

No. 26-1783

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

COUNT US IN, et al.,
Plaintiffs-Appellees,

v.

DIEGO MORALES, in his official capacity as the
Secretary of State of the State of Indiana, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the
Southern District of Indiana, No. 1: 25-cv-00864-RLY-MKK
The Honorable Richard L. Young, Judge

**EMERGENCY MOTION FOR IMMEDIATE ADMINISTRATIVE STAY
OF PRELIMINARY INJUNCTION AND STAY PENDING APPEAL**

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INTRODUCTION

Pursuant to Federal Rules of Appellate Procedure 8 and 27, Appellants (“the State” or “Indiana”) move for an ***emergency stay*** pending appeal of the preliminary injunction that issued on April 14, 2026, and blocked enforcement of an election law after voting had begun. Indiana also moves for an ***immediate administrative stay*** of the injunction to permit orderly consideration of the stay motion and to prevent further disruption to an ongoing election.

This is a textbook situation in which an immediate stay is needed to preserve the orderly elections, prevent voter confusion, and protect public confidence. Early in-person voting for Indiana’s primary began last week, on April 7, and primary day is May 5. But a week into voting, the district court changed the rules and enjoined an amendment to Indiana’s voter-ID regime enacted a year ago. It prohibited state and Monroe County election officials from enforcing Senate Bill 10’s (“SB 10”) provision clarifying that public university IDs cannot be used for voting. That was highly improper. As the Supreme Court has “repeatedly emphasized,” federal courts may not “insert[] [them]sel[ves]” into an “active primary.” *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (citation omitted).

Without a stay, Indiana and its people will suffer irreparable harm. The injunction overrides a duly enacted statute midway through an active primary, undermining the democratic process, public confidence in elections, and the fairness of elections. The injunction also requires election officials to redo guidance and retrain poll workers while voting is underway. It creates uneven election rules across the State,

allowing students, faculty, and contractors with IDs from select public universities to vote in just one of Indiana's 92 counties using a form of identification no other voters can use. And it threatens to confuse voters and workers alike.

Merits considerations strongly reinforce that a stay is warranted. The district court deemed SB 10 to burden unduly the right to vote because some university students could face difficulties in obtaining a driver's license. But that assessment runs into the teeth of *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), which held that Indiana may require voters to present a valid driver's license at the polls. As every other court to have addressed the issue has held, no constitutional principle requires States to let citizens vote using university-issued IDs—a special privilege most voters do not enjoy. And whatever one thinks of the constitutional claim, there can be no doubt the district court disregarded binding precedent by granting a universal injunction without a finding of facial invalidity.

Finally, no considerations tilt against a stay. The only plaintiff found to have standing has already voted in the primary, and could readily obtain a different ID before the general election in November. Plaintiffs have not identified anyone else who either lacks an ID that can be used to vote or is unable to obtain one. And plaintiffs' clear, inexplicable delay in seeking an injunction—they waited until ten months after SB 10 had been enacted and the primary was imminent—disentitles them to relief in the middle of an election. An immediate stay is warranted.

Counsel for the State contacted plaintiffs' counsel. Plaintiffs oppose a stay.

BACKGROUND

I. Voting in Indiana

Indiana permits citizens who are at least 18 years old and have been domiciled in a precinct for 30 days to register as voters. Ind. Code § 3-7-13-1; *see* § 3-5-2.1-90. In an election, registered voters may cast ballots in-person at their precinct or at various locations up to 28 days before election day. §§ 3-11-8-2, 3-11-4-1, 3-11-10-26.

