

STATE OF NEW HAMPSHIRE

HILLSBOROUGH,
SOUTHERN DISTRICT

SUPERIOR COURT
Docket #226-2022-CV-00233
Docket #226-2022-CV-00236

603 FORWARD; OPEN DEMOCRACY ACTION;
LOUISE SPENCER;
EDWARD R. FRIEDRICH; and
JORDAN M. THOMPSON

and

MANUEL ESPITIA, JR.; and
DANIEL WEEKS

Plaintiffs

v.

DAVID M. SCANLAN, Acting New Hampshire Secretary of State;
and JOHN M. FORMELLA, New Hampshire Attorney General

Defendants

**603 FORWARD PLAINTIFFS' OBJECTION TO DEFENDANTS'
MOTION TO DISMISS**

NOW COME Plaintiffs, 603 Forward, Open Democracy Action, Louise Spencer, Edward R. Friedrich, and Jordan M. Thompson, by and through their attorneys, McLane Middleton, Paul Twomey, Esq., and Elias Law Group LLP, and hereby object to the State's Motion to Dismiss. In support of this Objection, Plaintiffs submit herewith a Memorandum of Law that is incorporated herein by reference.

WHEREFORE, Plaintiffs requests that this Court:

- A. Deny the State's Motion to Dismiss; and
- B. Grant such other and further relief as the Court deems just and necessary

Respectfully submitted,

603 FORWARD, OPEN DEMOCRACY ACTION,
LOUISE SPENCER, EDWARD R. FRIEDRICH,
and JORDAN M. THOMPSON

Dated: September 26, 2022

By Their Attorneys,
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2022, I served the foregoing through the Court's electronic filing system on all parties and counsel of record.

/s/ Steven J. Dutton

Steven J. Dutton

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OBJECTION TO
DEFENDANTS' MOTION TO DISMISS**

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND 3

 I. Senate Bill 418’s changes to New Hampshire’s same-day voting rules..... 3

 II. Senate Bill 418’s costs to New Hampshire taxpayers. 4

 III. 603 Forward Plaintiffs’ challenge to SB 418..... 6

ARGUMENT 8

 I. The Individual Plaintiffs have taxpayer standing to sue because the General Court has unconstitutionally mandated spending to implement SB 418..... 8

 II. 603 Forward and Open Democracy Action also have standing to sue because SB 418 requires them to divert resources to combat the burdensome effects of the new law. 14

 III. This case is ripe for adjudication. 19

CONCLUSION..... 26

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INTRODUCTION

This case concerns a recently enacted law—Senate Bill 418 (“SB 418”)—that will make it more difficult for lawful New Hampshire residents who register on election day to successfully vote. Plaintiffs—three New Hampshire taxpayers and two New Hampshire voting organizations dedicated to promoting access to the ballot—allege that SB 418 violates numerous guarantees in the New Hampshire Constitution, including the rights to free and fair elections; equal protection; privacy; and due process, as well as the state’s constitutional requirements for certifying elections. Indeed, the state has no justifiable reason for the law. The General Court purported to pass it in response to concerns about voter fraud, but New Hampshire has no significant history of fraud and, as Governor Sununu has affirmed, has long enjoyed “secure, safe, and reliable” elections.

Defendants Acting Secretary of State David M. Scanlan and Attorney General John M. Formella have moved to dismiss the complaint. Tellingly, Defendants nowhere dispute Plaintiffs’ claims that SB 418 is unconstitutional. Nor do they allege Plaintiffs have failed to adequately plead their constitutional claims. Instead, they move to dismiss solely on the bases of standing and ripeness, arguing the Individual Plaintiffs lack taxpayer spending; that the Organizational Plaintiffs have not adequately alleged an injury; and that, in any event, the case is not ripe because SB 418 does not become effective until January 1, 2023. Each of these arguments should be rejected.

First, Defendants do not dispute that the Individual Plaintiffs—concerned citizens who actively lobbied against the bill—are taxpayers who are registered to vote in New Hampshire, the key prerequisites to taxpayer standing. They argue instead that Plaintiffs do not challenge a “specific” government spending action. But that theory is belied by the plain text of SB 418, which includes a Fiscal Note detailing the costs New Hampshire taxpayers will bear to implement the law. Even if the bill’s text left any doubt, Secretary Scanlan testified before the House Election

Committee that he “read[s] the bill” to require the Department of State to assume the costs of carrying out the bill, “a figure . . . that is in the hundreds of thousands of dollars.” Compl., Ex. A at 5. Defendants’ argument is inconsistent with the New Hampshire Constitution’s grant of taxpayer standing and the wishes of New Hampshire voters who overwhelmingly passed that amendment into law.

The Organizational Plaintiffs—603 Forward and Open Democracy Action—also have standing because SB 418 harms them as organizations. Both groups share the mission of promoting access to the ballot box for lower turnout communities, and each allocates significant time and resources to promoting that goal, while also pursuing other policy objectives. SB 418 forces both to divert resources from other programs and goals to combat the law’s harmful impacts, including specifically the ways in which it will make it harder for the communities these groups serve to successfully exercise their right to vote. 603 Forward and Open Democracy Action must now, for example, divert resources to retrain their staff and volunteers, publish new educational materials, and expand outreach to communities most impacted by SB 418. This Court has previously held that such a “diversion of time, talent, and resources” to educate voters suffices for standing, *see New Hampshire Democratic Party v. Gardner*, No. 2017-CV-00432, 2018 WL 5929044, at *2-3 (N.H. Super. Apr. 10, 2018), and the same is true here.

This case is also ripe for adjudication. Governor Sununu signed the bill into law on June 17, 2022 and it will soon go into effect on January 1, 2023. Plaintiffs’ complaint raises legal questions that are presently fit for judicial review without significant factual development. Secretary Scanlan himself recommended referring the legislation to the New Hampshire Supreme Court for an advisory opinion on the law’s constitutionality, and SB 418’s backers delayed its effective date purposefully to allow for judicial review. In contrast, delaying review will impose

hardship on Plaintiffs, particularly 603 Forward and Open Democracy Action, which are already in the process of reallocating limited resources towards combatting SB 418's harmful effects.

BACKGROUND

I. Senate Bill 418's changes to New Hampshire's same-day voting rules.

New Hampshire has long permitted residents to register and cast a ballot on election day, even if they were unable to present photo identification. Compl. ¶ 51. Under this system, New Hampshire enjoyed high voter turnout and its elections were, as Governor Sununu himself confirmed, "secure, safe and reliable." *Id.* ¶¶ 1, 26-45. Defendant Secretary Scanlan agreed the state's elections were "sound" and he had "complete confidence in them." *Id.* ¶ 122.

Despite the admittedly safe, secure, and high-turnout elections New Hampshire enjoyed under these rules, the General Court enacted SB 418, which changes the state's same-day registration rules for new voters who cannot present adequate identification. The law creates an unprecedented form of ballot for these voters—so-called "Affidavit Ballots"—that are only counted on a provisional basis, subject to the voter's ability to cure their Affidavit Ballot through a cumbersome verification process. *Id.* ¶ 55. If the voter is not able to comply with this process, their Affidavit Ballot is inspected by town officials and deducted from the vote count. *Id.*

SB 418 spells out how this Affidavit Ballot scheme operates. Voters registering for the first time on election day, who cannot present adequate identification, are given an "affidavit voter package" designed by the Secretary of State. *Id.* ¶ 56. The package contains two items: (1) a prepaid envelope addressed to the Secretary; and (2) an "affidavit voter verification letter, in duplicate form" that "lists all the documents required to qualify to vote in the state of New Hampshire." *Id.* The letter requires the voter to return her copy of the letter and proof of identification to the Secretary of State's office within seven days of the election "in order for the

ballot to be certified.” *Id.* After receiving the letter, the voter casts her Affidavit Ballot at the polling place. *Id.* ¶ 57. Moderators are required to mark each Affidavit Ballot sequentially in case they must retrieve and review the ballot’s contents later. *Id.* They also are required to store the ballots separately and to announce the number of Affidavit Ballots cast in the election. *Id.*

The voter’s Affidavit Ballot will not ultimately count in the final tally unless she submits the necessary paperwork identified in the verification letter to the Secretary’s office within seven days. *Id.* ¶ 58. On the seventh day after the election, the Secretary informs town moderators which Affidavit Ballots were not certified. *Id.* The town moderator then must retrieve the relevant Affidavit Ballot, inspect its contents, and deduct it from the relevant vote totals for each affected candidate or issue. *Id.* Only then can town officials certify the final vote. The Secretary is further required to refer the name of each voter who fails to certify their ballot to the Attorney General for investigation, which could result in criminal liability. *Id.* ¶ 59.

