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\*Pro hac vice application pending*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BABE VOTE and LEAGUE OF WOMEN  
VOTERS OF IDAHO,

*Plaintiffs,*

v.

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

*Defendant.*

Case No. CV01-23-04534

**PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

COME NOW Plaintiffs BABE VOTE and League of Women Voters of Idaho (“Plaintiffs”), by and through their counsel of record, the firm of Perkins Coie LLP, and pursuant to Idaho Rule of Civil Procedure 65(a) hereby move this Court for a Preliminary Injunction, on the grounds and for the reasons that great or irreparable injury, loss, and damage will result to Plaintiffs unless the Defendant, Secretary of State Phil McGrane, his agents or anyone acting at or under his direction and control, is enjoined from any and all actions implementing, relying on, or otherwise enforcing §§ 2–3 and 5 of House Bill 340 pending resolution of this matter.

This Motion is supported by the Memorandum in Support of Motion for Preliminary Injunction and the Declarations of Kevin J. Hamilton, Kendal Shaber, Yvonne Sandmire, Elizabeth McBride, and Michael C. Herron filed concurrently with this Motion.

DATED: July 6, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2023, I served the foregoing electronically through the iCourt E-File System, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service.

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Secretary of State,

*Defendant.*

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**PLAINTIFFS' MEMORANDUM  
IN SUPPORT OF MOTION  
FOR PRELIMINARY  
INJUNCTION**

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. RELEVANT FACTS .....	2
A. Idaho’s electoral system, which has long included the use of student IDs, is safe and secure. ....	2
B. The Voting Restrictions address no actual problem and serve no legitimate state interest. ....	3
C. The Voting Restrictions make it harder to vote for young voters and other vulnerable communities. ....	6
III. RELIEF REQUESTED.....	8
IV. LEGAL STANDARD FOR INJUNCTIVE RELIEF .....	8
V. ARGUMENT .....	9
A. The state cannot demonstrate that the Challenged Provisions are “necessary” to promote any “compelling” state interest.....	9
B. Plaintiffs will suffer irreparable injury. ....	12
1. BABE VOTE will suffer irreparable injury.....	14
2. The League will suffer irreparable injury. ....	15
C. The equities favor an injunction because it would preserve a voter registration system that has served Idaho well. ....	17
VI. CONCLUSION.....	18

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011) .....	17
<i>Ass’n of Comm. Orgs. for Reform Now v. Cox</i> , No. 106-CV-1891, 2006 WL 6866680 (N.D. Ga. Sept. 28, 2006).....	13
<i>Common Cause Ind. v. Lawson</i> , 937 F.3d 944 (7th Cir. 2019) .....	14
<i>Conley v. Whittlesey</i> , 133 Idaho 265 (1999).....	9
<i>Ind. State Conf. of N.A.A.C.P. v. Lawson</i> , 481 F. Supp. 3d 826 (S.D. Ind. 2020), <i>aff’d in part and vacated in part on other grounds and remanded sub nom. League of Women Voters of Ind. v. Sullivan</i> , 5 F.4th 714 (7th Cir. 2021) .....	13
<i>League of Women Voters of Fla., Inc. v. Detzner</i> , 314 F. Supp. 3d 1205 (N.D. Fla. 2018).....	13
<i>League of Women Voters of Fla. v. Browning</i> , 863 F. Supp. 2d 1155 (N.D. Fla. 2012).....	13, 17
<i>League of Women Voters of Mo. v. Ashcroft</i> , 336 F. Supp. 3d 998 (W.D. Mo. 2018) .....	13, 17
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014) .....	12, 13
<i>League of Women Voters of U.S. v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016).....	13, 17
<i>McCann v. McCann</i> , 152 Idaho 809 (2012).....	12
<i>Mont. Democratic Party v. Jacobsen</i> , 518 P.3d 58 (Mont. 2022).....	10, 11
<i>Mont. Democratic Party v. Jacobsen</i> , No. DV 21-0451, 2022 WL 16735253 (Mont. Dist. Ct. Sept. 30, 2022), <i>aff’d</i> , 518 P.3d 58 (Mont. 2022).....	4, 6, 11

