No. 24-220

IN THE

Supreme Court of the United States

CHRISTI JACOBSEN, MONTANA SECRETARY OF STATE,

Petitioner,

—v.—

MONTANA DEMOCRATIC PARTY, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

RESPONDENTS WESTERN NATIVE VOICE, MONTANA NATIVE VOTE, BLACKFEET NATION, CONFEDERATED SALISH AND KOOTENAI TRIBES, FORT BELKNAP INDIAN COMMUNITY, AND NORTHERN CHEYENNE TRIBE'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In the opinion below, the Montana Supreme Court affirmed a state trial court's decision to invalidate four state statutes on state constitutional grounds. In doing so, it reviewed extensive findings of fact and credibility determinations developed over the course of a nine-day state court trial and, consistent with a decades-old state constitutional framework, applied heightened scrutiny. Filing outside the statutory time limit, the Montana Secretary of State now seeks this Court's review of the Montana Supreme Court's factbound decision on two of those four laws. The questions presented are:

1. Whether a petition for certiorari filed after the 150-day limit set forth in 28 U.S.C. § 2101(c) is untimely, depriving the Court of jurisdiction to decide this case?

2. Whether the Montana Supreme Court exceeded the bounds of "ordinary judicial review," *Moore v. Harper*, 600 U.S. 1, 36 (2023), when it applied a longstanding state constitutional test assessing the fit between a statute and the asserted state interest to an extensive trial record in order to determine whether state legislation comports with the state constitution?

PARTIES TO THE PROCEEDING

Petitioner is Christi Jacobsen, in her official capacity as the Montana Secretary of State.

Respondents are the Montana Democratic Party, Mitch Bohn, Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe, Montana Youth Action, Forward Montana Foundation, and MontPIRG.

This Brief in Opposition is filed on behalf of Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, Respondents Western Native Voice and Montana Native Vote have no parent corporations, and no publicly held company holds 10 percent or more of their stock.

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INTRODUCTION

The Montana Constitution provides a fundamental right to vote: "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mont. Const. art. II, § 13. In this case, the Montana Supreme Court evaluated two recently enacted state statutes—eliminating Election Day voter registration (EDR) and paid third-party ballot assistance—against this Montana state constitutional clause, which has no counterpart in the United States Constitution. Applying a decades-old state constitutional standard, the court looked to uncontested factual findings that these two statutes impermissibly interfered with tens of thousands of Montanans' right to vote and Petitioner's failure to adduce any evidence showing that the statutes advanced her asserted state interests (much less were narrowly tailored). On this basis, the Montana Supreme Court held that the statutes violate the Montana Constitution's right-to-vote clause.

Now, filing outside the statutory period and the extension of time granted by the Court, Petitioner identifies no split of authority that should be resolved by this Court. Nor does she present an issue of nationwide importance; the Montana Supreme Court's decision concerns a provision of the Montana Constitution affecting only Montana voters.

Unable to assert a typical ground for certiorari, Petitioner attempts to engineer two

questions, neither of which warrant granting review. *First*, she states that this Court should grant the petition to set the standard for determining when a state court decision invalidating a state election law "exceed[s] the bounds of ordinary judicial review," *Moore v. Harper*, 600 U.S. 1 (2023), and thus intrudes on the state legislature's prerogatives under the federal Elections Clause, U.S. Const. art. I, § 4. Yet Petitioner admits that the purportedly competing standards she offers are all "essentially the same," Pet. 13, thus tacitly acknowledging the question is not worthy of this Court's review. *Cf. Moore*, 600 U.S. at 39 n.1 (Kavanaugh, J., concurring) (expressing "doubt" that the "precise formulation" the Court adopts will make a "material difference" in any case).

Second, Petitioner invites the Court to hold that this entirely ordinary state supreme court decision, applying means-end testing of a kind applied by state and federal courts throughout the country, "exceed[s] the bounds of ordinary judicial review," *id.* at 37. This would turn *Moore*—which reaffirmed the "general rule of accepting state court interpretations of state law" and held that the "Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review," *id.* at 19, 22—on its head. Granting certiorari to reverse this run-of-the-mill decision would render the concept of the "ordinary exercise of state judicial review" a dead letter, and "swell federal-court dockets" with countless challenges to garden-variety state constitutional interpretations, *id.* at 65 (Thomas, J., dissenting).

Seeking to make tiered scrutiny look somehow out-of-the-ordinary, Petitioner attempts two primary critiques of the opinion below. First, she erroneously claims the Montana Supreme Court held that the right-to-vote clause mandates EDR, though other constitutional language makes it discretionary. Pet. 20. But the court did no such thing; rather, it agreed that the state constitution does not mandate EDR, but then correctly rejected Petitioner's argument that the legislature's enactments on EDR are therefore entirely insulated from judicial review. Pet. App. 40a. Second, Petitioner insists—for the first time in this litigation and in a sharp departure from her briefing below—that it is somehow outside the ordinary judicial role for a court to assess the constitutionality of a statute when the constitutional provision at issue is "vague." Pet. 21. This theory would render countless state and federal constitutional provisions meaningless and knock out wide swaths of state and federal constitutional jurisprudence.

The petition for certiorari should be denied because it was untimely, so this Court lacks jurisdiction to consider it. And on the merits, the Montana Supreme Court exercised its ordinary "authority to apply state constitutional restraints" in assessing the challenged laws, *Moore*, 600 U.S. at 37. To conclude otherwise would federalize nearly every instance of state court review of elections-related enactments.

STATEMENT OF THE CASE

I. THE CHALLENGED STATUTES AND THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This petition concerns two Montana voting laws: HB176, which ended Election Day voter registration, and HB530, Section 2 (HB530), which outlawed paid third-party absentee ballot assistance.

Legislators supporting HB176 stated that their purpose for ending EDR—a practice available in Montana since 2005, Pet. App. 248a, ¶314—was to prevent voters likely to vote for the opposing political party from registering to vote. *Id.* at 257a, ¶¶341-42.

As to HB530, an initial proposal to restrict ballot collection assistance faltered after Montana election officials and the chief legal counsel for the state's Office of Commissioner of Political Practices testified that it violated the Montana Constitution. Pet. App. 280a-81a, ¶¶432-33. However, the executive director of the Montana Republican Party proposed reformulated language that was introduced, word-for-word, as an amendment to an unrelated election bill: HB530. It passed after the state senate "blasted" HB530 with this new amendment to the senate floor, bypassing the typical processes of committee consideration and public testimony. *Id.* at 281a-82a, ¶434.

