

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CAROLINE CASEY and MAGGIE FLAHERTY

v.

WILLIAM GARDNER, in his official capacity as New Hampshire Secretary of State and
GORDON MACDONALD, in his official capacity as New Hampshire Attorney General

Consolidated with
NEW HAMPSHIRE DEMOCRATIC PARTY

v.

WILLIAM GARDNER, in his official capacity as New Hampshire Secretary of State and
GORDON MACDONALD, in his official capacity as New Hampshire Attorney General

Docket No. 2019-0693

Rule 34 Certification from the
United States District Court for the District of New Hampshire
Case No. 1:19-cv-00149-JL

**OPENING BRIEF FOR PLAINTIFFS CAROLINE CASEY, MAGGIE
FLAHERTY AND NEW HAMPSHIRE DEMOCRATIC PARTY**

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STATUTES

RSA 21:6	11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30
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A resident or inhabitant or both of this state and of any city, town, or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.

RSA 21:6-a	11, 15, 17, 20, 21, 30
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Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his or her principal place of physical presence to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

RSA 207:1, XXIII.....	23
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Resident: A resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

RSA 215-A:1, XII.....	23
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“Resident” means a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

RSA 215-C:1, XIV	23
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“Resident” means a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

RSA 259:1	23, 30
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The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter, except where the context otherwise requires.

RSA 259:67	16, 31, 32, 33
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“Nonresident” shall mean:

I. Except as provided in paragraph II, any person whose legal residence is in some state, district or country other than New Hampshire, but a nonresident, having a regular abode or place of business within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode or place of business and the director for the purposes of registration shall determine what vehicles are so used;

II. For the purposes of the reciprocal provisions as to arrest of nonresidents, RSA 262:27 and 28, a person who is a resident of or holds a driving license issued by a reciprocating state.

RSA 259:88	15, 16, 22, 23, 24, 25, 26, 27, 30, 33
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“Resident” shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

RSA 261:40	31
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Except as otherwise provided, it is a violation for any person to drive or any owner or custodian to knowingly permit or cause to be driven on the ways of this state any vehicle which is not specifically exempt by statute or rule from the requirement of registration, unless the same has been registered and the appropriate fee paid in accordance with the provisions of this chapter. The fine for a violation of this section shall be \$100.

RSA 261:44	31, 32
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A vehicle, other than an OHRV or snowmobile, owned by a nonresident and duly registered for the current year in the state, district or country of which the owner is a resident may be driven upon the ways of this state without registration under this chapter to the extent, as to period of driving and otherwise, that the state, district or country of registration grants similar privileges for the operation of such vehicles owned by residents of this state and registered under its laws. The director for the purposes of this section shall determine the nature and extent of the privileges for the driving of vehicles granted by other states, districts or countries to residents of this state and his determination shall be final.

RSA 261:45	29
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I. Notwithstanding the provisions of RSA 261:44, when a nonresident has established a bona fide residency in this state, said resident shall have a maximum of 60 days from the date of his or her residency in which to register his or her vehicle or vehicles in New Hampshire.

II. When a nonresident business entity has established a place of business in this state and principally garages or regularly keeps overnight in this state a vehicle or vehicles owned by or leased to the business entity for conducting intrastate commerce in New Hampshire, the business entity shall be considered domiciled in New Hampshire and shall have a maximum of 60 days from the date of establishing such domicile in which to register the vehicle or vehicles with division or with an apportioned registration through the international registration plan. The director may adopt rules pursuant to RSA 541-A relative to procedures for such registration.

RSA 263:1	31
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I. No person, except those expressly exempted under RSA 263:25 or other provisions of this title, shall drive any motor vehicle upon any way in this state unless such person has a valid driver's license, as required under the provisions of this chapter, for the class or type of vehicle being driven.

II. Any person who held a driver's license of the appropriate class or type but whose driver's license has been expired for not more than 12 months shall be guilty of a violation or, for a second or subsequent offense shall be guilty of a class B misdemeanor.

III. Any person who drives a motor vehicle in this state and who has never had a license shall be guilty of a class B misdemeanor.

RSA 263:4	31, 33
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No person shall receive a driver's license unless and until he surrenders to the division all valid driver's licenses in his possession issued to him by any other jurisdiction. All surrendered licenses shall be returned by the division to the issuing department together with information that the licensee is now licensed in a new jurisdiction.

RSA 263:35	29
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Notwithstanding the provisions of RSA 261:44 or any other law to the contrary, any nonresident driver of a motor vehicle who holds a valid driver's license in another jurisdiction, upon the establishment of a bona

fide residency in this state, shall have a maximum of 60 days from the date his residency was established to obtain a driver’s license issued by the state of New Hampshire.

RSA 263:36	31, 32
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No owner of a pleasure vehicle, and no nonresident or driver thereof, holding a license to drive in the state, district, or country in which he resides shall be required to obtain a license to drive such vehicle within this state.

RSA 422:3, XXV.....	23
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“Resident” means resident, as defined in RSA 21:6.

RSA 654:1	11, 15, 17, 18, 19, 20, 21, 22, 25, 29, 30
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I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant’s domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

I-a. A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution of learning if such student’s claim of domicile otherwise meets the requirements of RSA 654:1, I.

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QUESTIONS PRESENTED

1. Are the definitions of “resident” and “residence” in RSA 21:6 and :6-a, as recently amended, effectively the same as the definition of “domicile” as used in RSA 654:1, such that one with a New Hampshire “domicile” is necessarily a New Hampshire “resident”? *Certification Order*, p. 15.¹
2. Is a student who claims a New Hampshire “domicile” pursuant to RSA 654:1, I-a necessarily a New Hampshire resident under RSA 21:6, as recently amended? *Id.*
3. Can an individual with a New Hampshire “domicile” pursuant to RSA 654:1 ever be an individual “who claims residence in any other state for any purpose” and thus is not a “resident” for the purposes of RSA 259:88? *Id.*
4. Does an individual who claims a New Hampshire “domicile” pursuant to RSA 654:1, I, or :1, I-a, necessarily establish a “bona fide residency” for the purposes of RSA 261:45 and 263:35? *Id.*
5. Given the definition of non-resident in RSA 259:67, are college students who maintain an abode for more than six months in any year required to obtain New Hampshire drivers’ licenses by RSA 263:1 if they wish to drive in the state and required by RSA 261:40 to register in New Hampshire any vehicles they keep in the state? *Id.*

¹ Citations to the “Order Certifying Question to the New Hampshire Supreme Court,” issued on November 27, 2019 in federal case number 1:19-cv-00149-JL (ECF No. 86), are referred to as *Certification Order*, p. __. Citations to the Appendix are referred to as App., __.

STATEMENT OF THE CASE AND THE FACTS

The statute challenged in the United States District Court is the most recent in a decades-long effort to exclude college students in New Hampshire from their rightful place as part of the state’s political community. House Bill 1264 (2018) [hereinafter HB 1264] arose from an effort to eliminate all distinctions between the concepts of domicile for voting purposes and all forms of residency under New Hampshire law, thereby rendering anyone domiciled in New Hampshire for voting purposes subject to the financial obligations (such as having an in-state driver’s license) associated with driving or owning a vehicle as a legal “resident” of the state. But HB 1264 failed to do so. App., 4–5, 30.

HB 1264 removed the words “for the indefinite future” from the definitions of “resident” and “residence” in RSA 21:6 and RSA 21:6-a. App., 5, 31. It was first introduced in the New Hampshire House of Representatives in November 2017, and by May 2018, it passed both that chamber and the New Hampshire Senate. App., 15, 42. Various legislators stated that they wanted to change New Hampshire law to make anyone domiciled for voting purposes in New Hampshire under RSA 654:1, I—but who did not have plans to remain for the indefinite future—be “residents” under RSA 21:6. App., 17, 43. Their goal was to deter participation by these constitutionally-eligible voters by requiring them, within 60 days of registering to vote, to pay moneys to the State through car registration and drivers’ license fees. *Id.* For example, after the bill passed, but before it was signed by the governor, Senator Carson—a supporter of the bill—put out a Facebook advertisement acknowledging that the bill targeted students:

STOP DRIVE-BY VOTING IN NH !!! The student being interviewed actually makes the case for the legislation; he wants to keep his out-of-state drivers license and drive his out-of-state registered car (because he doesn’t live in NH) but wants to VOTE IN OUR STATE ELECTIONS Call Gov. Sununu’s office . . . and demand he sign HB 1264; only NH residents should vote in state and local elections.

App., 17, 44.

On May 18, 2018, the Governor and Council requested from this Court an advisory opinion on whether, “[b]y subjecting those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSA 261:45 [requiring the registration of motor vehicles in New Hampshire within 60 days of establishing residency] and 263:35 [requiring residents who drive within the state to acquire a New Hampshire driver’s license within 60 days of establishing residency],” HB 1264 violated certain provisions of the New Hampshire or United States Constitutions. *See Opinion of the Justices (Definition of Resident and Residence)*, 171 N.H. 128, 131–32 (2018) [hereinafter *Resident*].

The Justices of this Court returned separate advisory opinions. *See generally id.*; *see also Opinion of the Justices (Domicile for Voting Purposes)*, 167 N.H. 539, 541–42 (2015) (“Because an opinion of the justices is an advisory opinion issued to a branch of the legislature, Governor, or Executive Council, and is not an opinion of the court in a litigated case, an opinion of the justices does not constitute binding precedent.”). In the briefing of interested parties and in the opinions issued, the parties and the Justices assumed that the statutory changes provided by HB 1264 actually accomplished what its proponents contended it did. *Resident*, 171 N.H. at 149 (opinion of Hicks and Bassett, JJ.). As discussed below, those assumptions, which are now squarely before this court, were wrong.

