

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW HAMPSHIRE**

NEW HAMPSHIRE YOUTH MOVEMENT,

*Plaintiff,*

v.

DAVID M. SCANLAN, in his official capacity  
as New Hampshire Secretary of State,

*Defendant.*

Consolidated Cases  
Case No. 1:24-cv-00291-SE-TSM

COALITION FOR OPEN DEMOCRACY,  
*et al.,*

*Plaintiffs,*

v.

DAVID M. SCANLAN, in his official capacity  
as New Hampshire Secretary of State, *et al.,*

*Defendants.*

**THE OPEN DEMOCRACY PLAINTIFFS' MOTION FOR SANCTIONS PURSUANT  
TO FEDERAL RULE OF CIVIL PROCEDURE 37(c)**

Throughout this case, Defendants Secretary of State David M. Scanlan and Attorney General John Formella (together, “Defendants”) have maintained that the infrastructure and functionality of the Statewide Voter Registration System (the “SVRS”), and the later changes required by HB 464, were irrelevant to Plaintiffs’ claims and Defendants’ defenses. They fought hard against—and at times outright refused—discovery requests related to the SVRS, its infrastructure, or the implementation of HB 464. Yet Defendants turned around and relied at trial on the very data that they had refused to produce and failed to supplement in response to discovery

requests, some of which contradicted deposition testimony of the Secretary himself given the week before trial. This conduct could merit severe sanctions like preclusion under Rule 37 of the Federal Rules of Civil Procedure, but in the interest of ensuring a resolution of the case on the merits, the Open Democracy Plaintiffs request far more modest relief as set out below.

Specifically, after initially violating this Court’s order compelling them to produce “a copy of the New Hampshire statewide voter database and all documents concerning the use of the database,” Case No. 24-cv-00312, Dkt. 75, at 1, Defendants agreed to produce less than what the Court ordered: a limited set of raw data, subject to an exceedingly strict protective order. Defendants stipulated that they would “not rely on any arguments related to data from [the] DMV . . . in this litigation unless that data is produced” and would “not argue that any analysis is incomplete or incorrect based on any [SVRS] data, data field information, or structural aspects of the SVRS that are not previously produced to Plaintiffs as part of this agreement.” Case No. 24-cv-00312, Dkt. 87-1; *see* Klementowicz Decl. Ex. J, Trial Tr. Day 6 PM (Feb. 17, 2026) 42:10–25 (discussing the protective order and Schedule A). Defendants reaffirmed these terms just two weeks before trial. *See* Dkt. 122. Yet no such DMV data, additional SVRS data, or updated structural aspects of the SVRS were produced to Plaintiffs.

After the Court granted Plaintiffs’ motion to compel based on Defendants’ newfound reliance on HB 464 and its implementation in their summary judgment briefing, Defendants still neglected to supplement their discovery responses with key information that they featured prominently in their defense-in-chief and that was directly responsive to existing discovery requests. And in the Court-ordered 30(b)(6) deposition on HB 464, held only three business days before trial, Defendants’ chosen Rule 30(b)(6) designee, Secretary Scanlan, repeatedly claimed a lack of knowledge about the implementation of HB 464, new functionalities in the SVRS, and the

data that had been added therein.

It was not until the middle of trial—once Plaintiffs had finished presenting their witnesses and Dr. Kenneth Mayer, their database expert, had left New Hampshire—that Defendants revealed that they would be relying on undisclosed information about the implementation of HB 464 and related structural aspects of the SVRS. Defendants presented this testimony despite the parties’ discovery-based stipulations about DMV data and structural aspects of the SVRS, and without making any effort to supplement answers to relevant discovery requests.

