No. 26-1740

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NEW HAMPSHIRE YOUTH MOVEMENT, et al.,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

On Appeal from the United States District Court for the District of New Hampshire, No. 1:24-cv-00291-SE-TSM
The Honorable Samantha D. Elliott

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BRIEF OF INDIANA, 21 OTHER STATES, AND THE ARIZONA LEGISLATURE AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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INTERESTS OF AMICI CURIAE[1]

The States of Indiana, Alabama, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, West Virginia, Wyoming, and the Arizona Legislature submit this amicus brief in support of appellants.

The Constitution vests States with authority to set qualifications for voting and to enforce those qualifications. *See* U.S. Const. art. I, § 2, cl. 1; U.S. Const. art. I, § 4, cl. 1; U.S. Const. amend. XVII; *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 16–17 (2013). Citizenship is the most basic of those qualifications. Yet officials across the country have found noncitizens on their voter rolls and ballots cast by noncitizens.[2] States have responded by taking measures to improve the

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[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund this brief's preparation or submission; and no person, other than amici curiae or their counsel, contributed money intended to fund this brief's preparation or submission.

[2] *See*, Geoff Mulvihill, *6,600 Noncitizens Registered to Vote After Error in New Jersey Motor Vehicle System, Governor Says*, Associated Press (July 21, 2026), https://abcnews.com/Politics/wireStory/6600-noncitizens-registered-vote-after-error-new-jersey-134958242.

integrity of elections, including by requiring voters to document their citizenship or by checking citizenship against government records.[3]

New Hampshire's requirement that voters provide proof of citizenship is both constitutional and sensible. Nothing in the Constitution prohibits States from demanding more than a prospective voter's self-attestation that she meets the requirements to vote. Yet the district court effectively held that the right to vote includes the right to self-attest to citizenship, ordering New Hampshire to demand nothing more than a prospective voter's say so. That ruling—which undermines States' exercise of their constitutional authority to set and to enforce voter requirements—is of significant concern to amici States.

To ensure only citizens vote, States have every reason to require prospective voters to provide evidence of a fact fundamental to their

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[3] *See*, *e.g.*, Ch. 2026-26, Laws of Fla. (verifying citizenship against driver's-license records and requiring documentary proof when citizenship cannot be confirmed); H.E.A. 1680, 124th Gen. Assemb., 1st Reg. Sess. (Ind. 2025) (requiring proof of citizenship from registrants who registered with a temporary driver's license or identification card number); S.B. 175, 2026 Leg. Assemb., Reg. Sess. (S.D. 2026) (requiring documentary proof of citizenship to register for state and local elections); H.B. 209, 2026 Gen. Sess. (Utah 2026) (similar); H.B. 156, 68th Leg., Gen. Sess. (Wyo. 2025) (codified at Wyo. Stat. Ann. §§ 22-1-102(a)(lvi), 22-3-102(a)(i)) (requiring proof of citizenship to register).

eligibility. The Constitution is not a one-way ratchet that prevents States from repealing previous accommodations or addressing potentially serious problems before they become endemic. Both the power and responsibility for amending election laws in response to new concerns rests with state lawmakers.

SUMMARY OF THE ARGUMENT

The district court should not have reached the merits. The organizational plaintiffs established standing only by showing that they spent money and staff time updating materials and adjusting programs after HB 1569 took effect. Under *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), an organization cannot spend its way into standing, and *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), applies only when a defendant directly interferes with an organization's core activities. HB 1569 did not interfere with anything the organizations do; it changed the law they explain to others. The individual plaintiffs' standing claims are no better. They do not claim a constitutional right to prove citizenship by affidavit, and each can prove citizenship through documents they hold or records the State already maintains. Their preference for a repealed option is neither a concrete nor a personal

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injury, any future injury rests on speculation, and Miles Borne's claim became moot when he registered.