Chief Justice Lynn and Justices Hantz Marconi and Donovan concluded that the bill did not violate the enumerated constitutional provisions. *Id.* at 149. Justices Hicks and Bassett concluded that resolution of the bill’s constitutionality was inappropriate when “a fundamental right is implicated and material facts are sharply disputed” and requested to be excused from answering the Governor and Council’s questions. *Id.* at 154, 156–57.

Neither opinion in *Resident* definitively answered the certified questions here, nor the overarching one: must every domiciliary in New Hampshire purchase a New Hampshire driver’s license, if they drive, and a car registration, if they own a car? *See id.*

at 142 (noting that HB 1264 would require domiciliaries to comply with motor vehicle requirements but not discussing RSA 259:88, the definition of “resident” in the motor vehicle title) (opinion of Lynn, *C.J.*, Hantz Marconi and Donovan, *JJ.*); *id.* at 149–50 (only assuming that HB 1264 would subject those who are domiciled for voting purposes in New Hampshire to the same legal requirements as residents for purposes of the opinion) (opinion of Hicks and Bassett, *JJ.*).

On July 13, 2018, after this Court issued *Resident*, Governor Sununu signed HB 1264 into law. App., 15, 42.

On February 13, 2019, Caroline Casey and Maggie Flaherty, two now-juniors at Dartmouth College in Hanover, filed suit in federal court. App., 10–11. Shortly thereafter, the New Hampshire Democratic Party filed a similar complaint. These cases were consolidated. The original complaints, making the same assumptions that characterized the *Resident* proceedings, alleged that HB 1264, by requiring all who vote in New Hampshire to pay money to the State in the form of motor vehicle fees as a consequence of voting, violates the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments. Defendants moved to dismiss the complaints. That motion was denied.

On October 9, 2019, the federal court *sua sponte* issued a procedural order observing that there were critical issues of state law interpretation to be resolved before it could consider the constitutional challenges and requesting the parties’ views on certification. With this order, the assumptions underlying earlier consideration of these issues were put squarely at the fore because “[i]f a registered voter can claim both a New Hampshire domicile and claim residence for motor vehicle purposes in another state, the [P]laintiffs likely do not face the harms they allege.” App., 60. Subsequently, Plaintiffs moved to amend their complaints. The amended complaints explained that “HB 1264 does not textually accomplish its intended objective of imposing New Hampshire motor vehicle fees on those who register to vote but have out-of-state drivers’ licenses or vehicle registrations. This is because, in part, HB 1264 did not amend the definition of ‘resident’ for motor vehicle purposes at RSA 259:88.” App., 6, 31. This answers what is

now the federal court’s third question. The motions to amend were granted over Defendants’ objections.

The amended complaints further allege that Casey and Flaherty (and some Democratic voters) are domiciled in New Hampshire for voting purposes but do not intend to remain in the State for the indefinite future. App., 10–11, 37. Under the law prior to HB 1264, it was without question that these voters would not be required to obtain New Hampshire drivers’ licenses or car registrations. App., 5, 30–31. However, those enacting the law hoped to link voting to these motor vehicle requirements and thereby discourage voting by young people and college students. *Id.* Even since the filing of Plaintiffs’ lawsuit, some legislators have reaffirmed that aim. For example, Representatives Al Baldasoro and Frank Doucette told the *Eagle Tribune* that HB 1264 “hopefully could make the races even tighter.” Madeline Hughes, *Republicans ready for Trump visit*, *Eagle-Tribune*, Aug. 11, 2019, https://www.eagletribune.com/news/new_hampshire/republicans-ready-for-trump-visit/article_09330267-cc22-5299-b5fc-63913867e4c4.html.

Plaintiffs subsequently moved for a preliminary injunction, and Defendants moved to dismiss the amended complaints. The motions for preliminary injunctions were denied and the motions to dismiss the amended complaints are stayed while this Court considers the certified questions. The federal court certified five questions of state law as predicate to its constitutional analysis.

The trial in federal court was previously scheduled for January 6, 2020. App., 122. Following certification, and in recognition of the schedule set by this Court, the federal court moved the trial to begin May 4, 2020. App., 124.

SUMMARY OF ARGUMENT

The five certified questions can be answered by applying this Court’s long-standing rules of statutory interpretation. The Court does not “speculate upon any supposed intention (of the legislature which is) not appropriately expressed in the act itself.” *Dupont v. Chagnon*, 119 N.H. 792, 795 (1979) (citation omitted). Rather, in construing statutes, this Court considers “the effect and meaning of the language of the act

finally ratified and adopted by the legislature.” *In re Juvenile 2005-212*, 154 N.H. 763, 767 (2007) (citation omitted). Applying that basic rule of statutory construction establishes that, while HB 1264 may have arisen from an effort to obliterate any legal distinctions between “domicile for voting purposes” and all other forms of legal residency under New Hampshire law, it did not textually accomplish that goal. Under the plain terms of the relevant statutes, individuals who are domiciled in New Hampshire for voting purposes are not necessarily subject to motor vehicle-related obligations.

As to the first certified question, “the definitions of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a,” are not “effectively the same as the definition of ‘domicile’ as used in RSA 654:1.” *Certification Order*, p. 15. Consideration of the “words in the statute itself,” *Merrill v. Great Bay Disposal Serv., Inc.*, 125 N.H. 540, 542 (1984) (citation omitted), compels this conclusion. The definition of resident requires a place of abode “to the exclusion of all others,” RSA 21:6, while the concept of “domicile for voting purposes,” RSA 654:1, I, necessarily allows that a person may have multiple domiciles for different purposes.

As to the second question, a student who has established domicile for voting purposes has not necessarily established residency. This is so because the plain language of RSA 21:6 and :6-a and that of RSA 654:1 are distinct. A student may establish “domicile for voting purposes” under the statute, in that they will have a continuous presence for “domestic, social, and civil purposes relevant to participating in democratic self-government,” RSA 654:1, I, without making the state their principal place of physical presence “to the exclusion of all others,” RSA 21:6, :6-a.

As to the third question, a person who is domiciled in New Hampshire for voting purposes can claim residence in another state for another purpose, and thus not be a “resident” under motor vehicle laws. *See* RSA 259:88. This is the most significant question to the federal case, as the answer will directly resolve whether HB 1264 places motor vehicle obligations on domiciliaries/voters. Indeed, the text of HB 1264 does *not* impose motor vehicle fees on all domiciliaries who register to vote. This is because HB 1264 did not amend the definition of “resident” for motor vehicle purposes in

RSA 259:88, which is a narrower definition than the general definition of “resident” in RSA 21:6.

RSA 259:88 defines “resident” for motor vehicle purposes as “a resident of the state as defined in RSA 21:6, *except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.*” (emphasis added). Thus, to the extent the Court determines—despite the distinct language between RSA 21:6, :6-a, and RSA 654:1—that a domiciliary/voter with an out-of-state driver’s license or vehicle registration declares his or her “residency” in New Hampshire under RSA 21:6 when registering to vote, such an individual will still not be a “resident” *for motor vehicle purposes* under RSA 259:88 if the voter has “claim[ed] residence in any other state for any purpose.”

New Hampshire statutes define “resident” for motor vehicle purposes more specifically than the general concept of residence. To hold that both definitions of “resident” define the same class of people would be to read RSA 259:88’s “except” clause as surplusage—something forbidden by the canons of statutory interpretation. Moreover, the legislative history makes clear that RSA 259:88 was written in this way to address the Division of Motor Vehicles’s (“DMV”) concerns with problems with the registration of vehicles by persons claiming residence in more than one state.

As to the fourth question, a person domiciled in New Hampshire for voting purposes does not necessarily establish “bona fide residency” under the motor vehicle statutes. This is the case regardless of which definition of residency is considered. As with the first two questions, the statutes define “domicile for voting purposes” differently from “residency.” Because “domicile for voting purposes” contemplates the possibility of having presence elsewhere for other purposes, such domicile does not equate to bona fide residency under the motor vehicle statutes.

As to the fifth question, nonresident college students do not need to obtain a New Hampshire driver’s license or register their vehicles here. The definition of “nonresident” flatly does not require a person with residency in another state to domesticate a driver’s license. RSA 259:67. The statutes governing potential obligations of people with

residency in another state to register vehicles in New Hampshire are irreconcilable, and the later-in-time statute does not require people with residency in another state to register their vehicles.

ARGUMENT

The meaning of a statute is based upon the words actually enacted by the legislature. This Court’s authority, as “the final arbiter of the meaning of a statute,” is to interpret a statute “*as expressed in the words of the statute itself.*” *Mahoney v. Town of Canterbury*, 150 N.H. 148, 152 (2003) (emphasis added); *see also State v. Hill*, No. 2018-0637, 2019 WL 6794418, at *2 (N.H. Dec. 13, 2019) (“We discern legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.”). It is not this Court’s “function to speculate upon any supposed intention (of the legislature which is) not appropriately expressed in the act itself.” *Dupont*, 119 N.H. at 795 (citation omitted).

Here, neither the discriminatory intent expressed by some members of the legislature in considering HB 1264 nor the constitutionality of the burdens that HB 1264 may impose on voters are before this Court on certification. That is, while certain members of the legislature sought to make those who have established “domicile for voting purposes” subject to the legal financial obligations of New Hampshire “residents,” that professed intent alone is not enough to make that so. Rather, “[t]he question is what is the effect and meaning of the language of the act finally ratified and adopted by the legislature.” *In re Juvenile 2005-212*, 154 N.H. at 767 (citation omitted). It is against this backdrop of the Court’s long-standing precedents that the questions certified by the federal district court must now be assessed.

