UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

New Hampshire Youth Movement, *Plaintiff*, v. David M. Scanlan, in his official capacity as New Hampshire Secretary of State, *Defendant*.	Consolidated Cases Case No. 1:24-cv-291-SE-TSM
Coalition for Open Democracy, *et al.*, *Plaintiffs*, v. David M. Scanlan, in his official capacity as New Hampshire Secretary of State, *et al.*, *Defendants*.	Case No. 1:24-cv-312-SE-TSM

OPEN DEMOCRACY PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW

TABLE OF CONTENTS

INTRODUCTION

The trial record leaves no doubt that House Bill ("HB") 1569 imposes significant—if not severe—burdens on the right of New Hampshire citizens to vote. By eliminating the Qualified Voter Affidavit ("QVA") for citizenship and the Challenged Voter Affidavit ("CVA") for voter challenges, the law has already turned away hundreds of eligible voters and threatens to disenfranchise thousands more. Yet Defendants have failed to demonstrate that any legitimate state interest sufficiently justifies the barriers that HB 1569 now imposes on citizens seeking to register and vote. The Court should therefore conclude that HB 1569's removal of the QVA and CVA unduly burdens the constitutional right to vote and that the elimination of the CVA independently violates procedural due process. The Court should declare these portions of HB 1569 unconstitutional and permanently enjoin their operation and implementation.

MERITS

I. The Removal of the QVA is an Unconstitutional Burden on the Right to Vote.

HB 1569 eliminates registrants' ability to demonstrate citizenship using a sworn affidavit, forcing them to provide a birth certificate, passport, naturalization papers, or undefined "other reasonable documentation" of citizenship—documents that many eligible voters do not have or cannot easily access and that would be costly and difficult to obtain. *See* DX-AAA-1 at 33, 36. In doing so, the statute imposes significant—if not severe—burdens on the right to vote and therefore triggers heightened scrutiny. *See Fish v. Schwab*, 957 F.3d 1105, 1128 & n.6 (10th Cir. 2020). HB 464 is, at best, a partial fix benefitting limited classes of voters and, at worst, an ineffectual product of slipshod implementation; it does not "provide[] an adequate remedy" for the many voters disadvantaged by this regime. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197–98 (2008) (plurality opinion of Stevens, J.). Although some of the interests Defendants invoke are legitimate in the abstract, there is no evidence that removing the QVA for citizenship actually

furthers those interests—much less that burdening wide swaths of voters is necessary to achieve them. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992). If anything, HB 1569 cuts against those interests. Thus, HB 1569's removal of the QVA for citizenship cannot survive constitutional scrutiny.

A. The *Anderson-Burdick* Standard

The right to vote is "a fundamental political right, . . . preservative of all rights." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)); *see also Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("[T]he right to vote is too precious, too fundamental to be so burdened or conditioned."). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which . . . we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see Fish*, 957 F.3d at 1121–22.

Accordingly, "[t]he First and Fourteenth Amendments prohibit states from placing burdens on citizens' rights to vote that are not reasonably justified by states' 'important regulatory interests.'" *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788–89 (1983), and citing *Burdick*, 504 U.S. at 430). Under the *Anderson-Burdick* balancing test, courts considering challenges to burdensome election laws apply a "sliding scale," *Fish*, 957 F.3d at 1124. Namely, courts

> must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Burdick, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789); *see also Common Cause R.I.*, 970 F.3d at 14 (same).

The "rigorousness" of a court's "inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights."

Burdick, 504 U.S. at 434. "Thus, the scrutiny [courts] apply will wax and wane with the severity of the burden imposed on the right to vote"; "heavier burdens will require closer scrutiny, lighter burdens will be approved more easily." *Fish*, 957 F.3d at 1124; *see Burdick*, 504 U.S. at 434.

Here, the Court "must balance any burden on the right to vote imposed by the [documentary proof of citizenship ("DPOC")] requirement against the government's asserted interests as justifications for imposing that burden." *Fish*, 957 F.3d at 1127. In evaluating the burden, courts look to the law's impact on voters broadly, along with any special burdens on particular groups. *See Crawford*, 553 U.S. at 198–99 (considering burdens imposed on all eligible persons who "do not possess [qualifying] identification" and weighing whether any "heavier burden may be placed on a limited number of persons"); *Fish*, 957 F.3d at 1127. Notably, when the burdens at issue "affect the voter's ability to actually cast a ballot"—rather than just "the procedures for getting candidates on a ballot"—they "affect more fundamental rights than those at issue in *Anderson* and *Burdick*." *Common Cause R.I.*, 970 F.3d at 14.

"[W]hen a more substantial burden is imposed on the right to vote, [courts'] review of the government's interests is more 'rigorous[].'" *Fish*, 957 F.3d at 1126 (quoting *Burdick*, 504 U.S. at 434). Thus, "[i]n passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it *necessary* to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789 (emphasis added); *see Common Cause R.I.*, 970 F.3d at 15 (asking whether "the incremental interest in the specific regulation at issue" is justified, not whether "in the abstract, the broader regulatory interest—preventing voting fraud and enhancing the perceived integrity of elections—is substantial and important").

The discussion that follows (i) sets out the burdens imposed on the right to vote by the removal of the QVA; (ii) clarifies that those burdens have not been meaningfully mitigated;

(iii) discusses how the interests that Defendants offer cannot justify those burdens; and (iv) asks the Court to arrive at the "hard judgment" *Anderson-Burdick* demands, *Crawford*, 553 U.S. at 190. The significant—if not severe—burden imposed by removing the QVA increases the "rigorousness of [the Court's] inquiry," *Burdick*, 504 U.S. at 434, and such an inquiry demonstrates that the precise interests put forward by Defendants do not justify the burden imposed on the right to vote. Thus, the removal of the QVA poses an unconstitutional burden on the right to vote.

B. HB 1569's Removal of the QVA for Citizenship Places Significant Burdens on Voters.

The burdens on voters imposed by the removal of the QVA are significant—if not severe—and require heightened scrutiny. *See Fish*, 957 F.3d at 1128 & n.6. Despite the lack of any statewide elections yet held under HB 1569, the record is replete with undisputed, concrete evidence of hundreds of voters who have been disenfranchised or who were only able to exercise their voting rights after persevering through substantial, unnecessary barriers. The record also contains unrebutted expert testimony showing that the removal of the QVA will impose burdens on large swaths of the New Hampshire electorate, and that disenfranchisement and other voter burdens will grow by orders of magnitude in upcoming statewide elections.

1. *HB 1569 has already placed hefty burdens on hundreds of eligible voters, including outright disenfranchisement.*

Since HB 1569 went into effect, only small municipal elections in the Spring and Fall of 2025 have been held. These elections are low-turnout and low-registration affairs, drawing out only the most civically engaged voters. *See, e.g.*, PX-104b (Secretary of State David Scanlan describing these as "low-turnout affairs" where "people that are voting are generally not registering on the day of the election" because "they've been voting for some time"). The New Hampshire Campaign for Voting Rights ("NHCVR")—a well-respected, non-partisan voting rights coalition that operates a poll observation program—tracked nearly 250 prospective voters who were turned

away in these municipal elections due to HB 1569. *See* PX-5 at 3. The "overwhelming[]" majority of those voters were turned away for lacking documentary proof of citizenship, including several who lacked related name change documentation. *See* Feb. 11 am Tr. 138:9–22, 139:2–25 (Spring Elections); *id*. 151:2–15, 152:2–5 (Fall Elections); *see also* PX-4 at 2, PX-5 at 2–3. In some municipalities, this partial count reflects upward of 10 percent of same-day registrants. PX-5 at 3; Feb. 11 am Tr. at 152:17–21; *see Fish*, 957 F.3d at 1128 (significant burden where DPOC law impacted "approximately 12% of the total voter registration applications"). Importantly, NHCVR's numbers are an undercount because its observation program only tracks the impacts at a subset of polling places. *See* PX-4; PX-5 at 2; Feb. 11 am Tr. 140:1–9, 152:6–16.

Those cumulative counts are reinforced by the experiences of more than a half dozen impacted voters, election officials, and poll observers who testified. Election officials testified to being forced to disenfranchise or otherwise heavily burden voters who lacked ready access to DPOC or name change documentation that tied their current names to DPOC. For example, a Supervisor of the Checklist from Durham, Ann Shump, testified that in March 2025, only two of the six individuals seeking to register had brought DPOC. Feb. 9 pm Tr. 80:20–22. Supervisor Shump described how she had to reject an 18-year-old student in front of a full class of his peers who had come to support him because he lacked DPOC and was unable to contact a family member who might be able to send him a photo or record of such proof. The disenfranchised student never returned. *Id.* 81:21–83:12. In another instance, Katherine Robert, a Supervisor from Concord, was forced to turn away a recently divorced woman who had changed back to her maiden name and moved, meaning that her prior registration did not match her current name. Feb. 10 pm Tr. 62:8–17. The woman lacked any paperwork that would allow Supervisor Robert to connect the dots and treat her prior registration as proof of citizenship. *Id*. 62:17–20, 63:5–9. Supervisor Robert

regretfully disenfranchised her, as the law required, *id*. 62:18–20, 63:10–13, 64:2–7, lamenting that the woman's ex-husband, whose name remained above hers on the checklist, "was going to be able to vote just fine . . . without any additional barriers" because "[h]is name hadn't changed." *Id*. 63:20–64:1. Other witnesses—including a Supervisor from Bethlehem and several individuals who served as poll observers—shared their direct knowledge of many more voters who suffered similar fates. *See, e.g.*, Feb. 12 pm Tr. 24:12–26:4; *id.* 44:12–23.

Individual voters also testified to the heightened burdens they faced when registering after the haphazard implementation of HB 1569. For example, Michael Blanchette testified about an hour-long ordeal attempting to register on election day in Manchester, immediately after he had painful oral surgery. Feb. 11 pm Tr. 38:10–14, 42:1–4. Before going to the polls, he called the City Clerk's Office, where an official assured him that he did not need to bring proof of citizenship based on his prior registration in Concord. *Id.* 39:20–22, 41:1–4. But when he arrived, officials demanded such proof, and it took approximately one hour of persistent negotiation, the involvement of six election officials, and a good deal of embarrassment, before he was permitted to vote. *See id.* 43:6–48:22; *see also* Feb. 9 am Tr. 53:6–60:13 (several naturalized citizens unable to register with passport because election official mistakenly required naturalization certificate); Feb. 12 am Tr. 8:8–17:14 (Portsmouth registrant describing his frustration and difficulties when he was turned away on election day for lacking DPOC). Defendants' own witnesses offered similar accounts. For instance, former Election Law Unit Chief and current Deputy Secretary of State Brendan O'Donnell testified to his unsuccessful efforts during the Manchester city primary in 2025 to prevent the disenfranchisement of Earl Rinker, a former elected official who was turned away from the polls because he did not have DPOC. Feb. 17 pm Tr. 8:25–9:23; *id.* 109:13–16; *see also* Feb. 11 am Tr. 166:13–167:14; Feb. 11 pm Tr. 28:10–15.

The burdens are further reflected through the experiences of organizational plaintiffs. The organizer of Open Democracy's high school voter registration program, Samuel Cassin, testified that the vast majority of high school students who registered through the program before HB 1569 used a QVA. Feb. 11 am Tr. 57:15–19. In 2024, Open Democracy helped at least 650 high school students register, and Mr. Cassin did not observe *any* applicant turned away. *Id.* 57:15–17, 58:7–12. HB 1569, however, placed a "significant burden" on the success of the drives, and in 2025, in part because of HB 1569, Open Democracy helped only 60 high school students register. *Id*. 55:25–56:1, 59:1–60:1; *see* Zink Tr. 26:23–27:18, 30:23–31:10 (similarly, fewer students registered in 2025 than in 2023, despite Open Democracy adding a full-time staffer for high school drives, because HB 1569 made it "more difficult for students to register to vote"). Mr. Cassin personally observed high school students who were unable to register after HB 1569. Feb. 11 am Tr. at 60:2–3. As a harrowing example, in one 2025 drive at Manchester Central High School, more students were turned away than were actually registered to vote. *Id.* 60:6–8.

