

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

COUNT US IN, et al.,
Plaintiffs-Appellees

v.

DIEGO MORALES, et al.,
Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

Case No. 1:25-cv-00864
The Honorable Judge Richard L. Young

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
IN SUPPORT OF DEFENDANTS-APPELLANTS AND URGING REVERSAL ON
THE ISSUES RAISED HEREIN

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TABLE OF CONTENTS

	PAGE
INTEREST OF THE UNITED STATES	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
STATEMENT OF THE ISSUE.....	4
ARGUMENT	4
I. The district court erroneously treated <i>Anderson-Burdick</i> as a one-way ratchet.	4
II. The Fourteenth Amendment does not impose disparate-impact liability.	8
A. The district court erroneously focused on impact, not burden.....	9
B. A disparate impact alone can never violate the Fourteenth Amendment.....	13
C. This Court already has explained that a disparate impact alone cannot justify enjoining a photo-identification requirement.	14
III. The district court’s opinion chills efforts to combat fraudulent voting.	16
CONCLUSION	20
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Alston v. City of Madison</i> , 853 F.3d 901 (7th Cir. 2017).....	13-14
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983)	2, 4, 9
<i>Brnovich v. Democratic Nat’l Comm.</i> , 594 U.S. 647 (2021)	18
<i>Buckley v. American Const. Law Found., Inc.</i> , 525 U.S. 182 (1999)	17
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992).....	2, 9-10
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	15
<i>Columbus Bd. of Educ. v. Penick</i> , 443 U.S. 449 (1979).....	14
<i>Crawford v. Marion Cnty. Election Bd.</i> , 553 U.S. 181 (2008).....	<i>passim</i>
<i>Eu v. San Francisco Democratic Cent. Comm.</i> , 489 U.S. 214 (1989)	17
<i>Frank v. Walker</i> , 768 F.3d 744 (7th Cir. 2014).....	14, 18
<i>Gill v. Scholz</i> , 962 F.3d 360 (7th Cir. 2020)	4, 9-10
<i>Harlan v. Scholz</i> , 866 F.3d 754 (7th Cir. 2017).....	9, 12
<i>Hope v. Commissioner of Ind. Dep’t of Corr.</i> , 9 F.4th 513 (7th Cir. 2021) (en banc)	15-16
<i>Hope v. Indiana Dep’t of Corr.</i> , 984 F.3d 532 (7th Cir. 2021).....	16
<i>Luft v. Evers</i> , 963 F.3d 665 (7th Cir. 2020)	6, 10
<i>Minority Police Officers Ass’n of South Bend v.</i> <i>City of South Bend</i> , 801 F.2d 964 (7th Cir. 1986).....	14

CASES (continued):	PAGE
---------------------------	-------------

<i>Nixon v. Missouri Mun. League</i> , 541 U.S. 125 (2004).....	6
<i>Personnel Adm’r of Mass. v. Feeney</i> , 442 U.S. 256 (1979).....	13
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) (per curiam)	17-18
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	17
<i>Smith v. Boyle</i> , 144 F.3d 1060 (7th Cir. 1998)	14
<i>Southwestern Oil Co. v. Texas</i> , 217 U.S. 114 (1910)	15
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	17
<i>Timmons v. Twin Cities Area New Party</i> , 520 U.S. 351 (1997).....	12
<i>Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	13
<i>Washington v. Davis</i> , 426 U.S. 229 (1976)	15

STATUTES:

18 U.S.C. 611(a)	1
18 U.S.C. 1015(f).....	1
52 U.S.C. 10307	1
52 U.S.C. 20511	1
Ind. Code § 3-5-2.1-84 (2026)	1
15 Del. Code. Ann. 15 § 5502 (West 2026).....	7
S.C. Code Ann. § 7-15-320 (2026)	7