On the merits, the district court misapplied *Anderson-Burdick*. Requiring registrants to prove their citizenship serves the most basic interest a State has in elections by ensuring that only qualified voters choose its officials. The district court accepted that noncitizens have voted in New Hampshire but deemed the problem too small to matter. The Constitution does not require a State to tolerate some number of ineligible votes before acting. The court then made two legal errors in assessing the burden. First, it asked whether the law was difficult for particular subgroups rather than measuring its burden across all the voters it governs. Second, it treated the repealing of an accommodation the Constitution never required as a constitutional injury, turning *Anderson-Burdick* into a one-way ratchet.

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ARGUMENT

I. Plaintiffs Lack Organizational and Individual Standing

Standing is a threshold question that this Court must resolve before reaching the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998). "A plaintiff must demonstrate (i) that she has suffered

or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med., 602 U.S. 367*, 380 (2024) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Neither the organizational nor individual plaintiffs satisfied these requirements here, so the Court should vacate the judgement and remand with instructions to dismiss.

A. The organizational plaintiffs lack standing under *Hippocratic Medicine*

Organizations must satisfy "the usual standards for injury in fact, causation, and redressability that apply to individuals." *Hippocratic Med.*, 602 U.S. at 393–94. Ordinarily, this requires an organization to show that a State is "requir[ing] or forbid[ding] some action by the plaintiff" organization. *Id.* at 382. When an organization challenges the State's regulation of someone else, standing is "substantially more difficult to establish." *Id.* (quoting *Lujan*, 504 U.S. at 562). Here, the organizational plaintiffs do not contend that New Hampshire is regulating them directly. Rather, they allege that changes to voter-registration procedures will require the organizations to "spen[d] money and devote[] staff time" to address the consequences on voters. *N.H.*

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Youth Movement v. Scanlan, 833 F. Supp. 3d 93, 125 (D.N.H. 2026); *see id.* at 127. *Hippocratic Medicine* forecloses that theory of injury.

In *Hippocratic Medicine*, as here, plaintiff organizations argued that the government had "impaired" their "ability to provide services and achieve their organizational missions," forcing them to fund studies, public advocacy, and public education. 602 U.S. at 394. But the Court rejected that argument, holding that an organization "that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Id.* That holding forecloses the diversion-of-resource theory the district court endorsed here.

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982), does not suggest otherwise—for two reasons. First, as the Supreme Court has cautioned, *Havens* was "an unusual case" and that courts should be "careful not to extend the *Havens* holding beyond its context." *Hippocratic Med.*, 602 U.S. at 396. Second, *Havens* does not stand for the proposition that "standing exists when an organization diverts its resources in response to a defendant's actions." *Id.* at 395. Rather, it held that a plaintiff that "operated a housing counseling service" had standing

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because the defendant's false statements "perceptibly impair[ed] its ability to provide counseling and referral services." *Id.* (quoting *Havens*, 455 U.S. at 379). The defendant thus "directly affected and interfered with core business activities—not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." *Id.*

Here, the organizations alleged nothing like an injury resulting from the sale of defective goods. Rather, Open Democracy "spent money and devoted staff time to updating and creating new materials" for high school registration drives and expanded its poll observer program. *N.H. Youth Movement*, 833 F. Supp. 3d at 125. Youth Movement changed its "materials and messaging, and add[ed] new processes and programs," and sent more staff to registration events. *Id.* at 126. The League of Women Voters and the Forward Foundation created new educational materials, expanded their outreach, and reallocated staff time. *Id.* at 127. An organization that continues its core activities and spends more on them because the law has changed has shown at most "a setback to the organization's abstract social interests," not an injury in fact. *Hippocratic Med.*, 602 U.S. at 394 (quoting *Havens*, 455 U.S. at 379).

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The court's finding that Open Democracy has helped fewer students register does not change the analysis. *N.H. Youth Movement*, 833 F. Supp. 3d at 125. The organizations in *Hippocratic Medicine* likewise claimed an impaired ability to "achieve their organizational missions," and that was not enough. 602 U.S. at 394; *see Wis. Voter All. v. Millis*, 166 F.4th 627, 637 (7th Cir. 2026) (an organization does not have standing when a government entity frustrates its "abstract social interests"). Open Democracy may still hold every voter-registration drive it held before. If fewer students register, it is because the students, the regulated parties, must now bring documents or have their citizenship confirmed through records. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (an organization generally "cannot rest [its] claim to relief on the legal rights or interests of third parties").

