Terri R. Pickens (ISB #5828)
Pickens Law, P.A.
398 S. 9th Street, Suite 240
Boise, ID 83702
terri@pickenslawboise.com
Tel: (208) 954-5090
Fax: (208) 954-5099

Elisabeth Frost*
David R. Fox*
Justin Baxenberg*
Daniel Cohen*
Qizhou Ge*
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20002
efrost@elias.law
dfox@elias.law
jbaxenberg@elias.law
dcohen@elias.law
age@elias.law
Tel: (202) 968-4490

Attorneys for Plaintiffs
*Admitted pro hac vice

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MARCH FOR OUR LIVES IDAHO and **IDAHO ALLIANCE FOR RETIRED AMERICANS**, Plaintiffs, v. **PHIL MCGRANE**, in his official capacity as Idaho Secretary of State, Defendant.	Case No.: 1:23-cv-00107-AKB **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS [DKT. 29]**

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INTRODUCTION

At issue in this litigation are two laws the Idaho legislature recently enacted that will make it harder for discrete groups of Idaho voters to register and vote. House Bill 340 targets all new voters by making it harder to register to vote and by requiring an identification card that some Idahoans cannot obtain without paying a government fee. And House Bill 124 specifically targets young voters by eliminating student identification as an accepted form of voter identification. Idaho adopted these laws without any evidence of election-related problems that the laws could solve, amidst an unprecedented surge in activism, voter registration, and voter turnout by young voters and a continuing boom in migration to Idaho from other states. The challenged laws will harm Plaintiffs March For Our Lives Idaho ("MFOL Idaho") and the Idaho Alliance for Retired Americans (the "Alliance"), as well as their members and constituents, by making voting and registration harder for the groups Plaintiffs serve. Plaintiffs accordingly sued, and for the reasons set forth in their Second Amended Complaint, allege that the challenged laws violate the Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments to the United States Constitution.

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Secretary of State Phil McGrane's motion to dismiss ignores the substance of Plaintiffs' allegations, the facial effect of the challenged laws, and multiple controlling decisions from the Ninth Circuit. Plaintiffs have standing as organizations because they allege that the challenged laws will make it harder for them to register and turn out voters, requiring them to divert resources from other activities. They also have standing as associations because they allege that the challenged laws will harm their members and constituents. In each case, Secretary McGrane's demand for more detailed injury allegations is irreconcilable with directly on point Ninth Circuit precedent that Secretary McGrane does not cite. *See Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040–42 (9th Cir. 2015). The Ninth Circuit has similarly rejected Secretary McGrane's argument that relief against him would not redress Plaintiffs' injuries, in a directly analogous case

involving the Arizona Secretary of State. *Mecinas v. Hobbs*, 30 F.4th 890, 899–900 (9th Cir. 2022). And Secretary McGrane's argument that Plaintiffs' challenge is not ripe ignores the governing test, under which Plaintiffs' claims are ripe because the challenged laws will inevitably harm them and their members once they take effect. *Ariz. v. Atchison, Topeka & Santa Fe R.R. Co.*, 656 F.2d 398, 402 (9th Cir. 1981).

Finally, Secretary McGrane argues that he was not properly served because Plaintiffs served him personally rather than serving the State of Idaho. But Plaintiffs served Secretary McGrane because they *sued* Secretary McGrane. The State of Idaho is not, and under the Eleventh Amendment could not be, a defendant here. And "official-capacity actions for prospective relief are not treated as actions against the State." *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). Personal service was proper. And to eliminate any doubt, Plaintiffs recently served the State of Idaho as well. ECF No. 30.

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The Court should deny the motion to dismiss.

BACKGROUND

After leaving Idaho voter registration and voter identification law largely unchanged for a decade, the Idaho legislature enacted two laws last session, House Bill 340 and House Bill 124, that will make registration and voting harder for particular groups of Idahoans, including young voters, new voters, and older voters who no longer drive.

House Bill 340 will make voter registration harder by requiring for the first time that all new registrants provide one of just a handful of types of photo identification, not including student identification. 2023 Idaho H.B. 340, § 5 (to be codified at Idaho Code § 34-411). Each of those forms of identification is generally available only after payment of a government fee. Second Am. Compl. ¶ 24, ECF No. 20 ("SAC"). And while HB 340 authorizes free identification cards for some voters, restrictions leave out many voters who will need identification, including voters who

turn 18 or move to Idaho shortly before an election, and voters who have an unused drivers' license that expires less than six months before an election. *Id.* ¶ 25. Meanwhile, existing registrants can continue to vote without any identification at all by signing an affidavit of residency. *Id.* ¶ 26.

