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

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.

PLAINTIFF NEW HAMPSHIRE YOUTH MOVEMENT'S POST-TRIAL MEMORANDUM OF LAW

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INTRODUCTION

New Hampshire's proof-of-citizenship requirement, erected through recent revisions to the State's voter-registration law, is unconstitutional. The trial record overwhelmingly proves New Hampshire Youth Movement's allegations that House Bill 1569 (2024)'s elimination of the Qualified Voter Affidavit ("QVA") as a means to show U.S. citizenship imposes severe burdens on the right to vote, as most clearly demonstrated by the fact that more than 15,000 New Hampshire voters relied on citizenship QVAs to register to vote in the months before HB 1569 took effect and the fact that more than a hundred were turned away in the low-turnout municipal elections that followed. The record also confirms that House Bill 464 (2025), which the legislature enacted to try to alleviate HB 1569's burdens, has substantial gaps and enormous practical problems that will leave it unable to help many eligible New Hampshire voters register.

The State nonetheless failed to offer any coherent or fact-based reason for this Court to conclude that the new regime meaningfully advances New Hampshire's asserted interests in preventing non-citizen voting, increasing voter confidence, or preserving resources. The State's own evidence confirms not just that there was no meaningful problem with non-citizen voting before HB 1569 was enacted, but also that HB 1569 would not even have addressed most of the handful of non-citizen voting incidents that did occur. The record also provides no reason to believe HB 1569 will improve the State's already sky-high voter confidence, and shows that the elimination of citizenship QVAs and the adoption of HB 464 will cost the State resources, not save them.

The Court should therefore grant final judgment to Youth Movement and enjoin enforcement of HB 1569's repeal of the option for New Hampshire voters to prove their citizenship with a QVA when registering to vote.

BACKGROUND

Since the 1994 federal elections, New Hampshire has guaranteed to eligible U.S. citizens who reside in the State the opportunity to register to vote on election day. Act of May 23, 1994, ch. 154:1, I, 1994 N.H. Laws (H.B. 1506). By doing so, the State qualified itself for an exemption from the strict voter-registration requirements of the National Voter Registration Act ("NVRA"). 52 U.S.C § 20503(b). Since then, New Hampshire's same-day registration provision has provided that a New Hampshire resident who is not yet registered but "otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day." R.S.A. 654:7-a. Election day registration quickly became far and away the most common and accepted method of voter registration in New Hampshire. FOF ¶¶ 9–10.[1] Between April and November 2024—the period for which the most accurate data is available, due to a change in state systems—two-thirds of new registrations took place on election day. FOF ¶¶ 6, 9.

Concurrently with the State's enactment of same-day registration, the General Court recognized the need for a backstop for voters who are unable to produce documentary proof of citizenship at the polls, creating the "citizenship affidavit." *See* Act of July 17, 1992, ch. 287, 1992 N.H. Laws (S.B. 321); *see also* Act of July 29, 2009, ch. 278:1, 2009 N.H. Laws (H.B. 265) (amending "citizenship affidavit" to the QVA to account for additional qualifications). For more than 30 years, under this affidavit system, the State permitted citizens who were unable to satisfy the citizenship requirement by producing other proof to sign an affidavit on pain of perjury, fraud, and other penalty. FOF ¶ 1.

Large numbers of new registrants used QVAs to register, because they did not have documentary proof of citizenship with them. In the months leading up to HB 1569's effective

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[1] "FOF" citations are to Youth Movement's Proposed Findings of Fact, filed concurrently.

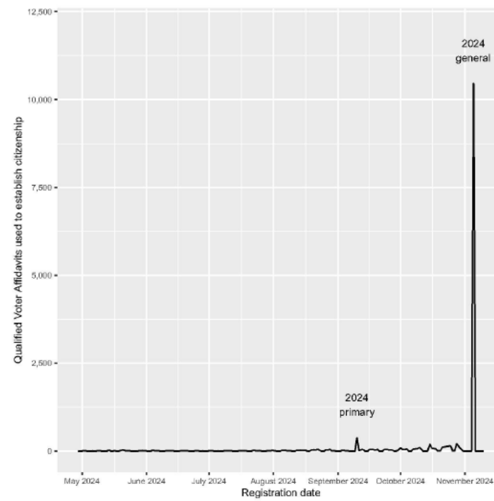
date—April 29, 2024, through November 10, 2024—at least 14,737 registrants relied on QVAs to prove their citizenship—more than 10% of all registrations, and upwards of 17% of first-time registrations. FOF ¶ 2. High-school and college-age voters—including those among Youth Movement's membership—were by far the most likely to rely on a QVA to prove citizenship: two-to-three times more likely compared to other segments of the population. FOF ¶¶ 3, 208. The vast majority of these citizenship QVAs were executed on election day. FOF ¶ 5. These tens of thousands of voters in just six and a half months executed citizenship QVAs only because they did not have documentary proof of citizenship with them when they registered to vote. FOF ¶¶ 1–5; PTX-112 at 185–87. And nothing in the record suggests that this period of time was unusual—it just happens to be the time for which the most accurate data is available.

Table 2: Age and use of Qualified Voter Affidavits to establish citizenship among registrations in the period April 29, 2024, to November 10, 2024

Age category	Registrations	QVA for citizenship	Percent
17 - 24	34,659	5,956	17.18
25 - 34	39,038	3,527	9.03
35 - 44	24,822	2,014	8.11
45 - 64	30,059	2,205	7.34
65 - 84	13,759	937	6.81
85 - 99	1,447	98	6.77
Total	143,784	14,737	10.25

Note: drops voters whose ages are 100 or more.

Figure 2: Usage by date of Qualified Voter Affidavits to establish citizenship



Note: restricts attention to registered voters whose registration dates are in the time period April 29, 2024, to November 10, 2024.

PTX-016 at 3, 6 (Suppl. Expert Report of Michael C. Herron).

There is no evidence that the decades-long use of QVAs to prove citizenship for more than 10% of registrations, and more than 17% for new registrants, caused any problem at all for New Hampshire elections. The State has identified at most eight non-citizens who have ever registered to vote in New Hampshire, and only three of those non-citizens allegedly used an affidavit to prove their citizenship. FOF ¶¶ 16–21. In contrast, at least five of the incidents—including one involving a QVA—involved pure election-worker error: those five non-citizens either told election officials that they were not citizens or showed a green card confirming that they were not citizens, yet they were allowed to register and vote anyways. FOF ¶¶ 22–27. The elimination of QVAs to prove citizenship would not have avoided those incidents. FOF ¶ 22. And even the three incidents involving QVAs are not quite what they seem. The first involved an individual who moved to the United States at three years old and honestly but mistakenly believed they were a citizen. FOF ¶ 21. The second involved an individual who maintained that he told election workers he was not a citizen and never completed the naturalization or citizenship portions of the QVA. FOF ¶ 19.

And the third, which led to a still-pending criminal charge that has not been adjudicated, involved a man who appears to have believed his naturalization application was wrongfully denied. FOF ¶ 20. These incidents involved, at most, 26 unlawful ballots cast over more than a decade, which the Secretary concedes is "just a small subset" of an already "miniscule" amount of wrongful voting generally, in the context of more than 8 million ballots cast during the same period. FOF ¶¶ 15, 28–29. And had the Secretary—the State's chief election official who has worked at the State Department for 25 years—been asked, he would have told legislators that there was no issue with non-citizens voting under the QVA system, and that citizenship QVAs did not threaten the integrity of elections in the State. FOF ¶ 144.

There is also no evidence that the acceptance of QVAs as proof of citizenship impaired voter confidence in New Hampshire. More than 90% of New Hampshire voters had confidence in New Hampshire elections even before citizenship QVAs were eliminated; they were more concerned with the integrity of elections in other States. FOF ¶¶ 159–60. A Commission on Voter Confidence convened by the Secretary in 2022 heard testimony from witnesses across the State, studied the issue carefully, and made a number of recommendations—but the elimination of QVAs for citizenship was not one of them. FOF ¶¶ 161–62. Nor did the acceptance of QVAs for citizenship cost the State money. The State was required to, and did, investigate affidavits used to prove identity and domicile, but it never engaged in similar investigations of citizenship QVAs. FOF ¶ 149, 163.

Against this backdrop, Representative Bob Lynn introduced HB 1569 in early 2024. PTX-001. At that time, the provision governing proof of citizenship, R.S.A. 654:12, read as follows:

> (a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a qualified voter affidavit, a sworn statement on the voter

> registration form used starting 30 days before an election and on election day, or any other reasonable documentation which indicates the applicant is a United States citizen.[2]

HB 1569 reenacted this provision with the authorization for affidavits excised:

> (a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, or any other reasonable documentation which indicates the applicant is a United States citizen.

PTX-001. In supporting the bill, Representative Lynn acknowledged that he did not think there was "a huge issue of voter fraud in New Hampshire" because "if there was, we would know about it." FOF ¶ 141.

