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Idaho Supreme Court
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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' OPENING 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

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I. STATEMENT OF THE CASE

A. Brief Statement of the Case

Following a dramatic surge in young voter registration in Idaho—a historic increase that far outpaced every other state in the nation—the Legislature responded by making it more difficult for Idaho's young people to register and to vote, for no reason other than brazen partisanship.

Since 2010, Idaho students have been able to use their Idaho student IDs for registering and voting. And in all that time, there were no problems. As the Secretary of State testified to the Legislature, there is no evidence of *any* fraud associated with Idaho student IDs—ever. But spurred on by a nationwide partisan effort to reduce student participation in elections, the Legislature nonetheless eliminated the use of student IDs for registering or voting. And, for good measure, the Legislature made it harder for other Idahoans, including some of its most vulnerable citizens, to register, and harder for voting-rights organizations like Plaintiffs to help people register. The bills—HB 124 and HB 340—specifically, and by design, target a disfavored group by imposing unnecessary barriers to voting. This is impermissible by any measure under the Idaho constitution.

Recognizing that the right of suffrage is preservative of all other rights, this Court has long jealously guarded Idahoans' fundamental right to vote by subjecting legislation that affects that right to strict scrutiny. Indeed, the Court's "fundamental rights jurisprudence is *unequivocal* that such rights are subject to strict scrutiny." *Reclaim Idaho v. Denney*, 169 Idaho 406, 430 (2021) (emphasis added), citing *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 126 (2000). In *Van Valkenburgh*, the Court held that "[b]ecause the right of suffrage is a fundamental right,

strict scrutiny applies," 135 Idaho at 126, and in *Reclaim Idaho*, this Court emphasized that *Van Valkenburgh* held "*without qualification* that a law infringing on a fundamental right is subject to strict scrutiny." *Reclaim Idaho*, 169 Idaho at 430.

Despite these clear pronouncements, the district court veered sharply off the path this Court has charted, skipped over the federal balancing test the Idaho Secretary of State ("Secretary") advocated, and jumped straight to the lowest level of review, rational basis. That constitutional standard, if adopted by this Court, would significantly weaken the protections afforded Idahoans' right to vote and give this and future legislatures carte blanche to target other disfavored groups in a misguided effort to shape the electorate to its liking. The lower court's decision marks a radical revision of Idaho law, which has long stood firmly against such legislative manipulation of the franchise. This Court should reverse and ensure that Idahoans' most fundamental right—the right to vote—remains closely protected for generations to come.

Plaintiffs-Appellants BABE VOTE and the League of Women Voters ("the League") respectfully request that the Court (1) apply strict scrutiny to HB 124 and HB 340 and reverse the district court's dismissal of the First Amended Complaint, and (2) enter judgment in Plaintiffs' favor, or (3) in the alternative to an entry of such judgment, reverse the district court's denial of motion for preliminary injunction and either enter a preliminary injunction enjoining HB 340 or instruct the district court to do so on remand. If instead the Court determines that the *Anderson-Burdick* standard applies to HB 124 and HB 340, Plaintiffs ask the Court for the same relief—reversal of the district court's dismissal and either judgment in Plaintiffs' favor or reversal of the denial of Plaintiffs' motion for preliminary injunction and remand.

B. Proceedings Below

1. The Pleadings

The Idaho Legislature passed two bills during its 2023 Legislative Session that limit the right of suffrage, particularly for young voters, by making it harder to vote—HB 124 and HB 340 (the "Voting Restrictions").[1] HB 124 eliminated the long-standing use of student identification cards as a form of identification for voting at the polls. R. 31 ¶ 27; R. 34 ¶ 35. Governor Little signed the bill into law on March 15, 2023, and BABE VOTE and the League sued the next day. R. 8.

HB 340 eliminated the long-standing use of student IDs for voter registration and otherwise limited forms of ID that could be used to register. Governor Little signed the bill into law on April 4, 2023, and BABE VOTE and the League subsequently amended their complaint. R. 23.

The Amended Complaint for Injunctive and Declaratory Relief (the "Complaint") alleges that the Voting Restrictions are unconstitutional under the Idaho Constitution and impose additional barriers to voting for young voters and voters from other vulnerable communities. These burdens, and the injury they impose on voting rights, significantly outweigh any purported state interest in election security, in part because there is no evidence that student IDs are not secure or that their elimination will protect the integrity of Idaho's elections or prevent voter fraud. R. 36–37.

[1] H.B. 124, 67th Leg., 1st Reg. Sess. (ID 2023), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/legislation/H0124.pdf; H.B. 340, 67th Leg., 1st Reg. Sess. (ID 2023), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/legislation/H0340.pdf.

Count One of the Complaint alleges that the Voting Restrictions violate the Idaho Constitution's guarantees of equal protection under Article I, § 2 and that they advance no compelling state interest and are not narrowly tailored. R. 37–38. Count Two alleges the restrictions burden the fundamental right to vote under the Idaho Constitution yet promote no compelling state interest. R. 39–40.

The Secretary responded by filing: (1) an answer and counterclaims, alleging that the Voting Restrictions do not violate various provisions of the *Federal* Constitution (a claim nowhere to be found in the Complaint in *this* case) (R. 43–60); (2) a motion for summary judgment on those counterclaims (R. 61); and (3) a motion for judgment on the pleadings seeking to dismiss the Complaint (*id.*).

2. Briefing

The Secretary's motion for judgment on the pleadings nominally sought dismissal of both affirmative claims in the Complaint, R. 61, but the Secretary's argument in his supporting memorandum focused solely on equal protection (Count 1), R. 77–84, and made only passing reference to the right-to-vote claim (Count 2). R. 78.[2] The Secretary argued that the federal *Anderson-Burdick* test should apply to the equal protection claim rather than strict scrutiny. R. 78–83.

[2] The Secretary filed a combined motion for judgment on the pleadings and motion for summary judgment on his counterclaims. Sections III and IV of the Secretary's supporting memorandum addressed the Twenty-Fourth and Twenty-Sixth Amendments to the U.S. Constitution, which were at issue solely in the counterclaims. The counterclaims are not at issue in this appeal.

The Secretary acknowledged, as he had to, that for purposes of the motion for judgment on the pleadings, "the undisputed facts . . . are the allegations of Plaintiff's Complaint." R. 72. But the Secretary's briefing nevertheless ignored those allegations entirely and instead based his argument on information outside and contrary to the Complaint, including unsupported assertions about the security and uniformity of student IDs, their frequency of use, and the supposed interests the Voting Restrictions advanced. R. 84–85, 87. Among other things, the Secretary relied heavily on the Voting Restrictions' respective Statements of Purpose, R. 70–71, despite the bolded disclaimers in each statement:

> **This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside the legislative process, including judicial review**.

R. 59–60.[3]

BABE Vote and the League subsequently filed a motion for preliminary injunction regarding HB 340. R. 118–20. The law, which went into effect on July 1, 2023, almost immediately caused both organizations to cease their voter-registration efforts. R. 519, 529._

[3] The Idaho Legislature revised Joint Rule 18 in 2013 to add this disclaimer to make it indisputably clear that the "statement of purpose" and "fiscal note" were *not* to be considered by courts reviewing the statutes and were *not* evidence of legislative intent. S. Con. Res. 129, 62nd Leg., 1st Reg. Sess. (ID 2013). The Secretary nonetheless emphatically relied on those very provisions, in defiance of the Legislature's instruction, to defend the statutes at issue in this case–all without a word of explanation. The tactic (defying the legislative command in one part of the statute in order to defend another) is more than a little ironic.

3. The District Court's Order

The district court heard one hour of oral argument on all three motions and subsequently issued its Memorandum Decision and Order ("Order") addressing each.[4] At the outset, the district court characterized the "central issue" on which its decision turned as whether HB 124 and HB 340 were subject to strict scrutiny or rational basis review, stating: "If it is the former, then Plaintiffs prevail; however, if it is the latter, then Defendant prevails." R. 610. The district court described this "central issue" as "an issue of first impression, which will certainly be finally decided by the Supreme Court." *Id*.