Respondents, four sovereign tribal nations and two non-profit organizations that serve Native American voters—collectively known in this litigation as the Western Native Voice parties—sued to challenge HB176 and HB530. The district court consolidated their case with suits brought by the Montana Democratic Party and youth-oriented not-for-profit groups. Those groups had also challenged HB176 and HB530 in addition to two other new voting laws: SB169, which removed Montana student IDs as acceptable forms of voter identification, and HB506, which prevented absentee voting by individuals who turned 18 in the month before Election Day. (Petitioner has not sought this Court's review of the Montana Supreme Court's holdings permanently enjoining those other two laws.)

After a nine-day bench trial with voluminous evidence, including testimony from twenty-five live witnesses, Pet. App. 188a-218a, the court issued a 199-page ruling invalidating each of the challenged state statutes on state constitutional bases. *Id.* at 150a-350a.

To reach that conclusion, the trial court applied Montana's long-established framework for reviewing state legislation for conformity with the state constitution. Pet. App. 23a-24a, ¶¶33-34. Under that method, it found both of the statutes at issue in this petition impermissibly burdened tens of thousands of Montanans' fundamental right to vote, as contained in the Montana Constitution's Declaration of Rights. *Id.* at 248a-251a, ¶¶316-23; *id.* at 322a, ¶566; *id.* at 328a-31a, ¶¶594-602. Then,

it concluded that there was no adequate fit between the enactments and the state's proffered interests. *Id.* at 187a, ¶137; *id.* at 261a-63a, ¶¶357-60; *id.* at 291a-94a, ¶¶465-79; *id.* at 296a-308a, ¶¶486-526; *id.* at 323a, ¶¶570-73; *id.* at 331a-32a, ¶¶603-04.[1]

The trial court also concluded that HB176, HB530, and SB169 each violated the right to equal protection under the Montana Constitution. Pet. App. 325a-27a, ¶¶579-86; *id.* at 333a-34a, ¶¶611-16; *id.* at 344a-48a, ¶¶661-73. The court further held that HB530 violated the Montana Constitution's guarantees of freedom of speech, *id.* at 334a-37a, ¶¶617-31, and due process, *id.* at 337a-41a, ¶¶632-47.

A. HB176

To start, the district court rejected Petitioner's claim that HB176 was nonjusticiable. Pet. App. 310a, ¶532. Although the district court recognized the Montana Constitution did not compel EDR, it still obligated courts to ensure that "[t]he State's authority to regulate elections" was "exercised 'within constitutional limits,'" including the limits set forth in the Montana Constitution's Declaration of Rights. *Id.* at 312a, ¶536 (quoting *Larson v. State ex rel. Stapleton*, 434 P.3d 241, 253 (Mont. 2019)).

The district court then made extensive factual findings to determine that repealing EDR in this instance would threaten Montanans' fundamental

[1] The trial court had earlier enjoined HB506 on similar grounds based on the Montana Youth Action Respondents' motion for summary judgment. Pet. App. 360a-67a.

right to vote under the state constitution. Pet. App. 249a-51a, ¶¶317-23. Among other things, it found that over 70,000 voters had made use of EDR in Montana since its inception, *id.* at 249a, ¶317, credited the testimony of individual voters who were disenfranchised in the 2021 municipal elections due to HB176, *id.* at 203a-04a, ¶¶162, 164, and credited data analysis identifying still more voters who were disenfranchised in the November 2021 municipal election because of HB176, *id.* at 204a-05a, ¶167. It further found that Native Americans living on reservations disproportionately and heavily rely on EDR and would be disenfranchised by its repeal. *Id.* at 170a-71a, ¶¶64-66; *id.* at 173a-76a, ¶¶76-79, 86-88; *id.* at *id.* at 178a-79a, ¶¶100-02; *id.* at 194a, ¶149. And it found that EDR had been critical in boosting voter turnout in Montana. *See, e.g.*, *id.* at 248a-49a, ¶¶316, 318.

In the trial court, Petitioner offered three state interests in support of HB176: to combat fraud, ease administrative burdens, and reduce wait times for voters. Pet. App. 291a, ¶465; *id.* at 298a, ¶496; *id.* at 305a, ¶514. The court determined that the record did not support any of these interests and, in some instances, evidence instead demonstrated that HB176 undermined the rationales Petitioner proffered. *Id.*

As for fraud, Petitioner's chief counsel testified that Petitioner had no evidence that (1) there existed any fraud or intimidation that would be addressed by the challenged laws, (2) eliminating EDR would deter fraud, or (3) EDR decreased public confidence in elections. Pet. App. 187a, ¶137. The

court found that, contrary to Petitioner's claim, EDR is *more* secure than other methods of registration because Election Day registrants, unlike voters who register earlier, are required to swear their eligibility in person before an election official. *Id.* at 252a-53a, ¶327. Based on the record evidence, the court found that "'[t]here is no connection' between EDR and voter fraud," *id.* at 297a, ¶489, and that HB176 "does not combat voter fraud," *id.* at 323a, ¶571; *see also id.* at 291a, ¶465.

The court likewise found that the state's rationale of easing administrative burdens was "not supported by the evidence." Pet. App. 298a, ¶496. The court found that, if anything, "HB 176 might create further administrative burdens for election administrators." *Id.* at 304a, ¶513. Strengthening these findings, numerous election officials testified that "ending EDR was 'not . . . helpful administratively' and 'will not help'" them in administering elections. *Id.* at 299a, ¶¶498-99.

The district court also found the claim that wait times justified repealing EDR "not supported by the evidence." Pet. App. 305a, ¶514. Critically, it found "EDR does not and cannot increase lines at most polling locations" because EDR typically takes place at "a centrally designated location, often county clerk's offices," and "not at polling places." *Id.* at ¶515. In the limited instances where EDR occurs at a polling location, the trial court found there are separate lines for those who need to register versus those who just need to cast their ballot. *Id.* The court thus found "no evidence that EDR itself causes long lines, even at the county seat." *Id.* at 306a, ¶520.

The district court permanently enjoined HB176. Pet. App. 348a.

