No. 26-1740

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NEW HAMPSHIRE YOUTH MOVEMENT, LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE, AND FORWARD FOUNDATION,

Plaintiffs-Appellees,

v.

DAVID SCANLAN AND JOHN FORMELLA,

Defendants-Appellants.

On Appeal from the United States District Court for the District of New Hampshire, No. 1:24-cv-291 (McCafferty, J.)

BRIEF OF REPUBLICAN NATIONAL COMMITTEE AS AMICI CURIAE IN SUPPORT OF APPELLANTS

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RULE 26.1 CORORATE DISCLOSURE STATEMENT

The Republican National Committee has no parent corporation nor is it a subsidiary or affiliate of a publicly held entity. No publicly owned entity owns more than 10% or more of its stock.

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INTEREST OF AMICI CURIAE[1]

The Republican National Committee is a national committee under 52 U.S.C. §30101. It manages the Republican Party's business, coordinates election strategy, and supports Republican candidates nationwide and in New Hampshire.

The RNC has extensive expertise in election law, election administration, and voting rights. And its members, candidates, and voters are among those most affected by lawsuits challenging election rules in New Hampshire and nationwide. The RNC has vital interests in protecting the ability of Republican voters to cast, and Republican candidates to receive, effective votes in federal and state elections To this end, the RNC supports numerous election integrity efforts to ensure that only qualified voters vote and that unqualified voters do not cast illegal ballots and dilute the votes cast by lawful voters. And these interests extend to the voter identification rules in New Hampshire and in the proper legal standards that govern elections.

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[1] All parties consent to the filing of this brief. No party's counsel authored this brief in whole or in part, and no party contributed any funds to this brief other than Amici.

INTRODUCTION AND STATEMENT

Each State must balance ease of registration with the security and efficiency of administering elections. Some States strike that balance by ending registration days or weeks in advance of the election. That extra time permits election officials to review applications, catch errors, and prepare for the election.

New Hampshire has chosen a different course. New Hampshire makes it easy to register and vote close to an election. Residents can register to vote year-round. And unlike most States, New Hampshire provides its residents the option to register on election day at their polling place. But this extra time for residents to register comes with potential tradeoffs in election security and efficiency.

HB 1569 addresses those tradeoffs. The law closes a loophole by requiring firmer evidence of U.S. citizenship. New Hampshire voters have always been required to satisfy the basic requirement of citizenship. But under prior law, an applicant could simply submit an affidavit saying that they were a citizen. Documentary proof was not required. Relying on an applicant's word raises obvious concerns ranging from simple mistakes to outright fraud. The legislature addressed those concerns by requiring applicants to provide proof of citizenship in the form of a birth certificate, passport, or other official documents. N.H. Rev. Stat. §654:12. Plaintiffs' own expert testified that more than 98% of eligible voters can satisfy those requirements. *See* ECF No. 157 at 11:9-11; 13:2-6, 20:11-15.

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HB 1569 also adjusts the process for challenging voters who are registered but not qualified to vote. Challenges must be submitted "in the form of a signed affidavit, under oath administered by an election official." N.H. Rev. Stat. §659:27-a. The process requires detailed information about the challenger, the voter whose qualifications are challenged, and the basis for the challenge. "Before ruling on the challenge, the moderator shall give the challenged voter an opportunity to be heard." *Id.* §659:27-a(II)(b). And anyone "aggrieved by the moderator's decision on a voter challenge may obtain immediate review of the decision in the superior court." *Id.* Previously, a challenged voter could still vote by filing an affidavit. HB 1569 provides an extra layer of protection before a vote is cast, providing that if "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." *Id.* §659:27(II).

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The district court ruled that by eliminating two affidavits, HB 1569 infringes on the right to vote. But eliminating limited accommodations for certain voters does not "significantly burden New Hampshire voters." *Contra* Order 61. Every resident still has plenty of opportunity to register and vote. And while the district court inferred "that a significant portion of the people who established citizenship by using an" affidavit, it did so "because they fell into the group of people who did not possess or could not easily retrieve DPOC." Order 62. That inference assumed that New Hampshire's laws "burdened" those who had "misplaced" their identification or could not access it within 24 hours. Besides being speculative, those difficulties come from ordinary life, not from

New Hampshire's law. The district court's assumption is a legal error, as is drawing broad conclusions of facial unconstitutionality from a narrow population of voters.

