No. 24-2811

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MONTANA PUBLIC INTEREST RESEARCH GROUP and MONTANA FEDERATION OF PUBLIC EMPLOYEES, *et al.*,

Plaintiff-Appellees,

v.

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

Defendants-Appellants,

REPUBLICAN NATIONAL COMMITTEE and MONTANA REPUBLICAN PARTY,

Intervenor-Defendants-Appellants

On Appeal from the United States District Court
for the District of Montana
Case No. 6:23-cv-00070
Hon. Brian Morris

EMERGENCY JOINT MOTION UNDER CIRCUIT RULE 27-3 FOR A STAY PENDING APPEAL

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May 16, 2024

Circuit Rule 27-3 Certificate

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(2) Facts showing the existence and nature of the emergency

As set forth more fully below, on April 24, 2024, the district court entered a preliminary injunction which enjoined HB 892, codified at Mont. Code Ann. §13-35-210, which prohibits "a person or elector" from "purposefully remain[ing] registered to vote in more than one place in this state or another state any time, unless related to involvement in special district elections." The district court further enjoined HB 892's requirement that "[a] person or elector previously registered to vote in another county

or another state shall provide the previous registration information" on their voter registration application. *Id.*

The regular registration deadline for Montana's primary elections was May 6, 2024. Mont. Code. Ann. § 13-2-301. The primary election will be held on June 4, 2024. Pursuant to Mont. Code. Ann. § 13-2-304 and a recent decision from the Montana Supreme Court, voters can late register and vote up to and including election day. *See Mont. Democratic Party v. Jacobsen*, 545 P.3d 1074 (Mont. 2024). By enjoining a voter registration law in the midst of ongoing registrations and on the "eve of an election," the district court injected uncertainty into Montana's elections. *Purcell v. Gonzales*, 549 U.S. 1 (2006). Because the district court's decision irreparably increases the risk of voter confusion, the Applicants respectfully request this Court stay the injunction.

(3) Why the motion could not have been filed earlier

Pursuant to Federal Rule of Appellate Procedure 8(a)(1)(A), Appellants were first required to move for a stay of the order pending appeal in the district court. Appellants did so on May 1, 2024, seeking expedited consideration. On May 13, 2024, Appellants separately moved for expedited consideration, again noting the looming election deadlines and asking for a decision by May 16, 2024, the day after Appellees' response was due. The district court denied the motion to stay on May 16, 2024.

(4) When and how counsel was notified

Counsel for Appellees were notified of this motion via email on May 16, 2024, and counsel indicated that Appellees would oppose this motion. This motion is being

electronically filed, and in addition a copy of this motion is being sent via electronic mail today to counsel for Appellees.

(5) Submission to the District Court

Appellants requested a stay pending appeal from the district court in a motion filed on May 1, 2024. That motion was based on the same grounds set forth in this motion. Appellants waived their reply and requested an expedited ruling by May 16, 2024. The district court denied the motion on May 16, 2024. (Exhibit A).

/s/ Christian B. Corrigan
Christian B. Corrigan

INTRODUCTION AND SUMMARY OF ARGUMENT

Montana's Constitution vests nearly all legislative power in the legislature,[1] Mont. Const. art. V, §1, and gives the legislature the authority to "provide by law the requirements for residence, registration, absentee voting, and administration of elections," Mont. Const. art. IV, §3. Pursuant to this authority, the 2023 Montana Legislature passed HB 892, which is codified at Mont. Code Ann. §13-35-210 and states in relevant part:

> A person or elector may not purposefully remain registered to vote in more than one place in this state or another state any time, unless related to involvement in special district elections. A person or elector previously registered to vote in another county or another state shall provide the previous registration information on the Montana voter registration application provided for in 13-2-110.

This provision codifies Montana's longstanding practice of requiring voter registration applicants to provide previous voter registration information. Doc. 30, at 2. Both the Montana and federal voter registration forms already require applicants to provide this information. *See* Docs. 30-4; 30-5; 30-6; 30-14; *National Mail Voter Registration Form*, U.S. Election Assistance Comm'n (last updated Jan. 22, 2024), perma.cc/554D-KLXE. No party disputes that the Montana voter registration form remained the same after the passage of HB 892.