Voter advocacy organizations (including Youth Movement), local election officials, and individual voters all testified in opposition to HB 1569, explaining that it would make it harder—and in some cases impossible—for thousands of citizens to vote, especially college students and married women. FOF ¶ 142. The Secretary did not testify in support of or opposition to the bill. FOF ¶ 143.

HB 1569 took effect on November 11, 2024—shortly after the 2024 general election. PTX-001; PTX-209. On January 23, 2025, the Secretary issued guidance on application of the new law in the form of a document answering twenty "frequently asked questions" from local officials. FOF ¶ 31; PTX-168. That guidance confirms that voters who do not present proof of citizenship must be turned away and will not be allowed to vote. PTX-168 at 6. It asserts that if a voter's

[2] The provision's reference to a "sworn statement on the voter registration form" did not have any effect as a practical matter after certain provisions of the same statute were held unconstitutional under state law in 2021. PTX-112 at 227 ("The statute that defines the voter registration form, RSA 654:7, was revised by SB3 (2017) to establish different forms for registering more than 30 days before an election versus registering within 30 days and on election day, however, the courts have held SB3, therefore the statute and forms as they existed before SB3 are the current law."); *see also N.H. Democratic Party v. Sec'y of State*, 262 A.3d 366, 373 (N.H. 2021).

documentary proof of citizenship does not display their current name—such as because they changed their name when they married—the voter must also show proof of a legal name change. PTX-168 at 7. The guidance does not comprehensively address what constitutes "other reasonable documentation," *see* PTX-168 at 7, although it does advise that some documents do *not* qualify, including Global Entry cards—advice that the Secretary has since acknowledged is wrong, although the guidance has not been corrected, FOF ¶ 37. At trial, state officials remained unable to offer a consistent explanation of what standard applies to the determination of what constitutes "other reasonable documentation"—aside from confirming that it lies in the discretion of individual officials at the 313 polling places throughout the State. FOF ¶¶ 30–37. The local officials tasked with applying it, too, remain puzzled. FOF ¶ 33.

Very quickly, the concerns about HB 1569 became reality in the first set of elections in which the proof-of-citizenship requirement was effective—the 2025 municipal elections. FOF ¶¶ 72–85. Those typically low-turnout elections are frequented by highly engaged citizens and see only a fraction of new registrants compared to federal election years—especially in college towns that welcome thousands of young and newly qualified citizens to the State each fall. FOF ¶ 86 (the Secretary stating that "[t]he people that are voting [in municipal elections] are generally not registering on the day of the election, they've been voting for some time"); *see also* FOF ¶¶ 87–89. Yet, even in those elections, civic organizers at just a handful of polling places in the State documented hundreds of voters being turned away at the polls, confirming in many cases the reason was lack of citizenship documentation. FOF ¶¶ 75–85; PTX-005. Local election officials have validated those accounts. FOF ¶¶ 79, 81–82. And, although officials in the Secretary's Office and in the Attorney General's Office balked at any effort to track those who were turned away in the 2025 municipal elections, the Secretary at a media event weeks after the election confirmed

the State was aware of voters being turned away and not returning to vote due to HB 1569. FOF ¶¶ 73–74, 86.

The evidence from the 2025 municipal elections foreshadows a much greater volume of problems in upcoming state and federal elections, when far more citizens will seek to register—especially college students and others who have recently (or will have by then) moved to the State. FOF ¶¶ 86–89. In Durham, for example, 6 people attempted to register to vote in the municipal election last year, whereas about 2,500 voters registered in November 2024—more than 1,000 of whom used a QVA to prove citizenship. FOF ¶ 87.

In the wake of the 2025 municipal elections, the legislature enacted HB 464, which exempts anyone previously registered to vote in New Hampshire from the proof-of-citizenship requirement and authorizes searches of certain State databases to confirm citizenship in lieu of documentary proof. PTX-003; DTX-UU at 1–2. But there are substantial gaps and administrative problems with HB 464's solutions. As the Secretary's own guidance confirms, HB 464's procedures are:

> not guaranteed to prove a person's citizenship in all cases. It may confirm citizenship for registrants: (i) who were previously registered to vote in New Hampshire; (ii) who were born in New Hampshire; (iii) who previously provided proof of citizenship when obtaining a New Hampshire driver's license; or (iv) whose name change is reflected in a New Hampshire vital record or DMV record. The SVRS will not be able to prove the citizenship of other registrants, who will need to provide documentary proof of citizenship when registering to vote.

DTX-UU at 2. HB 464's searches of vital records will not help voters who were born outside of New Hampshire or changed their name in a marriage outside of New Hampshire, and HB 464's searches of DMV records will not help voters who have an out-of-state driver's license, or who did not provide proof of citizenship to the DMV when obtaining a New Hampshire license. FOF ¶¶ 97–112.

There are also serious practical problems. To run a search, a local election official must

require the voter to execute an additional "Application for Confidential Verification of a New Hampshire Vital Record." FOF ¶ 94; PTX-176. The form requires voters to supply various categories of "highly sensitive" information not requested on voter registration forms. FOF ¶ 94. Among other things, voters must provide their name *as it appears on the record being searched*, town/city of birth, parent names, spouse names, date of marriage and town/city of marriage. FOF ¶ 94; PTX-176. And "[i]f the entered search criteria does not match what is listed in the Vital Records or the DMV Records data exactly, or the record has not been provided or could be incomplete by the applicable department, you may receive a warning message that states, 'No Records matching the entered search criteria found.'" FOF ¶ 95; DTX-VV at 2.

Finally, the guidance repeatedly warns local election officials: "Before ANY search can be completed within the Vital Records or DMV inquiries, **the voter shall be present in front of you with a completed Application for Confidential Verification of a New Hampshire Vital Record or DMV Records Form . . . AND photo identification**." FOF ¶ 96; DTX-VV at 1. It also repeatedly warns local officials:

> **Should you perform searches without the voter present or a completed form, your SVRS credentials could be suspended or revoked, and you could be subject to criminal penalties.**
>
> **Should you perform searches without the voter present or a completed form, your SVRS credentials could be suspended or revoked, and you could be subject to criminal penalties.**

FOF ¶ 96; DTX-VV at 1, 4, 7, 10, 13, 15, 19, 22.

LEGAL STANDARDS

"In an action tried on the facts without a jury . . . the court must find the facts specially and state its conclusions of law separately." Fed. R. Civ. P. 52(a)(1). "The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a

memorandum of decision filed by the court." *Id.* A district court is not required to make elaborate findings on every detail in the record and need only "make plain the basis for its disposition of the case." *Valsamis v. González–Romero*, 748 F.3d 61, 63 (1st Cir. 2014). Other relevant legal standards are discussed as necessary throughout the following Argument section.[3]

ARGUMENT

The documentary proof of citizenship requirement that results from HB 1569's elimination of citizenship QVAs violates the First and Fourteenth Amendments to the U.S. Constitution because it severely and disproportionately restricts the ability of New Hampshire voters to exercise the right to vote without meaningfully advancing the State's asserted interests in election integrity, voter confidence, and the public fisc. A statewide injunction against enforcement of HB 1569's elimination of citizenship QVAs is needed to provide complete relief to Youth Movement—a statewide organization whose mission and core services depend on continually recruiting newly eligible voters throughout the State to join its ranks and vote in New Hampshire elections. *Purcell* does not bar relief. The Secretary concedes that an order enjoining the requirement could be implemented, even if it were issued as late as early July. Such an order would only expand the options for voters; it would not cause the type of voter confusion that *Purcell* is meant to avoid.

I. The documentary proof-of-citizenship requirement resulting from HB 1569's elimination of citizenship QVAs is unconstitutional.

"The First and Fourteenth Amendments prohibit states from placing burdens on citizens' rights to vote that are not reasonably justified by states' important regulatory interests." *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (per curiam) (internal quotation marks

[3] Youth Movement does not address its standing in this Memorandum because the Secretary agreed not to challenge it in his post-trial brief, after acknowledging the Court's denial of summary judgment on that issue and that "additional facts have come in through the trial" that were not part of that record. Day 9 Tr. 111:4–9, 112:17–18.

omitted) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)) (citing *Burdick v. Takushi*, 504 U.S. 428, 430 (1992)). The strict proof-of-citizenship requirement that results from HB 1569's elimination of citizenship QVAs is unconstitutional under this standard because it severely burdens the right to vote and is unjustified by any substantial regulatory interest.

A. *Anderson-Burdick* requires careful scrutiny of any burden on the right to vote.

The parties agree that the *Anderson-Burdick* framework governs Youth Movement's claim. Under that framework, courts weigh the "character and magnitude" of the burden placed on "voters' rights against the 'precise interests put forward by the State as justifications for the burden imposed,'" carefully considering the extent to which those interests made it necessary to impose the particular burdens at issue. *Gorbea*, 970 F.3d at 14 (quoting *Anderson*, 460 U.S. at 789). "There is no 'litmus test' to separate valid from invalid voting regulations . . . ." *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008) (plurality opinion)).

