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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

**MEMORANDUM IN SUP-
PORT OF MOTION FOR
JUDGMENT ON PLEADINGS
AND FOR SUMMARY JUDG-
MENT**

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INTRODUCTION

The Idaho Legislature has the constitutional power and duty under both state and federal law to set “[t]he Times, Places and Manner of holding Elections,” U.S. Constitution Article I, Section 4, Clause 1, and to “prescribe qualifications, limitations, and conditions for the right of suffrage.” IDAHO CONST. art. VI, § 4. During the current legislative session, the Legislature enacted two pieces of legislation under this duty: (1) a law establishing a free form of universal voter ID; and (2) amendments to voter ID and registration requirements to streamline and simplify proof of identity and residency for registration and voting. But now, two coordinated lawsuits have challenged these amendments—one lawsuit in federal court, under the federal constitution, and this case, which brings the same challenges under the state constitution. While the lawyers’ approach of splitting legal challenges across multiple proceedings may serve their tactical purposes, it frustrates both fairness and judicial economy. Thus, the State of Idaho, through Secretary of State Phil McGrane,¹ seeks a single adjudication of both the state and federal claims in this case in state court—the one forum that can provide ultimate review by both state and federal courts. This Court should therefore rule on Plaintiffs’ claims and the State’s counterclaims and hold that Idaho’s amended voter registration and identification requirements comply with both the state and federal constitutions, as follows:

¹ Because Plaintiffs have sued Secretary McGrane in his official capacity, this motion refers to him as the “State” or the “State of Idaho” throughout this brief.

First, as a threshold matter, Plaintiffs' central claim that Idaho voter registration laws burdens newly relocated students' ability to vote misunderstands Idaho's lawful authority to qualify new voters. Not all persons new to Idaho, like college students, are eligible to vote because Idaho law requires a person to establish residency—which is more than physical presence—at least thirty days before registering to vote. On this understanding, Plaintiffs' allegations of discrimination against students are meritless.

Second, Idaho's Voter ID laws comply with equal protection under both the state and federal constitutions. The U.S. Supreme Court and many others have upheld voter ID requirements over equal protection challenges, and Idaho's laws are no different. Idaho's amended voter ID requirements do not classify based on age, but even if they did, they would be subject to rational basis review. And Idaho's statutory amendments to no longer accept student IDs—which only 104 voters used in the last election—meet legitimate legislative objectives of protecting election security. And that is especially true because Idaho law provides another free form of ID to any eligible voter and allows affidavits in lieu of ID.

Third, Idaho's Voter ID laws comply with the Twenty-Sixth Amendment to the federal constitution. Requiring ID does not prevent any eligible voters age 18 or older from voting. Instead, the law establishes the forms of ID that voters of any age may use—a driver's license, a passport, a free state ID, or even an affidavit. Just not a student ID proffered by a university or high school.

Fourth, Idaho's Voter ID and registration requirements comply with the Twenty-Fourth Amendment. Idaho does not have a poll tax and its new laws make voting more accessible to eligible voters. The creation of a free form of voter ID helps eliminate the impact of previous fees for financially vulnerable residents.

The Court should grant judgment on the pleadings dismissing Plaintiffs' claims and grant summary judgment on Idaho's counterclaims under federal law.

FACTUAL BACKGROUND

Since 2010, Idaho has required voter identification when casting a ballot. *See* 2010 Idaho Sess. Laws 634. Idaho law requires all voters to identify themselves at the polls with either a photo identification card or an affidavit in lieu of personal identification. *See* Idaho Code §§ 34-1113, 34-1114. The constitutionality of that law has never been challenged.

During the 2023 legislative session, Idaho enacted two changes that will impact the voter identification requirement over the course of the coming year.

First, H.B. 340 amends Idaho Code to provide eligible voters free identification cards through the Idaho Transportation Department if they do not already have a driver's license.² The law seeks "to clarify and create uniformity in voter registration requirements" by addressing "inconsistencies among the various methods of registering" and "the type of documentation an applicant must show to prove residence in order to complete registration."³ "To standardize the voter registration process, this

² H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), <https://tinyurl.com/7jbrh2vu>.

