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IN THE 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 the Idaho Secretary of State,

Defendant.

Case No. 1:23-cv-00107-AKB

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In this action, two organizations challenge recent amendments to Idaho's voter ID laws that will make voting easier for every voter. Those new laws establish a no-fee form of voter ID and simplify proof of identity and residency for voting, including by removing the use of student IDs that a tiny fraction of voters used in the last two elections. Plaintiffs say these laws violate the 26th and 24th amendments to the U.S. Constitution and the Equal Protection clause of the 14th Amendment to the U.S. Constitution. However, each of the claims fail on both jurisdictional and substantive grounds and the Court should grant Secretary of State Phil McGrane's motion for summary judgment in its entirety.

First, the Court lacks jurisdiction because Plaintiffs do not have standing. Despite the clear warning of this Court that "at later stages of this case . . . Plaintiffs can no longer rest on mere allegations" and that at summary judgment "Plaintiffs must adequately support their factual assertions of standing," Plaintiffs have failed to adduce the evidence for standing at this stage. Dkt. 47 at 15. Plaintiffs are not actual voters who claim they have been unable to register—instead, they are organizations that claim that Idaho's streamlining of voter ID and creation of no fee ID will make it harder for them to register voters and enlist support for their political causes. That is not sufficient for associational standing because neither Plaintiff identifies any member injured by these laws. It also fails to establish organizational standing because Plaintiffs have not shown that passage of the new laws will divert their resources and frustrate their missions. Plaintiffs' claims are simply generalized grievances that Article III forbids.

Second, Plaintiffs' merits arguments fall flat. Plaintiffs' First Claim for Relief alleging a violation of the Twenty-Sixth Amendment fails because the purpose of H.B. 124 and H.B. 340 are to streamline the registration process by creating uniformity in the photo ID requirements. As the undisputed

evidence proves, age was irrelevant to the decision to remove student IDs as a proper form of photo ID for registration and voting.

Third, Plaintiffs' Second Claim for Relief alleging a violation of the Twenty-Fourth Amendment fails as controlling Ninth Circuit case law has made plain that a requirement to present photo ID at the polls—even if obtaining that ID costs money—does not constitute a poll tax.

Fourth, Plaintiffs' Third Claim for Relief for violation of Equal Protection fails as a lower level of scrutiny applies to the bills. The voter ID laws here place at best a minimal burden on new registrants, far from the severe burden that is required before heightened scrutiny applies. Moreover, courts have recognized that election law security, election integrity, and the orderly administration of elections are compelling interests that warrant the photo ID requirements here.

Accordingly, Plaintiffs have failed to meet both jurisdictional and substantive legal requirements and the Court should grant the Secretary's motion and dismiss all three claims.

BACKGROUND

Since 2010, Idaho has required photo ID when casting a ballot. *See* 2010 Idaho Sess. Laws 634. Idaho also has historically required photo ID for registration. Since at least 1997, Idaho law has required photo ID when registering in person on election day, while mail in registration has required photo ID as an option to register since 2003, and, most recently, photo ID has been required to register electronically since 2016. *See* Idaho Code §§ 34-480A (1997); Idaho Code 34-410 (2003); Idaho Code § 34-409. To register in-person before election day, voters were required to identify themselves by personally appearing in the county clerk's office or before an official registrar and providing identifying information on the application for voter registration. *See* Idaho Code §§ 34-407 (2022); 34-411 (2022). Idaho law has long required all registered voters to identify themselves at the polls with either a photo identification card or an affidavit in lieu of personal identification. *See* Idaho Code §§ 34-1113, 1114. The general identification requirements of these laws have never been

challenged and is not challenged here. In 2023, Idaho enacted two new statutes—H.B. 124 and H.B. 340—that will simplify and standardize these voter ID requirements and create a new, no-fee form of voter ID. *See* 2023 Idaho Sess. Laws 143, 886.

