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 OPPOSITION TO THE MOTION TO DISMISS

INTRODUCTION

New Hampshire Youth Movement's Objection to the Secretary's Motion to Dismiss does not rehabilitate the Amended Complaint's numerous defects. Youth Movement has not plausibly alleged that its members' purported injuries are injuries-in-fact. Also, Youth Movement has not established that this lawsuit's objectives align with the reasons its members joined. Moreover, Youth Movement's redevelopment of its educational materials and adaptation of its existing activities is not a perceptible impairment to its core services. Accordingly, it has not plausibly alleged associational or direct standing. But even if Youth Movement had standing to proceed, its Amended Complaint nevertheless fails because its allegations merely outline potential burdens rather than actual ones, and it does so without pertinent facts from which the Court could make a reasonable inference that Youth Movement is entitled to relief.

ARGUMENT

I. New Hampshire Youth Movement Misapprehends the Legal Standard that the Court Will Apply to the Secretary's Rule 12(b)(1) Motion to Dismiss

The parties agree that the Secretary's facial challenge to Youth Movement's standing must be judged on the "same plausibility standard used to evaluate a motion under Rule

12(b)(6)." ECF No. 59 at 9 (quoting *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 307-08 (1st Cir. 2024)) (quotations omitted). While plausibility is not a "'probability requirement,' … it does require 'more than a sheer possibility that a defendant has acted unlawfully.'" *Pitta v. Medeiros*, 90 F.4th 11, 17 (1st Cir. 2024) (quotation and citation omitted). The nature of claims are context-dependent, so "determining whether a complaint states a plausible claim for relief is a context-specific task[.]" *See id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)) (quotations omitted). And in the context of Article III standing, a plaintiff must plausibly allege justiciability as a threshold matter. *Katz v. Pershing, LLC*, 672 F.3d 64, 75 (1st Cir. 2012). So, to establish jurisdiction, context requires a plaintiff to plead standing with heightened specificity.[1] *Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016) (Souter, J.).

II. New Hampshire Youth Movement Has Not Plausibly Alleged that It Has Associational Standing to Proceed on Behalf of Its Members

Youth Movement asserts its claim pursuant to 42 U.S.C. § 1983. ECF No. 50, ¶¶ 76-82. Civil rights claims under § 1983 vindicate ***individual*** rights, so associations may not assert rights on behalf of their members. *See Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011) (interpreting § 1983); *Rodriguez-Oquendo v. Toledo-Davila*, 39 F. Supp. 2d 127, 131 (D.P.R. 1999) ("The express language of section 1983 provides that only the party whose civil rights have been violated may bring a claim.") (citation omitted). Given the personal nature of § 1983 claims and the requirement for specific, individualized allegations of harm, the Court should, at a minimum,

[1] 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. The *Draper* court did not require the plaintiffs to satisfy a heightened pleading standard. Rather, Justice Souter explained that Article III requires a complaint to state "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)) (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). Here, Youth Movement has not satisfied its burden to plead standing with sufficient specificity.

be very circumspect in considering associational standing where Youth Movement members' purported injuries are vague or incompletely detailed. *See Draper*, 827 F.3d at 3.

A. Youth Movement Has Not Plausibly Alleged Its Members' Individual Standing to Challenge House Bill 1569

Youth Movement has not demonstrated that its members would have standing in each member's own right. It identifies five members allegedly harmed by HB 1569, Mr. Musick (the "Future Voter"), Ms. Montagano, Ms. Sumner, Ms. Barry, and Mr. Wyman (the "Registered Voters"), but Youth Movement merely asserts that the members "must comply with the [HB 1569] requirement in order to register to vote and are therefore injured by it[.]" *See* ECF No. 59 at 10. Mandatory compliance with a law, however, does not cause injury-in-fact. A plaintiff must plausibly allege each element of standing, but Youth Movement has not done so. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016).

