

**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

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 RESPONSE IN
OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL**

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INTRODUCTION

The Secretary’s request for a stay of the Court’s permanent injunction pending appeal, ECF No. 182-1 (“Mem.”), should be denied. As this Court’s thorough Order explains, New Hampshire’s repeal of the qualified voter affidavit (“QVA”) violated the First and Fourteenth Amendments because it caused a substantial burden on voting rights, while doing little or nothing to serve any of the Secretary’s asserted state interests in election integrity, voter confidence, or the public fisc. ECF No. 176 (“Order”) at 4. The Court faithfully applied Supreme Court and First Circuit precedent to arrive at this evidence-backed conclusion, and it issued a straightforward equitable remedy to provide complete relief to Youth Movement and other injured parties. Several of the Secretary’s contrary arguments were waived when he did not develop them until now; the rest fail to grapple with the Court’s well-supported factual findings. The Secretary is therefore unlikely to succeed on appeal, and the stay inquiry could “start and stop with the first factor.” *Trump v. Cook*, 609 U.S. ---, 2026 WL 1855613, at *7 (2026).

The Secretary also fails to show he will “suffer irreparable harm in the interim [or] that the balance of equities tip in [his] favor.” *Id.* The trial record shows that citizenship QVAs had not allowed for any material amount of voter fraud, and that allowing the use of such QVAs during the 2026 elections was feasible—often preferred by election officials to the alternative of turning away qualified voters. The injunction merely voids the unconstitutional repeal and is no broader than necessary to alleviate the organizational Plaintiffs’ harm. And neither the Secretary nor the public have valid interests in enforcing an unconstitutional provision of state law—so his remaining arguments fall with his paltry showing on the merits. The motion should be denied.

BACKGROUND

Ahead of trial, the parties negotiated a case schedule that all agreed would allow for the relief requested in this case—an injunction barring enforcement of the relevant provisions of

House Bill 1569—to be issued far enough in advance of the 2026 federal elections to allow for relief to take effect in those elections. Order at 44. Plaintiffs and the Court proceeded throughout this litigation based on that agreement—an agreement that was later confirmed by the Secretary’s testimony at trial that relief could be implemented without disruption if ordered as late as early July. *See id.*

The Court’s findings of fact and conclusions of law, issued after a nine-day bench trial, held that Youth Movement established Article III standing to challenge the State’s repeal of the QVA. *Id.* at 51–54. As the Court found, Youth Movement’s core programs involve increasing turnout among college-age people throughout New Hampshire, including by collecting pledges-to-vote and operating on-the-ground, get-out-the-vote (“GOTV”) services like “rides to the polls” for these and other aspiring voters. *Id.* at 38–39. These programs, which “relied on the availability of the QVA for new registrants to prove citizenship,” were harmed by the enactment of HB 1569 because it was “no longer the case” that “eligible voters . . . would be able to vote regardless of whether they possessed DPOC.” *Id.* at 39. Because relief preventing enforcement of the offending parts of the new law would eliminate these “perceptible impair[ments]” to Youth Movement’s core programs, the Court held that Youth Movement established standing. *Id.* at 47–54 (applying *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); and *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024)).

On the merits, the Court explained that the “parties agree[d]” that Youth Movement’s claim is “governed by the so-called *Anderson-Burdick* framework,” which “requires the court to ‘weigh the character and magnitude of the asserted injury to the voters’ rights against the precise interests put forward by the Secretary as justifications for the burden imposed’” in the context of New Hampshire’s election scheme as a whole. Order at 58–59 (quoting *Common Cause R.I. v. Gorbea*,

970 F.3d 11, 14 (1st Cir. 2020)); *see id.* (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433 (1992)). Applying this framework, this Court held that HB 1569’s repeal of the QVA was unconstitutional because it imposed significant burdens on the ability of large swaths of qualified voters to exercise their right to vote, and the trial record—including the testimony of the Secretary’s own witnesses—established that the provision did not advance the State’s asserted interests in election integrity, voter confidence, or the public fisc—which the Court expressly recognized and agreed are “legitimate in the abstract.” Order at 72–73.

Having held HB 1569 unconstitutional, the Court concluded that an injunction preventing enforcement of HB 1569’s repeal of the QVA statewide was warranted, given that such relief is within the Court’s equitable authority and no “more expansive than is necessary to provide complete relief.” *Id.* at 95 (citing *Trump v. CASA*, 606 U.S. 831 (2025)). Indeed, the Secretary did “not argue” otherwise. *Id.* The Court also held *Purcell v. Gonzalez*, 549 U.S. 1 (2006), which cautions against federal courts interfering with state election laws on the eve of an election to avoid voter confusion, is inapplicable as a matter of law and fact because the Secretary conceded (and the record otherwise shows) that relief can be implemented as contemplated, with “no risk of confusion.” Order at 95–96.

