

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 226-2023-CV-00613

DEMOCRATIC NATIONAL COMMITTEE and  
NEW HAMPSHIRE DEMOCRATIC PARTY,

*Plaintiffs,*

v.

DAVID M. SCANLAN, in his official capacity as the New Hampshire Secretary of State, and  
JOHN M. FORMELLA, in his official capacity as the New Hampshire Attorney General,

*Defendants,*

and

REPUBLICAN NATIONAL COMMITTEE and  
NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE,

*Intervenors.*

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' REPLIES  
TO DEFENDANTS' AND INTERVENORS' OBJECTIONS  
TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

The objections only underscore that a preliminary injunction is warranted. Neither defendants nor intervenors seriously dispute that doing what S.B. 418 requires—adjusting vote tallies to deduct votes cast by voters deemed “unqualified” because they fail to supply satisfactory documentation of their identities to the secretary of state within seven days of the election—inflicts irreparable harm on those voters, for which there is no adequate remedy at law. Instead, defendants and intervenors argue that (1) the harm to plaintiffs as political parties is not sufficiently immediate or concrete to warrant preliminary injunctive relief, and (2) plaintiffs are unlikely to succeed on the merits of their constitutional claims.

Taking the second point first, plaintiffs’ constitutional claims are likely to succeed for the reasons set forth in plaintiffs’ memorandum of law opposing the motions to dismiss: By requiring election officials to wait seven days after an election to determine which voters were “unqualified,” S.B. 418 §2, V, S.B. 418 makes it all but impossible to meet the state constitution’s five-day deadline for a tally of votes cast by those “qualified to vote,” N.H. Const. pt. 2, art. 32. And S.B. 418 violates the state constitution’s procedural-due-process guarantee by giving election-day registrants required to submit “qualifying documentation,” S.B. 418 §2, V, insufficient time and notice to ensure that their votes are counted.

As to harm, defendants’ and intervenors’ arguments—which conflate the immediacy and irreparability of the alleged harm with plaintiffs’ standing—ignore the fact that courts have consistently held that political parties suffer injury as a result of laws or practices that disenfranchise their voters and supporters. Defendants and intervenors likewise ignore the reality that relief for the constitutional violations alleged must be provided prior to an election because there can be no redress after the election is over. Courts thus routinely grant pre-

election injunctive relief to political parties to protect the integrity of the democratic process. This Court should do likewise here.

## **ARGUMENT**

### **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR CLAIMS**

Defendants' and intervenors' objections either expressly incorporate by reference (Defs. Obj. ¶1) or repeat nearly verbatim (*compare* Ints. Obj. 9-30 *with* Ints. Mot. 3-21) their motion-to-dismiss arguments regarding the merits of plaintiffs' constitutional claims. Those arguments fail—and plaintiffs are likely to succeed on their claims—for the reasons set forth in plaintiffs' memorandum of law opposing the motions to dismiss. Plaintiffs incorporate those arguments by reference and therefore only summarize them here.

S.B. 418 conflicts with part 2, article 32, of the state constitution—which affords local officials only “five days following [an] election” to report a tally of votes cast by persons “qualified to vote,” N.H. Const. pt. 2, art. 32—by making it all but impossible to know which voters were “unqualified” until “the *seventh* day after [an] election.” S.B. 418 §2, V (emphasis added). Defendants and intervenors eschew this conflict by mischaracterizing what plaintiffs say article 32 requires within five days: not a conclusive election result, but a tally of votes cast by those “qualified to vote,” N.H. Const. pt. 2, art. 32. And S.B. 418 violates the state constitution's procedural-due-process guarantee, N.H. Const. pt. 1, art. 15, by failing (1) to give election-day registrants a reasonable period of time to complete the law's onerous verification process and (2) to provide any notice or opportunity to be heard to those whose verification submissions are incomplete (and who are thus referred to the attorney general's office for investigation and potential criminal prosecution). Defendants' and intervenors' due-process arguments misapprehend both the S.B. 418's consequences and the constitution's requirements.

## II. PLAINTIFFS FACE AN IMMEDIATE THREAT OF IRREPARABLE HARM FOR WHICH THEY HAVE NO ADEQUATE REMEDY AT LAW

A preliminary injunction may issue where “there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law.” *N.H. Dep’t of Env’tl Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). Both requirements are satisfied here: S.B. 418 is exceedingly likely to prevent voters, including plaintiffs’ members and other individuals who would vote for Democratic candidates, from voting or from having their votes counted in upcoming elections. That harm is irreparable, and there is no adequate remedy at law for it, because—as another judge of this Court explained in enjoining New Hampshire’s requirement that election-day voters fill out a special domicile form—“once the election occurs, there can be no do-over and no redress.” *League of Women Voters of N.H. v. Gardner*, 2018 WL 5929043, at \*10 (N.H. Super. Ct. Oct. 22, 2018) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)). That is why “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *Id.*