B. HB530

The district court applied the same analysis to HB530. First, it credited unrebutted factual and expert statistical testimony demonstrating that HB530 impermissibly interfered with the right to vote. This included significant evidence about the importance of ballot collection assistance to Montanans who lack ready access to ballot drop-off locations, particularly Native American voters and voters with disabilities, and the disenfranchising effect removing that option would have on those populations. *See, e.g.*, *id.* at 167a, ¶48; *id.* at 239a-241a, ¶¶283-287; *id.* at 275a, ¶418; *id.* at 289a-90a, ¶463; *id.* at 331a, ¶601.

In support of HB530, the state's sole proffered interest was combatting fraud. But Petitioner cited "no evidence of any connection between ballot assistance and voter fraud in Montana," Pet. App. 297a, ¶488, let alone any evidence that HB530 would combat even speculative ballot fraud. *Id.* at 296a, ¶486; *see also id.* at 297a-98a, ¶¶491-95 (crediting testimony of election officials affirming they were unaware of fraud related to absentee ballots).

The district court also found instructive the fact that HB530 was passed outside the ordinary legislative process. Pet. App. 281a, ¶434.

Based on this analysis, the district court permanently enjoined HB530. *Id.* at 349a.

II. THE MONTANA SUPREME COURT'S DECISION

Petitioner appealed. In a 64-page decision issued on March 27, 2024, the Montana Supreme Court affirmed.

First, the state supreme court declined to adopt the federal *Anderson-Burdick* standard to decide cases under the Montana Constitution's right-to-vote provision, Pet. App. 9a, ¶15, and instead continued to apply Montana's longstanding "state-constitution-driven analytical framework," *id.* at 23a, ¶33. The court pointed to extensive Montana caselaw holding that the Montana Constitution may provide greater protections for fundamental constitutional rights than its federal counterpart, "even where the provision[s] [are] nearly identical." *Id.* at 10a, ¶16 (citing *State v. Guillaume*, 975 P.2d 312 (Mont. 1999)). Moreover, it observed this was not even a case where the state and federal constitutions have identical language. Rather, the court observed, "the United States Constitution contains no explicit protection of the right to vote." Pet. App. 12a, ¶20 (citing *Harper v. Va. State Bd. of Elec.*, 383 U.S. 663, 665 (1966)). By contrast, "[t]he Montana Constitution has contained a clear, explicit, unequivocal, and strong protection of the right to vote since before statehood." Pet. App. 12a, ¶19. That right promises "[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. Based on this text, the Montana Supreme Court reaffirmed that the Montana Constitution enshrines a "clear and unequivocal fundamental right" to vote as a matter of state law. Pet. App. 8a, ¶13.

The Montana Supreme Court then applied decades of unbroken Montana caselaw laying out the appropriate standard of review for constitutional challenges to state statutes. Pet. App. 23a-24a, ¶34. Under that framework, "when a law impermissibly interferes with a fundamental right, we apply a strict scrutiny analysis." *Id.* at 23a-24a, ¶34 (citing *Wadsworth v. State*, 911 P.2d 1165, 1173-74 (Mont. 1996)); *see also* Pet. App. at 23a, ¶32 (citing "the textual strength and history of Montana's explicit constitutional protection").

Critically, the court also acknowledged that the legislature has the "responsibility of providing procedures for conducting our elections." Pet. App. 24a, ¶35. In order to respect that authority, it recognized "strict scrutiny is inappropriate when the law has not interfered with the right to vote but has only minimally burdened it." *Id.* at 24a, ¶35. Courts determine "whether a law impermissibly interferes with a fundamental right" by "examining the degree to which the law infringes upon it." *Id.* at 24a, ¶34 (citing *Wadsworth*, 911 P.2d at 1173, and *Finke v. State ex rel. McGrath*, 65 P.3d 576, 580-81 (Mont. 2003), among other cases).

The court then applied this longstanding "state-constitution-driven analytical framework"—assessing the scope of the burden on the right to vote and applying the appropriate level of scrutiny—to the laws at issue. Pet. App. 23a, ¶33.

Starting with HB176, the statute ending EDR, the Montana Supreme Court rejected the government's threshold argument that the legislature's actions were not even "subject to judicial scrutiny." Pet. App. 38a, ¶63.

The court acknowledged language in the state constitution vests the legislature with discretion over whether to institute such a system in the first instance. But the court rejected Petitioner's claim that this discretion somehow meant the legislature had a blank check "both to enact election day registration and to take it away for any reason or no reason at all." *Id.* at 40a, ¶65.

The court instead held that while the decision of whether to adopt EDR is "discretionary," *Mont. Democratic Party v. Jacobsen*, 518 P.3d 58, 71 (Mont. 2022), that discretion did not insulate the legislature from standard constitutional constraints when it wrote laws on the subject. In short, just because EDR was not "forevermore baked into [the Montana] Constitution" did not mean that laws repealing it are somehow immune from any judicial review. Pet. App. 42a, ¶68.

The Montana Supreme Court then applied strict scrutiny to HB176 based on the trial court's factual

findings—subject to clear error review and which Petitioner did not even contest on appeal—that HB176 imposes substantial burdens on the right to vote. For example, the state supreme court affirmed the district court's conclusion that "many of these 70,000 Montanans" who have relied on EDR since 2005 "would be disenfranchised" due to HB176. Pet. App. 45a, ¶74.

At this stage, Petitioner pointed to just two state interests to justify the statute: "reducing administrative burdens on election workers" and "ensur[ing] the integrity and reliability of the election process." Pet. App. 46a, ¶75. The Montana Supreme Court affirmed the lower court's finding that HB176 resolved no administrative burdens. *Id.* at 46a-49a, ¶¶77-79. And it likewise affirmed the trial court's finding that there was no evidence that HB176 improves the integrity or reliability of the process. *See, e.g.*, *id.* at 50a, ¶82 (no evidence EDR had "ever delayed vote tabulation past statutory deadlines,"); *id.* at 50a, ¶83 n.17 (if anything, HB176 could "exacerbate" any issue of voter confidence because it "increase[s] the number of provisional ballots counted six days after the election"). Based on these factual findings, the Montana Supreme Court concluded HB176 did not survive strict scrutiny.

Because it affirmed the permanent injunction on right-to-vote grounds, the court did not address the

district court's alternative equal protection holding. *Id.* at 51a, ¶85.

