STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2026-0030

ADELE ROBERTSON; DANIEL FRYE; and REGINA WILSON,

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

On Appeal from the New Hampshire Superior Court,
No. 218-2025-CV-00951, Before the Honorable David W. Ruoff

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QUESTION PRESENTED

SB 287 (2025) requires that absentee voters either (1) include a copy of their photo identification with their absentee ballot request, (2) have their signature on their absentee ballot request notarized, or (3) show their photo identification in person, every time they request an absentee ballot.

The question presented is whether the Superior Court erred in dismissing, for failure to state a claim, Plaintiffs' claim that SB 287 impermissibly burdens the fundamental right to vote in violation of Part I, Article 11 of the New Hampshire Constitution. Appendix ("App.") at 39–47.

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RELEVANT LEGAL PROVISIONS

N.H. Const. Part I, Article 11:

> All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. . . . The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. . . .

RSA 657:17-c:

I. Every applicant for an absentee ballot shall provide verification before being issued an absentee ballot. Verification shall be satisfied by one of the following methods:

   (a) Including a copy of the voter's photo identification with the absentee ballot application. The identification shall meet the requirements of RSA 659:13, II(a);

   (b) Including a notarized signature on the absentee ballot application form; or

   (c) Personally presenting a qualifying photo identification, as defined in RSA 659:13, II(a), to the city or town clerk or their designee prior to the issuance of the absentee ballot.

II. No absentee ballot shall be issued unless one of the verification methods under paragraph I has been satisfied.

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INTRODUCTION

Senate Bill 287 makes it much harder for Plaintiffs—three legally blind New Hampshire voters—to cast ballots in New Hampshire elections, for no good reason. It does so by requiring would-be absentee voters to (1) submit a copy of their photo identification, (2) have their signature on their absentee ballot application form notarized, or (3) travel to their town or city clerk's office to present photo identification in person, every single time they request an absentee ballot for any election, which may be multiple times per year. These requirements are burdensome—especially for blind voters like Plaintiffs. To comply with them, Plaintiffs and other New Hampshire absentee voters would need to make a special trip, pay a fee, or obtain and operate a means of copying their identification cards—all so that they can exercise their constitutional right to vote. And SB 287 imposes those burdens in the absence of any evidence that New Hampshire had any meaningful problem with voters requesting absentee ballots in other voters' names—the only form of voter fraud that SB 287 could prevent.

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Plaintiffs have therefore stated a claim that SB 287 impermissibly burdens the fundamental right to vote in violation of Part I, Article 11 of the New Hampshire Constitution. The Superior Court erred in dismissing their Complaint for failure to state a claim. In doing so, the Superior Court ignored or failed to credit Plaintiffs' detailed factual allegations of the burden SB 287 imposes on voters like them, reasoning that many New Hampshire voters would not be burdened in the same way. This Court rejected exactly that approach to right-to-vote claims just five years ago.

See New Hampshire Democratic Party v. Sec'y of State, 174 N.H. 312, 325 (2021) ("*NHDP*"). The Superior Court also erred in assuming, at the motion to dismiss stage and in the absence of record evidence, that the State's general interest in election integrity would support SB 287's specific requirements.

The Court should reverse and remand for further proceedings.

STATEMENT OF THE CASE AND FACTS

I. Absentee voting has long been tightly restricted in New Hampshire, yet is relied on by many thousands of voters.

New Hampshire is one of the most difficult states in the country in which to vote by absentee ballot. While most states either offer no-excuse absentee voting or automatically send mail ballots to all registered voters, New Hampshire allows only narrow categories of voters to vote absentee. *See* App.6 (Compl. ¶ 14). The only New Hampshire voters eligible to vote absentee are those who (1) will be "absent" from the place they are registered to vote on election day, including those who are "unable to appear . . . because of an employment obligation"; (2) are unable to vote in person "by reason of physical disability"; or (3) cannot appear because of their "observance of a religious commitment." RSA 657:1, I.

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Even before SB 287 was enacted, absentee voters in New Hampshire were required to surmount numerous procedural hurdles to confirm their identity and eligibility at multiple stages. Like all voters, absentee voters must first register to vote and submit a voter registration form. *See* RSA 654:7, 654:16. Voters typically register in person at their local town or city clerk's office, RSA 654:16, where they must present documentary proof of citizenship, age, domicile, and identity, RSA 654:12, I. Voters who are

"temporarily absent" from the town or city or who, "by reason of physical disability," are "unable to attend a meeting of the supervisors of the checklist" are eligible to register absentee. RSA 654:16. But absentee registrants, too, must submit documentary proof of their citizenship status, age, domicile, and identity when they register—a requirement that Plaintiffs do not challenge here. *See* RSA 654:17, I; *see also* S.B. 218, 169th Gen. Assemb., Reg. Sess. (N.H. 2025) (codified at 2025 N.H. Laws ch. 298) (eff. Sep. 30, 2025). In addition, the voter registration affidavit must be witnessed and signed by the witness. *See* RSA 654:17, II.

After registering, absentee voters must complete an absentee ballot application to request an absentee ballot. There is no standing or permanent list of eligible absentee voters in New Hampshire, so voters must submit a new absentee ballot application for *every* primary, general, or local election in which they wish to receive an absentee ballot. *See* RSA 657:4. In that application, the voter must declare that they are a qualified voter currently registered to vote in that town or ward and check a box indicating the precise reason they will be entitled to vote via absentee ballot. *See id.* The voter must also provide identifying information, including their name and address of domicile, and sign the application. *Id.* SB 287, described below, added additional identification requirements at this stage of the process that Plaintiffs challenge in this case.