The Secretary waited more than three weeks after the Court issued its final Order to file this motion to stay the Order pending appeal. In its motion, the Secretary does *not* seek a stay based on *Purcell*. The Secretary has accordingly waived that argument. Instead, the Secretary argues that Plaintiffs lack standing, that the Court erred on the merits, and that the First Circuit is likely to reverse. Largely for the reasons the Court already gave in its Order, the Secretary’s motion should be denied.

LEGAL STANDARD

A stay pending appeal is “not a matter of right,” but an “intrusion into the ordinary

processes of administration and judicial review.” *New York v. Trump*, 133 F.4th 51, 65 (1st Cir. 2025) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). To obtain a stay, the Secretary must: “(1) make a ‘strong showing that [he is] likely to succeed on the merits’ in their appeal; (2) show that [he] ‘will be irreparably injured absent a stay’; (3) show that ‘issuance of the stay will [not] substantially injure the other parties interested in the proceeding’; and (4) show that the stay would serve ‘the public interest.’” *New York*, 133 F.4th 51, 65 (1st Cir. 2025) (last alteration in original). The first two factors are the “most critical.” *Id.* at 66. And in evaluating the likelihood of success on the merits, the Court must consider the underlying standard of review, under which the Court’s factual findings are reversible only if “clearly erroneous.” *See Rhode Island v. Trump*, 155 F.4th 35, 45 (1st Cir. 2025) (citing *Dep’t of Comm. v. New York*, 588 U.S. 752, 767 (2019)).

ARGUMENT

I. The Secretary’s appeal is unlikely to succeed on the merits.

A. The Court correctly held that Youth Movement established Article III standing at trial.

After declining to challenge Plaintiffs’ standing in its post-trial briefing—despite the Court’s clear warning that if the Secretary wanted a post-trial ruling on standing, the Secretary had to brief standing based on the trial record, Day 9 Tr. 111:4–25—the Secretary now devotes much of its stay brief to that very challenge. That argument is unlikely to succeed. The Court has now held three times over that Youth Movement has standing, and the First Circuit is likely to agree.

1. Youth Movement has organizational standing.

As the Court explained, an organization may establish Article III standing by showing that a challenged provision of law “perceptibly impairs” its “core business activities.” Order at 35–50 (citing *Havens*, 455 U.S. 363; *All. for Hippocratic Med.*, 602 U.S. 367). This is because a “concrete and demonstrable injury to the organization’s activities—with the consequent drain on the

organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests.” *Havens*, 455 U.S. at 379. Here, the Court correctly concluded that Youth Movement is injured by HB 1569 because the law directly “interferes” with Youth Movement’s “core business activities,” making its voter-registration programs less effective and more difficult to carry out. *Id.* at 37–40.

The Secretary’s contrary argument fails to engage with the clear factual record that Youth Movement’s core business is mobilizing young voters, and that HB 1569 directly makes that business materially harder. This case is therefore unlike *Alliance for Hippocratic Medicine*, where the plaintiff had a mere policy objection to the challenged government action, and chose to advocate against it, but did not have its own activities directly affected. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 397 (2024). And the Secretary does not even attempt to distinguish relevant precedent cited in Youth Movement’s prior filings and in the Court’s final Order. *See* ECF No. 101 at 20–25 (collecting cases); *see also* Order at 51–52 (citing *LULAC v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 188 (D.D.C. 2025) (“*LULAC P*”); *LULAC v. Exec. Off. of the President*, 808 F. Supp. 3d 29, 57–58 (D.D.C. 2025) (“*LULAC IP*”); *Get Loud Ark. v. Thurston*, 748 F. Supp. 3d 630, 653–54 (W.D. Ark. 2024); and *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024)).

The Secretary’s argument that Youth Movement “continues to engage in the core business activities that pre-existed HB 1569” misses the point. *Mem.* at 8–9. In *Havens*, too, the plaintiff organization continued to operate a housing counseling service despite the defendant’s challenged actions—the defendant had just made that materially harder and more expensive. 455 U.S. at 368–69, 379. Youth Movement was not required to give up on mobilizing voters in order to sue. And the Secretary is wrong to say that Youth Movement’s “core business activities related to voter

registration assistance continue[] *as [they] did prior to HB 1569*,” Mem. at 9 (emphasis added), because the Secretary does not dispute that Youth Movement relied heavily upon citizenship QVAs in conducting voter mobilization programs before HB 1569 took effect and could not do so while it was in force. *See* Order at 37–40. For similar reasons, the Secretary’s reliance on *NTEU v. United States*, 101 F.3d 1423, 1429 (D.C. Cir. 1996), is misplaced. *NTEU* held that organizational standing requires showing that “a defendant’s conduct has made the organization’s activities more difficult,” *id.* at 1430, and that is precisely what Youth Movement showed here.

