IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

NEW HAMPSHIRE YOUTH MOVEMENT,

Plaintiff,

v.

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

Defendant.

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

DEFENDANT SECRETARY OF STATE SCANLAN'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

INTRODUCTION

Plaintiff New Hampshire Youth Movement's ("Youth Movement" or the "Association") Objection to Defendant Secretary of State Scanlan's Motion to Dismiss does not rehabilitate the Complaint's three principal defects. First, Youth Movement has not satisfied its burden to plausibly allege its claim to associational standing. The Association has not identified any member with an actual or imminent concrete and particularized harm as it must to secure standing.[1] Youth Movement also fails to cite pertinent authority supporting its expansive view of its organizational purpose, the interests it represents, and the objectives of this lawsuit.[2]

Second, Youth Movement has not satisfied its burden to plausibly allege direct organizational standing. It cannot distinguish its circumstance from controlling Supreme Court authority holding that an association cannot secure direct standing absent a showing of ***direct*** interference with its core activities.[3] Third, the Court cannot reasonably infer plausible allegations of a claim upon which the Court may grant relief from the Complaint's threadbare recitals of the *Anderson-Burdick* balancing test.[4] For these reasons, and as explained more fully in the Secretary's Memorandum of Law in Support of the Motion to Dismiss (ECF No. 24), the Court should dismiss the Complaint in its entirety.

ARGUMENT

I. Standing Doctrine's "Heightened Specificity" Requirement to State a Plausible Claim of Associational Standing Is Not a "Heightened Pleading" Standard

Youth Movement conflates a "heightened pleading standard" with the "heightened specificity" required to plausibly plead standing. *See, e.g.*, ECF No. 25 at 9. There is a

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[1] *See Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016).

[2] *See Housatonic River Initiative v. EPA*, 75 F.4th 248, 265 (1st Cir. 2023).

[3] *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (discussing *Havens Realty Corp. v. Coleman*, 455 U. S. 363, 379 (1982)).

[4] *See Alston v. Spiegel*, 988 F.3d 564, 571 (1st Cir. 2021) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

difference between a ***pleading standard*** and that which is required to state a ***plausible claim***. The *Iqbal* pleading standard requires a plaintiff to provide sufficient detail to give a defendant "fair notice" of the plaintiff's claim and the grounds upon which the claim rests. *See Ocasio-Hernandez v. Fortuño-Burset*, 640 F.3d 1, 11-12 (1st Cir. 2011). Heightened pleading standards are rare, and do not apply in this case. *See Rivera v. R.I.*, 402 F.3d 27, 33 (1st Cir. 2005).

"Fair notice," on the other hand, requires a plaintiff to show a ***plausible*** claim for relief, not merely a ***possible*** claim for relief. *Ocasio-Hernandez*, 640 F.3d at 10-11. And because the nature of claims are context-dependent, "determining whether a complaint states a plausible claim for relief is a context-specific task[.]" *See Pitta v. Medeiros*, 90 F.4th 11, 17 (1st Cir. 2024) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)) (internal quotations omitted). Article III standing's context is unique because standing is a "threshold question in every case" that "'focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.'" *See N. New England Conf. v. N.H.*, 525 F. Supp. 912, 912-13 (D.N.H. 1980) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37-38 (1976)).

In *Draper v. Healey*, Justice Souter clarified pre-established standing doctrine, explaining that "where standing is at issue, heightened specificity is obligatory at the pleading stage." *Draper*, 827 F.3d at 3. Because Youth Movement confuses the pleading standard with context-specific plausibility, Youth Movement misunderstands *Draper*'s holding and its applicability here. Justice Souter did not heighten the basic pleading requirement, nor was his decision narrowly tailored to the specifics of the *Draper* case. *See id.* Rather, *Draper* explained that in the Article III standing context, a complaint requires "reasonably definite factual allegations, either direct or inferential, regarding ***each material element needed to sustain standing***." *Id.* (quoting *United States v. AVX Corp.*, 962 F.2d 108, 115 (1st Cir. 1992)) (internal quotations

omitted; emphasis added). *Draper*'s mandate that a plaintiff establish sufficiently plausible facts is not novel—it is the *sine qua non* of constitutional standing. *See Dicroce v. McNeil Nutritionals, LLC*, 82 F.4th 35, 38-30 (1st Cir. 2023).

