**No. 26A512**

IN THE

# Supreme Court of the United States

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DAVID M. SCANLAN, ET AL.,

*Applicants,*

v.

COALITION FOR OPEN DEMOCRACY,

*Respondent.*

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## RESPONSE IN OPPOSITION TO THE EMERGENCY APPLICATION TO STAY THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

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Bryan L. Sells
*Counsel of Record*
The Law Office of
Bryan L. Sells, LLC
Post Office Box 5493
Atlanta, Georgia 31107-0493
(404) 480-4212
bryan@bryansellslaw.com

Courtney Hostetler
John C. Bonifaz
Ben T. Clements
Free Speech For People
28 South Main Street, Suite 200
Sharon, Massachusetts 02067

Michael S. Gardener
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

Henry Clay Quillen
Whatley Kallas LLP
159 Middle Street, Suite 2C
Portsmouth, New Hampshire 03801

*Counsel for the Respondent*

## Parties to the Proceeding and Rule 29.6 Statement

The applicants in this Court are David M. Scanlan, in his official capacity as New Hampshire Secretary of State, and John M. Formella, in his official capacity as New Hampshire Attorney General. They are the defendants-appellants in the proceedings below.

The respondent in this Court is the Coalition for Open Democracy. It is the plaintiff-appellee in the proceedings below.

Under Rule 29.6, the Coalition for Open Democracy states that it is a nonprofit corporation, that it has no parent corporation, and that no publicly held company owns 10% or more of its stock.

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**To the Honorable Ketanji Brown Jackson,**
**Circuit Justice for the First Circuit:**

The Coalition for Open Democracy respectfully opposes the State's emergency application for a stay of the preliminary injunction that the United States District Court for the District of New Hampshire granted on October 2, 2026, and entered as a separate order on October 5, 2026. (App. 15a–66a.) The district court and the court of appeals have each declined to stay that injunction. (App. 69a–74a.)

## Introduction

This application asks the Court to stay a narrow injunction against a Secretary of State directive. No statute is enjoined. The district court declined to enjoin HB 323, the 2026 New Hampshire law that removed student IDs from the list of photo identification that a ballot clerk must accept. (App. 45a–47a.) It enjoined only the April Directive, a Secretary of State press release and email announcing that student IDs could no longer be used "for any purpose at all," including under the two statutory safety valves authorizing election officials to verify a voter's identity by "any other evidence that reasonably establishes" who the voter is. (App. 15a, 64a.) After three days of evidentiary hearings, the court found that the State had offered no interest specific to the Directive, that the Directive imposes a burden that is "minimal, but not de minimis," with direct evidence that it had already disenfranchised at least one voter, and that the Directive likely violates the First and Fourteenth Amendments and, independently, the Twenty-Sixth Amendment. (App. 44a, 47a, 56a–57a.) The Secretary issued revised guidance within days. (Appl. 14 n.1.)

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The application doesn't challenge any of that. It never mentions the constitutional holdings, the burden findings, or the finding that the State offered no interest in the exclusion. Its only merits argument is that the district court misread New Hampshire law, and for that it cites a district-court filing. (Appl. 12–13.) It doesn't argue that this Court would grant certiorari to review a federal court's interpretation of a state statute on an interlocutory appeal that the court of appeals hasn't decided. It argues instead that the question belongs in state court, a position the State never took in either court below. (Appl. 13.)

What the application does argue is *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). But every *Purcell* case the State cites stayed a federal court order that displaced a rule enacted by the State's legislature. Here no law is enjoined. Rather, the injunction enforces the legislature's statutes against an executive gloss exceeding the statutes' reach, and it does so on the State's own account of what those statutes mean. (App. 70a.) The district court made findings on timing, administrability, and confusion that the State doesn't call clearly erroneous: general-election voting "has not yet meaningfully begun," the injunction "requires only updated guidance," the Secretary "can issue guidance quickly," and the injunction "will not negatively impact any qualified voter's right to cast their ballot." (App. 59a–61a.) The Secretary proved the point by issuing the guidance the next business day. His website has told voters since the October 2 Order that supervisors may consider a student ID along with other evidence. The Secretary's revised guidance is now the status quo. A stay wouldn't preserve it. It would reverse the rules for a second time in a month.

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The State hasn't shown a reasonable probability that four Justices would grant certiorari, a fair prospect of reversal, or irreparable harm. It ignores findings that answer its *Purcell* argument. The equities run against the State, which issued the Directive, declined to defend it, bypassed the district court, and now asks for the only late change to the rules, two weeks before the election. The Court should deny the application.

## Statement

### A. New Hampshire's Identity Rules and Their Safety Valves

New Hampshire law separates registering to vote from obtaining a ballot. Both require proof of identity. The registration statute lists three kinds of government photo ID to establish identity, and then a fourth option: "[a]ny other evidence that reasonably establishes that it is more likely than not that the person is who they claim to be." N.H. Rev. Stat. Ann. § 654:12, I(d)(4). (App. 19a.) To obtain a ballot, a voter presents a "valid photo identification" to a ballot clerk. N.H. Rev. Stat. Ann. § 659:13, I(b), II(a). A voter lacking "a valid photo identification" is sent to the supervisor of the checklist, who "shall review the voter's qualifications and determine if the voter's identity can be verified." N.H. Rev. Stat. Ann. § 659:13, I(c). (App. 26a–27a.) The State acknowledged in the district court that the two statutes "do not materially differ," that the Secretary's office "has consistently interpreted" them "in harmony," and that the registration statute's "any other evidence" standard "is the same process set forth in RSA 659:13." (App. 21a n.14, 28a.) Supervisors apply that standard case by case. The Secretary's Election Procedure Manual tells them that

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"[a]ny other evidence that reasonably establishes that it is more likely than not that the person is who they claim to be" may be "used to prove identity." (App. 71a.) The State's own example is a marriage certificate offered to explain a name that doesn't match. (Supp. App. 12a (Dkt. No. 60 ¶ 6).)

Before 2026, students used their student IDs under both statutes. A student ID was on the list of expressly valid photo identification for obtaining a ballot, and the parties stipulated that student IDs "have historically been accepted for the purposes of voter registration" under the registration statute's safety valve. (App. 21a–22a.)

