IN THE SUPREME COURT OF THE STATE OF IDAHO

BABE VOTE and LEAGUE OF WOMEN VOTERS OF IDAHO, Appellants, vs. PHIL MCGRANE, in his official capacity as Secretary of State, Respondent.	**Supreme Court No. 51227-2023**

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Samuel A. Hoagland, District Judge, Presiding
District Court Case No. CV01-23-04534

Matthew P. Gordon, ISB No. 8554
MGordon@perkinscoie.com
Kevin J. Hamilton, *Pro Hac Vice*
KHamilton@perkinscoie.com
David T. Krueck, ISB No. 6246
DKrueck@perkinscoie.com
Torryn Taylor Rodgers, *Pro Hac Vice*
TRodgers@perkinscoie.com
Garmai J. Gorlorwulu, *Pro Hac Vice*
GGorlorwulu@perkinscoie.com
PERKINS COIE LLP
1111 West Jefferson Street, Suite 500
Boise, Idaho 83702-5391
Telephone: +1.208.343.3434
Facsimile: +1.208.343.3232

Attorneys for Appellants

Attorney General of the State of Idaho
James E.M. Craig, ISB No. 6365
james.craig@ag.idaho.gov
James E. Rice, ISB No. 6511
jim.rice@ag.idaho.gov
Deputy Attorney General
Joshua N. Turner, ISB No. 12193
josh.turner@ag.idaho.gov
Acting Solicitor General
P.O. Box 83720
Boise, ID 83720-0010

Attorneys for Respondent

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I. Introduction

The district court erred by applying the wrong constitutional standard of review—rational basis—to the Voting Restrictions at issue here. Because this error was dispositive, Appellants respectfully submit that this Court should reverse and remand. Under Idaho's fundamental rights jurisprudence, which is consistent with the majority approach across the country, strict scrutiny applies to statutes that restrict fundamental rights like the right of suffrage at issue here. The lower court mistakenly considered these restrictions to constitute mere "time, place, and manner" restrictions and thus applied a much less protective standard, which, as the district court acknowledged, was outcome-determinative because the statutes plainly cannot withstand strict scrutiny.

The case arrives before this Court on appeal from the district court's order granting the Secretary's motion for judgment on the pleadings pursuant to Idaho Rule of Civil Procedure 12(c). In evaluating such a motion, the lower court was required to accept as true the allegations of the Complaint. As alleged in the Complaint, this case involves restrictions adopted by the Idaho Legislature in the wake of increased youth participation in the 2020 election. The removal of student IDs as acceptable forms of identification for registering and voting will make it more difficult for students to vote and will, as a result, reduce turnout among that disfavored population. And the changes to the voter registration laws, including the requirement for "current" forms of identification, make it harder for certain Idahoans, including recent arrivals from other states, Idahoans living with disabilities, and Idahoans without secure housing, to register. And the Voting Restrictions impose these burdens for no legitimate purpose: Adopted as part of a larger national

effort to impose barriers to student voting, they advance no discernable purpose in Idaho other than to make it more difficult for students and other disfavored groups to register and to vote. The Voting Restrictions are solutions in search of problems, as Idaho's electoral system has long included student IDs for registering and voting without *any* evidence of problems.

Rather than accept these allegations as true, as he must on a motion to dismiss, the Secretary almost completely *ignores the record* in this case. Instead, the Secretary simply makes things up from whole cloth and presents them as if they were facts supported in the record below. Moreover, the Secretary completely abandons the legal position he argued below—that the federal *Anderson-Burdick* standard should be applied to the Voting Restrictions. *Compare* R. 77 (arguing that the federal standard was "appropriate for Idaho courts to use") *with* Response Brief of the Secretary of State ("Br.") 35–36 (arguing that the same federal standard is "fraught with uncertainty and lacks workability" and "[q]uestions abound regarding *how* to workably apply [*Anderson-Burdick*] and even *when* it applies in the first place.").

Now, the Secretary contends that the Voting Restrictions are subject only to rational basis review as mere "time, place, manner" restrictions. But the Secretary offers precious little support for the startling proposition that the Legislature may target disfavored minorities with burdensome restrictions for the purpose of making it more difficult for them to vote—subject to only the most minimal level of constitutional review. That cannot be—and is not—the law of this state (or any other state in the nation). Appellants respectfully submit that the district court should be reversed.

II. ARGUMENT

A. Standard of Review

On a motion for judgment on the pleadings under Rule 12(c), "the moving party admits all the allegations of the opposing party's pleadings", and "[a]ll doubts are to be resolved against the moving party[.]" *Smith v. Smith*, 160 Idaho 778, 784 (2016) (quoting *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 (1991)). Motions for judgment on the pleadings are "not favored" by Idaho courts. *Cedarholm v. State Farm Mut. Ins.*, 81 Idaho 136, 141 (1959).

The Secretary cites a portion of one case to misleadingly suggest that the standard here is similar to a summary judgment motion but elides the critical distinction between the two explained elsewhere in that same case. Br. 15 (citing *Union Bank, N.A. v. JV L.L.C.*, 163 Idaho 306, 311 (2017)). While in both a motion for judgment on the pleadings and a motion for summary judgment a court asks whether there is a genuine dispute of material fact, "one fundamental difference between the two motions lies in the scope of the court's consideration." *Taylor v. McNichols*, 149 Idaho 826, 833 (2010) (quoting *Fleming v. Lind–Waldock & Co.,* 922 F.2d 20, 23 (1st Cir.1990) (comparing a Rule 12(b)(6) motion to a Rule 56 motion). On a motion for summary judgment, the court asks whether the nonmoving party has proffered specific admissible *factual support* for the allegations of the complaint. *See* I.R.C.P. 56(c). By contrast, in evaluating a motion for judgment on the pleadings, a court must consider "only the pleadings and no more." *See Taylor*, 149 Idaho at 833 (addressing grounds for a Rule 12(b)(6) dismissal). The court must accept as true all allegations of the complaint, and "[w]here issues of fact are raised by the pleadings . . . it is error to enter judgment on the pleadings." *Union Bank, N.A.*, 163 Idaho at 312

(quoting *Idaho Placer Min. Co. v. Green*, 14 Idaho 294, 304 (1908)). In other words, a motion under Rule 12 tests the *allegations* of the complaint, not the *evidentiary basis* for those allegations—a critical point the Secretary fails to acknowledge, let alone address.

B. The district court erred by applying rational basis rather than strict scrutiny to Voting Restrictions that infringe on the fundamental right to vote

1. Strict scrutiny applies and the Voting Restrictions do not survive that standard

The right to vote is obviously a fundamental right under the Idaho Constitution. That much is undisputed. Br. 21. Statutes infringing on the right of suffrage, a fundamental right, are subject to strict scrutiny. This Court has made that clear. *See* Appellants' Opening Brief ("Opening Br.") 21–25 (citing *Reclaim Idaho v. Denney*, 169 Idaho 406, 430 (2021) and *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 126 (2000)).