ARGUMENT

The district court's order creates an untenable world where, once a State accommodates voters, it can't remove that accommodation without burdening the right to vote. "[I]mposing such a one-way ratchet is incompatible with the 'flexible' *Anderson-Burdick* framework." *Ohio Democratic Party v. Husted*, 834 F.3d 620, 635 (6th Cir. 2016). The *Anderson-Burdick* test requires the court to "weigh the 'character and magnitude of the asserted injury to' the voters' rights against the 'precise interests put forward by the State as justifications for the burden imposed.'" *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Only laws that impose "severe" burdens must be "narrowly drawn to advance a state interest of compelling importance." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). But as is most often the case, election rules that are "reasonable, nondiscriminatory restrictions" and impose minimal burdens are readily justified by "the State's important regulatory interests." *Anderson*, 460 U.S. at 788.

The district court misapplied *Anderson-Burdick* in at least three ways: It did not identify any burdens on the right to vote; it relied on idiosyncratic burdens on voters who wait until election day to register; and it disregarded compelling state interests in election integrity and public confidence. This Court should reverse these legal errors.

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I. HB 1569 does not burden the right to vote.

The district court drew two conclusions on HB 1569's supposed burden. "First, qualified voters are less likely to register prior to election day," and "[s]econd, it is more important that election day registration is readily available and a law that delays registration, even by one day or a few hours, is more likely to deprive qualified voters access to the ballot." Order 65. The "characterization of the resultant burden" from those conclusions "is not a factual finding, but a legal determination subject to de novo review." *Ohio Democratic Party*, 834 F.3d at 628. This Court should reverse those legal determinations because they are irrelevant to the *Anderson-Burdick* test. "Election laws will invariably impose some burden upon individual voters." *Burdick*, 504 U.S. at 433. But that reality doesn't make any new inconvenience—or, more accurately, the removal of a previous convenience—constitutionally suspect. To conclude otherwise artificially raises the bar for States to provide voting access and creates an unconstitutional ratchet.

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A. New Hampshire's existing accommodations are not the floor for voting access.

The district court relied on testimony estimating the number of voters whom HB 1569 would affect. Order 61-64. Plaintiffs' witness estimated that "between 89,934 and 153,213 cannot retrieve their documents within one day," "between 17,967 and 53,826 eligible New Hampshire voters" simply "misplaced their proof-of-citizenship-documents," and "between 5,433 and 31,291 eligible New Hampshire voters do not possess acceptable DPOC." *Id.* at 62-63. Setting aside the speculative nature of these

estimates, they do not show as a matter of law that HB 1569 imposes a constitutional burden on these estimated populations, let alone an "undue" burden on the right to vote. The Constitution does not require last-minute registration for those who "cannot retrieve their documents within one day." *Id.* Nor does it guarantee a last-chance safety-valve option for those who "misplace" their documents. *Id.* And an estimate of the vanishingly small number of voters who "do not possess acceptable DPOC" says nothing about what it takes to acquire those documents. *Id.*

As for costs, a birth certificate for a person born in New Hampshire costs $15. *Request for Certificates*, New Hampshire Sec'y of State (last accessed Nov. 9, 2026) perma.cc/986V-DJFF. The Supreme Court noted in 2008 that a fee "between $3 and $12" to obtain "the required documents" for voter identification "surely does not qualify as a substantial burden on the right to vote." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 & n.17 (2008) (plurality op.). The district court suggested that the costs are prohibitive. But they are not a "significant increase over the usual burdens of voting." *Id.* at 198. "Ordinary and widespread burdens, such as those requiring nominal effort of everyone, are not severe." *Id.* at 205 (Scalia, J., concurring). The same goes for the district court's assessment that, before HB 1569, 16.8% of first-time registrants presented affidavits to prove their citizenship. Order 61. Even if true, that those voters prefer to submit an affidavit doesn't mean that those voters lack documentary proof or that providing it is a "severe" burden. It shows, at most, a preference of some indeterminate number of voters.