I. Idaho simplifies voter ID law and creates new no-fee voter ID.

Prior to the 2023 legislative session, Idaho law long required voters to prove their identity and residence. To register to vote by mail, Idaho law required proof of residence via photo ID or a copy of a proper document showing the name and address of the voter. *See* 2003 Idaho Sess. Laws 182. In contrast, to register to vote on election day, the law required proof of residence with an Idaho-issued driver's license or ID card, a photo ID with an address, or a student ID from Idaho with a student fee statement providing an address. *See* 1997 Idaho Sess. Laws 1052. A voter could also register in person at a county clerk's office or before an official registrar and provide identifying information on the application for registration. Idaho Code § 34-407 (2022). Then, regardless of the method of registration, Idaho law required voters to prove their identity at the time of voting in the form of an Idaho driver's license, passport, tribal ID, concealed carry permit, or student ID. *See* 2017 Idaho Sess. Laws 310. If none of those forms of ID were available, the voter could (and still can) submit proof of identity via personal affidavit, which requires the voter to provide the voter's name and address and sign the form. Idaho Code § 34-1114. Idaho's available e-pollbook data from 30 counties reflects that in the November 2022 general election, about 98.75% of voters used a driver's license as ID, while only 104 voters used student ID.[1] Statement of Facts ("SOF") ¶ 38.

The new amendments to Idaho law will standardize and simplify these methods of proving identity and residence and create a new, widely available no-fee voter ID.[2] Rather than imposing

[1] Based on e-pollbook data available from 32 of Idaho's counties, only 27 voters out of 183,236 total e-Pollbook check-ins used a student ID in elections on November 7, 2023. SOF ¶ 40.
[2] The provisions of H.B. 124 do not go into effect until January 1, 2024. 2023 Idaho Sess. Laws 143. The provision of H.B. 340 went into effect on July 1, 2023. 2023 Idaho Sess. Laws 895.

different proof requirements depending on when and how a voter registers, the new laws will require the same standard of proof for all registration methods. Idaho Code § 34-411 [H.B. 340]; 2023 Idaho Sess. Laws 143 [H.B. 124]. Registrants can prove both their identity and their residence with an appropriate form of photo ID. Idaho Code §§ 34-411(3)–(4), 49-2444(22). Finally, to cast a ballot, currently registered voters must prove their identity either through the methods of proving identity at registration or with a personal affidavit. Idaho Code § 34-1114. Thus, while the new law does not recognize student ID as voter ID, any of the 104 persons who used it in 2022 or the 27 persons who used it in 2023 can vote with a personal affidavit since they are already registered to vote. Any new voters can register and vote with any of the four required forms of photo ID (including a no-fee state ID), and, if they register early enough, vote with a personal affidavit.

II. Plaintiff organizations challenge Idaho voter ID law.

Plaintiffs filed this challenge to Idaho law solely on federal constitutional claims, characterizing Idaho's streamlining of the registration process and creation of a new no-fee voter ID as a threat to democracy. Dkt. 20 ¶¶ 15, 56. The two Plaintiff organizations say these laws harm their efforts to register voters to support their political causes. *Id.* ¶¶ 12, 14.

March for Our Lives Idaho ("MFOL") says that the disallowance of student ID to prove identity harms young voters who only have a student ID, even though they may be eligible for a no-fee voter ID. Dkt. 20 ¶¶ 11–12. The Idaho Alliance for Retired Americans (the "Alliance") says the new bills harm its members because they make it harder for them to vote and will require some of them to pay a government fee for an ID card, despite the availability of a no-fee voter ID. Dkt. 20 ¶¶ 13–15.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where a party can show that, as to any claim or defense, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter

of law." F.R.C.P. 56(a). One of the principal purposes of the summary judgment rule "is to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary judgment is not "a disfavored procedural shortcut," but is instead the "principal tool[] by which factually insufficient claims or defenses [can] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Id.* at 327.

For standing, while general factual allegations of injury will suffice at the pleading stage, on summary judgment, the "plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts' [] which for purposes of the summary judgment motion will be taken to be true." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citing F.R.C.P. 56(e)).

ARGUMENT

I. Plaintiffs lack Article III standing and the Court lacks jurisdiction.

Federal courts can only "adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). The doctrine of standing "gives meaning to these constitutional limits by identifying those disputes which are appropriately resolved through the judicial process." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (cleaned up). "No principle is more fundamental to the judiciary's proper role in our system of government" than this limitation. *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 341, (2006); *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 101 (1998) (citation omitted).

To establish Article III standing, a plaintiff organization must show: "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180–81 (2000) (citing *Lujan,* 504 U.S. at 560–61).

Plaintiffs have failed to show an injury and the Court should grant Defendant's motion for lack of standing.

