No. 26-2132

In the
United States Court of Appeals
For the First Circuit

COALITION FOR OPEN DEMOCRACY,

Plaintiff–Appellee

v.

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,

Defendants–Appellants

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Appeal from the United States District Court for the
District of New Hampshire
1:26-cv-00647-JL-TSM

APPELLEE'S MOTION TO DISMISS THE APPEAL AS MOOT AND TO SUSPEND THE BRIEFING SCHEDULE

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This is an appeal from a preliminary injunction that granted relief for one election. That election was held on November 3. The Supreme Court had stayed the injunction twelve days earlier, and the district court has since confirmed that, "because the November 2026 general election to which it pertained has passed, the preliminary injunction order is no longer in effect." (Dkt. No. 76.)

Nothing is left for this Court to review. Affirming the injunction wouldn't restore it, and reversing it wouldn't undo anything. The case itself goes on in the district court, where the State's motion to dismiss is pending and the Coalition's claims will be decided on a full record. The Court should therefore dismiss the appeal as moot. And because the State's opening brief is due on December 2, the Court should suspend the briefing schedule while this motion is pending.

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Background

The Coalition for Open Democracy sued on August 11, 2026. It challenges HB 323, a 2026 law that removed student IDs from the list of photo identification expressly valid for obtaining a ballot

in New Hampshire. 2026 N.H. Laws ch. 20 (H.B. 323). It also challenges the April Directive, a Secretary of State press release announcing that student IDs can't be used for any purpose in the voting process. (Dkt. No. 68 at 1–2.) The complaint seeks declaratory relief and preliminary and permanent injunctions. (Dkt. No. 1 at 54–55.)

The district court took the Coalition's motion for a preliminary injunction one election at a time. On September 1, it denied relief for the September 8 primary. (Dkt. No. 68 at 4, 45.) It then ordered the parties to supplement the record on "the plaintiff's remaining request for preliminary injunctive relief with respect to the general election." (*Id.* at 4.) After a second evidentiary hearing and a day of oral argument, the court issued its opinion on October 2 and docketed a corrected version four days later. (Dkt. Nos. 63, 68.) The opinion's first sentence says what the order does: "This order grants limited preliminary injunctive relief with respect to New Hampshire's upcoming general election." (Dkt. No. 68 at 1.)

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The court denied relief as to HB 323 "in the November 2026 general election." (*Id.* at 50.) In the next paragraph, it granted relief as to the Directive:

> The court does, however, preliminarily enjoin the State from enforcing the April Directive to the extent that it prohibits or discourages New Hampshire election officials and polling station personnel from reviewing and considering student identification cards, as previously defined under RSA 659:13, as evidence of voter identity under either RSA 654:12(d)(4) or the voter qualification verification procedures set forth in RSA 659:13(c)(1) and (3). The Secretary of State is therefore ordered to issue, as soon as practicable, revised guidance for the November 2026 general election 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, when determining voter identity under RSA 654:12(d)(4) and RSA 659:13(c)(1) and (3).

(*Id.* (cleaned up).) On October 5, the court entered a one-page preliminary injunction order in the same terms. (Dkt. No. 64.)

The State appealed and asked for a stay. It told this Court that "equitable principles foreclose injunctive relief due to the proximity of the November 2026 general election." (Renewed Mot. for Stay 2.) This Court denied a stay on October 14. The State then told the Supreme Court that the orders required the Secretary to

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"issue revised guidance . . . in the lead up to the November 2026 general election." Emergency Appl. for Stay 2, *Scanlan v. Coal. for Open Democracy*, No. 26A512 (U.S. Oct. 15, 2026). On October 22, the Supreme Court stayed the orders "pending the disposition of the appeal" in this Court "and disposition of a petition for a writ of certiorari, if such a writ is timely sought." *Scanlan v. Coal. for Open Democracy*, No. 26A512, slip op. at 1 (U.S. Oct. 22, 2026).

The general election was held on November 3 with the stay in place. Three days later, the district court issued a scheduling order. The order describes the injunction as one that applied "during the November 2026 general election." (Dkt. No. 76.) It continues: "This court nevertheless takes the view that, because the November 2026 general election to which it pertained has passed, the preliminary injunction order is no longer in effect." (*Id.*)

The case is moving forward in the district court. The State moved to dismiss on October 14. (Dkt. No. 74.) The next day, the court ruled that "[t]he standing issue, at least, requires litigation, and may potentially be addressed by the court as part of the final trial on the merits." (Endorsed Order, Oct. 15, 2026.) The parties

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have agreed that the Coalition will amend the complaint or respond to the motion to dismiss by February 20, 2027. (Dkt. No. 78.)