[1] The people retain some legislative power pursuant to the ballot initiative and referenda process. *See* Mont. Const. art. III, §§ 4-5.

Over four months after HB 892 went into effect, Plaintiffs challenged HB 892 as facially unconstitutional. Six weeks later, and days after the 2023 municipal elections in Montana, Plaintiffs moved for preliminary injunctive relief on the grounds that HB 892 is vague and overbroad. After briefing and a hearing in which the parties presented argument, the district court enjoined HB 892 on April 24, 2024, concluding that Plaintiffs raised substantial questions on the merits of their overbreadth claim and met the remaining three preliminary injunction factors.

The regular registration deadline for Montana's primary elections was May 6, 2024. Mont. Code. Ann. § 13-2-301. The primary election will be held on June 4, 2024. Pursuant to Mont. Code. Ann. § 13-2-304 and a recent decision from the Montana Supreme Court, voters can late register and vote up to and including election day. *See Mont. Democratic Party v. Jacobsen*, 545 P.3d 1074 (Mont. 2024).

Defendants Christi Jacobsen, Austin Knudsen, and Chris Gallus, along with Defendant-Intervenors, the Republic National Committee and the Montana Republican Party (collectively, "Applicants"), jointly moved to stay the injunction in district court, which the court denied on May 16, 2024. The Applicants now file this Emergency Motion Under Circuit Rule 27-3 for a Stay Pending Appeal. The Applicants agree that a stay is warranted because the district court, by enjoining a voter registration law in the midst of ongoing registrations and on the "eve of an election," injected uncertainty into Montana's elections. *Purcell v. Gonzales*, 549 U.S. 1 (2006). Because the

district court's decision irreparably increases the risk of voter confusion, the Applicants respectfully request this Court stay the injunction.

LEGAL STANDARD

In considering a stay pending appeal application, "a court considers four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (internal quotation marks omitted). "The first two factors of the traditional standard are the most critical." *Id.*

I. APPLICANTS ARE LIKELY TO SUCCEED ON THE MERITS.

Applicants are likely to succeed on the merits of their appeal. First, the district court applied a more relaxed preliminary injunction standard than this Circuit permits. Second, the district court's overbreadth analysis sidesteps binding Supreme Court precedent in favor of dicta from a Seventh Circuit decision. And third, the district court disregarded important *Purcell* principles that foreclose district courts from enjoining elections laws on the eve of an election. Applicants will address each in turn.

A. The district court applied the wrong preliminary injunction standard.

While this Court reviews a district court's decision "to grant or deny a preliminary injunction for abuse of discretion," a "district court's interpretation of the underlying legal principles … is subject to de novo review." *Sw. Voter Reg. Educ. Project v. Shelley*,

344 F.3d 914, 918 (9th Cir. 2003) (en banc). Reversal is warranted when the "district court relied on an erroneous legal premise or abused its discretion." *Sports Form, Inc. v. United Press Int'l, Inc.*, 686 F.2d 750, 752 (9th Cir. 1982). Here, Applicants are likely to succeed in reversing the district court's decision because the district court analyzed Plaintiffs' request for preliminary injunctive relief under a lower standard.

After *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), this Circuit has continued to apply a "sliding scale" approach to preliminary injunctive relief. *All. for the Wild Rockies*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under the traditional four factors for preliminary relief, Plaintiffs bear the burden to show that they are likely to succeed on the merits. *Winter*, 555 U.S. at 20. The sliding scale approach, though, purports to recognize equitable principles whereby "a stronger showing of one element may offset a weaker showering of another." *Id.* That is, if a party makes "a stronger showing of irreparable harm," they may still be entitled to relief even if they make a "lesser showing of likelihood of success on the merits." *Id.* Following *Winter*, this Circuit reaffirmed the following standard: "A preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *All. for the Wild Rockies*, 632 F.3d at 1133 (quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc), *overruled in part on other grounds by Winter v. Nat. Res. Def. Council*, 555 U.S. 7 (2008)).

