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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Deputy Clerk - Pataro, Kathy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

BABE VOTE and LEAGUE OF WOMEN VOTERS OF IDAHO, Plaintiffs, vs. PHIL MCGRANE, in his official capacity of Secretary of State, Defendant.	Case No. CV01-23-04534 MEMORANDUM DECISION AND ORDER

This is an action challenging the constitutionality of House Bills 124 and 340, which eliminated the use of student identification cards for voter registration but provided for a new free form of identification. Plaintiffs BABE VOTE and the League of Women Voters of Idaho allege that HB 124 and HB 340 violate young Idahoans' constitutional right to equal protection under the law and the right to suffrage under the Idaho Constitution. Defendant Phil McGrane, in his official capacity as Secretary of State, filed counterclaims seeking a declaratory judgment declaring that HB 124 and HB 340 violate neither the Idaho nor United States Constitutions. Defendant filed motions for judgment on the pleadings and for summary judgment. Plaintiffs filed motions to dismiss Defendant's counterclaims and for preliminary injunction. The central issue presented by the motions is whether the legislative actions are subject to strict scrutiny or rational basis review. If it is the former, then Plaintiffs prevail; however, if it is the latter, then Defendant prevails. It is an issue of first impression, which will certainly be finally decided by the Supreme Court. For the reasons, stated herein, the Court finds the challenged legislative actions are subject to rational basis review.

FACTS & PROCEDURE

(1) Facts[1]

Since 2010, Idaho has required a voter to provide identification prior to casting a ballot in an election.[2] Prior to the legislation at issue, one acceptable form of identification included students IDs.

In the November 2022 general election, there were 21,005 voters between 18 and 24 years old.[3] Plaintiffs provided data for 13,950, or 66%, of the 21,005 voters. The data from the 13,950 voters shows that 59 voters, between the ages of 18 and 24, used a student ID card for identification at the polls.[4]

On March 15, 2023, the Governor of the State of Idaho signed HB 124, which goes into effect on January 1, 2024. HB 124 amended Idaho Code § 34-1113 in the following manner:

> 34-1113. IDENTIFICATION AT THE POLLS. All voters shall be required to provide personal identification before voting at the polls or at absent electors polling places as required by section 34-1006, Idaho Code. The personal identification that may be presented shall be one (1) of the following:
> (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; or
> ~~(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~~

[1] The record consists of the declarations of Kevin Hamilton (2), Michael Herron, Kendal Shaber (2), Yvonne "Sam" Sandmire, Elizabeth "Betsy" McBride, Brian Goeke, Guillermo Velasco, and Gabe Osterhout, and Defendant's Statement of Undisputed Facts, which appear to be undisputed by Plaintiffs.
[2] Statement of Undisputed Facts ¶¶ 1-2; see also Idaho Code §§ 34-1113, 1114.
[3] Osterhout Decl. ¶ 4, Ex. 1.
[4] The data was compiled from the 30 counties that used e-Pollbook check-ins during the elections and was not collected on the identification type used by election day registrants. Osterhout Decl. ¶ 4, Ex. 1.

> ~~(5)~~ (4) 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.

H.B. 124, 67th Leg., First Reg. Sess. (Idaho 2023). The stated purpose of the amendment is as follows:

> 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.

H.B. 124, 67th Leg., First Reg. Sess., Statement of Purpose (Idaho 2023).

On April 4, 2023, the Governor of the State of Idaho signed HB 340, which went into effect on July 1, 2023. HB 340 amended Idaho Code § 34-408A as follows:

> 34-408A. ELECTION DAY REGISTRATION. (1) An individual who is eligible to vote may register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence, ~~by~~ completing a registration application, showing proof of identity and residence pursuant to section 34-411, Idaho Code, and making an oath in the form prescribed by the secretary of state. ~~and providing proof of residence. An individual may prove residence for purposes of registering by:~~
> ~~(1) Showing an Idaho driver's license or Idaho identification card is6 sued through the department of transportation; or~~
> ~~(2) Showing any document which contains a valid address in the precinct together with a picture identification card; or~~
> ~~(3) Showing a current valid student photo identification card from a postsecondary educational institution in Idaho accompanied with a current student fee statement that contains the student's valid address in the precinct.~~
> (2) Election day registration provided in this section shall apply to all elections conducted under title 34, Idaho Code, and to school district and municipal elections. ~~An individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code.~~

H.B. 340, 67th Leg., First Reg. Sess. (Idaho 2023). Idaho Code § 34-411 was amended to permit the following as means for *proving identity in registering to vote*: a current Idaho driver's license,

a current passport or other identification card issued by the U.S. government, a current tribal identification card, or a current license to carry concealed weapons issued under the appropriate code. I.C. § 34-411(3) (emphasis added). Section 34-411 was also amended to permit the following as means for proving residence for the purpose of registering to vote: any form of photo identification outline in subsection (3)(a), (c), or (d) of said section, current proof of insurance, a deed of trust, mortgage, or rental agreement, a property tax, assessment, bill, or receipt, a utility bill (except cell phone bills), a bank or credit card statement, a paystub, paycheck, or government-issued check, an intake document from a residential care or living facility license under the appropriate code, enrollment papers issued for the current school year by a high school of accredited institution of higher education in Idaho, or a communication on letterhead from a social service agency registered with the Secretary of State verifying the applicant is experiencing homelessness and attesting to the applicant's residence. I.C. § 34-411(4)(a)(i)—(x). The stated purpose of the amendments is "to clarify and create uniformity:"

> 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.

