

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 22-0667

MONTANA DEMOCRATIC PARTY and MITCH BOHN, WESTERN NATIVE
VOICE et al., MONTANA YOUTH ACTION, et al.,

Plaintiffs and Appellees,

v.

CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,

Defendant and Appellant.

**APPELLANT'S NOTICE OF SUPPLEMENTAL
AUTHORITY**

On Appeal from the Montana Thirteenth Judicial District Yellowstone County
Cause No. DV-21-0451
Honorable Judge Michael G. Moses

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Appellant Montana Secretary of State Christi Jacobsen submits this notice of supplemental authority concerning the appropriate standard of review for Appellee's constitutional challenges to Montana election regulations. Mont. R. App. 12(6).

On October 2, 2023, the Idaho Fourth Judicial District Court granted summary judgment to the State, upholding restrictions on the use of student ID for voting identification. The court determined that rational basis review applies to time, place, or manner restrictions aimed at enhancing the integrity of an election. *Babe Vote v. McGrane*, No. CV01-23-04534 at 11-12, 16 (Ada Cnty., Idaho Oct. 2, 2023) (attached). The district court concluded that balancing Idaho's constitutional guarantee of suffrage with the provisions of Idaho's Constitution delegating the power to regulate elections to the Legislature required it to reject plaintiffs claim that the law was subject to strict scrutiny. *Id.* at 27.

This decision is pertinent for three reasons. First, it supports the Secretary's argument that blanket application of strict scrutiny to all election regulations is inappropriate and the statutes at issue are time, place, and manner regulations subject to rational basis review, not strict scrutiny. Appellant's Reply Brief at 7-13; *see also* Appellant's Opening Brief, 20-21. Second, both Idaho and Montana have similar constitutional provisions defining the right of suffrage and the legislature's

role in regulating elections. *Compare* Idaho Const., art. I, § 19 *with* Mont. Const. art. II, § 13; *compare* Idaho Const., art. VI, § 4 *with* Mont. Const. art. IV, §§ 2–3. Third, this decision contradicts Appellees’ argument that the Supreme Court of Idaho has approved applying strict scrutiny to all election regulations. *See Response Brief of Appellees Western Native Voice* at 20 (“Many states—including neighboring Idaho—have similarly applied strict scrutiny to laws that implicate the constitutional right to vote.”); *Response Brief of Appellees Montana Democratic Party* at 20 (“Several other state supreme courts have recognized as much and apply strict scrutiny to right-to-vote claims.” (citing *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 126, 15 P.3d 1129, 1134 (Idaho 2000))); *Cf.* Appellant’s Reply Brief, 11.

Respectfully submitted December 26, 2023.

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s/ Dale Schowengerdt
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CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 12-26-2023:

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