STATUTES (continued): **PAGE**

H.B. 346, 150th Gen. Assemb. (Del. expired Jan. 12, 2021)..... 7

H 5305, § 2 Gen. Assemb., 123d Sess. (S.C. 2019)..... 7

REGULATION:

Preserving and Protecting the Integrity of American Elections,
Exec. Order No. 14,248, 90 Fed. Reg. 14,005, (Mar. 25, 2025)..... 1

INTEREST OF THE UNITED STATES

“Free, fair, and honest elections unmarred by fraud, errors, or suspicion are fundamental to maintaining our constitutional Republic.” *Preserving and Protecting the Integrity of American Elections*, Exec. Order No. 14,248, 90 Fed. Reg. 14,005 (Mar. 25, 2025). To that end, federal law prohibits fraudulent voting in federal elections. *See* 18 U.S.C. 611(a), 1015(f); 52 U.S.C. 10307, 20511. The United States supports photo-identification requirements and other state regulations that secure elections and frustrate illegal voting. SB 10 is one such regulation. Ind. Code § 3-5-2.1-84 (2026) (SB 10). It is a commonsense statute that deters fraud and therefore improves public confidence in Indiana’s federal elections. The district court misapplied the *Anderson-Burdick* test by enjoining SB 10 because of its disparate impact on young voters and students. Its injunction distorts basic principles of Fourteenth Amendment law and threatens to chill similar state and federal election-integrity measures. The United States therefore files this amicus brief in support of defendants-appellants.

INTRODUCTION AND SUMMARY OF ARGUMENT

As do several other States, Indiana prohibits the use of student identifications at the polls. No one argues that this prohibition is per se unconstitutional. Plaintiffs do not assert an unqualified constitutional right to use their student identifications, and the district court did not recognize one.

This case arises only because Indiana formerly allowed voters to use student identifications, but now it does not. Misapplying the *Anderson-Burdick* test, the district court held that Indiana violated the Fourteenth Amendment “by eliminating student IDs as an acceptable form of identification.” SA27; *see Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). In other words, Indiana was under no obligation to accept student identifications in the first place, but once it did so, it is forbidden from reversing course. Indiana must continue to accept student identifications that “otherwise compl[y] with the neutral criteria established by Indiana’s voter ID law”—forever and ever. SA27.

The district court erred for all of the reasons explained by Indiana. The United States submits this amicus brief to highlight two additional reasons why this Court should reverse.

First, the district court disregarded *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), in which the Supreme Court held that Indiana's photo-identification law does not unconstitutionally burden the right to vote. Rather than abide by the controlling decision in *Crawford*, the court imposed a one-way ratchet upon Indiana under which States face increased constitutional scrutiny when tightening election-security regulations.

Second, the district court invented a novel theory of Fourteenth Amendment liability by focusing on SB 10's disparate *impact* on the unprotected classes of young voters and students rather than the statute's identical and minimal *burden* on all voters. Impact and burden are separate concepts. *Crawford* instructs courts to look to burden, not impact, and disparate impact alone cannot establish a Fourteenth Amendment violation.

By enjoining SB 10, the district court has undermined Indiana's interest in and obligation to guarantee free, fair, and secure elections. It

has opened the door for other unprotected classes to succeed on disparate-impact challenges to reasonable election regulations. Because the district court’s theory contravenes *Crawford*, the *Anderson-Burdick* test, and the Fourteenth Amendment, this Court should reverse.

STATEMENT OF THE ISSUE

Whether SB 10 violates the Fourteenth Amendment because of its disparate impact on young voters and students.

ARGUMENT

I. The district court erroneously treated *Anderson-Burdick* as a one-way ratchet.

When “reviewing constitutional challenges to state electoral regulations” under the Fourteenth Amendment, courts must apply the “*Anderson-Burdick* balancing test.” *Gill v. Scholz*, 962 F.3d 360, 364 (7th Cir. 2020). Under this test, courts “[f]irst consider the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate” and then balance this injury against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Ibid.* (quoting *Anderson* 460 U.S. at 789).

