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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

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT [Dkt. 55]

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INTRODUCTION[1]

Plaintiffs' Motion for Partial Summary Judgment is directed only to their Second Claim that Idaho's new voting law requiring photo identification at a polling location is purportedly an unconstitutional poll tax. Controlling Ninth Circuit case law has held that requiring identification at the polls is not an unconstitutional poll tax under either the Twenty-Fourth Amendment or the Equal Protection Clause. In *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012), *aff'd sub nom. Arizona v. Inter Tribal Council of Ariz., Inc.,* 570 U.S. 1 (2013), an en banc panel of the Ninth Circuit held that requiring voters to provide identification at the polls is not a poll tax, even if some people had to pay for the identification, the same arguments Plaintiffs are making in their Motion.

Plaintiffs also lack standing, which should end the case before any other legal and factual analysis begins. Plaintiffs, recognizing that their deposition admissions warrant their dismissal for lack of standing, now present declarations alleging facts in direct contradiction to those earlier admissions. As explained in detail below, Plaintiffs' declarations are insufficient to overcome their earlier admissions under the sham affidavit rule. Under the admissible facts, Plaintiffs are organizations that claim that Idaho's streamlining of voter identification and creation of no-fee identification will make it harder for them to educate and 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. They also fail 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.

[1] Defendant has provided an extensive review of the previous and existing voter identification laws in its Motion for Summary Judgment previously filed and refers the Court to the Background section in that brief. Dkt. 54-1 at 2–4.

Accordingly, Plaintiffs have failed to meet both jurisdictional and substantive legal requirements and the Court should deny Plaintiffs' Motion.

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." FED. R. CIV. 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). While summary judgment is not "a disfavored procedural shortcut," *id.* at 327, it should be granted cautiously. *See Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 255 (1986). Thus, because summary judgment is a "drastic device," cutting off a party's right to present its case to a jury, the moving party bears a "heavy burden" of demonstrating the absence of any triable issue of material fact. *Ambat v. City & Cnty. of S.F.*, 757 F.3d 1017, 1031 (9th Cir. 2014).

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) (citation omitted); *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 v. Defenders of Wildlife,* 504 U.S. 555, 560–61 (1992)).

Plaintiffs have failed to show an injury and the Court should deny Plaintiffs' 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) (emphasis added) (quoting *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002) (citation omitted)).

The Alliance 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. Dkt. 54-2 at 3, ¶ 14. That alone ends the discussion regarding the Alliance's organizational standing—it has none. Despite the admission, the Alliance now claims that H.B. 340 will force the Alliance "to divert resources away from [other] activities and towards educating its member about the stricter voter registration requirements and helping them obtain acceptable photo identification to register to vote." Dkt. 55-2 ¶ 65 (citing to Dkt. 55-3, Declaration of Steve Landon at Ex. B, ¶ 10). However, this "new" revelation is inadmissible under the sham affidavit rule.

"'The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.'" *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir.

2012) (quoting *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998 (9th Cir. 2009) (citation omitted) (disregarding declaration relating to summary judgment motion)). The rule prevents a party from contradicting his deposition testimony by simply submitting a contrary affidavit which would substantially impact summary judgment as a means of screening out sham fact issues. *Id.*

The Alliance's sudden recollection of purported resources that have or will be diverted because of H.B. 340 is in direct contradiction with its deposition testimony and the Court should find that the Landon Declaration is disregarded where it contradicts the earlier deposition testimony.[2]

Even if the Alliance could demonstrate that it diverted resources because of the passage of H.B. 340, it has failed to prove that the passage of H.B. 340 frustrates its mission. Indeed, the Alliance admits that one of the ways it promotes its mission is through "other voter engagement and *education activities*." Dkt. 55-2 ¶¶ 64 (emphasis added). The Alliance acknowledged at deposition that the passage of H.B. 340 will require it to educate people on the bill to register them to vote. Dkt. 54-3, Ex. 3 at 35:15-22. Voter education is one of the Alliance's stated ways of advancing its mission. Accordingly, the passage of H.B. 340 does not frustrate its mission—it is part and parcel of its purpose under ordinary circumstances. *See Am. Diabetes Ass'n v. United States Dep't of the Army*, 938 F.3d 1147, 1155 (9th Cir. 2019).