The Montana Supreme Court reached the same conclusion with respect to HB530. First, "[b]ased on the extensive record" developed by the district court, which Petitioner did not contest on appeal, the Montana Supreme Court determined that HB530 imposes significant burdens on "[m]any electors," especially the many Montanans who live in "remote areas." *Id.* at 55a, ¶97. This included a particularly striking burden in "Indian country," where HB530 "takes away the only option to vote for a significant number of Native Americans living on reservations." *Id.* at 57a, ¶99. As such, it impermissibly interfered with the state fundamental right to vote. *Id.* at 55a, ¶96.

Next, applying strict scrutiny, the court concluded that HB530 was not sufficiently tailored to serve the state's proffered interest in "preserving the integrity of its election process." *Id.* at 58a, ¶102. The court relied on the trial court's findings that, *inter alia*, "the Secretary failed to introduce any evidence of fraud related to ballot collection in Montana." *Id.* at 59a, ¶103. It therefore affirmed the district court's permanent injunction against HB530.

Because the Montana Supreme Court affirmed the trial court's injunction against HB530 on right-to-vote grounds, it declined to reach the district

court's equal protection, free speech, or due process holdings. *Id.* at 60a, ¶106.

Two justices dissented. The dissent principally disagreed with the majority's application of the decades-old framework developed under Montana law rather than the federal *Anderson-Burdick* framework. Pet. App. 78a. Yet the dissent acknowledged that "state courts are 'entirely free to read their own State's constitution more broadly than the [United States] Supreme Court reads the United States Constitution, or to reject the mode of analysis used by the Supreme Court in favor of a different analysis of its corresponding constitutional guarantee.'" *Id.* at 89a, ¶139 (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 293 (1982)) (alterations omitted). And it also recognized longstanding Montana Supreme Court caselaw holding that "[s]tates are free to grant citizens greater protections based on state constitutional provisions than the United States Supreme Court divines from the United States Constitution." Pet. App. 90a, ¶139 (quoting *State v. Hardaway*, 36 P.3d 900, 909 (Mont. 2001)). Indeed, the dissent agreed that "we clearly are not" "bound by" the *Anderson-Burdick* framework in assessing the claims in this case. Pet. App. 102a, ¶145.

Ultimately, the dissent suggested strict scrutiny applies if a challenged law "substantially interferes 'with the exercise of a fundamental right,'" Pet. App. 112a, ¶149 (quoting *Wadsworth*, 911 P.2d at 1174)—almost the precise statement of law the majority

used when it applied Montana's longstanding "state-constitution-driven analytical framework" for constitutional enforcement. The dissent instead principally disagreed with the lower court's findings of fact regarding the laws' interference with the right to vote. Pet. App. 113a-22a, ¶¶150-59. The dissent acknowledged, however, "that the State failed to present any contrary evidence, and does not dispute on appeal the factual evidence presented by the Plaintiffs below." *Id.* at 116a-17a, ¶155; *see also id.* at 122a, ¶160.

Petitioner filed for certiorari on August 26, 2024, 152 days after the Montana Supreme Court issued its opinion on March 27, 2024.

REASONS FOR DENYING THE WRIT

I. THE PETITION IS UNTIMELY

At the outset, this Court lacks jurisdiction because Petitioner filed too late. Even if the opinion below "implicate[d] . . . important and unsettled issue[s]" that warranted this Court's attention (which it does not), "this case does not present an opportunity to resolve" them. *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 577 U.S. 1179, 1179 (2016) (Thomas, J., concurring in the denial of certiorari). Because "threshold questions about the timeliness of the petition for certiorari . . . might"—indeed, will—"preclude [the Court] from reaching the [merits] question[s]," the Court must deny the petition. *Id.*

By statute, Congress has provided that a writ of certiorari in state civil cases such as this one must

be "applied for within ninety days after the entry of [the lower court's] judgment." 28 U.S.C. § 2101(c). A justice of this Court, "for good cause shown," can "extend the time for applying for a writ of certiorari," but only "for a period not exceeding sixty days." *Id*. Absent a petition for rehearing, this period begins to run "[w]hen the case is decided," *Mkt. St. Ry. Co. v. R.R. Comm'n of Cal.*, 324 U.S. 548, 551-52 (1945), meaning on "the date of entry of the judgment or order sought to be reviewed," Sup. Ct. R. 13.3. The upshot is that even when the Court grants an extension, petitions to review state civil judgments must be filed no later than 150 days after the lower court enters judgment.

This 150-day statutory limit cannot be overridden or overlooked. Rather, as this Court has "repeatedly" recognized, *Bowles v. Russell*, 551 U.S. 205, 212 (2007), it is "mandatory and jurisdictional," *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990); *see also, e.g.*, Sup. Ct. R. 13.2 (directing the Clerk of the Court not to file out-of-time petitions); Stephen M. Shapiro et al., Supreme Court Practice ch. 6, § 6.1.(d). (11th ed. 2019) ("No exceptions or waivers are recognized[,] . . . no matter how extenuating the circumstances"). The Court has given no quarter from the statutory deadline, even in the direst circumstance; in one instance, this Court appears to have let an execution go forward "without any Member of th[e] Court" having seen the petitioner's untimely petition. *Bowles*, 551 U.S. at 212 n.4.

Congress's jurisdictional limit, already clear on its face, is even more so in light of the adjacent subsection, 28 U.S.C. § 2101(d), which specifies the

petition process for state *criminal* matters. Unlike Section 2101(c), Section 2101(d) permits the Court to set the certiorari deadline as it sees fit. *See* 28 U.S.C. § 2101(d) ("The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case" will be "as prescribed by the rules of the Supreme Court."). This neighboring subsection shows that Congress knows how to give this Court discretion on limitations periods for petitions and appeals when it wishes. But Congress conspicuously declined to extend the same discretion for state civil cases like this one; 150 days is the firm outer boundary.

Here, Petitioner filed her petition two days outside of the 150-day statutory window. As she acknowledges, "[t]he Montana Supreme Court entered judgment on March 27, 2024," and Petitioner did not seek rehearing. Pet. 2; *see* Pet. App. 1a. Justice Kagan subsequently granted Petitioner an extension to file her petition for a writ of certiorari by August 24, 2024, 150 days after March 27, 2024. Pet. 2. Yet Petitioner did not file with this Court until August *26*, 2024, 152 days after the Montana Supreme Court entered judgment. *See id.*; Docket, *Jacobsen v. Democratic Party, et al.*, No. 24-220 (U.S. Aug. 28, 2024), *available at* https://perma.cc/TG9D-G78M. That deprived this Court of jurisdiction.