³ H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose, <https://tinyurl.com/rkxdkmx7>.

legislation requires that applicants submit a completed application, show proof of identity, and show proof of residence, regardless of the manner of registration.” *Id.* And the law establishes an alternative form of free voter identification by requiring the Idaho Department of Transportation “to issue no-fee identification cards for the purpose of complying with voter registration and voting requirements.” *Id.* This law takes effect this summer, in July 2023.

Second, H.B. 124 amends Idaho election law to streamline the forms of acceptable Voter ID so that student ID cards are no longer accepted at polls.⁴ Moving forward, accepted photo identification will include Idaho driver's licenses, free identification cards, U.S. passports or other federal ID cards, tribal identification cards, and concealed weapons licenses. The law's official statement of purpose notes that “[t]here is a lack of uniformity in the sophistication of student ID cards,” and that “[s]tatewide, only 104 voters who voted at the 2022 General Election used a student ID card to vote.”⁵ In addition, “[a]lternative forms of personal identification are available and accepted at the polls.” *Id.* The amended requirements will take effect six months after the creation of the new form of free ID, on January 1, 2024.

Litigation followed soon after the passage of these laws. In parallel filings coordinated with joint press coverage,⁶ one group of lawyers challenged these laws

⁴ H.B. 124, 67th Leg., Reg. Sess. (Idaho 2023), <https://tinyurl.com/d7s5zu2m>.

⁵ H.B. 124, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose, <https://tinyurl.com/2s4z9s89>.

⁶ Clark Corbin, *Babe Vote, March for Our Lives Idaho file suit over law eliminating student IDs for voting*, Idaho Capital Sun (Mar. 17, 2023, 3:23 PM), <https://tinyurl.com/6m3xbx69>.

under the federal constitution in federal court, while a second group of lawyers filed this action asserting substantially similar claims under the state constitution.⁷ But while Plaintiffs here have already served expansive discovery requests concerning voter fraud in Idaho, those records are unnecessary to resolve this straightforward controversy. Rather, to promote judicial economy, the State of Idaho has answered the complaint in this action and asserted counterclaims for declaratory judgment that Idaho's election laws comply with the federal constitution as well. The State now moves for judgment on the pleadings as to Plaintiffs' state-law claims and for summary judgment on its counterclaims under federal law.

STANDARD OF DECISION

Judgment on the pleadings and summary judgment hinge on the same standard: whether the moving party is entitled to judgment as a matter of law based on undisputed facts. For the State's motion for judgment on the pleadings, the undisputed facts (for purposes of this motion only) are the allegations of Plaintiffs' Complaint. And for the State's motion for summary judgment, it proffers a separate statement of undisputed facts. Under either standard, the issues for decision here concern the validity of the law itself, which, as explained below, easily satisfies the demands of both the state and federal constitutions.

Motion for Judgment on the Pleadings: "After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings."

⁷ *March For Our Lives v. McGrane*, Case No. 1:23-cv-00107-CWD, was filed in the District Court of Idaho on March 17, 2023. The present case before this Court was filed on March 16, 2023.

I.R.C.P. 12(c); see *Elsaesser v. Gibson*, 168 Idaho 585, 590, 484 P.3d 866, 871 (2021). “A judgment on the pleadings is reviewed under the same standard as a ruling on summary judgment.” *State v. Yzaguirre*, 144 Idaho 471, 474, 163 P.3d 1183, 1186 (2007) (citation omitted). “For purposes of a motion for judgment on the pleadings, 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.” *Id.*

Motion for Summary Judgment: Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c). The movant has the burden of showing that no genuine issues of material fact exist. *Stoddart v. Pocatello Sch. Dist. No. 25*, 149 Idaho 679, 683, 239 P.3d 784, 788 (2010). Disputed facts and reasonable inferences are construed in favor of the non-moving party. *Castorena v. Gen. Elec.*, 149 Idaho 609, 613, 238 P.3d 209, 213 (2010).

ARGUMENT

I. Idaho laws qualifying voters through registration and residency are an exercise of constitutional authority.

Before proceeding to Plaintiffs’ constitutional claims, it is important to address the heart of their factual allegations: that because H.B. 340 “expressly eliminates the use of student IDs for registration,” it “particularly affects college students coming from other states to attend school in Idaho” who “still have valid driver’s licenses from their prior home state.” Am. Compl. ¶¶ 4, 42. Putting aside that students are not a suspect class for purposes of equal protection analysis, this is factually incorrect.