House Bill 124 will make voting harder by eliminating student identification as an accepted form of voter identification, after it has been accepted for more than a decade. 2023 H.B. 124 (to be codified at Idaho Code § 34-1113). HB 124's sponsor claimed it would eliminate the possibility of students voting in both Idaho and another state. SAC ¶ 39. There has been no evidence of double voting by students, nor any documented problems with voter fraud involving student identification. *Id.* ¶ 40. There has, however, been a surge in political participation and activism by young Idahoans, who, driven by policy issues like gun violence and abortion rights, have been registering and voting in Idaho in increasingly large numbers. *Id.* ¶ 50. Voter registration rates for new voters aged 18 to 19 increased 81% from 2018 to 2022, and students have increasingly organized to testify on proposed legislation and protest at the Idaho Capitol—activism that has been met by hostility, including by two House committee chairs who recently took the extraordinary step of restricting committee testimony by Idahoans under the age of 18. *Id.* ¶ 2.

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Governor Little signed HB 124 on March 15. This case was filed two days later, on March 17. Compl., ECF No. 1. The Governor then signed HB 340 on April 4, and Plaintiffs filed their Second Amended Complaint two weeks later. SAC, ECF No. 20. Plaintiffs bring three claims, all under federal law.

First, Plaintiffs allege that HB 124 and HB 340 violate the Twenty-Sixth Amendment to the U.S. Constitution. SAC ¶¶ 68–78. The laws were intended to and will have the effect of making it harder for young voters to vote. Young voters are overwhelmingly more likely to have student identification and to lack other accepted forms of identification, *id.* ¶ 78, and the laws were passed

after a surge in youth political participation at the polls and at the Idaho Capitol. Student identification, moreover, has been an acceptable form of voter identification since Idaho first passed its voter identification laws in 2010. Despite no evidence that allowing student identification to be used as voter identification has had any impact on Idaho's elections (other than enabling young people to successfully vote), with HB 124, the legislature excised student identification—and only student identification—from the acceptable forms of voter identification. There is no plausible explanation for this surgical attack other than to make it harder for young people to vote.

Second, Plaintiffs allege that HB 340 is an unconstitutional poll tax in violation of the Twenty-Fourth Amendment and the Fourteenth Amendment's Equal Protection Clause. SAC ¶¶ 79–86. New registrants must pay a government fee to obtain one of four limited forms of photo identification to register to vote, and the free identification card excludes swaths of eligible voters.

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Third, Plaintiffs allege that HB 340 unconstitutionally discriminates against new voters compared to existing registrants in violation of the Equal Protection Clause. SAC ¶¶ 87–95. While existing registrants may continue to vote without showing photo identification at the polls by completing an affidavit, new registrants cannot register to vote without an approved form of photo identification. The legislature made its preference for existing registrants over new registrants clear in its debate and rejection of HB 137, a proposal to eliminate the affidavit option. HB 340 violates the Equal Protection Clause by imposing a substantial barrier to voting on only a disfavored subset of eligible voters.

Meanwhile, different organizations represented by different lawyers filed a separate case in state court challenging HB 124 and, later, HB 340, arguing that they violate the Idaho Constitution. *See Babe Vote v. McGrane*, No. CV01-23-04534 (4th Jud. Dist. Ct. Idaho) (filed

Mar. 16, 2023). Without any factual basis, Secretary McGrane wrongly characterizes these lawsuits as "coordinated"—they were not—and claims "joint press coverage" was planned or arranged—it was not. *See* Mem. in Supp. of Mot. to Dismiss at 1, 5, ECF No. 29-1 ("MTD"). Nor does the news article that the Secretary cites indicate otherwise. In fact, the article is clear that these are two different lawsuits, filed by different plaintiffs. That the cases were filed at about the same time—which is not surprising, given that both followed shortly after the law was signed—does not justify making the assumptions that the Secretary wrongly makes. Plaintiffs in this federal case, and their counsel, have nothing to do with that state case.[1]

LEGAL STANDARD

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Secretary McGrane's motion to dismiss brings a facial challenge to Plaintiffs' standing and this case's ripeness, because it challenges the adequacy of Plaintiffs' allegations of injury rather than disputing their truth. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In reviewing a facial motion to dismiss for lack of standing or ripeness, the Court must "'accept as true all material allegations of the complaint' and 'construe the complaint in favor of the complaining party.'" *La Raza*, 800 F.3d at 1039 (quoting *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011)). "[G]eneral factual allegations of injury resulting from the defendant's conduct" therefore "suffice to support" standing. *Id.* at 1040.

