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**MONTANA 18TH JUDICIAL DISTRICT COURT,
GALLATIN COUNTY**

LEAGUE OF WOMEN VOTERS OF
MONTANA,

Plaintiff,

v.

AUSTIN KNUDSEN, in his official capacity
as the Attorney General of the State of
Montana; CHRISTI JACOBSEN, in her
official capacity as Secretary of State of the
State of Montana; and CHRIS GALLUS, in
his official capacity as the Commissioner of
Political Practices of the State of Montana,

Defendants.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff League of Women Voters of Montana (“LWVMT” or “Plaintiff”) files this Complaint for Declaratory and Injunctive Relief against Defendants Austin Knudsen in his official capacity as Montana Attorney General, Christi Jacobsen in her official capacity as the Montana Secretary of State, and Chris Gallus in his official capacity as the Montana Commissioner of Political Practices (“Defendants”), for violations of the Montana Constitution’s guarantees of the rights to vote, free speech, free association, and due process, and allege the following:

INTRODUCTION

1. On May 22, 2023, Montana enacted House Bill 892 (“HB 892”), imposing criminal sanctions on voters who (1) register to vote in a new Montana jurisdiction before a previous jurisdiction in which they were registered has removed them from the registration rolls, and/or (2) do not accurately provide their previous registration information on a state registration application.

2. There is no formal process for voters to deregister to vote in Montana or many other jurisdictions, and federal law places the onus on state and local officials—not voters—to maintain the accuracy of voter registration lists.

3. HB 892’s overbroad, vague requirements and threat of severe criminal penalties for violations infringe Montanans’ fundamental rights to free speech, free association, due process, and to vote by putting the onus of voter registration list maintenance on individual voters and voter registration groups.

4. First, HB 892’s Deregistration Requirement mandates that Montanans applying to register to vote in a new Montana county must first ensure they are somehow deregistered in any other previous jurisdiction, whether another Montana county or a different state. § 13-35-210(5), MCA.

5. Second, HB 892's Omission Provision requires that voters applying using a Montana state voter registration form must accurately provide their "previous registration information" when registering to vote. § 13-35-210(5), MCA.

6. HB 892 enforces these new and unique obligations through felony criminal sanctions. Failure to comply with the Deregistration Requirement and/or Omission Provision is punishable by up to eighteen months of imprisonment, fines up to \$5,000, or both. § 13-35-210(6), MCA.

PARTIES

Plaintiff

7. Plaintiff LWVMT is membership, service, and advocacy organization that encourages informed and active participation in government.

8. As a nonprofit, nonpartisan civic engagement organization, LWVMT primarily seeks to assist and encourage its members and other Montanans to register to vote and engage in the electoral process.

9. The challenged HB 892 provisions impair LWVMT's and its members' rights, impede its critical voter engagement work, and chill its expressive activity by threatening exposure to criminal penalties.

10. LWVMT has approximately 339 members in Montana, including approximately 103 members in its Bozeman chapter.

11. LWVMT anticipates that some of its members have moved or will move between counties in Montana before the next election.

12. LWVMT anticipates that some of its members have moved or will move to Montana from another state before the next election.

13. LWVMT seeks to expand all eligible voters' participation in Montana's elections. LWVMT believes that encouraging greater electoral participation fosters civic engagement and helps to create a more representative democracy. LWVMT persuades and encourages its members and the Montanans it assists to be informed and active participants in government, including by registering to vote and voting in local, statewide, and national elections.

14. LWVMT expresses its pro-voting message and carries out its mission by regularly speaking about the value of voting, holding voter registration events, and assisting as many eligible Montanans as possible to apply to register to vote and to have the application successfully processed and accepted so the person can vote.

15. LWVMT assisted over 1200 eligible Montanans in registering to vote during 2022, a national election year. This includes voters who were previously registered in other Montana counties or in other states.

16. LWVMT has assisted in registering over 470 eligible Montanans so far in 2023, including voters who were previously registered in other Montana counties or in other states.

17. Plaintiff especially works with and assists community groups to register members of underserved populations, including formerly incarcerated individuals, voters with disabilities, veterans, low-income individuals, students, housing insecure individuals, elderly individuals, Native voters, and many others.

18. Plaintiff in general also works with Montanans who are likely to have moved recently and need to register in a new jurisdiction.

19. LWVMT expects that many of the voters it assists have moved or will move between counties in Montana or to Montana from another state and will need to register in the new jurisdiction before the next election.

20. LWVMT expects that some of the voters it assists will be a person who was formerly incarcerated and will need to reregister upon restoration of their voting rights before the next election.

21. The broad and ambiguous requirements in HB 892 and their attendant harsh criminal penalties chill and have severe intimidating effects on LWVMT's programs encouraging voter registration and voting in Montana, and burden the fundamental rights of LWVMT's members.

22. HB 892's requirements and its chilling effects limit Plaintiff's ability to carry out its message encouraging and supporting Montanans to register to vote and participate in elections.

23. HB 892 chills and hinders Plaintiff's expressive activities because LWVMT fears the risks of criminal liability that HB 892 threatens to Plaintiff, its members and volunteers, and the voters it assists.

24. Plaintiff is reasonably concerned that its members and the voters it assists could be exposed to criminal liability under HB 892.

25. Given expansive criminal laws for violations of Montana election code, Plaintiff is also reasonably concerned that its activities may expose them to criminal prosecution related to its voter registration programs.

26. LWVMT is reasonably concerned that HB 892 could be applied as a requirement for voter registration eligibility that could result in its members and the voters it assists having their valid applications rejected, delayed, or held in provisional non-eligible status, or having their ability to vote otherwise encumbered.

27. HB 892's requirements and criminal penalties also discourage some eligible voters from registering to vote at all if they are not sure about where they have previously been registered

or cannot be sure whether they have been deregistered by a previous jurisdiction. This will likely include members of LWVMT and the voters it assists.

28. To account for HB 892, Plaintiff is likely to have to alter its programs in ways that undermine its message of encouraging voters to engage in the political process.

29. For example, Plaintiff is likely to add warnings about HB 892's criminal provisions to its efforts to educate assisted voters, including that eligible voters may be subject to criminal penalties for their voter registration activity.

30. Addressing HB 892's new confusing and burdensome requirements will impose new and additional burdens on LWVMT's resources and will detract from LWVMT's voter registration programs, including by making it more difficult to recruit, train, and retain new members, volunteers, and partners to do voter registration work.

31. Because of the threat of criminal prosecution and because LWVMT believes it will likely need to warn members and voter registration volunteers about the potential criminal penalties for both voters and LWVMT members and volunteers under HB 892, LWVMT will be constrained in expressing its pro-voting message to members, volunteers, and prospective registrants.

32. If a LWVMT member, volunteer, or assisted voter were prosecuted under HB 892, very few members and/or volunteers would be willing to continue registering voters.

33. If a LWVMT member, volunteer, or assisted voter were prosecuted under HB 892, partners and voters would be more reluctant to engage with LWVMT's pro-voting message and programs.

34. As a result of HB 892, LWVMT will have to expend greater resources in an effort to persuade voters to register to vote.

