

Alora Thomas-Lundborg*
 Ihaab Syed*
 Theresa J. Lee*
 Dale E. Ho*
 AMERICAN CIVIL LIBERTIES UNION
 125 Broad Street
 New York, NY 10004
 (212) 519-7866
 (646) 885-8381
 (212) 549-2693
 athomas@aclu.org
 isyed@aclu.org
 tlee@aclu.org
 dale.ho@aclu.org

Alex Rate (MT Bar No. 11226)
 Akilah Lane
 ACLU OF MONTANA
 P.O. Box 1968
 Missoula, MT 59806
 406-224-1447
 ratea@aclumontana.org
 alane@aclumontana.org

Attorneys for Plaintiffs

CLERK OF THE DISTRICT COURT
 TERRY HALPIN
 NATIVE AMERICAN RIGHTS FUND
 1506 Broadway
 Boulder, CO 80302-6296
 (303) 447-8760
 jdeleon@narf.org
 mcampbell@narf.org

2021 MAY 17 AM 11: 54
 FILED
 DEPUTY

Samantha Kelty*
 NATIVE AMERICAN RIGHTS FUND
 1514 P Street N.W. (Rear) Suite D
 Washington, D.C. 20005
 (202) 785-4166
 kelty@narf.org

**Pro Hac Vice forthcoming*

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
 COUNTY OF YELLOWSTONE

WESTERN NATIVE VOICE, Montana)	
Native Vote, Blackfeet Nation, Confederated)	
Salish and Kootenai Tribes, Fort Belknap)	
Indian Community, and Northern Cheyenne)	
Tribe,)	
)	
Plaintiffs,)	
vs.)	
)	
CHRISTI JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
)	
Defendant.)	
)	

Cause No. **DV 21-0560**

MARY JANE KNISELY

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs challenge two newly enacted voting laws – House Bills 176 and 530 – that are part of a broader scheme by the Montana legislature to disenfranchise Native American voters.

Seemingly neutral laws that are in fact intended to exploit the vulnerabilities faced by Native voters, both bills were passed within a context of multiple attempts to impose barriers to Native Americans voting.

2. Montana has had a long history of voter discrimination against Native Americans. Today, Native Americans have limited in-person voting services on reservations. In this legislative session alone, the legislature introduced several bills intended to restrict Native American voting rights: It attempted to pass a ballot collection ban overwhelmingly similar to that struck down by two district courts last year (HB 406), quickly voted down a pro-Native American voting rights bill (HB 613), passed a bill that limits voter identification (SB 169), passed a bill to send a ballot measure to change the state supreme court election process (HB 325), introduced a bill to eliminate the ability to receive a ballot at a post office box (HB 455), and passed a bill that limits times polling places are open on low population districts like those common on reservations (SB 196). When two Yellowstone County District Courts found a ballot collection restriction unconstitutional last year, the legislature was officially on notice that the voting restrictions like those in House Bills 176 and 530 have an adverse and disparate impact on Native American voters. Without any study or remediation of the problem, the subsequent passage of these two bills is nothing short of discriminatory.

3. House Bill 176 (HB 176) and Section 2 of House Bill 530 (HB 530) harm Native Americans¹ in rural tribal communities across the seven Indian reservations located in Montana, by

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

impairing access to the voter registration process and to voting by absentee ballot. In so doing, HB 176 and HB 530 violate the right to vote, freedom of speech, and equal protection of the laws protected by the Montana Constitution.

4. Under HB 176, late voter registration is no longer available on Election Day.

5. Election Day Registration (“EDR”) is important to many tribal members. Tribal members rely on satellite and alternative voting locations on reservations in order to register and vote, and tribes and organizers drive tribal members to county seats on Election Day to vote and register on the same day.

6. Under Section 2 of HB 530, no one may “provide or offer to provide” nor accept, “a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots.” Violators will be fined \$100 per ballot unlawfully distributed, ordered, requested, collected, or delivered.

7. Many tribal members rely on paid ballot collectors to cast their votes in elections in Montana.

8. Native Americans living on reservations often lack access to regular mail service, such that many individuals cannot reliably receive mail voter registration applications or return those voter registration applications via mail.

9. 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.

10. Native Americans residing on reservations are more likely to be geographically isolated from polling centers where in-person voter registration or dropping off of a voter registration

application can occur, and they often lack the means to travel to those locations to register to vote or drop off a voter registration application prior to an election.

11. Native voters are a highly mobile population due to moving around to seek employment and due to insecure housing. When a voter moves and becomes a resident of another county, they must re-register in that county.

12. Because of these barriers, many Native Americans residing on rural reservations rely on EDR so that they can make only one trip to the polling center to register and vote on the same day.

13. For the same reasons, many Native Americans rely on paid ballot collectors to convey and/or collect and submit their voted absentee ballots.

14. By ending EDR and ballot collection practices, HB 176 and HB 530 prevent Native Americans living on reservations from full and equal participation in elections.

15. Western Native Voice, Montana Native Vote, the Blackfeet Nation, the Confederated Salish and Kootenai Tribes, the Fort Belknap Indian Community, and the Northern Cheyenne Tribe (collectively, "Plaintiffs") seek preliminary and permanent injunctive relief. Plaintiffs also seek a declaratory judgment that HB 176 and HB 530 violate their right to vote because it burdens the right of voters on rural reservations to cast their ballots.

JURISDICTION AND VENUE

16. Original jurisdiction is conferred on this Court through art. VII, section 4 of the Montana Constitution and Mont. Code Ann. § 3-5-302.

17. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. Mont. Code Ann. §§ 27-8-201 through 202 and M. R. Civ. P. 57, and the Court has jurisdiction to grant injunctive relief under Mont. Code Ann. § 27-19-101 *et seq.*

18. 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

19. Western Native Voice and Montana Native Vote, collectively “Non-Profit Plaintiffs”, are Native American-led organizations that organize and advocate in order to build Native leadership within Montana. Western Native Voice and Montana Native Vote are separate legal entities, each with their own boards of directors.

20. 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.

21. 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.

