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Attorneys for Plaintiffs BABE VOTE and LEAGUE OF WOMEN VOTERS OF IDAHO

**Pro hac vice applications forthcoming*

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,

v.

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

Defendant.

Case No. CV01-23-04534

PLAINTIFFS' MOTION TO DISMISS COUNTERCLAIMS

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Plaintiffs BABE VOTE and the League of Women Voters of Idaho (the "League") submit this memorandum in support of their Motion to Dismiss Defendant Secretary of State Phil McGrane's ("the Secretary") Counterclaims.

INTRODUCTION

BABE VOTE and the League filed this lawsuit to protect voting rights in Idaho, and they seek a declaration that two recently passed bills seeking to limit student voting, House Bill 124 ("H.B. 124") and House Bill ("H.B. 340") (collectively, the "Voting Restrictions"), violate the Idaho Constitution's guarantees of the right to vote and equal protection. The Secretary filed counterclaims seeking declarations that the Voting Restrictions do not violate certain provisions of the United States Constitution. But BABE VOTE and the League have asserted no claims under the U.S. Constitution. As a result, there is no live controversy between the parties regarding the issues on which the Secretary seeks declaratory judgment. Moreover, the Secretary's counterclaims address the same issues raised in an ongoing lawsuit filed against the Secretary in the District of Idaho. By seeking to inject into this case issues that have not been raised in the complaint, the Secretary attempts to hijack BABE VOTE and the League's litigation for his own tactical reasons in defiance of the long-settled principle that the plaintiff is the master of the complaint. For each of these reasons, the counterclaims should be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

BABE VOTE and the League are Idaho nonprofit organizations that advocate for increased voting access, particularly for young voters. Am. Compl. ¶¶ 7-14. In the 2023 Legislative Session, the Idaho Legislature passed two pieces of legislation that limit the right of

suffrage, particularly for young voters, and frustrate BABE VOTE and the League's mission to increase voter participation throughout the state of Idaho. *Id.* ¶¶ 9, 14.

First, H.B. 124 eliminated the long-standing use of student identification cards as a form of identification for voting at the polls. *Id.* ¶¶ 27, 35. Despite the Secretary's admission that there have been no problems with voters using student ID cards, the Legislature removed student IDs—and only student IDs—as an option for voting. *Id.* ¶¶ 31-32. Governor Little signed the bill into law on March 15, 2023. *Id.* ¶ 2. BABE VOTE and the League sued the next day, alleging that H.B. 124 violates the Idaho Constitution.

Second, the Legislature continued its assault on student voting by passing H.B. 340 to modify the procedures for voter registration. *Id.* ¶ 41. Among other things, the bill disallows the use of student identification cards for voter registration. *Id.* ¶ 42. While H.B. 340 includes a provision that establishes a "no-fee identification" for purposes of voter registration and voting, that is only available 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. 2023 IDAHO H.B. 340 § 8; Am. Compl. ¶ 42. Governor Little signed the bill into law on April 4, 2023, and Plaintiffs subsequently amended their complaint to include allegations that H.B. 340 likewise violates the Idaho Constitution. *See generally* Am. Compl.

Meanwhile, after BABE VOTE and the League filed this suit, different nonprofit organizations filed a separate lawsuit in the United States District Court for the District of Idaho, *Albizo Barron v. McGrane*, Case No. 1:23-cv-00107-CWD (the "Federal Case") challenging the Voting Restrictions under the U.S. Constitution. The plaintiffs in the Federal Case allege those

bills violate the 24th and 26th Amendments to the U.S. Constitution and the Federal Constitutional guarantee of equal protection.[1]

On May 8, 2023, the Secretary filed three different pleadings in this case: (1) Answer, Affirmative Defenses, and Counterclaims; (2) Motion for Judgment on the Pleadings and for Summary Judgment on their Counterclaims[2]; and (3) Motion to Stay. The Secretary's counterclaim "seeks declaratory relief in this action that the challenged statutes do not violate the *federal* constitution." Answer at 12 ¶ 24 (emphasis added). In particular, the Secretary seeks declaratory judgment regarding "FEDERAL EQUAL PROTECTION," "TWENTY-FOURTH AMENDMENT," AND "TWENTY-SIXTH AMENDMENT." Answer at 13-14.

