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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DONALD J. TRUMP FOR PRESIDENT, INC., REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE; MONTANA REPUBLICAN STATE CENTRAL COMMITTEE, Plaintiffs, And GREG HERTZ, in his official capacity as Speaker of the House of Representatives of Montana; SCOTT	Case No: 6:20-cv-00066-DLC

SALES, in his official capacity as President of the Montana State Senate on behalf of the Majorities of the Montana House and Senate (the Legislative Majority), Intervenor-Plaintiffs, v. STEPHEN BULLOCK, in his official capacity as Governor of Montana; COREY STAPLETON, in his official capacity as Secretary of State of Montana, Defendants, And DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE; DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE; MONTANA DEMOCRATIC PARTY, Intervenor-Defendants	**BRIEF OF AMICUS CURIAE LEAGUE OF WOMEN VOTERS OF MONTANA**

I. INTRODUCTION

Pursuant to the Court's September 14, 2020 Order (ECF 61), amicus curiae the League of Women Voters of Montana ("LWVMT") respectfully submits the following amicus brief in support of Defendants' and Intervenor-Defendants' opposition to Plaintiffs' Motion for Preliminary Injunction.

LWVMT is a nonprofit, nonpartisan organization that has been dedicated to promoting civic engagement and protecting democracy in Montana for nearly one

hundred years. During the COVID-19 pandemic, LWVMT has sought to expand access to voting and ensure that its members and the broader Montana community it serves have safe and effective means of casting a ballot.

Plaintiffs' and Intervenor-Plaintiffs' assertions that Governor Bullock's August 6, 2020 Directive allowing counties to choose to conduct the November 3, 2020 election by mail (the "General Election Directive") violates the U.S. Constitution or will open the doors to rampant fraud are dangerous and unfounded. Neither these phantom threats of voter fraud nor the U.S. Constitution prohibit Governor Bullock from using his valid emergency powers under Montana law to permit counties to exercise their discretion and conduct the general election by mail. Based on its experience as a trusted nonpartisan advocate for Montana voters, LWVMT has full confidence in county election officials to both maintain the integrity of Montana's elections and protect voters' health and safety by implementing vote-by-mail in November.

II. FACTUAL BACKGROUND

a. Absentee Voting in Montana

Montana election officials have experience administering elections with high rates of absentee voting. In the 2016 general election, 65.38% of voters cast their

ballots absentee.[1] In 2018, the rate increased to 73.13%.[2] Amidst these high rates of absentee voting, Montana does not have a voter fraud problem. After allegations of voter fraud in 2017, the Montana Secretary of State's office conducted a survey of the uncounted ballots for a 2017 special election and found that Montana has no problem with coordinated voter fraud.[3] Indeed, the ballot verification procedures followed by Montana election officials effectively guard against any risk of fraud, including among vote-by-mail ballots. In particular, as required by Montana Code § 13-13-241, election officials compare the signatures on the absentee ballot signature envelopes with the signature on the voter's absentee ballot application *or* voter registration form.[4] Additionally, election officials scan the bar codes on the ballot mailing envelopes to confirm their validity.[5] Critically, these ballot integrity

[1] MT Secretary of State, *Absentee Turnout 2000-Present*, https://sosmt.gov/elections/results/.
[2] *Id.*
[3] *See* MT Secretary of State, *2017 Mail Ballot Improvement Project*, https://sosmt.gov/elections/2017-mail-ballot-improvement-project/; Associated Press, *Secretary of state: Montana has no voter fraud issue*, GREAT FALLS TRIBUNE (Dec. 6, 2017) (quoting election official stating "that the process works" to "prevent[] ballots from being counted that should not be counted on Election Day"), https://www.greatfallstribune.com/story/news/2017/12/06/secretary-state-montana-has-no-voter-fraud-issue/929021001/; *see also* Corin Cates-Carney, *No Widespread Voter Fraud in Montana Elections, Secretary of State Says*, MONTANA PUBLIC RADIO (Dec. 5, 2017), https://www.mtpr.org/post/no-widespread-voter-fraud-montana-elections-secretary-state-says.
[4] A 2018 survey conducted by the LWVMT verified that all responding Montana county election officials check the signatures on absentee ballots, in line with state law. *See* League of Women Voters Montana, *Report on Montana Election Security* at 11, https://my.lwv.org/sites/default/files/leagues/wysiwyg/%5Bcurrent-user%3Aog-user-node%3A1%3Atitle%5D/lwv_mt_election_security_report.pdf.
[5] MT Secretary of State, *2018 Election Administrator Certification Training: Absentee Ballot Best Practices* at 10–11, https://sosmt.gov/Portals/142/Elections/Documents/Absentee-Best-Practices-2018.pdf.