The decision not to accept student ID to vote does not affect students coming from out of state to attend school in Idaho because they do not necessarily meet Idaho's voter registration requirement of "residence" in the first place. And since H.B. 340 does not impose any additional burdens on those who are entitled to register to vote in Idaho, it does not discriminate against students.

Fundamentally, both the state and federal constitutions authorize states to regulate elections and qualify voters. The Elections Clause of the United States Constitution empowers both Congress and state legislatures to enact laws to govern the mechanics of elections. States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Sheby County, Alabama v. Holder*, 570 U.S. 529, 543 (2013) (citation omitted). While Congress may later change the regulations passed by the state, the Elections Clause gives states the initial authority to prescribe the method of conducting elections. *Gonzalez v. Arizona*, 677 F.3d 383, 391 (9th Cir. 2012). Likewise, the Idaho Constitution, Article VI, Section 4 expressly grants the legislature its power to place qualifications, limitations, and conditions on the right of suffrage. *Rudeen v. Cenarrusa*, 136 Idaho 560, 567–68, 38 P.3d 598, 605–06 (2001). In *Rudeen*, which concerned the legislature's decision to add term limits for elected officials in Idaho, the Idaho Supreme Court concluded that the drafters of the Idaho Constitution intended that the legislature should have "the authority to

add limitations to the right of suffrage.” *Id.* at 567, 38 P.3d at 605 (emphasis added). Thus, limitations on the right to vote are inherent to its protection and its exercise.

Idaho’s fundamental voter qualification requirement is that a person establish residency in Idaho at least thirty (30) days before they register. Idaho Code §§ 34-402, 34-404. The statutory definition of “residence” is critical here: it is “the principal or primary home or place of abode” and is the place that “habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.” Idaho Code § 34-107(1). Further, Idaho law provides that “[a] qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.” Idaho Code § 34-107(4). Not only that, but the Idaho Constitution specifically addresses the relationship between status as a student and residency, stating that a person’s status as a student does not establish that residency is “gained or lost.” IDAHO CONST. art. VI, § 5. Thus, temporary attendance at a college or university does not alone fulfill the requirements for establishing a residence.

The Idaho Supreme Court’s interpretation of the “residence” requirement in other contexts reinforces this conclusion. *See Bradbury v. Idaho Jud. Council*, 149 Idaho 107, 233 P.3d 38 (2009). In *Bradbury*, the question before the court was determining the eligibility of a district judge based on his actual residency. *Id.* As part of the process for taking office after the election, the judge signed a registration form

stating that he “shall have been a resident of Idaho and the county for 30 days before the next election at which I vote.” *Id.* at 118, 233 P.3d at 49. The Idaho Supreme Court held that a person can have only one “residence” as defined in Idaho law, and that physical presence was not enough to establish residence. *Id.*

With this background, there is no merit to Plaintiffs’ charge that H.B. 340 targets students. The State furthers its interest in qualifying voters by requiring proof of residency when voters register. H.B. 340 transparently accomplishes the interest stated in its Statement of Purpose by requiring eligible voters who register on election day—students or otherwise—to provide the *same proof* of residency as registering by mail. H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose. That change resolved an inconsistency in prior law, which imposed different requirements for different methods of registration. H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Bill Text. And so H.B. 340 does not impose any greater requirement on students who come from out of state to attend school in Idaho. If those students have taken the steps necessary to establish residency in Idaho—which they can prove by proffering their enrollment papers—they can register to vote in advance or on election day. Idaho Code § 34-411 (as amended). And if these students have established only physical presence, but remain residents of their home states, they are not eligible to vote regardless of whether they possess the type of identification required for registration. Thus, Plaintiffs’ alleged violations of equal protection and undue burden on the right of suffrage necessarily fail because a person who has not established residency prior to registration does not have a constitutionally-protected right to vote in Idaho.