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Next, voters must complete and return their absentee ballot. The voter—or, for a blind voter or a voter who otherwise cannot mark his or her own ballot, a person assisting them—must mark the ballot and then enclose and seal the ballot in an inner envelope. RSA 657:17, I. The voter must then execute an affidavit, or the person assisting such a voter must sign a

statement acknowledging the assistance. *Id.* The inner envelope with the affidavit must then be sealed in an outer envelope, and the voter or person assisting them "shall then endorse on the outer envelope the voter's name, address, and voting place." *Id.* The voter or person assisting them may then mail the envelope to the town or city clerk with postage; or the voter or certain individuals with some connection to the voter may physically deliver the envelope. *See* RSA 657:17, I–II.

Thousands of New Hampshire voters rely on absentee voting to cast their ballots. In the 2024 general election, just under 100,000 New Hampshire voters cast absentee ballots—roughly 12 percent of the total number of votes cast. App.9 (Compl. ¶ 26). Members of certain groups—including disabled voters in particular—rely on absentee voting at higher rates, because it may be difficult or impossible for them to vote in-person. App.9 (Compl. ¶ 27). New Hampshire has never had any substantial problem of fraudulent absentee voting; rather, the State has long enjoyed high-turnout, secure, and fraud-free elections, as the state's own government officials, including Defendants, have consistently and publicly emphasized. App.14–15 (Compl. ¶¶ 50–54).

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II. SB 287 is enacted, further tightening New Hampshire's restrictions on absentee voting.

On August 1, 2025, Governor Kelly Ayotte signed SB 287, and the law took effect on September 30, 2025. *See* S.B. 287, 169th Gen. Assemb., Reg. Sess. (N.H. 2025) (codified at 2025 N.H. Laws ch. 302) (eff. Sep. 30, 2025). SB 287 changed the existing absentee ballot procedures to impose new burdens on voters each time they submit an application for an absentee ballot. As a result of SB 287's enactment, RSA 657:17-c now reads, in full:

I. Every applicant for an absentee ballot shall provide verification before being issued an absentee ballot. Verification shall be satisfied by one of the following methods:

(a) Including a copy of the voter's photo identification with the absentee ballot application. The identification shall meet the requirements of RSA 659:13, II(a);

(b) Including a notarized signature on the absentee ballot application form; or

(c) Personally presenting a qualifying photo identification, as defined in RSA 659:13, II(a), to the city or town clerk or their designee prior to the issuance of the absentee ballot.

II. No absentee ballot shall be issued unless one of the verification methods under paragraph I has been satisfied.

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Under SB 287, if voters do not (1) submit a copy of their photo identification, (2) include a notarized signature on the absentee ballot application form, or (3) personally present qualifying photo identification to the city or town clerk, they will not receive an absentee ballot. And because voters must submit an absentee ballot application for each local, primary, and general election, they must comply with the requirements imposed by SB 287 for every election they seek to participate in, up to multiple times a year, even if they have previously voted by absentee ballot or otherwise proved their identity. App.11 (Compl. ¶ 33).

The debate in the New Hampshire legislature on SB 287 was abbreviated and untethered from the version of the legislation that was enacted into law. The only public hearing held on SB 287 dealt with an

earlier version of the bill that was very different from the one that was ultimately enacted. *See* App.13 (Compl. ¶ 47). SB 287 at the time of that hearing would have required proof of identification *only* if absentee voters asked for their ballot to be sent to an address other than their address on file. App.13 (Compl. ¶ 47). In the House, however, SB 287 was amended to require additional identification from *all* voters requesting an absentee ballot, *every time* they request an absentee ballot, even if the ballot is to be sent to their registered address. App.14 (Compl. ¶ 49). No new public hearing was held on SB 287 after that substantial change. App.14 (Compl. ¶ 49).

III. Plaintiffs challenge SB 287 under the New Hampshire Constitution, and the Superior Court dismisses Plaintiffs' claim.

Shortly after SB 287 was enacted, on August 19, 2025, Plaintiffs brought this action in the Superior Court for Rockingham County. Plaintiffs brought a single claim, alleging that SB 287 violated Part I, Article 11 of the New Hampshire Constitution by imposing an impermissible burden on the fundamental right to vote. App.15–17 (Compl. ¶¶ 56–64).

Defendants moved to dismiss the Complaint. *See generally* App.19–32. On December 11, 2025, the Superior Court granted that motion. In just two paragraphs of analysis, the court concluded that the burdens imposed by SB 287 were reasonable and nondiscriminatory. *See* Addendum ("Add.") at 36–37. And in a single additional paragraph, the court held that Defendants' asserted interest in preventing voter fraud was sufficient to justify the burdens imposed by the law. *See* Add.37–38. Accordingly, the court granted Defendants' motion to dismiss and dismissed the action. *See* Add.38–39. This appeal followed.

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STANDARD OF REVIEW

In reviewing a motion to dismiss ruling, the Court considers "whether the allegations in the pleadings are reasonable susceptible of a construction that would permit recovery." *Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161 (2021). The Court "assume[s] the pleadings to be true and construe[s] all reasonable inferences in the light most favorable to the plaintiff." *Id.* The Court then "tests the facts in the petition against the applicable law." *Id.* New Hampshire is and remains "a notice pleading jurisdiction" and "take[s] a liberal approach to the technical requirements of pleadings." *Donald Toy v. City of Rochester*, 172 N.H. 443, 448 (2019) (quoting *City of Keene v. Cleaveland*, 167 N.H. 731, 743 (2015)). A complaint need only "state the general character of the action and put both court and counsel on notice of the nature of the controversy." *Id.* (quoting *Pike Industries v. Hiltz Construction*, 143 N.H. 1, 4 (1998)).

