

**UNITED STATES DISTRICT COURT
for the
DISTRICT OF NEW HAMPSHIRE**

**CAROLINE CASEY and MAGGIE
FLAHERTY**

Plaintiffs,

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**

Defendants.

**NEW HAMPSHIRE DEMOCRATIC
PARTY, By Raymond Buckley, Chair**

Plaintiff,

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**

Defendants.

Consolidated Case No.: 1:19-cv-00149-JL

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Caroline Casey and Maggie Flaherty (“the Individual Plaintiffs”) submit this memorandum of law in support of their motion for a preliminary injunction.

INTRODUCTION AND BACKGROUND

The Individual Plaintiffs seek narrow relief, limited to that which is necessary to mitigate burdens on the Individual Plaintiffs and the voting public of the confusion caused by HB 1264 and the Defendants’ implementation of that law. This Court currently is considering certifying questions of state law to the New Hampshire Supreme Court for resolution, which would put the January 6, 2020 trial date in serious jeopardy. If this Court does certify state law questions to the New Hampshire Supreme Court, the Individual Plaintiffs seek an order (1) prohibiting New Hampshire from using voter registration or voting history as evidence in any enforcement action under RSA 261:54 and RSA 263:35 and (2) requiring the State to inform election officials and the public of this order, which both constitute relief that is injunctive in nature and prospective in effect. To prevent the risk of conflicting orders in advance of the upcoming election which could itself contribute to voter confusion, *see Purcell v. Gonzalez*, 549 U.S. 1 (2006), this order should run at least through the Presidential Primary Election, expected to be scheduled for February 11, 2020.

While the Amended Complaint (DN 68) contains multiple theories of why HB 1264 is unconstitutional, this motion is limited to Count I: the inherently confusing nature of HB 1264, including its relationship to the existing statutory scheme, and the state agencies’ implementation of the law create an unconstitutional burden on the right to vote not adequately supported by a state interest under the *Anderson-Burdick* framework.

HB 1264 removed the phrase “for the indefinite future” from the definitions of “resident” and “residence” in RSA 21:6 and 21:6-a. This amendment was intended to remove a “basic

difference” between “residents” and those who only have a New Hampshire “domicile” under New Hampshire law. *See Guare v. State*, 167 N.H. 658, 662 (2015). The intent of the proponents of this law—including Defendant Gardner—was to impose fees on students and other voters, by making it so that any individual who registers to vote as a domiciliary of New Hampshire would now also be deemed a “resident” of the state, and, as such, would be required to domesticate their driver’s licenses and vehicle registrations (if any), both at considerable cost. Deputy Secretary of State David Scanlan, for instance, testified in support of HB 1264 before the House Election Law Committee, saying, “You should be a resident to have your domicile in the locality where you are going to vote A student would have to decide whether they want to claim if they’re a resident of the state of New Hampshire . . . and if they do, they’re subject to whatever else would be required of any other resident of the State of New Hampshire.”¹ Indeed, the Secretary of State recently acknowledged to the *Union Leader* HB 1264’s relationship to voting and its view that HB 1264 does impose “taxes” on certain voters.²

But HB 1264 did not amend RSA 259:88, which defines “resident” for motor vehicle purposes as a resident under RSA 21:6, “except that no person shall be deemed to be a resident who claims residence in any other state for any other purpose.” After HB 1264, RSA 259:88 presents a question: can there be a domiciliary in New Hampshire who still claims residence in any other state for any other purpose? Put differently, is everyone who registers to vote a resident

¹ Casey McDermott, “N.H. Election Chief: Voters Should Have to Claim Residency to Participate,” *NHPR*, Jan. 26, 2008, <http://nhpr.org/post/nh-election-chief-voters-should-have-claim-residency-participate#stream/0>

² *See* Josie Albertson-Grove, “Voting law confusion may keep some out-of-state students from voting in NH,” *Union Leader*, Oct. 12, 2019 (“Reflecting on the new voting laws, Gardner believes they do change something important: that more voters will be subject to taxes, which he sees as a good thing. ‘Current law allows some people to obtain representation without taxes or fees, to which other similarly situated persons are subjected,’ he said, adding he thought the current system creates two different classes of voters: residents who pay state and local taxes and those who are only domiciled here, who do not. ‘If you truly believe in the equal right to vote, then everyone should be doing the same things in order to be a voter,’ he said.”), https://www.unionleader.com/news/politics/state/voting-law-confusion-may-keep-some-out-of-state-students/article_c91ac468-7965-5168-a2b0-5839e6a19fbb.html.

under RSA 259:88, and thus required to comply with motor vehicle obligations? The Defendants have told this Court that the answer to this second question is yes, *see generally* Defs.’ Mem. Opp. Certification (DN 61), but the answer is more likely no. To construe RSA 259:88 otherwise would render the “except” clause surplusage, which is contrary to New Hampshire canons of statutory construction. *See Town of Amherst v. Gilroy*, 157 N.H. 275, 279 (2008) (“The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.”). Moreover, the legislative history makes clear that the except clause was put in at the request of the DMV because of “[r]ecent problems with the registration of vehicles by persons claiming residence in more than one state.” *See* Legis. History at PL3771 (DN 66-2). At least one New Hampshire court has interpreted RSA 259:88 to restrict the set of people required to get a New Hampshire driver’s license to those who do not claim residency in any other state. *See State v. Colley*, Case No. 462-2014-CR-00855 (5th Circuit—District Division—Newport April 16, 2015) (acquitting defendant who claimed residency in Florida from charge he did not update his license), attached as Exhibit M. This question is sufficiently open that this Court is considering certifying the question to the New Hampshire Supreme Court.

On their own, HB 1264, its relationship to the rest of the statutory scheme, and its effects are confusing. That confusion has been amplified and expanded by state agencies’ muddled messaging and refusal to directly answer the public’s legitimate questions about New Hampshire law. For example, Deputy Secretary of State David Scanlan told *NHPR* that “HB 1264 does not change any election laws.”³ While telling the *Union Leader* that HB 1264 taxes some voters, *see supra* note 2, Defendant Gardner has also said in contradictory fashion, “It doesn’t change any of

³ *See* Casey McDermott, “What Does N.H.’s New Voter Residency Law Actually Change? For Now State Officials Aren’t Saying,” *NHPR*, Sept. 20, 2019 <https://www.nhpr.org/post/what-does-nhs-new-voter-residency-law-actually-change-now-stateofficials-arent-saying#stream/0>.

the process. This did not affect anything on the election law.”⁴ At the same time, however, the Governor has repeatedly contradicted this narrative by telling the public that HB 1264 is an “election integrity” law that “restores equality and fairness to our elections.”⁵ With these mixed messages, the Department of Safety (DMV’s parent agency) has troublingly remained silent on the law’s impact,⁶ while internally acknowledging as part of its 2018 Online Training Program that HB 1264 is “intended to apply to voting,” but that “this change also has implications for driver licensing and motor vehicle and boat registration requirements as they apply to persons claiming or disclaiming residency here.” *See* Excerpt of Slides from Department of Safety, attached as Exhibit A. Even the Secretary of State’s current website contains information noting that “residency” and “domicile” are different through the link “Voting as a College Student.”⁷

Despite these muddled and mixed messages, the Defendants have taken the stunning position that they have no obligation to educate voters about the motor vehicle obligations imposed on new domiciliaries under HB 1264, while simultaneously and emphatically arguing in this case, that the law does advance interests related to voting and does impose residency obligations—like motor vehicle fees—on domiciliaries.⁸ The Defendants say that “[p]eople are required to know the

⁴ *See* Aidan Ryan, “Ahead of N.H. primary, new voter residence requirements leads to confusion on campus,” *Boston Globe*, Oct. 6 2019.

⁵ *See* John DiStaso, “Sununu Vetoes Democratic-passed Voting Bills, Says Election ‘Integrity’ to Remain in Place,” *WMUR*, July 29, 2019, <https://www.wmur.com/article/sununu-vetoes-democratic-passed-voting-bills-says-election-integrity-to-remain-in-place/28543142>.

⁶ *See* McDermott, *supra* note 3 (“The New Hampshire Division of Motor Vehicles, meanwhile, has not provided any answers to NHPR’s repeated questions seeking more information on how it plans to enforce the law, and whether voting in New Hampshire will now affect whether someone is considered a resident for motor vehicle purposes.”).

⁷ As of today’s date, the Secretary of State’s webpage entitled “Voting as a College Student” contains a document entitled “Registering to Vote in New Hampshire” that is dated November 7, 2018. This document has not been updated to reflect HB 1264, does not even discuss RSA 259:88, and, contrary to the position taken in this litigation, states that “under current New Hampshire law ‘domicile’ and ‘resident’ have different meanings.” *See* Exhibit B.