2. Youth Movement has associational standing.

Alternatively, Youth Movement has associational standing because (a) at least one of its members would have standing to sue individually, (b) the interests the organization seeks to protect are “germane to [its] purpose,” and (c) the claim and type of relief requested do not require individual participation of the members. *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). While the Secretary says all three factors are contested, the only argument it makes is that Youth Movement cannot satisfy the first because it has not identified an injured member. Mem. at 9. The Secretary is wrong.

Youth Movement satisfied the first requirement when it identified Kai Musick and Tess Sumner as Youth Movement members who were injured when they had to comply with HB 1569 in registering to vote. Tr. Day 2 AM at 52:15–53:2. It makes no difference that they were *able* to register, because as the Court recognized, “[t]he requirement that [an individual] must produce documentary evidence to register to vote itself constitutes an injury sufficient to confer standing.” Order at 55 (citing *Fish v. Schwab*, 957 F.3d 1105, 1120 (10th Cir. 2020)); *see also Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009). And Sumner’s testimony further established a concrete pocketbook injury, albeit a small one, in the form of gas for an otherwise unnecessary drive home to recover her passport before going to vote. Tr. Day 3 AM at

33:6–9. The Secretary has never disputed that implementation of HB 1569 caused such additional costs for people like Sumner. Standing considers whether there is a controversy at the time the action is filed. *See Am. C.L. Union of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 53 (1st Cir. 2013) (citing *Horizon Bank & Tr. Co. v. Massachusetts*, 391 F.3d 48, 53 (1st Cir. 2004)). This uncontroverted evidence shows that multiple identified Youth Movement members would have had standing at that time.

To the extent the Secretary means to suggest that Musick’s and Sumner’s hypothetical personal claims would be *moot*, that is beside the point. *See* Mem. at 11; Order at 57–58. This case was brought by Youth Movement, not by Musick and Sumner themselves. The record establishes without contradiction that Youth Movement has other high school and college-student members who are not yet registered to vote and will invariably be injured by HB 1569 when they do register. *See* Day 2 AM Tr. 51:23–52:10, 53:9. Youth Movement’s obligation to support its standing was to “identify members who *have suffered* the requisite harm,” *Summers v. Earth Island Institute*, 555 U.S. 488, 500 (2009) (emphasis added), and it did so with Sumner and Musick. Nothing required Youth Movement to continually update the list of names as the litigation proceeded. But even if mootness focused on Sumner and Musick alone, the dispute is capable of repetition yet evading review—an exception to the mootness doctrine. *See* Order at 57. “[T]he time frame presented by electoral disputes rarely allows for resolution through litigation,” so “[e]lectoral disputes are . . . ‘paradigmatic’ examples of cases that cannot be fully litigated before the particular controversy expires.” *La Botz v. Fed. Election Comm’n*, 889 F. Supp. 2d 51, 59 (D.D.C. 2012) (quoting *Moore v. Hosemann*, 591 F.3d 741, 744 (5th Cir. 2009)). Youth Movement therefore has associational standing, also.

B. The Court correctly held that the repeal of the qualified voter affidavit was unconstitutional.

1. The Court applied the correct legal standard to Youth Movement’s *Anderson-Burdick* claim.

On the merits, the Secretary waived his principal argument that the Court “did not apply the correct standard for considering facial challenges,” Mem. at 12, by failing to assert that facial-challenge-based defense in his pretrial statement of defenses. ECF No. 124. To prevent unfair surprise, the Court ordered the Secretary to file in advance of trial a brief statement of all “legal defenses on which [he] intend[s] to rely at trial,” including “the legal tests or burdens relative to each defense.” Minute Order (Jan. 20, 2026). In his response, the Secretary said nothing about the facial-challenge issue that he makes so prominent now. *See* ECF No. 124. He did not assert that Plaintiffs would fail to satisfy a “no set of circumstances” requirement, and he did not cite *Washington State Grange* or *Salerno*, on which he now relies. *See id.*; Mem. at 12. And while the Secretary’s post-trial briefing raised this issue, ECF No. 169 at 36–37, it did so only “in conclusory fashion.” Order at 60 n.20. Such vague assertions without proper development are insufficient to preserve the issue for appeal, so the Secretary is unlikely to obtain reversal on that basis. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