Since 2005, casting a ballot in person has required a voter to present a valid proof of identification. Ind. Code §§ 3-10-1-7.2(a), 3-11-8-25.1(a). Generally, an ID must be a “document” issued by the United States or Indiana that shows the voter’s name, photograph, and an expiration date. § 3-5-2.1-84(a); *see* §§ 3-10-1-7.2(a), 3-11-8-25.1(a). Indiana driver’s licenses—which 87.7% of Hoosier adults have, Ex. C at 33—and passports meet those criteria. Some IDs will be accepted without expiration dates, including IDs issued by the U.S. military, U.S. Department of Defense, U.S. Department of Veterans Affairs, the Indiana National Guard, and federally recognized tribes. § 3-5-2.1-84(b). Those IDs still must meet all other criteria. *Id.*

Should a voter present at the polls without a valid ID, the voter may cast a provisional ballot. Ind. Code § 3-11.7-2-1(b)(1). Voters who cast provisional ballots must appear before the circuit court clerk or county election board within ten days and show valid ID, §§ 3-11.7-5-2.5(a), 3-11-7.5-2.5(b)(1), or appear and execute an affidavit stating that they are indigent, § 3-11.7-5-2.5(c). Eligible voters without a driver’s license also can obtain free state IDs from the Bureau of Motor Vehicles

(“BMV”). § 9-24-16-10(b)-(c); *see* 140 IAC 7-1.1-3(a). Applying usually takes less than 18 minutes, and most IDs are mailed within 3 to 5 days. Ex. P at ¶ 12.

II. Senate Bill 10

Some—but not all—of Indiana’s public colleges and universities have issued IDs to students, faculty, employees, staff, and contractors that satisfied Indiana’s general requirements for IDs that can be used for voting. *See, e.g.*, Ex. H at ¶ 15 (Purdue University started issuing qualifying IDs in 2019); Ex. I at ¶¶ 4-7 (Ivy Tech does not generally issue IDs).

University IDs vary in appearance, Ex. F at ¶ 33; Ex. E at ¶ 58, which makes poll-worker training more complex, slows voter processing, and increases the likelihood of mistakes, Ex. F at ¶¶ 32, 56. More recently, two of Indiana’s largest universities—Purdue University and Indiana University—decided to issue only digital IDs to students. *See* Ex. H at ¶ 9; Ex. G at ¶ 14. That threatened more confusion. Ex. F at ¶¶ 32, 41, 56.

In April 2025, Indiana’s legislature passed SB 10, clarifying that IDs issued by an “educational institution” cannot be used for voting. Ind. Code § 3-5-2.1-84(c). That means students, faculty, and staff at public colleges and universities must use the same types of ID as other voters. Private university IDs never qualified.

III. This Litigation

In May 2025, Count US IN, Women4Change Indiana, and Josh Montagne filed this lawsuit against state election officials and local election officials in Monroe County. Ex. 1. They did not join any local election officials from Indiana’s other 91

counties. As relevant here, they alleged that SB 10 violates the right to vote because it burdens students. *See* Ex. A at ¶¶ 81-85. In February 2026—about nine months after filing the complaint and two months before Indiana would start early voting for its May 5 primary—plaintiffs moved for a preliminary injunction. Ex. Q at 8.

Early voting for Indiana’s primary started on April 7, 2026. Ex. D at 3. On April 14—a week into voting—the district court preliminarily enjoined enforcement of SB 10 by defendants. Ex. R. The court held that *Purcell* did not bar an injunction, even though voting was underway, training materials had been distributed, and poll workers had been trained. Ex. Q at 13-14. The court also held that plaintiffs were likely to succeed on the merits under *Anderson-Burdick*. It asserted that SB 10 poses a “moderate” burden to voting on “students and young voters” because some could face difficulty obtaining the documents needed to obtain an ID or would have to travel to a BMV branch. Ex. Q at 22-27. The court also held that interests in “orderly election administration” and safeguarding elections were insufficient. *Id.* at 27-31.

This appeal and motion followed. Indiana did not seek a stay below.

ARGUMENT

An immediate stay of the preliminary injunction—which issued seven days into early voting and just weeks before Indiana’s May 5 primary—is warranted.

I. *Purcell* Justifies an Immediate Stay

Since *Purcell v. Gonzalez*, 549 U.S. 1 (2006), the Supreme Court has “repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020). This is because last-minute judicial decrees can wreak

havoc. “Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials, and pose significant logistical challenges.” *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring, in grant of applications for stays). “When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters.” *Id.* at 880-81.