measures occur after ballots are received, regardless of the method by which they are returned.

b. The General Election Directive for the November 2020 Election

Much like the rest of the country, the COVID-19 pandemic has altered life in many parts of Montana. Over 9,400 Montanans have contracted COVID-19 and 141 Montanans have died.[6] And COVID-19 is still harming and killing Montanans.[7] In-person voting presents a serious risk to the health of voters, especially those who are elderly or who have preexisting conditions that place them at heightened medical risk if they were to contract COVID-19. And while Montana regularly has high rates of absentee voting, the process to apply for an absentee ballot can be burdensome and, in the current climate, could prove dangerous for some voters. In Montana, a voter cannot electronically register for an absentee ballot; rather, voters must submit a hard copy of an absentee ballot request form. Mont. Code § 13-13-212. Thus, voters without reliable internet access, computers, or printers are at a disadvantage. They must expose themselves to others by going either to their county election office to retrieve a form or to somewhere they can access a printer. And voters have to obtain their own envelopes and postage to request an absentee ballot as well.

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[6] *COVID-19 Demographic Information for Confirmed Cases*, MONTANA.GOV, https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/demographics.

[7] *See 196 new cases of COVID-19 in Montana*, NBC MONTANA (Sept. 10, 2020), https://www.ktvq.com/news/coronavirus/montana-reports-3-additional-deaths-90-new-covid-19-cases-wednesday-sept-9.

Earlier this year, Montana's state and local officials united in response to the pandemic to protect both the democratic rights and the health of Montana's citizens. In March, the Republican leadership of the Montana Senate and House, joined by Democratic officials, called for and supported Governor Bullock's Primary Election Directive allowing counties to send all registered voters mail-in ballots for the June primary.[8] Intervenor-Plaintiff Speaker Greg Hertz applauded the Primary Election Directive for "allow[ing] counties to choose what is best for their voters and election staff during this state of emergency."[9] No litigant sought to enjoin the Primary Election Directive. All fifty-six counties chose to conduct all-mail elections for the June primary, which had the highest voter primary turnout in recent history.[10] Amidst this high turnout election conducted by mail statewide, there was no corresponding increase in reports or cases of fraud.

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[8] *See, e.g.*, Casey Page, *Montana officials advocate for voting by mail as COVID-19 calls election processes into question*, BILLINGS GAZETTE (Mar. 18, 2020), https://billingsgazette.com/news/state-and-regional/govt-and-politics/montana-officials-advocate-for-voting-by-mail-as-covid-19-calls-election-processes-into-question/article_bc67e440-acbe-5c14-9cbd-d5c0339b6320.html.

[9] *Governor Bullock to Allow Counties the Choice to Conduct All Mail Election and Expand Early Voting for June Primary*, MONTANA.GOV (Mar. 25, 2020), https://news.mt.gov/governor-bullock-to-allow-counties-the-choice-to-conduct-all-mail-election-and-expand-early-voting-for-june-primary.

[10] Maritsa Georgiou, *Record ballot return rates in Montana primary*, NBC MONTANA (June 3, 2020), https://nbcmontana.com/news/local/record-ballot-return-rates-in-montana-primary.