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Other courts of appeals have recognized that organizations asserting similar injuries in election-law cases lack standing. In *Arizona Alliance for Retired Americans v. Mayes*, organizations claimed that an Arizona law cancelling the registrations of voters who register in a new county "would interfere with their voter-registration and voter-education efforts" and force them to "divert resources to educate and assist voters

whose registrations may be subject to cancellation." 186 F.4th 622, 628 (9th Cir. 2026) (en banc). The en banc court unanimously held "that the [o]rganizations lacked standing to challenge the [law]." *Id.* at 642. The organizations' "mere diversion of resources to educate and train voters on the potential effects of the [law] cannot independently establish an injury-in-fact." *Id.* at 635; see *id.* at 648 (Bress, J., concurring in part and concurring in the judgement) (law that "simply requires [organizations] to do more of the advocacy work they were created to do" does not injure them).

Likewise, in *Tennessee Conference of National Association for the Advancement of Colored People v. Lee*, the NAACP claimed that a policy requiring certain registrants to submit documents confirming their eligibility diverted its volunteers and money to helping applicants obtain records, impeding its core work of "[p]romoting voter registration." 139 F.4th 557, 565 (6th Cir. 2025). The Sixth Circuit explained that *Hippocratic Medicine* "disavowed" the diversion of resources theory and warned that if an organization could establish standing by identifying "some expense apart from [its] opposition efforts," that decision would

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become "a mere paper standing barrier" and "nothing more than a game of semantics." *Id.* at 563, 566. This Court should heed that warning here.

League of Women Voters of Massachusetts v. Trump, 190 F.4th 27 (1st Cir. 2026), is not to the contrary. There, a Postal Service rule governing ballot mail was issued about a week before States began mailing ballots. *Id.* at 36. The Court relied on findings that the "chaos engendered by the [rule's] immediate deadline" was "significantly interfering with" the organizations' efforts to give members "accurate and reliable information about how to vote" and that they did "not know whether to advise their members to vote by mail." *Id.* at 39 (quotations omitted). The Court called the case "unusual" and "indistinguishable from *Havens Realty* for relevant purposes." *Id.* at 39 n.3. By contrast, there is nothing unusual about organizations updating materials and advice when the law changes. Holding that the cost of explaining a new law confers standing would dramatically expand standing and extend *Havens* "beyond the context." *Hippocratic Med.*, 602 U.S. at 396.

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It is not difficult to see how embracing the district court's approach would have consequences beyond this case. Every change to a State's election law requires civic organizations to revise their materials and

retrain their volunteers. If those expenditures create standing every election statute could be challenged before it is ever applied by an organization that chooses to respond to it. *Hippocratic Medicine* rejected exactly that result, finding that the diversion of resources theory "would mean that all organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." 602 U.S. at 395. The same is true of state election laws. An organization's "abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art[icle] III." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40 (1976). The organizational plaintiffs lack standing.

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B. The individual plaintiffs lack a concrete, imminent, and redressable injury, or their claims are moot

The individual plaintiffs lack standing as well. The plaintiffs do not contend that the Constitution prohibits New Hampshire from requiring proof of citizenship. They also do not claim a constitutional right to prove citizenship by affidavit rather than by a document or record. As the district court explained, this case does not decide "whether it is constitutional for New Hampshire to require voters to prove their citizenship," and "[a]fter this order goes into effect, New Hampshire

voters will still be required to prove their citizenship." *N.H. Youth Movement*, 833 F. Supp. 3d at 98. The question here is whether the State may remove one method of doing so, namely self-attestation. *Id.* The individual plaintiffs have not shown that this change will inflict a concrete, particularized, and imminent injury on them.