A. Defendants concede that the harm plaintiffs allege is irreparable and that there is no adequate remedy at law to address it. Their only harm-related challenge is that the harm here is not sufficiently immediate to warrant injunctive relief. That is incorrect.<sup>1</sup>

1. Defendants first argue (Obj. ¶2) that the alleged harm cannot be sufficiently immediate because plaintiffs “waited nearly a year to file” this lawsuit. But as defendants acknowledge (Obj. ¶15), S.B. 418 has yet to be implemented in any statewide election for state office or in any election for federal office. That will change later this year, when the state holds

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<sup>1</sup> Although defendants’ objection refers in a heading to the “adequate remedy at law” requirement, the actual argument under that heading pertains to likelihood of success on the merits. Defs. Obj. ¶18.

elections for governor, most state legislative seats, both U.S. House seats, and of course the presidency. *See 2024-2025 Political Calendar*, N.H. Sec’y of State.<sup>2</sup> Many Granite Staters will register on the same day they vote in that election; in the last general presidential election year, 75,612 New Hampshire voters did so, *see* Declaration of Roger Lau ¶12. S.B. 418 thus threatens for the first time this year to disenfranchise large numbers of voters throughout New Hampshire.<sup>3</sup>

2. Defendants’ remaining arguments—which, again, conflate the *immediacy* of the alleged harm with plaintiffs’ *standing*—ignore the straightforward harm that S.B. 418 imposes: disenfranchisement. Defendants acknowledge (Obj. 1-2) that under S.B. 418, a “voter’s affidavit ballot is ... deducted from election results if the voter does not provide a photocopy of valid photo identification to the Secretary of State’s Office within seven days following an election.” Such disenfranchisement is thus not a mere possibility; it is the law’s essential feature.

Defendants (and intervenors) seek to brush this aside by arguing that the “affidavit ballot [voting] procedure will never apply to any voter who has previously registered to vote in New Hampshire” (Defs. Obj. 5), and that “the members of the Plaintiff organizations are already registered to vote and, therefore, ineligible to cast an affidavit ballot” (Ints. Obj. 3). But many of plaintiffs’ members and other supporters are *not* yet registered to vote in New Hampshire, and therefore *are* subject to harm from S.B. 418’s affidavit-ballot regime. That includes minors turning 18 in coming months, and those who move into the state shortly before election day. Many of these first-time New Hampshire voters are college students, who “may lawfully claim domicile for voting purposes in the New Hampshire town or city in which [they] live[] while

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<sup>2</sup> <https://www.sos.nh.gov/elections/2024-2025-political-calendar> (all websites cited herein were visited February 20, 2024).

<sup>3</sup> Had plaintiffs brought this lawsuit any earlier, in fact, defendants likely would have argued that plaintiffs had sued too *soon*—as they asserted in a prior challenge to S.B. 418. *See 603 Forward v. Scanlan*, 2023 WL 7326368 (N.H. Super. Ct. Nov. 1, 2023).



attending” school, RSA 654:1, I-a. S.B. 418 thus is just another in a string of unconstitutional efforts by the legislature to disenfranchise college students. *See N.H. Democratic Party v. Sec’y of State*, 174 N.H. 312, 319, 320 (2021); *Guare v. State*, 167 N.H. 658, 659-660 (2015).

Moreover, the harm inflicted by S.B. 418’s affidavit-ballot regime is not limited to those directly disenfranchised by it. There are also people who are already registered and will face long lines at the polls—and perhaps even be prevented from voting—by the statute. *See Compl.* ¶13. As the New Hampshire Supreme Court has recognized, a new registration requirement that “will increase average registration times and result in longer lines at polls ... together with ... the forms and the penalties, may outweigh the benefit of voting for some individuals” and will “suppress voter turnout”—thus harming even those who successfully navigate the requirements or are not directly subject to them. *N.H. Democratic Party*, 174 N.H. at 320. That is the situation here.

Defendants and intervenors argue, however, that these harms are speculative because plaintiffs have not (in defendants’ words) identified specific voters who have already been “deterred from registering to vote” or who voted by affidavit ballot, *Defs. Obj.* ¶8; *see also Ints. Obj.* 4. But such naming of individual voters is not necessary: The state presented a similar argument in *League of Women Voters of New Hampshire v. Gardner*, 2020 WL 4343486, (N.H. Super. Ct. Apr. 8, 2020), *aff’d*, 174 N.H. 312 (2021)—and lost the argument at the preliminary-injunction stage, again at trial, and yet again on appeal. As the trial court explained:

[T]he State’s overarching argument that Plaintiffs[] failed to identify any individual that was prevented from voting due to the implementation of SB 3 largely misses the point. ... The burdens imposed by SB 3 are more subtle; the new process establishes enough hurdles, the forms contain enough complexity, and the penalties present enough risk that they tend to dissuade a specific type of voter from even engaging with the process. In this regard, the State’s constant refrain that nobody was prevented from voting

rings hollow. SB 3 does not stop someone at the polls from casting a ballot; it discourages them from showing up in the first place.

