

**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

COALITION FOR OPEN DEMOCRACY,  
*et al.,*

*Plaintiffs,*

v.

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

*Defendants.*

Case No. 1:24-cv-00312-SE-TSM

**DEFENDANTS' RESPONSE TO THE COURT'S NOTICE OF  
POSSIBLE CONSOLIDATION OF THE CASES**

NOW COME Defendants New Hampshire Secretary of State David M. Scanlan and New Hampshire Attorney General John M. Formella (collectively, the "Defendants"),<sup>1</sup> by and through their counsel, the Office of the Attorney General, and state as follows in response to the Court's Consolidation Notices of January 10 and 28, 2025:

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<sup>1</sup> The Secretary of State is the lone defendant in *Youth Movement*. The Secretary of State and the Attorney General are the two defendants in *Open Democracy*. This Response uses the plural "Defendants" irrespective of the specific case to which it refers, to avoid confusion. Defendants are represented by the same counsel and are making identical arguments in defense of HB 1569.

### **Introduction**

1. *New Hampshire Youth Movement v. Scanlan* (1:24-cv-00291-SE-TSM) and *Coalition for Open Democracy, et al. v. Scanlan, et al.* (1:24-cv-00312-SE-TSM) share common questions of law and fact.

2. Consolidating *Open Democracy* and *Youth Movement* will promote judicial economy, avoid unnecessary costs or delays, and will not result in prejudice to any party.

3. If the Court elects to consolidate the cases, Defendants respectfully request that the Court allow Defendants' pending Motions to Dismiss to proceed in each case, independent of the other.

### **Comparative Procedural Postures of the Cases**

4. In fashioning the scope of consolidation, the Court should consider the comparative procedural postures of the cases' responsive pleadings and discovery.

5. Regarding responsive pleadings, both lawsuits have pending Motions to Dismiss that are substantively similar. *Youth Movement*, ECF No. 24 ("YM"); *Open Democracy*, ECF No. 36 ("OD"). Defendants assert that the Court should dismiss the lone Plaintiff in *Youth Movement* pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, because the organization does not have standing to challenge HB 1569. Likewise, Defendants assert that the Court should dismiss the three organizational and five individual Plaintiffs in *Open Democracy* on the same grounds. Alternatively, Defendants ask the Court to dismiss each case pursuant to Rule 12(b)(6) because each fails to state claims upon which the Court may grant relief.

6. The Motions to Dismiss, however, are currently on substantially different timelines for resolution. *Youth Movement* is fully briefed and awaiting a hearing. *Open Democracy* is awaiting Plaintiffs' Objection, which will be filed on or before February 21, 2025.

Defendants anticipate filing a Reply to the Objection on or before February 28<sup>th</sup>. The divergence in dispositive motion timelines is the result of Defendants' December 2024 negotiated agreement with the *Open Democracy* Plaintiffs regarding early case deadlines. Defendants could not reach a similar agreement with the *Youth Movement* Plaintiff.

7. If the Court elects to consolidate these cases, it should nevertheless permit the pending Motions to Dismiss to proceed to resolution independent of each other, to mitigate the inefficiencies already experienced by the parties and to avoid future unnecessary costs.

8. Regarding discovery, Plaintiffs have propounded interrogatories and requests for production of documents in both cases, but the status of discovery differs. Prior to the Court's January 10<sup>th</sup> consolidation notice, on December 20, 2024, the *Open Democracy* parties filed a Proposed Joint Discovery Plan pursuant to their December 2024 agreement. *OD* ECF No. 33. The Court has not ruled on the proposal, but the parties are currently proceeding according to that Plan.

9. On January 21, 2025, the *Youth Movement* parties met and conferred regarding whether they should negotiate and file a proposed discovery plan. Defendants explained that it would be premature to propose a trial schedule or to engage in discovery for two reasons. First, the Court's January 10<sup>th</sup> consolidation notice preempted a discovery plan. Second, the threshold question of Plaintiff's standing is pending before the Court. Plaintiff disagreed, so it filed a Motion for Scheduling Conference and its own Proposed Discovery Plan on January 27<sup>th</sup>. *YM* ECF Nos. 33 & 34.

10. Unless otherwise instructed by the Court, Defendants will object to *Youth Movement's* Motion for Scheduling Conference and its Proposed Discovery Plan on or before February 10<sup>th</sup>.

11. Lastly, the Court should also note that the Republican National and New Hampshire Republican State Committees have filed Motions to Intervene in both cases. *YM* ECF Nos. 14-15; *OD* ECF No. 39. The Court has not ruled on either proposed intervention.

**Conclusion**

12. Even at this early stage of the lawsuits, the independent progression of substantively similar cases has fomented considerable inefficiencies.

13. Accordingly, the cases should be fully consolidated to prevent duplication of labor, to promote judicial economy, and to avoid additional unnecessary costs or delays.

Respectfully submitted,

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

By their attorney,

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: February 3, 2025

/s/ Michael P. DeGrandis

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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

Michael P. DeGrandis