22. Civic engagement is a crucial part of Non-Profit Plaintiffs’ activities, especially get-out-the-vote (GOTV) programs. They conduct GOTV efforts on all seven reservations and in the Native American community in the three urban centers in Montana. Non-Profit 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. Voter education and facilitation of voter registration are core to Non-Profit Plaintiffs’ GOTV work and is vital to voter turnout in the Native American community.

23. Non-Profit 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.

24. Non-Profit Plaintiffs engage in robust election day activities, including door knocking, ballot collection and providing rides to the County seat for same day voter registration and late voting.

25. In prior election cycles, Non-Profit Plaintiffs have hired hundreds of individuals to work exclusively on election day.

26. For example, in 2018 Western Native Voice hired 20 organizers on the Fort Peck Reservation. These organizers provided rides to the county election office on election day in order to register voters.

27. In 2020, Lauri Kindness, an organizer for Western Native Voice, drove 150 people from the Crow Registration to register to vote at the Big Horn County elections office.

28. Providing rides to the county seat is a key component of Non-Profit Plaintiffs' strategy to increase turnout.

29. Providing rides to the county seat on election day is particularly important on rural reservations, where many individuals lack access to transportation. Many Native American voters also do not understand that if their address changes they will need to re-register to vote. They often find out about the necessity to re-register on election day itself, and rely on Non-Profit Plaintiffs to provide a ride to the county seat.

30. HB 176 is already impacting Non-Profit Plaintiffs' operations. Western Native Voice expects that it will no longer be able to only employ organizers on election day as the opportunity for same day registration has been eliminated. Instead, they will be forced to spend additional resources to hire organizers earlier in the election cycle in order to mobilize turnout.

31. HB 176 eliminates a key tool for Non-Profit Plaintiffs to increase voter turnout.

32. Non-Profit Plaintiffs collect ballots on all seven reservations in Montana, as well as in urban Indian centers such as Missoula, Great Falls, and Billings. Non-Profit Plaintiffs hire local organizers and pay them to collect voted ballots and deliver them to election offices. In 2016, they hired between 14 and 18 paid organizers to collect and deliver ballots. In 2018, they employed a total of 32 paid organizers, who collected and conveyed at least 853 ballots. Those 853 ballots represented fully 9-10% of all absentee ballots cast in the precincts targeted by Non-Profit Plaintiffs. In the 2020 general election, after the Montana Ballot Interference Prevention Act (“BIPA”) was permanently enjoined by two Yellowstone County district court judges, Non-Profit Plaintiffs paid organizers to collect and convey over 555 ballots.

33. Since Non-Profit Plaintiffs rely on paid organizers to collect ballots, Section 2 of HB 530 outlaws all ballot collection efforts by Non-Profit Plaintiffs. These efforts are core to their GOTV work and could not be replaced by other measures. To the extent HB 530 does not ban all ballot collection efforts by Non-Profit Plaintiffs, its terms nonetheless chill any such efforts by Non-Profit Plaintiffs due to the risk of substantial fines.

34. Given the effect HB 176 and HB 530 will have on their operations, Non-Profit Plaintiffs have standing to challenge the law on their own behalf. *See New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.*, 2014 MT 69, ¶ 27, 374 Mont. 229, ¶ 27, 328 P.3d 586, ¶ 27, *overruled on other grounds by Warrington v. Great Falls Clinic, LLP*, 2020 MT 174, ¶ 23, 400 Mont. 360, ¶ 23, 467 P.3d 567, ¶ 23.

35. 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 HBs 176 and

530's limitation on ballot collection and registration. Western Native Voice and Montana Native Vote, therefore, also have associational standing to bring claims on behalf of their members. *Id.*

Blackfeet Nation

36. 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.

37. 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.

38. Blackfeet has a satellite voting location open on the reservation on Election Day. Members of Blackfeet particularly rely upon EDR on the reservation in order to exercise their right to vote.

39. Due to racial animus and perceived racial animus directed toward Blackfeet tribal members when visiting border towns,² many Blackfeet members do not feel comfortable travelling to the county seat to register to vote or vote and prefer to access their voter services on the reservation.

40. Not all homes have internet access, and not all tribal members have access to devices to connect them to the internet, which makes it difficult if not impossible to print a registration application or verify voter registration details using the online My Voter Page.

² See U.S. Commission on Civil Rights 2019 Brief from Montana Advisory Committee, *Bordertown Discrimination in Montana*, available at: <https://www.usccr.gov/pubs/2019/05-29-Bordertown-Discrimination-Montana.pdf>.

41. 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.

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

43. 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.

44. 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.

45. 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. People are often in various states of homelessness or near homelessness, moving often, and without documentation of an address.

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

47. During the 2020 Election, Blackfeet hired 32 ballot collectors the day before Election Day and 29 ballot collectors on Election Day. Each person worked 8 hours per day and was

compensated \$20 per hour for an expenditure of at least \$9,760.00. There were 197 ballots collected as a result of this two-day effort.

48. Because HB 530 is vague as to whether tribal nations are exempt from the ballot collection restrictions the Blackfeet are concerned that they might be subject to fines and penalties and therefore may be chilled from conducting ballot collection in the future.

49. House Bills 176 and 530 make participation in elections by Blackfeet members substantially more difficult. HB 530 also disproportionately burdens Native American voters compared to non-Native voters due to inequities in mail delivery service, internet 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 voters by these laws, 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 the laws' suppressive effects. The Blackfeet Nation would be denied full participation in the state and federal system through its diminished political power.

Confederated Salish and Kootenai Tribes

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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 or to the county seat. Many tribal members prefer to vote by mail rather than go to an in-person polling place staffed by non-members. But many CSKT members also face

substantial difficulties picking up and returning their ballots due to poverty, road conditions, and lack of vehicle access.

56. Alternatively, because many tribal members do not feel comfortable traveling to majority non-Native areas given the hostilities between members and non-members, some may choose to register and vote at the same time to cut down on trips to these unfriendly towns.

57. To assist CSKT members and encourage them to 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. On occasion this coordinator would collect ballots for tribal members.

