**UNITED STATES DISTRICT COURT**
**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

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STAY DISCOVERY AND FURTHER PROCEEDINGS**



The Court should deny Defendant's motion to stay discovery and further proceedings in this time-sensitive election law case, ECF No. 45 ("Motion" or "Mot."), while proceeding with discovery in a later-filed case brought by different plaintiffs challenging to the same law, *Coalition for Open Democracy v. Scanlan*, 1:24-cv-00312 (D.N.H.), in which Defendant has conspicuously not sought a similar stay.

Defendant has the "burden of demonstrating the necessity of the requested stay." *Drewniak v. U.S. Customs & Border Prot.*, 563 F. Supp. 3d 1, 6 (D.N.H. 2021). And there is no justification for staying discovery in this case while Defendant proceeds with it in *Open Democracy*. Absent a stay in that "parallel litigation . . . , granting a stay here would not even provide Defendant[] with the relief [he] seeks," as he will be obliged to respond to discovery on these subjects in *Open Democracy* no matter what happens here. *New York v. U.S. Dep't of Com.*, 339 F. Supp. 3d 144, 149 (S.D.N.Y. 2018). Defendant argues for a stay based on his pending motion to dismiss, Mot. ¶ 8, but he filed a very similar motion to dismiss the *Open Democracy* case. *Open Democracy* ECF No. 36. And the possibility of consolidation of the *Open Democracy* case and this one, Mot. ¶ 14, only reaffirms that discovery should proceed in the two cases on the same timeline—it certainly

provides no reason to treat this case differently from that one. Contrary to Defendant's argument, *id*. ¶ 19, discovery will not be wasted if the cases are consolidated—Plaintiff will be entitled to take discovery whether its case is consolidated with *Open Democracy* or not.

Defendant's complaint that "[d]efending two substantially similar cases on two different tracks has been a significant burden on" him*, id.* ¶ 18, is exactly the point—that is why Plaintiff seeks to have discovery proceed on the same timeline in the two cases. It is *Defendant* who is insisting on different discovery timelines, by refusing to commence discovery in this case while doing so in *Open Democracy*. The result can only be duplicative discovery in the two cases, as discovery proceeds in *Open Democracy* without Plaintiff's participation or input. And while Defendant complains about supposedly burdensome discovery requests, that complaint is utterly premature: Plaintiff's counsel has expressly offered to confer to resolve any burden concerns, and Defendant has declined. *See* Fed. R. Civ. P. 26(c)(1).[1]

Moreover, a stay pending a decision on the motion to dismiss would badly prejudice Plaintiff because of the time-sensitive nature of the matter. *See Marquis v. FDIC*, 965 F.2d 1148, 1555 (1st Cir. 1992) (court considering stay "must ensure that competing equities are weighed and balanced"). A stay would therefore require Defendant to show "a clear case of hardship or inequity in" being required to proceed with discovery. *Drewniak*, 563 F. Supp. 3d at 3 (quoting *Landis v.*



[1] Defendant's complaints of burden also ring hollow. Defendant complains about a request to identify all voters who proved citizenship with a qualified voter affidavit over the 20-year period in which such affidavits existed, but that information is both directly relevant—those are the precise voters most likely to be disenfranchised by the challenged law—and seems likely to exist in database form. Plaintiff has specifically asked Defendant in what form that information exists, in an effort to alleviate any burden, and has not received a response. Defendant also complains about a request for all documents relating to actual or suspected non-citizen voting over a 20-year period, but such documents are likely to be few and far between, because non-citizen voting is exceptionally rare. *See* Compl. ¶ 56 (alleging that between 2015 and today, only seven people have been investigated in New Hampshire for non-citizen voting and only one person has been convicted).

*N. Am. Co.*, 299 U.S. 248, 255 (1936)). This is a constitutional challenge to a newly enacted New Hampshire election law that would make it hard or impossible for many eligible New Hampshire voters to cast ballots. Compl. ¶ 1, ECF No. 1. For that reason, Plaintiff has consistently sought to litigate this case on a schedule that will allow relief sufficiently in advance of the 2026 fall elections avoid potential disruption to those elections.

Plaintiff believes that the proposed discovery plan in the *Open Democracy* achieves the necessary speed by providing for a January 2026 trial. *See Open Democracy* ECF No. 33. But the stay that Defendant seeks is inconsistent with the *Open Democracy* schedule and could imperil the prospects of even a January 2026 trial—and thus, potentially, of relief for the 2026 fall elections—depending on the timing of the Court's decision on the pending motion to dismiss. Moreover, scheduling discussions in this case broke down because Defendant reserved his right to argue that a January 2026 trial is too late to provide relief for fall 2026. *See generally Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). If January 2026 might too late, then trial needs to be even earlier—Plaintiff has proposed November 2025, ECF No. 34 at 4—which is even more inconsistent with the stay of discovery that Defendant seeks. For that reason, courts often deny requests to stay discovery pending motions to dismiss in time-sensitive voting cases like this one. *See, e.g.*, *March for our Lives Idaho v. McGrane*, No. 1:23-cv-00107-AKB, ECF Nos. 28, 39 (D. Idaho 2023) (scheduling order rejecting ordering, over defendant's objection, that discovery in a voting case proceed while defendant's motion to dismiss challenging standing was pending), attached as Exhibits A and B.



In contrast, given the commencement of discovery in *Open Democracy*, denying a stay in this case is unlikely to meaningfully prejudice Defendant, because it will simply mean that discovery in the two related cases can occur in a coordinated fashion and at the same time. Denying a stay would therefore alleviate many of the burdens that Defendant complains about, including

the burdens of litigating the cases on "two different tracks" and the prospect of duplicative discovery. Mot. ¶ 18. And if discovery proceeds on the same track, Plaintiff stands ready to coordinate with the *Open Democracy* plaintiffs to avoid, where possible, duplicative discovery requests—while reserving, of course, its right to request the information it needs for its claims.

For all those reasons, Defendant fails to provide any persuasive reason "as to why the court should exercise its discretion to stay pretrial proceedings and discovery in light of their standing argument." *Drewniak*, 563 F. Supp. 3d at 6 (emphasis original). Plaintiff respectfully submits that the thicket of scheduling disputes in this case would be most readily resolved by consolidating this case with *Open Democracy* and adopting a discovery plan in both cases providing for a schedule that is at least as expedited as the *Open Democracy* discovery plan. To the extent that Defendant continues to insist that a January 2026 trial may be too close to the fall 2026 elections, Plaintiff requests the even-faster schedule in Plaintiff's proposed discovery plan, ECF No. 34. Either way, Defendant's request to stay discovery in this case while proceeding with it in *Open Democracy* serves no one's interests.



**CONCLUSION**

For the forgoing reasons, the Motion should be denied.

Dated: February 26, 2025

Respectfully submitted,

/s/ *Steven J. Dutton*
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 26th day of February 2025 on all parties of record via the Court's electronic filing system.

___/s/ Steven J. Dutton