The district court briefly acknowledged this Court's precedent holding that "the right of suffrage is a fundamental right[.]" R. 620 (citing *Van Valkenburgh*, 135 Idaho at 126). But the district court decided to limit *Van Valkenburgh* to the particular law at issue in that case, which required certain information to be printed on ballots, and concluded that *Van Valkenburgh* did not apply to the Voting Restrictions, which the court characterized as "time, place, [and] manner regulations[s]." R. 620. Based on that characterization, the court concluded that the Voting Restrictions were subject to rational basis review. R. 610, 620, 626.

[4] The district court separately analyzed the Secretary's motion for summary judgment on his counterclaims, which concerned the federal constitution, and denied that motion. That ruling has not been appealed. As a result, the discussion of the district court's Order in the balance of this brief is solely about the portions that address the Secretary's motion for judgment on the pleadings and BABE VOTE and the League's motion for preliminary injunction.

The district court's analysis made no mention of this Court's pronouncement two years ago that, "[i]n *Van Valkenburgh*, we held *without qualification* that a law infringing on a fundamental right is subject to strict scrutiny." *Reclaim Idaho*, 169 Idaho at 430 (emphasis added).

In support of its reasoning, the district court relied on information not alleged in and often contrary to the Complaint, namely: (1) the Statements of Purpose for both bills, R. 612–613, 632; (2) data submitted by the Secretary regarding the use of student IDs in voting in some counties in one election, R. 611; and (3) the assertion that students IDs "may not be [valid and reliable] in some instances" and "do not meet the same standards or authenticity and reliability as other forms of government identification." R. 632–33. The district court did not acknowledge the bolded disclaimers in the statements of purpose stating that they were not meant to be relied upon for judicial review and identified no support for its assertions about the relative reliability of student IDs.

The court concluded that the Voting Restrictions are rational because they require "only generally accepted, authentic and reliable forms of identification as a reasonable condition to exercise the right of suffrage," and on that basis granted the motion for judgment on the pleadings and denied the motion for preliminary injunction. R. 636-37. The district court entered judgment the same day, October 2, 2023, dismissing the Complaint with prejudice. R. 639. Plaintiffs filed their Notice of Appeal on October 12, 2023. R. 641–46. On October 19, 2023, Plaintiffs filed a motion to expedite the appeal with a statement of non-opposition from the Secretary. This Court granted the motion on October 24, 2023.

C. Statement of the Facts[5]

1. Parties

Appellant BABE VOTE is a nonpartisan, nonprofit Idaho organization whose mission is to encourage people, specifically young Idahoans, to register to vote and vote. R. 25 ¶¶ 7–8. BABE VOTE volunteers conduct voter registration drives at local schools, and community events, organize door knocking to remind people to vote leading up to and during elections, and educate students, young adults, and community members about voting rights through non-partisan voter information efforts. R. 25–26 ¶ 8. BABE VOTE works to expand informed access to voting for legally eligible young and marginalized citizens and encourage participation in their governance. *Id.*

Appellant the League is a nonpartisan, nonprofit organization that has encouraged informed and active participation in the political process as part of its mission for more than 75 years. R. 27 ¶ 11, 13. The League devotes substantial time, effort, and resources to helping Idaho voters, including students and other youth, ensure their ballots are properly cast and counted by educating citizens about voting rights and the electoral processes and facilitating voting through voter registration activities and non-partisan voter information efforts. *Id.* ¶ 12.

[5] A court reviewing a motion for judgment on the pleadings takes "all allegations in the pleading as true[.]" *Student Loan Fund of Idaho, Inc. v. Duerner*, 131 Idaho 45, 49 (1997). Accordingly, the statement of facts primarily cites allegations in the Complaint. Because the district court's denial of the motion for preliminary injunction is also on appeal, the statement of facts also cites record evidence introduced in support of that motion that supports the allegations, while recognizing that this Court will consider that evidence only in connection with its review of the preliminary injunction motion.

By making it harder for young people to register and vote, the Voting Restrictions impede BABE VOTE's and the League's 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. HB 340 also impedes the League's mission by making registration harder for voters who are housing insecure, who are houseless, and who have disabilities. R. 28 ¶ 14.

Appellee the Secretary is Idaho's chief election officer and is responsible for obtaining and maintaining uniformity in the application, operation, and interpretation of election laws. R. 28 ¶ 15; Idaho Code § 34-201. In carrying out these responsibilities, the Secretary has the duty of preparing and delivering to election administrators written directives and instructions relating to election law. R. 28 ¶ 15; Idaho Code § 34-202. The Secretary is named as a Defendant solely in his official capacity. R. 28 ¶ 15.

2. Idaho's "great" electoral system has long included student IDs

Since 2010, Idaho's electoral system has included a voter ID requirement. R. 30 ¶ 23. Prior to HB 124, voters were able to vote in person by presenting one of several forms of identification at the polls, including Idaho student IDs. R. 31 ¶ 27; Idaho Code § 34-1113 (2017). And before HB 340, would-be voters in Idaho could also show an Idaho student ID in connection with registering to vote on election day. R. 31–32 ¶ 28; Idaho Code § 34-408-A (2016). Voters registering in person before election day were not required to show any identification (R. 31 ¶ 28; Idaho Code § 34-407), and voters registering by mail could show "current and valid photo

identification," including a "current student identification card," (R. 31–32 ¶ 28; Idaho Code § 34-410 (2003)).

Under this longstanding registration and voter ID regime, Idaho had, by the Secretary's own description, a "great system" for voting. *See* R. 124, 143–44 ¶ 2, 149–50. Indeed. Voter fraud in Idaho was virtually non-existent because, according to the Secretary, the "vigilance" of Idaho's existing fraud prevention measures "ensured [the] system is safe." *See* R. 143–144 ¶ 2, 149–50. As the Secretary testified to the Legislature in February, there have been no instances of voter fraud linked to the use of student IDs to vote in Idaho. *Id.* The Secretary's testimony is consistent with the data: according to the Heritage Foundation's database of voter fraud—a conservative project that uses an expansive definition of "fraud"—there have been only 6 instances of voter fraud in Idaho between 2010 and 2023, *none* of which appear related to student IDs. *See* R. 144 ¶ 3, 152–53.

3. In response to the increase in young voter participation, the Legislature passed the Voting Restrictions to make it harder for young Idahoans to vote

Idaho's young people, who have long lagged behind in voter participation, recently began to turn out in greater numbers, thanks in part to the efforts of BABE VOTE and the League. In 2016, only 38% of Idahoans aged 18 to 29 cast ballots in the general election, but in 2020, that number jumped significantly, and nearly 50% of young voters voted. R. 29 ¶ 19; R. 144 ¶ 3, 155–59. Registration also spiked in recent years among younger voters, particularly among the youngest eligible Idahoans. From 2018–2022, registration among Idahoans aged 18–24 increased

16%—among the top ten increases in the country—and it increased ***81%*** among Idahoans aged 18 to 19, by far the biggest jump among all states. R. 29 ¶ 19 (emphasis added); R. 144 ¶ 5, 161–65.

Rather than celebrate this historic increase in young voter participation, the Idaho Legislature set out to undermine this positive trend, passing two partisan bills to restrict student voting rights. R. 30 ¶ 22. Neither bill responded to actual problems with the use of student IDs to register or vote—because, as the Secretary testified, there were none. *See* R. 24 ¶ 2, 36-37 ¶ 45, 143–44 ¶ 2, 149–50. Instead, both bills were, by all appearances, part of a coordinated national partisan effort to restrict student voting—a partisan backlash against increased student participation in politics. R. 24 ¶ 1; *see also, e.g.*, R. 144–45 ¶¶ 6–9, 167–219.

a. HB 124 eliminated student IDs as an option for identification at the polls

The first Voting Restriction passed by Idaho's Legislature, HB 124, was a surgical attack on student voters, eliminating Idaho student IDs—and only student IDs—from the list of acceptable IDs that could be shown at the polls. R. 24 ¶ 2. Before HB 124, voters could prove their identity to vote in person by presenting one of the following forms of identification:

(1) An Idaho driver's license or identification card issued by the Idaho transportation department;

(2) A passport or an identification card, including a photograph, issued by an agency of the United States government;

(3) A tribal identification card, including a photograph;

(4) A current student identification card, including a photograph, issued by a high school or an accredited institution of higher education, including a university, college or technical school, located within the state of Idaho; or

(5) A license to carry concealed weapons issued under section 18-3302, Idaho Code, or an enhanced license to carry concealed weapons issued under section 18-3302K, Idaho Code.