II. Senate Bill 418’s costs to New Hampshire taxpayers.

Both the text of SB 418 and its legislative history confirm that New Hampshire taxpayers will foot the bill for implementing its novel Affidavit Ballot scheme. *See* Compl. ¶¶ 110-113; *id.*, Ex. A at 5 (Fiscal Note). SB 418’s Fiscal Note explains the law requires state money, drawn from the General Fund, to prepare, print, and distribute voter affidavit packets; to purchase USPS first class postage for the return envelope in each package; and to cover overtime pay to Department of State workers tasked with reviewing the packets. *Id.* In view of these costs, the “Department of State indicates there would be an increased expense to the General Fund in FY 2023 and FY 2025 of \$48,000 and \$72,000 respectively.” Compl., Ex. A at 5. Further still, the Fiscal Note confirms that there will be an impact on local expenditures due to SB 418’s added responsibilities for

municipal election workers. *Id.* at 5-6.¹

Defendant Secretary Scanlan personally testified before the House Election Committee that SB 418 commits the State to spending taxpayer dollars. During that hearing, Representative Bergeron commented that, based on the number of in-person affidavits used in the 2016 presidential election, the total postage for SB 418 in a presidential election year would likely “run between \$160,000.00 to \$202,000.00,” though he was “sure” the total cost would be greater since “polling sites would have to have more envelopes than they possibly need.” *Id.* Representative Bergeron observed that, at that point, the bill contained “no fiscal note” and did not “say who’s going to be responsible for those exorbitant postage prices.” *Id.* When asked where this money would come from, Defendant Scanlan made clear that SB 418 mandates the use of taxpayer funds:

Representative Bergeron: Is it your intent that this [cost] is going to be taken up by the Secretary of State’s [budget]? Are you going to write it out of your budget?

Secretary Scanlan: That was my understanding. The way I read the Bill is that the Secretary of State is supposed to provide the packets that would be issued to a voter that was voting by an affidavit ballot with pre-paid overnight postage on those documents. We’re working on refining the fiscal note, in fact [Senior Deputy Secretary of State] Patty Lovejoy has been working on that. And we should have a figure for you that is in the hundreds of thousands of dollars.

Id. After that hearing, SB 418 was referred to the House Finance Committee and a Fiscal Note was added to the bill, further confirming that the legislation requires spending public dollars to implement the new law. *See* Compl. Ex. D at 8 (referring bill to House Finance Committee).

¹ To the extent Defendants contend the Individual Plaintiffs lack taxpayer standing because the State has not yet separately allocated money to implement SB 418, that misunderstands the relevant allocation process. The General Fund consists of “revenues accruing to the state from taxes, fees, interest earnings, and other sources which can be used for the general operation of state government.” *General Fund*, Transparent NH, <https://www.nh.gov/transparentnh/glossary/general-fund.htm>. “General fund revenues are not specifically required in statute or in the constitution to support particular programs or agencies.” *Id.* In other words, no specific future allocation of funds is required to implement SB 418—enacting the bill into law now mandates that the State to draw upon the General Fund to carry out the law, as the Fiscal Note confirms.

III. 603 Forward Plaintiffs' challenge to SB 418.

Plaintiffs in this action are three New Hampshire taxpayers and two New Hampshire voting organizations that are dedicated to promoting access to the ballot. *See generally* Compl. ¶¶ 9-20 (collectively “603 Forward Plaintiffs”). They allege that SB 418 violates several New Hampshire constitutional provisions, including the Free and Equal Elections Clause; the right to equal protection; the right to privacy; the right to due process; and the state’s constitutional requirements for certifying election results. *Id.* ¶¶ 114-149.

The Individual Plaintiffs are Louise Spencer, Edward R. Friedrich, and Jordan Michael Thompson, each of whom is a New Hampshire taxpayer and registered voter. *See* Compl. ¶¶ 15-20. Ms. Spencer is a co-founder of the Kent Street Coalition, a grassroots community organization focused on helping New Hampshire voters engage in politics at the local level. *Id.* ¶ 15. She testified against SB 418 before the General Court and helped to organize rallies urging lawmakers to vote against the bill. *Id.* She is concerned that SB 418 requires New Hampshire to spend taxpayer dollars to implement a law that violates the state constitution and will make it harder to vote, particularly in communities with many first-time voters. *Id.* ¶ 16. Mr. Friedrich is a United States Marine Corps veteran who also believes that SB 418 is unconstitutional and will make it harder to vote, particularly for overseas and military voters, including his grandson, who currently serves in the United States Navy. *Id.* ¶ 17. Mr. Friedrich actively campaigned against SB 418’s enactment, including by writing letters to the editor and speaking at rallies against the bill. *Id.* ¶ 18. Finally, Mr. Thompson is the Executive Director of Black Lives Matter Nashua. *Id.* ¶ 19. He is an active participant in the civic life of Nashua and is concerned about the impact SB 418 will have on first-time voters and younger voters in his community. *Id.*

The Organizational Plaintiffs in this matter are 603 Forward and Open Democracy Action.

See Compl. ¶¶ 9-15. 603 Forward is a non-partisan, non-profit organization whose core mission is “the maintenance and promotion of a healthy democracy.” Compl. ¶ 10; *see also* Ex. A, Affidavit of Lucas Meyer (“Meyer Aff.”) ¶ 3. In service of this mission, 603 Forward carries out a voter education program that focuses on empowering communities with lower voter turnout, including by encouraging them to register to vote. Compl. ¶ 10. These communities include younger voters and recent immigrant communities—particularly New Hampshire’s growing immigrant populations from African, Asian, and Latin American countries—many of whom are unfamiliar with requirements for voting. *Id*; Meyer Aff. ¶ 9. To assist these communities, 603 Forward simplifies complex election laws to make it easier for voters to navigate the electoral process. Compl. ¶ 10; *see also* Meyer Aff. ¶ 9. It also seeks to educate legislators on policies that impact New Hampshire voters and works to elect candidates that share their commitment to promoting a healthy democracy. Compl. ¶ 10. While Defendants contend that 603 Forward itself cannot register to vote, Mot. to Dismiss ¶ 42, advising citizens on how to vote is central to 603 Forward’s mission. Compl. ¶ 10; *see also* Meyer Aff. ¶ 3.

The communities who are aided by 603 Forward’s voting education program and for the benefit of whom the program is conducted are likely to be disproportionately harmed by SB 418. These same communities often lack access to stable housing and as a result, utility services documentation; accessible and orderly personal records; the capacity to make trips to governmental offices prior to election day; and the ability to pay fees for licensing and document services. *See* Compl. ¶ 74. 603 Forward has already engaged in a “significant reallocation of time and resources in terms of personnel and budget” to advocate against SB 418 and the harm it will impose on those 603 Forward serves. Compl. ¶ 10; *see also* Meyer Aff. ¶¶ 7-14.