Defendants cannot meaningfully refute this evidence of burden; instead, they claim they were not aware of such burdens because they did not track the impact of HB 1569 themselves. In fact, Secretary Scanlan testified in late January 2026 in opposition to legislation proposed by NHCVR that would have required him to do so. *See* Feb. 11 am Tr. 85:7–9, 86:9–87:15; Feb. 20. Tr. 75:9–17. But Defendants' decision to bury their heads in the sand does not help their cause; it simply means the extensive evidence of voter burdens goes unopposed by Defendants. For instance, Secretary Scanlan, Attorney General Formella, and then-Chief O'Donnell sought a meeting with the Senate Election Law Chair to share their concerns about HB 1569 prior to its passage. Feb. 17 pm Tr. 98:12–16; PX-158. A core part of their concern was that some people would have difficulty obtaining DPOC. *Id.* 99:4–10; *see also* Feb. 18 pm Tr. 74:19–22

(Investigator Richard Tracy acknowledging that DPOC is the hardest documentation for people to obtain). Those fears were borne out. According to Secretary Scanlan, in 2025 Town elections, voters "did not have the documentation that they needed" and "were sent home," and "some . . . just left and they never came back." PX-104b. Secretary Scanlan knew "that there's a population out there that are going to need some help," i.e., "individuals that we know are going to have difficulty proving that they're qualified, even though they are," and "the big hole in this whole process" is going to be "finding those individuals that can fall through the cracks." *Id.*

Dr. Kenneth Mayer also provided critical expert testimony on voter burdens. Dr. Mayer credibly calculates the lower bound of those without DPOC in the state as "easily into the six figures." Feb. 10 am Tr. at 93:2–9; *see also* PX-18. The young, the very old, and members of minority groups are less likely to possess DPOC. Feb. 10 am Tr. 93:13–18. The need to show proof of name change to use DPOC in a prior name will disproportionately impact married women. Feb. 10 am Tr. 91:10–16 (the requirement "by a 15-to-1 margin will affect women more than men"); PX-18 at 10 (noting that a "2023 survey by the Pew Research Center estimated that over 80% of women in opposite-sex marriages took their husband's last name or hyphenated their surnames compared to only 6% of men"); *see* PX-121 (email from Secretary's office identifying marriage as the "most common circumstance" for this burden); *see also Fish*, 957 F.3d at 1127 (courts may "specifically consider the 'limited number of persons' on whom '[t]he burdens that are relevant to the issue before us' will be 'somewhat heavier.'" (quoting *Crawford*, 553 U.S. at 198–99)).

Dr. Mayer also concluded that removing the QVA imposes "high direct monetary costs, high informational costs, high time costs, and complex administrative requirements" on prospective voters. PX-18 at 1, 7; Feb. 10 am Tr. 88:3–89:10. Details of these burdens—including the costs of birth certificates, passports and other federal citizenship documentation, and associated

informational and time costs—are described in Plaintiffs' Proposed Findings of Fact. Critically, those without DPOC are unlikely to be able to obtain it quickly, which will be an insurmountable burden for residents that register near or on election day. PX-18 at 17; *see* Feb. 10 am Tr. 99:24–100:20. As Dr. Mayer explained, a large number of New Hampshire residents historically have relied on election day registration because they may be "activated late in a campaign cycle." Feb. 10 am Tr. 99:25–100:20. But with the elimination of the QVA, same-day registration will not be possible for those who need time to obtain citizenship documentation. *Id.* Dr. Mayer's opinions are highly credible, well supported, and—notably—unopposed by Defendants.

2. HB 1569 subjects voters to arbitrary and uneven burdens.

To make matters worse, the inconsistent application of the DPOC requirement left behind by HB 1569's removal of the QVA will leave prospective voters subject to arbitrary burdens.

First, due to inadequate efforts to educate election officials and voters regarding changes in this vague and confusing law,[1] voters have repeatedly experienced differential treatment. The gaps in training are systemic—as Secretary Scanlan and Investigator Tracy testified, trainings are voluntary and not every official attends, and mistakes are particularly likely due to turnover of local officials. Feb. 18 pm Tr. 80:20–24; Feb. 20 Tr. 81:9–20.

[1] *See, e.g.*, Feb. 11 am Tr. 92:22–93:16, 94:6–19 (describing lack of "comprehensive or widespread voter education program coming out of the Secretary of State's Office, especially targeting, . . . all of the communities that would need it"); *id.* 94:20–95:1 (noting lack of engagement from the public with the Secretary's online presence, especially among communities with the most "difficulty accessing those documents"); Feb. 10 p.m. Tr. 58:24–59:3 (Concord Supervisors received no training from the Secretary's Office before City election); *id.* 59:4–7; 81:3–4 (Supervisors Board chair in Concord Ward 10 does not receive communications, guidance, or training directly from the Secretary's Office); Feb. 17 pm Tr. 82:3–5. (Investigator Tracy agreeing that a lack of training for election officials was a contributing factor to past alleged erroneous registrations of self-announced noncitizens); Feb. 20 Tr. 13–22 (Secretary Scanlan testifying that mistakes in which election officials may allow registration with a Green Card could be addressed by more training).

Erroneous applications of HB 1569 due to insufficient education began immediately after the law's passage, *see* Feb. 17 am Tr. 27:13–21, 119:12–18 (officials incorrectly turned voters without DPOC away despite guidance that QVAs were still available), and, unsurprisingly, unequal applications continued after the law took effect. For instance, in October 2025, a Stratham official turned away several naturalized citizens despite them presenting passports. *See* Feb. 17 am Tr. 28:8–24, 29:14–19; Feb. 17 pm Tr. 107:20–25. Defendants have known other officials were making this same mistake for years (though the existence of the QVA mitigated the risk of disenfranchisement), but they have not resolved this confusion. *See* PX-79 (detailing nearly identical mistake when registering naturalized passport holder).[2]

Second, even if Defendants somehow perfected their educational efforts, voters would necessarily still suffer arbitrary treatment due to the law's ambiguity in defining "other reasonable documentation which indicates the applicant is a United States citizen." The trial record makes clear that no one knows—much less agrees—what that phrase means in practice.

To begin, the phrase results in conflicting interpretations by those tasked with adjudicating voters' qualifications. When asked whether specific documents qualified under the law as "other reasonable documentation" for citizenship—including Global Entry Cards, Annual Town Reports, affidavits from parents averring to their child's domestic birth or citizenship via adoption, video

[2] The record contains additional proof of insufficient education leading to officials disparately applying the changes to DPOC requirements. *See, e.g.*, Feb. 11 am Tr. 169:13–170:9 (describing "inconsistency" in the application of documentary proof requirements, including after HB 464 where some voters were permitted to use prior registrations as proof of citizenship when others were not even asked if they were previously registered in the state); Feb. 12 am Tr. 32:14–34:6 (detailing circumstances of a couple whose prior registrations were treated disparately based on the particular poll worker to whom they were sent to register).

recordings of naturalization ceremonies, and more—witnesses' responses *consistently* conflicted.[3] Even for something as simple as an expired passport, which has been the subject of official guidance, witnesses could not agree on whether a time restriction on the date of expiry applied.[4] Ironically, Deputy O'Donnell, the former chief of the Election Law Unit, testified that he does not believe Supervisors could reasonably reach different conclusions on the sufficiency of any of these specific examples. Feb. 17 pm Tr. 96:17–97:2. Other officials fear that disparate applications are both very likely and problematic.[5] One thing is clear: Supervisors—the officials actually tasked by law with making these decisions—appear far less likely than agents of Defendants to conclude that any given document qualifies as DPOC.

Further, the Secretary of State's Office cannot even articulate what standard applies to a Supervisor's determination that a given document qualifies as "other reasonable documentation." Immediately upon HB 1569's effective date in November 2024, the Secretary's Office promulgated guidance explaining that "other reasonable documentation" refers to any document that "establishes that it is *more likely than not* that you are a United States citizen." PX-209 at 2 (emphasis added). The "more likely than not" standard also featured in early 2025 guidance. *E.g.*, PX-210 at 2; PX-168 at 6–7. In September 2025, after all town elections and other local elections

[3] *Compare* Feb. 10 pm Tr. 56:23–58:15 (Supervisor Robert), *with* Feb. 12 pm Tr. 12:8–14:14 (Supervisor Seely), *with* Feb. 17 pm Tr. 92:24–96:16 (Deputy O'Donnell), *with* Dkt. 147-1 at 119:4–10, 130:5–11; 132:9–133:6 (former Secretary of State Legal Counsel Orville "Bud" Fitch).

[4] Feb. 10 pm Tr. 55:9-21, 86:20-87:3 (only if expired "within five years," based on guidance she believes "came from the Secretary of State's office"); Feb. 12 pm Tr. 12:10-14 (Supervisor Seely) ("there may be a window for if it's expired within five years or something"); Feb. 17 pm Tr. 92:24-93:9 (Deputy O'Donnell) (no time restriction); *see also* Feb. 19 pm Tr. 133:12–134:15 (Director Piecuch) ("[i]t could be" that a five-year limit applies, but she is unaware of the correct guidance).

[5] *See* Feb. 10 pm Tr. 57:2–8 (Supervisor Robert); Feb. 12 pm Tr. 14:15-23 (Supervisor Seely); Dkt. 147-1 at 133:21–134:24 (Attorney Fitch); *see also* Feb. 17 pm Tr. 94:3–13 (Deputy O'Donnell, agreeing generally that different election officials would reach different conclusions).

were held under this guidance, a Supervisor raised concerns with the then-Deputy Secretary of State that this standard was a misreading of the statute. Feb. 12 pm Tr. 5:3–12, 7:7–14, 9:13–10:1. About a week later, the Secretary's Office reversed course in new guidance. *See* PX-211; Feb. 12 pm Tr. 8:5–7. This new September guidance removes the "more likely than not" language and replaces it with a generalized instruction to accept only "[o]ther reasonable documentation which indicates you are a United States citizen." PX-211 at 2. No changes were made to other, still-operative guidance documents employing the "more likely than not" standard. Feb. 19 pm Tr. 6:14–19. Notably, the Secretary's Director of Elections Patricia Piecuch was unaware this change had occurred months later at trial, but she admitted it could be a "substantive change," and that it would affect the Office's position "[f]or some documentation." Feb. 19 pm Tr. 9:9–23, 10:9–12; 11:25–12:3. However, she "can't determine how to figure out" the difference between the conflicting standards, even as she recognizes that "the supervisor . . . would have to make that determination." Feb. 19 pm Tr. 11:1–5. The record shows that at least some Supervisors find the change in guidance to be "arbitrary" and would apply the undefined new standard in a way that results in even fewer documents being accepted. *See* Feb. 12 pm Tr. 6:22–25, 10:2–10, 10:22–11:15 (Supervisor Seely describing "more likely than not" as a comparatively more generous).

Moreover, the Secretary's Office has flip-flopped on what qualifies as "other reasonable documentation" without notifying voters or local election officials of their shifting positions. In January 2025, it promulgated guidance that Global Entry Cards were not acceptable DPOC under HB 1569, *see* PX-168 at 11; *see also* Feb. 19 am Tr. 26:17–21, even though they clearly identify the holder's citizenship status, *see, e.g.*, PX-170. The Office has since admitted this was wrong, *see* Feb. 19 am Tr. 149:14–17, and on January 9, 2026, confirmed for purposes of this litigation that officials may accept Global Entry Cards. *See* PX-14 at 2–3 (Interrogatory Response). Yet the

Secretary's guidance has not been updated to inform local officials, Feb. 19 am Tr. 149:22–150:4, leaving voters at risk of being turned away, *id.* 151:25–152:3. Director Piecuch acknowledged that local election officials have reached out with questions about Global Entry Cards. *See* Feb. 19 pm Tr. 70:3–4. Given the incorrect and inconsistent guidance, local election officials have unsurprisingly reached different conclusions: Some say Global Entry Cards are not valid, some are unsure, and others only learned of the updated policy through their participation in this litigation. Feb. 12 pm Tr. 12:15–16 (Supervisor Seely); Feb. 10 pm Tr. 57:11–15 (Supervisor Robert); Feb. 9 pm Tr. 78:15–79:6 (Supervisor Shump).