R. 31 ¶ 27; Idaho Code § 34-1113 (2017).[6] HB 124 removed the option to show a current Idaho student ID. R. 34 ¶ 35; s*ee also* HB 124 § 1.

The legislative record of HB 124 includes no evidence of problems with student IDs. While the bill's chief sponsor, Representative Lambert, claimed that student IDs are not secure and that eliminating their use as a voter ID is necessary to protect the integrity of Idaho's elections and prevent voter fraud, R. 36 ¶ 44, she gave no specific examples of any instances of fraud linked to student IDs. Nor could she, given the absence of any such fraud. R. 37 ¶ 47. Representative Lambert merely said that unidentified and unspecified "constituents" have expressed "concern[ ] that students, maybe from a state like Washington or Oregon where they vote by mail, may come over here with their student ID and vote in person and then fill out their ballot in another state, thereby voting twice."[7] R. 37 ¶ 46. No known instances of such fraud have occurred in Idaho (R. 37 ¶ 47), and existing laws already make such conduct illegal. *E.g.*, Idaho Code §§ 18-2306 (1972), 18-2315 (2017) (criminalizing illegal voting, interference with elections, and other election offenses).

[6] The voter ID law was initially passed in 2010. R. 31 n. 2. The initial law permitted voters to use the above categories of identification at the polls, with the exception of concealed carry permits, which were added as an approved form of voter ID in 2017. *Id.*; Idaho Code § 34-1113 (2010); Idaho Code § 34-1113 (2017).

[7] Representative Lambert made the comments when introducing HB 54, an earlier version of HB 124 that also would have eliminated the use of student IDs to vote. R. 37 ¶ 46.

b. HB 340 eliminated student IDs as an option for registration and further restricted registration

The second Voting Restriction, HB 340, continued the assault on student voters by removing student IDs from the registration process. R. 31 ¶ 26; *see also* HB 340 §§ 2–5. And it expanded the assault on voting rights by sweeping more broadly to make registration harder for other citizens who already encounter additional barriers to the franchise, including voters with disabilities, newly relocated voters, voters with disabilities in residential care facilities, and new citizens. R. 36 ¶ 43; R. 126. HB 340 fundamentally changed the requirements for registering to vote in Idaho by requiring that all new voters show one of a limited number of forms of current photo ID. R. 35 ¶ 41. And it made it harder to register in particular for certain groups disfavored by the legislative majority—young voters and new Idaho residents. *Id.*

Whereas Idahoans previously had a variety of identification options for registering to vote, including student ID, HB 340 eliminated student IDs and otherwise cut the options back to a few forms of current identification. Section 5 of HB 340 requires registrants to show one of four forms of current photo ID:

> (1) A current driver's license or identification card issued pursuant to title 49, Idaho Code;
>
> (2) A current passport or other identification card issued by an agency of the United States government;
>
> (3) A current tribal identification card; or
>
> (4) A current license or enhanced license to carry concealed weapons issued under section 18-3302, Idaho Code, or section 18-3302K, Idaho Code.

HB 340 § 5. Moreover, unless a voter has an Idaho driver's license or Idaho state ID card, tribal ID card, or Idaho concealed carry license that displays their "current Idaho physical address," they must also show another document displaying their "name and current Idaho physical address." *Id.*

HB 340 includes a provision that establishes a "no-fee identification," but that ID is available only to those "eighteen (18) years of age or older who ha[ve] not possessed a current driver's license in the preceding six (6) months"—in other words, it's not available to Idahoans who are under 18 or who have a possessed a current driver's license from any state in the last six months. R. 36 ¶ 42; HB 340 § 8. In addition, many voters face barriers that prevent them from obtaining a "no-fee identification," including those with mobility and transportation challenges. R. 516–17 ¶¶ 8–10.

Both HB 124 and HB 340 include a brief statement of purpose with a bolded disclaimer:

> **This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside the legislative process, including judicial review.**

R. 59–60.

c. The Voting Restrictions are part of a national coordinated effort to make it harder for students and others to vote

Idaho is hardly alone in its efforts to restrict student voting. Rather, the Voting Restrictions are consistent with widespread strategies to discourage student voting or to exclude students from the "legitimate" electorate. R. 145 ¶ 11, 421–42; *see also* R. 29–30 ¶ 21. Increases in young voter participation in Idaho mirror similar increases nationwide—in the 2020 and 2022 elections, young voters turned out at historic or near-historic rates. R. 29 ¶¶ 19–20; *see, e.g.*, R. 144–45 ¶¶ 7–9,

171–219. In response, legislatures across the country used the false specter of voter fraud to try make it harder for young people to vote, for no reason other than for partisan advantage. R. 29–30 ¶ 21. Some passed such laws only to see them struck down as unconstitutional. *Id.* In Montana, for example, the legislature passed a bill downgrading student IDs from primary identification at the polls—a law struck down as unconstitutional under the Montana Constitution's equal protection guarantees in 2022. *Id.*; *see also* R. 145 ¶ 10, 221–419 (Findings of Fact, Conclusions of Law, and Order at *36, 44–48, *77–78, *Mont. Democratic Party v. Jacobsen*, No. DV 21-0451, 2022 WL 16735253 (Mont. Dist. Ct. Sept. 30, 2022)). And Texas imposed strict residency requirements on voters, a move held to unlawfully burden college students. R. 30 ¶ 21; *Tex. State LULAC v. Elfant*, 629 F. Supp. 3d 527 (W.D. Tex. 2022).[8]

4. The Voting Restrictions make it harder to vote for young voters and other vulnerable communities

The Voting Restrictions will make it harder to register and to vote. R. 35 ¶ 40; R. 36 ¶ 42. And the effects will, unsurprisingly, be felt most acutely by those they target: Idaho students, along with Idahoans for whom obtaining the required forms of identification will be more difficult. R. 33 ¶¶ 32–33; R. 36 ¶¶ 42–43. Indeed, in the few months HB 340 has been in effect, it has already suppressed voter registration efforts. R. 519–520 ¶¶ 16–19; R. 529–530 ¶¶ 12–15).

The Voting Restrictions' imposition of additional costs on the ability to vote and register to vote has a predictable consequence: some people who otherwise would have voted will not.

[8] The case was overturned on appeal on standing grounds. *Tex. State LULAC v. Elfant*, 52 F.4th 248 (5th Cir. 2022).

See R. 489 ¶ 3, 494 ¶ 15. This relationship between increased voting costs and lower turnout has been explained for over 60 years by the "calculus of voting," a widely embraced standard analytical tool in the scholarly literature, and it has been recognized by multiple courts. R. 489 ¶ 3; *Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (recognizing it is a "well-established formula" that in assessing an individual's likelihood of voting, "increasing the cost of voting decreases voter turnout."); *see also Montana Democratic Party*, 2022 WL 16735253, at *19–20 (acknowledging "credible" and "well supported" expert testimony stating: "as the costs of voting increase, the likelihood that an individual votes decreases").

The calculus of voting framework holds that an individual will turn out to vote if the benefits of doing so outweigh the costs and will not vote otherwise. As a result, increased costs tend to result in lower turnout. R. 489 ¶ 3. Costs of voting include, among other things, procuring the requisite form of identification and gathering information that specifies how, where, and when to vote. R. 490 ¶ 6. When the number of accepted forms of identification for either registration or voting decreases, the cost of voting correspondingly increases. R. 491 ¶ 9. Because the Voting Restrictions removed a type of identification from the types of identification that were previously sufficient in Idaho for the purposes of registering to vote and vote, they increase the costs of voting and therefore will predictably reduce voter turnout in Idaho. R. 494 ¶ 15.

Moreover, the Voting Restrictions will hit certain groups harder. Individuals who have disproportionately less access to forms of required identification are disproportionately burdened by the costs associated with acquiring identification. R. 494–95 ¶¶ 16–17. And, of course, eliminating the use of student IDs is a cost of voting that will, by definition, primarily affect

students. Students from other states attending school in Idaho are particularly vulnerable because if they still have a valid driver's license from their prior home state, they will be excluded from qualifying for HB 340's no-fee ID, and if no longer permitted to use their student IDs to register, those without other qualifying forms of ID will be left with no way to register to vote. HB 340 § 8; R. 495 ¶ 17. This is complete disenfranchisement.