The Secretary’s arguments on this score are meritless in any event. Rhetoric aside, the Secretary’s argument turns on the assertion that HB 1569 caused only “ordinary and widespread inconveniences” analogous to the ordinary voter identification law at issue in *Crawford*. Mem. at 13. But as the Court found, the trial record showed otherwise, with ample evidence that the elimination of QVAs of citizenship caused far more widespread and severe burdens. *See, e.g.*, Order at 15–20, 65–68 (detailing findings of individuals turned away from registering to vote leading up to and during the 2025 municipal elections). And that analysis was properly grounded in the *Anderson-Burdick* standard. Both the Supreme Court and First Circuit have held that federal

courts apply *Anderson-Burdick* to determine whether or not a challenged law or practice has “plainly legitimate sweep.” *Libertarian Party of N.H. v. Gardner*, 843 F.3d 20, 24–25 (2016); *Gorbea*, 970 F.3d 11 at 14 (applying *Anderson-Burdick*); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) (same, citing *Wash. State Grange*, 552 U.S. at 448).

The Secretary is also wrong to say that *Crawford* holds that “where a law has broad application to all voters, ‘it imposes only a limited burden on voters’ rights,” Mem. at 13 (quoting 553 U.S. at 203). No such rule exists, of course—a broad burden could easily be a severe one. The full sentence from *Crawford* states: “*When we consider only the statute’s broad application to all Indiana voters we conclude that it ‘imposes only a limited burden on voters’ rights.*” 553 U.S. at 202–03 (quoting *Burdick*, 504 U.S. at 439) (emphases added). That finding was based on the record in *Crawford*, and the law challenged there. And it followed the Court’s observation that the record before it lacked evidence of burdens on a particular “class of voters”—evidence it separately confirmed *is* relevant under *Anderson-Burdick*’s “balancing approach,” *id.* at 190–91, 198–202.

The Secretary’s reliance on Justice Scalia’s concurrence does not change this. Mem. at 13–14. As this Court recognized, the theory cannot be squared with post-*Crawford* precedent in the First Circuit, *see Gorbea*, 970 F.3d at 14, or elsewhere, *see, e.g., Fish*, 957 F.3d at 1120 (holding courts must consider both the statute’s application to all voters and its heavier burden on subsets of voters); *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1190 (9th Cir. 2021) (same); *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012) (same). Justice Scalia’s opinion garnered the votes of only two sitting Justices and is out of step with the Court’s other *Anderson-Burdick* precedents and its constitutional jurisprudence generally.¹

¹ Compare 553 U.S. at 205–06 (Scalia, J., concurring, joined by Thomas and Alito, JJ.), *with id.* at 198–02 (controlling op. of Stevens, J.), *id.* at 221–22 (Souter, J., dissenting); *and id.* at 238–39

2. The Court did not err in its findings under the *Anderson-Burdick* framework.

The Secretary is also unlikely to succeed in showing on appeal that the Court misapplied *Anderson-Burdick*. The Court applied the familiar framework, weighing the “character and magnitude” of the burden imposed by HB 1569’s repeal of the citizenship QVA against the “precise interests” the State asserted to justify that burden. *Gorbea*, 970 F.3d at 14–16 (quoting *Anderson*, 460 U.S. at 789); *see* Order at 59–60, 73–78. In arguing otherwise, the Secretary retreads fact-bound issues that the Court carefully considered and resolved following a nine-day trial. Because “it is the job of district courts” to make “factual determinations” underlying the ultimate legal question whether the law “unduly burdened” voting rights, *Baines v. Bellows*, 573 F. Supp. 3d 365, 384 (D. Me. 2021) (citing *Wash. State Grange*, 552 U.S. at 458), the Court’s findings will largely be reviewed under the clear-error standard. Especially with this in mind, the Secretary has not made the strong likelihood-of-success showing required for a stay. Fed. R. Civ. P. 52(a)(6); *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–75 (1985).

a. The record establishes that repeal of the qualified voter affidavit imposed significant burdens on the right to vote.

Contrary to the Secretary’s unsupported suggestion, the Court’s burden findings rested on a developed trial record, not speculation or assumptions. *See* Mem. at 1–2, 16–17. To start, the Secretary ignores undisputed evidence showing heavy reliance on QVAs to prove citizenship in New Hampshire’s same-day registration system. *See id.* In the months before HB 1569 took effect,

(Breyer, J., dissenting). The Court expressly considered the State’s request to depart from binding precedent anyway and held, “[t]o the extent that the defendants’ unsupported request requires a response, the court concludes that [the law does] not have a ‘plainly legitimate sweep’ even when the court considers only [its] ‘broad application’ to all [] voters.” Order at 60 n.20 (citation omitted). In doing so, the Court correctly recognized that even the Supreme Court’s most stringent facial standards focus only upon “the group for whom the law is a restriction, not the group for whom the law is irrelevant.” *Id.* (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015)).