Restrictions that impose a "severe" burden on the right to vote are subject to "strict scrutiny," and survive only if the State proves they are "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 433–34 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)); *see also McClure v. Galvin*, 386 F.3d 36, 41 (1st Cir. 2004) (same). But even restrictions imposing lesser burdens must be carefully scrutinized: "However slight" the burden on the right to vote "may appear, . . . it must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 189–91 (quoting *Norman*, 502 U.S. at 288–89). In making that assessment, the Court must consider "the extent to which [state] interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789. This is "a weighing test," and even in cases involving "a minimal burden," "*one* bizarre instance of" a state interest being served "cannot justify [a] burden" imposed on thousands of voters every

election. *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 317 (3d Cir. 2025), *petition for cert. filed*, No. 25-967 (U.S. Feb. 17, 2026).

In determining the burden, the Court must consider both the statute's broad application to all voters and its heavier burden on subsets of them. *Fish v. Schwab*, 957 F.3d 1105, 1127 (10th Cir. 2020) (citing *Crawford*, 553 U.S. at 198–99). Even facially non-discriminatory election rules can unconstitutionally burden voting rights if the burden imposed is not adequately justified. *See, e.g.*, *id.* at 1125 (holding Kansas's documentary proof-of-citizenship requirement invalid); *Husted*, 697 F.3d at 429 (holding Ohio's elimination of early-voting days invalid). In *all* cases, the Court's central task is to weigh the burdens on the fundamental right to vote against the State's asserted interests and chosen means of pursuing them.

The Court's analysis in this case should start with the Tenth Circuit's decision in *Fish*, which held Kansas's similar effort to require documentary proof of citizenship unconstitutional under the *Anderson-Burdick* standard. *Fish*, 957 F.3d at 1127–33. *Fish* found that the challenged law imposed a substantial burden "[b]ased primarily" on evidence that tens of thousands of Kansas would-be voters had their applications cancelled or suspended for failure to provide documentary proof of citizenship before the law was enjoined. *Id.* at 1127. *Fish* explained that this evidence of actual harm distinguished that case from the "scant evidence" of burden in *Crawford*, where the actual impact of the voter identification law on voters was hypothetical and largely undemonstrated. *Id.* at 1128. *Fish* also emphasized that, unlike in *Crawford*, there was no "safety valve" to allow voters without the required proof to register. *Id.* at 1129. It reached these conclusions despite a lack of evidence of how many voters did not have documentary proof of citizenship, rather than merely failing to provide it with their registration applications. *Id.* at 1130–31. And it then found that those burdens were not justified, where the evidence showed that only

a handful of non-citizens had registered to vote in Kansas in the last few decades and did not support the argument that the challenged requirement bolstered election confidence. *Id.* at 1134–35.

The record of burden in this case is stronger in almost all respects than the record in *Fish*—particularly when considering that New Hampshire is half the size of Kansas. And the record of justificatory state interests is even weaker.

B. The proof-of-citizenship requirement resulting from HB 1569's elimination of citizenship QVAs severely burdens the right to vote.

The record makes clear that tens of thousands of eligible voters will be prevented from registering by HB 1569 in upcoming elections, and that the burden disproportionately falls on particular groups of voters. The record also shows that many voters were already prevented from registering in the *much*-lower-turnout municipal elections last year. And while New Hampshire sought to lessen those burdens with HB 464, gaps in the available information and problems with the procedures for accessing it ensure that it will do little to help many New Hampshire voters burdened by HB 1569's elimination of QVAs for citizenship.

1. HB 1569's elimination of citizenship QVAs leaves thousands of eligible voters unable to register and vote in upcoming major federal elections.

The most straightforward evidence that HB 1569's elimination of citizenship QVAs severely burdens New Hampshire voters is the undisputed fact that tens of thousands of New Hampshire voters used citizenship QVAs to register to vote in recent elections before HB 1569 eliminated them. Under New Hampshire law, these voters were asked to sign citizenship QVAs only because they did not have adequate proof of citizenship with them when they sought to register to vote. FOF ¶ 1. Most of them registered at their polling place on election day. FOF ¶ 5. Under HB 1569, none of them would have been able to register to vote when they did. And as explained below, while HB 464 may help some of them, it will not help them all—and it causes

problems of its own. *Infra* Part I.C.

The numbers are striking. Between April 29, 2024, and November 10, 2024—the day before HB 1569 took effect—14,737 registrants relied on citizenship QVAs. FOF ¶ 2.[4] That was more than 10% of all registrants in that period, and more than 17% of first-time registrants. FOF ¶ 2. More than 10,000 of those citizenship QVAs were signed as part of election day registration on the day of the November 2024 general election. FOF ¶ 5. And the effect is even more extreme in some towns, and for some groups of voters. Young people aged 18 to 24 relied on QVAs to prove citizenship at twice to three-times the rate of other groups. FOF ¶ 3. And more than 1,000 voters signed citizenship QVAs to register at the November 2024 general election in the town of Durham alone. FOF ¶¶ 7, 87.

These voters signed citizenship QVAs because they did not have adequate proof of citizenship with them when they registered to vote. Undisputed election official testimony confirmed that a "huge number of people simply don't have their proof of citizenship with" them when they come to register to vote. FOF ¶ 45; *see also* FOF ¶ 31 (Shump estimates that 10-15% of registrants bring birth certificates and 30% bring passports). Under HB 1569, unless their citizenship could be confirmed via HB 464, discussed below, these voters would have been turned away. And as the D.C. Circuit and the Tenth Circuit have each held in the context of proof-of-citizenship requirements, it "does not matter" for purposes of assessing an "abridgment of the right to vote" "whether [a voter cannot comply] because they lack access to the requisite documentary proof or simply because the process of obtaining that proof is so onerous that they give up." *League*

[4] The evidence focuses on this time period because it is when reliable data is most available. Before April 29, 2024, the State used an older elections database, ElectioNet, that did not accurately track the use of QVAs to prove citizenship. FOF ¶ 6. But nothing in the record suggests that the use of QVAs was lower before April 29, 2024.

of Women Voters v. Newby, 838 F.3d 1, 13 (D.C. Cir. 2016); *Fish*, 957 F.3d at 1131 n.8 (adopting *Newby*'s reasoning).

The burden is worsened by New Hampshire's heavy reliance on election day registration—a factor not present in *Fish*. Two-thirds of the citizenship QVAs signed in the months before HB 1569 took effect were signed on election day. FOF ¶ 9. Voters who do not have documentary proof of citizenship with them on election day may not have the time or ability to retrieve their proof of citizenship and return in time to cast a vote. FOF ¶¶ 10–11, 41–51. And there is no "day after" election day on which an eligible voter can register and still vote in that election. FOF ¶ 47. Thus, whereas in *Fish*, applicants who submitted applications without proof of citizenship were contacted and given the chance to supplement their applications over the next 90 days, and could even request a hearing to prove citizenship, most New Hampshire voters who are unable to register after HB 1569 will simply be barred from voting, at least until the next election. *Cf.* 957 F.3d at 1129. And just as in *Fish*, New Hampshire has no provisional ballots for this circumstance. FOF ¶ 13; PTX-112 at 16 n.2 ("Citizens of New Hampshire who moved here from another state may have experienced casting a provisional ballot in their prior state when they failed to bring documentation of their qualifications or Photo ID to the polls. New Hampshire does not use a provisional ballot."); *see Fish*, 957 F.3d at 1129.

The record also confirms why so many New Hampshire voters relied on citizenship QVAs: even voters who have proof of citizenship rarely carry it with them. Unrebutted survey data shows that just 11% of New Hampshire eligible voters with a passport regularly carry it with them, and just 7% with a birth certificate regularly carry their birth certificate. FOF ¶ 41. Even would-be voters who possess the documents they need therefore have to go out of their way to retrieve them, or make a second trip to the polls if they do not know they need them or forget them the first

time—as the testimony shows multiple voters have in fact done after HB 1569. FOF ¶¶ 42–46, 54, 79–82. Secretary Scanlan agrees that HB 1569 imposes a burden on "voters that show up on election day that do not have the documentation that they need to register to vote." FOF ¶ 48. In contrast, the vast majority of New Hampshire eligible voters do carry photo identification, FOF ¶ 42—demonstrating why the law challenged here is so much more burdensome than the voter identification law upheld in *Crawford*, 553 U.S. at 189.

Even if photographs of documentation are acceptable—and that is not entirely clear—the burden remains. Nothing in the record suggests that large numbers of New Hampshire voters carry a photograph of their citizenship documents, whether on their phones or otherwise. As explained below, hundreds of voters were turned away for lack of proof of citizenship during the 2025 municipal elections even after the Secretary advised local officials that photographs of documentation sufficed. *Infra* Part I.B.4; FOF ¶ 35. Not a single witness testified that the option of providing a photograph helped them. Rather, voters and election officials testified that the option of providing a photograph did not help, because the voter did not have one and did not have anyone willing and able to send one. FOF ¶ 55. And the Secretary's changing guidance on the standard for what constitutes "other reasonable documentation of citizenship" makes it unclear whether photographs will continue to be acceptable. The Secretary's original reason for allowing photographs relied on a "more-likely-than-not" standard that does not appear in the statute and has since been excised from the relevant guidance. FOF ¶¶ 34–35; *cf. Fish*, 957 F.3d at 1130 (rejecting argument that acceptance of DPOC through e-mail and fax mitigated burden because the law "do[es] not mention e-mail or fax").

