

EXHIBIT L

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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

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

Plaintiff,

v.

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

Defendants.

Cause No. DV-56-2020-377-DK

DECLARATION OF M.V. HOOD III

M.V. Hood III declares as follows:

1. I am a tenured Professor of Political Science at the University of Georgia and the Director of the School of Public and International Affairs Survey Research Center. My research

areas include American politics, specifically in the areas of electoral politics, racial politics, election administration, and Southern politics.

2. I have been asked by counsel for Defendants to provide a brief overview of Montana's voting system, including the changes brought about by the challenged Ballot Interference Prevention Act [BIPA] (Mont. Code Ann. § 13-35-701–705), as well as to provide state-by-state comparisons of regulations associated with the collection and return of vote by mail ballots. Further, I have been asked to respond to the expert reports of Professor Daniel McCool and Professor Alexander Street and, specifically, to their opinions regarding BIPA, which counsel for Plaintiffs produced on March 25 and July 6, 2020.

3. In my opinion, the State of Montana provides a highly convenient election scheme for voters. Electors can vote using one of three methods: no-excuse absentee by-mail, no-excuse absentee in-person, or in-person at a local election precinct or satellite office on election day (Mont. Code Ann. § 13-13-117, -201, 222). Additional statutory guarantees protect the right to vote for all Montanans, including those in special circumstances. For example, the Montana election code contains specific provisions allowing for election-day [late] registration (Mont. Code Ann. § 13-2-304); permanent absentee voting (Mont. Code Ann. § 13-13-212(3)); provisional voting (Mont. Code Ann. §§ 13-13-114 and -601; 13-15-107(5)); emergency voting (Mont. Code Ann. § 13-13-212(2)); voting by military and overseas electors (Mont. Code Ann. §§ 13-21-102–228); ballot collection by members of the election board or an authorized election official (Mont. Code Ann. § 13-13-229); and accommodations for disabled and elderly electors (Mont. Code Ann. §§ 13-3-213; 13-13-118, -119, and -246).

4. At issue in this case is BIPA, a voter-approved referendum that placed limits on who may return a voted absentee ballot in-person and in what numbers. Prior to the passage of

BIPA, any individual could collect and return anyone else's absentee ballot. There was also no limit on the number of absentee ballots that could be returned. Following implementation of BIPA, voters may still return their own ballots in-person or by mail or may have a family or household member, acquaintance, or caregiver return their ballots in-person. (Mont. Code Ann. § 13-35-703 (2) and (3).)¹ There are no limitations, either in terms of who may collect or in what number, for absentee ballots returned via the postal service.² It should also be noted that BIPA did not alter any other component of the procedures that govern absentee voting or in-person election-day voting in Montana.

Montana's Voting System

5. Montana has the right and duty to regulate elections (Mont. Const. art. IV, § 3).
6. Montana's election framework offers electors a versatile set of options to exercise the franchise. Voters have great flexibility to complete the balloting process before election-day. Those who prefer to vote in-person can vote at the county election office or a designated satellite election office up to 30 days prior to the election (Mont. Code Ann. § 13-13-205(a)(i)). Those who would prefer more time to vote can pick up their ballot at their election office up to 30 days before an election, take it home, and return it by mail or other method,³ as long as the ballot is received by close of polls (8 p.m.) on election-day.
7. On Election Day, Montana voters can vote at their precinct from 7 a.m. to 8 p.m. or drop off their absentee ballots at any precinct within their county without waiting in line (Mont. Code Ann. § 13-13-201).

¹ BIPA does not apply to election officials or postal workers, or for ballots returned by mail. See Mont. Code Ann. § 13-35-703(2); Commissioner of Political Practices, *Montana Ballot Interference Prevention Act (BIPA)* (<http://politicalpractices.mt.gov/BIPA>).

² *Ibid*; Mont. Code Ann. § 13-35-704.

³ Absentee ballots may be delivered to the election office; a polling place within the elector's county; an absentee election board or authorized election official; or a designated place of deposit within the elector's county in a mail ballot election held pursuant to Title 13, chapter 19 (Mont. Code Ann. § 13-13-201).

8. Montana's late (election-day) registration even allows voters to show up, register, and cast a ballot on election-day (Mont. Code Ann. § 13-2-304).