1. Youth Movement Has Not Plausibly Alleged that Its Members' Purported Injuries Are Certainly Impending

A plaintiff cannot base Article III standing on speculation regarding injuries that have not yet occurred. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). If an injury has not yet manifested itself, injury-in-fact requires a showing that the threatened injury is "***certainly impending***." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quotations and citations omitted; emphasis in original). Only well-pleaded facts can lead to a reasonable inference that a plaintiff has alleged a certainly impending injury. *See Reddy v. Foster*, 845 F.3d 493, 497 (1st Cir. 2017). Allegations relying on gainsay, adjectives, and adverbs are "too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture." *See SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010) (citation omitted). It is not difficult to identify bare conclusions and gainsay—they are allegations "unembellished by pertinent facts." *See Ortiz v. Sig Sauer, Inc.*, 448 F. Supp. 3d 89, 97 (D.N.H. 2020) (quoting *Shay v. Walters*, 702 F.3d 76, 83

(1st Cir. 2012)).

Courts must set aside such conclusory statements and focus on factual allegations to determine whether a claim plausibly gives rise to an injury-in-fact. *See Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2016) ("Neither conclusory assertions nor unfounded speculation can supply the necessary heft [to satisfy a plaintiff's pleading stage burden to establish standing].") (citations omitted). Youth Movement asserts that "[a]ll four of those [Registered] voters will soon move and need to re-register to vote in a new county or town, where it is substantially likely that they will be required to comply with the proof-of-citizenship requirement." ECF No. 59 at 10. "Will soon move" and "substantially likely" are not well-pleaded facts. The Future Voter fares no better, who Youth Movement alleges will register to vote, but he is not yet qualified to do so. *See id.* at 11-12. These "few words of general intent" are not sufficient to establish injury-in-fact, but that is all Youth Movement offers in support of its contention that the Registered and Future Voters' purported injuries are certainly impending.[2] *See Carney v. Adams*, 592 U.S. 53, 64 (2020); *Frese v. Formella*, 53 F.4th 1, 5 (1st Cir. 2022) ("Well-pleaded facts are those that are 'non-conclusory' and 'non-speculative.'").

2. Youth Movement Has Not Plausibly Differentiated Its Members' Purported Injuries from Those of the General Public

To establish pre-enforcement injury-in-fact, a plaintiff "must demonstrate a realistic danger of sustaining a direct injury as a result of the [law's] operation or enforcement." *Freeman v. City of Keene*, 561 F. Supp. 3d 22, 31 (D.N.H. 2021) (quoting *Blum v. Holder*, 744

[2] Youth Movement takes an expansive view of the interests it may assert in this lawsuit. ***If*** it has associational standing, its standing is limited to the members with substantially similar injuries to those alleged by the Registered and Future Voters. *See New Progressive Party v. Hernandez Colon*, 779 F. Supp. 646, 651 (D.P.R. 1991) ("No individual plaintiff can say that he or she is being deprived of the right to vote. Therefore, the individual plaintiffs do not have standing to challenge any disenfranchising effects of the Commission's registration system."). This is not an "evidentiary burden" as Youth Movement claims. *Contra* ECF No. 50 at 5 n.2. This is a pleading requirement—a plaintiff cannot assert claims on behalf of others or a class to which they do not belong. *See* Fed. R. Civ. P. 23(a); 24 U.S.C. § 1983.

F.3d 790, 796 (1st Cir. 2014) (quotations omitted). Youth Movement disagrees, arguing that "a voter ***always has standing*** to challenge a statute that places a requirement on the exercise of his or her right to vote." ECF No. 59 at 11 (quoting *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1198 (N.D. Ala. 2020)) (quotations omitted; emphasis added).[3] To the contrary, courts cannot assume a plaintiff's standing, even in voting cases. *See Baker v. Carr*, 369 U.S. 186, 206 (1962) ("Many of the cases have assumed rather than articulated the premise in deciding the merits of similar claims.").