The results of that inquiry are clear. As Indiana correctly argues, SB 10 does not unconstitutionally burden the right to vote. Indiana

Br. 14-18, 29-31. In 2008, the Supreme Court held in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008) that Indiana’s photo-identification requirement is not burdensome. *Crawford* is controlling. It establishes that obtaining a valid state or federal photo identification imposes only the minimal burden of “making a trip to the BMV, gathering the required documents, and posing for a photograph.” *Id.* at 198 (opinion of Stevens, J.). When weighed against Indiana’s “broad interests in protecting election integrity” under *Anderson-Burdick*, these burdens “require[d]” the Supreme Court to “reject [a] facial attack on [Indiana’s] statute.” *Id.* at 200, 204. The same result must follow here because nothing has changed since *Crawford*. “Every voter affected by SB 10 can still vote by doing what voters without a public-university ID have always had to do: present a license, passport, or state ID.” Indiana Br. 17.

The district court erred in downplaying *Crawford* as merely “instructive” because Indiana removed a photo-identification option that previously was available: “by eliminating student IDs as an acceptable form of identification, [Indiana] selectively excluded a form of identification . . . that has been accepted as a form of voter identification for nearly two decades.” SA20, SA27. In doing so, the district court

created a “one-way ratchet” under *Anderson-Burdick* under which a State may “give [voters] the power” to use certain forms of identification, “but it could not take it away later.” *Nixon v. Missouri Mun. League*, 541 U.S. 125, 137 (2004). Had Indiana never allowed student identification to be used in the first place, plaintiffs could not have filed a viable lawsuit because voters lack a constitutional right to demand that States accept their preferred form of identification. But because Indiana once accepted student identification, the Fourteenth Amendment supposedly prevents it from reversing course.

This creation of a one-way ratchet under *Anderson-Burdick* has no basis in either law or logic. If a State can “make changes” to lawful election regulations, it also “can restore the original rules or revise the new ones” without triggering a “constitutional ratchet.” *Luft v. Evers*, 963 F.3d 665, 670 (7th Cir. 2020). Accordingly, under the *Anderson-Burdick* test, courts evaluate the burden imposed by an election regulation; they do not compare that burden to the pre-regulation status quo. Otherwise, election regulation would be a one-way street in which States are permitted to progressively loosen regulations but face

considerable legal barriers when tightening the regulations in response to new concerns or realizations.

Consider COVID-19 regulations, for example. Before the pandemic, many States required voters to provide a valid excuse such as age, injury, or military service in order to vote absentee. Several of these States temporarily amended their laws during the pandemic to allow no-excuse absentee voting, but they later restored their pre-pandemic laws. *Compare, e.g.*, H.B. 346, 150th Gen. Assemb. (Del. expired Jan. 12, 2021), *and* 15 Del. Code. Ann. 15 § 5502 (West 2026); H 5305, § 2 Gen. Assemb., 123d Sess. (S.C. 2019), *and* S.C. Code Ann. § 7-15-320 (2026). The district court’s one-way ratchet suggests that voters disparately impacted by the repeal or expiration of pandemic-era measures may have a constitutional right to forever vote by mail. After all, these States “eliminate[d] previously accepted” methods of voting even though far more than “tens of thousands of [voters] had relied on the previously accepted form.” SA28. And the abolition of temporary absentee voting imposes a heavier impact on young voters and students, who are less likely to qualify for post-pandemic absentee-voting excuses such as age, permanent disability, or hospitalization.

States have the right to impose new election-integrity measures or repeal old measures that resulted in lax integrity. The Fourteenth Amendment does not permanently freeze State law at its lenient point, nor does it confer upon voters a constitutional right to the most relaxed regulations that have ever existed. The district court erred in divining a rule instructing otherwise.

