No. 24-6376

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARCH FOR OUR LIVES IDAHO et al.,

Appellants,

v.

PHIL MCGRANE,

Appellee.

On Appeal from the United States District Court for the District of Idaho, Case No. 1:23-CV-107-AKB

BRIEF OF RESTORING INTEGRITY AND TRUST IN ELECTIONS AS AMICUS CURIAE IN SUPPORT OF APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Ninth Circuit Rule 26.1-1, Restoring Integrity and Trust in Elections, Inc. states that it has no parent corporation, and no corporation owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

AMICUS CURIAE'S IDENTITY AND INTEREST

Restoring Integrity and Trust in Elections ("RITE") is a non-profit, non-partisan, public-interest organization dedicated to protecting elections as the democratic voice of the people. RITE seeks to defend the democratic process from measures that risk sowing distrust in election outcomes and thus discouraging voter participation and engagement. Accordingly, RITE is dedicated to supporting policies that promote election security and enhance voter confidence.

RITE has a significant interest in this case, as it bears directly upon legislators' authority to oversee the electoral process and set rules ensuring the fair, orderly, and secure administration of voter registration and elections. In preparing this brief, RITE has drawn upon its expertise and national perspective on voting and election law, as well as its extensive experience in the interpretation of the voting-rights provisions found in the federal constitution, as well as in state constitutions. RITE trusts that this brief will, among other things, assist the Court in delineating the proper scope of the protections afforded by the Twenty-Sixth Amendment, thereby promoting predictability in the law and faith in the integrity and security of Idaho's voting system while, simultaneously, ensuring that the franchise remains open and easily accessible to all eligible Idahoans regardless of age.

No counsel for any party authored this brief in whole or in part, and no individual or entity other than RITE made any monetary contribution intended to

fund its preparation or submission. Timely notice of intent to file this brief was provided to counsel of record for all parties, and the same have consented in writing to its filing.

BACKGROUND

In 2023, the Idaho Legislature passed House Bills 124 and 340.

As relevant to this appeal, House Bill ("H.B.") 340 requires that, when registering to vote, Idahoans must "prove identity" by showing one of four forms of government-issued, photo identification: (1) an Idaho-issued driver's license or (free) state identification card; (2) a "current passport or other identification card issued by an agency of the United States government"; (3) a "current tribal identification card"; or (4) a "current license . . . to carry concealed weapons issued under" the "Idaho Code." Idaho Code § 34-411(3) (as amended).

House Bill 124, for its part, pertains to photo identification requirements applicable at the time of voting. The bill removed "student identification card[s]" as an acceptable form of identification, thereby requiring that, upon appearing to vote "at the polls or at absent electors polling places," voters produce one of the four other forms of identification set forth in the statute—the same four listed in H.B. 340 and required when registering to vote. H.B. 124, 67th Leg., Reg. Sess. (Idaho 2023). Many student identification cards are *not* government-issued, after all, and their security features and reliability are as varied as the institutions that issue them. *E.g.*,

id., Statement of Purpose (noting the "lack of uniformity in the sophistication of student ID cards"); *March for Our Lives Idaho v. McGrane*, 749 F. Supp. 3d 1128, 1143 (D. Idaho 2024) (the "standards at Idaho high schools and universities for obtaining student identification cards vary widely" and some schools "even allow students to use preferred names or nicknames on their student identification cards").

Plaintiffs-Appellants—two activist groups—sued, challenging the constitutionality of these enhancements to Idaho election security via several specious theories. The District Court granted summary judgment in favor of defendant, the Idaho Secretary of State. On appeal, plaintiffs have jettisoned all of their theories except one, claiming solely that Idaho's updated ID requirements violate the Twenty-Sixth Amendment to the United States Constitution. Their claim lacks merit.