9. Montana accepts both photo and non-photo identification when registering to vote and voting in-person, including, but not limited to, school IDs, tribal photo identification, a utility bill, bank statement, paycheck, government check, or other government document that shows the elector's name and current address (Mont. Code Ann. §§ 13-2-110 and 13-13-114). In this respect, Montana makes voting very accessible and is more lenient than many other states, which may require government-issued photo identification in order to cast a ballot in-person.

10. Montana is a no-excuse absentee state, meaning anyone can vote absentee if they so choose. An elector can request to be placed on the permanent absentee voter list and be automatically mailed an absentee ballot for each election in which they are eligible to vote up to 25 days prior to election-day, allowing more than sufficient time for return. For voters who feel more comfortable delivering their mail ballot in-person, this option is also available.⁴

11. Some Montana absentee voters may also designate an agent to pick up their ballot, and if necessary, vote their ballot (Mont. Code Ann. §§ 13-13-214, 13-13-241). This service simply requires voters to fill out an additional section on the absentee voter application form, available online or at the election office. This form must be returned to the election office (either by mail or delivered in-person), signed by the voter, and registered by the election administrator.⁵

⁴ Voters may sign up for this service by filling out the Application for Absentee Ballot (available online), signing it, and submitting it to the county election office by noon the day before election-day; or voters can visit the election office and fill out the form in-person. See Mont. Code Ann. §§ 13-2-110; 13-13-213 (“An agent designated pursuant to 13-1-116 or a third party may collect the elector’s application and forward it to the election administrator.”). The State requires a “wet” signature because the signature is used to verify voter identity throughout the voting process. See Mont. Code Ann. §§ 13-13-213(3)(a); 13-13-241.

⁵ Form available at <https://sosmt.gov/Portals/142/Elections/Forms/Application-for-Absentee-Ballot.pdf?dt=1485633482629&dt=1485633733234&dt=1485633997817&dt=1488412775482&dt=152347889271>.

12. Absentee voters have the option of taking their ballot to a post office, mail drop box, polling place, place of deposit, or election administrator's office. They also have the option of having another individual bring their ballot to a post office or mail drop box, or having a caregiver, family member, or acquaintance deliver their ballot to a polling place, place of deposit, or election administrator's office.

13. Absentee electors can track their ballot online through the various stages of the process, or call or e-mail the Montana Secretary of State's office for verification of receipt of their ballot. If an issue does arise, especially one related to the signature on the certificate, there is a process in place whereby the issue can be resolved. As with the vote-by-mail process, a voter can submit a corrective "cure" affidavit by mail or in-person to an election office (Mont. Code Ann. §§ 13-13-245 and 13-15-107).

14. Montana's robust absentee voting system, which has been in place for many years, is well-equipped to meet the needs of voters and election officials alike during the current pandemic. For evidence of this, one may look to the June 2020 statewide primary, which was administered as an all-mail election. Turnout for the 2020 primary was 55%, which is comparable to recent general election midterms.⁶ Turnout for the 2020 general will undoubtedly be higher, but Montana has demonstrated the state has the administrative capacity to conduct an all-mail election if circumstances dictate. One advantage of an all-mail election is that a voter may cast their ballot *sans* any human-to-human contact.

15. Montana is in the majority of states that regulate the return of absentee ballots in their election codes. Twenty-nine states (including Montana) have some regulation in place regarding who may return an absentee ballot and/or the quantities of absentee ballots that may be

⁶Montana Secretary of State: <https://sosmt.gov/elections/voter-turnout>.

collected. This finding places Montana in the mainstream, as almost three-fifths (58%) of states regulate this component of absentee balloting. Conversely, a minority of states (42%) do not limit the manner in which a voter may return their absentee ballot to election officials.

16. Three states without any limit on return of absentee ballots greatly restrict absentee voting by requiring an excuse (such as illness or disability). This leaves only about a third of the states (18) that fall into the no-excuse, no-regulation category.

BIPA

17. Under BIPA, any voter can still return their early ballot through the mail or in-person. Additionally, a family or household member, acquaintance, or an individual serving as a caregiver may also return an absentee ballot in-person on behalf of the voter.

18. BIPA did not alter in-person voting, early or on election-day, and it did not affect the location or number of satellite polling places available for people living on Montana Indian reservations.⁷ The settlement agreement and election directive cited require satellite locations to be open on reservations during the absentee voting period, making it easier for absentee voters who prefer to return their ballot in-person to do so or have a family or household member, caregiver, or acquaintance do so on their behalf.

