

No. 26-1740

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

NEW HAMPSHIRE YOUTH MOVEMENT; COALITION FOR OPEN DEMOCRACY;
LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE; FORWARD FOUNDATION;
STEVEN BORNE; *and* RUSSELL MUIRHEAD, *as father and next friend of Alexander
Muirhead and Lila Muirhead,*

Plaintiffs-Appellees,

McKENZIE NYKAMP TAYLOR; DECEMBER RUST; *and* STEVEN BORNE, *as father
and next friend of Miles Borne,*

Plaintiffs,

v.

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

Defendants-Appellants.

On Appeal from the District of New Hampshire, No. 1:24-CV-291
Hon. Samantha D. Elliott

**PLAINTIFF-APPELLEE NEW HAMPSHIRE YOUTH MOVEMENT'S
OPPOSITION TO MOTION TO STAY PENDING APPEAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiff-Appellee New Hampshire Youth Movement states that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

For decades, New Hampshire allowed eligible voters who did not have acceptable documents proving their citizenship to register to vote using a “qualified voter affidavit” or QVA, swearing to their citizenship under penalty of fraud. Many voters relied on QVAs to prove citizenship, including 10 percent of all registrants and 17 percent of first-time registrants in the months leading up to the 2024 election. But shortly after that election, House Bill 1569 took effect and eliminated QVAs. It did so despite the fact that even HB 1569’s proponents admitted that the QVA system worked well, and despite warnings that its elimination would have dire effects. The consequences were immediate: even in the far-lower-turnout municipal elections in 2025, would-be voters across the state were turned away for lacking acceptable proof-of-citizenship.

On May 28, 2026, after a nine-day bench trial held in February, Chief Judge Elliott enjoined HB 1569’s elimination of QVAs to prove citizenship. ECF 176 (Order).¹ The injunction was widely publicized, and voters across the state have been registering using the citizenship QVAs that Judge Elliott’s order restored. Secretary Scanlan waited more than three weeks to file a motion to stay in the district court. When he finally did move for a stay on June 19, he made no request for expedited treatment. *See* ECF 182. And when Judge Elliott denied that motion on July 22, the

¹ “ECF” citations reference the district court’s docket unless otherwise indicated.

Secretary waited another two weeks before seeking a stay from this Court on August

5. Again, he did not request expedited or emergency relief.

Secretary Scanlan's dilatory approach is unheard of in election litigation. After a three-judge court enjoined Texas's 2025 re-draw of its congressional map in November 2025, for example, Texas moved for a stay in the district court the next day, *see* Mot. to Stay, ECF 1440, *LULAC v. Abbott*, No. 3:21-cv-259 (W.D. Tex. 2025), and the matter was fully briefed in the Supreme Court seven days later, *see Abbott v. LULAC*, 146 S. Ct. 418 (2025). The Secretary took longer to even *file* his motion in the district court here than it took for the Texas matter to be *briefed and decided* at both the district court and the Supreme Court.

The result of the Secretary's extraordinary delay is that New Hampshire's September 8 primary is now barely three weeks away, and the general election is less than three months away. Were it not for the district court's Order, these would be the first statewide elections with HB 1569 in effect. The vast majority of new voters in New Hampshire register to vote on election day. Yet voters, civic groups, and local officials have had neither time nor reason to prepare for HB 1569's documentary proof-of-citizenship requirement, because it has been enjoined as unconstitutional since May. For months, the status quo has been the Order. *See Common Cause v. Gorbea*, 970 F.3d 11, 16 (1st Cir. 2020) (holding "the status quo" was the district court's challenged order where an election had been held under it).

The Secretary's "failure to present promptly" his stay motion provides reason alone to deny it. 1st Cir. R. 27.0(b). And the motion fails on the merits, too. The district court's ruling that New Hampshire's elimination of QVAs to prove citizenship unconstitutionally burdened the right to vote was strongly grounded in evidence that tens of thousands of New Hampshire voters rely on QVAs to prove their citizenship and many would be unable to vote without them, including the many voters turned away when HB 1569 was enforced in the 2025 municipal elections. At the same time, the Secretary's evidence that the elimination of citizenship QVAs served any state interest was extraordinarily weak, and the equities strongly favor the injunction.