I. The Definitions of Residence and Domicile for Voting Purposes Are Distinct Under the Statutes.

The first certified question is “[a]re the definitions of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a, as recently amended, effectively the same as the definition of ‘domicile’ as used in RSA 654:1, such that one with a New Hampshire ‘domicile’ is necessarily a New Hampshire ‘resident’?” The answer is no.

While in *Guare v. State*, this Court noted the “basic difference” between “residents” and those with “domicile” was the intent to remain, 167 N.H. 658, 662 (2015), it did not hold that this was the *only* difference between the statutory terms. As indicated in the *Resident* opinion of Justices Hicks and Bassett, it was *assumed* that “the statutory definitions of ‘resident’ and ‘residence’” were rendered “equivalent to the statutory definition of ‘domicile’” by the enactment of HB 1264. *Resident*, 171 N.H. at 149 (opinion of Hicks and Bassett, *JJ.*). While this assumption characterized much of the history surrounding the legislature’s efforts to alter the voting rights of students and the related litigation, now before the Court are these certified questions directly seeking answers to this open question of statutory construction. As is clear from the different words used to define these distinct statutory terms, they must necessarily mean different things. This is particularly so as HB 1264 did not amend the other provisions under consideration. *See In re Sarvela*, 154 N.H. 426, 430 (2006) (a “law means what it meant to its framers”).

Paramount to construing any statute are the “words in the statute itself.” *Merrill*, 125 N.H. at 542 (citation omitted). For matters of statutory construction, the statute’s words—not additional considerations surrounding a law’s passage—are the touchstone of the legislature’s intention.” *Id.* (citation omitted). RSA 21:6 provides the general definition of “resident.” As discussed below, this general definition of resident is superseded in certain contexts by more specific forms of residence for particular purposes, as in the motor vehicle title. In any event, the general definition of “resident” in RSA 21:6 reads:

A resident or inhabitant or both of this state and of any city, town, or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.

(emphasis added). RSA 654:1, I, and I-a, defines “Voter.” It reads:

I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided

for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. *An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.* A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

I-a. *A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives* while attending such institution of learning if such student's claim of domicile otherwise meets the requirements of RSA 654:1, I.

(emphasis added). It is plain from the statutes that the definitions of “residency” and “domicile for voting purposes” are different, though certainly in some instances overlapping, and that the two concepts encompass different scenarios.

First, RSA 21:6 defines resident as a person “who is domiciled or has a place of abode” within the state, but it also includes a second element that must be met (as plainly indicated by the definition's use of “and”)—namely, that the domiciliary must *also* have “demonstrated a current intent to designate that place of abode as his or her principal place of physical presence *to the exclusion of all others.*” (emphasis added). This definition necessarily contemplates something *more* than mere domicile in order for an individual to be a resident under the statutes. This Court will not “ignore the plain language of the legislation,” *Bovaird v. N.H. Dep't of Admin. Servs.*, 166 N.H. 755, 759 (2014), which here includes something in addition to domicile in order to meet the definition of resident.

Second, RSA 654:1, I, does not define “domicile” alone, but it contemplates inhabitants having “a single established domicile for voting purposes,” going on to define this particular “domicile for voting purposes” as “one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence *for domestic, social, and civil purposes relevant to*

participating in democratic self-government.” (emphasis added). The fact that the statute specifies more detail regarding the type of domicile contemplated here—namely, one “for voting purposes,” specifically—indicates that domicile for other purposes would be defined differently. Otherwise, inclusion of this phrase would be mere surplusage. This Court will not presume that the legislature would “waste words” and will construe statutes so that “every word” is “given effect.” *Town of Amherst v. Gilroy*, 157 N.H. 275, 279 (2008). To conclude that residents under RSA 21:6 and those who establish “domicile for voting purposes” are necessarily the same would fail to give the phrase “for voting purposes” any meaning.

Though for many people, residence under RSA 21:6 and :6-a and “domicile for voting purposes” under RSA 654:1 will be the same place, it is not necessarily so. Being a “resident” under RSA 21:6 requires the designation of the place of abode “to the exclusion of all others,” while “domicile for voting purposes” under RSA 654:1 contemplates a continuous presence for only certain purposes—“domestic, social, and civil purposes relevant to participating in democratic self-government.” This statutory definition of resident entails an exclusive place of abode, whereas the definition of “domicile for voting purposes” contemplates that individuals are able to have multiple domiciles for different purposes. As such, the definitions enacted by the legislature contemplate different scenarios. “[T]o adopt a construction that gives these terms the same meaning runs afoul of the well-recognized principle of construction that where the enacting body ‘uses two different words, it generally means two different things.’” *City of Concord v. State*, 164 N.H. 130, 141 (2012), as modified on reconsideration (Sept. 28, 2012) (citation omitted). “It is proper to presume that the legislature was aware of the difference between . . . words and chose to use them advisedly.” *John A. Cookson Co. v. N.H. Ball Bearings*, 147 N.H. 352, 357 (2001); *see also Pennichuck Corp. v. City of Nashua*, 152 N.H. 729, 735 (2005). In interpreting the provisions in question here, the Court must take seriously that the legislature used different words, with different scopes, to define residence and “domicile for voting purposes,” respectively. *See In re Guardianship of Williams*, 159 N.H. 318, 323 (2009) (“where the legislature uses

different language in related statutes, we assume that the legislature intended something different”).

II. Student Domiciliaries for Voting Purposes Are Not Necessarily Residents Under RSA 21:6.

The second certified question asks, “Is a student who claims a New Hampshire ‘domicile’ pursuant to RSA 654:1, I-a necessarily a New Hampshire resident under RSA 21:6, as recently amended?” The answer is no.

Students who claim domicile for voting purposes under RSA 654:1, I-a, are not necessarily residents under RSA 21:6 for at least two reasons. *First*, as laid out above, while an individual *could* be both a resident and establish domicile for voting purposes based upon both their intention and where they live, the plain language of RSA 21:6 and :6-a and that of RSA 654:1 are distinct, such that one with “domicile for voting purposes” *need not necessarily* be a resident. The same is true when the individual who has established “domicile for voting purposes” has done so “in the New Hampshire town or city in which he or she lives while attending [an] institution of learning.” RSA 654:1, I-a.

Second, the fact that a student who attends an institution of learning can establish “domicile for voting purposes” provides an easily understood example of an individual who establishes domicile for such purposes, but is not a resident under the terms of RSA 21:6. The definition of resident requires that two elements are met: (1) that the person has domicile, “and” (2) that the person has the current intent to make it their place of abode “to the exclusion of all others.” RSA 21:6. A college student may well establish “domicile for voting purposes” by having a continuous presence for “domestic, social, and civil purposes relevant to participating in democratic self-government,” but their relationship to that place of abode may well not be exclusive as to all other purposes—for example, tax purposes or filial purposes in relation to their parents, both unrelated to participation in democratic self-governance. The fact that the statutes consider students in a separate paragraph in defining “Voters” suggests that there is something particular about students away from their filial home, attending institutions of learning in New Hampshire. Such student voters are connected to their New Hampshire communities for

all purposes “relevant to participating in democratic self-government,” RSA 654:1, I, but may still have ties to their filial home for other purposes. *See Newburger v. Peterson*, 344 F. Supp. 559, 563 (D.N.H. 1972) (“the challenged New Hampshire law forces persons who are in every meaningful sense members of New Hampshire political communities to vote in communities elsewhere which they have long departed and with whose affairs they are no longer concerned, if indeed the former community still recognizes the right”).

To ignore the differences in what residence and “domicile for voting purposes” each require under the statutes would be to “consider what the legislature might have said,” presuming different language to actually mean the same thing, which this Court has consistently and repeatedly rejected as proper for the construction of statutes. *See Clay v. City of Dover*, 169 N.H. 681, 685 (2017); *Guardianship of Williams*, 159 N.H. at 323; *John A. Cookson Co.*, 147 N.H. at 357.

III. Individuals Domiciled in New Hampshire for Voting Purposes May Claim Residence in Any Other State for Any Purpose and Therefore May Not Be Residents under RSA 259:88.

The third certified question is “Can an individual with a New Hampshire ‘domicile’ pursuant to RSA 654:1 ever be an individual ‘who claims residence in any other state for any purpose’ and thus is not a ‘resident’ for the purposes of RSA 259:88?” The answer is yes.

Assuming *arguendo* that HB 1264 eliminated the difference between domicile and the general definition of residence under RSA 21:6, that would not mean that all domiciliaries are residents for purposes of the motor vehicle title under RSA 259:88. This is because, even after HB 1264, the definition of “resident” for purposes of motor vehicle statutes under RSA 259:88 explicitly excludes those who claim residence in any other state for any purpose. That is, some people who are domiciliaries for voting purposes under RSA 654:1 are not residents for motor vehicle purposes under RSA 259:88 (because they claim residence in another state for some purpose), and thus, do not have New Hampshire license and registration obligations.

RSA 263:35 and RSA 261:45 require those who establish “bona fide residency” in the state to procure a New Hampshire driver’s license if they drive and a New Hampshire

vehicle registration if they own a car, within 60 days of establishing residency.

“Resident” under these sections is defined in RSA 259:88, which applies specifically and exclusively to the motor vehicle title. *See* RSA 259:1 (“The following words and phrases when used in this title shall, for the purpose of this title, have meanings respectively ascribed to them in this chapter, except when the context otherwise requires.”).