Nevertheless, the Secretary argues that the Legislature's authority to "prescribe qualifications, limitations, and conditions for the right of suffrage" in Article VI, section 4 of the Idaho Constitution is broad and sweeping and that the "*only* limitation" on that authority is that the Legislature may not "annul" any other provisions of Article VI. Br. 17 (emphasis added). The Secretary thus makes clear the radical scope of his argument: under his view, the Legislature has nearly carte blanche to place *whatever* qualifications, limitations, and conditions on the right of suffrage it chooses, including limitations like the Voting Restrictions that intentionally and directly target the Legislature's disfavored groups. In other words, according to the Secretary, so long as the Legislature doesn't raise the voting age or expand voting to non-citizens or non-residents, it has a free hand to mold the right of suffrage in whatever image best suits its political aims, thereby

locking in the Legislature's power by insulating its members from meaningful challenges. That is not the law of this—or any—state.

Indeed, this Court already rejected that sweeping conception of legislative power in *Reclaim Idaho.* And for good reason: If adopted, such a position would be a dramatic weakening of the protections afforded the right to vote and would allow the Legislature—and future legislatures—to make it harder for disfavored groups to vote. Although students are the main subject of this legislation, future legislatures could—on the Secretary's reading—target gun owners, rural voters, urban inhabitants, or any other politically disfavored group of the moment.

a. This Court has already rejected the Secretary's argument and should do so again

The Secretary contends that because Article VI section 4 says the "legislature may prescribe qualifications, limitations, and conditions for the right of suffrage," the Voting Restrictions—or nearly any other limitation or condition the Legislature chooses to place on the right to vote—cannot, as a matter of law, violate the right of suffrage. Br. 17. In other words, the Secretary contends that the fundamental right to vote is subject to near-total control by the Legislature. It's a breathtaking position and, unsurprisingly, one that this Court has already expressly rejected.

In *Reclaim Idaho*, this Court addressed whether the legislature could curb Idahoans' right to engage in direct democracy through initiatives and referenda as provided in Article III, section 1 of the Idaho Constitution. Under that provision, the people's right to direct democracy is expressly subject to exercise "under such conditions and in such manner as may be provided by

acts of the legislature." Based on that, the then-Secretary of State and the then-legislature urged the Court "to read the initiative and referendum provisions of the Idaho Constitution as merely defining a power that is subject to total control by the legislature." *Reclaim Idaho*, 169 Idaho at 427. The Court forcefully rejected that argument, stating in no uncertain terms: "We do not agree." *Id.* The Court explained that the "conditions and manners provisions" in Article III, section 1 "**do not grant the legislature *carte blanche*** in limiting" the right to engage in direct democracy. *Id.* at 428 (emphasis added).

Notably, in reaching its conclusion, the Court analogized the initiative/referendum rights at issue in that case to the right of suffrage and noted that Article VI, section 4—the very basket into which the Secretary places all his eggs—similarly does not give the Legislature "a free pass to override constitutional constraints and legislate a right into non-existence." *Id.* at 429. And the Court emphasized its role in "protect[ing] against encroachments on the people's constitutionally enshrined power." *Id*. at 426.

The *Reclaim Idaho* Court's forceful rejection of the argument for expansive legislative power to shape fundamental rights applies with even more force here because the right to vote has long been recognized as *the* bedrock fundamental right. In contrast, the Court in *Reclaim Idaho* had to first analyze whether the initiative/referendum rights were fundamental in the first instance, an analysis that occupied over three pages of the Court's opinion. *See id.* at 427–30. The Court's analysis required a "close reading" of Article III section 1 because it contains both the reservation of direct democratic rights and the express condition that the rights may seek an initiative or referendum "under such conditions and in such manner" as the Legislature may provide, and it

also required the Court to address the fact the argument that the right was not "self-executing" because the Legislature did not enact enabling legislation for more than twenty years after the constitutional amendment enacting Article III section 1. *See id*. at 428-429.

Here, in contrast, there can be no contention that the right to vote depends on affirmative action by the Legislature, and not only has the right to vote been long established as a fundamental right under the Idaho Constitution—something the Secretary belatedly concedes, Br. 21—it is *the* fundamental right that undergirds our democracy. *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."). Thus, the argument that the Legislature has the unbridled power to restrict that right is even more tenuous, especially where, as here, that power is being wielded for no purpose other than to shape the electorate by making it harder for certain disfavored groups to vote. This Court correctly rejected the former Secretary's sweeping—and dangerous—view of expansive legislative power to curb fundamental rights in 2021, and it should, consistent with its role as the protector of the people's fundament rights, do so again here.

b. The Secretary's attempt to distinguish *Van Valkenburgh* and *Reclaim Idaho* is unconvincing

This Court's fundamental rights jurisprudence is "unequivocal": statutes that affect the right to vote are "subject to strict scrutiny." *Reclaim Idaho*, 169 Idaho at 430 (citing *Van Valkenburgh*, 135 Idaho at 126). The Secretary nevertheless tries in vain to distinguish this Court's precedent. Br. 27–28. Those efforts are both misguided and unconvincing.

First, the Secretary contends that the Voting Restrictions are mere "time, place, and manner" restrictions, subject to only minimal constitutional review. Br. 27. But the Secretary's brief is bereft of authority or reasoned argument to support that bold proposition.

The Secretary cites *Van Valkenburgh's* discussion of *Burdick v. Takushi*, 504 U.S. 428 (1992), Br. 27, but that doesn't help him, for several reasons. For starters, the *Burdick* Court never described Hawaii's prohibition on write-in voting as a "manner" restriction. Even if it had, Hawaii's law and the Voting Restrictions are categorically different. Simply put, prohibiting write-in voting limits for whom a voter can cast their vote, not *who can vote*. Any conclusion that Hawaii's law was a "manner" regulation would not in any way suggest that the Voting Restrictions are, too. And in any event, as explained in the Opening Brief, the *Burdick* Court evaluated the constitutionality of Hawaii's law by applying the balancing test that became *Anderson-Burdick*—not rational basis review—as do other courts evaluating restrictions that regulate the time, place, and manner of voting. Opening Br. 27–28.

Second, the Secretary contends that "the law at issue in *Van Valkenburgh* was very different than the laws at issue here." Br. 27–28. True enough, but the differences between the two only accentuate why the argument for strict scrutiny is even stronger here. Because they affect *who* can vote, the Voting Restrictions curtail the right of suffrage much more directly than the law requiring a ballot legend in *Van Valkenburgh*, which affected only what voters saw on the ballot once they were inside the polling booth and had no effect on who was granted access to that booth in the first instance.