It is irrelevant that the 150-day deadline fell on a Saturday. Because the certiorari deadline for this category of cases is jurisdictional, the Court has "no authority to extend the period for filing except as Congress permits." *Jenkins*, 495 U.S. at 45. And

Congress, for its part, has provided that extensions must "not exceed[]" 60 days beyond the initial 90-day deadline, 28 U.S.C. § 2101(c), a requirement whose plain text makes no allowances for weekends or holidays, *United States v. Tinklenberg*, 563 U.S. 647, 662 (2011) (statutory periods beyond 7 days include weekends and holidays). Thus, the maximum total time Congress has allowed parties to petition for certiorari in a state civil case is 150 days after the relevant state court judgment, even when that deadline falls on a Saturday or some other non-business day.

Union National Bank of Wichita v. Lamb, 337 U.S. 38 (1949), is materially distinguishable and does not hold otherwise. *Lamb* held that a petition filed 91 days after a lower court's judgment was timely because the default 90-day deadline fell on a Sunday. 337 U.S. at 40. That was so, this Court concluded, because Federal Rule of Civil Procedure 6(a) automatically extended all Sunday court deadlines to the next business day. *See id.*

But the petitioner in *Lamb* still filed well within the maximum allowable statutory period. When *Lamb* was decided, just as is the case now, Congress permitted this Court to entertain petitions up to 60 days beyond the initial 90-day deadline. *See* 28 U.S.C. § 2101(c) (1948). That case therefore did not address the problem posed here: whether this Court has the authority to entertain petitions filed *outside* the statutory period for review. In fact, *Lamb* expressly cabined its holding to a context where "no contrary policy" is "expressed in the statute governing this [Court's] review." 337 U.S. at 41.

Because the one-day extension in that case fell within the 60-day maximum extension period, no "contrary" statutory command stood in the way of accepting the petition as timely. *Lamb* thus does not suggest this Court can entertain petitions once the 150-day maximum allowable period to petition has elapsed—and the relevant statutory text makes plain it cannot.[2]

In short, because this Court already granted Petitioner the maximum permissible extension time, she was required by statute to file any petition within 150 days of the Montana Supreme Court's decision. When she did not do so, the opinion below became "final and unreviewable." *Salazar v. Buono*, 559 U.S. 700, 711 (2010) (plurality op.).

II. THIS FACTBOUND APPLICATION OF STATE CONSTITUTIONAL LAW TO STATE STATUTES DOES NOT WARRANT REVIEW BY THIS FEDERAL COURT

Even if the Court could exert jurisdiction—and it cannot—this case would not warrant review. In Petitioner's own telling, nothing turns on which standard this Court adopts to determine when state court election law decisions transgress the bounds of ordinary judicial review: The possible options are "essentially the same." Pet. 13. (She leaves readers

[2] In the decades since *Lamb*, this Court has continued to treat the limits set forth in Section 2101(c) as firm jurisdictional deadlines. *See, e.g.*, *Jenkins*, 495 U.S. at 45 (deadline is "mandatory and jurisdictional"); *F.E.C. v. NRA Pol. Victory Fund*, 513 U.S. 88, 99 (1994) (same); *Bowles*, 551 U.S. at 212 (same).

guessing as to how to square this with her characterization of the question presented as "exceptionally important." Pet. 22.).

Setting aside the futility of taking up a question that Petitioner admits will make no difference in the outcome, this case does not warrant this Court's attention because Petitioner seeks review of a factbound ruling that applies decades-old Montana precedent subjecting legislative enactments to various tiers of ends-means testing—a workaday, core judicial function. If the Montana Supreme Court's detailed, thorough application of heightened judicial scrutiny here somehow "transgress[es] the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, then this Court—and, for that matter, virtually all other state and federal courts—have routinely been transgressing the bounds of ordinary judicial review for the better part of a century.

A. Petitioner Admits that the Question She Presents Has No Practical Consequence.

Petitioner posits several possible standards for identifying when state court opinions transgress the bounds of ordinary judicial review and urges this Court to grant certiorari in order to pick one. *See* Pet. 12-13. Yet she goes on to admit that each of these putatively competing formulations actually "convey[s] essentially the same point." Pet. 13.

Petitioner thus echoes Justice Kavanaugh's concurring opinion in *Moore*, which noted the "similarities" among the various tests proposed over

the years to answer this putative question presented. 600 U.S. at 39 n.1 (Kavanaugh, J., concurring). Given those similarities, he expressed "doubt" that whatever "precise formulation" the Court adopts will make a "material difference" in any case, much less serve as a "decisive factor." *Id.*

Review is not warranted where answering the question presented will—as Petitioner herself admits—make no difference in the outcome. *Cf. Texas v. Hopwood*, 518 U.S. 1033 (1996) (statement of Ginsburg, J., respecting the denial of certiorari) (Court grants certiorari to review actual outcomes, not "the *rationale*" leading to that result).

B. The Montana Supreme Court Acted Within the Core of Its Judicial Role.

Discarding Petitioner's insistence that this Court must grant review to pick a standard she does not believe matters, we are left with her assertion that this particular state court opinion on the interplay of state statutory and constitutional law was so wrongheaded as to invite this Court to take the extraordinary step of reversing a state supreme court on an issue of state constitutional law. Wherever the ordinary bounds of judicial review may lie, she insists, this case falls outside them.

Not so. The opinion below was a thorough, fact-intensive application of a methodological framework the Montana Supreme Court has used for decades to interpret its own constitution. It was an entirely ordinary exercise of judicial power.

Moore contemplates that this Court might invalidate state court interpretations of state law on federal Elections Clause grounds only under rare circumstances: where a state court has so "transgress[ed] the ordinary bounds of judicial review" as to have "arrogat[ed] to themselves the power vested in state legislatures to regulate federal elections," 600 U.S. at 35-36.