H.B. 340, 67th Leg., First Reg. Sess., Statement of Purpose (Idaho 2023).

Prior to the passage of HB 124 and HB 340, high school, college, and technical students were permitted to use an Idaho student identification card for identification at the polls and to register to vote on election day.

In response to these amendments, Plaintiffs League of Women Voters of Idaho ("the League") and BABE VOTE filed the instant lawsuit, alleging (1) HB 124 and HB 340 violate the Equal Protection Clause of the Idaho Constitution and (2) HB 124 and HB 340 are unduly burdensome on the right to suffrage under the Idaho Constitution. Defendant filed an Answer and Counterclaims, which seek declaratory judgments that HB 124 and HB 340 are constitutional under the federal Equal Protection Clause, the Twenty-Fourth Amendment to the U.S. Constitution, and the Twenty-Sixth Amendment to the U.S. Constitution.

The mission of the League is to educate the public about voting rights and the electoral process as well as to increase voter participation and make elections more free, fair, and accessible to Idahoans.[5] The League receives election related questions through their website.[6] The League provides "detailed explanations of what [the questioners] need to do to register to vote and be eligible to cast their ballots."[7] Because of the new amendments, the League claims it will have to spend a significant amount of time learning the new laws, answering individualized questions about the laws, and creating as well as hosting training sessions and materials for its members, other organizations, and the public.[8] These efforts, it claims, will divert resources away from other

[5] Shaber Decl. ¶ 4.
[6] McBride Decl. ¶ 4.
[7] *Id.*
[8] *Id.* ¶¶ 4-5; Shaber Decl. ¶¶ 13-15.

efforts.[9] Kendal Shaber, the League's Youth Engagement and Voter Outreach Coordinator for the Greater Boise Area, attests that HB 340 will impede the League's mission by making it more difficult for new voters to register by creating confusion, particularly for new citizens, residents in care facilities, and new residents, including students.[10]

The League contends it has already suffered harm because of HB 340.[11] Because the League does not know how to counsel new registrants about how they can prove their residency and provide identification if they register through a third-party organization like the League, it is not comfortable conducting voter registration activities. [12] Thus, the League missed opportunities to register new voters on July 1 and 4.[13] The League also stopped voter registration efforts in nursing facilities because they are unsure how to counsel residents on providing proof or residency and identification as required under HB 340.[14] Additionally, the League suspended all future voter registration efforts in Idaho due to the obstacles and confusion caused by HB 340.[15] Thus, the League claims, it has been largely unable to advance its core mission.

BABE VOTE's mission is to encourage people, specifically young people, to register to vote and to vote, in local, state, and federal elections.[16] BABE VOTE contends that HB 340 has made its mission more difficult to achieve and claims that its activities have been "dramatically restricted."[17] What was previously a "straightforward" process for students has been "dramatically

[9] McBride Decl. ¶ 5-6; Shaber Decl. ¶¶ 13-15.
[10] Shaber Decl. ¶¶ 6-8, 12.
[11] *Id.* ¶ 16.
[12] *Id.*
[13] *Id.* ¶ 17.
[14] *Id.* ¶ 18.
[15] Second Shaber Decl. ¶ 3.
[16] Sandmire Decl. ¶¶ 4-5.
[17] *Id.* ¶¶ 7, 15.

complicated and burdened both (a) the ability of the students to register and vote, and (b) the ability of BABE VOTE to register those students and to enable them to vote."[18] BABE VOTE contends that HB 340 will require it to divert scarce resources from other efforts, such as helping students register to vote, to assist students in learning about the law and it effects and/or helping students obtain legal identification separately from their student identification cards.[19] BABE VOTE will also need to revise its training materials. BABE VOTE alleges it already suffered harm because of HB 340.[20] BABE VOTE intended to register new voters on July 1, 2023, at a market in Boise and on July 4, 2023, at the Freedom Celebration in Riverfest in Idaho Falls but was unable to use the online registration platform, because it was down from June 30 to July 10.[21]

Plaintiffs assert that "[v]oting eligible Idahoans who have neither Idaho driver's licenses, Idaho Department of Transportation identification cards, United States passports or other federal government documents, tribal identification cards, or concealed weapons permits are burdened by House Bills 340 and 124."[22] Plaintiffs claim that voting-eligible residents who are studying in Idaho but are from another state are particularly burdened by HB 124 and HB 340.

[18] *Id.* at 7.
[19] *Id.* ¶ 11.
[20] Sandmire Decl. ¶ 12.
[21] *Id.* ¶¶ 13-14. The enactment of HB 340 required updates to the Secretary of State's online voter registration portal and such updates and testing required that the portal be taken offline for a period. Velasco Decl. ¶¶ 4-6, 8. The voter registration portal was down from June 30, 2023 through July 10, 2023. *Id.* Since July 10, 2023, the voter registration portal is online and is validating voter information in accordance with HB 340. *Id.* ¶ 9.
[22] Herron Decl. ¶ 17.