Similarly, Open Democracy Action’s core mission is “to bring about and safeguard

political equality for the people of New Hampshire . . . through an open, accountable, and trusted democratic government.” Compl. ¶ 11. For Open Democracy Action, maintaining an electoral system that “allows eligible citizens to vote and have their vote counted” is at the core of their mission. *Id*; *see also* Ex. B, Affidavit of C. Olivia Zink (“Zink Aff.”) ¶ 3. Like 603 Forward, Open Democracy Action expends significant time and resources educating prospective voters on voter registration rules—including those that relate to voting in person—and focuses its efforts on groups with historically low voter turnout, such as young voters, new citizens, and lower-income voters. Compl. ¶ 12; *see also* Zink Aff. ¶¶ 5-7. For example, Open Democracy Action works annually with New Hampshire high schools to educate students about voting rules as they become eligible to vote. Compl. ¶ 12; *see also* Zink Aff. ¶¶ 7, 12-13. The group also funds initiatives to educate voters about how to register on election day at their polling places. Compl. ¶ 12; *see also* Zink Aff. ¶¶ 7-9. During the 2020 elections, the group ran a phone drive focused on reaching unregistered, lower-income voters to let them know about their right to same-day voter registration, the rules of which are significantly impacted by SB 418. Compl. ¶ 12.

ARGUMENT

I. The Individual Plaintiffs have taxpayer standing to sue because the General Court has unconstitutionally mandated spending to implement SB 418.

As taxpayers of the state of New Hampshire, Plaintiffs Louise Spencer, Edward R. Friedrich, and Jordan Michael Thompson have standing to challenge SB 418 under the taxpayer standing amendment in Part 1, Article 8 of the state constitution. That article provides that “*any individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision.*” N.H. Const. Pt. 1, Art. 8 (emphasis added). “In such a case, the taxpayer shall not have to

demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer.” *Id.* The provision makes clear why New Hampshire taxpayers are granted this standing—the government and its agents are “at all times accountable” to “the people” from whom all the government’s power originates and derives. *Id.* Taxpayer standing thus ensures government remains “open, accessible, accountable, and responsive” to the people and that their “right to an orderly, lawful, and accountable government” is maintained. *Id.*

The State does not dispute that Ms. Spencer, Mr. Friedrich, and Mr. Thompson are taxpayers and registered to vote in New Hampshire, as the complaint alleges. *See* Compl. ¶¶ 15-20. Nor does it dispute that SB 418 violates various provisions of the New Hampshire Constitution. *See generally* Mot. to Dismiss. Instead, the State only contends that the Individual Plaintiffs do not challenge a “specific spending action.” *Id.* ¶ 27. That is not correct. As explained in the complaint, the law identifies in its Fiscal Note the specific costs New Hampshire taxpayers will have to bear to carry out the unconstitutional Affidavit Ballot scheme required by the new legislation. *See* Compl. ¶ 110-113; *id.*, Ex. A at 5 (Fiscal Note). This includes funds for the return packets provided to voters forced to cast an Affidavit Ballot; the USPS First Class return postage for each packet; and any overtime pay for Department of State workers who will have to process the packets. *Id.* According to the legislature, these costs will total approximately \$48,000 and \$72,000 for 2023 and 2025 respectively. And the Fiscal Note makes clear these “expenditures” will come from the General Fund. *Id.* Further still, the Fiscal Note confirms that local election officials—who will be obligated to carry out much of SB 418’s Affidavit Ballot scheme—will also incur an “[i]ndeterminable [i]ncrease” in expenses specifically in response to the administration of SB 418. *Id.* Contrary to Defendants’ assertions, these mandated expenditures plainly constitute a “specific governmental spending action.” *Id.*

As explained above, because SB 418 mandates spending state revenue from the General Fund, it was required to have a hearing before the House Finance Committee, which considered and amended the bill. *See* Compl., Ex. E (April 13, 2022 House Fin. Comm. Hr’g Tr.). Legislators called for the hearing after Representative Bergeron raised questions about the bill’s costs at an earlier House Election Committee hearing. *See* Compl., Ex. C (April 8, 2022 House Election Comm. Hr’g Tr.) at 56. Representative Bergeron estimated SB 418 would cost “between \$160,000.00 to \$202,000.00” just for postage, and said he was “sure” the total cost would be greater since “polling sites would have to have more envelopes than they possibly need.” *Id.* He observed that, at that stage, the bill contained “no fiscal note” and did not specify “who’s going to be responsible for those exorbitant postage prices.” *Id.* As noted above, when asked by Representative Bergeron where this money would come from, Defendant Secretary Scanlan made clear that SB 418 mandates the use of taxpayer funds:

Representative Bergeron: Is it your intent that this [cost] is going to be taken up by the Secretary of State’s [budget]? Are you going to write it out of your budget?

Secretary Scanlan: That was my understanding. The way I read the Bill is that the Secretary of State is supposed to provide the packets that would be issued to a voter that was voting by an affidavit ballot with pre-paid overnight postage on those documents. We’re working on refining the fiscal note, in fact [Senior Deputy Secretary of State] Patty Lovejoy has been working on that. And we should have a figure for you that is in the hundreds of thousands of dollars.

Id. The bill’s text and legislative history confirm that, the legislature “approved spending” taxpayer funds for a for the very scheme that Plaintiffs challenge as unconstitutional.

Plaintiffs’ reading of the taxpayer standing provision is consistent with the New Hampshire Supreme Court’s recent decision in *Carrigan v. Department of Health and Human Services*, 262 A.3d 388 (N.H. 2021). In *Carrigan*, an individual plaintiff filed suit against the New Hampshire Department of Health and Human Services, broadly alleging that the Department “fail[ed] to meet [its] statutory and constitutional duties as a result of [its] ‘irresponsible’ spending decisions.” *Id.*

at 390. In its opinion, the Court explained that Part I, Article 8 granted taxpayer standing to challenge “governmental action” the state “has spent, or has approved spending” for, which did not extend to a “governmental body’s comprehensive response to a complex issue, such as child welfare, which encompasses many decisions to spend or approve spending, as well as decisions not to spend or approve spending.” *Id.* at 395. Thus, Part I, Article 8 affirmatively permits taxpayers to “call on the courts to determine whether a specific act or approval of spending conforms with the law.” *Id.*²

That is precisely what the Individual Plaintiffs do here. They do not challenge the State’s “comprehensive response” to election policy, nor do they ask the Court to decide whether the State’s “policy decisions regarding the allocation of resources are prudent or sufficient to comply with legal requirements.” *Id.* Plaintiffs challenge “*specific* governmental action,” namely expending state funds to require first time voters who lack sufficient identification to vote using an Affidavit Ballot, in contravention of the state constitution. *See Carrigan*, 262 A.3d at 396-397 (noting that “taxpayers have standing to challenge specific government actions” and analogizing to states like North Carolina, which have allowed taxpayers “to challenge discrete governmental actions”).

Defendants argue Plaintiffs are merely “challenging the implementation of SB 418, not the legality of its passage” because there “has not yet been any specific government spending action

² The Court also explained how its ruling was consistent with separation of power principles in the New Hampshire Constitution. *See generally Carrigan*, 262 A.3d at 398. Specifically, “[s]crutinizing the entire realm of a governmental body’s spending activity,” as the suit in *Carrigan* required, “exceeds” the traditional judicial role “and infringes on executive or legislative prerogatives.” *Id.* But in contrast, “[a]nalyzing the legality of a discrete governmental action and determining the remedy, if the action is illegal, is quotidian . . . business for the judiciary.” *Id.* The Individual Plaintiffs’ suit presents a “quotidian” challenge to the constitutionality of recently passed legislation, precisely the kind of routine judicial review the Court is not only well-suited to engage in but also has the duty to review.

or indeed any spending related to SB 418.” Mot. to Dismiss ¶ 26. But Part 1, Article 8 expressly grants standing to challenge “whether the State . . . has spent, *or has approved spending*,” in violation of the law. N.H. Const. Pt. 1, Art. 8 (emphasis added). SB 418 plainly approved spending—it made clear the funds to implement SB 418 will be drawn from the General Fund and approximated what those state expenditures will be. *See* Compl., Ex. A at 5. And Defendant Secretary Scanlan’s testimony confirmed that enactment of the law will obligate the Department of State to make these expenditures. *See supra* at 5, 10. For the same reason, Defendants’ contention that the Individual Plaintiffs challenge only “speculative harms on legislation that is not yet in effect, where the responsible public bodies have not yet taken action to implement the legislation,” Mot. to Dismiss ¶ 29, is not relevant. The Individual Plaintiffs do not need to show that their “personal rights were impaired or prejudiced,” and Defendants nowhere explain how implementation of the law will affect its constitutionality.³ In any event, the plain text of Part 1, Article 8 makes clear that funds need not have been spent, or the law itself implemented, before declaratory relief may be sought.