In this Court, the State's opening brief is due on December 2. (Briefing Notice, Oct. 23, 2026.)

Argument

I. The appeal is moot because the preliminary injunction has expired.

A. An appeal from a preliminary injunction is moot once the injunction can no longer operate.

Article III limits this Court to live controversies. When events have transpired "to render a court opinion merely advisory, Article III considerations require dismissal of the case." *O'Neil v. Canton Police Dep't*, 116 F.4th 25, 27 (1st Cir. 2024) (cleaned up). The party that raises mootness bears the burden of establishing it. *Grant v. Trial Ct. of Mass.*, 183 F.4th 29, 36 (1st Cir. 2026).

That rule has a settled application to preliminary injunctions. In *University of Texas v. Camenisch*, 451 U.S. 390 (1981), a university appealed a preliminary injunction that required it to pay for a deaf student's interpreter. The student graduated while the appeal was pending. The Supreme Court held that "the question

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whether a preliminary injunction should have been issued here is moot, because the terms of the injunction . . . have been fully and irrevocably carried out." *Id.* at 398. The underlying dispute, the Court explained, "remains for trial on the merits." *Id.* This Court follows the same course: "the proper procedure for an appellate court to follow, when a claim for preliminary relief becomes moot, is to dismiss this claim" and leave the rest of the case for trial. *Pub. Serv. Co. of N.H. v. Consol. Utils. & Commc'ns, Inc.*, 846 F.2d 803, 810 (1st Cir. 1988) (citing *Camenisch*).

Courts apply that rule to injunctions that govern a single election. In *Fleming v. Gutierrez*, 785 F.3d 442 (10th Cir. 2015), county election officials appealed a preliminary injunction that governed the November 2014 election. The election was held while the appeal was pending, and the voters who had obtained the injunction moved to dismiss. The Tenth Circuit granted the motion: "because the election has passed and we cannot grant any effective relief, the appeal is moot." *Id.* at 445. Other courts agree. *See Indep. Party of Richmond Cnty. v. Graham*, 413 F.3d 252, 256 (2d Cir. 2005) (appeal was moot because the relief "was limited in its

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applicability to the September 14, 2004 primary"); *Grant*, 183 F.4th at 36–37 (appeal from a preliminary-injunction ruling on a courthouse buffer zone was moot because the zone expired when the trial ended).

So too here.

B. This injunction granted relief for the November 2026 general election.

The district court's opinion says so from beginning to end. Its first sentence describes the order as granting "limited preliminary injunctive relief with respect to New Hampshire's upcoming general election." (Dkt. No. 68 at 1.) Its summary of the ruling says that the court "enjoins enforcement of the April Directive" and "orders the Secretary of State to issue revised guidance for the November 2026 general election." (*Id.* at 3.) Its account of the proceedings explains that the only request still before it was the one "for preliminary injunctive relief with respect to the general election." (*Id.* at 4.) And its decretal paragraphs deny relief as to HB 323 "in the November 2026 general election" and order revised guidance "for the November 2026 general election." (*Id.* at 50.)

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The court's reasoning has the same limit. Its analysis of the equities is about one election: whether "general-election voting" had begun, which ballots had gone out, and whether the Secretary could get guidance to local officials before election day. (*Id.* at 45–47.) The court concluded that he could, because "[t]his court's injunction requires only updated guidance." (*Id.* at 47.) Nothing in the opinion weighs the equities for any later election.

The State has read the orders the same way. It told this Court that the injunction was improper "due to the proximity of the November 2026 general election." (Renewed Mot. for Stay 2.) And it told the Supreme Court that the orders required revised guidance "in the lead up to the November 2026 general election." (Emergency Appl. for Stay 2.)

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C. The injunction's first sentence doesn't outlast the election.

