F. Supp. 3d at 1140.

203. BIPA cannot meet this test, as it "significantly inhibit[s] communication with voters about proposed political change and are not warranted by the state interests . . . alleged to justify those restrictions." *Buckley*, 525 U.S. at 192.

204. BIPA inhibits Organizational Plaintiffs', CSKT's, and Fort Belknap's protected activity of encouraging and helping Native Americans to vote throughout Montana.

205. BIPA should be found invalid in its entirety because it infringes upon Organizational Plaintiffs', CSKT's, and Fort Belknap's constitutionally protected speech and expression. *State v. Allum*, 2005 MT 150, ¶ 29, 327 Mont. 363, 114 P.3d 233.

### **Third Claim for Relief**

Freedom of Association, Mont. Const. art. II, § 6

Declaratory and Injunctive relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Confederated Salish and Kootenai Tribes, and Plaintiff Fort Belknap Indian Community against all Defendants

206. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

207. Montana’s Constitution protects the rights of individuals and organizations to associate. Like the United States Constitution, Article 2, Section 6 of Montana’s Constitution protects the right to “peaceably assemble” and “petition for redress.” *See Dorn*, 203 Mont. at 145, 661 P.2d at 431 (Article II, Section 6 and 7, Montana Constitution are the state counterpart to the First Amendment). This language has been read to incorporate freedom of association. *Cf. Matter of C.H.*, 210 Mont. 184, 199, 683 P.2d 931, 939 (1984); *see also Valley Christian Sch. v. Montana High Sch. Ass’n*, 2004 MT 41, ¶ 14, 320 Mont. 81, 86 P.3d 554.

208. “An individual’s investment of his or her time, energy, creativity, and passion to support a political campaign is at the heart of [freedom of] association.” *Jacobus v. Alaska*, 338 F.3d 1095, 1122 (9th Cir. 2003), *overruled on other grounds by Bd. Of Tr. Of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019). The members and organizers of Western Native Voice and Montana Native Vote, along with CSKT and Fort Belknap, devote their time and energy to organize and associate around the encouragement and protection of the Native American vote.

209. Organizational Plaintiffs’, CSKT’s, and Fort Belknap’s GOTV activities are important to educate individuals about the importance of the Native American vote. These activities are critical to deepening and expanding their relationship with individuals on the reservations and other allies.

210. BIPA infringes the Organizational Plaintiffs’, CSKT’s, and Fort Belknap’s ability to associate under the Montana Constitution. Freedom of association protects the ability of organizations, like Western Native Voice and Montana Native Vote, to associate with members, organizers, volunteers, and Native American communities in furtherance of a political belief, including the belief that the Native American vote should be encouraged and protected. Freedom of association protects CSKT’s and its tribal members’ ability to engage in a similar effort.

211. BIPA hampers the Organizational Plaintiffs' associational rights by burdening their ability, and the ability of individuals serviced by them, to organize, to encourage, and to protect the Native American vote. Organizational Plaintiffs will be burdened by needing to seek additional funds in order to continue to associate at their current level in the Native American community. Even if Organizational Plaintiffs are able to secure additional funding there is a substantial risk that they will no longer be able to organize in remote areas because there are insufficient organizers to service those areas in a manner that complies with BIPA.

212. CSKT's and Fort Belknap's ability to organize, to encourage, and to protect the Native American vote is also impaired by BIPA. If the Organizational Plaintiffs are prohibited from doing their ballot collection, the tribes will need to fundraise in order to replicate the ballot collection efforts currently done through the Organizational Plaintiffs.

213. Moreover, the risk of criminal prosecution exists not just for the organization itself, but for the individuals who conduct ballot collection. The risk of criminal prosecution makes it less likely that individuals will be willing to undertake ballot collection activities and advocate for political participation during and through these activities, thus further impeding Plaintiffs' associational rights.

214. BIPA is not narrowly tailored to serve any compelling state interest. Since freedom of association is a fundamental right, BIPA does not meet the burden on the right to associate.