The Alliance also now claims that H.B. 340 will require it to help its members obtain acceptable identification to register them to vote. Dkt. 55-1 at 8; Dkt. 55-2 ¶ 65. However, the Alliance admitted in its deposition that it has no evidence of any member who has been unable to register to vote because they lacked the identification required by H.B. 340. Dkt. 54-3, Ex. 3 at 27:22-25. This admission should control over the sham declaration.

[2] The Court must make a factual determination that the contradiction is a sham. *Yeager*, 693 F.3d at 1080.

Likewise, Plaintiff MFOL cannot show frustration of its mission. Just as with the Alliance, MFOL admits that it "conducts voter registration, turnout, and *education activities* focused on young voters." Dkt. 55-2 ¶ 44 (emphasis added). And like the Alliance, MFOL acknowledges that H.B. 340 will require it to educate its members. Defendant's Evidence in Support of Response ("Def. Resp. Evid.") at Ex. 1 at 27:10-22. Again, H.B. 340 promotes rather than frustrates MFOL's mission.

MFOL also fails to support its claims that its mission is frustrated with proper evidence. At deposition, MFOL admitted that it has no evidence of any member who: cannot pay a fee for a proper form of non-student ID (Dkt. 54-2 at 5, ¶ 33); has been unable to register to vote because of H.B. 340 (*Id.* at ¶ 32); has had difficulty obtaining a no-fee voter identification card (*Id.* at ¶ 29); has a driver's license in another state and was unable to obtain a no-fee voter identification card (*Id.* at ¶ 30); or had trouble getting to the DMV to get a no-fee voter identification card. *Id.* at ¶ 31. MFOL cannot even identify a single member who applied for a no-fee voter identification card. *Id.* at ¶ 34.

In its Motion, MFOL now claims the opposite: that it has members who lack acceptable identification under H.B. 340 and cannot obtain a no-fee identification, including those who have an out-of-state driver's license, who turn eighteen shortly before election day, or are unable to drive themselves to the DMV. Dkt. 55-1 at 7; Dkt. 55-2 ¶¶ 49, 51-53, 56 (citing to Declaration of Lucina Glynn, Dkt. 55-3, Ex. A, ¶¶ 6-9, 12, 14, 15).

The Court should disregard these assertions for three reasons. First, the Glynn Declaration is a sham affidavit that clearly and unambiguously contradicts previous party admissions in the Rule 30(b)(6) deposition without explanation. *Yeager*, 693 F.3d at 1080. MFOL was given notice of the content of the Rule 30(b)(6) deposition and was examined at length on each of the topics that the Glynn Declaration seeks to contradict.

Second, for this same reason the Glynn Declaration should be disregarded by the Court since MFOL has previously admitted in deposition that it has no evidence of any of those claims, and an

entity may not, at summary judgment, submit an affidavit "that conflicts with its Rule 30(b)(6) deposition or contains information that the Rule 30(b)(6) deponent professed not to know." 7 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE § 30.25[3](3d ed.2013), *see also Yeager*, 693 F.3d at 1080. Here, each of Glynn's representations in declaration directly contradicts her averment as the MFOL 30(b)(6) representative at deposition that MFOL did not know any of these members.

Last, the Court can safely discount as a general rule, "a self-serving declaration that states only conclusions and not facts that would be admissible evidence." *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495 (9th Cir. 2015). District courts properly disregard "self-serving and uncorroborated affidavit[s]" that do not "provide[any] indication how [the affiant] knows" the facts therein to be true. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1059, n.5 (9th Cir. 2002). The Glynn Declaration contradicts her deposition testimony without explaining why, or how the information in the declaration is known. The Court should set the declaration aside.

Plaintiffs' claims are not supported by any proper evidence and neither Plaintiffs' mission has been frustrated by the passage of H.B. 340. Accordingly, Plaintiffs do not have organizational standing.

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).

Plaintiffs' claims of having members with standing are all sham facts that are belied by their deposition admissions. MFOL admitted at deposition that it has no evidence of any members who used their student identification to vote. Dkt. 54-2 at 6, ¶ 37. MFOL also admitted that it had no evidence of any member who has been unable to register to vote because of H.B. 340 (Dkt. 54-2 at 5, ¶ 32) or even a single member who applied for a no-fee voter identification card. Dkt. 54-2 at 5, ¶ 34. MFOL also cannot identify a single member who has a driver's license in another state and was unable to obtain a no-fee voter identification card. Dkt. 54-2 at 5, ¶ 30.