But the Voting Restrictions will affect more than just students. For new residents or new drivers, it can often take many months to even schedule an appointment at the DMV and take a driving test. *See, e.g.*, R. 518 ¶ 12. Where applicable, this timetable is only further compounded by the need to have HB 340's no-fee voter ID (discussed further below) issued in time for individuals to register to vote. New citizens without a current and valid form of identification as enumerated in Section 5 of HB 340 would also be vulnerable in their ability to register to vote. R. 516 ¶ 7. With the aid of third-party organizations like BABE VOTE and the League, new citizens have historically been able to register to vote at their citizenship ceremonies, right after they have taken their oath and received their naturalization papers. *Id.* But under HB 340, if these new citizens do not already possess one of the enumerated forms of pre-approved identification, they would not be able to participate in such on-the-spot registration. Because of ambiguity in HB 340, it is unclear to the League how new citizens could finalize their registration by showing ID and residency documents if the League submits registration cards on their behalf—the League is uncertain whether it can continue to register new citizens at their citizenship ceremonies and has ceased such registration initiatives as a result. *Id.* Instead, new citizens now must go through the (likely lengthy) process of first obtaining one of the valid forms of identification before they can

register to vote—a deterrent that is likely to result in many new citizens and would-be voters unregistered. *See* R. 494 ¶ 15. This imposition of additional barriers to new American citizens' voting is particularly egregious.

While HB 340 includes a provision to create no-fee voter ID, voters who have or previously had within the last six months a current driver's license are ineligible, as are individuals under the age of 18. R. 36 ¶ 42; R. 130. As a result, new Idaho residents who have driver's licenses from another state cannot obtain the no-fee ID. R. 130. Nor can Idahoans who will turn 18 before the next election, potentially leaving them without the necessary identification to register in time to vote. *Id.* Moreover, while cast as "no-fee" voter ID, there are in fact costs associated with obtaining one, including time and transportation, which can be significant, particularly for individuals for whom transportation is a challenge. *Id.* As but one example, it may prove extremely difficult for individuals in congregate care facilities—who may not otherwise have a need for a current form of ID, and who often have significant mobility challenges—to obtain accessible transportation to the DMV to obtain the no-fee ID. R. 516–18 ¶¶ 8–11. For these individuals, access to the franchise is greatly encumbered by the new requirements set forth in HB 340. *Id.*

II. ISSUES PRESENTED ON APPEAL

(1) Did the district court err in granting Defendants' motion for judgment on the pleadings when it (a) refused to apply well-settled Idaho law mandating strict scrutiny and instead adopted rational-basis review, a constitutional standard that finds no support in Idaho law and was not advocated for by any party in the litigation; (b) failed to accept as true the allegations in Plaintiffs' complaint; and (c) considered allegations and evidence outside of the complaint?

(2) Did the district court err in denying Plaintiffs' motion for preliminary injunction when it (a) refused to apply well-settled Idaho law mandating strict scrutiny and instead adopted rational-basis review, a constitutional standard that finds no support in Idaho law and was not advocated for by any party in the litigation; (b) determined that Plaintiffs would win under strict scrutiny; and (c) ignored undisputed evidence of irreparable harm to Plaintiffs absent an injunction?

III. ARGUMENT

This Court has long made it emphatically clear that Idahoans' right to vote is fundamental under the Idaho Constitution, and thus any law that infringes upon it is subject to strict scrutiny. The Voting Restrictions at issue here plainly infringe the right to vote and—as all parties recognize—cannot survive strict scrutiny.

The district court ignored this Court's jurisprudence and erroneously applied rational basis review to the Voting Restrictions after characterizing them, without authority, as mere "time, place, and manner" restrictions. With all due respect, they are not. And even if they were, the appropriate standard would be the *Anderson-Burdick* framework, under which even laws that impose less than severe burdens on the right to vote are subject to more exacting forms of scrutiny than rational basis. And the Voting Restrictions rather plainly do not survive even the *Anderson-Burdick* standard. Finally, even assuming the district court applied the correct standard (it did not), it made numerous procedural errors that justify reversal. The court improperly looked beyond the allegations in the complaint, relied on text that the Legislature told courts not to use for judicial review, and dismissed both counts of the complaint even though the Secretary presented *no argument* for dismissal of Count Two.

The district court erred in granting Defendants' motion for judgment on the pleadings and denying Plaintiffs' motion for summary judgment.

A. Standard of Review

The Idaho Supreme Court reviews a district court's ruling on a motion for judgment on the pleadings de novo. *Student Loan Fund of Idaho*, 131 Idaho at 49. "A judgment on the pleadings is properly granted when, taking all allegations in the pleading as true, the moving party is entitled to judgment as a matter of law." *Id.* "[T]he moving party admits all the allegations of the opposing party's pleadings and also admits the untruth of its own allegations to the extent they have been denied." *Smith v. Smith*, 160 Idaho 778, 784 (2016) (quoting *State v. Yzaguirre*, 144 Idaho 471, 474 (2007)). "All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom, and if reasonable people might reach different conclusions." *Id*. (quoting *G & M Farms v. Funk Irr. Co*., 119 Idaho 514, 517 (1991)). Motions for judgment on the pleadings are "not favored by the courts[.]" *Cedarholm v. State Farm Mut. Ins. Cos.*, 81 Idaho 136, 141 (1959). Accordingly, the pleadings are "liberally construed in favor of the" non-moving party. *Id.*

"The granting or refusal of an injunction is a matter resting largely in the trial court's discretion." *Munden v. Bannock Cnty.*, 169 Idaho 818, 827 (2022) (citing *Conley v. Whittlesey*, 133 Idaho 265, 273 (1999)). This Court reviews a ruling on a motion for preliminary injunction under an abuse of discretion standard, determining "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (citing *Hull v. Giesler*, 163 Idaho 247, 250 (2018)). "When the trial court fails to apply the

proper legal standard to the choices before it, it constitutes an abuse of discretion." *Parkinson v. Bevis*, 165 Idaho 599, 608 (2019) (citing *State v. Montgomery*, 163 Idaho 40, 45 (2017)).

B. The district court erred by granting the Secretary's motion for judgment on the pleadings and dismissing the Complaint

The district court's most fundamental error was its choice to apply rational-basis review, particularly considering no party argued for that standard. The district court defied this Court's clear precedent establishing that statutes affecting Idahoans' fundamental right of suffrage are subject to strict scrutiny review and instead applied the *lowest* possible level of review—below even the federal courts' *Anderson-Burdick* standard for which the Secretary advocated.[9] In doing so, the district court didn't merely veer off the well-trodden path blazed by this Court, it went as far astray as possible by applying precisely the *opposite* standard to the one this Court has repeatedly endorsed, strict scrutiny—which, as the district court concluded and the Secretary conceded, the Voting Restrictions cannot survive.

1. Strict scrutiny, not rational basis, applies to this case, and it is undisputed that the Voting Restrictions do not survive that standard

a. This Court's precedent makes it clear that the Voting Restrictions are subject to strict scrutiny

Strict scrutiny, not rational basis, applies to both claims in the Complaint—violation of the right to vote and equal protection—because the Voting Restrictions affect and infringe Idahoans' fundamental right to vote.

[9] *See Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992).

The constitutional analysis begins with the proposition that "[a]ll political power is inherent in the people." Idaho Const. art. I, § 2. And Article I, § 19 of the Idaho Constitution says that "[n]o power, civil or military shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage."

"Because the Idaho Constitution expressly guarantees the right of suffrage," this Court held in 2000 that "voting is a fundamental right under the Idaho Constitution." *Van Valkenburgh*, 135 Idaho at 126. The Court reaffirmed that "if a fundamental right is at issue, the appropriate standard of review to be applied to a law infringing on that right is strict scrutiny." *Id.* *Van Valkenburgh* involved a statute authorizing the Idaho Secretary of State to place "legends" on ballots showing which candidates had signed or broken term-limits pledges. *Id.* at 123–24. The statute in *Van Valkenburgh*, like the one here, was plainly intended by the Legislature to influence the electorate in its voting. Yet even though the law did not *prevent any* person or group from voting, or for voting for the candidate of their choice, this Court nevertheless held that it infringed upon the fundamental right to vote and applied strict scrutiny. *Id.* at 127. The Court rejected the argument that the "more flexible" *Anderson-Burdick* standard should apply because *Burdick* "did not deal with the Idaho Constitution and instead was decided under the United States Constitution." *Id.* at 126.

