No. 26-1740

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NEW HAMPSHIRE YOUTH MOVEMENT,

Plaintiff-Appellee

v.

DAVID M. SCANLAN, in his official capacity as New Hampshire Secretary of State,

Defendant-Appellant

COALITION FOR OPEN DEMOCRACY; LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE; THE FORWARD FOUNDATION; MCKENZIE NYKAMP TAYLOR; DECEMBER RUST; MILES BORNE; A.M., by his next friend Russell Muirhead; and L.M., by her next friend Russell Muirhead,

Plaintiffs-Appellees

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

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS AND URGING REVERSAL ON THE ISSUES RAISED HEREIN

(See inside cover for continuation of Counsel)

(Continuation of Counsel)

ERIN CREEGAN
United States Attorney
District of New Hampshire
53 Pleasant Street
4th Floor
Concord, NH 03301

CRAIG W. TRAINOR
Acting Assistant Attorney General

ANDREW G. BRANIFF
MICHAEL T. HAYES
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 805-7671

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TABLE OF CONTENTS

PAGE

INTEREST OF THE UNITED STATES 1

STATEMENT OF THE ISSUE 2

SUMMARY OF ARGUMENT 2

ARGUMENT

I. The district court erroneously treated *Anderson-Burdick* as a one-way ratchet. 5

II. Voters' failure to comply with reasonable registration requirements does not create an unconstitutional burden under *Anderson-Burdick* 9

III. The Fourteenth Amendment does not impose disparate-impact liability. 14

A. The district court erroneously focused on impact, not burden. 15

B. A disparate impact alone can never violate the Fourteenth Amendment. 20

IV. The district court's opinion chills efforts to combat fraudulent voting. 22

CONCLUSION 26

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

CASES: **PAGE**

Anderson v. Celebrezze, 460 U.S. 780 (1983) 3, 6, 15

Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013) 7, 14

Brnovich v. Democratic Nat'l Comm., 594 U.S. 647 (2021) 24

Buckley v. American Const. Law Found., Inc.,
525 U.S. 182 (1999) 23

Burdick v. Takushi, 504 U.S. 428 (1992) ..... *passim*

City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985) 21

Clingman v. Beaver, 544 U.S. 581 (2005) 6, 11-12

Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979) 21

Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008) ..... *passim*

Eu v. San Francisco Cnty. Democratic Cent. Comm.,
489 U.S. 214 (1989) 23

Frank v. Walker, 768 F.3d 744 (7th Cir. 2014) 24

Gill v. Scholz, 962 F.3d 360 (7th Cir. 2020) 17

Gonzalez v. Arizona, 485 F.3d 1041 (9th Cir. 2007) 20

Libertarian Party of N.H. v. Gardner,
638 F.3d 6 (1st Cir. 2011) 5

Libertarian Party of N.H. v. Gardner,
843 F.3d 20 (1st Cir. 2016) 7, 9

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CASES (continued): **PAGE**

Luft v. Evers, 963 F.3d 665 (7th Cir. 2020) 8, 17

Melendez-Garcia v. Sanchez, 629 F.3d 25 (1st Cir. 2010) 20-21

Nixon v. Missouri Mun. League, 541 U.S. 125 (2004) 7

Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256 (1979) 20

Purcell v. Gonzalez, 549 U.S. 1 (2006) (per curiam) 23

Reynolds v. Sims, 377 U.S. 533 (1964) 23

Rosario v. Rockefeller, 410 U.S. 752 (1973) 12

Smith v. Shalala, 5 F.3d 235 (7th Cir. 1993) 21-22

Storer v. Brown, 415 U.S. 724 (1974) 12, 14, 16, 23

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997) 18

Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977) 20

Washington v. Davis, 426 U.S. 229 (1976) 21

STATUTES:

18 U.S.C. 611(a) 1

18 U.S.C. 1015(f) 1

52 U.S.C. 10307 1

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STATUTES (continued): **PAGE**

52 U.S.C. 20511 1

Del. Code Ann. tit. 15, § 5502 (West 2026) 8

H.B. 1569 (N.H. 2024) ..... *passim*
N.H. Rev. Stat. Ann. § 654:12 1

H.B. 346, 150th Gen. Assemb., 2d Reg. Sess. (Del. 2020) 8

REGULATION:

90 Fed. Reg. 14,005 (Mar. 25, 2025)
Preserving and Protecting the Integrity of American Elections, Exec. Order No. 14,248 1

RULE:

Fed. R. App. P. 29(a)(2) 2

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INTEREST OF THE UNITED STATES

"Free, fair, and honest elections unmarred by fraud, errors, or suspicion are fundamental to maintaining our constitutional Republic." *Preserving and Protecting the Integrity of American Elections*, Exec. Order No. 14,248, 90 Fed. Reg. 14,005 (Mar. 25, 2025). That is why federal law prohibits fraudulent voting in federal elections. *See* 18 U.S.C. 611(a), 1015(f); 52 U.S.C. 10307, 20511. The United States supports citizenship-verification requirements and other state regulations that secure elections and frustrate illegal voting. New Hampshire's House Bill 1569 (H.B. 1569), enacted in 2024 and codified in relevant part at N.H. Rev. Stat. Ann. § 654:12, is one such regulation. It is a commonsense statute designed to deter fraud and thereby promote public confidence in New Hampshire's elections. The district court misapplied the *Anderson-Burdick* test by enjoining H.B. 1569, finding that the elimination of Qualified Voter Affidavits (QVAs) resulted in a disparate impact on young voters and married women. Its injunction distorts basic principles of Fourteenth Amendment law and threatens to chill similar state and federal election-integrity measures. The United States therefore files this

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amicus brief in support of defendants-appellants under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUE

Whether H.B. 1569 violates the Fourteenth Amendment because of its disparate impact on young voters and married women.

SUMMARY OF ARGUMENT

As do several other States, New Hampshire requires prospective voters to prove that they are American citizens to register to vote. No one argues that this registration requirement is unconstitutional. Plaintiffs do not assert an unqualified constitutional right to register without proving citizenship, and the district court did not recognize one. Order 1.[1]

This case arises only because New Hampshire formerly allowed voters to prove their citizenship using QVAs, but now it does not.[2]

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[1] "Order _" refers to the district court order on appeal, Doc. 176, No. 1:24cv291 (D.N.H. May 28, 2026), and pincites to the Order refer to that document's internal pagination.

[2] The United States takes no position on the related question whether "[H.B.] 1569's elimination of the CVA [Challenged Voter Affidavit] as an acceptable response to voter challenges will also burden New Hampshire voters" in violation of the Fourteenth Amendment. Order 78.

Misapplying the *Anderson-Burdick* test, the district court held that New Hampshire violated the Fourteenth Amendment by eliminating the use of QVAs as an acceptable means of proving citizenship. Order 4, 58-78. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). In the district court's view, New Hampshire was under no obligation to accept QVAs in the first place, but once it did so, it is forbidden from reversing course. Apparently, New Hampshire must continue to accept QVAs indefinitely.

The district court erred for the reasons explained by New Hampshire. N.H. Br. 45-75.[3] Under the *Anderson-Burdick* test, the State's law pursues valid ends and a reasonably diligent voter can comply with its requirements. Requiring voters to comply with neutral state election law registration requirements is "eminently reasonable." *See Burdick*, 504 U.S. at 440 n.10 (explaining that, in a ballot-access case, limiting access to "those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable"). The United States

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[3] "N.H. Br. __" refers to Appellants' Opening Brief and to the internal pagination therein.

submits this amicus brief to highlight three additional reasons why this Court should reverse.

First, the district court imposed a one-way ratchet under which States face increased constitutional scrutiny when tightening election-security regulations. Its holding that New Hampshire cannot eliminate a means of proving citizenship that it was unobligated to allow in the first place has no basis in the Constitution, law, or precedent.

Second, contrary to the district court's analysis, voters' failure to comply with reasonable registration requirements does not create a severe burden under *Anderson-Burdick*. Although the district court found that some voters do not regularly possess or carry citizenship documents, it never held that a reasonably diligent prospective voter could not, with reasonable planning, obtain one of the many citizenship documents that New Hampshire accepts.

And third, the district court adopted a novel theory of Fourteenth Amendment liability by focusing on H.B. 1569's disparate *impact* on the unprotected classes of young voters and married women rather than the statute's identical and minimal *burden* on all voters. Impact and burden are distinct concepts. Supreme Court precedent directs courts to assess

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the burden a law imposes on voters generally, not its varying impact on particular groups, and disparate impact alone cannot establish a Fourteenth Amendment violation. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 207 (2008) (Scalia, J., concurring in the judgment).