Youth Movement is wrong to suggest that the district court's *Conservation Law Foundation* decision ("*CLF*") somehow marginalizes the First Circuit decisions in either *Draper* or *AVX*—*CLF* applied the rule of *AVX,* it did not depart from it.[5] *See CLF*, 2012 U.S. Dist. LEXIS at *18-19. Likewise, the other cases cited by Youth Movement do not support its contention that heightened specificity somehow alters the pleading standard.[6] *Draper* and *AVX*'s mandate that associations specifically allege standing at the pleading stage is consistent with Supreme Court precedent and controlling authority in this circuit. *See Draper*, 827 F.3d at 3; *AVX Corp.*, 962 F.2d at 115.

II. New Hampshire Youth Movement Has Failed to Sufficiently Allege the Elements of Associational Standing

Draper stands for the proposition that where associational standing is at issue, an organization must specifically allege ***who*** among its members allegedly have individual standing (*i.e.*, afford derivative injury-in-fact, causation, and redressability in a representative capacity),

[5] The *CLF* court's interpretation of the verb "heightened" as used in the *AVX* decision was dicta to impart context to the rule of *AVX*, post-*Iqbal*. *See Conserv. Law Found. v. Pub. Serv. Co. of N.H.*, No. 11-cv-353-JL, 2012 U.S. Dist. LEXIS 138881, *6 (D.N.H. Sept. 27, 2012). The *CLF* court's holding, on the other hand, emphasized that a plaintiff's "'conclusory allegations are insufficient,' and it is not enough that the complaint's allegations are 'merely consistent with' the plaintiff's ability to recover." *Id.* *7-8.

[6] *See Gustavsen v. Alcon Labs., Inc.*, 903 F.3d 1, 7 (1st Cir. 2018) (stating that while the plausibility standard for standing is the same as that for a Rule 12(b)(6) motion, the court must nevertheless "ask whether the plaintiff has pleaded sufficient factual matter to plausibly demonstrate his standing to bring the action[,]" which requires analyzing "named plaintiffs" before class certification) (internal quotations and citations omitted; cleaned up); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 313 n.11 (1st Cir. 2024) (stating that the association could not premise associational standing on its advocacy; it could only premise standing on injury-in-fact to members or those with indicia of membership); *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (holding merely that a "heightened pleading standard" does not apply to *Monell* claims, and not contradicting the requirement that a plaintiff plead in a non-conclusory manner); *Sea Shore Corp. v. Sullivan*, 158 F.3d 51, 54 (1st Cir. 1998) (stating that heightened pleading is not required, but the court need "not, however, credit bald assertions, subjective characterizations, optimistic predictions, or problematic suppositions") (cleaned up); *and Adams v. Watson*, 10 F.3d 915, 919 n.8 (1st Cir. 1993) (declining to "revisit *AVX*").

how the alleged harm is germane to the representative organization, and ***whether*** members must participate individually in the lawsuit. *See Draper*, 827 F.3d at 3. Youth Movement must allege these elements of its purported standing with specificity, but it falls short of the mark. *See id.*

A. New Hampshire Youth Movement Has Not Plausibly Alleged That at Least One Member Has Standing in His or Her Own Right

Rather than identify a member with injury-in-fact, Youth Movement generally describes its membership as "young, low-income, and [] marginalized[,]" and speculates that they "are less likely to possess or have ready access to their birth certificates, passports, or naturalization papers—if they have them at all[,]" arguing that these allegations support a reasonable inference of injury-in-fact.[7] *See* ECF No. 25 at 5. The Association leaves it to the Court to suppose that its members do not have any other reasonable documentation of citizenship. Youth Movement contends that this should be enough, because it would be too challenging for the Association to find one of its 100 members who will be injured by HB 1569 in advance of the injury:

> That it is difficult to identify such voters [who will lack access to proof-of-citizenship documents on election day] in advance does not change the fact that they will be harmed, and the Complaint alleges facts showing that the Youth Movement's members are particularly likely to fall into those categories of injured voters.

Id. at 17. The internally inconsistent assertion of "the ***fact*** that [prospective voters] will be harmed" and that it is only "particularly ***likely***" that its members will be among those harmed, underscores Youth Movement's hypothetical claim that a member is at risk of a concrete injury.[8]

[7] Youth Movement often refers to its "members" simultaneously with "constituents," as if they are the same. *See* ECF No. 25 at 2. It does not attempt to make any showing, however, that its constituents bear "indicia of membership in an organization." *Compare In re Fin. Oversight*, 110 F.4th at 315, 316 n.15 (requiring nonmembers to allege influence or control over the association and litigation) *with* ECF No. 18 n.6 (alleging only that Youth Movement's constituents "identify with the group's mission and significantly influence its core activities" without alleging how they influence the Association). Accordingly, the Association has failed to sufficiently allege that its constituents are "members" in the associational standing context.