In 2021, this Court reiterated that its "fundamental rights jurisprudence is unequivocal that such rights are subject to strict scrutiny[.]" *Reclaim Idaho*, 169 Idaho at 430. The laws at issue in *Reclaim Idaho* amended the processes by which the people of Idaho could exercise their referendum and initiative rights. One such law increased from 18 to 35 the number of districts

from which organizers needed signatures, and the other effectively gave the Legislature six months to repeal any initiative before it went into effect. *Reclaim Idaho*, 169 Idaho at 167. This Court held that the people's power to legislate directly was a fundamental right under the Idaho Constitution. *Id.* at 184. And even though the Idaho Constitution also provides that the people's power is to be carried out "under such conditions and in such manner as may be provided by acts of the legislature [i.e. it is subject to time, place, and manner regulation]," *id.* at 182, "any effort to limit those rights" is nonetheless subject to strict scrutiny, *id.* at 184.

The Court noted "that strict scrutiny is a well-established standard where fundamental rights are concerned" and "exists within a significant body of case law from . . . the Idaho Supreme Court." *Id.* at 186. The Court pointed specifically to the right to suffrage, which is "considered fundamental even though" the Idaho Constitution "provides" the legislature "the authority" to "'prescribe qualifications, limitations, and conditions for the right of suffrage.'" *Id.* at 183 (quoting Idaho Const., art. VI, § 4). Indeed, the Court put to rest any lingering doubt about what it meant two decades earlier: "[i]n *Van Valkenburgh*, we held *without qualification* that a law infringing on a fundamental right is subject to strict scrutiny." *Id*. at 184 (emphasis added). One would have thought that such a definitive declaration would have put to rest *any question* of the appropriate standard here.[10]

[10] Idaho is hardly alone in such an approach. Many other states have held that any law infringing upon the right to vote is subject to strict scrutiny. *See, e.g.*, *League of Women Voters of Kansas v. Schwab*, 525 P.3d 803, 822 (2023), *review granted* (June 23, 2023) (holding that strict scrutiny applied to challenges to election laws); *Montana Democratic Party v. Jacobsen*, 2022 WL 1126671, at *22 (Mont. Dist. Apr. 06, 2022) (granting a preliminary injunction after

Strict scrutiny also applies to the equal protection claim. Again, this Court has been clear: where a law results in differential treatment in the exercise of a fundamental right, that law is subject to strict scrutiny under a state law equal protection challenge. *Van Valkenburgh*, 135 Idaho at 126 (declining to apply the *Anderson-Burdick* test); *see also Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 710 (1990) ("Where the classification . . . involves a fundamental right[,] we have employed the 'strict scrutiny' test."); *State v. Avelar*, 129 Idaho 700, 703 (1997) ("Strict scrutiny applies where the classification . . . involves a fundamental right.").

There is no dispute that the fundamental right to vote is at issue here. The Voting Restrictions affect and infringe the right to vote by erecting additional barriers to the franchise that inevitably will prevent some voters from voting. *See Van Valkenburgh*, 135 Idaho at 127 (law requiring "ballot legends" infringed upon right to vote even though it did not prevent anyone from voting). Removing student IDs as options for registering and voting will plainly make it harder for students to register and vote and will decrease voter turnout among Idaho students. R. 494 ¶ 16. And HB 340's additional restrictions on registration will lead to vulnerable Idahoans being unable to register. *Id.* ¶ 15. Such restrictions plainly restrict the right to vote with far greater

analyzing statutes using strict scrutiny), aff'd, 410 Mont. 114; *League of Women Voters of Ark. v. Thurston*, 60CV-21-3138, at *15 (Ark. Cir. Ct. Mar. 24, 2022) (appeal pending) (ordering a permanent injunction by applying strict scrutiny to signature matching requirement restrictions and other voting statutes), available at https://www.lwv.org/sites/default/files/2023-03/2022-03-24_Pulaski-Cnty-Ct_memo-law-grant-PI.pdf; *Applewhite v. Commonwealth*, 2014 WL 184988, at *20 (Pa. Commw. Ct. Jan. 17, 2014) (applying strict scrutiny to voter ID restrictions); *Weinschenk v. State*, 203 S.W.3d 201, 215 (Mo. 2006) ("In light of the substantial burden that the Photo–ID Requirement places upon the right to vote, the statute is subject to strict scrutiny."); *Orr v. Edgar*, 670 N.E.2d 1243, 1253 (Ill. 1996) (applying strict scrutiny to a two-tiered registration system).

impact than mere ballot legends (as in *Van Valkenburgh*), or the required number of signatures for an initiative (as in *Reclaim Idaho*), neither of which prevented anyone from registering to vote or casting their ballot, as the Voting Restrictions will.

The Voting Restrictions are subject to strict scrutiny even though the Idaho Constitution "provides" the legislature "the authority" to "'prescribe qualifications, limitations, and conditions for the right of suffrage.'" *See Reclaim Idaho*, 169 Idaho at 429 (quoting Idaho Const., art. VI, § 4). As this Court held in evaluating a similar constitutional provision granting the legislature authority to set the "conditions" and "manner" for Idahoan's exercise of their power to legislate directly, such provisions "do not grant the legislature carte blanche in limiting that right." *Id.* at 428.

b. The district court erred in choosing rational basis review

The district court swept aside this well-settled law with the facile (and erroneous) mischaracterization of the Voting Restrictions as mere time, place, and manner restrictions, and its understanding that such restrictions trigger rational-basis review. *See* R. 620–21 ("Here, the challenged legislation involves a time, place, manner restriction where a more deferential standard of review should be applied."). The district court cited no authority holding that limitations on voter identification like the Voting Restrictions are time, place, and manner restrictions. That's hardly a surprise since they are plainly *not* time, place, and manner restrictions. And even if they were, rational basis would in any event not be the appropriate standard under Idaho's constitutional protections.

As an initial matter, the Voting Restrictions simply are not time, manner, and place restrictions because they go beyond regulating the timing or form of an election and instead directly affect who can vote. Examples of time, place, and manner restrictions on voting illustrate the difference. Time restrictions affect when elections occur and when ballots are counted. *E.g.*, *Bost v. Illinois State Bd. of Elections*, No. 22-CV-02754, 2023 WL 4817073, at *12–13 (N.D. Ill. July 26, 2023) (counting ballots received after Election Day is a time, place, and manner regulation). Manner restrictions regulate where and how people vote, like absentee and mail-in voting protocols and ranked choice voting. *See Baber v. Dunlap*, 376 F. Supp. 3d 125, 137–38 (D. Me. 2018) (ranked choice voting is a time, place, or manner regulation); *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 833–34 (D. Mont. 2020) (mail voting is a valid time, place, and manner regulation). By contrast, the regulations here directly limit *who can vote* – not the time, or place, or manner by which they vote. If the placement of a legend on a ballot (as in *Van Valkenburgh*) or increasing the number of signatures for qualification on the ballot (as in *Reclaim Idaho*) are not time, place, and manner restrictions, then it necessarily follows that neither are the restrictions here, which on their face restrict Idaho citizens from exercising the franchise.

But even if the Voting Restrictions were somehow considered to be time, manner, and place restrictions, rational basis would in any event not apply in Idaho. As discussed above, *Van Valkenburgh* "held *without qualification* that a law infringing on a fundamental right is subject to strict scrutiny," *Reclaim Idaho*, 169 Idaho at 430 (emphasis added). Although *Van Valkenburgh* noted that a "more deferential standard of review *might*" apply to time, place, or manner

restrictions, there is no indication that the *Van Valkenburgh* Court was referring to rational basis. *Van Valkenburgh,* 135 Idaho at 126. Indeed, the Court cited only to *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), a case applying a version of the balancing test that became *Anderson-Burdick* (hence the name). *Id.* at 126 (citing *Burdick*). Contrary to the district court's assertion here, the law in *Burdick* was not "subject to rational basis review," R.620–21, but rather to a more exacting level of scrutiny under federal law, now known as the *Anderson-Burdick* standard. *See Burdick*, 504 U.S. at 434.