19. Further, BIPA did not modify the procedures for requesting an absentee ballot or those related to the receipt of the ballot, only the process for returning a voted absentee ballot.

20. As stated above, most states regulate the return of absentee ballots in some manner. Of these, many states are even more restrictive than Montana. In Alabama, a ballot must be returned by the voter, with the exception that a designee can be used in case of a medical

⁷ See Doc. 26, App'x B, Exs. B (Settlement agreement in *Wandering Medicine v. McCulloch*, 906 F. Supp. 2d. 1083 (D. Mont. 2012)) and C (Montana Secretary of State Election Directive #01-2015, also available at <https://sosmt.gov/Portals/142/Elections/Documents/Officials/DIR-1-15.pdf>).

emergency (Ala. Code § 17-11-18). In Arkansas, a ballot must be returned by the voter, with the exception that a designated bearer can be used for medical reasons. A designated bearer is limited to returning two ballots. The only other exception concerns bulk collections from residential care facilities (Ark. Code §§ 7-5-403, 7-5-411). In Connecticut, a ballot must be returned by the voter or an immediate family member, with the exception that a designee can be used for medical reasons (Conn. Gen. Stat. Ch. 145 § 9-140b). In Georgia, a ballot must be returned by the voter, with the exception that voters with a physical disability may have a ballot returned by an immediate family or household member (Ga. Code § 21-2-385). In Indiana, a ballot must be returned by the voter or an immediate family member (Ind. Code § 3-11-10-1). In Louisiana, a ballot must be returned either by the voter or by another individual authorized by the voter, and outside of immediate family no person may deliver more than one ballot (La. Stat. § 18:1308). In Maine, a ballot must be returned either by the voter, an immediate family member, or a designated agent who must be the same individual designated in writing to pick up the ballot on behalf of the voter, and who is limited to returning five absentee ballots (Me. Rev. Stat. 21A §§ 753-A, 753-B, and 754-A). In Maryland, a voter may return their ballot or authorize a designated agent to do so, and both persons must complete and sign a Designation of Agent form (Md. Code, Elec. Law, § 9-307). In Massachusetts, Missouri, North Carolina, and Ohio, only the voter or an immediate family member may return a ballot (Mass. Gen. Laws, ch. 54, § 92; Missouri Stat. § 114.291; N.C. Gen. Stat. § 163-231(b)(1); Ohio Rev. Code § 3509.05). In Michigan, only a voter, family member, household member, or election official may return a ballot (Mich. Comp. Laws § 168.764A). In Minnesota, a voter may designate an agent to return his or her ballot, but agents may only act on behalf of three other voters per election cycle (Minn. Stat. §§ 203B.08, 203B.11). In Mississippi and Tennessee, absentee ballots must be returned by

the voter through the mail and cannot be returned in-person (Miss. Code Ann. § 23-15-719; Tenn. Code § 2-6-202). In Nevada, only a voter, immediate family member, or designee in an emergency (hospitalization) may return a ballot (Nev. Rev. Stat. §§ 293.316, 293.330). In New Hampshire, a ballot may only be returned by a voter, immediately family member, nursing home/residential care administrator, or agent assisting a blind or disabled voter (who may deliver only four absentee ballots in a given election) (N.H. Rev. Stat. § 657:17). In New Jersey, a ballot may only be returned by a voter or immediate family member, except that a voter may authorize another individual to return their ballot, and that individual may not return more than three ballots in an election cycle (N.J. Stat. §§ 19:63-16 and 19:63-27). In New Mexico, a ballot may only be returned by the voter, an immediate family member, or a caregiver (N.M. Stat. §§ 1-6-9, 1-6-10.1, 1-20-7). In Oklahoma, an absentee ballot must be returned by the voter via mail; there is no provision for in-person return except in the case of a physically incapacitated individual or an emergency absentee request where a voter may designate an agent to return their ballot (Okla. Stat. tit. 26, §§ 14-108, 14-110.1, 14-115.1). In Pennsylvania, only the voter may return their absentee ballot, except in the case of an emergency absentee ballot where the voter may designate another individual by completing a form (25 Pa. Stat. §§ 3146.2a and 3146.6). In Texas, only the voter may return their ballot in-person, though another individual may collect and place the voter's absentee ballot in the mail provided certain information is recorded on the absentee ballot carrier envelop (Tex. Elec. Code §§ 86.006 and 86.0051). In Virginia, a voter cannot designate another individual to return their ballot unless the voter has submitted an emergency absentee application with an authorization form for a representative (Va. Code Ann. §§ 24.2-705, 24.2-707). In West Virginia, no individual may deliver more than two absentee ballots in-person (W. Va. Code § 3-3-5).

