

**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.

Case No. 1:24-cv-00291-SE-TSM

PLAINTIFF'S PROPOSED DISCOVERY PLAN

Plaintiff the New Hampshire Youth Movement moves the Court to enter the following Discovery Plan pursuant to Federal Rule of Civil Procedure 26(f) and Rule 26.1 of the Local Rules of this Court.

RELEVANT BACKGROUND

Plaintiff challenges H.B. 1569 (2024), which threatens the fundamental rights of New Hampshire voters by requiring anyone seeking to register to vote to produce documentary proof of citizenship, with no exceptions. Absent the declaratory and injunctive relief Plaintiff seeks, the law stands to disenfranchise eligible voters in upcoming elections. *See* Complaint, ECF No. 1. And once those rights are lost, “there can be no do-over and no redress.” *League of Women Voters v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

This is therefore a time-sensitive case. As Plaintiff has explained, it is essential that the litigation advance on a schedule that would permit any warranted final relief to be entered sufficiently in advance of the upcoming 2026 primary and general elections; otherwise, Defendant is sure to assert that election administration concerns preclude such relief. *See generally Purcell v.*

Gonzalez, 549 U.S. 1, 4–5 (2006). Any delay in resolving this action prejudices Plaintiff’s ability to prosecute its case.

As described in greater detail in Plaintiff’s contemporaneously filed motion for a preliminary pretrial scheduling conference, Plaintiff has satisfied its obligations under Federal Rule of Civil Procedure 26(f) and Local Rule 26.1 to confer with Defendant in good faith to develop a proposed discovery plan for this case. Unfortunately, even after weeks of suggesting openness to proposing—at the very least—the same plan that he has already stipulated to in a later-filed case challenging H.B. 1569, *see Coalition for Open Democracy v. Formella*, No. 1:24-cv-00312 (D.N.H.), ECF No. 33, Defendant has now indicated that he will not entertain any discovery plan in this case at this juncture, in violation of Rule 26(f).

Despite Defendant’s objection, a scheduling order is overdue in this case. *See* Fed. R. Civ. P. 16(b). Plaintiff therefore requests that the Court enter such an order as soon as practicable and submits the following Proposed Discovery Plan, which requests a modestly expedited discovery and trial schedule.

* * *

26(f) CONFERENCE INFORMATION

Date and Place of Conference:

November 25 to December 6, 2024 (email exchanges and phone conversations); January 21, 2025 (video conference)

Plaintiff’s Participating Counsel:

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Defendant’s Participating Counsel:

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**NEW HAMPSHIRE DEPARTMENT OF
JUSTICE, OFFICE OF ATTORNEY
GENERAL**

*Counsel for New Hampshire Secretary of
State David M. Scanlan*

CASE SUMMARY

Plaintiff:

New Hampshire Youth Movement

Defendant:

New Hampshire Secretary of State David M.
Scanlan

Theory of Liability:

H.B. 1569 (2024) amended RSA 654:12 to eliminate a provision of state law that allowed qualified voters who lacked U.S. citizenship documents to sign an affidavit on pain of perjury and fraud to satisfy the citizenship requirement when registering to vote. Under H.B. 1569, all registrants must produce a “birth certificate, passport, naturalization papers” or other unspecified “reasonable documentation” to register and vote. Plaintiff alleges that H.B. 1569 places a burden on the fundamental right to vote by restricting access to registration and disenfranchising voters without sufficiently advancing the state’s interest in election integrity so as to justify the burden, in violation of the First and Fourteenth Amendments to the U.S. Constitution.

Theory of Defense:

Plaintiff anticipates that Defendant will assert that H.B. 1569 does not unjustifiably burden the right to vote and that the law sufficiently serves the government’s interest in the integrity of New Hampshire’s elections.

Declaratory and Injunctive Relief: Plaintiff seeks a declaration that H.B. 1569 violates the First and Fourteenth Amendments to the U.S. Constitution and an injunction enjoining its enforcement.

Damages: N/A

Attorneys' Fees and Costs: Plaintiff seeks reasonable attorneys' fees and costs.

Jurisdictional Questions: Defendant has asserted that Plaintiff lacks Article III standing to bring its claim.

Questions of Law:

- Does H.B. 1569 place a burden on the fundamental right to vote without advancing a sufficiently weighty justification for the burden imposed, in violation of the First and Fourteenth Amendments to the U.S. Constitution?
- Plaintiff anticipates that Defendant will raise additional questions relevant to its defenses, including:
 - Does Plaintiff have standing?
 - Does the Complaint state a claim upon which relief can be granted?
 - Do any of Defendant's affirmative defenses bar Plaintiff's claims or requested relief in whole or in part?

Type of Trial: Plaintiff believes a bench trial is appropriate and will contest any request for a jury trial.

SCHEDULE

Track Assignment: Plaintiff requests an expedited track.

Trial Date: Plaintiff Proposes: November 18, 2025

Disclosure of Claims Against Unnamed Parties: N/A

Amendment of Pleadings: Plaintiff Proposes: February 14, 2025, or by leave or invitation of the Court.

Joinder of Additional Parties: Plaintiff Proposes: February 14, 2025.

Third-Party Actions: Plaintiff Proposes: February 14, 2025.

Motions to Dismiss: Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim was filed December 20, 2024. *See* ECF No. 24. That Motion is ripe for hearing and decision.