HB 1569 does not require the Registered Voters to prove their citizenship and Youth Movement does not contend otherwise.[4] RSA 654:12, III. So, their purported injuries cannot be concrete because they are neither actual nor imminent. *See Spokeo, Inc.*, 578 U.S. at 340-41. Youth Movement correctly observes that a plaintiff ***might*** suffer particularized injury even where that "injury may be suffered by a large number of people[.]" ECF No. 59 at 12. Nevertheless, a plaintiff must allege an injury ***personal*** to him or her. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Without allegations differentiating a plaintiff's injury from the public—especially in support of a § 1983 claim—a plaintiff has merely expressed an abstract and

[3] *People First* dicta is the only case supporting Plaintiff's assertion. *People First*, 467 F. Supp. 3d at 1197-99 (analyzing the plaintiffs' injury-in-fact). Even where standing is at issue in election law challenges, courts citing *People First* do ***not*** hold that voters "always" have standing. *See, e.g.*, *Ala. State Conf. of the NAACP v. Marshall*, 746 F. Supp. 3d 1203, 1223 (N.D. Ala. 2024) ("[A] plaintiff has Article III standing only if he can demonstrate he suffered (1) an injury in fact that is both (2) fairly traceable to the defendant's conduct and (3) likely redressable by a favorable decision.") (citations omitted); *Lewis v. Hughs*, 475 F. Supp. 3d 597, 611-13 (W.D. Tex. 2020), *rev'd and remanded by Lewis v. Scott*, 28 F.4th 659 (5th Cir. 2022); *New Ga. Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1285 (N.D. Ga. 2020); *see also Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 184 (M.D.N.C. 2020) (quoting *People First* parenthetically but holding that the plaintiffs alleged "sufficient risk to constitute a cognizable injury for standing purposes"). The lone exception is dicta in *Memphis A. Phillip Randolph Inst. v. Hargett*, 485 F. Supp. 3d 959, 978 (M.D. Tenn. 2020), *rev'd and remanded by Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548 (6th Cir. 2021), but the Sixth Circuit subsequently dismissed the lawsuit when the named member "no longer ha[d] an actual, ongoing stake in th[e] litigation." *Hargett*, 2 F.4th at 558.

[4] Youth Movement misconstrues the statutory language, asserting that "[t]here is no mandate that the election official in fact seek to confirm a prior registration[.]" *Contra* ECF No. 59 at 14. Officials have an obligation to determine the qualifications of an applicant who is seeking to register to vote, which includes using the SVRS to confirm that an applicant is currently registered to vote in New Hampshire if that official has access to the SVRS when receiving the application. *See* RSA 654:12, III. This is mandatory.

indefinite concern that "deprives the case of the concrete specificity[.]" *See Liu v. United States Cong.*, 834 F. App'x 600, 604 (2d Cir. 2020).

The Registered Voters merely assert that they needed affidavits to register to vote in the past and they do not want to provide reasonable documentation in the future. ECF No. 59 at 14-15. The Future Voter merely asserts that the law will one day require him to "locate, obtain, and bring qualifying documents[.]" *See id.* at 13. Every voter who will one day register will be subject to the same requirements. *See generally* RSA 654:12. So, even if the Registered and Future Voters' inconvenience in locating their reasonable citizenship documentation is an injury, their injuries lack the concreteness necessary to personalize and differentiate their harm from that of the general public.[5] *See FEC v. Akins*, 524 U.S. 11, 24-25 (1998) (noting that the test for injury-in-fact is concreteness of the allegations).

3. Youth Movement Has Not Plausibly Alleged a Causal Nexus Between Its Members' Purported Particularized Injuries and House Bill 1569

Even if Youth Movement plausibly alleged its members' injuries, it has not plausibly alleged a causal nexus connecting a concrete and particularized harm to HB 1569. The requirement that injuries be particularized is closely related to the requirement that plaintiffs demonstrate causation. *See Hochendoner*, 823 F.3d at 731-32 ("The particularization element of the injury-in-fact inquiry reflects the commonsense notion that the party asserting standing must not only allege injurious conduct attributable to the defendant but also must allege that he, himself, is among the persons injured by that conduct."). "[A] plaintiff must adduce facts

