

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Case No. 218-2025-CV-00951

ADELE ROBERTSON; DANIEL FRYE; and REGINA WILSON

*Plaintiffs*

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*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Adele Robertson, Daniel Frye, and Regina Wilson, by and through counsel, McLane Middleton, P.A. and Elias Law Group LLP, bring this Complaint for a declaratory judgment and permanent injunction and state as follows:

**INTRODUCTION**

1. New Hampshire is one of the most difficult states in the country in which to vote by absentee ballot. The state imposes tight limits on which categories of voters may vote absentee at all. And it then imposes numerous burdensome procedural requirements as voters register to vote, complete an absentee ballot request, and cast their absentee ballots.

2. On August 1, 2025, Governor Kelly Ayotte signed SB 287 into law and made absentee voting even harder. *See* SB 287, 169th Gen. Assemb., Reg. Sess. (N.H. 2025) (codified at 2025 N.H. Laws ch. 302) (eff. Sep. 30, 2025). When it takes effect, SB 287 will require voters applying for absentee ballots to either submit a copy of their photo identification, travel to the town or city clerk's office to present such photo identification in person, or have their signature on the

absentee ballot application form notarized. And the voters must do this for every single local, primary, and general election in which they wish to receive an absentee ballot.

3. SB 287 will impose severe and unreasonable burdens on Plaintiffs' and other New Hampshire voters' abilities to vote. Despite the stringent limitations that New Hampshire already places on absentee voting, many thousands of individuals regularly vote absentee, including voters with impairments or disabilities, as well as senior voters, overseas and military voters, and voters with limited means. And it is precisely those voters—who will struggle with scanning or printing a copy of their photo identification, or will find it very difficult to obtain notary services or travel to a town or city clerk's office—on whom the burden of SB 287 will fall the heaviest.

4. SB 287's defenders have framed the measure as necessary to prevent voter fraud and promote trust and integrity in New Hampshire elections. But the state has long enjoyed high-turnout, secure, and fraud-free elections, as its own officials, including Defendants, have repeatedly emphasized. Neither this nor any other state interest can serve to justify the burdens that SB 287 imposes on voters' fundamental right to vote.

5. SB 287 violates Part I, Article 11 of the New Hampshire Constitution, and the Court should enjoin its enforcement.

### **PLAINTIFFS**

6. Plaintiff ADELE ROBERTSON is a visually impaired adult who is registered to vote in New Hampshire. She resides at 106 Front Street, Exeter, New Hampshire 03833. Ms. Robertson is a regular voter in New Hampshire who has voted absentee since the early 2000s and expects and intends to vote absentee in future elections.

7. Plaintiff DANIEL FRYE is a blind adult who is registered to vote in New Hampshire. He resides at 47 Broadway, Concord, New Hampshire 03301. Mr. Frye is a regular

voter in New Hampshire who has voted via absentee ballot in previous elections and expects and intends to vote absentee in future elections.

8. Plaintiff REGINA WILSON is a visually impaired adult who is registered to vote in New Hampshire. She resides at 62 Haigh Road, Brentwood, New Hampshire 03833. Ms. Wilson is a regular voter in New Hampshire who has voted via absentee ballot in previous elections and expects and intends to vote absentee in future elections.

### **DEFENDANTS**

9. Defendant DAVID M. SCANLAN is the New Hampshire Secretary of State. His office is located at 25 Capitol Street, Concord, New Hampshire 03301. He is named as a Defendant in his official capacity. Defendant Scanlan is the “chief election officer” for New Hampshire. RSA 652:23. His duties include overseeing all state elections and administering the state’s election laws, including the requirements that will be imposed under SB 287. He is further required to “provide information regarding . . . absentee ballot procedures for all voters,” *id.*, and to “prepare the appropriate application forms for absentee ballots” prior to each election, RSA 657:4. He is also responsible for preparing the state’s manual of New Hampshire election laws and procedures for conducting elections. RSA 652:22. Defendant Scanlan, personally and through the conduct of his agents, servants, and employees, act under color of state law at all times relevant to this action.