35. Because of HB 892, LWVMT has had to divert resources from its voter registration and assistance programs as well as projects on other subjects, including youth civics education, outreach to Montanans who were formerly incarcerated, and public outreach on local government review.

36. For instance, LWVMT has been forced to adopt new procedures and programmatic safeguards for registering voters in light of HB 892's ambiguous and harsh provisions.

37. LWVMT's new procedures include, for example, developing and conducting training for registration volunteers for LWVMT and other partner organizations about collecting previous voter registration information, physically highlighting the section of the registration form where registrants are asked to provide previous voter registration information, and verbally drawing voters' attention to answer this question because of the threat of felony prosecution if they fail to do so.

38. LWVMT has also developed trainings and safeguards to instruct its members and volunteers to suggest that voter registration applicants check any previous registration information from a prior jurisdiction of registration before registering in a new Montana county.

39. For example, LWVMT has created additional trainings to instruct its volunteers and members to refer voters to the My Voter Page, run by the Montana Secretary of State, to determine whether the assisted voter may have been previously registered in any other Montana jurisdiction(s).

40. In LWVMT's experience, however, these safeguards cannot fully account for HB 892's burdens, which will nonetheless burden voting rights and impair LWVMT's expression.

41. For instance, attempting to account for the Deregistration Requirement and Omission Provision, such as by highlighting the previous registration question for registrants or

having them check their status on the My Voter Page will substantially extend the voter registration drive interaction and make the process more difficult for both LWVMT and the voters LWVMT assists.

42. LWVMT is also reasonably concerned that the new safeguards and processes it has developed do not adequately reduce the risk or fear of prosecution among members, volunteers, partner organizations, and the voters it assists.

43. For example, LWVMT does not have any reasonable means of assisting voters in determining whether they are currently registered in any other state or jurisdiction outside of Montana.

44. Because of these compounding difficulties and burdens, LWVMT expects that HB 892 will impair its message, decrease the number of eligible voters LWVMT can assist to register in a given period, and overall hinder its voter registration programs.

Defendants

45. Defendant Austin Knudsen is sued in his official capacity as Attorney General of Montana. Attorney General Knudsen resides in and maintains his office in Montana.

46. Attorney General Knudsen oversees the enforcement of the state's criminal laws. *See, e.g.*, § 2-15-501, MCA. Violations of HB 892 are prosecutable as felony criminal offenses.

47. Defendant Christi Jacobsen is sued in her official capacity as Secretary of State of Montana. Secretary Jacobsen resides in and maintains her office in Montana.

48. As Montana's chief election officer, Secretary Jacobsen is responsible for "obtain[ing] and maintain[ing] uniformity in the application, operation, and interpretation of the election laws." §§ 13-1-201, -202, MCA. Specifically, Secretary Jacobsen is responsible for creating the standard voter registration application form. § 13-1-210(1), MCA.

49. Secretary Jacobsen’s office was involved in passing HB 892. Dana Corson, the Deputy Chief Elections Officer in the Secretary of State’s Office, testified before both the Montana House and Senate State Administration Committees regarding the bill. Corson offered support for the bill on behalf of the Secretary of State’s office and answered questions from representatives about the bill.

50. Defendant Chris Gallus is sued in his official capacity as the Montana Commissioner of Political Practices.

51. Commissioner Gallus “is responsible for investigating all of the alleged violations of the election laws . . . and in conjunction with the county attorneys is responsible for enforcing these election laws.” § 13-37-111, MCA. This includes HB 892.

JURISDICTION AND VENUE

52. The court has original jurisdiction under the Montana Constitution, Article VII, Section 4, and § 3-5-302(1)(b), MCA.

53. The court may grant declaratory relief under §§ 27-8-201 and -202, MCA. The court may grant injunctive relief under §§ 27-19-101, *et seq*, MCA.

54. Venue is proper in Gallatin County under § 25-2-126(1) because the League of Women Voters of Montana operates a chapter in Bozeman in Gallatin County, has members that reside in Gallatin County, and regularly registers voters in Gallatin County, among several other Montana counties. § 25-2-126(1), MCA.

FACTUAL ALLEGATIONS

Current Voter Registration Practices in Montana

55. Voters in Montana can register using a completed Montana state voter registration form promulgated by the Secretary of State (the “State Form”) or using a federal voter registration form created by the U.S. Election Assistance Commission (the “Federal Form”).

56. There are two registration periods in Montana.
57. Regular registration lasts until thirty days before an election.
58. During regular registration, voters can register in person, by mail, by fax, or by emailing to their county election official a clear digital image of their registration application that has affixed a wet signature. § 13-2-301, MCA; Mont. Admin. R. 44.3.2003.
59. During the “late registration” period covering the twenty-nine days before election day, voters may only register in-person at county election official offices if they want to vote in the upcoming election. §§ 13-2-301, 13-2-304, MCA; Mont. Admin. R. 44.3.2015.
60. A provision passed in 2021 that would have reduced the number of days to register, including on election day, is currently enjoined for violating the Montana Constitution. *Mont. Democratic Party v. Jacobsen*, No. DV 21-0451, 2022 WL 16735253 (Mont. Dist. Sept. 30, 2022) (partially enjoining, *e.g.*, §§ 13-2-301, 13-2-304, MCA).
61. There is not currently an online voter registration option in Montana. Montanans can renew their driver’s license at the Motor Vehicles Division (“MVD”) online, and Montana law requires that voters have the opportunity to simultaneously register to vote whenever they apply for, renew, or change their address with the MVD. *See* § 61-5-107, MCA; *see also* 52 U.S.C. §§ 20504(a)(1), 20504(c)(1), 20504(d), 20502(3) (imposing similar requirements under federal law). But a Montana registrant still must complete and submit a hard copy voter registration form.
62. There are specified options for Montana voters to submit an in-person voter registration application. § 13-2-110, MCA; Mont. Admin. R. 44.3.2003.
63. Eligible residents can submit a voter registration application in person during work week hours at county election offices through election day. §§ 13-2-301, 13-2-304, 13-2-201, MCA.

64. Eligible residents can also register in person at an MVD location and various public-assistance agencies, though there are often significant delays in this process and voters cannot meaningfully check the status of the processing. §13-2-221, MCA.

65. Eligible residents can also register via mail by mailing a completed voter registration form. § 13-2-110, MCA.

66. The current State Form, which election officials are instructed to use, indicates that it was last revised April 2021. Mont. Admin. R. 44.3.2004.¹

67. Plaintiff inquired and submitted a public records request to Defendant Jacobsen concerning the State Form and Defendant Jacobsen’s enforcement of HB 892—once via a confirmed-delivered mailing on August 19, 2023, and twice via email on August 17 and October 17—but Plaintiff has not received a response to date.

68. To Plaintiff’s knowledge, the State Form has not been revised since the passage of HB 892, despite the indication that the election official address information was updated May 22, 2023.