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**B. HB 323, the April Directive, SB 223, and HB 317**

The Governor signed HB 323 on April 3, 2026, and it took effect June 2. 2026 N.H. Laws ch. 20. It removed student IDs from the list of expressly valid photo identification in New Hampshire. N.H. Rev. Stat. Ann. § 659:13, II(a). It did that "not by affirmatively prohibiting acceptance of student IDs at polling stations, but by removing student ID cards as a form of expressly 'valid identification' for obtaining a ballot." (App. 23a.) HB 323 "did not change the separate registration statute, RSA 654:12," and it left the supervisor's safety valve in N.H. Rev. Stat. Ann. § 659:13, I(c) in place. (App. 23a, 27a–28a.)

On April 23, the Secretary issued a press release and an email to local election officials. The press release, titled "Secretary of State Shares Election Resources for New Hampshire Students," announced that "student IDs cannot be used as proof of ID when registering to vote, requesting an absentee ballot, or checking in to vote in

an election." (App. 25a.) The email told local election officials that "student IDs can no longer be used to register to vote or obtain a ballot on election day." (Supp. App. 2a (Dkt. No. 46 ¶ 3).) The district court called these the "April Directive," finding that the Directive barred officials from considering student IDs "for any purpose at all," including under the safety valves. (App. 15a–16a.) The Secretary's Election Procedure Manual carried the same instruction. After telling supervisors that "any other evidence" may prove identity, it added a single exception: "a student identification card cannot be used to prove identity." (App. 26a, 71a.) The Directive cited HB 323 as its authority. (App. 25a.)

The legislature returned to these statutes twice that summer. SB 223, signed July 2, added the word "only" to the introductory clause of N.H. Rev. Stat. Ann. § 659:13, II(a), which lists the expressly valid forms of identification when obtaining a ballot. 2026 N.H. Laws ch. 243. HB 317, signed July 10, amended both the registration and ballot statutes. 2026 N.H. Laws ch. 284. It moved the clause allowing identity to be verified "by the moderator or another election official" from the registration statute's safety valve to the ballot statute's safety valve, and it otherwise left N.H. Rev. Stat. Ann. § 654:12, I(d)(4)'s "any other evidence" standard "unchanged." (App. 20a, 23a n.24.) As the district court found, the legislature "specifically amended the statute's catch-all provision" in HB 317 "but did not address student IDs at all." (App. 27a.) At the same time, the State's Division of Motor Vehicles accepts a "current student photo/digital image ID card" as proof of identity

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to issue the non-driver ID and voter ID cards that the Secretary's materials tell students to get instead. (App. 30a, 54a & n.105.)

### C. The Litigation and the District Court's Findings

The Coalition, a nonpartisan voting-rights organization, sued on August 11, 2026, moving for a preliminary injunction against both HB 323 and the Directive. (App. 16a.) The district court held an evidentiary hearing on August 31 and denied relief for the September 8 primary under *Purcell*, because absentee voting for the primary was "already in progress." (App. 1a–14a, 59a.) It then ordered the parties to supplement the record, held two more days of hearings, and directed the State to "clarify its position" on what a supervisor of the checklist does when a voter arrives without a listed ID. (App. 18a, 70a.) The State answered that supervisors apply the registration statute's "any other evidence" standard. (App. 70a.)

On October 2, the court issued a fifty-page opinion, which it amended on October 6 to expand two footnotes. The appendix reproduces the amended opinion. (App. 15a–65a.) It denied relief as to HB 323, finding that the interests articulated by the legislature for the statute, stale cards and the lack of REAL ID security features, were the kind of "generalized, forward-looking concerns" that a State may invoke under *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), justifying removal of student IDs from the list a ballot clerk must accept. (App. 45a–47a.)

The Directive was different. The court found that "the State has articulated no interest specific to that rule at all." (App. 47a.) "Neither the State's briefing nor its

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oral argument defends the April Directive on its own terms." (App. 47a.) The State "offered no explanation—legislative, administrative, or otherwise—for why the interests that justify tightening ballot-issuance documentation under RSA 659:13 should justify excluding student identification from RSA 654:12's safety valve provision that apparently extends to other forms of non-governmental identification," and it "has not identified any security or integrity concern specific to student ID cards and why they are unique among other non-governmental forms of identification." (App. 47a.) New Hampshire's Deputy Secretary of State, called by the State as a witness, testified that he "did not see any factual reason why a student ID could not be reasonable evidence" of identity. (App. 47a.) The Coalition had "expressly and repeatedly argued" that the Directive exceeded HB 323, "yet the State chose not to engage with that argument on its merits," and so "passed on its opportunity" to argue that HB 323's concerns justified a categorical bar under the safety valves. (App. 48a.) Because "a court applying *Anderson-Burdick* is not obligated to construct a justification the State has not offered," the court held that the Directive likely violates the First and Fourteenth Amendments. (App. 49a.) It separately held that the same unjustified exclusion likely violates the Twenty-Sixth Amendment. (App. 56a–57a.) The court said twice that the injunction "rests on federal constitutional grounds," not state law. (App. 48a n.100, 58a n.110.)

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On the burden, the court found that the Directive's "categorical exclusion falls exclusively on the population most likely to hold student ID as their only form of identification," and that the burden is "minimal, but not de minimis, because it is

more than a theoretical inconvenience and is supported by direct evidence of at least one actual instance of disenfranchisement." (App. 44a.)

The court then applied *Purcell*. It found that "general-election voting has not yet meaningfully begun," because "no absentee ballots have been returned" and the only ballots distributed had gone to military and overseas voters, who hold passports or military IDs, automatically accepted forms of ID under the statute. (App. 59a–60a.) It found "[t]he risk of voter confusion" to be "negligible, because the limited injunction will not negatively impact any qualified voter's right to cast their ballot": voters with a listed ID "are unaffected," voters without one "may again offer a student ID under the safety valve provision," and voters who never learn of the injunction "are in the same posture as they would be without the limited injunction." (App. 60a.) It found the burden on the Secretary "modest and surmountable," because the injunction "leaves ballot design, printing, and shipping untouched," "requires only updated guidance," and "the Secretary has both shown and testified that it can issue guidance quickly." (App. 61a.) The court considered *People Not Politicians v. Onder*, No. 26A388 (U.S. Sept. 25, 2026) (per curiam), and distinguished it on that ground. (App. 61a.) It noted that the Secretary "lacks direct contact with poll workers, but that is equally true of every directive it issues, including the April Directive itself." (App. 61a.) On laches, it found that "[b]oth parties" had "contributed to the difficulty of this case" and declined to "tip the equities toward defendants based on a delay whose consequences both sides share." (App. 61a–63a.)

