

No. 24-6376

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARCH FOR OUR LIVES IDAHO, *et al.*,

Plaintiffs-Appellants,

v.

PHIL MCGRANE, IN HIS OFFICIAL CAPACITY AS IDAHO SECRETARY OF
STATE,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Idaho
Hon. Amanda K. Brailsford
Case No. 1:23-cv-00107-AKB

**BRIEF FOR *AMICI CURIAE* ARIZONA STATE LEGISLATURE,
MONTANA, ALABAMA, ARKANSAS, FLORIDA, GEORGIA, INDIANA,
IOWA, KANSAS, LOUISIANA, MISSOURI, NEBRASKA, NORTH
DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA,
TENNEESE, TEXAS, AND WYOMING
SUPPORTING DEFENDANT-APPELLEE AND AFFIRMANCE**

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The Arizona State Legislature, by and through Warren Petersen, President of the Arizona State Senate, and Steve Montenegro, Speaker of the Arizona House of Representatives, and the States of Montana, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Wyoming (collectively, the “*Amici States*”) respectfully submit this brief as *amici curiae* in support of the Defendant-Appellee.¹

The district court properly sustained Idaho’s policy decision to exclude student ID cards from the catalogue of acceptable forms of identification when registering to vote or obtaining a ballot at the polling place. *See March for Our Lives Idaho v. McGrane*, 749 F. Supp. 3d 1128 (D. Idaho 2024). In doing so, the district court concluded that a legislative body’s ostensible discriminatory intent is not a cognizable predicate for a Twenty-Sixth Amendment claim, *see id.* at 1140. It added that even if the standard that governs intentional discrimination claims in other contexts, *see Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252 (1977), can be imported into the Twenty-Sixth Amendment, the Plaintiffs-Appellants had failed to adduce viable evidence of an intent to discriminate on the basis of age. *See March for Our Lives*, 749 F. Supp. 3d at 1143. This Court should affirm the district court’s sound analysis in all respects.

¹ All parties have consented to the filing of this brief under FRAP 29(a)(2) and Circuit Rule 29-2(a).

INTEREST OF THE *AMICI STATES*

The Constitution entrusts to the States “broad authority,” *Short v. Brown*, 893 F.3d 671, 676 (9th Cir. 2018), to preemptively protect their electoral structures from fraud, illegal votes by ineligible individuals, and other unlawful activity, “without waiting for it to occur and be detected within [their] own borders.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 686 (2021); *see also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (recognizing that state governments “must play an active role in structuring elections; ‘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.’” (citation omitted)); *Dudum v. Arntz*, 640 F.3d 1098, 1114 (9th Cir. 2011) (emphasizing that States are “*not* required to show” that reasonable and non-discriminatory voting laws are “narrowly tailored—that is, the one best tailored to achieve its purposes”).

Distinct from, although “closely related” to, the imperative of deterring actual wrongdoing is each State’s equally important interest in “protecting public confidence ‘in the integrity and legitimacy of representative government.’” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (plurality op.); *see also Feldman v. Ariz. Sec’y of State’s Office*, 840 F.3d 1057, 1082 (9th Cir. 2016) (“[I]t is ‘practically self-evidently true’ that implementing a measure designed to prevent voter fraud would instill public

confidence.” (citation omitted)), *vacated on other grounds*, 843 F.3d 366 (9th Cir. 2016) (en banc).²

Voter identification requirements, which ensure that “only the votes of eligible voters” are counted, *Crawford*, 553 U.S. at 196, vindicate both objectives, *see id.* at 204. The efficacy of these mandates, though, depends on the reliability of the documentation a voter may use to confirm her identity. *See id.* at 193 (crediting notion that photo ID “is one effective method of establishing a voter’s qualification to vote”).

Numerous states, including *Amici* States, condition voter registration and/or access to the ballot on the furnishing of valid proof of identity.³ These requirements differ in denoting precisely how and in what manner voters can adequately establish their identities. But this diversity itself underscores States’ sovereign discretion (in the absence of any controlling federal law) to formulate—and subsequently modify—bespoke legislative solutions tailored to their particularized circumstances, exigencies, and policy preferences. *See generally Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th

² The U.S. Supreme Court subsequently stayed the en banc court’s vacatur in *Feldman*, *see* 580 U.S. 977 (2016), and later upheld the challenged statute, *sub nom. Brnovich*, 594 U.S. at 647—thus indirectly affirming the *Feldman* panel’s disposition of the case.