RSA 259:88 states that “‘Resident’ shall mean a resident of the state as defined in RSA 21:6, *except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.*” (emphasis added).² Thus, the residency definition in RSA 259:88 for motor vehicle purposes *specifically exempts* those who may fit the general definition of “resident” under RSA 21:6, but who still “claim residence in any other state for *any purpose.*” In other words, under this definition, a New Hampshire domiciliary who holds a Vermont driver’s license may not be a New Hampshire resident under RSA 259:88 for motor vehicle purposes.

A. The Canon of Statutory Interpretation that Requires All Words in a Statute Be Given Meaning Compels the Conclusion that Domiciliaries Are Not Necessarily Residents for Motor Vehicle Purposes.

“It is an elementary principle of statutory construction that all of the words of a statute must be given effect and that the legislature is presumed not to have used superfluous or redundant words.” *Merrill*, 125 N.H. at 543; *see also Town of Amherst*, 157 N.H. at 279 (“The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.”).

Here, if Defendants were correct that all domiciliaries fit the general definition of residents under RSA 21:6, and were also necessarily residents for purposes of the motor vehicle title under RSA 259:88 specifically, that would render the clause “except that no person shall be deemed to be a resident who claims residence in any other state for any purpose” in the latter provision meaningless. That is because the definition of residence

² Identical definitions of “resident” also appear in RSA 207:1, XXIII (fish and game); RSA 215-A:1, XII (off highway recreational vehicles); and RSA 215-C:1, XIV (snowmobiles). By contrast RSA 422:3, XXV (“New Hampshire Aeronautics Act”) defines resident as “resident, as defined by RSA 21:6,” demonstrating that if the legislature intended to make a specific definition of resident the same as the general definition, it knew how to do so.

for motor vehicle purposes under RSA 259:88 specifically excludes some people who fit the general definition of residence under RSA 21:6, *i.e.* those who “claim[] residence in any other state for any purpose.” In order to impose motor vehicle licensing and registration obligations on *all* domiciliaries as residents under RSA 21:6 with HB 1264, the legislature could have done so by deleting the “except” clause from RSA 259:88. But it did not. *See Hill*, 2019 WL 6794418, at *6 (“Had the legislature intended subparagraph III(d) to apply to paragraph IV, it would have made it so.”).

This reading is compelled by this Court’s past precedents. For example, in *Town of Amherst*, this Court considered a challenge to the district court’s jurisdiction to enter an award of \$42,350 against a property owner who failed to remove a non-conforming shed from her property for 154 days in violation of a zoning ordinance. *See* 157 N.H. at 276. Because the district court only had jurisdiction in civil cases in which the damages claimed do not exceed \$25,000, the Town argued that the civil award was properly understood to be 154 separate awards of \$275, and thus within the jurisdiction of the court. *Id.* at 276–78. In making this argument, the Town relied upon *Simpson v. Young*, 153 N.H. 471, 477 (2006), which examined a statute governing damages in a landlord/tenant action. *Simpson* held that under the landlord/tenant statute, the district court had jurisdiction to award \$1,000 in damages per day because each day of non-compliance was a separate violation, even though the aggregate award was more than the district court had jurisdiction to award for a single violation. *Id.* at 475.

The *Town of Amherst* Court compared the landlord/tenant statute discussed in *Simpson*, RSA 540-A:4, IX, with the statute governing zoning ordinance violations, RSA 676:17, I. The former explicitly provided that “[e]ach day that a violation continues shall constitute a separate violation.” 157 N.H. at 278. By contrast, RSA 676:17, I, did not provide that each day the violation continued was a separate offense, and instead authorized a “civil penalty of \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue.” *Id.* at 279. The Town argued that the two statutes had the same meaning, but the Court rejected that argument because it conflicted with canons of statutory construction. *Id.* Specifically, the Court wrote that the

phrase “each day that a violation continues shall constitute a separate violation” must have meaning, and that “a statute that lacks a similarly worded phrase has a different meaning that a statute that contains one.” *Id.* As a result, the Court concluded that RSA 676:17, I, did not contemplate new offenses for each day the shed was not removed, and the award was therefore beyond the district court’s jurisdiction.³

Like the language at issue in *Town of Amherst*, the clause “except that no person shall be deemed to be a resident who claims residence in any other state for any purpose” in RSA 259:88 must be given meaning. That phrase would be “mere surplusage” if Defendants’ argument—that all domiciliaries for voting purposes must be “residents” under both RSA 21:6 and 259:88—were correct. That is, if anyone who establishes domicile in New Hampshire solely “for voting purposes” under RSA 654:1—but who retains presence elsewhere for other purposes—were automatically also a “resident” for purposes of RSA 259:88, then the latter statute would not have made reference to (and exclude from its definition of residence) people who “claim[] residence in any other state for any purpose.” Defendants’ reading would remove the “except” clause and render RSA 259:88 to essentially read “‘Resident’ shall mean a resident of the state as defined in RSA 21:6.” This reading cannot be correct because it would render an entire clause in RSA 259:88 meaningless.

B. A Person May Have Multiple Residences.

New Hampshire law explicitly contemplates that a person may have multiple residences. The legislature is free to make this choice. A person may generally be a “resident” under the general definition for residence in RSA 21:6, but not a “resident” under RSA 259:88 for motor vehicle purposes because that person is a resident in a different state for some specific purpose. And three justices of this Court have already recognized, in a non-binding opinion, that a person may have more than one residence. *Resident*, 171 N.H. at 136 (opinion of Lynn, C.J., and Hantz Marconi and Donovan, JJ.)

³ The legislature thereafter amended RSA 676:17, I, to contemplate separate offenses for each day of a continuing violation. See *Town of Bartlett v. Furlong*, 168 N.H. 171, 178 (2015).

(considering residence and domicile and indicating “one . . . may have more than one residence at the same time”).

RSA 259:88 must be read in accordance with the plain meaning of its words. *See Teeboom v. City of Nashua*, 172 N.H. 301, 310 (2019) (“We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole.”) (citations omitted). The plain meaning of the statute makes clear that a person who fits the general definition of a New Hampshire resident under RSA 21:6, but who also “claims residence in any other state for any purpose,” RSA 259:88, is not a New Hampshire resident for purposes of the motor vehicle title. “Claim” means “to ask for especially as a right.” *Claim*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/claim>. Thus, one who “claims” residence in any other state is one who asks for residence in any other state. The law explicitly contemplates that one can ask for residence in another state for a specific and limited purpose, as “any” means “one or some indiscriminately of whatever kind.” *Any*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/any>. If the State wants to prosecute a person for not updating a driver’s license or vehicle registration, it will have to prove beyond a reasonable doubt that the person does not “ask for” residence in another state for “one or some” reasons “indiscriminately of whatever kind.”

C. Legislative History Demonstrates the Legislature’s Intent to Specifically Exclude Those Who Claim Residency in Another State for Any Purpose from Motor Vehicle Obligations.

The plain text of RSA 259:88 unambiguously permits people in New Hampshire to be domiciliaries for voting purposes without automatically becoming residents for motor vehicle purposes. While an inquiry into the legislative history of RSA 259:88 is unnecessary here, *see State v. Gardner*, 162 N.H. 652, 653 (2011) (“When the language of a statute is clear on its face, its meaning is not subject to modification . . . If, however, statutory language is ambiguous and subject to more than one reasonable interpretation,

[the Court] may consult its legislative history to determine the legislature’s intent.”), the legislative history of RSA 259:88 only underscores its plain meaning.⁴

RSA 259:88 was enacted in 1985 as part of House Bill 258, which modified multiple parts of the motor vehicle laws. *See App.*, 64–65. As initially proposed, the bill would have defined “Resident” to be “a resident of the state as defined in RSA 21:6.” *See App.*, 85. A legislative memorandum from Deputy Commissioner of the Department of Safety Earl Sweeney to the House Transportation Committee supported this language:

Section 3 of this bill redefines the term ‘resident.’ This terms [sic] has been defined in RSA 21:6 after considerable work by a legislative study committee and the Attorney General’s office, and their definition supercedes the definition of resident found in any other statute unless the legislature specifically states otherwise. Since there is a definition of ‘resident’ in the motor vehicle statutes and the legislature has not seen fit to have it supercede the definition in RSA 21:6, having a separate definition only confuses public and we would rather have the motor vehicle law simply say that the term ‘resident’ shall mean a resident of the state as defined by RSA 21:6.

See App., 69–70. However, the Deputy Commissioner’s position was rejected when an amendment to the bill proposed adding “the following additional phrase at the end of the sentence: ‘except that no person shall be deemed a resident who claims residence in any other state for any purpose.’” *See App.*, 94–95. The drafter’s note at the end of the proposed amendment explained, “Recent problems with the registration of vehicles by persons claiming residence in more than one state have led the Motor Vehicle Division to recommend adding this definition.” *Id.* The House Committee unanimously recommend the bill Ought to Pass with Amendment. *See id.* at 74. On the Senate floor, Senator

⁴ If the Court finds RSA 259:88 ambiguous, it can examine that statute’s legislative history without reference to the legislative history of HB 1264 because HB 1264 did not amend RSA 259:88. Even the Secretary of State’s May 30, 2019 brief—which was filed when this Court first considered HB 1264—acknowledged that HB 1264 *only* amended RSA ch. 21, and thus did not amend the motor vehicle title at RSA ch. 259. *See Mem. of Law of N.H. Sec’y of State, Resident*, No. 2018-0267, 2018 WL 6706895 (N.H. May 30, 2018) (“HB 1264 amends only the terms ‘resident,’ ‘inhabitant,’ ‘residence,’ and ‘residency’ as defined in RSA chapter 21.”). During his December 23, 2019 deposition in this case, Secretary of State Gardner testified that he was not familiar with RSA 259:88, he had no discussions concerning this statute when HB 1264 was being considered in the legislature, and he had no opinion on what the statute’s “except” clause means. *See App.*, 116–19.