(2) Procedural Background

On March 16, 2023, Plaintiffs filed the instant action. Plaintiffs filed an Amended Complaint on April 26, 2023. On May 8, 2023, Defendant filed an Answer and Counterclaim and Motions for Judgment on Pleadings, Summary Judgment, and to Stay Proceedings. On May 30, 2023, Plaintiffs filed a Motion to Dismiss Defendants' Counterclaims. On June 13, 2023, a status conference and hearing on the motion to stay was held. The Court denied the motion to stay discovery pending a decision on the Defendant's dispositive motions. A hearing date was scheduled on all the pending matters, including Plaintiffs' Motion for Preliminary Injunction, which was filed July 6, 2023. Oral argument was heard on August 4, 2023, after which the matters were taken under advisement.

LEGAL STANDARDS

(1) 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." IRCP 12(c). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56, and all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. IRCP 12(d).

(2) Motion to Dismiss

"A court may grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992). In ruling on a motion to dismiss, the issue "is not whether the plaintiff will

ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008). "A motion to dismiss must be resolved solely from the pleadings and all facts and inferences from the record are viewed in favor of the non-moving party." *Taylor v. McNichols*, 149 Idaho 826, 832-33, 243 P.3d 642, 648-49 (2010).

To state a claim for relief and survive a Rule 12(b)(6) motion, the pleading "does not need detailed factual allegations," however, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). Mere "labels and conclusions" or a "formulaic recitation of a cause of action's elements will not do." *Id*. There must be "enough facts to state a claim to relief that is plausible on its face." *Id*. at 547. Stated differently, "[the] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "As a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which the plaintiff includes allegations showing on the face of the complaint that there is some insurmountable bar to relief." *Harper*, 122 Idaho at 536, 835 P.2d at 1347.

(3) Summary Judgment

Summary judgment may be entered only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." IRCP 56(a). The Court "liberally construes the facts and existing record in favor of the non-moving party" in making such determination. *Hall v. Forsloff*, 124 Idaho 771, 773, 864 P.2d 609, 611 (1993). "If reasonable people could reach different conclusions or inferences from the evidence, the motion

must be denied." *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 238, 108 P.3d 380, 385 (2005). Moreover, "[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment." *Stafford v. Weaver*, 136 Idaho 223, 225, 31 P.3d 245, 247 (2001) (citations omitted).

The moving party bears the initial burden of proving the absence of a genuine issue of material fact, and then the burden shifts to the nonmoving party to come forward with sufficient evidence to create a genuine issue of material fact. *See Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (1994). When the nonmoving party bears the burden of proving an element at trial, the moving party may establish a lack of genuine issue of material fact by establishing the lack of evidence supporting the element. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994).

A party opposing a motion for summary judgment "may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Gagnon v. W. Bldg. Maint., Inc.*, 155 Idaho 112, 114, 306 P.3d 197, 199 (2013). Such evidence may consist of affidavits or depositions, but "the Court will consider only that material . . . which is based upon personal knowledge and which would be admissible at trial." *Harris v. State, Dep't of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). If the evidence reveals no disputed issues of material fact, then only a question of law remains on which the court may then enter summary judgment as a matter of law. *Purdy v. Farmers Ins. Co. of Idaho*, 138 Idaho 443, 445, 65 P.3d 184, 186 (2003).

(4) Preliminary Injunction

The decision to grant or deny a preliminary injunction rests within a trial court's discretion. *Walker v. Boozer*, 140 Idaho 451, 454, 95 P.3d 69, 72 (2004). On discretionary issues, the Court must: (1) correctly perceive the issue as one of discretion; (2) act within the boundaries of its discretion; 3) act consistent with applicable legal standards; and (4) reach its decision by an exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 421 P.3d 187 (2018).

ANALYSIS

Defendant moves to dismiss Plaintiffs' claims on the pleadings, arguing HB 124 and HB 340 do not violate the right to suffrage or the Equal Protection clause of the Idaho Constitution. Defendant also moves for summary judgment on his counterclaims. Plaintiffs move for a preliminary injunction arguing they have established a substantial likelihood of success on the merits and have shown irreparable harm. They also move to dismiss Defendant's counterclaims.

(1) The challenged legislation is subject to rational basis review and does not violate the right to suffrage or the Equal Protection Clause of the Idaho Constitution.

The central issue in this case is whether the challenged legislation is subject to strict scrutiny or rational basis review. The issue is one of first impression in Idaho. Although *Van Valkenburgh v. Citizens for Term Limits*, held that the right of suffrage is a fundamental right and strict scrutiny applied to a law that required the Secretary of State to place information on ballots for voters on whether a particular Congressional candidate had taken or broken a term limits pledge, here, the challenged legislation, is a time, place, manner regulation that is aimed at enhancing, not undermining, the integrity of an election. 135 Idaho 121, 126, 15 P.3d 1129, 1134 (2000) (finding the challenged statute was unlike the statute in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) where

the United States Supreme Court found Hawaii's law prohibiting write-in voting was subject to rational basis review, not strict scrutiny, because it did not unconstitutionally limit access to the ballot by party or independent candidates or unreasonably interfere with the right of voters to associate and have candidates of their choice placed on the ballot). Here, the challenged legislation involves a time, place, manner restriction where a more deferential standard of review should be applied.

Courts in Montana and Tennessee have addressed similar challenged legislation and have gone in different directions. In *Montana Democratic Party v. Jacobsen*, the plaintiffs brought an action against the Secretary of State alleging that a statute eliminating student identifications cards alone, and without additional documentation, as a form of voter identification at the polls unconstitutionally burdened the right to vote. *Montana Democratic Party v. Jacobsen*, 518 P.3d 58, 67 (Mont. 2022). The district court granted the plaintiffs' motion for a preliminary injunction, and the Secretary of State appealed. The Supreme Court of Montana affirmed the lower court's decision finding the statute's impact on the right to vote was not a minimal burden on college students, particularly out-of-state college students, who are less likely to have Montana drivers licenses or identification cards. *Id.* at 67–68.