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As for time, New Hampshire voters have an abundance of it. They can register year-round, on or before election day. The Supreme Court upheld Georgia's fifty-day registration cutoff as constitutional. *Burns v. Fortson*, 410 U.S. 686, 686 (1973) (per curiam). It endorsed Arizona's similar fifty-day deadline. *Marston v. Lewis*, 410 U.S. 679, 680 (1973). And it upheld New York's thirty-day deadline to enroll in closed primaries. *Rosario v. Rockefeller*, 410 U.S. 752, 762 (1973). New Hampshire doesn't truly have a registration deadline; the cutoff is the election itself. Every resident has plenty of time to vote, and "a voter's interest in deciding late rather than early whether to participate in an election is not a weighty interest." *ACORN v. Bysiewicz*, 413 F. Supp. 2d 119, 149 (D. Conn. 2005).

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Together with being "reasonable," HB 1569 is also "nondiscriminatory." *Anderson*, 460 U.S. at 788. And "[r]easonable, nondiscriminatory restrictions … need be justified only by legitimate regulatory interests." *Barr v. Galvin*, 626 F.3d 99, 109 (1st Cir. 2010). The district court found "an especially heavy burden on certain groups of voters"—young voters and married women. Order 67. But the district court also acknowledged that "elimination of the QVA to prove citizenship impacts voters as a whole." *Id.* The *Anderson-Burdick* test considers whether "[t]he law is facially neutral and nondiscriminatory." *Libertarian Party of Va. v. Alcorn*, 826 F.3d 708, 717 (4th Cir. 2016). So where plaintiffs offer only "evidence of some differences in treatment," but "no evidence of discriminatory intent," the law cannot be labeled discriminatory. *Harlan v. Scholz*, 866 F.3d 754, 761 (7th Cir. 2017). And when "[a]ll parties are subject to the same

requirements," as is true here, no party "faces a disproportionate burden." *Libertarian Party of Va.,* 826 F.3d at 717. HB 1569 "draws no classifications, let alone discriminatory ones." *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment). Because Plaintiffs never alleged that the law is "discriminatory" under the Anderson-Burdick standard, HB 1569 must be "justified only by legitimate regulatory interests." *Barr*, 626 F.3d at 109. That is a low bar.

So the district court should have found that New Hampshire's registration system does not impose undue burdens on the right to vote. And this Court should not hesitate to correct that error, because the "characterization of the resultant burden … is not a factual finding, but a legal determination subject to de novo review." *Ohio Democratic Party*, 834 F.3d at 628. Courts "have not shied away from disposing of *Anderson-Burdick* claims" because they "'failed as a matter of law.'" *Daunt v. Benson*, 999 F.3d 299, 313 (6th Cir. 2021) (collecting cases); *see also Libertarian Party of Va.*, 826 F.3d at 719 (affirming dismissal of *Anderson-Burdick* claim, noting "we have no need to conduct the kind of empirical analysis into burdens that would essentially displace the authority of state legislatures with the views of expert witnesses").

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Whatever the inconveniences of obtaining proof of citizenship might be, they are a far cry from the "heavy burden[s]" this Court has recognized under the *Anderson-Burdick* test. *See Common Cause R.I.,* 970 F.3d at 15 (discussing the "heavy burden" of in-person voting during the COVID-19 pandemic, which required an "unusual and in fact unnecessary chance with your life … simply to vote"). And those difficulties must be

assessed "in light of the adequate" measures under the State's "election code" to facilitate voting. *Burdick*, 504 U.S. at 438-39. "Election laws will invariably impose some burden upon individual voters," but that doesn't make every burden constitutionally suspect. *Id.* at 433. New Hampshire makes it easy for its residents to register and vote.