21. By regulating absentee ballot collection, BIPA can act to strengthen chain-of-custody between the voter and the county elections office. Limiting the method of transmittal to the voter or a trusted individual helps to ensure a voter's absentee ballot makes it to election authorities in the same state as it left the voter's hand; thus reinforcing public confidence in the integrity of elections.

22. Professor McCool reports that there is a "complete absence of any evidence of voter fraud" in Montana. (Doc. 17, ¶ 95.) Fraud prevention measures, however, do not have to be justified solely on the grounds that fraud is present and has been proven. Such measures can also be forward-looking. Whether past election fraud related to absentee ballot collection in Montana is present does not prevent the Montana Legislature from implementing changes in the election code designed to prevent the future occurrence of fraud. As explained in the previous paragraph, BIPA helps meet this goal.

23. Voter fraud is extremely difficult to detect, and even when it is detected it is often not until after the fact.

24. Although Montana does not have specific documented instances of absentee ballot fraud; such has been documented in other states. For example, very recently, the New Jersey Attorney General announced voting fraud charges against a city councilman and several others based on the allegation they tampered with absentee ballots that they collected from voters.⁸ In North Carolina, the election for the 9th Congressional district was nullified in 2018

⁸ "AG Grewal Announces Voting Fraud Charges Against Paterson Councilman Michael Jackson, Councilman-Elect Alex Mendez, and Two Other Men," State of New Jersey, Office of the Attorney General (June 25, 2020) (<https://www.nj.gov/oag/newsreleases20/pr20200625a.html>).

over allegations related to absentee ballot fraud. In 2019, formal indictments were handed down in this matter.⁹

25. Professor McCool claims BIPA eliminated the bulk collection of absentee ballots in Montana.¹⁰ However, BIPA only applies to the in-person return of absentee ballots. It does not apply to absentee ballots returned through the U.S. Postal Service. As such, the bulk collection of absentee ballots can continue as long as such ballots are deposited at the post office. In addition, bulk collection under this scenario can be undertaken by anyone, regardless of their relationship to the voter.

26. Moreover, the six-person limit on absentee ballots returned in-person does not appear to be much of a hindrance for most Montana voters. Although the law is currently enjoined, there has been some data collected on BIPA forms submitted for various elections in 2019 and 2020. Using data from the Montana Commissioner of Political Practices, one can estimate the ratio of ballots cast by the number of BIPA forms submitted. On average, the number of absentee ballots returned per form is 1.2.¹¹ What this tells us is that, more often than not, a person submitting a BIPA form is returning an absentee ballot for only a single voter. This figure is far below the six-ballot maximum allowed under the law. The available BIPA data also reveals that 90% of absentee ballots returned in-person on behalf of another voter are returned by a family member.

27. In his March 25, 2020 report, Professor McCool concludes that BIPA will produce a disproportionate burden on Native American voters, in particular, and negative effects

⁹ “NC Political Operative Indicted in Connection with Alleged Ballot-Tampering Scheme,” *The Hill* (February 27, 2019) (<https://thehill.com/homenews/campaign/431827-nc-political-operative-indicted-in-connection-with-alleged-ballot-tampering>).

¹⁰ “The negative impact of the legislation was that it eliminated the freedom of individuals to assist other voters by collecting and delivering their ballots.” (Doc. 17, ¶ 83.)

¹¹ Calculated as Ballots Cast per BIPA Form/Number of BIPA Forms: 29,462/24,683=1.19.

on Montana's election system, in general. Professor McCool, however, provides no direct evidence that such would be the case, as his conclusions are based on numerous hypotheticals and unproven assumptions.

28. Further, Professor McCool's conclusions are not supported by the data he relies on. For example, Paragraph 17 of Professor McCool's affidavit (Doc. 17) states:

The significant point is that tribal voters are dispersed over a large area, requiring significant driving distances to get to a post office, tribal offices, and election offices. To gain a better understanding of the distances across reservations, Table 3 presents a sample of distances that a hypothetical voter on a reservation would have to drive to get to *either the tribal agency or the county courthouse*. This is not a comprehensive listing of all possible driving distances—that would be nearly as numerous as there are tribal members. And it does not include distances from all seventeen counties that include reservation lands. However, it does illustrate how far some voters may drive to vote or **access a mailbox or post office**.