The Open Democracy Plaintiffs would be within their rights to seek preclusion of evidence or monetary sanctions. Instead, the Open Democracy Plaintiffs seek far more modest relief, which the Court has the authority to provide even absent a formal sanctions request—and which, for the reasons explained in Plaintiffs’ forthcoming post-trial briefing, represents the most reasonable inferences to draw from the evidentiary record. First, where a defense witness’s testimony conflicts with that of Secretary Scanlan (or seeks to cure his averred lack of knowledge) on issues regarding the implementation of HB 464, the Open Democracy Plaintiffs seek a reasonable inference that the other witness is less credible on those subject matters, especially matters of Department of State policy—as would be reasonably expected given the Secretary’s leadership role and his 30(b)(6) designation.<sup>1</sup> Second, the Open Democracy Plaintiffs request that, in light of Defendants’ failure to supplement and Plaintiffs’ resultant inability to more fully probe the evident inadequacies of the HB 464 system, the Court give appropriate, lesser weight to testimony which was based on undisclosed responsive information.

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<sup>1</sup> Plaintiffs will endeavor to identify such conflicting testimony in their Proposed Findings of Fact.

## FACTUAL BACKGROUND

### *Plaintiffs' Discovery Requests*

Early in this case, Plaintiffs served interrogatories and requests for the production of documents, seeking, among other things, documents and information concerning the implementation of HB 1569. Relevant here, Plaintiffs issued the following interrogatories:

- ***Interrogatory No. 9.*** Describe any databases or records that any New Hampshire state agency or entity, maintains, possesses, or is able to access that contain information that may be used to verify the birthplace or U.S. citizenship status of an individual.
- ***Interrogatory No. 12.*** Identify all policies, practices, or procedures other than those related to the implementation or enforcement of HB 1569, for identifying whether voter registration applicants or registered voters are noncitizens.

Klementowicz Decl. Ex. A. Defendants responded on March 12, 2025, and later amended their responses several times, including to account for HB 464.<sup>2</sup> As recently as their January 9, 2026 Fourth Supplemental Responses, Defendants maintained their objection that data or “any other information derived from the SVRS” is “irrelevant to the claims and defenses in this lawsuit.”

Klementowicz Decl. Ex. B.

Plaintiffs also issued the following requests for the production of documents, as relevant here:

- ***Request for Production No. 12.*** All documents and communications relating to implementation of HB 1569 and guidance to local officials. . . .
- ***Request for Production No. 15.*** All documents and communications related to policies, practices, or procedures concerning any processes, other than those related to the

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<sup>2</sup> In their amended responses, Defendants purported to explain the changes that were expected to be made in response to HB 464. For example, in Defendants' Third Supplemental Responses dated October 10, 2025, Defendants explained that “[w]hen a polling place does not have internet access, the Secretary has advised local election officials to ensure that staff with internet access are available by phone on election day.” Klementowicz Decl. Ex. A. The Third Supplemental Responses also indicated that local election officials would be directed to “contact the Attorney General’s Election Hotline on election day for assistance” after HB 464, without any reference to the *Secretary’s* own staff. *Id.* None of this turned out to be accurate according to the Secretary of State’s Office’s ultimate guidance, and Defendants never supplemented these responses.

enforcement or implementation of HB 1569, that could be used to identify whether voter registration applicants are U.S.-citizens, including but not limited to actual or possible use of the federal SAVE database, the federal Social Security Number Verification Service, the New Hampshire Vital Records Information Network (NHVRIN), the New Hampshire Division of Motor Vehicles records, or any other database containing birth, immigration, or citizenship information.

- ***Request for Production No. 20.*** A copy of the New Hampshire statewide voter database and all documents concerning the use of the statewide voter database, including instruction manuals or other guides concerning the data fields contained in the database and their correct interpretation.
- ***Request for Production No. 22.*** Any documents or communications concerning or reflecting guidance provided to any election administrator, including but not limited to town moderators, town clerks, and supervisors of the checklist, concerning implementation of HB 1569 for the March, April, and May 2025 town elections. . . .

Klementowicz Decl. Exs. C, D, E.

### ***Plaintiffs’ Efforts to Obtain the SVRS***

As noted, Plaintiffs requested a “copy of the New Hampshire statewide voter database and all documents concerning the use of the statewide voter database, including instruction manuals or other guides concerning the data fields contained in the database and their correct interpretation.”