B. The district court's reasoning would turn state voting access regulations into a one-way ratchet.

New Hampshire has always required residents to establish that they are U.S. citizens when registering to vote. Plaintiffs never challenged that requirement. And the district court acknowledged "[f]or many years, New Hampshire voters have been required to prove their citizenship." Order 1. What Plaintiffs challenged, and what the district court enjoined, is HB 1569's elimination of the option of registering to vote via a "qualified voter affidavit" or "domicile affidavit." Compl. ¶¶27-28; Order 97. But those affidavits were affirmative accommodations offered beyond the constitutional right to vote, and enjoining their removal ties the State's hands for the future.

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At the heart of the district court's ruling is a false assumption. Accommodations such as the voter affidavits are options that States can employ—or not. The accommodations are not the constitutional floor. The Constitution doesn't require those accommodations, so removing them doesn't violate the Constitution. *See Ohio Democratic Party*, 834 F.3d at 635 ("[S]tates would have little incentive to pass bills expanding voting access if, once in place, they could never be modified in a way that might arguably burden some segment of the voting population's right to vote.").

Rather than recognize these accommodations for what they are, the district court penalized the State for its year-round and election-day registration system. It reasoned that those accommodations count against the New Hampshire because they exempt the State from the provisions of the National Voter Registration Act. Order 64. That reasoning turns the NVRA's exemption on its head. *See* 52 U.S.C. §20503(b)(1)-(2). The same provisions that exempt a State from the NVRA cannot also be a "burden on all voters" in the state. *Contra* Order 64. Election-day registration is a privilege that States can condition or remove entirely. That HB 1569 might make election-day registration more difficult does not mean that it burdens "the right to vote." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1262 (11th Cir. 2020). Because there's no constitutional right to a qualified-voter affidavit for citizenship, or to a challenged-voter affidavit, New Hampshire is free to condition or eliminate these "measure[s] of grace." *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1188 (9th Cir. 2021).

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For the same reason, the district court's concern for "voters who possess and have access to DPOC" but who "often do not carry it with them" is misplaced. Order 63. That some voters might experience unforeseen difficulties "on the way to the polls" is a problem "arising from life's vagaries," not a problem with HB 1569. *Crawford*, 553 U.S. at 197 (plurality op.). If an applicant fails to register by election day, it is only because they "chose to disregard" their opportunity to register throughout the rest of the year. *Rosario*, 410 U.S. at 762. And voters' preferences that voting and registration accord with their own convenience does not unconstitutionally burden the right to vote.

By assuming these changes burden the right vote, but never analyzing what conduct is protected by the right to vote, the district court created a classic one-way ratchet.

II. Idiosyncratic burdens on same-day registration don't sustain an *Anderson-Burdick* claim.

The district court's *Anderson-Burdick* analysis fails for another reason: It focuses on idiosyncratic burdens of voters who wait until election day to register to vote. Plaintiffs can't rely on "special burden[s]" that "may be placed on a limited number of persons." *Crawford*, 553 U.S. at 199 (plurality op.).

A. Start with the fact that same-day registration is a privilege, not a right. "[A] person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot." *Marston v. Lewis*, 410 U.S. at 680. The Constitution is not concerned with burdens on statutory privileges. It prohibits only unjustified "burdens" on "the right to vote." *Burdick*, 504 U.S. at 438. If "the statute does not burden the right to vote, [the Court] cannot engage in that kind of review" under the *Anderson-Burdick* test. *Jacobson*, 974 F.3d at 1262. For that reason, the Supreme Court has rejected claims that certain conditions on absentee voting are unconstitutional. *McDonald v. Bd. of Election Comm'rs of Chi.*, 394 U.S. 802, 807 (1969). When States impose limits on absentee voting, but not in-person voting, "[i]t is … not the right to vote that is at stake … but a claimed right to receive absentee ballots"—which is not a constitutional right. *Id.* Plaintiffs complain that HB 1569 burdens election-day registration fail for a similar reason. New Hampshire need not provide same-day

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registration at all, let alone provide further accommodations for voters who wait until the last day to register.