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The injunction bars the State from enforcing the Directive "to the extent that it prohibits or discourages" election officials "from reviewing and considering student identification cards" as evidence of identity under the safety valve provisions, N.H. Rev. Stat. Ann. § 654:12, I(d)(4) and N.H. Rev. Stat. Ann. § 659:13, I(c), and orders the Secretary to issue, "as soon as practicable," revised guidance "clarifying that, although student identification cards are no longer expressly valid to establish voter identity under RSA 659:13, election officials may consider them, along with other available evidence." (App. 66a.)

**D. The Secretary's Guidance**

The Secretary's website now carries a notice on both the election-day page and the registration page that the guidance "has been updated to accurately reflect the court's order as of October 2," and it tells voters that if they lack a listed ID, supervisors of the checklist "may consider a student identification card along with other available evidence." N.H. Secretary of State, *Election Day Voting*, https://www.sos.nh.gov/election-day-voting; N.H. Secretary of State, *Register to Vote*, https://www.sos.nh.gov/elections/register-vote. (Supp. App. 19a, 21a.) The State acknowledges that the Secretary made "immediate, good-faith attempts to comply" and sent "revised instructions" to election officials by email. (Appl. 14 n.1.) On October 6, the Secretary posted a press release on the same website announcing that he would seek a stay. N.H. Secretary of State, *Secretary of State Requests a Stay of the Court Order on the Use of Student IDs* (Oct. 6, 2026), https://mm.nh.gov/files/uploads/sos/docs/10-06-26-press-release-hb-323.pdf. (Supp.

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App. 17a–18a.) The partial preliminary injunction and the revised guidance were in place for Franklin's October 6 municipal election. *See* Franklin, N.H., City Charter § C-7, https://ecode360.com/10175799. Absentee voting for the general election began September 29, with the revised guidance in effect since October 2. (App. 59a.) New Hampshire has no early in-person voting. The general election is November 3.

**E. The Stay Proceedings**

The State appealed on October 5 and, without asking the district court for a stay, moved for one in the First Circuit on October 6. (App. 69a.) The court of appeals denied that motion without prejudice so that the State could seek a stay "in the district court in the first instance." (App. 67a–68a.) The district court denied the State's motion the same evening. (App. 69a–72a.) It explained that the State "was on express notice" of when the ruling would issue, that the court had offered at argument to grant a stay if it enjoined HB 323, which it did not, and that the State "took four days to seek a stay from the Court of Appeals." (App. 69a.) On the merits, it explained that the injunction "is based on the State's own articulation of state law throughout this litigation" and holds "the State to the interpretation it supplied." (App. 70a.) The State's new argument that the word "only" in N.H. Rev. Stat. Ann. § 659:13, II(a) forecloses the safety valve was "raised for the first time in the motion to stay" and "is inconsistent with the interpretation actually advanced by the State" when the court "probed this specific question." (App. 70a–71a n.15.) And because the Manual already told supervisors that "any other evidence" may prove identity, the injunction amounts to "ordering the Secretary of State to remove the single line" that excepted student

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IDs, "is in all other ways consistent with the Election Procedure Manual," and "creates no greater risk of 'inconsistent application of identity verification procedures' than already exists." (App. 71a.) "[T]he injunction removes a barrier; it does not impose any new procedure that officials or voters must learn." (App. 72a.)

The State renewed its motion in the First Circuit on October 8. The Coalition responded, and the Republican National Committee filed an amicus brief in support of a stay. On October 14, the court of appeals denied the motion because the State had "failed to demonstrate that stay relief is in order," citing *Nken v. Holder*, 556 U.S. 418, 433–34 (2009), for the burden on the moving party. (App. 73a.) The State filed its application in this Court the next day.

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**Reasons for Denying the Application**

A stay pending appeal "is not a matter of right," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken*, 556 U.S. at 433–34. When the request comes to this Court, the applicant must show "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Nat'l Republican Cong. Comm. v. Brown*, No. 26A274, slip op. 2 (U.S. Sept. 4, 2026) (per curiam) (quoting *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam)). The same test governs a State's request to stay a district court's injunction while its appeal is pending in the court of appeals. *Little v. Reclaim Idaho*, 591 U.S. 1060, 1060–61 (2020) (Roberts,

C.J., concurring in grant of stay). And in that posture the applicant "bears an 'especially heavy burden.'" *Id.* at 1062 (quoting *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers)).

## I. The State hasn't shown a reasonable probability that this Court would grant certiorari.

### A. An applicant must show that this Court would likely grant certiorari and reverse.

The first element is a threshold, not a formality. It asks whether the case is one this Court would take on the merits docket. "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application for injunctive relief). "If the underlying merits issue would not warrant this Court's review when the case returned to the Court on the merits docket, then we should deny the application and leave the question of interim relief to the court of appeals." *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring in grant of stay). Assessing certworthiness "is standard practice for this Court" on an emergency application. *Id.* at 936 n.2 (Jackson, J., dissenting from grant of stay).

*Purcell* doesn't lower that threshold. The State reads *People Not Politicians* to mean that election-specific considerations can "dictate" a stay "even when the merits are not entirely clearcut." (Appl. 8.) But that case involved a federal court ordering a State to hold its congressional elections under a map that the State's own supreme

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court had rejected. Slip op. 1. And the State's own authority describes *Purcell* as "a sensible refinement of ordinary stay principles for the election context," not a replacement for them. *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring). (Appl. 9.) An applicant still has to show that the case is one this Court would hear.

The State's application recites the test and then never applies it. (Appl. 7.) It doesn't say what question it would ask this Court to decide, why that question is one the Court would grant certiorari to answer, or why a majority would reverse. It offers one sentence: "If the First Circuit does not reverse the district court's order, then there is reason to believe this Court will intervene under these circumstances." (Appl. 13.) The two authorities it cites for that sentence, *McKesson v. Doe*, 592 U.S. 1 (2020) (per curiam), and *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), are not about certiorari at all. They are about sending questions of state law to state courts. That's the State's theory of certworthiness, and it defeats itself.

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### B. The only error the State asserts is a federal court's reading of a New Hampshire statute.