58. Non-Profit Plaintiffs also pick up and drop off ballots on the Flathead Reservation and provide rides to EDR. CSKT worked in coordination with Non-Profit Plaintiffs. If Non-Profit Plaintiffs were not able to perform these functions, less Flathead members would be able to vote and CSKT would have to expend additional funds to provide rides to the polls, county seat to register, or to the post office to mail ballots for voters that otherwise would not need CSKT's assistance.

59. House Bills 176 and 530 makes participation in elections by CSKT members substantially more difficult. These laws disproportionately burden Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, 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 these laws, 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 the suppressive effects of these laws. CSKT would also be denied full participation in the state and federal systems through its diminished political power.

Fort Belknap Indian Community

60. 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.

61. 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.

62. 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.

63. 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.

64. Not all homes have internet access, and not all tribal members have access to devices to connect them to the internet, which makes it difficult if not impossible to verify voter registration details using the online My Voter Page or to print a voter registration application.

65. 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.

66. 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.

67. To assist Fort Belknap members and encourage them to vote, every year Fort Belknap pays a third party organization, the Snake Butte Voter Coalition to perform GOTV, including ballot collection and voter registration.

68. Additionally, Fort Belknap has worked in coordination with Non-Profit Plaintiffs to assist with GOTV efforts. Fort Belknap depended on these groups to collect and drop off ballots on the reservation and to provide rides to EDR services. If Non-Profit Plaintiffs are unable to perform ballot collection and if EDR is no longer available, Fort Belknap would have to expend additional funds to provide services to voters.

69. House Bills 176 and 530 make participation in elections by Fort Belknap members substantially more difficult. These laws disproportionately burden Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, 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 these laws, Fort Belknap members' attempts to vote are more likely to be unsuccessful and Fort Belknap's political power and ability to advocate for Fort Belknap's needs would be reduced by the suppressive effects of these laws. Fort Belknap would also be denied full participation in the state and federal systems through its diminished political power.

Northern Cheyenne Tribe

70. The Northern Cheyenne Tribe is a sovereign, federally recognized tribe with 11,679 enrolled Tribal members. Approximately 2,891 are 18 years of age or older and live on the reservation. The Northern Cheyenne Reservation spans approximately 444,000 acres. The reservation is intersected by Big Horn and Rosebud counties. The Northern Cheyenne Tribe asserts claims on behalf of its own injuries and behalf of its members.

71. Most houses on the Northern Cheyenne 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.

72. Distance to post offices varies widely among members living on the reservation.

73. Not all homes have internet access, and not all tribal members have access to devices to connect them to the internet, which makes it difficult if not impossible to verify voter registration details using the online My Voter Page or to print a voter registration application.

74. Northern Cheyenne had a satellite voting location open on the reservation on Election Day in Lame Deer for Rosebud County in the 2018 general election. Members of Northern Cheyenne particularly rely upon EDR on the reservation in order to exercise their right to vote.

75. Northern Cheyenne suffers from a high poverty rate. Given the extreme poverty, many members do not own or have access to a reliable vehicle. Many people share vehicles and catch rides or use the Tribal transit if it is running. Those who do have vehicles cannot always afford a tank of gas for a mail run, choosing instead to spend limited funds on necessities such as food or heating. Cost of

fuel is a big issue on the Northern Cheyenne Reservation and only Lame Deer and Ashland have available fuel stations.

76. There is an extreme housing shortage on the Northern Cheyenne Reservation, with many family, friends, and acquaintances sharing homes. Overcrowding is extremely common. It is not uncommon to have up to 20+ people sharing a home. Many are fearful of letting it be known that their homes are overcrowded and worry that they will be sanctioned by the Tribal Housing Authority for unauthorized people living in the home. Many people do not have access to documentation proving their addresses.

77. Additionally, Northern Cheyenne has worked in coordination with Non-Profit Plaintiffs to assist with GOTV efforts. Northern Cheyenne depended on these groups to collect and drop off ballots on the reservation. If Non-Profit Plaintiffs are unable to perform ballot collection, Northern Cheyenne would have to expend additional funds to provide services to voters.

78. House Bills 176 and 530 make participation in elections by Northern Cheyenne members substantially more difficult. These laws disproportionately burden Native voters compared to non-Native voters due to inequities in mail delivery service, internet access, 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 Northern Cheyenne voters by these laws, Northern Cheyenne members' attempts to vote are more likely to be unsuccessful and Northern Cheyenne's political power and ability to advocate for Northern Cheyenne's needs would be reduced by the suppressive effects of these laws. Northern Cheyenne would also be denied full participation in the state and federal systems through its diminished political power.

Defendant

79. Defendant Christi Jacobsen is the Secretary of State for the state of Montana. The Secretary of State is the state's chief election officer. Mont. Code Ann. § 13-1-201. In her role, she is responsible for administration of elections and voter registration in Montana. *Id.* Defendant Jacobsen is also responsible for advising, assisting, and training election administrators. *Id.* § 13-1-202. Additionally, she engages in public outreach and communications regarding the challenged laws.

80. Defendant Jacobsen is directly involved in both bills. HB 176 was a legislative priority of her office, and she testified in favor of the bill at the House State Administrative Hearing held on January 21, 2021. HB 176 will also be implemented by her office. Section 2 of HB 530 requires Defendant Jacobsen "to adopt an administrative rule" subjecting individuals for a \$100 fine per ballot for "distributing, ordering, requesting, collecting, or delivering ballots" for "pecuniary gain." Defendant Christie Jacobsen is sued in her official capacity.

FACTUAL ALLEGATIONS

81. In-person voting and registration 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, especially tribal members living on Montana's rural reservations, relies on ballot collection and EDR.

I. VOTING AND REGISTERING TO VOTE ON RESERVATIONS IN MONTANA

82. 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).

83. 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 Flathead Reservation encompasses 1.3 million acres, the Fort Belknap Reservation encompasses 675,147 acres, and the Northern Cheyenne Reservation encompasses 444,000 acres.

84. There is a long history of disenfranchising Native voters in Montana. For example, in 1906 the Montana Attorney General issued an opinion expressly mandating that Native American reservations not be included in voting precincts and that, because Native Americans were considered wards to the government, they could not register to vote, or vote, at all.