⁸ The Department of Justice in this case has justified HB 1264 to this Court by arguing that the law is connected to voting insofar as the law, in its view, fosters a governmental interest “in ensuring a community of interest *among its electorate* and ensuring that those members of the community are all appropriately regulated in the same manner if they own and drive a motor vehicle on the roadways of this State.” *See* Defs.’ Mot. to Dismiss at 25 (DN 20-1) (emphasis added).

law” and “[i]t is not incumbent upon the Attorney General’s Office or the Secretary of State’s Office to tell them of every collateral consequence” of becoming a resident or declaring domicile. *See* Oct. 30, 2019 Tr. 16:7–21, 20:14–22. Defendants could easily and clearly inform the public of how HB 1264 impacts voters who have out-of-state drivers’ licenses and vehicle registration—which would mitigate some of this “on the ground” confusion—but simply refuses to do so.⁹

The sworn testimonies of individuals Mary Catherine Suskie, Benjamin Kremer, William Hardesty-Dyck, Katherine Morse-Gagne, Olivia Joan Hancock, and Mary Dineen, State Director for N.H. for Warren, Elizabeth Wester, Town Clerk of Hanover Elizabeth McClain, and Chair of the Supervisors of the Checklist in Durham, Ann Shump, make clear that people are confused. Approximately two dozen people have come into the Hanover Town Clerk’s office asking whether, as a consequence of registering to vote, they will have to get New Hampshire driver’s licenses and vehicle registrations. Clerk McClain asked the Secretary of State’s Office how to answer that question. The Secretary of State’s Office would not provide this local election official with guidance, instead directing local election officials to refer people asking those questions to the DMV, even though members of town clerks’ offices are DMV agents in charge of registering vehicles. The DMV itself has given misleading or incomplete answers as well. Clerk McClain believes that, in her professional experience, the confusion will cause otherwise qualified people not to vote.

Moreover, HB 1264’s burdens of confusion do not fall evenly across New Hampshire’s population and are discriminatory against students and young voters. Dr. Michael Herron is the

⁹ This silence is also concerning where the Secretary of State’s Office already, 90 days after each election, writes letters to voters who “execut[ed] sworn statements on the voter registration form ... starting 30 days before an election and on election day” informing them “of a driver’s obligation to obtain a New Hampshire driver’s license within 60 days of becoming a New Hampshire resident.” *See* RSA 654:12, V(d); 2011 SB318 (requiring such letters to be sent, effective August 26, 2012). If the State can educate voters after an election as to what their obligations are, then surely the State can do so before an election so voters can make informed decisions.

William Clinton Story Remsen 1943 Professor of Government and Chair of the Program in Quantitative Social Science at Dartmouth College. He has conducted an analysis of HB 1264, and concludes that the law will specifically burden young voters and college student voters, as well as voters affiliated with the Democratic Party. During the 2016 General Election, 8,149 voters used out-of-state identification at some point during the voting process, a disproportionate number of whom were likely students. His analysis is described in greater detail below and shows that the law and its burdens are discriminatory.

In short, HB 1264's burdens of confusion are a severe infringement on the fundamental right to vote—or, at the very least, unreasonable and discriminatory. Because the law is not tailored to advance a compelling interest and does not even serve a legitimate state interest, it cannot survive either strict or intermediate scrutiny, as is required by *Anderson-Burdick*.

As set out below, the Individual Plaintiffs meet the elements for a preliminary injunction, and this Court should issue one to protect the rights of voters to be free from unconstitutional burdens.

STATEMENT OF FACTS

HB 1264 and the way it interacts with the rest of the statutory scheme—both in the statutory text and because of Defendants' and other state agencies' refusal to give voters a clear answer about the operation of the law—has created significant confusion among the public, political campaigns, and election officials.

Mary Catherine Suskie, a first-year law student at the University of New Hampshire Franklin Pierce School of Law submitted testimony. *See* Suskie Aff. ¶¶ 1–2, attached to N.H. Democratic Party's Mot. for Prelim. Inj. as Exhibit A. Suskie testifies that she registered to vote during the week of October 21, 2019, in Concord, New Hampshire where she is domiciled. *Id.* ¶

8. She decided to vote in New Hampshire because it is where she is domiciled, she is connected to political life here, and it is much more convenient to vote in New Hampshire than Arkansas where she is a resident for motor vehicle and insurance purposes. *Id.* ¶¶ 4, 10, 14. She does not know if she will stay in New Hampshire after graduation or move somewhere else, but she does not plan on moving back to Arkansas. *Id.* ¶ 3. She is on her parent's health insurance plan, which is important because it allows her to see her oncologist in Arkansas, and she is unaware if she can stay on that plan if she is not a resident of Arkansas. *Id.* ¶¶ 6–7. When she registered to vote she was unaware of HB 1264, but has subsequently learned that because of HB 1264, if she does not get a New Hampshire driver's license or register her car in New Hampshire, she could “get in some kind of trouble.” *Id.* ¶¶ 12–13. She does not know if she needs to get a New Hampshire driver's license or register her parent's car that she drives in New Hampshire because she does not understand if motor vehicle law applies to her because she maintains her residence in Arkansas for motor vehicle and insurance purposes. *Id.* ¶ 14. She is confused and concerned because if she has to get a New Hampshire driver's license, she is not sure if she would lose her health insurance which could implicate her ability to see her oncologist in Arkansas. *Id.* ¶ 15. She believes that if she has to get a New Hampshire driver's license, it would require her to choose between maintaining her health insurance and being able to vote. *Id.* ¶ 16. Suskie testified that in addition to putting her health insurance at risk, spending \$100 or more on a vehicle registration, spending \$50 on a driver's license, and taking time from her studies to go to the DMV would be a significant burden. *Id.* ¶¶ 21, 22.

Benjamin Kremer submitted testimony. *See* Kremer Aff., attached to N.H. Democratic Party's Mot. for Prelim. Inj. as Exhibit B. Kremer testified that he was confused about what effect, if any, HB 1264 would have on him as an out-of-state license holder who is registered to vote in

New Hampshire. *Id.* ¶ 2. He called the Secretary of State’s Office on October 8, 2019 to ask a series of questions about voting and how HB 1264 has changed the process. *Id.* He was transferred to two different people before being connected with Deputy Secretary of State David Scanlan. *Id.* ¶ 4. Kremer grew up in Connecticut before moving to New Hampshire to attend college, has a Connecticut issued driver’s license, and has lived in Newmarket, New Hampshire for almost 2 years. *Id.* ¶ 6. He asked Deputy Scanlan the following questions: how does HB 1264 affect voting for people like him that came to New Hampshire for college, how can he establish residency in New Hampshire, how does HB 1264 affect him as an out-of-state driver, and how is the law enforced? *Id.* ¶ 7. Deputy Scanlan told him that after HB 1264, a person has to be a resident of New Hampshire to vote in New Hampshire. *Id.* ¶ 8. Deputy Scanlan told him that “residency is the one place where you spend most of your time, where you file income tax returns and the like.” *Id.* ¶ 9. Deputy Scanlan told him that if he drives and is a New Hampshire resident, he has to register your car in New Hampshire within an unspecified “period of time.” *Id.* ¶ 10. Deputy Scanlan told him the law might be enforced if he gets stopped in a car and the police officer sees that he is a New Hampshire resident, and that nothing “on the election side” would trigger the DMV to issue something. *Id.* ¶ 11. Kremer testified that he would not have known any of this if he had not called the Secretary of State’s Office because no clear information on the impact of HB 1264 on voters with out-of-state licenses and registrations has been publically disseminated. *Id.* ¶ 12.

Katherine Morse-Gagne submitted testimony. *See* Morse-Gagne Aff., attached to N.H. Democratic Party’s Mot. for Prelim. Inj. as Exhibit C. Morse-Gagne testified that she was confused about what effect, if any, HB 1264 would have on out-of-state license holders and people who have out-of-state vehicle registrations who are registered to vote in New Hampshire. *Id.* ¶ 2. On October 8, 2019, she contacted the DMV in Concord. *Id.* She told the DMV she had questions

about how HB 1264 might affect her. *Id.* ¶ 3. The DMV told her they did not have any answers to any voting-related questions and directed her to speak to her town. *Id.* ¶ 4. She repeated that she specifically had a couple of questions about implications for her license and registration, and said she thought they might have part of the information she was looking for. *Id.* ¶ 5. The DMV repeated that they did not have that information and she should talk to her town. *Id.* She subsequently called the Manchester City Clerk's office. *Id.* ¶ 6. The first person she spoke with was not helpful. *Id.* ¶ 8. The second person at the clerk's office told her that as long as one claims domicile in New Hampshire, one is eligible to vote, even if one lives here short-term or as a student. *Id.* ¶ 9. She asked if there were any differences for people with out-of-state driver's licenses, and the clerk's office said it did not have information about those laws and referred her back to the DMV. *Id.* ¶ 10. Morse-Gagne asked if she or a college student from out of state would need to do anything differently from someone living in New Hampshire more permanently in order to vote, and the person at the clerk's office said something like "no, we treat everyone equally." *Id.* ¶ 14. Morse-Gagne testified that she would not have known any of this had she not taken time out of her day to call because no clear information on the impact of HB 1264 on voters with out-of-state licenses and registrations has been publically disseminated. *Id.* ¶ 15.

William Hardesty-Dyck submitted testimony. *See* Hardesty-Dyck Aff., attached to N.H. Democratic Party's Mot. for Prelim. Inj. as Exhibit D. Hardesty-Dyck testified that he was confused about what effect, if any, HB 1264 would have on him as an out-of-state license holder who is registered to vote in New Hampshire. *Id.* ¶ 2. He called the Secretary of State's Office and was connected with Deputy Scanlan. *Id.* ¶¶ 2-3. He asked Deputy Scanlan what, specifically, the legislation changed and was informed that it aligns domicile and residency for the purposes of voter registration. *Id.* ¶ 3. Deputy Scanlan added that it does not make any changes to residency

requirements, and that it is up to students to choose whether to keep their out-of-state residency or establish New Hampshire residency. *Id.* ¶ 4. Deputy Scanlan informed him that, under the new rules, he could still register and vote with his out of state credentials, if within 60 days he then obtained a New Hampshire driver's license and changed his vehicle registration. *Id.* ¶ 6. Hardesty-Dyck asked how the law might be enforced. *Id.* ¶ 8. Deputy Scanlan explained that there is no proactive sharing of information, but that in the case of something like a traffic citation, the records of the individual may be cross-referenced and, at that point, a determination could be made that the individual was in violation of the residency requirements. *Id.* Hardesty-Dyck testified that he would not have known any of this had he not taken time out of his day to call the Secretary of State's Office because no clear information on the impact of HB 1264 on voters with out-of-state licenses and registrations has been publically disseminated. *Id.* ¶ 9.