Third, the Secretary claims that *Reclaim Idaho* is inapposite because the Voting Restrictions "involve different, more express constitutional provisions" and "do not effectively prevent the people from exercising their right to vote." Br. 28. But the latter contention directly contradicts both the allegations in the Complaint and the evidence in the record that the Voting Restrictions *will* inevitably prevent some people from exercising their right to vote. R. 33 ¶¶ 32–33; R. 35 ¶ 40; R. 36 ¶¶ 42–43; R. 519–20 ¶¶ 16–19; R. 529–30 ¶¶ 12–15. And the Secretary's observation about "different, more express constitutional provisions" again only further undermines his argument. As discussed above, the Voting Restrictions curb the right to vote, which has long been acknowledged as not just *a* fundamental right, but *the* fundamental right, while the legislation at issue in *Reclaim Idaho* curbed the initiative/referendum rights, which, while undoubtedly important, were not obviously fundamental rights.

Finally, the Secretary tries to redefine the right at issue and claims that, because the Legislature initially included student IDs when it enacted voter ID laws in 2010, "nothing prevents [the Legislature] from removing that status." Br. 28–29. But the Secretary cites no authority supporting his contention—perhaps because courts that have addressed that issue roundly disagree with the Secretary's position. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."); *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) ("The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.") (cleaned up); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) ("[A] citizen has a constitutionally

protected right to participate in elections on an equal basis with other citizens in the jurisdiction.") (citation omitted).

The Secretary's attempt to redefine the issue as "the right to register and vote using a student identification," Br. 29, fails as a logical fallacy—if the Secretary were correct, the Legislature could simply pick off whatever forms of ID it wanted, one by one, under the theory that "there is no constitutional right to register and vote with a [passport; tribal ID card; driver's license, etc.]" until the electorate had been re-shaped to its liking.[1]

c. The Secretary's reliance on *Dunbar* and *Rudeen* is misplaced

Unable to distinguish *Van Valkenburgh* or *Reclaim Idaho*, the Secretary pivots to *State v. Dunbar*, 39 Idaho 691, 230 P. 33 (1924), and *Rudeen v. Cenarrusa*, 136 Idaho 560 (2001), Br. 18, 22–23, 28, 35, for help. But those cases provide precious little support for the Secretary's position that the Voting Restrictions are subject to rational basis review and in fact undermine that argument.

The 1924 *Dunbar* decision is irrelevant here as even a cursory review demonstrates. There, an Idaho law prevented a political candidate from appearing twice on the ballot. The challenger did not "point[ ]" the Court "to any provision of [the Idaho] Constitution[ ] which the statute

[1] The Secretary's citation to *Eberle v. Nielson*, 78 Idaho 572, 578 (1957), Br. 34, is both misleading and counter-productive to his cause. Despite the Secretary's implicit suggestion, that case had nothing to do with fundamental rights, let alone the right to vote, and the *Eberle* Court instead emphasized the "fundamental principle[] which must be recognized and given effect"—namely, that "the State Constitution is a *limitation*, *not a grant*, of power." *Eberle*, 109 Idaho at 578 (emphases added). "We look to the State Constitution, not to determine what the legislature may do, but to determine what it may *not* do." *Id*. (emphasis added).

clearly infringes, nor to any implication necessarily and reasonably arising from the Constitution with which it conflicts." *Dunbar*, 230 P. at 38. And there was no allegation that the law interfered with the "right of the individual to vote for the candidate of his choice." *Id.* at 37. Here, in sharp contrast, BABE VOTE and the League of Women Voters of Idaho ("the League") allege that the Voting Restrictions interfere with Idahoans' right to vote for the candidates of their choice and thus violate the right to suffrage under the Idaho Constitution. Even the Secretary concedes that the Legislature cannot enact legislation that "effectively prevents the people from exercising their right to vote." Br. 19, 21 (quoting *Reclaim Idaho*, 169 Idaho at 430).

As for *Rudeen*, the Secretary concedes that the law at issue there did not implicate an Idaho elector's fundamental right to suffrage, Br. 22–23, which is undisputedly at issue here, Br. 18. Rather, the case involved the right of a candidate to hold office. County and other officials challenged the Idaho Term Limits Act of 1994, which prevented persons "who had served in the office for a given length of time" from appearing on the ballot. *Rudeen*, 136 Idaho at 564. The plaintiffs there argued that the Act violated the right to suffrage. This Court held that "the right of suffrage might be broader than simply the right to vote," but it did not include the "right to hold public office." *Id.* at 567. Thus, the Act did not implicate—let alone violate—Idahoans' right to suffrage. Indeed, *Rudeen* supports the argument for the application of strict scrutiny here because the Court emphasized that, under Idaho's equal protection jurisprudence, if "a fundamental right is involved, the statue is given strict scrutiny." *Id*. at 569.

Neither *Dunbar* nor *Rudeen* involved legislation that affected Idahoans' fundamental right to vote, much less legislation designed to limit access to the ballot for a disfavored minority

(students and other groups). And as this Court made clear in *Reclaim Idaho*, cases applying lower standards of review are not persuasive if the Court in those cases "did not apply a fundamental rights analysis." 169 Idaho at 431. As a result, neither case offers any support for the argument that rational basis review should apply to such restrictions.

d. This Court's precedent applying strict scrutiny to laws that impair the right to vote is consistent with most states' approach

Contrary to the Secretary's contention, Br. 23, this Court's decisions protecting the right to vote through strict scrutiny are consistent with the majority approach in this country. Indeed, most states have precedent that directly or indirectly supports the application of strict scrutiny to laws that impair the right to vote. Emily Lau, *Explainer: State Constitutional Standards for Adjudicating Challenges to Restrictive Voting Laws*, State Democracy Research Initiative (Oct. 3, 2023), https://perma.cc/2ZXY-PA8B.

Several state supreme courts have expressly identified strict scrutiny as the proper standard for assessing challenges to voting restrictions. *See e.g.*, *Tully v. Edgar*, 664 N.E.2d 43, 47 (Ill. 1996) ("Where challenged legislation implicates a fundamental constitutional right, ... such as the right to vote, ... the court will examine the statute under the strict scrutiny standard."); *Wells by Wells v. Panola Cnty. Bd. of Educ.*, 645 So.2d 883, 893 (Miss. 1994) ("A statute ... interfering with the exercise of a fundamental right, such as voting, is subject to strict scrutiny."); *Marrujo v. New Mexico State Highway Transp. Dept.*, 887 P.2d 747, 751 (N.M. 1994) ("Strict scrutiny applies when the violated interest is a fundamental personal right or civil liberty—such as ... voting ...."); *Madison v. State*, 163 P.3d 757, 767 (Wash. 2007) ("[B]ecause the right to vote has been

recognized as fundamental for all citizens, restrictions on that right generally are subject to strict scrutiny, meaning they must be narrowly tailored to further a compelling state interest"); *Shumway v. Worthey*, 37 P.3d 361, 366 (Wyo. 2001) ("The right to vote is fundamental, and we construe statutes that confer or extend the elective franchise liberally (as opposed to those limiting the right to vote in some way, which then invokes strict scrutiny)."); *Weinschenk v. State*, 203 S.W.3d 201, 216 (Mo. 2006) (Missouri courts "have uniformly applied strict scrutiny to statutes impinging upon the right to vote."). Pennsylvania, Kansas, and Arkansas' lower courts have also applied strict scrutiny to voting restrictions. *See* Opening Br. 23 n.10 (citing Kansas, Arkansas, and Pennsylvania decisions).[2]