Klementowicz Decl. Ex. D. After Defendants refused, Plaintiffs filed a motion to compel. Case No. 24-cv-00312, Dkt. 60. In their objection, Defendants claimed the SVRS was “irrelevant to claims or defenses” in this case. Case No. 24-cv-00312, Dkt. 70, at 11.

This Court granted Plaintiffs’ motion to compel the SVRS, *see* Case No. 24-cv-00312, Dkt. 75, but Defendants still heavily resisted, *see* Case No. 24-cv-00312, Dkt. 77 (motion for reconsideration), 80 (notice of interlocutory appeal), 81 (motion to stay). Due to time sensitivity and to avoid a marginal interlocutory appeal, Plaintiffs negotiated with Defendants for production of certain data derived from the SVRS and agreed that such production would fulfill Defendants’ “obligations under the Court’s May 20 and May 27 Orders” (but *not* their continuing duty to supplement responses to the underlying requests, per Federal Rule of Civil Procedure 26(e)). *See* Case No. 24-cv-00312, Dkt. 87-1. In exchange, Defendants agreed to a stipulation (entered by

order of the Court as Schedule A to the protective order) that provided, in relevant part:

- The Defendants will not rely on any arguments related to data from DMV or DOC in this litigation unless that data is produced.
- The Defendants will not argue that any analysis is incomplete or incorrect based on any Statewide Voter Registration System (“SVRS”) data, data field information, or structural aspects of the SVRS that are not previously produced to Plaintiffs as part of this agreement.

*Id.* Subject to this stipulation, on June 30, 2025, Defendants produced certain data derived from the SVRS.<sup>3</sup> Defendants never supplemented the data from the SVRS, nor did they provide additional DMV data or access to structural aspects of the SVRS that were not previously produced, despite requesting an amended, superseding protective order—which included the same Schedule A language—on January 23, 2026, only two weeks before trial.<sup>4</sup> *See* Dkt. 122.

#### ***Plaintiffs’ Efforts to Obtain Discovery Related to HB 464***

Given the potential significance of HB 464 to the present litigation, Plaintiffs asked Defendants to supplement their discovery responses after it became law, and Defendants refused.

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<sup>3</sup> Under the protective order, Plaintiffs and their experts were subject to very strict limitations on their use of certain data derived from the SVRS. *See generally* Case No. 24-cv-00312, Dkt. 87. For example, such data could only be accessed on “air gapped” computers. *Id.* at ¶ 7(A). Notably, the in-court testimony of Dr. Mayer was limited by Defendants’ redaction of “highly confidential” materials reflecting SVRS search fields. *See* PX 177; *see, e.g.*, Klementowicz Decl. Ex. H, Trial Tr. Day 2 PM (Feb. 10, 2026) 10:17–11:9 (showing redacted version and noting that Plaintiffs would not elicit testimony about redacted material consistent with protective order). Defendants said nothing. Then, during the direct examination of Ms. Piecuch—*after* Dr. Mayer had left New Hampshire—Defendants introduced an unredacted version of the same exhibit and elicited testimony about the underlying search fields they maintained were “highly confidential” just days prior. *See* Klementowicz Decl. Ex. K, Trial Tr. Day 8 AM (Feb. 19, 2026) 86:19–87:22 (noting that Defendants had “de-designated” DX VV and were “seeking to introduce VV-1 as a full exhibit”). Defendants’ use of confidentiality designations as a shield at trial was improper. *Cf. Barros-Villahermosa v. United States*, No. 06-cv-1491, 2009 WL 10668714, at \*1 (D.P.R. Feb. 10, 2009) (a party “should not be able to withhold a document (or part of a document) from an opposing party by asserting a privilege and then submit the document when it suits them”), *report & recommendation adopted* 2009 WL 10669006 (D.P.R. May 1, 2009).