**TABLE OF AUTHORITIES (continued)**

	<b>Page(s)</b>
<i>Munden v. Bannock County</i> , 169 Idaho 818 (2022).....	17
<i>N.C. State Conf. of the N.A.A.C.P. v. N.C. State Bd. of Elections</i> , No. 16-cv-1274, 2016 WL 6581284 (M.D.N.C. Nov. 4, 2016) .....	13
<i>Nat’l Coalition on Black Civic Participation v. Wohl</i> , 498 F. Supp. 3d 457 (S.D.N.Y. 2020).....	14
<i>Newlan v. State</i> , 96 Idaho 711 (1975).....	9
<i>Planned Parenthood Great N.W. v. State</i> , Nos. 49615, 49817, 49899, 2022 WL 3335696 (Idaho Aug. 12, 2022) .....	9
<i>Project Vote, Inc. v. Kemp</i> , 208 F. Supp. 3d 1320 (N.D. Ga. 2016).....	13
<i>Tex. State LULAC v. Elfant</i> , 52 F.4th 248 (5th Cir. 2022) .....	4
<i>Tex. State LULAC v. Elfant</i> , 629 F. Supp. 3d 527 (W.D. Tex. 2022).....	4
<i>Van Valkenburgh v. Citizens for Term Limits</i> , 135 Idaho 121 (2000).....	9, 10, 11
<i>Veasey v. Abbott</i> , 830 F.3d 216 (5th Cir. 2016) .....	6
<i>Winter v. Nat’l Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	17
<i>Wolford v. Montee</i> , 161 Idaho 432 (2016).....	17
 <b>RULES</b>	
Idaho Rule of Civil Procedure 65 .....	2, 9



**TABLE OF AUTHORITIES (continued)**

**Page(s)**

**OTHER AUTHORITIES**

House Bill 124 ..... 1

House Bill 340 ..... 1

## I. INTRODUCTION

In 2020 and 2022, Idaho saw a dramatic surge of participation and engagement by young voters. Rather than applaud and celebrate these new voters, the Idaho legislature instead chose to *target them* by adopting onerous new restrictions plainly designed to burden their ability to participate in future elections. Specifically, the legislature adopted two statutes that eliminated students' long-standing ability to use a student ID when registering and at the polls. And it did so even though the Secretary himself told the legislature that there had been no fraud or other issues associated with student IDs.

House Bill 124 (“HB 124”) and House Bill 340 (“HB 340”) (collectively, the “Voting Restrictions”) unconstitutionally burden the right to vote because they make it harder for students to vote and for students and other disfavored groups to register to vote, all without furthering any legitimate, let alone compelling, state interest. Indeed, the purported interest the Secretary identifies to this Court—that the Voting Restrictions serve the state interest of “protecting election security”—defies his earlier statements to the legislature that “Idaho’s elections are secure” and that there have not been any “instances of students trying to commit voter fraud.” Def.’s Mem. in Support of Mot. for J. on Pleadings & for Summ. J. at 13; Hamilton Decl., Ex. 1.

The practical effect of these Voting Restrictions is to heavily burden the ability of student voters to both register to vote and cast their votes by eliminating from use a method of identification these voters are most likely to possess. This is surely no mistake. The partisan-backed Voting Restrictions were passed in response to an increased wave of voter participation among these very demographics during the 2020 and 2022 elections, and they are part and parcel of similar coordinated efforts across the country specifically targeting student voting for partisan purposes. HB 340 imposes additional unnecessary barriers to the voter registration process, defying Idaho’s constitutional guarantees of the right to vote and equal protection without offering any benefit to the state.

Plaintiffs BABE VOTE and the League of Women Voters of Idaho (the “League”), two organizations that advocate for increased voting turnout generally and particularly seek to empower youth voting in addition to registering new and young voters throughout the state, seek injunctive relief to prevent the irreparable injury to the right to vote and their organizational goals if §§ 2–3 and 5 of HB 340 (the “Challenged Provisions”) are not enjoined.

Accordingly, Plaintiffs BABE VOTE and the League seek a preliminary injunction pursuant to Idaho Rule of Civil Procedure 65, enjoining the enforcement of the Voting Restrictions. This Memorandum is supported by the Declarations of Kevin J. Hamilton (“Hamilton Decl.”), Kendal Shaber (“Shaber Decl.”), Yvonne Sandmire (“Sandmire Decl.”), Elizabeth McBride (“McBride Decl.”), and Michael C. Herron (“Herron Decl.”), filed concurrently with this memorandum.

## II. RELEVANT FACTS

### A. **Idaho’s electoral system, which has long included the use of student IDs, is safe and secure.**

The Secretary testified before the legislature early this year, affirming without qualification that Idaho had a “great system” for voting, and frankly admitted that there were *no* instances of voter fraud associated with the use of student IDs. *See* Hamilton Decl., Ex. 1.

Since 2010, Idaho’s electoral system has included a voter ID requirement. Prior to the adoption of HB 124, voters were able to vote in person by presenting one of several forms of identification at the polls, including student IDs. Idaho Code § 34-1113 (2017).

Moreover, before HB 340, would-be voters in Idaho could show a student ID in connection with registering to vote on election day. *Id.* § 34-408-A (2016). Voters registering in person before election day were not required to show any identification, *id.* § 34-407, and voters registering by mail could show “current and valid photo identification,” including a “current student identification card,” *id.* § 34-410 (2003).

In elections under these longstanding registration and voter ID regimes, voter fraud in Idaho was virtually non-existent because, according to the Secretary, the “vigilance” of Idaho’s

existing fraud prevention measures “ensured [the] system is safe.” *See* Hamilton Decl., Ex. 1. Indeed, the Secretary himself admitted during legislative hearings that there “isn’t rampant voter fraud” in Idaho, and there have been no instances of voter fraud linked to the use of student IDs to vote in Idaho. *Id.* The Secretary’s testimony is consistent with the data: according to the Heritage Foundation’s database of voter fraud—a conservative project that uses an expansive definition of “fraud”—there have only been 6 instances of voter fraud in Idaho between 2010 and 2023, *none* of which appear related to student IDs. *See id.*, Ex. 2.