The State’s cramped understanding of taxpayer standing is in fundamental tension with the wishes of New Hampshire’s citizens, who overwhelmingly enacted the constitutional amendment granting taxpayer standing in 2018. *See N.H. Constitutional Amendments Both Pass Easily*, Concord Monitor (November 7, 2018), <https://www.concordmonitor.com/nh-amendments-constitutional-21386686> (showing taxpayer standing amendment approved 83 percent to 17 percent). As the Court explained in *Carrigan*, this amendment was adopted for the express purpose

³ For the same reason, it does not matter that the Individual Plaintiffs “are all registered voters [who] will not be subject to SB 418.” Mot. to Dismiss. ¶ 18 (citing *Asmussen v. Comm’r, N.H. Dep’t of Safety*, 766 A.2d 678, 689 (N.H. 2000)). They do not need to show direct personal injury to establish taxpayer standing, and nothing in *Asmussen*—which predates the taxpayer standing amendment by nearly two decades—holds otherwise.

of overturning its decision in *Baer v. New Hampshire Department of Education*, 8 A.3d 48 (N.H. 2010), in which the Court concluded that status as a taxpayer was insufficient to confer standing. *Carrigan*, 1262 A.3d at 393 (citing *Baer*, 8 A.3d at 51). The General Court attempted to overturn *Baer* by amending the law on declaratory judgments to allow taxpayers into court “when it is alleged that the taxing district ... *has engaged, or proposes to engage, in conduct that is unlawful or unauthorized*, and in such a case the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced.” *Id.* (emphasis added). But the Supreme Court struck down the amendment as unconstitutional in *Duncan v. State*, 102 A.3d 913 (2014), in which it held that the standing requirements outlined in *Baer* were enshrined in the state constitution.

Part 1, Article 8 was approved by the people in direct response to *Baer* and *Duncan* and the Court in *Carrigan* found that history to be important. *See Carrigan*, 262 A.3d at 393. The Court found that the purpose of the amendment was “to return taxpayer standing in New Hampshire to its status prior to [the Court’s] decisions in *Baer* and *Duncan*.” *Id.* (citing Senate Rules and Enrolled Bills Committee Hearing on CACR 15, at 1-2 (Mar. 29, 2018) (Remarks of Rep. Berch)). It thus revived a pre-*Baer* line of taxpayer standing cases which “allowed plaintiffs to bring claims . . . alleg[ing] that specific governmental actions were illegal.” *Id.* at 396 (collecting cases). The Court explained this line of cases was “consonant with the decisions of other state courts examining their state’s taxpayer standing doctrine.” *Id.* (collecting cases). Those include a Missouri Supreme Court decision holding taxpayers have standing to challenge allegedly unconstitutional legislation “require[ing] expenditure of funds generated through taxation.” *Lebeau v. Comm’rs of Franklin Cnty., Missouri*, 422 S.W.3d 284, 291 (Mo. 2014); *see also Md. State Admin. Bd. of Election L. v. Talbot Cnty.*, 558 A.2d 724, 729 (Md. 1988) (holding taxpayer had standing to seek declaratory judgment that provision in county charter was unconstitutional).

That same Missouri decision rejected the argument that Defendants now make here, that a challenge brought under the taxpayer standing amendment is nevertheless unripe if the challenged statute has not yet been implemented or enforced against the plaintiffs. *See Lebeau*, 422 S.W.3d at 291. The “unifying theme” of each of these cases revived by the amendment is “that taxpayers have standing to challenge specific governmental actions,” but “not to launch broad polemics on governmental bodies’ general spending policies.” *Carrigan*, 262 A.3d at 397. Plaintiffs bring just such a “challenge to specific governmental action” here, and the New Hampshire Constitution grants the Individual Plaintiffs standing to do so.

II. 603 Forward and Open Democracy Action also have standing to sue because SB 418 requires them to divert resources to combat the burdensome effects of the new law.

603 Forward and Open Democracy Action each have standing as well. “The general rule in New Hampshire is that a party has standing to raise a constitutional issue . . . when the party’s own rights have been or will be directly affected.” *Hughes v. N.H. Div. of Aeronautics*, 871 A.2d 18, 24 (N.H. 2005). Similarly, to have standing sufficient to seek declaratory relief, a plaintiff’s claims “must be definite and concrete touching the legal relations of parties having adverse interests.” *Asmussen*, 766 A.2d at 689 (quoting *Salem Coal. for Caution v. Town of Salem*, 433 A.2d 1297, 1299 (N.H. 1981)). A plaintiff has met this burden where she alleges an impairment of a present legal right. *See Avery v. N.H. Dep’t of Educ.*, 34 A.3d 712, 715 (2011); *see also* N.H. Rev. Stat. Ann. § 491:22. Under Article III of the federal constitution, for example, organizations have standing to seek equitable and declaratory relief when a statute causes a “drain on [an] organization’s resources.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 365 (1982). In such circumstances “there can be no question that the organization has suffered the requisite injury in

fact.” *Id.*⁴ Similarly, an organization also suffers an injury in fact for standing purposes when a defendant’s actions impede its ability to carry out its mission. *Id.* at 379. This Court itself has likewise found organizations are injured when an unconstitutional voting law requires them to divert resources. *See N.H. Democratic Party v. Gardner*, No. 2017-CV-00432, 2018 WL 5929044, at *2-3 (N.H. Super. Apr. 10, 2018).

Both 603 Forward and Open Democracy Action have set forth facts, in the complaint and by affidavit, establishing how their legal rights have been impacted. *See* Compl. ¶¶ 9-14; *see generally* Meyer Aff.; Zink Aff. Promoting democracy and access to the ballot box is core to the mission of both 603 Forward and Open Democracy Action. *See supra* Background § III. To that end, 603 Forward maintains an active voting education program geared specifically towards communities with lower voter turnout, such as younger voters and recent immigrant communities. *Id.* Likewise, Open Democracy Action spends considerable time and resources educating prospective voters on registration rules, focusing primarily on high school seniors and lower-income voters. *Id.* Both organizations are injured by the enactment of SB 418.

Now that SB 418 is law, 603 Forward must further divert its limited “time and resources . . . to educate its constituents” about the new law, particularly since the law will soon go into effect. Compl. ¶ 10; *see also* Meyer Aff. ¶¶ 7-14. It is critical to 603 Forward’s mission that the communities it serves understand the impact of SB 418, as those same groups—already the least likely to vote—are most likely to run afoul of its burdensome provisions. Meyer Aff. ¶ 14. To counteract SB 418’s effects, 603 Forward will be forced to divert resources to update and retool

⁴ Setting aside the separate issue of taxpayer standing, New Hampshire courts have noted that “as a practical matter,” the state constitution “imposes standing requirements that are similar to those imposed by Article III of the Federal Constitution.” *Duncan v. State*, 102 A.3d 913, 923 (N.H. 2014) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). These federal decisions therefore offer persuasive authority as to ordinary standing principles.

its voter education program to account for SB 418, which soon goes into effect. *Id.* ¶¶ 8-9. It plans to reallocate resources to train its staff and volunteers who work with communities to encourage citizens to vote. *Id.* And it will likewise increase outreach to these communities to ensure they learn about SB 418 and how it impacts their ability to vote. *Id.* Further still, 603 Forward has found that SB 418 is already harming the group's efforts to recruit poll workers and election administrators, requiring additional staff time and funding sources. *Id.* ¶ 13. Diverting these resources comes at a tangible cost—because of the time and money it must spend addressing SB 418, 603 Forward will have to draw resources from its campaigns to promote affordable housing and education funding in NH. *See id.* at ¶ 14.