ARGUMENT

The challenged legislation is constitutionally sound. With respect to citizens 18 years of age and older, the Twenty-Sixth Amendment bars "den[ial]" or "abridge[ment]" of the right vote "on account of age." Idaho's legislation does not "deny" anyone the right to vote "on account of age," and plaintiffs do not argue otherwise. The legislation also does not "abridge" the right to vote "on account of age." Far from erecting an obstacle to voting, Idaho law allows all voting-age citizens to receive state ID cards free of charge, and those cards are approved forms

of voter ID under the statute. Additionally, the exclusion of student IDs from the list of accepted forms of identification applies to all comers, not only to members of a specific age group.

Contrary to this straightforward analysis—and contrary to precedent and to the text of the Twenty-Sixth Amendment—plaintiffs ask this Court to subject Idaho's legislation to an extreme form of disparate-impact analysis that would render any election regulation whose effects might be felt differently by one age group or another unconstitutional. But their proposed approach, in addition to contradicting text and precedent, is also both unworkable in practice and internally inconsistent. Their approach also ignores the history and context of the Twenty-Sixth Amendment and runs afoul of basic principles of federalism.

I. Idaho's Voter-ID Amendments Do Not Deny or Abridge the Right to Vote on Account of Age.

Section 1 of the Twenty-Sixth Amendment states, in full, that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." But before a court can assess whether the right to vote has been "denied or abridged," it must first determine the scope of that right.

In cases spanning many decades, the Supreme Court has made clear that the right to vote consists of the right to cast one's ballot and the right to have that ballot properly counted. "The Court has consistently recognized that all qualified voters

have a constitutionally protected right 'to cast their ballots and have them counted[.]'" *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (quoting *United States v. Classic*, 313 U.S. 299, 315 (1941)). *See also United States v. Saylor*, 322 U.S. 385, 388 (1944) ("[T]he elector's right intended to be protected is not only that to cast his ballot but that to have it honestly counted."); *Tully v. Okeson*, 78 F.4th 377, 384 (7th Cir. 2023). In our system of government, these rights are sacrosanct and protected by a variety of federal constitutional provisions, including the Twenty-Sixth Amendment.

But the right to vote—itself fundamental and inviolate—must not be confused with a voter's so-called "right" to demand that a state administer its electoral system in a given way. To the contrary, the states "have broad powers to determine the conditions under which the right of suffrage may be exercised." *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (citation and internal quotation marks omitted). And, of course, the Constitution explicitly vests each state with the authority to set the "Times, Places and Manner of holding Elections[.]" U.S. Const. Art. I § 4. "[T]he right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992).

It is thus the right to cast a ballot and to have that ballot properly counted—not the "right" to have elections administered via particular procedures favored by a

given voter or class of voters—that, per the Twenty-Sixth Amendment, may not be "denied or abridged . . . on account of age." The test for when that right has been "denied" is straightforward. After ratification of the Twenty-Sixth Amendment, the Supreme Court "held that a person's right to vote is denied when an election law 'absolutely prohibits them from voting.'" *Texas Democratic Party v. Abbott*, 978 F.3d 168, 188 (5th Cir. 2020) (quoting *Goosby v. Osser*, 409 U.S. 512, 521 (1973)).

The meaning of the term "abridge," while modestly more nuanced, is also clear. In *Reno v. Bossier Parish School Board*, the Supreme Court explained the meaning of that word in the context of the Voting Rights Act. 528 U.S. 320, 333-34 (2000). "The term 'abridge,' . . . —whose core meaning is 'shorten'—necessarily entails a comparison. It makes no sense to suggest that a voting practice 'abridges' the right to vote without some baseline with which to compare the practice." *Id.* Further, where a provision, like the Twenty-Sixth Amendment, establishes a new protection (as opposed to reaffirming an existing one), the proper comparison is between the status quo and the "hypothetical alternative" enacted by the legislation. *Id.* at 334.

The "hypothetical alternative" [1] contemplated by the Twenty-Sixth Amendment at the time of its enactment is explicit in its text: a system in which—

[1] That is, alternative to the state of affairs on the ground at the time the Amendment was enacted.

at least with respect to age—all eligible citizens 18 years of age or older possess the right to vote—that is, the right to cast a ballot and to have that ballot properly counted. A state statute thus "abridges" the right to vote on account of age, and thereby runs afoul of the Twenty-Sixth Amendment, where it deviates from this "hypothetical alternative" by constructing direct, age-based obstacles to the act of voting or to the proper counting of votes.