That path is narrow, and for good reason. This Court has "repeatedly" held that "state courts are the ultimate expositors of state law," and that it is "bound by their constructions except in extreme circumstances." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975). It is particularly "fundamental" that "state courts be left free and unfettered by [this Court] in interpreting their state constitutions." *Florida v. Powell*, 559 U.S. 50, 56 (2010) (citation omitted). *Moore* did not alter those foundational assumptions about state courts' power and purview. Rather, it recognized the "general rule of accepting state court interpretations of state law." *Moore*, 600 U.S. at 35. And it acknowledged state courts' particular prerogative to invalidate state statutes on state constitutional bases, a practice that predates the Constitution itself. *Id.* at 21; *see also id.* at 35.

Here, the Montana Supreme Court's decision plainly satisfies *Moore*'s deferential test for federal court supervision of state law elections decisions, under whatever formulation of the "essentially the same" standards Petitioner advances. Pet. 13. In the opinion below, the Montana Supreme Court conducted a factbound weighing of the burdens caused by HB176 and HB530 against the interests

proffered by the state. This was a routine exercise of the court's supervisory appellate authority and its undisputed power to vet legislative enactments for conformity with the state constitution. It does not warrant this Court's review under *Moore* or any other theory.

As relevant here, the Montana Supreme Court grounded its analysis in Article II, Section 13 of the Montana Constitution, the right-to-vote provision of that document's enumerated Declaration of Rights. Its text, which contains no direct twin in the Federal Constitution, supplies a specific individual fundamental right to vote in free and open elections: "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Mont. Const. art. II, § 13.

Looking to the right-to-vote provision's "plain language" and its "history," as well as the court's own precedent, Pet. App. 11a-21a, the Montana Supreme Court recognized it as a fundamental right that affords "greater protection" than any analogous federal constitutional right to vote, Pet. App. 11a. This was consistent with the court's decades-long recognition that Montana's Declaration of Rights "stand[s] on its own footing," supplying "protections far broader than those available through the federal system." Pet. App. 10a (quoting *Buhmann v. State*, 201 P.3d 70, 108-09 (Mont. 2008) (Nelson, J., dissenting)).

Because the right-to-vote provision enshrines a fundamental right, the Montana Supreme Court

next deployed a "state-constitution-driven analytical framework" that has been in use for at least three decades to assess whether legislative enactments impermissibly infringe on liberties guaranteed within the Montana Constitution. Pet. App. 23a-24a, ¶¶33-34; *see, e.g.*, *Wadsworth*, 911 P.2d at 1173-74 (articulating this framework); *Arneson v. State By & Through Dep't of Admin., Teachers' Retirement Div.*, 864 P.2d 1245, 1247 (Mont. 1993) (similar). This "state-constitution-driven analytical framework" tasks courts with addressing two questions: (1) whether a law imposes an "impermissibl[e]" burden on a fundamental right, and (2) if so, whether the state can satisfy Montana's version of strict scrutiny. *Wadsworth*, 911 P.2d at 1174.

Applying that framework to HB176, the Montana Supreme Court looked to "undeniable" evidence that eliminating EDR would result in significant disenfranchisement, with no "evidence to the contrary" anywhere in the trial record. Pet. App. 45a. On this basis, it held that HB176 imposed an impermissible burden that triggered strict scrutiny. As to the state's purported interests, the trial record was wholly devoid of evidence that HB176 advanced the two asserted justifications. To the contrary, Petitioner made an "admission" that "election day registration was an improvement in Montana's election processes." *Id.* at 49a. Because the state's proffered interests were unsupported by the evidence, the Montana Supreme Court held that HB176 failed to satisfy strict scrutiny.

The Montana Supreme Court applied the same "state-constitution-driven analytical framework" to

analyze HB530, the statute prohibiting paid ballot collection. Pet. App. 23a, ¶33. The Montana Supreme Court looked to "the extensive record" developed at trial, including "statistical analysis" and "unrebutted testimony." *Id.* at 54a, ¶93; *id.* at 56a, ¶98. Based on that evidence, it concluded the law amounted to an impermissible interference with the right to vote, triggering strict scrutiny. *Id.* at 58a, ¶101. But at trial, Petitioner "failed to introduce any evidence" that the law would advance her proffered justification of combatting fraud, *id.*; indeed, she introduced no evidence of fraud related to ballot collection in Montana whatsoever. The law therefore did not survive strict scrutiny. *Id.* at 60a, ¶106.

These holdings were unremarkable. They drew on decades of precedent and looked to standard tools of constitutional interpretation—text, history, and context. They then carefully examined the trial record and faithfully applied Montana's well-established framework for judicially enforcing Montanans' fundamental rights through tiered scrutiny. If applying means-ends testing to rights-infringing legislation somehow transgresses the bounds of ordinary judicial review, then the line of dissatisfied state court parties banging down this Court's door for relief will be long indeed.

C. Petitioner's Objections to This Ordinary Exercise of Review Are Groundless.

Seeking to make the Montana Supreme Court's opinion look like something other than a workaday

application of Montana's "state-constitution-driven analytical framework" for protecting fundamental rights, Petitioner raises two core objections to the opinion below. Neither establishes that this was anything other than a regular exercise of Montana's judicial power, much less a deviation from standard practice so striking as to justify certiorari.

Petitioner's first objection applies only to HB176. In addition to Article II's right-to-vote protection, Article IV of the Montana Constitution grants the legislature discretion to institute EDR in the first instance. The relevant text states "[t]he legislature . . . may provide for a system of poll booth registration." Mont. Const. art. IV, § 3. In Petitioner's telling, when the Montana Supreme Court invalidated the legislature's efforts to end EDR on right-to-vote grounds, it effectively turned this "may" into a "must"—holding that despite the state constitution's "permissive language," EDR is now "in fact, mandatory." Pet. 20.

The Montana Supreme Court did no such thing. It expressly acknowledged the "permissive language" of Article IV, Section 3. Pet. App. 40a, ¶67. And, on the basis of that constitutional text, it recognized EDR was not "forevermore baked into" Montana's Constitution. *Id.* at 42a, ¶68. That is, it did not hold that the Montana Constitution requires EDR, but rather that its repeal through HB176—at this specific time, on the basis of this specific factual record—failed to pass constitutional muster. *Id.*

In this way, the Montana Supreme Court's *actual* holding with respect to Article IV, Section 3

was much more modest and was rooted firmly in text. On appeal, Petitioner had argued that, by granting the legislature discretion to enact EDR in the first instance, Article IV, Section 3 somehow also gave the legislature "unfettered authority to terminate it" at any moment, no matter the factual record. Pet. App. 40a, ¶67. In other words, she read Article IV, Section 3 to mean that state courts lack any power to determine whether EDR-related statutes conflict with other provisions of the Montana Constitution, including the right-to-vote protection at issue here.