<sup>4</sup> The court entered this amended, superseding protective order on January 26, 2026. Endorsed Order (Jan. 26, 2026); Dkt. 126.

*See* Dkt. 96, at 3–5 (describing Plaintiffs’ repeated efforts to obtain HB 464-related discovery). When, on November 7, 2025, Defendants filed a motion for summary judgment confirming the centrality of HB 464’s changes to their defense, *see* Dkt. 88-1, Plaintiffs renewed their request. Defendants again refused to conduct additional searches, agreeing to produce only “final guidance, policies, or agreements issued by the State Department.”

On November 21, 2025, Plaintiffs filed a motion to compel Defendants to produce discovery related to the implementation of HB 464. *See* Dkt. 96. Defendants opposed, claiming that the HB 464-related discovery sought would have “no evidentiary value.” Dkt. 97, at 2. On December 2, 2025, the Court held a hearing on Plaintiffs’ motion, during which both the Court and Defendants’ counsel agreed that Plaintiffs’ existing discovery requests encompassed HB 464. *See, e.g.*, Klementowicz Decl. Ex. F, Tr. (Dec. 2, 2025) 12:11–12 (“THE COURT: . . . How does [RFP 15] not implicate HB 464? MR. DEGRANDIS: It absolutely does.”); 15:20–23 (“THE COURT: . . . You, yourself, are arguing that the implementation of 1569 is modified by HB 464, so therefore anything involving the implementation of 1569 implicates 464. No one’s expanding the definitions of anything.”); 29:13–14 (similar). At the hearing, the Court presciently warned Defendants:

[E]ssentially what’s going to happen is there’s going to be trial by surprise when it comes to the implementation of 464, because you’re going to be able to go to trial and talk about how it’s going to be implemented, and the plaintiffs are going to have no idea how it’s going to be implemented . . . [T]hat’s going to be a problem, because they can’t prepare for trial, because they don’t know what the answers to those questions are.

*Id.* 52:21–53:7.

The Court ultimately granted Plaintiffs’ motion to compel in part, ordering Defendants to search for and produce responsive documents. Endorsed Order (Dec. 2, 2025). On December 16, 2025, following the Court’s ruling, Defendants produced 410 largely duplicative documents, most

of which were entirely or heavily redacted. After a series of hearings, briefs, and *in camera* review, the Court concluded that almost all of those documents were improperly redacted. *See* Dkt. No. 120, at 4–5.

The Court also ordered a new Rule 30(b)(6) deposition on the limited topic of HB 464 and the documents produced in response to the motion to compel. Dkt. 120, at 14–15. Defendants designated Secretary Scanlan as the agency’s Rule 30(b)(6) designee, but during the course of the deposition—which, at Defendants’ insistence and to accommodate the Secretary’s schedule, did not take place until February 4, 2026, a mere three business days before trial—it became clear the Secretary had little to share about crucial features of HB 464’s implementation. For instance:

- “Q Do you have a sense of how incomplete or how absent [the vital records or DMV] databases might be? **A I don’t.**” Klementowicz Decl. Ex. G, Scanlan Dep. Tr. (Feb. 4, 2026) 28:16–18.
- “Q So there’s no part of the software that tries to return close matches? **A I don’t believe so.**” *Id.* 35:14–16.
- “Q . . . Are you aware of the form created by DMV that is an application for a driver’s license or a non-driver’s ID has a box where the applicant checks whether they are a U.S. citizen? **A I believe that’s correct. I’ve filled out enough of those applications that I should probably recognize that, but yeah, I seem to recall that. Q . . . Do you know, if a person checks yes to that information and says on the form that they are a U.S. citizen, but . . . does not present a passport or a birth certificate or other documentary proof of citizenship, whether DMV will still record them as a U.S. citizen? **A I don’t know the answer to that. Q And do you know if DMV records them as a U.S. citizen, whether they would pop in the SVRS now as a confirmed U.S. citizen? **A And I don’t know how that process works either.****” *Id.* 40:25–41:24.**
- “Q . . . [W]e did, earlier in this deposition, have a discussion about how DMV gathers data on United States citizenship. I read this letter to suggest that, in fact, a person who self-reports as a United States citizen to DMV when getting a license or a non-driver’s ID will show up now in SVRS as a United States citizen and will be verified accordingly; is that your understanding, having reviewed this letter? **A I -- I want to check on that. I just -- I just don’t know. I mean, this was when the negotiations or discussions first started with DMV, so I -- I -- I -- I want to understand a little bit better just exactly how that -- how that process is working today.**” *Id.* 58:21–59:11.
- “Q . . . But if you don’t have internet, but you do have a cell phone, an election official could not call the Secretary of State’s office and say, will you please perform a confidential