Application of these principles to the challenged Idaho enactments shows that the enactments are constitutionally sound. Idaho's updated, more secure ID requirements certainly do not *deny* any individual the right to vote on account of age. That is, the amendments do not "absolutely prohibit" any individual from voting, let alone "absolutely prohibit" any individual from voting *on account of age*. Plaintiffs do not—and cannot—argue otherwise.

The Idaho amendments also do not *abridge* the right to vote on account of age. In other words, they do not erect direct, age-based obstacles to any eligible citizen's ability to cast a ballot or have that ballot properly counted. This is so for at least two reasons.

First, Idaho's government-ID requirement is no obstacle. It is well established, after all, that states have a deep and abiding interest in election security and, thus, are permitted to require would-be voters to properly identify themselves. "There is no question about the legitimacy or importance of the State's interest in counting

only the votes of eligible voters" and thus legislating prophylactically to prevent fraud and, separately, but relatedly, to promote "public confidence in the integrity" of elections. *Crawford v. Marion County Election Board*, 553 U.S. 181, 197 (2008) (Stevens, J., lead opinion) (upholding constitutionality of Indiana's photo-ID requirement). And Idaho offers free state identification cards that, pursuant to the challenged statutes, satisfy the state's dentification requirements both for voter registration and when voting at the polls. *See* Idaho Code § 49-2444(22). The mere fact that an individual may be required to endure minor inconvenience—in, e.g., requesting such an ID card and submitting to a photograph taken by issuing authorities (incidentally, the very same inconveniences required to obtain student IDs)—before he or she may register or vote is no true obstacle to casting a ballot or to having that ballot properly counted.

Second, Idaho's government-ID requirement does not abridge the right to vote "on account of age" because it applies equally to all comers, regardless of age. Young, old, or middle-aged, all Idahoans who seek to either register to vote or prove their identity at the polls must produce government-issued photo identification consistent with one of the four categories set forth in the challenged statutes. Plaintiffs inadvertently admit as much. (Appellants' Br. at 5 ("As a result" of the challenged amendments, "*no one* may now register to vote unless they have and present one of the four . . . forms of accepted photo identification." (emphasis

added)).) The law applies uniformly to all, and there is no departure from the "hypothetical alternative" established by the Twenty-Sixth Amendment—a country in which, regardless of age, all eligible citizens 18 and over are free to cast their votes and to have those votes properly counted.

II. The Interpretive Theory Proffered by Plaintiffs Is Unworkable and Internally Inconsistent.

Plaintiffs' interpretation of the Twenty-Sixth Amendment is in stark contrast to the text- and precedent-based method just discussed. They assert that "the Twenty-Sixth Amendment prohibits age discrimination, not violations of the substantive right to vote." (Appellants' Br. at 2.) And by "age discrimination," plaintiffs clearly mean not just a prohibition against actual discrimination but also a constitutional bar on any policy with a "disparate impact" on the young.[2] (Appellants' Br. at 3, 34.) Idaho's decision to disallow use of student IDs to prove identity when registering to vote or at the polls does not, after all, apply only to individuals within a given age bracket—say, those 25 years of age and younger. But

[2] Plaintiffs cite only a single case in support of the proposition that disparate-impact analysis applies to Twenty-Sixth Amendment litigation—a 2018 decision from a District Court in Florida. (Appellants' Br. at 33-34 (citing *League of Women Voters v. Detzner*, 314 F. Supp. 3d 1205, 1221-23 (N.D. Fla. 2018).) But even in that case, the court took pains to distinguish "between [the] 'disparate inconveniences voters face when voting [and] the denial or abridgement of the right to vote.'" *Id.* at 1216 (quoting *Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 601 (4th Cir. 2016)).

that is of no moment, plaintiffs tell us, because the young are disproportionately impacted by this change in the law. "[Y]oung voters," plaintiffs say, "were *35 times* more likely to use student identification than older voters." (Appellants' Br. at 12, 40.) Therefore, removing student IDs from the menu was unconstitutional.