Expert Disclosures, Written Reports, and Supplementations: Plaintiff Proposes:

- Plaintiff's Expert Disclosure(s) and Written Report(s): May 9, 2025.
- Defendant's Expert Disclosure(s) and Written Report(s): June 6, 2025.
- Expert Rebuttal Reports: June 20, 2025.
- Supplementations per Federal Rule of Civil Procedure 26(e).

Completion of Discovery: Plaintiff Proposes: July 7, 2025.

Motions for Summary Judgment: Plaintiff Proposes: July 21, 2025.

Challenges to Expert Testimony: Plaintiff Proposes: September 5, 2025.

DISCOVERY

Timing of Discovery: Written discovery may commence on or after January 22, 2025.

Plaintiff Proposes: Depositions may commence on the earlier of (a) the Court's ruling on Defendant's motion to dismiss, (b) April 11, 2025, or (c) by leave of Court or agreement of the parties.

Discovery Needed:

Plaintiff anticipates serving written discovery and taking depositions. Plaintiff intends to issue interrogatories and requests for production of documents, records, communications, and other discoverable material pertaining to the constitutionality of H.B. 1569 to the extent permitted by the Federal Rules of Civil Procedure.

Plaintiff reserves the right to object to any discovery including, but not limited to, interrogatories, requests for production of documents, and requests for admission (“Discovery Requests”), as unduly burdensome or irrelevant, and to object on any other good faith applicable basis.

Initial Disclosures:

Plaintiff will serve its initial disclosures on Defendant by February 4, 2025, pursuant to Federal Rule of Civil Procedure 26(a)(1).

Preservation of Documents and Information:

Plaintiff has, since the commencement of this action, preserved and will continue to preserve all discoverable material in its possession.

Document Collection:

Plaintiff intends to confer with Defendant regarding custodians, locations, forms of discoverable material, as well as reasonable search terms for ESI, where applicable.

Interrogatories:

Plaintiff Proposes: Plaintiff may propound a maximum of 25 interrogatories on Defendant, and Defendant may propound a maximum of 25 interrogatories on Plaintiff. Responses will be due 30 days after service unless otherwise agreed pursuant to Federal Rule of Civil Procedure 29.

Requests for Production of Documents:

Plaintiff Proposes: Plaintiff may propound a maximum of 30 requests for production of documents on Defendant, and Defendant may propound a maximum of 30 requests on Plaintiff. Responses will be due 30 days after

service, unless otherwise agreed, pursuant to Federal Rule of Civil Procedure 29.

Requests for Admission:

Plaintiff Proposes: Responses will be due 30 days after service, unless otherwise agreed, pursuant to Federal Rule of Civil Procedure 29.

Depositions:

To streamline discovery, Plaintiff Proposes limiting depositions to 5 fact witness depositions per side of the case, plus depositions of any expert witnesses disclosed by any party. Each deposition will be limited to seven hours unless extended by agreement of the parties.

Electronic Information Disclosures:

Plaintiff Proposes: Documents are to be produced as they are kept in the ordinary course of business: in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata; documents stored as Excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

The parties will, where necessary, confer regarding the form of production and reasonable search terms, where applicable.

Disclosure Exemptions and Privileges:

Plaintiff Proposes: If any party asserts that a privilege, doctrine, statute, or rule exempts any discoverable material from an answer or production, in whole or in part, the party asserting the privilege will produce a log with sufficient information for the receiving party to assess the privilege claim without revealing the

exempted information. A privilege log must (1) state the basis for withholding each category of discoverable material; (2) sufficiently describe the subject matter of each category to permit the other party to evaluate the privilege or nondisclosure claim; (3) identify the date range; and (4) provide a list of all persons privy to the undisclosed discoverable material.

If a party inadvertently discloses discoverable material that is subject to a disclosure exemption, the inadvertent production shall not constitute waiver of the protection and the producing party may demand prompt return and destruction of the inadvertent production if the disclosure so qualifies under Federal Rule of Evidence 502(b).

Stipulation Regarding Evidence Protections:

Plaintiff will, to the extent necessary, confer with Defendant regarding entry of a stipulated order protecting the confidentiality of private or sensitive information.

OTHER ITEMS

Settlement and Mediation:

Plaintiff does not believe settlement or mediation is feasible in this action.

Trial Estimate:

5 days

Witnesses and Exhibits:

Plaintiff Proposes: Witness and exhibit lists, included in final pretrial statements, are due 10 days before final pretrial conference but not less than 30 days before trial. Objections are within 14 days after filing of final pretrial statements.

Preliminary Pretrial Conference:

Plaintiff believes a preliminary pretrial conference will be beneficial in this case.

Motion to Intervene:

On November 19, 2024, the Republican National Committee and New Hampshire

Republican State Committee moved to intervene as defendants. *See* ECF. No. 14. That Motion is ripe for hearing and decision.

Potential Consolidation:

On January 10, 2025, the Clerk filed a notice of potential consolidation with *Coalition for Open Democracy v. Formella*, No. 1:24-cv-00312 (D.N.H.). ECF No. 28. Any responses to the Notice are due by February 21, 2025.

Dated: January 27, 2025

Respectfully submitted,

/s/ Steven J. Dutton

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Counsel for Plaintiff

** Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 27th day of January 2025 on all parties of record via the Court's electronic filing system.

/s/ Steven J. Dutton

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