[5] In a recent D.C. District Court case, the court held that certain organizations had standing to challenge an Executive Order related to documentary proof of citizenship because their members suffered injury-in-fact. *LULAC v. Exec. Office of the President*, No. 1:25-cv-00946 (25-0946), 2025 U.S. Dist. LEXIS 78304, *94 (D.D.C. Apr. 24, 2025). In *LULAC*, the organizations' executives provided declarations in support of their standing arguments for a preliminary injunction and proffered "evidence from at least one specifically aggrieved member[.]" *Id.* The Secretary does not concede that declarations and proffers sufficiently establish members' particularized injuries-in-fact, but notes that the *LULAC* plaintiffs provided substantially more substantive allegations than Youth Movement's Amended Complaint.

demonstrating that he himself is adversely affected[.]" *Id.* at 732. This requirement is essential to effectuate Article III's limited grant of subject-matter jurisdiction by "ensur[ing] that disputes are settled 'in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action[.]'" *Id.* (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)).

Here, Youth Movement has not sufficiently alleged that its members have standing because Youth Movement's theory is not that requiring registering voters to prove their eligibility to vote is unconstitutionally burdensome. *See, e.g.*, ECF No. 59 at 3. Rather, Youth Movement asserts that requiring a prospective voter to produce reasonable documentation of voter eligibility is ***more*** burdensome than the repealed affidavit system. *See id.* at 15 (regarding Ms. Montagano). If providing reasonable documentation of citizenship is an injurious burden, so too was the affidavit regime, where the law required a registering voter to execute an affidavit. Youth Movement must plausibly allege each Registered and Future Voter's comparative burden of the reasonable documentation requirement with the QVA requirements to establish the concreteness and particularization of their injuries. There is no other way to fairly trace the injurious cause to HB 1569's repeal of the affidavit system.[6]

B. Youth Movement Cannot Contrive Germaneness by Broadly Defining Its Mission to Encompass All Laws Regarding the "Political System"

The germaneness requirement "prevent[s] litigious organizations from forcing the federal courts to resolve numerous issues as to which the organizations themselves enjoy little expertise and about which few of their members demonstrably care." *Town of Norwood v. FERC*, 202 F.3d 392, 407 (1st Cir. 2000) (quoting *Humane Soc'y of the United States v. Hodel*, 840 F.2d 45,

[6] Youth Movement is wrong to assert that this is "the Secretary's proposed 'comparative' burden analysis[.]" *Contra* ECF No. 59 at 13. This is Youth Movement's allegation of the causal connection between HB 1569 and its and its members' purported injuries. *See, e.g.*, *id.* at 3-4.

57 (D.C. Cir. 1988)). Youth Movement asserts that its challenge to HB 1569's constitutionality is germane to its organizational purpose because one of its policy goals is to "help young voters navigate the political system[.]" ECF No. 59 at 24 (quotations omitted). But Youth Movement's members joined "to advance individual policy goals (which, by way of example, include increasing wages, decreasing costs of education, housing and medical care, and combatting climate change)." ECF No. 50, ¶ 14. Navigating the political system is a means to that end. It does not demonstrate alignment between membership and this lawsuit's objectives.

Youth Movement's education of young people regarding voting is far afield of Youth Movement's expertise in wages, education, costs of living, and climate change. Youth Movement cannot create germaneness simply by defining its mission broadly to encompass navigating the political system. *See Nielsen v. Thornell*, No. 22-15302, 2024 U.S. App. LEXIS 16550, at *9 (9th Cir. July 8, 2024). Were it otherwise, Article III standing would have little practical purpose, as every public policy advocacy group could contrive an injury in virtually any voting-related case. *See id.*

III. New Hampshire Youth Movement Has Not Plausibly Alleged that House Bill 1569 Perceptibly Impairs Its Ability to Provide Core Services

For the reasons stated in the Secretary's Motion to Dismiss, Youth Movement has not suffered organizational injury-in-fact because HB 1569 does not directly impose an impediment to the organization's ability to provide services to achieve its mission or core activities. ECF No. 54-1 at 7-10. Youth Movement's Opposition does not alter the analysis or this conclusion. Youth Movement claims that the "Complaint squarely alleges that the proof-of-citizenship requirement impairs its core direct voter engagement programs." ECF No. 59 at 27. But, like its conclusory statements regarding its members' purported injuries-in-fact, Youth Movement does not provide sufficient supporting facts from which the Court could reasonably infer that HB 1569

has perceptibly impaired its ability to provide core services.