The Montana Supreme Court rejected Petitioner's interpretation, which had no basis in the text of Article IV, Section 3 itself. Instead, as is the case for virtually all other Montana state statutes, it held that EDR-related statutes remain subject to Montana's well-worn judicial framework for defending fundamental rights from legislative incursion. While the state constitution grants the legislature discretion to stand up a system of EDR, it does not follow that the "decision to eliminate it is not subject to judicial scrutiny." Pet. App. 42a, ¶68.

This holding was hardly transgressive. The Montana Supreme Court essentially declined to read one constitutional provision so broadly as to exempt the legislature from the standard operation of "judicial scrutiny" to enforce the "constitutional constraints" on its powers. Pet. App. 40a, ¶67; *id.* at 42a, ¶68; *see also generally Larson*, 434 P.3d at 253 (Montana legislature must exercise discretion "within constitutional limits"). That is exactly parallel to this Court's reading of the federal

Elections Clause in *Moore*. *See Moore*, 600 U.S. at 22 ("The Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review."). In fact, constitutionally enshrined fundamental rights limit constitutional grants of legislative power in most other areas of federal law, too. *Cf., e.g.*, *New York v. United States*, 505 U.S. 144, 156 (1992) ("Congress exercises its conferred powers subject to the limitations contained in the Constitution.").

Second, Petitioner points to the open-textured nature of the Montana Constitution's right to vote, Article II, Section 13, which she derides as too "vague" to be the basis for judicial review. Pet. 21. Although her brief is light on details, the crux of this argument appears to be that Montana's right to vote ought to be treated differently than other fundamental rights enshrined in the Montana Constitution's Declaration of Rights, the rest of which are enforced through Montana's well-worn scheme of tiered judicial scrutiny.

As a matter of pure Montana law, any suggestion that Montana's right-to-vote provision should be singled out for less judicial enforcement is obviously wrong. In fact, Petitioner herself did not even attempt that argument below. Instead, she acknowledged that Montana law provides a settled, decades-old framework for judicial assessment of whether state statutes comply with fundamental rights, including the right-to-vote provision at issue here. *See* Pet. App. 386a (citing *Wadsworth*, 911 P.2d at 1173-74); *see also* Pet. App. 385a (recognizing the standard the court applied here "is well-established"

for "constitutional challenges to statutes"). She even specifically requested that the Montana Supreme Court apply this standard to Respondents' right-to-vote claims, *id.*, which it did.[3]

Now, Petitioner implies the judicial test she requested below was actually illegitimate because the right-to-vote provision is "vague." But she points to no authority or evidence—from text, history, or otherwise—that as a matter of state constitutional interpretation the Montana Constitution's right to vote is not subject to enforcement through the same scheme of heightened judicial scrutiny as the rest of the state constitution's Declaration of Rights. *Cf. Mont. Democratic Party*, 518 P.3d at 65 ("As a right included in the Montana Constitution's Article II Declaration of Rights, the right to vote is fundamental."); *see also Willems v. State*, 325 P.3d 1204, 1210 (Mont. 2014) (similar). Montana law provides no principled basis on which to distinguish the right to vote from the other enumerated rights in the Declaration of Rights, a set of broad-based guarantees expressly drafted to "meet the changing circumstances of contemporary life." Mont. Const. Convention, Bill of Rights Comm. Proposal, Vol. II, at 618 (1972), https://perma.cc/5MHE-SCAQ. If the right to vote is too "vague" for judicial review, then many of Montanans' other cherished liberties are too. Pet. 21.

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[3] In her briefing to the Montana Supreme Court, Petitioner took various positions on the correct standard. But she ultimately agreed that the "well-established" Montana Supreme Court standard should apply, Pet. App. 385a-86a, while also arguing that it closely tracked the federal *Anderson-Burdick* framework.

Petitioner's only other option would be that *federal* law supplies some basis under which the right to vote is too "vague" to be enforced through Montana's standard framework of tiered judicial review. *Id.* This is just the argument this Court already rejected in *Moore*. *Moore* expressly disclaimed that the Elections Clause somehow overrides the standard process of state judicial review, a process that includes reviewing legislation for conformity with state constitutional protections. And it is well-established that this ordinary process of state judicial review will often include reviewing broad constitutional provisions against more specific statutes. *See McCulloch v. Maryland*, 17 U.S. (1 Wheat.) 316, 407 (1819) (constitutions do not have "the prolixity of a legal code"). Applying open-textured constitutional provisions to statutory enactments is standard fare for both state and federal courts, *see Marbury v. Madison*, 5 U.S. (1 Cranch.) 137, 177-78 (1803), including in the federal right to vote context, *see Burdick v. Takushi*, 504 U.S. 428, 432-34 (1992); *see also* U.S. Const. amends. I, XIV. To hold otherwise would effectively overrule *Moore*, which even Petitioner does not suggest doing here.

Petitioner's other critiques of the Montana Supreme Court's opinion are a mix of distortion and grievance. For example, Petitioner describes the majority as having "rejected the federal *Anderson-Burdick* framework." Pet. 6. Yet the court did not abruptly make this decision; it has not applied the *Anderson-Burdick* framework in its more than 30 years of deciding constitutional right-to-vote claims since federal courts adopted that standard. *See, e.g.*,

Finke, 65 P.3d at 580; *Johnson v. Killingsworth*, 894 P.2d 272, 273-74 (Mont. 1995). In any event, Petitioner does not even actually argue in favor of that standard—which just supplies another method of means-ends scrutiny—let alone suggest the outcome would be any different if it were applied here instead.

Petitioner likewise makes much about the fact that there were "[t]wo dissenting members" on the Montana Supreme Court, such that the decision was 5-to-2. Pet. 23. But dissent is not just well within the ordinary bounds of judicial review; the free and frank exchange of competing views has become a hallmark of modern American judicial practice. *See generally* Antonin Scalia, *Dissents*, 13 OAH Mag. Hist. 18 (1998).