By enjoining H.B. 1569, the district court has undermined New Hampshire's interest in and obligation to guarantee free, fair, and secure elections. It has opened the door for other unprotected classes to succeed on disparate-impact challenges to reasonable election regulations. Because the district court's theory contravenes *Crawford*, the *Anderson-Burdick* test, and the Fourteenth Amendment, this Court should reverse.

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ARGUMENT

I. The district court erroneously treated *Anderson-Burdick* as a one-way ratchet.

Courts "review . . . Fourteenth Amendment claims under the sliding scale approach announced by the Supreme Court in *Anderson* . . . and *Burdick*." *Libertarian Party of N.H. v. Gardner*, 638 F.3d 6, 14 (1st Cir. 2011) (*Gardner I*). Under this test, courts "first consider the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate" and then balance this injury against "the precise

interests put forward by the State as justifications for the burden imposed by its rule." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

The results of the test are clear here. Supreme Court precedent makes clear that "burdens are not severe if they are ordinary and widespread." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 206 (2008) (Scalia, J., concurring in the judgment) (discussing *Clingman v. Beaver*, 544 U.S. 581 (2005)). And the Constitution does not prevent States from imposing uniform, non-discriminatory registration rules, unless a "reasonably diligent" voter cannot comply with the law's requirements. *See id.* at 206-207; *see also id.* at 198 (opinion of Stevens, J.) (recognizing the legitimate "usual burdens of voting," including "gathering the required documents"). And indeed, "[m]any electoral regulations, including voter registration generally, require that voters take some action to participate in the [electoral] process." *Clingman*, 544 U.S. at 593. As New Hampshire correctly argues, H.B. 1569 does not unconstitutionally burden the right to vote under the *Anderson-Burdick* test. N.H. Br. 45-75.

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But the district court's contrary holding seemingly turns *Anderson-Burdick* into a "one-way ratchet": a State may "give the power" to accept

a particular means of proving citizenship, "but it could not take it away later." *Nixon v. Missouri Mun. League*, 541 U.S. 125, 137 (2004). As a starting point, States are not required to permit proof of citizenship through affidavits or attestation. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013) (explaining that "state-developed [voter registration] forms may require information," *e.g.*, documentary proof of citizenship, that "the [NVRA-governed] Federal Form does not"). The district court neglected this fact, thus giving the impression that the State's *reversal* regarding the previously permissible QVAs, and not New Hampshire's registration requirements themselves, resulted in the "unjustifiable burden" finding. Order 78. *See Libertarian Party of N.H. v. Gardner*, 843 F.3d 20, 32 (1st Cir. 2016) (*Gardner II*) ("[I]f the current regime would have withstood challenge had it been enacted now as a whole, we can see no reason why it should fail if developed over time by amendment."). But because New Hampshire once accepted QVAs, the Fourteenth Amendment supposedly prevents it from reversing course.

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This creation of a one-way ratchet under *Anderson-Burdick* is unfounded. If a State can "make changes" to lawful election regulations, it also "can restore the original rules or revise the new ones" without

triggering a "constitutional ratchet." *Luft v. Evers*, 963 F.3d 665, 670 (7th Cir. 2020). Accordingly, under the *Anderson-Burdick* test, courts evaluate the burden imposed by an election regulation; they do not compare that burden to the pre-regulation status quo. *See*, *e.g.*, *Luft*, 963 F.3d at 676 (holding statute's elimination of one form of proof of residence did not violate *Anderson-Burdick*). Otherwise, election regulation would be a one-way street in which States are permitted to progressively loosen regulations but face considerable, if not insurmountable, legal barriers when tightening regulations in response to new concerns or realizations.

Consider COVID-19 regulations. Before the pandemic, many States required voters to provide a valid excuse such as illness, disability, or military service to vote absentee. Several of these States amended their laws during the pandemic to allow no-excuse absentee voting, but later restored their pre-pandemic laws. *Compare, e.g.*, H.B. 346, 150th Gen. Assemb., 2d Reg. Sess. (Del. 2020) (expired Jan. 12, 2021), *with* Del. Code Ann. tit. 15, § 5502 (West 2026). The district court's one-way ratchet suggests that voters disparately impacted by the repeal or expiration of pandemic-era measures may have a constitutional right to vote by mail forever. After all, these States "remove[d] one of the methods previously

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available" for voting. Order 1. And the abolition of temporary absentee voting imposes a heavier impact on young voters than on older voters because young voters are less likely to qualify for post-pandemic absentee-voting excuses such as illness or physical disability.