Other state supreme courts have held that strict scrutiny applies to laws that burden fundamental rights, and that voting is a fundamental right, but have not yet had occasion to connect the two principles in a decision. *See, e.g.*, *Baehr v. Lewin*, 852 P.2d 44, 63 (Haw. 1993) ("This court has applied 'strict scrutiny' analysis to laws ... impinging upon fundamental rights expressly or impliedly granted by the constitution[.]") (cleaned up); *Akizaki v. Fong*, 461 P.2d 221, 222-23 (Haw. 1969) ("The right to vote is perhaps the most basic and fundamental of all the rights guaranteed by our democratic form of government."); *Wrigley v. Romanick*, 988 N.W.2d 231, 242 (N.D. 2023) ("A statute which restricts a fundamental right is subject to strict scrutiny[.]");

[2] The Secretary notes that cases cited by Appellants from Kansas and Arkansas are on appeal. That's certainly true, but this hardly provides support for the Secretary's position. In fact, the only *actual decisions* in those cases are those provided by Appellants and in both cases the courts—unsurprisingly—applied strict scrutiny. *See also Jegley v. Picado*, 80 S.W.3d 332, 350 (2002) (because right at issue is a fundamental right, "we must analyze the constitutionality [of the challenged statute] under strict-scrutiny review").

Poochigian v. City of Grand Forks, 912 N.W.2d 344, 349 (N.D. 2018) ("The right to vote is a fundamental constitutional right.").

Faced with this overwhelming authority, the Secretary gamely attempts to minimize its crushing weight by attempting to distinguish some cases and citing to a few cases from other states, but the effort is doomed to failure. *Orr v. Edgar*, an equal-protection decision from the Illinois Court of Appeals, 670 N.E.2d 1243, 1253 (Ill. Ct. App. 1996), is consistent with the Illinois Supreme Court's statement that "[w]here challenged legislation implicates a fundamental constitutional right, … such as the right to vote, … the court will examine the statute under the strict scrutiny standard." *Tully v. Edgar*, 664 N.E.2d at 47. Contrary to the Secretary's assertion, the Missouri Supreme Court did not "acknowledge[ ] that strict scrutiny often does not apply to election laws." Br. 25. Rather, the Court observed that Missouri courts have "uniformly applied strict scrutiny to statutes impinging upon the right to vote" and that "[s]everal federal courts … are in accord that strict scrutiny must apply to direct burdens on the right to vote." *Weinschenk v. State*, 203 S.W.3d at 215–16. Finally, even if Pennsylvania's application of strict scrutiny were limited to voting laws that effectively deny someone the right to vote, the Voting Restrictions qualify. Just like the voter ID law in *Applewhite v. Commonwealth*, the Voting Restrictions make the exercise of the "franchise" "so difficult and inconvenient" for some individuals as to amount to a denial of the right. No. 330 M.D. 2012, 2014 WL 184988, at *19 (Pa. Commw. Ct. Jan. 17, 2014). Here, Plaintiffs alleged that the Voting Restrictions will make it so difficult and inconvenient for some young voters and other vulnerable communities to vote that they are denied

the franchise altogether. R. 33 ¶¶ 32–33; R. 35 ¶ 40; R. 36 ¶¶ 42–43; R. 519–20 ¶¶ 16–19; R. 529–30 ¶¶ 12–15.

The Secretary cites cases from Indiana, Oklahoma, and New Jersey to argue that this Court should not apply strict scrutiny to the Voting Restrictions. Br. 23–24 (quoting *League of Women Voters of Ind., Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010), *Gentges v. State Election Bd.*, 419 P.3d 224 (Okla. 2018), and *Lesniak v. Budzash*, 626 A.2d 1073 (N.J. 1993)). But those cases hardly support his position.

First, and perhaps most obviously, *Rokita* is irrelevant because it did not involve a challenge under Indiana's constitutional right-to-vote provision. Instead, plaintiffs brought a facial challenge to Indiana's voter ID law under the state constitution's elector-qualifications and equal-privileges-and-immunities provisions. *Rokita*, 929 N.E.2d at 762. "No individual voter has alleged that the Voter ID Law has prevented him or her from voting or inhibited his or her ability to vote in any way," so the Indiana Supreme Court specifically left the door open for those claims in the future. *Id.* at 761. Here, by contrast, Plaintiffs allege that the Voting Restrictions inhibit Idahoans' ability to vote.

Lesniak is similarly irrelevant. The New Jersey Supreme Court upheld a law requiring all signatures on a party-nominating petition to come from registered voters and thus invalidated 279 signatures of unregistered voters on a candidate's papers. *Lesniak*, 626 A.2d at 1078. Contrary to the Secretary's assertion, the case most assuredly did not involve "a voter['s] challenge[ ] [to] New Jersey's voter registration requirements." Br. 24.

Finally, Oklahoma's Constitution is distinguishable, and the Voting Restrictions would not pass the test in *Gentges* in any event. The Oklahoma Constitution, unlike Idaho's, specifically gives the legislature power to "enact such laws as may be necessary to detect and punish fraud in … elections." *Gentges*, 419 P.3d at 228 (quoting Okla. Const. art. 3, § 4). And *Gentges* did not hold that the right to vote was fundamental under the Oklahoma Constitution. In any event, the Voting Restrictions would not pass muster under the *Gentges* test. Oklahoma courts must evaluate whether a law governing the right to vote "reflects a conscious legislative intent for electors to be deprived of their right to vote." *Id.* As discussed in Appellants' Opening Brief and *infra* Section II.C, the Voting Restrictions do nothing but make it harder for certain groups to vote and thus reflect a conscious legislative intent to deprive certain electors of their suffrage rights.

e. The Secretary's parade of horribles is ahistorical and absurd

Unable to escape the shadow of this Court's decisions mandating strict scrutiny or the weight of other state supreme courts' similar decisions, the Secretary pivots to trying to scare this Court into disavowing its own precedent by invoking a parade of horribles he claims would follow were this Court to apply its prior holdings here. The Secretary claims that if this Court applies strict scrutiny in *this* case, "*every* election-related law that touches on the voting process" will trigger strict scrutiny, and he warns of a flood of challenges to every conceivable election regulation. Br. 26–27. Hardly.

This Court *already held, twice*, that regulations infringing on the right to vote are subject to strict scrutiny. And in the 23 years since *Van Valkenburgh*, there has been no flood of legal challenges to election regulations, nor efforts to challenge every picayune change to election

administration. Idaho and plenty of other states, *see supra*, have been able to operate elections "equitably and efficiently," Br. 26, under that standard. And *this* challenge was filed because the Legislature patently targeted students and other disfavored groups. Application of strict scrutiny here would maintain the status quo rather that change it and, consequently, would not have the effects the Secretary claims.