Third, HB 1569's ambiguous terminology has produced widespread—and effectively irremediable—voter and election official confusion, thereby imposing additional voter burdens. *See* Feb. 9 pm Tr. 35:3–20 (Ms. Tentarelli testifying that, because there is no clear guidance on what counts as "other reasonable documentation of citizenship," she cannot accurately advise voters); Feb. 12 am Tr. 30:7–16, 53:23–54:1 (Ms. Gadoury testifying that she does not know what counts as other reasonable documentation, that voters likewise often do not know either, and that she has not seen officials addressing the issue); *see also* Feb. 10 am Tr. 85:6–86:15 (Dr. Mayer testifying that academic literature shows such ambiguity predictably results in inconsistent application); Feb. 10 pm Tr. 55:2–24 (Supervisor Robert testifying that she doesn't know whether she has "ever been presented anything that would be considered other reasonable documentation for citizenship"); Feb. 11 am Tr. 91:14–17 (Ms. Chouinard testifying that she is "not aware of anything that could satisfy" the other-reasonable-documentation requirement).

HB 1569's inconsistent application and arbitrary language will not only disenfranchise voters who lack access to DPOC but also voters who think they possess "reasonable documentation" but are arbitrarily denied registration by the whims of their local election official.

3. HB 1569's burdens will multiply in upcoming statewide elections.

All of these burdens will worsen when HB 1569 is put to the test in statewide contests. Statewide elections draw out magnitudes more voters than off-cycle local elections, with less active, less prepared voters. Supervisor Robert testified that, in Ward 10 in Manchester, for example, "municipal elections are slower, presidential general elections are busier," with turnout in the 2024 general election exceeding 70 percent. Feb. 10 pm Tr. 52:4–5; 81:4–7. Supervisor Robert worries that the "removal of the QVA"—combined with already witnessing "people who weren't able to vote" due to lacking DPOC and the confusion and time barriers added by the complex logistics of HB 464 (discussed below)—"will absolutely keep people from being able to cast a vote" in future elections. Feb. 10 pm Tr. 81:11–23; *see also* Feb. 11 pm Tr. 6:9–8:4 (Ms. Chouinard relaying extensive concerns for increased burdens in future elections). Supervisor Seely testified that during statewide elections she expects to turn away more voters and spend additional time processing those who attempt to register, because officials will need to look up data for each voter. Feb. 12 pm Tr. at 46:2–9; *see also* Feb. 10 pm Tr. 81:11–16. Supervisor Shump testified that resultant longer lines will cause some people to leave without voting. Feb. 9 pm Tr. 90:7–10; *see also* Feb. 17 pm Tr. 82:17–83:20 (Deputy O'Donnell's testimony that election officials worry that longer lines will cause voters to walk away without voting); Feb. 18 am Tr. 64:19–24 (Investigator Tracy's testimony that extended wait times can disenfranchise eligible voters).

These concerns for broad impacts in future elections are bolstered by the fact that QVAs were very commonly used to establish citizenship before HB 1569. Dr. Mayer testified that in 2024 at least 17 percent of registrants used a QVA to register, including approximately 10,500 registrants on election day. Feb. 10 am Tr. 97:18–25; *id.* 100:3–5; *see also* Feb. 19 pm Tr. 96:23–25 (generally, statewide QVA usage data is likely an undercount, as the state did not "closely and accurately track the use of many QVAs"). That number is higher in some towns. For example,

Supervisor Shump testified that, before HB 1569, more than 50 percent of registrants in Durham used a QVA. Feb. 9 pm Tr. 62:25–63:7. Supervisor Robert also testified that a majority of QVAs that were used in Ward 10 of Manchester were for citizenship. Feb. 10 pm Tr. 52:12–14. Supervisor Seely similarly testified that 10–15 percent of registrants used a QVA—mostly to establish citizenship. Feb. 12 am Tr. 119:5–14. Likewise, Mr. Cassin testified that "the vast majority" of high school students who registered before HB 1569 used a QVA for citizenship. Feb. 11 am Tr. 57:15–19.

4. HB 1569's burden is significant, if not severe.

In sum, "[t]hese factual findings create a fundamental distinction between this case and *Crawford*." *Fish*, 957 F.3d at 1128. In *Crawford*, the plaintiffs had "not introduced evidence of a single, individual Indiana resident who will be unable to vote" because of the challenged voter ID law "or who will have his or her right to vote unduly burdened by its requirements." 553 U.S. at 187. Here, despite only small municipal elections having occurred, there is extensive evidence of both disenfranchisement and other heightened burdens on voters, in part because citizenship documentation is significantly harder and more costly to obtain than generic proof of identification. The Court can easily infer that thousands more will be burdened in future elections by the removal of the QVA for citizenship, as Dr. Mayer anticipates. Further, *Crawford* emphasized that, in light of "utterly incredible and unreliable" expert testimony in that case, "much of the argument about the numbers of [impacted] voters [came] from extrarecord, postjudgment studies, the accuracy of which [had] not been tested in the trial court." 553 U.S. at 200. Not so here, where Plaintiffs' expert testimony has been highly reliable and unrebutted. Indeed, Defendants neither challenged the qualifications and testimony of Plaintiffs' experts, nor offered *any* responsive experts of their own. Thus, "[w]hile the record in *Crawford* led Justice Stevens to

conclude that the burden there was slight, the record before [this Court]" should "instead lead[] [it] to conclude that the burden on the right to vote here was significant." *Fish*, 957 F.3d at 1128.

C. HB 464 Does Not Meaningfully Mitigate the Burdens on Voters.

Courts resolving *Anderson-Burdick* claims may consider whether there exists a safety valve that will "provide[] an adequate remedy" for those who are burdened by the challenged law. *Crawford*, 553 U.S. at 197–98. In *Crawford*, for example, the plurality emphasized that the "severity of th[e] burden" on voters who could not afford or access photo ID was "mitigated" by the "availability of the right to cast a provisional ballot" upon executing an affidavit averring to their qualifications and indigency. *Id.* at 186 n.2, 197–200. In *Fish*, by contrast, the Tenth Circuit stressed that the purported remedy there—a telephonic administrative hearing at which the voter had the opportunity to present reasonable proof of their citizenship—"was too burdensome and vague to serve as an effective safety valve," and "only three voters had ever availed themselves of it." *Fish v. Kobach*, 840 F.3d 710, 753 (10th Cir. 2016).[6]

Here, Defendants argue that HB 464, a newly implemented law, sufficiently eases the burdens of HB 1569. Not so. HB 464 is at best a partial patchwork solution and at worst an ineffectual and poorly designed attempt to assist certain groups of voters but not others.

After HB 1569 was implemented in Spring 2025 elections—with significant impacts on voters—the General Court attempted to modify the DPOC regime through HB 464, signed into law on August 1, 2025. *See* Dkt. 132 ¶ 47. HB 464 makes two principal changes. First, it added proof of a voter's prior New Hampshire registration (similar to HB 1569's inclusion of current registration in another town) to the list of acceptable documentation of citizenship. *See* DX-AAA-

[6] Notably, the safety valve was insufficient even when the alternative proof that had been *accepted* as DPOC at those Kansas hearings included "*an applicant's own affidavit*." *Fish v. Kobach*, 840 F.3d at 747 n.21 (emphasis in original).

2 at 12 (effective September 20, 2025). Second, it directed the Secretary of State to "provide access to data from centralized voter registration records, records from the department of safety, and New Hampshire vital records . . . to assist voters in providing proof of citizenship, age, domicile, and identity to the city and town clerks." *Id.* (effective February 1, 2026, one week before trial).

1. On its face, HB 464 could assist only a narrow subset of registrants.

Even assuming HB 464 operates as intended (and, as discussed below, the record indicates it will not), its benefits extend only to a subset of would-be registrants. In practice, it creates two classes: (1) native-born and long-time New Hampshire residents, whose citizenship the State *may* be able to verify through in-state vital records or DMV data; and (2) and newer residents and others whose records fall outside those systems. *See* Feb. 18 pm Tr. 128:14–17 (Director & Registrar of Vital Records Kristin Martino testifying that the Statewide Voter Registration System "will not receive vital records from any individuals born, married or divorced outside of New Hampshire"); Feb. 19 pm Tr. 30:18–32:12 (Director Piecuch testifying that HB 464 may not assist individuals born outside New Hampshire or those without New Hampshire driver's licenses or nondriver IDs). That second group is substantial. Approximately 60 percent of New Hampshire residents were born outside the State. *See* Feb. 10 am Tr. 123:5–8; Feb. 18 Tr. pm Tr. 129:20–23. In addition, roughly 43,000 voters registered with an out-of-state driver's license. PX-287; Feb. 19 pm Tr. 33:12–25. For such would-be registrants, HB 464 offers no meaningful relief. Accordingly, Dr. Mayer testified that, even if the HB 464 system worked correctly, many New Hampshire residents will not be able to prove citizenship using new search functions, as detailed in Plaintiffs' Proposed Findings of Fact. As Supervisor Seely lamented, "we've created a second class of citizens" who were born out of state. Feb. 12 pm Tr. 39:14–23. By making it easier only for some classes of residents to register and vote, HB 464 creates a worse *Anderson-Burdick* problem. *See Obama for Am. v. Husted,* 697 F.3d 423, 435–36 (6th Cir. 2012) ("Equally worrisome would be the result if

states were permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.").

HB 464's limitations persist even for would-be registrants with New Hampshire credentials. Secretary Scanlan suggests that the SVRS may contain DMV data establishing the citizenship of New Hampshire REAL ID holders, *see* Feb. 20 Tr. 50:20–51:4, but as Dr. Mayer notes, approximately one-third of New Hampshire driver's licenses are not REAL ID-compliant, and an additional two to eight percent of residents lack any driver's license or nondriver ID. Feb. 10 am Tr. 135:14–25. For these voters as well, HB 464 provides no assistance.

The Secretary's Office further warns that the data has substantial gaps, including for instance, any birth records before 1935 and in several seemingly random years between then and present, and any delayed birth records; marriage records before 1960; divorce records before 1979 or within the last six months; all but one year of civil union records; and dissolution records prior to 2008. PX-177 at 4, 7, 10, 13, 16; DX-UU at 2. The data also does not include, for example, divorce and dissolution records that were not forwarded by a county to the Vital Records Division. DX-UU at 3. Defendants further warn that "vital records or DMV information may be incomplete or absent," in which case, "individuals must prove their qualification . . . with documentation." *Id.*; *see also* PX-177 at 2 ("incomplete" and missing records); *id.* at 7, 10 (noting "inconsistenc[ies]" in the searchability of marriage and divorce records based on the year of marriage). Defendants have no idea how many records are missing or have fatal data flaws. *E.g.*, Feb. 20 Tr. 49:19–50:12.

2. In practice, HB 464 benefits even fewer registrants than it promises.

Even for those whose vital records or DMV data *should* be in the system contemplated by HB 464, the state's implementation matters greatly. The record makes clear the Secretary of State's execution of HB 464 is severely lacking, and the resultant system does not function reliably.

First, a substantial number of polling places wholly lack access to the SVRS for a few reasons. Election officials cannot access the SVRS without internet. Feb. 19 pm Tr. 13:12–14. A poll conducted by the Secretary of State's Office confirmed that approximately eleven to sixteen percent of the state's hundreds of polling locations do not have any internet access, and approximately fifteen to twenty-two and a half percent lack cellular service. PX-76; Feb. 19 pm Tr. 22:3–12. Operative guidance from the Secretary of State is clear: if election officials "have difficulty with wireless connectivity at [their] polling place" and thus "do not have access to the [SVRS]," then "the voter will need to provide you with proof of citizenship." PX-168 at 12 (Question 20); *see* Feb. 19 pm Tr. 12:21–13:14; Feb. 18 pm Tr. 76:12–77:9. Even where internet access is available, some municipalities do not have any election officials with SVRS access at the polling place.[7] And officials with access are not permitted to share their SVRS credentials under any circumstances. Feb. 19 am Tr. 109:24–110:14. Many municipalities do not provide work laptops to their election officials, *see, e.g.*, Feb. 19 pm Tr. 77:5–16, and officials are discouraged from using their personal devices to access the SVRS, *see* Feb. 18 pm Tr. 78:3–8. Even if they could use a personal device, not all election officials have personal laptops. *See* Feb. 18 pm Tr. 77:25–78:2; Feb. 9 pm Tr. 86:13–14.