So important is the need for settled rules that the Supreme Court and this Court have routinely stayed injunctions issued shortly before elections. *See, e.g., Abbott*, 146 S. Ct. at 419 (staying injunction issued eleven months before election); *Merrill*, 142 S. Ct. at 879 (staying injunction issued seven weeks before primary); *Ardoin v. Robinson*, 142 S. Ct. 2892, 28Ex. J3 (2022) (staying injunction five months before primary); *Democratic Nat’l Comm. v. Bostelmann*, 977 F.3d 639, 641-42 (7th Cir. 2020) (staying injunction granted six weeks before election); *Common Cause Ind. v. Lawson*, 978 F.3d 1036, 1042 (7th Cir. 2020) (staying injunction granted five weeks before election). Yet here, the district court issued an injunction after in-person voting had started. That is well after “*Purcell*’s warning threshold.” *Tully v. Okeson*, 977 F.3d 608, 612 (7th Cir. 2020).

The district court tried to downplay its injunction as “merely” requiring Indiana to revive prior practices. Ex. Q at 13. But the Supreme Court rejected an identical argument in *Purcell*. There, the Ninth Circuit enjoined Arizona’s then-new requirements that voters prove citizenship when registering to vote and show identification

when they present at the polls. 549 U.S. at 2. The injunction required Arizona to revive prior election procedures. But the Court held that the injunction was too close to the election, which was a month away. *Id.* at 5. That holding applies with all the more force here, where the election is already underway.

Without a stay, the injunction is guaranteed to sow chaos, confusion, and disruption. Election officials will have to retrain poll workers and redo guidance. Ex. J, at ¶¶ 4-7; Ex. K at ¶¶ 6-8. Just revising and reprinting training materials in time would be “difficult and expensive, if not impossible.” Ex. K at ¶ 6. Nor is training poll workers simple. University IDs can differ widely. *See* Ex. F at ¶ 49. Voter confusion and public confidence in the elections is at risk too—a problem compounded by the injunction’s scope and effect. *See Purcell*, 549 U.S. at 4-5. The injunction enjoins enforcement of SB 10 by state election officials and a single county election board. Ex. R. It does not run against officials in Indiana’s other 91 counties. That creates the possibility different counties will adhere to different rules, creating confusion and unfairness. Indeed, election officials and administrators have already expressed “confusion and discomfort.” Ex. S at ¶ 9. A stay is required.

II. The State Is Likely to Succeed on the Merits

Although the Court need not look past *Purcell*, the traditional stay factors—likelihood of success, the balance of harms, and the public interest—powerfully reinforce that a stay should issue. *See Nken v. Holder*, 556 U.S. 418, 426 (2009).

To start, Indiana’s likelihood of success is strong. As every other court to confront the issue has recognized, *Crawford* forecloses the view that requiring voters—

students included—to present a driver’s license or similar ID imposes a burden. And even if one focuses on those who could have voted with university IDs before SB 10—a dwindling number of students, staff, and faculty at select institutions—the vast majority can easily vote using another ID. Speculation that some students might claim difficulty taking a bus to a BMV branch, retrieving a birth certificate, or establishing residency cannot support holding SB 10 unconstitutional, especially given countervailing interests in election administration and integrity. And the district court’s issuance of a universal injunction defies binding precedent.

A. *Crawford* establishes SB 10 does not burden the right to vote

Under *Anderson-Burdick*, a court must examine the “character and magnitude” of an alleged burden on the right to vote, and then weigh that burden against state interests. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). “Nondiscriminatory restrictions that impose only slight burdens are generally justified by the need for orderly and fair elections,’ whereas severe burdens must be narrowly tailored to serve a compelling state interest.” *Acevedo v. Cook Cnty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019) (quoting *Libertarian Party of Ill. v. Scholz*, 872 F.3d 518, 523-24 (7th Cir. 2017)). Absent a severe burden, a voting regulation must be upheld if it is “reasonable” and “nondiscriminatory,” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983), and a court must defer to the State’s judgment of its “important regulatory interests,” *Burdick*, 504 U.S. at 434. *Anderson-Burdick* is not a license to override legislative judgments about “whether any given election law is necessary.” *Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020).