for example, 14,737 registrants—more than 10% of all registrants and roughly 17% of first-time registrants—used QVAs to prove citizenship. Order at 61. More than 10,000 voters did so on Election Day in November 2024 alone. *Id.* That evidence directly supports the Court’s finding that eligible voters consistently and necessarily relied on the QVA when registering, particularly on Election Day. Even if they might “possess” a qualifying document in the abstract, their use of a QVA shows they did not have such a document with them when they registered to vote. *Id.* And abundant evidence showed that locating and retrieving such documents is often no small matter. *Id.* at 13–14, 61–64 (describing expert testimony on who does not have ready access to DPOC).

The Secretary’s retort is to repeat its suggestion that those who “choose to wait until election day” inflict “personalized and idiosyncratic burdens” upon themselves that should not be attributed to the law, Mem. at 17–18; *see also id.* Argument § I.A.2, but in New Hampshire—unlike in most other states—voters are *entitled* to rely on election-day registration. *See* Order at 6–7; 52 U.S.C. § 20503(b). If same-day registration did not exist, New Hampshire would have to make advance registration far easier. Order at 64–65 (explaining that without same-day registration, New Hampshire would be subject to provisions in the National Voter Registration Act such as requirements to establish “certain public assistance offices, register to vote by mail, and submit provisional ballots”). And the Court properly credited evidence showing several distinct reasons the law inflicts direct burdens on not only eligible voters who lack acceptable documents altogether but also on voters who possess documents but cannot locate or retrieve them in time, voters whose documents do not match their current legal names, and voters who possess documents but do not have them with them when they go to vote. *Id.* at 13–14, 62–64.

As a result, while the Secretary relies heavily on Dr. Herron’s estimate that most eligible voters “possess” a form of documentary proof of citizenship, Mem. at 15, 25—though tens of

thousands do not—the Secretary ignores record evidence clearly establishing that the burden from the repeal of citizenship QVAs extends far more broadly than that. The record shows, for example, that *even for voters who have the documents*, only about 11% of passport holders and 7% of birth certificate holders regularly carry such documents with them. Order at 63–64. Testimony from individual voters confirmed this. Montagano, for example, did not own a passport and kept her birth certificate with her parents, who lived two hours away, and was able to register to vote on election day in November 2024 using a QVA. NHYM Proposed FOF ¶ 52. And Sumner kept both in a safe in her mother’s bedroom; after school and work, she had to detour home before voting and would have been unable to vote if her mother had not been home. *Id.* ¶¶ 53–54.

Even more insurmountable, for the Secretary, is the evidence from HB 1569’s real-world implementation during low-turnout municipal elections last year, when many voters were turned away because they lacked documentary proof of citizenship. Order at 65–66. In Durham, for example, only two of six same-day registrants brought documents proving their citizenship, and one student who was turned away did not return. *Id.* at 17–18. Voters were also turned away and did not return in Conway, Bethlehem, Keene, and Concord. *Id.* at 17–18, 65–66. This evidence is especially probative because municipal elections involve far fewer new registrants than state and federal elections, yet it is conspicuously absent from the Secretary’s analysis. *See generally* Mem.

Finally, the Secretary does not even attempt to argue that he will likely succeed on appeal in arguing that HB 464 meaningfully mitigates these burdens, no doubt because the factual record so clearly refutes that idea. *See generally* Mem. at 12–20. As this Court recognized, the Secretary’s own evidence confirms that the so-called safety valve offered by HB 464 will do little to mitigate the burdens inflicted by HB 1569 for large groups of voters, while causing additional problems of its own. *See* Order at 65.

b. The record establishes that the law does not advance the asserted state interests.

Turning to the Secretary's asserted state interests, the Motion does not meaningfully engage with the actual basis for the Court's ruling. This Court did not deny that election integrity, voter confidence, and protecting public resources are legitimate and important interests, as the Motion suggests. Just the opposite: the Court expressly recognized those interests as "legitimate in the abstract." Order at 72–73, 78 (quoting *Fish*, 957 F.3d at 1132). But that was not the end of the analysis, because the Court rightly held that *Anderson-Burdick* required it to assess whether those interests justified *the specific burden imposed* by eliminating the citizenship QVA. *Anderson*, 460 U.S. at 789; *Gorbea*, 970 F.3d at 14–15. And the Court found based on almost entirely undisputed evidence that the asserted state interests "are not meaningfully served by HB 1569's elimination of the QVA," and that eliminating the QVA "may have actually harmed" them. Order at 78. The Secretary does not even try to argue otherwise.