Moreover, federal courts apply *Anderson-Burdick*, not rational basis scrutiny, to restrictions that regulate the time, place, and manner of voting. *See Obama for Am. v. Husted*, 697 F.3d 423, 431–32 (6th Cir. 2012) (affirming district court's application of the *Anderson-Burdick* standard and preliminary injunction enjoining deadline for in-person early voting); *Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1277–78 (N.D. Ga. 2021) (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).

In short, the district court had no basis in Idaho law to apply anything but strict scrutiny—much less rational basis review—to the Voting Restrictions. That standard, applied here, was error as a matter of law.

c. It is undisputed that the Voting Restrictions do not withstand strict scrutiny because they advance no legitimate state interest and are not narrowly tailored

As the lower court noted, and no party disputes, the Voting Restrictions plainly cannot survive review under strict scrutiny. Idaho's strict scrutiny standard "requires that the government action [at issue] be necessary to serve a compelling state interest, and that it is narrowly tailored to achieve that interest." *Reclaim Idaho*, 169 Idaho at 431 (quoting *Bradbury v. Idaho Jud. Council*, 136 Idaho 63, 69 (2001)). The Secretary has the burden to establish that the Voting Restrictions are necessary and narrowly tailored to achieve a compelling state interest, and to meet that burden he must point to actual evidence, not mere speculation. *See id*. at 434 ("We see little evidentiary or logical support for the position that the state has a compelling interest in ensuring that initiatives and referenda demonstrate a threshold level of support in every legislative district before qualifying for the ballot."); *Dunn v. Blumstein*, 405 U.S. 330, 346 (1972) (durational residency requirement for purposes of voting violated equal protection in part because the record was "totally devoid of any evidence that durational residence requirements are in fact necessary to identify bona fide residents."); *Nader v. Brewer*, 531 F.3d 1028, 1039–40 (9th Cir. 2008) (finding election nomination petition deadline unconstitutional under strict scrutiny and noting that "[t]he

state made the conclusory assertion that it must order the ballot paper by early June to ensure availability, but it has not provided documentation or any other evidence supporting this conclusion."); *Pilloud v. King Cnty. Republican Cent. Comm.*, 404 P.3d 500, 503 (Wash. 2017) (holding campaign finance statute unconstitutional after proponent failed to "present evidence to support" claim that the law was necessary to advance compelling state interest).

(i) The Voting Restrictions do not advance any compelling state interest

The Secretary points to election security/voter fraud as the state interest purportedly advanced by the Voting Restrictions, R. 80 ("Election security and preventing fraud are the primary and legitimate interests of Voter ID laws."), but he offers no *actual evidence* to support such a contention (which evidence could not be considered on a motion to dismiss in any event). After all, even interests that are "legitimate in the abstract" most assuredly require evidentiary support to survive strict scrutiny. *See Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020) ("we agree with the Secretary that Kansas's interest in counting only the votes of eligible voters is legitimate in the abstract, but, on this record, we do not see any evidence that such an interest made it necessary to burden voters' rights here."); *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) ("North Carolina asserts goals of electoral integrity and fraud prevention. But nothing in the district court's portrayal of the facts suggests that those are anything other than merely imaginable."); *Obama for Am.*, 697 F.3d at 433–34 (by not providing actual evidence, state failed to justify its "sufficiently weighty" interest, let alone a "compelling" interest).

Here, the Secretary doesn't even attempt to support the purported state interest with evidentiary support beyond breezy pronouncements and a wave of the arm. This is, to put it delicately, insufficient. There is no evidence in the record (or otherwise) that the Voting Restrictions actually advance any "election security" interest—in fact, the evidence points the other way. Certainly, the allegations in the Complaint, which must be taken as true, provide no basis for concluding that the Voting Restrictions are necessary to advance any state interest. Indeed, the Complaint alleges that Voting Restrictions serve no purpose at all other than to make voting more difficult for students and others—hardly a legitimate state interest—and points out the lack of evidence presented in favor of the bills and the Secretary's admission that there were no prior problems with the use of student IDs. R. 36–37.

But even if this Court were inclined to look beyond the allegations, the Secretary's purported state interests are wholly unsupported by the record before the district court and this Court. The Secretary's briefing below relied heavily on the Voting Restrictions' statements of purpose, *see, e.g.,* R. 84–85, 544–45, 547–48, but as discussed earlier, those statements are expressly *not* an expression of legislative intent and are *not* meant to be used for judicial review. Moreover, they contain no actual evidence. And while the Secretary baldly asserts that student IDs are the "least secure and least uniform method of identification," (R. 87), he identifies no support for that claim, and no declaration submitted by the Secretary contains any such evidence.

Indeed, all relevant evidence is to the contrary. The Secretary has candidly acknowledged that the previous identification regime was a "great system" and that he has not identified *a single instance* of voter fraud, much less any associated with the use of student IDs. And even accepting

for the sake of argument the unsupported *contention* that the Legislature targeted student IDs because of a "lack of uniformity," there is no actual record evidence of any deficit in uniformity, nor that any such variation was ever a problem in the decade-plus that Idaho students used student IDs to register and to vote. Simply put, the Secretary failed to "articulate specific, rather than abstract state interests, and explain 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 (6th Cir. 2014), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

(ii) The Voting Restrictions are not narrowly tailored

Even if the Secretary had presented any actual evidence to support his "election security" rationale, the Voting Restrictions are not narrowly tailored to advance that state interest. *See Reclaim Idaho*, 169 Idaho at 431. To satisfy the narrowly tailored requirement, the Secretary must demonstrate that eliminating student IDs for registering and voting—and otherwise limiting registration options—"is a narrowly tailored way of achieving the goal of" protecting election integrity. *Id*. at 437. In other words, the Secretary must establish that the Voting Restrictions are "not substantially broader than necessary[,]" *State v. Medel*, 139 Idaho 498, 501 (Ct. App. 2003), which requires a showing that they "target[] and eliminate[] no more than the exact source of the 'evil' [they] seek[ ] to remedy." *Nite Moves Ent., Inc. v. City of Boise*, 153 F. Supp. 2d 1198, 1209 (D. Idaho 2001) (citation omitted).

Here, if the "evil" the Secretary wishes to combat is alleged voter fraud, the Voting Restrictions are in fact "devoid of *any* tailoring at all[,]" *Reclaim Idaho*, 169 Idaho at

437 (emphasis original), because the record has no evidence suggesting any relationship whatsoever between student IDs and voter fraud. R. 33 ¶ 31. And if the "evil" is that student IDs lack uniformity or that some educational institutions' student IDs are less secure—and if the Secretary had actually presented evidence supporting that contention—the narrowly tailored solution would be to exclude those deemed problematic rather than issue a blanket prohibition. If, for example, there were evidence that IDs issued by high schools varied wildly and were much more susceptible to forgery than university IDs, the Legislature could have modified the existing voter ID law to permit IDs only from Idaho colleges. But broadly excluding *every* Idaho student ID is antithetical to narrow tailoring, particularly where the record reflects the burdens that the Voting Restrictions impose on both the voting and voting registration processes for young people and other vulnerable communities with steep hurdles to obtaining one of the few enumerated forms of acceptable identification that remain in order to exercise their franchise. R. 33 ¶¶ 32–33. To be sure, the overbroad approach the Legislature chose "is probably an effective tactic" if the goal were to make it harder for students to vote, but that of course is "inconsistent with the constitutional requirement of a 'narrowly drawn' solution." *Reclaim Idaho*, 169 Idaho 437. And that goal is hardly a legitimate state interest in any event.

In short, the Secretary has "failed to demonstrate" that eliminating student IDs or otherwise restricting voter registration "is a narrowly tailored way of achieving the goal" of election integrity. *Id*.