69. The current State Form has a field for inputting an applicants’ previous voter registration information.

70. But the current State Form is unclear as to whether the field is required for registration.

71. The State Form notes that providing previous registration information is **“REQUIRED IF NAME CHANGED OR IF PREVIOUSLY REGISTERED TO VOTE IN ANOTHER MT COUNTY OR IN ANOTHER STATE.”**

¹ See Montana State Voter Registration Application, Montana Sec’y of State, https://sosmt.gov/wp-admin/admin-ajax.php?juwpfis_admin=false&action=wpfd&task=file.download&wpfd_category_id=766&wpfd_file_id=47309&token=acb38cbb998e43108cfd572bc458c4ff&preview=1 (last visited Oct. 30, 2023).

72. But the prompt to provide past registration information is not marked with the asterisk that the State Form instructions indicate marks the required fields to become registered.

73. Additionally, the previous registration information field is placed in a location where voters likely will not notice it and inadvertently will not complete it.

74. Providing previous registration information is also not listed as required information under the Montana Constitution, election code, or administrative rules concerning processing applications. *See, e.g.*, Mont. Const. art. IV, § 2; §§ 13-2-110, 13-1-210, MCA; Mont. Admin. R. 44.3.2005.

75. Applicants can also register using the Federal Form, which the National Voter Registration Act requires Montana to “accept and use,” 52 U.S.C. § 20505(a), but which Montana election officials are less accustomed to processing and voter registration organizations typically do not use.

76. The Federal Form does not permit mandating deregistration in a prior jurisdiction as a precondition to registration. 52 U.S.C. § 20505(a).

77. Plaintiff, however, uses the State Form instead of the Federal Form in its programs for numerous practical and operational reasons important to serving Plaintiff’s mission.

78. For example, the State Form does not request party affiliation. In Plaintiff’s experience, using the Federal Form, which includes a party affiliation field, will be a deterrent for some voter applicants. Additionally, as a nonpartisan organization, Plaintiff’s civic engagement advocacy is untethered from partisanship, and Plaintiff can better express its nonpartisan pro-voting message to voters by using a form that does not include partisan labels.

79. Also unlike the Federal Form, the State Form explicitly lists tribal ID as a type of acceptable ID on the face of the form. This better enables Plaintiff at voter registration drives to assist Native American applicants in Montana.

80. In addition, part of Plaintiff’s mission is to maximize the likelihood that its members and assisted voters will have their applications successfully processed and accepted.

81. Plaintiff understands that county election officials are more accustomed to processing State Form applications. Using the State Form in voter registration work is, in Plaintiff’s experience, more likely to be successful because election officials are familiar with the State Form and will more readily process it.

HB 892’s Legal Framework and Legislative History

82. Prior to the passage of HB 892, Montana law already provided “No person may vote more than once at an election,” and imposed criminal penalties for double voting. § 13-35-210, MCA (2021).

83. Federal law also criminally prohibits “voting more than once” in a federal election and specifies that anyone who is convicted for doing so may be imprisoned for up to five years and/or fined up to \$10,000. 52 U.S.C. § 10307(e).

84. Despite these existing criminal prohibitions, the Montana Legislature introduced and passed HB 892—short title “Prohibit Double Voting”—toward the end of the 2023 legislative session, adding new felony punishments on top of the existing prohibitions against voting twice in equivalent elections in two different jurisdictions.

85. HB 892 went into effect immediately on passage by both houses of the state Legislature and approval of the Governor on May 22, 2023. HB 892 § 4 (“This act is effective upon passage and approval” (brackets omitted)).

86. The Legislature also appropriated \$1,000 to the Secretary of State for HB 892's enforcement and implementation, to disburse on July 1, 2023. HB 892 § 2.

87. HB 892 reiterated the existing Montana law that provided a voter "may not vote more than once at an election." § 13-35-210(2), MCA.

88. HB 892 then created an additional felony prohibition on voting "more than once at any election held in this state or vote in both this state and another state or territory in the same or equivalent elections." § 13-35-210(4), MCA.

89. HB 892 provides an exception for those voting in "special district elections," though it does not itself define that term. § 13-35-210(4), MCA.

90. Despite HB 892's purported primary purpose being to impose additional felony restrictions on double voting, as indicated by its short title and legislative record, relatively few details were given regarding the actual need for additional criminal prohibitions during the Montana Legislature's consideration.

91. For example, HB 892's lead sponsor, Representative Lynn Hellegaard, stated during Senate and House hearings that she lacked information about the genesis of the bill and details of its language and effects because "leadership gave [her] this bill and said we want this done."

92. Another legislator pointed out during the Senate floor debate that the bill was passed by departing from regular legislative processes and rules, which the Senate majority leader dismissed by stating that "all violations are self-healing."

93. But Representative Hellegaard attested that HB 892 is meant to "send[] a strong message" that voting twice "will not be tolerated."

94. Representative Hellegaard claimed that the focus of HB 892 was to bar people actually “voting in both” jurisdictions in which they are registered and doing so in “basically the same election.” She claimed that the goal was to “address[] the current vagueness in our statute and attach consequences for breaking our election laws.”

95. Additionally, Dana Corson, the Deputy Chief Elections Officer from the Secretary of State’s office, testified that he believed HB 892 was specifically concerned with a scenario where there “might be someone living in another state, voting in the same federal election in Montana”—a situation that was already a crime under both state and federal law.

96. HB 892’s new requirements go much further than doubling down on prohibiting double voting.

97. The new provisions instead impose and threaten felony criminal sanctions for innocent voter registration activity by requiring that, before registering, Montana voters deregister in a prior jurisdiction and provide “previous registration information” on a State Form application.

HB 892’s Deregistration Requirement

98. HB 892 makes it a crime for a voter to maintain a voter registration in more than one jurisdiction—the “Deregistration Requirement.”

99. Lead HB 892 sponsor, Representative Hellegaard, testified that a “main purpose of this bill ... was to address” the possibility that a person “could be registered in two states.”

100. The Deregistration Requirement accordingly prohibits any voter “purposefully remain[ing] registered to vote” in two separate voting jurisdictions within Montana or in another state in addition to Montana. § 13-35-210(5), MCA.

101. Among HB 892’s ambiguities that chill Plaintiff’s activities and burden voters, the Deregistration Requirement does not define what “purposefully” means.

102. Also among HB 892's ambiguities that chill Plaintiff's activities and burden voters, the Deregistration Requirement does not define what "remain registered" means.

103. Likewise, HB 892 does not specify what "in more than one place in this state" means, including as it exempts but fails to define what "related to involvement in special district elections" means.

104. For example, in response to Secretary designee Dana Corson's testimony during the Senate State Administration Committee hearing, one legislator raised concerns that because of the provision's ambiguities and breadth, someone "could interpret this any way you want" to impede voter registration and that she was "not comfortable with that interpretation" because "what hangs in the balance is jail time."

105. By its terms, HB 892's criminal penalties could be applied to voters who merely have knowledge of a registration in a prior jurisdiction that may or may not be cancelled.

106. HB 892's criminal penalties could also be applied to voters who are willfully uncertain about the existence of a previous registration, such as voters who have moved from a state with automatic voter registration.