Here, the district court accepted that Plaintiffs merely raised "substantial questions" about whether the challenged law may "chill" protected speech without also

finding that the balance of the equities—or their showing of irreparable harm—tipped "decidedly" or "sharply" in their favor. Doc. 79, at 25. The district court only concluded that "the likelihood of irreparable harm tips in favor of Plaintiffs, "the balance of equities tips in favor of Plaintiffs," and the "public interest tips in favor of Plaintiffs." *Id.* at 29, 31, 33. Setting aside the question of whether Plaintiffs actually satisfied this minimum standard for each of these factors, none of these findings show that Plaintiffs made a "stronger showing" as required by this Circuit's sliding scale approach. *All. for the Wild Rockies*, 632 F.3d at 1133. The district court, therefore, was not justified in lowering the standard for evaluating Plaintiffs' merits arguments.

Beyond the district court's conclusions that the three other preliminary injunction factors only "tip[] in favor of Plaintiffs," the district court's explanation on each of these factors only highlights its error. With respect to the irreparable harm, the district court made contradictory findings; it found that HB 892 "likely *do[es] not* substantively change Montana voting registration procedure," Doc. 79, at 13 (emphasis in original), while at the same time finding that HB 892 forced Plaintiffs "to face a proverbial Hobson's choice" of complying with the law or risking criminal penalties, *id.* at 27. Even if the district court correctly concluded that Plaintiffs were likely to suffer irreparable harm, its conclusion that the challenged law did not "substantively change" any voting procedure cuts the opposite direction, thereby undermining any suggestion that Plaintiffs made a "stronger showing of irreparable harm" to justify a lesser merits inquiry. *All. for the Wild Rockies*, 632 F.3d at 1131.

Likewise, the district court's balancing of the equities and public interest analyses don't meet the traditional standard, let alone the "stronger showing" required by *Alliance for the Wild Rockies*. Although the district court acknowledged that HB 892 does not "substantively change Montana voting registration procedure," Doc. 79, at 13, the district court "agree[d]" that Plaintiffs "face substantial financial and organizational hardship related to having to conform their voter registration activities to HB 892's requirements," *id.* at 30. And while the district court emphasized the public interest in exercising the right to vote, *id.* at 32, the district court made no further findings beyond the minimum standard Plaintiffs must meet. Again, even assuming the district court correctly concluded the equities and public interest weigh in Plaintiffs' favor, neither conclusion justifies lowering the merits inquiry to something less than likelihood of success.

This Circuit's precedent makes clear the district court's preliminary injunction analysis was flawed. *All for the Wild Rockies*, 632 F.3d at 1133. Applicants are likely to succeed on appeal.

B. Plaintiffs failed to meet their burden under the Supreme Court's overbreadth analysis.

To succeed on an overbreadth challenge, a plaintiff must show that the law "prohibits a substantial amount of protected speech" relative to its "plainly legitimate sweep." *Williams*, 553 U.S. at 292. A court must consider whether the unconstitutional applications of the challenged law are "realistic, not fanciful" and whether they are

"substantially disproportionate to the statute's lawful sweep." *United States v. Hansen*, 599 U.S. 762, 770 (2023); *see also Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984) (noting a statute is not overbroad just because "one can conceive of some impermissible applications"). If the district court can reasonably "construe the Act as constitutional," it must do so. *United States v. Rundo*, 990 F.3d 709, 714 (9th Cir. 2021).