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

A. Mail-Service

86. 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.

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

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

89. 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.

90. 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 multiple ballots. A single tribal community member may collect and convey ten to twenty voted ballots for other reservation residents.

91. 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.

B. Internet Access

92. Native Americans living on reservations in Montana have limited access to computers and broadband internet, which further reduces their ability to obtain information about voting opportunities and deadlines. Those who can access Montana's My Voter Page can use it to check their voter registration status and address, the location and directions to their county election office, whether they are on the list to have ballots automatically mailed to them, and track the status of their mailed ballot.

93. Though nearly ninety percent of Montana households have a computer and over eighty percent of them have broadband internet subscriptions, these resources are far less available in Indian Country. There are computers in only sixty-five percent of households on the Blackfeet Indian

Reservation, and a mere sixty percent of these households have a broadband internet subscription. United States Census Bureau, *American Community Survey 2015-2019 American Community Survey 5-Year Estimates for Blackfeet Indian Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/index.html?st=30&aianihh=0305> (accessed May 14, 2021). While seventy-four percent of households on the Fort Belknap Reservation have a computer, less than sixty-three percent have broadband service. United States Census Bureau, *American Community Survey 2015-2019 American Community Survey 5-Year Estimates for Fort Belknap Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/index.html?st=30&aianihh=1150> (accessed May 14, 2021). On the Northern Cheyenne Indian Reservation, while nearly seventy-two percent of households have a computer, less than fifty-three percent have broadband internet service. United States Census Bureau, *American Community Survey 2015-2019 American Community Survey 5-Year Estimates for Northern Cheyenne Indian Reservation and Off-Reservation Trust Land, MT*, <https://www.census.gov/tribal/index.html?st=30&aianihh=2490> (accessed May 14, 2021). Even though the Federal Communication Commission has recently issued internet licenses for broadband on reservations in Montana, many of these communities remain chronically underserved.

C. Poverty

94. Native Americans experience higher poverty rates compared to the rest of Montana's population. Half of Montana's forty counties are considered "high-poverty" due to having poverty rates higher than fourteen percent. Montana Legislative Services Division, *Unemployment: Barriers in High-Poverty Areas Examined under SJR 20*, (draft report) (2018) at 1. Four of the five counties with poverty rates higher than twenty-percent intersect with reservations. *See id.* at 3-4. Meanwhile, there is a high poverty rate across all reservations in Montana, often significantly higher than fourteen percent: 38.6% on the Blackfeet Indian Reservation, 31.5% on the Crow Reservation, 23.6% on the Flathead

Reservation, 41.0% on the Fort Belknap Reservation, 30.6% on the Fort Peck Indian Reservation, 45.6% on the Northern Cheyenne Indian Reservation, and 31.1% on the Rocky Boys' Reservation.

Montana State University, *Poverty Report Cards*,

<https://www.montana.edu/extensionecon/countydata/allreservations.pdf>.

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

D. Traveling to Vote and Register to Vote

96. 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 that make travel difficult or impossible.

97. 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.

98. 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.

99. Ballots and registration applications 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.

100. 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.

101. 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.

E. Satellite Polling Locations

102. 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.

103. In-person early voting and late registration starts 30 days prior to Election Day. Mont. Code Ann. §§ 13-13-205(1)(a)(i); 13-2-301. 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.

104. The two exceptions where voter registration services are available 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 Jacobsen also lists the courthouse at 420 Ohio Street as a satellite location for the Fort Belknap Reservation, but it is located at the county seat in the town of Chinook, over twenty miles from the Fort Belknap Reservation border.

F. Voter Registration

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

106. Given the inaccessibility of mail service and polling locations, many tribal members register and/or change their registration on the same day as the day that they vote. The number of Native Americans who use EDR compared to Montana population as a whole is statistically significant.

G. Organized Ballot Collection and Conveyance

107. 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.

108. 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.

109. Nine percent of the absentee ballots returned from tribal nations within Montana alone during the 2018 election were delivered by Non-Profit Plaintiffs.

110. In the 2020 general election, after BIPA was permanently enjoined by two Yellowstone County district court judges, Non-Profit Plaintiffs paid organizers to collect and convey over 555 ballots.

111. Non-Profit Plaintiffs' ballot collection activities have never been the subject of a complaint or investigation by Montana's Commissioner of Political Practices.

II. THE LEGISLATIVE HISTORY OF HB 176

112. EDR has a long and successful history in Montana. Mont. Code Ann. § 13-2-304 was introduced by then-Senator Jon Ellingson as part of Senate Bill 302 on January 26, 2005. The bill that included the EDR provision ultimately received bipartisan support in the legislature. Secretary of State and Chief of Elections Officer at the time, Linda McCulloch, said, "Virtually everyone supported it [because] election day registration is the ultimate failsafe." Montana Conservation Voters reports that the bill was the result of cooperation amongst groups including "Montana Association of Clerks and Recorders, the Montana Secretary of State, AFL-CIO, the Montana Democratic Party, AARP, Montana Women Vote, the League of Women Voters, Associated Students of the University of Montana, and the Montana Advocacy Program." MONTANA LEGISLATIVE SCORECARD at 12. Senator Ellingson has since published editorials describing SB 302's purpose and the bipartisan coalition that once stood behind it. See Jon Ellingson, *Bipartisan coalition created Montana's Election Day Registration*, MONTANA STANDARD, July 31, 2015 and Jon Ellingson, *House Bill 176 is Voter Suppression*, MISSOULIAN, Feb. 25, 2021.

113. Since its passage, the law permitting EDR has been amended in very minor ways, but EDR has been available to Montanans in each election since 2005. After the governor vetoed a 2011 attempt to eliminate EDR, the legislature voted to put the issue on the ballot.

114. In 2014, Montana voters rejected the ballot referendum (LR 126) that would have ended EDR. Voters rejected LR 126 in 80 out of 100 legislative districts. At the time, Montana Secretary of State Linda McCulloch said. “You don’t fix administrative problems by turning people away from the polls . . . You just don’t do that.”