In reviewing a motion to dismiss for improper service of process, "[a] signed return of service constitutes prima facie evidence of valid service which can be overcome only by strong

[1] The plaintiffs in the state case allege only state law claims under the Idaho Constitution. Oddly, however, Secretary McGrane has attempted to assert counterclaims in the state case seeking declaratory judgments against the state-court plaintiffs that HB 124 and HB 340 do not violate federal law. Plaintiffs doubt that Secretary McGrane can obtain a declaratory judgment against private plaintiffs rejecting federal claims that those plaintiffs have not brought—a clear advisory opinion. But regardless, Plaintiffs here are not parties to the state case, so nothing the state court says about federal law will bind them or this Court.

and convincing evidence." *SEC v. Internet Sols. for Bus.*, 509 F.3d 1161, 1163 (9th Cir. 2007).

ARGUMENT

Secretary McGrane challenges Plaintiffs' standing, whether the case is ripe, and the adequacy of service of process. The Court should reject each challenge.

I. Plaintiffs have standing for each of their claims.

Plaintiffs have standing because the challenged laws will injure them and their members and constituents by making it harder for Idaho voters to register and vote. Secretary McGrane's contrary argument ignores what the challenged laws actually do and ignores controlling precedent under which Plaintiffs' allegations of injury are more than adequate and redressable by relief against Secretary McGrane.

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A. The challenged laws make it harder for many Idaho citizens to register and vote.

Contrary to Secretary McGrane's argument, MTD at 1–5, the challenged laws will make registration and voting harder for young voters, new voters, and old voters in particular, and they will not make registration and voting easier for anyone. HB 124 makes just one change to Idaho law: it eliminates student identification as an accepted form of voter identification. Voters who would otherwise have used student identification to vote will therefore be unable to do so. And while they can complete a residency affidavit instead, doing so "takes longer than showing identification and can lead to delays at polling places, and the warning language is often scary for voters." SAC ¶ 36. HB 124 harms those voters, and it does not help anyone else.

HB 340, too, will make it harder for some people to register and vote and will not make it easier for anyone. Before HB 340, prospective voters could register by mail by providing either "current and valid photo identification" or "[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of

the voter." Idaho Code § 34-410(2). They could register on election day by providing either (1) an Idaho driver's license or identification card, (2) "any document which contains a valid address in the precinct together with [any] picture identification card," or (3) a current university identification card and a fee statement showing an address in the precinct. *Id.* § 34-408A. And they could register in person before election day without any identification requirement at all. *Id.* § 34-407. After HB 340, prospective voters will always need to show one of just a handful of types of photo identification, along with additional proof of residence if their Idaho address is not on their identification. H.B. 340 § 5 (to be codified at Idaho Code § 34-411). HB 340 therefore means that voters without one of the accepted forms of identification cannot register at all. SAC ¶¶ 17–24.

HB 340's allowance for a narrow set of Idaho voters to obtain a free voter identification card does not eliminate this harm. The free cards are available only to Idahoans who are 18 and older and have not had a valid driver's license for at least 6 months. SAC ¶ 25. These restrictions mean that many voters who need identification are left out, including young voters who will turn 18 shortly before election day, voters who recently moved to Idaho and still have a valid out-of-state driver's license, and elderly voters who no longer drive and would otherwise decline to renew a license expiring shortly before an election. SAC ¶ 25. And HB 340 will leave even voters who can get a free card worse off. Before, voters without state identification could register by mail with just a "utility bill" or "government document" and then vote using a residency affidavit; now, they cannot even register until they first go to the Department of Motor Vehicles, provide proof of residency, age, and identity, and get an identification card. H.B. 340 § 8 (to be codified at Idaho Code § 49-2444(6)).