The application identifies one error on the merits: "the district court premised relief on an incorrect interpretation of New Hampshire law." (Appl. 8; *see id.* at 12–13.) But it doesn't develop the argument. It "maintain[s], as [it] did below, that the district court's interpretation is wrong," and cites a district-court filing. (Appl. 12 (citing D. Ct. Doc. 70, at 3–7).) It doesn't contend that the district court misstated the standard of *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), misread *Crawford*, or erred on the Twenty-Sixth Amendment. It

doesn't challenge the finding that the State articulated no interest in the Directive, or the finding that the Directive imposed a burden backed by evidence of an actual disenfranchised voter. (App. 44a, 47a.) The federal law here is undisputed. What the State disputes is what N.H. Rev. Stat. Ann. § 654:12 and N.H. Rev. Stat. Ann. § 659:13 mean.

That isn't a question that this Court grants certiorari to decide. "[W]e do not normally grant petitions for certiorari solely to review what purports to be an application of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 144 (1996) (per curiam). A petition "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Justice Harlan denied a stay on exactly this ground where the applicant's remaining contention was that the court of appeals had "misinterpreted the relevant New York law": "I do not think it is within the realm of reasonable possibility that this Court will undertake to reassess the Court of Appeals' view of the local law," so "the likelihood of certiorari being granted is thus too remote to justify" a stay. *Birtcher Corp. v. Diapulse Corp. of Am.*, 87 S. Ct. 6, 8 (1966) (Harlan, J., in chambers).

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*Leavitt* recognized an exception for "blatant federal-court nullification of state law." 518 U.S. at 145. But nothing like that happened here. The district court declined at this juncture to enjoin HB 323, and it held the State to the reading of the safety valves that the State itself supplied in response to the court's question. (App. 45a–47a, 70a–71a n.15.) A court that enforces a statute as the State itself described it hasn't nullified anything.

The posture makes the showing weaker still. This is an interlocutory appeal from a preliminary injunction. The court of appeals hasn't decided it. Any petition for certiorari would seek review of whatever the First Circuit says about a federal district court's reading of two New Hampshire statutes on a preliminary record, with a trial on the merits still to come. The cases in which this Court has found a reasonable probability of certiorari on an emergency application look nothing like that. In *Little*, the district court had ordered Idaho to accept digital initiative signatures through a system "never before used by the State," and "the Circuits ha[d] applied their conflicting frameworks to reach predictably contrary conclusions." 591 U.S. at 1060–61 (Roberts, C.J., concurring). In *National Republican Congressional Committee*, the court of appeals' jurisdictional holding "splits with every other Circuit to have considered the issue." Slip op. 2. The State identifies no conflict, no open question of federal law, and no federal holding it disagrees with. Its application is "a case-specific, fact-intensive request for error correction," which doesn't become "a certworthy issue" because the State attaches the word "emergency" to it. *Labrador*, 144 S. Ct. at 936 n.3 (Jackson, J., dissenting). "[N]ot every alleged error made by a lower court judge warrants this Court's immediate intervention and correction in real time, while the lower court's proceedings are pending." *Id.* at 937 n.4.

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**C. The State's new state-court theory confirms the point.**

The State's answer is that "state, not federal, courts 'are final arbiters of state law in our federal system[.]'" (Appl. 13.) It suggests that this Court might intervene as it did in *McKesson*, or as *Pullman* permits, so that a state court can decide the

question. (Appl. 13.) That argument is an admission. If the dispositive question is one for the New Hampshire Supreme Court, it is not one for this Court, and the first *Hollingsworth* element fails on the State's own account.

The argument is also new. The State never asked the district court to abstain under *Pullman*, never asked it to certify a question to the New Hampshire Supreme Court, and never raised either possibility in the court of appeals. It did the opposite. It told the district court that *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), barred the court from considering state law at all. (App. 48a n.100.) The court accepted that framing and rested the injunction "on federal constitutional grounds." (App. 48a n.100, 58a n.110.) Having kept the state-law question out of the case below, the State can't ask this Court to stay the injunction so that a state court can answer it. This Court is "a court of review, not of first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and the court of appeals won't consider stay arguments that a movant didn't make in its district-court stay motion, *Rhode Island v. Trump*, 155 F.4th 35, 46–47 (1st Cir. 2025); *Am. Fed'n of Gov't Emps. Local 2305 v. Dep't of Veterans Affs.*, 177 F.4th 1, 12 & n.2 (1st Cir. 2026). An argument that the State hasn't made to either court below can't supply a reasonable probability that this Court would grant certiorari to decide it.

And the argument is wrong on its own terms. Certification "is by no means 'obligatory' merely because state law is unsettled," and the decision whether to seek a state court's guidance "rest[s] in the sound discretion of the federal court." *McKesson*, 592 U.S. at 5. *Pullman* abstention is "an extraordinary and narrow

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exception" that courts have declined to apply in election cases. *Am. Encore v. Fontes*, 152 F.4th 1097, 1122 (9th Cir. 2025). And neither doctrine has anything to say about a case in which the State's own reading of its statutes, stated in writing in response to the court's question, is the reading the court adopted. (App. 70a.) There is no unsettled question of state law here that the State itself hasn't already answered.

## II. The State hasn't shown a fair prospect of reversal.

### A. The State doesn't challenge the constitutional holdings or the findings that support them.

The district court enjoined the Directive on two independent federal grounds, doing so on findings made after three days of evidentiary hearings. Under *Anderson* and *Burdick*, a court weighs the burden on the right to vote against "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). The court found a burden that is "minimal, but not de minimis," falling "exclusively on the population most likely to hold student ID as their only form of identification," and supported by "direct evidence of at least one actual instance of disenfranchisement." (App. 44a.) On the other side of the scale, it found nothing. The State "has articulated no interest specific to that rule at all." (App. 47a.) It "has not identified any security or integrity concern specific to student ID cards and why they are unique among other non-governmental forms of identification such that they cannot satisfy a standard the legislature left untouched." (App. 47a.) Its own Deputy Secretary "did not see any factual reason why a student ID could not be reasonable evidence" of identity. (App. 47a.) And when the Coalition argued that the Directive went beyond HB 323, the

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State "chose not to engage with that argument on its merits" and "passed on its opportunity" to explain why HB 323's concerns justify a categorical bar under the safety valves. (App. 48a.) Because "a court applying *Anderson-Burdick* is not obligated to construct a justification the State has not offered," the Directive failed. (App. 49a.)

The application doesn't engage with any of this. It doesn't mention *Anderson*, *Burdick*, or *Crawford*. It doesn't argue that the burden findings are clearly erroneous. It doesn't identify, even now, an interest that the Directive serves. It says the district court's reading of state law is "late-breaking" and shouldn't "trump the interpretation published and disseminated by the Secretary's office for more than five months." (Appl. 12–13.) But the constitutional holding doesn't turn on whose interpretation is right. It turns on the absence of any justification for excluding one form of identification as evidence from a case-by-case inquiry that admits every other form. The State has never supplied a justification in any court, and it doesn't try here.