The issue in *Montana Democratic Party* was whether a preliminary injunction should be granted. Notably, the court did not decide what level of scrutiny should be applied. *Id.* Montana's standard for issuing a preliminary injunction differs substantially from Idaho's. Montana does not require that a plaintiff show both a likelihood of success on the merits and irreparable harm. Thus, in *Montana Democratic Party*, the appellate court found the plaintiffs established a prima facie case

of irreparable injury through the loss of a constitutional right, but the court did not consider whether they had proven a likelihood of success on the merits.

In Idaho, by contrast, "for preliminary relief to issue, [a plaintiff] must demonstrate a substantial likelihood of success on the merits or a "clear right" to the ultimate relief requested." *Planned Parenthood Great NW. v. State*, 532 P.3d 801, 807 (Idaho 2022) (applying conjunctive standard for preliminary injunctive relief, i.e., a preliminary injunction will only issue when the requesting party can show, among other factors, a likelihood of success on the merits and irreparable harm). Thus, the focus in *Montana Democratic Party* was on "some degree of harm" and did not ultimately decide what level of review was appropriate. Here, unlike in Montana, the Plaintiffs must show both substantial likelihood of success on the merits and irreparable harm; therefore, whether strict scrutiny or a more deferential level of review applies is dispositive.

In *Nashville Student Org. Comm. v. Hargett*, the plaintiffs challenged Tennessee Voter ID Law's exclusion of student identification cards from the list of acceptable forms of voter identification arguing it violated the Twenty-Sixth Amendment's prohibition against denying or abridging someone's right to vote on the basis of age and that it violated the Equal Protection clause of the Fourteenth Amendment. 155 F. Supp. 3d 749, 755 (M.D. Tenn. 2015). The United States District Court for the Middle District of Tennessee held that the complaint failed to state a claim for relief under Rule 12(b)(6).[23] The court held that if the Tennessee Voter ID Law is discriminatory on the

[23] The Idaho Supreme Court has recognized that federal case law provides persuasive authority when interpreting rules under the IRCP that are substantially similar to rules under the FRCP. *See Terra-W., Inc. v. Idaho Mut. Tr., LLC*, 150 Idaho 393, 398, 247 P.3d 620, 625 (2010); *Stewart v. Arrington Const. Co*., 92 Idaho 526, 529, 446 P.2d 895, 898 (1968); *see also Jones v. Berezay*, 120 Idaho 332, 335, 815 P.2d 1072, 1075 (1991). FRCP 12(b)(6) and IRCP 12(b)(6) are substantially similar.

basis of age, it is subject only to a rational basis standard[24] of review because age is not a suspect classification (nor is the status of being a student). *Id*. In finding that the plaintiffs' Fourteenth Amendment claim failed as a matter of law, the court found the rational basis test was

> satisfied by the defendants' articulated concerns about false student identifications and there is no need for further factual discovery or development of the record regarding the actual motivations of the legislators who enacted the Tennessee Voter ID Law. It is not relevant to the outcome of the court's analysis whether there is any empirical basis to support the speculation that student identifications are falsified at a significant rate, that this has the potential to contribute to voter identification fraud, or that this concern is of a different magnitude than concerns about falsification of faculty/staff identifications from the same institutions. Similarly irrelevant is the question of whether these considerations actually motivated the legislators who enacted the Tennessee Voter ID Law.

Id. at 756. The court also found that the Tennessee Voter ID Law is not an abridgment of the right to vote, let alone a denial of it, for purposes of a Twenty-Sixth Amendment claim. The court found the law did not impose any unique burden on students, rather, everyone is required to obtain some form of acceptable photo identification in order to vote.

> Students, like everyone else, can select among a state-issued driver license, a United States passport, or the free, state-issued non-driver identification card. The Tennessee Voter ID Law merely does not allow students to use the student identification cards that they already have. Admittedly, allowing students to use these cards would make it easier for them to vote, but it does not automatically follow that not allowing them to use their student identification cards imposes a severe burden or otherwise abridges their right to vote.

[24] Under rational basis review, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. ... In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Commc'ns, Inc*., 508 U.S. 307, 315 (1993). Rather, "the governmental policy at issue will be upheld as long as there is a rational relationship between the disparity of treatment and some legitimate government purpose," and "a plaintiff faces a severe burden and must negate all possible rational justifications for the distinction." *Midkiff v. Adams Cnty. Reg'l Water Dist*., 409 F.3d 758, 770 (6th Cir.2005); *see also id*. ("On rational-basis review .[.]. those attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it.") (citing *Lehnhausen v. Lake Shore Auto Parts Co*., 410 U.S. 356, 364 (1973)). In *Crawford v. Marion Cnty. Election Bd*., in analyzing the justification for Indiana's limited burden on voting rights without applying a heightened standard of review, the United States Supreme Court noted that the motivations of individual legislators were not material once a valid, neutral justification had been articulated: "if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators." 553 U.S. 181, 204 (2008),

Id. at 757;[25] *see also Common Cause v. Thomsen*, 574 F. Supp. 3d 634, 636 (W.D. Wis. 2021) (under rational basis review, information required by Wisconsin statute to appear on student identification card in order for card to be used as voter identification was material to determination of whether an individual could vote under state law, and therefore such requirements did not violate federal voter-rights statute, in case in which required information consisted of date of issuance, signature of individual to whom it was issued, and expiration date no later than two years after date of issuance).