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SUMMARY OF THE ARGUMENT

New Hampshire courts evaluating right-to-vote claims balance the character and magnitude of the asserted injury to individuals' voting rights against the precise interests put forward by the State as justifications for the burden imposed by its restriction. *See Guare v. State*, 167 N.H. 658, 663 (2015). In granting Defendants' motion to dismiss, the Superior Court erred on both sides of this balancing analysis.

First, the Superior Court failed to credit Plaintiffs' allegations regarding the burden on the right to vote imposed by SB 287. Plaintiffs' Complaint contained extensive allegations showing that each of the three options for proving identity under SB 287 imposes a severe burden for

many voters. As courts nationwide have held with respect to the governing balancing test, determining "the magnitude of the asserted injury" based on those allegations presents "factual questions that cannot be resolved on a motion to dismiss." *Mecinas v. Hobbs*, 30 F.4th 890, 905 (9th Cir. 2022); *see also Libertarian Party of N.H. v. Gardner*, No. 14-cv-00322, 2014 WL 7408214, at *4 (D.N.H. Dec. 30, 2024). Yet the Superior Court did not even cite most of these allegations, let alone credit them as true as it was required to do at the motion to dismiss stage.

Instead, the Superior Court held that SB 287's requirements imposed only "ordinary burdens on all absentee voters" and concluded that the "additional burden" imposed on "a subset of absentee voters" was irrelevant to the statute's constitutionality. Add.36. But this Court expressly rejected the proposition that burdens are irrelevant if they do not affect all voters in *NHDP*. *See* 174 N.H. at 325. The Superior Court also concluded that the burdens imposed by SB 287 *must* be reasonable because voters have three options for compliance with the statute, but entirely failed to explain how that could be where Plaintiffs alleged that *each* of the three options imposes substantial burdens. The Superior Court thus erred in discounting Plaintiffs' allegations and holding that the law imposes only reasonable and nondiscriminatory burdens.

Second, the Superior Court also erred in evaluating the State's purported justifications for SB 287—the other half of the balancing analysis. For one, the Superior Court applied the wrong legal standard: given Plaintiffs' burden allegations, the Superior Court was required to assume that at least intermediate scrutiny applies, such that the *State* was required to prove that SB 287 is substantially related to an important

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governmental objective. *NHDP*, 174 N.H. at 329. At this stage of the case, there was no evidence from the State that could meet that burden—only Plaintiffs' allegations.

Moreover, under *any* standard of review, SB 287's burdens must be justified by interests that are connected to the regulation purporting to advance them, not merely ones that are legitimate in the abstract. *See Guare*, 167 N.H. at 669. The Superior Court entirely failed to conduct any such analysis. Instead, it merely concluded that the State's purported concerns about voter fraud and election integrity were legitimate, without assessing the factual basis for these concerns or considering whether SB 287 was a sufficiently tailored way of addressing them. In doing so, the Superior Court entirely ignored Plaintiffs' allegations that New Hampshire elections were already very secure, such that there was no problem for SB 287 to address.

This Court should reverse the Superior Court's dismissal and remand this case for further proceedings.

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ARGUMENT

Whether an election practice unconstitutionally burdens the right to vote under the New Hampshire Constitution turns on a balancing test that weighs "'the character and magnitude of the asserted injury to the [voting] rights' sought to be vindicated 'against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Guare*, 167 N.H. at 663 (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)) (alteration in original).

This is a sliding-scale framework that adjusts the level of scrutiny according to the severity of the burden on the right to vote. *See id.* (quoting *Burdick*, 504 U.S. at 434). Severe burdens must be "narrowly drawn to advance a state interest of compelling importance." *Id.* (quoting *Burdick*, 504 U.S. at 434). Burdens that are reasonable and nondiscriminatory must still be justified by "important regulatory interests." *Id.* (quoting *Burdick*, 504 U.S. at 434). And burdens in between those two extremes are subject to "a test comparable to intermediate scrutiny." *Id.* at 667–68; *see also NHDP*, 174 N.H. at 326.

In dismissing the Complaint, the Superior Court failed to credit Plaintiffs' factual allegations of burden, and it wrongly treated the State's asserted justifications as sufficient and dispositive without any evidentiary support. The Court should reverse and remand for further proceedings.

I. The Superior Court failed to credit Plaintiffs' factual allegations of burden.

The Superior Court failed to credit Plaintiffs' factual allegations as true and to draw all reasonable inferences from them as New Hampshire law requires at this early stage of the case. *See Ortolano v. City of Nashua*, 177 N.H. 359, 361 (2025). In holding that SB 287 imposes only a reasonable, nondiscriminatory burden, the Superior Court disregarded Plaintiffs' detailed factual allegations of why SB 287 would make voting much harder for them and other New Hampshire voters. *See* Add.35–37.