This extreme approach to the Twenty-Sixth Amendment is unworkable in practice and internally inconsistent. As to unworkability, consider the implications of a constitutional standard forbidding all voting regulations that might engender a "disparate impact" like that detected by plaintiffs here. Suppose, as is often the case, that a state allowed individuals to verify their identity by bringing a utility bill with them to the polls. Because many of them live with parents, in college dormitories, or in apartments or other shared housing, young voters are less likely than their more chronologically advanced—and more well established—counterparts to have active accounts with utility providers. *See Challenges Facing Student Voters*, League of Women Voters (June 20, 2024), https://tinyurl.com/huc5fp8c (pointing out that "young people , , , liv[ing] in a campus-like environment . . . usually don't get documents like utility bills" and lamenting that this fact "makes proof of residence more challenging when it comes time to vote"). Per plaintiffs' interpretation Twenty-Sixth Amendment, then, allowing reliance on utility bills as a means of proving identity would disparately impact the young, thus rendering the policy constitutionally infirm.

Or suppose a state were to repeal a statute permitting would-be voters to verify their identities via presentation of a debit card issued in the voter's name. Individuals ages 18 to 24 use debit cards at roughly twice the rate of those 65 and older. *See What Generation Uses Debit Cards the Most?*, Payments Journal (Apr. 26, 2024), https://tinyurl.com/mvyxt726. Thus, the young would presumably rely disproportionately on debit cards as a means of voter identification, rendering their removal from the list of acceptable IDs unconstitutional. In short, on plaintiffs' reading of the Amendment, every quotidian change in voter registration or identification policy would assume constitutional dimensions provided the change marginally impacted one age group differently from another even when, as is the case here, the acceptable means of identification remain broadly available to *all* voters regardless of age.

As to inconsistency, if plaintiffs' theory is correct—i.e., if any change in the law concerning acceptable forms of identification violates the Twenty-Sixth Amendment provided that one age group relies on that form of identification more frequently than another—then it is unclear why plaintiffs have not taken *precisely the opposite* approach to their view of developments in Idaho election law over the past several years.

Recall that the Twenty-Sixth Amendment forbids denial or abridgment of the right to vote "on account of age." It offers no special protection to the young but,

instead, protects all voters 18 and over equally. Accordingly, if, as plaintiffs contend, any election-related regulation tending to impact one age group more or less favorably than another violates the Twenty-Sixth Amendment, then plaintiffs should have challenged the Idaho statutes as *previously* enacted. If, as plaintiffs say, the young have disproportionate access to student IDs, then the prior statutory scheme, permitting use of student IDs for purposes of registration and voting, violated the Twenty-Sixth Amendment vis-à-vis the elderly and the middle aged. Drivers' licenses, for instance, or passports are more age-neutral forms of identification and, thus, constitutionally preferable to student IDs. Per plaintiffs' theory, then, Idaho's decision to *accept* student IDs as valid forms of identification for registration and voting purposes violated the Twenty-Sixth Amendment.

Indeed, in the context of absentee voting, plaintiffs and their counsel do take precisely that contrary position—i.e., they argue that extending an election-administration privilege that benefits one age group over another is unconstitutional per the Twenty-Sixth Amendment. Specifically, plaintiffs spend considerable time maligning the Seventh Circuit's recent decision in *Tully v. Okeson*, 78 F.4th 377 (7th Cir. 2023). In that case, the Seventh Circuit held that expanding opportunities for the elderly to vote absentee did not violate the Twenty-Sixth Amendment. Plaintiffs

vehemently disagree with this conclusion.[3] (Appellants' Br. at 27-28.) But note the irony. If *Tully* is wrong—and thus disparate impact is a touchstone of the Twenty-Sixth Amendment—then Idaho law *prior to* the challenged amendments was unconstitutional since, just like the Indiana law at issue in *Tully*, it extended a special privilege to a class of voters based on age. Idaho's *previous* law made it easier for the young to vote, since voters in that class are more likely to possess a student ID, while the law at issue in *Tully* made it easier for the elderly to vote by expanding their absentee options. On plaintiffs' view, then, states violate the constitution both when they *extend* special privileges *and* when they remove those privileges. Such an approach to Twenty-Sixth Amendment jurisprudence is, to say the least, unprincipled and inconsistent.