The State may point out that the first sentence of the injunction, which bars the State from enforcing the Directive, has no date in it, and that it reaches registration as well as obtaining a ballot. But this Court doesn't read one sentence of an order in

isolation. When an order's wording is imprecise, a reviewing court "can comb relevant parts of the record to discern the authoring court's intention." *Negrón-Almeda v. Santiago*, 528 F.3d 15, 23 (1st Cir. 2008). And a time limit that appears in one part of an injunction "is most naturally read to apply to the remainder of the order." *NACM-New England, Inc. v. Nat'l Ass'n of Credit Mgmt.*, 927 F.3d 1, 5 (1st Cir. 2019).

Here, the record points one way. The injunction's two sentences are a single remedy. The second begins with "therefore," and it tells the Secretary how to carry out the first: by issuing guidance "for the November 2026 general election." (Dkt. No. 68 at 50.) That is why the district court could say that its injunction "requires only updated guidance." (*Id.* at 47.) The same paragraph of the order denies relief as to HB 323 "in the November 2026 general election." (*Id.* at 50.) The court didn't rule on one half of the motion for one election and the other half for all time. The motion before it concerned the general election, and that is the motion the court decided. (*Id.* at 4.)

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Nor does it matter that the first sentence reaches registration. The opinion treats registering and obtaining a ballot as two steps toward voting in the same election. Its discussion of the equities describes voters who "stay home on election day because they believe that their student IDs will not suffice to register or obtain a ballot." (*Id.* at 46.) And the guidance that the court ordered "for the November 2026 general election" covers both statutes. (*Id.* at 50.)

The opinion also looks ahead to what comes next. It advises both sides on how to try the case "when this case moves from the preliminary stage to a final trial on the merits." (*Id.* at 48 n.120.) Whether the Directive may be enforced in later elections, or in registration for them, is a question for that trial.

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D. The district court has confirmed that the injunction is no longer in effect.

If any doubt remained, the judge who wrote the order has resolved it. Three days after the election, he explained that the injunction applied "during the November 2026 general election" and that, "because the November 2026 general election to which it

pertained has passed, the preliminary injunction order is no longer in effect." (Dkt. No. 76.) That reading deserves this Court's respect, because "uncertainty as to the meaning and intendment of a district court order can sometimes best be dispelled by deference to the views of the writing judge." *Lefkowitz v. Fair*, 816 F.2d 17, 22 (1st Cir. 1987).

The scheduling order didn't vacate or modify the injunction, and the Coalition doesn't contend that it did. Once an appeal has been taken, a district court "ordinarily may not alter the judgment under review." *Am. Fed'n of Gov't Emps. Loc. 2305 v. U.S. Dep't of Veterans Affs.*, No. 26-1321, 2026 WL 2969474, at *4 (1st Cir. Oct. 2, 2026) (cleaned up). But it can say what its own order means. An order that is "simply another way of expressing what is reasonably to be expected from the" injunction doesn't modify it. *Id.* at *3 (cleaned up). That is all the scheduling order did. And the Coalition's argument doesn't depend on the scheduling order. The injunction ran its course on November 3, and the order confirms as much.

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E. Nothing this Court could order would affect the parties.

A decision here "would not have any present-day, real-world effect on the parties because both the election and the effective time period of the injunction have passed." *Fleming*, 785 F.3d at 445. If this Court affirmed, there would be nothing to reinstate. The election is over, and the guidance that the injunction required was guidance for that election. If this Court reversed, there would be nothing to dissolve.

The Supreme Court's stay doesn't change that. The stay suspended the injunction for the election, and it lasts only until this appeal and any petition for certiorari are resolved. It gives the State no continuing stake in an order that has expired.

The appeal is therefore moot.

II. The State's arguments won't evade review.

The State may argue that this appeal fits the exception for disputes that are capable of repetition yet evading review. It doesn't. That exception applies only when the challenged action is too short-lived to be fully litigated before it ends and there is a

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"reasonable expectation that the same complaining party will be subject to the same action again." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (cleaned up).

Nothing here evades review. The Directive is still in place, which is why the case isn't moot and why the district court is proceeding toward a final judgment. The Coalition's claims for declaratory relief and a permanent injunction are pending. (Dkt. No. 1 at 54–55.) So is the State's motion to dismiss. (Dkt. No. 74.) Whatever the district court decides, the losing side can appeal, and this Court can then review the State's arguments on a complete record.

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Fleming rejected the same argument for the same reason. The officials there argued that their appeal fit the exception even though the election had passed. The Tenth Circuit disagreed. The officials' arguments, including their challenge to the voters' standing, "will not evade review because the request for a permanent injunction remains pending and can be reviewed on appeal to this court from a final judgment." 785 F.3d at 447. The Second Circuit reached the same conclusion in *Independence Party*.