Plaintiffs alleged facts showing that each of the three options for proving identity under SB 287 imposes a severe burden for many voters. To provide a copy of photo identification, voters must have access to, and be able to use, technology that can create such a copy, and must also figure out

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how to transmit that copy to the city or town clerk with their absentee ballot application. App.11–12 (Compl. ¶¶ 35, 38). Plaintiffs alleged that many voters, including but not limited to blind voters like Plaintiffs, will find that barrier difficult to overcome. App.11 (Compl. ¶ 35). To provide a notarized signature, absentee voters must locate and travel to a notary or access online notarization services. App.11 (Compl. ¶ 36). Plaintiffs alleged that many voters, including but not limited to blind voters like Plaintiffs, cannot drive or easily find transportation, will struggle to use the technology required for online notarization, and that some voters will struggle to pay the required fee. App.11–12 (Compl. ¶¶ 36, 40). To present a qualifying photo identification to a clerk in person, absentee voters would need to travel to their city or town hall building—a substantial burden on those for whom travel is difficult and those who are temporarily away from their permanent residence. App.12 (Compl. ¶ 37). Plaintiffs also alleged that all of these tasks are harder for blind voters like them. App.13 (Compl. ¶ 42). Making matters worse, this is not a one-time requirement—SB 287's new requirements must be completed for every election in which a voter wishes to vote absentee. App.13 (Compl. ¶ 43). Voters who cannot complete them and are unable to vote in person will not be able to vote in that election at all. App.9, 11 (Compl. ¶¶ 34, 44).

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Moreover, while the extent of these burdens turns on particular voters' circumstances, they are particularly likely to affect exactly those voters who are most likely to vote absentee. New Hampshire limits absentee voting to a narrow class of voters: those who will be "absent" from the place they are registered to vote on election day; those who are unable to vote in person "by reason of physical disability"; and those who

cannot appear because of their "observance of a religious commitment." RSA 657:1, I. Many of the individuals who fall within those categories are exactly the same individuals who are most likely to face difficulty complying with SB 287's requirements, including blind or otherwise disabled voters for whom technology use and travel may be more difficult, App.11, 13 (Compl. ¶¶ 34–35, 42), and voters who are away from their home and cannot travel to provide identification in person and may have more limited access to technology and notaries, App.12–13 (Compl. ¶¶ 37, 41, 42).

The Superior Court did not even cite most of these allegations, much less credit them as it was obliged to do. *Ortolano*, 177 N.H. at 361–62. It instead concluded that SB 287 "impose[s] ordinary burdens on all absentee voters." Add.36. The court reasoned that SB 287 "merely requires absentee voters to choose between three distinct methods to provide one form of identification." Add.37. But the Superior Court did not explain how that choice could eliminate the burden, where Plaintiffs alleged that *each* of the three options imposes substantial burdens—and where even the court acknowledged that "each of these methods may impose an additional requirement on absentee voters requesting absentee ballots." Add.36–37. "[C]ourts . . . routinely find that burdens have been imposed on one method of voting despite the existence of other voting methods." *Curling v. Raffensperger*, 702 F. Supp. 3d 1303, 1374 (N.D. Ga. 2023). The Superior Court also reasoned that absentee voters were already required to mail or send in their application to election officials. Add.37. But while that is true, Plaintiffs' factual allegations described above explain why SB 287's new identification requirements are substantially more burdensome than merely

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mailing an application—they require some combination of additional technology use, additional travel, or the payment of an additional fee. App.11–13 (Compl. ¶¶ 35–37, 41).

The Superior Court's contrary conclusion was driven by its improper focus solely on the burdens SB 287 imposes on "*all* absentee voters," while discounting those imposed only on a "*subset* of absentee voters." Add.36 (emphasis added) (citing *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008) (plurality opinion), and *id.* at 205 (Scalia, J., concurring in the judgment)). This Court explicitly rejected that approach in *NHDP*, holding that *Crawford* did not "support[] the State's position that a 'statute applicable to all voters survives a facial challenge even when it imposes an unjustified burden on some.'" 174 N.H. at 325. The Court affirmed the trial court's rejection of the State's argument that the law "could not be deemed facially unconstitutional" because it did not "place[] any burden on the vast majority of New Hampshire voters," "even assuming it might discourage some voters from attempting to register." *Id.* at 319. *NHDP* therefore makes clear that *all* burdens must be justified, and that the Superior Court erred by dismissing burdens that affect only "a subset of absentee voters." Add.36.

Under the proper standard, right-to-vote claims like this one can almost never be rejected at the motion to dismiss stage. Determining "the magnitude of the asserted injury" almost invariably presents "factual questions that cannot be resolved on a motion to dismiss." *Mecinas*, 30 F.4th at 905. "The fact-specific nature of the relevant inquiry . . . obviates a resolution of this case on the basis of the complaint alone." *Cruz v. Melecio*, 204 F.3d 14, 22 (1st Cir. 2000). With "no factual record," courts

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have no way to predict whether a plaintiff "will be able to prove its claim that the law it challenges imposes a heavy burden." *Libertarian Party of N.H.*, 2014 WL 7408214, at *4. No surprise, then, that the one time this Court has rejected a right-to-vote claim as a matter of law without an evidentiary record, it did so only after assuming that the law imposed a severe burden and was "subject to the most exacting standard of review." *Op. of the Justices*, 171 N.H. 128, 135 (2018). Here, in contrast, the Superior Court assumed the opposite—that Plaintiffs would fail to prove any substantial burden from SB 287, despite their contrary factual allegations. That assumption violated the requirement that Plaintiffs' allegations be credited and construed in their favor at this stage. *Ortolano*, 177 N.H. at 361.