For these reasons, strict scrutiny applies to the Voting Restrictions, and as the lower court acknowledged, R. 610, the statutes cannot survive because they fail "both tests under strict

scrutiny." *See Reclaim Idaho*, 169 Idaho at 437. Indeed, the Secretary never even argued below that the Voting Restrictions could survive strict scrutiny, quietly conceding the point.[11] This Court should reverse the district court's Order and enter judgment in favor of BABE VOTE and the League.

2. Even if strict scrutiny does not apply, the appropriate test is *Anderson-Burdick*, not rational basis, and the Voting Restrictions do not meet that standard

If this Court were to decide to depart from its long-standing precedent applying strict scrutiny to legislation affecting fundamental rights, the *Anderson-Burdick* framework that the Secretary argued for—not rational basis—would apply. *Van Valkenburgh*, 135 Idaho at 126 (citing *Burdick*).[12] But this is cold comfort to the Secretary: the Voting Restrictions plainly cannot pass muster under *Anderson-Burdick* either.

Under *Anderson-Burdick*, the level of scrutiny depends on several factors, including the magnitude of the burden on particularly affected groups. Laws that impose severe burdens on the right to vote are subject to strict scrutiny. *See Norman v. Reed*, 502 U.S. 279, 280 (1992); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019). But even laws that impose less than severe burdens are subject to more exacting forms of scrutiny than rational basis review, and courts specifically consider the effects on the voters who are actually affected, not just the entire population of voters as a whole. *See, e.g.*, *Anderson*, 460 U.S. at 792–94 (1983) (holding "it is especially difficult for the State to justify a restriction

[11] As explained *infra*, the Secretary made no argument regarding Plaintiffs' right-to-vote claims.

[12] *See supra* n.11.

that" imposes disparate burdens on identifiable groups of voters); *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016) (holding courts must consider "not only a given law's impact on the electorate in general, but also its impacts on subgroups, for whom the burden, when considered in context, may be more severe").

Moreover, regardless of the extent of the burden, the state must "articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest put forth." *Ohio NAACP*, 768 F.3d at 545-46; *see also Anderson*, 460 U.S. at 789. And at the motion to dismiss stage, the only facts that are pertinent to *Anderson-Burdick* balancing are those pleaded in the complaint— alleged facts allegedly supporting an alleged state interest that are outside the four corners of the complaint are not considered. *Sixth Dis. of Afr. Methodist Episcopal Church*, 574 F. Supp. 3d at 1278.

The allegations here demonstrate a significant burden on the particular groups affected by the Voting Restrictions and an absence of any state interest actually advanced by the legislation, including the absence of any actual connection between the Voting Restrictions and election security. *Supra* Section III.B.1.c. Those allegations, taken as true, show that the Secretary's motion for judgment on the pleadings would fail even if *Anderson-Burdick* applied. R. 106–08; *Sixth Dist. of Afr. Methodist Episcopal Church*, 574 F. Supp. 3d at 1278 ("[T]he Amended Complaint contains detailed allegations of burdens that Plaintiffs assert the challenged provisions will impose on Georgia voters. Plaintiffs also maintain that there are no legitimate state interests that would support such burdens. *Anderson* and *Burdick* do not require more from Plaintiffs at the motion to dismiss stage. And State and Intervenor Defendants' weighing of the alleged burden on

voters, which relies on facts not asserted in the Amended Complaint, is not appropriate at this time.").

This holds true, for the same reasons, even if the Court were inclined to consider the Secretary's improper reliance on supposed facts beyond those in the allegations. *E.g.*, R. 84–85 (referring to an unverified number of voters who used student IDs to vote), 544–45 (same), 547–48 (referring to the unverified number of voters who use IDs to vote and unproven statements about how easy it is to create fake student IDs); *see also e.g.*, Tr. 39:13–40:12 (describing the Secretary's reliance on factual assertions without support in the record). As just one example, the Secretary posits—based on his own version of the facts—that the burden on voters set by the Voting Restrictions is minimal because out of "some 21,005" voters in the November 2022 General Election, "just 59 of them used student ID to vote." R. 544. But the Secretary's attempt to distract the court with these extra-evidentiary numbers is not the relevant inquiry: the relevant inquiry is "not only a given law's impact on the electorate in general, but also its impacts on subgroups[.]" *Pub. Integrity*, 836 F. 3d at 1024 n.2. As a result, if this Court decides that *Anderson-Burdick* or a similar balancing test applies, it should reverse the district court's dismissal of the Complaint and enter judgment in Plaintiffs favor or, alternatively, reverse and remand for further proceedings.

3. The district court made a litany of procedural errors in evaluating Plaintiffs' claims that independently warrant reversal

In its apparent haste to expedite this Court's consideration of the case, the district court committed several procedural missteps in evaluating the Secretary's Judgment on the Pleadings. Among them, the district court:

(1) improperly based its decision on information other than the allegations in the Complaint, even going so far as to rely on unsupported speculation about the reliability of student IDs;

(2) improperly relied on the Voting Restrictions' statements of purpose, ignoring bolded disclaimers and Idaho Legislature Joint Senate and House Rules that they were not to be relied on for judicial review; and

(3) dismissed both Counts of the Complaint even though the Secretary presented *no argument* for dismissal of Count Two (violation of the Idaho Constitution's protection of the right to vote).

Each of these errors would independently justify reversal and remand.

First, the district court defied the legal standard for evaluating motions for judgment on the pleadings. Instead of accepting as true the allegations in the Complaint, the court instead relied on purported facts that were both directly contrary to the allegations in Plaintiffs' Complaint and entirely unsupported by the record. *See Smith*, 160 Idaho at 784 (2016) ("the moving party admits all the allegations of the opposing party's pleadings and also admits the untruth of its own allegations to the extent they have been denied" and "[a]ll doubts are to be resolved against the moving party[.]"). For example, the district court asserted that the Voting Restrictions are justified because "Student IDs do not meet the same standards [f]or authenticity and reliability as other forms of government identification." R. 632–33. But there is and was no evidence in the record to support such a proposition. And there is certainly no evidence that the standards for student IDs

are any more or less stringent than for concealed carry licenses, which the Voting Restrictions continue to allow for voter identification.

Moreover, the district court's declaration that the elimination of student IDs in voting and registration is not overly burdensome directly contradicts the Complaint. *Compare* R. 626 ("nor does the condition make it . . . overly burdensome – for those in the [affected] classification to continue to exercise the right of suffrage."), *with* R. 33 ¶ 36 ("each of the now-permissible forms of voter ID cost the ID holder money to obtain . . . [a]nd even though HB 340 includes a provision to create no-fee voter ID, it does not apply to everybody"). Such contentions are certainly not posited by Plaintiffs in their pleadings, nor do they fall within the realm of conflicting inferences that may be drawn or about which "reasonable people might reach different conclusions."[13] *Smith*, 160 Idaho at 784. And maybe most importantly, such a proposition is unsupported by the record below, which may be searched in vain for *any* evidentiary support for such a finding (even if such evidence could be properly considered).

[13] Where matters outside the pleadings are presented on a Rule 12(c) motion and not excluded, the district court may treat that motion as one for summary judgment provided that all parties are "given a reasonable opportunity to present all the material that is pertinent to the motion." I.R.C.P. 12(d). At no point did the district court here indicate that it would be considering materials outside the pleadings or that it was treating the Secretary's motion for judgment on the pleadings as one for summary judgment, let alone grant Plaintiffs the opportunity to present further materials, and Plaintiffs contested the introduction of such evidence at each stage. *See* R. 101–04; *see also* Tr. 39:6–40:12. Moreover, little discovery had occurred by the time of the hearing, in large part because the Secretary repeatedly dragged his heels. As such, had the district court indicated that it would consider the motion as one for summary judgment, Plaintiffs would have requested that the court deny the motion under Rule 56(d) or defer a ruling pending additional discovery.

Second, the district court's decision improperly relied on the Voting Restrictions' respective statements of purpose, defying the bolded disclaimer that they are "neither intended as an expression of legislative intent nor intended for any use outside the legislative process, *including judicial review*." R. 59–60. The disclaimer reflects the Idaho Legislature's rules that both require a statement of purpose on each bill from the sponsor and make crystal clear that such required statements are "Not a Statement of Legislative Intent. — (e) Statements of purpose and fiscal notes are mere attachments to the bill and are not voted on. The statement of purpose and fiscal note are not expressions or statements of legislative intent and are not intended for any use outside of the legislative process, including judicial review." Joint Rule of the Senate and the House of Representatives 18, 67th Leg., 1st Reg. Sess. (ID 2023). For that reason, the district court's reliance on HB 124's statement of purpose for the notion that "only 104 voters who voted at the 2022 General Election used a student ID card to vote"—something that appears nowhere in Plaintiffs' pleadings—is entirely misplaced.