Despite these admissions, MFOL now claims that it has members who relied on their student identification cards to register, will turn eighteen shortly before election day and will be unable to obtain a no-fee identification card in time for election day,[3] or have an out-of-state driver's license that will disqualify them from obtaining a no-fee identification card.[4] Dkt. 55-1 at 9-10. Again, these are sham allegations that should be disregarded.

The Alliance 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. 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 identification (Dkt. 54-2 at 4, ¶ 21); cannot afford the fee for a proper form of voter identification after passage of H.B. 340 (*Id.*); or has been unable to register to vote for any reason because of H.B. 340 (Dkt. 54-2 at 4, ¶ 23). Yet in their Motion, the Alliance now claims that it has members who will be forced to renew their driver's licenses to vote and who will be forced to pay for

[3] Even if this were not a sham allegation, anyone, including someone who turns eighteen on election day, who has not had a driver's license in the past six months can walk into the DMV and walk out the same day with a no-fee voter identification card receipt that is valid for registering to vote and for voting. Dkt. 54-3, Ex. 16, Decl. of Guillermo Velasco ¶ 3, Ex. C.

[4] Like with a no-fee identification, someone with an out-of-state driver's license can surrender their out-of-state driver's license at the DMV and walk out that same day with proper identification. Dkt. 54-3, Ex. 16, Decl. of Guillermo Velasco ¶ 3, Ex. C.

an identification card to register to vote. Dkt. 55-1 at 10–11. These allegations should be disregarded by the Court as they are directly contradictory to their deposition admissions.

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 Plaintiffs' Motion should be denied.

II. H.B. 340 Is Not An Unconstitutional Poll Tax Under the Twenty-Fourth Amendment.

Plaintiffs' Second Claim that Idaho's voter identification laws violate the Twenty-Fourth Amendment is contrary to controlling Ninth Circuit law. 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,* 677 F.3d at 407. 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 its Twenty-Fourth Amendment analysis, the court noted that the plaintiffs were arguing that "because some voters do not possess the identification required under Proposition 200, those voters will be required to spend money to obtain the requisite documentation, and that this payment is indirectly equivalent to a tax on the right to vote." *Gonzalez,* 677 F.3d at 407. That is the exact same argument Plaintiffs make here: "[free identification] cards are unavailable to voters who turn 18 shortly before an election or who no longer drive and would otherwise not renew their driver's licenses. Under House Bill 340, *such voters must pay Idaho or the federal government for an identification card if they wish to vote.*" Dkt. 20 at ¶ 85 (emphasis added).

The *Gonzalez* court rejected that argument, holding that, while obtaining the identification required under Arizona state law "may have a cost, it is neither a poll tax itself (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." *Gonzalez*, 677 F.3d at 407. In short, the *Gonzalez* court held that the identification required at the polls was not a poll tax, even if some voters have to pay to obtain that identification. *Id.* at 408.

The court noted that their conclusion was consistent with *Harman*, the only Supreme Court case considering the Twenty-Fourth Amendment's ban on poll taxes. *Id.* at 408. The court held that, under the reasoning in *Harman*, "[r]equiring voters to show identification at the polls does not constitute a poll tax… rather, under Proposition 200, *all* voters are required to present identification at the polls." *Id.* (emphasis added). Just as in *Gonzalez*, H.B. 340 requires *all* voters to present identification at the polls. The fact that some of those forms of identification may cost money does not make the law a poll tax.

Plaintiffs try to distinguish *Gonzalez* by arguing that payment for an identification is a per se poll tax, but a required payment for documents that are necessary to get an identification are not. Dkt. 55-1 at 16–17. This hairsplitting ignores the rationale of *Gonzales* as well as *Harman* and *Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966). As the Ninth Circuit noted in discussing both cases, unconstitutional poll taxes are a prohibition on forcing a voter to pay directly to vote or else be subjected to unclear and burdensome processes.[5] *Gonzalez*, 677 F.3d at 408. Put succinctly, "[r]equiring voters to show identification at the polls does not constitute a tax." *Id.* Nor is the requirement that voters show identification to register and vote *an alternative* to paying a tax. *Id.* Rather, under H.B. 340 "all voters are required to present identification at the polls" and when registering. Plaintiffs' failure to grapple with this reasoning is fatal to their Motion.