Open Democracy Action, too, will have to divert significant resources—including both money and staff and volunteer time—to counteract SB 418's harmful effects. Compl. ¶ 13; *see also* Zink Aff. ¶¶ 5-19. For example, consistent with its prior efforts to educate New Hampshire voters about their same-day registration options, Open Democracy Action plans to focus programing efforts and volunteer time encouraging new voters to obtain photo identification ahead of any future elections, in order to avoid having to cast an Affidavit Ballot. *See* Zink Decl. ¶ 8. This is a new effort on Open Democracy Action's part because New Hampshire has not previously imposed such burdens on someone seeking to vote without such identification. *Id.* Open Democracy Action does not believe these voters *should* be required to obtain identification in order to vote, but fears that they will be disenfranchised or discouraged from voting if forced to use an Affidavit Ballot. *Id.*

Open Democracy Action is also working to reallocate resources to ensure that unregistered voters—like New Hampshire high school students—will be aware of SB 418's requirements. Compl. ¶ 13; *see also* Zink Aff. ¶¶ 12-13. In tandem with that, the group will have to divert

resources retraining the volunteers who lead this work, which will have the added impact of taking time away from other mission critical Open Democracy Action priorities, including work on campaign finance laws. Compl. ¶ 13; *see also* Zink Aff. ¶¶ 10, 18. Open Democracy Action is further planning to devote more staff and volunteer time to recruiting poll workers due to the “unprecedented difficulties” the state is currently confronting in recruiting such workers. Zink Aff. ¶¶ 14-16. Open Democracy Action attributes this difficulty in recruiting poll workers to the confusion sown by new election laws like SB 418. *Id.* Open Democracy Action believes it must undertake these programming shifts and reallocation of its resources because SB 418 will otherwise discourage, or simply prevent, some New Hampshire residents from voting, defeating Open Democracy Action’s mission to promote access to the ballot box. *See* Zink Aff. ¶¶ 18-19. Indeed, Open Democracy Action views SB 418 as fundamentally impairing its mission by making it harder to encourage people to vote, particularly since those casting Affidavit Ballots risk not having their ballots counted or their privacy invaded. *Id.* ¶ 4.

Defendants contend 603 Forward and Open Democracy Action’s diversion of their resources does not suffice to grant standing for essentially two reasons. They first argue that the groups’ allegations of harm are too “conclusory” and “tenuous” to support standing. *See* Mot. to Dismiss ¶¶ 34-36. But this same Court has previously found nearly identical facts sufficient to confer organizational standing. *See Gardner*, 2018 WL 5929044, at *2-3. That case also concerned a suppressive voting law that “changed same-day voter registration requirements.” *Id.* at *2. The League of Women Voters of New Hampshire, among others, challenged the law, alleging in its complaint that it “is engaged in numerous voter education activities across New Hampshire” and issues publications “directed to both voters and local elections clerks to help voters understand” New Hampshire’s “voter ID requirements and voter registration procedures.” *Id.* at *3 (quoting

complaint). As a result, the organization alleged it would ““have to launch a new voter education campaign specifically focused on educating voters as well as clerks’ about the new registration requirements.” *Id.* This Court concluded that the time, staff, and funding required to retool their voter education efforts meant the League would “suffer a ‘sufficient injury primarily in the form of diversion of time, talent, and resources to educate their voters and implement the requirements of the [new registration] law.’” *Id.* (quoting *Lee v. Va. State Bd. of Elections*, 155 F. Supp. 3d 572, 578 (E.D. Va. 2015)); *see also id.* n.3 (collecting case law supporting finding of organizational standing). 603 Forward and Open Democracy Action have similarly shown that they will suffer an injury through “diversion of time, talent, and resources” to educate their own constituencies, supporters, and volunteers about the impacts of SB 418. Compl. ¶¶ 9-14; *see also Meyer Aff.* ¶¶ 7-14; *Zink Aff.* ¶¶ 5-19.

Next, Defendants claim that 603 Forward and Open Democracy Action are, in effect, seeking to vindicate the rights of others, rather than their own rights. *See Mot. to Dismiss* ¶¶ 37-50. But that is not correct—the harms alleged in the complaint, and detailed in the organizations’ affidavits, concern harm to 603 Forward and Open Democracy Action *as organizations*. “It is well-accepted in the standing context that organizations may have interests of their own, separate and apart from the interests of their members.” *Mass. Delivery Ass’n v. Coakley*, 671 F.3d 33, 45 n.7 (1st Cir. 2012) (citing *Havens Realty Corp.*, 455 U.S. at 378-79). That is the case here—603 Forward and Open Democracy Action seek to vindicate their rights as organizations not to have their missions frustrating by having to divert their resources to address an unconstitutional law. *Meyer Aff.* ¶¶ 7-14; *Zink Aff.* ¶¶ 5-19. Granting relief on their claims will directly remedy the harm that SB 418 imposes on 603 Forward and Open Democracy Action by abating their need to direct resources in response to its disenfranchising and burdensome effects. *See, e.g., Georgia*

Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1116 (11th Cir. 2022) (organization's diversion of resources would be redressed by enjoining practice of only providing mail ballot applications in English); *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1260 (11th Cir. 2012) (similar); *Nat'l Coal. on Black Civic Participation v. Wohl*, 498 F. Supp. 3d 457, 472 (S.D.N.Y. 2020) (explaining that injunctive relief would redress organization's injury where it "not have to divert more resources from other programming").⁵

As explained in more detail below, 603 Forward and Open Democracy Action are also not seeking "resolution of hypothetical issues and the airing of generalized grievances." Mot. to Dismiss ¶ 47. As their affidavits show, both organizations are already in the process of recommitting resources in response to SB 418 once it takes legal effect in just a few months.

III. This case is ripe for adjudication.

While standing concerns "who" is bringing the case, ripeness considers "when" the challenge is brought. *N.H. Lottery Comm'n v. Rosen*, 986 F.3d 38, 52 (1st Cir. 2021). Where a statute has yet to be applied or enforced, "the doctrines of standing and ripeness tend to overlap." *Id.* Indeed, standing and ripeness typically "boil down to the same question." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 (2007). Plaintiffs' claims are therefore ripe for the reasons

⁵ Defendants also suggest in passing that this diversion of resources constitutes a "mere injury" rather than that "some legal right of [theirs] is impaired or prejudiced" by SB 418. Mot. to Dismiss. ¶¶ 39-40 (citing *Avery*, 34 A.3d at 716; RSA 491:22). But 603 Forward and Open Democracy Action have a tangible right not to have their missions impaired by the diversion of resources necessitated by SB 418. *See, e.g., Havens Realty Corp.*, 455 U.S. at 379. Further still, Defendants exclusively focus on the standard for declaratory relief under RSA § 491:22. But Plaintiffs also seek injunctive relief from SB 418's unconstitutionality under this Court's equitable jurisdiction. *See* Compl. ¶ 23 (citing RSA § 498:1). Because 603 Forward and Open Democracy Action "have been or will be directly affected" by SB 418 in a harmful manner, they possess standing to seek equitable relief. *Hughes*, 871 A.2d at 24.

above. *See Rosen*, 986 F.3d at 52 (explaining “preceding discussion [on standing] largely applies” to ripeness too). Likewise, the Individual Plaintiffs are not required to “have to demonstrate that [their] personal rights were impaired or prejudiced beyond [their] status as a taxpayer,” N.H. Const., Pt. 1, Art. 8, specifically because the purpose of the taxpayer spending amendment is to permit concerned taxpayers to test the constitutionality of a specific governmental act once it is approved. Such a “facial challenge is usually ripe ‘the moment the challenged regulation or ordinance is passed.’” *Pharm. Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294, 307 (1st Cir. 2005) (quoting *Suitum v. Tahoe Reg’l Planning Agency*, 520 U.S. 725, 736 n.10 (1997)).