The district court's reliance on its assertions about the supposed unreliability of student IDs and on the Voting Restrictions' statements of purpose was no mere triviality. Rather, it was key to the court's decision. The district court cited the statements of purpose—and only the statements of purpose—as support for its assertions about "the State's goal regarding HB 124 and HB 340"; for its speculation about the reliability of student IDs; and for its conclusions about whether the Voting Restrictions further that goal. R. 632-33.[14] And the court's ultimate

[14] The district court also made the unsupported assertion that "a student ID cannot be used to open

conclusion expressly rested on its conception that the Voting Restrictions "are rationally related to their stated purpose to clarify and create uniformity by requiring only generally-accepted, authentic, and reliable forms of identification[.]" R. 636. As a result, the errors are fundamental to the decision and independently require reversal.

Third, the district court erred in dismissing Count 2 of Complaint, for violation of the fundamental right to vote because the Secretary failed to present any argument as to Plaintiffs' right to vote claims. Instead, the Secretary's briefing focused solely on Plaintiffs' equal protection claim. A court should not consider an issue if the movant fails to provide any argument or evidence in support of it. *E.g.*, *State v. Guerra*, 169 Idaho 486, 494 (2021); *Akers v. Mortensen*, 156 Idaho 27, 36 (2014); *Powell v. Sellers*, 130 Idaho 122, 128 (Ct. App. 1997). Yet the district court did just that, and that error independently warrants reversal of the dismissal of Count 2 of the Complaint.

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

The district court also erred when it denied Plaintiffs' motion for preliminary injunction to enjoin Sections 2–3 and 5 of HB 340.

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a bank account, buy alcohol, drive a motor vehicle, or fly on an airplane." R. 633 n.28. The court offered no insight into the source of its knowledge about the requirements for bank accounts or the issuance of drivers' licenses—certainly, no such evidence was presented to the court. But even more problematically, the district court failed to recognize that forms of ID the Legislature still allows for voting suffer from the same limitations—for example, there is no indication that an Idaho concealed carry license can be used for any of those tasks. As a result, the court's bank-alcohol-drive-fly justification both lacks evidentiary support and provides no basis for distinguishing among IDs that are and aren't permitted under the Voting Restrictions.

A plaintiff is entitled to a preliminary injunction when it demonstrates (1) "a substantial likelihood of success on the merits or a 'clear right' to the ultimate relief requested"; and (2) irreparable injury absent an injunction. *See Planned Parenthood Great Nw. v. State,* 172 Idaho 321, 532 P.3d 801, 807 (2022); I.R.C.P. 65(e)(1)–(2). A preliminary injunction is an equitable remedy whose purpose is to "maintain the status quo until judgment." *Wolford v. Montee*, 161 Idaho 432, 442 (2016).

The district court denied Plaintiffs' motion for a preliminary injunction because, applying the erroneous rational-basis standard, it determined that Plaintiffs failed to demonstrate a substantial likelihood of success. R. 622, 626. The court did not make any findings on the second factor—irreparable injury.

The district court abused its discretion in denying Plaintiffs' motion. A trial court obviously abuses its discretion when it applies the wrong legal standard to a motion for preliminary injunction. *Parkinson*, 165 Idaho at 608 (citing *State v. Montgomery*, 163 Idaho 40, 45 (2017)). That happened here. As discussed above in Section III.B.1, the Voting Restrictions trigger strict scrutiny, not rational basis, under settled Idaho constitutional law.

Under the proper standard of review (strict scrutiny), the statute plainly cannot survive (as all appear to agree), and thus Plaintiffs have shown a substantial likelihood of success on the merits on their motion for a preliminary injunction. R. 610, 622. And even if strict scrutiny does not apply, *Anderson-Burdick* is the appropriate standard, and the Voting Restrictions do not pass that test either.

Plaintiffs also showed undisputed evidence of irreparable injury absent an injunction. Under Idaho law, irreparable injury is an injury that cannot be "remed[ied] or repair[ed]." *McCann v. McCann*, 152 Idaho 809, 820 (2012). "Courts routinely deem restrictions on fundamental voting rights irreparable injury . . . [because] once the election occurs, there can be no do-over and no redress." *League of Women Voters of N.C.*, 769 F.3d at 247.

Interference with an organization's ability to carry out its mission also constitutes irreparable harm, a point recognized by courts across the country, often in cases specifically involving the League. *See, e.g., League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). In particular, "conduct that limits [a voting rights] organization's ability to conduct voter registration activities constitutes an irreparable injury." *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1350 (N.D. Ga. 2016); *see also Newby*, 838 F.3d at 8–9 ("Because . . . those new obstacles unquestionably make it more difficult for the Leagues to accomplish their primary mission of registering voters, they provide injury for purposes both of standing and irreparable harm."); *Ass'n of Comm. Orgs. for Reform Now v. Cox*, No. 1:06-CV-1891, 2006 WL 6866680, at *6 (N.D. Ga. Sept. 28, 2006) (finding irreparable injury where regulation "reduces Plaintiffs' participation in voter registration drives and places burdens on Plaintiffs' post-drive activities"); *Ind. State Conf. of N.A.A.C.P. v. Lawson*, 481 F. Supp. 3d 826, 842 (S.D. Ind. 2020), *aff'd in part and vacated in part on other grounds and remanded sub nom. League of Women Voters of Ind. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021); *League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012).

Likewise, a law that requires an organization to divert its resources to deal with its negative effects threatens irreparable harm sufficient to award a movant a preliminary injunction. *E.g.*, *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d at 1224 (finding irreparable harm to organization where "members will have to expend more resources and time to assist voters in accessing off-campus early voting" as result of challenged law); *N.C. State Conf. of the N.A.A.C.P. v. N.C. State Bd. of Elections*, No. 16-cv-1274, 2016 WL 6581284, at *9 (M.D.N.C. Nov. 4, 2016) (finding organization would suffer irreparable harm where it had to "divert its finite and limited resources away from its planned voter-protection and education efforts" in order to "dedicate its limited staff and resources to ensuring that [challenged laws did] not unlawfully disenfranchise any of its members"); *Nat'l Coalition on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 474 (S.D.N.Y. 2020) (finding diversion of resources constituted irreparable injury).

The record evidence of irreparable injury to BABE VOTE, the League, and Idaho voters resulting from HB 340 is undisputed. *See* R. 510–11, 516–20, 527–30. BABE VOTE and the League each submitted uncontroverted evidence of how HB 340 impedes their missions by forcing them to suspend voter registration efforts, requires them to divert resources to educate voters about the new registration requirements and combat its harmful effects, and how this would target the populations Plaintiffs serve. *See* R. 494–95, 510–11, 516–20, 527–30. This evidence is more than sufficient to establish irreparable injury. *See, e.g.*, *Newby*, 838 F.3d at 8–9; *Ashcroft*, 336 F. Supp. 3d at 1005. Indeed, the evidence of lost opportunities to register voters alone "easily meet[s]" the irreparable harm standard. *Browning*, 863 F. Supp. 2d at 1167. For these reasons, Plaintiffs met the second factor of the test, and the equities favor a preliminary injunction.

In sum, Plaintiffs have demonstrated a substantial likelihood of success on the merits under both standards, and the Voting Restrictions will irreparably harm Plaintiffs absent an injunction. If this Court determines that strict scrutiny or *Anderson-Burdick* applies to the Voting Restrictions but does not enter judgment in Plaintiffs' favor, it should reverse the denial of Plaintiffs' motion for preliminary injunction and either enter a preliminary injunction or instruct the district court to do so upon remand.

IV. CONCLUSION

For these reasons, Appellants respectfully request the Court grant the relief outlined in Section I.A. *supra*.

Respectfully submitted this 7th day of November, 2023.

DATED: November 7, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 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.

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