States have the authority to impose new election-integrity measures or repeal earlier measures that weakened election integrity. The Fourteenth Amendment does not permanently freeze state law at its most lenient point, nor does it confer upon voters a constitutional right to the most relaxed regulations that once existed. *See Gardner II*, 843 F.3d at 32 (holding that the burden of amended ballot-access rules should be weighed against all justifications for the State's overall ballot-access regime, rather than the justification for the amendment); *cf.* Order 34, 72-73 (examining only the State's justification for H.B. 1569). The district court erred in divining a rule instructing otherwise.

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II. Voters' failure to comply with reasonable registration requirements does not create an unconstitutional burden under *Anderson-Burdick*.

Setting aside the ratcheting effect of the district court's decision, the district court also erred by applying heightened scrutiny to the at-issue neutral, nondiscriminatory registration requirements, finding that

they unconstitutionally imposed "significant[] burden[s]" on New Hampshire voters. Order 60-61.

Burdick squarely rejected the claim that election regulations impose severe burdens and violate the Constitution merely because they "impose[] any burden upon the right to vote." *Burdick v. Takushi*, 504 U.S. 428, 432 (1992). Reasonable, nondiscriminatory voter registration requirements impose limited, constitutional burdens under *Anderson-Burdick*, even if the requirements "prevent[] a significant number of voters" who fail to comply with state law "from participating" in a state's elections. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 190 (2008) (opinion of Stevens, J.) (citation omitted).

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Voters are expected to comply with many basic, state-law requirements to vote—requirements that may result in a prospective voter being unable to cast a ballot. *See Crawford*, 553 U.S. at 198 (opinion of Stevens, J.). Take a law that requires voters to register 14 days before election day. That law prevents a voter who attempts to register 13 days before election day from casting a ballot. But the Supreme Court has never held that such neutral, nondiscriminatory registration provisions impose an "excessively burdensome requirement[]" on the right to vote

that triggers a State's heightened evidentiary burden under *Anderson-Burdick*. *Crawford*, 553 U.S. at 191-197, 202 (opinion of Stevens, J.) (citation omitted).

The Supreme Court's decision in *Clingman v. Beaver* illustrates the point. 544 U.S. 581 (2005). There, Oklahoma law required voters to register for a party's primary elections almost two months before election day. *Id.* at 605-606 (O'Connor, J., concurring in part and concurring in the judgment). Failure to comply with the registration deadline foreclosed individuals from voting in the primary election. But the Court still rejected the voters' constitutional challenge. As the Court explained, "[m]any electoral regulations, including voter registration generally, require that voters take some action to participate" in an election. *Id.* at 593. And Oklahoma's registration law passed muster because, "with only nominal effort," voters could comply with state law and vote. *Id.* at 590-591 (plurality opinion). That voters who failed to comply with the registration deadline could not vote did not turn the "slight[]" burden imposed by Oklahoma's law into a "severe," unconstitutional burden. *Id.* at 590.

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By their very nature, registration requirements work to regulate access to the ballot box.[4] And the Supreme Court has long upheld registration requirements that result in preventing certain persons from voting if they fail to comply with state law. *See, e.g.*, *Clingman*, 544 U.S. at 590-593; *Rosario v. Rockefeller*, 410 U.S. 752, 760-762 (1973) (upholding requirement that voters change party registration 11 months before the primary election). For those requirements, the constitutional question is whether "a reasonably diligent" prospective voter could "be expected to satisfy" the state's registration requirements. *Storer v. Brown*, 415 U.S. 724, 742 (1974).[5]

The district court's key error was its failure to engage in any of this analysis. Although the district court found that some voters do not

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[4] Recognizing that H.B. 1569 works as a voter registration requirement demonstrates that the district court's focus on New Hampshire's lack of provisional ballots is beside the point. Although Justice Stevens' opinion in *Crawford* noted the availability of curing a photo-identification error through the use of provisional ballots, registration requirements are categorically different.