³ *See, e.g.*, Ariz. Rev. Stat. § 16-579(A); Ala. Code § 17-9-30; Ark. Const. art. 51 § 13(b)(1); Fla. Stat. § 101.043; Ga. Laws § 21-2-417; Ind. Code §§ 3-5-2-40.5, 3-11-8-25.1; Iowa Code § 49.78; Kan. Stat. Ann. § 25-2908(h)(1); La. Rev. Stat. Ann. § 18:562; Miss. Const. art. XII, § 249A; Mo. Rev. Stat. § 115.427; Mont. Code Ann. § 13-13-114; Neb. Const. art. I-22(2); N.D.C.C. § 16.1-01-04.1; Ohio Rev. Code Ann. § 3509.05; S.C. Code Ann. § 7-13-710; Tenn. Code Ann. § 2-7-112(a)(1)(A); Tex. Election Code Ann. § 63.001(b); Wyo. Stat. Ann. § 22-1-102(a).

1072, 1091 (9th Cir. 2024) (“State-by-state and intra-state variation in the administration of elections is a feature—not a bug—of our federal system.”); *Ohio Democratic Party v. Husted*, 834 F.3d 620, 623 (6th Cir. 2016) (rejecting a “one-way ratchet” theory of voting rights that would prevent States “from later modifying their election procedures in response to changing circumstances”).

Acting on reasonable concerns that student IDs are highly variable in their content and security, the Idaho Legislature determined that they are not a sufficiently reliable method of establishing identity when registering to vote, *see* Idaho Code § 34-411, as amended by 2023 Idaho Laws ch. 293 (“H.B. 340”), or obtaining a ballot at the polling place, *see* Idaho Code § 34-1113, as amended by 2023 Idaho Laws ch. 27 (“H.B. 124”). That is a policy decision entirely within the Idaho Legislature’s authority.

A judicial invalidation of H.B. 340 or H.B. 124 not only would collide with entrenched Supreme Court precedent; it also would constrain the *Amici* States’ ability to preemptively preclude voting misconduct and would corrode public confidence in election integrity. *Amici* States are especially concerned that the Plaintiff-Appellants’ misconstruction of the *Arlington Heights* standard would, if adopted by the Court, facilitate improper federal judicial incursions into state legislative processes and enable contrived divinations of legislative “intent” to nullify neutral and non-discriminatory democratically enacted laws.

The *Amici* States accordingly submit this brief in support of Defendant-Appellee pursuant to FRAP 29(a)(2).

SUMMARY OF THE ARGUMENT

The *Amici* States write to emphasize two points. First, the Plaintiffs-Appellants' arguments dilute or disregard critical qualifications that the Supreme Court has in recent years integrated into the *Arlington Heights* framework. In deference to the democratic legitimacy imparted by the legislative process, courts must attach a strong presumption of legislative good faith to all duly enacted state laws. Plaintiffs alleging discriminatory intent cannot discharge their burden of proof by conflating other potential motivations—including political or ideological objectives—with *bona fide* discriminatory animus. And they cannot elevate specific statements of individual legislators into proxies for the collective intent of the body. Proper application of the *Arlington Heights* test confirms the soundness of the district court's conclusion.

Second, voter ID requirements are a cornerstone of many States' electoral infrastructure. These laws serve a valid and important regulatory function as bulwarks against fraud and similar corruptions of the democratic process. But they also engender and solidify public trust in the security of the electoral system and the accuracy of the results that it produces. As the Supreme Court has recognized and as political science research has confirmed, this positive externality supplies an independent, constitutionally sufficient predicate for voter ID laws, even in the absence of extant voter fraud.

ARGUMENT

I. The Plaintiffs-Appellants Misapply the *Arlington Heights* Test By Disregarding the Presumption of Legislative Good Faith, Confounding Alleged Political or Ideological Motivations with Age-Based Animus, and Relying on Improper “Cat’s Paw” Reasoning

It is telling that, in over forty pages of briefing, the Plaintiffs-Appellants never acknowledge, let alone substantively engage with, two recent Supreme Court precedents that illuminate the proper application of the *Arlington Heights* criteria in election-related settings. See *Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021); *Abbott v. Perez*, 585 U.S. 579 (2018). Both *Brnovich* and *Abbott* left intact the *Arlington Heights* test—which weighs, among other factors, (1) “the historical background” of the challenged law, (2) “specific antecedent events,” (3) “departures from normal procedures,” (4) “contemporary statements of decisionmakers,” and (5) the challenged law’s disparate impact on protected classes, see *March for Our Lives*, 749 F. Supp. 3d at 1142—but they imbued it with at least three key qualifications, all of which the Plaintiff-Appellants effectively ignore.