[5] It is noteworthy that the *Harman* Court said at the outset that it was not holding that the residency certificate process at issue *itself* was not —without the threat of a poll tax in the alternative— unconstitutional. *Harman*, 380 U.S. at 538.

Accordingly, for the same reasons stated in *Gonzalez*, the State of Idaho's photo identification requirement is not a poll tax.

III. H.B. 340 Is Not An Unconstitutional Poll Tax Under the Equal Protection Clause.

After holding that Arizona's law requiring identification at the polls, even if it cost money to obtain the identification, was not a poll tax under the Twenty-Fourth Amendment, the *Gonzalez* court also held that the law was not a poll tax under the Equal Protection Clause. *Gonzalez*, 677 F.3d at 408. The court noted that the Arizona polling identification law fell outside of *Harper's* rule that "restrictions on the right to vote are invidious if they are unrelated to voter qualifications." *Id.* at 409. Unlike in *Harper* where a state law improperly levied an annual $1.50 poll tax on individuals exercising their right to vote, the *Gonzalez* court held that "[r]equiring voters to provide documents proving their identity is not an invidious classification based on impermissible standards of wealth or affluence, ***even if some individuals have to pay to obtain the documents***. On the contrary, such a requirement falls squarely within the state's power to fix core voter qualifications." *Id.* (emphasis added).

The *Gonzalez* court then dismissed the plaintiffs' argument that *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) extended *Harper's* holding to make the fees required to obtain identification documents per se invidiously discriminatory. *Gonzalez*, 677 F.3d at 409. The court noted that the lead opinion in *Crawford* upheld Indiana's state requirement that a citizen voting in person must present a photo identification card issued by the government, while acknowledging that obtaining identification documents may require payment of a fee. *Id.* at 410.

Plaintiffs claim that *Gonzalez* does not apply here because the challenge to the law in *Gonzalez* focused on the burden on voters to obtain the underlying documents to acquire voter identification

cards. Dkt. 55-1 at 16. This is a distinction without a difference as the court held that since "*any* payment associated with obtaining the documents required under Proposition 200's polling place provision is related to the state's legitimate interest in assessing the eligibility and qualifications of voters, the photo identification requirement is not an invidious restriction under *Harper*; and the burden is minimal under *Crawford*. As such, the polling place provision does not violate the Fourteenth Amendment's Equal Protection Clause." *Id.* at 410 (emphasis added).

The *Gonzalez* court's holding is equally applicable to Idaho's requirement that some form of photo identification be provided at a polling location, even if that identification costs money. Regardless of whether the payment is for the photo identification or other documents required to prove identification, the lack of substantial burden on the voter is the same.

Plaintiffs also attempt to distinguish *Gonzalez* by arguing that the voter requirements in Arizona are "more flexible" than those allowed under H.B. 340. Of course, that is not the holding in *Gonzalez*. As noted above, the *Gonzalez* court held that any payment for obtaining voter identification documents was not an Equal Protection violation. The only mention by the court of the types of identification documents was in relation to its acknowledgment that the types of documents required in Arizona at a polling place were the same that the *Crawford* court noted were required to obtain a free identification in Indiana; namely, a birth certificate, certificate of naturalization, veterans photo identification, military photo identification, or U.S. passport. *Id.* Those documents are encompassed in the requirements for obtaining a free voting identification card in Idaho. Idaho Code § 49-2444(6), (22) (birth certificate or government-issued document required for free photo identification).

Plaintiffs' attempt to distinguish *Gonzalez* by claiming that voters in Arizona without a form of identification can vote early which did not require voters to show any identification also fails. Dkt. 55-1 at 17. First, this observation is *dicta* that had no bearing on the court's holding that requiring payment for voter identification documents is not a poll tax as a matter of law. Second, Arizona's law

allowed for early voting without photo identification because the elections officer was required to compare the signature on the ballot envelope with the voter's signature on file, which is itself a means of identification allowing the elections officer to ensure that the early voter was the actual registered voter. ARIZ. REV. STAT. § 16-550(A). This is similar to Idaho's affidavit in lieu of personal identification, which also allows for registered voters to sign an affidavit at the polls if they do not possess the required voter identification because they have previously provided that information when they registered to vote. Idaho Code §§ 34-411, 34-1114. Allowing voters to aver their identity *before* signatures and other documents exist as a baseline defeats the purpose of voter identification law and is not constitutionally necessary.