Olivia Joan Hancock submitted testimony. *See* Hancock Aff., attached to N.H. Democratic Party's Mot. for Prelim. Inj. as Exhibit E. Hancock is a Regional Organizer for NextGen New Hampshire. *Id.* ¶ 2. She is originally from Maryland, and has a Maryland driver's license. *Id.* ¶ 3. She moved to Dover, New Hampshire for her job in August 2019, but does not know if she will remain in New Hampshire after her contract ends in November 2020. *Id.* She registered to vote in New Hampshire on October 2, 2019 because she is domiciled in New Hampshire. *Id.* ¶ 4. While she was generally aware when she registered that HB 1264 was in effect, she was confused about whether and how it affected her as a new voter in New Hampshire with an out-of-state driver's license. *Id.* ¶ 5. Her job entails educating student voters and answering their questions about voter registration, voting, and how laws affect New Hampshire voters. *Id.* ¶ 6. On October 11, 2019, she called the DMV in Concord, New Hampshire to ask about HB 1264 and how it would affect students. *Id.* ¶ 8. The representative she spoke with, Lorrie, said Hancock was the third person

Lorrie had spoken to that day about HB 1264. *Id.* ¶¶ 9–10. Lorrie was unfamiliar with HB 1264 and said that because it is not a safety law, she did not believe it would be enforced by the DMV. *Id.* ¶ 12. Lorrie told Hancock that in order to register a car in New Hampshire, one needs to have a permanent residence like a lease, and that a dorm is not a permanent residence so one cannot register a car to a dorm address. *Id.* ¶¶ 15–16. Lorrie told Hancock that HB 1264 “had not been filtered down to the DMV yet” and, to her knowledge, the law is not being enforced. *Id.* ¶ 17. Hancock testified that she would not have known any of this had she not taken time out of her day to call the DMV because no clear information on the impact of HB 1264 on voters with out-of-state licenses and registrations has been publically disseminated. *Id.* ¶ 20.

Mary K. Dineen, a first year law student at the University of New Hampshire Franklin Pierce School of Law submitted testimony. *See* Dineen Aff., attached to N.H. Democratic Party’s Mot. for Prelim. Inj. as Exhibit F. Dineen is domiciled in Concord, New Hampshire where UNH law school is located. *Id.* ¶ 2. She is from North Carolina, where her mother still lives, and where she is a resident for motor vehicle and insurance purposes. *Id.* ¶¶ 4, 16. She has a North Carolina driver’s license. *Id.* She registered to vote in Concord during the week of October 21, 2019. *Id.* ¶ 6. She chose to register to vote in New Hampshire because she is a domiciliary of New Hampshire, and because she is concerned about voting absentee in North Carolina. *Id.* ¶¶ 6-9. For one thing, in the November 2018 election, a significant number of absentee ballots—most cast by Democrats, like her—were lost and not counted in North Carolina. *Id.* ¶ 10. She did not know about HB 1264 when she registered to vote, but she has since become confused and concerned about what the law means for her ability to vote. *Id.* ¶¶ 14, 17. She does not know if she will need to get a New Hampshire driver’s license or register her car in New Hampshire because she does not understand the requirements of HB 1264 or how the law applies to her because she maintains her residence in

North Carolina for motor vehicle and insurance purposes. *Id.* ¶ 16. Spending money to register a car in New Hampshire or to get a New Hampshire driver's license would be difficult to her, as would having to take the time away from her studies to go to the DMV. *Id.* ¶¶ 18–19.

The Individual Plaintiffs have also sworn to their confusion as to what residency means in relation to this statutory scheme. *See* Exhibit C, Excerpt of Casey Answers and Objs. to Defs.' First Set of Interrogs., No. 8 (“I am unsure of how the term ‘residency’ is legally defined”); Exhibit D, Excerpt of Flaherty Answers and Objs. to Defs.' First Set of Interrogs., No. 8 (“I don't know what the term ‘residency’ legally means exactly.”).

Elizabeth Wester, the State Director for N.H. for Warren, has also testified how confusion is affecting her work. *See* Wester Aff. (DN 60-2). Elizabeth Warren is the senior United States Senator from Massachusetts and is currently seeking the Democratic Party's nomination for President of the United States. Earlier this year, her campaign “prepared educational materials concerning the process of registering to vote in New Hampshire. These materials were based in large part upon statements made during the legislative hearings on HB 1264 by state officials, including representatives of the office of the Secretary of State and the legislative sponsors.” *Id.* at 1. Wester continues: “After preparing these materials we were advised not to use them with voters until the issue of the application of the exceptions contained in the definition of residency in the motor vehicle code were addressed and clarified. To date we have been unable to find any clarification from any state officials and are thus unable to adequately advise students on the ramifications of a decision to register to vote in NH.” *Id.* Wester notes that the “lack of clarity from the Secretary of State's office has left a lot of confusion in college campuses across the state ... Now it is extremely unclear what happens after [students] vote if they do not have an NH license and drive a car in anyway in New Hampshire.” *Id.* “Without guidance from the state, we

are left in the position of being unable to answer voters['], especially students['], questions. We have chosen to provide less information instead of making assumptions of what the proper interpretation could be under HB1264.” *Id.*

Elizabeth McClain, the Town Clerk of Hanover, New Hampshire, has similarly explained the confusion on potential voters her office has encountered. *See* McClain Decl. (DN 59-1). She testified that the vast majority of people who register to vote other than on Election Day do so at the town clerk’s office. *Id.* ¶ 4. She has personally assisted hundreds of people registering to vote. *Id.* She testified that “HB 1264 was a significant change. It used to be very that clear college students, transient workers, and others could select New Hampshire to be their voting domicile... Now, approximately two dozen people have come in to our office when registering to vote who have asked us if they will, as a consequence, be required to get a New Hampshire driver's license.” *Id.* ¶ 6.

In response to these questions, on July 19, 2019, she emailed the Secretary of State’s Office for guidance on how to answer the question: If I register to vote, do I need to get a New Hampshire driver’s license? *Id.* In response, rather than answering the question, the Secretary of State’s Office informed her: “HB 1264 does not change any election law. As election officials we do not offer advice on how residency laws apply to other areas of the law such as how motor vehicle, tax, fish and game, and labor laws, etc. apply to individual voters.” *Id.* ¶ 7. As a result, she began directing would-be voters to the closest DMV office which is 45 minutes away by car and not readily accessible by public transportation. *Id.* ¶ 8. She directs voters to the DMV even though her staff are municipal agents for the DMV, authorized to collect state fees for vehicle registrations, because none of her staff has received training in their capacity as municipal agents for the DMV on whether people who register to vote have to get a New Hampshire vehicle registration. *Id.* ¶ 9.

In sum, based upon her professional experience, she believes “HB 1264 is causing significant confusion that could ultimately cause qualified potential voters to elect not to vote. This confusion has been amplified by the lack of clarity from state agencies, including the Secretary of State’s Office.” *Id.* ¶ 10.

Ann Shump, the Chair of the Supervisors of the Checklist in Durham, New Hampshire, also submits written testimony. *See* Shump. Decl., attached as Exhibit E. The Supervisors of the Checklist maintain ultimate responsibility for the checklist of voters in Durham, and only they may add and remove names from the checklist. *Id.* ¶ 2. She notes that during a general election for President of the United States, 3,000 people may register on Election Day at the polls in Durham. *Id.* ¶ 5. She has personally registered thousands of people to vote, including college students. *Id.* She testifies that sometimes people ask questions about the law when registering to vote, and that she thinks it is important to be able to answer registrants’ questions. *Id.*

Ms. Shump expects “that many new voters may ask if they have to get a New Hampshire driver’s license and/or vehicle registration within 60 days after the election. As election officials, we have been given little if any guidance on this issue.” *Id.* ¶ 8. Because the registration form says, “If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns,” Ms. Shump feels that she should be prepared to answer. *Id.* ¶ 9. In addition, she and the other supervisors will need to train their many volunteers to answer that question. *Id.*

Based upon her significant experience registering voters, and the publicity around HB 1264, Ms. Shump expects “there to be many more questions about this issue.” *Id.* ¶ 10. In July 2019, she spoke with “Bud” Fitch of the Secretary of State’s Office about HB 1264, and asked him how it was going to affect voter registration. *Id.* ¶ 11. He told her in essence that HB 1264

should not affect voter registration because the change of a driver's license or car registration would happen after the election. *Id.* Ms. Shump does not believe this to be a satisfactory answer, because it does not help her prepare an answer if a registrant is asking her if they will need to get a New Hampshire driver's license or vehicle as a consequence of voting. *Id.* ¶ 12. Based upon her professional experience, Ms. Shump believes that the law will cause questions and confusion at the polls on Election Day and could cause qualified voters to refrain from voting in Durham. *Id.* ¶ 13. She also believes that these extra questions about motor vehicle requirements will cause delays at the registration tables and, in turn, longer registration lines. *Id.*