It is therefore simply not true that the challenged laws "make voting easier for everyone," or even for *anyone*. MTD at 1. They help no one, and they will make registration and voting harder

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for many young voters, new voters, and older voters in particular.

B. The challenged laws injure Plaintiffs as organizations.

By making it harder for many voters to register and vote, the challenged laws injure Plaintiffs as organizations. "Organizations can demonstrate organizational standing by showing that the challenged practices have perceptibly impaired their ability to provide the services they were formed to provide." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 765 (9th Cir. 2018) ("*EBSC I*") (cleaned up); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) ("*EBSC II*") (merits panel reaching same conclusion). Organizations therefore have standing if a challenged law "frustrates the organization's goals and requires the organization 'to expend resources . . . they otherwise would spend in other ways.'" *EBSC I*, 932 F.3d at 765 (quoting *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc)). Alleging such a "diversion-of-resources injury is sufficient to establish organizational standing at the pleading stage, even when it is 'broadly alleged.'" *La Raza*, 800 F.3d at 1040 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

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Under this test, civil rights groups that promote voting and voter registration in support of their missions have organizational standing to challenge state actions that make voting and voter registration more difficult, causing them to "expend[] additional resources that they would not otherwise have expended, and in ways that they would not have expended them." *La Raza*, 800 F.3d at 1036–37, 1039–42. That is exactly what Plaintiffs allege here.

MFOL Idaho alleges that in support of its mission to "harness[] the power of young people to fight for common sense solutions to end gun violence in Idaho," it "conducts voter registration and voter turnout activities, targeting its efforts on young voters." SAC ¶ 11. It further alleges that the challenged laws "make it harder for those voters to register and vote and harder for MFOL Idaho to successfully register and turn them out to vote"; and that they will therefore "detract from

MFOL Idaho's organizational mission" and "require MFOL Idaho to divert resources towards voter education from other programming to ameliorate the law's disenfranchising and vote suppressing impact." *Id.* ¶ 12.

The Alliance similarly alleges that its "mission is to protect the civil rights of retirees," that it spends "resources on voter registration, get out the vote activities, and other voter engagement and education activities," and that HB 340 "will force the Alliance to divert resources away from [other] activities and towards educating its members about the stricter voter registration requirements and helping them obtain acceptable photo identification." *Id.* ¶ 15.

These are exactly the type of allegations that *La Raza* holds sufficient to support organizational standing in this context. *See La Raza*, 800 F.3d at 1039–41. And they distinguish this case from *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010), where the plaintiff "failed to assert any factual allegations in its complaint that it was forced to divert resources," or any other "factual allegations regarding organizational standing." Nor is *La Raza* some kind of odd outlier. There is a raft of similar relevant and binding precedent from the Ninth Circuit, all of which Secretary McGrane ignores. *See, e.g.*, *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1104-06 (9th Cir. 2004) (holding that allegations that nonprofit civil rights organization had to divert resources from "other efforts" to promote awareness of and compliance with laws were "enough" to show a "diversion of resources"); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013) (holding that organizational plaintiffs had standing to challenge a law when they "had to divert resources to educational programs to address its members' and volunteers' concerns about the law's effect"); *Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (holding that nonprofit organizations had organizational standing where the plaintiff

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responded to allegations of discrimination by "start[ing] new education and outreach campaigns targeted at discriminatory roommate advertising"); *Comite de Jornaleros de Redondo Beach*, 657 F.3d at 943 (holding that organizations representing day laborers' interests had standing to challenge ordinance that frustrated their missions of strengthening local day laborer organizing groups and forced them to divert resources they would have spent in other ways to meeting with workers to discuss enforcement of the ordinance and assisting workers who were impacted).

Instead, Secretary McGrane relies on out of circuit precedent—namely, the Fifth Circuit's decision in *Texas State LULAC v. Elfant*, 52 F.4th 248, 253 (5th Cir. 2022), *cert. pet. pending*, No. 22-50690. MTD at 14. There are many problems with that reliance. Not only is it not binding on this court—while each of the cases listed above are—the decision in *Texas State LULAC* was the result of an appeal from a grant of summary judgment, so it does not address the pleading standards on a motion to dismiss. *See* 52 F.4th at 251. And, even at that very different stage, the opinion's holding addresses only the traceability and redressability prongs of the Article III standing test, not the injury-in-fact prong that Secretary McGrane challenges here. *See id.* at 255–56. Moreover, *Texas State LULAC*'s decision on those other prongs (which, again, are not at issue here) created a circuit split with the Ninth Circuit and others by applying an unjustifiably demanding test that this (and other) circuits have declined to apply. *See* Pet. for Writ of Certiorari at 9–21*, Tex. State LULAC v. Torres*, No. 22-50690 (Feb. 23, 2023); *Barnum Timber Co. v. EPA*, 633 F.3d 894, 901 (9th Cir. 2011) (explaining that a plaintiff need not "allege that" a specific government act "is the sole source" of injury).[2] This Court cannot disregard Ninth Circuit precedent in favor of dicta from a different circuit that follows a different approach in a different procedural context.