The asserted injury is not concrete. HB 1569 did not change the obligation to prove citizenship; it replaced self-attestation with other means of proof, including "other reasonable documentation" and verification through state and federal records. N.H. Rev. Stat. § 654:12(I)(a), (II-a), (VI). Plaintiffs Alexander and Lila Muirhead and Miles Borne each hold a New Hampshire-issued Real ID, so the State's motor-vehicle records confirm their citizenship. *See* Joint Stip., ECF 132 ¶¶ 7-8, 23-26; N.H. Rev. Stat. § 654:12(VI). State vital records likewise confirm Borne's citizenship because he was born in New Hampshire; moreover, he keeps a passport and a birth certificate at home. Joint Stip., ECF 132 ¶¶ 2, 4, 28; N.H. Rev. Stat. § 654:12(VI). Plaintiffs therefore could register to vote.

The asserted injury is not particularized. An injury "must affect 'the plaintiff in a personal and individual way and not be a generalized

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grievance." *Hippocratic Med.*, 602 U.S. at 381 (quoting *Lujan*, 504 U.S. at 560 n.1). Plaintiffs who can readily prove their citizenship are not harmed by the absence of an affidavit designed for registrants who cannot. What is left for the individual plaintiffs is a view about how New Hampshire should structure registration. That is a generalized grievance about the conduct of government. *See Lyman v. Baker*, 954 F.3d 351, 360–61 (1st Cir. 2020); *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam).

No injury is imminent. Because the Muirheads have not yet registered to vote, their claims rest on a threatened injury. A threatened injury "must be certainly impending to constitute injury in fact"; "allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (citation modified). The district court found that standard satisfied because the Muirheads intend to register when they turn eighteen. *N.H. Youth Movement*, 833 F. Supp. 3d at 127. But that fact does not show an imminent inability to register. For HB 1569 to injure either of them, every available path would have to fail at once: each would have to lose access to the passport and birth certificate now in their possession, and the motor-vehicle records

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reflecting their Real IDs would have to fail to confirm their citizenship. That is the kind of "highly attenuated chain of possibilities" that cannot establish standing. *Clapper*, 568 U.S. at 410.

The district court relied on *Fish v. Schwab*, 957 F.3d 1105, 1120 (10th Cir. 2020), for the proposition that a requirement to produce documentary proof of citizenship is itself an injury. *N.H. Youth Movement*, 833 F. Supp. 3d at 127. That reads too much into *Fish*. In *Fish*, "the [documentary proof of citizenship] requirement here actually was enforced against" the plaintiff, and his voter application was cancelled. *Fish*, 957 F.3d at 1113, 1120. No individual plaintiff here had the requirement enforced against them, nor is there any proof they will be unable to register.

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Borne's claim is also moot. Borne turned eighteen and registered to vote in 2025, using documentary proof of citizenship, while this case was pending. *N.H. Youth Movement*, 833 F. Supp. 3d at 127–28. The district court reasoned that standing is measured when the complaint is filed. *Id.* at 128. But "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997). Because New Hampshire treats prior

registration as proof of citizenship, N.H. Rev. Stat. § 654:12(I)(a), Borne will never again need to produce documents, or execute an affidavit, to register.

The district court applied the exception for disputes capable of repetition yet evading review, reasoning that in election cases "a plaintiff need only show that others similarly situated might suffer a comparable harm in the future." *N.H. Youth Movement*, 833 F. Supp. 3d at 128 (emphasis omitted) (quoting *La Botz v. FEC*, 889 F. Supp. 2d 51, 59 (D.D.C. 2012)). But the exception separately requires that a challenged action be "in its duration too short to be fully litigated prior to cessation or expiration." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (quotation omitted). HB 1569 is not. It does not lapse when an election ends; it governs every voter registration going forward. A voter who cannot prove citizenship or who chooses not to register rather than comply remains subject to the law, and that voter's claim does not become moot. Borne's claim went moot only because he proved his citizenship and registered. That is not a dispute too short to litigate. It is a plaintiff who no longer has one.

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II. HB 1569 and State Requirements To Prove Citizenship Are Constitutional

The plaintiff's claim also fails on the merits. HB 1569 asks registrants to prove that they are citizens. That requirement serves the State's most basic interest in its elections. And the burden it imposes is the kind of ordinary inconvenience the Supreme Court has held does not "represent a significant increase over the usual burdens of voting." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.). The district court concluded otherwise only by discounting the State's interest and misapplying *Anderson-Burdick*.