Meanwhile, Idaho’s young people, who have long lagged behind in voter participation, recently began to turn out in greater numbers, thanks in part to the efforts of BABE VOTE and the League. In 2016, only 38% of 18–29 year-old Idahoans cast ballots in the general election, but in 2020, that number jumped by more than 25%, and nearly half of young voters voted. *Id.*, Ex. 3. Registration also spiked in recent years among younger voters, particularly among the youngest eligible Idahoans. Registration among Idahoans aged 18–24 increased 16% from 2018–2022—among the top ten increases in the country—and it increased **81%** among Idahoans aged 18 to 19, by far the biggest jump among all states. *Id.*, Ex. 4.

**B. The Voting Restrictions address no actual problem and serve no legitimate state interest.**

Rather than celebrate this historic increase in young voter participation, the Idaho legislature immediately set out to undermine this positive trend, passing two partisan-backed bills to restrict student voting rights. Neither bill responded to actual problems with the use of student IDs to register or vote—because none had been identified. To the contrary, the Secretary testified to the legislature that he was unaware of any instances of students trying to commit voter fraud. Instead, both bills were, by all appearances, part of a coordinated partisan effort to restrict student voting—a partisan backlash among certain politicians against increased student participation in politics. *See, e.g.*, Hamilton Decl., Exs. 5–8. Idaho was hardly alone. Republican-controlled legislatures across the country have used the false specter of voter fraud to try make it harder for young people to vote. Some passed such laws, only to see them struck down as unconstitutional.

In Montana, for example, the legislature passed a bill downgrading student IDs from primary identification at the polls—a law struck down as unconstitutional under the Montana Constitution’s equal protection guarantees in 2022. Hamilton Decl., Ex. 9 (Findings of Fact, Conclusions of Law, and Order at \*36, 44–48, \*77–78, *Mont. Democratic Party v. Jacobsen*, No. DV 21-0451, 2022 WL 16735253 (Mont. Dist. Ct. Sept. 30, 2022), *aff’d*, 518 P.3d 58 (Mont. 2022)). And Texas imposed strict residency requirements on voters, a move held to unlawfully burden college students. *Tex. State LULAC v. Elfant*, 629 F. Supp. 3d 527 (W.D. Tex. 2022).<sup>1</sup> These recent efforts are consistent with long-standing strategies to discourage student voting or to exclude students from what Republican lawmakers define as the “legitimate” electorate. Hamilton Decl., Ex. 10.

The first bill passed by Idaho’s legislature, HB 124, was a surgical attack on student voters, eliminating student IDs—and only student IDs—from the list of acceptable IDs that could be shown at the polls. *See* 2023 Idaho H.B. 124 § 1.

The second bill, HB 340, continued the assault on student voters by removing student IDs from the registration process, but it also swept more broadly to make registration harder for other citizens who already encounter additional barriers to the franchise, including voters with disabilities, newly relocated voters, voters with disabilities in residential care facilities and new citizens. *See* 2023 Idaho H.B. 340 §§ 2–5.

Whereas registrants previously had a variety of identification options for registering to vote, HB 340 limits would-be registrants to less than a handful of expressly enumerated forms of current identification to establish identity and residency.

Section 5 of HB 340 requires registrants to show one of four expressly enumerated forms of current photo ID:

- a) A current driver’s license or identification card issued pursuant to title 49, Idaho Code;

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<sup>1</sup> The case was overturned on appeal on standing grounds. *Tex. State LULAC v. Elfant*, 52 F.4th 248 (5th Cir. 2022).

- b) A current passport or other identification card issued by an agency of the United States government;
- c) A current tribal identification card; or
- d) A current license or enhanced license to carry concealed weapons issued under section 18-3302, Idaho Code, or section 18-3302K, Idaho Code.

2023 Idaho H.B. 340 § 5.

Moreover, unless a voter has an Idaho driver's license or Idaho state ID card, tribal ID card, or Idaho concealed carry license that displays their "current Idaho physical address," they must also show another document displaying their "name and current Idaho physical address" as proof of residency:

- ii. A current proof of insurance;
- iii. A deed of trust, mortgage, or lease or rental agreement;
- iv. A property tax assessment, bill, or receipt;
- v. A utility bill, excluding a cellular telephone bill;
- vi. A bank or credit card statement;
- vii. A paystub, paycheck, or government-issued check;
- viii. An intake document from a residential care or assisted living facility licensed pursuant to the provisions of chapter 33, title 39, Idaho Code;
- ix. Enrollment papers issued for the current school year by a high school or an accredited institution of higher education located within the state of Idaho; or
- x. A communication on letterhead from a public or private social service agency registered with the secretary of state verifying the applicant is homeless and attesting to the applicant's residence for registration purposes.