At bottom, the Secretary's motion provides no justification for the "chaos that will ensue" if the district court's injunction, which has now been in force for months, is now set aside "in the crucial final weeks before an election." *Respect Maine PAC v. McKee*, 622 F.3d 13, 16 (1st Cir. 2010).

BACKGROUND

Because the Secretary offers an incomplete account of the relevant history, Youth Movement recounts the highlights.

I. Legal and Factual Background

Since 1994, New Hampshire has guaranteed eligible citizens the opportunity to register to vote on election day. Act of May 23, 1994, ch. 154:1, I, 1994 NH Laws

(HB 1506). By doing so, the State qualified for an exemption from the strict requirements of the National Voter Registration Act (“NVRA”). Order 6–7.

When New Hampshire enacted same-day registration, it also required voters to provide proof-of-citizenship, either using documentary evidence—a U.S. Passport, U.S. birth certificate, naturalization certificate, or a handful of other documents, in each case matching their current name—or by swearing to their eligibility with a citizenship affidavit—later named a QVA. Act of July 17, 1992, ch. 287, 1992 NH Laws (SB 321); Act of July 29, 2009, ch. 278:1, 2009 NH Laws (HB 265). Ever since, large numbers of voters have relied on QVAs to prove their citizenship when registering, including ten percent of all registrants, and 17 percent of new registrants, in the months before the 2024 election. *Infra* Argument § I.B.

HB 1569 was introduced against this backdrop. Despite repeated warnings that the law would make it harder—and, for many, impossible—to vote, as well as repeated concessions by even the bill’s supporters that the existing system “works very well,” HB 1569 passed and took effect in November 2024. Order 12. The concerns about the law quickly became reality in the following year’s municipal elections: Even in those low-turnout elections, it resulted in hundreds being turned away from the polls. Order 15–20.

In response, the legislature enacted House Bill 464 (2025), which exempted voters previously registered in-state and authorized searches of certain in-state

databases for citizenship records. *See id.* at 22. But undisputed gaps plague this “partial” solution: The Secretary’s guidance confirmed it “will not be able to prove the citizenship” of large swaths of the population. *Id.* at 22–32. And election officials testified to substantial practical problems if they had to search state databases for large numbers of new registrants on election day. Order 30–32; *see also, e.g.*, ECF 170 at 24–37 (collecting trial-record cites).

II. Procedural History

Ahead of the February 2026 trial, the parties negotiated a schedule all agreed would allow for relief (if warranted) to be ordered sufficiently in advance of the 2026 elections. Order 95–96. At trial, the Secretary again confirmed that relief could be implemented without disruption if ordered by early July. *Id.* at 96.

The final Order issued May 28, 2026. The district court first held that Youth Movement established standing. *Id.* at 47–54. On the merits, the court noted the “parties agree[d]” the “*Anderson-Burdick* framework” governs, and held HB 1569 in relevant part unconstitutional. *Id.* at 58–78. The court then concluded an injunction preventing enforcement statewide was warranted, finding such relief no “more expansive than is necessary,” and noting that the Secretary did “not argue” otherwise. Order 95–96. The court found that relief can be implemented with “no risk of confusion” since it was “ordered” well before “early July.” *Id.*

The Secretary did not seek a stay pending appeal from the district court until three weeks later. ECF 182. The district court denied the motion on July 22. The Secretary then waited two more weeks before moving in this Court on August 5.

LEGAL STANDARD

A stay is “not a matter of right,” but an “intrusion into the ordinary processes of administration and judicial review.” *New York v. Trump*, 133 F.4th 51, 65 (1st Cir. 2025) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). To obtain a stay, the Secretary must: (1) make a strong showing he is likely to succeed on the merits of his appeal; (2) show he will be irreparably harmed absent a stay; (3) show the stay will not injure other parties; and (4) show the stay serves the public interest. *Id.*

ARGUMENT

The Court should deny the motion. The Court is unlikely to reverse the district court’s fact-bound, evidence-backed Order, and the Secretary’s dilatory litigation conduct—culminating in a request for a stay from this Court mere weeks before the 2026 elections, months after citizenship QVAs again became available—wholly undermine his already weak showing on the remaining factors.