A. Plaintiffs lack organizational standing.

Plaintiffs cannot establish organizational standing. An organization suing on its own behalf must show "***both*** a diversion of its resources and a frustration of its mission." *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (quoting *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002)) (emphasis added).

The Alliance Plaintiff has admitted in its F.R.C.P. 30(b)(6) deposition that passage of H.B. 340 did not result in any of its resources being diverted.[3] SOF ¶ 14. That alone ends the discussion regarding the Alliance's organizational standing—it has none.

Even if the Alliance could demonstrate that it diverted resources because of the passage of H.B. 340, the Alliance has failed to prove that the passage of H.B. 340 frustrates its mission. The Alliance claims that H.B. 340 will make it harder for its members to vote for a few reasons. First, they claim it makes it "a little tougher" for two groups to vote: (a) members who no longer have a driver's license to vote because they let their license expire shortly before the election (SOF ¶ 16); and (b) people moving to the state shortly before the election without a valid Idaho driver's license. SOF ¶ 18. Second, they claim it will cost some of its members money out of their pocket. SOF ¶ 20. Third, it prohibits someone from registering at the polls if they are not preregistered and do not have the right identification. SOF ¶ 22. And last, they claim it will make it harder for the Alliance to register people to vote "without a lot of roadblocks." SOF ¶ 27.

[3] The Alliance has also admitted that it does not have any claims related to H.B. 124 as it is not making any claims H.B. 124 denies its members the right to vote based on age. SOF ¶ 15.

None of these claims are supported by any evidence. The Alliance has no evidence of any of its members letting their driver's license expire or who moved to Idaho shortly before an election with no Idaho driver's license. SOF ¶¶ 17, 19. The Alliance does not know of any member who was unable to pay for any of the proper forms of ID required to register to vote. SOF ¶ 21. The Alliance also admits it was able to successfully obtain 160 voter registration cards at the Eastern Idaho State Fair after H.B. 340 went into effect on July 1, 2023. SOF ¶ 26. In fact, the Alliance admits it does not have evidence of any of its members being unable to register to vote for any reason because of H.B. 340. SOF ¶ 23. Thus, the Alliance has no evidence of any frustration of its mission.

Likewise, Plaintiff MFOL cannot show frustration of its mission. MFOL claims that following the passage of H.B. 124 and H.B. 340, the process is more complicated for its members, and it is worried that MFOL's "members are going to be facing roadblocks as they attempt to register to vote and … may dissuade [its] members from getting engaged in the political process, which is part of [MFOL's] mission." SOF ¶ 28. However, MFOL has no evidence that the passage of H.B. 124 and H.B. 340 have frustrated its mission in any way. Despite claims of a complicated process, MFOL cannot identify a single member who had difficulty obtaining a no-fee voter ID.[4] SOF ¶¶ 29-31. MFOL also cannot identify any member who has been unable to register to vote because of H.B. 340 or is unable to pay a fee for the proper form of voter ID. SOF ¶¶ 32-33. And, MFOL has admitted that it will continue its voter registration drives and continue to acquire voter registration cards at its events. SOF ¶ 36.

In short, MFOL has a number of abstract concerns about the impacts of H.B. 124 and H.B. 340 on its purported mission, but none of them are supported by evidence or rise to the concrete and

[4] MFOL claims that its co-directors had trouble getting in contact with the DMV but in fact admitted that when no one answered the phone on a single attempt to contact the DMV, the co-directors were able to access the DMV online and find the necessary information on how to apply for a no-fee voter ID. SOF ¶ 35.

demonstrable injury to its activities that is required by law. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

There simply is no dispute, let alone a dispute as to a material fact, that Plaintiffs have failed to demonstrate organizational standing in this action.

B. Plaintiffs lack associational standing.

Plaintiffs have not, and cannot, show any valid basis to sue "as the representative of its members." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 342–43 (1977). Critically, plaintiffs seeking to establish associational standing must identify "at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association," *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.,* 517 U.S. 544, 555 (1996), and must identify this injured member with specific allegations. *Assoc. Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep't of Transp.,* 713 F.3d 1187, 1194 (9th Cir. 2013).