[8] Youth Movement also alleges that HB 1569 will "necessarily apply to ***all*** voters seeking to register to vote—including the Youth Movement's members." ECF No. 25 at 16 (emphasis in original). This statement all but concedes that the Association is pursuing a generalized grievance and not an injury particularized to a member.

Difficulty in identifying members who may suffer future harm does not excuse an association from its duty to identify members. For example, in the Second Circuit *Faculty Alumni* case, an association challenged NYU's Law Review editor-selection diversity considerations. *See Faculty Alumni, & Students Opposed to Racial Preferences v. N.Y. Univ.*, 11 F.4th 68, 72 (2d Cir. 2021). The association ("FASORP") asserted that its members would be injured by having their future scholarly submissions evaluated by less-capable students. *Id.* at 73. With respect to its standing to challenge the editor-selection process, FASORP:

> only asserts that its membership includes "faculty members or legal scholars who have submitted articles to the Law Review in the past, and who intend to continue submitting their scholarship to the Law Review in the future[.]"

Id. at 76 (quoting FASORP's Am. Compl.). Like Youth Movement, FASORP asserted that "it's hard to get more specific than that." *Id.* (internal quotations and citation omitted) (cleaned up). The Second Circuit held that pleading stage allegations such as these ask the court:

> to accept a self-description of the activities of its members and to conclude that there is a statistical probability that some of those members are threatened with concrete injury.

Id. (internal quotations and citation omitted). "Such allegations are ***plainly insufficient*** to show that FASORP's members have suffered the requisite harm here." *Id.* at 76 & n.37 (citing *Summers*, 555 U.S. at 497) (emphasis added). So, where an association does not specifically identify its purportedly injured members, the association cannot satisfy its burden to make "a factual showing of perceptible harm." *See Summers*, 555 U.S. at 499.

Youth Movement's reliance upon *CLF* to assert that Youth Movement is entitled to a sufficiency test lesser than that articulated by *AVX* is misplaced for the reasons stated in Section I. above. Moreover, unlike Youth Movement, CLF ***named*** affected members ***and*** produced their affidavits. *CLF*, ECF No. 20 at 14 n.10 (D.N.H. Nov. 10, 2011) (Exhibit A). Judge Laplante expressly held that CLF did ***not*** make "the type of nebulous allegations regarding

[CLF's] members' identities … which the *AVX* court decried[,]" because CLF "clearly identified two of its members[.]" *CLF*, 2012 U.S. Dist. LEXIS at *18-19 (quoting *AVX Corp.*, 962 F.2d at 117) (internal quotations omitted). Youth Movement's extra-jurisdictional citations to contend that it need not specifically identify an injured member are equal parts nonbinding and unavailing.[9]

Youth Movement has not identified who among its members ***cannot*** produce reasonable documentation of their citizenship when he or she registers to vote. It is not even clear that the Association has a single member who is not ***currently*** registered to vote. Accordingly, Youth Movement has not plausibly alleged that the injury of which it complains is traceable to HB 1569 or that the Court could redress the purported injury. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998) ("First and foremost, there must be alleged (and ultimately proven) an injury in fact[.]") (internal quotations and citations omitted; cleaned up).

B. New Hampshire Youth Movement's Allegations Are Not Sufficient to Assess Whether Its Members Must Individually Participate in This Case

Youth Movement does not have associational standing if its members must individually participate in this litigation. *See Council of Ins. Agents & Brokers v. Juarbe-Jimenez*, 443 F.3d 103, 108 (1st Cir. 2006) (citing *Hunt* v. *Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)) (internal quotations and citations omitted). Without specifics regarding injury-in-fact,

[9] *See, e.g.*, *Ranchers-Cattlemen Action Legal Fund v. USDA*, 573 F. Supp. 3d 324, 334 (D.D.C. 2021) (holding that where a portion of most if not all members' dues are diverted by an allegedly unlawful regulation, it is "a close question," but that is enough "—although just enough—" to establish associational standing at the pleading stage); *Sierra Club v. Energy Future Holdings Corp.*, 921 F. Supp. 2d 674, 679-80 (W.D. Tex. 2013) (noting specific allegations and documentation of illegal pollutant discharge to which association members who lived, worked, and recreated downwind had been exposed); *Garcia v. City of L.A.*, 611 F. Supp. 3d 941, 951 (C.D. Cal. 2020) ("Naming individual members ***may*** not be necessary at the motion to dismiss stage" but only where, among other things, "the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury.") (internal quotations and citations omitted; cleaned up) (emphasis added); *March for Our Lives Idaho v. McGrane*, 697 F. Supp. 3d 1029, 1041-42 (D. Idaho 2023) (holding that associational standing may be established only where it is "relatively clear" that a member will be charged a fee by the state to vote ***and*** the defendant need not "know the identity of a particular member to understand and respond to an organization's claim of injury.") (internal quotations and citations omitted).

causation, and redressability, it is impossible to tell whether the Association's members must individually participate here, as a prudential matter. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) (applying the constitutionally required elements of associational standing to determine whether an association can appropriately represent its members).