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That silence matters at this stage. A preliminary injunction is reviewed for an abuse of discretion, and the findings that support it stand unless clearly erroneous. *Purcell* itself faulted a court of appeals for setting aside an election injunction without showing the district court's findings to be wrong, a point taken up below. 549 U.S. at 5. A movant that leaves the grounds for an injunction unchallenged can't make a "strong showing" that the injunction was error, *Rhode Island v. Trump*, 155 F.4th at 47, let alone show a fair prospect that this Court would reverse it.

### B. The injunction holds the State to its own account of state law, and it would stand even on the State's new one.

The State's one merits argument is that the district court misread New Hampshire law. (Appl. 12.) It offers no reasoning of its own. It cites only to its own district-court stay motion. (Appl. 12 (citing D. Ct. Doc. 70, at 3–7).) The district court answered that motion the day it was filed, and the answer bears repeating.

The injunction "is based on the State's own articulation of state law throughout this litigation." (App. 70a.) The State stipulated that the registration statute's safety valve, N.H. Rev. Stat. Ann. § 654:12, I(d)(4), allowed registration with a student ID before the passage of HB 323. (App. 22a, 70a.) When the court asked what a supervisor of the checklist does for a voter who arrives without a listed ID, the State answered in writing that the supervisor applies that same safety valve, because the two statutes "do not materially differ," the Secretary's office "has consistently interpreted" them "in harmony," and the registration standard "is the same process set forth in RSA 659:13." (App. 21a n.14, 70a; Supp. App. 12a–13a (Dkt. No. 60 ¶ 9).) It gave an example. A voter whose license shows a different name may obtain a ballot on the strength of a marriage certificate, which appears on no statutory list. (Supp. App. 12a (Dkt. No. 60 ¶ 6).) The court adopted that account.

The State's reliance on the addition of the word "only" in N.H. Rev. Stat. Ann. § 659:13, II(a) to foreclose the safety valve is wrong for two reasons. First, it was "raised for the first time in the motion to stay" and "is inconsistent with the interpretation actually advanced by the State" when the court "probed this specific question." (App. 70a–71a n.15.) A party "cannot" overturn an injunction "based on

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arguments that it debuts for the first time on appeal." *Washington v. U.S. Dep't of Hous. & Urb. Dev.*, 171 F.4th 473, 489 (1st Cir. 2026).

Second, the new argument is wrong. Paragraph II(a) says that "[o]nly the following forms of identification" satisfy "the identification requirements of paragraph I." N.H. Rev. Stat. Ann. § 659:13, II(a). It says nothing about paragraph I(c), which exists for the voter who "does not have a valid photo identification." N.H. Rev. Stat. Ann. § 659:13, I(c)(1). That voter goes to the supervisor of the checklist, who "shall review the voter's qualifications and determine if the voter's identity can be verified." N.H. Rev. Stat. Ann. § 659:13, I(c)(3). On the State's reading, the supervisor may consider only listed IDs. But the voter in front of her doesn't have one. That's why she's there. The State's reading leaves paragraph I(c)(3) with nothing to do, and New Hampshire courts "will not construe a statute in a way that would render it a virtual nullity." *Dietz v. Town of Tuftonboro*, 171 N.H. 614, 619 (2019). The legislature's own conduct confirms the point. SB 223 added the word "only" to paragraph II(a) on July 2, 2026. Before SB 223, the clause read, "The following forms of identification bearing a photograph of the voter shall satisfy the identification requirements of paragraph I." After it, the clause reads, "Only the following forms of identification bearing a photograph of the voter shall satisfy the identification requirements of paragraph I." 2026 N.H. Laws ch. 243, § 1. Eight days later, HB 317 amended both statutes, kept the supervisor's instruction to "determine if the voter's identity can be verified," and left the "any other evidence" standard in N.H. Rev. Stat. Ann. § 654:12 "unchanged." (App. 20a, 23a n.24.) The legislature "specifically

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amended the statute's catch-all provision" and "did not address student IDs at all." (App. 27a.) If it had wanted to limit the safety valves to the listed IDs, and thereby exclude student IDs, it knew how. It's the State that asks for a limitation "that the legislature did not see fit to include." *Appeal of Vasquez*, 175 N.H. 450, 453 (2022). And the State has never explained how a word added to the ballot statute removed student IDs from the registration statute, which HB 323 didn't amend and HB 317 left alone.

Nor is the Secretary's reading owed deference. The New Hampshire Supreme Court is "the final arbiter of the legislature's intent," it is "not bound by an agency's interpretation of a statute," and deference is unavailable where an interpretation "clearly conflicts with the express statutory language." *Appeal of Morrissey*, 165 N.H. 87, 91–92 (2013) (quoting *Appeal of Town of Seabrook*, 163 N.H. 635, 644 (2012)). And there is a more basic problem. The Directive issued on April 23 and cited HB 323 as its authority. (App. 25a.) SB 223 wasn't signed until July 2. An interpretation can't rest on statutory language that didn't exist when it was announced.

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The district court put it simply. "HB 323 did one specific thing: it removed student ID cards from the forms of identification that are expressly valid to obtain a ballot. The legislature made that choice, and the court upholds it." (App. 63a.) Before HB 323, a ballot clerk had to accept a student ID. After HB 323, a student with only a student ID goes to the supervisor, who decides case by case whether her identity has been verified. That's a real change. It's the change the legislature made, and the injunction leaves it in place. The State describes the statute the same way. Its

application says that after HB 323 "only government-issued ID could serve as automatic identity verifications," and that the court left intact HB 323's repeal of student IDs "as forms of per se identity verification." (Appl. 5, 6.) Automatic, per se verification is the ballot clerk's list. The safety valves are everything else. What the legislature didn't do was declare that student IDs are the one form of evidence a supervisor may not consider under the safety valves. "It does not follow, and the State has not explained why it should follow," that the legislature decided that too. (App. 63a.)