Preston explained that the bill, with the House’s amendment, “more clearly defines resident.” *See id.* at 105. The bill was subsequently enacted into law.

The legislative history makes clear that the legislature was aware that motor vehicle laws had a definition of resident that was distinct from the more general definition found in RSA 21:6. The Deputy Commissioner of the Department of Safety supported making the definition of “resident” the same for motor vehicle purposes as the general definition, *id.* at 70, but the DMV requested otherwise because of “problems with the registration of vehicles by persons claiming residence in more than one state,” *id.* at 94. The legislature considered these competing proposals, and ultimately adopted the definition proposed in response to problems identified by DMV. This demonstrates the legislature’s specific intent to exempt from motor vehicle obligations normally accruing to residents those who claim residency in another state for any purpose. It is not the role of this Court to second-guess or question the wisdom of this policy decision in 1985, or the legislature’s subsequent decision to not amend RSA 259:88 as part of HB 1264. *See Boehner v. State*, 122 N.H. 79, 85 (1982) (“our task is not to second-guess the legislature or question the factors which went into its decision”); *see also In re J.W.*, 172 N.H. 332, 340 (2019) (“[P]olicy determinations as to what [eligibility] limitations apply are for the legislature, not the judiciary, to make.”). Indeed, this Court has traditionally declined to ignore a statute’s plain text—even where doing so arguably could be viewed as consistent with the legislature’s overall policy objectives—because the policy of the legislature is best reflected in the words of the statute itself. *In re J.W.*, 172 N.H. at 342 (rejecting argument that lower court “can dispense with statutory requirements for adoption as long as the court determines that the proposed adoption would be consistent with the policy objectives of the statutory scheme”).

Resolution of this question is especially important given the fact that the State—in providing guidance to local election officials and voters on the impact of HB 1264—has refused to acknowledge RSA 259:88 and its “except” clause, and therefore has presented inaccurate information on the effect of HB 1264 to the public. It has done this even though at least one court has acknowledged that the obligation to get an in-state driver’s

license only arises for residents as defined by RSA 259:88. *See State v. Colley*, No. 462-2014-CR-00855, (5th Cir.—District Div.—Newport April 16, 2015) at App., 126–27. Instead, the State has informed the public that, in light of HB 1264, *all* domiciliaries for voting purposes have to comply with these motor vehicle obligations that apply to residents under RSA 21:6. In December 18, 2019 guidance, in response to the question, “I have registered to vote in New Hampshire, but I have an out-of-state driver’s license and I drive here. What should I do?,” the State told voters, “Anyone registering to vote in New Hampshire is indicating that he or she has established a domicile/residence here. Once one establishes domicile/residence in New Hampshire, New Hampshire law requires that person to take certain actions. Under the motor vehicle title, a person has 60 days upon establishing domicile/residence to obtain a New Hampshire driver’s license, if they drive here, and to register a vehicle, if they own a vehicle in the state.” *See* App., 132. This Court should clarify that the State’s guidance is wrong. As explained, HB 1264 does not apply these burdens on all domiciliaries given the legislature’s failure to amend RSA 259:88 and its “except” clause.

IV. Domiciliaries for Voting Purposes Do Not Necessarily Establish “Bona Fide Residency” for the Purposes of the Motor Vehicle Statutes.

The fourth certified question is “Does an individual who claims a New Hampshire ‘domicile’ pursuant to RSA 654:1, I or :1, I-a necessarily establish a ‘bona fide residency’ for the purposes of RSA 261:45 and 263:35?” The answer is no.

For many of the same reasons discussed above, an individual who establishes “domicile for voting purposes” under RSA 654:1, I, or :1, I-a, does not necessarily establish a “bona fide residency” under the motor vehicle title. RSA 261:45 and 263:35 do not contain a definition of “bona fide residency,” so the term has to be defined in reference to other statutes. The two possible definitions are that from RSA 259:88 under the motor vehicle title or the more general definition under RSA 21:6. Either definition compels the conclusion that domiciliaries for voting purposes are not necessarily bona fide residents for the purposes of these statutory provisions.

As explained above in Section III, the proper definition of “bona fide resident” under these motor vehicle provisions is the definition of “resident” for motor vehicle purposes under RSA 259:88, which is not identical to those who establish “domicile for voting purposes.” That definition applies to all of the sections of the motor vehicle title, including RSA 261:45 and RSA 263:35. *See* RSA 259:1.

But even if the Court were to determine that the term bona fide resident under these provisions is defined by the more general resident provision of RSA 21:6, that would still be unavailing for Defendants’ position. As explained above in Section I, a person may have “domicile for voting purposes,” RSA 654:1, I, but still not fit the general definition of resident under RSA 21:6.

The statutes set forth different requirements for individuals living in New Hampshire to meet any one of the definitions: resident/residency under RSA 21:6, :6-a, residents under RSA 259:88, and “domicile for voting purposes” under RSA 654:1. In practice, many individuals will establish all three. This is not because these concepts are coextensive, but because many individuals will independently meet the definition of each separate statutory section. At the same time, individuals may establish domicile for voting purposes only, as they established their presence for “domestic, social, and civil purposes relevant to participating in democratic self-government,” but not to “the exclusion of all others,” thus leaving themselves out of the definition of resident under RSA 21:6 and under the motor vehicle title.

Defendants might insist that is not what the proponents of HB 1264 intended, but this Court determines the meaning of the statute and the intent of the legislature based upon the words actually enacted. *See In re Juvenile 2005-212*, 154 N.H. at 767; *Dupont*, 119 N.H. at 795. Moreover, the Court must give meaning to *all* of these enactments of the legislature, and not interpret the particular definitions that were amended by HB 1264 to alter the meaning of the provisions that HB 1264 did not amend. *See In re Sarvela*, 154 N.H. at 430 (holding that later legislatures do not change the meaning of unamended statutes because a “law means what it meant to its framers”). HB 1264 did not alter the relationship between “domicile for voting purposes” and any other obligations

contemplated by statute for “residents,” under whichever definition of residency this Court determines governs RSA 261:45 and 263:35. The statutes in question use different language which requires different things, and the “legislature’s choice of language is deemed to be meaningful,” so this Court will “assume that the legislature intended something different.” *State Emps. Ass’n of N.H. v. N.H. Div. of Pers.*, 158 N.H. 338, 345 (2009) (citation omitted).

V. “Nonresident” New Hampshire College Students Do Not Need to Obtain New Hampshire Drivers’ Licenses or Vehicle Registrations.

The fifth certified question is “Given the definition of non-resident in RSA 259:67, I, for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers’ licenses by RSA 263:1 if they wish to drive in the state and required by RSA 261:40 to register in New Hampshire any vehicles they keep in the state?” The answer is no.

RSA 263:1 generally requires people who drive in New Hampshire to have a driver’s license. It comes as no surprise, however, that not everyone driving in the State has or needs a New Hampshire driver’s license. Were it otherwise, interstate travel would become practically impossible for those who do not hold multiple driver’s licenses from multiple states (which is itself prohibited by RSA 263:4). Indeed, RSA 263:36 specifically provides that nonresidents who are licensed in another state do not need a New Hampshire driver’s license: “No owner of a pleasure vehicle, and no nonresident or driver thereof, holding a license to drive in the state, district, or country in which he resides shall be required to obtain a license to drive such vehicle within this state.”⁵

Similarly, RSA 261:40 generally requires vehicles to be registered. Like with driver’s licenses, not every single vehicle operated in the state must have a New Hampshire registration. It is very common to see other states’ license plates on New Hampshire’s ways. RSA 261:44 explains that nonresidents need not register their

⁵ A “pleasure vehicle” is an “automobile . . . designed for the transportation of persons on highways.” *Am. Mut. Liability Ins. Co. v. Chaput*, 95 N.H. 200, 202 (1948).

vehicles in this state: “A vehicle . . . owned by a nonresident and duly registered for the current year in the state, district or country of which the owner is a resident may be driven upon the ways of this state without registration under this chapter to the extent, as to period of driving or otherwise, that the state, district or country of registration grants similar privileges for the operation of such vehicles owned by residents of this state and registered under its laws.”

The motor vehicle title is clear that nonresidents are not compelled to get New Hampshire driver’s licenses or car registrations. *See* RSA 263:36, 261:44. RSA 259:67 defines nonresident. It reads:

“Nonresident” shall mean:

- I. Except as provided in paragraph II, any person whose legal residence is in some state, district or country other than New Hampshire, but a nonresident, having a regular abode or place of business within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode or place of business and the director for the purposes of registration shall determine what vehicles are so used;
- II. For the purposes of the reciprocal provisions as to arrest of nonresidents, RSA 262:27 and 28, a person who is a resident of or holds a driving license issued by a reciprocating state.

The statute defines nonresident to exclude those with a “regular abode or place of business” in New Hampshire for more than six months in any year, but only “as to all *vehicles* principally used in connection with such abode or place of business.” *Id.* (emphasis added).

Plainly, RSA 259:67, I, says nothing about driver’s licenses or drivers. It refers only to registrations and vehicles. If the legislature intended this provision to deal with licensing, it would have referred to licensing as well as registration. But it chose not to do so. Additionally, requiring nonresidents to get driver’s licenses is unworkable. A person with multiple abodes or businesses and multiple vehicles can have multiple registrations in different states. A person living in Methuen, Massachusetts, but who runs a business in Salem, New Hampshire, for example, could register his work vehicle in New Hampshire,

but the car he uses at home in Massachusetts. It would be more confusing and difficult (and impossible under the statutes as currently written, *see* RSA 263:4⁶) to require that same person to keep two licenses, and to use his New Hampshire license when he drives in the Granite State and his Massachusetts license when he drives in the Commonwealth.