While the New Hampshire Supreme Court has not adopted a formal test for ripeness, it often applies the two-pronged analysis widely adopted by federal courts and other state jurisdictions. *Univ. Sys. of N.H. Bd. of Trustees v. Dorfsman*, 130 A.3d 1219, 1224 (N.H. 2015). Under this test, ripeness requires consideration of (1) fitness for judicial review and (2) whether the challenged action creates hardship on the plaintiffs. *Id.* The claims the Plaintiffs bring here challenging SB 418 are both fit for judicial review and create direct hardships for themselves and numerous other eligible New Hampshire voters.

A. The Plaintiffs’ allegations are fit for judicial review.

In determining whether a lawsuit is fit for judicial review, courts consider whether the issues are primarily legal, whether they require further factual development for adjudication, and whether the challenged action is final. *Dorfsman*, 130 A.3d at 1224. All three factors indicate the challenge to SB 418 is fit for review at this point.

“Courts are more likely to find a claim ripe if it is of an intrinsically legal nature.” *Riva v. Commonwealth of Mass.*, 61 F.3d 1003, 1010 (1st Cir. 1995). The determination of whether a particular statute runs afoul of the state or federal constitution—the style of claims Plaintiffs bring

here—is primarily a legal determination. *E.g.*, *Club Madonna, Inc. v. City of Miami Beach*, 924 F.3d 1370, 1380 (11th Cir. 2019) (“A facial challenge presenting a purely legal argument, for example, ‘is presumptively ripe for judicial review because that type of argument does not rely on a developed factual record.’”) (quoting *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009); *Barker v. State of Wis. Ethics Bd.*, 815 F. Supp. 1216, 1219 (W.D. Wis. 1993) (“Here, the issue is legal: whether the statute itself is constitutional.”)).

The Defendants’ suggestion that Plaintiffs’ claims hinge on “speculation” as to whether the Secretary’s office “will read the law and implement it in such as way” as to create injuries, Mot. ¶ 52, is undercut by the primarily legal nature of Plaintiffs’ challenges. For example, Plaintiffs allege SB 418 violates the state constitutional right to privacy by requiring election officials to review how individuals cast a ballot, in order to deduct their voters from the final tally. *See* Compl. ¶ 76, 87-98. Similarly, the complaint alleges that SB 418’s edict that local elections officials must deduct affidavit ballots from the final tallies seven days following the election will prevent these officials from certifying a final vote count within five days as required by the New Hampshire constitution and certain related statutes. Compl. ¶¶ 102-09; N.H. Const. pt. 2, art. 32; RSA 659:75. These allegations present primarily legal claims alleging the newly instated affidavit ballot system violates New Hampshire’s constitution. They do not require significant factual development for the court’s consideration. And tellingly, Defendants do not identify any specific facts that must be developed before this challenge becomes fit for review. *See* Mot. to Dismiss ¶¶ 52-53.

The legislative history of SB 418 confirms that reviewing the constitutionality of the new law raises primarily legal issues. Secretary Scanlan himself acknowledged that the bill raised constitutional issues prior to the bill’s passage, well before any factual development about the law’s provisions could have taken place. *See* Compl. ¶ 7 (quoting Secretary Scanlan as “simply

rais[ing], you know, that there may be a constitutional issue with [SB 418]”); *id.* ¶ 66 (quoting Secretary Scanlan as stating he “believe[d] that there are constitutional questions that need to be addressed”). Indeed, the Secretary even suggested certifying the constitutionality of SB 418 to the New Hampshire Supreme Court for an advisory opinion, which is, by definition, a purely legal analysis. *Id.* ¶ 66; *Opinion of the Justs.*, 115 A.3d 257, 259 (2015) (“Part II, Article 74 of the State Constitution ‘empowers the justices of the supreme court to render advisory opinions, *outside the context of concrete, fully-developed factual situations* and without the benefit of adversary legal presentations, only in carefully circumscribed situations.’”) (emphasis added) (*quoting Duncan v. State*, 102 A.3d 913, 921 (2014)). The Secretary’s own testimony confirms that the Court’s task here is chiefly one of legal analysis.

Further still, the law’s own sponsors anticipated—and apparently desired—that SB 418 be tested in court before taking effect. As originally drafted, SB 418 was intended to take immediate effect. *See* Compl., Ex. E at 13. But after significant public backlash to the bill at an April 8, 2022 House Election Committee Hearing, Representative Berry amended the bill to make its effective date January 1, 2023. *Id.* He explained the legislature “shouldn’t be making major election law changes in a general election year,” particularly since he was “sure that there will be a lawsuit.” *Id.* He explained that pushing the effective date to January 1, 2023 “will give time for any lawsuit to work its way through [the courts], before we’re trying to implement it.” *Id.* In other words, SB 418’s own backers anticipated it would be promptly subject to judicial review and delayed its start date to date to allow for orderly court proceedings. That makes sense. It serves no one’s interest, including this Court’s, to require Plaintiffs to wait until the eve of an election and then seek emergency relief over a bill already passed into law.

Because Plaintiffs’ challenge is primarily legal in nature, the Court can weigh Plaintiffs’

claims—without significant factual development—even though statute has yet to go into effect. *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 92–93 (1st Cir. 2013) (“Because these challenges rest solely on the existence of the Ordinance, no further factual development is necessary.”); *California v. U.S. Dep’t of Homeland Sec.*, 476 F. Supp. 3d 994, 1008 (N.D. Cal. 2020) (finding regulation ripe for review despite some “speculation” on the regulation’s “operation in practice”). The mechanics of how SB 418 will operate are provided in detail in the text of the bill itself. *E.g.*, Compl. ¶ 56 (describing “affidavit voter package” distributed to voter and process of election official marking “affidavit voter verification letter”); *id.* ¶ 57 (describing marking and segregation of affidavit ballots by town moderators); ¶ 58 (describing communication between Secretary’s office and town moderators for certification process); ¶ 59 (describing referral of non-certified affidavit ballots to Attorney General’s office). The statute itself therefore supplies most of the necessary details for the Court’s review of Plaintiffs’ claims.⁶

The Secretary’s arguments against finality should similarly be rejected. While SB 418’s effective date is still forthcoming and there has been “no action yet relative to SB 418 from either of the defendants,” Mot. ¶ 55, courts often find that laws are ripe for adjudication even with certain government actions still pending. *Weaver’s Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 468 (1st Cir. 2009) (holding claims ripe despite pending regulatory approval from “several key federal agencies”); *see also Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 32 (1st Cir. 2007) (finding issue ripe despite questions remaining about the construction and

⁶ For the same reason, Defendants miss the mark in arguing Plaintiffs’ claims rely on “unsubstantiated factual claims about the operation of SB 418, not merely its legal operation.” Mot. to Dismiss ¶ 53. As these allegations in the complaint show, SB 418 spells out how the law will operate in detail. These same details are what undergird Plaintiffs’ claims.

operation of gas terminal at heart of lawsuit). “[E]ven when the direct application of a statute is open to a charge of remoteness by reason of a lengthy, built-in time delay before the statute takes effect, ripeness may be found as long as the statute’s operation is inevitable (or nearly so).” *Riva v. Commonwealth of Mass.*, 61 F.3d 1003, 1010 (1st Cir. 1995); *cf. OOIDA v. FMCSA*, 656 F.3d 580, 586 (7th Cir. 2011) (“Where . . . a petition involves purely legal claims in the context of a facial challenge to a final rule, a petition is presumptively reviewable.”).

SB 418 takes effect in a few short months and will impact and complicate elections not long thereafter—indeed, already, the first election subject to SB 418 is a mere six months away, and groups like 603 Forward are already making decisions about how they will need to educate voters to attempt to combat its disenfranchising and burdensome effects, as well as the resource allocation that comes along with that. Meyer Aff. ¶¶ 7-14; Zink Aff. ¶¶ 5-19. The law’s impact on New Hampshire’s election became apparent and expected with the Governor’s signature, and there is no need for the Court to wait until after the January effective date to consider its constitutionality.