107. The HB 892 criminal penalties, by the statute's terms, could additionally be applied to voters who have duplicate registration files in Montana, despite no fault of the voter, including due to innocent voter behavior such as a name change.

108. HB 892 also does not provide how voters are to comply with the Deregistration Requirement.

109. Federal and state law provide that voters, at their option, can terminate their registration in a prior jurisdiction. § 13-2-402(1), MCA; 52 U.S.C. § 20507(a)(3)(A).

110. But HB 892 converts what is supposed to be an optional choice by the voter to a mandated prerequisite to avoid facing felony criminal penalties and/or a mandatory registration eligibility requirement.

111. It can be difficult for voters to cancel a prior registration in a different jurisdiction.

112. Much of the process for canceling a previous registration is jurisdiction-specific and not within the voter's control.

113. As the Secretary of State's designee, Dana Corson, indicated during the Legislature's consideration of HB 892, there is no national, centralized system or established process for voters to check and/or terminate their registration in a prior jurisdiction.

114. There is also no established or consistent process across different Montana counties for voters to cancel their registration in a prior jurisdiction, and each county handles such inquiries following its own process.

115. Whether a voter's request to cancel their registration in a prior jurisdiction is received, timely processed, and/or ultimately effectuated is contingent on the independent acts of third parties, which voters cannot dictate.

116. In some jurisdictions, it is difficult for a voter to check whether a request to cancel their registration in a prior jurisdiction has been processed and completed.

117. For instance, Montana's My Voter Page does not indicate that a previous registration was cancelled and only shows what the current address is. The voter would have to call or contact the election office and have them verify that a previous registration was removed.

118. Additionally, other states and county election jurisdictions have their own individual processes and platforms for voter data, some of which also lack registration information that can be easily accessed by voters.

119. HB 892 thus threatens to criminally prohibit an eligible voter from registering to vote if she remains registered in another jurisdiction—even where the voter has no intent to vote in more than one jurisdiction in an election.

HB 892’s Omission Provision

120. HB 892 also requires that voter registration applicants using the Montana State Form must accurately disclose their “previous registration information” on the form—the “Omission Provision.”

121. The Omission Provision provides that State Form applicants “shall provide the[ir] previous registration information” on the Montana voter registration application. § 13-35-210(5), MCA.

122. The Omission Provision makes it a felony criminal offense for a voter registration applicant to omit their previous registration information on a State Form.

123. The Omission Provision may also make it a crime for a voter registration applicant to inaccurately provide their previous registration information.

124. The Omission Provision does not specify the requisite mental state for a violation.

125. The Omission Provision also does not specify what is required for a voter to satisfy providing “previous registration information.”

126. For example, it is unclear whether the required information is only the voters’ last-in-time registration or all previous registrations.

127. Additionally, it is unclear whether providing “previous registration information” is satisfied by the applicant naming their previous jurisdiction(s) or whether they must provide their exact previous registration address(es).

128. During a House State Administration Committee hearing, one legislator emphasized some of these ambiguities, including the concern that if a registration applicant neglected to fill out the previous registration information section of the application then “they’d be looking at 18 months in prison and a \$5,000 fine” regardless of whether they did so inadvertently.

129. That concern raised about the Omission Provision went unaddressed during the legislative process and the bill was not amended to relieve the concern.

130. Additionally, when a legislator asked in the House State Administration Committee hearing whether the Omission Provision would “increase the burden to vote on the voter” or “increase the burden on the clerk’s office, or both,” the informational witness representing the Montana Association of Clerks and Recorders stated that she shared the concern, that she was “not sure what the intent here is,” and that it was unclear whether clerks would have to refuse registrations if the previous registration information field was omitted.

131. HB 892 thus makes it a crime if an eligible voter seeks to register but omits or fails to accurately input their previous registration information, even where the voter has no intent to omit such information and/or no intent to vote in more than one jurisdiction in an election.

HB 892’s Criminal Penalties

132. Violating any of the provisions in HB 892—including the Deregistration Requirement and Omission Provision—is a felony. §§ 13-35-210(6), 45-2-101(23), MCA.

133. A felony conviction under HB 892 is punishable by fines up to \$5,000, imprisonment for up to 18 months, or both. § 13-35-210(5)-(6), MCA.

134. These penalties exceed Montana’s background election code criminal penalty, which makes violations of election laws misdemeanors unless otherwise specified. § 13-35-1, MCA.

135. Legislators and the Secretary of State’s designee testified that they sought to add HB 892’s penalties because they wanted to enforce them against Montanans.

136. During the Senate State Administration Committee hearing, for example, sponsoring Representative Hellegaard emphasized that the bill was designed to add penalties of “fines or imprisonment for violating this act,” including the Deregistration Requirement and Omission Provision.

137. As Representative Hellegaard said during the House floor debate, “in discussing [HB 892] with the Secretary of State’s office, this will allow them to prosecute; they wanted this bill.”

138. Representative Hellegaard also attested that she needed to “stick an appropriations or a revenue source” in HB 892, “so that’s why we added in those fines” as punishments for violations.

139. Beyond the voter-applicant, Plaintiff is reasonably concerned that HB 892’s provisions may also be enforced to expose others to criminal liability, including voter registration organizations, their members, and their volunteers. *See, e.g.*, §§ 13-35-106, 13-35-205(6), MCA.

140. Moreover, because HB 892 is enforced with felony criminal penalties, a Montanan who is convicted and incarcerated for violating the Deregistration Requirement and/or the Omission Provision would be disenfranchised. § 13-1-111(2), MCA (“A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.”).

141. The risk of criminal penalties related to third-party voter registration work established in HB 892 is part of a broader trend across other states that have enacted laws criminalizing and burdening civic organizations' speech and expressive activity.

142. But HB 892's particular restrictions and severe criminal penalties make Montana an outlier as compared to other states.

HB 892 Burdens Plaintiff's Rights and Impairs its Expressive Activity

143. Because of HB 892, Plaintiff is experiencing, and will continue to experience, substantial burdens on the voting, speech, associational, and due process rights of its members and volunteers, LWVMT itself, and the voters LWVMT assists.

144. Third-party voter registration groups, including Plaintiff, have been effective at expressing their pro-voting message and expanding their associations by encouraging Montanans to become registered to vote.

145. According to 2022 data that Montana reported to the U.S. Election Assistance Commission, Montana received a reported total of over 3,000 new voter registration applications explicitly tied to third-party voter registration drives, and only 1% of those applications were not accepted.

146. According to the same data for 2020, Montana received a reported total of over 4,100 new voter registration applications explicitly tied to third-party voter registration drives, and only .12% of those applications were not accepted.

147. HB 892's restrictive requirements and harsh criminal penalties threaten Plaintiff's and other civic organization's effective voter registration and engagement work.

148. Since the passage of HB 892, Plaintiff has faced uncertainty about the voter registration activities it undertakes and is concerned that continuing such activities could result in criminal prosecution for its volunteers and the voter registration applicants it assists.

149. Plaintiff is reasonably concerned that its voter registration programs could expose the voters it is assisting to threat of criminal prosecution under HB 892.