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[2] This petition is available at https://www.supremecourt.gov/DocketPDF/22/22-809/255435/20230223152703817_Texas%20SB%201111%20Cert%20Petition%20Final.pdf.

C. The challenged laws injure Plaintiffs' members and constituents.

In addition to having standing based on their own injuries, Plaintiffs also have associational standing to sue on behalf of their injured members and constituents. An organization can sue on behalf of its members "when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021). The third requirement is met where, as here, plaintiffs seek only declaratory and injunctive relief based on a facial challenge to statutes, so that nothing about the claims requires the participation of individual members. *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 344 (1977). And contrary to Secretary McGrane's argument, MTD at 10, the Ninth Circuit has squarely held that even organizations *without* formal members can invoke this form of standing to sue on behalf of their constituents, if the organization "serves a 'specialized segment' of" the community that is the "primary beneficiar[y] of" the organization's work, giving the organization "a personal stake in the outcome of [the] lawsuit." *Am. Unites for Kids*, 985 F.3d at 1096–97.

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Plaintiffs' allegations are sufficient to support this form of standing, too. MFOL Idaho alleges that it is a "student-led organization" led by "six young activists" and working with "hundreds of supporters and volunteers" who are "registered with the organization" and who "benefit from, share in, and help guide the organization's priorities and activities." SAC ¶ 11. MFOL Idaho targets its voter registration and turnout efforts at young voters who are "concerned about gun violence and see voting as an opportunity to make their voices and concerns heard." *Id.* But the challenged laws "harm MFOL Idaho's constituents, including the voters MFOL Idaho registers and MFOL Idaho's organizers and volunteers who register and turn out voters," by making it "harder for [them] to register and vote." *Id.* ¶ 12. That includes students who "only

possess a student identification card." *Id.* These allegations establish that MFOL Idaho serves a "specialized segment" of Idaho voters that is the primary beneficiary of its work—young people concerned about gun violence. *See Am. Unites for Kids*, 985 F.3d at 1096. They also establish that those constituents are harmed because the challenged laws make it harder for them to vote and that protecting their voting rights is germane to MFOL Idaho's mission of organizing in opposition to gun violence. *See id.*

The Alliance's associational standing is also well supported. The Alliance has 11,407 formal members, all Idaho residents. SAC ¶ 13. They "benefit from, share in, and help guide the organization's priorities and activities." *Id.* Plaintiffs allege that HB 340 "makes it harder for" some of those members "to register to vote and will force some of them to pay a government fee for an identification card in order to register to vote." *Id.* ¶ 14. And this is directly germane to the Alliance's mission "to protect the civil rights of retirees and ensure that they obtain social and economic justice," both because voting is itself a civil right and because barriers to members' voting "threaten[] the electoral prospects of the candidates the Alliance endorses" and "mak[e] it more difficult for the Alliance and its members to associate to effectively further their shared political goals." *Id.* ¶ 15.

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These allegations are sufficient because they make it at least "relatively clear, rather than merely speculative," that Plaintiffs' members and constituents will include voters harmed by the challenged laws. *La Raza*, 800 F.3d at 1041. There is no further requirement that Plaintiffs identify specific injured members. MTD at 9. In fact, the Ninth Circuit has *rejected* the argument that "an injured member of an organization must always be specifically identified in order to establish Article III standing for the organization" via associational standing. *La Raza*, 800 F.3d at 1041. Rather, if it is clear and not speculative "that one or more members have been or will be adversely

affected by a defendant's action," and if the identity of the injured member is not needed "to understand and respond to an organization's claim of injury," then there is "no purpose to be served by requiring an organization to identify by name the member or members injured." *Id.* Secretary McGrane ignores this controlling precedent and offers no argument as to why the identity of particular injured members and constituents would be needed in this facial constitutional challenge. *See Hunt*, 432 U.S. at 344.[3]

D. Plaintiffs' injuries are redressable by relief against Secretary McGrane, who does not have Eleventh Amendment immunity.