II. The Fourteenth Amendment does not impose disparate-impact liability.

The district court erred by enjoining SB 10 based on its finding that “SB 10 burdens a particular class of voters.” SA19. Specifically, the court concluded that SB 10 imposes “a slightly greater impact on students and young voters than they do on all Indiana voters.” SA27. Because of the “moderate burden that SB 10 imposes on students and young voters, the court conclude[d] that Plaintiffs have a reasonable likelihood of success to prevail on their First and Fourteenth Amendment claim.” SA33. By focusing its analysis on the effects of SB 10 on two distinct subclasses of voters, the district court misapplied the *Anderson-Burdick* test, supplanting its balancing test with an inquiry improperly focused on a disparate impact on unprotected classes.

A. The district court erroneously focused on impact, not burden.

The key question in the *Anderson-Burdick* inquiry is whether and to what extent an electoral regulation burdens voters. All “[e]lection laws will invariably impose some burden on individual voters.” *Burdick, v. Takushi*, 504 U.S. 428, 433 (1992); *see also Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (Election laws “inevitably affect[]—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.”). Thus, the applicable “standard . . . depends on the severity of the burden imposed by the state law under consideration.” *Harlan v. Scholz*, 866 F.3d 754, 759 (7th Cir. 2017). “[W]hen a challenged regulation imposes ‘severe’ burdens” “stricter scrutiny may be appropriate.” *Gill v. Scholz*, 962 F.3d 360, 364 (7th Cir. 2020) (citation omitted). But “when a state election law provision imposes only reasonable, nondiscriminatory restrictions . . . the State’s important regulatory interests are generally sufficient to justify the restrictions,” *Burdick*, 504 U.S. at 434 (internal quotation marks and citation omitted).

Because a photo-identification requirement is nondiscriminatory and does not “impose excessively burdensome requirements on any class

of voters,” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) (opinion of Stevens, J.), the district court should have asked whether SB 10 furthers “important regulatory interests,” *Burdick*, 504 U.S. at 434 (citation omitted). The results of that inquiry are clear and necessitate upholding SB 10. As *Crawford* instructs, Indiana’s photo-identification law is “supported by valid neutral justifications” that are “sufficiently strong . . . to reject [a] facial attack on the statute.” *Crawford*, 553 U.S. at 204 (opinion of Stevens, J.); *see also id.* at 209 (Scalia, J., concurring) (“The universally applicable requirements of Indiana’s voter-identification law are eminently reasonable.”).

Instead of examining the identical (minimal) burden that SB 10 imposes on all Indiana voters, the district court erroneously focused on the statute’s impact on discrete groups of voters. But burden and impact are two distinct concepts. A burden is a requirement “that the law uniformly imposes on all voters.” *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). Burdens can include registration deadlines, ballot-access provisions, and voter-identification requirements. *See Luft v. Evers*, 963 F.3d 665, 669 (7th Cir. 2020); *Gill*, 962 F.3d at 365-366. An impact, in

contrast, measures the magnitude “of [a] single burden” on individual candidates or voters. *Crawford*, 553 U.S. at 205 (Scalia, J., concurring).

A “burden that the law uniformly imposes” can have “different impacts” on different people. *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). For example, registration deadlines have no impact on already registered voters but light impacts on voters who recently moved to a State. A signature-collection requirement can impose a light impact on a popular candidate in an urban congressional district while imposing a much heavier impact on an unpopular or unknown candidate in a sparsely populated district. And although a voter-identification law such as SB 10 imposes the same burden on all voters (they must obtain and present valid photo identification), it imposes different impacts on voters who do and do not have photo identification at the time the law is enacted. The former group of voters who need only “maintain the accuracy of the information displayed on the identifications, renew them before they expire, and replace them if they are lost,” *ibid.*, whereas the latter must obtain accurate photo identifications.