*Id.* at \*16. Likewise, in a prior case this Court “was satisfied that injunctive relief” would be necessary (even absent the identification of specific voters allegedly harmed) because, absent relief, the League of Women Voters would have to “undertake education activities related to the upcoming election.” *Rivers v. New Hampshire*, No. 219-2012-cv-00458 (Super. Ct. Sept. 24, 2012), *aff’d sub nom. Guare*, 167 N.H. 658. Other courts have likewise recognized that “if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those voters can be identified.” *Ariz. Democratic Party v. Ariz. Republican Party*, 2016 WL 8669978, at \*11 (D. Ariz. Nov. 4, 2016). They have also recognized that the harm from restrictions like those here is irreparable, because “votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.” *Id.*

Political parties are directly (and immediately) harmed, moreover, when their voters are disenfranchised. For example, one court explained that the Florida Democratic Party would “undoubtedly suffer irreparable injury absent a preliminary injunction” of a statute that would have disenfranchised “mismatched-signature voters” by denying them an “opportunity to prove they are who they say they are.” *Fla. Democratic Party v. Detzner*, 2016 WL 6090943, at \*8 (N.D. Fla. Oct. 16, 2016). Another court similarly recognized that the Arizona Democratic Party “would be irreparably harmed” if, absent a preliminary injunction, “potential members of the electorate suffer[ed] intimidation, threatening conduct, or coercion such that their right to vote freely [was] abridged, or altogether extinguished.” *Ariz. Democratic Party*, 2016 WL 8669978, at \*11. And a federal court of appeals affirmed that the Republican Party of North Carolina “would suffer irreparable harm without the grant of preliminary relief” to prevent the party’s voters from being “effectively disenfranchised.” *Republican Party of N.C. v. N.C. State Bd. of*

*Elections*, 27 F.3d 563 (Table), 1994 WL 265955, at \*1 (4th Cir. 1994). The same conclusion reached by all these courts is warranted here.

In fact, the complaint here alleges far *more* than the baseline showing that this and other courts have demanded in prior cases. In particular, it details the steps that S.B. 418 forces plaintiffs to take, including training volunteers, tracking down “Democratic voters “who cast affidavit ballots to help them successfully complete the process,” and “extending payroll end dates for staff by an additional week.” Compl. ¶14. It also alleges that all this will likely “cost at least tens of thousands of dollars and hundreds, if not thousands, of hours of work by DNC and NHDP employees.” *Id.* And as set forth in the accompanying declarations of Roger Lau and Raymond Buckley, S.B. 418 is harming plaintiffs by requiring each to educate its members and other supporters on the law’s cumbersome identity-verification process; to assist affidavit-ballot voters in successfully completing that process; to overcome the chilling effect that the prospect of criminal investigation and public disclosure of voters deemed to be “unqualified” would have on same-day registration; and to prepare for delayed vote counts and contests over which affidavit ballots count in the days and weeks following elections. *See* Lau Declaration ¶¶17-21; Buckley Declaration ¶¶12-17. Hence, while plaintiffs need only allege *impending* harm, *see supra* pp.5-6; Pl. Mem. in Support of Obj. to Mot. Dismiss at 10-13, 25, plaintiffs have also established *already-existing* harm.

Finally, the contention that S.B. 418’s harms are “speculative” (Defs. Obj. ¶20; Ints. Obj. 4) is belied by public reporting as to even the off-cycle special elections held since S.B. 418 took effect last year, which describes a recent election in which an election-day registrant’s ballot was pulled from the tally because the voter failed to return the necessary documentation within the

seven days provided under S.B. 418. *See* Bookman, *First Affidavit Ballot Was Cast in NH Last Month, and then Was Pulled from Final Vote Tally*, N.H. Public Radio (Dec. 15, 2023).<sup>4</sup>

B. Intervenor advance several additional arguments concerning irreparable harm. None has merit.

First, intervenors argue (Obj. 4) that to show harm to their candidates, plaintiffs must demonstrate that they will lose more votes than their opponents. In support of this claim, intervenors cite a Pennsylvania case holding that individual voters could not bring a *vote-dilution* challenge to the counting of a subset of absentee ballots. *See Ball v. Chapman*, 289 A.3d 1, 20 (Pa. 2023). But this is not a vote-dilution case: Plaintiffs claim instead that their members and other supporters will be prevented from having their votes counted *entirely*—an irreparable harm to plaintiffs’ members in and of itself, and one that will additionally harm plaintiffs’ ability to have Democratic candidates elected. Courts have routinely recognized that political parties are injured by laws that cause such a result. As one federal appellate court recently explained, if a political party alleges that an “unlawful election regulation makes the competitive landscape worse for ... [that] party than it would otherwise be if the regulation were declared unlawful,” then that party has alleged “concrete, non-generalized harm.” *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022).