II. Idaho's Voter ID laws comply with both state and federal Equal Protection guarantees.

Idaho's Voter ID laws do not violate either state or federal equal protection provisions. Plaintiffs in this case assert claims under the Idaho Constitution's right to equal protection and the right to suffrage, and the State counterclaims for a declaration that these Voter ID laws conform to the federal constitution. Here, the legislature has acted within its express authority under state and federal law to enact additional limitations on suffrage to qualify voters. Any challenge to these laws under an equal protection theory fails under both state and federal law.

Equal protection challenges to the limitations in Idaho's Voter ID and registration laws fail under both state and federal law. While the protections under the Idaho Constitution are independent of the federal constitution, the Idaho Supreme Court has recognized that "the equal protection guarantees of the federal and Idaho Constitutions are substantially equivalent." *Rudeen*, 136 Idaho at 568, 38 P.3d 606. As a necessary corollary, no equal protection analysis is required and no violation of equal protection will be found if the State has not engaged in the disparate treatment of similarly situated individuals. *Alpine Vill. Co. v. City of McCall*, 154 Idaho 930, 937, 303 P.3d 617, 624 (2013). Thus, it is appropriate for Idaho courts to use federal constitutional law to review equal protection claims under the Idaho Constitution under "the 'flexible standard' outlined in *Burdick v. Takushi*." *Rudeen*, 136 Idaho at 569, 38 P.3d at 607. Any equal protection challenge to Idaho's Voter ID laws fails under that standard.

A. *Anderson-Burdick* recognizes that equal protection permits restrictions on the right to vote in order to prevent fraud.

Even though the right to vote is a fundamental right, that does not mean that all state laws that impact voting require strict scrutiny. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Instead, the Court recognizes that, “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974). Generally, a state’s important regulatory interests are accepted by the Court as sufficient justification for reasonable, non-discriminatory restrictions. *Anderson*, 460 U.S. at 788. As the Court explained, “[t]o achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualifications of voters . . . or the voting process itself, inevitably affects—at least to some degree—the individual’s right to vote[.]” *Id.*

Thus, when evaluating a constitutional challenge to an election law, the United States Supreme Court has used a two-part analysis that considers (1) “the character and magnitude of the asserted injury to the rights protected,” and then (2) “the precise interests put forward by the State as justification[] for the burden imposed by its rule.” *Anderson*, 460 U.S. at 789. In applying this test, “the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Stated differently, strict scrutiny is not an appropriate approach to review election law when the law does not severely burden the

right to vote and does not invidiously discriminate against a suspect class. *See Short v. Brown*, 893 F.3d 671, 677–79 (2018). Thus, the Supreme Court has uniformly dismissed invitations to require narrow tailoring for all election laws because it “would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Burdick*, 504 U.S. at 433.

The Ninth Circuit recently applied the *Anderson-Burdick* doctrine in rejecting a challenge to California’s election laws. In *Short v. Brown*, the plaintiffs requested injunctive relief for the automatic mailing of absentee ballots in all counties when California’s law only required automatic mailing in specific counties. 893 F.3d 671. In upholding the district court’s denial for a preliminary injunction, the court explained that “strict scrutiny applies only where the burden on the fundamental right to vote is severe.” *Id.* (citing *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 (9th Cir. 2016)). The court was critical of the appellants’ analysis for heightened scrutiny:

But this confuses two separate strands of equal protection doctrine: suspect classifications and fundamental rights. The first strand bars a state from codifying a preference for one class over another, but it prescribes heightened scrutiny only where the classification is drawn from a familiar list—race, gender, alienage, national origin. The second strand bars a state from burdening a fundamental right for some citizens but not for others. Absent some such burden, however, legislative distinctions merit no special scrutiny.

Short, 893 F.3d at 678–79 (citations omitted). Thus, the Ninth Circuit instead applied the *Anderson-Burdick* doctrine and upheld the law because “the Constitution permits states to impose some burdens on voters through election regulations” to serve their legitimate interests in regulation elections. *Id.* at 677.

Election security and preventing fraud are the primary and legitimate interests of Voter ID laws. “One strong and entirely legitimate state interest is the prevention of fraud.” *Brnovich v. Democratic Nat’l Comm.*, 210 L. Ed. 2d 753, 141 S. Ct. 2321, 2340 (2021). “Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight,” as well as “undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.” *Id.* Voter ID requirements not only prevent fraud from occurring in the first place, but also provide officials a means of verifying and further investigating allegations of fraud and wrongdoing that may later be asserted. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 195–96 (2008). That is what Idaho has accomplished with its Voter ID laws here.