Plaintiffs finally claim that *Gonzalez* is not applicable here because Idaho voters who are not eligible for the free voter identification have to pay a fee directly to the state or forgo the right to vote. Dkt. 55-1 at 17. However, that is precisely the holding of *Gonzalez,* which held that requiring voters to provide identification to vote is not a poll tax, "*even if* some individuals have to pay to obtain the documents." *Gonzalez,* 677 F.3d at 409 (emphasis added). Moreover, a birth certificate or passport, the identification documents that were validated by the *Gonzalez* court, require payment to the state or federal government, just as with the photo identifications under H.B. 340 that require a payment.

Accordingly, *Gonzalez* is controlling here and H.B. 340's photo identification requirement is not a poll tax.[6]

[6] Other circuits are in accord. *See Veasey v. Abbott*, 830 F.3d 216, 266 (5th Cir. 2016) (fees voters born outside of state to obtain identification documents and photo identification requirement at polls were not poll taxes); *Jones v. Gov. of Fla.*, 975 F.3d 1016, 1037 (11th Cir. 2020) (court fees and costs imposed on felons not taxes under Twenty-Fourth Amendment).

IV. Plaintiffs' Additional Arguments Are Irrelevant And Not Supported By The Facts.

The remaining arguments Plaintiffs raise in their Motion for Partial Summary Judgment are meritless. First, Plaintiffs mischaracterize the record when they claim that the Secretary of State, the Idaho Transportation Department, sheriffs, and legislators understood that identification cards impose a cost, and that H.B. 340's identification requirement could be understood as imposing a poll tax. Dkt. 55-1 at 14. In fact, Plaintiffs' own evidence shows that the cited statements relate to the cost to the state, not the voters. Dkt. 55-2 ¶¶ 39–40. Moreover, Plaintiffs' claim that H.B. 340's identification requirement could be understood as a poll tax is contrary to controlling law but also not a proper reference to the record. The evidence Plaintiffs cite in support of their claim comes from two emails in early 2022 (well before H.B. 340 was even discussed by the legislature) that deal with completely different bills submitted by members no longer in the legislature. Dkt. 55-2 ¶ 23, Dkt. 55-3, Ex. J (2/14/22 email chain from county clerk discussing Representative Moon's RS 29354 from the 2022 legislative session); Dkt. 55-2 ¶ 24, Dkt. 55-3, Ex. K (3/17/22 email chain discussing HB 761 from the 2022 legislative session). Put simply, a single county clerk's opinion about a different bill that did not pass and is not the law is not relevant, nor is a messaging concern about a bill that never became law made in financial discussions with another executive department.

Second, Plaintiffs' additional arguments are not supported by the proper facts. Plaintiffs speculate that "swaths of eligible voters are excluded from obtaining no-fee identification cards," (Dkt. 55-1 at 14) but fail to present any evidence to support that statement. *See S. Calif. Gas Co. v. City of Santa Ana,* 336 F.3d 885, 888 (9th Cir. 2003) (plaintiff moving for summary judgment must establish "beyond controversy every essential element of its" claim).

Plaintiffs claim that the following voters would be excluded from no-fee identification cards: (1) voters with an active driver's license that expires within six months before an election but who no

longer drive and would otherwise not renew their driver's licenses; (2) voters who move to Idaho shortly before election day and have not yet surrendered their still-valid out-of-state driver's license in exchange for an Idaho driver's license; and (3) voters who turn eighteen on or shortly before election day and are unable to obtain an identification card in time for election day. Dkt. 55-1 at 14. While it may be true that this hypothetical group of people may be unable to obtain a no-fee identification card, Plaintiffs have failed to present evidence of the actual existence of this "swath" of eligible voters who fall into one of those three categories. Plaintiffs have failed to present evidence of any actual potential voter who falls within one of these categories. Further, they have failed to identify a potential voter who falls within one of those categories *and* who lacks another form of acceptable identification *and* who is unable to obtain another acceptable form of identification.