*Id.*

Through these Voting Restrictions, the legislature has transformed Idaho's long-standing and well-functioning election system by making voting and registration less accessible and more difficult, particularly for new residents of Idaho, young voters, voters with disabilities, and students

whose school IDs are no longer sufficient for voting or registration. These unneeded changes are pure partisan maneuvers against disfavored subgroups that serve no legitimate, let alone compelling, state purpose. These groups will bear the burden of the discriminate impact of the Voting Restrictions and their changes to the long-standing voting and voting registration requirements in Idaho.

**C. The Voting Restrictions make it harder to vote for young voters and other vulnerable communities.**

The effect of the Voting Restrictions will be felt most acutely by those they target: students, along with others for whom obtaining the required forms of identification will be more difficult.

The Voting Restrictions unnecessarily impose additional costs on the ability to vote and register to vote, with a predictable consequence: some people who otherwise would have voted will not. *See* Herron Decl. ¶¶ 3, 15. This phenomenon has been known for over 60 years as the “calculus of voting”—it is widely embraced as a standard analytical tool in the scholarly literature, and it has been recognized by multiple courts. Herron Decl. ¶ 3; *Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (recognizing it is a “well-established formula” that in assessing an individual’s likelihood of voting, “increasing the cost of voting decreases voter turnout.”); *see also Montana Democratic Party*, 2022 WL 16735253, at \*19, \*20 (acknowledging “credible” and “well-supported” expert testimony stating: “as the costs of voting increase, the likelihood that an individual votes decreases.”). The calculus of voting framework holds that an individual will turn out to vote if the benefits of doing so outweigh the costs and will not vote otherwise, and increased costs tend to result in lower turnout. Herron Decl. ¶ 3. Costs of voting include, among other things, procuring the requisite form of identification and gathering information that specifies how, where, and when to vote. *Id.* ¶ 6. Moreover, changes in election laws can require voters to re-educate themselves on the procedures for registering to vote and vote, and this re-education is costly in and of itself. *Id.* When the number of accepted forms of identification for either registration or voting decreases, the cost of voting correspondingly increases. *Id.* ¶ 9. Since HB

340 has removed a type of identification from the types of identification that were previously sufficient in Idaho for the purposes of registering to vote, it increases the costs of voting and is therefore expected to reduce voter turnout in Idaho. *Id.* ¶ 15.

Moreover, HB 340 will hit certain groups harder. Individuals who have disproportionately less access to forms of required identification are disproportionately burdened by the costs associated with acquiring identification. *Id.* ¶¶ 16–17. Eliminating the use of student IDs is a cost of voting that will, by definition, primarily affect students. And students from other states attending school in Idaho are particularly vulnerable because if they still have a valid driver’s license from their prior home state, they will be excluded from qualifying for HB 340’s no-fee ID, and if no longer permitted to use their student IDs to register, those without other qualifying forms of ID will be left with no way to register to vote. 2023 Idaho H.B. 340 § 8; Herron Decl. ¶ 17. This is complete disenfranchisement.

But the Voting Restrictions will affect more than just students. For new residents, or new drivers, it can often take many months to even schedule an appointment at the DMV and take a driving test. *See, e.g.*, Shaber Decl. ¶ 12. Where applicable, this timetable is only further compounded by the need to have HB 340’s no-fee voter ID (discussed further below) issued in time for individuals to register to vote. New citizens without a current and valid form of identification as enumerated in Section 5 of HB 340 would also be vulnerable in their ability to register to vote. *Id.* ¶ 7. With the aid of third-party organizations like BABE VOTE and the League, new citizens have historically been able to register to vote right at their citizenship ceremonies when they have taken their oath and received their naturalization papers. *Id.* at ¶ 7. But under HB 340, if these new citizens do not already possess one of the enumerated forms of pre-approved identification, they would not be able to participate in such on-the-spot registration. Because of ambiguity in the law— it is unclear to the League how new citizens could finalize their registration by showing ID and residency documents if the League submits registration cards on their behalf—the League is uncertain whether it can continue to register new citizens at their citizenship ceremonies and has ceased such registration initiatives as a result. *Id.* Instead,



individuals now must go through the (likely lengthy) process of first obtaining one of the valid forms of identification *before* they can register to vote—a deterrent that is likely to result in many new citizens and would-be voters unregistered. *See* Herron Decl. ¶ 15. This imposition of additional barriers to new American citizens’ voting is particularly egregious.