By their own admissions, Plaintiffs do not come close to this threshold requirement. The Alliance has over 11,000 members yet it cannot identify a single member harmed by the passage of H.B. 340. The Alliance cannot identify a single member who: has been unable to pay the fee for a proper form of voter ID (SOF ¶ 21); cannot afford the fee for a proper form of voter ID after passage of H.B. 340 (*Id.*); has been unable to register to vote for any reason because of H.B. 340 (SOF ¶ 23); did not vote because of the requirements to submit an affidavit in lieu of personal identification (SOF ¶ 24); let their driver's license expire and did not renew it (SOF ¶ 17); moved to Idaho shortly before the election with no Idaho driver's license (SOF ¶ 19); or even attempted to obtain a no-fee voter ID. SOF ¶ 25.

MFOL suffers from the same failure to meet its most basic requirement for associational standing—a member who suffered harm due to the passage of H.B. 124 or H.B. 340. MFOL has no evidence of any member who: cannot pay a fee for a proper form of non-student ID (SOF ¶ 33); has

been unable to register to vote because of H.B. 340 (SOF ¶ 32); has had difficulty obtaining a no-fee voter ID (SOF ¶ 29); has a driver's license in another state and was unable to obtain a no-fee voter ID (SOF ¶ 30); or had trouble getting to the DMV to get a no-fee voter ID. SOF ¶ 31. MFOL cannot even identify a single member who applied for a no-fee voter ID. SOF ¶ 34.

Indeed, MFOL is not even aware of any member who used their student ID to vote (SOF ¶ 37), which is unsurprising given that only 104 student IDs were recorded out of a total of 383,658 e-pollbook check-ins. SOF ¶ 38.

Put simply, there is not a single member identified by either Plaintiff who has been harmed by the passage of H.B. 124 or H.B. 340. Plaintiffs cannot demonstrate associational standing and the Secretary's motion for summary judgment should be granted.

II. Plaintiffs' First Claim fails as Idaho's voter ID laws comply with the Twenty-Sixth Amendment.

Nothing about Idaho's voter ID laws interferes with anyone's right to vote based on age. The Twenty-Sixth Amendment provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." U.S. CONST. amend. XXVI, § 1. Plaintiffs' claims here depend on whether H.B. 124 and H.B. 340 abridge the right to vote protected by the Twenty-Sixth Amendment or merely affect a tangential privilege: to vote by using student ID. *See Tully v. Okeson*, 977 F.3d 608, 613 (7th Cir. 2020).

The *Tully* court notes that the Supreme Court answered a question much like this in *McDonald v. Bd. Of Election Comm'rs of Chicago*, 394 U.S. 802 (1969). The *McDonald* Court rejected pretrial detainees' challenge to an absentee ballot law because the detainees failed to provide evidence that the challenged law "impact[ed their] ability to exercise the fundamental right to vote" and did not absolutely prohibit them from voting. 394 U.S. at 807, 808 n.7. Instead, the law "ma[de] voting more available to some groups." *Id.* at 807. Thus, the *McDonald* Court held that the right to vote was not at stake "but a limited right to receive absentee ballots." *Id.* Though *McDonald* was decided before

the Twenty-Sixth Amendment was enacted, the principal *Tully* relied on is clear: not every regulation on conditions and qualifications to vote is actually a hindrance on the right to vote but, as here, only affects a "limited right" that the Legislature can reasonably grant or deny.

Courts have dismissed similar claims to Plaintiffs'. *See Nashville Student Org. Comm. v. Hargett,* 155 F. Supp. 3d 749 (M.D. Tenn. 2015) (granting defendants' motion to dismiss). The *Nashville Student Organization* court noted that the very few state and federal district court cases in which a violation of the Twenty-Sixth Amendment was found have *only* involved state actions that completely block voters from voting, rather than a law impacting accessibility and convenience. *Nashville Student Org. Comm.,* 155 F. Supp. 3d at 757–58. In contrast to those cases, the district court explained that Tennessee's "Voter ID Law does not impose any unique burden on students" and "everyone is required to obtain some form of acceptable photo identification in order to vote." *Nashville Student Org. Comm.,* 155 F. Supp. 3d at 757. "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." *Id.* The court concluded by noting that while allowing student ID for voting might make it easier, it did not mean that failing to accept student ID abridged any student's right to vote. *Id.* Relying on the reasoning in *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008), the court held that plaintiffs' claim that removing student ID as a form of voter ID was not a violation of the Twenty-Sixth Amendment. *Id.*

The same result is warranted here. While Idaho has chosen to no longer accept student IDs to vote, it has made voting easier for everyone by creating a new form of no-fee, valid voter ID and allowing anyone to vote with an affidavit as to their identity. Indeed, the acceptable forms of photo ID under H.B. 124 and H.B. 340 are the same as those endorsed by the *Nashville Student Organization* court.