(Emphasis added.) However, hypothetical distances to a tribal agency or county courthouse in no way illustrate how far voters must drive to access a mailbox or post office to vote by mail.

Taking just the first example in Table 3 of his report, the town of Babb on the Blackfeet Reservation, Professor McCool cites a distance of 70 roundtrip miles from Babb to Browning (the reservation agency) and 139 miles to Cut Bank (the county seat). The mileage chart, however, only applies to the distance a voter would need to travel in order to return an absentee ballot in-person. Of particular note is the fact that the post office has a location in Babb where a voter could deposit their absentee ballot.¹²

29. Professor McCool also seeks to draw conclusions about BIPA's disparate impacts among Native Americans living on reservations by pointing to poor broadband connectivity¹³

¹² Located at 4016 US Highway 89. According to the U.S. Postal Service website, the post office in Babb is open six days a week from 8–11 a.m. and 12:30–4:15 p.m., Monday through Friday, and from 11 a.m. to 12 p.m. on Saturday. See <https://tools.usps.com/find-location.htm?location=1353832>.

¹³ “[T]o participate equally in the electoral process in Montana, it is very helpful if not a necessity to live in an area that has broadband service, the ability to pay the monthly bill for service, and have access to a computer and a printer. This leaves out a substantial portion of the Native American community.” (Doc. 17, ¶ 32.)

and theoretical voter ID issues¹⁴ that are not present in this case. First, the lack of broadband service is irrelevant to Plaintiffs' challenges to BIPA, and while voter ID requirements are certainly relevant to electoral participation, Montana does not require a photo ID to vote. Montana voters can use a wide variety of both photo and non-photo identification in order to vote in-person.

30. In focusing almost exclusively on in-person return of an absentee ballot by the voter, Professor McCool further misrepresents BIPA's effect by ignoring other available return methods. Again, BIPA only affects the in-person, bulk delivery of absentee ballots. Voters can still return their absentee ballots through the mail or in-person to the county election office or satellite office; a designated place of deposit; or a polling place within their county of residence on election-day. Under BIPA, a family or household member, caregiver, or acquaintance can also return up to six ballots (not counting their own) in-person to election officials. Bulk collection of absentee ballots by any individual, regardless of relationship to the voter, can still be undertaken as long as such ballots are deposited with the postal service. Even under BIPA, there are still many return options available to absentee voters.

31. Professor McCool also describes housing problems on Indian reservations in Montana and concludes, "it is difficult to deliver, via the mail, a mail-in ballot to someone who does not have a domicile."¹⁵ While that may be true, the statement has nothing to do with BIPA, as BIPA does not affect how Montana voters receive their absentee ballot.

32. Professor McCool's claim that the "lack of that service [ballot collection] means that some people may not vote" is unsupported by any empirical evidence.¹⁶ This statement also

¹⁴ "If a current photo ID with current mailing address would be required for voting, this would present a significant challenge to an aspiring voter." (Doc. 17, ¶ 31.)

¹⁵ (Doc. 17, ¶ 37.)

¹⁶ (Doc. 17, ¶ 45.)

mischaracterizes the law. BIPA does not apply to absentee ballots transmitted through the U.S. Postal Service.¹⁷ As such, BIPA does not prohibit the bulk collection (in any number) of absentee ballots, or require a defined relationship with the voter, as long as such ballots are returned through the mail.

33. Likewise, in his supplemental report, Professor McCool states:

One of the advantages of using the voluntary services of a ballot collector is that, first, they understand the deadline regarding when ballots must be delivered, and second, they can make sure the ballots are delivered to a post office in time to ensure that they will arrive on-time and be counted.¹⁸

What Professor McCool describes in the preceding quotation is still completely feasible under BIPA—bulk collection of absentee ballots can continue under BIPA as long as such ballots are deposited at the post office. Anyone in Montana can collect an unlimited number of absentee ballots from any voter and return these ballots through the USPS. In his initial report, Professor McCool states that, without organized ballot collection, “every voter must be able to pay for all of the following: a car, preferably with snow tires to deal with remote reservation roads in November; auto insurance; gas money; in some cases child care . . . ; and a substantial amount of time away from work.”¹⁹ However, this is another misrepresentation of the law. Professor McCool fails to account for the fact that voters can still return their ballot though the mail or have a family or household member, caregiver, or acquaintance deliver a ballot in-person. Voters can also hand over their voted absentee ballot to a bulk collector as long as these ballots are deposited at the post office.