Second, intervenors argue (Obj. 5) that S.B. 418 “does not affect anyone’s fundamental rights, including anyone’s fundamental right to vote,” because election-day registration “is not a fundamental right.” That is unavailing: The fact that there is no fundamental right to election-day registration in no way means that the concededly fundamental right to vote and have one’s

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<sup>4</sup> <https://www.nhpr.org/nh-news/2023-12-15/first-affidavit-ballot-was-cast-in-nh-last-month-and-then-was-pulled-from-final-vote-tally/>.

vote counted is not at stake here. It *is* at stake; the complaint alleges (Compl. ¶79) that S.B. 418’s affidavit-ballot regime will deny people the right to have their vote counted, and that that denial is unlawful because, “[h]aving induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.” *Saucedo v. Gardner*, 335 F.Supp.3d 202, 217 (D.N.H. 2018). Indeed, under intervenors’ reasoning, New Hampshire would be free to allow people to vote only in person between 3 and 4 in the morning on election day (and/or only in person at the top of Mount Washington), because voting during the day (or anywhere near one’s home) “is not a fundamental right.” (Ints. Obj. 5). That is obviously wrong.

Third, intervenors argue (Obj. 6-7) that “[j]udicial recognition of Plaintiffs’ claim ... would act as an extra-constitutional check” on the legislature. That assertion borders on bizarre. For courts to block legislative violations of the state constitution is not an “extra-constitutional” check; it is the judiciary’s core role: As the New Hampshire Supreme Court explained half a century ago, the “interpretation of our State constitution and of statutes .... is a traditional function conferred on the judiciary” and “not within the competence of the other two branches.” *O’Neil v. Thomson*, 114 N.H. 155, 159 (1974). The U.S. Supreme Court made the same point just last year, explaining that “[s]ince early in our Nation’s history, courts have recognized their duty to evaluate the constitutionality of legislative acts.” *Moore v. Harper*, 600 U.S. 1, 19 (2023).

C. As noted, defendants do not dispute that plaintiffs lack an adequate alternative remedy at law. And intervenors’ argument that plaintiffs can just wait for each individual voter to “ask a court to enjoin the state from discarding her affidavit ballot” (Obj. 8) is unavailing. Because S.B. 418 provides no notice to voters when their affidavit ballots are discarded, voters

are unlikely ever to seek such an injunction. Moreover, intervenors’ proposed approach would require courts to resolve plaintiffs’ constitutional claims on a rushed basis in immediate proximity to an election, at which point supporters of the law would presumably argue (as the secretary did in a recent case) that courts ought “not intervene,” *Norelli v. Sec’y of State*, 175 N.H. 186, 200 (2022). Sound judicial policy here “advise[s] in favor of resolving this case” *now*, “in a timely and efficient manner so as not to disrupt the upcoming election process.” *Id.* The fact that one of the two injuries alleged is procedural (Ints. Obj. 8) makes no difference; the harm occurs as soon as S.B. 418’s inadequate procedures deter voters from showing up at the polls or from casting their ballots in the first place.

### CONCLUSION

This Court should grant plaintiffs’ motion for a preliminary injunction.

February 22, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was transmitted today by electronic filing to all counsel of record.

February 22, 2024

Respectfully submitted,

/s/ William E. Christie  
William E. Christie, #11255



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REPUBLICAN NATIONAL COMMITTEE and  
NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE,

*Intervenors.*

**DECLARATION OF ROGER LAU**

I, Roger Lau, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.
2. I am the Deputy Executive Director of the Democratic National Committee (“DNC”). I have held that position since February 2021.
3. The DNC is the oldest continuing party committee in the United States, and the Democratic Party’s national committee as defined by 52 U.S.C. §30101(14). The DNC’s organizational purposes and functions are to communicate the Democratic Party’s position and messages on issues; protect voters’ rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats but also to cast their ballots for Democratic candidates.

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The DNC's leadership is composed of the chair, vice chairs, and over 200 members elected by Democrats in every U.S. state and territory and the District of Columbia.

4. This leadership represents the interests of prospective voters in each county in New Hampshire who vote for Democratic candidates for positions up and down the ballot. The DNC considers those individuals to be its members—even if they are not yet registered to vote—because such individuals (1) provide financial support in the form of political contributions to the DNC and candidates supported by the DNC on a regular basis, (2) help select the DNC's leadership, and (3) help determine the DNC's strategic and political direction by electing Democratic candidates to office.