The real concern about future implications arises if the Court were to endorse the Secretary's nearly limitless view of legislative power to regulate elections, including deciding who can vote. That would represent a sea change in the law, one that would considerably weaken the guardrails protecting the right of suffrage and embolden an activist legislature to act even more aggressively to make it harder for disfavored groups to vote.

2. The Voting Restrictions cannot survive strict scrutiny, and the Secretary has forfeited any argument to the contrary

In the district court, Plaintiffs argued, without dispute from the Secretary, that the Voting Restrictions cannot survive strict scrutiny. R. 104; R. 131; R. 541. The district court agreed. R. 610 ("The central issue … is whether the legislative actions are subject to strict scrutiny or rational basis review. If it is the former, then Plaintiffs prevail[.]").

Before this Court, however, the Secretary sheepishly retreats and argues, for the first time, that he "does *not* agree that the statutes fail under strict scrutiny." Br. 39. But he offers this Court precious little to defend that conclusion aside from one half-hearted conclusory sentence: "Election security and integrity is a compelling state interest, and removing a form of photo

identification that lacks basic security measures and replacing it with a no-fee alternative is narrowly tailored to achieve that interest." Br. 39–40. This is both too late and too little.

First, it is too late. The Secretary never presented this argument to the district court and, having failed to do so, is barred from raising the argument for the first time on appeal. This Court "will not consider issues not raised in the trial court on appeal." *State v. Plata*, 171 Idaho 833, 526 P.3d 1003, 1010 (2023) (quotations and citation omitted); *State v. Neimeyer*, 169 Idaho 9, 13 (2021) ("substantive issues may not be raised for the first time on appeal"); *State v. McAway*, 127 Idaho 54, 60 (1995) ("Constitutional issues generally will not be considered by this Court if raised for the first time on appeal.").

Second, it is too little. A single unsupported conclusory sentence offered for the first time in an Appellee's brief is hardly sufficient to present the issue. A party in this Court must "provide[ ] a cogent argument supported by authority" to merit the Court's consideration. *Plata*, 526 P.3d at 1010; *see* Idaho App. R. 35(b)(6) ("The [respondent's] argument should contain the contentions of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon.").[3]

[3] *See also State v. Baxter*, 163 Idaho 231, 235 n.4 (2018) (Court will not consider argument mentioned only in passing); *Munden v. Bannock Cnty.*, 169 Idaho 818, 839 (2022) (Court will not consider an issue not supported by argument and authority); *Capstar Radio Operating Co. v. Lawrence*, 160 Idaho 452, 465 (2016) (same); *McCandless v. Pease*, 166 Idaho 865, 878 (2020) ("[B]ecause Appellants' arguments lack citations to any legal authority and coherent argument, we decline to address the merits of these arguments on appeal.").

3. Even if strict scrutiny does not apply, the appropriate test is *Anderson-Burdick*, not rational basis, which the Voting Restrictions also do not survive

Apparently convinced that the Voting Restrictions could not withstand any fair application of the *Anderson-Burdick* standard that he forcefully advocated to the district court, the Secretary abruptly reverses course and argues *against* his former position. Br. 23. This reversal betrays a belated realization that the Voting Restrictions are incapable of withstanding anything but the mildest form of scrutiny.

When this case was before the district court, the Secretary argued, repeatedly, that the district court should apply *Anderson-Burdick*. The Secretary claimed it was "appropriate for Idaho courts to use," R. 77, and that "[t]he Court can and should find as a matter of law that Idaho's Voter ID laws comply with equal protection under the *Anderson-Burdick* doctrine." R. 80; *see also* R. 580 ("As set forth more fully in the State's reply in support of its motion for judgment on the pleadings, these laws satisfy the federal *Anderson-Burdick* framework.").

But after the district court unexpectedly (and mistakenly) eschewed both strict scrutiny and *Anderson-Burdick* in favor of rational basis review, the Secretary suddenly had a change of heart, warning that the standard he formerly favored is "fraught with uncertainty and lacks workability" and that "[q]uestions abound regarding *how* to workably apply [*Anderson-Burdick*] and even *when* it applies in the first place." Br. 36, 38; *see also* Br. 38 n.9 ("The Secretary also agrees with the district court that *Anderson-Burdick* is inapplicable here[.]").

The Secretary's abrupt about-face is more than a little telling—and equally wrong.

Strict scrutiny is, and always has been, the appropriate standard of review under Idaho law. *Anderson-Burdick* was brought into this case as a possible standard of review *only because the Secretary advocated for it*. For the Secretary to *now* claim that *Anderson-Burdick* is "unworkable"—after Plaintiffs' briefing was filed—is disingenuous, at best.

And in any event, the Secretary's description of what *Anderson-Burdick* requires is remarkably inaccurate. The standard is not by any stretch of the imagination "akin to rational basis review." Br. 37. Nor have Plaintiffs "misstate[d] the test badly," *id.*, by citing to a definition of the test which requires "specific, rather than abstract state interests" and a justification as to "why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest put forth." *Ohio State Conf. of NAACP. v. Husted*, 768 F.3d 524, 545–46 (6th Cir. 2014), *vacated for other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014);[4] *see also Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Indeed, in *Burdick*, 504 U.S. at 434, the standard's co-namesake, the Court instructs that states must present "precise interests" for which courts will consider "the extent to which those interests make it necessary to burden the plaintiff's rights." The standard is not difficult to understand or apply, nor is it akin to rational basis.

That standard, applied to the record before the Court, considered on a Rule 12 motion, is fatal to the Secretary's position. Because there is no showing that the Voting Restrictions are

[4] The Secretary accuses Plaintiffs of "neglecting to mention" that *Ohio NAACP* was vacated on other grounds, Br. 36, but Plaintiffs' first mention of *Ohio NAACP* clearly states as much. Opening Br. 31.

"actually necessary" nor that they further any legitimate state interest, the statutes cannot survive a correct application of the *Anderson-Burdick* standard. Opening Br. 33–35.[5]

4. The Secretary's bare-bones argument for rational basis review is meritless

Although the Secretary turns his back on *Anderson-Burdick* to embrace rational basis review, he is able to muster only the faintest of arguments in support of the latter. Tellingly, the Secretary identifies no authority—in Idaho or elsewhere—applying rational basis review to restrictions limiting who gets to vote. That's hardly a surprise: again, this Court's "fundamental rights jurisprudence is unequivocal that such rights are subject to strict scrutiny." *Reclaim Idaho*, 169 Idaho at 430 (citing *Van Valkenburgh*, 135 Idaho at 126); *see* cases cited *supra* 11–13.