That lack of SVRS access prevents local officials from utilizing the processes created under HB 464. The state's guidance threatens—in repeated, bold, underlined, and red text marked "Important"—that "ANY search" of DMV or vital records data can only be completed if the voter is "present in front of you" (with "you" referring to the official "perform[ing] searches") and

[7] *See, e.g.*, Feb. 19 pm Tr. 77:5–16, Feb. 19 pm Tr. 78:11–13 ("[W]e know that there are some cities where their supervisors do not have access to SVRS. That is out of our control."); Feb. 19 pm Tr. 80:3–9 (Concord, Manchester, Nashua, among other cities and towns, do not have supervisors with SVRS access); Feb. 10 pm Tr. 71:10–72:14 (no official at any of the ten wards in Concord has SVRS access); Feb. 11 am Tr. 144:8–14 (lack of access in Nashua).

"[s]hould you perform searches without the voter present . . . your SVRS credential could be suspended or revoked, and you could be subject to criminal penalties." PX-177 at 1, 4, 7, 10, 13, 16, 19, 22.[8] As a result, officials without direct SVRS access should be expected to turn voters away for lack of DPOC. Feb. 10 pm Tr. 78:7–79:11 (Supervisor Robert explaining that, in Concord, a voter would have to leave the polling place to go to city hall to authorize an SVRS check before returning to vote). Supervisor Robert expects to "see lower vote numbers" because not every voter will come back. Feb. 10 pm Tr. 79:12–19.

Further, Dr. Mayer testified that the search function in the SVRS is itself fatally flawed and will not work as intended. *See* Feb. 10 am Tr. 138:9–25.[9] First, the "Application for Confidential Verification of a New Hampshire Vital Record or DMV Record Search for the Purpose of New Hampshire Voter Registration" lacks clear instructions on which sections are necessary to fill out, requests unnecessary personal information, and includes intimidating language threatening voters with penalties of voter fraud. PX-176; Feb. 10 am Tr. 124:4–17. Second, the SVRS instructions are inconsistent, inaccurate, and include eight warnings to election officials that they may be subject to penalties for conducting an improper search. PX-177. The SVRS search function requires an "exact match" between the data entered and the data from the DMV or vital records. Feb. 10 am Tr. 129:24–130:2; 134:3–12. Requiring an exact match ensures that there will be "false negatives," where an individual may be in the system but not located by a search. This can happen, for example, if a nickname is entered, if a search term contains a typo, or the underlying data has an error. Feb. 10 am Tr. 130:3–21; Feb. 10 pm Tr. 17:3–23. False negatives will be consequential,

[8] These directives are even repeated for "Death Inquiries," though hopefully no dead voters will be "present in front of" any election officials. PX-177 at 19.

[9] Additional analysis of the system implemented following HB 464 is detailed in Plaintiffs' Proposed Findings of Fact.

as a person not located through an SVRS search will need to furnish DPOC or else be disenfranchised. Feb. 10 pm Tr. 19:7–12.

3. Defendants' attempt to rehabilitate HB 464 finds no support in the record.

Defendants do not meaningfully dispute that the State's implementation of HB 464 is flawed. They largely concede the limited categories of people who could even have DMV or vital records data in the SVRS.[10] To the other issues, Defendants instead argue those shortcomings do not matter because the Secretary purportedly plans to rehabilitate the effectiveness of their HB 464 system. These arguments have no support in any documentary evidence and are rooted in testimony that was improperly withheld from Plaintiffs during discovery.

Defendants claim that: (i) some state-level SVRS users are permitted to accept calls from local officials and perform searches remotely; and (ii) those state-level users have different search

[10] Defendants have not proven the SVRS includes citizenship data for both REAL ID holders and non-REAL-ID holders. *Cf.* Feb. 20 Tr. 50:20–51:4 (Scanlan implying SVRS data includes only REAL-ID data). To the extent they argue they have, they have not proven that non-REAL-ID citizenship data is verified, rather than self-reported. *See* Feb. 19 pm Tr. 66:22–67:13. In fact, the record indicates otherwise. *See* PX-145A (letter from Secretary Scanlan to DMV Director shortly before HB 464's enactment requesting access to DMV data that reflects "how the licensee reported their United States Citizenship status when obtaining a license of non-driver ID from your office" and stating his "understanding" that "[t]he data point is as provided by the applicant [on their license application], it has not been vetted or verified for purposes of determining [U.S.] citizenship by the [DMV]."); PX-270 (earlier draft of guidance, with now-removed statement that "DMV records will confirm whether the person used citizenship documents such as birth certificates, passports, etc." which was removed from final guidance).

Even if it were true that SVRS includes both verified REAL-ID data and other data, SVRS does not permit officials to differentiate self-attested from verified data. *See* Feb. 19 pm Tr. 34:9–24. But self-reported DMV citizenship data is no more reliable than a QVA attestation—in fact, given the strict penalties on the QVA, DMV data is likely *less* reliable. Thus, if the SVRS includes unverified data, the implementation of HB 464 undermines the whole rationale of HB 1569's DPOC regime, and the removal of the QVA was entirely unnecessary to advance the purported state interests. Rather, the regime merely serves to burden—for no reason—those voters who do not have New Hampshire IDs or who otherwise cannot avail themselves of SVRS data searches based on election official access, issues with the match and search functionality issues, or any number of other reasons.

capacities, including partial name searches. Much of this testimony conflicts with other testimony and formal guidance and is not credible. As described above, the guidance states that "ANY search" by an election official requires the voter to be "present in front of you" and that the "entered search criteria" must "match" the DMV or vital records data "exactly." PX-177 at 1–2.

But Defendants' witnesses differ on whether that guidance applies to them. For instance, Deputy O'Donnell insists the inquiry instructions *do* apply to state-level officials who conduct remote DMV and vital records searches by phone, but claims that doing so "would be no different than what's in th[at] detailed instruction document" because the requirement that a voter be "present in front of you" somehow does not mean physically present before the official conducting the search but merely present before some other official. Feb. 18 am Tr. 33:3–38:7. This would mean that anyone—not just a state-level user—could conduct a remote search. His colleague, Director Piecuch takes a different view: she believes the existing guidance is merely a set of "local instructions" that do not apply to state-level users, so they are free to conduct searches that would otherwise violate that guidance. *See*, *e.g.*, Feb. 19 pm Tr. 50:11–51:3, 47:14–21 (agreeing existing guidance conflicts but speculating that "we are looking at putting out additional guidance," after trial ends); Feb. 19 am Tr. 72:25–73:5. There is no evidence in the record whether future guidance might resolve these issues in favor of either witnesses' conflicting position. *See id.* 75:13–16.

Notably, *both* of these witnesses' testimony conflicts with that of the Secretary of State—the chief election official, their boss, and their Office's qualified Rule 30(b)(6) representative on issues related to the implementation of HB 464 at a deposition held just three business days before trial. The Secretary counters that "the voter has to be in front of the local election official who is actually doing the search" physically, and that acting otherwise could result in criminal prosecutions for those involved, Feb. 20 Tr. 73:9–20; that a process to allow local officials to call

state-level officials to conduct remote searches "does not currently exist," Feb. 18 am Tr. 36:12–37:2; and that he does not believe there is any part of the SVRS software that tries to return close or partial matches. *Id*. 32:3–19; Feb. 19 pm Tr. 49:8–15.

The factual and documentary evidence supports the Secretary's statements. It is simply not credible that these special state-level search procedures are fully functional and were the subject of substantial internal deliberations, *see* Feb. 19 pm Tr. at 86:18–25, yet were not written down anywhere and appear nowhere in the dozens of pages of detailed guidance presented in this case. Thus, much of the testimony on which Defendants ask the Court to rely comes from noncredible witnesses, directly conflicts with the named Defendants' own testimony. All of it asks the Court to infer that new, unfinalized guidance, trainings, and procedures are conveniently coming down the pipeline immediately *after* trial—guidance and procedures that contradict materials that *are* in evidence, and which in many cases, have been the operative public position of the Secretary of State's Office for months if not over a year.

Even if Defendants' preferred testimony *were* credible, it would not meaningfully impact the burden on voters. The Secretary's guidance and trainings do not go to all Supervisors, *see, e.g.*, Feb. 10 pm Tr. at 60:16–24, so many officials may not know any details of these new DMV and vital records searches. And even if the guidance were received, it does not explain to local officials that state-level users *could* help them remotely or that state-level officials might have different search capacities. *See* Feb. 19 pm Tr. 50:4–51:15; *see also* PX-177. Rather, it insists they could be prosecuted for trying to have someone else run the search. So there is no reason local officials would know to or be expected to contact the state to conduct a search.

Defendants will likely suggest that local officials will still contact the Secretary of State or Attorney General's Offices, because that's what they expect local officials to do. *See* Feb. 19 pm

Tr. 51:15–52:8. But the record suggests that local officials act otherwise. *See, e.g.*, Feb. 10 pm Tr. 91:6–92:16 (Supervisor Robert detailing that ward procedure is to first contact the Moderator, then the City Clerk, and to only call the Secretary of State's Office if advised by the Clerk, and stating no awareness of any time in her six year tenure that she called or emailed the Attorney General's or Secretary of State's Office); Feb. 18 am Tr. 52:8–21 (Stratham incident not reported to the Attorney General's Election Law Hotline); Feb. 19 am Tr 35:2–5 (Director Piecuch has not received any calls from election officials regarding individuals that were not able to vote under HB 1569, despite concrete evidence of hundreds such individuals in the record); Feb. 19 pm Tr. 5:18–6:6 (Director Piecuch confirming testimony under oath that the Secretary's Office does "not get involved in with local elections . . . when supervisors are registering their voters. . . . [A]s far as turning people away, they don't need to report that information to us."). In the rare instance where the evidence *does* show election officials seeking the help of the Secretary of State's Elections Desk, no one answered that local official's *election-day* call, leaving them to solve their search inquiry problem on their own. Feb. 19 am Tr. 117:16–118:2. The record gives the Court no reason to conclude these trends will change.

Moreover, even if officials surprisingly start calling the Secretary for election-day search help, there are only three staffers at the Elections Desk with staggered shifts, meaning even fewer are available at any given time. *See* Feb. 19 pm Tr. at 52:9–53:5. With hundreds, if not thousands, of individuals expected to show up at the polls in future statewide elections without DPOC, the Secretary expects his office to be "swamped" to a problematic degree. Feb. 20 Tr. 73:1–4.

4. HB 464 will impose significant burdens on election administration.

Setting aside functionality issues, HB 464 will have significant negative impacts on election administration, resulting in longer lines that lead to more burdens for voters. Even before the implementation of vital records and DMV searches—when the only HB 464 change at issue

was searching prior registrations—NHCVR witnessed that minor change "significantly" increase registration times in Fall city elections, and the organization fears that in future general elections, delays in registration will result in "significant lines" that "would potentially disenfranchise a lot of voters." Feb. 11 am Tr. 143:25–144:7; 144:15–145:2. Those fears are likely to come to fruition due to more complex and time-consuming DMV and vital records searches combined with many more voter registrants. *See, e.g.*, Feb. 10 am Tr. 126:24–127:2; Feb. 9 pm Tr. 86:20–87:3, 88:18–89:13, 90:7–15; Feb. 10 pm Tr. 80:18–81:2, 81:11–23; Feb. 12 pm Tr. 46:2–17. Delays will be exacerbated by the SVRS's slow-moving operation, *see* Feb. 12 pm Tr. 33:15–34:1 (prior to HB 464, it took "a couple minutes" to pull up one voter, given the number of SVRS users on election day), as well as election officials' inability to practice or test the new and highly complex inquiries. *See, e.g.*, Feb. 9 pm Tr. 85:12–86:8; Feb. 12 pm Tr. 35:16–25.