#### **Fourth Claim for Relief**

Due Process – Facial Challenge, Mont. Const. art. II, §17

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Assiniboine and Sioux Tribes of Fort Peck, Plaintiff Blackfeet Nation, Plaintiff Crow Tribe, Plaintiff Confederated Salish and Kootenai Tribe, and Plaintiff Fort Belknap Indian Community against all Defendants

215. Plaintiffs incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

216. The Montana Constitution provides that “[n]o person shall be deprived of life, liberty, or property without the due process of law.” Mont. Const. art. II, §17.

217. A statute is unconstitutionally vague and void on its face if it fails to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *State v. Dugan*, 2013 MT 38, ¶ 67, 369 Mont. 39, 63, 303 P.3d 755, 773. “Vague laws may trap the innocent by not providing fair warning.” *City of Whitefish*, 216 Mont. at 440, 704 P.2d at 1025–26.

218. “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Dugan*, 2013 MT 38 at ¶ 66.

219. Montana courts take particular care to point out that when a vague law “abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked.” *City of Whitefish*, 216 Mont. at 440, 704 P.2d at 1025–26.

220. The definitions of exceptions to illegal conduct set forth in BIPA are not sufficiently specific to give an ordinary person reasonable notice of what activity is prohibited.

221. BIPA prohibits anyone except a caregiver, family member, household member, acquaintance, postal worker, or election official from collecting a ballot. Mont. Code Ann. § 13-35-703(1).

222. BIPA exempts from its prohibition the collection of ballots by an “acquaintance.” Mont. Code Ann. § 13-35-703(2).

223. BIPA defines “acquaintance” as “an individual known by the voter.” Mont. Code Ann. § 13-35-702(1).

224. That definition is not sufficiently detailed to allow a person to know exactly when someone moves from the category of generally prohibited individual to a permitted “acquaintance.”

225. Based on the definition of an “acquaintance” applicable to BIPA, a person collecting and conveying ballots has no way to determine when or whether they may be in violation of the law.

226. BIPA also exempts from its prohibition the collection of ballots by a “family member.” Mont. Code Ann. § 13-35-703(2).

227. BIPA defines “family member” as “an individual who is related to the voter by blood, marriage, adoption, or legal guardianship.” Mont. Code Ann. § 13-35-702(4).

228. BIPA’s definition of “family member” does not track with family relationships in Indian Country.

229. When questioned about BIPA’s definition of “family member” as it applies to family relationships in Indian Country, the sponsor of the bill indicated that all that is required is the good judgment of the voter.

230. Thus, the statutory definition is not sufficiently detailed to allow a person to determine whether or not a party qualifies as their “family member,” particularly given the nature of family relationships in Indian Country.

231. Based on the definition of “family member” applicable to BIPA, a person collecting and conveying ballots has no way to determine when or whether they may be in violation of the law.

232. Thus, the general prohibition and definitions of BIPA are void on their face as they fail to give a person of ordinary intelligence fair notice that they fall within an exception to prohibited conduct.

233. BIPA imposes “a fine of \$500 for each ballot unlawfully collected.” Mont. Code Ann. § 13-35-705. BIPA fails to specify whether this dollar penalty is a criminal or civil penalty. “Statutes

which impose penalties, however, either criminal or civil, must be clear and explicit, and where such statutes are so vague and uncertain in their terms as to convey no meaning, the courts must declare the penal provisions void.” *Smith v. State, Driver’s Imp. Bureau*, 1998 MT 94, ¶ 11, 288 Mont. 383, 958 P.2d 677.

234. The definitions of illegal conduct set forth in BIPA are so vague as to convey no meaning.

235. The definitions of “acquaintance” and “family member” applicable to BIPA are so vague and uncertain that an ordinary person could discern no meaning in the terms.

236. The \$500 fine could therefore be imposed on an individual based upon a vague and uncertain definition. Mont. Code Ann. § 13-35-705.