"[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Because "[e]lection laws will invariably impose some burden upon individual voters," strict scrutiny applies only to severe burdens. *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992). When a law imposes "reasonable, nondiscriminatory restrictions," "the State's important regulatory interests are generally sufficient to justify" them. *Id.* at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). And

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"evenhanded restrictions that protect the integrity and reliability of the electoral process itself" are not invidious. *Crawford*, 553 U.S. at 189–90 (opinion of Stevens, J.) (quoting *Anderson*, 460 U.S. at 788 n.9).

A. Requiring proof of citizenship serves the State's most fundamental interest in its elections

The Constitution leaves voter qualifications to the States. U.S. Const. art. I, § 2, cl. 1; U.S. Const. amend. XVII; *see also* U.S. Const. art. I, § 4, cl. 1 (empowering States to regulate the time, place, and manner of federal elections). Of all the voter qualifications States impose, citizenship is perhaps the most fundamental. A State may deny noncitizens the right to vote because voting lies at the heart of political institutions. *Foley v. Connelie*, 435 U.S. 291, 296 (1978); *see* 18 U.S.C. § 611 (making it a crime for a noncitizen to vote in federal elections).

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Because States have the power to require that all voters be citizens, States must be able to enforce that requirement. *See Free Speech Coal. v. Paxton*, 606 U.S. 461, 478 (2025) ("where the Constitution reserves a power to the States, it also reserves 'the ordinary and appropriate means' of exercising that power" (citation omitted)). "[I]t would raise serious constitutional doubts if a federal statute precluded a State from obtaining

the information necessary to enforce its voter qualifications." *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 16–17 (2013).

Enforcing citizenship requirements is vitally important. If a noncitizen casts a ballot, that "debase[s] or dilute[es]" the "weight of a citizen's vote." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). In close races, such as a recent New Hampshire race decided by a coin flip, ECF 160 at 121:5–18, even a single diluted vote can be decisive. Allowing ineligible persons to vote harms voter confidence in the electoral process as well. "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); *see id.* (observing voter fraud can "breed distrust of our government"). "There [thus] 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 (opinion of Stevens, J.).

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The district court failed to give sufficient weight to this important interest. It could not deny that noncitizens sometimes register to vote and cast ballots; it admitted that as many as eight noncitizens may have cast as many as 26 ballots in New Hampshire. *N.H. Youth Movement*, 833 F. Supp. 3d at 138. Instead, the court deemed noncitizen voting a

problem too "minuscule" to matter. *Id.* But the Constitution does not require a State to tolerate some quantity of ineligible votes before acting. "Legislatures . . . should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." *Munro v. Socialist Workers Party*, 479 U.S. 189, 195–96 (1986). A State "may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021).

Nor must a State ignore evidence of a problem beyond its borders. In *Crawford*, the record contained no evidence of in-person voter impersonation in Indiana, yet the Supreme Court sustained Indiana's law in light of "flagrant examples of such fraud in other parts of the country." 553 U.S. at 194–95 (opinion of Stevens, J.); *see Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997) (States need not provide "elaborate, empirical verification of the weightiness" of their justifications). The same type of evidence to which the Supreme Court took in *Crawford* illustrates the need to verify citizenship here.

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Noncitizen voting is a significant problem across the country. Ohio's Secretary of State has referred to 1,084 noncitizens who appear to have registered unlawfully to federal prosecutors, including 167 who appear to have voted in federal elections between 2018 and 2024.[4] Iowa announced that it was able to confirm 277 noncitizens on its rolls, 35 of whom cast ballots that were counted in the 2024 general election.[5] And in New Jersey, the Governor announced that a motor-vehicle software error registered about 6,600 people who had identified themselves as noncitizens between June 2023 and June 2024, some of whom went on to cast ballots.[6] These examples underscore the reasonableness of requiring proof of citizenship rather than just allowing prospective voters to self-attest to their eligibility.