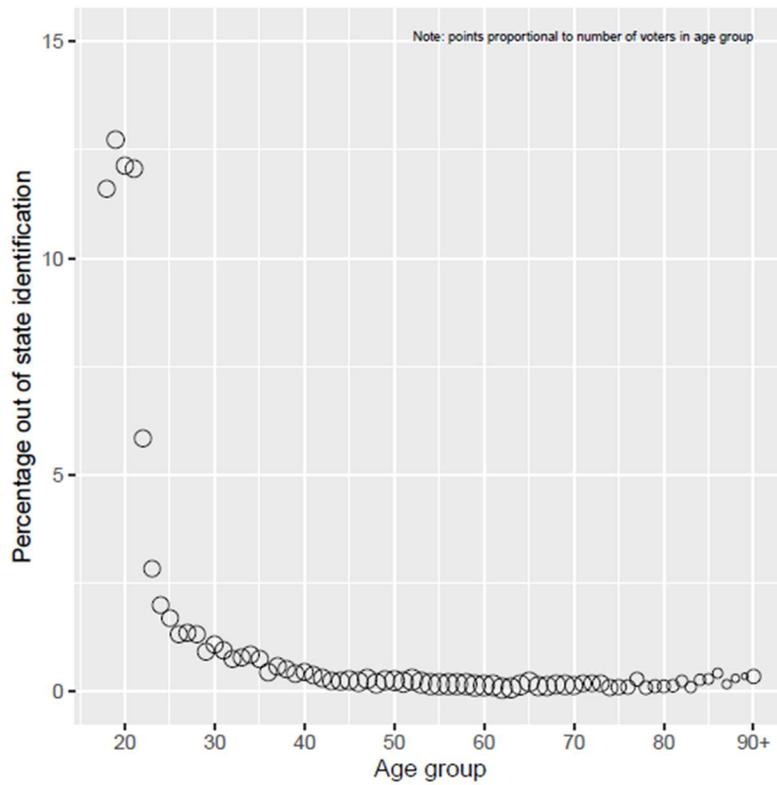
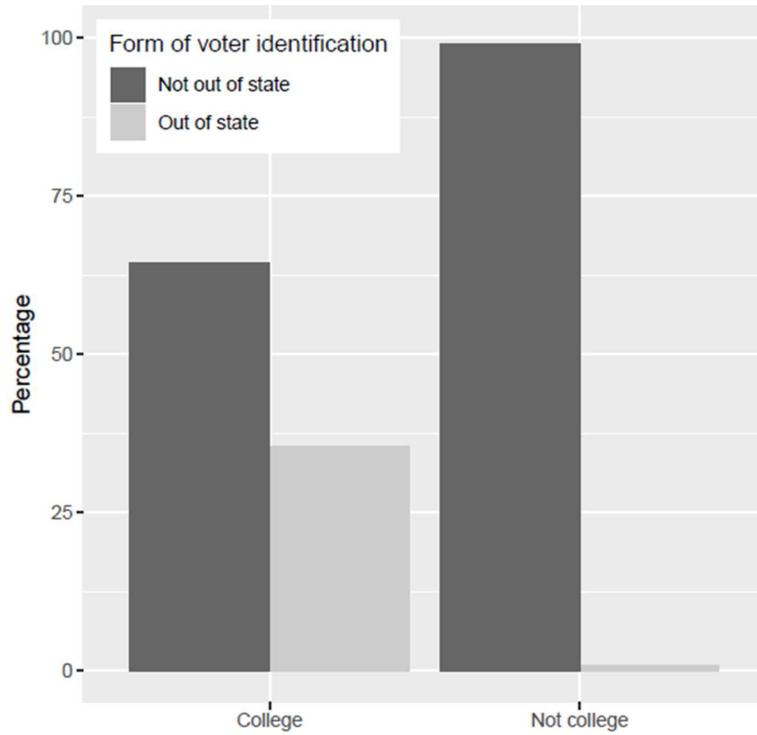
These burdens of confusion are not spread evenly and instead disproportionately affect college students, young people, and Democrats and Undeclared voters. Michael Herron, the William Clinton Story Remson 1943 Professor of Government and Chair of the Program in Quantitative Social Science at Dartmouth College in Hanover, New Hampshire, analyzed the burdens of HB 1264 on voter registrants and voters in New Hampshire. *See* Exhibit F, Herron Decl. ¶¶ 1–2. He analyzed three statewide elections in New Hampshire, the 2018 General Election, the 2018 Primary Election, and the 2016 General Election. *Id.* ¶ 6. Dr. Herron examined the extent to which, historically, New Hampshire voters have used out-of-state forms of identification in their voting processes (*i.e.* when voting or registering to vote). *Id.* ¶ 5. He calculated an approximate number of New Hampshire voters by examining domicile address; however, he explains that his algorithm almost certainly undercounts the number of college students voting, and thus conservatively characterizes the burdens. *Id.* ¶ 9.

Based upon the data, he concludes that college students are, and will be, disproportionately burdened by HB 1264. *Id.* ¶ 20. This is because college students are disproportionately heavy users of out-of-state forms of identification. *Id.* For example, during the 2018 general election, 990 of

6,582 total voters in the town of Durham, the location of the main campus of the University of New Hampshire, presented out-of-state identification. *Id.* ¶13. Durham's rate, 15 percent, of usage of out of state identification far exceeds the corresponding statewide rate of approximately 0.5 percent. *Id.*

He further concludes that, college student status notwithstanding, young registrants and voters in New Hampshire are, and will be, disproportionately burdened by HB 1264. *Id.* ¶ 21. This is because these individuals are disproportionately heavy users of out-of-state forms of identification. *Id.* For example, in the 2016 General Election in New Hampshire, the rate of usage of out-of-state identification was greater than ten percent among voters 21 years of age and younger. *Id.* ¶ 20. In addition, Dr. Herron's analysis found that users of out-of-state identification are less Republican and more Democrat or Undeclared than non-out-of-state users. *Id.* ¶ 22.

While the analysis of all the elections reflects that young voters and college students used out-of-state identification in their voting process at a significantly higher rate than the general public (and Dr. Herron's complete declaration is incorporated herein by reference), two charts analyzing data from the 2016 General Election are significant as they demonstrate usage patterns in a high-turnout election:



See id. ¶¶ 18–19 (Figures 5 and 6). These charts visually demonstrate that college student voters and young voters (including those younger than 20) use out of state identification at a significantly higher rate than the general population. This analysis is significant because, while many people may be confused about whether the act of voting triggers DMV obligations, those who already have New Hampshire driver’s licenses are less likely to be discouraged by that confusion than those without New Hampshire driver’s licenses.

While the burdens of confusion on the right to vote imposed by HB 1264 are apparent, the state’s justifications for the law are not. Defendants have twice refused to explain under oath what state interests HB 1264 advances or how it does so until the close of discovery on December 31, 2019. On August 6, 2019, the Individual Plaintiffs propounded Interrogatories on Defendants. *See* Excerpts of Plaintiffs’ First Set of Interrogs. to Defs. Gardner and MacDonald, attached as Exhibits G and H. Specifically, Interrogatory 8 to each Defendant stated “Please describe all state interests that you claim HB 1264 advances, including all factual bases that you contend support these articulated interests,” and Interrogatory 9 stated, “Please describe how HB 1264 advances each of the state interests asserted in response to Interrogatory No. 8, including all factual and legal bases for your position that HB 1264 is ‘narrowly drawn’ to advance the state interests described.” *Id.* In response, on October 7, 2019, Defendants objected and refused to answer, claiming to each “In a case with a standard schedule, a response to this contention interrogatory may have been appropriate at the conclusion of discovery. Given, however, the expedited schedule... the defendant objects to this contention interrogatory as unduly burdensome and disproportional to the needs of this case.”¹⁰ *See* Excerpts of Defs.’ Answers and Objs. to Interrogatories, attached as Exhibits K

¹⁰ On October 24, 2019, counsel for the Individual Plaintiffs sent a letter to Defendants’ counsel regarding these and other deficient interrogatory answers. In a good faith effort to narrow the dispute, the Individual Plaintiffs agreed to excise the phrase “and legal” from Interrogatory 9. On October 31, 2019, the Defendants agreed to answer the

and L. Defendants did not seek a protective order absolving them of an obligation to fully answer the Interrogatories. Because Defendants have refused to explain under oath what interests HB 1264 advances or how, they should be precluded from doing so in response to this motion.

ANALYSIS

Motions for preliminary injunctions are permitted by Federal Rule of Civil Procedure 65. “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits; that he is likely to suffer irreparable harm in the absence of preliminary relief; that the balance of equities tips in his favor; and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). “In this circuit, proving likelihood of success on the merits is the ‘sine qua non’ of a preliminary injunction.” *Arborject, Inc. v. Rainbow Treecare Sci. Advancements*, 794 F.3d 168, 173 (1st Cir. 2015) (citation and quotation omitted). In this case, the Court should issue the narrow temporary order the Individual Plaintiffs request because, as explained below, each element of the test has been met.

1. The Individual Plaintiffs are Likely to Succeed on the Merits.

A. The Relief Which Plaintiffs Seek is Not Barred by the Eleventh Amendment.

In a recasting of their standing arguments, the Defendants have repeatedly argued that the Court cannot enter relief against the Secretary of State because such relief would be barred by the Eleventh Amendment. Defendants’ contention is wrong because the relief the Individual Plaintiffs request in this case falls squarely within the “well recognized exception memorialized in *Ex parte Young*.” *Town of Barnstable v. O’Conner*, 786 F.3d 130, 138 (1st Cir. 2015) (citation and quotation marks omitted).

narrowed Interrogatory, but still refused to answer the interrogatories and disclose the state interests underlying HB 1264 until the close of discovery. *See* Exhibits I and J.