B. Idaho’s Voter ID and registration laws comply with *Anderson-Burdick* under controlling precedent.

The Court can and should find as a matter of law that Idaho’s Voter ID laws comply with equal protection under the *Anderson-Burdick* doctrine.⁸ The State’s burden upon voters in requiring identification is very low and falls squarely within the type of regulations intended by the Idaho and United States Constitutions and

⁸ Plaintiffs’ claims can be decided as a matter of law because even if the well-pleaded factual allegations of their complaint are true, Idaho’s Voter ID laws are constitutional. *See Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 753 (M.D. Tenn. 2015) (court granted defendant’s motion to dismiss under equal protection and Twenty-Sixth Amendment challenges to state’s rejection of student ID as a form of voter ID); *see also Utah Republican Party v. Cox*, 892 F.3d 1066 (10th Cir. 2018) (court affirmed decision to grant judgment on the pleadings after analysis of state electoral process under *Anderson-Burdick*). For the same reasons, the Court may grant summary judgment granting declaratory judgment on the State’s counterclaims that Idaho’s Voter ID laws comply with the federal constitution.

approved by the U.S. Supreme Court. And the State's legitimate interests in election security amply justify any minimal additional burden upon voters. Indeed, the legislature has made voting in Idaho *more accessible* and more secure by removing the financial cost for state-issued identification cards so that all voters, including students, may use them when casting ballots. This Court should therefore approve Idaho's Voter ID law and allow these changes to take effect without delay.

This is not a close question. Indeed, the U.S. Supreme Court has already blessed a substantially similar Voter ID law under *Anderson-Burdick*. In *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), the U.S. Supreme Court reviewed Indiana's voter identification law within the context of the increasing number of states that have relied primarily on photo identification. *Id.* at 197–98. Applying *Anderson-Burdick*, the Court considered the severity of the burden imposed on voters, which the Court recognized as a range based on the individual life circumstances of voters. *Id.* The Court held that the Indiana law did not present a severe burden because most voters already possessed a driver's license, and for those who would be required to obtain identification, the “inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Id.* at 198. And for the small number of voters who found such requirements difficult for any reason, the severity of that burden was adequately mitigated by the ability to cast a provisional ballot based on an affidavit. *Id.* at 199.

Continuing the *Anderson-Burdick* analysis, the Court considered the valid interests set forth by Indiana for its voter identification requirements. *Id.* at 191–98. First, Indiana asserted that federal legislation of state voting regulations have made voter identification a federal compliance issue. *Id.* at 192–94. States like Indiana and Idaho had responded to such requirements by establishing a uniform method of compliance through photo identification. *Id.* And so even though the record did not contain specific evidence of voter fraud,⁹ the Court recognized that the risk of fraud is real and had already been sufficiently documented nationwide: “[T]here is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.” *Id.* at 195–96. Finally, the Court considered the state’s interest in protecting public confidence in the integrity of the electoral process, which had “independent significance” from simply preventing voter fraud. *Id.* at 197.

⁹ While the plurality opinion in *Crawford*, authored by Justice Stevens, approved the law without any case-specific evidence of voter fraud, the concurrence by Justice Scalia, joined by Justices Alito and Thomas, would have gone even further and held that the issues were wholly a matter of law and required no factual inquiry. *Id.* at 206–07 (Scalia, J., concurring). As the concurrence explained, there is no requirement for the Court to look to a “voter-by-voter examination of the burdens of voting regulations,” which would lead to constant litigation. *Id.* at 208. “[D]etailed judicial supervision of the election process would flout the Constitution’s express commitment of the task to the States. It is for state legislatures to weigh the costs and benefits of possible changes to their election codes, and their judgment must prevail unless it imposes a severe and unjustified overall burden upon the right to vote, or is intended to disadvantage a particular class.” *Id.* (citation omitted). The analysis of the state’s interest against the minimal burden should have ended the Court’s analysis, and “[t]hat the State accommodates some voters by permitting (not requiring) the casting of absentee or provisional ballots, is an indulgence—not a constitutional imperative.” *Id.* at 209.