150. Plaintiff is also reasonably concerned that its voter registration drives may result in prosecution if someone it assists to register either turns out to be registered in two places or to have omitted previous registration information on the State Form.

151. Plaintiff's concerns about the threat of criminal exposure chill the expression of its pro-voting views and impair its expressive associations.

152. Since the passage of HB 892, LWVMT has altered its voter registration activities because of concerns about the application of HB 892's requirements.

153. HB 892 reduces the effectiveness of Plaintiff's persuasive message and undermines its most effective means of conveying its message that voting is easy and risk-free because LWVMT feels it will likely need to couple its pro-voting message with warnings to assisted voters, members, and volunteers about the criminal risks of HB 892.

154. Plaintiff has been forced to dedicate more resources to each voter it seeks to register to ensure compliance with the new restrictions and requirements.

155. HB 892 likely decreases the number of eligible Montanans that Plaintiff is able to register.

156. Under HB 892's Deregistration Requirement, Plaintiff's members and the Montanans it assists are forced to undertake burdensome steps to cancel their prior voter registration before being able to register to vote in Montana without threat of criminal sanction.

157. Voters may be unable to register and exercise their fundamental right to vote based on the acts or omissions of third parties who control whether or not they are timely deregistered in a prior jurisdiction.

158. The burdens of the Deregistration Requirement will be acutely felt by populations that move more frequently, such as students, housing insecure individuals, elderly voters moving to assisted living facilities, low-income voters, active-duty service members and veterans, formerly incarcerated Montanans, and others.

159. The Deregistration Requirement is particularly burdensome for eligible Montana voters who register in the last days before and including Election Day.

160. An eligible voter who attempts to exercise her right under state law to register in the last days leading up to an election but discovers she must deregister in her prior jurisdiction may be denied the right to register and vote, or be exposed to risk of felony prosecution, if the prior jurisdiction does not process her deregistration or postpones processing deregistration requests until after the upcoming election.

161. Under HB 892's Omission Provision, Plaintiff's members and the Montanans it assists are forced to undertake burdensome steps to ensure that registration applicants input complete and accurate details concerning their previous registration information on their State Form registration application.

162. These burdens of the Omission Provision will be acutely felt by populations that move more frequently, such as students, housing insecure individuals, low-income voters, elderly voters moving to assisted living facilities, active-duty service members and veterans, formerly incarcerated Montanans, and others.

163. Like the Deregistration Requirement, the Omission Provision imposes a particularly severe burden on eligible voters who attempt to register in the final days before an election but may be unable to determine and accurately input their previous registration information in time to complete their registration and exercise their fundamental right to vote.

164. The burdens of the Deregistration Requirement and Omission Provision are likely to have an adverse effect on a range of Montana voters, many of whom seek to register in a new Montana jurisdiction due to a cross-jurisdiction move.

165. According to 2022 data that Montana reported to the U.S. Election Assistance Commission, 45% of total registration forms received during the 2022 election cycle were because a Montana applicant made a cross-jurisdiction move, amounting to a reported 107,667 total affected voters that cycle.

166. According to the same data for 2020, a reported 36% of total registration forms received during the 2020 election cycle were because a Montana applicant made a cross-jurisdiction move, amounting to a reported 136,272 total affected voters that cycle.

167. Moreover, according to 2022 census data estimates 4.3% of Montana's entire population moved from a different state and 2.8% of Montana's population had an inter-county move during the previous year.²

168. According to 2021 census data estimates, 3.9% of Montana's entire population moved from a different state and 3.3% of Montana's population had an inter-county move over the preceding five years.³

² U.S. Census Bureau, 2022 American Community Survey 1-Year Estimates, *Residential Mobility in the Last Year in Montana*, Table S0701, <https://data.census.gov/vizwidget?g=040XX00US30&infoSection=Residential+Mobility;https://data.census.gov/table/ACSST1Y2022.S0701?g=040XX00US30> (last accessed Oct 30, 2023).

³ U.S. Census Bureau, 2021 American Community Survey 5-Year Estimates, *Geographic Mobility by Selected Characteristics in the United States: Montana Profile*, Table S0701, <https://data.census.gov/table/ACSST5Y2021.S0701?g=040XX00US30> (last accessed Oct 30, 2023).

169. Plaintiff must divert resources to inform members and the Montanans it assists of HB 892's requirements, including by developing training and guidance materials for supporters, volunteers, and partnership organizations to attempt to comply with the Deregistration Requirement and Omission Provision and avoid HB 892's harsh criminal penalties.

170. Despite developing materials and making adjustments to account for HB 892, Plaintiff's new practices are insufficient to relieve the significant burdens on its programs and the rights of LWVMT and its members.

171. For example, LWVMT is limited in their resources and ability to assist voters in determining their previous registration information.

172. Notably, LWVMT volunteers and members have no reasonable way to assist voters in determining whether they have been previously registered in another state, as it would require LWVMT volunteers and members to be familiar with the laws and voter web applications of all 49 other states and other territories.

173. Additionally, when a voter moves from another state and registers to vote in Montana, they may consider their registration to be a "new registration" as indicated on the top of the State Form and accordingly fail to complete the previous registration information field.

174. Moreover, HB 892 will slow down and complicate the voter registration process for each voter that LWVMT assists.

175. The time and resources taken with each individual voter at LWVMT's voter registration programs will be greater and more burdensome because of the need to assist and encourage voters to overcome HB 892's requirements.

176. Voters at registration drives who do not know whether or where they have previous registration information will have to investigate it, input it on the form, and later independently

complete and return their application to election officials, likely without the assistance of LWVMT or other civic organizations.

177. HB 892's requirements will diminish and impair LWVMT's pro-voter message and encouragement to register to vote by making it less likely that eligible voters who agree with and wish to heed that message will register to vote because they are concerned about HB 892's penalties or otherwise cannot successfully complete the additional steps necessary to comply with HB 892.

178. The Deregistration Requirement and Omission Provision also burden individual voters' suffrage rights to the extent that the provisions could compel county election officials to reject or otherwise delay the processing of registration applications, including by holding applications in a non-eligible pending status for an eligible voter-applicant who has an existing registration in another jurisdiction and/or omits the previous registration information field.

179. If HB 892 is applied in a manner that would instruct election officials to reject and/or hold applications in pending status, it will burden eligible voters in several ways. *See, e.g.*, § 13-2-109, MCA.

180. Voters that have their application held, delayed, or rejected because of HB 892 may have to follow up and spend additional time and effort to investigate and resubmit or correct their registration application, such as in person at their county office.

181. Voters that have their application held, delayed, or rejected because of HB 892 may never have their application accepted for processing and therefore be unable to vote.

182. Voters may have to engage in burdensome follow up to comply with HB 892, even though their county election official already has an effective statewide database of voter

information that, before HB 892, effectively enables officials to update existing voter registrations if a voter has an inter-county move.

183. Voters that have their application held, delayed, or rejected because of HB 892 may also be subject to threat of criminal prosecution.

184. Overall, the Deregistration Requirement and Omission Provision will force potential voters to overcome additional burdens and/or face the risk of severe criminal sanction just for exercising their fundamental right to register to vote.