A. **There Is a Strong Presumption of Legislative Good Faith**

First, facially neutral state laws, such as H.B. 124 and H.B. 340, are undergirded by a “presumption of legislative good faith.” *Abbott*, 585 U.S. at 610; see also *N.C. State Conference of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020) (“*Abbott* could not be more clear in allocating the burden of proof and applying the presumption of good faith.”). While plaintiffs can rely on both direct and circumstantial evidence in

developing a discriminatory intent claim, they must affirmatively “prove that the . . . Legislature acted in bad faith and engaged in intentional discrimination.” *Abbott*, 585 U.S. at 607. “This presumption of legislative good faith directs district courts to draw the inference that cuts in the legislature’s favor when confronted with evidence that could plausibly support multiple conclusions.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024). It thus necessarily must inform application of the summary judgment standard, and buttresses the district court’s conclusion that the Plaintiffs-Appellants have failed to adduce a triable issue of fact. *See generally Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299 (11th Cir. 2021) (affirming summary judgment for the State when “no reasonable factfinder could find, based on the evidence presented, that [state] voter ID law is discriminatory”); *cf. D.N. by Jessica N. v. DeSantis*, -- F. Supp. 3d --, 2024 WL 516857, at *7 (S.D. Fla. Dec. 19, 2024) (finding discriminatory intent claim insufficient at motion to dismiss stage).

Assessed through the prism of this “strong,” *United States v. Carrillo-Lopez*, 68 F.4th 1133, 1153 (9th Cir. 2023), presumption of legislative good faith, the Plaintiffs-Appellants’ factual showing is deficient. To begin with, much of Plaintiffs-Appellants’ putative legislative history evidence merely corroborates that the Legislature’s objective was exactly what the Legislature said it was: remediating potential election security risks associated with *student* voting. *See* Doc. 21.1 at 38 (alleging that legislator “was concerned about . . .the large number of students in his district that were voting with the student identification cards”), 39 (claiming that the evidence shows “that the

legislature was particularly motivated to eliminate the use of student identification”). That the “bill’s sponsors [and] legislative leaders . . . all presented a consistent message about the need for election security” emanating from potential vulnerabilities with student ID cards, *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 924 (11th Cir. 2023), attests to the genuineness of the rationale. Whether or to what extent these election security concerns were factually well-founded is not an evidentiary barometer of discriminatory intent. *See Brnovich*, 594 U.S. at 689 (a “sincere, though mistaken, non-race-based belief that there has been [election-related] fraud” is not discriminatory intent (citation omitted)).

The Twenty-Sixth Amendment attaches no protections to “students” as a class. To be sure, student status often is correlated with age. But Plaintiffs-Appellants’ evidence can sustain, at most, the inference that the Legislature was aware that its elimination of student IDs as an available option could disproportionately affect younger voters. Consciousness of uneven impact, however, is not tantamount to discriminatory intent. *See Carrillo-Lopez*, 68 F.4th at 1139 (“To establish that the lawmakers had a discriminatory purpose in enacting specific legislation, it is not enough to show that the lawmakers had an ‘awareness of [the] consequences’ of the legislation for the affected group, that those consequences were ‘foreseeable,’ or that they legislature acted ‘with indifference to’ the effect on that group.”); *Veasey v. Abbott*, 830 F.3d 216, 231 (5th Cir. 2016) (“Legislators’ awareness of a disparate impact on a

protected group is not enough: the law must be passed *because of* that disparate impact.”).⁴