It is no answer that the plaintiffs in *Tully* (as well as in *Texas Democratic Party*) sought to "fix" the purported discrimination by extending the absentee-voting privilege to all age groups rather than by taking that privilege away from the elderly. This only highlights another problem with plaintiffs' theory. If plaintiffs are correct

[3] The head of the election-law boutique representing plaintiffs likewise submitted a brief in the only other significant Court of Appeals case to grapple with the scope of the Twenty-Sixth Amendment—*Texas Democratic Party v. Abbott*—in which he argued that providing extra privileges to one aged-based class in the form of guaranteed absentee-voting access was unconstitutional under the Twenty-Sixth Amendment. *See* Br. of Nat'l Redistricting Foundation, Doc. 249-2, *Texas Democratic Party v. Abbot*, No. 20-50407 (5th Cir. 2020).

that (1) the Twenty-Sixth Amendment bars all "age discrimination," (2) discrimination includes disparate impact, and (3) the remedy in such circumstances is always to expand, rather than remove, procedural privileges surrounding the registration and voting process, then the result would be a system that always permits the loosening—and never the strengthening—of state election-integrity measures.

That is precisely what plaintiffs say should have happened in *Tully* and, more to the point, precisely what they say is required here. Given that the young disproportionately possess student IDs, then once the Idaho legislature allowed for the use of such IDs to prove identity at the polls, it was, on plaintiffs' theory, forever barred from rescinding that privilege, as such rescission "disparately impacts" the young. The result of such an approach would be a one-way ratchet of ever-loosening election-integrity regulations. But that, thankfully, is not the law. A "one-way ratchet" approach "is incompatible" with Supreme Court precedent. *Ohio Democratic Party v. Husted*, 834 F.3d 620, 635 (6th Cir. 2016). *See also Crawford*, 553 U.S. at 189-90 (confirming that "evenhanded restrictions that protect the integrity and reliability of the electoral process itself are not invidious" and, thus, not constitutionally suspect (internal quotation marks and citation omitted)); *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1269 (11th Cir. 2020) (the Constitution has "never contemplated that federal courts would dictate the manner of conducting elections").

Indeed, "[s]uch [an approach] would have a chilling effect on the democratic process: states would have little incentive to pass bills expanding voting access if, once in place, they could never be modified in a way that might arguably burden some segment of the voting population's right to vote." *Ohio Democratic Party*, 834 F.3d at 635. It would also quickly wreak electoral havoc. Consider, for example, the case of active-duty military personnel. As mandated by federal statute, when it comes to requesting absentee ballots, Idaho law extends special privileges to military personnel stationed outside the state. Among other things, the state allows those personnel to request absentee ballots via a standardized federal postcard system. *See* Idaho Code § 34-410A ("an application for an absentee ballot made under" the "Uniformed and Overseas Citizens Absentee Voting Act" is "given the same effect as an application for an absentee ballot made under" the procedures set forth in the Idaho Code). Other state residents do not possess this privilege. The young compose a disproportionately large segment of active-duty military personnel. *See Department of Defense Demographic Profile*, U.S. Naval Institute, https://tinyurl.com/mrhzvnaf ("Overall, the average age of the active-duty force is 28.5 years."). Thus, this postcard privilege disproportionately benefits the young. Per plaintiffs' interpretation of the Twenty-Sixth Amendment, then, allowing servicemembers to register in this way while disallowing others is unconstitutional,

and the only constitutionally acceptable solution is to extend the postcard privilege to all voters.