The standard for an overbreadth challenge is a demanding one. The Supreme Court has repeatedly cautioned that invalidating a statute on overbreadth is "strong medicine" that should be dispensed sparingly. *Hansen*, 599 U.S. at 770; *Williams*, 553 U.S. at 293; *L.A. Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. 32, 39 (1999); *New York v. Ferber*, 458 U.S. 747, 769 (1982). Simply "conceiv[ing] of some impermissible applications," *Taxpayers for Vincent*, 466 U.S. at 800, does not satisfy Plaintiffs' burden, nor does the burden flip to the State to prove that "the 'vast majority' of a statute's applications [are] legitimate," *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 476 n.8 (2007) (op. of Roberts, C.J.). This high bar exists because "invalidating a law that in some of its applications is perfectly constitutional—particularly a law directed at conduct so antisocial that it has been made criminal—has obvious harmful effects." *Williams*, 553 U.S. at 292. The court can always cure any overbreadth "through case-by-case analysis" in as-applied challenges brought later. *N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 14 (1988).

Turning first to HB 892's plainly legitimate sweep. In briefing below, Applicants explained that the multiple-registration prohibition and the prior registration disclosure requirement help ensure cleaner voter rolls, facilitate efficient election administration, and prevent duplicative voting by removing the ability of individuals to vote in multiple elections. Doc. 30, at 17-18; Doc. 39, at 10-11. And Plaintiffs' own documents confirm this. For example, Plaintiffs include information from National Conference of State Legislatures explaining that identifying voters that have moved "help[s] with identifying potential duplicate registrations and by extension, double voters." Doc. 13-14. Plaintiffs also included a study by Pew Center for the States that asserted "[n]otice of [multiple voter registrations] would help a state keep accurate rolls by verifying residence and eligibility" and that duplicate registrations in multiple states are a "major problem." Doc. 13-16. To combat "election fraud" and help states keep accurate voter rolls, states can adopt "prophylactic measure[s]." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2348 (2021). HB 892 is one such prophylactic measure—it identifies "duplicate registrations and by extension, double voters," Doc. 13-14. The district court's conclusion that the State "fail[ed] to draw a sufficient connection between maintaining multiple voter registrations and prohibiting double voting," Doc. 79, at 25, is incorrect as both a matter of law and fact. *See Brnovich*, 141 S. Ct. at 2348; *see also* Doc. 30, at 26; Doc. 39, at 10-11; Doc. 13-14; Doc. 13-16.

Next, the district court erred by relying on the dicta in *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019), to conclude that HB 892 covers a substantial

amount of protected speech. Doc. 79, at 23-25. *Common Cause*, however, reaffirms that a state can remove voters from its voter rolls so long as the *voter* provides information about prior registration directly to that state rather than a third party—exactly what HB 892 requires. 937 F.3d at 960. And because it is permissible to remove voters who are registered in more than one jurisdiction from voter rolls, Plaintiffs must provide something beyond "fanciful" hypotheticals. *Hansen*, 599 U.S. at 770. It's indisputable that the law has been in effect for over a year and municipalities successfully ran their 2023 elections pursuant to the law. Plaintiffs, moreover, still cannot point to a single person who has been prevented from registering to vote. In fact, since HB 892 was signed into law, over 25,000 Montanans have successfully registered to vote without incident. Doc. 59.Those facts significantly undermine Plaintiffs' claims of substantial impermissible applications. Doc. 39, at 21.

Common Cause, even if it were Ninth Circuit precedent, doesn't change this. First, Plaintiffs brought a claim under the National Voter Registration Act, not an overbreadth claim. *Common Cause*, 937 F.3d at 947. Second, noting that "millions of Americans go off to college in August" and "[s]ome drop out by November" isn't enough for Plaintiffs. Doc. 79, at 24. This fails to show that a substantial number of impermissible applications exist, let alone a substantial number relative to the plainly legitimate sweep of the law. Worse yet, the district court didn't even find that it was likely those *Common Cause* hypotheticals would manifest as a result of HB 892. Instead, the district court concluded only that those hypotheticals "*could* apply to HB 892." Doc.

79, at 24 (emphasis added). This falls short of Plaintiffs' burden to show that the law "prohibits a substantial amount of protected speech." *Williams*, 553 U.S. at 305.