application or a confidential records check for me because the voter is not in front of the Secretary of State's office staff? **A We are working on a process to be able to do that.**  
Q Okay. But that does not currently exist? **A It does not currently exist.**" *Id.* 72:13–24.

### ***Defendants' Trial by Surprise***

On the last day of Plaintiffs' case-in-chief—after Dr. Mayer had finished testifying and left the state of New Hampshire—Defendants started to present testimony regarding the implementation of HB 464 that they had never disclosed to Plaintiffs, namely regarding (i) the purported nature of DMV data integrated into the SVRS, (ii) allegedly differing standards for state-level users of the SVRS that might allow them to conduct DMV and Vital Records inquiries by phone without voters present, (iii) the alleged ability of state users of the SVRS to conduct partial match searches, and (iv) inexplicable testimony that incorrect or incomplete information entered into optional search fields (but required on paper forms) somehow has zero effect on search results.

### **ARGUMENT**

Under Federal Rule of Civil Procedure 26(e), a party who has responded to an interrogatory or request for production “must supplement or correct its disclosure or response . . . in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.” Fed. R. Civ. P. 26(e). Under Rule 37(c), “[i]f a party fails to provide information” required by Rule 26(e), and the failure was not “substantially justified” or “harmless,” the court may order sanctions. Fed. R. Civ. P. 37(c). This general approach is necessary to “ensure that the spirit of open discovery embodied in Rule 26 is not undermined either by evasion or by dilatory tactics.” *Thibeault v. Square D Co.*, 960 F.2d 239, 245 (1st Cir. 1992).

**I. DEFENDANTS VIOLATED RULE 26(e) BY FAILING TO SUPPLEMENT THEIR DISCOVERY RESPONSES.**

Defendants violated Rule 26(e) by failing to supplement their discovery responses with information concerning HB 464’s implementation. The duty to supplement under Rule 26(e) is a continuing one that does not end simply because discovery has closed. Both the Court and Defendants’ counsel have already acknowledged as much. *See* Klementowicz Decl. Ex. F, Tr. (Dec. 2, 2025) 55:23–56:3 (“THE COURT: You have to look at your duty to supplement, Attorney DeGrandis, because your duty -- so, discovery is closed, but you have a continuing duty to supplement up until the date of trial. MR. DEGRANDIS: I completely agree, and I’m saying we will do that.”).

This Court has already determined that documents and information regarding the implementation of HB 464 are responsive to Plaintiffs’ discovery requests. Indeed, during the December 2, 2025, hearing on Plaintiffs’ motion to compel, the Court stated:

[Plaintiffs’] requests ask for anything involving the implementation of 1569. You, yourself, are arguing that the implementation of 1569 is modified by HB 464, so therefore anything involving the implementation of 1569 implicates 464.