Finally, even if the State's reading were right, the injunction still would stand. Assume that the statutes themselves bar any consideration of student IDs under the safety valves. The constitutional question would still be the same, and the district court's answer didn't depend on who authored the exclusion. The court found that the State "has offered no explanation—legislative, administrative, or otherwise—for why the interests that justify tightening ballot-issuance documentation under RSA 659:13 should justify excluding student identification from RSA 654:12's safety valve provision." (App. 47a.) If the statute commands that exclusion, the exclusion fails under *Anderson* and *Burdick* for the reasons the district court gave. The one justification the State has ever offered, in a reply brief in the court of appeals, is that HB 323's concerns about stale cards and security features "do not disappear when a supervisor, rather than a ballot clerk, examines the credential." (Supp. App. 15a (C.A. Reply 5).) But the safety valve is case by case by design, for every document a voter brings. A supervisor who may weigh a marriage certificate, a utility bill, or "any other

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evidence" is already exercising judgment. Excluding one document doesn't eliminate that judgment. It removes one input and leaves the judgment. HB 323's interests—stale cards and missing security features—are reasons why a ballot clerk shouldn't have to accept a student ID automatically. They aren't reasons why a supervisor can't weigh one alongside a utility bill or a lease—documents with no security features at all. And the State already treats a student ID as reliable evidence of identity elsewhere. Its Division of Motor Vehicles accepts a "current student photo/digital image ID card" to issue the non-driver and voter ID cards that the Secretary's own materials tell students to obtain. (App. 30a, 54a & n.105.) This is an exclusion that the State has never defended, and the State conceded below that no voter has ever used a student ID fraudulently. (Supp. App. 3a–8a, 10a (Dkt. No. 61 at 47:7–14, 169:22–170:7; Dkt. No. 62 at 87:10–13).) A judgment may be sustained on any ground the record supports, *Jennings v. Stephens*, 574 U.S. 271, 276 (2015) (quoting *United States v. Am. Ry. Express Co.*, 265 U.S. 425, 435 (1924)), and the relief is identical under either theory: the Secretary may not instruct election officials to reject student IDs automatically under the safety valves. There is no fair prospect of reversal on either path.

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### C. The Twenty-Sixth Amendment holding is independent and unchallenged.

The district court also held that the Directive likely violates the Twenty-Sixth Amendment. (App. 56a–57a.) It found no animus on the Secretary's part; he "merely sought to implement HB 323, although it did so more broadly than the applicable statutes permit." (App. 53a n.103.) But it found that the Directive imposes a "modest,

but distinct, burden" on student voters, that the State "articulated no interests specific to the April Directive," and that the Directive "excludes student IDs from RSA 654:12(d)'s catch-all provision" and the ballot-stage safety valve "[w]ithout express statutory authority." (App. 56a–57a.)

The State didn't mention the Twenty-Sixth Amendment in its application or in either court below. An applicant seeking to stay an injunction must show a fair prospect of reversal, and an injunction that rests on two independent grounds isn't reversed by an argument addressed to one of them. *See Rhode Island v. Trump*, 155 F.4th at 47. Whatever the State might say about the First and Fourteenth Amendments, the Twenty-Sixth Amendment holding stands unchallenged, and it independently supports the injunction.

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## III. *Purcell* cuts against a stay.

### A. The injunction didn't alter New Hampshire's election rules.

The *Purcell* principle is that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). Every case the State cites applied that principle to a federal court that displaced a rule the State's lawmakers had enacted. In *Purcell*, the Ninth Circuit enjoined Arizona's voter-identification statute. 549 U.S. at 2–3. In *Republican National Committee*, a district court extended a statutory absentee-ballot deadline. 589 U.S. at 424. In *Merrill*, a court ordered Alabama to redraw its congressional map. And in *People Not Politicians*, the Eighth Circuit ordered Missouri to use a map that the Missouri Supreme Court had held "is

not the law and has never been the law." Slip op. 1. This Court's point in each case was the same: "States are free to decide for themselves whether last-minute changes to an election are in their best interests." *Allen v. Milligan*, 608 U.S. 511, 514 (2026) (per curiam) (quoted in *People Not Politicians*, slip op. 4). A "State legislature's decision either to keep or to make changes to election rules" is not for federal courts to second-guess in the weeks before voting. *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of application for stay).

Here the legislature decided, and the injunction honors its decision. HB 323 removed student IDs from the ballot clerk's list. The legislature left both safety valves in place, and when it returned to the statutes in July it amended the safety valves with HB 317 and "did not address student IDs at all." (App. 27a.) The Directive is what changed the rules. It took a case-by-case standard that the legislature chose to keep and carved out one document, on the Secretary's say-so, without offering any explanation. (App. 47a.) The State itself concedes that "the district court did not enjoin enforcement of HB 323 itself." (Appl. 3.) What the court enjoined was "a related directive from the Secretary of State that reaches further than the statute itself." (App. 15a.) The district court didn't alter that legislative choice. It enforced it.

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*Purcell* protects a State's election laws from late judicial change. It doesn't protect an executive gloss on those laws from a ruling that the gloss lacks any justification. When the Ninth Circuit affirmed an injunction against a provision of Arizona's Election Procedures Manual, it rejected the Secretary's *Purcell* argument because it was "unclear how enjoining the [provision] would disturb the status quo or

visit a hardship on election authorities since the main enforcement mechanism—the underlying statute—remains in force." *Am. Encore*, 152 F.4th at 1122. The Eighth Circuit has described the "status quo" that *Purcell* protects as the State's "duly-enacted election law," and treated an executive official's departure from it as the late change. *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020). That's this case. The statutes remain in force. The injunction requires the Secretary to stop telling officials to ignore them.

### B. The district court's findings on timing, administrability, and confusion are unchallenged.

The State's *Purcell* argument rests on factual assertions, every one of which was rejected below. The State says the injunction would be "a complete reversal of prior guidance and training," that revised guidance "would be inconsistent with the Election Procedure Manual," and that "[r]e-educating local election officials and the public in a short time is practically impossible." (Appl. 10–11.) The district court found otherwise after hearing the Secretary's own witnesses. The training and outreach that the State describes, the Manual, the posters, the radio ads, and the voting guides, were stipulated facts. (Appl. 4, 10–11; Supp. App. 3a (Dkt. No. 46 ¶ 102).) The Election Procedure Manual already tells supervisors that "[a]ny other evidence that reasonably establishes that it is more likely than not that the person is who they claim to be" may be "used to prove identity," with one exception for student IDs. (App. 71a.) So the injunction amounts to "ordering the Secretary of State to remove the single line," but "is in all other ways consistent with the Election Procedure Manual," and "creates no greater risk of 'inconsistent application of

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identity verification procedures' than already exists under the Secretary of State's guidance, which expressly recognizes and authorizes independent judgment by local polling station supervisors." (App. 71a.) The burden on the Secretary is "modest and surmountable." The injunction "leaves ballot design, printing, and shipping untouched," "requires only updated guidance," and "the Secretary has both shown and testified that it can issue guidance quickly." (App. 61a.) The State says the Secretary lacks direct contact with poll workers. (Appl. 10.) The court addressed that too: "that is equally true of every directive it issues, including the April Directive itself." (App. 61a.)