5. In recent election cycles, the DNC has spent millions of dollars and invested significant staff and volunteer time to persuade and mobilize voters to support Democratic candidates across the country, and it will continue to do so in future elections, including in 2024 to support Democratic candidates in New Hampshire.

6. The DNC works to accomplish its mission by, among other things, mobilizing and persuading voters to register and to vote. This is done by, for example, organizing volunteers and field organizers to conduct registration and get-out-the-vote activities.

7. These activities, in turn, take the form of door knocking, text messaging, and phone banking, as well as coordinated registration drives. The DNC also invests in digital advertisements along with mailings in support of Democratic candidates throughout New Hampshire (and the rest of the country).

8. The DNC's work in support of its mission to elect Democrats up and down the ballot has included (and will include in future elections) every city and town in New Hampshire.



9. In particular, the DNC's registration, voter-turnout, phone-banking, and volunteer texting programs operate on a statewide basis in New Hampshire. Recipients of the DNC's mailings have also been located statewide.

10. Since the DNC operates across the country, investing additional funds or personnel in one state will necessarily divert those resources from others.

11. The DNC invests funds in relevant activities in states where it anticipates there will be close races. These activities include contacting voters whose ballots have been rejected and helping them perform whatever tasks are necessary to ensure that their ballots are ultimately counted, to the extent legally permissible. These activities require the DNC to devote substantial personnel time and money to track data from counties, contact voters, and assist them in completing the curing process, which varies in each state.

12. As of January 2024, there are over 265,000 registered members of the Democratic Party in New Hampshire. *See 2024 Presidential Primary Election Results: Names on Checklist*, N.H. Sec'y of State.<sup>1</sup> Many of those registered on an election day. For example, in the January 2024 Presidential Primaries, 28,447 voters registered on election day. *Id.* And in 2020, the last general presidential election year preceding S.B. 418's enactment, 75,612 voters registered on election day. *See 2020 General Election Results: Names on Checklist*, N.H. Sec'y of State.<sup>2</sup>

13. The election-day-registration provisions of S.B. 418 harm, and unless enjoined, will continue to harm, the DNC. They deter or otherwise prevent New Hampshire residents who would vote for Democratic candidates from doing so, thereby reducing votes for the DNC's favored candidates and policies, and preventing timely and final election results. In particular,

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<sup>1</sup> <https://www.sos.nh.gov/2024-presidential-primary-election-results> (all websites cited herein were visited February 20, 2024).

<sup>2</sup> <https://www.sos.nh.gov/elections/2020-election-results/2020-general-election-results>.



S.B. 418 provides no process for election-day registrants to contest erroneous rejections of their applications, removes ballots from the official count if the required documentation does not reach the secretary of state within seven days after an election (including through no fault of the voter), imposes a higher standard for registration on election-day registrants than other registrants, and fails to provide a system for election-day registrants to track whether their votes were ultimately counted. It is all but certain that one or more members of the DNC, or other individuals who would vote for Democrats in New Hampshire, will be disenfranchised as a result of these provisions. And by erecting obstacles to the counting of ballots cast by Granite Staters who support Democratic candidates, S.B. 418 impairs those Democratic candidates' electoral prospects and thus harms the DNC's core goal of maximizing the number of such candidates who are elected.

14. Upon information and belief, S.B. 418 has already caused, and will continue to cause, prospective eligible voters to decline to exercise their right to vote (either by declining to show up at the polls or declining to sign an affidavit) and thereby subject themselves to criminal penalties for failing to return a verification letter in time.

15. Upon information and belief, some voters who have opted for election-day registration by affidavit under S.B. 418 have had their ballots thrown out. In the 2023 Manchester city election, an election-day registrant who did not return the verification letter in time (and who was reported to have cast his ballot for a Democratic mayoral candidate) had his or her vote excluded from the total vote count. *See Bookman, First Affidavit Ballot Was Cast in NH Last Month, and then Was Pulled from Final Vote Tally*, N.H. Public Radio (Dec. 15, 2023).<sup>3</sup>

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<sup>3</sup> <https://www.nhpr.org/nh-news/2023-12-15/first-affidavit-ballot-was-cast-in-nh-last-month-and-then-was-pulled-from-final-vote-tally>.



“The New Hampshire Attorney General’s office confirmed it is investigating the person for possible voter fraud charges.” *Id.*

16. The election-day-registration provisions of S.B. 418 further harm, and unless enjoined, will continue to harm, the DNC’s mission by forcing the DNC to invest personnel, time, and money in educating New Hampshire voters about S.B. 418, to ensure that those voters are not prevented from voting and having their votes counted in a critical election year.