Indeed, Plaintiffs have admitted that they do not have any evidence of anyone who falls into any of the categories of the hypothetical group of eligible voters who they claim are not eligible for a no-fee voter identification card.[7] Dkt. 54-3, Ex. 3 at 27:22-28:4, 33:10-23; Ex. 4 at 46:23-47:1, 49:25-50:8, 51:14-17. Moreover, even assuming such individuals exist, while the Plaintiffs' first two categories would be excluded from the no-fee identification, both of those categories have existing driver's licenses that they paid for and could obtain an Idaho driver's license or identification card for a fee that the *Gonzalez* court held was not a poll tax.[8] The third category could easily register to vote either by pre-registering before their 18th birthday or walking into the DMV on their birthday and walking out the same day with a free receipt for a voter identification card, which is an acceptable

[7] Plaintiffs do not even have evidence of any other of their members attempting to obtain, or having any difficulty obtaining, a no-fee voter identification card. Dkt. 54-3 at Ex. 3 at 43:20-22; *Id.,* Ex. 4 at 42:9-12, 46:23-47:1.

[8] Plaintiffs' claim—that obtaining an Idaho driver's license for someone moving from out of state is burdensome because they have to pass a written test—is a red herring. Everyone who obtains an Idaho driver's license has to pass a written test, so the burden is equal on everyone. Dkt. 55-1 at 15; Idaho Code § 49-313. Moreover, the requirement for passing a test to obtain a driver's license has never been held to be a severe enough burden that it violates Equal Protection or is considered a poll tax.

form of identification for registering to vote and voting, even if it was on election day.[9] Idaho Code § 34-402; Dkt. 54-3, Ex. 16, Decl. of Guillermo Velasco ¶ 3, Ex. C.

Plaintiffs then try to impugn the motives behind limits on issuing no-fee identification by claiming that any limits were motivated solely by the revenue impact of these cards, to the detriment of seniors. Dkt. 55-1 at 14-15. However, the evidence consistently demonstrates that the Secretary of State repeatedly advocated for the no-fee identification card to ensure that HB 340 increases access to the polls. Def. Resp. Evid. at Ex. 2 at 89:16-90:15. The Secretary of State only acknowledged that revenue concerns were "probably one consideration" of the no-fee identification requirements, but then offered to reimburse sheriffs' departments out of his own budget for the cost of issuing the no-fee identification card. Def. Resp. Evid., Ex. 2 at 103:21-104:1. Again, the primary motivation for the Secretary's insistence on the no-fee identification and H.B. 340 in general is increased access, and Plaintiffs have made no showing that any of the requirements are somehow invidious. Def. Resp. Evid. at Ex. 2 at 89:16-90:15. This has been recognized by courts as a valid state power to fix core voter qualifications. *See Gonzalez*, 677 F.3d at 409; *Crawford*, 553 U.S. at 189; *Anderson v. Celebrezze*, 460 U.S. 780, 788, n.9 (1983) ("We have upheld evenhanded restrictions that protect the integrity and reliability of the electoral process itself.").

In sum, even assuming Plaintiffs' arguments have any relevance to the legal issue of whether H.B. 340 constitutes a poll tax, none of the factual issues Plaintiffs raise alter the fact that H.B. 340's identification requirements are valid exercises of state control over the integrity of its election process. H.B. 340 is, accordingly, not a poll tax.

CONCLUSION

[9] This negates Plaintiffs' claim that voters who turn eighteen on or near election day may have a narrow window to obtain a no-fee card which may not arrive in the mail in time. Dkt. 55-1 at 15.

Plaintiffs cannot overcome their initial hurdle of establishing standing. Plaintiffs have no organizational standing as they cannot prove both a diversion of their resources and a frustration of their mission. The Alliance has admitted that none of its resources were diverted due to H.B. 340. Moreover, both Plaintiffs acknowledge that Idaho's new voter identification laws will require them to educate their members on election law, which is one of their stated ways of advancing their respective missions. Plaintiffs also have no associational standing as they have admitted they cannot identify a single member harmed by the new voter identification laws.

Even if Plaintiffs could establish standing, their claim that H.B. 340 is a poll tax is wrong as a matter of law. *Gonzalez* unequivocally held that requiring a voter to provide identification at the polls, even if it costs the voter money, is not a poll tax under either the Twenty-Fourth Amendment or the Equal Protection Clause of the Fourth Amendment.

Therefore, the Court should deny Plaintiffs' motion for summary judgment on its Second Claim that H.B. 340's identification requirements are an unconstitutional poll tax.

DATED: December 8, 2023

Respectfully submitted,

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 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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