The district court credited another witness who concluded that New Hampshire has a high "cost of voting," Order 6. But the laws on the books say otherwise—New Hampshire's election-day registration rules are generous compared to other States. Over half of the States don't permit any voter to register on election day. Most of those States close registration well before election day. Oregon, for example, closes registration twenty-one days before the election. *See* Or. Rev. Stat. §247.025. Massachusetts closes registration ten days before the election. *See* Mass. Gen. Laws ch. 51, §26. Other States such as New York permit voters to register on the day they vote, but only during the early voting period. *See* N.Y. Election Law §8-604. That New Hampshire accommodates voters with election-day registration makes the State's elections less burdensome, not more. *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020) (describing how the "numerous avenues" available to voters undercut claims that the system is burdensome).

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The minority of States that do provide election-day registration have similar or even stricter requirements than New Hampshire. Idaho, Iowa, Nevada, and New Mexico, for example, all require photo identification for applicants seeking to register on election day, with no accommodation for provisional ballots if a voter lacks the required documents. *See* Idaho Code §34-408A; Iowa Code §48A.7A; Nev. Rev. Stat. §293.5847; N.M. Stat. §1-4-5.7. Minnesota requires identification and proof of residence

for applicants registering on election day, with no provisional-ballot opportunity if the applicant doesn't have the proper evidence. *See* Minn. Stat. §201.061. Connecticut permits same-day registration only at locations specifically designated for the purpose. *See* Conn. Gen. Stat. §9-19j(c). That "the laws and experience of other states" require similar or stricter election-day registration practices is good evidence that New Hampshire's rules do not violate the Constitution. *Ohio Democratic Party*, 834 F.3d at 629; *see also Common Cause R.I.*, 970 F.3d at 15 (comparing Rhode Island's witness-signature requirement to "other states" that "have such a rule").

Far from being evidence that HB 1569 burdens the right to vote, that New Hampshire "afford[s]" its residents "privileged voting opportunities" such as election-day registration favors upholding the law. *Ohio Democratic Party*, 834 F.3d at 629. New Hampshire would be well within constitutional bounds if it eliminated election-day registration entirely, as most States don't offer that privilege. HB 1569 doesn't do that. New Hampshire also wouldn't violate the constitution by imposing conditions on election-day registration. *See McDonald*, 394 U.S. at 807. HB 1569 doesn't even do that. Rather, HB 1569 sets the same rules for all voters, "whether the applicant seeks to register before election day or on election day." N.H. Rev. Stat. §654:12(I). The district court's order demands more. It demands that New Hampshire accommodate applicants who "misplace" their documents, or those who simply choose not to bring them to the polls. Order 63, 65. But "the inability of a small proportion of otherwise eligible individuals to meet the registration deadline" cannot "transform[] that deadline into a

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severe burden on First and Fourteenth Amendment rights." *ACORN*, 413 F. Supp. 2d at 148. That New Hampshire provides registration through election day undercuts Plaintiffs' claims that applicants have insufficient time to register to vote.

B. Even if Plaintiffs could sustain their *Anderson-Burdick* claims based on burdening the privilege of same-day registration, they can't rely on the idiosyncratic burdens faced by only some voters. As the Eleventh Circuit has explained, courts must "'identify a burden before [they] can weigh it.'" *Jacobson*, 974 F.3d at 1261 (quoting *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment)). Plaintiffs focus on burdens that are legally "irrelevant" because they are "special burden[s] on some voters," not categorical burdens on "voters generally." *Crawford*, 553 U.S. at 204, 206 (Scalia, J., concurring in the judgment) (cleaned up).