While HB 340 includes a provision to create no-fee voter ID, it does not apply to everybody: voters who have or previously had, within the last six months, a current driver’s license are ineligible, as are individuals under the age of 18. As a result, new Idaho residents who have driver’s licenses from another state cannot obtain the no-fee ID. Nor can Idahoans who will turn 18 before the next election, potentially leaving them without the necessary identification to register in time to vote. Moreover, while cast as “no-fee” voter ID, there are in fact costs associated with obtaining one, including time and transportation. Those costs can be significant, particularly for individuals for whom transportation is a challenge. As but one example, it may prove extremely difficult for individuals in congregate care facilities—who may not otherwise have a need for a current form of ID, and who often have significant mobility challenges—to obtain accessible transportation to the DMV to get a so-called “no-fee” ID. *Shaber Decl.* ¶¶ 8–11. For these individuals, access to the franchise is greatly encumbered by the new requirements set forth in HB 340. *Id.*

### **III. RELIEF REQUESTED**

BABE VOTE and the League seek to enjoin the Secretary from implementing, relying on, or otherwise enforcing the Challenged Provisions pending resolution of this matter on the merits.

### **IV. LEGAL STANDARD FOR INJUNCTIVE RELIEF**

As relevant here, a preliminary injunction may be granted:

- (1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and that relief, or any part of it, consists of restraining the commission or continuance of the acts complained of, either for a limited period or perpetually;

(2) when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff[.]

I.R.C.P. 65(e); *Planned Parenthood Great N.W. v. State*, Nos. 49615, 49817, 49899, 2022 WL 3335696, at \*4–5 (Idaho Aug. 12, 2022). Plaintiffs are entitled to a preliminary injunction if they demonstrate a “substantial likelihood of success on the merits” or “a ‘clear right’” to relief and irreparable harm in the absence of an injunction. *Planned Parenthood Great N.W.*, 2022 WL 3335696, at \*6. “The granting or refusal of an injunction is a matter resting largely in the trial court’s discretion.” *Conley v. Whittlesey*, 133 Idaho 265, 273 (1999).

## V. ARGUMENT

BABE VOTE and the League meet the requirements for a grant of a preliminary injunction—they have a clear right to the relief demanded, and the Challenged Provisions threaten both organizations and Idaho voters with irreparable injury by imposing severe burdens on the most precious of our rights as citizens: the right to vote. Further, the protection of the fundamental right to vote obviously serves the public interest. And the equities weigh heavily in favor of preserving the status quo which has served the state well for years without a *single identifiable instance* of fraud involving the use of student IDs.

### A. **The state cannot demonstrate that the Challenged Provisions are “necessary” to promote any “compelling” state interest.**

Plaintiffs respectfully submit that they are entitled to an injunction under Rule 65(e)(1) of the Idaho Rules of Civil Procedure because the Challenged Provisions unnecessarily and heavily burden Idaho voters’ fundamental constitutional rights to vote. That burden on the right to vote is not justified by any legitimate—much less compelling—countervailing interests of the state.

“Because the Idaho Constitution expressly guarantees the right of suffrage . . . voting is a fundamental right under the Idaho Constitution [and] the appropriate standard of review to be applied to a law infringing on that right is strict scrutiny.” *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 126 (2000); *see also Newlan v. State*, 96 Idaho 711, 713 (1975)

(acknowledging voting as a fundamental right thereby subject to strict scrutiny). Under strict scrutiny, “a law which infringes on [the right to vote] will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest.” *Van Valkenburgh*, 135 Idaho at 126.

The Challenged Provisions’ restrictions on voter registration burden the right to vote by sharply increasing the costs associated with voter registration through the limiting of options. Indeed, together, the barriers the Challenged Provisions place on both the voting and voting registration processes leave students, those who are disabled and/or living in congregate care communities, new citizens, and others, with steep hurdles to obtaining one of the few enumerated forms of acceptable identification in order to exercise their franchise.

The Challenged Provisions impose heightened burdens on new and young voters (often college students) by striking from the list of acceptable IDs the very form of identification they are most likely to have. Rates of obtaining driver’s licenses—one of the few remaining forms of valid identification under HB 340—have been steadily declining over recent years for young people in “Generation Z” (i.e., those born between 1996 and 2012). *See* Hamilton Decl., Ex. 11 (citing prevalence of ridesharing apps, the stress of driving, car insurance rates, and climate change as just some of the reasons why younger people aren’t getting their licenses as quickly as in the past).

For precisely these reasons, a similar measure in Montana restricting the use of student IDs was found to impose a burden on students who are less likely to have an in-state driver’s license. Hamilton Decl., Ex. 12 (*Mont. Democratic Party v. Jacobsen*, 518 P.3d 58 (Mont. 2022)). In upholding the district court’s decision to enjoin the law, the Montana Supreme Court noted expert testimony credited by the district court establishing that college students were less likely to possess a driver’s license than older voters, and similarly, that out-of-state students attending local universities were unlikely to have Montana licenses or ID’s. *Id.* at 67–68. The court noted that those students would “be at a particular disadvantage” if their student ID no longer qualified for the purposes of voting and that the “additional hoops” imposed by the restriction “raise[d] the cost of voting in a way that [was] unique to young voters given their mobility and the fact that they are

less likely to possess” other primary forms of ID. *Id.* at 68 (internal quotations omitted).