LEGAL STANDARD

"[A] declaratory judgment can only be rendered in a case where . . . [a] justiciable controversy exists." *Schneider v. Howe*, 142 Idaho 767, 772, 133 P.3d 1232, 1237 (2006) (quotation omitted). "Justiciability challenges are subject to Idaho Rule of Civil Procedure 12(b)(1) since they implicate jurisdiction." *Tucker v. State*, 162 Idaho 11, 18, 394 P.3d 54, 61 (2017). A challenge under Rule 12(b)(1) can be either facial or factual. *Owsley v. Idaho Indus. Comm'n*, 141 Idaho 129, 133 n. 1, 106 P.3d 455, 459 n.1 (2005) (citing *Osborn v. United States*,

[1] Without identifying anything other than a news story reporting on both lawsuits, the Secretary lobs unfounded accusations that the two lawsuits were coordinated to serve attorneys' tactical purposes. The Secretary's baseless contentions should be disregarded as an ill-conceived attempt to disparage BABE VOTE and the League.

[2] At the same time that he filed his answer and counterclaims, the Secretary filed a motion for summary judgment on the counterclaims in violation of Rules 56(a) and 56(d) and without allowing time for Plaintiffs to respond in any way. Given the patent prematurity of the filing, Plaintiffs requested that the Secretary postpone the hearing on the motion for summary judgment until after resolution of the motion to dismiss the counterclaims so that the parties and the court need not brief and prepare for a summary judgment hearing. The Secretary was unwilling to do so but agreed to put off the hearing on the motion for summary judgment so that it could align with the hearing on this motion to dismiss.

918 F.2d 724, 729 n.6 (8th Cir. 1990)). "Facial challenges provide the non-movant the same protections as under a 12(b)(6) motion." *Id.* (citation omitted). "Factual challenges, on the other hand, allow the court to go outside the pleadings without converting the motion into one for summary judgment." *Id.* (citation omitted). When considering a Rule 12(b)(1) facial challenge, the "standard of review mirrors that used under 12(b)(6)." *Id.*

Rule 12(b)(6) requires that claimants allege sufficient facts in support of their claims that, if true, would entitle plaintiffs to relief. *Rincover v. Dep't of Fin., Sec. Bureau*, 128 Idaho 653, 656, 917 P.2d 1293, 1296 (1996). Although the non-moving party is entitled to have all inferences from the record drawn in its favor, a motion to dismiss for failure to state a claim should be granted where the claimant can prove no set of facts in support of his claim that would entitle him to relief. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002).

ARGUMENT

I. The Secretary's counterclaims should be dismissed because there is no justiciable controversy.

The Secretary's counterclaims are not justiciable in this Court because there is no live controversy between these parties about whether the Voting Restrictions violate the U.S. Constitution.

The purpose of Idaho's Declaratory Judgment Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." IDAHO CODE § 10-1212. A court "may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." IDAHO CODE § 10-1206.

An actual or justiciable controversy is a prerequisite to a declaratory judgment action because courts are precluded "from deciding cases which are purely hypothetical or

advisory." *Bettwieser v. N.Y. Irrigation Dist.*, 154 Idaho 317, 326, 297 P.3d 1134, 1143 (2013) (quoting *Wylie v. Idaho Transp. Bd.*, 151 Idaho 26, 31, 253 P.3d 700, 705 (2011)). Claims are hypothetical where a judgment in favor of the claimant "would have no practical effect on [claimant] other than a sense of vindication." *Valencia v. Saint Alphonsus Med. Ctr. - Nampa, Inc.*, 167 Idaho 397, 402, 470 P.3d 1206, 1211 (2020). In other words, declaratory judgment actions are not justiciable where the declaratory judgment sought "would merely determine a collateral legal issue" and "would not resolve the entire case or controversy[.]" *United States v. Schlenker*, 24 F.4th 1301, 1306–07 (9th Cir. 2022) (quoting *Calderon v. Ashmus*, 523 U.S. 740, 746–47 (1998)).

Similarly, an action is "too hypothetical and contingent to establish a justiciable controversy" when it is based on allegations that the other party "likely disagrees" with an interpretation. *ABC Agra, LLC v. Critical Access Grp., Inc.*, 156 Idaho 781, 785–86, 331 P.3d 523, 527–28 (2014). Moreover, "courts will not rule on declaratory judgment actions which present questions that are moot or abstract." *Westover v. Idaho Cntys. Risk Mgmt. Program*, 164 Idaho 385, 390, 430 P.3d 1284, 1289 (2018) (citing *Wylie*, 151 Idaho at 31, 253 P.3d at 705.) A declaratory judgment action is moot if "the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Id*.