The State says the injunction will confuse voters. (Appl. 11.) The court found "[t]he risk of voter confusion" to be "negligible, because the limited injunction will not negatively impact any qualified voter's right to cast their ballot." (App. 60a.) Voters with a listed ID "are unaffected." Voters without one "may again offer a student ID under the safety valve provision." And voters who never learn of the injunction "are in the same posture as they would be without the limited injunction." (App. 60a.) The State worries that voters "could show up at the polls with only their student IDs in-hand." (Appl. 11.) The Secretary's revised guidance says student IDs may be considered "along with other available evidence," and the injunction itself says student IDs "are no longer expressly valid." (App. 66a.) A voter who is unsure whether a student ID will suffice is better off than one who has been told not to try. And the district court identified where the real risk of confusion lies: "for months, the State's guidance has steered voters toward a voucher-based voter ID program that the record

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suggests is simply not operational." (App. 72a.) "The real risk of voter confusion is created by leaving this guidance untouched, not in granting the limited relief that the order outlines." (App. 72a.)

The application doesn't argue that any of these findings is clearly erroneous. It doesn't mention them. It repeats the assertions that the district court rejected and asks this Court to accept them instead. It says the order "raises more questions than it answers," but it doesn't say what they are. (Appl. 8.) *Purcell* doesn't permit that. It was "error" for the court of appeals in *Purcell* to set aside the district court's judgment without "showing the ruling and findings of the District Court to be incorrect." 549 U.S. at 5. Whether a change comes too close to an election "may depend in part on the nature of the election law at issue, and how easily the State could make the change without undue collateral effects." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). The district court found that this change was easy to make. The Secretary then made it.

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### C. The Secretary has already issued guidance, so a stay would be the late change.

Whatever force the State's confusion argument had on October 6, it has none now. The Secretary issued the revised guidance. His website has told voters since October 2 that the guidance "has been updated to accurately reflect the court's order" and that supervisors "may consider a student identification card along with other available evidence." (Supp. App. 19a, 21a.) The State concedes that the Secretary made "immediate, good-faith attempts to comply" and sent "revised instructions" to local election officials. (Appl. 14 n.1.) That guidance was in place for Franklin's

October 6 municipal election. The State did in one business day what its application says is "practically impossible" in two weeks.

That changes the *Purcell* analysis in two ways. First, the status quo is now the injunction. A stay "simply suspend[s] judicial alteration of the status quo." *Nken*, 556 U.S. at 429. When the order being stayed has already been carried out, a stay doesn't preserve anything. It reverses what voters and officials have been told. This Court recognized as much when it refused to stay a consent decree that Rhode Island had already implemented: "The status quo is one in which the challenged requirement has not been in effect," and "many Rhode Island voters may well hold that belief." *Republican Nat'l Comm. v. Common Cause R.I.*, 141 S. Ct. 206, 206 (2020). The First Circuit applied the same reasoning five weeks ago, in a case against this Secretary, when it denied a stay because voters "who have read and relied upon the Secretary of State's representation may arrive to register and vote on election day without the newly required documentation and be turned away without recourse." *N.H. Youth Movement v. Scanlan*, No. 26-1750, 2026 WL 2620381, at *2 (1st Cir. Sept. 4, 2026). And the Sixth Circuit denied Tennessee a stay where "the defendants themselves prominently state" on the State's website that the injunction governs, voters "relied on communications from defendants and local election officials," and "there is no substantial harm to defendants in continuing to comply with rules they are currently following." *Memphis A. Philip Randolph Inst. v. Hargett*, 977 F.3d 566, 568–69 (6th Cir. 2020).

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Second, it identifies who is asking for a late change. *People Not Politicians* turned on that question. The Eighth Circuit had blamed the Missouri Supreme Court for destabilizing the election, and this Court answered that the state court "was not responsible for the late-breaking changes"; the Secretary of State, "well aware" of the risk, "nonetheless chose to proceed." Slip op. 4. The same is true here, and the Secretary is on the other side of it. He issued a Directive that went beyond the statute. He declined to defend it when the court "probed this specific question." (App. 70a–71a n.15.) He bypassed the district court and "took four days to seek a stay from the Court of Appeals." (App. 69a.) He issued guidance to voters and local election officials and then announced on the same website that he would ask to have it undone. Two weeks before the election, with the guidance in voters' hands, the only late change on the table is the one the State asks this Court to order.

The State's answer is that "[t]he ability to blast-email revised instructions does not establish that those instructions have displaced prior training and materials." (Appl. 14 n.1.) But the Directive itself was an email to local election officials and a press release. (Supp. App. 2a (Dkt. No. 46 ¶ 3); App. 25a.) The revised guidance went out the same way, through the same office, to the same people. And if one email isn't enough, the remedy is in the Secretary's hands. The injunction orders guidance "as soon as practicable." (App. 66a.) Nothing stops him from further updating the Manual, the posters, or the website. He has instead spent the two weeks since October 2 asking three courts to withdraw the guidance he issued. The "nuance" that the State says officials and voters can't be trusted to grasp is one that the State stated in a

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sentence to the court of appeals: the injunction "preserves the exclusion of student IDs as valid identification while permitting their consideration alongside other evidence." (Supp. App. 16a (C.A. Reply 11).)

The State is right that *Purcell* doesn't wait for voting to begin. (Appl. 9.) But what has happened in the election so far still matters, because it determines whether anyone has acted in reliance on the old rule. Here no one has. Absentee voters verify their identity under a separate statute, N.H. Rev. Stat. Ann. § 657:17-c, by a copy of a listed ID, a notarized signature, or presenting a listed ID to the clerk. (Supp. App. 4a (Dkt. No. 46 ¶ 113).) The injunction doesn't touch that statute, and neither would a stay. When the district court ruled, "no absentee ballots have been returned," and the only ballots distributed had gone to military and overseas voters who hold passports or military IDs. (App. 59a–60a.) New Hampshire has no early in-person voting. The injunction affects one thing: what a supervisor of the checklist may consider on November 3 when a voter arrives without a listed ID. A stay would change nothing for the 97% of voters who hold a listed ID, nothing for absentee voters, and everything for those who have been told, on the Secretary's own website, that they may bring what they have. (App. 71a.)