[5] The same is true for laws requiring a registered voter to present a photo ID to cast a ballot. For example, in *Crawford*, it was no defense to the state law's requirements that the State would not count a provisional ballot if the voter failed to travel to the clerk's office for follow-on procedures within ten days. 553 U.S. at 186.

regularly possess or carry citizenship documents, it never held that "a reasonably diligent" prospective voter could not, with reasonable planning, *obtain* one of the many citizenship documents that New Hampshire accepts. For example, the court concluded that some college students may not possess citizenship documents *on election day*. Order 61-66 (relying on prospective voters who wait until election day to register and concluding that some voters "cannot retrieve their [citizenship] documents within one day"). But nothing in state law requires voters to wait until election day to register. And nothing prevents "a reasonably diligent" college student from planning ahead and acquiring citizenship documents prior to election day.[6]

As *Burdick* itself recognized, States may impose "reasonable regulation of elections" that "require[s] [voters] to act in a timely fashion if they wish to express their views in the voting booth." 504 U.S. at 438. And the district court did not address the fact that the Supreme Court

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[6] Indeed, most, if not all, voters identified by the district court were voters who waited to register to vote until election day. *See, e.g.*, Order 61, 63-66 (concluding that the overwhelming majority of voters affected by the elimination of QVAs are voters who wait until election day to register).

has countenanced state election regulations that prevent proof of citizenship through attestation. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013) ("These state-developed [voter-registration] forms may require information the Federal Form does not.").

The Constitution does not require "instant[] access to the ballot." *Burdick,* 504 U.S. at 437 (quoting Storer, 415 U.S. at 736). Because a reasonably diligent prospective voter can comply with New Hampshire's registration requirement by planning ahead before election day, the Court should reverse. The district court's alternative conclusion that a registration requirement "that imposes any restraint" on a prospective voter's ability to register and cast a ballot imposes an unconstitutional burden "is simply wrong." *Id.* at 440 n.10.

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III. The Fourteenth Amendment does not impose disparate-impact liability.

The district court erred by enjoining H.B. 1569 based on its finding that "[H.B.] 1569's elimination of the QVA to prove citizenship will have a particularly detrimental impact on young residents and married women." Order 61. Specifically, the court found that "[y]oung people aged 17 to 24 relied on QVAs to prove citizenship at higher rates than other

groups" (*ibid.*), and that "[m]arried women are disproportionately burdened because the names on their [proof of citizenship] often do not exactly match their current names" (Order 67). Reasoning that laws that "place[] a particular burden on an identifiable segment of voters are more likely to raise constitutional concerns" (Order 68 (internal quotation marks and citation omitted)), the court held that H.B. 1569 violates the Fourteenth Amendment (Order 78). In doing so, the court supplanted the *Anderson-Burdick* balancing test with an inquiry improperly focused on the law's impact on two unprotected classes of voters.

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A. The district court erroneously focused on impact, not burden.

The key question in the *Anderson-Burdick* inquiry is whether and to what extent an electoral regulation burdens voters. All "[e]lection laws will invariably impose some burden upon individual voters." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *see also Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (explaining that election laws "inevitably affect[]—at least to some degree—the individual's right to vote and his right to associate with others for political ends"). Thus, the applicable standard "depends upon the extent to which a challenged regulation burdens . . .

Fourteenth Amendment rights." *Burdick*, 504 U.S. at 434. As the Supreme Court explained:

> [W]hen those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance. But when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions.

Ibid. (internal quotation marks and citation omitted).

A proof-of-citizenship requirement does not impose "excessively burdensome requirements" on any class of voters. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) (opinion of Stevens, J.) (quoting *Storer v. Brown*, 415 U.S. 724, 738 (1974)); *see* N.H. Br. 46-47.

The district court therefore should have upheld H.B. 1569 due to New Hampshire's plainly "legitimate" interests in "election integrity [and] safeguarding voter confidence." Order 72 (citation omitted).

Instead of examining the identical (minimal) burden that H.B. 1569 imposes on all New Hampshire voters, the district court erroneously focused on the statute's impact on discrete groups of voters. *See* Order 60 n.20. But burden and impact are two distinct concepts. A burden is a requirement "that the law uniformly imposes on all voters." *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment). Burdens can

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include registration deadlines, ballot-access provisions, and voter-identification requirements. *See Luft v. Evers*, 963 F.3d 665, 669 (7th Cir. 2020); *Gill v. Scholz*, 962 F.3d 360, 365-366 (7th Cir. 2020). An impact, in contrast, measures the magnitude "of [a] single burden" on individual candidates or voters. *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment).