10. Defendant JOHN M. FORMELLA is the New Hampshire Attorney General. His office is located at 33 Capitol Street, Concord, New Hampshire 03301. He is named as a Defendant in his official capacity. Defendant Formella is responsible for enforcement of the state’s election laws and is authorized to prosecute violations of those laws. RSA 7:6-c, I. He is also responsible for approving the manual of New Hampshire election laws and procedures for conducting elections. RSA 652:22. Defendant Formella, personally and through the conduct of his agents, servants, and employees, act under color of state law at all times relevant to this action.

## JURISDICTION & VENUE

11. This Court, as the court of general jurisdiction in New Hampshire, has subject-matter jurisdiction over this complaint and the jurisdiction to grant both declaratory and equitable relief. RSA 491:7, 491:22, II; RSA 498:1.

12. This Court has personal jurisdiction over Defendants, both of whom are sued in their official capacities and are appointed statewide officials in New Hampshire. Both Defendants work and reside in the State of New Hampshire.

13. Venue is proper in this judicial district because at least one of the Plaintiffs resides in Rockingham County. *See* RSA 507:9.

## STATEMENT OF FACTS

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

14. New Hampshire imposes stringent limitations on absentee voting. Unlike most states, which 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.

15. 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.<sup>1</sup>

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<sup>1</sup> The statute also prescribes procedures that will apply if “the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning for election day applicable to the city, town, or unincorporated place” where the voter resides. RSA 657:1, II.

16. These limitations are backed by criminal penalties. RSA 657:24 provides that anyone who votes or attempts to vote absentee “who is not entitled to vote by absentee ballot” is guilty of a misdemeanor.

17. Even before SB 287 was enacted, absentee voters in New Hampshire had to confirm their identity and eligibility to vote at multiple stages.

18. *First*, the voter must register to vote. The vast majority of voters must register in person at their local town or city clerk’s office. Voters may register absentee only if they are “temporarily absent” from the town or city or, “by reason of physical disability,” are “unable to attend a meeting of the supervisors of the checklist.” RSA 654:16. Everyone who registers to vote, whether in person or absentee, must submit a voter registration form. *See* RSA 654:7, 654:16. A voter who registers in person must also present documentation serving as proof of citizenship, age, domicile, and identity. *See* RSA 654:12, I.

19. A voter who registers absentee, in addition to completing the voter registration form, must also complete an absentee registration affidavit. *See* RSA 654:16. The absentee registration affidavit requires voters to swear or affirm the basis for their eligibility to complete an absentee registration. *See* RSA 654:17, I. In addition, under SB 218, which was signed on the same day as SB 287 and will take effect when SB 287 does, these voters must also submit supporting documentation that proves the voter’s citizenship status, age, domicile, and identity. *See* SB 218, 169th Gen. Assemb., Reg. Sess. (N.H. 2025) (codified at 2025 N.H. Laws ch. 298) (eff. Sep. 30, 2025).

20. The voter registration affidavit must be witnessed and signed by the witness as well. *See* RSA 654:17, II. The form also explicitly warns individuals that, under RSA 659:34, knowingly

or purposefully providing false information when registering to vote is a misdemeanor punishable by a fine and/or by a prison sentence of up to a year. *See* RSA 654:17, I.

21. *Second*, the voter must complete an absentee ballot application. Because there is no standing or permanent list of eligible absentee voters in New Hampshire, voters who need to vote absentee are required to submit a new absentee ballot application for every single primary, general, or local election. *See* RSA 657:4.<sup>2</sup>

22. 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.*<sup>3</sup> The voter must also provide identifying information, including their name and address of domicile, and sign the application. *Id.*

23. When a town or city clerk receives an application for an absentee ballot, the clerk must confirm that the application has been “properly executed” and that the voter is on the checklist of that town or city. RSA 657:12, 657:13. The clerk must then deliver or mail the appropriate absentee ballot to the individual. *See* RSA 657:15.

24. *Third*, voters must complete 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

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<sup>2</sup> *See also Application for State Election Absentee Ballot-RSA 657:4*, N.H. Sec’y of State (last visited Aug. 18, 2025), <https://www.sos.nh.gov/sites/g/files/ehbemt561/files/documents/2024-09/2024-absentee-ballot-application-state-election-remediation-update-9.23.24.pdf> (directing voters to “complete a separate form for each election”).