Even if Youth Movement one day diverts resources to update its pledge-to-vote, voter registration, and get-out-the-vote programs, these are current routine activities. ECF No. 59 at 27. This is a voluntary response to HB 1569, not a required change to its operations as a consequence of HB 1569. Perhaps more to the point, Youth Movement alleges that it must divert resources to adapt existing programs so they do not lose their effectiveness. *See id.* at 27-28. Even if diversion of resources could confer standing, its resources must be diverted ***from regular*** activities ***to different*** activities to counteract HB 1569. *See Conn. Citizens Def. League, Inc. v. Lamont*, 6 F.4th 439, 447 (2d Cir. 2021). Youth Movement has not plausibly alleged that it has suffered injury-in-fact.[7]

IV. New Hampshire Youth Movement Has Not Stated a Claim Upon Which the Court May Grant Relief

Rather than explain how the Amended Complaint's allegations could lead to a reasonable inference that HB 1569 caused injury to Youth Movement members' First or Fourteenth Amendment rights, the Opposition reiterates allegations of possible future harm that could be experienced by those who are not the Registered or Future Voters. For example, Youth

[7] Youth Movement's reliance on nonbinding decisions is 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 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). In *LULAC*, the D.C. District Court held that the organizations had standing to challenge an Executive Order related to documentary proof of citizenship because their members suffered injury-in-fact. *LULAC*, 2025 U.S. Dist. LEXIS 78304, *92-93. The organizations' executives provided declarations in support of their organizational standing for a preliminary injunction. *LULAC*, ECF No. 34-1 at 36-37. Like Youth Movement, LULAC and the other organizational plaintiffs alleged that the Executive Order would harm their voter registration activities. ECF No. 34-24, ¶¶ 13-14. But unlike Youth Movement, LULAC alleged that it will maintain existing programs but "staff will devote less time to it because of all of our ***new responsibilities*** created by the EO." *Id.* ¶ 15 (emphasis added). The Secretary does not concede that this sufficiently establishes organizational injury-in-fact, but notes that LULAC asserted that it was diverting resources from existing programs to new ones. Youth Movement does not identify any new programs.

Movement claims to have adequately alleged that voters without reasonable documentation "will either be completely disenfranchised or forced to spend hundreds of dollars[,]" married women may be "prevented from voting or face additional burdens[,]" and voters were "disenfranchised" in the March 2025 town elections. ECF No. 59 at 31. These allegations are "unembellished by pertinent facts," as they do not apply to any of the Registered or Future Voters. *See Ortiz*, 448 F. Supp. 3d at 97. This does not satisfy Plaintiff's pleading burden because a "naked assertion devoid of further factual enhancement" does not state a claim. *Maldonado v. Fontanes*, 568 F.3d 263, 273 n.6 (1st Cir. 2009) (quoting *Iqbal* and *Twombly*) (cleaned up). Nonparties' ***potential*** burdens are not allegations in support of a plaintiff's ***real*** burdens. *See Alston v. Spiegel*, 988 F.3d 564, 574 (1st Cir. 2021).

Moreover, Youth Movement's assertions that HB 1569 burdens the Registered and Future Voters and nonparties, without describing how or to what degree it ***personally*** burdens them, does not state a § 1983 claim. *Carabello Cordero*, 91 F. Supp. 2d at 488 ("The First Circuit Court of Appeals has stated that the action created under this section [1983] is a personal action in the sense that the plaintiff must have suffered the alleged deprivation of constitutional or federal rights in his or her own person.") (citation omitted). To plausibly state a claim, allegations need not be detailed, but they must provide more than a "the-defendant-unlawfully-harmed-me" accusation. *See Hall v. Twitter, Inc.*, No. 20-cv-536-SE, 2023 U.S. Dist. LEXIS 80569, *2 (D.N.H. 2023). The First Amended Complaint does not satisfy this requirement.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the Secretary of State's Memorandum of Law in Support of his Motion to Dismiss, the Court should dismiss the First Amended Complaint in its entirety, with prejudice.

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: May 16, 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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