In any event, the Plaintiffs-Appellants have not supplied evidence that H.B. 124 or H.B. 340 will exert an adverse disparate impact on younger voters’ access to the ballot. The mere fact that younger voters were much more likely than older voters to have used student IDs in recent elections (*see* Doc. 21.1 at 40) does not establish, or even imply, that they *lack* other forms of statutorily permitted identification. *See Brnovich*, 594 U.S. at 684 & n.19 (fact that Native Americans relied on banned third-party ballot collection practices did not equate to a finding that the ban would make it “significantly more difficult” for Native Americans to vote); *League of Women Voters*, 66 F.4th at 935 (although minority voters were relatively more likely to use ballot drop boxes, evidence did not show that restrictions on daily drop-box hours would actually impede minority voters from accessing them). An evidentiary chasm continues to separate Plaintiffs-Appellants’ premise—*i.e.*, that younger voters are disproportionately more likely to possess and use a student ID—from a showing of actual disparate impact—*i.e.*, that these younger voters cannot otherwise comply with Idaho’s neutral and generally applicable voter identification requirement.

⁴ Plaintiffs-Appellants also point to various “warnings” directed to college students from the Idaho Administration and Elections and the Secretary of State. But these statements are not probative of the *Idaho Legislature’s* intentions. *See Common Cause Fla. v. Boyd*, 726 F. Supp. 3d 1322, 1361 (N.D. Fla. 2024) (Governor’s alleged discriminatory purposes “cannot simply by virtue of his role in the legislative process be imputed to the Florida Legislature”).

Accordingly, when assessed in a light most favorable to Plaintiffs-Appellants, the record indicates, at most, that the legislative debate’s polestar was (real or perceived) election security risks associated with student voting and that the Idaho Legislature was aware that student ID holders are more likely to be young. This anemic evidentiary offering does not discharge *any* of the *Arlington Heights* elements, and certainly would not enable a reasonable fact-finder to declare that Plaintiffs-Appellants have satisfied their “especially stringent” evidentiary burden, *Alexander*, 602 U.S. at 11, to “overcome the presumption of legislative good faith.” *Abbott*, 585 U.S. at 605.

B. Supposed Political or Ideological Motives Are Not Evidence of Discriminatory Intent

Second, “partisan motives are not the same as [discriminatory] motives.” *Brnovich*, 594 U.S. at 689. Plaintiffs-Appellants’ assertions that some legislators were preoccupied with the partisan composition of voting blocs using various forms of ID [Doc. 21.1 at 35] and had, in different contexts, indicated opposition to student protests advocating various liberal causes [Doc. 21.1 at 41] are not viable evidence of age-based animus.

Even indulging the dubious assumption that these sentiments did, in fact, subjectively influence some legislators’ votes to adopt H.B. 124 and/or H.B. 340, they evince, at most, an averseness to certain ideological or political cohorts. That does not bespeak a desire to discriminate on the basis of age *qua* age. *See Cooper v. Harris*, 581 U.S. 285, 308 (2017) (holding in redistricting context that plaintiffs must “disentangle race from politics and prove that the former drove” legislative decisions); *Carrillo-Lopez*,

68 F.4th at 1153 (disparate effects of immigration law on certain national origin groups was explainable by other variables, which “undermines any inference of a discriminatory motive”); *League of Women Voters*, 66 F.4th at 931 (“A connection between race and partisan voting patterns is not enough to transform evidence of partisan purposes into evidence of racially discriminatory intent.”); *cf. Cranford*, 553 U.S. at 204 (valid justifications for voter ID law “should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators”).

By attempting to bootstrap “evidence of partisanship” into an inference “that [age] targeting is, in fact occurring,” *League of Women Voters*, 66 F.4th at 924, the Plaintiffs-Appellants’ argument encapsulates exactly the analytical error that the Supreme Court has cautioned against. *See also League of United Latin Am. Citizens v. Abbott*, 601 F. Supp. 3d 147, 180–81 (W.D. Tex. 2022) (“To act with a primarily partisan motivation while not admitting as much may constitute ‘bad faith’ in a colloquial sense. But the presumption of legislative good faith was articulated, and is often reaffirmed, specifically in the context of alleged racial motivations.”).

In short, Plaintiffs-Appellants’ showing that some legislators disapproved of some student activists’ perceived political leanings would not permit a reasonable factfinder to infer discriminatory animus on the basis of age.