*Id.* 15:19–22.<sup>5</sup> Defendants’ responses to Plaintiffs’ interrogatories and requests for the production of documents, as well as the testimony of Defendants’ Rule 30(b)(6) designee, omitted key information about the implementation HB 464 and its resulting changes to the SVRS, information Defendants ambushed Plaintiffs with at trial. This failure to supplement is a clear violation of Rule 26(e). *See Colon-Millin v. Sears Roebuck De Puerto Rico, Inc.*, 455 F.3d 30, 37–38 (1st Cir. 2006) (there was a “clear violation of Rule 26(e)” where the plaintiff was “ambushed at trial because the

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<sup>5</sup> Even if Plaintiffs’ discovery requests did not encompass HB 464—which they do—Defendants were still required to disclose information regarding the implementation of HB 464 as part of their duty to supplement their initial disclosures. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii); Fed. R. Civ. P. 26(e).

defendants failed to supplement their answers to the interrogatories”). Defendants were also under continuing, self-imposed obligations—subsequently adopted by the Court—to produce all relevant DMV data to the extent they wanted to “rely on any arguments related to” such data, and not to argue that “any analysis is incomplete or incorrect based on any . . . structural aspects of the SVRS that [were] not previously produced to Plaintiffs.” Case No. 24-cv-00312, Dkt. 87-1.

**II. DEFENDANTS’ FAILURE TO SUPPLEMENT WAS NOT “SUBSTANTIALLY JUSTIFIED” OR “HARMLESS.”**

Defendants’ failure to supplement their discovery responses was neither “substantially justified” nor “harmless.” Fed. R. Civ. P. 37(c). Indeed, when Plaintiffs previewed this general issue for the Court during trial, and the Court gave Defendants’ counsel an opportunity to address it, Defendants’ counsel had little to offer, claiming that “elections are really dynamic” and “[t]he Secretary of State’s Office has been working really hard to” implement HB 464. Klementowicz Decl. Ex. I Trial Tr. Day 5 PM (Feb. 13, 2026) 60:25–61:3. Nor was Defendants’ failure to supplement harmless. Although Plaintiffs believe they were able to undermine the reliability of the testimony at issue, the fact that Plaintiffs were learning about certain features of the SVRS infrastructure for the first time at trial meant they were prevented from more fully probing the accuracy of the witnesses’ testimony regarding the functionality of the HB 464 system during cross-examinations and from allowing their own expert to opine on these alleged features. *See AngioDynamics, Inc. v. Biolitec AG*, 780 F.3d 429, 435 (1st Cir. 2015) (affirming sanctions where “discovery violations frustrated [plaintiff’s] ability to prosecute th[e] lawsuit”).

**III. AN INFERENCE REGARDING THE WITNESSES’ CREDIBILITY IS AN APPROPRIATE SANCTION FOR DEFENDANTS’ VIOLATION OF THE DUTY TO SUPPLEMENT.**

“[A] district court confronted with a violation of Rule 26(e) can fashion an appropriate sanction from a wide range of options.” *Thibeault*, 960 F.2d at 245; *accord AngioDynamics*, 780

F.3d at 435 (“Under Rule 37, the district court maintains a variety of tools at its disposal to sanction a party who violates discovery orders . . . .”); *Bartlett v. Mut. Pharm. Co.*, No. 08-cv-358-JL, 2009 WL 3614987, at \*6 (D.N.H. Nov. 2, 2009) (“This court has broad discretion under Rule 37(c) to fashion an appropriate sanction from a wide range of options.” (internal quotation marks omitted)). Although Rule 37(c) contains a list of possible sanctions, the Court is not so limited—it “may impose other appropriate sanctions.” Fed. R. Civ. P. 37(c)(1)(C). The flexibility provided for in Rule 37(c) “gives the district court leeway to best match the degree of non-compliance with the purpose of Rule 26’s mandatory disclosure requirements.” *Bartlett*, 2009 WL 3614987, at \*6 (quoting *Ortiz-Lopez v. Societed Espanola de Auxilio Mutuo & Benefiencia de P.R.*, 248 F.3d 29, 34 (1st Cir. 2001)).