Calls for the Governor to issue a similar Directive for the upcoming November 2020 general election were once again issued on a bipartisan basis. The Montana Association of Clerks & Recorders/Election Administrators and the Montana Association of Counties—nonpartisan associations comprised of both Democratic and Republican officials—requested that the Governor use his authority to again provide the counties the option of conducting all-mail elections in light of the COVID-19 pandemic; nonpartisan advocacy groups like LWVMT echoed their call.[11] The Governor responded to these requests and issued the General Election Directive—allowing local officials to *choose* the best way to conduct their elections.[12]

c. The Considered Choice of Montana's County Officials on How to Conduct the November 2020 General Election

The element of choice in the General Election Directive is critical. A bottom-up approach to politics has long been the Montana way and is fitting for the diversity of Montanans' needs. What is right for some counties may not be right for others. For example, while forty-six counties have chosen to conduct all-mail elections in November 2020 as permitted by the General Election Directive, the remaining ten counties have elected not to do so.

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[11] Holly Michels, *Montana clerks call for general election by mail*, INDEPENDENT RECORD (July 28, 2020), https://helenair.com/news/state-and-regional/govt-and-politics/montana-clerks-call-for-general-election-by-mail/article_b88950de-3ff6-5e67-ab30-9f4d0e2e687a.html.

[12] Gov. Steve Bullock, *Directive implementing Executive Orders 2-2020 and 3-2020 and providing for measures to implement the 2020 November general election safely* (August 6, 2020).

III. ARGUMENT

a. Governor Bullock's Directive Falls Within His Broad Discretion to Protect Constitutional Rights During a Crisis.

The Supreme Court has reinforced that "when [politically accountable] officials 'undertake[] to act in areas fraught with medical and scientific uncertainties,' their latitude 'must be especially broad.'" *South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (2020) (quoting *Marshall v U.S.*, 414 U.S. 417, 427 (1974)); *see also Gonzales v. Carhart*, 550 U.S. 124, 163 (2007); *Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997); *Williamson v. Optical of OK Inc.*, 348 U.S. 483, 487 (1955). "Where those broad limits are not exceeded, they should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *South Bay United Pentecostal Church*, 140 S. Ct. at 1613–14. This is such a case.

The General Election Directive ensures that the officials most familiar with the circumstances and needs of their communities have made the informed choice as to how to safely conduct their elections. These officials best understand the risk that COVID-19 poses to each of their communities and the capability of their offices to run all-mail elections, as tested by the history of widespread absentee voting in Montana and positive results from the all-mail June primary election.

Plaintiffs ask this Court to overrule the carefully considered decision of forty-six of Montana's counties based in part on the phantom threat of voter fraud, a non-issue in Montana's elections. They ask this Court to weigh this speculative concern over the very real likelihood that reversing course from the General Election Directive will confuse voters who will be waiting for mail-in ballots that never come, disenfranchise those who are unable to take the health risk to cast their ballot or apply for an absentee ballot in person, and threaten the health and safety of Montanans. This court should reject Plaintiffs' request and instead defer to the decisions of Montana's local election officials, made under the General Election Directive, about how to best protect the health and safety of Montana's citizens and Montana's democracy.

b. Plaintiffs Lack Standing to Pursue Their Claims.

Plaintiffs lack standing to pursue their constitutional claims. To prove standing, parties must establish: (1) an injury-in-fact that is "concrete and particularized" and "actual or imminent," (2) "the injury is fairly traceable to the challenged action," and (3) "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Plaintiffs bear the burden of demonstrating standing for each of their claims, *see id*. at 561, and they fail to carry this burden because they lack an injury-in-fact and have not established traceability.

To demonstrate a cognizable injury-in-fact, Plaintiffs "must possess a *direct stake* in the outcome of the case," meaning that the injury must "affect[] [them] in a personal and individual way." *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2015) (emphasis added). Litigants that press only a "generalized grievance"—in which they "claim[] only harm to [their] and every citizen's interest in proper application of the Constitution . . . and seek[] relief that no more directly and tangibly benefits [them] than it does the public at large"—fall short of meeting this requirement. *Id.* (quotations and citations omitted); *see also United States v. Hays*, 515 U.S. 737, 743 (1995) (collecting cases). This constraint is intended to prevent mere "concerned bystanders" who are not personally harmed from using the court "as a vehicle for the vindication of value interests." *Hollingsworth*, 570 U.S. at 707 (citation omitted).