Safeguarding confidence in the fairness of elections “encourages citizen participation in the democratic process.” *Id.*

That Idaho’s Voter ID law complies with equal protection is even more clear than it was in *Crawford*. At the outset, Idaho has an equivalent and legitimate interest in identifying voters as ballots are cast in order to detect and deter fraud. As in *Crawford*, there is no need for a case-specific record on the point. Having statutes that secure the eligibility of each voter furthers public confidence in Idaho’s electoral process.

And to the extent there are any differences between Indiana and Idaho law, they cut in Idaho’s favor. Idaho law permits a self-identification affidavit per Idaho Code § 34-1114 for those without identification. This is significantly less burdensome than the Indiana law held valid in *Crawford*. Idaho voters without photo identification are not required to make an additional trip to the county court clerk to submit their affidavit, as in Indiana, but may submit it at the polling place. Idaho provides a separate, free form of compliant voter identification for all eligible voters, including any voter who might have otherwise used a student identification card to verify their identity. Thus, as the Fourth Circuit has held in similar circumstances, if the laws in *Crawford* satisfied equal protection, then less burdensome laws like Idaho’s necessarily do as well. *Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 607 (4th Cir. 2016).

Idaho’s Voter ID law directly advances its interests in protecting election integrity and promoting fairness and public confidence in the electoral process. The

legislative amendments enacted in 2023 were supported with the specific legislative statements of purpose proffered here. As those statements explain, H.B. 124 provides that student ID will no longer be accepted to identify voters because high schools and colleges do not have uniform standards throughout the state for issuing this form of identification.¹⁰ To the extent this affects the 104 voters who used student ID in the last election, they now have six months to obtain free identification through the Idaho Department of Transportation per H.B. 340.¹¹

C. Idaho’s Voter ID and registration laws do not treat voters differently based on age or justify strict.

Plaintiffs say Idaho’s amendment to no longer accept student ID as Voter ID violates equal protection as unlawful age discrimination. This is doubly wrong: Idaho’s law does not present different requirements for voter identification based on age, and, in any event, age has never been regarded as a suspect class under equal protection law under the United States or Idaho Constitutions.

First, a voter ID requirement does not discriminate based on age simply because it does not accept student IDs. Nothing on the face of a rule about student IDs contains any age classification. And here, the law’s statement of purpose explained that it rejected student ID in order to minimize the number of forms of ID permitted, with student ID having been used by exactly 104 voters statewide in the last

¹⁰ H.B. 124, Statement of Purpose.

¹¹ Federal statutory law also supports this result. Congress has also required identification for voter registration and limited that identification to a driver’s license number or last 4 digits of the social security number. *See* 52 U.S.C. § 21083(a)(5)(A). Student ID would thus be insufficient under federal law too.

election.¹² Any eligible student voters who do not have a passport or driver's license would be entitled to go get a free ID at the DMV. And it is well-known that students may come to college at a variety of different ages. In fact, the State's largest land-grant institution, the University of Idaho, estimates that as much as 40% of its student body are non-traditional students.¹³ The notion that this law discriminates based on age is simply not plausible.

Second, even accepting Plaintiffs' accusations of age discrimination, Idaho's Voter ID laws should be reviewed under a rational basis standard and are easily upheld. "Age classifications, unlike governmental conduct based on race or gender, cannot be characterized as 'so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy.'" *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000) (quoting *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440, (1985)). Thus, in contrast to equal protection claims based on racial or religious classifications, the appropriate standard for reviewing an age discrimination claim is rational basis:

States *may* discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. The rationality commanded by the Equal Protection Clause does not require States to match age distinctions and the legitimate interests they serve with razorlike precision. As we have explained, when conducting rational basis review "we will not overturn such [government action] unless the varying treatment of different groups or persons is so unrelated to the achievement of any

¹² H.B. 124, Statement of Purpose, available *supra*.

¹³ *Nontraditional Students*, University of Idaho, <https://www.uidaho.edu/student-affairs/nontraditional> (last visited May 8, 2023). The Court may take judicial notice of this claim on the public website of a public entity. *See* I.R.E. 201.

combination of legitimate purposes that we can only conclude that the [government's] actions were irrational.”

