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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BABE VOTE and LEAGUE OF WOMEN
VOTERS OF IDAHO,

Plaintiffs/Counterdefendants,

v.

PHIL MCGRANE, in his official capacity of
Secretary of State,

Defendant/Counterclaimant.

Case No. CV01-23-04534

**ANSWER, AFFIRMATIVE DE-
FENSES, AND COUNTER-
CLAIMS**

Defendant Phil McGrane, in his official capacity as the Secretary of State for the State of Idaho, hereby answers the complaint, asserts affirmative defenses, and pleads the counterclaims in this matter as follows:

I. ANSWER

RESPONSE TO “INTRODUCTION”

1. Defendant denies the allegations in paragraph 1, except that the Idaho legislature passed House Bill 124.

2. Defendant denies the allegations in paragraph 2, except that House Bill 124 was passed by the legislature on March 9, 2023, and it was signed by the governor on March 15, 2023.

3. Defendant denies the allegations in paragraph 3.

4. Defendant denies the allegations in paragraph 4, except that House Bill 340 was passed by the legislature on March 28, 2023, and it was signed by the governor on April 4, 2023.

5. Defendant denies the allegations in paragraph 5.

6. Defendant denies the allegations in paragraph 6.

RESPONSE TO “PARTIES”

7. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 7 and therefore denies.

8. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 8 and therefore denies.

9. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 9 and therefore denies.

10. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 10 and therefore denies.

11. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 11 and therefore denies.

12. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 12 and therefore denies.

13. Defendant lacks information sufficient to form a belief regarding the truth of the allegations of paragraph 13 and therefore denies.

14. Defendant denies the allegations in paragraph 14.

15. This paragraph is denied except that Defendant admits that the cited statutes state the statutory duties of the Secretary of State.

RESPONSE TO “JURISDICTION AND VENUE”

16. In response to paragraph 16, Defendant admits that the Court has general jurisdiction to hear these claims and it is proper for the Court to do so.

17. In response to paragraph 17, Defendant admits that the Court’s jurisdiction to enter declaratory relief under Idaho Code § 10-1201 is proper. To the extent any additional facts are asserted through this paragraph, the Defendant denies.

18. In response to paragraph 18, Defendant admits that venue is proper in Ada County.

RESPONSE TO “FACTUAL ALLEGATIONS”

19. In response to paragraph 19, Defendant denies the allegations in this paragraph.

20. In response to paragraph 20, Defendant denies the allegations in this paragraph.

21. In response to paragraph 21, Defendant denies the allegations in this paragraph.

22. In response to paragraph 22, Defendant denies the allegations in this paragraph except that he admits that Idaho law states certain voting requirements as set forth in Idaho Code §§ 34-1113 and 34-1114, which speak for themselves.

23. In response to paragraph 23, Defendant denies the allegations in this paragraph except that Idaho law states certain voting requirements as set forth in Idaho Code §§ 34-1113 and 34-1114, which speak for themselves.

24. In response to paragraph 24, Defendant denies the allegations in this paragraph.

25. In response to paragraph 25, Defendant denies the allegations in this paragraph except that Idaho continues to accept a variety of different forms of identification to register to vote but will no longer accept student IDs.

26. In response to paragraph 26, Defendant denies the allegations in this paragraph except that Idaho continues to accept a variety of different forms of identification to register to vote but will no longer accept student IDs.

27. In response to paragraph 27, Defendant denies the allegations in this paragraph except that Idaho law states certain voting requirements as set forth in Idaho Code §§ 34-1113 and 34-1114, which speak for themselves.

28. In response to paragraph 28, Defendant denies the allegations except that the cited voter registration statutes speak for themselves.

29. In response to paragraph 29, Defendant denies the allegations except

that Idaho continues to accept a variety of different forms of identification to register to vote but will no longer accept student IDs.

30. In response to paragraph 30, Defendant denies the allegations in this paragraph except that the statutes relating to voter registration speak for themselves.