5. In sum, HB 464 creates more problems than it Fixes.

Thus, the alleged "safety valve" of HB 464 does not meaningful change the burden analysis. For many voters, HB 464 will not provide *any* benefit. Even for those to whom it might theoretically apply, it is too poorly implemented "to serve as an effective safety valve," and evidence shows that only a small handful of "voters ha[ve] ever availed themselves of it." *Fish v. Kobach*, 840 F.3d at 753. While *Crawford* found that provisional ballot and affidavit options mitigated burdens, no such remedies are available here. In fact, HB 1569 *removed* precisely the kind of affidavit that saved the photo ID law in *Crawford*. Secretary Scanlan even attempted to amend an alternate bill to include provisional balloting with a post-election cure window and a 15-minute limit on attempted data searches before reverting to a provisional ballot—recognizing the utility of such safety valves "to mitigate the rigid effects of HB 1569"—but his effort was unsuccessful. PX-93; Feb. 20 Tr. 46:19–49:12; *see Fish*, 957 F.3d at 1129 ("[T]hese provisions

are significantly less effective than the safety valve in *Crawford* because that safety valve allowed certain individuals to actually cast provisional votes while these provisions do not.").

For these reasons, the removal of the QVA for citizenship imposes a significant burden on the right to vote, and HB 464 does not adequately mitigate that burden.

D. Defendants' Asserted Interests Are Insufficient to Justify the Removal of the QVA for Citizenship.

Next, the Court must "evaluate the interests put forward by the State as justifications for the burden imposed by its rule." *Crawford*, 553 U.S. at 190. Defendants offer four purported interests: (1) ensuring that every qualified voter who chooses to register or cast a ballot may do so prior to or on election day; (2) promoting election integrity; (3) improving public confidence in election integrity; and (4) protecting the public fisc. *See* Dkt. 124, at 2–3. While legitimate in the abstract, Defendants failed to offer concrete evidence that "those interests make it necessary to burden the plaintiff's rights" here. *Burdick*, 504 U.S. at 434; *see Coal. for Open Democracy v. Scanlan*, 794 F. Supp. 3d 28, 49 (D.N.H. 2025); *see also Common Cause R.I.*, 970 F.3d at 15 (whether "in the abstract, the broader regulatory interest—preventing voting fraud and enhancing the perceived integrity of elections—is substantial and important" means nothing when "the incremental interest in the specific regulation at issue . . . is marginal at best"). Accordingly, on this record, these interests are insufficiently weighty to justify the limitations on the right to vote imposed by the removal of the QVA for citizenship.

First, Defendants' asserted interest in ensuring that every eligible voter who seeks to register can cast a ballot by or on election day supports *keeping* the QVA. The record makes clear that HB 1569 erects new barriers that make registering and voting harder for qualified voters.

Second, Defendants' asserted interest in promoting election integrity likewise cannot justify the burdens imposed by eliminating the QVA. The *Fish* court noted there was "essentially

no evidence that the integrity of Kansas's electoral process had been threatened, that the registration of ineligible voters had caused voter rolls to be inaccurate, or that voter fraud had occurred." 957 F.3d at 1134. It emphasized that "at most, 67 noncitizens registered or attempted to register in Kansas over the last 19 years" and only "39 noncitizens have found their way onto the Kansas voter rolls" during that period—which it described as "incredibly slight evidence," particularly because "administrative anomalies" could account for most instances. *Id*.

Here, the record is even thinner. Dr. Lorraine Minnite found—and Defendants do not dispute—that, from 1996 to 2024, the State has identified only seven non-U.S. citizens who it concluded may have unlawfully cast a ballot in New Hampshire, plus one individual whose prosecution remains pending. Feb. 13 am Tr. 42:22–43:22, 49:16–22. Per the findings of the State's Department of Justice, in the seven concluded cases, the noncitizens all had mitigating circumstances that indicate a lack of fraudulent intent. Feb. 13 am Tr. 43:12–44:12. The State concluded five were allowed to vote despite (i) informing the election official they were not U.S. citizens, (ii) checking "No" on the U.S. citizenship question on the voter registration form, or (iii) providing a green card, which indicates a lack of U.S. citizenship. Feb. 13 am Tr. 43:23–45:9; PX-20 at 18–20; DX-GG. It determined that the other two voluntarily informed local election officials of their status and asked to be removed from the voter rolls after discovering that they should not have been registered. PX-20 at 16, 19; DX-GG at 7. The State concluded one of them mistakenly believed she was a U.S. citizen, because her parents never told her she had immigrated at the age of three. PX-20 at 19; DX-GG at 1, 7. The State repeatedly concluded that these matters stemmed in part from preventable election official errors. *See generally* Feb. 17 pm Tr. 70:8–82:5.

Like in *Fish*, these facts constitute "incredibly slight evidence," particularly because "administrative anomalies" account for most of the instances. 957 F.3d at 1134. Critically, there

is only evidence that one of the seven even used a QVA. Feb. 17 pm Tr. 84:18–24. Deputy O'Donnell thus confirmed that eliminating the QVA "would not eliminate . . . all of those cases," including those "involv[ing] election officials who saw a permanent resident card or saw the answer no [to the citizenship question] on [the registration] form." Feb. 17 am Tr. 122:18–24. Secretary Scanlan agreed that election officials can continue to make the same mistake after the passage and implementation of HB 1569. Feb. 20 Tr. 81:16–82:3, 83:9–22.

Defendants' asserted interest in promoting election integrity also cannot be squared with HB 464. By accepting prior registrations, that statute treats QVAs before HB 1569 took effect as "reasonable documentation of citizenship," yet categorically rejects identical affidavits submitted afterward. Defendants offer no explanation why a sworn affidavit executed in 2023 reliably establishes citizenship but the same sworn affidavit in 2025—containing the same representations and subject to the same penalties—somehow poses an intolerable risk to election integrity. *See* Feb. 19 pm Tr. 30:7–9 (Director Piecuch acknowledging that voters submitting affidavits in 2023 and 2025 are "doing the same thing"). Nor, as discussed above, could they justify crediting self-reported DMV citizenship data while refusing to accept QVAs as reasonable documentation of citizenship. *See supra* p.21 n.10. HB 464 thus undermines the legitimacy of the proffered integrity rationale. *See Fish v. Kobach*, 840 F.3d at 747 (noting that state's acceptance of some affidavits as proof of citizenship "undermine[s] legitimacy" of state interest in eliminating attestations of voter eligibility).

Third, Defendants' asserted interest in improving public confidence in election integrity cannot justify the burdens imposed by eliminating the QVA. The *Fish* court rejected the same rationale, holding that "the evidence did not demonstrate that Kansas's interest in safeguarding voter confidence made it necessary to enact the DPOC requirement." 957 F.3d at 1134. The record

there showed that the estimated number of suspended applications belonging to noncitizens was "statistically indistinguishable from zero," while "more than 99%" of suspended applicants were citizens who otherwise would have been able to vote. *Id.* at 1134–35. Such a disproportionate burden on eligible voters, the court explained, "may have the inadvertent effect of eroding, instead of maintaining, confidence in the electoral system." *Id.* at 1135.

The same reasoning applies with even greater force here. Defendants have produced no evidence that HB 1569 has improved public confidence in elections. To the contrary, Secretary Scanlan testified that approximately 90% of New Hampshire voters already express confidence in the State's elections—a level he characterized as high. Feb. 20 Tr. 54:19–55:3. Although he opined in his individual capacity that noncitizen voting could affect confidence, he acknowledged that his Office has not conducted any study or analysis measuring the effect of HB 1569 on voter confidence. *Id.* 19:12–17; 30:4–8; *see also* Feb. 18 am Tr. 22:18–24 (similar testimony from Deputy O'Donnell). He further testified that the existence of the QVA itself "is not a contributing factor to any declining voter confidence in New Hampshire." Feb. 20 Tr. 45:15–18. Likewise, Deputy O'Donnell testified that no member of the public has ever told him that HB 1569 increased their confidence in New Hampshire elections. Feb. 18 am Tr. 23:20–23.

If anything, the record evidence shows the opposite effect. Secretary Scanlan acknowledged that if large numbers of eligible voters are unable to vote because they lack required documentation, that "could lead to a decrease in voter confidence." Feb. 20 Tr. 57:3–7; *see, e.g.*, Feb. 11 pm Tr. 5:10–20 (Ms. Chouinard testifying that the elimination of the QVA decreases her confidence in New Hampshire elections for this reason). Investigator Tracy similarly testified that, in his experience, turning away an eligible voter can undermine that voter's confidence in the election process. Feb. 18 pm Tr. 68:16–20. Likewise, Dr. Mayer testified that HB 1569 may

decrease voter confidence as "the academic literature [] shows that voters who have a frustrating experience at the polls," including "people who try to vote and can't . . . [,] are more likely to report low confidence in election outcomes." Feb. 10 am Tr. at 109:7–10.

Indeed, the premise that sweeping restrictions are needed to combat voter fraud may fuel public suspicion about a problem that is virtually nonexistent in the state. As Investigator Tracy testified, some individuals will believe fraud exists regardless of the evidence—meaning measures like HB 1569 cannot increase their confidence. Feb. 18 pm Tr. 98:18–99:1. On this record, Defendants' public-confidence rationale is not only unsupported; it is affirmatively contradicted.

Fourth, Defendants cannot justify the burdens imposed by HB 1569 as necessary to conserve public resources. Even assuming marginal cost savings could ever justify disenfranchising or significantly burdening eligible voters, the record forecloses that argument here. Investigating noncitizen voting has historically constituted only about two percent of the work performed by the Election Law Unit, which has consistently had sufficient staffing and funding to handle those investigations. Feb. 18 pm Tr. 88:25–89:2; Feb. 17 pm Tr. 57:6–16; 56:4–6; *see Obama for Am.*, 697 F.3d at 434 (holding that "vague" claim of burden on election officials was not "sufficiently weighty" to justify burden on voters in absence of evidence that officials "may struggle" with carrying out their duties). In light of the small number of investigations related to citizenship, as Deputy O'Donnell testified at his deposition, the removal of the QVA for citizenship will not save the State meaningful resources. *See* Feb. 17 pm Tr. 85:2–21. The supposed enforcement burden that the removal of the QVA for citizenship purports to alleviate scarcely existed in the first place.

Nor has HB 1569 produced meaningful cost savings. To the contrary, substantial public funds have already been spent implementing the HB 1569/HB 464 regime. Secretary Scanlan

confirmed that his Office spent at least $167,280 modifying the SVRS to implement HB 464, exclusive of training costs, DMV implementation expenses, and other administrative expenditures. Feb 20 Tr. 59:5–13 *see also* PX 278-A. Director Piecuch testified that the State incurred additional vendor charges to implement HB 464 and that the implementation required substantial staff time and post-launch troubleshooting to address various operational issues. Feb. 19 pm Tr. 61:3–17. Secretary Scanlan also confirmed that negotiating the memorandum of understanding with the DMV and implementing HB 464 required a "significant amount of staff time" and would not have been necessary but for HB 1569. Feb 20 Tr. 58:18–59:4. Moreover, the State faces ongoing and anticipated litigation costs, which were foreseeable and raised to legislators before the law passed; Deputy O'Donnell warned State Senator James Gray that litigation costs could reach approximately $3 million. Feb. 17 pm Tr. 99:11–25.

In short, Defendants' fiscal rationale fails on every front: the law generates no significant savings while imposing considerable new expenses.