The disenfranchising impact of the statute does not stop with students. New citizens have historically been able to register to vote at their citizenship ceremonies. *Shaber Decl.* ¶ 7. By restricting what constitutes valid identification for registration purposes, new citizens may no longer be able to register at the time of their swearing in, and it will be difficult, if not impossible, for the League and other organizations to later identify these individuals and assist them in registering to vote. *Id.* ¶ 7. The burdens will also fall on others, like residents of care facilities, who may lack current forms of identification because they are not needed for everyday life and find it difficult to obtain new IDs. *Id.* ¶¶ 8–11. In fact, in many cases, for many of these vulnerable adults, the same circumstances necessitating their move into a facility also make driving impossible or impractical.<sup>2</sup> *Id.* ¶ 9. At bottom, when potential registrants are confused about how to register, they will often forgo registering to vote entirely. *Id.* ¶ 6.

For these burdens to pass constitutional muster, the Secretary must show that the state’s interest “is compelling and the statute is necessary to further that interest.” *Van Valkenburg*, 135 Idaho at 128. But there is no such compelling interest here. The Secretary proffers that “[e]lection security and preventing fraud” are its “primary” interests in passing the Voting Restrictions. *See* *Def.’s Mem. in Support of Mot. for J. on Pleadings & for Summ. J.* at 13. Proponents of similar restrictions in other states have pointed to the same purported interests. *See, e.g.,* *Hamilton Decl., Ex. 12 (Mont. Democratic Party*, 518 P.3d at 68). But those were rejected for lack of evidence, *id.*, and there is no such evidence here, either. Indeed, the Secretary himself acknowledged that “[t]here isn’t rampant voter fraud” in Idaho, nor are there any “instances of students trying to commit voter fraud.” *Hamilton Decl., Ex. 1.*

An asserted state interest in deterring voter fraud fails when not supported by evidence of actual voter fraud. *Hamilton Decl., Ex. 12 (Mont. Democratic Party*, 518 P.3d at 68–69).

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<sup>2</sup> Even though these residents may qualify for HB 340’s “no-fee” ID, the mobility and other challenges many of these residents face would likewise make it extremely difficult to obtain this form of identification. *Shaber Decl.* ¶ 10.

Likewise, any supposed concerns about proof of residency as justification for striking student IDs from the list of acceptable forms of identification for voter registration fails for want of substantive evidence that registration of non-residents was a problem to begin with and that existing Idaho law inadequately prevented it. To the contrary, prior to the passage of HB 340, the Secretary insisted that “Idaho’s elections are secure” as a result of existing safeguards. Hamilton Decl., Ex. 1. The state can hardly walk back that admission at this point.

The fact is, the Voting Restrictions, generally, and the Challenged Provisions of HB 340 specifically, heavily burden the right to vote without advancing any state interest, much less a compelling one. Respectfully, BABE VOTE and the League have a clear right to relief.

**B. Plaintiffs will suffer irreparable injury.**

Plaintiffs are entitled to an injunction under § 65(e)(2) of the Idaho Rules of Civil Procedure because they will suffer irreparable injury if the unconstitutional Voting Restrictions remain in effect. The Challenged Provisions will change the status quo and will immediately (and unnecessarily) strip would-be voters of their ability to register to vote. This, in turn, will irreparably injure Plaintiffs’ mission.

Should the Challenged Provisions not be enjoined, both Plaintiffs will have to divert significant time and resources to counteract the burdens the new laws place on Idaho’s voting and would-be voting constituents. Many of the groups Plaintiffs serve, including new voters, young voters, new citizens, disabled voters, and more, will be disenfranchised. *See* Shaber Decl. ¶¶ 6–12; Sandmire Decl. ¶¶ 7–9; Herron Decl. ¶¶ 15–17.

Under Idaho law, irreparable injury is an injury that cannot be “remed[ied] or repair[ed].” *McCann v. McCann*, 152 Idaho 809, 820 (2012). “Courts routinely deem restrictions on fundamental voting rights irreparable injury . . . [because] once the election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Here, the Challenged Provisions will prevent otherwise-eligible Idahoans who lack the enumerated forms of identification from registering to vote. And while the no-fee

voter ID might remedy the problem for some voters, its reach is limited by its built-in limitations on eligibility and the inherent costs associated with obtaining identification from the DMV.

Interference with an organization's ability to carry out its mission also constitutes irreparable harm, a point recognized by courts across the country and often in cases specifically involving the League. *See, e.g., League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). “[C]onduct that limits [a voting rights] organization’s ability to conduct voter registration activities constitutes an irreparable injury.” *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1350 (N.D. Ga. 2016); *see also Newby*, 838 F.3d at 8–9 (“Because . . . those new obstacles unquestionably make it more difficult for the Leagues to accomplish their primary mission of registering voters, they provide injury for purposes both of standing and irreparable harm.”); *Ass’n of Comm. Orgs. for Reform Now v. Cox*, No. 106-CV-1891, 2006 WL 6866680, at \*6 (N.D. Ga. Sept. 28, 2006) (finding irreparable injury where regulation “reduces Plaintiffs’ participation in voter registration drives and places burdens on Plaintiffs’ post-drive activities”); *Ind. State Conf. of N.A.A.C.P. v. Lawson*, 481 F. Supp. 3d 826, 842 (S.D. Ind. 2020), *aff’d in part and vacated in part on other grounds and remanded sub nom. League of Women Voters of Ind. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021); *League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012).