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When plaintiffs challenge "generally applicable, nondiscriminatory voting regulation[s]," the burdens arising from "the peculiar circumstances of individual voters" are legally "irrelevant." *Id.* at 204-06. The *Anderson-Burdick* test is concerned only with burdens that affect voters "categorically." *Id.* at 206. This categorical approach is required by "adherence to precedent." *Id.* at 204. For example, in holding that Hawaii's ban on write-in voting "impose[d] only a limited burden on voters' rights," the Supreme Court looked at the ban's effect on voters generally, rather than on the plaintiff specifically. *Burdick*, 504 U.S. at 436-39. In fact, it was the dissent in *Burdick* that focused on the law's impact on "some individual voters." *Id.* at 448 (Kennedy, J., dissenting). And in rejecting a challenge to Oklahoma's primary election, the Court emphasized that

"Oklahoma's semiclosed primary system does not severely burden the associational rights of the state's citizenry" generally—irrespective of its specific effect on the individual plaintiffs. *Clingman v. Beaver*, 544 U.S. 581, 593 (2005). *Storer v. Brown* likewise held that the "sever[ity]" of California's ballot-access requirements must be assessed based on "the nature, extent, and likely impact" of those requirements—not the known impact on the specific candidates who were plaintiffs. 415 U.S. 724, 738 (1974).

The correct, categorical approach to *Anderson-Burdick* is fatal to the district court's judgment. The court's only finding that HB 1569 imposes meaningful burdens voters generally turned on the "burden of all voters" caused by the States' lawful exemption from the NVRA. *See supra* p.10; Order 64. But if that exemption is an unconstitutional burden, then every State exempt from the NVRA—and the NVRA itself—would violate the right to vote. The district court conceded—as it must—that a "facial challenge must fail where the statute has a plainly legitimate sweep." Order 60 n.20 (quoting *Crawford*, 553 U.S. at 202 (plurality op.)). But it then focused entirely on the speculative and peculiar burdens imposed on certain subclasses of voters. Order 61-64. That some applicants might "misplace" their documents, choose not to carry them, or not be able to acquire them on 24 hours' notice does not mean that New Hampshire's registration rules are to blame—particularly not when New Hampshire permits year-round registration. "Burdens of that sort arising from life's vagaries … are neither so serious nor so frequent as to raise any question about the constitutionality" of identification requirements. *Crawford*, 553 U.S. at 197 (plurality op.).

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The district court relied on a Fourth Amendment case analyzing warrantless searches for its blinkered "focus" on "the group for whom the law is a restriction, not the group for whom the law is irrelevant." Order 60 n.20 (citing *City of L.A. v. Patel*, 576 U.S. 409, 418 (2015)). Even if *Patel* were a relevant voting-rights case, its reasoning undermines the district court's analysis. In addressing facial challenges, the Court held that because "legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects," the "proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *Patel*, 576 U.S. at 418 (cleaned up). HB 1569 affects the conduct of all voter-registration applicants, just as Hawaii's prohibition on mail-in voting applied to all voters—even though it "invariably impose[d] some burden upon individual voters." *Burdick*, 504 U.S. at 433. And Indiana's photo ID requirements had a "'plainly legitimate sweep'" as "appli[ed] to all Indiana voters," even though "some voters" experienced more direct burdens. *Crawford*, 553 U.S. at 202-03 (plurality op.). *Patel* thus held that "[u]nder the most exacting standard the Court has prescribed for facial challenges, a plaintiff must establish that a 'law is unconstitutional in *all of its applications*.'" *Patel*, 576 U.S. at 418. (emphasis added). Plaintiffs' facial challenge requires courts to define burdens on the right to vote by looking at all voters, not merely the individual effects on specific voters. *Burdick*, 504 U.S. at 436-39; *see also Clingman*, 544 U.S. at 593; *Storer*, 415 U.S. at 738. The district court's reliance on *Patel* was misplaced, and its "[z]eroing in on the abnormal burden experienced by a small group of voters is problematic at

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best, and prohibited at worst." *Ne. Ohio Coal for the Homeless v. Husted.*, 837 F.3d 612, 631 (6th Cir. 2016).