For many voters, the burden is even greater because their citizenship documents are difficult or time consuming to access. Even of those eligible New Hampshire voters who do

possess some form of documentary proof of citizenship, between 89,934 and 153,213 cannot retrieve their documents within one day because, for example, they are a student and their documentation is stored in their parent's home. FOF ¶¶ 49–50. Students domiciled in New Hampshire often leave their proof of citizenship at their family home, rather than bringing them with them to school. FOF ¶ 50. And some voters keep their citizenship documents in a safe or safety deposit box, to which they may not personally have access. FOF ¶ 50.

Other voters have misplaced their proof of citizenship documents—they believe they have them somewhere but do not know where. Between 17,967 and 53,826 eligible New Hampshire voters fall into this category, believing that they have citizenship documents but that they could not retrieve them even if allowed multiple days to do so because they do not know where they are. FOF ¶ 56. Election officials acknowledged that voters—including the Secretary himself, recently—sometimes lose their citizenship documents, and that it is fairly common for voters to say they do not know where their birth certificate is. FOF ¶ 57, 66.

Finally, some eligible voters do not possess citizenship documents at all. Between 5,433 and 31,291 eligible New Hampshire voters do not possess acceptable proof of citizenship documents—a conservative estimate that assumes voters who do not know whether they possess acceptable documents do in fact possess them. FOF ¶¶ 58–60. The estimate rises as far as 59,583 if voters who do not know whether they have the required documents are treated as lacking them. FOF ¶ 60. This evidence provides a data point missing in *Fish*—the number of New Hampshire residents who "in fact lack" documentary proof of citizenship rather than those who merely fail to provide it when registering. *Fish*, 957 F.3d at 1130–31. It would be burdensome and expensive for many of these people to obtain proof of citizenship, potentially requiring them to pay fees and request documents from multiple states—a process that can come with long delays. FOF ¶¶ 61–

65.

The record therefore establishes that tens of thousands of New Hampshire voters are burdened by the elimination of citizenship QVAs, and that many will be unable to overcome that burden in time to vote. HB 1569's elimination of citizenship QVAs therefore imposes a severe burden on the right to vote. *See, e.g.*, *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *6 (N.D. Fla. Oct. 16, 2016) ("If disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does." (citing *Stewart v. Blackwell*, 444 F.3d 843, 869 (6th Cir. 2006), *superseded*, 473 F.3d 692 (6th Cir. 2007))).

2. The requirement compounds the harm from election worker errors.

The burden imposed by HB 1569 is worsened by its effects on election worker error. Courts applying *Anderson-Burdick* routinely hold that mistakes or errors that result from aspects of the challenged regime are relevant to the burden inquiry. *See, e.g.*, *Fish*, 957 F.3d at 1129 n.7; *Ne. Coal. for the Homeless v. Husted*, 696 F.3d 580, 591–95 (6th Cir. 2012) (considering burden imposed on the right to vote by "poll-worker error"); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) (emphasizing burdens flowing from "problems [that] occur because of the way in which Florida implements the scheme," and "deficiencies [in its] very nature"); *see also N.H. Democratic Party*, 262 A.3d at 373 (finding "unreasonable and discriminatory burden[s]" based on errors resulting from confusing statutory instructions). Here, the strict proof-of-citizenship requirement created by the elimination of citizenship QVAs leaves voters' fundamental right to vote vulnerable to election worker misunderstandings over what constitutes adequate proof of citizenship—misunderstandings that the record shows have repeatedly occurred in past elections and are sure to occur again.

The problem starts with the Secretary's Office, which has never provided comprehensive

guidance on what constitutes "other reasonable documentation" of citizenship, but which did advise in its initial HB 1569 guidance that Global Entry cards were *not* acceptable. FOF ¶¶ 32–35. The Secretary's Office acknowledged in a discovery response almost a year later that this guidance was wrong, but it still has not told local election officials that—even as voters continue to register. FOF ¶ 35. The Secretary's Office also has not provided any standard by which local officials should assess whether a given document constitutes "other reasonable documentation," and the Director of the Elections Division testified that she would need to seek legal advice if a local official sought her opinion on a particular document on election day. FOF ¶¶ 36–37. Unsurprisingly, given the dearth of guidance, the record is replete with contradictions and uncertainty over what is and is not acceptable proof. FOF ¶¶ 30–40. The record also reflects local officials' errors on easy questions, including repeated demands for naturalization certificates from naturalized citizens who try to prove citizenship with U.S. passports. FOF ¶¶ 12, 144. Before HB 1569, voters on the wrong side of these errors could still sign a QVA and vote; now they cannot.

3. The requirement disproportionately harms young residents, residents from out-of-state, and married women.

The problems with HB 1569 are heightened by the particular burdens it places on certain groups of voters. "Laws that 'place[] a particular burden on an identifiable segment' of voters are more likely to raise constitutional concerns." *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1190 (9th Cir. 2021) (citing *Anderson*, 460 U.S. at 792). Here, the record establishes that the proof-of-citizenship requirement resulting from the elimination of citizenship QVAs places a distinct and measurably more significant burden on young voters and married women.

Young voters are particularly burdened for two reasons. First, they are almost by definition new voters, whereas New Hampshire voters who registered before HB 1569 took effect are forever exempted from its requirements. *See* PTX-003 at 2. Second, even among new voters, they were

disproportionately reliant on citizenship QVAs before HB 1569 took effect, perhaps because, as the record shows, young voters often leave their citizenship documents at their parents' homes. FOF ¶¶ 3, 50–53.

Married women are particularly burdened because of the Secretary's construction of HB 1569 to require that names on citizenship documents exactly match the voter's current name. Because women more often change their names when they marry, this change affects women more than men at a 15:1 ratio. FOF ¶ 38. The record confirms that women are being turned away from registration for this reason. FOF ¶¶ 82–85. And the Secretary's construction of HB 1569 to not require similar proof of name changes for suffixes like "Jr." and "Sr." that change more often for men heightens the disparity. FOF ¶ 40. The disparate burden seems gratuitous—HB 1569 does not specifically address name changes, and officials struggled to explain why they have interpreted the statute in this manner. But it is undisputed that they have done so and turned women away as a result, FOF ¶¶ 82–85, and there is no evidence that they will change course.

4. The 2025 municipal elections confirm the substantial burden from HB 1569's elimination of citizenship QVAs.

The Court need not speculate as to whether the proof-of-citizenship requirement will, in fact, have negative effects on New Hampshire voters because the record shows that eligible voters have already been "prevented from registering to vote because of the [proof-of-citizenship] requirement" for precisely the reasons discussed. *Fish*, 957 F.3d at 1127. This evidence of actual harm to voters is powerful proof of a severe burden. *See id.* at 1126–27; *cf. Ayers-Schaffner v. DiStefano*, 37 F.3d 726, 728 & n.5 (1st Cir. 1994) (holding that a "total denial of the right to vote," even if in a single primary "in [a] school committee race," is an "undeniably severe" burden, and the ability to vote in future elections is not a "satisfactory alternative").

No state or federal election has been held in New Hampshire since HB 1569 took effect,

but municipalities across the State held local elections under the new law in 2025. And while state officials made no effort to track the effects of HB 1569 in that election, a voter advocacy group's observation campaign at a small portion of the polling locations in the State identified hundreds of voters turned away, and was able to confirm that many were turned away specifically because of HB 1569's new proof-of-citizenship requirements. FOF ¶¶ 72–90. Some of the voters turned away were unable to return. FOF ¶¶ 79–86. The observers' testimony was corroborated by the testimony of local election officials—some of whom personally turned away voters during the March 2025 elections due to HB 1569's elimination of citizenship QVAs. FOF ¶¶ 79–83, 76.

Supervisor Shump, for example, testified that six people attempted to register to vote in the March 2025 town elections in Durham, only two of whom brought documentary proof of citizenship with them. FOF ¶ 79. Shump was able to confirm another two voters' prior registration, exempting them from the requirement. FOF ¶ 79. The remaining two would-be voters were turned away, and only one was able to return with proof. FOF ¶ 79. The would-be voter who did not return was a high school student whose entire class came to the high-school gymnasium—Durham's polling place—to watch him register and vote, only to see him turned away. FOF ¶ 79. Even after checking whether there was "anybody at home who could possibly pull out his birth certificate or his passport and take a picture of it and send it to him," Supervisor Shump had to turn him away—the only time in Shump's 20 years of service she has ever had to turn away a voter who claimed to be a citizen for lacking citizenship documentation. FOF ¶¶ 79, 156.