It is easy to see, then, that the end result of such a system would be a rapid race to the bottom on the election-integrity front via the following cycle: (1) a state legislature enacts a change that makes some administrative aspect of the voting process easier for some portion of the population; (2) a litigant sues, offering evidence that the change, though neutral on its face, "disparately impacts" a given age group; (3) the change is held to violate the Twenty-Sixth Amendment; (4) the change cannot be rescinded, as its rescission would disparately impact the age group benefitting from the change; and, thus (5) by court order, the privilege afforded by the change is expanded, irrevocably, to cover all voters in the state. This is not the law, has never been the law, and should never become the law.

III. The History of the Twenty-Sixth Amendment and Basic Principles of Federalism Weigh Heavily Against Plaintiffs' Approach.

Plaintiffs' approach to the Twenty-Sixth Amendment flies in the face of the text of that Amendment and disregards existing precedent outlining the scope of the constitutionally protected right to vote. It ignores the fact that Idaho's statutory amendments apply to all age groups equally. It is unworkable in practice. It is internally inconsistent and would force a ratcheted system upon the states that would permit legislators to loosen election-integrity requirements while barring them from ever strengthening those rules. But that is by no means the full scope of the problems

associated with plaintiffs' approach to the Amendment. Among other things, their approach also ignores the history and context of the Twenty-Sixth Amendment and defies basic principles of federalism.

Throughout their brief, plaintiffs rely heavily on the history of—and precedent surrounding—the Fifteenth Amendment. But they fail to grapple with the night-and-day difference in historical conditions surrounding the ratification and subsequent enforcement of the Fifteenth and Twenty-Sixth Amendments. The Fifteenth Amendment, guaranteeing the right to vote regardless of "race, color, or previous condition of servitude," was proposed in the aftermath of the Civil War and passed by Congress in February 1869. *Cong. Globe*, 40th Cong., 3d Sess. 1641 (1869). Just over a year later, on March 30, 1870, the Secretary of State certified the Fifteenth Amendment as duly ratified. 16 Stat. 1131 (1870). The ratification occurred in a climate of deep controversy and division. New York ratified—and then rescinded ratification. U.S. Code, Constitution at 9, https://tinyurl.com/27xam5r8. Ohio initially rejected the Amendment. *Id.* More significantly, several Southern states—including North Carolina and Louisiana—ratified the Amendment while under the control of "Radical Republican" reconstruction governments—governments that would soon lose power. *See* Travis Crum, *The Lawfulness of the Fifteenth Amendment*, 97 Notre Dame L. Rev. 1543, 1566 (2022). Four other Southern states—Georgia, Mississippi, Texas, and

Virginia—approved the Amendment only after Congress, just months after submitting the Amendment to the states, passed legislation compelling those four states to ratify as a condition of reentry to the Union. *See id.* at 1549, 1575-76. Thus, though ratification succeeded, it did so only due to coercion in the very states most likely to resist adherence to the Amendment's guarantees.

And, indeed, many decades of resistance followed. "The 'blight of racial discrimination in voting . . . infected the electoral process in parts of our country for nearly a century'" following passage of the Fifteenth Amendment. *Shelby County v. Holder*, 570 U.S. 529, 545 (2013) (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966)). Many Southern states evaded the Amendment by "'switch[ing] to discriminatory devices not covered by [certain] federal decrees,' 'enact[ing] difficult new tests,' or simply 'def[ying] and evad[ing] court orders.'" *Id.* at 545 (quoting *Katzenbach*, 383 U.S. at 314). "[E]ntrenched racial discrimination in voting" remained "'an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.'" *Id.* at 535 (quoting *Katzenbach*, 383 U.S. at 309). Thus, "'[t]ests and devices'" used to prevent black citizens from voting became "'relevant'" to Fifteenth Amendment enforcement "'because of their long history as a tool for perpetrating . . . evil[.]'" *Id.* at 552 (quoting *Katzenbach*, 383 U.S. at 330).

The history of the Twenty-Sixth Amendment could hardly be more different.