III. The State has strong interests in ensuring that only eligible voters are registering to vote.

Even if the district court had identified a burden on the right to vote, the State has several weighty interests in "seeking to assure that elections are operated equitably and efficiently." *Burdick*, 504 U.S. at 433. Plaintiffs challenge "neutral, nondiscriminatory regulation[s]" of the voting process, *Crawford*, 553 U.S. at 203 (plurality op.), under which "[v]oters must simply take reasonable steps and exert some effort," *New Ga. Project*, 976 F.3d at 1282. While conceding they are legitimate interests, the district court dismissed these interests as "abstract." Order 72-73.

At a minimum, New Hampshire's interests include conducting orderly elections to enhance public confidence in election integrity, guarding against voter fraud, and protecting state resources. These interests "need not be 'compelling.'" *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1354 (11th Cir. 2009) (*quoting Burdick*, 504 U.S. at 439). But they are anyway. *See Green v. Mortham*, 155 F.3d 1332, 1335 (11th Cir. 1998) ("The states' compelling interests include maintaining fairness, honesty, and order, minimizing frivolous candidacies, and 'avoiding confusion, deception, and even frustration of the democratic process.'" (citations omitted)). These are "weighty reasons that warrant judicial respect." *Democratic Nat'l Comm. v. Wis. State Legislature*, 592 U.S. 1039, 1047 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

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To start, HB 1569 promotes the orderly administration of New Hampshire elections. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Ensuring election integrity requires "running an orderly, efficient election and … giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election." *Democratic Nat'l Comm. v. Wis. State Legislature,* 592 U.S. at 1044. Simplifying the registration steps is the most obvious method of ensuring orderliness and efficiency for election officials. And "[t]here is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Crawford*, 553 U.S. at 196 (plurality op.). Affidavits are a fundamentally different form of evidence from documentary proof. So the "interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process." *Id.*

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Public confidence is another independent interest. Although the State's interest in public confidence "is closely related to the State's interest in preventing voter fraud, 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 (plurality op.). But when courts issue "orders affecting elections," particularly by invalidating democratically enacted election procedures, they necessarily interfere with legislatively enacted election rules, which can "result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S.

1, 4-5 (2006). And the Supreme Court has "never required a State to make a particularized showing of the existence of voter confusion." *Munro v. Socialist Workers Party*, 479 U.S. 189, 194 (1986). "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy," *Purcell*, 549 U.S. at 4, and courts should defer to legislatures on how best to assure voters and encourage democratic participation, *Crawford*, 553 U.S. at 196 (plurality op.).

The State also has a compelling interest in preventing fraud. "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Id.* Indeed, "[t]he State's interest is particularly strong with respect to efforts to root out fraud." *Doe v. Reed*, 561 U.S. 186, 197 (2010). That's because "fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 672 (2021).

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These interests are compelling as a matter of law, but the district court instead credited factual assertions that they aren't present here. The Supreme Court has debunked the notion that a State must justify its interests in election integrity and public confidence with record support. State legislatures have legitimate interests in guarding against fraud even when the "record contains no evidence of any such fraud." *Crawford*, 553 U.S. at 194 (plurality op.). In part that's because "the long, uninterrupted and prevalent use of these statutes makes it difficult for States to come forward with the sort of proof" the district court demanded. *Burson v. Freeman*, 504 U.S. 191, 208 (1992) (plurality op.). By its very nature, "election fraud [is] successful precisely because" it is

"difficult to detect." *Id.* Requiring evidence also puts States in a Catch-22, because it "would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action." *Munro v. Socialist Workers Party*, 479 U.S. at 195. "States have thus never been required to justify their prophylactic measures to decrease occasions for vote fraud." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 240 (5th Cir. 2020) (cleaned up). In any event, courts acknowledge as a matter of historical fact that "[v]oting fraud is a serious problem in U.S. elections generally." *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004) (collecting sources).