17. Because S.B. 418 fundamentally changes how voters must cast their ballots, the DNC is currently engaging in a broad-based education program targeting thousands of New Hampshire Democratic voters as well as Democratic candidates. S.B. 418’s cumbersome requirements and its sweeping application call for resources and programs unique in kind and scale from DNC’s existing activities in the state, including its ballot-cure programs. Voters will have to be informed (1) that they can no longer use affidavits to establish their identities on election day without voting by affidavit ballot, and (2) that if they lack an accepted type of photo identification, they will have to send to the secretary of state (to be received within seven days of the election) specific types of documents, or be disenfranchised and referred to the New Hampshire Attorney General for investigation. The magnitude of this new program and the severity of the consequences of non-compliance require the DNC to implement a carefully designed and coordinated information campaign that will likely include:

- training candidates, campaign staff and volunteers, and voters on compliance with S.B. 418;
- providing new training to volunteers who participate in get-out-the-vote programs;
- revising online voting information;



- developing, printing, and distributing customized voter-education mail targeting Democratic voters most likely to be affected;
- developing and launching customized voter-education digital ads targeting Democratic voters most likely to be affected;
- recruiting and deploying post-election volunteers to knock on doors, make calls, and conduct other forms of voter outreach (e.g., public information sessions) to all Democratic voters who cast affidavit ballots to help them successfully complete the verification process; and
- extending payroll end dates for staff by an additional week so they can support post-election programs.

18. By the start of the November 2024 election, these efforts, which require hiring additional staff, likely will cost at least tens of thousands of dollars and hundreds, if not thousands, of hours of work by DNC employees. This large diversion will leave the DNC with fewer resources for the core work that is essential to its mission of electing Democratic candidates, such as get-out-the-vote initiatives and voter-registration campaigns.

19. The DNC has already spent hundreds of hours and significant financial resources on these efforts since S.B. 418 took effect on January 1, 2023. The DNC has also begun to work with affiliates, volunteers, and staff to ensure voters that learn about the law's cumbersome identity-verification process, including: (1) which documents constitute acceptable identification on election day, (2) how to fill out the affidavit-ballot package and avoid any potential criminal consequences for failing to do so correctly, (3) how to obtain the right identification, and (4) how to successfully submit that identification to the secretary of state in time. The DNC will also



assist election-day registrants to the extent permitted by law in completing S.B. 418’s verification process.

20. As if that were not enough, the DNC must also overcome the chilling effect that the prospect of criminal investigation and public disclosure of voters deemed “unqualified” has on election-day registration—traditionally a popular and easy way to register in the state. In light of these concerns, the DNC has had to divert resources to encourage voters to register (if possible, in light of their individual circumstances) more than 30 days in advance of an election so as to avoid the risk that their ballots will not be counted under S.B. 418 if they seek to register and vote on the same day.

21. The DNC and its candidates are preparing (and setting funding aside for) delayed vote counts and contests in the days and weeks following elections over which affidavit ballots will ultimately be counted.

22. Similarly, the DNC is allocating resources to ensure that the efforts described above can target those who are most likely to register and vote on the same day, including student populations.

Executed on this 22nd day of February, 2024.

**Roger Lau** 01182569003  
Signed on 2024/02/22 07:11:10 -8:00

Roger Lau



State of Ohio, County of Montgomery

Sworn to or affirmed and subscribed before me by Roger Lau on this date of February 22, 2024.



02A97E013FC

Signed on 2024/02/22 07:11:10 -8:00  
Signature of Notary Public - State of Ohio



Notarial act performed by audio-visual communication





THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 226-2023-CV-00613

DEMOCRATIC NATIONAL COMMITTEE and  
NEW HAMPSHIRE DEMOCRATIC PARTY,

*Plaintiffs,*

v.

DAVID M. SCANLAN, in his official capacity as the New Hampshire Secretary of State, and  
JOHN M. FORMELLA, in his official capacity as the New Hampshire Attorney General,

*Defendants,*

and

REPUBLICAN NATIONAL COMMITTEE and  
NEW HAMPSHIRE REPUBLICAN STATE COMMITTEE,

*Intervenors.*

**DECLARATION OF RAYMOND BUCKLEY**

I, Raymond Buckley, declare as follows:

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.
2. I am the Chair of the New Hampshire Democratic Party (“NHDP”). I have held that position since 2007.
3. The NHDP is a state committee as that term is defined in 52 U.S.C. §30101(15), and a political party as defined in N.H. RSA 652:11. The NHDP’s purpose is to elect candidates of the Democratic Party to public offices throughout New Hampshire. To accomplish this purpose, the NHDP supports Democratic candidates in national, state, and local elections through fundraising and organizing efforts; protects voters’ rights; and ensures that all eligible Granite Staters—including those who register to vote on election day—can cast a ballot and have that ballot counted.