E. Balancing the Burdens and Interests, HB 1569 Unduly Burdens the Right to Vote.

As discussed, "'the rigorousness of [the] inquiry into the propriety of [the DPOC requirement] depends upon the extent to which [it] burdens' voters' rights." *Fish*, 957 F.3d at 1133 (quoting *Burdick*, 504 U.S. at 434). Here, the evidence of hundreds of voters who have already been turned away in low-turnout municipal elections and thousands more sure to follow in future statewide elections, supported by unrebutted expert testimony that estimates over 100,000 voters statewide may face similar obstacles "means that heightened scrutiny is appropriate." *Id.*

Therefore, this Court must determine "whether the concrete evidence demonstrates that '[the State's] interests make it necessary to burden the plaintiff's rights' in this case." *Id.* (quoting *Anderson*, 406 U.S. at 789). The State's asserted interests—ensuring access to ballots, promoting election integrity and public confidence, and conserving public resources—are not "sufficiently

weighty evidence to justify the burdens imposed on voters." *Id*. at 1134; *see Common Cause R.I.*, 970 F.3d at 15 ("[T]he incremental interest in the specific regulation at issue . . . is marginal at best."). Instances of noncitizen voting in New Hampshire are extremely rare, most voters already have high confidence in elections, and HB 1569 has produced little to no cost savings while increasing administrative and litigation expenses. On this record, the substantial burdens imposed on eligible voters far outweigh Defendants' asserted justifications.

II. The Removal of the CVA is an Unconstitutional Burden on the Right to Vote.

The elimination of the CVA for voter challenges largely implicates the same balancing analysis as the elimination of the QVA, with a few notable differences further weighing in Plaintiffs' favor. First, the State's own witnesses have conceded a lack of *any* state interest behind the elimination of the CVA for voter challenges, which means that Plaintiffs prevail by showing even the slightest burden to voters. *See Crawford*, 553 U.S. at 191 ("However slight that burden may appear . . . it must be justified by relevant and legitimate state interests."). Second, the threat of challenges is significant, and registered voters are even less likely to carry documents proving their eligibility than prospective voters who plan to register. Third, judicial review of a challenge decision, although theoretically available, is so burdensome under HB 1569 as to be illusory. And finally, to the extent Defendants might claim that HB 464 could lessen some of the burden from eliminating the CVA, election officials cannot, under the Secretary's guidance, use database searches to assist voters facing a challenge. Especially because the balancing test favors Plaintiffs to an even greater extent due to Defendants disclaiming any state interest, the Court should hold the CVA's removal unconstitutionally burdens the right to vote.

Crucially, Secretary Scanlan testified that the elimination of the CVA does not serve any conceivable state interest. Feb. 20 Tr. 44:24–45:2. He further admits that the CVA "is not a contributing factor to any declining voter confidence in New Hampshire." *Id.* 45:15–18. Nor did

the Commission on Voter Confidence that the Secretary created recommend eliminating the CVA. *Id.* 65:16–19. And from a law enforcement perspective, Investigator Tracy agreed that "it doesn't make sense that the challenger would get to use an affidavit [to make the challenge] but the voter would not" be able to use an affidavit to respond. Feb. 18 pm Tr. 87:18–21; *see also* Feb. 20 Tr. 42:13–16 (Secretary Scanlan "can't say" whether an affidavit from a challenger is inherently more reliable than an affidavit from a challenged voter). The Attorney General's Office is also unaware of any fraud or other misuse involving the CVA in the context of a voter challenge. *See* Feb. 18 am Tr. 8:7–20, 57:21–58:4. Nor has there been any drain on resources due to any investigation of a CVA used to overcome a voter challenge. *See id.* Moreover, as discussed previously, the record shows that the Attorney General has had sufficient resources to investigate the use of voter affidavits in the state, and the Election Law Unit has not requested additional funding or resources in recent years. Feb. 17 pm Tr. 56:1–18; 57:6–16.

On the other hand, the threat of baseless challenges—and the burden that such challenges would pose—is significant. As detailed *infra* III.B., evidence shows that the elimination of the CVA, which had operated as a "safeguard" against erroneous challenges, will incentivize groups making challenges on a wide scale, in a state where such challenges have been known to target particular groups, such as college students. *See* Feb. 18 am Tr. 20:16–23. Under HB 1569, a challenger may attack a voter's eligibility by signing an affidavit, which enumerates at least ten possible grounds for a challenge. Feb. 20 Tr. 42:5–8; *see* PX-213 (challenge form). The voter, however, is not legally allowed to respond with an affidavit attesting to their eligibility. *Id*. 42:9–12. The voter thus has few options to convince the election official adjudicating the challenge that

they are eligible, except to produce documents proving their eligibility—placing them in a similar scenario as a person seeking to register to vote for the first time under HB 1569.[11]

However, a registered voter who is challenged is even *less* likely to have the required documentation proving their eligibility than a prospective voter who is registering. As Investigator Tracy testified, a voter typically does not receive prior notice that they will be challenged at the polls. Feb. 18 pm Tr. 82:9–23. A voter who is already registered therefore has little reason to believe that they may need to re-produce a birth certificate or passport when they have previously established their eligibility. Feb. 9 pm Tr. 98:10–13; Feb. 10 am Tr. 101:21–23. And even if a voter had notice of a potential challenge, "there are going to be eligible voters that just aren't going to have" required documentation for a variety of possible reasons. Feb. 18 pm Tr. 69:1–71:7 (Tracy); *see also* Feb. 9 pm Tr. 98:10–13 (Supervisor Shump testifying that challenged voters are already registered and thus unlikely to have DPOC, making it harder to respond to a challenge).

Also discussed *infra* III.B., the ambiguous standards that govern voter challenges invite arbitrary impositions of these burdens on voters.

For the reasons discussed *infra* III.B., the requirement that a voter obtain same-day judicial review of a successful voter challenge is so burdensome as to make that ostensible safeguard largely illusory. Under HB 1569, a voter who is successfully challenged must immediately file a lawsuit in New Hampshire Superior Court, to obtain the right to receive and cast a ballot before polls close on election day. Feb. 18 am Tr. 11:20–24. Requiring a voter to file emergency litigation in a matter of minutes or hours is likely to be as burdensome—and infeasible—as requiring the voter to provide documentation of their voter eligibility. Navigating the various procedural hurdles

[11] For this reason, the evidence discussed above regarding Count I is also highly probative of Counts II and III, recognizing that the bases for challenges include far more than just citizenship.

for such a lawsuit is undoubtedly challenging even for a trained attorney—and either costly for a voter who retains a lawyer or virtually impossible for someone acting *pro se*. Feb. 10 am Tr. 107:14–17; *see* Feb. 10 am Tr. 107:17–21 (Dr. Mayer opining that it is "preposterous" to expect a voter to successfully avail themselves of HB 1569's judicial review process). And as Investigator Tracy testified, voters should not be expected to pay hundreds of dollars in order to cast a ballot. Feb. 18 pm Tr. 86:2–11; *see Crawford*, 553 U.S. at 198 (emphasizing importance of compliance with state's voting requirement being "free").

Finally, the processes created under HB 464 do not mitigate the significant burdens placed on voters facing a challenge. As discussed *supra* I.C., HB 464's processes have major flaws and limitations. But they are especially unlikely—and, in fact, likely not permitted—to be used for voters whose eligibility is challenged. The Secretary's forms and guidance are explicit that the HB 464 search mechanism is only to be used for *registrants* during the process of completing a *voter registration application*, but challenged voters are *already registered*.[12] The Secretary is unaware of any contrary instruction to local officials to utilize a database search as part of adjudicating a voter challenge. Feb. 20 Tr. 42:25–43:3. Moreover, the Secretary acknowledges that his stern warnings of criminal penalties for misuse of the database search may deter local election officials from using the databases for voter challenges. *Id*. 43:17–25. In addition, the gaps and limitations of the processes authorized under HB 464 may be magnified even if the databases are deployed for use in the challenge context: Historically, unfounded challenges in New Hampshire have been

[12] The application form for a DMV or vital records search is expressly "FOR THE PURPOSE OF NEW HAMPSHIRE VOTER REGISTRATION," and requires voters to aver, in bolded text, that their records are to be "verif[ied] for voter registration purposes ONLY," and explains the form "shall be filed with the voter registration application." PX-176 at 1; *see* PX-177 (form must be "filed with the voter registration application"); DX-UU (stating in first line of guidance that searches "can now be used to verify certain citizenship, age, name change, and death information *for voter registration*." (emphasis added)).

misused and aimed at perceived out-of-staters, such as college students, who are unlikely to be found in the state's vital records and DMV databases. *See id.* 44:1–11; Feb. 18 pm Tr. 82:24–84:6.

Voters in New Hampshire are substantially likely to face a greater risk of voter challenges in future elections due to the elimination of the CVA as a safeguard and such voters would bear the significant burden of having to re-establish their eligibility without prior notice. Because Defendants identify no legitimate state interest advanced by eliminating the CVA, these burdens necessarily outweigh any asserted state interests and render the removal of the CVA an unconstitutional burden on the right to vote.

III. The Removal of the CVA Violates the Due Process Clause.

Procedural due process affords the "basic guarantee" that "before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard at a meaningful time and in a meaningful manner." *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 13 (1st Cir. 2011) (cleaned up). Thus, people at risk for a deprivation not only must receive "notice and an opportunity to be heard," but such notice and hearing must occur "at a time when the deprivation can still be prevented." *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). This means affording the individual facing deprivation "a reasonable time" to appear and contest that denial. *A.A.R.P. v. Trump*, 605 U.S. 91, 94–95 (2025).

The Parties agree that the three-part framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976), applies to the Court's analysis of Plaintiffs' procedural process claim. *See* Defs.' Pretrial Statement, Dkt. 117 at 3; *see also Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018); *Doe v. Rowe*, 156 F. Supp. 2d 35, 48 (D. Me. 2001). To determine "what process is due"—and whether the challenged procedure provides it—the Court must balance three factors: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of

additional or substitute procedural safeguards; and finally, the Government's interest." *Collins v. Univ. of New Hampshire*, 664 F.3d 8, 17 (1st Cir. 2011) (cleaned up).

A. HB 1569 implicates a protected liberty interest in the right to vote.

"The right to vote is of the most fundamental significance under our constitutional structure." *Ayers-Schaffner v. DiStefano*, 37 F.3d 726, 727 (1st Cir. 1994). It is "beyond dispute," that eligible citizens possess a liberty interest in that right under the Fourteenth Amendment's Due Process Clause, *Saucedo*, 335 F. Supp. at 217, as "[v]arious courts have recognized," *Doe*, 156 F. Supp. 2d at 47–48 (collecting cases). This interest merits "significant weight." *Saucedo*, 335 F. Supp. 3d at 217.

B. There is a great risk of erroneous deprivation of voting rights under HB 1569's removal of the CVA and strong value in retaining the CVA or another safeguard.

In the voting context, "even rates of [ballot] rejection well under one percent translate to the disenfranchisement of dozens, if not hundreds, of otherwise qualified voters, election after election." *Saucedo*, 335 F. Supp. 3d at 217. New Hampshire voters who are challenged on election day after HB 1569 have a much more significant risk of erroneous disenfranchisement than voters at large, and yet the value of permitting a voter to resolve a challenge at the polling place without needing to pursue state court litigation and receive a resolution by the close of polls that same day "has the very tangible benefit of avoiding disenfranchisement." *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339 (N.D. Ga. 2018); *see also Saucedo*, 335 F. Supp. 3d at 219 ("additional procedures" to avoid disenfranchisement based on purported signature mismatch "would provide a tangible benefit"); *Zessar v. Helander*, No. 05 C 1917, 2006 WL 642646, *9 (N.D. Ill. Mar. 13, 2006) ("[T]he probable value of an additional procedure is likewise great in that it serves to protect the fundamental right to vote."). Under HB 1569, several factors heighten the risk of erroneous disenfranchisement, stemming from the CVA's removal and the lack of an adequate safeguard.