Plaintiffs' injuries are redressable by relief against Secretary McGrane. Secretary McGrane's argument that Plaintiffs should have sued county clerks instead of him fails to account for his substantial authority over county election officials under Idaho law, and it is foreclosed by Ninth Circuit precedent that Secretary McGrane fails to cite.

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The redressability requirement imposes only a "relatively modest" burden. *Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012). It "is satisfied so long as the requested remedy 'would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered.'" *Mecinas*, 30 F.4th at 900 (quoting *Renee*, 686 F.3d at 1013). The analysis focuses on the "practical consequence[s]" of the remedy sought. *Renee*, 686 F.3d at 1013. It is not a question of formalities, and redress need not be "guarantee[d]." *Id.*

[3] Moreover, even if *Summers v. Earth Island Institute*, 555 U.S. 488, 498 (2009), and *Associated General Contractors of Am. v. California Department of Transportation*, 713 F.3d 1187, 1194 (9th Cir. 2013), impose a requirement to identify individual members in some circumstances, they certainly do not require that members be identified at the pleading stage. *Summers* was an appeal from a final judgment invalidating agency action. 555 U.S. at 492. *Associated General Contractors* was a summary judgment case and emphasized that "on summary judgment," the plaintiff "was required to submit competent evidence, not mere allegations, to demonstrate that at least one of its members had standing." 713 F.3d at 1194; *see also League of Women Voters of Cal. v. Kelly*, No. 17-CV-02665-LB, 2017 WL 3670786, at *8 (N.D. Cal. Aug. 25, 2017) ("A plaintiff does not need to plead its evidence; it needs only to allege a claim plausibly. The court cannot discern why—at the pleadings stage—the identity of particular members is required for fair notice of the claims.").

The Ninth Circuit's decision in *Mecinas* is directly analogous, holding that the redressability requirement was met in a case just like this one. Plaintiffs in *Mecinas* sued the Arizona Secretary of State challenging the order on which candidate names were printed on ballots. 30 F.4th at 900. The Arizona Secretary of State, much like Secretary McGrane here, objected that county officials prepared and printed ballots, arguing that relief against her would not redress the claimed injury. *Id.* But the Ninth Circuit rejected that argument, explaining that Arizona law required the Secretary of State to issue guidance on the order of candidate names and required county officials to comply with that guidance. *Id.* Because "the Secretary is statutorily delegated the authority to 'prescribe rules' for 'producing [and] distributing' ballots . . . the counties would have no choice but to follow a mandate from her directing them to order the ballots pursuant to a court's injunction," and an injunction against the Secretary consequently "would significant[ly] increase the likelihood of relief." *Id.* (first and third alterations in original).

That analysis controls here. Like Arizona law, Idaho law requires Secretary McGrane to issue binding directives on all aspects of election law to county clerks and requires county clerks to follow them. He "shall cause to be prepared and distributed to each county clerk detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of the county clerk." Idaho Code § 34-202. And "[e]ach county clerk affected thereby shall comply with such directives and instruction." *Id*. Thus, just as in *Mecinas*, an order against Secretary McGrane would redress Plaintiffs' injuries because the counties "would have no choice but to follow a mandate from [him]" precluding enforcement of the challenged laws. 30 F.4th at 900. Secretary McGrane provides no reason to think that county clerks would violate Idaho law by ignoring his binding directives. The "practical consequence" of a binding directive from

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Secretary McGrane would therefore "amount to a significant . . . likelihood that the plaintiff would obtain relief." *Renee*, 686 F.3d at 1013. No more is required.

Finally, Secretary McGrane's lack of authority over the issuance of identification cards is irrelevant. MTD at 16. Plaintiffs have no objection to the free identification card itself and do not seek any relief that would require a change in the issuance of such cards. *See* SAC at 28–29 (prayer for relief). But the free identification card does not eliminate the constitutional problems with the changes to voter registration and voter identification requirements. *See id.* ¶¶ 25–26. Redressing that claim requires relief relating to the voter registration process under Secretary McGrane's direction—specifically, an injunction against "enforcing House Bill 340's requirement of photo identification to register to vote." *Id.* at 29. It does not require relief against the Secretary of Transportation.