4. The NHDP has members across the state, including many who regularly vote for and otherwise support candidates affiliated with the Democratic Party, and many who will do so if they are able to register and vote on the same election day. NHDP members include registered voters as well as those who vote for Democratic candidates but are not yet registered to vote, such as members of constituency caucuses and councils such as the New Hampshire Young Democrats, New Hampshire High College Democrats, and New Hampshire High School Democrats some of whom are under the age of 18. Officers of each of these youth organizations are members of the State Committee and those officers under the age of 18 file a pledge to register as democrats when they turn 18. As of January 2024, there are over 265,000 registered members of the Democratic Party in New Hampshire. *See 2024 Presidential Primary Election Results: Names on Checklist*, N.H. Sec’y of State.<sup>1</sup>

5. In recent election cycles, the NHDP has spent significant time and resources to persuade and mobilize voters to support Democratic candidates across the state, and it will continue to do so in future elections, including in 2024. Among other activities, the NHDP organizes volunteers and field organizers to conduct get-out-the-vote activities. The NHDP also engages in voter-education activities to explain the voting process to eligible voters, including how voters can successfully register, cast their ballots, and ensure those ballots are counted.

6. These efforts include door knocking, text messaging, and phone banking. The NHDP also invests in digital advertisements and mailings in support of Democratic candidates throughout the state. And NHDP youth organizations, such as the New Hampshire Young Democrats, the New Hampshire College Democrats, and the New Hampshire High School

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<sup>1</sup> <https://www.sos.nh.gov/2024-presidential-primary-election-results> (all websites cited herein were visited February 20, 2024).

Democrats, encourage prospective voters to register and to support Democratic candidates throughout the state.

7. The NHDP's efforts to elect Democratic candidates have been carried out (and will be carried out in future elections) in every county in New Hampshire. The recipients of the NHDP's mailings and other communications are likewise statewide.

8. Election-day registration is a popular means by which Democrats in New Hampshire cast their ballots. In 2020, the last general presidential election year preceding S.B. 418's enactment, 75,612 voters registered on election day. *See 2020 General Election Results: Names on Checklist*, N.H. Sec'y of State.<sup>2</sup>

9. Election-day registration is especially popular among NHDP members who are new to the state or whose personal situations make it difficult to register to vote in advance. Democratic voters tend to include new citizens and/or residents, young people, college students, and lower-income voters, all of whom rely heavily on election-day registration. It is also critical to the NHDP's youngest members, including students who form the NHDP's college and high school youth organizations and who may be unable or unwilling to register now that S.B. 418 is in place. *See, e.g., NHDP Constituency Caucuses & Councils: New Hampshire Young Democrats*, NHDP (describing NHDP's young members).<sup>3</sup> Upon information and belief, people in each of these groups (and other Granite Staters as well) will be deterred from casting a ballot on election-day as a result of the barriers that S.B. 418 imposes and the criminal penalties it threatens, and NHDP's entire membership, including its candidates, will be harmed as a result.

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<sup>2</sup> <https://www.sos.nh.gov/elections/2020-election-results/2020-general-election-results>.

<sup>3</sup> <https://www.nhdp.org/constituency-caucuses-and-councils>.

10. In particular, S.B. 418 provides no process for election-day registrants to contest erroneous rejections of their affidavit ballot applications, removes ballots from the official count if the required documentation does not reach the secretary of state within seven days after an election (including through no fault of the voter), imposes a higher standard for registration on election-day registrants than other registrants, and fails to provide a system for election-day registrants to track whether their votes were ultimately counted. It is all but certain that one or more members of the NHDP, or other individuals who would vote for Democrats in New Hampshire, will be disenfranchised as a result of these provisions. By erecting obstacles to the counting of ballots cast by Granite Staters who support Democratic candidates, S.B. 418 impairs those Democratic candidates' electoral prospects and thus harms the NHDP's core goal of maximizing the number of such candidates who are elected.

11. Unless enjoined, the election-day-registration provisions of S.B. 418 will continue to undermine the NHDP's ability to further its mission, by forcing it to divert personnel, time, and money away from its broader advocacy and persuasion activities, and towards educating voters about S.B. 418 to ensure that those voters can vote and have their votes counted.