The Eleventh Amendment says that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. The principles of the “amendment (despite its literal text) also bar a citizen from bringing a federal court action against his or her own state.” *Maysonet-Robles v. Cabrero*, 323 F.3d 43, 48 (1st Cir. 2003). This prohibition, however, “is subject to a well recognized exception memorialized in *Ex parte Young*, which permits ‘federal courts, notwithstanding the absence of consent, waiver or evidence of congressional assertion of national hegemony, [to] enjoin state officials to conform future conduct to the requirements of federal law.’” *Barnstable*, 786 F.3d at 138 (quotation marks and citations omitted; alterations in original). To determine whether the *Ex parte Young* exception applies, “a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002) (citations and quotation marks omitted). “A pivotal question under *Ex parte Young* is whether the relief serves directly to bring an end to a present violation of federal law.” *Barnstable*, 786 F.3d at 138. In considering whether the Eleventh Amendment bars suit, the Court should *not* consider whether the challenged actions are in fact a violation of federal law and should instead look to whether they are alleged to be, as the “inquiry into whether suit lies under *Ex parte Young* does not include an analysis of the merits of the claim.” *Verizon*, 535 U.S. at 646.

The allegations of voter confusion are allegations of violations of federal law.¹¹ As explained above, HB 1264 and the Defendants’ refusal to make clear whether people registering

¹¹ It cannot be seriously contested that the relief the Individual Plaintiffs seek—blocking use of voter registration as evidence going forward, and an order requiring the Defendants to notify the public and election officials of that order—is prospective in nature. Moreover, the evidence presented demonstrates that there is a present violation of federal law

to vote must now pay motor vehicle fees have caused and will continue to cause confusion, which constitutes a substantial and unconstitutional burden on the right to vote under the *Anderson-Burdick* framework. The sworn testimony of Elizabeth McClain, Ann Shump, Mary Dineen, Mary Catherine Suskie, Benjamin Kremer, Katharine Morse-Gagne, William Hardesty-Dyck, Elizabeth Wester, and Dr. Michael Herron reveal that the burdens of confusion on the voters are severe or, at the very least, significant and discriminatory.

An order requiring the Secretary of State to notify election officials and the voting public that evidence of voter registration or voting history cannot be used in a proceeding for failure to update a driver's license or car registration would directly ameliorate this confusion, as the public would have a clear answer to guide their conduct while the case proceeds through the New Hampshire Supreme Court and this Court. Because such an order to the Secretary of State could only responsibly issue if the Court also enjoined the Attorney General from using evidence of voter registration or voting history in a proceeding for failure to update a driver's license or car registration, an order against the Attorney General also "serves directly to bring an end to a present violation of federal law" under the *Anderson-Burdick* framework. *Barnstable*, 786 F.3d at 138.

In any event, the Defendants concede, as they must, that the Court may issue relief against the Attorney General. The Defendants acknowledged in their Memorandum Opposing Certification at 14 (DN 61) that "this court could enjoin the Attorney General from advising agencies concerning HB 1264's provisions in the event it declares HB 1264 unconstitutional," while at the same time protesting that the Court cannot enter general relief that reaches "agencies that administer other laws." *Id.* Defendants err to the extent they suggest that relief against the

because voter confusion is present and ongoing.

Attorney General cannot reach all criminal prosecutions in the state because they understate the Attorney General's statutory and common law authority.

The Attorney General is the chief law enforcement officer in the state. "The powers of the Attorney General are broad and numerous. Some grow out of the common law, and many are specified by statute." *Bokowsky v. State*, 111 N.H. 57, 58 (1971). Specifically, and as is relevant to this case, the Attorney General "shall have and exercise general supervision of the criminal cases pending before the supreme and superior courts of the state, and with the aid of the county attorneys, the attorney general shall enforce the criminal laws of the state." RSA 7:6. Any person, "in the enforcement of such [criminal] law, shall be subject to the control of the attorney general whenever in the discretion of the latter he shall see fit to exercise the same." RSA 7:11. These laws "demonstrate a legislative purpose to place ultimate responsibility for criminal law enforcement in the Attorney General" who "is specifically charged with enforcement of the criminal laws of the state." *Wyman v. Danais*, 101 N.H. 487, 490 (1958) (internal quotation marks omitted). In addition to having direct supervisory control over public prosecutors and law enforcement, the Attorney General has the authority to enter *nolle prosequis* on private prosecutions in the State. *See State by Tucker v. Gratta*, 101 N.H. 87, 88 (1957). The Attorney General recently used this broad authority to assume responsibility of the Hillsborough County Attorney's Office.¹² Moreover, the District of New Hampshire has, in the past, issued broad relief as to the State of New Hampshire with respect to the enforceability of a statute with violation-level penalties. *See*

¹² *See* Sept. 6, 2019 Ltr. from G. MacDonald to Hillsborough Cty. Att'y Michael Conlon, <https://www.doj.nh.gov/news/2019/documents/20190906-hillsborough-county.pdf> (discussing the Department of Justice's "plenary authority... to enforce the criminal laws," and explaining that "the Attorney General has the authority to control, direct, and supervise the law enforcement functions" of the Hillsborough County Attorney's Office).

Rideout v. Gardner, 123 F. Supp. 3d 218 (D.N.H. 2015) (issuing declaratory judgment striking down “ballot selfie” law).

The Attorney General controls or can control every prosecution in the state. As a result, an order directing the Attorney General not to use evidence of voter registration or voting history in prosecutions under RSA 261:54 and RSA 263:35 would reach every prosecution under those statutes in the state. As such, an order is permissible under *Ex parte Young*, and the Eleventh Amendment does not prevent the Court from issuing the requested relief.

B. The Individual Plaintiffs Have Standing.

The Court has already ruled that the Individual Plaintiffs have standing, but Defendants may nonetheless urge this procedural argument upon the Court again. Such argument should, yet again, be rejected.

To establish standing, a plaintiff must “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The Court has already ruled that the Complaint sufficiently alleges an injury in fact because the Individual Plaintiffs have alleged that they are burdened by HB 1264 to the extent it requires them to domesticate their out-of-state driver’s licenses, subjecting them to the required fee and inconvenient trip to the DMV. *See* Memorandum Order at 12 (Aug. 29, 2019) (DN 47). And if HB 1264 *does not* require new voters to comply with these DMV obligations, then the Individual Plaintiffs are being subjected to unconstitutional confusion by the state agencies’ refusal to explain the law. The State has left the Individual Plaintiffs in the dark as to how it intends to apply HB 1264’s terms.

To the extent the Defendants challenge the Individual Plaintiffs' standing to seek relief against the Secretary of State,¹³ that argument has also already been rejected by the Court. In an argument closely intertwined with their Eleventh Amendment argument, the Defendants have suggested that the Individual Plaintiffs do not have standing to bring claims against the Secretary of State because he cannot provide the Individual Plaintiffs relief.

The Court has correctly rejected this argument as “highly formalistic” and “too limited and compartmentalized.” *See id.* at 15. As the Court has noted, the Secretary of State’s distribution of information about the interplay between residence and domicile, “even if scrupulously accurate, would constitute participation in, and contribute to, the enforcement of HB 1264 to plaintiffs’ alleged detriment by informing potential voters that registering to vote may amount to a declaration of residency which in turn creates motor vehicle licensing and registration obligations.” *See id.* at 16. And, as discussed above, the Secretary of State can provide relief to the Individual Plaintiffs and the voting public from the unconstitutional burden of confusion—the burden which is the subject of this motion—by telling local election officials and the public what, in Defendants’ view, HB 1264 does and whether people will have to purchase New Hampshire driver’s licenses and vehicle registrations as a consequence of registering to vote.

C. Defendants’ Argument that Plaintiffs Cannot Bring a Facial Challenge is Without Merit and Has Previously Been Rejected by the Court.

Defendants are expected to argue, as they have previously, that the Individual Plaintiffs cannot bring a facial challenge to HB 1264 because HB 1264 alters laws beyond motor vehicle requirements. This argument is without merit. A plaintiff may bring a facial challenge to a statute

¹³ The briefing schedule agreed to by the parties and ordered by the Court does not provide for the filing of replies or surreplies, so the Individual Plaintiffs raise the issues addressed in Sections 1.A-C preemptively.

if it “lacks any ‘plainly legitimate sweep.’” *Saucedo v. Gardner*, 335 F. Supp. 3d. 202, 213 (D.N.H. 2018) (quoting *Hightower v. City of Boston*, 693 F.3d 61, 77 (1st Cir. 2012)). As the Court has recognized, “the standards for facial challenges ‘may obscure the relevant inquiry.’” Memorandum Order at 18 (DN 47) (quoting *Saucedo*, 335 F. Supp. 3d at 213). Indeed, “in practice, a facial challenge is best understood as a challenge to the terms of the statute, not hypothetical applications, and is resolved simply by applying the relevant constitutional test to the challenged statute.” *Saucedo*, 335 F. Supp. 3d. at 213–14 (internal citation, quotation marks, brackets omitted). Here, the standard for a facial challenge is met because the Individual Plaintiffs have alleged, among other things, that HB 1264 has caused substantial voter confusion and serves no legitimate purpose, amounting to an undue burden on the right to vote under the *Anderson-Burdick* framework. Accordingly, there are “no set of circumstances” under which HB 1264 is constitutional. *See Daskalea v. Wash. Humane Soc’y*, 480 F. Supp. 2d. 16, 36 n.22 (D.D.C. 2007) (noting that “[a] statute that does not satisfy the requirements of the Fourteenth Amendment does satisfy the ‘no set of circumstances’ test of *United States v. Salerno*, 481 U.S. 739 (1987)”).