Youth Movement asserts that the Massachusetts District Court's recent *Brandeis Center* decision held that "individualized consideration of [] members' experiences" does not create a "bar to associational standing because the requested injunctive relief will inure to the benefit of all injured class members[.]" ECF No. 25 at 20 (quoting *Louis D. Brandeis Ctr. for Hum. Rights Under L. v. President*, No. 24-11354-RGS, 2024 U.S. Dist. LEXIS 200937, at *4 (D. Mass. Nov. 5, 2024). Perhaps this is not a *per se* bar to associational standing, but the *Brandeis Center* complaint is not at all like Youth Movement's. The *Brandeis Center* associations specifically identified five members with injuries-in-fact, detailing the nature, severity, date, and location of physical injuries that had already occurred—and attached supporting documentation (including videos). *See, e.g.*, *Louis D. Brandeis Ctr.*, ECF No. 1, ¶¶ 110-132 (Member #4) (May 22, 2024) (Exhibit B). The Secretary's argument is that Youth Movement's inability to identify a member who has suffered injury-in-fact or the cause of the alleged injury makes it impossible to assess whether a "fact-intensive-individual inquiry" ***might*** preclude associational standing. *See N.H. Motor Transp. Ass'n v. Rowe*, 448 F.3d 66, 72 (1st Cir. 2006).

C. New Hampshire Youth Movement's Broad Mission Does Not Make Every Matter of Public Interest Germane to Its Core Purpose

Youth Movement relies upon *Housatonic River* for the proposition that it need "only" assert that the lawsuit's interests be "related to [Plaintiff's] core purposes" to satisfy the germaneness requirement for standing, but this does not accurately reflect *Housatonic River*'s holding. *Contra* ECF No. 25 at 19. In *Housatonic River*, the court held that the association was

specifically formed for the purpose of protecting the river from contamination. *See Housatonic River*, 75 F.4th at 265. The lawsuit's objective was not merely "related to [the association's] core purposes"—the organization literally did nothing else. *See id.* So, the inquiry into germaneness is more scrutinizing than Youth Movement implies. *See Saget v. Trump*, 375 F. Supp. 3d 280, 336 (E.D.N.Y. 2019). A lawsuit's objective must align with the association's core purposes. *See Me. People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277, 283 (1st Cir. 2006) (internal citation omitted). In other words, Youth Movement must demonstrate that this lawsuit's goals serve the *ex ante* aims that its members understood they would advance by joining. *See Housatonic River*, 75 F.4th at 265 (citing *Hunt*, 432 U.S. at 343).

Indeed, even if Youth Movement's core purposes were related to voting rights (which they are not), voting rights would not be enough to establish the constitutional requirement of germaneness in this case. This is so because Youth Movement ***supports*** citizenship as a voter registration requirement. *See* ECF No. 1, ¶¶ 3-4. It simply objects to the ***mechanism*** adopted by the political branches to ensure that registrants are citizens. *See id.* ¶ 4. A favorable decision in this case would purportedly serve the interests of (1) unregistered prospective voters who (2) cannot produce reasonable documentation to establish citizenship. *See id.* ¶¶ 6-8. Youth Movement has not alleged that its members share these characteristics or associated with it to advance these interests, which are highly attenuated from its mission "to advance policy goals such as increasing wages, decreasing the costs of education, housing and medical care, and combatting the growing effects of climate change." *See id.* ¶ 14.

III. New Hampshire Youth Movement Has Not Plausibly Alleged That It Has Direct Organizational Standing

The principal rule of *Alliance for Hippocratic Medicine* is that where a governmental action does not directly impose an impediment to an association's advocacy, the association has

not suffered injury to a legally protected interest. *See All. for Hippocratic Med.*, 602 U.S. at 395-96. Youth Movement tries to distinguish *Alliance for Hippocratic Medicine* from this case, but it cannot credibly do so. The crux of Youth Movement's argument is that it is different than Hippocratic Medicine (the "Alliance") because the Alliance had "no perceptible impairment of core activities." *See* ECF No. 25 at 11.