185. HB 892's criminal sanctions and additional hurdles to voting undermine voters' trust, confidence, and willingness to engage in the electoral process.

186. The Deregistration Requirement and Omission Provision chill Plaintiff's and other Montanans' political expression by making it a criminal risk, through vague provisions, for individuals to seek to register to vote.

187. HB 892 makes it costlier and riskier for Plaintiff and other organizations to promote voter registration in Montana and for eligible Montana voters to become registered.

***The Deregistration Requirement and the Omission Provision
Serve No Legitimate Government Interest***

188. Neither the Deregistration Requirement nor the Omission Provision is justified by or tailored to any legitimate state interest.

189. For voter applicants who move from out of state, Montana county election officials lack a means to check whether an applicant has an existing registration in any different state or otherwise verify the voters' previous registration information in any different state.

190. Having a single voter registration or providing previous registration information are not qualifications to register to vote, to cast a ballot, or to be an eligible elector under Montana law. *See, e.g.*, Mont. Const. art. IV, § 2; § 13-2-110, MCA (stating requirements for voter

registration applications); *id.* § 13-1-111 (listing voter qualifications); *id.* § 13-1-112 (rules for determining voter’s residence); *id.* § 13-2-402 (providing reasons for voter registration cancellation); Mont. Admin. R. 44.3.2010(4) (providing that “[u]pon satisfying the voter registration qualifications in 13-1-111, MCA, a registered elector may obtain and cast a ballot”). Imposing burdens on voting unrelated to voter qualifications is unlawful.

191. Additionally, as one court concluded, “[w]hile double voting is surely illegal, having two open voter registrations is a different issue entirely,” and having two registrations almost always happens for a variety of legitimate or entirely benign reasons. *Common Cause Ind. v. Lawson*, 937 F.3d 944, 960 (7th Cir. 2019).

192. According to a report issued by the PEW Charitable Trusts, for example, as of 2012 approximately 2.75 million people were registered to vote in more than one state.

193. Moreover, according to reported data compiled by the U.S. Election Assistance Commission, approximately 10% of all new voter registrations nationwide in 2020 and 2022 were due to the voter making a cross-jurisdiction move and, as noted, the figures are even higher for Montana specifically.

194. Accordingly, while numerous people have more than one active registration, that does not indicate any unlawful intent or action to vote in more than one jurisdiction. Rather, such temporary double registrations are the natural result of a mobile population and the United States’ highly decentralized voting and election systems.

195. Because it may also be unclear whether a voter registration application will be rejected if the voter applicant has failed to comply with the Deregistration Requirement and/or the Omission Provision, it is not certain that the law would actually prevent a person who intentionally fails to comply from being registered, and thus voting, in more than one jurisdiction.

196. For instance, Montana has explicitly declined (including during the consideration of HB 892) to become a member of the Electronic Registration Information Center (ERIC), a nonprofit, nonpartisan membership organization of state election officials that shares voter registration list information to assist in removing voters who have moved.

197. Even where Montana county election officials could have access to registration information in other states, they do not have consistent practices, procedures, or resources for systematically checking such information concerning processing voter registration applications.

198. For voter applicants who move to a different county within Montana, county election officials already have voters' previous registration information located in Montana's statewide voter registration database called Elect MT.

199. Before HB 892, election officials already would automatically and easily check a Montana voter registration applicant's previous registration information without the voter applicant needing to provide it. *See, e.g.*, § 13-2-108, MCA (establishing statewide voter registration system); Mont. Admin. R. 44.3.1102 (describing rules for statewide voter registration system); Mont. Admin. R. 44.3.2004 (authorizing election officials to seek missing information, cross-referencing Mont. Admin. R. 44.3.2005); Mont. Admin. R. 44.3.2012 (mandating inter-governmental coordination concerning voter registration).

200. In sponsoring HB 892, however, Representative Hellegaard claimed in a committee hearing that the bill was needed to prevent voter fraud in Montana.

201. Representative Hellegaard claimed that she "know[s] of one complaint that has been filed in Montana regarding twelve people who are alleged to have voted twice in 2020."

202. But when asked, Representative Hellegaard did not provide any further details identifying the specific complaint, attesting to its validity, or informing whether any complaint resulted in a conviction or was otherwise verified.

203. There is no evidence that Montana elections are undermined by voter fraud or other election misconduct.

204. Even unverified alleged incidences of unlawfully voting in more than one jurisdiction in the same election are vanishingly rare in Montana.

205. Montana state and federal courts uniformly agree that there is no widespread voter fraud in Montana, concluding numerous times that voter fraud is not only a miniscule problem in the United States generally but is “a fiction” in Montana specifically. *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 822 (D. Mont. 2020); *see also Mont. Democratic Party v. Jacobsen*, 2022 MT 184, ¶ 29, 410 Mont. 114, 518 P.3d 58 (finding that the Secretary of State had “failed” to provide evidence of voter fraud); *Driscoll v. Stapleton*, 2020 MT 247, ¶ 22, 401 Mont. 405, 473 P.3d 386 (same); *Drummond v. Town of Virginia City* (1992), 253 Mont. 428, 431, 833 P.2d 1067, 1069 (emphasizing that “no evidence has been adduced that any voter fraud occurred”).

206. Moreover, the interest that HB 892 purports to serve—prohibiting double voting—is already accomplished through preexisting state and federal law and in other provisions of HB 892 that Plaintiff does not challenge.

207. Other parts of Montana law and election practices also generally provide sufficient tools to prevent, prohibit, and punish voter fraud.

208. Legislators, the Secretary of State’s designee, and members of the public discussed the preexisting federal and state laws that prohibit double voting during the legislative committee hearings and floor debates on HB 892.

209. For example, one legislator during the Senate floor debate objected to HB 892, stating that “[w]e have, in Montana, very safe, secure elections, but this bill practically implies otherwise” and emphasized that “[i]n all of the history of Montana’s elections and voting, there have been only two people that have been found actually guilty in spite of all the allegations that have been made. Only two people in the whole history. We have safe, secure elections. This bill is not needed.”

210. Another legislator opposing HB 892 stated during the House floor debate that the bill “takes what was a very simple state statute and straightforward—no person may vote who is not entitled to vote, boom, plain and simple, and may not vote in more than one election—and then” the bill “added all these other additional subsections, many of which are already addressed” by existing Montana law and registration application processing practices.

211. For instance, as one legislator emphasized in discussing HB 892 during the Senate State Administration Committee hearing, the State Form already requires that applicants attest to their eligibility and “that the information on this application is true” under penalty of perjury.

212. Another legislator pointed out during the House State Administration Committee hearing that Montana’s absentee ballot forms likewise already have a prompt for a voter to update and correct their voter registration address, as well as an attestation that requires the voter to sign and affirm under penalty of perjury that they “have not voted another ballot in this election” and they understand that “attempting to vote more than once is a violation of Montana law.”

213. Additionally, Dana Corson, the Deputy Chief Elections Officer from the Secretary of State's office, testified in the Senate State Administration Committee hearing that there was no current concern with Montanans voting in multiple counties in Montana because "the voter management system would prevent two ballots [from] going out" and the preexisting "residency standards have got that figured out."