Because Plaintiffs are challenging the legislation on constitutional grounds, Plaintiffs bear the initial burden of establishing that the statutes are unconstitutional and "must overcome a strong presumption of validity." *Olson v. J.A. Freeman Co*., 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990). " 'It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases.' " *Rudeen v. Cenarrusa*, 136 Idaho 560, 564, 38 P.3d 598, 602 (2001) (citing *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 406, 342 P.2d 706, 709 (1959)). " 'In the case of statutes passed by the Legislative Assembly and assailed as unconstitutional the question is not whether it is possible to condemn, but whether it is possible to uphold; and we stand committed to the rule that a statute will not be declared unconstitutional

[25] The court noted the challenged legislation was distinguishable from cases involving state actions that actually blocked young people from voting rather than simply excluded measures that would make it easier for them to do so. *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); *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 in order to be allowed to vote); *U.S. v. Texas*, 445 F.Supp. 1245 (S.D.Tex.1978) (same); *Worden v. Mercer Cnty. Bd. of Elections*, 61 N.J. 325, 294 A.2d 928 (1972) (same). State laws that denied students the ability to register to vote in the county of their campus residence have also been found to violate the Fourteenth Amendment, which, the court found, further distinguished the burden on the right to vote by the elimination of student IDs as an acceptable form of voter registration. *See Bright v. Baesler*, 336 F.Supp. 527, 531 (E.D.Ky.1971); *Ownby*, 337 F.Supp. at 38; *U.S. v. Texas*, 445 F.Supp. at 1245.

unless its nullity is placed, in our judgment, beyond reasonable doubt.' " *Id.* (citing *Hellar v. Cenarrusa*, 104 Idaho 858, 664 P.2d 765 (1983).

If a suspect class or a fundamental right is involved, the statute is given strict scrutiny. *Id.* Strict scrutiny requires the state to prove a compelling need for the goal of the challenged statute and that there is no less discriminatory method available to achieve that goal. *Id.*; *Van Valkenburgh*, 135 Idaho at 126, 15 P.3d at 1134 (holding that the right of suffrage is a fundamental right and strict scrutiny applied to a law that required the Secretary of State to place information on ballots for voters on whether a particular Congressional candidate had taken or broken a term limits pledge).

Idaho also employs a "means focus" scrutiny, which is a similar standard to the federal intermediate scrutiny, but unlike the federal standard, it is employed "where the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute." *State v. Mowrey*, 134 Idaho 751, 755, 9 P.3d 1217, 1221 (2000) (citations omitted). "[T]he classification must be 'obviously invidiously discriminatory' before the means-focus test will be used." *State v. Hart*, 135 Idaho 827, 830, 25 P.3d 850, 853 (2001). "In order for a classification to be considered obviously invidiously discriminatory, 'it must distinguish between individuals or groups either odiously or on some other basis calculated to excite animosity or ill will.'" *Id.* (citations omitted).

All other challenges are given low level or rational basis review. *Mowrey*, 134 Idaho at 755, 9 P.3d at 1221. "This standard, customarily applied to social and economic legislation, requires only that a statutory scheme classify persons in a manner rationally related to a legitimate governmental objective." *State v. Breed*, 111 Idaho 497, 500, 725 P.2d 202, 205 (Ct. App. 1986). Rational basis review places the burden on the challenging party to prove that the state's goal is not legitimate and that the challenged law is not rationally related to the legitimate government purpose and if there is any conceivable state of facts which will support it. *Id.*; *State v. Bowman*, 104 Idaho 39, 41, 655 P.2d 933, 935 (1982). Alleged discrimination based on age receives rational basis review. *See Gomersall v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 483 P.3d 365 (2021).

Here, the appropriate level of scrutiny is rational basis review. While the fundamental right to vote is associated to Plaintiffs' claims, the classification of age and being a student are primarily at issue. The challenged legislation places conditions on the right to suffrage rather than directly removing the ability of a particular classification to vote. While a certain classification—age—appears to be more affected than other classifications, the condition is not immediately invalidated nor does the condition make it impossible – let alone overly burdensome – for those in the classification to continue to exercise the right of suffrage. "Students" are not a protected class. Moreover, not every student is a young person and not every young person (of voting age) is a student. The removal of student identification as means for registering to vote and identifying oneself at the polls, is not discriminatory and it has a clear relationship to the stated purposes of HB 124 and 340.

a. HB 124 and HB 340 do not burden the right of suffrage under the Idaho Constitution.

Defendant argues that the Idaho Constitution permits states to regulate elections and qualify voters. Plaintiffs contend that the new voting laws "burden the right to vote of young voters and new residents and that HB 340 additionally burdens those experiencing housing insecurity, houseless people, people with disabilities, people who live in rural communities, and racial and ethnic minorities" and that "HB 124 burdens young voters, who are more likely to vote using IDs issued by Idaho colleges and universities."

The right of suffrage is guaranteed by the Idaho Constitution, which states "[n]o power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." IDAHO CONST., art. I § 19. Voting is a fundamental right under the state Constitution. *Reclaim Idaho v. Denney*, 169 Idaho 406, 429, 497 P.3d 160, 183 (2021) (citing *Van Valkenburgh*, 135 Idaho at 126, 15 P.3d at 1134).