The Amendment was "[a]pproved by Congress in March of 1971 and ratified by June" of that same year—"the most quickly ratified constitutional amendment in our history." *Texas Democratic Party*, 978 F.3d at 186 (citing Eric S. Fish, Note, *The Twenty-Sixth Amendment Enforcement Power*, 121 Yale L.J. 1168, 1193 (2012)). With the Vietnam War in full swing, a broad national consensus had developed that those "old enough to fight" were "old enough to vote." *See id.* at 185-86. While ratification of the Fifteenth Amendment had been followed by a century of attempts across the South to continue denying black citizens the right to vote via use of poll taxes, literacy tests, grandfather clauses, and other "'[t]ests and devices,'" *Shelby County*, 570 U.S. at 552 (quoting *Katzenbach*, 383 U.S. at 329), ratification of the Twenty-Sixth Amendment resulted in immediate implementation, without resistance, of a nationwide policy lowering the minimum voting age to 18.

Indeed, in the half-century since ratification, attempts to circumvent the Twenty-Sixth Amendment's requirements have been virtually nonexistent. In their brief to this Court, plaintiffs identify only two instances over the past 54 years in which a court, state or federal, has arguably found a violation of the Twenty-Sixth Amendment.[4] The dearth of case law represents a dearth of even *potential* violations

[4] Plaintiffs mention *Worden v. Mercer County Board of Elections*, 294 A.2d 233 (N.J. 1972), a New Jersey state-court case decided a year after the Amendment was ratified. The case involved a local election official's determination that college students were not eligible to vote in the county where they attended school. *Id.* at

of the Amendment. *See, e.g.*, *Texas Democratic Party*, 978 F.3d at 195 ("few courts have" had occasion to interpret the Twenty-Sixth Amendment); *Tully*, 78 F.4th at 382 n.5 ("dearth" of cases interpreting the Twenty-Sixth Amendment); *March for Our Lives Idaho*, 749 F. Supp. 3d at 1139 ("Neither the Supreme Court nor the Ninth Circuit has considered a challenge to an election law under the Twenty-Sixth Amendment."). Consider as well that both the Fifteenth and Twenty-Sixth Amendments grant to Congress the "power to enforce" the terms of each "by appropriate legislation"—that is, to enact legislation it deems necessary to secure the rights guaranteed by the two Amendments. U.S. Const. Amend. XV § 2; Amend. XXVI § 2. In the context of the Fifteenth Amendment, Congress has enacted a number of sweeping statutes that it has found necessary to secure the rights guaranteed by the Amendment, from the Enforcement Acts of 1870 and 1871 to the Voting Rights Acts of 1965 and 1975. But Congress has concluded that similar legislation in the Twenty-Sixth Amendment context is unnecessary. This is yet more evidence that, in contrast to the post-ratification history of the Fifteenth Amendment and its prohibition of denial or abridgement of the right to vote on account of race,

234. The only other case they cite that arguably fits in this category is *League of Women Voters v. Detzner*, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018). But that case merely involved a preliminary injunction and a single District Judge's conclusion that the plaintiffs had "a substantial likelihood of" succeeding on the merits of the Twenty-Sixth Amendment claim at issue. *Id.* at 1223.

post-ratification denial or abridgment of the right to vote on account of age has been virtually nonexistent.

Given the Nation's very different experiences with these two Amendments, courts should be especially reluctant to incorporate the most muscular theories of Fifteenth Amendment enforcement into Twenty-Sixth Amendment jurisprudence. "States have 'broad powers to determine the conditions under which the right of suffrage may be exercised.'" *Shelby County*, 570 U.S. at 543 (quoting *Carrington v. Rash*, 380 U.S. 89, 91 (1965)). This remains true even in the Fifteenth Amendment context. In *Shelby County*, the Supreme Court addressed the constitutionality of § 4(b) of the Voting Rights Act of 1965 ("VRA"). Congress's authority to enact the VRA in the first place was derived directly from the Fifteenth Amendment. That is, "Congress enacted the Voting Rights Act . . . to implement the Fifteenth Amendment[.]" *Smith v. Salt River Project Agricultural Improvement & Power Dist.*, 109 F.3d 586, 592 (9th Cir. 1997).