115. HB 176 was introduced by Representative Sharon Greef in Montana’s House of Representatives on January 15, 2021. On January 21, 2021, the House’s State Administrative Committee held a hearing on the bill. At the hearing Secretary Jacobsen, along with a member of Jacobsen’s staff and a few members of the public spoke in favor of the bill. However, the vast majority of speakers vociferously opposed the bill. While the proponents of the bill gave fuzzy rationale for its supposed necessity, including invocations of “election integrity,” the opponents clearly outlined the specific dangers to electoral participation of repealing EDR, and specifically the disproportionate impacts on indigenous voters.

116. In particular, Jordan Thompson, Keaton Sunchild, Danielle Vazquez, Lauri Kindness, and Dalayah Killsback all spoke in opposition to HB 176. Mr. Thompson spoke on behalf of CSKT and stated that the tribe opposed the bill because it wanted to keep elections accessible to all Montanans. Mr. Sunchild testified to the factual predicates that make EDR so important to Montana’s Native voters including the large reservations that require traveling long distances to vote and register in person. Further he testified that there was a tradition of voting in person and that first time voters would register and vote on Election Day.

117. Ms. Kindness detailed her own work as a Western Native Voice organizer on the Crow Reservation. She testified that in the past election her team set up a mobile location across from the Big Horn County Courthouse, the only location where voters could register to vote on Election Day. Western Native Vote had registration cards at the location and assisted voters with their registrations.

Her team also picked up voters from their homes and drove them to the courthouse to vote and register. Her team assisted 150 voters with their registration on Election Day. She also discussed how difficult voting already is for so many Native voters and that taking away EDR would add another barrier to a system that already disenfranchises Native voters.

118. Ms. Vazquez and Ms. KILLSBACK also testified to how Native voters would be disproportionately hurt by the EDR repeal.

119. Native American voters rely on EDR given the other barriers to voting, including distance to voter registration locations and the cost of travel. In addition, many other opponents, like Ruthie Barbour of Forward Montana, noted that HB 176 would have a particularly damaging effect on Montana's Native voters.

120. Regina Plettenberg testified on behalf of the Montana Association of Clerks and Recorders and Election Administrators. She testified that EDR's repeal would result in fewer people being able to vote. She noted that 200 people had used EDR in her county (Ravalli) alone on Election Day. She also testified that the same safeguards that exist before Election Day were in place for verification of a voter's registration and identity on Election Day. Dana Corson of the Secretary of State's office corroborated Ms. Plettenberg's testimony that the same safeguards exist pre-Election Day as on Election Day.

121. At the Senate State Administration hearing on February 15, 2021, Representative Greef testified that HB 176 was necessary because those who use it are irresponsible procrastinators. Instead of recognizing the burdens faced by Native voters, Representative Greef explained her insult in the following way: "Elections don't just pop up out of the blue and surprise us. If we are a responsible voter, we study the ballot ahead of time and we also know if we need to register to vote They wait to register to vote because they can." She further asserted HB 176 mitigates against voter fraud and

ensures voter integrity, but when pressed by a member of the Committee for proof of fraud, she provided none.

122. Representative Greef and Dana Corson, Director of Election and Voter Services at the Montana Secretary of State Office, claimed at the Senate State Administration hearing that elimination of EDR would provide a solution to citizens who are discouraged to vote due to long lines and extended wait times by making the process more efficient. Mr. Corson said HB 176 would reallocate and free up time and resources at County Election office for other essential duties like “answering email and answering the phone.”

123. Contrary to these assertions, EDR does not allow for registration at the polls. Instead, residents may register and vote at the offices of county election administrators after the close of the voter registration deadline (30 days before election), including on Election Day.

124. It is accurate that EDR contributes to an appreciable increase in voter participation. Opponents of HB 176 noted the program’s popularity: 7,547 voters used EDR in 2008; 12,055 voters used EDR 2016; over 8,000 voters used EDR in 2018; and even in the middle of a pandemic last year 3,352 voters used EDR.

125. Audrey McCue, Lewis and Clark County Elections Supervisor, testified at the Senate State Administration hearing, “[c]ontinuing this service to the voters is important and taking it away is a disservice to them.” As an expert on the administration of elections, she explained that lines are long on Election Day because that is the last day to register, so moving the last day to register to an earlier date will only make the lines longer on that earlier date.

126. Three opponents at the Senate State Administration hearing testified that HB 176 has the potential to disproportionately impact Native Americans in Montana, that it will disenfranchise Native

voters, that it will make registration more difficult for those who live an extreme distance away from their polling location, and that it will make it more difficult for those who are highly mobile to register.

127. Opponents testified at the Senate State Administration hearing that HB 176 is a fail-safe used by voters who do everything correctly to register but show up to vote on election day to discover that some administrative error has caused them to not be registered. One opponent testified that forty percent of EDR were not new registrations.

III. THE LEGISLATIVE HISTORY OF BALLOT COLLECTION BANS

128. There is a history of attempts to institute ballot collection bans in Montana, which are clearly intended to suppress the Native American vote. In 2017, the Montana Legislature passed the Ballot Interference Prevention Act (BIPA), to put a ban on ballot collection on Montana's 2018 ballot. As part of that bill, several hearings were held where testimony was received about the effect that BIPA would have on Montana's Native American voters. For example, at the Senate State Administration Committee hearing held on March 22, 2017, Plaintiff CSKT testified that BIPA did "not align with how many of us in my community vote [given the] barriers to voting for tribal people . . . [and BIPA's] limit to who can pick up a ballot . . . creates even more obstacles to voting for us." Plaintiff CSKT further testified that "[g]roups like Western Native Voice goes out and collects ballots for Natives [and that BIPA] could eliminate that vital service for Native people."