To be sure, dilution of an individual voter's power to elect representatives—such as through the drawing of district lines—constitutes an injury-in-fact to the affected voter. *See Gill v. Whitford*, 138 S. Ct. 1916, 1929–31 (2018) (citing *Baker v. Carr*, 369 U.S. 186, 206 (1962)). But this "right to vote is 'individual and personal in nature,'" *id.* at 1929 (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)), and, to confer standing, "a plaintiff must prove that the value of her own vote has been 'contract[ed],'" *id.* at 1935 (Kagan, J., concurring) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964)). Here, however, Plaintiffs—national and state political party organizations—fail to articulate how they or their members are at risk of having their

vote contracted. Instead, Plaintiffs' contentions are precisely the type of undifferentiated, follow-the-Constitution grievances that do not amount to concrete and particularized injuries-in-fact. *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (*per curium*) (denying standing because the "injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed"). Indeed, just last month, the Supreme Court stated that the same parties here—the Republican National Committee, a state level Republican committee, and Donald Trump for President, Inc.—"lack[ed] a cognizable interest" in enforcing a witness signature requirement on absentee ballots after elected officials chose to suspend it. *Republican Nat. Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151, at *1 (U.S. Aug. 13, 2020).[13] Plaintiffs assert the same theory of harm here and it fails for the same reasons. Accordingly, Plaintiffs have failed to prove a cognizable injury-in-fact to satisfy standing requirements.

Even if Plaintiffs' generalized and speculative claims were sufficient to establish a vote-dilution injury—and they are not—Plaintiffs also fall short of establishing traceability to the General Election Directive. To have standing, "there

[13] Likewise, other courts have rejected assertions that litigants such as Plaintiffs have suffered an injury-in-fact based on similar fraud-based claims. *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2089813, at *5 (D. Nev. Apr. 30, 2020) (holding in an analogous lawsuit that the "Plaintiffs' [vote dilution] argument is difficult to track and fails to even minimally meet the first standing prong"); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) ("[T]he risk of vote dilution[is] speculative and, as such, [is] more akin to a generalized grievance about the government than an injury in fact.").

must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan*, 504 U.S. at 560–61. Plaintiffs have not connected the challenged conduct—Defendants' decision to authorize counties to increase vote-by-mail in purported violation of Plaintiffs' incorrect reading of Montana law—with the dilutive injury they assert.

Plaintiffs go to great rhetorical lengths to argue that Montana voters' increased access to vote-by-mail will necessarily result in voter fraud in Montana, which then allegedly leads to a risk of vote-dilution harm. Pl. Mem. 6–11. But despite their efforts to stitch together this causal chain, Plaintiffs' fraud charges amount to nothing more than conjecture. Tellingly, Plaintiffs cite to no court decisions finding actual cases of vote-by-mail fraud, no peer-reviewed research on this subject, and no evidence that in any way indicates the existence of voter fraud in Montana. Plaintiffs' evidentiary shortcomings are easily explained: election law experts have resoundingly rejected the speculative narrative that Plaintiffs spin, and states across the country have for years successfully implemented vote-by-mail programs without voter fraud problems.[14] As stated above, Montana itself had 73.13% of its voters cast

[14] *See, e.g.*, Elaine Kamarck and Christine Stenglein, Low Rates of Fraud in Vote-By-Mail States Show the Benefits Outweigh the Risks, THE BROOKINGS INSTITUTION (June 2, 2020), https://brook.gs/3ct24tJ (analyzing elections in universal vote-by-mail states—Colorado, Hawaii, Oregon, Utah, and Washington—and discrediting fraud concerns); Wendy Weiser & Harold Ekeh, The False Narrative of Voter Fraud, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud (studying

mail ballots in 2018 and 65.38% in 2016, yet Plaintiffs present not a shred of evidence of vote-by-mail fraud in the state. Moreover, *all fifty-six* Montana counties conducted their June 2020 primary elections by mail,[15] and Plaintiffs have submitted no evidence of fraud or other misconduct related to that election. Regardless, any risk of fraud that could hypothetically occur would be "the result of the independent action of some third party not before the court," and still fail to establish traceability. *See Lujan*, 504 U.S. at 560–61. Thus, Plaintiffs invite the Court to validate their voter fraud alarmism based on an unfounded, abstract risk of fraud and unsubstantiated news reports of suspected or vanishingly rare instances of fraud outside of Montana. The Court should reject this invitation.