Likewise, a law that requires an organization to divert its resources to deal with its negative effects threatens irreparable harm sufficient to award a movant a preliminary injunction. *E.g., League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1224 (N.D. Fla. 2018) (finding irreparable harm to organization where “members will have to expend more resources and time to assist voters in accessing off-campus early voting” as result of challenged law); *N.C. State Conf. of the N.A.A.C.P. v. N.C. State Bd. of Elections*, No. 16-cv-1274, 2016 WL 6581284, at \*9 (M.D.N.C. Nov. 4, 2016) (finding organization would suffer irreparable harm where it had to “divert its finite and limited resources away from its planned voter-protection and education efforts” in order to “dedicate its limited staff and resources to ensuring that [challenged laws did]

not unlawfully disenfranchise any of its members”); *Nat’l Coalition on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 474 (S.D.N.Y. 2020) (finding diversion of resources constituted irreparable injury); *cf. Common Cause Ind. v. Lawson*, 937 F.3d 944, 954 (7th Cir. 2019) (finding diversion of resources sufficient injury to confer standing to organization because “[a]ny work to undo a frustrated mission is, by definition, something in furtherance of that mission”).

**1. BABE VOTE will suffer irreparable injury.**

BABE VOTE will suffer irreparable injury because the Challenged Provisions are impeding its mission of registering young eligible citizens to vote and will require BABE VOTE to divert resources to educating voters about the new registration requirements and ameliorate the effects of the Challenged Provisions. BABE VOTE’s mission is to encourage eligible citizens, specifically young eligible citizens, to register to vote and vote. Sandmire Decl. ¶ 4. To achieve its mission, BABE VOTE conducts voter registration drives at high school and colleges campuses, and community events. *Id.*<sup>3</sup>

BABE VOTE engages heavily in voter education and training efforts and devotes substantial time, effort, and resources to achieve its mission of encouraging young and marginalized people to register to vote, vote, and participate in their governance. *Id.* ¶ 5. BABE VOTE works to expand informed access to voting for legally eligible young and marginalized citizens. *Id.* Recognizing that young people will inherit the consequences of political policy, BABE VOTE focuses on, but is not limited to, increasing voter participation among legally eligible 18–34 year olds. *Id.* Further, BABE VOTE teaches people who are too young to vote how to help legally-eligible voters register and vote and teaches young constituents how to directly participate in their governance. *Id.*

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<sup>3</sup> There are myriad reasons why students would not have a valid and current driver’s license, among them being: not having a need for one; lack of access to a vehicle or driver’s education classes or training; inability to afford driver’s education classes or training; lack of transportation to the DMV; lack of time to complete the required driver’s education classes; lack of available adult supervision for driving practice; delays in the scheduling of classes and ultimate issuance of a license; and the fact that many people find the process of obtaining an Idaho driver’s license cumbersome.

The Challenged Provisions are making it much more difficult for BABE VOTE to achieve its mission of helping young Idahoans register to vote and ultimately vote at the polls. *Id.* ¶ 7–10, 12–15. For example, since HB 340 went into effect on July 1, 2023, BABE VOTE has been limited to only registering voters using the Secretary’s online registration method because of the uncertainty about how individuals who fill out physical registration cards can prove their residency and identity under the new law. *Id.* ¶ 12. But even that the online registration platform has been unavailable to BABE VOTE because the Secretary has suspended online registration until July 10 in order to update the system, rendering BABE VOTE’s registration efforts over the July 4 holiday—typically a significant period for registering new voters for BABE VOTE—significantly less effective. *Id.* ¶¶ 12–14. For example, BABE VOTE typically registers voters at the Freedom Celebration at Riverfest in Idaho Falls on July 4, but this year its volunteers were unable to register most potential registrants due to the obstacles created by HB 340. *Id.* ¶ 14. Because of these obstacles and the confusion created by HB 340, BABE VOTE was forced to suspend future Idaho voter registration efforts statewide. *Id.* ¶ 15. BABE VOTE will also have to divert significant time and resources to counteract the burdens the Challenged Provisions place on Idaho’s voting and would-be voting constituents. *Id.* ¶ 11.