The Secretary breezily characterizes the Voting Restrictions as mere time, place, and manner restrictions, claiming without support that they "obviously" regulate manner of voting. Br. 27. But aside from that facile characterization, the Secretary offers precious little. Indeed, the briefing may be searched in vain for supporting authority. The suggestion that the Legislature may adopt legislation targeting specific disfavored classes of voters for the purpose of making it more difficult for those groups (but not others) to vote and be subject to only the most minimal level of

[5] Moreover, the Secretary does not address, and therefore tacitly concedes, Plaintiffs' additional point, that because the Secretary moved for judgment on the pleadings, the Secretary's erroneous inclusion of additional and supposed facts that fall outside the four corners of the complaint cannot be considered in the *Anderson-Burdick* analysis. *Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1278 (N.D. Ga. 2021). And in any event, regardless of whether the Court considers these supposed facts (it should not), the Voting Restrictions nevertheless fail. *See* Opening Br. 34–35.

constitutional scrutiny is more than a little startling. It's hardly surprising that the Secretary offers no authority to support the proposition: there is none.[6]

But even if the Secretary had been able to find authority supporting his assertion that the Voting Restrictions are mere "time, place, or manner" regulations, it wouldn't help his argument for rational basis review because, as explained in the Opening Brief, courts apply *Anderson-Burdick*—not rational basis review—to restrictions that regulate time, place, and manner.[7] Opening Br. 27. The Secretary is curiously silent on the point.

The Secretary argues that rational basis applies to the Voting Restrictions "under these precedents [*Van Valkenburgh*, *Dunbar*, and *Rudeen*]." Br. 23. But neither *Dunbar* nor *Rudeen* supports the application of rational basis review to a statute affecting a fundamental right, let alone the fundamental right to vote—largely because neither case addresses restrictions on that right.

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[6] Curiously, the Secretary devotes far less ink to arguing in favor of rational basis review than he does to his arguments (1) why the means-focus test doesn't apply; and (2) about how rational basis review would apply here. *See* Br. 29–33. Those arguments are mere distractions because Plaintiffs never argued for mean-focus or that the Voting Restrictions should be struck down under rational basis review.

[7] *See Obama for Am.*, 697 F.3d at 431–32 (affirming district court's application of the *Anderson-Burdick* standard and preliminary injunction enjoining deadline for in-person early voting); *Sixth Dist.*, 574 F. Supp. 3d at 1277–78 (applying *Anderson-Burdick* standard at the motion to dismiss stage to voting restrictions such as additional requirements for absentee voting, restrictions on drop boxes, and the distribution of absentee ballots, among others); *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 590 F. Supp. 3d 850, 864 (M.D.N.C. 2022) (applying *Anderson-Burdick* standard at the motion to dismiss stage to restrictions limiting assistance for filling out ballot request forms); *League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1215-21 (N.D. Fla. 2018) (granting preliminary injunction after applying *Anderson-Burdick* to removal of college campus for sites for early voting); *Feldman v. Arizona Sec'y of State's Off.*, 208 F. Supp. 3d 1074, 1087 (D. Ariz.), *aff'd*, 840 F.3d 1057 (9th Cir. 2016) (applying *Anderson-Burdick* to a law limiting who can return an absentee ballot on the voter's behalf).

See supra 10-11. And certainly, *Van Valkenburgh's* proclamation that "because the right of suffrage is a fundamental right, strict scrutiny applies" cannot possibly be construed as support for rational basis review of a law affecting that right.[8] *Van Valkenburgh*, 135 Idaho at 126.

The Secretary's suggestion that the Voting Restrictions—which specifically target a politically disfavored group—may be characterized are merely routine "time, place, and manner" regulation of elections subject to the lowest possible level of constitutional scrutiny is wholly unsupported by authority, baldly inconsistent with this Court's decisions, and should be rejected.

C. The district court also erred in denying Plaintiffs' motion for preliminary injunction

The district court also erred by denying Appellants' motion for a preliminary injunction. *See* Opening Br. at 39–40. Although the denial of a motion for preliminary injunction is reviewed for abuse of discretion, the district court abused that discretion by applying the wrong legal standard—rational basis review—to the question of whether Appellants had shown a likelihood of success on the merits. *See Parkinson v. Bevis*, 165 Idaho 599, 608 (2019) (citing *State v. Montgomery*, 163 Idaho 40, 45 (2017)).

The district court's denial of Plaintiffs' motion for preliminary injunction hinged on the court's erroneous decision to apply rational basis review and its subsequent conclusion that Plaintiffs had not shown a likelihood of success on the merits. R. 635–36. As a result, the court

[8] In his terse section addressing the right-to-vote claim, the Secretary asserts that the Voting Restrictions "merely regulate the time, place, and manner of voting" yet points for support only to "the reasons explained in the previous section." Br. 34. But as discussed, *supra* Section II.B.4, the Secretary's only "argument" on that issue is his bald assertion that the Voting Restrictions "obviously" regulate manner of voting.

never addressed the second prong, irreparably injury. But the application of strict scrutiny—or even *Anderson-Burdick*—would lead to a different result because BABE VOTE and the League demonstrated a likelihood of success under either standard. *See* Opening Br. 39–40. And Plaintiffs demonstrated irreparable injury by providing the lower court with sworn declarations showing how HB 340 has already injured each organization by, among other things, significantly curtailing their ability to perform voter registration drives, a core mission for each, along with extensive authority holding that such harms constitute irreparable injury. Opening Br. 40–41. *See* R. 510–11, 516–20, 527–30.

The Secretary's Response, Br. 39–40, ignores the record evidence of organizational harm and provides the Court with no contrary authority, much less anything contradicting the extensive authority cited in the Opening Brief establishing that the injuries suffered by BABE VOTE and the League constitute irreparable harm as a matter of law. Br. 40; contra Opening Br. 41; *see also* R. 494–95, 510–11, 516–20, 527–30. Instead, the Secretary makes two short, entirely unsupported arguments, each of which falls far short of the mark.

First, he contends (for the first time on appeal) that the Voting Restrictions could in fact survive strict scrutiny. Br. 39. But as discussed, having failed to raise this argument below, it is rather plainly too late to do so now, here, for the first time. *See Plata*, 526 P.3d at 1010 (Court "will not consider issues not raised in the trial court on appeal.") (cleaned up); *see also Neimeyer*, 169 Idaho at 13; *McAway*, 127 Idaho at 60.

And in any event, this one-sentence argument, Br. 40–41, is utterly devoid of citation to either the record or any authority. As a result, it is woefully insufficient to contest the point. *See*

Idaho App. R. 35(b)(6) ("The argument should contain the contentions of the respondent with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon."); s*ee also Bach v. Bagley*, 148 Idaho 784, 790 (2010) (citing *Randall v. Ganz*, 96 Idaho 785, 788 (1975) ("Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court.")).