31. In response to paragraph 31, Defendant denies the allegations in this paragraph.

32. In response to paragraph 32, Defendant denies the allegations in this paragraph.

33. In response to paragraph 33, Defendant denies the allegations in this paragraph.

34. In response to paragraph 34, Defendant lacks information sufficient to form a belief regarding the specific desires of any voters, but admits that in 2022, precisely 104 voters used student identification to comply with Idaho Code § 34-1113.

35. In response to paragraph 35, Defendant denies the allegations in this paragraph except that he admits that Idaho law states certain voting requirements as set forth in Idaho Code §§ 34-1113 and 34-1114, which speak for themselves.

36. In response to paragraph 36, Defendant denies the allegations in this paragraph.

37. In response to paragraph 37, Defendant denies the allegations in this paragraph.

38. In response to paragraph 38, Defendant lacks information sufficient to

form a belief regarding the truth of the allegations of this paragraph and therefore denies.

39. In response to paragraph 39, Defendant denies the allegations in this paragraph and asserts that photo identification is available to any eligible voter without a driver's license through House Bill 340.

40. In response to paragraph 40, Defendant denies the allegations in this paragraph.

41. In response to paragraph 41, Defendant denies the allegations in this paragraph.

42. In response to paragraph 42, Defendant denies the allegations in this paragraph.

43. In response to paragraph 43, Defendant denies the allegations in this paragraph.

44. In response to paragraph 44, Defendant denies the allegations in this paragraph.

45. In response to paragraph 45, Defendant denies the allegations in this paragraph.

46. In response to paragraph 46, this paragraph refers to the legislative history of House Bill 124, which speaks for itself, and therefore no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

47. In response to paragraph 47, Defendant denies the allegations in this

paragraph.

48. Paragraph 48 contains no factual assertions to admit or deny and no response is required.

49. In response to paragraph 49, this paragraph refers to the Idaho Constitution, which speaks for itself, and therefore no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

50. In response to paragraph 50, Defendant denies the allegations in this paragraph.

51. In response to paragraph 51, Defendant denies the allegations in this paragraph.

52. In response to paragraph 52, Defendant denies the allegations in this paragraph.

53. In response to paragraph 53, Defendant denies the allegations in this paragraph except that Defendant admits that the legislature passed House Bills 124 and 340.

54. In response to paragraph 54, Defendant denies the allegations in this paragraph.

55. In response to paragraph 55, Defendant denies the allegations in this paragraph.

56. Paragraph 56 contains no factual assertions to admit or deny and no response is required.

57. In response to paragraph 57, this paragraph refers to the Idaho

Constitution, which speaks for itself and therefore no response is required. To the extent a response is required, Defendant denies the allegations in this paragraph.

58. In response to paragraph 58, Defendant denies the allegations in this paragraph.

59. In response to paragraph 59, Defendant denies the allegations in this paragraph.

60. In response to paragraph 60, Defendant denies the allegations in this paragraph.

61. In response to paragraph 61, Defendant denies the allegations in this paragraph.

62. In response to paragraph 62, Defendant denies the allegations in this paragraph.

II. AFFIRMATIVE AND OTHER DEFENSES

The following are defenses that Defendant may assert based on the facts alleged in the action, or based on facts adduced as the matter progresses. In disclosing these defenses, Defendant does not assume any burden of proof not otherwise required by law. Moreover, Defendant undertakes the burden of proof only as to those defenses deemed “affirmative” defenses by law, regardless of how such defenses are denominated herein. Finally, Defendant reserves the right to assert further defenses that may become apparent as litigation progresses.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The relief Plaintiffs seek is inconsistent with and unsupported by the United States Constitution and Idaho law.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs come to the Court with Unclean Hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because the challenged statutes further a compelling governmental interest and are narrowly tailored to achieve that interest.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because the challenged statutes have a legitimate state interest and there is a rational connection between the statutory language and the goals set forth in the Statement of Purpose.

RESERVATION OF DEFENSES

Defendant reserves the right to supplement these defenses with any additional defenses that subsequently become available during discovery or at trial.

III. ATTORNEY FEES

Defendant asserts that plaintiffs' action is frivolous and not supported by a good faith basis in fact or law and requests an attorney fee award pursuant to Idaho Code § 12-121.