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[4] Press Release, Ohio Sec'y of State, *Secretary LaRose Refers More Than 1,200 Criminal Cases to DOJ* (Oct. 28, 2025), https://www.ohiosos.gov/office/media-center/categories/press-releases/2025-10-28.

[5] Press Release, Iowa Sec'y of State, *Iowa Secretary of State's Audit of Voter Registration Lists Finds 277 Confirmed Noncitizens Registered to Vote* (Mar. 20, 2025), https://sos.iowa.gov/news-resources/iowa-secretary-states-audit-voter-registration-lists-finds-277-confirmed-noncitizens.

[6] Geoff Mulvihill, *6,600 Noncitizens Registered to Vote After Error in New Jersey Motor Vehicle System, Governor Says*, Associated Press (July 21, 2026), https://abcnews.com/Politics/wireStory/6600-noncitizens-registered-vote-after-error-new-jersey-134958242.

Self-attestation also makes violations difficult to detect. When a registrant may simply swear to citizenship, the State has no document against which to check the claim, and ineligible registrations surface, if at all, only through after-the-fact investigation. As the Seventh Circuit recognized in *Crawford*, the scarcity of prosecutions may reflect the difficulty of detecting unlawful voting rather than its absence. *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 953 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). And after-the-fact enforcement cannot undo the harm. New Hampshire's Deputy Secretary of State testified that unlawful ballots, once cast, cannot be excised or discounted from the elections they distort, and that HB 1569's verification requirement would have prevented several instances of wrongful voting the State had confirmed. ECF 160 at 93:5–12, 122:6–17, 125:18–24. The legislature reasonably chose to verify eligibility before a ballot is cast rather than to prosecute after the fact.

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Finally, the district court discounted the State's interest in voter confidence because surveys show that about ninety percent of New Hampshire residents already trust the State's elections. *N.H. Youth Movement*, 833 F. Supp. 3d at 138–39. But "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.). A State need not wait for confidence to erode before acting to preserve it, *see Munro*, 479 U.S. at 195–96, particularly as noncitizen voting draws sustained national attention. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4; *see Crawford*, 553 U.S. at 197 (opinion of Stevens, J.).

B. The district court misapplied *Anderson-Burdick*

The district court concluded that HB 1569 significantly burdens the right to vote. *N.H. Youth Movement*, 833 F. Supp. 3d at 130–31. It reached that conclusion through two legal errors. First, it measured HB 1569's burden by its effect on particular subgroups rather than all the voters the law governs. Second, it treated the repeal of an accommodation the Constitution never required as a constitutional burden, turning *Anderson-Burdick* into a one-way ratchet.

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1. The district court improperly examined isolated impacts rather than the impact on all voters the requirement governs.

Anderson-Burdick does not ask whether some voters, in some circumstances, will find a law difficult to satisfy. "Every voting rule imposes a burden of some sort." *Brnovich,* 594 U.S. at 669. The question is whether the law imposes a substantial burden measured across the voters it governs. As the Fifth Circuit has explained, "the severity analysis is not limited to the impact that a law has on a small number of voters," and a court errs when it "focuses only on the burden to the plaintiffs—instead of voters as a whole." *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 236 (5th Cir. 2020).

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Crawford illustrates the point. In *Crawford*, Justice Scalia distinguished between the severity of a burden and individual impacts. Severity, he explained in writing for three Justices, must be measured by looking at a regulation's effect on all voters it governs: "our precedents refute the view that individual impacts are relevant to determining the severity of the burden." 553 U.S. at 205 (Scalia, J., concurring). Three other Justices took a complementary approach. They acknowledged that a voting rule may place "a somewhat heavier burden . . . on a limited

number of persons." *Id.* at 199 (opinion of Stevens, J.). But that burden would not justify "invalidat[ing] the entire statute." *Id.* at 203. They explained that a statute must suffer constitutional problems when applied to "most voters." *Id.* at 198; *accord Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008).