However, the "legislature may prescribe qualifications, limitations, and conditions for the right of suffrage, additional to those prescribed in this article, but shall never annul any of the provisions in this article contained." IDAHO CONST., art. VI § 4. "The ability of the legislature to make laws related to a fundamental right arises from the reality that, in an ordered society, few rights are absolute. However, the legislature's duty to give effect to the people's rights is not a free pass to override constitutional constraints and legislate a right into non-existence, even if the legislature believes doing so is in the people's best interest." *Reclaim Idaho*, 169 Idaho at 429, 497 P.3d at 183.

Idaho courts and statutes also permit certain qualifications on the right of suffrage. *See Rudeen*, 136 Idaho at 567, 38 P.3d at 605 (Term Limits Act, which limited ballot access for multi-term incumbents, was a valid exercise of the power vested in the legislature and the people by the Idaho Constitution to pass laws by initiative and to prescribe additional qualifications for the right of suffrage); I.C. § 34-402 ("Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified elector"); I.C. § 18-310(4) (restricting a convicted felon's right to suffrage until satisfactory completion of sentence, probation, or parole).

In *Van Valkenburgh*, the petitioners sought to challenge a statute requiring the Secretary of State to place information advising voters whether a particular Congressional candidate had taken or broken a term limits pledge on the ballots. 135 Idaho at 123–24, 15 P.3d at 1131–32. The court found that the statute violated the right to suffrage under the Idaho Constitution under a strict scrutiny analysis because the statute dictated the means in which the ballot is written, violating the integrity of the ballot and the sanctity of the voting booth, without a compelling state interest. *Id.* at 125–26, 15 P.3d at 1133–34. The court noted:

> The Respondents argue this Court should not apply strict scrutiny, and instead should apply the more "flexible" standard of review employed by the United States Supreme Court when reviewing state regulations of the electoral process. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 432–33 (1992). The *Burdick* case is, however, distinguishable from the present case. First, *Burdick* did not deal with the Idaho Constitution and instead was decided under the United States Constitution. Secondly, the statute at issue in *Burdick* involved a prohibition on write-in voting, not a legend printed on the ballot itself by the state. Idaho Code § 34–907B, unlike the statute in *Burdick*, is not simply a time, place or manner voting restriction to which a more deferential standard of review might be applied. *See Simpson*, 130 Idaho at 615, 944 P.2d at 1378. The ballot designation here relates to the very basic right of a voter to express support for a candidate within the sanctity of the voting

> booth. We find no reason to apply a different standard to the exercise of this fundamental right and will apply strict scrutiny to our analysis of I.C. § 34–907B.

Id. at 126, 15 P.3d at 1134. As the court noted in *Van Valkenburgh*, the challenged statute was unlike the statute in *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), which was a time, place, manner restriction subject to rational basis review. The challenged legislation in *Burdick* was Hawaii's law prohibiting write-in voting. The United States Supreme Court held the statute was not unconstitutional because it did not limit access to the ballot by party or independent candidates or unreasonably interfere with the right of voters to associate and have candidates of their choice placed on the ballot. Similarly, here, the challenged legislation involves a time, place, manner restriction where a more deferential standard of review should be applied.

Article I, § 19 of the Idaho Constitution does not detail any specifications as to age, duration of residence, or requirements for the right of suffrage. Article VI, § 4 of the Idaho Constitution specifically permits the Idaho legislature to prescribe limitations, qualifications, and/or conditions on such right of suffrage. The removal of student identification cards as permissible means of identification at the polls or for voter registration under HB 124 and HB 340 does not unduly burden voters; there are other valid and free means to identify oneself at the polls and for voter registration. Students are not a protected class.

Thus, the Court finds HB 124 and HB 340 do not burden the right of suffrage, and the complaint fails to state claims for relief.

b. HB 124 and HB 340 do not violate Idaho's Equal Protection Clause.

Plaintiffs contend that the new voting law violates Equal Protection and cannot survive a strict scrutiny analysis. Defendant argues the new voting laws do not violate the Idaho Equal Protection Clause.

Idaho's Equal Protection Clause is enumerated in in Article I, § 2 of the Idaho Constitution. It states: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature." IDAHO CONST., art. I § 2.

"Idaho's Constitution stands on its own, and although we may look to the rulings of the federal courts on the United States [C]onstitution for guidance in interpreting our own state constitutional guarantees, we interpret a separate and in many respects independent constitution." *Hellar v. Cenarrusa*, 106 Idaho 586, 590, 682 P.2d 539, 543 (1984). The majority of Idaho cases, however, state that the equal protection guarantees of the federal and Idaho Constitutions are substantially equivalent. *Rudeen*, 136 Idaho at 568, 38 P.3d at 606 (citations omitted). That is not to say it is equivalent in ultimate result. *Thompson v. Engelking*, 96 Idaho 793, 818, 537 P.2d 635, 660 (1975) (Donaldson, J., dissenting).