All of LWVMT's arguments against Plaintiffs' standing apply with equal force to at least Intervenor-Plaintiffs' Fourteenth Amendment claims in Count III. Like Plaintiffs, Intervenor-Plaintiffs lack both an injury-in-fact based on their speculative and generalized dilution-harm contentions and fail to show traceability between the permissive General Election Directive, the hypothetical risk of voter fraud, and any dilutive effect to their or anyone else's votes.

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voter datasets and concluding it is "more likely for an American to be struck by lightning than to commit mail voting fraud"); Richard L. Hasen, ELECTION MELTDOWN 128 (2020) (summarizing that "[t]he issue of organized voter fraud has now been put to the test in courts and in social science" and amounts to no more than "a sham perpetuated by people who should know better, advanced for political advantage").

[15] *See* Mike Dennison, *Montana counties now look toward all-mail ballots for June primary*, MISSOULA CURRENT (Apr. 6, 2020), https://missoulacurrent.com/government/2020/04/montana-june-primary (retrieved Sep. 16, 2020).

Moreover, Intervenor-Plaintiffs' lack standing on Counts I and II because those claims are premised on an institutional injury to the Montana State Legislature as a whole, not possessed by two members or one party's caucuses. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Supreme Court recognized that a state legislature has standing to vindicate institutional injuries to its authority under the Constitution, but notably only after the Arizona legislature had "commenced th[e] action after authorizing votes in both of its chambers." 576 U.S. 787, 802 (2015). Here, the Montana State Legislature took no such authorizing vote, and Intervenor-Plaintiffs only purport to de facto represent its institutional interests. Under *Arizona*, that is insufficient to confer standing based on the alleged institutional injury Intervenor Plaintiffs assert in Counts I and II. *See, e.g.*, *Kerr v. Hickenlooper*, 824 F.3d 1207, 1214–16 (10th Cir. 2016) (applying *Arizona* and denying standing to state legislators); *Corman v. Torres*, 287 F. Supp. 3d 558, 567–69 (M.D. Pa. 2018) (same); *cf. State by & through Tennessee Gen. Assembly v. U.S. Dep't of State*, 931 F.3d 499, 507–14 (6th Cir. 2019) (denying standing to state legislature because "[m]erely alleging an institutional injury is not enough" and the inquiry requires more than just counting putative votes by legislators).

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In sum, Plaintiffs and Intervenor-Plaintiffs are both factually and legally wrong about their purported vote-dilution harms and their tenuous at best connection to the General Election Directive. They therefore lack standing and the court should deny the Motion on this basis.

c. The Directive Does Not Implicate Either the Elections Clause or the Electors Clause.

Because the Eleventh Amendment bars a federal court from granting "relief against state officials on the basis of state law," *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984), Plaintiffs have dressed up their claims involving the proper interpretation of Montana law as claims under the Elections Clause and the Electors Clause. Tellingly, Plaintiffs devote no more than a paragraph to explain how these constitutional provisions apply here, with virtually no discussion of the Supreme Court decisions they purport to rely on. Pl. Mem. 11–12. Plaintiffs' claims based on these provisions are unfounded and they are unlikely to succeed on the merits.