C. Individual Members Do Not Speak for the Entire Legislative Body

Third, “legislators who vote to adopt a bill are not the agents of the bill’s sponsor or proponents.” *Brnovich*, 594 U.S. at 689 (adding that “[t]he ‘cat’s paw’ theory has no

application to legislative bodies”). Notably, Plaintiffs-Appellants have not pointed to any expressions of age-based animus during the consideration and passage of H.B. 124 and H.B. 340. A couple of legislators’ apparent solicitude for challenges confronting elderly voters [Doc. 21.1 at 36–37] does not, semantically or logically, imply a corresponding hostility towards the young. But even if those isolated statements could be (mis)construed in such a manner, they still would not evidence a discriminatory objective by the Legislature writ large. See *Carrillo-Lopez*, 68 F.4th at 1140 (“[A] court must be aware that the statements of a handful of lawmakers may not be probative of the intent of the legislature as a whole.”); *Fusilier v. Landry*, 963 F.3d 447, 464 (5th Cir. 2020) (“The Supreme Court has repeatedly cautioned against overemphasizing statements from individual legislators, which are not necessarily ‘what motivates others’ to act.” (citation omitted)).

In sum, a proper application of *Arlington Heights*, as refined by *Abbott* and *Brnovich*, establishes that the Plaintiffs-Appellants’ evidentiary showing amounted to little more than confirmation that the Legislature was, in fact, motivated by real or perceived election integrity concerns unique to *student* voting. No reasonable factfinder could conclude that a few legislators’ supposed political objectives were pretexts for age-based discrimination, or that the Legislature as a body harbored animus towards student voters because of their relative youth.

II. Voter ID Laws Safeguard Public Trust in Elections

The value of voter ID laws transcends their practical utility. Plaintiffs-Appellants harp on the paucity of detected voter fraud involving students. Doc. 21.1 at 46. Preliminarily, this contention, even if true, does not impugn H.B. 124 and H.B. 340's validity. See *Brnovich*, 594 U.S. at 686 (“[A] State may take action to prevent election fraud without waiting for it to occur”); *Greater Birmingham Ministries*, 992 F.3d at 1334 (noting that “detering voter fraud is a legitimate policy on which to enact an election law, even in the absence of any record evidence of voter fraud”). More fundamentally, it obscures that voter ID laws carry innate worth as ballasts for voters' faith in the accuracy and reliability of election results.

The Supreme Court has expressly recognized public confidence in elections as a freestanding governmental interest that is independent of (albeit related to) the regulatory objective of deterring and detecting actual fraud. See *Crawford*, 553 U.S. at 197. Further, the ubiquity of this “self-evidently true” proposition, *Feldman*, 840 F.3d at 1082, obviates the need to adduce factual showings that are specific to particular challenged laws. See *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014) (“Photo ID laws promote confidence, or they don't; there is no way they could promote public confidence in Indiana (as *Crawford* concluded) and not in Wisconsin. This means that they are valid in every state—holding constant the burden each voter must bear to get a photo ID—or they are valid in no state.”).

It bears noting, though, that political science research fortifies this commonsense observation with empirical support. A 2017 study sought to examine the effects of voter ID laws by sending randomly selected Virginia residents informational postcards. The researchers concluded that educating registrants on the state's photo ID requirements "likely reduced perceptions of electoral fraud." Kyle Endres & Costas Panagopoulos, *Photo Identification Laws and Perceptions of Electoral Fraud*, 8 RESEARCH & POLITICS 3 (2021), available at <https://tinyurl.com/27wkzfh5>. Another study found that awareness of voter ID laws does not deter electoral participation, and may actually mobilize it. See Jack Citrin, et al., *The Effects of Voter ID Notification on Voter Turnout: Results from a Large-Scale Field Experiment*, 13 ELECTION L. J. 228, 238 (2014) (noting that it is "possible that notification of voter ID laws elevated turnout by bolstering confidence in the integrity of the electoral system"); see also *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* at 18 (Sept. 2005) ("The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."), available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF.

Again, the constitutional *bona fides* of any given voter ID law do not pivot on its capacity to induce quantitatively observable effects on public sentiment. See *Frank*, 768 F.3d at 751; see also *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997) (courts do not "require elaborate, empirical verification of the weightiness of the State's asserted justifications" for neutral voting laws). But the intuitively and factually sound

maxim that “public confidence in the integrity of the electoral process . . . encourages citizen participation in the democratic process,” *Crawford*, 553 U.S. at 197, and thus is intrinsically an important State interest, must underpin the Court’s assessment of Idaho’s neutral and non-discriminatory reforms to its voter ID laws.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court’s judgment.

Dated: April 30, 2025

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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/s/ Thomas Basile