Plaintiffs attempt to inject ambiguity into the statute by imagining specific hypotheticals, but courts can resolve these issues as they arise by using regular tools of statutory interpretation in as-applied challenges, *N.Y. State Club Ass'n*, 487 U.S. at 14, applying the rule of lenity, *United States v. Santos*, 553 U.S. 507, 514 (2008), and the canon of constitutional avoidance, *Edward J. De Bartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988). This isn't to say that in all overbreadth challenges the court should engage in a wait-and-see approach. But given the specific circumstances of *this* statute, as explained above, Plaintiffs' concerns will play out in only very limited situations, which are overshadowed by the "plainly legitimate sweep" of the statute. *Williams*, 553 U.S. at 292. The "strong medicine" of invalidating the entire statute, therefore, is unjustified here, and Applicants are likely to succeed on the merits on appeal.

C. *Purcell* applies and forecloses preliminary injunctive relief.

Finally, because of the proximity to the primary election, including the primary registration deadline on Monday, May 6, the district court's decision runs afoul *Purcell* principles. When district courts enjoined state election laws in 2020 and States moved for stays, virtually every one of those motions was granted. *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grants of applications for stays) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)); *New Ga. Project v. Raffensperger*, 976 F.3d

1278, 1283 n.2 (11th Cir. 2020). If the court of appeals didn't enter a stay, then the Supreme Court did; and if the court of appeals entered a stay, then the Supreme Court left it in place. *E.g.*, *RNC v. DNC*, 140 S. Ct. 1205 (2020); *Tex. Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020), *application to vacate denied*, 140 S. Ct. 2015 (June 26, 2020); *Thompson v. Dewine*, 959 F.3d 804 (6th Cir. 2020), *application to vacate denied*, 2020 WL 3456705 (U.S. June 25, 2020); *Merrill v. People First of Ala.*, 141 S. Ct. 190 (July 2, 2020); *Little v. Reclaim Idaho*, 140 S. Ct. 2616 (July 30, 2020); *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081 (9th Cir. 2020); *Clarno v. People Not Politicians Ore.*, 141 S. Ct. 206 (2020); *Merrill v. People First of Ala.*, 141 S. Ct. 25 (Oct. 21, 2020); *Andino v. Middleton*, 141 S. Ct. 9 (Oct. 5, 2020); *A. Philip Randolph Inst. of Ohio v. Larose*, 831 F. App'x 188, 189 (6th Cir. 2020); *Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564 (5th Cir. 2020); *Richardson v. Tex. Sec'y of State*, 978 F.3d 220 (5th Cir. 2020); *Priorities USA v. Nessel*, 978 F.3d 976, 978 (6th Cir. 2020); *Common Cause Ind. v. Lawson*, 978 F.3d 1036, 1039 (7th Cir. 2020); *Curling v. Sec'y of State of Ga.*, 2020 WL 6301847 (11th Cir. Oct. 24, 2020); *DNC v. Bostelmann*, 977 F.3d 639 (7th Cir. 2020), *application to vacate stay denied*, *DNC v. Wis. State Leg.*, 141 S. Ct. 28 (Oct. 26, 2020).

The district court first explained that this case falls squarely within the cases applying *Purcell*. Doc. 79, at 12. But the district court brushed away Defendant-Intervenors' concerns by concluding that HB 892 "likely *do*[*es*] *not* substantively change Montana voting registration procedure" and enjoining it "will not lead to voter

confusion." *Id.* at 13. Even "innocuous" injunctions, though, implicate *Purcell*. *Wis. State Legislature*, 141 S. Ct. at 31.