To be sure, the raw number of voters turned away in the 2025 elections is relatively small—hundreds, not thousands. But this reflects the unique nature of municipal elections, which are dramatically lower turnout affairs than state and federal elections, with far fewer new voters seeking to register. FOF ¶¶ 86–89. The difference is not subtle. In Durham, for example, only 6

new voters sought to register in March 2025, whereas about 2,500 new voters registered in November 2024—more than *400 times* more registrants. FOF ¶ 87. Moreover, multiple state and local election officials testified that voters in municipal elections tend to be the most-engaged, best-informed voters, who are less likely to be tripped up by documentation requirements. FOF ¶¶ 86, 88. The Secretary acknowledged that he would expect not only more voters, but also a higher percentage of voters, to be turned away as a result of HB 1569 during state and federal elections as compared with municipal elections. FOF ¶ 89.

C. HB 464 fails as a "safety valve" for eligible voters without documentation.

In the wake of HB 1569's effect on the March 2025 municipal elections, the legislature seems to have recognized that it had a problem. But its solution—HB 464—does far too little to alleviate the burdens that HB 1569's elimination of citizenship QVAs imposes, both because of gaps in the databases that HB 464 makes available in SVRS to confirm voters' citizenship and because of practical problems with the procedures that HB 464 creates to undertake such confirmations. As a result, while HB 464 may help some voters, it does not meaningfully change the burden analysis—and in some instances, it makes it worse. Thus, New Hampshire law still lacks an adequate "safety valve" for those without acceptable proof of citizenship. *Fish*, 957 F.3d at 1128–29.

1. The records available in SVRS exclude large swaths of eligible voters.

Because of limitations in the data available to the State in seeking to confirm voters' citizenship, HB 464 can only possibly help a subset of registrants: (1) those who were previously registered to vote in New Hampshire, (2) those who were born in New Hampshire, (3) those who possess a birth certificate in a different name, where the name change occurred as part of a New Hampshire marriage or divorce, and (4) those who have a New Hampshire driver's license or state identification card and proved their citizenship when they applied for it. FOF ¶¶ 97–112; DTX-

UU at 2. The record makes clear that large numbers of New Hampshire voters who have previously relied on citizenship QVAs fall outside those categories.

a. Prior registrations

Start with HB 464's prior-registration provision, which exempts voters previously or currently registered in New Hampshire from the requirement to prove their citizenship. PTX-003. This provision expanded HB 1569's exemption of *actively* registered New Hampshire voters to also cover *removed* New Hampshire voters and it allows for proof by "other official records" along with the SVRS. PTX-003 (emphasis removed). But it does not, of course, do anything to help new New Hampshire voters, including voters who just turned 18 and became eligible to vote, and voters who just moved to New Hampshire for the first time. First-time New Hampshire registrants were especially likely to register using citizenship QVAs, so the voters who are excluded include those particularly likely to need help. FOF ¶¶ 3–5, 8.

Moreover, even while it does nothing to help many new registrants, the prior registration exemption undermines the Secretary's justification of HB 1569. After all, existing registrants include many voters who proved their citizenship using a QVA—more than 10% of the registrants from the months leading up to HB 1569, for example. FOF ¶ 2. The Secretary admitted that a voter who proved their citizenship before HB 1569 using a QVA has not done any more to prove their citizenship than someone who seeks to sign a similar affidavit after HB 1569. FOF ¶¶ 147–48. It is hard to imagine a legislature sincerely concerned that non-citizens had been registering to vote with QVAs would have forever grandfathered-in everyone who had ever registered in the State, whether they provided documentary proof of citizenship or not. Yet after HB 464, New Hampshire has done just that.

b. Vital records

The vital records that HB 464 makes available to be searched in SVRS have large gaps.

Most significantly, only New Hampshire vital records are available, so the search is restricted to New Hampshire births, marriages, and divorces. FOF ¶ 100. More than 60% of U.S. citizens living in New Hampshire were born outside the State, so these vital records searches will fail to confirm citizenship for the majority of eligible voters. FOF ¶ 101. Many New Hampshire residents get married or divorced outside the State, and for such residents, these vital record searches will not be able to confirm a name change that might be needed for a birth certificate to be accepted as citizenship proof. FOF ¶ 101.

The Court need not speculate that voters in these gaps exist and have relied on citizenship QVAs to register in the past. Analysis of citizenship QVAs from four New Hampshire municipalities in the months before HB 1569 took effect confirms that more than 72% of them—829 out of 1146—were executed by voters born outside New Hampshire, either in other states or overseas. FOF ¶ 8. None of those voters would have been helped by a search of New Hampshire's vital records. Similarly, two of the three Bethlehem women whose registrations were rejected in October 2025 because their current names did not match birth certificates would still have been rejected after HB 464, because they were born and married in Massachusetts. FOF ¶ 90.

Even beyond the system's exclusion of out-of-state vital records, the database suffers from various other gaps in coverage, errors, and inconsistencies that further undermine its ability to help even people who should, in theory, have a New Hampshire record. Nearly all pre-1935 birth certificates are unavailable and some from 1949 and 1950 are also missing. FOF ¶ 102. Any birth certificate that was issued on a "delayed" basis (because it was filed six months or more after birth) is not searchable at all. FOF ¶ 102. Marriage records from before 1960 are unavailable, as are divorce records from before 1979 and—particularly concerning—from within the last six months, when a voter may be most likely to have had a recent name change that is not yet reflected on the

voter rolls. FOF ¶ 103; *see also* FOF ¶ 82 (describing a recently divorced woman who was unable to vote because she lacked proof of her name change). Other name change records from family and probate court are also entirely unavailable. FOF ¶ 103.

Further, Vital Records Director Martino testified at trial that New Hampshire vital records are frequently found to have errors from data entry. FOF ¶ 122. She also confirmed that staff sometimes make amendments to vital records in error. FOF ¶ 122. The database's website contains a disclaimer that records are frequently found to contain inaccuracies. FOF ¶ 122. Director Martino "often" has "to call towns and cities to resolve discrepancies due to the amendments, name changes, adoptions parentage orders and other events," and "[j]ust as often clerks will call your office to resolve errors they encounter." FOF ¶ 124. Indeed, when asked by the Secretary's staff about a draft version of HB 464 that ultimately became law, Director Martino expressed concern that searches of vital records would fail to help many voters for this and many of the other reasons just discussed. FOF ¶ 105.

c. DMV records

The DMV records that HB 464 allows to be searched are similarly limited, although the record reflects uncertainty over their exact scope and source. The biggest limitation is clear and undisputed: the records include only holders of New Hampshire driver's licenses and identification cards. FOF ¶ 106. New Hampshire law allows voters to register using out-of-state identification, and many do so—state records show that more than 43,000 active New Hampshire voters used an out-of-state license or identification card to register. FOF ¶ 107. And another 118,000 active New Hampshire voters do not have a New Hampshire driver's license or identification card number associated with their registration, suggesting that they, too, may lack such identification. FOF ¶ 107. The search of DMV records authorized by HB 464 can do nothing to help voters like these who lack a New Hampshire license or identification card. And because new voters in that category

likely recently moved to New Hampshire, *cf.* R.S.A. 263:35 (requiring residents to "obtain a driver's license issued by the state of New Hampshire" within 60 days of "establishment of a bona fide residency"), they are the same voters who are unlikely to have a New Hampshire vital record that proves their citizenship.

There are other problems as well. The DMV database will not accurately report the citizenship status of naturalized citizens who applied for a license before they became a citizen, unless that have since voluntarily updated their status with the DMV. FOF ¶ 110; PTX-145A ("We recognize that many circumstances, including naturalization subsequent to applying for a license, will explain why a discrepancy exists between the records."). Yet the Secretary's search instructions wrongly specify that a registrant shown in DMV records as a non-citizen "is **not** a US citizen and **cannot** register to vote," before later qualifying that statement in smaller text on a different page. FOF ¶ 110.

As for other voters, the record simply does not reveal how often citizenship information is available in DMV records, where that information comes from, or how accurate it is. FOF ¶¶ 108–12; *see also* PTX-145A. The Secretary himself testified that he did not know the answers to these questions, and that his Office did not complete an investigation into the accuracy or completeness of the DMV data—even after having issued guidance instructing local officials to rely on it in assessing voter qualifications. FOF ¶ 108; *see* DTX-UU. The record suggests that some of the DMV citizenship data is self-reported by the registrant, and it is unclear whether citizenship can be confirmed based on that self-reported data under HB 464. FOF ¶¶ 110–12.

2. HB 464's SVRS search system is riddled with serious practical limitations.

Finally, even aside from all these database-specific problems, the trial record establishes that a host of practical issues that are unaddressed by the law and the Secretary's guidance are

likely to prevent SVRS from coming to the aid of many voters who might otherwise have searchable records available.