214. Corson also testified that, even before HB 892, Montana uses a system to avoid registrations in multiple jurisdictions through a practice of "exchanging information" across states and has "been doing that for as long as [he] can remember."

215. But in response to an inquiry, Corson confirmed that the Secretary nonetheless has declined to join ERIC, the primary cross-state systematic registration checking tool used by a majority of states.

216. The lead HB 892 sponsor, Representative Hellegaard, also attested during the House State Administration Committee hearing that the Secretary of State's office already had a process of "connect[ing] with other counties" in Montana to cancel prior registrations.

217. Likewise, if county election officials see any indication that a voter may be registered in more than one jurisdiction, they already used (and will continue to use) an effective practice of having the individual voter cast a provisional ballot and then waiting to count the provisional ballot until the Monday after election day to ensure that only one ballot is processed and counted.

218. Representative Hellegaard did not dispute the testimony that preexisting laws and practices already cover the desired purpose of HB 892, responding instead during the Senate State Administration Committee hearing that she sought to enact HB 892 merely to provide "another tool in the toolbox."

CLAIMS FOR RELIEF

COUNT I

Violation of the Right of Free Speech Montana Constitution, art. II, § 7

219. Plaintiff reiterates and reincorporates by reference the factual allegations set forth in this Complaint.

220. “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.

221. Together and individually, the challenged restrictions unconstitutionally curtail Plaintiff’s core political speech, which includes its communications and activities aimed at encouraging Montana voters to participate in democracy by registering to vote.

222. Voter registration activity is core political speech safeguarded under Montana’s Free Speech protections because registration advocacy represents the “interchange of ideas for the bringing about of political and social changes desired by the people.” *Dorn v. Board of Trustees of Billings School District* (1983), 203 Mont. 136, 145, 661 P.2d 426, 431 (quoting *Roth v. United States*, 354 U.S. 476 (1956)); accord *Meyer v. Grant*, 486 U.S. 414, 422 (1988).

223. Plaintiff’s speech and expressive activities convey Plaintiff’s political and philosophical views that voting is important to create a more representative democracy and that eligible voters should register and vote in Montana elections.

224. Plaintiff takes a strong stance in the debate of whether to engage or to disengage from the political process and whether to trust or to distrust in elections by urging eligible citizens of the virtues of participating in democracy and becoming registered to vote.

225. Plaintiff's voter registration work involves direct communication and expressive conduct between members, volunteers, partners, and prospective voters that overall conveys Plaintiff's pro-democracy messages.

226. Plaintiff also communicates with eligible Montanans by assisting them to properly register to vote, including to comply with HB 892.

227. Plaintiff uses the success of its voter registration programs and advocacy to further its expressive activity and amplify its ability to convey their message.

228. By providing effective assistance and encouragement to help Montana voters get registered, Plaintiff can attract more membership, volunteers, partners, and funding resources.

229. HB 892 burdens and chills Plaintiff's free speech in its voter registration activities.

230. The Deregistration Requirement and Omission Provision, and their attendant criminal penalties, dissuade Plaintiff from communicating its pro-democratic engagement and voter mobilization messages.

231. The Deregistration Requirement and Omission Provision force Plaintiff to alter and limit its expression due to the HB 892 threat that its voter registration work could expose its members, organization, volunteers, and/or the voters it assists to criminal liability.

232. To attempt to minimize these risks without completely forgoing its voter registration activities, Plaintiff must alter its programs, develop guidance, and spend more time training members and volunteers to seek strict compliance with the Deregistration Requirement and Omission Provision.

233. The infirmities of the HB 892 provisions warrant strict scrutiny, which Defendants cannot satisfy.

234. HB 892 also fails any lesser level of scrutiny.

235. Defendants have no compelling, substantial, or even rational interest in restricting Plaintiff's core political speech.

236. Far from being narrowly tailored, the challenged HB 892 provisions are both underinclusive and overinclusive.

237. The challenged HB 892 provisions are unnecessary prophylaxis on the existing effective prohibitions of double voting under Montana and federal law.

238. Montana's existing safeguards in its voter registration practices and laws already sufficiently deter any instances of fraud or double voting and adequately punish any potential violation.

239. Regardless, instances of double voting or other voter fraud occurring in Montana are vanishingly rare, and no such proven instances were discussed during the Legislature's consideration of HB 892 to establish a compelling and/or sufficiently tailored state interest.

COUNT II
Violation of the Right of Free Association
Montana Constitution, art. II, §§ 6, 7

240. Plaintiff reiterates and reincorporates by reference the factual allegations set forth in this Complaint.

241. "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.

242. The Montana Constitution further guarantees: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action." Mont. Const. art. II, § 6.

243. Through its voter registration activity, Plaintiff builds associations with members, volunteers, partner civic organizations, and the voters it assists.

244. Plaintiff builds these associations to further the “interchange of ideas for the bringing about of political and social changes desired by the people,” *Dorn*, 203 Mont. at 145, 661 P.2d at 431, and to engage in the “opportunity to persuade [its associates] to action,” *Montana Auto. Ass’n v. Greely* (1981), 193 Mont. 378, 387, 632 P.2d 300, 305.

245. Plaintiff associates with voters, volunteers, other civic organizations, and members to perpetuate and express its views that Montanans should engage in the political process to create a more representative democracy.

246. Plaintiff uses the success of its voter registration programs to further its expressive associations and to build new associations.

247. By providing effective assistance and persuasion to help Montana voters get registered, Plaintiff can attract more membership, volunteers, funding resources, and partnerships with other civic organizations.

248. Together and individually, the challenged restrictions burden and chill Plaintiff’s free association in its voter registration activities.

249. The Deregistration Requirement and Omission Provision, and their attendant criminal penalties, impairs Plaintiff’s ability to associate with voters through registration drives because of concerns about violating HB 892’s new requirements.

250. The Deregistration Requirement and Omission Provision, and their attendant criminal penalties, impairs Plaintiff’s ability to associate with and attract members, volunteers, and partner civic organizations because of concerns about violating HB 892’s new requirements and the added strain on Plaintiff’s voter registration programs.

251. The infirmities of the HB 892 provisions warrant strict scrutiny, which Defendants cannot satisfy.

252. HB 892 also fails any lesser level of scrutiny.

253. Defendants have no compelling, substantial, or even rational interests in abridging and burdening Plaintiff's protected associational activity.

254. Far from being narrowly tailored, the challenged HB 892 provisions are both underinclusive and overinclusive.

255. The challenged HB 892 provisions are unnecessary prophylaxis on the existing effective prohibitions of double voting under Montana and federal law.

256. Montana's existing safeguards in its voter registration practices and laws already sufficiently deter any instances of fraud or double voting and adequately punish any potential violation.

257. Regardless, instances of double voting or other voter fraud occurring in Montana are vanishingly rare, and no such proven instances were discussed during the Legislature's consideration of HB 892 to establish a compelling and/or sufficiently tailored state interest.