**2. The League will suffer irreparable injury.**

Likewise, the League will suffer irreparable injury because the Challenged Provisions interfere with its mission and will require the League to divert scarce resources from other priorities. As part of its mission, the League’s encourages informed and active participation in the political process. *Shaber Decl.* ¶ 3. To achieve this, the League devotes substantial time, effort, and resources to helping ensure Idaho voters and would-be voters are properly registered and their ballots properly cast and counted. *Id.* ¶ 4. Among other activities, the League educates citizens about voting rights and the electoral processes and facilitates voting through voter registration activities and non-partisan voter information efforts. *Id.*

For more than 75 years, the League has served the voters of Idaho, including



comprehensive programs involving students and other youth designed to encourage their early and ongoing participation in voting. *Id.* ¶ 5. Activities have included: conducting mock elections in grades 9–12, hosting on-campus voter registration in high school and public colleges and universities, providing high school scholarships, co-sponsoring candidate forums, funding student memberships, and providing voting information and resources to voters, on-campus student groups, and new and young citizens. *Id.*

By making it harder to register to vote for young people and other populations who rely on third party organizations to register to vote, the Challenged Provisions have already impeded—and will continue to impede—the League’s mission to register voters and encourage informed and active participation in the political process. *Id.* ¶¶ 6, 19. For example, historically, the League has aided in registering new citizens to vote at their citizenship ceremonies. *Id.* ¶ 7. Because of the uncertainty involved in the wake of the passage of HB 340, the League is no longer registering new citizens at these ceremonies. *Id.* The League will also suffer harm to its mission because HB 340 makes it extremely difficult for the League to assist voters in care facilities register to vote. *Id.* ¶¶ 8–11, 18. The League will have to divert significant time and resources toward re-training its volunteers, which includes spending money and time updating training materials and literature, and re-educating voters about HB 340. *Id.* ¶ 13–15; McBride Decl. ¶¶ 4–6. As a result of the time and resources this will take, it is a significant risk that many of the League’s base, many of whom rely on third-party organizations like the League to facilitate their access to the vote, will be disenfranchised. *See* Shaber Decl. ¶¶ 7–11, 15–18.

Indeed, since HB 340 went into effect, the League is no longer comfortable conducting voter registration activities at all and has also counseled local League presidents to suspend their own voter registration activities. *Id.* ¶ 16. The League has unsuccessfully attempted to obtain clarity about how to counsel new registrants about how they can prove their residency and provide their identification registering through third-party organizations, *see id.*, and remains deeply uncertain about how it can register voters under the law’s new regime, *id.* ¶ 16. Traditionally, the July 4 holiday has presented significant opportunities for the League to register new voters, but as

a result of the uncertainty presented by the Challenged Provisions, the League had to forego its registration activities this year. *Id.* ¶¶ 17–18. This is, obviously, a severe impediment to the League’s mission.

Courts have routinely found irreparable harm against the League and its sister branches when it comes to restrictive voting measures. *See, e.g., Newby*, 838 F.3d at 8–9 (“Because . . . those new obstacles unquestionably make it more difficult for the Leagues to accomplish their primary mission of registering voters, they provide injury for purposes both of standing and irreparable harm.”); *Ashcroft*, 336 F. Supp. 3d at 1005 (finding irreparable harm because plaintiffs “diverted resources from other activities crucial to their missions in order to address Defendants’ failure to offer voter registration services in connection with mail-in and online change of address transactions.”); *Browning*, 863 F. Supp. 2d at 1167 (finding plaintiffs’ “easily meet” requirement of irreparable harm because of lost opportunity to register voters).

**C. The equities favor an injunction because it would preserve a voter registration system that has served Idaho well.**

Finally, a preliminary injunction is warranted because the public interest and the equities favor preserving the status quo pending resolution of this case on the merits. A preliminary injunction is an equitable remedy whose purpose is to “maintain the status quo until judgment.” *Wolford v. Montee*, 161 Idaho 432, 442 (2016). While Idaho courts do not always expressly discuss the balancing of the equities or the public interest, those factors are regularly considered for injunctions under Federal Rule of Civil Procedure 65, which “is virtually identical to IRCP 65,” and thus commentary on the federal rule is “instructive.” *Munden v. Bannock County*, 169 Idaho 818, 829 (2022); *see also Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (a plaintiff seeking a preliminary injunction must establish “that the balance of equities tips in his favor, and that an injunction is in the public interest”); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (relying on *Winter* factors).

Here, the status quo is a voting regime that the Secretary himself calls “a great system” that it is “secure,” in part because of the “election workers throughout the state” who ensure the “system

is safe.” Hamilton Decl., Ex. 1. Thanks in no small part to the efforts of BABE VOTE and the League, the status quo has resulted in a significant increase in voter participation by young voters. But the Challenged Provisions threaten to upend this self-proclaimed “great system”—well-known and well-used by Idahoans for over a decade— in favor of gratuitous changes that will only serve to make voting more burdensome and difficult. Worse, those burdens will fall most heavily on younger voters, new citizens and some of our most vulnerable voters—all without advancing any legitimate, much less compelling state interest. This is the definition of an unconstitutional burden.

## VI. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court issue the requested preliminary injunction as to the Challenged Provisions.

DATED: July 6, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2023, I served the foregoing electronically through the iCourt E-File System, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service.

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