129. Further, Audrey McCue also testified against BIPA on behalf of the Montana Association of Clerk and Recorders and Election Administrators as part of the same Senate hearing. She testified that BIPA was unnecessary to prevent unsolicited ballot collection and undelivered ballots. Prior to the enactment of BIPA, county election officials already kept records of all ballots delivered to their offices. Voters could also track their ballots by going online or calling local election officials to make sure collected ballots were in fact delivered. 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. *See, e.g.,* Mont. Code Ann. § 27-1-1501 *et seq.*

130. At the April 6, 2017, House Judiciary Committee hearing, Plaintiff Western Native Voice testified that "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 hired 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." The Montana Association of Clerk and Recorders and Election Administrators again testified against BIPA before the House Judiciary Committee, further underscoring that the clerks did not believe Montana had a problem with ballot interference.

131. On November 6, 2018, voters approved BIPA. On March 12, 2020, a group of plaintiffs representing a cohort of Montana's tribal nations and Non-Profit Plaintiffs filed suit challenging BIPA in Yellowstone County based on the harm to Native American voters. After a three-day trial, Judge Fehr found that BIPA violated the plaintiffs right to vote, freedom of association, and due process, and permanently enjoined BIPA's enforcement. In a 61-page order, Judge Fehr meticulously detailed how Native Americans were disproportionately affected by BIPA.

132. Following Yellowstone County District Court holding BIPA unconstitutional, the legislature did not study impediments on Native voters' access to the franchise, did not consider the impact on Native voters when ballot collection is restricted, and did not attempt to remediate the access issues identified by the court.

133. On February 12, 2021, a new ballot collection ban was introduced in Montana’s House. This bill, HB 406, would have effectively revived BIPA, with minor modifications that did not correct its constitutional infirmities. Numerous groups testified against the legislation, including representatives of plaintiffs here (from Western Native Voice, Montana Native Vote, the Confederated Salish and Kootenai Tribes, and Fort Belknap Indian Community). Further, the chief legal counsel for the Office of Commissioner of Political Practices came out against the bill, motivated by her “keep-us-out-of-court job duties.” The bill did not pass the Montana Senate.

134. As a last-ditch attempt to once again introduce a ballot collection ban, one was added to an amendment to HB 530 on Montana’s Senate floor on April 26, 2021. Since the amendment came after the committee process, there was no ability for Montana’s legislature to receive public testimony regarding the amendment. However, several Montana legislators spoke in opposition to the inclusion of the amendment. As with the failed HB 406, HB 530 likewise did not correct the constitutional infirmities of BIPA.

135. At the April 26, 2021 Senate floor session, the amendment’s sponsor, Senator Steve Fitzpatrick, conceded that the amended was added “late.” The sole piece of evidence cited by the sponsor for its inclusion was an instance of alleged fraud that occurred in North Carolina several years ago – this same incident was cited by the State as a reason for BIPA and found unpersuasive by Judge Fehr given the long history of ballot collection in Montana and the absence of fraud. Senator Bryce Bennett spoke in opposition to the amendment, noting that the amendment was an “attempt to try and hijack a bill” and that it provided “no definitions.” He further noted that the amendment was the same as the ballot collection bans that had been dealt with by Montana’s legislature in the past and which had been recently defeated.

136. The very next day, April 27, 2021, the House held a floor session during which Representative Wendy Kamey, the original sponsor of HB 530, conceded that she had not requested the amendment adding a ballot collection ban. Representative Kamey presented muddled reasons to support the amendment, failed to provide any anecdotal or statistical evidence to support a need for a new ballot collection ban, and even misrepresented the state of the law in Montana (testifying that “for years we’ve allowed up to six ballots to be collected by an individual”). In opposition, Representative Denise Hayman testified that the amendment is “a backdoor version” of BIPA, and that reinstating such restrictions would increase voter confusion, as well as increase the workload of election officials.

137. Representative Tyson Running Wolf also testified in opposition to the HB 530 amendments, indicating that he had supported the bill in its original form. He explained that Section 2 of HB 530 “effectively ends the legal practice of ballot collection,” which is heavily relied upon by Native voters in Montana and would result in “en masse” disenfranchisement. In his words, “[b]allot collection is a lifeline to democracy for rural indigenous communities” because of social and economic barriers such as long distances to election offices and lack of access to transportation in Indian Country. Representative Kamey failed to rebut or even acknowledge these impacts in her closing remarks on the legislation before it went to a vote.

CLAIMS FOR RELIEF

First Claim for Relief

Right to Vote, Mont. Const. art. II, § 13 as to HB 176

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Blackfeet Nation, Plaintiff Confederated Salish and Kootenai Tribes, Plaintiff Fort Belknap Indian Community, and Plaintiff Northern Cheyenne Tribe against Defendant

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

139. 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.

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

141. 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, ¶ 52, 54 P.3d 1, ¶ 52, *aff'd on reh'g in part*, 2002 MT 129A, ¶ 52, 57 P.3d 41, ¶ 52.

142. "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, ¶ 18, 109 P.3d 219, ¶ 18.

143. 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.

144. Native Americans living on reservations disproportionately rely on EDR to register to vote, given the long distances to polling places and post offices, lack of transportation, poor mail service, and poverty on Montana's reservations.

145. HB 176 thus burdens the right to vote of Native Americans living on rural reservations relative to the rest of Montana voters.

146. Legislative testimony made clear that HB 176 would affect the ability of Native American voters to exercise their right to vote.

147. That HB 176 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.

148. Montana’s Constitution does not have a voter registration deadline and the unnecessary elimination of EDR places an additional voter eligibility qualification that violates Article II, section 13.

149. The sole justification offered for HB 176 is to promote election integrity. However, as the United States Supreme Court has said, “[f]encing out’ from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” *Dunn v. Blumstein*, 405 U.S. 330, 355 (1972) (internal citations omitted).

150. Legislative testimony made clear that EDR was not a pressing issue in current elections.

151. Thus, no compelling state interest could possibly justify the infringement upon the voting rights of Native Americans affected by HB 176.

152. Even assuming that election integrity was a compelling interest, as illustrated by the legislative history, HB 176 is not narrowly tailored to meet this interest.

Second Claim for Relief

Right to Vote, Mont. Const. art. II, § 13 as to HB 530

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Blackfeet Nation, Plaintiff Confederated Salish and Kootenai Tribes, Plaintiff Fort Belknap Indian Community, and Plaintiff Northern Cheyenne Tribe against Defendant

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

154. 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.