COUNT III
Violation of the Right of Suffrage
Montana Constitution, art. II, § 13

258. Plaintiff reiterates and reincorporates by reference the factual allegations set forth in this Complaint.

259. The Montana Constitution guarantees the Right of Suffrage, providing that "[a]ll 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.

260. The Right of Suffrage is a fundamental right. *Mont. Democratic Party*, 2022 MT 184, ¶ 18-19.

261. Together and individually, the challenged restrictions unconstitutionally curtail the voting rights of Plaintiff's members and the Montanans it assists.

262. The Deregistration Requirement and Omission Provision make it more difficult and riskier to register to vote, creating needless and burdensome barriers to the franchise.

263. HB 892 burdens individual voters by requiring that they go through additional and unnecessary steps before they are able to register to vote.

264. HB 892 burdens individual voters by conditioning their ability to register and eventually vote on the actions of third parties cancelling a prior registration.

265. HB 892 subjects eligible voters to severe penalties for failing to comply with the Deregistration Requirement and Omission Provision.

266. Felony punishment for a violation of HB 892 could result in the voter being completely disenfranchised.

267. If HB 892 is applied to reject, delay, or hold voter registration applications in non-eligible pending or provisional status, eligible voters may be completely disenfranchised or significantly burdened in seeking to ensure that their registration application is successfully processed and accepted. *Mont. Admin. R. 44.3.2005*; *Mont. Admin. R. 44.3.2011*; *but see Mont. Admin. R. 44.3.2010(4)* ("Upon satisfying the voter registration qualifications in 13-1-111, MCA, a registered elector may obtain and cast a ballot.").

268. HB 892's burdens on voting rights will affect a wide range of voters.

269. HB 892's burdens are also likely to be imposed more acutely on specific populations of voters that are part of Plaintiff's membership base and the Montanans that Plaintiff assists.

270. The populations most likely to be burdened by HB 892 include, for example, students, housing insecure individuals, elderly voters moving into assisted living facilities, formerly incarcerated Montanans, veterans and active-duty service members, low-income voters, and voters who otherwise move frequently.

271. HB 892's harsh criminal penalties are likely to make some prospective voters opt to forego registering altogether to avoid the risk of criminal prosecution.

272. Threats of criminal penalties will require Plaintiff and similarly situated organizations to take more time per individual voter registration and/or provide more limited assistance during the registration process.

273. As a result, HB 892's requirements will compound the burdens on individual voters who will be less likely to navigate the voter registration process without effective assistance.

274. HB 892's burdens on the fundamental right to vote are evaluated under—and fail—strict scrutiny.

275. HB 892's challenged provisions also fail any lesser level of scrutiny.

276. Defendants have no compelling, substantial, or even rational interest in burdening Plaintiff's voting rights.

277. Far from being narrowly tailored, the challenged HB 892 provisions are both underinclusive and overinclusive.

278. The challenged HB 892 provisions are an unnecessary prophylaxis on the existing efficient prohibitions of double voting under Montana and federal law.

279. Montana’s existing safeguards in its voter registration practices and laws already sufficiently deter any instances of double voting and punish any potential violation.

280. Regardless, instances of double voting or other voter fraud occurring in Montana are vanishingly rare, and no such proven instances were discussed during the Legislature’s consideration of HB 892 to establish a compelling and/or sufficiently tailored state interest.

281. The significant burdens that HB 892 imposes on the right to vote far exceed any countervailing state interest.

COUNT IV
Violation of Due Process - Vagueness
Montana Constitution, art. II, § 17

282. Plaintiff reiterates and reincorporates by reference the factual allegations set forth in this Complaint.

283. The Montana Constitution prohibits unconstitutionally vague laws under the Due Process Clause, which provides “No person shall be deprived of life, liberty, or property without due process of law.” Mont. Const. art. II, § 17.

284. “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined,” *City of Whitefish v. O’Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025, such that “it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden,” *State v. Nye* (1997), 283 Mont. 505, 513, 943 P.2d 96, 101.

285. Together and individually, the challenged HB 892 restrictions unconstitutionally impair the guarantees of due process for Plaintiff’s, its members and volunteers, and the Montanans it assists.

286. The Omission Provision is unconstitutionally vague because it imposes severe criminal penalties on voters for omitting, inadvertently or not, “previous registration information” on their form. § 13-35-210(5), MCA.

287. The Omission Provision is unconstitutionally vague because it fails to provide adequate guidance to the ordinary Montanan about what amounts to “previous registration information” to be included on their registration form. § 13-35-210(5), MCA.

288. Without a *mens rea* for a violation of the Omission Provision, it is unconstitutionally vague as to whether unintentional omission of previous registration information or other innocent conduct implicates criminal liability, which chills the protected activity of Plaintiff and other Montanans.

289. The Deregistration Requirement is unconstitutionally vague because the law fails to provide guidance to the ordinary person about what it means to “purposefully remain registered to vote in more than one place” or what steps voters must take to avoid the threat of severe criminal penalties. § 13-35-210(5), MCA.

290. HB 892 impairs Plaintiff’s voter registration drives because of uncertainty about whether its members’ and/or volunteers’ conduct may violate HB 892 and be directly threatened by prosecution under Montana’s criminal election code provisions. *See, e.g.*, §§ 13-35-106, 13-35-205(6), MCA.

291. HB 892 similarly impairs the rights of other civic organizations and individuals engaged in voter registration activity.

292. The threat of HB 892’s harsh criminal penalties without indication of what actions constitute a violation are likely to make prospective voters opt to forego registering altogether to avoid the unclear risk of criminal prosecution.

293. HB 892 overall does not provide Montanans of ordinary intelligence fair notice of how to avoid the threat of severe criminal penalties.

294. HB 892's unconstitutionally vague provisions fail any level of applicable constitutional scrutiny.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and:

A. Declare that the challenged provisions in HB 892—the Deregistration Requirement and the Omission Provision—violate the Right of Free Speech in the Montana Constitution, both facially and as-applied to Plaintiff;

B. Declare that the challenged provisions in HB 892—the Deregistration Requirement and the Omission Provision—violate the Right of Free Association in the Montana Constitution, both facially and as-applied to Plaintiff;

C. Declare that the challenged provisions in HB 892—the Deregistration Requirement and the Omission Provision—violate the Right of Suffrage in the Montana Constitution, both facially and as-applied to Plaintiff;

D. Declare that the challenged provisions in HB 892—the Deregistration Requirement and the Omission Provision—are void for vagueness and violate the Right of Due Process in the Montana Constitution, both facially and as-applied to Plaintiff;

E. Preliminarily and permanently enjoin Defendants and their agents, officers, employees, successors, and all persons acting in concert with each or any of them, from enforcing the challenged provisions in HB 892, including the punitive sanctions contained therein;

- F. Retain jurisdiction to render any and all further orders that this Court may deem necessary;
- G. Award Plaintiff its reasonable costs and attorneys' fees; and
- H. Grant any and all relief this Court deems just and proper.

This 31st day of October, 2023.

Respectfully submitted,

/s/ Constance Van Kley

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**pro hac vice application forthcoming*