<sup>3</sup> Alternatively, if not already registered to vote, an individual requesting an absentee ballot may declare that “I am absent from the town/city where I am domiciled and will be until after the next election, or I am unable to register in person due to a disability, and request that the forms necessary for absentee voter registration be sent to me with the absentee ballot.” RSA 657:4.

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.

25. Absentee ballots are processed by local moderators, in public view, beginning on election day. *See* RSA 659:49, I. Before counting any absentee ballot, a moderator must confirm that the name of the voter is on the checklist; the affidavit has been properly executed; the signature “appears to be that of a duly qualified voter who has not voted at the election”; and the signature is not “clearly legible as the name of a person other than the voter.” RSA 659:50; N.H. Election Procedure Manual 82 (Aug. 2024).<sup>4</sup> The affidavit will be treated as signed if the voter received assistance from a person named on the affidavit. *See* N.H. Election Procedure Manual 82.

26. In the 2024 general election, just under 100,000 voters cast absentee ballots in New Hampshire—roughly 12 percent of the total number of votes cast. That figure has consistently stayed around 10 percent in recent elections, after spiking to more than 30 percent in 2020, when the state’s restrictions on absentee ballot eligibility were temporarily lifted as a result of the COVID-19 pandemic.

27. The need for absentee voting is particularly great among certain groups. In particular, some voters with disabilities are especially likely to rely on absentee voting as it may be difficult or impossible for them to vote in-person.

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<sup>4</sup> Available at <https://www.sos.nh.gov/sites/g/files/ehbemt561/files/documents/2024-08/epm-2024-2025-final-ada-for-web.pdf>.

28. Across the country, turnout for voters with disabilities is higher in states that have no-excuse absentee voting or conduct vote-by-mail elections than it is in states that require excuses for absentee voting. Where states have eliminated excuse requirements for absentee voting, turnout among voters with disabilities has significantly increased.

**II. SB 287 tightens these already-strict limitations and imposes new requirements on absentee voters.**

29. SB 287 changes absentee ballot procedures to impose new burdens on New Hampshire absentee voters.

30. SB 287, as amended, was passed by both houses of the New Hampshire legislature and then signed into law by Governor Ayotte on August 1, 2025.

31. Once the law takes effect, a new section will be added to the New Hampshire election code, which will read, in full:

657:17-c Verification of Absentee Ballot Applicant.

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.

32. SB 287 will take effect on September 30, 2025, 60 days after it was signed by Governor Ayotte.



33. 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 each of these elections, every time a voter submits an application—often multiple times per year—even if they have previously voted by absentee ballot or otherwise proved their identity.

### **III. SB 287 imposes significant burdens on the rights of New Hampshire absentee voters.**

34. SB 287 will make it more difficult for Plaintiffs and other Granite Staters to vote absentee. Individually and jointly, SB 287's "verification" methods impose burdens on every absentee voter. And, in some cases, these burdens will entirely prevent voters from exercising their right to vote.

35. To provide a copy of their photo identification as required under Section I(a) of SB 287, absentee voters such as Plaintiffs will have to obtain access to, and ensure they can use, technology that can create copies of the requisite photo identification. Voters will also have to figure out how to transmit that copy to the city or town clerk with their absentee ballot application. That is a deterrent to voting that many New Hampshire voters, including individuals who are blind or have severely impaired vision such as Plaintiffs, will find difficult to overcome.

36. To provide a notarized signature under Section I(b), the voter must have access to a notary, either by traveling to a business offering notary services or by using technology to access an online notary. In either case, the voter will need to pay a fee. Many voters, including those who have vision impairments like Plaintiffs, or many voters who have other disabilities or are elderly, are not able to drive or easily find transportation, and thus will encounter many difficulties in finding and traveling to a notary. They will similarly struggle to utilize online notaries, which require a certain level of access to and familiarity with the requisite technology. And voters of limited means will be unable to pay the fee required for notarization services.

37. Finally, to present a qualifying photo identification to their city or town clerk in person under Section I(c), the voter must travel to their city or town hall to request an absentee ballot in person. That, too, is a burden that will weigh heavily on many individuals, including poor, elderly, and disabled voters—including visually impaired voters such as Plaintiffs—for whom travel is significantly more difficult than for other voters. It will also weigh heavily on those who are temporarily away from their permanent residence and cannot return to their home city or town.