As courts across the country have recognized, *Crawford* resolves the threshold issue here—whether SB 10 significantly burdens the right to vote. See *BABE VOTE v. McGrane*, 546 P.3d 694, 713 (Idaho 2024); *March for Our Lives Idaho v. McGrane*, 749 F. Supp. 3d 1128, 1141-42, 1148 (D. Idaho 2024); *Nash. Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 754-55 (M.D. Tenn. 2015). When Indiana first enacted its photo ID law in 2005, challengers made the same argument that plaintiffs made here—that Indiana’s law burdens the right to vote of the elderly, the poor, and other voters without driver’s licenses. See *Crawford*, 553 U.S. at 200-02 & n.20 (opinion of Stevens, J.). The Supreme Court disagreed. As Justice Stevens explained, “the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Id.* at 198. Justice Scalia’s concurrence was even more direct: any alleged “burden of acquiring, possessing, and showing a free photo identification is simply not severe.” *Id.* at 209.

Crawford controls here. SB 10 does not change the preexisting requirement that a voter must present proof of identification at the polls—which for most voters, means presenting a driver’s license or free state ID. See *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 786, 824 (S.D. Ind. 2006), *aff’d sub nom. Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff’d*, 553 U.S. 181 (2008). Rather, SB 10 clarifies that students, faculty, and staff at the few public universities that issued physical IDs with expiration dates cannot use those IDs to vote. SB 10 thus places them on the same footing as all other voters, including the elderly, the

poor, and other voters whom *Crawford* held did not face a severe burden. Any argument that SB 10 creates more than a minimal inconvenience runs straight into *Crawford*.

B. Putative impacts on individuals do not distinguish *Crawford*

The district court sought to sidestep *Crawford* by focusing on “a particular class of voters,” *i.e.*, “students and young voters.” Ex. Q at 17, 25. As an initial matter, that is the wrong unit of analysis. SB 10 does not single out “students” or “young voters.” Even before SB 10, many students could not vote using university IDs, including those at private universities and those who attended public institutions that do not issue physical IDs with expiration dates. *See* Ex. I at ¶¶ 3-11; Ex. O at 23:20-24:8. Nor are those with university IDs necessarily young. A significant portion—somewhere between a third and a half—are faculty and staff. *See* Ex. H at ¶ 3; Ex. G at ¶ 3. Many more are contractors or older students in graduate or professional programs. Dkt 92-6 at ¶¶ 3, 8; Ex. H at ¶¶ 3, 8, 12. Characterizing SB 10 as a “student ID” ban, *see* Ex. Q at 25, is simply wrong.

But even if “students and young voters” were the correct unit, the district court applied the wrong standard. To invalidate a voting rule’s application to an entire group, a “substantial” number of its applications to the group must be unconstitutional. *Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024); *see John Doe No. 1. v. Reed*, 561 U.S. 186, 194 (2010). But the district court never found SB 10 lacks a “plainly legitimate sweep.” *Crawford*, 553 U.S. at 202 (opinion of Stevens, J.) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)). Nor

could it. According to the court, 73.4% of Indiana residents between the ages of 18 and 24—“the predominant age group among Indiana college students”—already have a driver’s license. Ex. Q at 4; *see also id.* at 21 n.4. They face no burden whatsoever.

Faced with this difficulty, the district court tried the same tactic the challengers tried in *Crawford*—it speculated that some students could face difficulty voting for a variety of reasons. *See* Ex. Q at 21-27. But that confuses an alleged burden’s severity with “different impacts” on individuals. *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). Supreme Court “precedents refute the view that individual impacts are relevant to determining the severity of the burden.” *Id.* That is why *Crawford* rejected arguments that Indiana’s law was unconstitutional because “some voters” in various groups—the elderly, the poor, or the homeless—could face difficulties. *Id.* at 206 (quoting *Burdick*, 504 U.S. at 446 (opinion of Kennedy, J.)). What was dispositive is that “most voters” faced none. *Id.* at 198 (opinion of Stevens, J.); *see also Richardson v. Tex. Sec’y of State*, 978 F.3d 220, 236 (5th Cir. 2020). The same is true here.