B. SB 418 creates hardship for the Plaintiffs

The Plaintiffs also satisfy the second prong of the ripeness test, which looks to whether the challenged issues present the parties with a “direct and immediate” impact. *Dorfsman*, 130 A.3d at 1224; *Appeal of Heald*, No. 2019-0277, 2020 WL 2735498, at *5 (N.H. May 22, 2020). A party’s credible allegations that a law will impose “delay, uncertainty, and expense” are “sufficient to show present injury.” *Roman Cath. Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 92 (1st Cir. 2013); *see also Town of Barnstable v. O’Connor*, 786 F.3d 130, 143 (1st Cir. 2015) (finding claims ripe because, if adjudicated, party “would undoubtedly act different tomorrow, and be able to spend their resources with less risk of waste”); *cf. Rosen*, 986 F.3d at 53 (finding issue ripe in the “pre-enforcement context” because “concrete plan to engage immediately (or nearly so)

in an arguable proscribed activity . . . can demonstrate hardship”).

The complaint and affidavits attached to this response more than adequately plead the hardship SB 418 will impose on 603 Forward, Open Democracy, and their constituents.⁷ As explained in greater detail above, the new law “harms 603 Forward’s sophisticated voter education program . . . [which] works to simplify complex election laws for voters, particularly recent immigrants.” Compl. ¶ 10; *see also* Meyer Aff. ¶¶ 7-9. The organization will need to substantially overhaul this voter education program, including by revising the materials they intend to distribute and translating them into multiple languages before distribution, which will require “significant reallocation of time and resources in terms of personnel and budget.” Compl. ¶ 10. Similarly, Open Democracy Action’s “core constituencies—young voters, new voters, and lower-income voters—are the very voters most likely to be harmed by SB 418.” Compl. ¶ 12; *see also* Zink Aff. ¶ 7. As a result, their extensive voter education program and materials will require revision to explain the law’s new requirements to voters, “diverting resources and time away from other mission critical initiatives.” Compl. ¶ 13; *see also* Zink Aff. ¶¶ 18-19. The retooling for both organizations is not some distant problem. Both Organizational Plaintiffs will need to pivot in a matter of weeks, and just after their programming aimed at the midterm elections, to prepare materials ahead of the January 1, 2023 effective date. These resulting activities are precisely the types of “delay, uncertainty and expense” which demonstrate hardship in a pre-enforcement context. *City of Springfield*, 724 F.3d at 92.

⁷ As explained above, the Individual Plaintiffs’ claims became ripe the moment SB 418 was enacted because they are not required to show personal injury. *See supra* 12 & n.3. Even so, the Individual Plaintiffs face imminent hardship because, once SB 418 goes into effect on January 1, 2023, their tax dollars will contribute towards its implementation.

CONCLUSION

For the reasons above, the Court should deny Defendants' motion to dismiss.

Dated: September 26, 2022

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 26, 2022, I served the foregoing through the Court's electronic filing system on all parties and counsel of record.

/s/ Steven J. Dutton

Steven J. Dutton

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Exhibit A

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STATE OF NEW HAMPSHIRE

HILLSBOROUGH,
SOUTHERN DISTRICT

SUPERIOR COURT
Docket #226-2022-CV-00233
Docket #226-2022-CV-00236

603 FORWARD;
OPEN DEMOCRACY ACTION;
LOUISE SPENCER;
EDWARD R. FRIEDRICH; and
JORDAN M. THOMPSON

and

MANUEL ESPITIA, JR.; and
DANIEL WEEKS

Plaintiffs

v.

DAVID M. SCANLAN, Acting New Hampshire Secretary of State;
and JOHN M. FORMELLA, New Hampshire Attorney General

Defendants

SWORN AFFIDAVIT OF LUCAS MEYER

I, Lucas Meyer, being duly sworn, state as follows:

1. I am an adult individual over eighteen years of age, am competent to testify, and declare the following facts based on my personal knowledge.

2. I am Co-Founder and Chairman of the Board of Directors at 603 Forward. As Chairman, I work closely with 603 Forward staff and other members of the Board of Directors to oversee all aspects of 603 Forward's finances and programming, including programming related to voter education.

3. 603 Forward is a non-profit, non-partisan organization founded in 2020. The

organization's central purpose is to confront the generational crises facing New Hampshire by engaging in policy areas critical to retaining existing, and attracting new, younger citizens in New Hampshire. This includes focusing on issues like public education reform, healthcare access, and voting rights. The organization advances its mission including through staff who encourage local collective action; training volunteers to act in their communities; and helping young people from New Hampshire run for elected office in their home communities. Maintenance and promotion of a healthy democracy in New Hampshire is central to our mission.

4. The work, programming, and financial resources of 603 Forward have been and will continue to be directly impacted by the enactment and implementation of New Hampshire Senate Bill 418 ("SB 418").

5. During the 2022 legislative session, we had to divert at least half of our advocacy-related resources and put them exclusively toward preventing the enactment of SB 418, at the expense of other causes relevant to 603 Forward's mission.

6. These advocacy-related resources included creating and running digital advertisements to combat SB 418, mobilizing voters to testify about the bill's harmful effects, developing educational materials, and hosting trainings and briefings for those who would be most impacted by its requirements.

7. Because the forthcoming November elections will be governed by pre-SB 418 rules, our current voter education programming materials continue to focus on existing same-day registration rules. Nonetheless, because of SB 418's forthcoming effective date, 603 Forward is already actively working and diverting resources—including significant volunteer and staff time, as well as financial resources—to prepare for the law's effect. 603 Forward cannot delay these efforts until after the November 2022 elections because the first elections subject to SB 418's

provisions—March 2023 town elections—are less than six months away.

8. The resources 603 Forward is diverting in response to SB 418 are already being used to take actions in response to the bill. For example, 603 Forward has planned necessary changes to our voter education program, which includes updating the voter education portions of our website, including our ‘Vote’ and ‘Same day registration’ pages, in advance of the implementation of SB 418. 603 Forward is also actively making plans to divert additional financial resources and staff time to revising and updating the voter education materials it distributes, and to retraining its own staff and volunteers in response to SB 418.

9. 603 Forward is additionally already planning how to reallocate and expend significant resources particularly in communities with high concentrations of New Hampshire’s newly naturalized American populations, including Nashua, Manchester, and Somersworth and other parts of Hillsborough and Strafford counties. In addition to requiring a greater degree of voter education efforts, programming in these counties often requires specialized development of materials to account for distinct language needs.

10. As a result of these increased demands on 603 Forward’s resources, the organization is also already actively committing its time and attention to raising new funds for programming in the communities that will be disproportionately impacted by SB 418. The effort required to raise these new funds is itself a diversion of time and resources from other 603 Forward goals.

11. 603 Forward has already also spent time and financial resources drafting and distributing press releases about the harmful effects of SB 418—even prior to its implementation—in order to educate New Hampshire voters about its impact and to raise awareness of the law’s negative effect on New Hampshire.

12. Due to the enactment and forthcoming implementation of SB 418, a law which is directly opposed to our mission and efforts, 603 Forward had to—and will continue to—divert time and money to monitoring any related legislative developments.

13. SB 418 also impacts 603 Forward's existing leadership development initiatives, which in part seek to recruit individuals to serve as poll workers and in election administration roles. 603 Forward has already encountered increased difficulties in recruitment, in part because the State legislature's frequent modification of voting and election laws makes it more difficult for individuals in election-related positions to perform their jobs, while also encouraging participation from bad faith individuals intimidating people in these positions. Due to the enactment of SB 418 and its additional burdens on election officials and voters, 603 Forward plans to allocate additional staff time and funding resources towards recruiting and educating poll workers and election administrators.

14. The funds used to maintain the effectiveness of 603 Forward's voter education program are being drawn from other organizational objectives. For example, 603 Forward is diverting existing resources and focus from its other programs and initiatives, including our work to advocate for better funding for higher education in New Hampshire and our work to create more affordable housing opportunities. These education- and housing-related programs and initiatives are also critical to 603 Forward's mission, and by having to divert resources to combat SB 418, those programs and initiatives are less likely to succeed, or to accomplish as much as they otherwise could. SB 418 has forced 603 Forward to balance its limited resources amongst these competing core objectives, to the detriment of not only the programs and initiatives that will be under-resourced as a result, but also to the group's overall mission.