The Superior Court also erred in concluding that SB 287's identification requirements are nondiscriminatory merely because they apply to all absentee voters and mirror the identification requirements of in-person voting. *See* Add.37. At the outset, this reasoning ignores that providing identification remotely—by making a copy, making a separate trip, or getting a document notarized—is fundamentally different, and substantially more burdensome, than merely showing an identification card in person when one is already present at the polling place to vote. It also ignores that, by law, New Hampshire voters who qualify to vote absentee, and are therefore impacted by SB 287, differ in many important respects from voters who cast ballots in person, either because of their physical location or condition. *See* App.7 (Compl. ¶ 18); RSA 654:16. That, of course, is why New Hampshire law allows them to vote absentee. And it ignores Plaintiffs' allegations that SB 287 will disparately impact *certain*

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absentee voters—particularly those with disabilities or impairments, or who struggle to use or access technology or travel outside of the home—making compliance for them far more difficult. *See League of Women Voters of N.H. v. Gardner*, No. 226-2017-CV-00433, 2020 WL 4343486, at *10, *16 (N.H. Super. Ct. Apr. 8, 2020), *aff'd sub nom. NHDP*, 174 N.H. 312 (holding that "the burdens imposed by the [challenged] law are discriminatory" because the law's burdens fell "disproportionately on certain groups of individuals who use same-day registration more frequently than others," including "[y]oung, mobile, low-income, and homeless voters").

Taken together and with all reasonable inferences drawn in Plaintiffs' favor, Plaintiffs' allegations establish that SB 287 imposes substantial and disparate burdens on particular groups of absentee voters. At this stage of the case, the Superior Court was therefore required to assume that *at least* intermediate scrutiny applies to SB 287. *See Guare*, 167 N.H. at 667–68. The Superior Court erred in disregarding or discounting Plaintiffs' allegations and holding that the law imposes only reasonable and nondiscriminatory burdens. The Court should reverse.

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II. The Superior Court erred in concluding that any state interest justified the burdens imposed by SB 287.

The Superior Court also erred on the other side of the *Guare* balancing analysis in assessing whether the State's interests justify the burdens SB 287 imposes. Having determined that the law's burdens were reasonable and nondiscriminatory, the Superior Court concluded in a single page that the State's purported interests in securing absentee voting

procedures and preventing voter fraud sufficed to justify that burden. *See* Add.37–38. This was error for three reasons.

First, the Superior Court's error in considering SB 287's burden caused it to apply the wrong standard in assessing the relevant state interests. Under intermediate scrutiny, "*the State was required to prove* that the challenged law is substantially related to an important governmental objective." *NHDP*, 174 N.H. at 329 (emphasis added) (quotation marks and alterations omitted). And at this stage of the case, there was no evidence from the State that could meet that burden—only Plaintiffs' own allegations.

Second, under *any* standard for review, SB 287's burdens must be justified by interests that are *connected* to the regulation purporting to advance them, not merely ones that are legitimate in the abstract. "However slight [a] burden may appear . . . , it must be justified by *relevant* and legitimate state interests . . . ." *Crawford*, 553 U.S. at 191 (plurality opinion). State interests justifying burdens on the fundamental right to vote therefore must not only be "defined," but they must also be "connected to" the challenged election practice. *Eakin v. Adams Cnty. Bd. of Elections*, 676 F. Supp. 3d 449, 460 & n.12 (W.D. Pa. 2023). Thus, in *Guare*, this Court concluded—separately from its conclusion on the magnitude of the burden—that "the State has failed to establish that the challenged language . . . *actually addresses*" the asserted interest in complying with the federal Help America Vote Act. 167 N.H. at 669 (emphasis added). And in *NHDP*, the Court held that "the State has failed to demonstrate that SB 3 is substantially *related to* the precise governmental interests it set forth as justifications necessitating the burdens the law imposes on the right to

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vote," because SB 3's changes to the voter registration process "d[id] not impede fraudulent voters." 174 N.H. at 329 (emphasis added). The Court therefore "rejected the State's voter-fraud justification" and determined that "the State's perceived need to protect the integrity of New Hampshire's elections was 'illusory.'" *Id. Libertarian Party New Hampshire v. State*, which the Superior Court cited, is not to the contrary—in that case, the ballot access burdens were directly and indisputably connected to the asserted interest in requiring a significant modicum of support before a candidate was placed on the ballot. 154 N.H. 376, 378–79 (2006).

Here, however, the Superior Court did not assess the factual basis for any asserted concerns about voter fraud and election integrity, nor consider whether those concerns are sufficiently related to the burdens that SB 287 imposes to justify those burdens. Rather, it stopped its analysis after concluding that those interests are legitimate. *See* Add.38. As a result, the Superior Court did not consider, much less credit, Plaintiffs' factual allegations that New Hampshire elections were already extremely secure, such that there was no problem for SB 287 to address. App.14–15 (Compl. ¶¶ 50–55). As Plaintiffs alleged, Defendants and other state officials have repeatedly touted New Hampshire's elections as secure and fraud-free. *See* App.14–15 (Compl. ¶¶ 50–55); *see also League of Women Voters of N.H. v. Gardner*, No. 226-2017-CV-00433, 2018 WL 5929043, at *9 (N.H. Super. Ct. Oct. 22, 2018) ("[V]oter fraud is not widespread or even remotely commonplace" in New Hampshire."); *League of Women Voters of N.H.*, 2020 WL 4343486, at *19 ("[T]he reality is that voter fraud is virtually non-existent in this state, a fact that the State conceded at trial."). The Superior Court also ignored the numerous safeguards that already exist

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under New Hampshire law that further these goals, including the fact that absentee voters in New Hampshire were already required to confirm their identity and eligibility at multiple stages before obtaining an absentee ballot. *See* App.7–9 (Compl. ¶¶ 17–25).