Plaintiffs allege, with no evidence, that H.B. 124 and H.B. 340 were motivated by a discriminatory purpose in response to the wave of political activism by young Idahoans because they

are far more likely to have student identification. Dkt. 20 ¶ 78. Plaintiffs also claim a discriminatory purpose because there has not been a single documented problem since Idaho began requiring voter identification or since Idaho enacted its current registration law. *Id.* Neither is accurate as the facts prove a valid and nondiscriminatory purpose.

The bills' respective statements of purpose identify the reason for their passage. H.B. 340's Statement of Purpose states: "[t]he purpose of the legislation is to clarify and create uniformity in voter registration requirements … 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." H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose, https://tinyurl.com/rkxdkmx7.

The purpose behind the bills is further supported by the Secretary and his staff who were deeply involved in the discussions surrounding these bills. The Secretary stated that the purpose of H.B. 340 was to realign the registration requirements for photo ID and residency documentation to bring greater uniformity to voter registration administration and ensure election integrity. SOF ¶ 11. The Secretary's staff member who largely drafted H.B. 340 confirmed that the intent of H.B. 340 was "to make registration uniform regardless of the method or mode of registering, so whether you're registering online or in person or by mail, it would have the same requirements." SOF ¶ 11. The Secretary's policy director agreed that the "intent of [H.B. 340] the entire time was to uniform the registration and voting process while also allowing for a free ID for people that needed one. That was [the Secretary's] priority." SOF ¶ 11.

The legislative purpose behind H.B. 124 is also amply supported. H.B. 124's Statement of Purpose states the bill was proposed because of "a lack of uniformity in the sophistication of student ID cards." H.B. 124, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose, https://tinyurl.com/48b3yaz4. This concern is justified by evidence from various Idaho high schools

and universities. At several private high schools in Idaho, a fee is required to apply for admission to the school, which would result in issuance of a student ID if the child is admitted and pays the required tuition. SOF ¶ 41. To enroll in a public high school, parents are required to provide a copy of the student's birth certificate, immunization records, and proof of residency in the district before the student can be admitted and issued a student ID. SOF ¶ 42. Some schools allow students to use preferred names or nicknames on their student IDs, while others require the student's name be listed as identified in the enrollment records. SOF ¶¶ 43-44.

Student IDs at Idaho's universities also vary in cost and requirements. Enrolled students at some universities are required to provide a government form of ID, such as a driver's license, passport, or birth certificate, before getting a student ID, but, like some high schools, are free to use their preferred name which may not be their legal name. SOF ¶ 45. In contrast, students at other universities must use their legal names on their student IDs. SOF ¶ 46. At least one university does not require students to present a copy of their government issued ID, so the student ID is not considered an official form of identification. SOF ¶ 49.

Ironically those Idaho universities which require government ID to acquire a student ID allow the use of a driver's license, state ID card, or passport to receive the ID—the same forms of ID required by H.B. 124 and H.B. 340. SOF ¶ 47. Thus, the students who have these student IDs will still be able to vote with no difficulty or extra steps required.

It is clear that the universities, colleges, and high schools issue student IDs for their own legitimate purposes, which does not include providing official identification for voting purposes. SOF ¶ 48. The schools' varying requirements and differences in standards for issuing student IDs are the exact stated reason for passage of H.B. 124 and H.B. 340; namely they were eliminated as a form of voter ID because of the lack of uniformity in the sophistication of student IDs. Student IDs are issued

by schools to students to provide access to their services and receive the scrutiny that each institution believes is appropriate for their own needs.

Accordingly, the purpose behind the voter ID laws was not discriminatory but was instead to create a uniform registration process and provide a no-fee voter ID to those in need. Even though the Plaintiffs' first claim is a challenge under the 26th Amendment, it is instructive that courts have consistently upheld these types of statutes against Equal Protection challenges. *Crawford*, 553 U.S. at 196–97 (safeguarding voter confidence); *Fla. St. Conf. of N.A.A.C.P. v. Browning*, 569 F. Supp. 2d 1237 (N.D. Fla. 2008) (same); *see also Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 128, 15 P.3d 1129, 1136 (2000) (state has a "compelling interest in protecting the integrity of the electoral process").