As in *Crawford*, moreover, the challengers have not quantified the extent or size of burden. The court estimated that SB 10 affects “40,000 students.” Ex. Q at 20-21. By “affected,” the court meant that they do not have a driver’s license, passport, or ID card from the BMV. *Id.* at 21 n.4. But the mere fact that those students must allegedly apply for a driver’s license or free ID card does not establish that their rights are burdened—any more than it did in *Crawford*. There, too, voters had to obtain a license or card. Yet the Court held any burden was minimal. *See Crawford*, 553 U.S. at 198 (opinion of Stevens, J.); *id.* at 209 (Scalia, J., concurring).

The same remains true today. Voters' need to obtain an ID cannot be considered in isolation. *See Luft*, 963 F.3d at 671. The BMV, which has 116 locations, makes IDs available at no cost to any resident who lacks a driver's license. Ind. Code § 9-24-16-10(b)-(c). The average appointment with the BMV takes fewer than 18 minutes, Indiana residents receive a temporary ID at the appointment, and most permanent IDs are mailed within three to five business days. Ex. P at ¶ 12. And a voter who arrives at the polls without an ID may cast a provisional ballot and then either present a valid ID within ten days or execute an affidavit of indigency. §§ 3-11.7-2-1(b)(1), 3-11.7-5-2.5(c). Requiring compliance with basic rules that citizens routinely navigate with success is not a constitutional problem.

The court suggested some students might face transportation, financial, or scheduling difficulties. Ex. Q at 21-26. But it did not hazard estimates as to how many of the 40,000 students who allegedly lack other IDs actually face one or more of those difficulties. Rather, it invoked the same kinds of generic descriptions that *Crawford* rejected as inadequate. *See* 553 U.S. at 201-02 & n.20 (opinion of Stevens, J.). It strains credulity to suggest that students with the intellect and resources to attend Indiana's flagship universities somehow face greater burdens than the putative burdens to the homeless, elderly, and poor that *Crawford* deemed insignificant.

Tellingly, despite months of litigation and discovery, plaintiffs have not identified a single person who lacks a valid ID or could not obtain an ID with minimal effort. *See* Ex. N at 32:2-5; Ex. M at 110:18-111:9; Ex. L at 56-64. The district court stressed that Josh Montagne does not have a driver's license. Ex. Q at 22-23. But

Montagne possesses everything needed to obtain an ID from the BMV. Ex. L at 22:16-19, 47:13-48:20. He simply has chosen not to retrieve his birth certificate from his parents' home during visits there. *See* Ex. L at 40:21-44:16.

One final point: the district court thought it “relevant” that SB 10 singles out “student ID cards.” Ex. Q at 25. But it cited no authority holding that supposed legislative intent has any relevance under *Anderson-Burdick*, and as discussed, it is simply wrong to characterize SB 10 as targeting “student ID[s].” The statute addresses IDs held by a wide range of people of all ages. And the district court cited no evidence that could overcome the “presumption of legislative good faith” that must be afforded the legislature. *Abbott v. Perez*, 585 U.S. 579, 610 (2018).

C. Valid state interests outweigh any putative burden

Even if the district court were correct in supposing that SB 10 imposes some burden, it improperly disregarded countervailing state interests. *Crawford* recognized three legitimate state interests that voter ID laws serve: deterring fraud, protecting public confidence in election integrity, and ensuring orderly election administration. 553 U.S. at 196-97. SB 10 advances each.

Start with election administration. SB 10 eliminates a source of complexity and potential error. Public university IDs have varied enormously in appearance, format, security features, and issuance procedures, variation that complicates poll-worker training, slows voter processing, and increases error. Ex. F at ¶¶ 32, 56. Recent events have exacerbated matters. In recent years, some of Indiana's largest public universities have decided to issue only digital IDs to students. *Id.* at ¶ 37. Those

digital IDs do not meet Indiana’s general requirements for a valid ID, which (among other things) must be a “document.” Ind. Code § 3-5-2.1-84(a). But there is evidence of confusion among local officials and poll workers. *See* Ex. F at ¶ 41 (explaining two counties gave different answers regarding digital IDs). Clarifying that no IDs can be used eliminates the confusion and ensures voters do not arrive at the polls under a wrong impression of what IDs are valid. *See id.* at ¶¶ 37, 53.