The risk of voter confusion resulting from the injunction here is significant. *First*, HB 892 introduced a prohibition on remaining registered to vote in more than one location. The district court's order injects confusion into whether registered voters may legally remain registered in other jurisdictions. *Second*, while Montana's voter registration form before and after enactment of HB 892 required applicants to disclose previous registration information, *see* Doc. 30-14, the district court's order introduces confusion as to whether the State may continue requiring this information and using its existing application form. Injecting fresh confusion shortly before an election into the voter registration process about whether the existing voter registration application and legal requirements are lawful squarely implicates *Purcell*. 549 U.S. at 4. *Third*, it's no answer to cite the district court's statement that HB 892 does not "substantively change Montana voting registration procedure." Doc. 79, at 13. That's because "[c]ourt orders affecting elections … can *themselves* result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5 (emphasis added). When voters see federal courts upend election laws enacted by their representatives, they naturally become less confident in the process and results of the election. That the state law didn't substantively change the registration process cuts against Plaintiffs' irreparable harm, not *Purcell*. The district court's dismissal of Defendant-Intervenors' *Purcell* arguments was in error.

II. APPLICANTS WILL BE IRREPARABLY INJURED ABSENT A STAY.

Applicants "will suffer irreparable harm" absent a stay. *Nken*, 556 U.S. at 426. Because Applicants are likely to succeed on appeal, this Court's decision will "'seriously and irreparably harm" Defendants and Intervenor-Defendants by preventing the State of Montana from "conducting this year's elections pursuant to a statute enacted by the Legislature," *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018), and "vindicating its sovereign interest," *Little*, 140 S. Ct. at 2617 (Roberts, C.J., concurring). And, as explained above, Applicants will also suffer the well-known problems that the *Purcell* principle tries to avoid. Even if Applicants ultimately succeed on appeal in the ordinary course, the harm caused in the meantime, including voter confusion and the loss of electoral confidence, cannot be undone. *See Sw. Voter Reg. Educ. Project*, 344 F.3d at 918 (Federal courts do not "lightly interfere with … a state election.").

III. THE BALANCE OF THE EQUITIES WEIGHS IN APPLICANTS' FAVOR.

Because Applicants include governmental actors, the last two factors—harm to others and the public interest—"merge." *Nken*, 556 U.S. at 435. When assessing these factors in an election case, the most important consideration is *Purcell*, which says "that lower federal courts should ordinarily not alter the election rules on the eve of an election." *RNC v. DNC*, 589 U.S. 423, 424 (2020) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). Even if the challenged provisions ultimately are declared unconstitutional, *Purcell* protects the election process by "allow[ing] the election to proceed without an injunction" while Applicants' appeal is pending. *Purcell*, 549 U.S. at

6; *accord Riley v. Kennedy*, 553 U.S. 406, 426 (2008). Accordingly, the equities weigh decidedly in Applicants' favor. *Leiva-Perez*, 640 F.3d at 964.

The balance of equities here decidedly favors a stay. Under *Purcell*, the balance favors a stay *even if* Plaintiffs were likely to succeed on appeal. *See Kilgarlin v. Hill*, 386 U.S. 120, 121 (1967); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). For the reasons stated above, Movants—not Plaintiffs—are likely to succeed on appeal. Even so, a stay is warranted given "the public's substantial interest in the stability of its electoral system in the final weeks leading to an election," let alone the final *days*. *Lair*, 697 F.3d at 1202. And a stay will not hurt Plaintiffs. Again, this Court concluded that "the multiple voter registration prohibition and prior registration disclosure requirement likely *do not* substantively change Montana voting registration procedure." Doc. 79, at 13. Meanwhile, the district court's order leaves open important questions about Montana's voter registration laws and voters' obligations under those laws. The equities weigh in favor of staying the injunction.

CONCLUSION

For the foregoing reasons, the Court should stay the district court's injunction pending appeal.

DATED this 16th day of May, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, Christian B. Corrigan, an employee in the Office of the Attorney General of the Montana, hereby certifies that according to the word count feature of the word processing program used to prepare this motion, this motion contains 3,625 words, excluding the parts of the document exempted by Rule 32(f), and complies with the typeface requirements and length limits of Rules 27(d)(2)(A) and 32(c), and Circuit Rule 27-3.

/s/ Christian B. Corrigan
Christian B. Corrigan

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing emergency stay motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit on May 16, 2024. I certify as well that on that date I caused a copy of this emergency stay motion to be served on the following counsel registered to receive electronic service. I also caused a copy to be served on counsel via electronic mail:

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