In *Shelby County*, the Supreme Court noted that the exacting burdens the VRA placed on states for the purpose of ensuring compliance with the Fifteenth Amendment were "a drastic departure from basic principles of federalism."[5] *Shelby*

[5] This departure was "drastic" in part because the VRA regulated "*all* changes to state election law," including those changes that affected only state, as opposed to federal, elections. *Shelby County*, 570 U.S. at 544 (citation and internal quotation marks omitted). In the same way, plaintiffs' proffered interpretation of the Twenty-

County, 570 U.S. at 535. Nevertheless, the Court had for many years tolerated the close federal oversight wrought by the VRA due to the long, sordid, and malevolently ingenious history of attempts by Southern states to deprive black citizens of the franchise. *Id.* at 535, 545-46. But citing to, among other things, dramatic increases in voter registration and election participation among black citizens in the decades following the VRA's 1965 enactment as well as the small number of Attorney General objections to voting-regulation changes in states subject to the VRA's preclearance requirements, the Court concluded that the "exceptional conditions" necessary to justify the curtailment of state authority to regulate elections wrought by § 4(b) no longer existed. *Id.* at 545, 559. Accordingly, § 4(b) was no longer constitutional. *Id.* at 559.

The federalism lesson of *Shelby County* applies, with even greater force, in the Twenty-Sixth Amendment context. "'[T]he Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections.'" *Id.* at 543 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991)). Plaintiffs call on this Court to blaze a new path in the realm of Twenty-Sixth Amendment jurisprudence by concluding that, once a state has extended an election-administration-related privilege to citizens, it may not

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Sixth Amendment would require federal-court management of the procedural details of elections for both state and federal office.

withdraw the privilege—even where a burden-free alternative mechanism is available—so long as withdrawal of the privilege will disparately impact individuals within any given age group. Such an "extraordinary and unprecedented" intrusion into the states' authority to regulate elections could only be justified, if at all, by a similarly "extraordinary problem." *Id.* at 549, 543. But no such problem is present in the Twenty-Sixth Amendment context: neither in the facts of this case nor anywhere else in the half-century history of states self-policing and self-enforcing with regard to the Amendment.

In *Shelby County*, the Supreme Court made clear that federal interference with State election-regulation prerogatives can be—and, in that case, was—constitutionally problematic in the Fifteenth Amendment context given the enormous strides the Nation had made with regard to the removal of barriers to black voter participation. A fortiori, then, federal micromanagement of state voting laws in the Twenty-Sixth Amendment context is certainly unconstitutional given the utter dearth of age-based barriers to voting, both in Idaho and nationwide.

* * *

Plaintiffs ask this Court to establish a system that would permit federal judicial intrusion into the minutiae of state election regulations whenever any policy change, however minor, might "disparately impact" one age group or another. In other words, plaintiffs seek to beget a level of federal intrusion into the states' right to

manage elections akin to that imposed, in the Fifteen-Amendment context, by the VRA pre-*Shelby County*. But, with respect to the Twenty-Sixth Amendment, Congress has enacted no enforcement legislation, no state was coerced into ratification, *all* states immediately complied with the Amendment's requirements, and plaintiffs are unable to muster *any* evidence showing a pattern of post-ratification discrimination based on age. In short, plaintiffs would have this Court equate a century of broad, deliberate efforts by numerous states to keep ballots out of the hands of black citizens entirely with a state's decision to remove a single form of unofficial documentation from the list of approved forms of identification while at the same time ensuring approved forms are free and readily available to all.

CONCLUSION

This Court should affirm the District Court's grant of summary judgment in favor of the Idaho Secretary of State.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 5,323 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), I have relied on the word-count function of Microsoft Word in preparing this certificate.

2. I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 28, 2025, this Brief was filed with the United States Court of Appeals for the Ninth Circuit via the Court's ECF system. Counsel of record will receive notice of, and be able to access, the filing via that system.

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