Moreover, the fit between the asserted interest in "establish[ing] that an absentee voter is who they claim to be," Add.38, and the challenged law is extremely weak. SB 287's requirements apply only at the absentee-ballot *request* stage; SB 287 imposes no safeguards targeted at the ballot return stage (*i.e.*, when a person *casts* the ballot). Nor, of course, can an election worker who receives a copy of a voter's identification card in the mail compare the picture to the voter, unlike with in-person voting. As a result, and unlike identification requirements for in-person voting, SB 287 does little to confirm that a vote is cast by the voter themself. And neither SB 287's proponents nor Defendants articulated any reason to suspect that meaningful numbers of absentee ballots are being obtained (let alone cast) by ineligible individuals—much less provided evidence that is so. In fact, Defendants' articulation of this purported state interest focused on voters allegedly voting in more than one state, rather than voter impersonation—a scenario that SB 287 does nothing to prevent. *See* App.19–20. In light of the poor fit between the restriction and the interest, the Superior Court erred in holding that this action could be dismissed at the pleading stage. *See NHDP*, 174 N.H. at 329 (holding that a state interest in combatting voter fraud was insufficient to justify a law that would not prevent fraud).

Third, the Superior Court's approach was again inconsistent with the motion to dismiss standard. "[W]ithout any factual record at this stage," there was no basis for the court to say that the State's "justifications

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outweigh the constitutional burdens on [Plaintiffs] as a matter of law." *Soltysik v. Padilla*, 910 F.3d 438, 447 (9th Cir. 2018). Nor was it possible to determine "whether the State will succeed in articulating and justifying its interests in the restriction." *Libertarian Party of N.H.*, 2014 WL 7408214, at *4. Again, the one exception from this Court in *Opinion of the Justices* proves the rule. There, the challenged law was precisely tailored to eliminate the difference between legal residency and domicile that the Court held the State had a compelling interest in eliminating. 171 N.H. at 145–46. Because the law "could be drawn more narrowly only if it left in place, to some degree, the dichotomy" the State sought to eliminate, which would "defeat the purpose of the legislation," the Court held that no "factual development" was needed on the question of tailoring. *Id.* Here, in contrast, the State could have sought to promote election integrity and voter confidence in any number of ways, and there is a clear need for factual development regarding whether SB 287 was a reasonably tailored way of addressing the State's supposed concerns.

The Superior Court therefore erred in holding at the motion to dismiss stage that the State's generalized interest in election integrity justifies the specific burdens that Plaintiffs allege SB 287 places on absentee voters.

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CONCLUSION

This Court should reverse the dismissal of Plaintiffs' claim under Part I, Article 11 of the New Hampshire Constitution.

STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs respectfully request oral argument before the full Court, with 15 minutes of argument per side. This case presents important and recurring questions of New Hampshire constitutional law and civil procedure that justify a decision after oral argument by the full Court.

If oral argument is held, David R. Fox will argue for Plaintiffs-Appellants.

CERTIFICATION REGARDING THE APPEALED DECISION

Plaintiffs certify that the appealed decision is in writing and is appended to the end of this brief.

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Dated: April 9, 2026

Respectfully submitted,
/s/ Steven J. Dutton

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CERTIFICATE OF SERVICE

Pursuant to this Court's Rule 26(3)(b), a copy of the foregoing was transmitted by electronic filing to all counsel of record on this 9th day of April, 2026.

/s/ Steven J. Dutton
Steven J. Dutton

CERTIFICATE AS TO COMPLIANCE WITH WORD LIMIT

I hereby certify that the within document complies with the word limit for opening briefs because it contains 5,452 words that count against the limit.

Dated: April 9, 2026

/s/ Steven J. Dutton
Steven J. Dutton

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ADDENDUM

December 11, 2025 Order on Motion to Dismiss
from the Rockingham Superior Court (Ruoff, J.)……31

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THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, SS. **SUPERIOR COURT**

Adele Robertson, et al.

v.

David M. Scanlan, et al.

Docket No. 218-2025-CV-00951

ORDER ON DEFENDANT'S MOTION TO DISMISS

Plaintiffs Adele Robertson, Daniel Frye, and Regina Wilson bring this action against Defendants David M. Scanlan, in his capacity as the New Hampshire Secretary of State, and John M. Formella, in his capacity as the New Hampshire Attorney General, seeking declaratory and injunctive relief arising from a new statute regulating absentee voting. See Doc. 1. Defendants now move to dismiss. Doc. 6. Plaintiffs object. Doc. 11 (Obj.); Doc. 12 (Mem. Law). After review, the Court concludes it can resolve the Motion without a hearing. Defendants' motion to dismiss is **GRANTED**.

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Background

Unless otherwise noted, the following facts are derived from the Complaint, see Doc. 1, and are assumed true for purposes of this Order. Plaintiffs are three visually impaired New Hampshire residents who regularly vote by absentee ballot. Id. ¶¶ 3, 6–8. On August 1, 2025, Governor Kelly Ayotte signed SB 287[1] into law which imposed identification requirements on absentee voters. Id. ¶ 2. Specifically, RSA 657:17-c requires absentee voters to provide identification verification for every election, either by

[1] Since the filing of Plaintiffs' Complaint, SB 287 has been codified as RSA 657:17-c. For purposes of this Order, the Court will refer to the challenged law as RSA 657:17-c.