Ultimately, Petitioner's critique boils down to disagreement with the court's resolution of a threshold justiciability question that applies only to one of the four statutes in this litigation and a brand-new complaint that the Montana Constitution's right to vote is "vague." Pet. 21. But Petitioner's desire for a do-over—or perhaps just a new state constitution—does not somehow mean this opinion transgressed the bounds of ordinary judicial review. The court's decision in this case was an unremarkable exercise of judicial review based on well-established state law.

III. OTHER CONSIDERATIONS COUNSEL AGAINST GRANTING THIS PETITION

Additional considerations weigh further against granting certiorari. The state law opinion here is cabined to the Montana context, minimizing any importance nationally. Further, granting review would raise significant interpretive and practical problems, underscoring why this Court should "hesitate long" before wading into state law questions so soon after its decision in *Moore*, 600 U.S. at 65 (Thomas, J., dissenting). Finally, this case is a poor vehicle, because even a complete reversal of the Montana Supreme Court's decision would not revive HB176 or HB530.

A. This Case Does Not Implicate Voting Practices Elsewhere.

Contrary to Petitioner's speculation, Pet. 24, the decision below does not implicate issues that will continue to arise. The interpretive questions here are tied up in case-specific considerations twice over: first, because they applied principles of constitutional interpretation specific to Montana and its state constitution, and second, because they did so to an extensive trial record evaluating how particular Montana statutes impact Montana voters.

Petitioner's assertion that the issues in this case will continue to arise would be true only if other state constitutions contained identical text and had identical histories and interpretive methods. But state constitutions are not carbon copies of one

another—they mean different things, even when they contain "same or similar words." Jeffrey S. Sutton, *What Does–and Does Not–Ail State Constitutional Law*, 59 U. Kan. L. Rev. 687, 707 (2011); s*ee also, e.g.*, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015) (Court has "long recognized the role of the States as laboratories for devising solutions to difficult legal problems.") (internal citations omitted).

Of course, other states may have similar constitutional voting protections, and they may encounter similar questions of how to reconcile election laws with those superseding constitutional guarantees. But other states will address those questions in their own manner according to their own precedents, their own constitutional and statutory texts, and their own distinctive contexts. The rulings of the Montana Supreme Court have force only in Montana, and Petitioner thus presents no reason to believe that the Montana-specific issues addressed below will recur elsewhere.

B. *Moore* Was Just Decided.

This petition also comes less than two years after the Court's decision in *Moore.* Not enough time has elapsed since then for courts to have fully metabolized that decision. Tellingly, Petitioner does not cite *any* other case applying the *Moore* framework to date.

Haste is anathema to developing a body of law with multifarious and unpredictable federalism

implications. As two Justices cautioned in *Moore* itself, the prospect of asking federal courts to routinely answer what constitutes the bounds of ordinary judicial review threatens to "invest[] potentially large swaths of state constitutional law" with federal issues, upsetting settled understandings about each sovereign's proper sphere. *Moore*, 600 U.S. at 65 (Thomas, J., dissenting). What's more, many of the questions posed by state election law cases in the immediate aftermath of *Moore* may prove "not amenable to meaningful or principled adjudication by federal courts." *Id.* And even if this Court's review of state court decisions for conformity with the Elections Clause winds up being "forgiving . . . in practice," intemperate pursuit of that enterprise would still threaten to "swell federal-court dockets with state-constitutional questions." *Id.* In light of those concerns, the *Moore* dissenters urged the Court to "hesitate long" before "committing the Federal Judiciary to this uncertain path." *Id.*

This case drives home the many reasons to exercise caution before this Court dives headfirst into the business of invalidating state court opinions addressing state law questions. There are, for starters, the difficult jurisprudential questions the *Moore* dissenters highlighted: how to address mismatched state and federal justiciability standards; the range of permissible modes of constitutional interpretation; and the role of stare decisis in determining what transgresses the bounds of ordinary judicial review. *See Moore*, 600 U.S. at 64-65 (Thomas, J., dissenting). Much about this case would push those questions to the fore. For example,

the Montana state constitution was adopted to "meet the changing circumstances of contemporary life," Mont. Const. Convention at 618, raising questions about the appropriate method of constitutional interpretation. And the state court's allegedly transgressive holding here merely applied decades-old state precedents, injecting serious stare decisis considerations into the mix.

Practical considerations point in the same direction. Here, a ruling that the Montana Supreme Court's decision violates the Elections Clause would apply only to federal elections; the Elections Clause does not apply to how states conduct their own elections. Does this mean reversing on Elections Clause grounds would permit Montanans to register on Election Day for state and local elections but not for federal elections? To have only the Montana-specific portions of their ballots delivered to elections officials by paid collectors? The prospect of different voting rules for state and federal elections here threatens an election administration nightmare, especially when federal and state elections take place on the same day—as they so often do. These are precisely the sort of thorny administrative and legal issues that counsel for caution in the wake of *Moore* and further cut against granting review now.

C. This Case Is a Poor Vehicle.

Even if this Court wanted to address questions *Moore* evidently left unanswered, this case is a poor vehicle to do so. The reversal Petitioner seeks will not actually modify the parties' legal obligations.

Although Petitioner omits this from her petition, the district court actually held that HB176 and HB530 violated multiple provisions of the Montana Constitution—not just the right to vote. The Montana Supreme Court, however, reviewed only the right-to-vote holding. Because it concluded that the right to vote supplied sufficient basis for affirmance, it explicitly declined to "evaluate" or even "discuss" the other constitutional violations underpinning the trial court's permanent injunction. Pet. App. 51a, ¶85; *id.* at 60a ¶106. Thus, even a complete victory for Petitioner before this Court would not nullify all grounds on which the trial court's decision rests. Absent further appeals in state court, both permanent injunctions will remain in place and Petitioner will remain unable to enforce HB176 and HB530.

* * *

As *Moore* made clear, and especially in light of the general rule that state supreme courts are the ultimate interpreters of state law, "[t]he Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review." *Moore*, 600 U.S. at 22. That's precisely what the Montana Supreme Court did here. Its workaday application of state constitutional law to state elections statutes was an ordinary exercise of state judicial review, and nothing about it merits this Court's review.

CONCLUSION

For the foregoing reasons, this Court should deny review.

Respectfully submitted,

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