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### D. The district court weighed the Coalition's delay, and the State's own delay counts against it.

The State says the Coalition "waited more than four months" to sue. (Appl. 4, 12.) The district court agreed that the lawsuit's timing was a problem, and it held the Coalition to it by denying relief for the primary. (App. 1a–14a, 61a.) It then found that "[b]oth parties" had "contributed to the difficulty of this case" and declined to

"tip the equities toward defendants based on a delay whose consequences both sides share." (App. 61a–63a.) That is a discretionary judgment, made on a record that the State doesn't contest. *Benisek v. Lamone*, 585 U.S. 155 (2018) (per curiam), on which the State relies, affirmed a district court's discretion to weigh a plaintiff's delay in denying relief. *Id.* at 159–60. It didn't hold that a reviewing court may reweigh delay to grant relief that the district court denied. And the State's own delay counts against it. The State measures from April 3, when HB 323 was signed. But the Directive it defends issued April 23, the "only" language it relies on was enacted July 2, and the statutes it says the court misread were amended July 19. The State had the district court's ruling date in advance, didn't ask that court for a stay, and waited four days to ask the wrong court. (App. 69a.) An applicant whose timing problem is "[p]artly from defendants' own doing" can't invoke the calendar against the other side. *Memphis A. Philip Randolph Inst.*, 977 F.3d at 568.

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## IV. The remaining factors favor the Coalition.

### A. The State hasn't shown irreparable harm.

A stay applicant must show that irreparable injury is likely, not that there is "some possibility" of it. *Nken*, 556 U.S. at 434–35. The State's showing rests on *Maryland v. King*: "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). (Appl. 13.) But no statute has been enjoined. The statutes enacted by New Hampshire's representatives are in force, and the injunction holds the Secretary to them as the State itself described them.

(App. 63a, 70a.) The interest that *King* protects is the legislature's, and the legislature's choice is the one that the injunction enforces. What the injunction displaces is a Directive that the district court found the State had never justified. (App. 47a.) A State's sovereign interest lies in enforcing requirements that are "likely consistent with" the Constitution, *Little*, 591 U.S. at 1062 (Roberts, C.J., concurring), not in enforcing a rule that two federal grounds say it may not enforce.

The State's conduct confirms the point. It issued guidance to local election officials the next business day, and it concedes as much. (Appl. 14 n.1.) When this Secretary acted on an injunction in *New Hampshire Youth Movement* and "immediately reinstated" the affected procedures, the First Circuit held that the State's own conduct undermined its claim of irreparable harm. 2026 WL 2620381, at *1. "[T]here is no substantial harm to defendants in continuing to comply with rules they are currently following." *Memphis A. Philip Randolph Inst.*, 977 F.3d at 568. The only harms the State describes are the confusion and administrative burden that the district court found "negligible" and "modest and surmountable" on the evidence, and those are the harms a stay would cause. (App. 60a–61a.)

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**B. A stay would harm voters and the public interest.**

The balance of harms and the public interest "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Both favor the Coalition. The district court found direct evidence that the Directive had already disenfranchised at least one voter, and it found that denying relief "potentially leaves young and often first-time voters without government-issued forms of ID to get through DMV

appointments, fees or vouchers, and trips to multiple offices before election day," through a voter ID program that the record suggests "is simply not operational." (App. 44a, 60a, 72a.) A restriction on the right to vote is an irreparable harm, and "[o]nce the election occurs, there can be no do-over and no redress." (App. 58a–59a (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)).) New Hampshire lets voters register on election day, but the free voter ID that the State points to is printed overnight and mailed, so it can't be had the same day. For a student with no other ID, the Directive takes election-day registration off the table, and the court found that "at least one voter experienced exactly this sequence and was disenfranchised as a result." (App. 42a–43a.) A stay would withdraw guidance that is already in voters' hands and tell them, for the second time in a month, that the evidence they have will not be considered. The State says the Coalition's delay "undermines its assertions of irreparable harm." (Appl. 13–14.) But the irreparable harm here is a voter's, not a litigant's. A ballot that isn't cast on November 3 is lost whether the Coalition sued in April or in August, and the district court has already discounted the Coalition's delay once, by denying relief for the primary. (App. 1a–14a, 61a.)

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The State's public-interest argument assumes that a statute has been enjoined. (Appl. 13.) None has. The legislature's choices are in effect under the injunction. The Secretary's gloss on them is not, and "[t]he public is not served by a court enforcing a rule that may exceed an agency's statutory authority." (App. 57a (quoting *R.J. Reynolds Tobacco Co. v. Food & Drug Admin.*, No. 25-40137, 2026 WL

2409778, at *10 (5th Cir. Aug. 18, 2026)).) Five weeks ago, the First Circuit held that "the public interest weighs against granting a stay" where voters had relied on this Secretary's own representations about what they would need at the polls. *N.H. Youth Movement*, 2026 WL 2620381, at *2. That's this case. A stay would protect no one. It would turn away the voters who arrive on November 3 with the evidence the Secretary's website told them to bring. The public interest lies in letting eligible voters prove who they are on election day, without a second reversal in the final weeks.

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**Conclusion**

The State asks this Court to reinstate a Directive that it has never defended, on findings that it has never challenged, under a theory that it never presented to either court below. The injunction enforces New Hampshire's statutes as the State itself described them, on two independent federal grounds. The Secretary has already issued guidance to local election officials and voters. A stay wouldn't preserve the status quo. It would change the rules for the second time in a month, two weeks before the election, in the direction that keeps eligible voters from proving who they are, and it would make this Court the author of the only late change in this election. The Court should deny the application and the request for an administrative stay.

October 19, 2026

Respectfully submitted,

Bryan L. Sells
*Counsel of Record*
The Law Office of
Bryan L. Sells, LLC
Post Office Box 5493
Atlanta, Georgia 31107-0493
(404) 480-4212
bryan@bryansellslaw.com

Courtney Hostetler
John C. Bonifaz
Ben T. Clements
Free Speech For People
28 South Main Street, Suite 200
Sharon, Massachusetts 02067

Michael S. Gardener
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

Henry Clay Quillen
Whatley Kallas LLP
159 Middle Street, Suite 2C
Portsmouth, New Hampshire 03801

*Counsel for the Respondent*

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