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Rockingham Superior Court
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including with their ballot a copy of their photo identification, including a notarized signature on their ballot, or bringing their photo identification to their local city or town clerk. Id. ¶ 31.

Plaintiffs assert that these identification requirements will impose burdens on them and other New Hampshire voters. Id. ¶ 34. Specifically, Plaintiffs assert that the identification requirements will essentially deter disabled voters from voting because it will require them to access technology, travel to their local clerk's office, or pay for a notary. Id. ¶ 35. Ultimately, Plaintiffs allege that the identification requirements will disenfranchise voters with disabilities, mobility issues, or limited financial means. Id. ¶ 44. Based on the new identification requirements, Plaintiffs assert that RSA 657:17-c violates Part 1, Article 11 of the New Hampshire Constitution because it imposes undue burdens on a category of New Hampshire voters. Id. ¶¶ 56–62.

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Analysis

In ruling on a motion to dismiss, the Court analyzes whether the plaintiff's factual allegations are "reasonably susceptible of a construction that would permit recovery." Mentis Scis., Inc. v. Pittsburgh Networks, LLC, 173 N.H. 584, 588 (2020). "The trial court need not accept allegations in the writ that are merely conclusions of law." Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 711 (2010) (quotations and citation omitted). The relevant inquiry is whether, drawing all reasonable inferences in the plaintiff's favor, the allegations provide a basis for legal relief. Mentis Scis., 173 N.H. at 588. If not, dismissal is proper. Id.

Here, Defendants argue that Plaintiffs fail to allege that RSA 657:17-c is facially unconstitutional because the Legislature merely aligned the requirements for absentee

voting with the requirements for in person voting. Doc. 6 ¶ 15. In addition, Defendants assert that RSA 657:17-c is nondiscriminatory and does not burden the fundamental right to vote because voters may still request accommodations and people with disabilities are not prohibited from voting due to the identification requirements. Id. ¶¶ 17–18. Moreover, Defendants contend that the identification requirements are reasonable and justified by New Hampshire's interest in securing elections and are therefore constitutional. Id. ¶¶ 28, 30.

In response, Plaintiffs assert that absentee voting is a constitutional privilege and any regulations on that privilege must be reasonable. Doc. 12 at 4. Plaintiffs argue that RSA 657:17-c is unconstitutional because the identification requirements are unreasonable, unduly burdensome, and discriminatory. Id. at 5. Specifically, Plaintiffs assert that RSA 657:17-c fails intermediate scrutiny review because it forces voters to comply with unreasonable requirements and disproportionately affects disabled, elderly, and low-income voters. Id. at 6–7. Lastly, Plaintiffs contend that RSA 657:17-c is unconstitutional under any level of scrutiny because it does not aim to solve any known election fraud or election administration problem. Id. at 12.

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As an initial matter, the Court notes that Plaintiffs' have brought this action alleging a claim under the New Hampshire Constitution only. Therefore, the Court will address the issues raised by Plaintiffs under state law, making reference to federal law only for purposes of guidance. See State v. Ball, 124 N.H. 226, 231–33 (1983).

"Whether or not a statute is constitutional is a question of law[.]" New Hampshire Democratic Party v. Sec'y of State, 174 N.H. 312, 321 (2021). The Court "presume[s] a statute to be constitutional and will not declare it invalid except upon inescapable

grounds." Id. "In other words, [the Court] will not hold a statute to be unconstitutional unless a clear and substantial conflict exists between it and the constitution." Id.

Part I, Article 11 of the New Hampshire Constitution provides, in relevant part:

> All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. . . . The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election.

First, the Court must determine what level of scrutiny applies to the challenged statute. "Although the right to vote is fundamental, [the Court] do[es] not necessarily subject any impingement upon that right to strict scrutiny." Guare v. State, 167 N.H. 658, 663 (2015). Instead, the Court applies a balancing test to determine the level of scrutiny to apply. Id. "Under that test, [the Court] weigh[s] the character and magnitude of the asserted injury to the [voting] right sought to be vindicated against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights." Id. (cleaned up). "Under this standard, the rigorousness of [the Court's] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens the fundamental right to vote." Id. (cleaned up).

Generally, when the right to vote is subjected to "severe" restrictions, the restriction must be "narrowly drawn to advance a state interest of compelling

importance." Id. (citation omitted). However, when a law imposes "reasonable, nondiscriminatory restrictions" upon the right to vote, "the State's important regulatory interests are generally sufficient to justify the restrictions." Id. "Most cases fall between these two extremes." Id.

"Courts in other jurisdictions have recognized that a test similar to intermediate scrutiny applies to a voting restriction that falls between the two extremes." Id. at 666. "Our intermediate level of scrutiny requires that a challenged law be substantially related to an important government objective." Id. at 665. The State bears the burden under this level of review, and "may not rely upon justifications that are hypothesized or invented post hoc in response to litigation, nor upon overbroad generalizations." Id. Where a law imposes unreasonable restrictions on the right to vote, "the State must articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest set forth." Id. The New Hampshire constitutional framework for evaluating challenges to burdens imposed on voters is derived from the analysis developed by the United States Supreme Court in Burdick v. Takushi, 504 U.S. 428 (1992) and Anderson v. Celebrezze, 460 U.S. 780 (1982). See Guare, 167 N.H. at 663; see also Akins v. Secretary of State, 154 N.H. 67, 71–72 (2006).