First, SVRS access requires a computing device and internet access, which many New Hampshire polling places lack. FOF ¶¶ 117–20. A survey of election officials conducted by the Secretary's Office found that 10.75% do not have internet, and officials at around 5% more are "not sure." FOF ¶ 119. The survey also found that around 15% do not have cellular service, and around 7.5% are not sure. FOF ¶ 119. There is overlap between those groups—at least four polling places have no telephone *or* internet access. FOF ¶ 119. Investigator Tracy agreed that some polling places do not have internet access or telephone access. FOF ¶ 120 (testifying about, among other incidents, being advised at a polling place in Milton to go "outside and st[and] near a telephone pole" to get cell service). The State does not provide laptops to election workers, and many municipalities do not provide them either. FOF ¶ 117. And while some witnesses suggested that officials could use personal devices to access SVRS, Investigator Tracy testified that doing so was a bad idea, given the sensitivity of the data involved. FOF ¶ 117. Nothing in the record suggests that the State has taken any substantial steps to address these issues.

Second, there are nowhere near enough officials with SVRS access to conduct the volume of searches that will be required to confirm voters' citizenship in a state or federal election. *More than ten thousand voters* signed citizenship QVAs on November 5, 2024. FOF ¶ 5. In Concord, none of the city's ten wards has anyone with access to SVRS present on election day. FOF ¶ 114. Nashua has nine polling places but only six people with SVRS access. FOF ¶ 114. Durham—where more than one thousand voters signed citizenship QVAs on November 5—operates 13 voter registration stations at state and federal elections, staffed by 75 volunteers, but has only three people with SVRS access who can be available to run searches. FOF ¶ 114. Making matters worse,

SVRS tracks search activity and will log users out—and lock them out of their accounts—if they run too many searches too quickly. FOF ¶ 131. Access can only be restored by calling the Secretary's Office. FOF ¶ 131.

The local officials who do have SVRS access, moreover, must juggle many priorities—they cannot simply sit and run searches all day. FOF ¶ 115. Supervisor Shump—who stays at Durham's polling location from open to close—spends part of her day on voter registration, but testified that she "need[s] to be available" to supervise the 70-plus volunteers who help with processing thousands of registrants and to put out fires throughout the day. FOF ¶ 114–15. She, like other local officials, does not see how HB 464 can be implemented under existing conditions. FOF ¶ 117. And local election officials are strictly prohibited from sharing their credentials with others, on pain of suspension and even criminal penalties. FOF ¶¶ 96, 116, 132.

This problem cannot be solved by having officials at a polling place call other officials to run the searches for them. For one, the instructions the Secretary issued to election officials strictly prohibit this, requiring that the voter being searched be "in front of" the official running the search, and threatening criminal penalties if that requirement is not followed. FOF ¶ 96. The Secretary agreed that having another official who is not in front of the voter run the search remotely would not be allowed. FOF ¶ 130. Election officials reasonably understood these instructions to prohibit them from making such calls. FOF ¶ 130. But even if the calls could be made, there are simply not enough people who could be called. The Secretary conceded that his office could not handle thousands of calls to confirm voter eligibility on election day—they would be "swamped." FOF ¶ 121. And in a system where more than 10,000 voters signed citizenship QVAs on election day in the last federal election, thousands of calls is exactly what would be required.

Third, the specifics of the search procedures that officials are instructed to use will lead to

false negatives where responsive records are missed. FOF ¶ 122–24, 129. The instructions to local officials impose an "exact match" methodology, so that responsive records will be returned only if it perfectly matches the search query. FOF ¶¶ 95, 128–29. In the name category, for example, if a voter's name on their birth certificate was "Samantha," and the official entered "Sam"—or vice versa—it would not return a match. FOF ¶ 128. In the place of birth category, a registrant must provide the city or town where they were actually born—typically the location of a hospital—rather than their place of their home at the time they are born, which may also present problems. FOF ¶ 127. These limitations leave the searches extremely vulnerable to typos, faulty memories, differences in describing the location in question, and data entry errors.

* * *

The combined result of these limitations and problems is that HB 464 cannot possibly help a substantial number of voters prove their citizenship—and by offering the false promise of verification without documentation, it may do more harm than good even for those voters who could in theory be helped. Voters will not know, before they show up at a polling place, whether the search that HB 464 authorizes will in fact be able to confirm their citizenship, much less do so in a timely way. In some cases—such as a "delayed" birth certificate issued when the eligible voter was a young child, a name change from early childhood, an idiosyncrasy in data storage, or an error on a record—a voter would have no reason to know that their birth certificate will not be searchable or will not match their legal name. FOF ¶¶ 100–105, 113. In other cases, voters will expect the HB 464 searches to be more comprehensive than they are—Vital Records Director Martino testified, for example, that some New Hampshire residents wrongly expect her office to have access to out-of-state records. FOF ¶ 113. The result is that even under HB 464, eligible New Hampshire voters will show up to register on election day and be turned away, whereas before HB

1569 was enacted they could simply have signed a citizenship QVA and voted.

D. New Hampshire's asserted interests in eliminating citizenship QVAs fail to justify the burdens that the resulting proof-of-citizenship requirement imposes.

The Secretary attempts to justify the elimination of citizenship QVAs as furthering three state interests—election integrity, election confidence, and the public fisc. But the elimination of QVAs does little or nothing to further any of these interests, and there is no evidence that they "make it necessary to burden" voting rights as HB 1569 does. *Anderson*, 460 U.S. at 789. They therefore fail to justify HB 1569's elimination of citizenship QVAs under any level of scrutiny.

1. Non-citizen voting is not an actual problem in New Hampshire.

While the Secretary asserts an interest in election integrity as a justification for HB 1569's elimination of citizenship QVAs, he comes perilously close to conceding that no such interest is actually implicated here. He admitted on the stand that when HB 1569 was being debated in the legislature, he "would not have said" that the acceptance of "QVAs for citizenship pose[s] a risk to election integrity in New Hampshire." FOF ¶ 144. And the Secretary is hardly alone in that assessment—even HB 1569's sponsor acknowledged that he did not "think there's a huge issue of voter fraud in New Hampshire," because "if there was, we would know about it." FOF ¶ 141. That could be the end of the matter: if the acceptance of citizenship QVAs did not pose a risk to election integrity, then election integrity could not possibly demand their elimination.

The record confirms Secretary Scanlan's view—citizenship QVAs in fact did not pose a risk to election integrity in New Hampshire. The record reflects only eight non-citizens who have registered to vote or voted in New Hampshire in the last twenty-six years, three of whom may have registered using a citizenship QVA, and only one of whom is being criminally prosecuted. FOF ¶¶ 14–29. Even accounting for differences in population, this is far fewer than the 39 non-citizens held insufficient to justify Kansas's documentary-proof-of-citizenship requirement in *Fish*. 957

F.3d at 1134. Deputy Secretary O'Donnell acknowledged that as a percentage of all ballots cast in the last decade, the number of confirmed non-citizen ballots "would look pretty close to zero." FOF ¶ 28. The Secretary testified that the frequency of *any* sort of unlawful voting is "miniscule" and that of those rare instances, non-citizen voting is an even smaller subset. FOF ¶ 29. Under *Anderson-Burdick*'s "weighing test," "*one* bizarre instance" of the challenged requirement "helping . . . prosecute a criminal case of voter fraud . . . cannot justify" a burden on thousands of other voters. *Eakin*, 149 F.4th at 317; *see also Rideout v. Gardner*, 838 F.3d 65, 74 (1st Cir. 2016) (invalidating New Hampshire ballot-selfie law that burdened "all voters" "in the name of trying to prevent a much smaller hypothetical pool of voters" from committing a crime). Yet that is just what the Secretary asks the Court to find here.

Even if the legislature thought eight non-citizens registering over decades was too many, it would have made far more sense to address the problem that led to the registration of the five non-citizens who appear not to have used a citizenship QVA to register than to burden thousands of voters to address the three who did. At least four of those five other non-citizens—and one of the three who used a QVA, as well—was allowed to register and vote despite either telling election workers they were not a citizen or showing proof of non-citizenship, such as a green card. FOF ¶¶ 19–27. That should be a particularly easy problem to prevent, yet it is undisputed that HB 1569 would have done nothing to prevent these registrations. FOF ¶¶ 145–46. A solution to that problem, the Secretary agreed, is election worker training. FOF ¶ 144.

The legislature's concern does not seem to have been that fraudulent QVAs were going undiscovered. Such a concern would be impossible to square with HB 1569's sponsor's confidence that if New Hampshire had a huge issue of voter fraud, "we would know about it," not to mention the Secretary's admission that he would not have said citizenship QVAs posed an election integrity

risk. FOF ¶¶ 141, 144. But if undiscovered fraud had been the concern, a far less restrictive solution is obvious—investigate the citizenship QVAs (or a sample of them), just as election officials were required to investigate domicile and identity affidavits. FOF ¶ 149. Investigator Tracy acknowledged that this could have been done and was never tried. FOF ¶ 149. At a minimum, such an audit could have been done to confirm whether there was an actual problem that required the elimination of citizenship QVAs, before eliminating a mechanism that tens of thousands of New Hampshire voters relied on to be able to register to vote. *Cf. Rideout v. Gardner*, 123 F. Supp. 3d 218, 234 (D.N.H. 2015) (rejecting a restriction on taking "ballot selfies" in part because it would "for the most part, punish only the innocent while leaving" actual wrongdoers "unscathed"), *aff'd*, 838 F.3d 65 (1st Cir. 2016). Even in pursuing an important interest, a state "cannot choose means that unnecessarily burden or restrict constitutionally protected activity" when there are "other, reasonable ways to achieve to achieve those goals with a lesser burden." *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972). Yet that is, at best, what New Hampshire has done here.