A "burden that the law uniformly imposes" can have "different *impacts*" on different people. *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment). For example, a registration deadline has no impact on already registered voters but a light impact on voters who recently moved to a State. A signature-collection requirement can impose a light impact on a popular candidate in an urban congressional district while imposing a much heavier impact on an unpopular or unknown candidate in a sparsely populated district. And although a proof-of-citizenship law such as H.B. 1569 imposes the same burden on all voters (they must obtain and present valid proof of citizenship to register), it imposes different impacts on voters who do and do not have ready access to proof of citizenship at the time of registration. The former group of

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voters need only present the requisite documents, whereas the latter must locate their documents or obtain them in the first instance.

When evaluating the constitutionality of "a generally applicable, nondiscriminatory voting regulation" such as H.B. 1569, the regulation's "individual impacts" on specific voters or candidates are not "relevant to determining the severity of the burden it imposes." *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment). That is why, for example, the Supreme Court upheld a law that "prohibit[ed] a candidate from appearing on the ballot as the candidate of more than one party," even though the law's impact made it more "difficult for third parties to succeed." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 354, 362 (1997).

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The district court's analysis therefore is backwards. It enjoined H.B. 1569 because it "impacts voters as a whole [but] places an especially heavy burden on certain groups of voters." Order 67. It evaluated what it characterized as the burden of H.B. 1569 on young voters and married women (*i.e.*, its *impact* on those groups) rather than the "single burden that the law uniformly imposes on all voters." *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment). Its decision "to perform a unique

balancing analysis that looks specifically at a small number of voters who may experience a special burden under the statute" is precisely the analysis the *Crawford* plurality declined to undertake. *Id.* at 200 (opinion of Stevens, J.).

The district court's reliance on which voters used QVAs also proves too much. Any law that eliminates one of several permissible ways to satisfy a requirement will undoubtedly fall hardest on the people who used the eliminated option; that necessarily follows from eliminating an option. And the fact that members of some demographic groups were more likely to choose the repealed option does not transform a uniform requirement into a discriminatory one. By focusing on the impact on those who had used or would use the eliminated option, the district court failed to assess whether the law, as applied to *all* New Hampshire voters, had a "plainly legitimate sweep" that "impose[d] only a limited burden on voters' rights." *Crawford*, 553 U.S. at 202-203 (opinion of Stevens, J.) (internal quotation marks and citations omitted). Accordingly, the district court did just what the *Crawford* plurality refused to do: it permanently enjoined a generally applicable requirement as to all voters

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based in substantial part on its asserted effect on particular subgroups. Order 4, 67-68.

B. A disparate impact alone can never violate the Fourteenth Amendment.

A proof-of-citizenship requirement is "even-handed" and "politically neutral." *Gonzalez v. Arizona*, 485 F.3d 1041, 1049 (9th Cir. 2007) (citation omitted). The district court's conclusion that H.B. 1569 is nevertheless unconstitutional in part because it exerts a disparate impact on young voters and married women warrants reversal because a disparate impact, standing alone, can never violate the Fourteenth Amendment.

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The Fourteenth Amendment "guarantees equal laws, not equal results," *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 273 (1979), so "[p]roof of racially discriminatory intent or purpose is required to show a violation," *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). To prove discriminatory intent, an equal-protection "plaintiff must show that the decisionmaker . . . selected or reaffirmed a course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group." *Melendez-Garcia*

v. Sanchez, 629 F.3d 25, 38 (1st Cir. 2010) (brackets, internal quotation marks, and citations omitted).

Absent proof of discriminatory intent, neither "disparate impact" nor "foreseeable consequences," without more, violates the Equal Protection Clause. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464 (1979). The Supreme Court "ha[s] not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one [group] than of another." *Washington v. Davis*, 426 U.S. 229, 242 (1976).