IV. COUNTERCLAIM

Counterclaimant provides the following assertions in support of its counterclaim for declaratory and other relief, as follows:

1. The United States Constitution provides that the elections of U.S. Representatives and Senators in each State are prescribed by State legislatures. U.S. CONST. art. I, § 4, cl. 1 (the “Elections Clause”).

2. The Idaho Constitution provides that the legislature may prescribe qualifications, limitations, and conditions for the right of suffrage. IDAHO CONST. art. VI, § 4.

3. The Idaho legislature has provided for such elections to be conducted pursuant to standards proscribed by Idaho Code, Title 34.

4. Under existing Idaho law, voters are required to verify their identity in one of two ways: (1) by providing photo identification pursuant to Idaho Code § 34-1113; or (2) by providing an affidavit in lieu of identification pursuant to Idaho Code § 34-1114.

5. On January 1, 2024, House Bill 124 will take effect, which will alter an existing requirement for voters to prove who they are as they are casting a vote.

6. House Bill 124 will affect a limited number of eligible voters.

7. Only 104 voters used student identification to prove their identity in 2022.

8. Further, publicly available data shows that over ninety-eight (98) percent of voters used a state-issued driver’s license.

9. House Bill 124 passed with the attached Statement of Purpose. *See Ex. A.*

10. On July 1, 2023, House Bill 340 will take effect, which will ensure that any eligible voter without a driver's license may receive a free identification card to use for identifying themselves at a voting precinct.

11. House Bill 340, passed during the same legislative session as House Bill 124, is a state-sponsored effort to close the gap so that the State of Idaho can identify all of its residents with state-issued identification cards.

12. Among the benefits received with the passage of House Bill 340 is a more secure democracy.

13. House Bill 340 passed with the attached Statement of Purpose. *See Ex. B.*

14. Counterclaimant Phil McGrane has brought this claim against Babe Vote and League of Women Voters under the United States Constitution and the Idaho Constitution. As a court of general jurisdiction, this Court has authority to hear these claims.

15. As a court of general jurisdiction, this Court has authority to hear these claims.

16. This Court has jurisdiction to enter declaratory relief under Idaho Code § 10-1201.

17. Venue is proper because the legislature passed House Bill 124 and House Bill 340 in Ada County.

18. Counterclaimant is the Idaho Secretary of State.
19. Pursuant to Counterclaimant's role as Idaho's chief election officer, it is his statutory duty to provide directives, instructions, and assistance to county clerks across the State of Idaho related to the conduct of elections. *See Idaho Code §§ 34-202, 34-203, 34-205, & 34-206.*
20. Counterdefendant Babe Vote is a non-profit organization registered with the Idaho Secretary of State.
21. Counterdefendant League of Women Voters is a non-profit organization registered with the Idaho Secretary of State.
22. While this action brings challenges under the Idaho Constitution only, this action was filed concurrently and coordinated with another action in federal court that challenges the same statutes under the federal constitution.
23. The Idaho and federal constitution employ substantially similar standards with regard to equal protection.
24. In the interest of preventing gamesmanship and promoting judicial economy through a single proceeding adjudicating the validity of the laws in question, Counterclaimant seeks declaratory relief in this action that the challenged statutes do not violate the federal constitution.
25. Under Idaho Rules of Civil Procedure 13(a), these counterclaims arise out of the transactions or occurrences that are the subject matter of Plaintiffs claims and do not require adding another party over whom the court cannot acquire jurisdiction.

COUNT ONE

DECLARATORY JUDGMENT – FEDERAL EQUAL PROTECTION

26. Counterclaimant re-alleges and incorporates by reference the foregoing allegations.

27. Counterclaimant brings this claim under Idaho Code § 10-1201.

28. As set forth in their applicable statements of purpose, House Bills 124 and 340 were enacted to serve legitimate state interests in qualifying eligible voters, verifying Idaho residence, preventing fraud and providing easily accessible forms of identification.