Further, even assuming the truth of Plaintiffs' allegation that young people are more likely to have student IDs, that does not prove that H.B. 124 or H.B. 340 "denie[s] or abridge[s]" the "right of citizens of the United States, who are eighteen years or age or older, to vote." U.S. Constitution, Amend. 26. In the 2022 general election, only 59 voters between the ages of 18-24 used a student ID to vote. SOF ¶ 39. The minor inconvenience of voters who used a student ID to vote in 2022 and 2023 who will now have to use a different form of identification has been specifically rejected by courts as a reason to overturn voter ID laws. *Crawford*, 553 U.S. at 198–200.

Finally, the fact that there has been no evidence of voter fraud in Idaho is of no moment. Courts have held election ID laws constitutional even in the absence of any fraud occurring in the state, finding that the historical examples of voter fraud are sufficient. *Crawford*, 553 U.S. at 194–96. You do not have to wait for your house to be burglarized before you lock your front door.

The Twenty-Sixth Amendment does not preclude states like Idaho from modifying election laws to address important interests such as ensuring election security. Thus, Plaintiff MFOL's members still have the fundamental right to vote, but they have never had a fundamental right to do it with a student ID. *Tully*, 977 F.3d. at 613 ("the fundamental right to vote means the ability to cast

a ballot, but not the right to do so in a voter's preferred manner . . .") The Court should therefore grant Defendant's motion and dismiss Plaintiffs' First Claim.

III. Plaintiffs' Second Claim fails as Idaho's voter ID and registration laws are not an unconstitutional poll tax.

Plaintiffs' second claim that Idaho's voter ID laws violate the Twenty-Fourth Amendment is contrary to controlling law. They allege the no-fee ID provided by H.B. 340 "imposes an unconstitutional poll tax … by requiring some voters to pay a fee for a state- or federal-issued identification card to vote." Dkt. 20 ¶ 85.

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

In *Gonzalez,* the plaintiffs were arguing exactly what Plaintiffs are arguing here – since some voters did not have the photo ID required under Arizona's state law, those voters would be required to spend money to obtain the required ID, which was purportedly a violation of the Twenty-Fourth Amendment and the Equal Protection Clause. *See Gonzalez,* 677 F.3d at 407–10; Dkt. 20 ¶ 85. The Ninth Circuit rejected both arguments, holding that any payments related to obtaining the required identification were not a poll tax. *Gonzalez,* 677 F.3d at 407–10. As the court noted, "[a]lthough obtaining the identification required [] may have a cost, it is neither a poll tax (that is, it is not a fee imposed on voters as a prerequisite for voting), nor is it a burden imposed on voters who refuse to pay a poll tax. *Cf. Harman*, 380 U.S. at 541–42. . ." *Id.* at 408. Accordingly, for the same reasons stated in *Gonzalez,* Defendant's photo ID requirement is not a poll tax.

If anything, H.B. 340 alleviates any financial burden on voting. It provides that all eligible voters who do not already possess identification that will be accepted for voting may qualify for an Idaho identification card without paying a fee. H.B. 340 makes identification available without fee and provides for documentation of residency that any eligible voter who has established residency would possess. This is to be contrasted with the hundreds, thousands, or even tens of thousands of dollars that a student must pay to be eligible to obtain a student ID from one of Idaho's colleges or universities. SOF ¶¶ 50, 51. This Court should therefore grant the Secretary's motion and dismiss Plaintiffs' Second Claim.

IV. Plaintiffs' Third Claim fails as Idaho's voter ID laws comply with Equal Protection guarantees.

Plaintiffs' third claim for relief is unsupported both in law and in fact and should therefore be dismissed.

A. Strict scrutiny is only required when the restrictions placed upon voters are severe, otherwise the more deferential *Anderson-Burdick* test applies.

Even though the right to vote is a fundamental right, that does not mean that all state laws that impact voting require strict scrutiny. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Instead, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown,* 415 U.S. 724, 730 (1974). The Constitution itself recognizes a state's interest in ensuring election integrity as it expressly authorizes states to regulate the "time, places and manner of holding elections." Art. I, § 4, U.S Const.; *see also Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 191 (1999) ("States … have considerable leeway to protect the integrity and reliability of … election processes generally.").