The framework for an equal protection analysis under both the federal and state constitutions generally involves a three-step process: (1) to identify the classification being challenged, (2) to determine the standard under which the classification will be judicially reviewed, and (3) to

determine whether the appropriate standard has been satisfied.[26] *Rudeen*, 136 Idaho at 569, 38 P.3d at 607 (citing *Tarbox v. Idaho Tax Commission*, 107 Idaho 957, 959, 695 P.2d 342, 344 (1984)). In *Rudeen v. Cenarrusa*, the plaintiffs challenged a term limits initiative on equal protection grounds as well as on the basis that the initiative impermissibly infringed upon the fundamental right of suffrage guaranteed by the Idaho Constitution. 136 Idaho 560, 563–64, 38 P.3d 598, 601–02 (2001). The Idaho Supreme Court determined that the initiative did not violate the candidates' right of equal protection guaranteed by the federal or Idaho Constitutions, noting that the equal protection guarantees of the federal and Idaho Constitutions are substantially equivalent, and that the right of suffrage does not include the right to hold office. *Id.* at 567-68, 38 P.3d at 605-06.

In finding that the challenged legislation did not violate candidates' right of equal protection guaranteed by the Idaho Constitution under a low-level scrutiny, the Supreme Court aligned with the reasoning of a similar case *Bates v. Jones*, which found that the impact of the term limits was " 'not severe,' and 'do not constitute a discriminatory restriction . . . [finding] no distinction on the basis of the content protected expression, party affiliation, or inherently arbitrary factors such as race, religion, or gender.' " *Rudeen*, 136 Idaho at 570, 38 P.3d at 608 (citing *Bates v. Jones*, 131 F.3d 843, 847 (9th Cir.1997)). Thus, the court in *Rudeen*, similarly applied low level scrutiny to the challenged legislation because the candidates were not members of a suspect class and holding public office and being listed on a ballot is not a fundamental right.

[26] Defendant claims the applicable test is the two-part analysis set forth in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). However, such test is not applicable to the instant case because it analyzes claims brought regarding rights protected by the First and Fourteenth Amendment. *See Anderson*, 460 U.S. at 789. No such claims are brought in the instant case. *See also Rudeen v. Cenarrusa*, 136 Idaho 560, 570, 38 P.3d 598, 608 (2001) (applying *Anderson* to federal claims in case but for state claims analyzed whether claim implicated a fundamental right and whether strict scrutiny or rational basis applied).

In this case, the classifications being challenged are high school, college, and trade school students who will now be precluded from using their student identification cards at the polls as well as persons who lack access to government-issued identification due to lack of access or means. Like the candidates in *Rudeen*, these are not members of a suspect class.

The State's goal regarding HB 124 and HB 340 is to create uniformity in voter registration and in the voting process.[27] The removal of student identification cards as a means for proving personal identification at the polls and eliminating the use of student identification cards for voter registration as well as establishing a no-fee identification card available under certain circumstances meet the goal of unifying the voting requirements and process. There is a legitimate government purpose in uniformity of the voting process and voter registration.

Moreover, the State has a compelling interest in ensuring that only lawful voters can vote in the constitutionally guaranteed "free and lawful" elections. One way of showing that a voter is lawful is to require identification cards that are valid and reliable, which student IDs may not be in some instances. Even if there have been no actual instances of voter fraud using student IDs in Idaho, that does not mean that the State does not have a legitimate or even compelling interest in requiring valid and reliable, state approved and generally accepted identification for a lawful voter to lawfully vote. Student IDs do not meet the same standards or authenticity and reliability as other

[27] *See* H.B. 124, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose (noting a lack of uniformity in student identification cards); H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose (stating "[t]he purpose of this legislation is to clarify and create uniformity in voter registration requirement"); Mem. in Supp. of Mot. for J. on Pleadings and for Summ. J. filed May 8, 2023 at 7-8.

forms of government identification.[28] The challenged legislation does not deprive anyone of the right to lawfully vote.

Thus, the Court concludes that HB 124 and HB 340 do not violate Idaho's Equal Protection clause, and the complaint fails to state claims for relief.

2. Defendant's counterclaims related to the United States Constitution are dismissed because there is no justiciable controversy.

Plaintiffs contend that Defendant's counterclaims for declaratory judgment are not justiciable in this Court because there is no live controversy between the parties as to whether Idaho's new voting legislation violates the United States Constitution. Plaintiffs' claims allege only violations of the Idaho Constitution. Defendant argues that the federal issues raised by the State's counterclaims are central to the underlying controversy and that claims challenging election law under the Idaho Constitution depend on the Federal Constitution.

"The 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." I.C. § 10-1206. A prerequisite to a declaratory judgment action is an actual or justiciable controversy; therefore, courts are precluded from deciding cases which are purely hypothetical or advisory. *Reclaim Idaho*, 169 Idaho at 418, 497 P.3d at 172 (citation omitted); *Valencia v. Saint Alphonsus Med. Ctr. - Nampa, Inc.*, 167 Idaho 397, 400, 470 P.3d 1206, 1209 (2020) (citation omitted); *ABC Agra, LLC v. Critical Access Grp., Inc.*, 156 Idaho 781, 783, 331

[28] For example, a student ID cannot be used to open a bank account, buy alcohol, drive a motor vehicle, or fly on an airplane.

P.3d 523, 525 (2014) (citation omitted). A claim is too hypothetical to establish justiciable controversy when it is based on allegations that the opposing party "likely disagrees" with an interpretation. *ABC Agra, LLC*, 156 Idaho at 785-786, 331 P.3d at 527-528.