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II. Plaintiffs' claims are ripe.

Plaintiffs' claims are ripe for judicial resolution. This is a facial challenge to two laws that have been enacted by the Idaho legislature and signed by the Governor. Absent a court order, HB 340 will take effect this July and HB 124 will take effect next January. And the injuries that Plaintiffs allege will follow directly from that. There simply are no "contingent future events that may not occur as anticipated, or indeed may not occur at all" between Plaintiffs and their alleged injuries. MTD at 17 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

In a facial challenge like this one, if "the inevitability of the operation of a statute against certain individuals is patent," then "it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect." *Atchison, Topeka & Santa Fe R.R. Co.*, 656 F.2d at 402 (quoting *Blanchette v. Conn. Gen. Ins. Co.*, 419 U.S. 102, 143 (1974)); s*ee also Geo Group, Inc. v. Newsom*, 50 F.4th 745, 754 (9th Cir. 2022) (en banc) (holding that because a plaintiff's "plans are in the near future and would plainly violate" the

challenged law, their injuries were "sufficiently imminent even though they will not occur for at least two years" when the challenged law took effect). Challenges to enacted statutes that have not yet taken effect are therefore "[o]f course not" premature, so long as "it otherwise appear[s] that the act certainly would operate as the [plaintiff] apprehended it would." *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923). "One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending, that is enough." *Id.*; *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 287 (holding that suit is ripe where a challenged law is "mandatory" and "definitely imposed" and harm from it "certain to ensue" when the law takes effect).

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Secretary McGrane ignores this directly on point precedent, so he offers no argument as to why Plaintiffs' claims are not ripe under this test. They are. The laws that Plaintiffs challenge have been enacted and signed and will take effect in just months. When they do, they will directly restrict how Plaintiffs' members and constituents can register and vote, and directly harm the Plaintiff organizations themselves. *Supra* Part I. None of that is contingent or speculative. And Plaintiffs' facial challenge to the laws does not depend on facts about their actual application. *See Pac. Legal Found. v. State Energy Res. Conservation & Dev. Comm'n*, 659 F.2d 903 (9th Cir. 1981), *aff'd sub nom. Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983) (holding that a challenge to a not-yet-enforced statute is ripe if the issue raised is purely legal and does not require factual development).

The cases Secretary McGrane cites do not involve facial challenges to recently enacted legislation like this one. *Twitter Inc. v. Paxton*, 56 F.4th 1170, 1175 (9th Cir. 2022), involved a challenge to a civil investigative demand that had already been issued but a plaintiff that failed to actually allege any harm; *Texas v. United States*, 523 U.S. 296, 300 (1998), involved a challenge

to the application of the Voting Rights Act to a particular set of circumstances that might never arise; *Addington v. U.S. Airline Pilots Ass'n*, 606 F.3d 1174, 1179–80 (9th Cir. 2010), involved a union's challenge to a seniority proposal that had not yet been adopted and might never be; and *Association of American Medical Colleges v. United States*, 217 F.3d 770, 780 (9th Cir. 2000), was an Administrative Procedure Act case that turned on the definition of "final agency action" for purposes of the APA's review provisions. Each of those cases involved real contingencies, not just a time gap before a law takes effect as here.

Delaying adjudication until the challenged laws take effect would be particularly perverse in the election context. In recent years, federal courts have refused to issue injunctive relief affecting elections even many months before election day. *See, e.g.*, *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in the grant of a stay) ("This Court has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and this Court in turn has often stayed lower federal court injunctions that contravened that principle."). This practice makes it essential that plaintiffs be allowed to challenge unconstitutional election laws as soon as they are enacted and a concrete dispute arises. Otherwise, under Secretary McGrane's approach, it would always "either be 'too soon' or 'too late' to enforce voting rights." *DNC v. Bostelmann*, 466 F. Supp. 3d 957, 965 (W.D. Wis. 2020). And, indeed, plaintiffs regularly challenge laws that burden the right to vote shortly after their enactment—including in the Ninth Circuit. *See, e.g.*, Order at 1, 14, 17–19, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509 (D. Ariz. Feb. 16, 2023), ECF No. 304 (rejecting ripeness challenge in case filed March 31, 2022, challenging laws that had been signed the day before and took effect on January 1, 2023).