Defendants may argue that, because HB 1264’s changes to the definition of “resident” and “residence” put more burdens on new voters than just motor vehicle requirements, the bill cannot be attacked facially. But the Court has already correctly rejected this argument: “The court is not persuaded, on this limited record, that . . . plaintiffs are barred from facially challenging this objective as unconstitutional because the legislature made the change in a way that also affected other statutes.” Memorandum Order at 19 (DN 47). If the Defendants’ argument was right, a legislature could insulate all unconstitutional voting laws from meaningful judicial review by simply writing them more broadly. For example, under Defendants’ argument, a law which required citizens to pay a fee to interact with all government offices (including voting precincts)

could not be facially challenged under the Twenty-Fourth Amendment as a poll tax because other applications, not addressed by litigants, also exist.

D. HB 1264 Unduly Burdens Individual Plaintiffs' First and Fourteenth Amendment Right to Vote and Does Not Advance Any State Interest.

HB 1264 and the way it interacts with the rest of the statutory scheme—both in the statutory text and because of Defendants' and other state agencies' refusal to give voters a clear answer about the operation of the law—unduly burdens Plaintiffs' rights. *See* Statement of Facts *supra*. The Constitution prohibits any encumbrance on the right to vote—here, confusion—that is not adequately justified by a valid state interest. *See Anderson v. Celebrezze*, 460 U.S. 780, 788–89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433–34 (1992). In applying the *Anderson-Burdick* test, a court reviewing a challenge to a law burdening voting must weigh “the character and magnitude of the asserted injury” against “the *precise interests* put forward by the State as justifications for the burden imposed by its rule,” assessing “the extent to which those interests *make it necessary* to burden the plaintiff's rights.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789) (emphasis added). The Court must “not only determine the legitimacy and strength of each of [the state's] interests,” but also “must consider the extent to which those interests make it necessary to burden the plaintiff's rights.” *Anderson*, 460 U.S. at 789.

This analysis presupposes that even restrictions imposing a less than severe burden on the right to vote are subject to appropriate balancing and scrutiny, requiring that “[h]owever slight [a] burden may appear ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (internal quotation marks omitted) (plurality opinion). Even if the burden imposed “is not insurmountable,” plaintiffs may obtain relief “[if] the interests put forth by the defendant do not adequately justify the restriction imposed.” *Fulani v. Krivanek*, 973 F.2d 1539, 1545 (11th Cir.

1992) (law denying a signature verification fee waiver to minor-party candidates failed *Anderson-Burdick* analysis even under a rational basis test).

i. At a minimum, HB 1264 substantially burdens Individual Plaintiffs' rights by causing voter confusion.

HB 1264 imposes burdens on the right to vote through confusion in two ways.

First, notwithstanding the aim of the sponsors of HB 1264 and the arguments made by Defendants in this case regarding the impact of the law, HB 1264 is inherently confusing as related to all motor vehicle obligations because it did not amend the definition of “resident” for motor vehicle purposes in RSA 259:88. Under RSA 259:88, “resident” for motor vehicle purposes is defined 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). The statements of the drafters and the reporting at the time of HB 1264’s passage¹⁴ suggest to the public that if an individual registers to vote they then must purchase a driver’s license and car registration from the state. That such a conclusion is directly undermined by the alternate definition of resident in RSA 259:88 demonstrates that the statutory scheme is inherently confusing. Contrary to Defendants’ assertions, DN 61 at 11 n.2, while certain nonresidents may need to register their vehicles, nonresidents are *not* required to obtain New Hampshire driver’s licenses, as long as they are not being paid to drive in the state. RSA 263:38. With the legislature’s failure to amend RSA 259:88, there has been significant confusion as to whether voters with out-of-state driver’s licenses or vehicle registrations who register to vote then become residents for motor vehicle purposes under RSA 259:88. When reviewing the law, many cannot determine whether they are required to

¹⁴ See Ethan Dewitt, “N.H. Supreme Court upholds constitutionality of voter residency bill,” *Concord Monitor* July 12, 2018 available at <https://www.concordmonitor.com/In-3-2-decision-Supreme-Court-upholds-constitutionality-of-voting-residency-bill-18791151> (“The law represents a simple linguistic change that to supporters and detractors could have vast effects.”).

domesticate their driver's license and/or vehicle registration within 60 days of registering to vote. That the statutory scheme and HB 1264's impact on motor vehicle obligations are confusing on their face is clearly illustrated by the current status of this case. Indeed, this Court is considering certification to the New Hampshire Supreme Court precisely because this statutory scheme is confusing; the Court would not be doing so if it were clear and unambiguous.

Second, in addition to the confused statutory language, the actions of various state agencies have perpetuated, amplified, and directly caused confusion among would-be voters. In response to direct questions from the public and the press regarding how they intend to enforce and interpret the law, state agencies—including the Department of Justice, the Secretary of State's office, and the Division of Motor Vehicles—have refused to directly answer the basic question of whether voters with out-of-state driver's licenses or vehicle registrations have to obtain a New Hampshire driver's license or vehicle registration (if they drive or own a car) within 60 days of registering to vote. Instead of informing citizens about the laws under which they live, the state agencies have engaged in a game of "passing the buck" by referring questions to each other, leaving voters to fend for themselves in the wake of a confusing law.

For example, the Attorney General has not directly answered the question of whether a voter must obtain a New Hampshire driver's license, instead directing election officials whom are asked for information from the public to "direct the individual to the municipal or state agency that administers or enforces the law in question." *See* Sept. 18, 2019 Ltr. from Att'y Gen. Office to Secretary of State's Office at 1 (DN 57-3). Likewise, the Attorney General, contrary to the litigation representations of his office that HB 1264 does impose these obligations, has indicated that while "[t]he decision to vote here may implicate other obligations and benefits under the law unrelated to voting," "individual circumstances may vary, and that this obligation [to obtain a New

Hampshire driver’s license] should be determined on a case-by-case basis,” without explaining under what circumstances a voter would not have to obtain a New Hampshire driver’s license. *Id.* The Attorney General is the “chief legal officer” of the state, RSA 471-C:1, but has failed to clearly explain to the public what the law requires. Similarly, the Secretary of State, in providing direction to local election officials, would not answer the question of whether voters “need to get a driver’s license to vote,” refusing any responsibility for advising the public on this question, stating, “As election officials we do not offer advice on how residency laws apply to other areas of the law such as how motor vehicle, tax, fish and game, and labor laws, etc. apply to individual voters.” *See* Sept. 23, 2019 Correspondence from Sec’y of State to local election officials (DN 57-4).

Despite the Department of Justice’s statements to this Court confirming HB 1264’s nexus to voting, no state agency in New Hampshire—all of which are counseled by the Department—has directly informed the public of whether registering to vote constitutes an act of declaring legal residency and, if so, whether it constitutes declaration of legal residency for motor vehicle purposes, thus perpetuating confusion over this issue across the state. With state leadership providing such paltry and contradictory guidance, it is little wonder New Hampshire domiciliaries are confused.

Public reports demonstrate that this confusion abounds, which this Court has recognized. *See, e.g.*, Josie Albertson-Grove, “Voting law confusion may keep some out-of-state students from voting in NH,” *Union Leader*, Oct. 12, 2019 https://www.unionleader.com/news/politics/state/voting-law-confusion-may-keep-some-out-of-state-students/article_c91ac468-7965-5168-a2b0-5839e6a19fbb.html; Casey McDermott, “What Does N.H.’s New Voter Residency Law Actually Change? For Now State Officials Aren’t Saying,” *NHPR*, Sept. 20, 2019 <https://www.nhpr.org/post/what-does-nhs-new-voter-residency->

[law-actually-change-now-state-officials-arent-saying#stream/0](#) (the New Hampshire Division of Motor Vehicles declining to answer questions on how it plans on enforcing HB 1264 and “whether voting in New Hampshire will now affect whether someone is considered a resident for motor vehicle purposes”). Moreover, Plaintiffs in this case have presented sworn testimony as to this confusion and its impact on the right to vote. *See* Statement of Facts, *supra*.

Plaintiffs have presented ample evidence of voter confusion that is likely to cause qualified voters to forego their most fundamental rights. *See, e.g.*, Suskie Aff. ¶¶ 12–22, Ex. A to NHDP; Kremer Aff. ¶¶ 2–11, Ex. B to NHDP; Hardesty-Dyck Aff. ¶¶ 2–8, Ex. D to NHDP; Morse-Gagne Aff. ¶¶ 2–14, Ex. C to NHDP; Hancock Aff. ¶¶ 5–20, Ex. E to NHDP; Dineen Aff. ¶¶ 15–19, Ex. F. to NHDP; Shump Decl. ¶¶ 10–13, Ex. E; McClain Decl. ¶ 10 (DN 59-1); Wester Aff. (DN 60-1). Whatever its cause, voter confusion is a substantial burden on the right to vote. *See, e.g., Hall v. Simcox*, 766 F.2d 1171, 1175 (7th Cir. 1985) (“The problem of voter confusion cannot be dismissed as trivial”); *see also Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 665–66 (6th Cir. 2016) (risk of voter confusion constitutes a burden that is “not slight”).¹⁵ The risk of voter confusion is taken seriously by the courts, because as the Supreme Court has recognized, voter confusion can cause the “consequent incentive to remain away from the polls.” *Purcell*, 549

¹⁵ Federal courts have consistently recognized that avoiding voter confusion is an important state interest. *See, e.g., Clements v. Fashing*, 457 U.S. 957, 965 (1982); *Am. Party of Tex v. White*, 415 U.S. 767, 782 n.14 (1974); *Hindel v. Husted*, 875 F.3d 344, 348 (6th Cir. 2017); *Libertarian Party of N.H. v. Gardner*, 843 F.3d 20, 32 (1st Cir. 2016); *Pursuing Am.’s Greatness v. Fed. Election Comm’n*, 831 F.3d 500, 510 (D.C. Cir. 2016); *Libertarian Party of N. D. v. Jaeger*, 659 F.3d 687, 697 (8th Cir. 2011); *Barr v. Galvin*, 626 F.3d 99, 111 (1st Cir. 2010); *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1219 (11th Cir. 2009); *Rosen v. Brown*, 970 F.2d 169, 177 (6th Cir. 1992); *Lightfoot v. Eu*, 964 F.2d 865, 871 (9th Cir. 1992) (“State has a compelling interest in minimizing voter confusion.”); *Swamp v. Kennedy*, 950 F.2d 383, 386 (7th Cir. 1991) (“Avoiding voter confusion is also a compelling state interest.”). From this, it must follow that the creation of voter confusion burdens voters: otherwise, there would be no need for states to pass regulations aimed at avoiding confusion.