RSA 259:67 likewise cannot require all nonresidents who spend six months in any year to get New Hampshire vehicle registrations. While RSA 259:67 says those with abodes or businesses in New Hampshire may be “deemed a resident” with respect to certain vehicles (and thus required to register those vehicles), it is impossible to reconcile that language with RSA 259:88’s mandate that “no person shall be deemed to be a resident” who claims residence in another state for any other purpose (and thus not required to register a vehicle).⁷ As such, no “reasonable construction of the two statutes taken together can be found,” and the later statute, here RSA 259:88,⁸ must control. *See Bd. of Selectman v. Planning Bd.*, 118 N.H. 150, 152–53 (1978). In light of this total incompatibility, the Court should hold that New Hampshire law does not require nonresidents to domesticate their vehicle registrations.

CONCLUSION

For the reasons discussed above, the certified questions should be answered as follows:

The definitions of “resident” and “residence” in RSA 21:6 and :6-a, as recently amended, are not effectively the same as the definition of “domicile” as used in

⁶ *State v. Woodman*, 114 N.H. 497, 500–01 (1974), held that the predecessor to RSA 263:4 only prohibits having more than one “primary license” when other statutes require a driver to hold multiple licenses. Because no law generally requires nonresident drivers to hold multiple licenses, *Woodman* does not permit nonresident drivers to do so.

⁷ Attorneys affiliated with the New Hampshire Democratic Party have been advising voters for years prior to the enactment of HB 1264 that college students who are not residents under 259:88 are not required to purchase New Hampshire vehicle registrations, and the State has never advised the Party that it takes a different view of nonresidents’ obligations. As far as Plaintiffs can determine, RSA 259:67 has *never* been interpreted to require such individuals to register vehicles in New Hampshire.

⁸ RSA 259:88 was enacted in 1985, with an effective date of January 1, 1986; RSA 259:67 was enacted in 1981, with an effective date of January 1, 1982.

RSA 654:1, such that one with a New Hampshire “domicile” is not necessarily a New Hampshire “resident.”

A student who claims a New Hampshire “domicile” pursuant to RSA 654:1-a is not necessarily a New Hampshire resident under RSA 21:6, as recently amended.

An individual with a New Hampshire “domicile” pursuant to RSA 654:1 can “claim[] residence in any other state for any purpose” and thus is not necessarily a “resident” for the purposes of RSA 259:88.

An individual who claims a New Hampshire “domicile” pursuant to RSA 654:1, I or :1, I-a, does not necessarily establish a “bona fide residency” for the purposes of RSA 261:45 and 263:35.

Given the definition of non-resident in RSA 259:67, college students who maintain an abode for more than six months in any year are not required to obtain New Hampshire drivers’ licenses by RSA 263:1 if they wish to drive in the state and are not required by RSA 261:40 to register in New Hampshire any vehicles they keep in the state.

REQUEST FOR ORAL ARGUMENT

Plaintiffs request oral argument before the full Court. Attorney Henry R. Klementowicz will present for Plaintiffs.

RULE 16(3)(i) CERTIFICATION

Counsel hereby certifies that the order certifying questions from federal court is in writing and is appended to this brief.

Respectfully submitted,

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STATEMENT OF COMPLIANCE

Counsel hereby certifies that pursuant to New Hampshire Supreme Court Rule 26(7), this brief complies with New Hampshire Supreme Court Rule 26(2)–(4). Further, this brief complies with New Hampshire Supreme Court Rule 16(11), which states that “no other brief shall exceed 9,500 words exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.” Counsel certifies that the brief contains 9,196 words (including footnotes) from the “Question Presented” to the “Request for Oral Argument” sections of the brief.

/s/ Henry Klementowicz

Henry Klementowicz

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served on counsel for Defendants through the court's electronic filing system on today's date: Seth Zoracki, Esq., Anthony Galdieri, Esq., Samuel Garland, Esq., Anne Edwards, Esq., New Hampshire Department of Justice, 33 Capitol Street, Concord, NH 03301, and Bryan Gould, Esq., Cooley Arroyo, Esq., Cleveland, Waters and Bass, P.A., 2 Capitol Street, Concord, NH 03301.

Dated: January 13, 2019

/s/ Henry Klementowicz

Henry Klementowicz

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Caroline Casey, et al.

v.

Civil No. 19-cv-149-JL
Opinion No. 2019 DNH 199

NH Secretary of State, et al.

**Order Certifying Question
to the New Hampshire Supreme Court**

In this voting rights case, two young New Hampshire voters and the New Hampshire Democratic Party challenge recent changes to New Hampshire’s statutory definitions of “resident” and “residence.” They allege that the impact of these changes remains unclear. But they allege that the changes were intended to burden the right to vote, by indirectly making voter registration an effective declaration of residency that triggers obligations and fees for drivers and vehicle owners under New Hampshire’s Motor Vehicle Code. The plaintiffs allege that if the changes have this intended effect, the resulting statutory scheme violates the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments. The plaintiffs argue that the statutory changes did not achieve the intended effect. But they allege that the unresolved confusion over the impact of the changes itself burdens the right to vote, violating the First and Fourteenth Amendments.

The plaintiffs’ constitutional claims are intertwined with several questions of New Hampshire law upon which this court has found no controlling precedent. Resolution of these questions may be determinative. Pursuant to New Hampshire Supreme Court Rule 34, this court thus certifies the following questions to the New Hampshire Supreme Court:

- Are the definitions of “resident” and “residence” in [RSA § 21:6](#) and [:6-a](#), as recently amended, effectively the same as the definition of “domicile” as used

in [RSA § 654:1](#), such that one with a New Hampshire “domicile” is necessarily a New Hampshire “resident”?

- Is a student who claims a New Hampshire “domicile” pursuant to [RSA § 654:1-a](#) necessarily a New Hampshire resident under [RSA § 21:6](#), as recently amended?
- Can an individual with a New Hampshire “domicile” pursuant to [RSA § 654:1](#) ever be an individual “who claims residence in any other state for any purpose” and thus is not a “resident” for the purposes of [RSA § 259:88](#)?
- Relatedly, does an individual who claims a New Hampshire “domicile” pursuant to [RSA § 654:1, I](#) or [I-a](#) necessarily establish “a bona fide residency” for the purposes of [RSA §§ 261:45](#) and [263:35](#)?
- Given the definition of non-resident in [RSA § 259:67, I](#) for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers’ licenses by [RSA § 263:1](#) if they wish to drive in the state and required by [RSA § 261:40](#) to register in New Hampshire any vehicles they keep in the state?

I. Facts

The court acknowledges that the New Hampshire Supreme Court is familiar with much of the background underlying this case. See [Opinion of the Justices, 171 N.H. 128 \(2018\)](#). What follows is a summary of both the facts and relevant legal context of this federal civil rights litigation.

This case involves three areas of New Hampshire law: elections statutes, statutory construction provisions, and motor vehicle statutes. The plaintiffs’ civil rights action challenges recent changes to [N.H. Rev. Stat. Ann. §§ 21:6](#) and [21:6-a](#), which altered statutory definitions of “resident” and “residence.” They claim that these changes, or confusion resulting from the changes, burden the right to vote and violate the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments to the U.S. Constitution. 2018 House Bill 1264 implemented these changes,

and they became law on July 1, 2019. For simplicity and consistency with the parties' papers, the court will refer to the changes collectively as HB 1264.

A. New Hampshire law prior to HB 1264

New Hampshire election law provides that:

Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

[N.H. Rev. Stat. Ann. § 654:1, I.](#)

Voting is thus conditioned on domicile. The statute also specifically addresses students: “A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution of learning if such student’s claim of domicile otherwise meets the requirements of [RSA 654:1, I.](#)” [N.H. Rev. Stat. Ann. § 654:1, I-a1.](#) The voter statute does not refer to “resident” or “residence”.

Chapter 21 of Title I of the New Hampshire Code (“Statutory Construction”) provides rules of statutory interpretation and definitions applicable under the Code. These include the definitions of “resident” and “residence” altered by HB 1264. Prior to the recent changes, [Section 21:6](#) provided:

A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

N.H. Rev. Stat. Ann. § 21:6 (2018) (amended 2019) (emphasis added). And Section 21:6-a similarly provided that:

Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

N.H. Rev. Stat. Ann. § 21:6-a (2018) (amended 2019) (emphasis added). Prior to the recent changes implemented by HB 1264, individuals were not deemed "residents" unless they intended to remain in New Hampshire "for the indefinite future."

Finally, this case implicates certain motor vehicle statutes because these provisions impose obligations on New Hampshire "residents." Section 259:88 addresses "resident for motor vehicle purposes" and provides that "[r]esident" shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose." N.H. Rev. Stat. Ann. § 259:88. A motor vehicle owner or driver that establishes bona fide residency in New Hampshire takes on certain legal obligations.

[W]hen a nonresident has established a bona fide residency in this state, said resident shall have a maximum of 60 days from the date of his or her residency in which to register his or her vehicle or vehicles in New Hampshire.

N.H. Rev. Stat. Ann. § 261:45.

[A]ny nonresident driver of a motor vehicle who holds a valid driver's license in another jurisdiction, upon the establishment of a bona fide residency in this state, shall have a maximum of 60 days from the date his residency was established to obtain a driver's license issued by the state of New Hampshire.

N.H. Rev. Stat. Ann. § 263:35.