2. The elimination of citizenship QVAs is neither necessary nor appropriate to improve voter confidence.

The Secretary alternatively argues that the elimination of citizenship QVAs was necessary to improve voter confidence, but this too is unsupported by record evidence. The Secretary acknowledged that the surveys on which he relies to understand voter confidence show that "about 90% of people in New Hampshire have confidence in" the State's elections, and that this is a "high level of confidence." FOF ¶ 159. The Secretary believes New Hampshire voters have more concerns about the way elections are conducted outside of New Hampshire than they do about the way elections are conducted within New Hampshire. FOF ¶ 159.

This is supported by the findings of the Secretary's own Special Committee on Voter

Confidence, which he created in 2022 to study voter confidence in New Hampshire. The Committee was made up of "a very diverse group of knowledgeable individuals" hand-chosen by the Secretary to ensure "that the whole political spectrum was represented." FOF ¶ 161. After traveling the State and hearing days of testimony from members of the public, the Committee reported that the majority of "New Hampshire voters have confidence in our elections," that "New Hampshire elections are accurate," and that "New Hampshire is well served by local election officials." FOF ¶ 161. And while the Committee recommended some changes in election laws to improve voter confidence, it did not recommend the elimination of citizenship QVAs, or any other changes to New Hampshire's proof-of-citizenship laws. FOF ¶ 162. Rather, the Committee recommended things like improved recruitment and training of local election officials, expanded voter education, use of new ballot counting machines that use paper ballots, expanding the use of random audits, improved access for public observation of the electoral process, changes to the process for updating voter checklists, increased auditing of election results, and legislation "to make it easier for citizens to obtain appropriate voter information." FOF ¶ 162.

The record suggests that the elimination of citizenship QVAs will, if anything, *reduce* voter confidence. Experts, voters, and election officials alike testified that turning eligible voters away from the polls, or even just making it more difficult for them to register or vote, reduces confidence in elections. FOF ¶¶ 152–57. Direct voter testimony bears that out. Tess Sumner, a Youth Movement member, testified that while she had gone into election day feeling "really excited to finally be able to vote for the first time" in the end the process of ensuring that she had everything she needed to register and vote ended up making the experience "very stressful." FOF ¶ 154. Mr. Kim, who was forced to make multiple trips to the polling place to prove his citizenship was left feeling as though he were a "second class citizen." FOF ¶ 154.

This, too, is undisputed. The Secretary admitted that HB 1569 might lead to a loss of confidence in this way, stating that if "large numbers of people are unable to vote because they present at a polling place without the requisite documentation, that could lead to a decrease in voter confidence," and said that it was therefore "too early to tell" if the law would help or harm voter confidence. FOF ¶ 157. This equivocation provides further reason to reject the argument that the elimination of citizenship QVAs will help voter confidence—and all the more so because of the lack of evidence that New Hampshire has a problem with voter confidence to begin with. *See Fish*, 957 F.3d at 1135 (rejecting an asserted interest in preventing voter fraud and improving voter confidence when "the Secretary's proffered justifications are not supported—and indeed in several places are undercut" by the facts.").

3. The elimination of citizenship QVAs will not save the State money.

Finally, the Secretary has asserted that the elimination of citizenship QVAs is justified to save New Hampshire money. But the record refutes this justification, as well. Far from saving taxpayer dollars or other state resources, the combined effect of HB 1569 and HB 464 is more expensive for the State to administer than the prior procedures were.

The Secretary asserts first that the elimination of affidavits will save the State money by eliminating the need to investigate the accuracy of those affidavits after the fact. But this is a shell game, because the investigations the State was required to carry out involved domicile and identity affidavits, not citizenship affidavits. *See* R.S.A. 654:12, I(c)(2)(B), V (2021). The State has "never systematically investigated Qualified Voter Affidavits for citizenship." FOF ¶ 163. So, the elimination of citizenship QVAs—which is all that Youth Movement challenges in this case—was not responsible for and cannot justify the savings on which the Secretary relies. And while the State did spend some time investigating alleged non-citizen voting, it was not very much—Investigator Tracy estimated such investigations take up less than 2% of his time. FOF ¶ 149. As

explained, most of those investigations did not involve a citizenship QVA, so the elimination of citizenship QVAs will do nothing to eliminate them. And presumably the State will continue to investigate credible reports of non-citizen voting they receive from local authorities, the reporting route for most instances of suspected non-citizen voting. *See, e.g.*, FOF ¶ 164. After all, HB 1569 does nothing to avoid the election worker errors that gave rise to at least five of the eight incidents of non-citizen voting in the record.

In contrast, the costs for implementing HB 464's procedures continue to pile up. Just the payments to a vendor to update the SVRS to comply with HB 464 exceeded $167,000. FOF ¶ 165. That was on top of the "significant" amount of staff time spent negotiating a memorandum of understanding with the Department of Safety and taking the other steps necessary to implement HB 464. FOF ¶ 165. And more spending will follow: Both the Secretary's Office and the Department of Safety will have to continue to devote staff time to provide data and support the mechanisms to transmit that data, to train local and state officials in running the necessary searches, and in actually running searches to confirm voter citizenship. FOF ¶ 165. The Secretary also agreed that he will have to go "above and beyond in order to educate the public" about the documentary proof of citizenship requirement. FOF ¶ 166. These costs to the State do not account for the costs municipalities may be saddled with to ensure that each polling location has adequate laptops to conduct the necessary SVRS searches. *See* FOF ¶ 117.

* * *

In sum, the record shows that the elimination of citizenship QVAs will do little or nothing to further the state interests the Secretary has claimed justify the law. It would have done nothing to prevent most of the handful of incidents of non-citizen registration, which were the result of poll worker error and not citizenship QVAs. It was not even on the menu of ways of improving New

Hampshire's already sky-high voter confidence that were recommended by the Committee the Secretary himself convened to study the problem. And far from saving the State money, it will increase its costs. With no state interest meaningfully served by the elimination of QVAs for citizenship, the burdens that the resulting proof-of-citizenship requirement imposes cannot possibly be justified under *Anderson-Burdick*'s balancing test. *Fish*, 957 F.3d at 1124 (quoting *Crawford*, 553 U.S. at 191).

II. A permanent statewide injunction is warranted.

Because the proof-of-citizenship requirement resulting from the elimination of the citizenship QVAs is unconstitutional, Youth Movement requests a declaratory judgment and a corresponding, statewide injunction barring the Secretary from enforcing the portion of HB 1569 that repealed the use of QVAs to prove citizenship when registering to vote in New Hampshire. A statewide remedy is needed because it is the only way to "offer complete relief" to Youth Movement, an organization that works to help voters across the State register and turn out to vote. *Trump v. CASA*, *Inc.*, 606 U.S. 831, 852 (2025) (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).

A. Statewide relief is justified under *CASA*.

In *CASA*, the Supreme Court reaffirmed the basic principle that federal courts have equitable power to shape a remedy "to the necessities of the particular case," so long as it is not "broader than necessary to provide complete relief to each plaintiff with standing to sue." *Id.* at 854, 861 (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)); *cf. Rhode Island v. Trump*, 155 F.4th 35, 45 (1st Cir. 2025) (noting *CASA* turned on the "question of whether an injunction is 'broader than necessary to provide complete relief'"). In doing so, the Court acknowledged that offering such relief "sometimes requires that the express terms of an injunction extend to nonparties," and may even require a "universal" injunction that effectively bars a defendant's

enforcement of a law "altogether." *NEA v. N.H. Att'y Gen.*, 806 F. Supp. 3d 166, 210 (D.N.H. 2025) (discussing *CASA*, 606 U.S. at 851).

Judge McCafferty's recent analysis in *NEA v. New Hampshire Attorney General* is instructive. 806 F. Supp. 3d at 210–12. That Court, applying *CASA*, explained that "an injunction limited to enjoining" the named State defendants from enforcing certain "anti-DEI laws [only] against the named plaintiffs would fail to provide [the] plaintiffs with complete relief" because the challenged laws themselves only "directly regulate[d] the conduct of public schools, public entities, agencies, and political subdivisions." *Id.* at 211 (citation modified). Because the "plaintiffs experience[d] harm" through their "work with" the directly regulated entities, an injunction that by its terms only applied to nonparties was necessary to redress the harm to their "work." *Id.*

Here, an injunction precluding the Secretary from taking steps to enforce the requirement, including by instructing local officials statewide accordingly, is necessary to grant complete relief to Youth Movement. Youth Movement's organizational injuries flow directly from enforcement and threatened enforcement of the requirement on voters it serves through its core services throughout the State. FOF ¶¶ 178–207. Youth Movement's core services and mission *depend* on its "work with" these potential voters. *NEA*, 806 F. Supp. 3d at 211; FOF ¶¶ 178–86. An injunction that precludes enforcement of the requirement by officials throughout the State is therefore necessary to eliminate Youth Movement's need to counteract the burdens of the requirement. FOF ¶¶ 174–77, 181–85.