I. The Secretary is unlikely to succeed on the merits.

A. The district court correctly held Youth Movement has standing.

1. Organizational standing. Youth Movement has organizational standing because HB 1569’s elimination of citizenship QVAs impaired its core business activity of helping young people register and turn out to vote. As the district court

recognized, organizations may establish standing by showing that a challenged law “perceptibly impairs” their “core business activities.” Order 49–50 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); and *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024)). Such a “concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests.” *Havens*, 455 U.S. at 379. Youth Movement suffered just such an injury: its existing “core business activities” of helping young, New Hampshire voters register and turn out became more difficult when HB 1569 eliminated citizenship QVAs. Order 38–40. And relief preventing enforcement would eliminate these “perceptibl[e] impair[ments],” making Youth Movement’s injury redressable. *Id.* at 47–54.

The Secretary’s contrary argument fails to engage with the factual record showing that Youth Movement’s core business is mobilizing young voters and that HB 1569 made that business materially harder. As the district court found, Youth Movement’s core programs involve increasing turnout among college-age people by collecting pledges-to-vote and operating on-the-ground get-out-the-vote services like “rides to the polls.” *Id.* at 38–39. These programs “relied on the availability of the QVA” to prove citizenship, and became much more difficult after HB 1569 when it was “no longer the case” that “eligible” voters “would be able to vote regardless

of whether they possessed” documentary proof-of-citizenship. *Id.* at 39. Because Youth Movement’s “*business* activities” were impaired—not just its “ideological” goals, this case is fundamentally different from *Alliance for Hippocratic Medicine*, where the plaintiff had policy objections and chose to advocate against the challenged action, but that action did not directly impact the plaintiff’s own activities. 602 U.S. at 397.

The Secretary’s argument that Youth Movement “continues to engage in the core business activities that pre-existed HB 1569” misses the point. Mot. 10. In *Havens*, too, the plaintiff continued to operate a housing counseling service despite the defendant’s challenged actions—those actions just made it materially harder and more expensive. 455 U.S. at 368–69, 379. Youth Movement was not required to give up mobilizing voters to sue. And the Secretary has tellingly never attempted to distinguish similar cases. Order 51–52 (collecting cases); *see also Colorado-Montana-Wyoming NAACP v. Smith*, 180 F.4th 1266, 1275–76 (10th Cir. 2026) (collecting cases of “[s]everal other circuit courts”).

2. Associational standing. Youth Movement also established associational standing by showing (a) at least one of its members would have standing individually, (b) interests it seeks to protect are “germane to [its] purpose,” and (c) the claim and relief do not require individual participation. *Hunt v. Wash. State Apple*

Advert. Comm’n, 432 U.S. 333, 343 (1977). The Secretary suggests all three factors are contested but in fact challenges only the first. Mot. 12.

Youth Movement identified multiple members who were injured by having to comply with HB 1569 when registering to vote. ECF 188 at 8 (citing Day 2 AM Tr. 52:15–53:2). It makes no difference that they were ultimately *able* to register, Mot. 12, because “[t]he requirement that [someone] must produce documentary evidence to register to vote itself constitutes an injury.” Order 55 (citing *Fish v. Schwab*, 957 F.3d 1105, 1120 (10th Cir. 2020)); *see also Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009). And one member suffered an additional pocketbook injury when she had to drive home to retrieve her passport before registering to vote. ECF 154 (Day 3 AM Tr.) 33:6–9; *see, e.g., Angelo v. District of Columbia*, 180 F.4th 324, 330–31 (D.C. Cir. 2026) (holding additional cost of alternative transportation sufficient to establish standing).