When evaluating the constitutionality of “a generally applicable, nondiscriminatory voting regulation” such as SB 10, the regulation’s

“individual impacts” on specific voters or candidates are not “relevant to determining the severity of the burden it imposes.” *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). The Supreme Court has “refute[d] the view that individual impacts are relevant to determining the severity of the burden.” *Ibid.* In *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 354, 362 (1997), the Supreme Court upheld a law that “prohibit[s] a candidate from appearing on the ballot as the candidate of more than one party” even though the law’s impact made it more “difficult for third parties to succeed.” Likewise, in *Harlan*, 866 F.3d at 760, this Court upheld voter-registration laws notwithstanding their “impact . . . on voters in low-population and rural counties, as well as less affluent counties.”

The district court departed from precedent by enjoining SB 10 because it has a “slightly greater *impact* on students and young voters.” SA27 (emphasis added). It evaluated the impact of SB 10 on students and young voters rather than the “single burden that the law uniformly imposes on all voters.” *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). Its decision “to perform a unique balancing analysis that looks specifically at a small number of voters who may experience a

special burden under the statute” is exactly what *Crawford* forbids. *Id.* at 200 (opinion of Stevens, J.).

B. A disparate impact alone can never violate the Fourteenth Amendment.

The district court’s conclusion that SB 10 is unconstitutional solely because it exerted a disparate impact on students and young voters warrants reversal for the independent reason that a disparate impact, standing alone, can never violate the Fourteenth Amendment. Plaintiffs challenge SB 10 under the Equal Protection Clause (Doc. 1, at 25 (Compl. ¶ 82)), and well-settled law establishes that a disparate impact is insufficient to establish an equal-protection violation. Because the Equal Protection Clause “guarantees equal laws, not equal results,” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 273 (1979), “[p]roof of racially discriminatory intent or purpose is required to show a violation,” *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (internal quotation marks and citation omitted).

To prove discriminatory intent, an equal-protection plaintiff must demonstrate “that the decisionmaker selected or reaffirmed a particular course of action at least in part ‘because of’ ... its *adverse* effects upon an identifiable group.” *Alston v. City of Madison*, 853 F.3d 901, 908 (7th Cir.

2017) (alteration in original; internal quotation marks and citation omitted). “This discriminatory purpose or intent may be established by proof of the systematic exclusion of persons because of race or the unequal application of a law, policy or system.” *Minority Police Officers Ass’n of South Bend v. City of South Bend*, 801 F.2d 964, 966-967 (7th Cir. 1986). However, a “disparate impact and foreseeable consequences, without more, [cannot] establish a constitutional violation” of the Equal Protection Clause. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464 (1979); *see also Smith v. Boyle*, 144 F.3d 1060, 1064 (7th Cir. 1998) (“[D]isparate impact—a law’s *unintentionally* bearing harder on one group than another—is not a permissible basis for finding a denial of equal protection.”).

C. This Court already has explained that a disparate impact alone cannot justify enjoining a photo-identification requirement.

In *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014), plaintiffs contended that Wisconsin’s “photo ID requirement especially reduces turnout by . . . students,” among other groups of voters. *Id.* at 747. This Court held that *Crawford* was controlling and any “disparate impact” did not violate the Fourteenth Amendment. *Id.* at 751, 755. The same result

should follow here. *See* Indiana Br. 20. The district court erroneously allowed unprotected classes to raise a disparate-impact claim.

Even if a disparate impact justified enjoining election regulations under the Due Process Clause, the district court erred by enjoining SB 10 even though “the classes complaining of disparate impact are not even protected.” *Crawford*, 553 U.S. at 207 (Scalia, J., concurring).