12. More specifically, because S.B. 418 fundamentally changes how voters must cast their ballots, NHDP must engage in a broad-based education program targeting thousands of New Hampshire Democratic voters as well as Democratic candidates. Voters have to be informed (1) that they can no longer use affidavits to establish their identities on election day without voting by affidavit ballot, and (2) that if they do not provide an accepted type of photo identification when registering on election day, they will have to send to the secretary of state (to be received within seven days of the election) specific types of documents, or be disenfranchised and referred to the New Hampshire Attorney General for investigation. The magnitude of this

new program and the severity of the consequences of non-compliance will require the NHDP to implement a carefully designed and coordinated information campaign that will include:

- training candidates, campaign staff and volunteers, and voters on compliance with SB 418;
- providing new training to volunteers who participate in get-out-the-vote programs;
- revising voting information on the NHDP website;
- developing and launching customized voter-education digital ads targeting Democratic voters most likely to be affected;
- recruiting and deploying post-election volunteers to knock on doors, make calls, and conduct other forms of voter outreach (e.g., public information sessions) to all Democratic voters who cast affidavit ballots to help them successfully complete the verification process; and
- extending payroll end dates for staff by an additional week so they can support post-election programs.

13. This education program will necessarily divert financial and other resources from messaging on behalf of Democratic candidates in the lead up to the November 2024 election.

14. Even though S.B. 418 has to date only been in effect for local and special elections in the state, the NHDP has already diverted resources to gathering information about how voters should navigate this new process, which has been mired in uncertainty since the first day of its rollout. For example, the state waited until the Friday before the first election in which affidavit ballots were to be used to release guidance to cities and towns on how to implement

S.B. 418. *See DeWitt, New 'Provisional Ballot'-Type System to Debut Next Week During Rochester Special Election*, N.H. Bulletin, (Feb. 13, 2023).<sup>4</sup>

15. At least one voter who opted for election-day registration by affidavit under S.B. 418 had his or her ballot thrown out: an election-day registrant who voted for the Democratic candidate in the 2023 Manchester city election. *See Bookman, First Affidavit Ballot Was Cast in NH Last Month, and then Was Pulled from Final Vote Tally*, N.H. Public Radio (Dec. 15, 2023).<sup>5</sup> “The New Hampshire Attorney General’s office confirmed it is investigating the person for possible voter fraud charges.” *Id.*

16. Given this environment, the NHDP will need to train voters, volunteers, and staff about (1) which documents constitute acceptable identification on election day, (2) how to obtain that identification, (3) how to fill out and securely deliver the affidavit-ballot package to the secretary of state so as to avoid any potential criminal consequences for failing to do so correctly, and (4) how to do all this within seven days. The NHDP will need to engage in broad-based outreach before the election to ensure election-day registrants turn out to vote despite S.B. 418’s threatened penalties. All this will require hundreds of additional hours of staff time and resources that the NHDP could have spent supporting candidates or expanding campaigns. The NHDP will also allocate resources to ensure those efforts can target those who are most likely to register and vote on the same day, including student populations. The NHDP sets its annual budget in June and will include a specific line item for the expenditures necessary for voter-education activities concerning SB 418.

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<sup>4</sup> <https://newhampshirebulletin.com/2023/02/13/new-provisional-ballot-type-system-to-debut-next-week-during-rochester-special-election/>.

<sup>5</sup> <https://www.nhpr.org/nh-news/2023-12-15/first-affidavit-ballot-was-cast-in-nh-last-month-and-then-was-pulled-from-final-vote-tally>.

17. The NHDP's preferred candidates must also prepare to lose voter turnout and suffer delayed election results. For example, in the first election for statewide office to apply S.B. 418's requirements, the Democratic candidate, finding himself in a tied election, had to devote limited campaign resources to informing potential voters in his runoff election of S.B. 418's requirements. See Dandurant, *Rochester Special Election: Grassie vs. Walker First Test for New NH Voting Law*, Foster's Daily Democrat (Feb. 17, 2023).<sup>6</sup> He stated that his campaign had to avoid "a provisional ballot issue" because he knew from personal experience that voters "get frustrated and they just leave" because they "don't understand the process." DeWitt, *supra* ¶15.

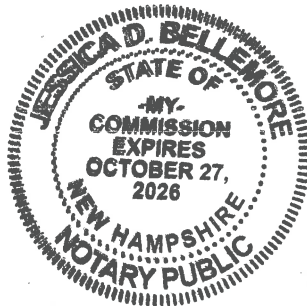
18. Unless enjoined, S.B. 418 will disenfranchise NHDP members, which would significantly impair the NHDP's mission to elect Democratic candidates to office in New Hampshire.

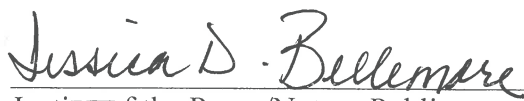
Executed this 22nd day of February, 2024.

  
Raymond Buckley

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

Before me on this 22nd day of February, 2024, appeared the above-subscribed Raymond Buckley and made oath that the statements contained herein are true and correct to the best of his knowledge, information and belief.



  
Justice of the Peace/Notary Public  
My Commission Expires: 10/27/2026

<sup>6</sup> <https://www.fosters.com/story/news/2023/02/17/rochester-nh-special-election-first-for-nh-affidavit-ballot-voting-law/69906393007/>.