U.S. at 4–5. As such, the burden that voter confusion “imposes upon the fundamental right to vote is unreasonable.” *Guare*, 167 N.H. at 662.

Moreover, the Plaintiffs have also demonstrated that the burdens of the challenged scheme are not neutral and non-discriminatory, but instead fall disproportionately upon young voters and college students, and disproportionately on Democrats and Undeclared voters. Herron Decl. ¶¶ 20–22. “[P]articularly where [voting restrictions] have discriminatory effects, there is increasing cause for concern that those in power may be using electoral rules to erect barriers to electoral competition.” *Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (O’Connor, J., concurring). Courts must be concerned with voting regulations that differently impact different groups, as, for example, “state legislatures could give extra early voting time to groups that traditionally support the party in power and impose corresponding burdens on the other party’s core constituents.” *Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012).

ii. The state’s interests do not make it necessary to burden the right to vote through voter confusion.

The state has refused repeated opportunities in discovery to state, under oath, what interests are served by the challenged scheme. *See* Defs.’ Answers and Objs. to Interrogs., Exhibits K and L, and Letter, Exhibit J. This fact alone demonstrates that the state does not have even legitimate interests that necessitate the voter confusion burdening the electorate. At the outset, there can be no legitimate state interest in imposing confusion on voters.

The post hoc justifications offered in attorney argument before this Court, though apparently not definite enough for the actual Defendants to swear to them in written discovery, also fail to necessitate the burden of voter confusion. In their motion to dismiss, counsel for Defendants assert that “the State has a compelling interest in ensuring a community of interest among its electorate and ensuring that those members of the community are all appropriately

regulated in the same manner if they own and drive a motor vehicle on the roadways of this State.” Mem. Law in Supp. Mot. to Dismiss at 25 (DN 20-1); *but see One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp 3d 896, 934 (W.D. Wis., 2016) (“But uniformity for uniformity’s sake gets the state only so far.”). *First*, this is not a legitimate state interest. The New Hampshire Constitution grants the right to vote to all those who are domiciliaries. N.H. Const. Part I, Art. 11. Attaching additional requirements on those who legitimately seek to exercise their right to vote as permitted under the state constitution is illegitimate. *Second*, before and after HB 1264, all registered voters are required to be domiciliaries of New Hampshire, and the definition of domiciliary is unchanged: “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.” RSA 654:1, I. HB 1264 does nothing to change the level of connection that a person must have with the State to vote—it simply imposes fees.

Accepting such an assertion as a legitimate interest would justify the attachment of any number of additional requirements on those who wished to exercise their right to vote. The State could just as easily assert that it has an interest in ensuring that voters have a significant connection with the state through demonstrating that they can read the New Hampshire Constitution and understand its provisions, or to monetarily illustrate their connection to the state by paying a tax upon registering to vote. Courts should also view this claimed interest with skepticism as it is certainly “susceptible of abuse.” *Opinion of the Justices (Definition of Resident and Residence)* (“*Resident*”), 171 N.H. 128, 153 (2018) (Op. Hicks, Bassett, JJ.) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 356 (1972)). Courts should not “lightly . . . accept” a claim that a law is intended to “insure that only those citizens who are primarily or substantially interested in or affected by

electoral decisions have a voice in making them,” as “[a]ll too often, lack of a ‘substantial interest’ might mean no more than a different interest, and ‘fencing out’ from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” *Id.* (quoting *Evans v. Cornman*, 398 U.S. 419, 422 (1970)).¹⁶

Defendants also at times appear to assert that the state interest at issue is the prevention of fraud (while simultaneously arguing in contradictory fashion that HB 1264 is not a voting law). For example, Defendants’ emphasize a quotation from *Dunn*, 405 U.S. at 345, that “Surely the

¹⁶ The New Hampshire Constitution ensures the right to vote for all domiciliaries of the state. N.H. Const. Part I, Art. 11. Through this constitutional guarantee alone New Hampshire distinguishes itself from other states that Defendants attempt to invoke as other state constitutions do not all have the same predicate, making reliance on those other states’ statutory scheme on residence inapt. Moreover, as already addressed in briefing related to the denied Motion to Dismiss, many other states do not link the act of registering to vote to motor vehicle requirements, or they exempt out-of-state students from having to comply with motor vehicle requirements. *See* 23 Ver. Stat. Ann. § 4(30)(B) (“persons who live in the State for a particular purpose involving a defined period of time, including students, migrant workers employed in seasonal occupations, and persons employed under a contract with a fixed term, are not residents for purposes of [the Motor Vehicle title] only.”); Ariz. Rev. Stat. § 28-2001 (explicitly exempting out-of-state students from requirement to register a vehicle); Ark. Code Ann. § 27-16-104(7)(B) (same); Cal. Veh. Code § 516 (voter registration is only one of nine factors to consider in determining residency for motor vehicle purposes); Nev. Rev. Stat. Ann. § 482.103 (2) (out-of-state students explicitly exempted from definition of resident for motor vehicle purposes); N.C. Gen. Stat. § 20-4.01 (34) (residents for motor vehicle purposes exclude those “who resides within this state for . . . a temporary or transitory purpose”); Or. Rev. Stat. Ann. § 807.062 (listing actions which establish residency for motor vehicle purposes and not including registering to vote); Utah Code Ann. § 41-1a-202(1)(ii)(B) (exempting out of state students from requirement to register vehicles); W. Va. Code § 17B-2-2 (same). Even states invoked by Defendants, DN 20-1 at 20 n.3, do not link motor vehicle requirements to registering to vote in the manner the state tries to use them to illustrate. Many, in fact, have the inverse relationship between voter registration and motor vehicle information: those state’s do not force motor vehicle obligations on those who register to vote but allow those who register to vote to use their motor vehicle information in that process. *See* 52 U.S.C. § 20503 (establishing a national policy pursuant to which a state generally must establish procedures to register to vote for federal elections “by application made simultaneously with an application for a motor vehicle driver’s license”); Ga. Code Ann. § 21-2-217(b) (providing that motor vehicle and personal property registration *may* be considered in determining a voter’s qualification to register and vote); Idaho Code Ann. § 34-107(2) (providing that motor vehicle registration may be taken into account when determining residence for voting purposes); Me. Rev. Stat. Ann. tit. 21-A § 112 (providing that the registrar *may* consider the place where any motor vehicle is owned by the person is registered in determining residence for voting purposes); N.Y. Elec. Law § 5-104 (providing that motor vehicle and other personal property registration *may* be considered in determining a voter’s qualification to register and vote); Or. Rev. Stat. § 247.035(3) (providing that where the person is licensed to drive and where the person registers motor vehicles are *factors* in determining residency for voting purposes); R.I. Gen. Laws § 17-1-3.1(b) (providing that the address furnished to the division of motor vehicles for a driver’s license and the address from which the voter’s motor vehicle is registered is prima facie evidence of a person’s residence for voting purposes); S.C. Code Ann. § 7-1-25(D) (providing that voter’s address on an automobile registration and on driver’s license are *factors* to consider in determining domicile for voting purposes). Each of these illustrates a state doing the opposite of what New Hampshire now tries: these statutes provide (non-exclusive) ways in which a potential voter may access the ballot through use of motor vehicle office and records; they do not take the act of registering to vote to require imposition of motor vehicle fees.

prevention of such fraud is a legitimate and compelling governmental goal,” DN 20-1 at 24, and offer a convoluted hypothetical about individuals attempting “to escape nonresident motor vehicle licensing and registration obligations,” voting, and then canceling their voter registrations, DN 61 at 16. Neither of these assertions demonstrate a legitimate state interest supporting HB 1264. Although *Dunn* recognized the general proposition that preventing fraud “is a legitimate and compelling governmental goal,” here, just as in *Dunn*, “it is impossible” to view the challenged scheme “as necessary to achieve that state interest.” 405 U.S. at 345. Indeed, the Defendants’ post hoc rationale of fraud prevention is wholly unmoored from the requirements of New Hampshire law, *see* RSA 263:38 (nonresidents not required to obtain New Hampshire driver’s licenses, as long as they are not being paid to drive in the state). Defendants have not, and cannot, show that the challenged scheme in any way reduces fraud and particularly cannot show that the burden of voter confusion is necessary to guard against fraud, especially where, as here, the law in question does not alter voter eligibility. *See Perez-Guzman v. Gracia*, 346 F.3d 229, 245 (1st Cir. 2003) (“The fact that a state’s asserted interest in preventing electoral fraud is important in the abstract does not create a presumption that its chosen means of regulation will advance that interest.”). If anything, the confusion caused by the law will only reduce voter confidence in the electoral process. *Cf. Fish v. Kobach*, 309 F. Supp. 3d 1048, 1113 (D. Kan. 2018) (challenged registration law that “caused confusion” and “acted as a deterrent to registration and voting” “erodes confidence in the electoral system.”); *One Wisconsin Inst., Inc. v. Nichols*, 155 F. Supp. 3d 898, 902 (W.D. Wis., 2015) (finding a law requiring photo ID to vote may undermine rather than promote public confidence in elections).