The election integrity record illustrates the point. The Court found only 47 instances of wrongful voting of any kind from 1998 through 2024; at most eight identified noncitizens who may have cast ballots during that period; at most 26 ballots cast by those individuals; and only three noncitizens who may have used QVAs to prove citizenship. *Id.* at 74–75. Both Secretary Scanlan and Deputy O'Donnell testified that noncitizen voting is essentially nonexistent in New Hampshire, and the Secretary was ultimately forced to concede that the new regime could not have prevented almost any of the miniscule amount of noncitizen voting that did occur. *See id.* at 75. On that record, the Court reasonably concluded that eliminating a sworn affidavit used by thousands of eligible voters did little to advance election integrity. *See, e.g., Fish*, 957 F.3d at 1134–36.

The voter confidence rationale failed for similar reasons. The Court did not deny that voter

confidence matters in general. The Court instead found that no evidence supports the Secretary's theory that eliminating citizenship QVAs improves confidence. Order at 75–76. The Secretary's surveys showed high levels of confidence in New Hampshire elections before and after HB 1569, and the Special Committee on Voter Confidence touted by the Secretary did not even recommend eliminating QVAs or otherwise changing New Hampshire's proof-of-citizenship laws. *Id.* Unrebutted expert evidence showed that turning eligible voters away may reduce confidence, which the Secretary did not dispute. *Id.* at 76.

Nor did the public-fisc rationale support the QVA repeal. While the Secretary relied on affidavit follow-up costs generally, *see* ECF No. 169 at 22–24, the Court found that New Hampshire never systematically investigated citizenship QVAs and that non-citizen voting investigations consumed minimal resources. Order at 76–77. By contrast, HB 1569 and HB 464 immediately created hundreds of thousands of additional costs in vendor fees and significant additional staff time. *Id.* at 77–78. The Court therefore reasonably found that eliminating citizenship QVAs would not meaningfully conserve state resources.

Finally, the Court did not hold that every election law must include a safety valve, as the Secretary suggests. It considered the absence of an effective alternative because the Secretary argued that HB 464 and the broader scheme mitigated the burden. *Id.* at 68–73; *see also, e.g., Fish*, 957 F.3d at 1129 (distinguishing *Crawford*, explaining that “unlike the Indiana law in *Crawford*, an eligible Kansas applicant on the suspense or cancellation list does not have the option to fill out a provisional ballot, produce DPOC after the election, and have their ballot counted”).

C. The Court properly enjoined enforcement of an unconstitutional provision.

The Secretary's attempt to argue that the Court's equitable relief exceeded its authority—either on the theory that it “revives” a repealed citizenship law, or because it issued relief statewide—likewise fail. These arguments, too, were waived. The Secretary's pretrial notice of

defenses said nothing about limits on equitable authority precluding the relief that Youth Movement has sought from the start of this case. ECF No. 124; *see also* ECF No. 50 at 32 (seeking, among other relief, an injunction against “giving effect to HB 1569 to the extent it repealed the state’s qualified voter affidavit provisions”). And as the Court’s Order noted, Order at 95, the Secretary’s post-trial brief made no challenge to the scope of equitable relief sought either. By failing to brief this issue before seeking a stay, the Secretary waived it. *See, e.g., Planned Parenthood v. Kennedy*, No. 1:25-CV-11913-IT, 2025 WL 2495955, at *5 (D. Mass. Aug. 29, 2025) (citing cases).

Regardless, the argument is wrong on the merits. The Secretary insists that “the Court went much further than simply declaring HB 1569 unconstitutional and enjoining Defendants from implementing and enforcing it.” Mem. at 21. But the Secretary nowhere explains how that is so, and the Court in fact did exactly what the Secretary impliedly concedes would be appropriate relief: it enjoined implementation of HB 1569’s repeal of qualified voter affidavits for citizenship. Order at 97. The straightforward consequence of enjoining the unconstitutional repeal of the provision of law providing for QVAs to prove citizenship is that the previously repealed provision is in effect. *See Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 631 (2020) (holding “that an unconstitutional statutory amendment ‘is a nullity’ and ‘void’ when enacted, and for that reason has no effect on the original statute”) (quoting *Frost v. Corp. Comm’n*, 278 U.S. 515, 527 (1929)); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th 295, 321–22 (1st Cir. 2024) (finding instructive “the general rule . . . ‘that a void act cannot operate to repeal a valid existing statute,’ meaning that the existing statute ‘remains in full force and operation as if the repeal had never been attempted’” (quoting *LaRoque v. Holder*, 650 F.3d 777, 791 (D.C. Cir. 2011))).