B. HB 1264's changes

HB 1264 amended the definition of “resident” and “residence” in sections 21:6 and 21:6-a to remove the requirement that a resident intend to remain “for the indefinite future.” The bill was introduced in the New Hampshire House of Representatives in November 2017, and by May 2018 was passed by both the House and New Hampshire Senate.¹ The plaintiffs allege that the bill was a voting measure, primarily intended to discourage college students from voting in New Hampshire elections.² The aim of the bill, they allege, was to make “residency” equivalent to “domicile,” so that registering to vote would effectively declare residency and trigger exposure to motor vehicle obligations and fees.³ The plaintiffs allege that the bill intended to require college students to incur the cost and burden of obtaining New Hampshire drivers licenses and registering their cars (if they own cars) in New Hampshire if they wish to both vote in New Hampshire and drive or own vehicles in the state.⁴ Before HB 1264's changes, many such students could be domiciled in New Hampshire (and vote) under the election statutes without being residents under motor vehicle law, because they lacked the then-statutorily-required intent to remain for the indefinite future.

The plaintiffs point to various aspects of the legislative record to support their account of HB 1264. They allege that the bill was considered by the election law committees of the legislature, and that the Division of Motor Vehicles did not assess the bill.⁵ Instead, the plaintiffs

¹ Casey Am. Compl. (doc. no. 68) ¶¶ 15-17; NHDP Am. Compl. (doc. no. 69) ¶¶ 14-16.

² Casey Am. Compl. (doc. no. 68) ¶¶ 18-20; NHDP Am. Compl. (doc. no. 69) ¶¶ 17-19.

³ Id.

⁴ Id.

⁵ Casey Am. Compl. (doc. no. 68) ¶ 18; NHDP Am. Compl. (doc. no. 69) ¶ 17.

allege, the Secretary of State's office advocated for and testified about the bill.⁶ They also cite alleged statements by legislators presenting the bill as a voting measure designed to discourage certain groups from voting or at least impose costs on them.⁷ HB 1264 also fits, according to the plaintiffs, within a pattern of recent legislative efforts to discourage voting by college students.⁸

After HB 1264 passed the legislature, the Governor and Executive Council requested that the Justices of the New Hampshire Supreme Court opine on the constitutionality of the bill under the New Hampshire Constitution and the Fourteenth Amendment of the U.S. Constitution.

[Opinion of the Justices](#), 171 N.H. 128, 131-32 (2018). A majority of three Justices determined that it was proper to issue an advisory opinion on these questions, and concluded that the bill did not violate either constitution. The “incongruity” between the definitions of “domicile” and “residency,” they explained, resulted from this court’s 1972 decision in [Newburger v. Peterson](#) that domicile for voting purposes could not be conditioned on an indefinite intention-to-remain test. [Opinion](#), 171 N.H. at 138-139, 145 (citing [Newburger](#), 344 F.Supp. 559 (D.N.H. 1972)). After [Newburger](#), New Hampshire amended its law regarding domicile for voting purposes to remove the indefinite intention-to-remain requirement. [Opinion](#), 171 N.H. at 138. Because the definition of “residency” was left unchanged, the majority explained, certain groups were permitted “to vote in New Hampshire without incurring responsibility for . . . obligations of state citizenship,” producing “an imbalance of rights and responsibilities.” [Id.](#) at 145. They opined that New Hampshire is not required to maintain that imbalance, and that even if the right to vote was burdened, the state “has a compelling justification” in “insuring that those who are permitted

⁶ Casey Am. Compl. (doc. no. 68) ¶¶ 18-19; NHDP Am. Compl. (doc. no. 69) ¶¶ 17-18.

⁷ Casey Am. Compl. (doc. no. 68) ¶¶ 20-23; NHDP Am. Compl. (doc. no. 69) ¶¶ 19-22.

⁸ Casey Am. Compl. (doc. no. 68) ¶¶ 24-29; NHDP Am. Compl. (doc. no. 69) ¶¶ 23-28.

to vote are bona fide residents who share a community of interest with other citizens.” [Id.](#) at 142. Two other Justices wrote separately. They declined to opine on the submitted questions because they determined that resolving the questions appropriately would require a developed factual record. [See id.](#) at 154, 156-574.

After the Justices issued their advisory opinion, the governor signed the bill.⁹ The new law took effect on July 1, 2019.¹⁰

C. These lawsuits

The individual plaintiffs, Caroline Casey and Maggie Flaherty, filed their complaint in mid-February 2019, and the New Hampshire Democratic Party filed its complaint two weeks later. These complaints were identical except for the paragraphs describing the plaintiffs. Casey and Flaherty are students at Dartmouth College who both wish to vote in New Hampshire while attending the school but do not intend to remain in New Hampshire after graduation.¹¹ They currently have driver’s licenses from other states, and both registered to vote in New Hampshire in 2018. They allege that they will suffer injury if they must incur the expense and trouble of obtaining New Hampshire driver’s licenses. Neither alleges that they own a vehicle, so their claims do not implicate the requirement to register a vehicle in New Hampshire.¹²

The New Hampshire Democratic Party alleges that it is harmed by HB 1264 because voters inclined to support its candidates “will incur onerous fees to register to vote or will be too

⁹ Casey Am. Compl. (doc. no. 68) ¶ 17; NHDP Am. Compl. (doc. no. 69) ¶ 16.

¹⁰ Casey Am. Compl. (doc. no. 68) at 1; NHDP Am. Compl. (doc. no. 69) at 1.

¹¹ Casey Am. Compl. (doc. no. 68) ¶¶ 1-2.

¹² [Id.](#)

intimidated to register or vote at all.”¹³ The court, on the defendants’ motion and with the assent of the plaintiffs, consolidated the two cases.¹⁴

The defendants moved to dismiss the plaintiffs’ claims for lack of standing and failure to state claims. The court denied these motions.¹⁵ The court then ordered the parties to provide their views on certifying certain questions to the New Hampshire Supreme Court.¹⁶ Days later, the plaintiffs moved to amend their complaints. In their original complaints, the plaintiffs’ arguments assumed that HB 1264 achieved its alleged intended effect. In their amended complaints, the plaintiffs instead contended that the bill failed to accomplish its goal, because it left in place the exception of [RSA § 259:88](#) that “no person shall be deemed to be a resident” for the purposes of the Motor Vehicle Code “who claims residence in any other state for any purpose.” They argue that registered voters with an out-of-state driver’s license or vehicle registration claim residence in another state for some purpose, and so are not residents for the purposes of the Motor Vehicle Code. The plaintiffs alleged that this ambiguity and the defendants’ failure to give adequate guidance on the law created voter confusion that impermissibly burdens the right to vote in violation of the First and Fourteenth Amendments. The court granted the plaintiffs leave to amend, over the defendants’ objection. The defendants later moved to dismiss the confusion-based claims.¹⁷ These motions are stayed pending the certification described therein.

¹³ NHDP Am. Compl. (doc. no. [69](#)) ¶ 1.

¹⁴ Order of May 1, 2019.

¹⁵ Order of August 29, 2019 (doc. no. [47](#)).

¹⁶ Order of October 9, 2019 (doc. no. [56](#)).

¹⁷ Mots. to Dismiss (docs. no. [74](#) and [75](#)).

The parties responded to the court's request for their views on certification. The plaintiffs supported certification on the condition that the court enter a temporary order prohibiting the State from using evidence of voter registration in any judicial or administrative enforcement of RSA §§ 261:45 and 263:35 and requiring the Secretary of State to inform local election officials that the act of voting in the 2020 New Hampshire Presidential Primary or registering to vote at or before that primary election would not require a person to obtain a New Hampshire driver's license or vehicle registration. The defendants opposed certification as unnecessary and declined to agree to the temporary relief requested by the plaintiffs.

After oral argument, the court indicated that it was inclined to certify certain issues to the New Hampshire Supreme Court, but declined to issue any temporary injunctive order without the defendants' consent, which they declined to provide. The court set a briefing schedule for the plaintiffs to move for a preliminary injunction. The plaintiffs limited their motions to their confusion-based claims. On the day after the plaintiffs filed this motion, the Attorney General, Secretary of State, and Commissioner of Public Safety signed a letter to the Town Clerk of Hanover and copied to all election officials that purportedly "sets forth in simple terms the effect of" HB 1264.

The court held an evidentiary hearing and oral argument, and has denied the motions for preliminary injunctions (see doc. no. 87). At the hearing, the court expressed no opinion on whether the plaintiffs might secure temporary relief from the New Hampshire Supreme Court pending the resolution of the statutory interpretation questions here certified.

D. Evidence presented by the parties

The plaintiffs submitted affidavits or declarations from ten witnesses, two of whom testified at the evidentiary hearing. The defendants submitted declarations from two witnesses,

one of whom testified at the evidentiary hearing. These declarations and the transcript of the evidentiary hearing are available to counsel and the New Hampshire Supreme Court should they deem them relevant or useful with respect to the issues of state law described below. This court also discusses this evidence in its order on the motions for preliminary injunctions (doc. no. 87).

II. State law issues

New Hampshire Supreme Court Rule 34 provides:

This court may answer questions of law certified to it by the Supreme Court of the United States, a court of appeals of the United States, or of the District of Columbia, or a United States district court when requested by the certifying court if there are involved in any proceeding before it questions of law of this State which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of this court.

This rule may be invoked by an order of any of the courts referred to above upon that court's own motion or upon the motion in that court of any party to the cause.