Generally, a state's important regulatory interests are accepted by the Court as sufficient justification for reasonable, non-discriminatory restrictions. *Anderson,* 460 U.S. at 788. As the Court

explained, "[t]o achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualifications of voters . . . or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote[.]" *Id.*

Thus, when evaluating a constitutional challenge to an election law under the Fourteenth Amendment, the United States Supreme Court has used a two-part analysis that considers (1) "the character and magnitude of the asserted injury to the rights protected" and (2) "the precise interests put forward by the State as justification[] for the burden imposed by its rule." *Anderson*, 460 U.S. at 786 n.7, 789. In applying this test, "the rigorousness of [the] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Burdick v. Takushi,* 504 U.S. 428, 434 (1992). It is only when a voter's rights under the First and Fourteenth Amendments "are subjected to 'severe' restrictions" that "the regulation must be narrowly drawn to advance a state interest of compelling importance." *Id.* (internal quotations and citation omitted). Stated differently, strict scrutiny is not an appropriate approach to review election law when the law does not severely burden the right to vote and does not invidiously discriminate against a suspect class. *See Short v. Brown*, 893 F.3d 671, 677–79 (9th Cir. 2018). Thus, the Supreme Court has uniformly dismissed invitations to require narrow tailoring for all election laws because it "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." *Burdick*, 504 U.S. at 433. "[W]hen a state election law provision imposes only reasonable, nondiscriminatory restrictions … the State's important regulatory interests are generally sufficient to justify the restrictions." *Burdick*, 504 U.S. at 434.

B. H.B. 340's requirement to show certain types of photo identification is not a severe burden.

The Ninth Circuit recently declined to apply strict scrutiny in rejecting a challenge to California's election laws. In *Short v. Brown,* the plaintiffs requested injunctive relief for the automatic

mailing of absentee ballots in all counties when California's law only required automatic mailing in specific counties. 893 F.3d at 677. In upholding the district court's denial of a preliminary injunction, the court explained that "strict scrutiny applies only where the burden on the fundamental right to vote is severe." *Id.* , citing *Pub. Integrity All., Inc. v. City of Tucson,* 836 F.3d 1019, 1024 (9th Cir. 2016). Thus, the Ninth Circuit instead applied the *Anderson-Burdick* doctrine and upheld the law because "the Constitution permits states to impose some burdens on voters through election regulations" to serve their legitimate interests in regulating elections. *Id.*

Similarly, the very limited burden H.B. 340 places on new voters is not a severe limitation. The U.S. Supreme Court has specifically held that the inconvenience of making a trip to the DMV to obtain proper identification "does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Crawford*, 553 U.S. at 198. It is especially relevant in Idaho as someone can walk into the DMV and walk out the same day with a temporary ID that is valid for voter registration and voting. SOF ¶ 12.

Because the burden on voters is de minimis, the proper test in reviewing the challenged law is not strict scrutiny, but the rational basis-hued end of the *Anderson-Burdick* sliding scale.

C. The character and magnitude of the asserted injury is minimal.

Anderson-Burdick first requires the Court to "consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. The State's burden in requiring photo identification is very low and falls squarely within the type of regulations intended by the United States Constitutions and approved by the U.S. Supreme Court. As discussed above, requiring a person to show one form of acceptable photo identification, which includes an available no-fee identification card, is extremely minimal. In fact, the burden is so minimal that Plaintiffs were unable to identify a single person who could not register to vote under H.B. 340's photo identification requirements. SOF

¶ 23, 32. Plaintiffs' argument that "the burdens it imposes on new voters are severe," Dkt. 20 ¶ 92, is meritless and belied by Plaintiffs' own testimony.

D. The interests supporting H.B. 340 are important and compelling.

Anderson-Burdick next requires the Court to "identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. Election security and preventing fraud are the primary and legitimate interests of voter ID laws. "One strong and entirely legitimate state interest is the prevention of fraud." *Brnovich v. Democratic Nat'l Comm.,* 594 U.S. ___, 141 S. Ct. 2321, 2340 (2021). "Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight," as well as "undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." *Id.* Voter ID requirements not only prevent fraud from occurring in the first place, but also provide officials with a means of verifying and further investigating allegations of fraud and wrongdoing that may later be asserted. *See Crawford*, 553 U.S. at 195–96. That is what Idaho has accomplished with its voter ID laws here.