155. Mail service is poor on Montana's rural reservations and many individuals do not receive residential mail service and post offices are located in far distances from where individuals reside.

156. Many Native Americans living on rural reservations, therefore, are only able to cast their vote by relying on the collection and conveyance of their ballot by an individual working for Non-Profit Plaintiffs and other paid organizers.

157. HB 530 is a ballot collection ban by paid collectors and thus burdens the right to vote of Native Americans living on rural reservations relative to the rest of Montana voters.

158. Legislative history of Montana's prior ballot collection ban, other proposed ballot collection bans, and HB 530's amended language, along with record established in *Western Native Voice v. Stapleton* trial, made clear that HB 530 would affect the ability of Native American voters to exercise their right to vote.

159. That HB 530 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.

160. Little justification was offered for HB 530 other than the invocations of alleged fraud occurring in ballot collection in other states. These very same justifications had been offered for BIPA and debunked in the *Western Native Voice v. Stapleton* trial.

161. Montana has a long history, especially in rural Native American reservations, of ballot collection. There is no record of fraud connected to this form of voting.

162. Thus, no compelling state interest could possibly justify the infringement upon the voting rights of Native Americans affected by HB 530.

163. Even assuming that banning paid ballot collection were a compelling interest (a point refuted by the legislative history), HB 530 is not narrowly tailored to meet this interest.

Third Claim for Relief

Equal Protection, Mont. Const. art. II, § 4 as to HBs 530 and 176

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Blackfeet Nation, Plaintiff Confederated Salish and Kootenai Tribes, Plaintiff Fort Belknap Indian Community, and Plaintiff Northern Cheyenne Tribe against Defendant

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

165. Article II, § 4 of the Montana Constitution guarantees that no person shall be denied the equal protection of the laws. It is a fundamental right under Montana’s Constitution and it “provides for even more individual protection” than the federal equal protection clause of the United States Constitution. *Cottrill v. Cottrill Sodding Serv.*, 229 Mont. 40, 42, 744 P.2d 895, 897 (1987).

166. The first step in an equal protection analysis is determining what classifications are at issue. *Snetsinger v. Montana Univ. Sys.*, 2004 MT 390, ¶ 16, 325 Mont. 148, 154, 104 P.3d 445, 449. “A law or policy that contains an apparently neutral classification may violate equal protection if ‘in reality [it] constitut[es] a device designed to impose different burdens on different classes of persons.’” *Id.* (quoting *State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 367, ¶ 85, 982 P.2d 421, ¶ 85) (alterations in original).

167. After the relevant classification has been determined courts then determine the appropriate level of scrutiny. *Id.* Strict scrutiny applies if a suspect class or fundamental right is affected. *Id.*; see also *In re Adoption of A.W.S.*, 2014 MT 322, ¶ 16, 377 Mont. 234, 238, 339 P.3d 414, 417.

168. “Under the strict scrutiny standard, the State has the burden of showing that the law, or in this case the policy, is narrowly tailored to serve a compelling government interest.” *Snetsinger*, ¶ 17; see also *In re Adoption of A.W.S.*, ¶ 17 (“Ordinarily, the burden of proof falls on the State.”).

169. Here, Native Americans living on rural reservations in Montana disproportionately rely on EDR and ballot collection in order to exercise their fundamental right to vote given the remote locations of these reservations, poverty and poor mail service.

170. The legislature was well aware of the burden it was placing on Montana's Native voters when passing these laws due to the copious amount of legislative history and prior voting rights litigation on behalf of Montana's Native voters. The laws are, in other words, "device[s] designed to impose different burdens on different classes of persons." *Spina*, ¶ 85.

171. As discussed more fully *infra*, there was no compelling state interest to deny Montana's Native voters equal protection of the laws.

172. For these reasons, HB 530 and HB 176 violate the equal protection of laws protected by Montana's Constitution.

Fourth Claim for Relief

Freedom of Speech, Mont. Const. art. II, § 7 as to HB 530

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, and Plaintiff Blackfeet Nation, Plaintiff Confederated Salish and Kootenai Tribes, and Fort Belknap Indian Community against Defendant

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

174. 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.

175. 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).

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

177. 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).

178. 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, 1352 (1991); *see also, City of Helena v. Krautter*, 258 Mont. 361, 363–64, 852 P.2d 636, 638 (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).

179. 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).

180. 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).

181. 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 U.S. at 186 (quoting *Meyer*, 486 U.S. at 422).

182. 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).

183. HB 530’s prohibition that an organization may not give and that a ballot collector may not receive a “pecuniary benefit” for ballot collection limits Non-Profit Plaintiffs ability to engage in ballot collection and Tribal Plaintiffs ability to engage in ballot collection. In order to engage in such a large-scale ballot collection effort, Non-Profit Plaintiffs employ paid organizers to work on remote rural reservations to conduct Non-Profit Plaintiffs’ GOTV activities, including ballot collection.

184. Such a ban on who can engage in protected conduct, including the limitation to unpaid volunteers, is precisely the type of ban struck down by the Supreme Court in *Meyer*. There the Supreme Court found that Colorado’s ban on paid circulars for petitions violated freedom of speech because:

The refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees’ message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Meyer, 486 U.S. at 422–23

185. HB 530’s ban on paid ballot collectors has a similar effect of limiting the number of voices that Non-Profit Plaintiffs can employ and the audience that they can reach.

186. HB 530's limitation on who can collect ballots effectively ends Non-Profit Plaintiffs' ballot collection activities and thus eliminated a core part of political speech and expressive conduct.

187. As HB 530 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,' upholding the restriction only if it is narrowly tailored to serve an overriding state interest.").

188. 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 (internal citation omitted).

189. HB 530 cannot meet this test, as it "significantly inhibit[s] communication with voters about proposed political change and [is] not warranted by the state interests . . . alleged to justify those restrictions." *Buckley*, 525 U.S. at 192.