Accordingly, the Court must determine whether the challenged statute imposes severe restrictions, or only reasonable, nondiscriminatory ones upon Plaintiffs' right to vote, or something in between. Here, RSA 657:17-c provides:

> I. Every applicant for an absentee ballot shall provide verification before being issued an absentee ballot. Verification shall be satisfied by one of the following methods:

> (a) Including a copy of the voter's photo identification with the absentee ballot application. The identification shall meet the requirements of RSA 659:13, II(a);
>
> (b) Including a notarized signature on the absentee ballot application form; or
>
> (c) Personally presenting a qualifying photo identification, as defined in RSA 659:13, II(a), to the city or town clerk or their designee prior to the issuance of the absentee ballot.
>
> II. No absentee ballot shall be issued unless one of the verification methods under paragraph I has been satisfied.

Upon review, the Court concludes that the identification requirements imposed upon absentee voters are not severe and do not unreasonably burden the right to vote. "Ordinary and widespread burdens, such as those requiring 'nominal effort' of everyone, are not severe." Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 205 (2008) (Scalia, J., concurring); id. at 198 (plurality opinion). Burdens are generally deemed severe when they outright exclude voters from the process. See, e.g., Dunn v. Blumstein, 405 U.S. 330, 337 (1972) (requirement that voters reside in state for one year and county for three months to register); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1996) (finding poll tax requirement unconstitutional). Here, the identification requirements impose ordinary burdens on all absentee voters, and the possibility that it may cause additional burden on a subset of absentee voters does not render the entire statute unconstitutional. See Crawford, 553 U.S. at 205 (Scalia, J., concurring). Moreover, the identification requirements allow various methods to prove a voter's identification, including providing a copy of their photo identification, notarizing their signature, or presenting their identification to the town or city clerk. Although each of these methods may impose an additional requirement on absentee voters requesting absentee ballots, they do not unreasonably burden an absentee voter's ability to obtain

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an absentee ballot. Indeed, the burden imposed by the identification requirement is reasonable because it merely requires absentee voters to choose between three distinct methods to provide one form of identification.

To the extent Plaintiffs' assert that these methods are unreasonable and severe because a subset of voters may have difficulty copying their identification, traveling or paying for a notary, or traveling to their town or city's clerks' office, the Court is unpersuaded. These alleged burdens identify no more than different impacts of the non-severe burden that RSA 657:17-c imposes on all absentee voters. See DCCC v. Ziriax, 2020 WL 5569576, at *19 (N.D. Okla. Sept. 17, 2020) ("The mere possibility that the burden may be greater on a small subset of voters does not entitle the plaintiffs to the sweeping relief they seek here."). Absentee voters requesting absentee ballots were already required to mail or provide their application to the secretary of state or town or city clerk. See RSA 657:6; RSA 657:7, III. RSA 657:17-c merely requires absentee voters to include with their ballot application a copy of their identification, a notarized signature, or to provide their identification to the town clerk when returning their application. For the same reason, the Court concludes that the identification requirements are nondiscriminatory. Indeed, the RSA 657:17-c identification requirements align the requirements to obtain an absentee ballot with the requirements to obtain an in-person ballot. Compare RSA 657:17-c, with RSA 659:13, I(b) (requiring in-person voters to present proof of identity before obtaining a ballot).

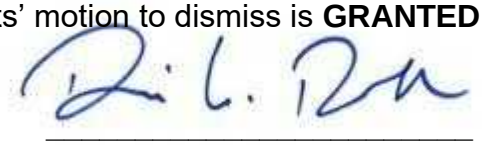
Having determined that the challenged identification requirements are reasonable and not discriminatory or severe, the Court next considers "'the precise interests put forward by the State as justifications for the burden[s] imposed by [the

statutes]," bearing in mind that 'the State's important regulatory interests are generally sufficient to justify the restrictions.'" Libertarian Party New Hampshire v. State, 154 N.H. 376, 382–83 (2006) (quoting Akins, 154 N.H. at 72). Here, Defendants assert that the identification requirements "seek to further secure New Hampshire's absentee voting procedures, which are particularly vulnerable to fraud[.]" Doc. 6 ¶ 30. Moreover, Plaintiffs allege in their Complaint that the legislature explained RSA 657:17-c was intended to "prevent voter fraud and promote trust and integrity in New Hampshire elections." Doc. 1 ¶ 46. The Court concludes that this is a sufficient justification for the identification requirements to establish that an absentee voter is who they claim to be and ensure the legitimacy of elections. "The Supreme Court and other courts have repeatedly emphasized that insuring that those who are permitted to vote are bona fide residents who share a community of interest with other citizens of the jurisdiction is a legitimate concern of the highest order." Opinion of the Justices, 171 N.H. 128, 142–43 (2018). "Insuring a community of interest among voters and residents promotes confidence in political outcomes and guards against a distortion of the political community." Id. at 144. "Surely the prevention of such fraud is a legitimate and compelling government goal." Id. (quoting Dunn v. Blumstein, 405 U.S. 330, 343-44 (1972)). Thus, the Court concludes that Defendants have articulated a precise justification for the burden imposed by RSA 657:17-c.

Accordingly, the Court concludes that RSA 657:17-c imposes reasonable, nondiscriminatory identification burdens on absentee voters to protect the State's interest in securing elections and limiting voter fraud. See Libertarian Party New Hampshire, 154 N.H. at 382–83. As such, Defendants' motion to dismiss is **GRANTED**.

Conclusion

For the foregoing reasons, Defendants' motion to dismiss is **GRANTED**. Doc. 6.



Date: December 11, 2025

Hon. David W. Ruoff
Presiding Justice

Clerk's Notice of Decision
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