Because "[t]he Fourteenth Amendment does not regard neutral laws as invidious ones, *even when their burdens purportedly fall disproportionately on a protected class*," it cannot invalidate a state law when "the classes complaining of disparate impact"—young voters and married women—"are not even protected." *Crawford*, 553 U.S. at 207 (Scalia, J., concurring in the judgment).[7] Any disparate impact on young

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[7] *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) (explaining that the Supreme Court has "declined . . . to extend heightened review to differential treatment based on age"); *Smith v.*

voters or married women triggers at most rational-basis review, *see ibid.*, which H.B. 1569 easily survives. New Hampshire's law furthers legitimate interests in combatting voter fraud and promoting voter confidence. *See* Order 72 (finding New Hampshire's interests "legitimate in the abstract" (citation omitted)). New Hampshire's interest in "preventing voter fraud" is plainly legitimate, and "public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Crawford*, 553 U.S. at 197 (opinion of Stevens, J.); *cf. id.* at 209 (Scalia, J., concurring in the judgment) ("The universally applicable requirements of Indiana's voter-identification law are eminently reasonable.").

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IV. The district court's opinion chills efforts to combat fraudulent voting.

The "risk of voter fraud [is] real" and "could affect the outcome of a close election." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (opinion of Stevens, J.). H.B. 1569 is a commonsense measure designed to ensure that only citizens register and vote. The district

Shalala, 5 F.3d 235, 239 (7th Cir. 1993) (explaining that a "classification based on marital status does not involve a suspect class").

court's injunction of H.B. 1569 accordingly thwarts States' efforts to secure elections, including federal elections.

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). But the right to vote loses its meaning if elections are conducted or perceived to be conducted unfairly. "Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

Recognizing the sanctity of fair elections, the Supreme Court repeatedly has held that a "State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). States have not only the power but also the obligation to combat voter fraud. "[T]here *must* be a substantial regulation of elections if they are to be fair and honest." *Storer v. Brown*, 415 U.S. 724, 730 (1974) (emphasis added); *see also Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 206 (1999) (Thomas, J., concurring in the judgment) ("States, of course, must

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regulate their elections to ensure that they are conducted in a fair and orderly fashion."). And "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021).

New Hampshire need not wait for expansive fraud to be detected before neutrally regulating voting. By eliminating the QVAs as a means of proving citizenship, New Hampshire has made voter fraud more difficult. It makes no difference that "[w]rongful voting . . . is extremely rare in New Hampshire." Order 34. New Hampshire can adjust registration procedures to "deter[] fraud (so that a low frequency stays low)." *Frank v. Walker*, 768 F.3d 744, 750 (7th Cir. 2014). Just as the Supreme Court upheld a photo-identification law in *Crawford* even though the district judge in that case "found that there had never been a documented instance of voter-impersonation fraud in that state," *id.* at 749, the district court here should have upheld H.B. 1569 rather than concluding that the small number of documented cases of noncitizen voting "strongly undercut any legitimate concern about election integrity." Order 74.

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The district court's disparate-impact-on-unprotected-classes test chills States' ability to prophylactically protect against fraudulent voting. It suggests that any voting procedures that impose a disparate impact on any class of people—protected or not—might violate the Fourteenth Amendment solely because of the disparate impact. If H.B. 1569 is constitutionally suspect because it disproportionately impacts the young, so too is any legislation that disproportionately impacts the old, such as a statute that limits mail-in voting in a State with a large proportion of elderly residents lacking transportation. Likewise, if H.B. 1569 triggers heightened scrutiny because of its effect on married women, laws that disparately impact the so-called class of single men must meet the same fate. The district court's invention of what is in all but name a new protected class opens the door for other "classes" of voters to bring disparate-impact challenges to commonsense election-security measures. And those "classes" very well could succeed under the district court's logic.

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CONCLUSION

This Court should reverse the district court's decision and remand for further proceedings consistent with the principles set forth above.

Respectfully submitted,

ERIN CREEGAN
United States Attorney
District of New Hampshire
53 Pleasant Street
4th Floor
Concord, NH 03301

CRAIG W. TRAINOR
Acting Assistant Attorney General

s/ Michael T. Hayes
MICHAEL T. HAYES
ANDREW G. BRANIFF
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 805-7671

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limits of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4822 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Michael T. Hayes
Michael T. Hayes
Attorney

Date: November 13, 2026

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I certify that on November 13, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system.

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s/ Michael T. Hayes
Michael T. Hayes
Attorney

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