The district court's ruling in *Browning* is instructive. 569 F.2d 1237. The plaintiffs in *Browning* alleged that a Florida voter registration statute that imposed a new verification process as a precondition for first-time registrants violated the Fourteenth Amendment's equal protection clause. Florida passed a law requiring new voter registration applicants with a requisite identification to place their identification number on their voter registration application. *Id.* at 1239. Election officials would then try to verify the authenticity of the registration application. *Id.* at 1240. If the applicant's number could not be verified, they would receive a notice letter and have to respond by showing their driver's license, identification card, or Social Security card to election officials. *Id.*

During a lengthy discussion about the constitutional right to vote, the court listed three valid state interests identified by *Crawford*, 553 U.S. 181 (1) election modernization, including the use of a

government-issued photo identification; (2) preventing voter fraud, even with no evidence of any such fraud occurring in the state; and (3) safeguarding voter confidence, which has "independent significance, because it encourages citizen participation in the democratic process." *Id.* at 192–197. An "electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Id.* at 194.

Based on the state's demonstration that the challenged law promoted important regulatory state interests of preventing voter fraud and its interest in orderly administration and accurate recordkeeping, the *Browning* court held that the state had a compelling interest in fair and honest elections, and the new voter registration requirements were not a violation of equal protection. 569 F.Supp.2d at 1251–52, 1258–59.

Just as in *Browning*, H.B. 340 promotes the important state interests of preventing voter fraud and election integrity. H.B. 340's Statement of Purpose clearly identifies these proper interests: "[t]he purpose of the legislation is to clarify and create uniformity in voter registration requirements … 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." H.B. 340, 67th Leg., Reg. Sess. (Idaho 2023), Statement of Purpose, https://tinyurl.com/rkxdkmx7. The Secretary confirmed this. SOF ¶ 11.

The purposes of H.B. 340 are legitimate, important, and compelling governmental interests.

E. The interests of H.B. 340 outweigh the minimal burdens of requiring photo identification to register to vote, making H.B. 340 constitutional.

The last step of the *Anderson-Burdick* test is to weigh the asserted injury against the State's interests. *Burdick*, 504 U.S. at 434; *Anderson*, 460 U.S. at 789. "[W]hen a state election law provision imposes only reasonable, nondiscriminatory restrictions … the State's important regulatory interests are generally sufficient to justify the restrictions." *Burdick*, 504 U.S. at 434; *Anderson,* 460 U.S. at 788.

As discussed above, H.B. 340 imposes only reasonable, nondiscriminatory restrictions. Thus, the State's interests, as identified above, justify the restrictions. Plaintiffs' claim really boils down to an argument that new voters should be exempted from showing any proof of identity because existing registered voters can vote by showing an affidavit in lieu of identification but new registrants are required to show photo identification in order to register to vote. *See* Dkt. 20 ¶¶ 88, 89. Plaintiffs ignore the fact that the affidavit in lieu of personal identification is available to existing registrants because they already provided the required identification when they registered. SOF ¶ 13.

Since registered voters already previously proved their identity with the required identification upon registering to vote, the affidavit is allowed as a method of proving that the person voting is the same person who previously registered to vote. The affidavit contains the signature of the person voting, which could be compared against the signature of the person who registered to vote if necessary to identify voter fraud. *See* Idaho Code § 34-1114 ("The voter shall sign the affidavit."). If an affidavit was allowed for new registrants, those new registrants would have done nothing to prove their identity through any of the acceptable forms of identification. Thus, allowing new registrants to use the affidavit would negate the very reason H.B. 340 was enacted – to standardize the registration process and ensure election integrity. Moreover, it would result in lesser election security by allowing new registrants to register to vote and to vote without having to prove their identity through an acceptable form of identification.

Accordingly, Plaintiffs have failed to show H.B. 340 violates equal protection and the Court should grant Defendant's motion and dismiss Plaintiff's Third Claim.

CONCLUSION

Therefore, the Court should grant the Secretary's motion for summary judgment and dismiss Plaintiffs' Complaint in its entirety.

DATED: November 17, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 17, 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 the following persons:

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