Second, the Secretary asserts, without any support, that BABE VOTE and the League's missions are "unaffected." Br. 40. But the uncontroverted record evidence shows they are affected, and significantly so. The sworn declarations demonstrate the harm already wrought by HB 340, including how it has impeded each organization's mission by forcing them to suspend voter registration efforts, requiring them to divert resources to educate voters about the new registration requirements and combat its harmful effects, and how the bill targets populations each Plaintiff organization serves. *See* R. 510–11, 516–20, 527–30. The Secretary's mere assertion to the contrary is, of course, far from enough to undermine the sworn testimony in the record.

If this Court reverses the district court's dismissal of the Complaint and remands for further proceedings, it should also reverse the denial of the motion for preliminary injunction.[9]

[9] As discussed in the Opening Brief, upon reversal of the district court's dismissal, this Court can and should enter judgment in favor of BABE VOTE and the League and permanently enjoin both Voting Restrictions. Opening Br. 2. The Court would need to address Plaintiffs' motion for preliminary injunction only if it determined that this case should be remanded to the district court for further proceedings. That being said, if this Court remands but directs the district court to apply rational basis review, Plaintiffs concede that they cannot at this stage establish the elements necessary for a preliminary injunction under that standard and would consequently withdraw their motion.

D. The district court's procedural mistakes are fundamental error and independently warrant reversal

Finally, the district court made numerous fundamental procedural errors that each independently warrants reversal. *See* Opening Br. 36–39. The district court improperly relied on information outside the allegations of the Complaint, improperly relied on the Voting Restrictions' statements of purpose (despite their bolded disclaimers alerting to the fact that they should not be considered in judicial review under the Idaho Legislature's joint rules), and dismissed both Counts of the Complaint despite the Secretary having presented no argument for dismissal of Count Two (violation of the right to vote).[10]

In his Opposition, the Secretary tries in vain to downplay these errors, Br. 41–44, but it is undeniable that the district court's decision was based on supposed "facts" posited by the Secretary that were directly contrary to the allegations made in Plaintiffs' Complaint. This is not a triviality, but fundamental and reversible error. *See, e.g., Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 872 (2017), quoting *Taylor*, 149 Idaho at 849 (holding that because the court "shall look only to the pleadings without consideration to the record from the [u]nderlying [c]ase" when reviewing under the Rule 12(b)(6) standard, district court's procedural error "was not harmless").

[10] The Secretary claims that he did present such argument to the district court, and that his briefing "speaks for itself." Br. 43. Indeed it does—and the headings in the Secretary's brief reveal its sole focus on equal protection. The Secretary claims that he "wove its argument against that claim throughout its discussion on the Equal Protection Claim," and he calls out a few sentences in his briefing that hint at the right-to-vote claim, Br. 43, but those are hardly cogent arguments and, in any event, they address only registration, not voting.

Most fundamentally, the district court erred by failing to take as true the allegations of the complaint, as required by Rule 12(c). Worse, the Court relied on factual contentions proffered by the Secretary that were not in and contrary to the Complaint. *See* Opening Br. 37. For example, the court asserted that the State's interest in ensuring that only lawful voters can vote was furthered by requiring valid and reliable ID cards, "which student IDs may not be in some instances" and claimed that student IDs "do not meet the same standards or authenticity and reliability as other forms of government identification." R. 632–33. But those assertions are found nowhere in the Complaint and are contrary to the (undisputed) allegations about the Secretary's testimony that there have been no problems with the use of student IDs in voting. R. 16. And even worse, the district court cited the bills' Statements of Purpose in support of his conclusions, R. 632, defying the bolded directives on each. *See* Opening Br. 38. [11]

Moreover, the rationales offered by the Secretary for the Voting Restrictions (that appear nowhere in Plaintiffs' allegations) are not principled reasons for eliminating student IDs from among the list of acceptable identifications and instead point to the Legislature selectively targeting one group to make it harder for them to vote. As he did below, the Secretary again claims that student IDs were eliminated because they are unreliable. Br. 10; R. 87; R. 636–33. But again, this contention was and is nothing more than pure speculation by the Secretary, proffered as if it

[11] Despite relying heavily on the Voting Restrictions' Statements of Purpose below, R. 70–71, R. 76, R. 84–85, the Secretary now sheepishly avoids discussing them, perhaps finally realizing the incongruence of arguing for deference to the Legislature's bills while also ignoring the Legislature's bolded directive on those same bills that the Statements of Purpose should not be used for judicial review.

were a fact supported by evidence in the record below. In fact, there is no support in the record for that contention. And there is similarly no record evidence that student IDs are any more or less reliable than other forms of ID that can still be used for registration and voting, such as concealed carry permits, which do not demonstrate either citizenship or residency.[12] Similarly, the Secretary points to data about student ID usage as reason for its elimination, Br. 1, but there's no evidence that concealed carry permits (or any other form of identification for that matter) were used meaningfully more often than student IDs. The Secretary offers no explanation for why the Legislature preferred concealed carry permits over student IDs, and that unjustified favoritism points to selective targeting of students.

To be sure, the absolute numbers who used student IDs in voting are not critical—the fact remains that *Idahoans have used student IDs to vote*. That's what matters. What also matters is that, in their zeal to curb student voting, the Legislature and the Secretary repeatedly misled the public and the district court about the data. For example, the Secretary claimed that "*only* 104 persons *anywhere in Idaho* are known to have used student ID to vote in the November 2022 General Election." R. 544 (emphases added). But the declaration upon which the Secretary relied for this bold assertion showed that the figure was based on incomplete data collected from only

[12] U.S. citizens do not need to obtain a concealed carry permit to carry a concealed weapon in Idaho, *see* Idaho Code § 18-3302(4)(f)(ii) (prohibition on carrying concealed weapons without a permit does not apply to U.S. citizens over 18 years of age). As a result, it stands to reason that Idaho concealed carry permits are much more likely to be obtained by non-citizens who are ineligible to vote. Moreover, there is no requirement to be a resident of Idaho to obtain a regular concealed carry permit—residency is required only for an enhanced permit. *See* Idaho Code § 18-3302K(4)(b).

some of Idaho's counties in a single non-presidential election and, among the counties excluded was Bannock County, home to Idaho State University and its more than 12,000 students—a fact neither the Legislature nor the Secretary bothered to share with the public or the court. R. 556–59. Moreover, the Secretary's repeated reference to the number of voters using student IDs to vote says nothing of the number of Idahoans who used student IDs in prior elections nor the number who use student IDs to *register*.

Compounding the errors, the Secretary invents even more supposed facts in his briefing to this Court. Now, the Secretary claims for the first time that student IDs did not serve the purpose of establishing identity at the polls "very well." Br. 10. Nothing supports that evidence-free assertion, and it's again contrary to the Secretary's admission about the lack of problems with student IDs in the previous thirteen years. The Secretary also attempts to improperly introduce new "evidence" into the record on appeal by pasting purported images of various ID cards into his brief—none of which were in the record below. Br. 9–10. Even if the Court considered those images, they prove nothing. And the Secretary also makes claims that are contrary to the statutory language. He asserts, as a supposed benefit of the Voting Restrictions, that the identification requirements for registering and voting are now the same. Br. 11. But that's not true—only HB 340 requires that identification be "current," and *that* requirement is what has made it so difficult for BABE VOTE and the League to continue their work of registering voters, and what has proved so burdensome for Idahoans living with disabilities and others who often have non-current forms of identification. R. 516–20, R. 527–30.