To the extent the Secretary’s objection is that the identified members’ claims would be *moot* now that they are registered, *see* Mot. 12, that objection fails. The plaintiff is Youth Movement, not an individual member. To have associational standing, Youth Movement needed only to “identify members who *have suffered* the requisite harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 500 (2009) (emphasis added). It did so. Youth Movement exists to help register newly eligible voters, so the list of not-yet-registered members is ever changing, as new members join and

then register. And the record shows without contradiction that Youth Movement has other members who are not yet registered and who would invariably be injured by HB 1569 when they register. ECF 150 (Day 2 AM Tr.) 51:23–53:9.²

B. The district court correctly held the proof-of-citizenship requirement unconstitutional.

1. The district court properly applied the *Anderson-Burdick* framework.

This Court is unlikely to reverse the district court’s conclusion that HB 1569’s elimination of citizenship QVAs unconstitutionally burdened voting rights, a question that turns on “factual determination[s]” reviewed only for clear error. *Baines v. Bellows*, 573 F. Supp. 3d 365, 384 (D. Me. 2021) (alteration in original) (quoting *Wash. St. Grange v. Wash. St. Rep. Party*, 552 U.S. 442, 458 (2008)).

a. HB 1569 imposed significant burdens on voting rights.

The district court’s burden findings rested on a developed trial record showing heavy reliance on citizenship QVAs in New Hampshire’s same-day registration system. In the months before HB 1569 took effect, for example, 14,737 registrants—more than 10 percent of all registrants and 17 percent of first-time registrants—used QVAs to prove citizenship. Order 61. Under then-existing New Hampshire law, they would have done so only because they did not have acceptable documentary proof-

² Even if mootness focused on *identified* members alone, the dispute would fall within an exception for harms “capable of repetition yet evading review.” See Order 57 (citing *La Botz v. FEC*, 889 F. Supp. 2d 51, 59 (D.D.C. 2012) (quoting *Moore v. Hosemann*, 591 F.3d 741, 744 (5th Cir. 2009))).

of-citizenship with them. *See* RSA 654:12, I(a) (eff. through Nov. 10, 2024). The trial record also explained *why* so many voters lacked proof: many voters do not possess any of the limited set of acceptable documents (such as a U.S. Passport or birth certificate matching their current name), and even those who in-theory have such documents do not regularly carry them and are not able to access them quickly. Order 13–14, 61–64.

Thus, while the Secretary points to Dr. Herron’s estimate that most eligible voters “possess” an acceptable form of documentary proof-of-citizenship, Mot. 32–33, the Secretary ignores Dr. Herron’s accompanying findings that *tens of thousands* of eligible voters do not possess such proof, and that even many voters who possess documentary proof do not have ready access to it, Order 12, 63. For example, only about 11 percent of passport holders and 7 percent of birth-certificate holders regularly carry such documents with them, and substantial numbers of voters would need multiple days to retrieve them. *Id.* at 63–64. Voters who use election-day registration—which is heavily relied upon in New Hampshire due to the state’s unique voter-registration systems—have little time to obtain or retrieve necessary documents if they do not have them with them when they go to vote. *Id.* at 65.

Testimony from voters, including Youth Movement members, confirmed these problems. Kara Montagano did not own a passport and stored her birth certificate with her parents two hours away—she was able to register and vote on

election day in November 2024 only by using a QVA. Order 13; *see* Day 3 AM Tr. 15:24–16:10. In the March 2025 elections under HB 1569, Tess Sumner—who does own a passport—had to detour home after school to obtain it from her mother’s safe and would have been unable to vote if her mother had not been home to unlock it. Order 13–14; *see* Day 3 AM Tr. 31:1–25.

Moreover, the record also shows that when HB 1569 was implemented in the 2025 municipal elections, hundreds of voters were turned away because they did not have acceptable proof-of-citizenship with them. Order 65–66. The record confirms that the problem is likely to be far worse in statewide and federal elections, with their much higher turnout. *Id.*

The Secretary retorts that the aspect of the burden that flows from same-day registration is self-imposed, complaining that those who “choose to wait until election day” inflict “personalized and idiosyncratic burdens” upon themselves that should not be attributed to the law. Mot. 22. But that argument ignores the central role that same-day registration plays in New Hampshire elections. New Hampshire voters are legally entitled to register on election day, Order 6–7, and the existence of election-day registration means that New Hampshire is exempt from the NVRA, and thereby not required to offer pre-election-day registration at motor vehicle offices, by mail, or in other ways available in most states. *See id.* at 64–65. The Secretary’s motion does not even acknowledge this. *See* Mot. 20–24.

Finally, the Secretary does not even attempt to argue that he will succeed in showing that the so-called “solution” offered by HB 464 changes the equation, *see* Mot. 19–26, nor could he, as he conceded at trial that the system cannot help broad swaths of the population—particularly those who are new to New Hampshire, and for that reason especially likely to be registering to vote—and that it causes problems of its own, Order 65.³

b. HB 1569 did not advance the asserted state interests.