There are potentially determinative issues of New Hampshire law in this case. While it falls to this court (in this case) to determine the constitutional permissibility of the statutory enforcement scheme at least arguably created by HB 1264, it is impossible for the court to assess the scheme without resolving several state law questions about the meaning and interaction of New Hampshire statutes. The meaning of New Hampshire statutes is best (and only conclusively) determined by the New Hampshire Supreme Court. Furthermore, the plaintiffs have urged the court to apply the canon of constitutional avoidance.¹⁸ See [State v. Paul](#), 167 N.H. 39, 44-45 (2014) (describing the “well-established doctrine”); [Northwest Austin Mun. Utility Dis. No. One v. Holder](#), 557 U.S. 193, 205 (2009) (same). The New Hampshire Supreme Court is better equipped to determine if it is “reasonably possible . . . to construe a [New

¹⁸ Casey Am. Compl. (doc. no. 68) ¶ 14.

Hampshire] statute so as to avoid bringing it into conflict with the constitution.” [Paul](#), 167 N.H. at 45. This court is thus certifying these necessary questions of New Hampshire law to the New Hampshire Supreme Court. The answers to these questions could result in one or more interpretations of the enforcement regime that do not implicate the federal constitutional right to vote in any way.¹⁹

Domicile and student domicile. The parties in this case presume that an individual who is a New Hampshire domiciliary under [RSA § 654:1](#) is necessarily a resident of New Hampshire under [RSA § 21:6](#), as recently amended. If this assumption is accurate, an individual who certifies that he or she is a New Hampshire domiciliary in registering to vote would effectively admit that he or she is also a New Hampshire resident, and potentially be subject to the legal requirements of residency.

The same assumption was made by the Justices of the New Hampshire Supreme Court and all of the involved parties when the Governor and Executive Council sought an advisory opinion regarding the constitutionality of HB 1264. The certified questions there assumed that the bill “subject[ed] those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by [RSAs 261:45](#) and [263:35](#) and to pay any fees or taxes associated therewith.” [Opinion of the Justices](#), 171 N.H. 128, 131–32 (2018).

The opinion of Chief Justice Lynn and Justices Hantz-Marconi and Donovan stated:

By removing the words “for the indefinite future” from [RSA 21:6](#) and [:6-a](#), HB 1264 makes the definitions of “resident” and “residence” as used in those statutes

¹⁹ Several rules and canons of New Hampshire statutory interpretation, such as the rule against surplusage, or the presumption against implied repeals, see [Winnacunnet Co-op. School Dist. v. Town of Seabrook](#), 148 N.H. 519, 525-26 (2002); [Bd. of Selectmen v. Planning Bd.](#), 118 N.H. 150, 152-153 (1978), could impact the Court’s consideration of these questions, especially since the Court is being asked to apply the constitutional avoidance canon. See *supra* Part II.

effectively the same as the definition of “domicile” as used in [RSA 654:1, I](#), notwithstanding that the text of the amended version of [RSA 21:6](#) and [:6-a](#), on the one hand, and [RSA 654:1, I](#), on the other, is not identical.

[Id.](#) at 139-40; see [id.](#) at 145 (describing HB 1264 as “equalizing the legal standard for domicile for voting purposes with the legal standard for residence for other purposes”). These Justices also noted that “[n]one of the parties who have submitted memoranda in support of or in opposition to HB 1264 disputes that the bill makes the definitions of ‘resident’ and ‘residence’ in [RSA 21:6](#) and [:6-a](#) equivalent to the definition of ‘domicile’ in [RSA 654:1, I](#).” [Id.](#) at 140 n.4 (emphasis added). The separate opinion of Justices Hicks and Bassett similarly explained:

Both the proponents and opponents of HB 1264 posit that the proposed amendments will render the statutory definitions of “resident” and “residence” equivalent to the statutory definition of “domicile.” See [RSA 654:1, I \(2016\)](#). Assuming this to be the case for purposes of this advisory opinion, HB 1264, if it were to become law, would subject those who are “domiciled” in New Hampshire for voting purposes to the same legal requirements as those who are “residents” of the State—e.g., HB 1264 would require them to register their vehicles here, see [RSA 261:45](#) (Supp. 2017), and to obtain a New Hampshire driver's license, see [RSA 263:35 \(2014\)](#).

[Id.](#) at 149-50 (emphasis added).

Although, as an advisory opinion, [Opinion of the Justices](#) is not binding law, there is indirect support for the parties’ assumption in binding New Hampshire law:

The basic difference between a “resident” and a person who merely has a New Hampshire “domicile,” is that a “resident” has manifested an intent to remain in New Hampshire for the indefinite future, while a person who merely has a New Hampshire “domicile” has not manifested that same intent.

[Guare v. State](#), 167 N.H. 658, 662 (2015). As HB 1264 removed this “basic difference,” it arguably rendered those who have a New Hampshire domicile “residents.”

But confirming this supposed equivalence is crucial to resolving the plaintiffs’ claims. If registering to vote does not in effect claim or admit New Hampshire residency, the potential

harms alleged by the plaintiffs would not come to pass and any voter confusion could be easily alleviated.

A further issue arises because the individual plaintiffs in this case are college students. [RSA § 654:1-a](#) specifically addresses college students. If this student-specific domicile provision alters the assumed relationship between “domicile” and “residence,” it may resolve the individual plaintiffs’ claims. If a student who claims domicile only via [RSA § 654:1-a](#) does not in effect claim or admit New Hampshire residency, the alleged burdens on the right to vote do not result.

Claiming residence in another state. Another question arises from [RSA § 259:88](#), which defines “resident” for the purposes of the Motor Vehicle Code: “‘Resident’ shall mean a resident of the state as defined in [RSA 21:6](#), except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.” [N.H. Rev. Stat. Ann. § 259:88](#) (emphasis added). In their amended complaints, the plaintiffs argue that this exception includes those who possess out-of-state driver’s licenses or have cars registered out of state. The plaintiffs have identified one New Hampshire case briefly citing this provision. [State v. Colley](#), Case No. 462-2014-CR-00855 (5th Circuit—District Division—Newport April 16, 2015) (dismissing charge of failing to obtain a New Hampshire license against defendant with Florida license who was also registered to vote in Florida). This court has found no other New Hampshire authority interpreting this language, or similar language elsewhere in the New Hampshire Code. See [N.H. Rev. Stat. Ann. §§ 207:1, 215-A:1; 215-C:1](#).

If a registered voter can both claim a New Hampshire domicile and claim residence for motor vehicle purposes in another state, the plaintiffs would not face the harms they fear. The application might also depend on the student-specific domicile provision. If a college student

with an out-of-state license can “claim domicile for voting purposes” in New Hampshire pursuant to [RSA § 654:1, I-a](#), but is excluded from the definition of resident in [RSA § 259:88](#) because he or she claims residence for motor vehicle purposes in another state, the individual plaintiffs would not incur the licensing and registration obligations at issue here.

Bona fide residency. The language of [RSA §§ 261:45](#) and [263:35](#) raises a further, similar question. These statutes require a nonresident who establishes “a bona fide residency” in New Hampshire to obtain a New Hampshire driver’s license if he or she drives and registers any vehicles in New Hampshire. If a student “claim[s] domicile for voting purposes” under [RSA § 654:1, I-a](#), does he or she establish a “bona fide residency”? If not, the individual plaintiffs’ right to vote is not burdened as alleged.

Non-resident motor vehicle requirements. The defendants’ opposition to the motions for preliminary injunctions raised an additional state law question.²⁰ The defendants cite [RSA § 259:67, I](#), which provides that:

[A] nonresident, having a regular abode or place of business within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode or place of business and the director for the purposes of registration shall determine what vehicles are so used.

The defendants argue that this statute means that the individual plaintiffs and most college students were required to obtain New Hampshire driver’s licenses and register any vehicles they kept in New Hampshire before HB 1264 and independent of their voter registration. If plaintiffs

²⁰ The plaintiffs’ motions for preliminary injunctions made certain arguments under the New Hampshire Constitution. Casey Mem. in Supp. of Mot. for Prelim. Inj. (doc. no. [72-15](#)) at 32, 33 n. 16 (arguing that Part I, Art. 11 guarantees the right to vote to all domiciliaries and bars any additional restrictions on the right to vote). The New Hampshire Supreme Court considered the application of Part I, Article 11 in its advisory opinion. [Opinion of the Justices, 171 N.H. 128, 131–32, 141, 151, 155-56 \(2018\)](#). But the questions raised by the plaintiffs’ arguments are too indefinite and tangential to warrant certification at this time.

are correct, the individual plaintiffs' alleged harms would not flow from HB 1264, and all of the alleged burdens alleged by the plaintiffs might be significantly reduced in scope.

III. Certified Questions

For the reasons set forth in this order, the court certifies the following questions to the New Hampshire Supreme Court:

- Are the definitions of “resident” and “residence” in [RSA § 21:6](#) and [:6-a](#), as recently amended, effectively the same as the definition of “domicile” as used in [RSA § 654:1](#), such that one with a New Hampshire “domicile” is necessarily a New Hampshire “resident”?
- Is a student who claims a New Hampshire “domicile” pursuant to [RSA § 654:1-a](#) necessarily a New Hampshire resident under [RSA § 21:6](#), as recently amended?
- Can an individual with a New Hampshire “domicile” pursuant to [RSA § 654:1](#) ever be an individual “who claims residence in any other state for any purpose” and thus is not a “resident” for the purposes of [RSA § 259:88](#)?
- Relatedly, does an individual who claims a New Hampshire “domicile” pursuant to [RSA § 654:1, I](#) or [I-a](#) necessarily establish “a bona fide residency” for the purposes of [RSA §§ 261:45](#) and [263:35](#)?
- Given the definition of non-resident in [RSA § 259:67, I](#) for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers' licenses by [RSA § 263:1](#) if they wish to drive in the state and required by [RSA § 261:40](#) to register in New Hampshire any vehicles they keep in the state?

SO ORDERED.


Joseph N. Laplante
United States District Judge

Dated: November 27, 2019

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