29. House Bills 124 and 340 impose minimal if any burdens on the ability of eligible voters to vote.

30. House Bills 124 and 340 do not classify based on age or upon any suspect class for purposes of equal protection.

31. House Bills 124 and 340 were enacted with the requisite rational basis as set forth in their statements of purpose.

COUNT TWO

DECLARATORY JUDGMENT – TWENTY-FOURTH AMENDMENT

32. Counterclaimant re-alleges and incorporates by reference the foregoing allegations.

33. Counterclaimant brings this claim under Idaho Code § 10-1201.

34. House Bills 124 and 340 do not require payment of any poll tax.

35. House Bills 124 and 340 do not unlawfully deny or abridge the right to vote for any eligible voter.

COUNT THREE

DECLARATORY JUDGMENT – TWENTY-SIXTH AMENDMENT

36. Counterclaimant re-alleges and incorporates by reference the foregoing allegations.

37. Counterclaimant brings this claim under Idaho Code § 10-1201.

38. House Bills 124 and 340 do not classify based on age and do not unlawfully limit the ability of eligible voters to cast votes in Idaho elections.

39. House Bills 124 and 340 do not unlawfully deny or abridge the right to vote for any eligible voter over eighteen (18) years of age or older.

PRAYER FOR RELIEF

WHEREFORE, the Counterclaimant requests the Court grant the following relief:

- A. Declaratory relief from the Court that House Bills 124 and 340 do not violate the Idaho Constitution.
- B. Declaratory relief from the Court that House Bills 124 and 340 do not violate the United States Constitution.
- C. An award of attorney fees pursuant to Idaho Code § 12-121.
- D. Such other relief as the Court deems appropriate.

DATED: May 8, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Lincoln Davis Wilson
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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2023, I filed 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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REVISED

STATEMENT OF PURPOSE

RS30169 / H0124

This legislation removes student ID cards from section 34-1113 as an acceptable form of personal identification to vote at the polls. There is a lack of uniformity in the sophistication of student ID cards. Statewide, only 104 voters who voted at the 2022 General Election used a student ID card to vote, which was the second least utilized form of personal identification. Alternative forms of personal identification are available and accepted at the polls.

FISCAL NOTE

There will be no impact to the General Fund, since this legislation creates no new requirements of state government.

Contact:

Representative Tina Lambert
Senator Scott Herndon
(208) 332-1000

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**EXHIBIT
A**

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 of the legislative process, including judicial review (Joint Rule 18).

STATEMENT OF PURPOSE

RS30721 / H0340

The purpose of this legislation is to clarify and create uniformity in voter registration requirements. Currently, there are inconsistencies among the various methods of registering, as well as lack of clarity concerning the type of documentation an applicant must show to prove residence in order to complete registration. To standardize the voter registration process, this legislation requires that applicants submit a completed application, show proof of identity, and show proof of residence, regardless of the manner of registration. In addition, by specifying the acceptable documentation required to prove identity and residence, this legislation prevents any uncertainty for applicants and election officials. Given the lack of uniformity in the sophistication of student ID cards, such cards are no longer a valid form of personal identification to vote at the polls. As an alternative, this legislation requires the Idaho Department of Transportation (“ITD”) to issue no-fee identification cards for the purpose of complying with voter registration and voting requirements.

FISCAL NOTE

A standard four-year identification card is \$15.00. \$10.00 of this amount is distributed to the county Sheriff that issues the credential and \$5.00 is distributed to the Highway Distribution Account. Of the \$5.00, approximately \$3.00 is distributed to ITD and \$2.00 is distributed among local highway jurisdictions. In the 2022 general election, 98.8% of the voters showed a driver’s license as a form of personal identification, while only 0.4% of the voters completed an Affidavit in lieu of showing personal identification, and 104 voters used a student ID. It’s anticipated that these latter two categories of voters will be the likeliest applicants for no-fee ID cards. Accordingly, it is anticipated that fewer than 2,000 no-fee ID cards will be issued each year. There would be minimal impact to ITD dedicated and local funds and no impact to the General Fund.

Contact:

Representative Brandon Mitchell
(208) 332-1000
Representative Joe A. Palmer
(208) 332-1000
Phil McGrane, Secretary of the State
(208) 332-2849

**EXHIBIT
B**

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 of the legislative process, including judicial review (Joint Rule 18).