Id. at 83–84.

Election laws that treat voters differently based on age are not subject to strict scrutiny, “given that age is not a suspect class.” *Texas Democratic Party v. Abbott*, 961 F.3d 389, 405 (5th Cir. 2020). In *Texas Democratic Party*, the district court granted plaintiffs a preliminary injunction challenging state election laws that required individuals under sixty-five (65) to provide a disability basis to receive a mail-in ballot. *Id.* at 395. Individuals over sixty-five (65) were provided mail-in ballots regardless of disability. The district court’s decision criticized application of the law during the unique circumstances presented that year with COVID-19 safety protocols and held that the exposure to the virus placed a “severe burden” on the plaintiffs right to vote. *Id.* at 402. And like the challenge to Idaho laws here, the plaintiffs challenged the Texas law under both the equal protection and twenty-sixth amendment theories

The Fifth Circuit reversed. First, it held the Texas law did not violate equal protection under rational basis review: “[T]he right to vote in any manner is therefore not absolute, because common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections.” *Id.* at 407 (cleaned up). And it further explained that “[i]f a state’s decision to give mail-in ballots only to some voters does not normally implicate an equal-protection right to vote, then neither does it implicate the right to vote of the Twenty-Sixth Amendment. There is no reason to treat the latter differently.” *Id.* at 409 (citations and internal quotations omitted). The Court concluded that because the law restricted only one

method of voting, by absentee ballot, and it did not restrict in-person voting by age, the state law would not impact any voter's rights. *Id.*

The same goes here. Idaho's law requiring identification is the same for voters of any age, but even if the student ID restriction were construed as imposing a different classification based on age, the Court would apply the rational basis standard. And the law would survive that lenient review. As discussed above, the State has a clear interest to preserve the integrity of Idaho's elections, and it is highly rational for the state legislature to require a form of identification at the polls for election security, to assist investigations of allegations, and to protect public confidence in election results.

Even more specifically, Idaho has a legitimate interest at stake in securing the eligibility of each voter by requiring identification and by limiting the number of methods of identification that are allowed. Student ID is both the least secure and least uniform method of identification and was rarely used by voters anyway. These are perfectly rational grounds to eliminate it as a source of legitimate voter ID, especially when the State provides a free form of ID available to all eligible voters. The Supreme Court approved Indiana's voter ID law even without an allowance for student ID, and so it should approve the laws here as well.

III. Idaho's voter ID laws comply with the Twenty-Sixth Amendment.

Nothing about Idaho's Voter ID laws interferes with "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote ... on account of

age.” U.S. CONST. amend. XXVI, § 1. As noted above, nothing about the laws classify based on age, and the Twenty-Sixth Amendment is therefore inapposite.¹⁴

Courts have dismissed similar challenges to voter ID requirements under the Twenty-Sixth Amendment. Although the U.S. Supreme Court has not yet interpreted the Twenty Sixth Amendment,¹⁵ a federal court in Tennessee has upheld a similar voter identification law that excluded student ID despite a challenge under the Twenty-Sixth Amendment and the Equal Protection Clause. *Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749 (M.D. Tenn. 2015). The court noted that the very few state and federal district court cases in which a violation of the Twenty-Sixth Amendment was found have involved state actions that completely block voters from voting, rather than a law impacting accessibility and convenience.¹⁶ In contrast to those cases, the district court explained that “Voter ID Law does not impose any unique burden on students” and “everyone is required to obtain some form of acceptable photo identification in order to vote.” *Nashville Student Org.*, 155 F. Supp. 3d at

¹⁴ The plaintiffs in the related pending federal case have alleged a Twenty-Sixth Amendment claim based on allegations substantially similar to plaintiffs here. Second Am. Compl. ¶¶ 68–78, *March For Our Lives v. McGrane*, Case No. 1:23-cv-00107-CWD (Apr. 17, 2023).

¹⁵ The Seventh Circuit recently rejected heightened scrutiny for claims that concerned automatic mailing of absentee ballots pursuant to both the Twenty-Sixth and Fourteenth Amendments. *Tully v. Okeson*, 977 F.3d 608 (7th Cir. 2020).

