

STRAFFORD, SS.

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

No. 219-2012-CV-00458

ANNEMARIE E. GUARE, et al.<sup>1</sup>

v.

THE STATE OF NEW HAMPSHIRE

**PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

NOW COME Petitioners, Annemarie E. Guare, et al., by and through counsel, and file this Motion for Summary Judgment, stating as follows:

1. On September 12, 2012, Petitioners filed a Verified Petition for Preliminary Injunction, Declaratory Judgment, and Final Injunctive Relief against the State of New Hampshire.
2. The Petition sought issuance of a preliminary and permanent injunction requiring the State to amend the voter registration forms to strike the following paragraph:

In declaring New Hampshire my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire driver's license within 60 days of becoming a resident.

3. Petitioners also sought a judgment declaring that citizens who are both drivers and eligible to vote in New Hampshire, but who intend to cease living in New Hampshire at a defined point of time in the future, do not have any obligation to obtain either driver's licenses or motor vehicle registrations from the State of New Hampshire, notwithstanding the language in the voter registration form promulgated in RSA 654:7, IV; and to issue a judgment declaring that portions of Chapter 285 are invalid as unlawful and unconstitutional. Finally, Petitioners sought a permanent injunction prohibiting the New Hampshire Secretary of State from sending a letter

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<sup>1</sup> Petitioner Hannah Rivers has been omitted from this caption. Petitioners will shortly be filing a motion to amend their Amended Petition pursuant to Superior Court Civil Rule 12(a) to withdraw Hannah Rivers as a petitioner.

to those who executed domicile affidavits informing them of the need to obtain a New Hampshire driver's license.<sup>2</sup>

4. On September 24, 2012, this Court issued an Order granting Petitioners' request for a preliminary injunction striking the offending paragraph from the voter registration form, labeling that paragraph an "inaccurate and confusing expression of the law." This Court also ordered the Secretary of State to re-issue the voter registration form without the offending language and to notify every New Hampshire Town and City that the re-issued voter registration form must be used forthwith in registering new voters.<sup>3</sup> This decision was correct, and nothing has changed since this Court's September 24, 2012 Order that would require reversing that decision. In fact, subsequent events and the facts developed in discovery fully support the Court's findings. For the reasons stated in the attached memorandum of law, Petitioners now seek summary judgment on the issue of whether the preliminary injunction should be made permanent. As there are no material facts in dispute and this case squarely presents a question of law that can be decided on summary judgment, a formal bench trial on May 19, 2014 addressing whether Petitioners are entitled to a permanent injunction is unnecessary.

WHEREFORE, Petitioners respectfully request that this Court:

- A. Grant the within Motion for Summary Judgment;
- B. Issue a permanent injunction that makes permanent the relief granted in the preliminary injunction issued by this Court on September 24, 2012, as modified by this Court's order of October 5, 2012, which directed the Secretary of State to:

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<sup>2</sup> Petitioners also sought an order directing the Secretary of State to notify citizens on its website that those who are domiciled in New Hampshire for voting purposes do not have to obtain a New Hampshire driver's license or register their motor vehicles in New Hampshire unless they intend to remain in New Hampshire indefinitely. The Court initially granted such an order, but upon reconsideration, this order was rescinded. Petitioners now withdraw their original request that the Secretary of State be required to place a particular statement on the website.

<sup>3</sup> This Court also ordered the Secretary of State to add a statement to its website. Upon reconsideration, the order related to the website was rescinded. As explained in the attached Memorandum of Law, Petitioners now withdraw their request regarding the website.

- a. Strike from the voter registration form the paragraph that states:

In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.

- b. Re-issue the voter registration form without the above stated paragraph.
  - c. Notify every New Hampshire Town and City that the re-issued voter registration form must be used forthwith in registering new voters.
- C. Issue a permanent injunction prohibiting the New Hampshire Secretary of State from sending a letter to those who executed domicile affidavits informing them of the need to obtain a New Hampshire driver's license.
- D. Issue a declaratory judgment finding that:
- a. Chapter 285 fails to amend the residency provisions of New Hampshire law and therefore the amended voter registration form may not be used by the Secretary of State because it does not conform to existing law.
  - b. To the extent that Chapter 285 does amend New Hampshire's residency and motor vehicle statutes, it violates the Poll Tax provisions of Part 1, Article 11 of the New Hampshire Constitution and the Twenty-Fourth Amendment to the Constitution of the United States.
  - c. To the extent that Chapter 285 does amend New Hampshire's residency and motor vehicle statutes, it violates the equal protection and due process clauses of Part 1, Article 1, 2, 10, 11 and 14 of the New Hampshire Constitution and the Fourteenth Amendment to the Constitution of the United States.
- E. Grant such other relief as may be just and proper.

Dated: March 14, 2014

Respectfully Submitted,

Petitioners, by and through their Cooperating  
Attorneys with the New Hampshire  
Civil Liberties Union Foundation,



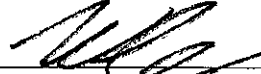
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Summary Judgment has been  
forwarded to the Office of the New Hampshire Attorney General this 14th day of March 2014.



William E. Christie  
NH Bar #11255

STRAFFORD, SS.

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

No. 219-2012-CV-00458

ANNEMARIE E. GUARE, et al.<sup>1</sup>

v.