The Elections Clause provides that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature," U.S. Const. art. I, § 4, and the Electors Clause similarly provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President, U.S. Const. art. II, § 1. Plaintiffs insist the delegations of power to the "Legislature" by these provisions mean that all election

rules and regulations must be governed *exclusively* by a state's representative body, such that the Governor's issuance of the Directive constituted "a direct usurpation of the Legislature's authority." Pl. Mem. 1; *see id.* at 13 (arguing "the Governor has no authority to exercise legislative power and change election laws"). But Plaintiffs' position is foreclosed by Supreme Court precedent. As the Court explained in *Arizona State Legislature*, the "Legislature" as used in the Elections Clause is not a formalistic constraint on the states but rather broadly encompasses the "power that makes laws" consistent with a state's constitution, reiterating its prior holding that "'the Legislature' d[oes] not mean the representative body alone." 576 U.S. at 805, 813–14 (citing *Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565, (1916)). There, the Arizona Constitution permitted voters to "legislate for the State" through an initiative process, which Arizona voters utilized to adopt an independent redistricting commission. *Id.* at 814. Importantly, in rejecting a challenge under the Elections Clause to that commission, the Court held that "the people may delegate their legislative authority over redistricting to an independent commission *just as the representative body may choose to do*." *Id.* (emphasis added); *see also Paher*, 2020 WL 2089813, at *8 (concluding that the Nevada Secretary of State's plan to conduct an all vote-by-mail primary was "effectively prescribed by the state's legislature because the Nevada Legislature has in the first instance authorized the Secretary to adopt regulations to carry out the state's election laws").

A state's decision to provide the governor a role in regulating its elections, including federal elections, does not alter the outcome. Because the Elections Clause does not constrain states in their particular lawmaking processes, it "respect[s] the State's choice to include the Governor in that process." *Ariz. State Legislature*, 576 U.S. at 807 (citing *Smiley v. Holm*, 285 U.S. 355, 368 (1932)). In other words, "[w]hether the Governor of the state ... shall have a part in the making of state laws, is a matter of state polity," and the Elections Clause "neither requires nor excludes such participation." *Smiley*, 285 U.S. at 368; *see also Ariz. State Legislature*, 576 U.S. at 824 (explaining the Elections Clause "surely was not adopted to diminish a State's authority to determine its own lawmaking processes"). Unsurprisingly, then, numerous states have delegated certain explicit authority over the regulation of elections to the executive branch, *see, e.g.*, Cal. Gov. Code § 12172.5(d) (delegating to secretary of state authority to "adopt regulations to assure the uniform application and administration of state election laws"); Ga. Code § 21-2-50.1 (delegating to secretary of state authority to "postpone the date of any primary, special primary, election, or special election" during a state of emergency); Fla. Stat. § 97.012 (delegating to secretary of state authority to "provide uniform standards for the proper and equitable administration of the registration laws"), and Montana is no exception, *see* Mont. Code § 13-1-202(1) (delegating to Montana Secretary of State

authority to issue "written directives and instructions relating to and based on the election laws" and "advisory opinions on the effect of election laws").

In short, neither the Elections Clause nor the Electors Clause erects a constitutional bar to the involvement of a state's governor in federal election regulation. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995) (explaining a state's authority under the Elections Clause "parallels" its authority under the Electors Clause). Plaintiffs' claims amount to no more than a contention that Governor Bullock violated Montana law by issuing the Directive. *See* Pl. Mem. 12–18. As Governor Bullock explains, he did not. But the answer to this state-law question is beside the point because, again, federal courts "may not 'grant' injunctive 'relief against state officials on the basis of state law,' when those officials are sued in their official capacity," *Vasquez v. Rackauckas*, 734 F.3d 1025, 1041 (9th Cir. 2013) (quoting *Pennhurst*, 465 U.S. at 106), even where such state-law claims are cleverly framed as arising under federal law, *see Massey v. Coon*, No. 87-3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (upholding dismissal of complaint under *Pennhurst* that "on its face" stated "a claim under the due process and equal protection clauses of the Constitution" because those claims were "entirely based on the failure of defendants to conform to state law"). Thus, Plaintiffs are not likely to succeed on their claims that the General Election Directive violates either the Elections Clause or the Electors Clause.

IV. CONCLUSION

Based on the foregoing, the Court should deny Plaintiffs' Motion.

Dated: September 11, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the requirements of Local Rule 7.1. It contains 3,986 words as determined by the word-processing system used to prepare this brief.

/s/ Patricia Klanke