Further, courts will not rule on declaratory judgment actions which present questions that are moot or abstract. *Westover v. Idaho Ctys. Risk Mgmt. Program*, 164 Idaho 385, 390, 430 P.3d 1284, 1289 (2018) (citation omitted). "A claim for declaratory judgment is moot where 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.* (citation omitted) (emphasis removed).

In this case, Plaintiffs' claims arise only under the Idaho Constitution, not the United States Constitution. As such, there is no justiciable controversy before this Court regarding the constitutionality of HB 124 and 340 under the United States Constitution. Further, even if the laws were permissible under the United States Constitution that does not mean the laws would be permissible under the Idaho Constitution, which could afford greater protections. As such, a declaratory judgment as Defendant requests would have no effect on Plaintiffs' claims alleged in the case before this Court.

Thus, dismissal of Defendant's counterclaims relating to the United States Constitution is warranted.[29]

[29] To the extent Defendant's counterclaim seeks declaratory judgment that HB 124 and 340 do not violate the Idaho Constitution, judgment is entered in Defendant's favor.

3. Plaintiffs' Motion for Preliminary Injunction

Plaintiffs request a preliminary injunction enjoining the Secretary of State from implementing, relying on, or otherwise enforcing Idaho voting restrictions pending resolution of the instant case. Defendant argues that Plaintiffs are not likely to succeeded on the merits and have not sufficiently alleged irreparable injury.

As previously stated, the Idaho Supreme Court requires both a likelihood of success on the merits and a showing of great or irreparable injury in order for a preliminary injunction to issue. "[F]or preliminary relief to issue, Petitioners must demonstrate a substantial likelihood of success on the merits or a "clear right" to the ultimate relief requested." *Planned Parenthood Great Nw. v. State*, 532 P.3d 801, 807 (Idaho 2022) (clarifying that Idaho employs a conjunctive standard for preliminary relief to be warranted). "A district court should grant a preliminary injunction 'only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal.'" *Gordon*, 166 Idaho 105, 455 P.3d at 384 (quoting *Harris*, 106 Idaho at 518, 681 P.2d at 993); *Brady*, 130 Idaho at 572, 944 P.2d at 707 (analyzing whether relief was proper under IRCP 65(e)(1) and (3)) (quoting *Harris*, *supra*, and *Evans v. District Court of the Fifth Judicial Dist*., 47 Idaho 267, 270, 275 P. 99, 100 (1929)); *see also Idaho Cty. Prop. Owners Ass'n, Inc. v. Syringa Gen. Hosp. Dist*., 119 Idaho 309, 315, 805 P.2d 1233, 1239 (1991) ("Plaintiffs had shown the clear right they had for relief and the irreparable injury necessary for the issuance of an injunction."); *Miller*, 132 Idaho at, 388, 973 P.2d at 159 ("District courts are required to issue injunctions only where irreparable injury is actually threatened."); *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1007, 739 P.2d 301, 306 (1987) ("[I]njunctions should issue only where irreparable injury is actually threatened.").

Thus, regardless of whether relief is sought under subsections (1) or (2) of Rule 65, Plaintiffs must show a likelihood of success on the merits and that a preliminary injunction is necessary to prevent irreparable injury. Because the Court finds the complaint fails to state cognizable claims for relief, Plaintiffs have not shown a substantial likelihood of success on the merits. Therefore, preliminary injunctive relief is not warranted.

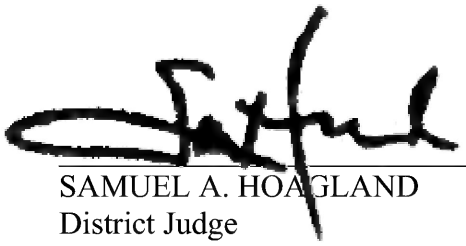
CONCLUSION

In summary, the Idaho Constitution guarantees the right of free and lawful suffrage to the people, and delegates to the legislature the authority to prescribe the qualifications, limitations and conditions necessary for the exercise of the right. When balancing these two constitutional provisions, rational basis is the proper standard of scrutiny, not strict scrutiny, nor means-focus scrutiny.[30] In this case, the legislature has eliminated student identification cards as one of the previously acceptable forms of identification; however, it has also provided for free state identification cards as an alternate form of acceptable voter identification. Plaintiffs seek to equate student identification cards as form of age discrimination against younger voters, but not all young people are students and not all students are young people. The new laws are rationally related to their stated purpose to clarify and create uniformity, by requiring only generally-accepted, authentic and reliable forms of identification as a reasonable condition to exercise the right of suffrage.

[30] In any event, the new laws do not violate means-focus scrutiny as the laws are not obviously invidiously discriminatory, since they do not distinguish between individuals or groups either odiously or on some other basis calculated to excite animosity or ill will. *See Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 522 P.3d 1132, 1198 (2023) ("For a classification to be 'obviously' and 'invidiously discriminatory' it 'must distinguish between individuals or groups either odiously or on some other basis calculated to excite animosity or ill will.' ").

Therefore, for the reasons contained herein, Defendant's Motion for Judgment on the Pleadings is GRANTED; Defendant's Motion for Summary Judgment and Plaintiffs' Motion to Dismiss Counterclaims are GRANTED in part and DENIED in part. Plaintiffs' Motion for Preliminary Injunction is DENIED. A judgment will be issued concurrent with this decision.

IT IS SO ORDERED.



10/2/2023 2:41:54 PM

SAMUEL A. HOAGLAND
District Judge

Date

CERTIFICATE OF MAILING

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