38. Moreover, it is unclear whether SB 287 permits voters to digitally transmit a copy of their photo identification to their city or town clerk. As State Senator Rebecca Perkins Kwoka warned in the June 26, 2025 conference committee hearing, this ambiguity could lead some of New Hampshire's 234 municipalities to accept digital copies while others do not and introduce a layer of confusion for voters navigating the absentee voting process.

39. Determining how to comply with SB 287's requirements imposes an additional layer of burden on voters, particularly those with disabilities and impairments, as they navigate an already complicated absentee ballot process. As the House Election Law Committee heard through public testimony, these requirements will directly harm such voters and, for many, effectively shut the door on their ability to vote.

40. For example, many people with disabilities, especially those with intellectual disabilities, lack credit cards. Those that do have them often avoid providing financial information to others, particularly online, out of fear of data breaches and cyberfraud, as responding to such events can be especially challenging because of their disabilities. This would preclude such voters from using an online notary.

41. SB 287 also burdens military and overseas voters, who cannot necessarily return to New Hampshire to provide proof of identification in person and may lack access to notaries and to the technology necessary to comply with the statute.

42. For blind or visually impaired voters like Plaintiffs, having to figure out transportation to a notary or to a clerk's office can prove to be very difficult. And their visual impairments make creating copies of their photo identification or using online notary services more difficult than for other voters.

43. To make matters worse, SB 287 imposes these requirements in every election in which New Hampshire residents seek to vote by absentee ballot. Voters cannot simply provide this information once—they must do so repeatedly for each local, primary, and general election in which they wish to vote absentee.

44. A voter who is unable to satisfy any of these requirements and who is unable to appear to vote in person will be unable to vote. SB 287 thus poses severe burdens on the right to vote because it threatens to disenfranchise various categories of voters entirely.

**IV. No legitimate and sufficiently weighty government interest justifies the unreasonable burdens imposed by SB 287.**

45. No sufficient government interest justifies the burdens SB 287 imposes.

46. Defenders of SB 287 argued in the legislature that it would prevent voter fraud and promote trust and integrity in New Hampshire elections.

47. The only public hearing on SB 287 was held in the Senate on March 11, 2025. That hearing, however, concerned a very different bill that 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.

48. In the context of that narrower bill, State Senator and prime sponsor Howard Pearl suggested that election integrity was the driving force behind SB 287, and State Representative Greg Hill testified that SB 287 would make ballot thievery more difficult.

49. 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. No new public hearing was held on SB 287 after that substantial change.

50. SB 287 is a solution in search of a problem. New Hampshire has long enjoyed high-turnout, secure, and fraud-free elections, as the state's own government officials, including Defendants, have consistently emphasized.

51. After the 2020 general election, then-Governor Chris Sununu released a statement asserting that New Hampshire's elections "are secure, accurate, and reliable—there is no question about it," and thanked election officials "for delivering results to the people of New Hampshire timely and accurately, just as they have always done." He dismissed claims of fraud in the election, explaining that "folks voted at [an] unbelievable rate" in the state, and that "in New Hampshire there is no evidence of widespread voter fraud." And he disputed President Donald Trump's attacks on the reliability of New Hampshire's elections, explaining that a subsequent state audit of the election was "proof that New Hampshire's voting process is the most reliable, safe, and secure in the country." Other state officials similarly rejected President Trump's baseless attacks on the integrity of New Hampshire's elections. Then-Secretary of State Bill Gardner, who oversaw the 2020 election in New Hampshire and served as the state's top election official for decades, stated he had "no basis . . . to agree" with the President's claims of fraud, and that "[n]obody has brought any evidence [of fraud] before my office."

52. This consensus has not changed since 2020. In the leadup to the 2022 general elections, for example, Senate President Chuck Morse and Senator Jeb Bradley described New Hampshire's elections as "the gold standard for the nation."