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III. Plaintiffs properly served Secretary McGrane.

Secretary McGrane's challenge to service of process is now moot because, to avoid any

doubt, Plaintiffs had two copies of the summons and Second Amended Complaint personally served on Deputy Attorney General Ventrella on May 24, and thereby completed service on the State of Idaho under Fed. R. Civ. P. 4(j)(2)(B) and Idaho R. Civ. P. 4(d)(4)(A), as Secretary McGrane argues was required. MTD at 19; ECF No. 30.

There was, however, no problem to begin with. Plaintiffs' original, personal service on Secretary McGrane under Rule 4(e)(2)(A) was proper because Secretary McGrane is the only defendant in this case. Rule 4(j)(2) is inapplicable because it governs service on "[a] state, municipal corporation, or other state-created governmental organization that is subject to suit." And this is not a suit against the State of Idaho—not in form, and not even "fundamentally." MTD at 18. The State of Idaho is not a "person" who can be sued under 42 U.S.C. § 1983, *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989), and Idaho would, in any event, be immune from suit under the Eleventh Amendment, *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1040 (9th Cir. 2003). But Plaintiffs *can* sue Secretary McGrane in his official capacity to enjoin enforcement of unconstitutional laws, because if the Secretary were to enforce such laws, he would be "stripped of his official or representative character and . . . subjected *in his person* to the consequences of his individual conduct." *Ex Parte Young*, 209 U.S. 123, 160 (1908) (emphasis added). For that reason, "official-capacity actions for prospective relief are not treated as actions against the State." *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985).

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Personal service is therefore appropriate in suits against official-capacity defendants for injunctive relief under *Ex Parte Young*, as the First Circuit has held. *Echevarria-Gonzalez v. Gonzalez-Chapel*, 849 F.2d 24, 29 (1st Cir. 1988). This is because such suits are "against an individual, albeit in his official capacity, and not against the state," and it "will be the individual" defendant "who in an official capacity is going to be bound by the judgment, and who can be held

in contempt if a court order is disobeyed." *Id.* Indeed, service on the State of Idaho alone would surely have been inappropriate—Idaho is not the defendant here, and Secretary McGrane was entitled to "adequate notice . . . that an action in court is pending against him." *Id.*

No surprise, then, that judges in this district have recently and repeatedly held that official capacity defendants may be served personally. *See, e.g.*, *Liles v. Skiles*, No. 2:22-CV-00004-DCN, 2022 WL 3101620, at *2 (D. Idaho Aug. 4, 2022) ("Serving an individual defendant in his or her official capacity may be made personally or by leaving the summons and complaint with an authorized agent at the defendant's place of employment." (cleaned up)); *Olsen v. City of Boise*, No. 1:20-CV-00478-DCN, 2022 WL 137976, at *2 (D. Idaho Jan. 13, 2022) (same); *Mendoza-Jimenes v. Bonneville Cnty.*, No. 4:17-CV-00501-DCN, 2018 WL 3745818, at *1 (D. Idaho Aug. 7, 2018) (same). And while Secretary McGrane cites a few contrary cases, none is from this district or any in the Ninth Circuit, and none addresses the fundamental point that a suit under *Ex Parte Young* is not, and cannot be, a suit against a state itself.

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CONCLUSION

The Court should deny Defendant's motion to dismiss. If, however, the Court grants the motion in any part, Plaintiffs request leave to amend their complaint to address any deficiency.

Dated: June 7, 2023

Respectfully submitted,

/s/ David R. Fox

Terri R. Pickens (ISB #5828)
PICKENS LAW, P.A.
398 S. 9th Street, Suite 240
Boise, ID 83702
terri@pickenslawboise.com
Tel: (208) 954-5090
Fax: (208) 954-5099

Elisabeth Frost*
David R. Fox*
Justin Baxenberg*
Daniel Cohen*
Qizhou Ge*
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW, Suite 400
Washington, D.C. 20002
efrost@elias.law
dfox@elias.law
jbaxenberg@elias.law
dcohen@elias.law
age@elias.law
Tel: (202) 968-4490

Attorneys for Plaintiffs
*Admitted pro hac vice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 7, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to all counsel of record.

/s/ David R. Fox

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