“[A] law, neutral on its face and serving ends otherwise within the power of government to pursue, is [not] invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another.” *Washington v. Davis*, 426 U.S. 229, 242 (1976). And a because disparate impact cannot establish unconstitutional discrimination on the basis of the protected trait of race, “[i]t would be strange indeed” if disparate impact could establish unconstitutional discrimination on the basis of the unprotected traits such as age or occupation. *Hope v. Commissioner of Ind. Dep’t of Corr.*, 9 F.4th 513, 527 (7th Cir. 2021) (en banc); *see City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) (The Supreme Court has “declined . . . to extend heightened review to differential treatment based on age.”); *Southwestern Oil Co. v. Texas*, 217 U.S. 114, 121 (1910) (holding that

States may “classify occupations”). “There is no reason for permitting disparate-impact theory in one context but not the other.” *Hope*, 9 F.4th at 527.

The district court also suggested that SB 10 is unconstitutional because it disparately impacts new Indiana residents. The district court emphasized that many young students recently moved to Indiana from other States and that these students “must surrender any existing out-of-state driver’s license or ID” in order to “obtain[] the free ID for voting.” SA26. However, this Court has rejected the theory that “new residents” can raise a disparate-impact claim based on their “[p]rior out-of-state residency.” *Hope v. Indiana Dep’t of Corr.*, 984 F.3d 532, 562 (7th Cir. 2021) (St. Eve, J. dissenting); *see Hope*, 9 F.4th at 527 (vindicating Judge St. Eve’s position en banc).

III. The district court’s opinion chills efforts to combat fraudulent voting.

The “risk of voter fraud [is] real” and “could affect the outcome of a close election.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (opinion of Stevens, J.). SB 10 is a commonsense measure designed to target “occasional,” albeit “flagrant examples” of “in-person voter impersonation at polling places.” *Id.* at 194-196. The district

court's injunction of SB 10 accordingly thwarts States' efforts to secure elections, including Federal elections.

“The right to vote freely for the candidate of one's choice is of the essence of a democratic society.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). But the right to vote loses its meaning if elections are conducted or perceived to be conducted unfairly. “Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

Recognizing the sanctity of fair elections, the Supreme Court repeatedly has held that a “State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). States do not just have the power to combat voter fraud. They have the obligation to do so. “[T]here *must* be a substantial regulation of elections if they are to be fair and honest.” *Storer v. Brown*, 415 U.S. 724, 730 (1974) (emphasis added); *see also Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 206 (1999) (“States, of course, must regulate their elections to ensure that

they are conducted in a fair and orderly fashion.”). And “it should go without saying 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).

By banning the use of educational photo identifications at the polls, Indiana has made voter fraud more difficult. *See* Indiana Br. 36-37. It makes no difference that in-person voter fraud in Indiana is at most extremely rare. A “photo ID requirement . . . deters fraud (so that a low frequency stays low).” *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014). Just as the Supreme Court upheld Indiana’s photo-identification law in *Crawford* even though “there had never been a documented instance of voter-impersonation fraud,” *ibid.*, the district court should have upheld SB 10 rather than belittling it as “a solution in search of a problem,” SA32.

The district court’s disparate-impact-on-unprotected-classes test chills States’ ability to prophylactically protect against fraudulent voting. It suggests that any voting procedures that impose a disparate impact on any class of people—protected or not—might violate the Fourteenth Amendment solely because of the disparate impact. If SB 10 is constitutional suspect because it disproportionately impacts the young, so too is any legislation that disproportionately impacts the old, such as a statute that limits mail-in voting in a State with a large proportion of elderly residents who lack access to transportation. Likewise, if SB 10 “trigger[s] heightened scrutiny” because it “impacted” thousands of students (SA23), laws that impact other occupational classes must face the same scrutiny. Under the district court’s reasoning, a State that modifies the early voting period could face a challenge from a “class” of flight attendants and pilots, and a State that relocates rural polling places could face a challenge from a “class” of farmers. And those “classes” very well could succeed.

CONCLUSION

This Court should reverse the district court's decision and remand for further proceedings consistent with the principles set forth above.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Seventh Circuit Rule 29 because it contains 3584 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) and Seventh Circuit Rule 32(b) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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