AFFIDAVIT

I, Lucas Meyer, declare under penalty of perjury under the laws of New Hampshire that the foregoing is true and correct. Executed on September 26, 2022, in Hillsborough, New Hampshire.

Lucas S. Meyer

Lucas Meyer

Sworn and subscribed before me this the 26 day of September, 2022.

Notary Public:

[Signature]

Name:

Mckenzie St. Germain

My commission expires:

MCKENZIE N ST. GERMAIN
Notary Public-New Hampshire
My Commission Expires
May 16, 2023

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Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NEW HAMPSHIRE

HILLSBOROUGH,
SOUTHERN DISTRICT

SUPERIOR COURT
Docket #226-2022-CV-00233
Docket #226-2022-CV-00236

603 FORWARD;
OPEN DEMOCRACY ACTION;
LOUISE SPENCER;
EDWARD R. FRIEDRICH; and
JORDAN M. THOMPSON

and

MANUEL ESPITIA, JR.; and
DANIEL WEEKS

Plaintiffs

v.

DAVID M. SCANLAN, Acting New Hampshire Secretary of State;
and JOHN M. FORMELLA, New Hampshire Attorney General

Defendants

SWORN AFFIDAVIT OF C. OLIVIA ZINK

I, C. Olivia Zink, being duly sworn, state as follows:

1. I am an adult individual over the age of eighteen, am competent to testify, and declare the following facts based on my personal knowledge.
2. I serve as Executive Director of Open Democracy Action. In that role, I am responsible for the development and implementation of Open Democracy Action's budget, programs, and initiatives.
3. Open Democracy Action is a non-profit, non-partisan organization whose mission is to bring about and safeguard political equality for the people of New Hampshire. Inherent to

that mission is an electoral system that allows eligible citizens to vote and have their votes counted. The organization, its mission, and all its efforts are tied to access to the ballot box and to fair elections. SB 418 impairs Open Democracy Action's mission by making it more difficult for some citizens to vote, discouraging otherwise eligible voters from exercising their right to the franchise, and forcing Open Democracy Action to divert its resources to sustain its mission.

4. As an initial matter, SB 418 harms our mission by making it difficult for our staff and volunteers to persuade new voters, and voters from lower turnout communities, to actually vote. As a result of SB 418, our organization's staff and volunteers must now persuade would-be voters that they will be able to successfully cast their ballots, while at the same time being unable to ensure SB 418's burdensome verification process will not disenfranchise them or violate their right to a secret ballot.

5. SB 418 also requires us to divert resources—and in particular our limited volunteer resources—from other programming. Open Democracy Action's efforts to effect change rely considerably on its roster of volunteers, who are asked each week to complete three action items in pursuit of the organization's goals.

6. A significant focus of Open Democracy Action's volunteers is its voter education efforts, which focuses on informing prospective voters about voter registration rules and advising voters on how to vote either through absentee ballot or in person. These efforts require Open Democracy Action to print voter education materials, train its volunteers on New Hampshire's voting rules, and plan programming for the constituencies it serves.

7. Open Democracy Action focuses its education efforts on groups who have historically lower voter turnout, including young voters, new citizens, and lower-income voters. For example, Open Democracy Action works with New Hampshire's schools to educate high

school students about voting rules as they become eligible to register to vote. Open Democracy Action also commits significant volunteer time to efforts to educate voters from lower turnout communities about same-day registration opportunities, which are now limited by SB 418.

8. Consistent with our past efforts to counsel unregistered voters on their same-day registration options, we plan to refocus programming efforts and volunteer time on educating new voters about the need to obtain photo identification ahead of an election, and encouraging them to obtain such identification, in order to avoid being forced to cast an Affidavit Ballot. This will be a new educational effort on our part because New Hampshire has never before required photo identification to vote on election day. And while we do not believe New Hampshire voters should be required to present photo identification to vote on election day, we fear that many voters will be disenfranchised or discouraged from voting if they are forced to cast an Affidavit Ballot. It is critical to our mission that we prepare voters for SB 418's harmful effects.

9. At the same time, we are planning to allocate volunteers to help those forced to vote via Affidavit Ballot navigate the new voting requirements to ensure their ballots are counted. Reallocating volunteers to focus on this issue will divert their efforts away from other election-related activities we ordinarily engage in.

10. Due to the changes introduced by SB 418, Open Democracy Action's approximately 200 volunteers, as well as its staff members, will also have to undergo training to be reeducated as to voter eligibility and election-day specific requirements, which will again take up volunteer time that could otherwise be put to other uses.

11. In addition to these new efforts to protect voters from SB 418 and to reeducate our volunteers, the enactment of SB 418 impacts Open Democracy Action's existing programs. Among the programs that have been and will be impacted are Open Democracy Action's high

school voter registration drives and poll and election worker recruiting efforts.

12. As part of our high school voter registration drives and voter education programs, Open Democracy Action works annually with New Hampshire high schools to educate students who are about to become eligible to vote about voting rules and requirements. During the week of September 18, 2022 alone, Open Democracy Action hosted 10 voter registration drives at New Hampshire high schools. Because New Hampshire high school students are nearly always first-time voters, they are particularly likely to be burdened, disenfranchised, or confused by SB 418's requirements.

13. To counteract these harms, Open Democracy Action is now planning to devote staff time to retooling its high-school-specific voter registration program, including by updating and reprinting voter education materials. For example, Open Democracy Action develops and sends a letter to all high school principals in New Hampshire with information and guidance on how to register to vote. This letter, which is distributed to high school students across New Hampshire, will have to be amended to provide new information as to which forms of identification are accepted in New Hampshire for students registering on Election Day. It will also have to explain to students the consequences of attempting to register to vote on election day without photo identification, including by explaining the burdensome process for curing an Affidavit Ballot.

14. Open Democracy Action, additionally, spearheads a poll and election worker recruiting program. Through this program, we educate New Hampshire residents about the different roles election workers fill and available opportunities to take on those roles.

15. Open Democracy Action is facing unprecedented difficulties in recruiting poll and election workers following SB 418's passage. Several would-be volunteers have personally told me that recent changes to New Hampshire election law, including the enactment of SB 418,

have made them hesitant to participate. They fear that the confusion SB 418 causes will make it difficult to administer. I also anticipate that SB 418 will cause significant confusion among poll workers and municipal staff during the upcoming March 2023 town elections, the first elections to which SB 418 will apply. The confusion SB 418 will introduce also undercuts our mission by making it harder for everyone in New Hampshire to vote.

16. To counteract the effect SB 418 will have on recruiting efforts in advance of the March 2023 town elections, Open Democracy Action is planning to devote more staff and volunteer time and resources into poll worker recruitment.

17. Beyond a significant reallocation of volunteer efforts, SB 418 will also require diverting financial resources from the organization's budget to bring all of its voter education volunteer recruitment materials and programming into compliance with the new voter registration regime, and to ensure we are able to support our volunteers in the efforts above.

18. These diversion of volunteer hours and financial resources described above will require Open Democracy Action reallocation of resources away from other important programs, including campaign finance research projects, education about democracy, and grassroots mobilizing for participation in civic engagement.

19. These programs are also central to Open Democracy Action's mission, but SB 418 has forced our organization to reallocate financial resources and staff attention amongst these competing demands.

AFFIDAVIT

I, C. Olivia Zink, declare under penalty of perjury under the laws of New Hampshire that the foregoing is true and correct. Executed on September 26, 2022, in Franklin, New Hampshire.

C. Olivia Zink
C. Olivia Zink

Sworn and subscribed before me this the 26th day of September, 2022.

Notary Public: [Signature]

Name: Nicole M. DeSignore

My commission expires: Dec 18, 2024



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