E. BABE VOTE and the League have standing

At the end, the Secretary tries to raise, for the first time in this case, a question about BABE VOTE and the League's standing. Br. 44–47. But his standing argument fares no better than his argument on the merits.

For starters, it's not clear whether the Secretary actually intends to argue that Plaintiffs in fact lack standing to proceed. He argues only that Appellants standing rests on "narrow" grounds. Br. 44. But there is, of course, no requirement that litigants have broad or expansive grounds for standing—it's a binary inquiry, not a relative measure: a litigant either has standing and can bring a lawsuit or does not, and cannot. As a result, even if the Secretary's characterization were accurate (it's not), Plaintiffs' "narrow" standing grounds are sufficient. Indeed, this Court need not even indulge the Secretary by trying to make out an argument for lack of standing when the Secretary himself could not do so.[13]

In any event, there is a good reason the Secretary is unable to argue that Plaintiffs lack standing—they plainly do. "To establish standing 'a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision.'" *Reclaim Idaho*, 169 Idaho at 419 (quoting *State v. Philip Morris, Inc*., 158 Idaho 874, 881 (2015)). At the pleading stage, Plaintiffs' general factual allegations of injury resulting from the challenged legislation suffice

[13] *Cf. Bach*, 148 Idaho at 790 ("Where an appellant fails to assert his assignments of error with particularity and to support his position with sufficient authority, those assignments of error are too indefinite to be heard by the Court.") (citation omitted).

because courts assume the truth of those allegations. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). And injury based on diversion-of-resources "is sufficient to establish organizational standing at the pleading stage, even when it is broadly alleged." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015) (internal quotation marks and citation omitted).[14] Furthermore, "risk or threat of injury" is sufficient "to satisfy the actual injury requirement" at the preliminary stage if that risk or threat is "certainly impending." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 764 (9th Cir. 2018). Applying this rule, in *Reclaim Idaho*, this Court found the plaintiffs had standing because "[w]hile it is yet to be seen whether [the legislation] will preclude either from qualifying their matters for the 2022 ballot, the fact that the legislature has placed a significantly greater burden for getting their petitions certified for the ballot is clear." 169 Idaho at 423.

BABE VOTE and the League alleged (and later established through sworn testimony) more than enough facts to establish standing. Among other things, they alleged that by making it harder for young people to register and vote, the Voting Restrictions negatively affect both organizations' missions of increasing voter turnout and making elections more free, fair, and accessible to Idahoans regardless of age and make it more difficult for BABE VOTE to achieve its mission of ensuring all eligible young voters in Idaho successfully vote. R. 26 ¶ 9; R. 28 ¶ 14. They also alleged that HB 340 further impedes the League's mission by making registration harder for voters who are housing insecure, who are houseless, who have disabilities, and who are new citizens.

[14] "Idaho has adopted the constitutionally based federal justiciability standard." *ABC Agra, LLC v. Critical Access Grp., Inc.*, 156 Idaho 781, 783 (2014).

R. 28 ¶ 14; R. 516 ¶ 7. These are "distinct and palpable injur[ies] in fact" that are sufficient to establish standing. *Reclaim Idaho*, 169 Idaho at 423.

The Secretary contends that the injuries alleged in the Complaint are "hypothetical and conjectural," Br. 45, overlooking the fact that the Amended Complaint was filed *before* the Voting Restrictions became effective. And in any event, the case law is clear: plaintiffs may seek prospective relief. *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010) (ruling future credible threat of harm constitutes injury-in-fact); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008) (ruling anticipated diversion of resources to address future election laws satisfied "immediacy and likelihood requirements" of standing). The Secretary also ignores the declarations subsequently submitted by representatives of BABE VOTE and the League in support of their Motion for Preliminary Injunction, which squarely discuss the actual harms inflicted on both organizations once HB 340 went into effect, including the cessation of voter registration efforts, a key part of each organization's mission. *See* R. 510–11, 516–20, 527–30. Notably, many courts have found not only that frustration of voting-rights organizations' mission is an injury, but that it is *irreparable* harm. Opening Br. 41–42.[15]

[15] Moreover, contrary to the Secretary's contention, diversion of resources from a plaintiff's mission most assuredly does establish standing. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013) (holding that organizational plaintiffs had established standing because they "had to divert resources to educational programs to address its members' and volunteers' concerns about the law's effect"); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc) (holding that standing had been established where the state action frustrated Plaintiffs' missions and forced them to divert resources to discuss the enforcement of the new ordinance and address the new ordinances impact).

The Secretary's traceability and redressability argument, which contends that some young voters lack student identification and therefore the harm alleged is not traceable to the Voting Restrictions, Br. 45–46, is illogical. Redressability "is satisfied so long as the requested remedy would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.," *Mecinas v. Hobbs*, 30 F.4th 890, 900 (9th Cir. 2022) (quoting *Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012)) (internal quotation marks omitted). "Plaintiffs need not demonstrate that there is a guarantee that their injuries will be redressed by a favorable decision." *Id*. (quoting *Renee*, 686 F.3d at 1013) (internal quotation marks omitted). Here, HB 124 and 340 removed an entire category of voter identification, and HB 340's changes to voter registration caused both BABE VOTE and the League to suspend their efforts to register Idaho voters. Enjoining these laws, restoring student IDs, and undoing the changes from HB 340 would directly and necessarily reverse the harm they caused; as a result, the injuries are "fairly traceable" to the Voting Restrictions. *Reclaim Idaho*, 169 Idaho at 423.

Finally, the Secretary's argument about associational standing is a sideshow. BABE VOTE and the League have both sufficiently alleged and established direct organizational harm from the Voting Restrictions.

III. CONCLUSION

For these reasons, BABE VOTE and the League respectfully request the Court reverse the district court and grant the relief requested in their Opening Brief.

Respectfully submitted this 28th day of November, 2023.

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PERKINS COIE LLP

By: _____

Matthew P. Gordon
MGordon@perkinscoie.com
Kevin J. Hamilton
KHamilton@perkinscoie.com
David T. Krueck
DKrueck@perkinscoie.com
Torryn Taylor Rodgers
TRodgers@perkinscoie.com
Garmai J. Gorlorwulu
GGorlorwulu@perkinscoie.com

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2023, I served the foregoing electronically through the iCourt E-File System, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service.

James E.M. Craig
james.craig@ag.idaho.gov

James E. Rice
jim.rice@ag.idaho.gov

Joshua N. Turner
josh.turner@ag.idaho.gov

Attorneys for Respondent

Matthew P. Gordon