The Secretary’s state-interest arguments likewise fail. The district court did not deny that “New Hampshire’s interest in counting only the ballots of eligible voters is, at a minimum, important.” Mot. 23. Just the opposite: as the Secretary later acknowledges, the court expressly held that the Secretary’s asserted interests in election integrity, voter confidence, and protecting resources are legitimate interests “in the abstract.” Order 72–73, 78.

The problem for the Secretary was not that the interests are not legitimate or even important, but that the record showed HB 1569’s elimination of citizenship QVAs did not “meaningfully serve” them, and “may have actually harmed” them.

³ Without explanation, the Secretary also cites a recent amendment to RSA 654:12 that authorizes the use of additional databases, including out-of-state and federal databases, to try to prove citizenship. Mot. 1. The scope, effect, and implementation of that law are not in the trial record, which the Secretary made no effort to supplement. The Secretary’s reliance on those additional databases is therefore waived. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

Order 78. The Secretary says nothing about that and therefore fails to address the district court’s actual holding, which properly considered whether the challenged law was “reasonably justified” by the “precise interests put forward by the State.” *Gorbea*, 970 F.3d at 14 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)); *accord Fish*, 957 F.3d at 1122 (similar); *Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 316 (3d Cir. 2025), *cert. pet. filed*, No. 25-967 (U.S. Feb. 17, 2026) (similar).⁴

The election-integrity record illustrates the point. The district court found at most eight identified noncitizens who may have cast ballots in New Hampshire from 1998 through 2024, only three of whom may have used QVAs in proving their citizenship. *Id.* at 74–75. The far more common problem was election-worker error, including workers on multiple occasions accepting lawful permanent-resident cards as proof-of-citizenship. ECF 155 (Day 5 AM Tr.) 43:23–45:9. Indeed, both the Secretary and his deputy testified at trial that HB 1569 could *not* have prevented almost *any* of the very little non-citizen registration that New Hampshire had ever experienced. Order 74–75.

⁴ Nor did the court hold that every election law must have a “safety valve.” Mot. 23. It considered the absence of an effective alternative, because the Secretary argued HB 464 and the broader scheme mitigated burdens. *Id.* at 68–73; *see Fish*, 957 F.3d at 1129 (noting that, “unlike the Indiana law in *Crawford*, an eligible Kansas applicant [did] not have the option to fill out a provisional ballot, produce DPOC after the election, and have their ballot counted”).

The voter-confidence rationale also failed. The district court agreed that voter confidence matters, but it found that no evidence supported the Secretary's theory that eliminating QVAs improved confidence. Order 75–76. The Secretary's own surveys showed high confidence in elections both before and after HB 1569, and expert evidence further showed that turning eligible voters away likely *reduced* confidence, something the Secretary did not dispute. *Id.* at 76. The record also showed that, when the Secretary convened a commission to study voter confidence, it had many recommendations but none related to proof-of-citizenship. *Id.* at 35–36.

Nor did the district court err in rejecting the public-fisc rationale. The Secretary argued that eliminating citizenship QVAs saved the state money on investigating the QVAs after-the-fact, but the state's witnesses admitted that the state had in fact never done such investigations for citizenship QVAs. Order 76–77. By contrast, implementing HB 1569 created significant additional costs like vendor fees and greater staff time. *Id.* at 77–78. The court thus reasonably found that eliminating citizenship QVAs would not meaningfully conserve state resources.

For these reasons and those stated in the Order, the Secretary is not likely to succeed on the merits.

2. The district court applied the correct legal standard.

The Secretary waived his separate argument that the district court “did not apply the correct standard for considering facial challenges,” Mot. 15, by failing to

assert this facial-challenge-based defense in his pretrial statement. To prevent unfair surprise, the district court ordered the Secretary to file a brief statement of all “legal defenses on which [he] intend[s] to rely,” including “the legal tests or burdens relative to each defense.” Minute Order (Jan. 20, 2026). In his filing, the Secretary said nothing about a defense based on this being an inappropriate “facial challenge.” *See* ECF 124. Indeed, even his post-trial briefing raised the facial challenge issue only “in conclusory fashion.” Order 60 n.20. That is insufficient to preserve the issue for appeal. *Zannino*, 895 F.2d at 17.