The district court failed to follow the proper approach here. It did not ask whether New Hampshire's proof-of-citizenship requirement or HB 1569 substantially burdens *most* voters to whom it applies. Instead, the court examined the experiences of particular subgroups, including young voters and married women whose documents reflect a former name, and from accounts of individual voters turned away in low-turnout local elections. *N.H. Youth Movement*, 833 F. Supp. 3d at 130–34. And it then further narrowed its focus to those who could not satisfy the requirement. *Id.* at 130 n.20. *Crawford* forecloses that approach. Indiana's requirement applied to every in-person voter, as HB 1569's applies to every registrant, and *Crawford* measured the Indiana law by its "broad application to all Indiana voters." 553 U.S. at 202–03 (opinion of Stevens, J.). Measuring HB 1569's burden only by the subset of voters

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who find it hardest to satisfy would judge every generally applicable election rule by its most difficult application.

Under a correct application of *Anderson-Burdick*, it is clear that HB 1569 does not impose a substantial burden. HB 1569 asks registrants to present a birth certificate, passport, naturalization papers, or "any other reasonable documentation," or to have their citizenship confirmed through official records. N.H. Rev. Stat. § 654:12(I)(a), (VI). That requires no more—and in many cases less—than what the Supreme Court has found constitutionally unremarkable. In *Crawford*, the Court explained that "the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.); *see id.* at 209 (Scalia, J., concurring in the judgment). The district court's concern that many voters do not carry their citizenship documents and must retrieve them before registering, *N.H. Youth Movement*, 833 F. Supp. 3d at 131–32, describes only ordinary inconvenience.

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Even the Tenth Circuit in *Fish*, on which the district court principally relied, measured the burden across everyone the law governed. It found a significant burden because Kansas had denied registration to more than 31,000 applicants, roughly twelve percent of all new registration applicants during the relevant period. 957 F.3d at 1127–28. The district court here never asked that question. The expert estimate on which it relied found that more than 98 percent of eligible New Hampshire residents possess documentary proof of citizenship, and that between 5,433 and 31,291 residents must take some affirmative step to obtain it and that estimate includes voters who are already registered or whose citizenship the State's own records confirm. Trial Ex. 15 ¶ 176; ECF 157 at 15:4–17:10, 20:6–15. A count of voters who must take a step to obtain a document is not a count of voters who cannot comply.

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The court's reliance on how often registrants used the affidavit option before its repeal suffers from the same flaw. *N.H. Youth Movement*, 833 F. Supp. 3d at 131. The court acknowledged that it "cannot and does not conclude that every voter who used a [qualified voter affidavit] to establish citizenship could not otherwise have established citizenship with [documentary proof of citizenship]." *Id.*

When a State offers a free and immediate alternative to producing documents, many registrants who have documents will use it. Their choice reflects a preference for the easier path, not an inability to comply; any resulting burden is "a matter of choice rather than a state-created obstacle." *Frank v. Walker*, 768 F.3d 744, 749 (7th Cir. 2014).

Much of the remaining analysis concerned the early implementation of the records-verification procedures the legislature adopted in 2025: gaps in historical records, internet access at some polling places, the number of trained officials, and search protocols that might return false negatives. *N.H. Youth Movement*, 833 F. Supp. 3d at 134–37. Those are administrative problems that a State can address through funding, training, and guidance, and they may support relief for a particular voter who is wrongly turned away. They do not make the statute invalid on its face. Courts adjudicating facial challenges may not "speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449–50 (citation omitted).

Finally, the district court concluded that the burden was heightened because New Hampshire lacks a "safety valve" such as provisional ballots, reasoning that *Crawford* sustained Indiana's law in

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part because voters without identification could cast provisional ballots. *N.H. Youth Movement*, 833 F. Supp. 3d at 133, 137. But *Crawford* treated Indiana's provisional-ballot option as one feature that mitigated the burden on a small group of voters. 553 U.S. at 199 (opinion of Stevens, J.). It did not hold that a State must provide such an option, and its acceptance of Indiana's interests did not depend on it. *See id.* at 191–97. New Hampshire resolves eligibility at the registration table, including on Election Day, through multiple paths of proof.