It is not enough for the state to invoke interests in a vacuum. Rather, those “precise interests” have to “make it necessary to burden the plaintiffs’ rights.” *Burdick*, 504 U.S. at 434

(quoting *Anderson*, 460 U.S. at 789). The State must propose an “interest sufficiently weighty to justify the limitation.” *Norman v. Reed*, 502 U.S. 279, 288–89 (1992). The state’s justifications here are not sufficiently “important” to excuse the discriminatory burden it has placed on some but not all New Hampshire voters. The Defendants have refused to even conclusively identify the interests that the challenged scheme advances, *see* Exhibits Defs.’ Answers and Obs. to Interrogs., Exhibits K and L, and Letter, Exhibit J, much less offered any evidence at all to show that its interests are “‘important,’ much less ‘sufficiently weighty’ to justify the burden it has placed on” young New Hampshire voters. *Obama for Am.*, 697 F.3d at 434. The state cannot simply recite interests that courts have found compelling in other cases to justify undue burdens on the right to vote. *See Rideout v. Gardner*, 838 F.3d 65, 72–73 (1st Cir. 2016).

2. The Individual Plaintiffs are Likely to Suffer Irreparable Harm if an Injunction Does Not Issue.

Plaintiffs will be irreparably harmed in the absence of a preliminary injunction that both prohibits New Hampshire from using voter registration or voting history as evidence in any enforcement action under RSA 261:54 and RSA 263:35, and requires the State to inform election officials and the public of this order.

It is apodictic that “restrictions on [the] right [to vote] strike at the heart of representative government.” *Werme v. Merrill*, 84 F.3d 479, 483 (1st Cir. 1996) (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). Any loss of constitutional rights is presumed to be an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Asociación de Educación Privada de Puerto Rico v. Garcia-Padilla*, 490 F.3d 1, 21 (1st Cir. 2007) (applying *Elrod* to irreparable harm component of permanent injunction analysis); *Libertarian Party of Me., Inc. v. Dunlap*, No. 2:16-cv-002-JAW, 2016 WL 3039715, at *12–*13 (D. Me. May 27, 2016) (not reported) (finding irreparable harm would result from if an election law unduly burdening the right to vote were not

enjoined). The risk of disenfranchisement practically defines irreparable harm. *See Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (“[T]he right to vote is a constitutionally protected fundamental right ... When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) (internal citations and quotation marks omitted); *see also Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358, 1368 (N.D. Ga. 2004), *aff’d*, 408 F.3d 1349 (11th Cir. 2005) (holding that the loss of the opportunity to register and vote causes irreparable harm because “no monetary award can remedy” this loss).

Consistent with this authority, courts routinely grant preliminary injunctions in election-related cases because they are necessary to prevent irreparable injury. *See, e.g., Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 15-16 (1st Cir. 2012); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (affirming a preliminary injunction of a signature requirement which posed an undue burden on the right to vote). This is so because once the election comes and goes, “there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also, e.g., Obama for Am.*, 697 F.3d at 436; *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986).

As the Supreme Court has recognized, “careful consideration” must be given to changes to election regimes that involve “the possibility that qualified voters might be turned away from the polls.” *Purcell*, 549 U.S. at 7. Without preliminary relief to preserve the long-standing right of students and other New Hampshire domiciliaries to register to vote without incurring significant monetary expenses, HB 1264 will continue to cause significant voter confusion, and chill voter participation in New Hampshire’s February primary election. *Id.* at 3–4. State agencies’ lack of clarity on what HB 1264 requires of Plaintiffs and other college students and young voters,

combined with growing interest in the election, will sow increased voter confusion and risk of disenfranchisement, and increase the burdens on their fundamental right to vote.

3. The Balance of Equities Favors the Individual Plaintiffs.

As to the third element, the hardships borne by the Individual Plaintiffs if the injunction is not granted outweigh the State's interests if the injunction is granted. Absent relief from this Court, the challenged law is imposing and will continue to impose irreparable harm on Plaintiffs by unduly burdening Plaintiffs' right to vote and casting a shadow of voter confusion across New Hampshire.

Without preliminary injunctive relief, Individual Plaintiffs, and other students and young people, are under imminent threat that they will face liability if they register or vote in the February 11, 2020 primary election and maintain their out-of-state licenses. This fear will likely cause many voters to forego the exercise of their most precious constitutional right.

In contrast, the State will not suffer any hardship if the injunction is granted. Enjoining the state from using voter registration or voting history as evidence in any enforcement action under RSA 261:54 and RSA 263:35, will cause minimal, if any, harm to Defendants. Defendants not pointed to a single instance where such information was used by the State in a prosecution under these Sections. Plaintiffs' requested relief simply requires Defendants to continue to register New Hampshire domiciliaries and to permit Plaintiffs to vote without concern that they may be prosecuted later for not obtaining motor vehicle documents simply because they voted. Defendants will suffer no harm in continuing in this manner until there is a final resolution to this case. *United States v. Lambert*, 695 F.2d 536, 540 (11th Cir. 1983) (“[T]he harm considered by the district court is necessarily confined to that which might occur in the interval between ruling on the preliminary injunction and trial on the merits.”).

Defendants may contend that requiring the State to inform election officials and the public of an interim order will incur administrative costs, but the significance of any harms to the State of providing clarity and adequate notice of what the law requires are doubtful. Even assuming that Defendants would be harmed by the miniscule administrative burdens of an injunction, courts have repeatedly held that slight administrative burdens and costs of informing registrars and the public of the law do not outweigh fundamental voting rights. *See, e.g., League of Women Voters of N.C.*, 769 F.3d at 244 (a state may not “sacrific[e] voter enfranchisement at the altar of bureaucratic (in)efficiency and (under-)resourcing.”); *Obama for Am.*, 697 F.3d at 434 (“[T]he State has not shown that its regulatory interest in smooth election administration is ‘important,’ much less ‘sufficiently weighty’ to justify the burden it has placed on nonmilitary Ohio voters.”); *Stewart v. Blackwell*, 444 F.3d 843, 872 (6th Cir. 2006) (“Governments always attempt to justify their conduct based on cost and administrative convenience, but the state’s reliance on these factors is not necessarily rational.”); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2012) (describing the imposition of administrative, time, and financial burdens on Georgia as “minor when balanced against the right to vote, a right that is essential to an effective democracy”).

Meanwhile, Individual Plaintiffs and members of the NHDP face the risk of prosecution if they do not domesticate their driver’s license within 60 days of registering to vote, which will deter them from voting. The threatened injury of voter disenfranchisement outweighs any inconvenience that an injunction might cause to Defendants. Thus, the balance of hardships weighs in favor of Plaintiffs.

4. The Public Interest Favors an Injunction.

Under these circumstances, “the injunction’s cautious protection of the Plaintiffs’ franchise-related rights is without question in the public interest.” *Cox*, 408 F.3d at 1355. “It is

axiomatic that the public interest favors the protection of constitutional rights.” *Libertarian Party of Me.*, 2016 WL 3039715 at *13; see *Hyde Park Partners, L.P. v. Connolly*, 839 F.2d 837, 854 (1st Cir. 1988) (“[O]bviously, should the statute be unconstitutional, the public interest would be adversely affected by denial of [] an injunction.”). The public interest “favors permitting as many qualified voters to vote as possible,” *Obama for Am.*, 697 F.3d at 437, so that every eligible voter can exercise their constitutional right to vote. See also *League of Women Voters of U.S. v Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). By contrast, permitting enforcement of HB 1264 will violate Plaintiffs’ voting rights and strike “at the heart of representative government.” *Reynolds*, 377 U.S. at 555.

Enjoining HB 1264 undoubtedly promotes the public interest by avoiding the chilling effect of large scale voter confusion, particularly among college students, many of whom will be voting for the first time. See *Guare*, 167 N.H. at 666 (recognizing that confusing voter registration form language would have a chilling effect on the right to vote). Plaintiffs have presented concrete evidence of voter confusion resulting from Defendants’ refusal to clarify whether all voters must obtain a New Hampshire driver’s license within 60 days of registering to vote. See Statement of Facts, *supra*. A clear interpretation from the New Hampshire Supreme Court as to whether RSA 259:88 permits an individual domiciled in New Hampshire to maintain their out-of-state license will directly cure such confusion and may also ameliorate some of the other monetary burdens imposed by HB 1264. Permitting voter confusion to grow in the interim only increases the severity of HB 1264’s burdens, disserving the public interest and violating Plaintiffs’ voting rights. An order from this Court limiting the irreparable harm of HB 1264 as the primary election approaches serves the public interest in protecting constitutional rights and in avoiding unnecessary, irreversible voter confusion.

CONCLUSION

For all of the reasons discussed above, the Individual Plaintiffs' Motion for a Preliminary Injunction should be granted.

Respectfully submitted,

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By and through their attorneys affiliated with the American Civil Liberties Union of New Hampshire Foundation and the American Civil Liberties Union Foundation,

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Date: November 6, 2019

CERTIFICATE OF SERVICE

The undersigned certifies that he has electronically filed this date the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record in the consolidated case. This filing is available for viewing and downloading from the ECF system.

Dated: November 6, 2019

/s/ Henry R. Klementowicz
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