Regardless, the Secretary’s legal-standard argument is meritless. Rhetoric aside, the Secretary’s argument turns on an assertion that HB 1569 caused only “ordinary and widespread inconveniences,” analogous to the ordinary voter-identification law at issue in *Crawford*. Mot. 16. But the district court found otherwise, based on evidence of widespread reliance on citizenship QVAs and substantial chaos in low-turnout municipal elections after they were eliminated. Order at 15–20, 65–68. The district court’s “facial” analysis was properly grounded in the *Anderson-Burdick* test: The Supreme Court and this Court have held that courts apply *Anderson-Burdick* to determine whether or not a challenged law or practice has “plainly legitimate sweep.” *Libertarian Party of N.H. v. Gardner*, 843 F.3d 20, 24–25 (2016) (discussing *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 202 (2008) and *Wash. St. Grange*, 552 U.S. at 448).

The Secretary wrongly contends that *Crawford* held that a “law [with] broad application to all voters” cannot impose significant burdens. Mot. 16 (quoting 553 U.S. at 203). In fact, it held only that the Indiana law’s broadly applicable burdens were not severe. *See Crawford*, 553 U.S. at 202–03 (“*When we consider only the statute’s broad application to all Indiana voters we conclude that it imposes only a limited burden on voters’ rights.*” (emphases added)). In arguing otherwise, the Secretary principally relies on Justice Scalia’s concurrence. Mot. 17. But as this Court and others have held, that concurrence’s approach did not garner the support of five justices and is not the controlling opinion. *See Gardner*, 843 F.3d at 31 n.6; *Fish*, 957 F.3d at 1120; *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012).

C. The injunction is proper.

Finally, the Secretary’s argument that the relief exceeded the district court’s authority is baseless. This argument, too, was waived, as the Secretary’s pretrial statement of defenses said nothing about equitable authority precluding Youth Movement’s relief, which was always for an injunction of that scope. ECF 124; *see* ECF 50 (Amended Complaint) at 32, and even the Secretary’s posttrial brief omitted any challenge to the that relief, Order 95; *see, e.g., Planned Parenthood v. Kennedy*, No. 1:25-cv-11913, 2025 WL 2495955, at *5 (D. Mass. Aug. 29, 2025) (holding arguments first raised in a post-judgment stay motion are not properly before the court) (collecting authority).

The argument is also wrong on the merits. The Secretary nowhere explains how “the court went much further than simply declaring HB 1569 unconstitutional and enjoining [him] from enforcing it.” Mot. 27. The district court did no more than enjoin implementation of an unconstitutional provision of law. Order 97. The straightforward consequence of enjoining the unconstitutional repeal here was that the repealed provision remains in effect. *See Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 631 (2020) (citing *Frost v. Corp. Comm’n*, 278 U.S. 515, 527 (1929)); *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th 295, 321–22 (1st Cir. 2024) (finding instructive “the general rule . . . ‘that a void act cannot operate to repeal a valid existing statute,’ meaning that the existing statute ‘remains in full force and operation as if the repeal had never been attempted’” (quoting *LaRoque v. Holder*, 650 F.3d 777, 791 (D.C. Cir. 2011))).

The Secretary likewise offers no basis to conclude that the Order is not narrowly tailored to redress Plaintiffs’ harms. Having found the law unconstitutional, the court had authority to enjoin enforcement and order relief sufficient to prevent the violation from harming Plaintiffs. *See, e.g., Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025). Redressing the harm to Plaintiffs—organizations with members and mobilization programs targeting eligible New Hampshire voters statewide—required statewide relief. *See id.* at 853 (recognizing “complete relief”

for named plaintiff may require broader injunction). The Secretary never argued for anything less. Order 97; *see* ECF 169.