¹⁶ See *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 96 Cal. Rptr. 697, 488 P.2d 1, 2 (1971) (finding a Twenty-Sixth Amendment violation where the state did not allow unmarried minors to establish domicile separate from their parents for purposes of voter registration); see also *Ownby v. Dies*, 337 F. Supp. 38 (E.D. Tex. 1971) (holding that the Twenty-Sixth Amendment was violated by statute that required a heightened standard for individuals under 21 to establish residency for eligible voting).

757. That allowing student ID for voting might make it easier did not mean that failing to accept student ID abridged any student's right to vote. *Id.*

The same result is warranted here. While Idaho has chosen to no longer accept student ID to vote—a rule that would have affected just 104 persons in the last election—it has made voting easier for everyone by creating a new form of free, valid voter ID and allowing anyone to vote with an affidavit as to their identity. Voters of different circumstances of life, including age, will always be affected differently by such laws based on their individualized circumstances. But that does not mean that Idaho's Voter ID laws abridge the right to vote for persons 18 or older. Nor does the Twenty-Sixth Amendment preclude states like Idaho from modifying election laws to address important interests such as ensuring election security. The Court should therefore grant a declaratory judgment that Idaho's voter ID law complies with the Twenty-Sixth Amendment.

IV. Idaho's Voter ID and registration laws comply with the Twenty-Fourth Amendment.

Though Idaho has made voting more accessible to residents of all economic means by making a free form of ID available to eligible voters, Plaintiffs seek to create controversy and allege discrimination where it does not exist. They say the free ID provided by H.B. 340 will “disproportionately affect communities who already lack access to government-issued ID because some in these communities cannot afford or do not have access to the necessary documents.” *See* Am. Compl. ¶ 43. But H.B. 340 only amends an existing and lawful requirement to prove residency by making

uniform these requirements across all forms of voting and registration. These provisions satisfy both Idaho and federal law and the Court should so hold.

The Idaho Supreme Court has never held that the Idaho Constitution provides relief from voter qualification laws on the basis that the registration requirement impacts voters financially. And the only such restriction under federal law raised in the companion federal litigation—the Twenty Fourth Amendment’s prohibition of poll taxes—is inapplicable.¹⁷ That amendment states as follows:

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

U.S. CONST. amend. XXIV, § 1.

A law does not violate the Twenty-Fourth Amendment merely because it requires identification that some voters may need “to spend money to obtain.” *Gonzalez v. Arizona*, 677 F.3d 383, 407 (9th Cir. 2012), *aff’d sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, (2013). Rather, the Twenty-Fourth Amendment prohibits “a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax.” *Harman v. Forssenius*, 380 U.S. 528, 541, (1965).

If anything, H.B. 340 alleviates any financial burden on voting. It provides that all eligible voters who do not already possess identification that will be accepted for voting may qualify for an Idaho identification card for free. H.B. 340 makes

¹⁷ Second Am. Compl. ¶¶ 79–86, *March For Our Lives v. McGrane*, Case No. 1:23-cv-00107-CWD (Apr. 17, 2023).

identification available without fee and provides for documentation of residency that any eligible voter who has established residency would possess. Idaho law does not require one specific type of proving residency and has ensured that even its most economically vulnerable voters—homeless persons—can prove residence in Idaho through documentation which they may access without having a lease or mortgage.¹⁸ This Court should therefore grant the declaratory relief sought by Defendant and conclude that Idaho’s Voter ID and registration requirements do not violate the Twenty-Fourth Amendment.

CONCLUSION

For the foregoing reasons, the Court should grant judgment on the pleadings dismissing Plaintiffs’ complaint with prejudice for failure to state a claim and issue summary judgment granting declaratory judgment on the State’s counterclaims that its Voter ID laws do not violate the federal constitution.

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¹⁸ Idaho Code § 34-411, as amended, provides that a homeless person may prove residence through ID or documents related to insurance, home ownership lease, rental agreement, property tax assessment, utility bill, bank statement, paycheck, intake documentation from an assisted living facility, student enrollment papers, or a social service agency verifying the applicant’s homelessness. H.B. 340, available *supra*.

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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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