The Secretary likewise offers no basis to conclude the Order is not narrowly tailored to

redress the Plaintiffs’ harm from the constitutional violation. Having found that repeal of the citizenship QVA was unconstitutional, the Court had authority to enjoin enforcement of that unconstitutional provision and to order relief sufficient to prevent the same constitutional violation from recurring and harming the named Plaintiffs in future elections. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (reaffirming that courts have the equitable power to shape remedies to address “the necessities of the particular case...” (citation omitted)). Redressing the harm to the named Plaintiffs—statewide organizations that have members statewide and work to mobilize nonmember voters statewide—required statewide relief. *See id.* at 853 (recognizing that “complete relief” for the named plaintiff may require a broader injunction). And the Secretary never argued for anything less. *See generally* ECF No. 169.

In fact, the Secretary gives up the game when he explains what lesser relief the Court “[p]erhaps” could have ordered: requiring acceptance of “registrants who *bring notarized sworn affidavits* as proof of citizenship” when they come to vote. Mem. at 22 (emphasis added). Such a procedure would certainly be *more burdensome* than the restoration of citizenship QVAs—it would require advance planning, a separate trip to a notary, and often the payment of a fee. But in no sense is it *narrower*. Unlike the restoration of citizenship QVAs, which is the status quo that follows directly from enjoining the unconstitutional repeal, the Secretary’s proposal would be made up out of whole cloth. And it would do nothing more to serve the State’s asserted interests than the relief the Court ordered. A notarized affidavit that a voter brings with them provides the exact same proof of citizenship as a citizenship QVA—the voter’s word, given under legal penalty for lying, after showing identification to prove they are who they say. If anything, the citizenship QVA is stronger, because the identification is shown to an election worker directly. The only reason anyone would want to require a notarized affidavit instead of a citizenship QVA is if their

real goal were not to verify citizenship, but simply to make it harder to vote.

II. The balance of the equities does not favor a stay.

Finally, the Secretary has not met his burden to show irreparable harm in the absence of a stay, or that Youth Movement and other parties will not be harmed by a stay. In fact, it is Plaintiffs and the public that will be irreparably harmed by a stay of the Court's Order enjoining the unconstitutional repeal of QVAs, particularly with just weeks remaining before the 2026 statewide elections begin.

A. The Secretary's three-week delay in moving for a stay of the Court's Order exacerbates risks of harm to Plaintiffs and the public.

To start, the Secretary's request for a stay pending appeal inexplicably comes 22 days after the Court's Order was issued. The Secretary provides no justification for this substantial delay, even as the 2026 elections are fast approaching. This "delay in . . . seeking a stay vitiates much of the force of [the Secretary's] allegations of irreparable harm." *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977); *see also Penn Mut. Life Ins. Co. v. City of Austin*, 168 U.S. 685, 697 (1898) ("No rule of law is better settled than that a court of equity will not aid a party whose application is destitute of conscience, good faith, and reasonable diligence.").

Since the Court's Order, QVAs have been available to New Hampshire registrants who do not have documentary proof of citizenship with them while registering. New Hampshire residents have registered to vote, election officials have revised their registration practices, and organizations like Youth Movement have already updated their voter education materials in preparation for the 2026 elections.² And the Secretary points to no concrete harm that has occurred

² Indeed, information about the Court's Order enjoining the repeal of the QVAs has been broadly disseminated to the public. *See, e.g.,* Jenna Russell & Nick Corasantiti, *Judge Tosses Citizenship Law Aimed at New Voters in New Hampshire*, N.Y. Times (May 29, 2026), <https://www.nytimes.com/2026/05/29/us/new-hampshire-citizenship-law-voters.html>; Ethan

in the weeks that have passed since the Order. By waiting to seek a stay, the Secretary magnified the disruption and confusion that a stay would cause.

B. The Secretary is not harmed by the Court’s final order.

The Secretary fails to show irreparable harm merely “because the Order invalidates a duly enacted state law and reimposes a repealed state law.” Mem. at 22. This Court correctly found that the enjoined provisions of HB 1569 violated the First and Fourteenth Amendments of the U.S. Constitution. Order at 97; *supra* Argument § I.B.2, and the Secretary cannot be harmed by an Order enjoining enforcement of an unconstitutional law, *see, e.g., Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025) (finding the government is not irreparably harmed by an injunction barring enforcement of an unlawful order); *State v. HUD*, 171 F.4th 473, 492 (1st Cir. 2026) (similar); *Nat’l Educ. Ass’n-New Hampshire v. N.H. Att’y Gen.* (“NEA”), 806 F. Supp. 3d 166, 209 (D.N.H. 2025) (similar, citing *Siembra Finca Carmen, LLC v. Sec’y of Dep’t of Agric.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)). The Secretary’s issue with the Order “reinstating” the “repealed state form,” Mem. at 23, suffers from similar defects: Regardless of what the Secretary calls the Court’s relief, he cannot claim irreparable harm from reinstatement of the citizenship QVA, as that is merely the practical consequence of the equitable relief that the Secretary has provided no basis to find was improper or unlawful. *See supra* Argument § I.B.3. And the Secretary’s assertion that the State “must balance its same-day polling location registration and voting with its inability to recall or discount ballots later discovered to be invalidly cast,” Mem. at 23, is a misplaced merits argument that does nothing to show irreparable harm and finds no support in the trial record, which