The Secretary gives up the game when he explains what lessor relief the court could “[p]erhaps” order: requiring acceptance of “registrants who *bring notarized sworn affidavits* as proof of citizenship” when they come to vote. Mot. 29 (emphasis added). Such a procedure would certainly be more *burdensome* than restoration of citizenship QVAs—it would require advance planning, a separate trip to a notary, and often payment of a fee. But in no sense is it *narrower*. Unlike restoration of citizenship QVAs, which is the current status quo, the Secretary’s proposal would be made up out of whole cloth. And a notarized affidavit that a voter brings with them provides the same proof-of-citizenship as a QVA—the voter’s word, given under legal penalty for lying, after showing identification to prove they are who they say. The only reason anyone would want to require a notarized affidavit instead of a QVA is if their goal were simply to make it harder to vote.

II. The equities and public interest strongly disfavor a stay.

A. The Secretary will not be harmed absent a stay.

The Secretary’s “delay in . . . seeking a stay vitiates much of the force of [his] allegations of irreparable harm.” *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977). The Secretary’s motion to stay inexplicably comes more than two months after the final Order issued, and the Secretary provides no justification for that

substantial delay—a deficiency that alone warrants outright denial. 1st Cir. R. 27.0(b) (“Motions for stay . . . may be denied for failure to present promptly”). That is particularly so with the primary now just three weeks away, and the general election in less than three months.

The Secretary’s assertion that the state “will . . . be irreparably harmed if it must revive” citizenship QVAs, Mot. 7, ignores that this has already happened: during the more than two months since the Order, citizenship QVAs have been available to registrants, but the Secretary points to no concrete harm that has resulted. Nor does the Secretary show irreparable harm merely “because the mandatory injunction prevents [the State] from implementing its duly enacted laws.” Mot. 29. An order enjoining enforcement of an unconstitutional law cannot cause the government harm. *Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025); *State v. HUD*, 171 F.4th 473, 492 (1st Cir. 2026).

B. Youth Movement and voters will suffer irreparable harm if a stay is granted.

The Secretary also fails to show that a stay would *not* harm Plaintiffs and the public. His analysis oddly focuses only on certain individual plaintiffs, ignoring injuries to Youth Movement and other parties. Mot. 32. Yet a stay will irreparably harm Youth Movement’s ability to implement its core voter-registration programs, and this harm is especially salient with the upcoming 2026 elections looming.

As explained, Youth Movement runs core programs to increase voter participation that would be less effective under HB 1569. *Supra* Argument § I.A. There can be “no do over” for those losses. *E.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (quoting *League of Women Voters v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014)) (holding harm to organizational interests in voter-registration programs constitutes irreparable harm); *LULAC v. EOP*, 808 F. Supp. 3d 29, 85 (D.D.C. 2025) (similar).

By waiting to seek a stay, the Secretary only magnified the disruption: in the weeks since the Order, residents have registered to vote, officials have revised their registration practices, and organizations like Youth Movement have already updated their plans and materials for their 2026 election programming. They have had no reason to prepare to comply with an unconstitutional requirement that has been enjoined since May.

C. A stay would not serve the public interest.

Finally, and for similar reasons, the public interest disfavors a stay. “The public interest [] favors permitting as many qualified voters to vote as possible.” *Husted*, 697 F.3d at 437; *see Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Here, the trial record showed substantial harm to voting rights from HB 1569’s elimination of QVAs, and it makes abundantly clear that far greater harm looms if that provision remains in effect during the imminent and much higher-turnout elections. Order 96.

While the Secretary cites century-old decisions for the general proposition that legislative enactments reflect the public interest, Mot. 32–33, each (unlike this case) involved constitutionally valid legislation, *see Virginian Ry. Co. v. Sys. Fed.*, 300 U.S. 515, 554–59 (1937); *Atkin v. State of Kansas*, 191 U.S. 207, 224 (1903).

CONCLUSION

The Secretary’s motion to stay pending appeal should be denied.

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CERTIFICATE OF COMPLIANCE

This response complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,184 words, excluding the parts exempted by Rules 27(d)(2) and 32(f). It also complies with the typeface and style requirements of Rule 32(a)(5)–(6), because it was prepared in Microsoft Word in 14-point Times New Roman font, a proportionally spaced typeface.

/s/ David R. Fox

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I certify that on August 17, 2026, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the First Circuit using the appellate CM/ECF system. All participants in this case are registered CM/ECF users and service will be accomplished by the Court's electronic filing system.

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