The officials' arguments there didn't evade review because the same questions "remain pending before the district court" and, after a final judgment, "can be reviewed on appeal." 413 F.3d at 256.

The election cases that apply the exception are different. Each was an appeal from a final judgment. Nothing remained pending in the district court, so the choice was between appellate review then and none at all. *See FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 460–64 (2007); *Libertarian Party of N.H. v. Gardner*, 843 F.3d 20, 23–24 (1st Cir. 2016); *Barr v. Galvin*, 626 F.3d 99, 104–06 (1st Cir. 2010). Even then, the exception is "a narrow one," and "not every election case fits within its four corners." *Barr*, 626 F.3d at 105. An interlocutory appeal is a different matter. As *Fleming* explained, whether the exception applies to an appeal from a preliminary injunction aimed at a completed election "is distinct from the question of whether this suit as a whole is capable of repetition, yet evading review." 785 F.3d at 446.

The exception exists for disputes that would otherwise go undecided. This one won't. The exception therefore doesn't apply.

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III. Mootness leaves no occasion to reach standing.

The State's docketing statement signals that it intends to challenge the Coalition's standing here. (Docketing Statement Attach. 1.) That challenge is no reason to keep a moot appeal alive, for three reasons.

First, a court may dismiss a case as moot without deciding standing. In *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997), the Supreme Court had "grave doubts" about the petitioners' standing but concluded that it "need not definitively resolve the issue" because the case was moot. *Id.* at 66. Both questions go to Article III jurisdiction, and a court that lacks jurisdiction on one ground has no reason to opine on the other.

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Second, standing is being litigated where it should be. The district court "assume[d] without deciding" that the Coalition has standing. (Dkt. No. 68 at 20.) It has since ruled that "[t]he standing issue, at least, requires litigation." (Endorsed Order, Oct. 15, 2026.) The State's motion to dismiss, which raises the issue, is pending. (Dkt. No. 74.) A ruling from this Court would come first, and on a preliminary record.

Third, this Court already has the Coalition's standing before it in a live appeal. In *New Hampshire Youth Movement v. Scanlan*, No. 26-1740 (1st Cir.), the State has appealed from a final judgment, and the Coalition is one of the appellees. The district court there concluded, after a nine-day bench trial, that the Coalition has standing. The State's opening brief there argues at length that the Coalition and the other organizational plaintiffs lack standing. Appellants' Opening Br. 17, 21–37, *N.H. Youth Movement v. Scanlan*, No. 26-1740 (1st Cir. Nov. 6, 2026). The State itself calls the two appeals "very closely related" because the Coalition asserts the same kind of standing in both. (Docketing Statement Attach. 1.) The question that the State wants answered will be answered there.

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There is no reason to answer it here first, in a moot appeal, on a preliminary record.

IV. The Coalition doesn't oppose vacatur.

If the State asks this Court to vacate the preliminary-injunction orders when it dismisses the appeal, the Coalition

doesn't oppose that request. *See Grant*, 183 F.4th at 41–42 (vacating the preliminary-injunction ruling on appeal after the appeal became moot); *Pub. Serv. Co.*, 846 F.2d at 811 (vacating preliminary orders "on the ground that the appeal is moot").

V. The Court should suspend the briefing schedule while this motion is pending.

The State's opening brief and appendix are due on December 2. (Briefing Notice, Oct. 23, 2026.) Full briefing on the merits of an expired injunction would cost the parties and this Court time that a dismissal would make unnecessary. A pause costs the State nothing. The injunction is stayed, and the State isn't subject to it. If the Court denies this motion, it can set a new schedule then.

Counsel for the Coalition asked counsel for the State for its position on this motion. The State opposes it.

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Conclusion

The election that this injunction addressed is over, and the case goes on in the district court. This Court should dismiss the appeal as moot and suspend the briefing schedule while this motion is pending.

Dated: November 19, 2026

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Certificate of Compliance

This motion complies with the type-volume limitation of Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure because, excluding the parts of the document exempted by Rule 32(f), it contains 3,208 words. This motion also complies with the typeface and type-style requirements of Rule 27(d)(1)(E) and Rule 32(a)(5) and (6) because it has been prepared using Microsoft Word in the 14-point Century Schoolbook typeface in Roman style.

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