¹⁷ See “Montana Ballot Interference Act,” Montana Commissioner of Political Practices (<http://politicalpractices.mt.gov/BIPA>), and Mont. Code Ann. § 13-35-704.

¹⁸ (McCool Supp. Report at 7.)

¹⁹ (Doc. 17, ¶ 69.)

34. I do not agree with Professor McCool’s characterization of who would qualify as a “caregiver,” a “family member,” or an “acquaintance” under BIPA. Professor McCool posits two hypotheticals on this topic, and subsequently concludes that Native American voters “would have to decide a fine point of law, on the spot, to ensure they were not violating BIPA.”²⁰ BIPA does not require an election official to question a depositor about their relationship to the voter.²¹ Further, absentee ballots received in violation of BIPA will still be accepted and processed.²² Also germane to this discussion, bulk collection of absentee ballots for return through the postal service can be undertaken by anyone, regardless of the **relationship** to the voter.

35. Finally, Professor McCool’s conclusion that “it is a serious crime to help someone deliver their ballot,” has no support in the statutory language of BIPA.²³ BIPA only imposes a fine.²⁴ This penalty is more lenient than in many other states that regulate ballot collection, as it is not uncommon for criminal penalties to be associated with the violation of such provisions, with some states classifying these violations as felony matters.²⁵

36. Professor Street claims that in the 2020 primary election, ballots cast by Montanans living on reservations were more likely to be rejected, and that such problems could have been identified and prevented by ballot collectors. However, the potential effects of BIPA are not that straightforward for a number of reasons.

²⁰ (Doc. 17, ¶ 17.)

²¹ *Montana Election Judge Handbook 2020*, p. 58 (<https://sosmt.gov/Portals/142/Elections/Documents/Officials/Election-Judge-Handbook.pdf>) (providing “confirming the identity of the ballot collector is not required by statute,” and “election officials are not responsible for enforcing the statute” and do not need to confirm the data and enforce completeness of the form) (<https://sosmt.gov/Portals/142/Elections/Documents/Officials/DIR-1-19.pdf>);

²²*Ibid.*

²³ (McCool Supp. Report at 2.)

²⁴ Mont. Code Ann. § 13-35-705.

²⁵ For example, Texas (Tex. Elec. Code Ann. § 86.006(f),(g)), Georgia (Ga. Code Ann. § 21-2-574); North Carolina (N.C. Gen. Stat. § 163-226.3), and Ohio (Ohio Rev. Code § 3599.21), among others.

37. First, Professor Street's analysis ignores the fact that BIPA was enjoined for the 2020 primary election. Contrary to Professor Street's claims, it is difficult, if not impossible, to study the effects of a law prior to implementation. A state court order on May 20, 2020, enjoined BIPA from being enforced during the 2020 statewide primary.²⁶ As such, BIPA has never been fully in effect for a statewide election in Montana. For this reason, it is impossible to infer that an increase in the absentee ballot rejection rate for the 2020 statewide primary is a consequence of BIPA.

38. Further, Professor Street's comparison of the 2020 statewide primary to previous elections is problematic for another reason. A directive from Governor Bullock allowed counties to conduct the June 2020 primary election completely by mail.²⁷ As all fifty-six counties chose this option, the 2020 primary was effectively an unprecedented statewide election conducted by absentee ballot.²⁸ This also meant that an absentee ballot was sent to all active registrants in the state, which is a departure from how statewide elections are typically conducted. Some voters who previously had preferred to vote in-person at their polling place on election day did not have that option in the 2020 statewide primary. As well, some subset of these voters may have had little or no experience with absentee voting. This is one possible explanation that could account for an increase in the absentee ballot rejection rate—BIPA is not.

39. Importantly, the only subset of voters that would be potentially affected by BIPA would be those who had previously relied on third-party ballot collectors who deposited such

²⁶ <http://politicalpractices.mt.gov/BIPA>.