Michigan's experience this past election cycle highlights some of the tangible problems that HB 1569 solves. Like New Hampshire, Michigan allows residents to register on election day. *See* Mich. Comp. Laws §168.497. And like New Hampshire before HB 1569, Michigan permits voters to satisfy the citizenship requirement with an affidavit. *See id.* §168.495(f), (g). During early voting, a Chinese citizen attending the University of Michigan allegedly registered during early voting and cast a ballot. The Secretary of State issued a public statement acknowledging felony charges filed against the student. In the past two years, Michigan's Secretary of State has referred 35 noncitizens to the Michigan Attorney General for potential criminal charges because they had cast a ballot in the 2024 presidential election in Michigan. As a result, the Michigan legislature is now considering proof-of-citizenship requirements for voters. Similarly, 28 non-citizens were recently charged by federal prosecutors in California for federal crimes including fraudulently registering and casting ballots in U.S. Elections.

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Justice Dep't Charges 28 Foreign Nationals in California for Election Crimes, DOJ (Oct. 19, 2026) perma.cc/7U8Z-VG8L. In August, New Jersey was forced to remove more than 5,000 noncitizens from its voter rolls, many of whom cast ballots in 2023 and 2024 elections. D. Difilippo, *NJ Strikes 5,100 from voter rolls in wake of registration gaffe,* New Jersey Monitor (Aug. 19, 2026) perma.cc/8245-GFB3. New Hampshire is a step ahead of these States in closing the loophole presented by an affidavit honor system. And it's entitled to rely on "flagrant examples of such fraud in other parts of the country [that] have been documented throughout this Nation's history." *Crawford*, 553 U.S. at 195 (plurality op.).

New Hampshire must be particularly vigilant of these loopholes. "Fraud can affect the outcome of a close election," *Brnovich*, 594 U.S. at 672, and New Hampshire often has close elections. As outlined by the General Court in earlier legislation on voter affidavits, "over the past 45 years, New Hampshire has had 44 state elections that ended in a tie or in a one-vote victory." Act of June 17, 2022, 2022 N.H. Laws, ch. 239 (S.B. 418). "On average, that is almost once per year, not including the 1974 U.S. Senate race that was won by 2 votes—the closest U.S. Senate race in history." *Id.* Prophylactic measures are particularly appropriate given New Hampshire's unique experience with close elections. Just one or two voters taking advantage of the loopholes closed by HB 1569 could flip an election. The "Legislature [is] not obligated to wait" for that "to happen" before acting to deter fraud. *Brnovich*, 594 U.S. at 686.

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Relatedly, successful elections with high voter confidence do not tie the State's hands from ensuring continued election integrity. *Contra* Order 35-76. The Eleventh Circuit recently reversed a district court that cited "high voter confidence in Florida's 2020 election" as undercutting the State's interest in deterring and detecting fraud. *League of Women Voters of Fla. v. Fla. Sec'y of State*, 66 F.4th 905, 925 (11th Cir. 2023). "Even if there were no evidence of voter fraud in Florida, our precedents would not require it before [an election-integrity] bill … could be adopted." *Id.* (citing *Crawford*, 553 U.S. at 194-96 (plurality op.); *Brnovich*, 594 U.S. at 686).

In the end, "the striking of the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment." *Griffin*, 385 F.3d at 1131. "*Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government." *Common Cause/Ga.,* 554 F.3d at 1353 (citing *Anderson*, 460 U.S. at 796-806). That's particularly true when the State asserts a "legitimate interest" that "is settled beyond hope of contradiction." *Barr*, 626 F.3d at 111. New Hampshire's interests in election orderliness, confidence, and integrity "obviously are compelling." *Burson*, 504 U.S. at 199. This case is thus "one of the 'usual' variety in which the 'State's important regulatory interests justify reasonable, nondiscriminatory restrictions.'" *Libertarian Party*, 826 F.3d at 721 (cleaned up) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)). By requiring the State to provide evidence of its interests, and by crediting contrary evidence as sufficient to defeat the State's interests, the district court required precisely what numerous other

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courts have said is unnecessary. Enjoining the State's valid law on such grounds was legal error.

CONCLUSION

For these reasons, the Court should reverse the district court's judgment.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

This brief complies with Rule 32(a)(7) because it contains 5,786 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

Dated: November 13, 2026 */s/ Gilbert C. Dickey*

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: November 13, 2026 */s/ Gilbert C. Dickey*

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