Courts have found adverse inferences against a witness’s credibility to be an appropriate sanction for a discovery violation. *See, e.g., Rockwood v. SKF USA Inc.*, 2010 WL 3860414, at \*5, \*9 (D.N.H. Sept. 30, 2010) (“[T]he court believes the just sanction [for the plaintiff’s violation of the magistrate judge’s discovery order] is to draw an adverse inference against Rockwood’s credibility as a witness at any trial in this matter (where the court will be sitting as the finder of fact)” and noting that “[d]rawing an adverse inference against Rockwood effects [the] goal [of ensuring that litigants honor court orders] while also preserving the judicial preference for the resolution of cases on the merits”); *Trigon Ins. Co. v. United States*, 204 F.R.D. 277, 291 (E.D. Va. 2001) (similar); *cf. Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 20 (1st Cir. 2009) (“[A]n adverse inference instruction may be allowed when a party fails to produce a document that exists or should exist and is within its control.”).

The Open Democracy Plaintiffs would be within their rights to seek severe sanctions for Defendants’ gamesmanship, including the sanctions expressly set forth in Rule 37(c), such as

preclusion of evidence or monetary sanctions. *See* Fed. R. Civ. P. 37(c)(1). Instead, the Open Democracy Plaintiffs seek more modest relief, which the Court has authority to grant even absent a formal sanctions request—and which, for the reasons explained in Plaintiffs’ forthcoming post-trial briefing, represents the most reasonable inferences to draw from the evidentiary record. *First*, where a defense witnesses’ testimony appears to conflict with that of Secretary Scanlan (or seeks to cure his averred lack of knowledge) on issues regarding the implementation of HB 464, the Open Democracy Plaintiffs seek a reasonable inference that the witness is less credible on those subject matters, especially matters of Department of State policy. This would be reasonable in any event given the Secretary’s leadership role and his designation as the person to speak on HB 464 on behalf of the Office. *See* Fed. R. Civ. P. 30(b)(6) (an “organization must designate” someone “to testify on its behalf”); *SiOnyx, LLC v. Hamamatsu Photonics K.K.*, 2017 WL 8236153, at \*2 (D. Mass. Oct. 13, 2017) (“The testimony provided by the corporate representative at a Rule 30(b)(6) deposition binds the corporation.”); *see also Calzaturificio S.C.A.R.P.A. s.p.a. v. Fabiano Shoe Co.*, 201 F.R.D. 33, 36 (D. Mass. 2001) (“[T]he law is well-established that a 30(b)(6) deponent [has] an affirmative obligation to educate himself as to the matters regarding the corporation.”). *Second*, the Open Democracy Plaintiffs request that, in light of Defendants’ failure to supplement and Plaintiffs’ resultant inability to more fully probe the evident inadequacies of the HB 464 system, the Court give appropriate, lesser weight to previously undisclosed testimony.

### **CONCLUSION**

Defendants produced just shy of 4 million pages of discovery in this case. Unfortunately, that did not include discovery related to several aspects of their trial defenses. The Court should grant the Open Democracy Plaintiffs the requested relief given Defendants’ “trial by surprise” tactics.

DATED this 26th day of February, 2026

Respectfully submitted,

COALITION FOR OPEN DEMOCRACY,  
LEAGUE OF WOMEN VOTERS OF NEW  
HAMPSHIRE, THE FORWARD  
FOUNDATION, MILES BORNE,  
ALEXANDER MUIRHEAD, BY HIS NEXT  
FRIEND RUSSELL MUIRHEAD, AND  
LILA MUIRHEAD, BY HER NEXT  
FRIEND RUSSELL MUIRHEAD

By and through their attorneys,

/s/ Henry R. Klementowicz

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**CERTIFICATION**

Given the nature of the relief requested, the Open Democracy Plaintiffs have not sought Defendants' position on the motion.

/s/ Henry R. Klementowicz

Henry R. Klementowicz (N.H. Bar No. 21177)

**CERTIFICATE OF SERVICE**

I certify that on today's date I served a copy of the foregoing on all counsel through the court's ECF system.

/s/ Henry R. Klementowicz

Henry R. Klementowicz (N.H. Bar No. 21177)