53. And, in the leadup to the recent 2024 general election, Defendant Scanlan told reporters that "the process is transparent. It is observable. We can trust the results." He further rejected claims that had been made of security vulnerabilities in a voter database, stating that the alleged issues "[d]id not happen," and that he is "very confident that it is secure, and we've got a good handle on it." Defendant Scanlan urged voters to trust their local election officials and the election process, stating that there are thousands of locally elected election officials in New Hampshire who work in a non-partisan way to make sure that there is a fair and secure election and that "[w]ith all of these elected individuals fulfilling their statutory roles, there is very little opportunity for collusion and conspiracy and things like that."

54. According to Defendants themselves, then, there is no election integrity problem in New Hampshire, let alone one involving the already-restrictive absentee voting process.

55. SB 287 is not supported by any government interest that is sufficiently weighty to justify the burdens it imposes on Granite Staters' voting rights.

## **CAUSES OF ACTION**

### **COUNT I (Against All Defendants)**

#### **(Violation of the Free and Equal Elections Clause of the New Hampshire Constitution, by Burdening the Fundamental Right to Vote)**

56. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

57. “[T]he right to vote is fundamental.” *Akins v. Sec’y of State*, 154 N.H. 67, 71, 904 A.2d 702 (2006) (citing *McGraw v. Exeter Region Coop. Sch. Dist.*, 145 N.H. 709, 713, 765 A.2d 710 (2001)).

58. The New Hampshire Constitution guarantees the right to vote by providing that: “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.” N.H. Const. pt. 1, art. 11.

59. To decide whether an election practice violates the right to vote, New Hampshire courts apply a balancing test under which the character and magnitude of the asserted injury to voting rights is weighed “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 v. State*, 167 N.H. 658, 663, 117 A.3d 731 (2015) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), and citing *Akins*, 154 N.H. at 72, 904 A.2d 702).

60. Election practices that impose unreasonable burdens must “be substantially related to an important governmental objective.” *Guare*, 167 N.H. at 665, 117 A.3d 731 (citing *Cnty. Res. for Justice v. City of Manchester*, 154 N.H. 748, 762, 917 A.2d 707 (2007)). And those that impose severe burdens “must ‘be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.’” *Akins*, 154 N.H. at 73, 904 A.2d 702 (quoting *Follansbee v. Plymouth Dist. Ct.*, 151 N.H. 365, 367, 856 A.2d 740 (2004)). The asserted governmental interest must be specific, rather than abstract, and the State must “explain why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest set forth.” *Guare*, 167 N.H. at 667, 117 A.3d 731 (quotation omitted).

61. SB 287 requires every absentee voter—every single time they apply to vote absentee in any local, primary, or general election—to submit a copy of their photo identification along with their application; travel to the town or city clerk’s office to present such photo identification in person; or obtain notary services to have their signature on the absentee ballot application form notarized. This burden falls especially heavily on voters with disabilities, seniors, overseas military voters, and individuals of limited means. The law also imposes particular burdens on visually impaired voters such as Plaintiffs, who face additional difficulties in traveling and using certain technology because of their impairments.

62. Thus, SB 287 imposes severe and unreasonable burdens on the rights of New Hampshire voters.

63. There is no state interest that is “sufficiently weighty” to justify the substantial burdens that SB 287 places on the right to vote. *N.H. Democratic Party v. Sec’y of State*, 174 N.H. 312, 324–25, 262 A.3d 366 (2021). In particular, elections in New Hampshire were secure even before SB 287, and there is no evidence of any problem with absentee voting in New Hampshire that SB 287 could solve.

64. Thus, SB 287 fails under any level of scrutiny, and thereby violates Part I, Article 11 of the New Hampshire Constitution.

#### **PRAYER FOR RELIEF**

Accordingly, Plaintiffs respectfully request that this Court enter the following declaratory and equitable relief:

A. An order declaring that SB 287 violates Part I, Article 11 of the New Hampshire Constitution.

B. An order permanently enjoining Defendants, their respective agents, officers, employees, successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to SB 287.

C. An order awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to the Court's inherent equitable power. *See Claremont Sch. Dist. v. Governor*, 144 N.H. 590, 595, 761 A.2d 389 (1999).

D. Any such other or further relief as the Court deems just and proper.

Respectfully submitted,  
/s/ Steven J. Dutton

Dated: August 19, 2025

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*\*Pro hac vice application forthcoming*

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