Here, there is no justiciable controversy because the Secretary's counterclaims raise hypothetical questions that address collateral legal issues not raised by BABE VOTE and the League—the Voting Restrictions' compliance with the federal Constitution—and essentially seek an advisory opinion from this Court as to those questions. BABE VOTE and the League seek relief exclusively under the Idaho Constitution, not the U.S. Constitution. The Amended

Complaint nowhere alleges that the Voting Restrictions violate the Fourteenth, Twenty-Fourth, or Twenty-Sixth Amendments to the U.S. Constitution—the province of the Secretary's counterclaims. By asserting counterclaims that seek declarations about the Voting Restrictions' compliance with those amendments, the Secretary attempts to inject into this case issues that are not in controversy in this action. Moreover, granting the declaratory judgments the Secretary seeks would not address Plaintiffs' allegations under the Idaho Constitution and thus "would not resolve the entire case or controversy." *Schlenker*, 24 F.4th 1301, 1306–07. Thus, the Secretary asserts merely hypothetical counterclaims raising issues that are not in active dispute between the parties to this case. As a result, there is no actual or justiciable controversy here, so the counterclaims should be dismissed.

II. The Secretary's counterclaims should be dismissed because the counterclaims contravene the aims of Plaintiffs' lawsuit.

The Secretary's counterclaims should also be dismissed because permitting a declarative judgment about claims and sources of law that BABE VOTE and the League have not alleged defies the fundamental principle that the plaintiff is the master of his complaint. As Justice Holmes noted more than 100 years ago, "[o]f course, the party who brings a suit is master to decide what law he will rely upon." *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913). Under this principle, defendants cannot bring counterclaims in order to seek federal jurisdiction where a plaintiff has pled the complaint under state law claims. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) ("The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law."). Indeed, "since the plaintiff is 'the master of the complaint,' the well-pleaded-complaint rule enables him, 'by eschewing claims based on federal law, ... to have the cause heard in state court.'" *Holmes Grp.,*

Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 831–32 (2002) (quoting *Caterpillar*, 482 U.S. at 398–99).

The same principle that prevents defendants from using counterclaims to deprive a plaintiff of their chosen forum also precludes litigants from deploying a declaratory judgment counterclaim to try to force a plaintiff to defend an issue he has not raised. As a plaintiff is the master of his complaint, a defendant is not free to hijack a case to his whims by interjecting any legal issue he wishes. *See Zeyen v. Pocatello/Chubbuck Sch. Dist. #25*, No. 16-CV-00458, 2018 WL 2224053, at *4 (D. Idaho May 15, 2018) ("The Court notes that Defendants have creatively couched the interest at issue to their advantage. . . . As the plaintiff is 'the master of the complaint,' . . ., the Court must look past this red herring and analyze Zeyen's asserted liberty interest.") (citation omitted).

BABE VOTE and the League made the deliberate decision to bring their claims under the Idaho Constitution. The Secretary's counterclaims ask this Court to issue a declaratory judgment that does not address the issues raised by plaintiffs but instead improperly seeks an "advance ruling" on separate issues. *Schlenker*, 24 F.4th at 1307.

III. The Secretary's counterclaims should be dismissed because the same claims are at issue in ongoing federal court litigation.

The Secretary's counterclaims should also be dismissed for an independent reason: they are duplicative of claims being actively litigated in federal court. "[I]t is proper for a court to refuse to entertain a request for declaratory relief" where another pending action "involves identically the same issues as those raised by the declaratory judgment action." *Scott v. Agric. Prods. Corp.*, 102 Idaho 147, 149, 627 P.2d 326, 328 (1981) (citing with approval several federal cases).

Here, there is an active case pending in the District of Idaho against the Secretary challenging the Voting Restrictions that "involves identically the same issues" as the Secretary's counterclaims. There, the plaintiffs allege that the restrictions violate the U.S. Constitution, and, specifically, the 24th and 26th Amendments and the Federal Constitutional guarantee of equal protection. Second Am. Compl. ¶¶ 76–77, 85, 92–95, *Albizo Barron v. McGrane*, Case No. 1:23-cv-00107-CWD (D. Idaho Apr. 17, 2023). The Secretary's counterclaims here concern the *exact same* provisions of the U.S. Constitution. Indeed, the Secretary acknowledges that his goal is to have the claims in the Federal Case heard in this Court. Answer at 12 ¶ 24. For that reason, "practical considerations of expediency and efficiency," dictate that the counterclaims here should be dismissed. *Scott*, 102 Idaho at 150. The proper course of action would be for the Secretary to adjudicate these claims in the case in which they were *actually* made (and against the parties who actually raised them): in the federal District of Idaho litigation. It would be superfluous to issue a declaratory judgment regarding these federal law claims where BABE VOTE and the League allege only state constitutional violations.

CONCLUSION

For the foregoing reasons, the Secretary's counterclaims should be dismissed with prejudice.

DATED: May 30, 2023.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 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 Filing Notification:

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