The record evidence is more than sufficient to conclude that voter challenges will pose a colorable threat to voters' rights in future elections after the removal of the CVA. Even prior to HB 1569, challenges were a tool used by both those seeking to disrupt elections and safeguard them. *See, e.g.*, Feb. 18 pm Tr. 83:9–17, 83:25–84:6 (Investigator Tracy confronting aggressive voter challengers at a college); Feb. 18 am Tr. 20:5–10 (Deputy O'Donnell has seen attempts to lodge mass voter challenges as recently as November 2024); Feb. 17 am Tr. 101:13–18. But the rate at which voters were *previously* challenged is not particularly relevant here, because prior to HB 1569, challenges had little bite due to the CVA. Nor is it significant that defense witnesses might disclaim knowledge of challenges occurring in the small, low-turnout, low registration elections held since HB 1569's implementation. What matters is whether, as written, the provisions of HB 1569 create a risk of erroneous deprivation of voting rights, and they surely do. *See Saucedo*, 335 F. Supp. 3d at 214.

First, the threat of a challenge is widespread; it can affect anyone and come from anywhere. "*Any* voter may have his right to cast a ballot in a given election challenged by *any* registered voter in the same town[.]" PX-112 at 79 (Election Procedures Manual) (emphasis added). Challenges can also be brought by election officials themselves (*i.e.*, those who might rule on that very challenge), political-party-appointed challengers, and Attorney-General-appointed challengers. *Id.*

Second, the record suggests challenges will be more likely to occur now that the safeguard of the CVA is gone, especially for members of particular groups that are already treated as suspect by portions of the New Hampshire public. Dr. Mayer credibly testified that "the removal of the CVA turns [voter challenges] into a high-stakes process where a voter could easily face a challenge that would require them to show documentary proof" or have the challenge deemed well-founded. Feb. 10 am Tr. 103:23–104:1. For instance, after HB 1569, members of the election protection

community have seen "coordinated" efforts from political parties and other citizen groups to recruit challengers through "social media posts" and other means—"whether they're party challenge[r]s or other challengers"—to be at polls on election day. Zink Tr. 36:1–9, 38:18–39:11. Indeed, Secretary Scanlan agreed that without the CVA, it is possible that political parties may start challenging voters on a wider scale, Feb. 20 Tr. 42:20–24, and Investigator Tracy agreed that voter challenges can now be misused to make voting more difficult for eligible voters, Feb. 18 pm Tr. 82:24–83:1. Supervisor Shump testified that political parties are increasingly placing challengers at the polls in her college town, and those challengers are paying particular attention to college students. Feb. 9 pm Tr. 93:2–18; *see also* Feb. 18 pm Tr. 83:9–17, 83:25–84:6 (aggressive voter challengers at Hesser College).

Third, as described *supra* II, unsuspecting registered voters are especially unlikely to be carrying proof on their person that allows them to rebut a challenge. As Supervisor Shump testified, voters who are already registered are unlikely to have a birth certificate or passport with them when they go to vote, making it harder to respond to a challenge. Feb. 9 pm Tr. 98:10–13

Fourth, the law will be applied arbitrarily. It provides no guidance or standard on when "it is more likely than not that [a] challenge is well grounded," DX-AAA-1 at 43, creating a risk of arbitrary deprivation, *see also supra* I.B.2.[13] As in *Saucedo*, the "absence of functional standards"

[13] In fact, if a well-intentioned official sought further guidance, the standard becomes even less clear. Prior to HB 1569, the words "more likely than not" did not appear *anywhere* in RSA 659:27. Rather, it simply explained what happened "[i]f the moderator determines that the challenge is well grounded." DX-AAA-1 at 43. The Elections Procedure Manual then defined "not well grounded" to mean "the available evidence makes it more likely than not that the voter is qualified to vote." PX-112 at 80. However, HB 1569 changed RSA 659:27, adding "[i]f the moderator determines that *it is more likely than not that* the challenge is well grounded, the moderator shall not receive the vote of the person so challenged." DX-AAA-1 at 43. Thus, if an official seeks to put together the statutory language with the operative guidance, they would apply the following meaningless standard: Whether it is *more likely than not* that the available evidence *does not* make it *more likely than not* that the voter is qualified to vote.

and the fact that "the ultimate determination is left to the sole discretion of the" election official "entails tangible risks." 335 F. Supp. 3d at 218; *see also Martin*, 341 F. Supp. 3d at 1339 (substantial risk of disfranchisement when an "election official . . . has unchecked discretion to determine" outcome). This is more problematic given Dr. Mayer's testimony that one can challenge a voter "based on, in practice, flimsy [ ], inaccurate evidence." Feb. 10 pm Tr. 35:7–23.

Fifth, and most importantly, after the elimination of the CVA, the only option for a voter successfully challenged on election day "is to appeal the election official's decision to the superior court." Feb. 17 am Tr. 100:22–101:2. As Deputy O'Donnell agreed, the CVA "operated as a safeguard against the erroneous deprivation of that voter's voting right[s]," and HB 1569 "eliminated that safeguard." Feb. 18 am Tr. 20:16–22. This is especially dangerous here, in one of the very few states without any provisional balloting. Feb. 20 Tr. 48:21–23.

Rather than "a suitable form of predeprivation hearing coupled with the availability of meaningful judicial review," *Chongris v. Bd. of Appeals of Town of Andover*, 811 F.2d 36, 40 (1st Cir. 1987), the process in place after HB 1569 is largely illusory. Where litigation is the only route to challenge the deprivation of one's rights, due process requires "sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief." *A.A.R.P.*, 605 U.S. at 94–95. When, as here, the voter needs to take "quick action" to have any chance of "predeprivation process," a post-deprivation process of "an independent tort action" is likely "constitutionally inadequate." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982); *see also Panzella v. Sposato*, 863 F.3d 210, 218 (2d Cir. 2017) (finding a due process violation where the burden was "on the person whose [rights were affected]" to give up "time" and "money to initiate a lawsuit and [usually] retain an attorney" (internal quotation marks omitted)).

A voter challenged on election day will likely have no prior notice of the challenge, and yet only has the rest of the day until the close of polls to pursue and obtain relief in Superior Court, Feb. 18 am Tr. 18:17–19:5—which, depending on when in the day the challenge is lodged, could mean the voter has anywhere from 12 hours to mere minutes. Yet Deputy O'Donnell agreed that voters may reasonably want assistance of an attorney, that it would be two hours of work for the attorney to get ready to file, that attorneys in New Hampshire have an average hourly rate of about $300, and that there is a filing fee in Superior Court and no categorical fee waiver for these challenges. Feb. 18 am Tr. 12:2–13:1. Investigator Tracy agreed that the filing fee could itself act as a deterrent for some would-be voters. Feb. 18 pm Tr. 86:5–11.[14] Additionally, Deputy O'Donnell's testimony further made clear that the process can be confusing and time consuming for many voters, because it is far from obvious who the proper defendants are—even though the expedited hearing procedure for election day requires all attorneys who may appear to be disclosed in the initial pleading to allow for a thorough conflict check. Feb. 18 am Tr. 13:12–15:2. In addition, the process necessarily requires election officials to step away from their duties at the polling place in the middle of election day. *Id*. 18:17–19:5.

By contrast to the many risks of erroneous deprivation to challenged voters and the illusory process available to contest a successful challenge, restoring the CVA will have a very probable tangible benefit of protecting against such disenfranchisement. And Defendants' witnesses recognize that the CVA system worked. *See* Feb. 17 am Tr. 101:13–22 (describing "a few instances" where an improperly domiciled voter left rather than unlawfully complete a CVA under

[14] The Court may take judicial notice of the current $325 filing fee for a civil action. *Superior Court Fee Schedule*, https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-06/filing_fees_superior.pdf; *see Freeman v. Town of Hudson*, 714 F.3d 29, 36–37 (1st Cir. 2013) (courts may take judicial notice of official public records).

threat of criminal penalty); Feb. 17 pm Tr. 67:23–68:5 (agreeing affidavits with serious penalties of voter fraud and threats of enforcement deterred fraud). While provisional balloting or other avenues would also provide greater process for voters than the illusory same-day lawsuit, those options would likely require greater changes to the structure of New Hampshire elections than reinstating the CVAs, which could be easily accomplished by returning to the status quo.

C. The burden on any government interest in removing the CVA is minimal.

In a broad sense, New Hampshire of course has "legitimate interests in preventing voter fraud and protecting public confidence in elections." *Saucedo*, 335 F. Supp. 3d at 220. Yet, for the reasons stated *supra* II, all of the evidence, including admissions from Defendants, reflects that HB 1569's elimination of the CVA does not advance any interests.

In sum, HB 1569's elimination of the CVA for challenged voters—leaving in its place only a same-day judicial appeal with associated timing issues, costs, and confusion—does not comport with basic standards of due process. It fails to afford eligible voters sufficient time to make their case for eligibility "at a time when the deprivation can still be prevented." *Fuentes*, 407 U.S. at 81.

JUSTICIABILITY, EQUITIES, AND REMEDY

I. Plaintiffs Face Irreparable Harm, the Equities Favor Them, and *Purcell* Does Not Foreclose or Counsel Against Relief for 2026.

A "restriction on the fundamental right to vote . . . constitutes irreparable injury." *Obama for Am.*, 697 F.3d at 436. And "[b]y definition, the public interest favors permitting as many qualified voters to vote as possible." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (cleaned up). Nonetheless, Defendants contend that the principles outlined in *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), preclude relief before the 2026 statewide elections. That argument fails for two primary reasons.

First, the Supreme Court has rejected an attempt to apply *Purcell* where the defendant made "previous representations to the district court that the schedule on which the district court proceeded was sufficient to enable effectual relief as to the November elections should applicants win at trial." *Rose v. Raffensperger*, 143 S. Ct. 58, 59 (2022). Similarly, the Eleventh Circuit found *Purcell* inapplicable where defendants had agreed that they "would be able to conduct the March 2023 elections" if maps were in place by a certain date and "the entire schedule on which the district court proceeded was developed" on that basis. *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 22-13544, 2022 WL 16754389, at *2 (11th Cir. Nov. 7, 2022).

Purcell does not apply here for the same reason. The Court set the schedule based on the parties' joint discovery plan and Defendants' representations that an order issued 90–120 days before the election would suffice "to implement the changes necessary so that no one would be disenfranchised and the public would not be confused and so on." *See, e.g.*, Tr. of Status Conf., Dkt. 52, at 18:21–20:13 (Mar. 7, 2025). Secretary Scanlan confirmed, in his capacity as the representative of the Secretary of State's office, that if the Court ordered the State to "use qualified voter affidavits for proof of citizenship and/or reinstated the challenge voter affidavit for voter challenges," he would "feel confident that [he] could implement" such an order if issued by early July. Scanlan Dep., Dkt. 103-11, at 474:1–10 (Oct. 22, 2025). He reaffirmed this at trial, Feb. 20 Tr. 65:20–66:1, "without caveat," *Jacksonville NAACP*, 2022 WL 16754389, at *2. Thus, given Defendants' own "representations to the . . . court that the schedule on which the district court proceeded was sufficient to enable effectual relief" for this year's statewide elections, *Rose*, 143 S. Ct. at 59, a decision by May—or even by early July—means that *Purcell* is simply not implicated here.

Defendants may cite a need to overhaul the SVRS to accept QVAs again, but Director Piecuch admitted at trial that election officials could use the current option for cataloging "other reasonable proof of citizenship" in the SVRS to process QVAs for citizenship without requiring *any* reprogramming, allowing for quick implementation. Feb. 19 pm Tr. 96:15–19.[15]

Second, *Purcell* is implicated "[o]nly under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress." *Am. Encore v. Fontes*, 152 F.4th 1097, 1121 (9th Cir. 2025) (internal quotation marks omitted); *see also, e.g.*, *League of Women Voters of Ohio v. LaRose*, 741 F. Supp. 3d 694, 722–23 (N.D. Ohio 2024) (rejecting *Purcell* arguments in absentee decision issued two months before absentee voting began). Moreover, "*Purcell*'s heightened standard is not appropriate [where] . . . the primary reason for applying that standard—risk of voter confusion—[is] lacking." *Jacksonville Branch of NAACP*, 2022 WL 16754389, at *3. That is certainly the case here, where even if some voters were unaware of an injunction, voters with easily accessible DPOC would still perfectly capable of bringing those documents with them to register, as planned. All it would mean is that the many registrants who *lack* those documents might *also* be able to vote.