Moreover, an injunction that offered relief to only some voters, or in only some parts of the State, would raise serious constitutional concerns of its own. *See, e.g.*, *Obama for Am. v. Husted*, No. 2:12-CV-636, 2014 WL 2611316, at *4 (S.D. Ohio June 11, 2014) (entering permanent injunction following affirmance of preliminary injunction, noting that "any injunction

issued by the Court must require equal in-person early voting hours for all eligible voters"). Voters must be treated equally, and states violate the Equal Protection Clause when they allow different voters to be subjected to materially different procedures. *Bush v. Gore*, 531 U.S. 98, 104–05 (2000).

B. The traditional equitable factors are satisfied.

Youth Movement also easily satisfies the traditional "four-factor test" for a permanent injunction. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006) (injunction warranted where (1) threatened injury to plaintiff is irreparable, (2) remedies at law are inadequate, (3) balance of hardships favors relief, and (4) public interest would not be disserved).

As for the first two factors, the injuries to Youth Movement and its members in the absence of the requested injunction are quintessential "irreparable harms" that cannot be compensated through remedies at law. *See Ross-Simons of Warwick, Inc. v. Baccarat*, 102 F.3d 12, 19 (1st Cir. 1996) (noting that harms are generally irreparable if they cannot be "accurately measurable or adequately compensable by money damages"). In nearly identical circumstances, the U.S. District Court for the District of Columbia held recently that interference with a nonprofit's "mission of registering voters" constitutes "irreparable harm." *League of United Latin Am. Citizens v. Exec. Off. of President*, --- F. Supp. 3d. ---, 2025 WL 3042704, at *33 (D.D.C. Oct. 31, 2025) (citing. *Newby*, 838 F.3d at 9 (D.C. Cir. 2016)); *id.* at 33 n.46 (collecting cases); *accord NEA*, 806 F. Supp. at 208 ("harm to [a nonprofit's] core activities constitutes irreparable harm"). Here, too, unrebutted evidence establishes that the proof-of-citizenship requirement impairs Youth Movement's mission and core voter-registration activities. FOF ¶¶ 178–207. And harms to the voting rights of Youth Movement members who would otherwise be forced to confront the proof-of-citizenship requirement provides an independent basis for irreparable harm. FOF ¶¶ 208–11; *see, e.g.*, *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (describing

interference with voters' ability to participate "completely irreparable," holding district court's contrary conclusion an abuse of discretion).

The last two factors, which "merge" where the government is the defendant, *Nken v. Holder*, 556 U.S. 418, 435 (2009), likewise counsel in favor of an injunction. The First Circuit has now firmly established that the government cannot be harmed by—and the public interest cannot be disserved by—an injunction that merely "bars enforcement of an unlawful" act. *Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025) (citing *New Jersey v. Trump*, 131 F.4th 27 (1st Cir. 2025)), *petitions for cert. filed*, Nos. 25-1169, 25-1170 (Jan. 30, 2026); *NEA*, 806 F. Supp. 3d at 209 ("The 'government has no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution.'" (alteration in original) (quoting *Siembra Finca Carmen, LLC v. Sec'y of Dep't of Agric.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)). Further, in this case, the requested injunction would "merely maintain" the tried-and-true "status quo prior to the [proof-of-citizenship requirement's] enactment," avoiding any conceivable injury to the State. *NEA*, 806 F. Supp. 3d at 209; *see also infra* III.B. A permanent injunction is warranted.

III. *Purcell* does not bar relief.

Purcell poses no barrier here. *Purcell* is concerned with court orders that themselves create voter confusion or administrative disruption close to an election; it is not an absolute bar against injunctive relief, nor does it dissolve a court's equitable authority simply because an election is near. *See Purcell v. Gonzalez*, 549 U.S. 1, 405 (2006) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 881 n.1 (2022) (Kavanaugh, J., concurring) ("How close to an election is too close may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects."). Here, the requested relief—permitting QVAs to prove citizenship—does not require a complex or time-consuming redesign of the State's registration

system, and the Secretary acknowledged that an order issued as late as early July would still leave sufficient time to implement the relief in time for the 2026 elections. FOF ¶¶ 167–68. Moreover, allowing QVAs to prove citizenship would *reduce*, not increase, confusion by restoring a familiar and administrable mechanism for proving eligibility at the polls, *supra* Background; FOF ¶ 169—and in any event, can only *help* voters by mitigating potential disenfranchisement. *Purcell* therefore provides no basis to deny or delay relief.

A. Youth Movement's requested relief would not require any changes to SVRS and can be implemented in time for the 2026 elections.

Youth Movement's requested relief is administratively feasible and can be implemented in time for the 2026 elections. The Secretary testified that, if the Court were to issue an order in early July saying that the State must allow the use of QVAs for proof of citizenship, he was "confident" the State could implement that order in time for the 2026 elections. FOF ¶ 167. And although Elections Director Piecuch initially estimated that it would take "four to six months" to "reimplement qualified voter affidavits for citizenship[,]" that estimate was incorrectly premised on needing to make changes within the SVRS. *See* FOF ¶ 168. Director Piecuch later confirmed that the SVRS already provides a way for an election official to register a voter who provides some other form of proof of citizenship, and the Secretary's Office could "instruct local officials to say yes to that question if they had a citizenship QVA." FOF ¶ 168. Director Piecuch therefore agreed that relief in this case "would not require a change to SVRS." FOF ¶ 168. Thus, the relief that Youth Movement seeks does not require the sort of complex or time-consuming SVRS redesign on which Director Piecuch's initial estimate was premised—and, in fact, would not require *any* changes at all in SVRS to be implemented.

Such an order can be issued by early July and would provide ample time to implement this straightforward relief. *Cf. Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurring) ("The District

Court's order would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion.").

B. Youth Movement's requested relief would help voters and reduce confusion.

Purcell counsels against issuing orders that "themselves result in voter confusion and [a] consequent incentive to remain away from the polls." 549 U.S. at 4–5 (2006). An order permitting QVAs to prove citizenship would do the opposite. New Hampshire voters have relied extensively on QVAs to prove citizenship for 30 years, including approximately 10,500 registrants during the November 2024 election. FOF ¶ 5; *see supra* Part I.A. Unlike the proof-of-citizenship requirement, which has not been in effect for any federal election, election officials already know how to administer QVAs. FOF ¶ 169 (Shump testifying that citizenship was often the document new registrants lacked, that such voters would then fill out a QVA, and that in her roughly twenty years as a Durham supervisor she knew of no instance in Durham in which someone used a QVA to fraudulently establish citizenship); FOF ¶ 169 (Robert testifying that "[w]e would simply explain that we're going to have you sign this form" and "[w]hat this form says is that you are who you say you are; that you were born in the United States or are a naturalized citizen"). Granting Youth Movement's requested relief would restore a familiar mechanism New Hampshire election officials know how to implement and voters have consistently relied upon.

Moreover, Youth Movement's requested relief does not ask voters to comply with any new requirements or cause any confusion that could cause disenfranchisement. In fact, if any voter mistakenly believed they would need to bring documentary proof of citizenship despite the Court's injunction, that voter would still be able to register. *See Gorbea*, 970 F.3d at 16–17 ("[T]o the extent certain voters expect the two-witness or notary requirement, we cannot imagine that it will pose any difficulty not to have to comply with it"). In other words, Youth Movement's requested relief in no way heightens the risk of disenfranchisement as it can only *help* voters who are unable

to comply with the proof-of-citizenship requirement upon arriving to the polls. *Id.* at 17 (explaining that enjoining the challenged law "poses no conflict with the sort of expectations that concerned the court in *Purcell* and no substantial specter of confusion that might deter voters from voting").[5]

CONCLUSION

For the forgoing reasons, the Court should enjoin enforcement of HB 1569's repeal of the use of QVAs to prove citizenship for voter registration.

[5] To the extent the Court considers the additional factors identified in Justice Kavanaugh's concurring opinion in *Merrill*, they favor relief here as well. Youth Movement is likely to succeed on the merits for the reasons explained above. *Supra* Part I. Absent relief, eligible voters will face irreparable harm in the form of disenfranchisement in the 2026 elections. *Supra* Part II.B. Youth Movement did not unduly delay in seeking relief, filing its Complaint just five days after HB 1569 was signed into law. *See* ECF No. 1. And, as discussed above, the requested injunction is administratively feasible without significant cost, confusion, or hardship. *Supra* Part III.A.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, I caused a copy of the foregoing to be served on all counsel of record through the Court's ECF filing system.

/s/ Steven J. Dutton
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