²⁷ "Directive Implementing Executive Orders 2-2020 and 3-2020 and Providing for Measures to Implement the 2020 June Primary Election Safely" (March 25, 2020), available at <http://governor.mt.gov/Portals/16/Directive%20on%20Elections.pdf?ver=2020-03-26-102626-610>. The directive also mandated that any county opting to hold an all-mail election would provide postage for the return of absentee ballots through the mail.

²⁸ Voters in the 2020 statewide primary could vote absentee early in-person, but voters could not choose to vote at their polling place on election-day.

ballots with election officials in-person. No one, however, knows anything about the size of this group.²⁹

40. Not only is there no information on the size of this group, one must also make the assumption that a voter in this group would be unable to return their voted absentee ballot by any of the other available mechanisms. The number of voters who would fall into this category is also unknown, although it is logically smaller than those who may have simply used ballot collectors in the past for in-person return. Professor Street estimates that “about 200 on-reservation residents were deterred from voting in the June 2020 primary by BIPA and the other conditions affecting the election.”³⁰ Given the unique nature of the 2020 primary, along with the fact that BIPA was enjoined, it is my opinion that the preceding statement has no basis of underlying empirical support.

41. Professor Street further assumes that ballot collectors act to reduce the number of absentee ballots rejected by proactively informing voters of potential issues (again, we have no idea how many absentee ballots are collected in bulk by third parties).³¹ Besides being late, the two other common reasons for absentee ballot rejection are unsigned certificates and certificates with signature mismatches. Assuming a ballot collector will return ballots on time, the only type of potential error that a ballot collector could alert a voter to would be the absence of a signature, as opposed to a signature mismatch, because signature mismatches are determined by election officials by comparing the signature on file with the signature on the ballot.³² Even so, this is an unsupported assumption for which there is no evidence.

²⁹ The BIPA data that is available again shows that, on average, most collectors are returning the absentee ballot of a single voter, even though it is possible to return the ballots of up to six voters.

³⁰ Street Report at 18. Throughout his report, Professor Street conflates residents of Indian Reservations with the Native American population. While there is a heavy overlap between these two groups, they are not equivalent.

³¹ Plaintiffs Montana Native Vote and Western Native Voice have claimed they collected 853 ballots in 2018 (Doc. 18, ¶ 14) but do not have data for other years (Decl. of Aislinn Brown).

³² Mont. Code Ann. § 13-13-241.

42. In summary, one cannot conclude that BIPA will have a disparate impact on Montana voters based on the string of untested assertions proffered by Professors McCool and Street.

Conclusions

43. My own analyses of state procedures regarding the return of absentee ballots leads me to a different set of conclusions from those proffered by Professor McCool and Professor Street. In my opinion, BIPA places Montana well within the mainstream—almost three-fifths of states regulate the return of absentee ballots in their election codes by either restricting who may return an absentee ballot and/or in what quantity.

44. BIPA only restricts the bulk, in-person return of absentee ballots. Voters can still return their absentee ballot through the postal service or in-person to a number of locations. In addition, BIPA allows the in-person return of absentee ballots by a voter's family member, household member, caregiver, or acquaintance. BIPA does not limit the bulk collection of absentee ballots returned through the U.S. Postal Service. As well, BIPA did not alter any other component of the procedures that govern absentee voting or in-person election-day voting in Montana.

45. I do not agree with Professor McCool's conclusions that BIPA will produce a disproportionate burden on Native American voters or negative effects, in general, on Montana's election system. Having examined Professor McCool's reports in detail, he provides no direct evidence to buttress these claims, and in my opinion, they are not supported by the existing data.

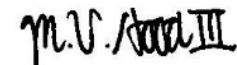
46. Similarly, I do not agree with Professor Street's conclusions that BIPA will increase absentee ballot rejection rates and decrease voter participation. Having examined

Professor Street's report in detail, he provides no direct evidence to buttress these two claims, and in my opinion, they are not supported by the existing data.

47. I am aware of no evidence that the election changes brought about by BIPA will have a discriminatory impact on the ability of Native American Montana voters to cast a ballot. Instead, it is my opinion that BIPA can act as a prophylactic against fraud while increasing voter confidence in the integrity of Montana's election system.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 30th day of July, 2020.



M.V. HOOD III

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Declaration of M.V. Hood III by e-mail to the following addresses:

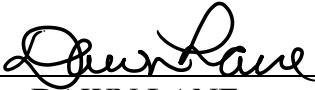
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Dated: July 30, 2020


DAWN LANE