Universities’ accelerating transition to digital IDs also means there is less reason to tolerate the confusion that surrounds a category of IDs that will be issued to increasingly fewer students, staff, and faculty. Even the district court admitted that eliminating university IDs as acceptable IDs would “streamline election administration.” Ex. Q at 30. Instead, the court faulted the legislature for not streamlining further. *See id.* But that amounts to an impermissible second-guessing of policy judgments about costs and benefits. “Only when voting rights have been severely restricted must states have compelling interests and narrowly tailored rules.” *Luft*, 963 F.3d at 672 (citing *Burdick*, 504 U.S. at 434). Otherwise, “balancing the interests of discouraging fraud and mitigating elections-related issues with encouraging voter turnout is a judgment reserved to the legislature.” *Tully*, 977 F.3d at 611.

SB 10 improves public confidence and election integrity too. Expert evidence demonstrates that stricter identification requirements correlate with reduced public perceptions of fraud prevalence. Ex. E at ¶¶ 41-42. Indeed, voter ID laws enjoy overwhelming bipartisan public support in Indiana, including supermajority approval

among Democrats. Ex. E at ¶¶ 14-17, 28. Restricting university ID promotes confidence. University IDs are not issued under any statewide standard that requires proof of citizenship, lawful presence, or Indiana residency, distinguishing them from every other qualifying form of voter ID. Ex. F at ¶¶ 28-29, 46. The district court’s suggestion that Indiana needs to wait for more concrete evidence of fraud and a loss of public confidence, Ex. Q at 28-30, ignores that a “State may take action to prevent election fraud without waiting for it to occur.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 686 (2021).

Indiana is not alone in reaching the judgment it has reached. Idaho, Missouri, Ohio, South Carolina, Tennessee, and Texas have each decided that university IDs cannot be used for voting. *See* Idaho Code §§ 34-1113, 34-411; Mo. Rev. Stat. § 115.427; Ohio Rev. Code Ann. § 3505.18 (West); S.C. Code Ann. § 7-13-710; Tenn. Code Ann. § 2-7-112; Tex. Elec. Code Ann. § 63.0101 (West). The Constitution lets Indiana make that same decision.

D. The district court’s overbroad injunction defies precedent

There is yet another reason Indiana has a likelihood of success—the district court’s decision to grant universal relief to nonparties defies binding precedent. Under settled precedent, an injunction must be no “broader than necessary to provide complete relief to each plaintiff with standing to sue.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025); *see Chi. Headline Club v. Noem*, 168 F.4th 1033, 1042 (7th Cir. 2026); *Doe v. Rokita*, 54 F.4th 518, 519 (7th Cir. 2022). But the district court did the opposite here. This is not a class action, and the only party it found to have standing was

Montagne. Ex. Q at 10. But the court enjoined the defendant state and Monroe County election officials from enforcing SB 10 against anyone. Ex. R. That was “inappropriate.” *Noem*, 168 F.4th at 1042 (quoting *CASA*, 606 U.S. at 850).

III. The Remaining Factors Favor a Stay

The remaining *Nken* factors also justify a stay. Indiana’s and the public’s interests significantly overlap. *See Nken*, 556 U.S. at 435. Absent a stay, the district court’s order enjoining the Defendants from enforcing SB 10 will irreparably injure the public and State interests by causing voter and election worker confusion, disrupting an orderly election process, and preventing enforcement of a democratically enacted law. Conversely, none of the plaintiffs face any substantial injury.

First, this injunction causes irreparable injury to the public and State by causing confusion for voters, the public, and election workers and officials. Since SB 10 was enacted in April of 2025, Hoosier voters and the public were told that university IDs are no longer valid for voting. Local election administrators and workers have been trained to implement SB 10. Ex. J at ¶¶ 4-7; Ex. K at ¶¶ 6-8. Now, a week into primary election voting, the district court has enjoined the defendants—the Secretary of State, members of the Election Commission, members of the Election Division, and only one of 92 county election boards—and “any other persons who act in concert with the parties” from enforcing SB 10. Ex. R. The timing and scope of this injunction is an obvious recipe for confusion. *See* pp. 6-7, *supra*; Ex. J at ¶¶ 4-7; Ex. K at ¶¶ 6-8; *Tully*, 977 F.3d at 618 (intervention after an election had begun “would only risk exacerbating voter confusion”) (citation omitted).