Dewitt, *Ahead of Midterms, Federal Court Strikes Down NH Proof-of-Citizenship Voter Registration Law*, N.H. Bulletin (May 29, 2026), <https://newhampshirebulletin.com/2026/05/29/ahead-of-midterms-federal-court-strikes-down-nh-proof-of-citizenship-voter-registration-law/>.

showed that eliminating citizenship QVAs caused substantial chaos at the polls while doing almost nothing to prevent voter fraud or to serve any other state interest.

C. Youth Movement and voters across New Hampshire will suffer irreparable harm in the 2026 elections and beyond if a stay is granted.

The Secretary also fails to demonstrate that a stay would *not* irreparably harm Plaintiffs or the New Hampshire public. The Secretary’s analysis of irreparable harm inexplicably focuses only on the individual Open Democracy plaintiffs, once again ignoring the injuries to Youth Movement, its members, and the other organizational plaintiffs in arguing that “Plaintiffs will not suffer any harm from a stay.” Mem. at 24. The Court must consider harm to Youth Movement in granting a stay, as Youth Movement is a Plaintiff with Article III standing. *See LULAC*, 808 F. Supp. 3d at 81 (holding that interference with a nonprofit’s “mission of registering voters” constitutes “irreparable harm”) (citing *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016)).

A stay of the Order pending appeal will irreparably harm Youth Movement’s ability to implement its core programs—and this harm is especially salient with the September 8 statewide primary and the November 3 general election now—because of the Secretary’s delay—fast approaching. *See Newby*, 838 F.3d at 9 (explaining that, “after the registration deadlines . . . pass, ‘there can be no do over and no redress’”) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014)). Youth Movement runs several programs aimed at increasing turnout of younger voters. Order at 38. This includes its pledge-to-vote and GOTV programs, both of which the Court found relied on the availability of the QVA for citizenship to help new registrants register to vote. *Id.* at 38–39. If the Court grants a stay of its Order, however, young voters who committed to vote through Youth Movement’s pledge-to-vote program may be unable to register if they do not have ready access to documentary proof. Its ride-to-the-polls program will also be less effective, as Youth Movement will not be able to assist residents who

intended to register on election day but do not have proof with them at their polling location. *Id.* at 39. This poses irreparable harm to Youth Movement, as residents unable to register for and vote in the upcoming elections will have no second chance to cast their ballots in these elections. *See LULAC*, 808 F. Supp. 3d at 81.

III. The public interest does not favor a stay.

Finally, the public interest weighs strongly against a stay. The public has a “strong interest in exercising the ‘fundamental political right’ to vote.” *Purcell*, 549 U.S. at 4. “The public interest therefore favors permitting as many qualified voters to vote as possible.” *Husted*, 697 F.3d at 437 (6th Cir. 2012); *see also Joelner v. Village of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004) (explaining that “[i]t is always in the public interest to protect First Amendment” rights); *NEA*, 806 F. Supp. 3d at 209 (“[T]he public interest is harmed by the enforcement of laws repugnant to the United States Constitution.”). The trial record showed substantial disruption from the repeal of citizenship QVAs during the local elections last year, and it made clear that far greater disruption looms if the repeal remains in effect during the much higher turnout elections coming this fall. The public interest does not favor disrupting New Hampshire’s elections in that way, particularly given the Secretary’s extraordinarily weak evidence that any state interest was meaningfully served by the repeal of citizenship QVAs.³

CONCLUSION

The Secretary’s motion should be denied.

³ The Secretary cites to Supreme Court decisions from 1903 and 1937 for the general proposition that legislative enactments reflect the public interest. Mem. at 24–25. But both cases, unlike this one, involved constitutionally valid legislation. *See Virginian Ry. Co. v. Sys. Fed.*, 300 U.S. 515, 554–59 (1937) (finding relevant legislation valid under the Commerce Clause and the Fifth Amendment); *Atkin v. State of Kansas*, 191 U.S. 207, 224 (1903) (finding that the “constitutionality [of the discussed statute] is beyond all question.”).

DATED this 6th day of July, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 6th day of July 2026 on all parties of record via the Court's electronic filing system.

/s/ Steven J. Dutton