To the contrary, the Alliance's relationship to the FDA's regulations and Youth Movement's relationship to HB 1569 are nearly indistinguishable. Neither is regulated by the authority subject to their legal challenges. *See All. for Hippocratic Med.*, 602 U.S. at 373 *and see* ECF No. 1, ¶¶ 34-36. Moreover, the Alliance and Youth Movement's public policy advocacy,[10] the purported impediments to their organizational purposes,[11] and their alleged organizational injuries,[12] are materially identical. At best, Youth Movement has alleged a setback to its abstract social interests. Like the FDA regulation and the Alliance, HB 1569 does not directly impose an impediment to Youth Movement's advocacy. *See All. for Hippocratic Med.*, 602 U.S. at 395. *Alliance for Hippocratic Medicine* is controlling, and it bars Youth Movement's organizational standing in this case.[13]

[10] The Alliance alleged that it advocates for protecting women and girls from the dangers of chemical abortion drugs, for the vulnerable, and for patient wellness. *See All. for Hippocratic Med.*, ECF No. 1, ¶¶ 32-33 (Nov. 18, 2022) (Exhibit C) ("All. Compl."). Youth Movement alleges that it advocates for increased wages, for decreased education, housing, and medical care costs, and for climate change mitigation. ECF No. 1, ¶ 14.

[11] The Alliance alleged that the FDA "frustrates and complicates" its "purpose to support women's health and to educate doctors, their patients, and the public about these dangers." All. Compl. ¶ 315 (supported with affidavits). Youth Movement alleges that HB 1569 "directly undermin[es] the efficacy of its educational and get out the vote efforts[.]" ECF No. 1, ¶ 18 (not supported by affidavits).

[12] The Alliance alleged that the FDA caused it to "expend considerable time, energy, and resources on its public advocacy and educational activities about chemical abortion drugs—to the detriment of their other priorities and functions." All. Compl. ¶ 315 (supported with affidavits). So too, Youth Movement alleges that it "will be forced to direct efforts toward educating voters on the harms and risks associated with the proof-of-citizenship requirement … at a direct cost to its other priorities." ECF No. 1, ¶¶ 18, 19 (not supported by affidavits).

[13] Youth Movement's reliance on nonbinding decisions is again unavailing. *See, e.g.*, *LUPE v. Abbott*, No. 5:21-cv-0844, 2024 U.S. Dist. LEXIS 187743, at *107-08 (W.D. Tex. Oct. 11, 2024) (granting organizational standing in part, but denying organizational standing where it did not plausibly allege that its members have or will engage in conduct prohibited by the challenged statute) (citing *All. for Hippocratic Med.*, 602 U.S. at 383); *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 396 (4th Cir. 2024) ("We have consistently held that standing cannot be

IV. New Hampshire Youth Movement Has Failed to State a Plausible Claim That House Bill 1569 Violates Its or Its Members Constitutional Rights

Youth Movement hypothesizes that unidentified unregistered voters do not have birth certificates, passports, or naturalization papers, and that they do not have any other reasonable documentation of citizenship. *See* ECF No. 25 at 22. It states with unwavering certainty that "[s]ome will be prevented from registering and voting," and it characterizes the burdens to comply with HB 1569 as "significant," but offers no corroborating facts of a member who has been denied voter registration or who can demonstrate that HB 1569 is prohibitively burdensome to him or her. *See id.* at 22. These allegations are impermissibly threadbare because they offer only legal conclusions and recitals of the elements set forth by the *Anderson-Burdick* balancing test, *extra contextum*. *See Rodriguez-Ramos*, 685 F.3d at 40. They do not lend themselves to a reasonable inference that HB 1569 violates Youth Movement's members' rights. *See Alston*, 988 F.3d at 571. Thus, even if the Court were to hold that Youth Movement has associational standing, the Complaint fails to state a claim upon which the Court may grant relief.

Also, as stated in Section III. above, Youth Movement has not plausibly alleged that HB 1569 directly imposes an impediment to the Association's public policy advocacy, nor has it alleged a legally cognizable injury to the organization. Resource diversion does not state a claim—Youth Movement must plausibly allege a direct conflict between HB 1569 and its mission. *See Equal Means Equal v. Ferriero*, 3 F.4th 24, 30 (1st Cir. 2021). Since it has not, the Complaint fails to state a claim upon which the Court may grant relief to the organization.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Complaint in its entirety.

established on the sole basis of an organization's uncompelled choice to expend resources.") (holding that where a partisan organization's mission to counsel voters is "directly 'affected and interfered with'" the organization has direct standing) (quoting *All. for Hippocratic Med.*, 602 U.S. at 395).

Respectfully submitted,

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

By his attorney,

JOHN M. FORMELLA
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Date: January 22, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all parties of record through the Court's e-filing system.

/s/ Michael P. DeGrandis
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