Second, the loss of an orderly election process cannot be undone after the election. Both the public and State have a compelling interest in the orderly operation of the election process. *See Purcell*, 549 U.S. at 4-5; *Benisek v. Lamone*, 585 U.S. 155, 160 (2018). Not only does the district court’s injunction override the policy judgments of Indiana’s legislature in balancing efficient election administration, voter confidence, and voters’ ability to obtain IDs, but it does so seven days after voting has already commenced. There is clear harm. *See Tully*, 977 F.3d at 618 (“This court is ill equipped to second guess, let alone override, the rational policy judgments of Indiana’s elected officials ‘on the eve of an election’”) (quotations omitted).

Third, barring the State from “conducting [an] election pursuant to a statute enacted by the Legislature” would “seriously and irreparably harm the State.” *Abbott*, 585 U.S. at 602; *see Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (similar). Even when this Court has found a statute unconstitutional, it has issued stays keeping the laws in effect pending a final decision. *See e.g., Baskin v. Bogan*, No. 14-2386 (7th Cir. 2014), Dkt. 217, 218 (staying invalidation of laws pending final disposition by Supreme Court).

Montagne does not face any substantial injury. The district court stated that plaintiffs have “shown the potential for irreparable harms,” noting that Montagne’s inability to vote with a university ID and SB 10’s “moderate burden” he would face getting another ID. Ex. Q at 32. But that putative harm is no longer immediate. According to news reports, Montagne voted Wednesday, April 15, in the primary election using his university ID. Ex. B. Plenty of time now remains for Montagne to collect

his birth certificate before the general election in November. *See* pp. 12-13, *supra*. And the court did not find any other parties had standing, which precludes considerations of any claimed harms to them.

Finally, plaintiffs' delay in requesting an injunction strongly tips the balance of harms to the State. This Court has emphasized that plaintiffs must press a claim "expeditiously." *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990). "[B]elated election litigation risks giving voters incentive to remain away from the polls." *Trump v. Wis. Elections Comm'n*, 983 F.3d 919, 925 (7th Cir. 2020) (citation omitted). And it has held that delay of as little as two or three months can disentitle a plaintiff to relief. *See Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1060 (7th Cir. 2016); *Bowes v. Ind. Sec'y of State*, 837 F.3d 813, 818 (7th Cir. 2016). The delay here is substantially longer. Plaintiffs waited ten months after SB 10 was enacted, until the eve of a long-scheduled primary, to seek an injunction. The district court sought to excuse the delay. Ex. Q at 14. But plaintiffs have not identified any evidence that was essential for a claim they could not have obtained earlier, and at no point did plaintiffs seek expedited discovery. This Court should stay the preliminary injunction.

IV. Exigent Circumstances Warrant Seeking a Stay from this Court

Defendants did not seek a stay in the district court because it would be impracticable. Under Federal Rule of Appellate Procedure 8(a)(2), a motion for stay must either show that a motion for stay was filed in the district court and denied or that "moving first in the district court would be impracticable." *See e.g., Commonwealth v. Beshear*, 981 F.3d 505, 508 (6th Cir. 2020); *Gonzalez ex rel. Gonzalez v. Reno*, No. 00-

11424-D, 2000 WL 381901, at *1 n.4 (11th Cir. Apr. 19, 2000). This emergency motion is being filed within approximately 48 hours of the injunction, and given that voting commenced more than a week ago and will end in 19 days, time is of the essence. Seeking relief below would not have been practicable and would have almost certainly been futile, considering the district court's deliberate decision to enjoin SB 10 while an election was underway. Clarity from this Court is urgently needed.

CONCLUSION

The Court should grant an immediate administrative stay of the preliminary injunction and a stay pending appeal.

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CERTIFICATE OF COMPLIANCE

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Dated: April 16, 2026

/s/ James A. Barta
JAMES A. BARTA
Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that, on April 16, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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