An injunction issued in May or even further into summer, will allow the State ample time for a pre-election remedy, Feb. 20 Tr. at 65:20–66:1, and to ensure "no one would be disenfranchised and the public would not be confused." Tr. of Status Conference, Dkt. 52, at 18:21–20:13 (Mar. 7, 2025).

This case is nothing like those in which the Supreme Court has applied *Purcell*. In *Purcell* itself, the Court stayed a four-sentence preliminary injunction against Arizona's voter ID law

[15] Similarly, reinstating the CVA for voter challenges raises no timing concerns. It would only require re-printing forms from the operative Election Procedure Manual, with which officials are already familiar.

issued by the Ninth Circuit a month before the general election—an order which itself had reversed the district court's denial of the injunction. 549 U.S. at 3–4. The *Purcell* Court was particularly concerned that conflicting court orders and alterations within mere weeks of an election might lead to "voter confusion and consequent incentive to remain away from the polls." *Id*. at 5–6. More recently, in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), the Supreme Court stayed a redistricting injunction where candidate filing deadlines were imminent and voting only weeks away, *see id.* at 879 (Kavanaugh, J., concurring), and in *Democratic National Committee v. Wisconsin State Legislature*, 141 S. Ct. 28 (2020), the Court stayed an order changing Wisconsin's absentee-balloting laws "just six weeks before the November election and after absentee voting had already begun," *id.* at 31 (Kavanaugh, J., concurring); *see also Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (staying congressional redistricting injunction issued during "an active primary campaign" and less than three weeks from the candidate-filing deadline).

Purcell will not be implicated by any injunction issued by May or further into summer.[16]

II. Scope of Remedy

Courts "have broad authority to fashion equitable relief" once a constitutional violation is found. *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 56 (1st Cir. 2023). When crafting a remedy, the court "must undertake an equitable weighing process to select a fitting remedy for the legal violations it has identified, taking account of what is necessary, what is fair, and what is workable." *North Carolina v. Covington*, 581 U.S. 486, 488 (2017) (cleaned up); *accord Griffin v. Burns*, 570 F.2d 1065, 1079 (1st Cir. 1978). In a voting

[16] If the Court disagrees and finds that any injunction it issues might implicate *Purcell* notwithstanding Defendants' concessions, Plaintiffs request the right to brief why they could nonetheless overcome any presumption or heightened standard imposed that may apply during the "*Purcell* period." *See, e.g.*, *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring) ("[T]he *Purcell* principle . . . might be overcome even with respect to an injunction issued close to an election").

rights case, the typical remedy is "striking down state laws or rules . . . which improperly restrict or constrict the franchise." *Griffin*, 570 F.2d at 1076; *see also* Defs.' Mem. of Law in Supp. of Mot. for Summ. J., Dkt. 88-1, at 29 (agreeing "this Court may declare a state law unconstitutional and enjoin an unconstitutional law's enforcement"). Here, Plaintiffs have proven that HB 1569's elimination of the QVA for citizenship and the CVA for voter challenges is unconstitutional, and the law should be enjoined to the extent necessary to redress and prevent those violations.

Specifically, Plaintiffs have proven violations from the elimination of: (i) the QVA for proving citizenship when registering, effectuated by HB 1569's repeal of RSA 654:12 and 654:7 (effective Nov. 11, 2024); and (ii) the CVA for responding to a voter challenge, effectuated by HB 1569's repeal of RSA 659:27, RSA 659:27-a, RSA 659:30, RSA 659:31, RSA 659:32 (effective Nov. 11, 2024). *See* DX-AAA-1 at 33–48 (identifying changes enacted by HB 1569). As a remedy, the *Coalition for Open Democracy* Plaintiffs seek a declaration that these portions of HB 1569 are unconstitutional and a permanent injunction "as necessary and appropriate to prohibit Defendants from implementing or enforcing HB 1569." Amended Compl., Dkt. 85, at 41.

When declared unconstitutional, "the official act of the government becomes null and void." *Cath. League for Religious & Civ. Rts. v. City & Cnty. of San Francisco*, 624 F.3d 1043, 1053 (9th Cir. 2010) (en banc) (citing *Powell v. McCormack,* 395 U.S. 486, 506 (1969)). And where an unconstitutional statute purports to repeal a prior law, as HB 1569 does, the prior law is restored as the last "valid expression of the legislat[ure's] intent." *See Frost v. Corp. Comm'n*, 278 U.S. 515, 526–28 (1929) (holding that newly enacted state law was unconstitutional and therefore "was a nullity, wholly 'without force or vitality,' leaving the provisions of the existing statute unchanged"); *accord Lindenbaum v. Realgy, LLC*, 13 F.4th 524, 528 & n.2 (6th Cir. 2021). Invalidation of HB 1569 and an injunction against its implementation would therefore have the

effect of restoring New Hampshire's election procedures—specifically the voter registration and voter challenge processes—"to the versions in effect prior to HB 1569's implementation" on November 11, 2024. *N.H. Youth Movement v. Scanlan*, No. 24-cv-291, 2026 WL 323171, at *7 (D.N.H. Feb. 6, 2026).

Plaintiffs' requested remedy is narrowly tailored to the constitutional violations and does not seek to invalidate the entirety of HB 1569. *Cf. Crawford*, 553 U.S. at 203 (noting that "petitioners have not demonstrated that the proper remedy . . . would be to invalidate the entire statute," even if an unjustified burden is shown). In particular, Plaintiffs seek declaratory and injunctive relief only to the extent necessary to restore New Hampshire residents' ability to use the QVA to prove citizenship and the CVA to respond to a voter challenge. Such relief is needed "to afford plaintiffs full protection from unconstitutional election practices" and is undoubtedly within the power of this Court to grant, and it does not otherwise hinder implementation of remaining aspects of HB 1569. *See Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1226–27 (11th Cir.) (cleaned up), *cert. denied sub nom. Polelle v. Byrd*, 146 S. Ct. 298 (2025); *e.g.*, *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 53 (D. Me. 2021) (enjoining state election law to the extent it is unconstitutional), *aff'd*, 40 F.4th 1 (1st Cir. 2022); *Saucedo*, 335 F. Supp. 3d at 224 (enjoining implementation of unconstitutional New Hampshire election law); *Norelli v. Secretary of State*, 292 A.3d 458, 469 (N.H. 2022) (holding that court-ordered remedial districting plan should make only those changes necessary to cure the identified constitutional deficiencies). Absent such relief, HB 1569 will continue to injure Plaintiffs by, among other things: (i) impairing Organizational Plaintiffs' work of registering voters and ensuring that they are able to participate in elections; and (ii) requiring Organizational Plaintiffs to continue bearing the burdens of attempting to provide

trainings and education on HB 1569's restrictive and ambiguous citizenship proof and challenge procedures, as detailed in Plaintiffs' Proposed Findings of Fact.

That limited remedy is also "fair" and "workable" from the State's perspective. *See Griffin*, 570 F.2d at 1079. For at least the 25 years prior to HB 1569, voters in New Hampshire have been able to rely on affidavits to register to vote and to vote. Feb. 20 Tr. 34:6–10. During that time, the affidavit system was successfully administered, with infinitesimally small numbers of noncitizens allegedly registering or voting using an affidavit. *Supra* I.D. Moreover, the state rarely had to investigate cases involving alleged noncitizens using the QVA or voters relying on the CVA to defend against a voter challenge. *Supra* I.D. The previous longstanding affidavit system is familiar to election officials, and the Secretary is confident that his Office could implement such a remedy in a timely manner before the next election. Feb. 20 Tr. 65:20–66:1. With respect to the state legislature's policy preferences, Plaintiffs' tailored remedy would leave in place the remainder of HB 1569, including its elimination of the QVA to prove other eligibility requirements.

Although Defendants have not raised any objection to granting relief on a statewide basis, Plaintiffs note that such relief is both necessary and appropriate. First, the Organizational Plaintiffs work to register voters and increase voter participation throughout New Hampshire. *See, e.g.*, Zink Tr. 11:11–12:7; 23:4–9; 31:15–25; Feb. 9 pm Tr. 23:24–24:25; PX-61; Feb. 12 am Tr. 43:14–44:9; PX-55; PX-57. Because they register voters throughout New Hampshire, it is "impossible for [the Court] to craft relief that is complete *and* benefits only the named plaintiffs." *Trump v. CASA, Inc.*, 606 U.S. 831, 851–852 n.12 (2025). Anything less than statewide relief would thus continue to interfere with their work and cause injury. *Id.* at 850–852 ("[A] court of equity may fashion a remedy that awards complete relief," including statewide relief, even if that relief "might have the

practical effect of benefiting nonparties").[17] Second, in the elections context, equal protection requires uniformity of legal rules and equal treatment of similarly situated voters. *N.E.. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 598 (6th Cir. 2012) (citizens have the "right to participate in elections on an equal basis with other citizens in the jurisdiction." (quoting *Dunn,* 405 U.S. at 336)). Requiring only some New Hampshire voters to meet a stricter DPOC requirement would raise constitutional concerns. *Cf. Bush v. Gore*, 531 U.S. 98, 104–05 (2000).

For the foregoing reasons, the Court should declare HB 1569 unlawful and enjoin the implementation and enforcement of the law to the extent necessary to restore all New Hampshire residents' ability to use the QVA to prove citizenship when registering to vote, as residents could do prior to HB 1569. The Court should also declare HB 1569 unlawful and enjoin its implementation and enforcement to the extent necessary to restore all New Hampshire voters' ability to use the CVA in response to a voter challenge, as voters could do prior to HB 1569.

III. Miles Borne's Claim is Not Moot.

In denying summary judgment, this Court acknowledged that despite "[Miles] Borne ha[ving] turned 18, registered to vote in 2025 with little difficulty, and [] not intend[ing] to register to vote anywhere else," Order, Dkt. 135 at 22–23, his claim fell "comfortably" within the "capable of repetition, yet evading review" mootness exception. *Id*.

The parties stipulated to the same evidence at trial. Dkt. 132 ¶¶ 1, 9–12, 14. Because the evidentiary record has not materially changed, the Court should adhere to its prior determination. *See United States v. Wallace*, 573 F.3d 82, 87–88 (1st Cir. 2009) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case."). Mr. Borne's claim therefore remains live.

[17] Statewide relief is also necessary to provide complete relief to N.H. Youth Movement because it is a membership organization with members across the State. Feb. 10 am Tr. 11:1–5, 53:4–6.

CONCLUSION

The Open Democracy Plaintiffs respectfully request that the Court enter judgment in their favor, declare that HB 1569's elimination of the QVA for proving citizenship and its elimination of the CVA are unconstitutional, and permanently enjoin the law's implementation and enforcement as requested herein.

Respectfully submitted on this March 5, 2026,

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

By and through their attorneys,

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette (N.H. Bar No. 265393)
Henry R. Klementowicz (N.H. Bar No. 21177)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION
18 Low Avenue
Concord, NH 03301
(603) 333-2201
gilles@aclu-nh.org
henry@aclu-nh.org

Jacob van Leer*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, D.C. 20005
(202) 715-0815
jvanleer@aclu.org

Ming Cheung*
Clayton Pierce*
Ethan Herenstein*
Davin Rosborough*
Sophia Lin Lakin*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004
(212) 549-2500
mcheung@aclu.org
cpierce@aclu.org
eherenstein@aclu.org
drosborough@aclu.org
slakin@aclu.org

Geoffrey M. Atkins*
John T. Montgomery*
Desiree M. Pelletier*
Michelle A. Kain*
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7000
Geoffrey.Atkins@ropesgray.com
John.Montgomery@ropesgray.com
Desiree.Pelletier@ropesgray.com
Michelle.Kain@ropesgray.com

Alex H. DiLalla*
ROPES & GRAY LLP
191 N Wacker Dr, 32nd Floor
Chicago, IL 60606
(312) 845-1200
Alex.DiLalla@ropesgray.com

CERTIFICATE OF SERVICE

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

/s/ Gilles R. Bissonnette
Gilles R. Bissonnette