190. HB 530 directly restricts Non-Profit Plaintiffs' and Blackfeet's, CSKT's, and Fort Belknap'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 Non-Profit 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.

191. To assist CSKT members and encourage them to vote, every year CSKT hires temporary workers specifically to work GOTV activities. Likewise, Fort Belknap pays the Snake Butte Voter Coalition to conduct GOTV. Blackfeet Nation also undertakes paid ballot collection. These tribal efforts are aimed at 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 Non-Profit Plaintiffs to assist with GOTV efforts and ballot collection. The tribes depended on Non-Profit Plaintiffs to collect and drop off ballots on the reservation. If both Non-Profit Plaintiffs and paid tribal organizers 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. However, the restriction of the “most effective, fundamental, and perhaps economical avenue of political discourse,” even if “‘more burdensome’ avenues” exist has been found to violate freedom of expression. *Meyer*, 486 U.S. at 424.

192. To the extent the activities of Non-Profit Plaintiffs, Blackfeet, CSKT, and Fort Belknap do not fall within the restrictions of HB 530, this is unclear from the face of the law. As such, the law operates to chill the Plaintiffs’ rights to speech and expression. Both the Montana and United States Supreme Courts have made this clear: where, as here, a 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, and where there are ambiguities as to the scope of a law that regulates speech and expression, those ambiguities are “problematic for purposes of the First Amendment.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997). “The lack of [fair] notice [as to what is prohibited] in a law that regulates expression ‘raises special First Amendment concerns because of its obvious chilling effect on free speech.’” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 807 (2011) (quoting *Reno*, 521 U.S. at 871–72).

193. HB 530 inhibits Non-Profit Plaintiffs’, Blackfeet’s, CSKT’s, and Fort Belknap’s protected activity of encouraging and helping Native Americans to vote throughout Montana.

194. HB 530 should be found invalid in its entirety because it infringes upon Non-Profit Plaintiffs', Blackfeet's, CSKT's, and Fort Belknap's constitutionally protected speech and expression. *State v. Allum*, 2005 MT 150, ¶ 29, 327 Mont. 363, ¶ 29, 114 P.3d 233, ¶ 29.

Fifth Claim for Relief

Due Process – Facial Challenge, Mont. Const. art. II, §17 as to HB 530

Declaratory and Injunctive Relief on behalf of Plaintiff Western Native Voice, Plaintiff Montana Native Vote, Plaintiff Blackfeet Nation, Plaintiff Confederated Salish and Kootenai Tribe, Plaintiff Fort Belknap Indian Community, and Plaintiff Northern Cheyenne Tribe against Defendant

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

196. 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.

197. 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, ¶ 66, 369 Mont. 39, 63, 303 P.3d 755, 772. “Vague laws may trap the innocent by not providing fair warning.” *City of Whitefish*, 216 Mont. at 440, 704 P.2d at 1025.

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

199. 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.

200. HB 530 prohibits a person from “provid[ing] or offer[ing] to provide, and a person may not accept, a pecuniary benefit in exchange for distributing, ordering, requesting, collecting, or delivering ballots.”

201. Notably “pecuniary benefit” has not been defined in the statute. Merriam Webster defines “pecuniary” as 1. “consisting of or measured in money” and 2. “of or relating to money.” Even this definition is unclear. Is the prohibition on collectors who are explicitly paid to collect ballots and paid per ballot? Is the prohibition on anyone who is a paid employee and as part of their employment engage in ballot collection among other tasks, such as the Non-Profit Plaintiffs paid organizers?

202. HB 530 explicitly exempts from its prohibitions “a government entity.” However, again this term is not defined. Would it for example include the sovereign tribal governments and organizers paid to engage in ballot collection efforts by those tribes?

203. Without clear definitions and the imposition of a \$100 per ballot fine, Non-Profit Plaintiffs and Tribal Plaintiffs may steer clear of ballot collection to avoid accruing such a penalty.

204. Thus, HB 530 prohibition on ballot collection should also be declared void for vagueness.

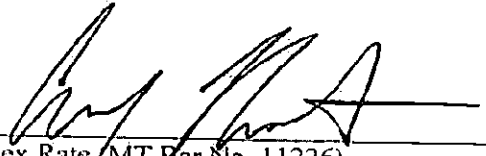
PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

- A. Order Defendant Christi Jacobsen to cease all implementation and enforcement of HB 176;
- B. Order Defendant Christi Jacobsen to cease all implementation and enforcement of Section 2 of HB 530;
- C. Issue a judgment declaring that HB 176 violates the Montana constitutional right to vote;
- D. Issue a judgment declaring that Section 2 of HB 530 violates the Montana constitutional right to vote;

- E. Issue a judgment declaring that Section 2 of HB 530 and HB 176 violates the Montana constitutional right to equal protection of law;
- F. Issue a judgment declaring that Section 2 of HB 530 violates the Montana constitutional right to freedom of speech;
- G. Issue of a judgment declaring that Section 2 of HB 530 violates the Montana constitutional right to due process;
- H. Award interim and permanent injunctive relief against the application of HB 176;
- I. Award interim and permanent injunctive relief against the application of Section 2 of HB 530;
- J. Award attorney's fees and costs associated with this litigation; and
- K. Provide any additional relief the Court deems just.

DATED THIS 17th day of May 2021.



Alex Rate (MT Bar No. 11226)
Akilah Lane
ACLU OF MONTANA
P.O. Box 1968
Missoula, MT 59806
406-224-1447
ratea@aclumontana.org
alane@aclumontana.org

Alora Thomas-Lundborg*
Theresa J. Lee*
Ihaab Syed*
Dale E. Ho*
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
(212) 519-7866
(646) 885-8381
(212) 549-2693
athomas@aclu.org

tlee@aclu.org
isyed@aclu.org
dale.ho@aclu.org

Jacqueline De León*
Matthew Campbell*
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302-6296
(303) 447-8760
jdeleon@narf.org

Samantha Kelty*
NATIVE AMERICAN RIGHTS FUND
1514 P Street N.W. (Rear) Suite D
Washington, D.C. 20005
(202) 785-4166
kelty@narf.org

Attorneys for Plaintiffs