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2. The district court improperly treated *Anderson-Burdick* as a one-way ratchet

The district court's second error was to treat the repeal of a nonmandatory accommodation as a constitutional burden. As explained above, plaintiffs do not claim a constitutional right to prove citizenship by affidavit. *See N.H. Youth Movement*, 833 F. Supp. 3d at 98. The affidavit option was an accommodation New Hampshire chose to offer, not one the Constitution required. So that accommodation cannot lock New Hampshire into the choice forever or create a heightened baseline for a burden analysis.

The notion an accommodation creates "a federal floor that [a State] may add to but never subtract from" would be an "astonishing

proposition." *Ohio Democratic Party v. Husted*, 834 F.3d 620, 623 (6th Cir. 2016). That theory "would create a 'one-way ratchet' that would discourage states from ever increasing [voting] opportunities, lest they be prohibited by federal courts from later modifying their election procedures in response to changing circumstances." *Id.*; *see Tex. League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 148 (5th Cir. 2020) (that an accommodation "is not as broad as plaintiffs would wish does not mean that it has illegally limited their voting rights").

The district court nevertheless found the burden "heightened" because New Hampshire does not offer early in-person voting, provisional ballots, or third-party registration drives. *N.H. Youth Movement*, 833 F. Supp. 3d at 132. The Constitution requires none of these. "The Constitution does not require any opportunities for early voting." *Husted*, 834 F.3d at 623. Nor does it entitle private groups to collect and submit other people's registration applications. *See Voting for Am., Inc. v. Steen*, 732 F.3d 382, 391 n.4 (5th Cir. 2013).

The district court also counted New Hampshire's exemption from the National Voter Registration Act against it. *N.H. Youth Movement*, 833 F. Supp. 3d at 132–33. But Congress exempted States like New

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Hampshire because they allow registration at the polls on Election Day. 52 U.S.C. § 20503(b). Treating that exemption as an aggravating factor penalizes New Hampshire for maintaining the most accessible forms of registration available. Those omissions may be part of the whole system inquiry, but they cannot be weighed against New Hampshire while the accommodations it does provide was ignored.

The district court was right that burdens must be assessed by "looking at the whole electoral system." *N.H. Youth Movement*, 833 F. Supp. 3d at 129 (quoting *Luft v. Evers*, 963 F.3d 665, 671–72 (7th Cir. 2020)). But whole-system review requires crediting accommodations a State provides, not merely faulting it for those it does not. The Supreme Court has upheld registration deadlines that close fifty days before an election. *Marston v. Lewis*, 410 U.S. 679 (1973) (per curiam); *Burns v. Fortson*, 410 U.S. 686 (1973) (per curiam). But New Hampshire allows registration on Election Day; accepts "any other reasonable documentation" of citizenship; verifies citizenship through state, out-of-state, and federal records; provides free New Hampshire birth certificates for voting; offers vouchers to help indigent registrants obtain documents; and treats a prior registration as proof of citizenship. N.H.

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Rev. Stat. § 654:12(I)(a), (II-a), (VI); *N.H. Youth Movement*, 833 F. Supp. 3d at 134. Viewed as a whole, that system offers a wide variety of paths to registration that limits burdens on any individual voter.

Fish does not support a different rule. The plaintiffs there challenged Kansas's documentary-proof requirement itself, 957 F.3d at 1111; plaintiffs challenge only the repeal of one method of proof. And *Fish's* treatment of self-attestation as the "presumptive minimum" a State may require rested on the National Voter Registration Act, *id.* at 1114, a statute whose registration mandates do not apply to New Hampshire, *see* 52 U.S.C. § 20503(b).

The district court's approach would reach well beyond New Hampshire. If repealing an accommodation is itself a constitutional burden, every accommodation a State adopts becomes permanent the moment it takes effect. States would have every reason not to experiment with generous registration options, knowing that any expansion could never be revisited. The Constitution does not impose that one-way ratchet, and *Anderson-Burdick* does not require it.

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CONCLUSION

The Court should vacate the district court's judgment and remand with instructions to dismiss for lack of standing. In the alternative, the Court should reverse.

Respectfully submitted,

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