237. Thus, the penal provision of BIPA should also be declared void. Mont. Code Ann. § 13-35-705.

#### **Fifth Claim for Relief**

##### **Due Process – As-Applied Challenge, Mont. Const. art. II, §17**

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Assiniboine and Sioux Tribes of Fort Peck, Plaintiff Blackfeet Nation, Plaintiff Crow Tribe, Plaintiff Confederated Salish and Kootenai Tribes, and Plaintiff Fort Belknap Indian Community against all Defendants

238. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth in this claim.

239. “For vague-as-applied challenges, a court must determine whether the statute in question provides a person with ‘actual notice’ and whether it provides ‘minimal guidelines’ to law enforcement.” *Dugan*, 2013 MT at ¶ 66.



240. BIPA does not provide Plaintiffs with “actual notice” of what is prohibited. The definitions of “acquaintance” and “family member” are not sufficiently clear for Plaintiffs to determine from whom they may or may not collect ballots.

241. BIPA is also vague because it lacks “explicit standards for those who apply,” leading to “arbitrary and discriminatory enforcement.” *City of Whitefish*, 216 Mont. at 440, 704 P.2d at 1025-26. “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Id.*

242. Subjective enforcement will result from the lack of clear definitions and the delegation of enforcement responsibilities to several entities.

243. Enforcement may occur both at the state level through Defendant Mangan’s office and at the local county attorney level. *See* Mont. Code Ann. §§ 13-37-124; 13-37-125. The law invites differences with how each would interpret the same activity.

244. Defendant Mangan and Defendant Stapleton have interpreted the law to apply only if an individual delivers a ballot in person to a polling place or elections office. Registry forms are not required for ballots that are delivered by mail. *See* Commissioner of Political Practices, *Montana Ballot Interference Prevention Act (BIPA)*, <http://politicalpractices.mt.gov/BIPA> (accessed Mar. 11, 2020) (“BIPA does not apply for ballots returned by mail.”).

245. There is nothing in the legislative history, text of the statute, nor any of the public statements by the Defendants to explain why hand delivered ballots should be treated differently than ballots delivered by mail. The distinction between the treatment of ballots based solely on the form of delivery is entirely arbitrary.

246. The distinction also has a discriminatory effect on Native Americans, who are far more likely to deliver the ballots of others in person rather than through the mail, because of the poor mail service on reservations.

247. Also, Defendant Mangan's and Defendant Stapleton's interpretation is not binding on the county attorneys, who have the independent authority to prosecute under BIPA.

248. Further, Defendant Mangan is obligated under the law to investigate all reports by citizens of possible infringement of BIPA, which could lead to differential reporting rates and enforcement.

249. Given the absence of clarity of definition and the possibility for arbitrary enforcement, organizers will be wary of collecting ballots under BIPA.

250. All Plaintiffs will be deterred from collecting any ballots based on the possibility of financial or criminal penalties under BIPA.

#### **PRAYER FOR RELIEF**

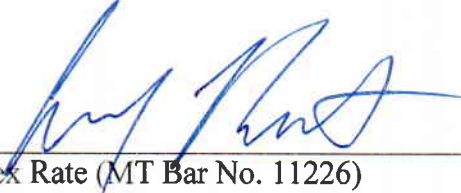
Wherefore, Plaintiffs request that the Court:

- A. Order Defendant Corey Stapleton, Defendant Mangan, and Defendant Fox to cease all implementation and enforcement of BIPA;
- B. Issue a judgment declaring that BIPA violates the Montana constitutional right to vote;
- C. Issue a judgment declaring that BIPA violates the Montana constitutional freedom of speech;
- D. Issue a judgment declaring that BIPA violates freedom of association under the Montana Constitution;
- E. Issue a judgment declaring that BIPA violates the Montana constitutional right to due process, facially and as applied;
- F. Award interim and permanent injunctive relief against the application of BIPA;

G. Award attorney's fees and posts associated with this litigation; and

H. Provide any additional relief the Court deems just.

DATED THIS 12th day of March 2020.



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