THE STATE OF NEW HAMPSHIRE

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
INTRODUCTION**

On September 24, 2012, this Court granted Petitioners' request for a preliminary injunction striking certain language (the "offending paragraph") from the voter registration form promulgated by Senate Bill 318 (2012 session) that this Court correctly identified as an "inaccurate and confusing expression of the law."<sup>2</sup> See Order on Request for Preliminary Injunction at 5 ("Order").

This Court properly required the State to strike the offending paragraph from the voter registration form. The voter registration form enacted in Senate Bill 318 required any person, including individuals domiciled in New Hampshire who were not New Hampshire residents, to execute a declaration stating, in relevant part:

In declaring New Hampshire my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire driver's license within 60 days of becoming a resident.

RSA 654:7, IV (as amended by 2012 Session Laws ch. 285). This paragraph was inaccurate and confusing. The parties agree that under state law voters are not required to be "residents," but only to be "domiciled for voting purposes" in New Hampshire. The State concedes that a person

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<sup>1</sup> Petitioner Hannah Rivers has been omitted from this caption. Petitioners will shortly be filing a motion to amend their Amended Petition pursuant to Superior Court Civil Rule 12(a) to withdraw Hannah Rivers as a petitioner.

<sup>2</sup> This Court also ordered the Secretary of State to re-issue the voter registration form without the offending paragraph, to notify towns and cities that the re-issued voter registration form must be used forthwith in registering new voters, and to add a statement to its website. Upon reconsideration, the order related to the website was rescinded. Petitioners now withdraw their request regarding the website.

who is eligible to register to vote because they are domiciled in New Hampshire is not required to register their motor vehicle or obtain a New Hampshire driver's license if he/she is not a "resident." By striking the offending paragraph, the Court did not alter the statutory definition of domicile or resident and did not alter who may register to vote in New Hampshire. Rather, the Court simply struck language it correctly found to be an inaccurate statement of law. The result was a form that fully comports with New Hampshire law regarding eligibility to vote.

In its Order, the Court carefully considered the evidence and arguments. Its well-reasoned decision included several core factual findings, including that the offending paragraph:

- "with important inaccuracy," tells a prospective voter that by "declaring a New Hampshire domicile," he/she "comes to need to deal with the requirements of, residency laws." Order at 5;
- "advances, as an important feature, an inaccurate, and confusing expression of the law to be considered by, among others, . . . non-resident persons who otherwise qualify to vote and would now like to register and/or proceed to exercise their voting rights without feeling they are subjecting themselves, in so doing, to residency law obligations." *Id.* at 5;
- "has the effect, with the evident uncertainties it creates respecting 'resident' status, of substantially or severely burdening the four non-resident student petitioners, and those similarly situated, in following through on the exercise of their right to vote in New Hampshire." *Id.* at 6; and
- "works also to improperly inhibit education activities associated with voting and the election," *Id.* at 6, and "hinders education efforts related to the election," *Id.* at 7.

Nothing has changed since this Court's September 24, 2012 Order that would require reversing it. In fact, subsequent events and the facts developed in discovery fully support the Court's findings. The revised voter registration form has been used without incident since October 2012, including on Election Day 2012, the single largest same day registration in the State's history with approximately 99,000 voters going through this process. Exhibit A, Gardner Tr. at 58-59. The parties have conducted discovery, which has confirmed that the form enacted by Senate Bill 318 created confusion, and that its restoration would bring back that confusion. Nor has discovery revealed an adequate justification for the offending paragraph. Because there

are no material factual disputes between the parties, summary judgment is appropriate and a bench trial addressing whether Petitioners are entitled to a permanent injunction is unnecessary.

Because restoring the voter registration form as enacted in Senate Bill 318 would chill the fundamental right to vote of domiciliaries who have not “demonstrated a current intent” to designate a New Hampshire city or town as their “principal place of physical presence for the indefinite future to the exclusion of all others,” this Court should make its preliminary injunction permanent, and, in addition, prohibit the New Hampshire Secretary of State from sending a letter to those who executed domicile affidavits informing them of the need to obtain a New Hampshire driver’s license. *See* RSA 654:12, V(d).

### **FACTUAL BACKGROUND**

#### **Petitioners**

Petitioner Annemarie E. Guare is 19 years old and lives in Durham, New Hampshire. *See* Exhibit B, Deposition of Annemarie E. Guare (“Guare Depo.”) at 5:21-22; 16:17-21. She has lived in Durham since August 2012, when she came from Maine to attend the University of New Hampshire. *See id.* at 6:8-9; 10:4-8; 14:6-7. She is currently a sophomore majoring in political science. *Id.* at 10:13-14; 14:6-7. Since she came to New Hampshire, she has lived in this state for approximately 8 months out of the year. *Id.* at 24:13-16. She and her family pay approximately \$22,000 (including loans) of the nearly \$40,000 annual UNH tuition price. *Id.* at 26:15-28:1. She participates in a number of community activities in New Hampshire, and works here. *Id.* at 10:17-22; 32:3-16. In addition, she engages in substantial commerce in New Hampshire, including dining at restaurants. *See* 24:20-26:11. She has a Maine driver’s license. *Id.* at 12:3-6.

She does not currently intend to remain in New Hampshire after she graduates in December 2015, and therefore she cannot be considered a “resident” of New Hampshire. *See* RSA 21:6. As she testified at deposition, she will “probably . . . take a couple years off” after

graduation “and then go to law school and hopefully get a job.” Guare Depo. at 11:16-22. She has not “really thought about” her plans for the “couple years” following her undergraduate studies. *Id.* However, she anticipates leaving New Hampshire after graduation. *Id.* at 11:23-12:2.

She intends to vote in New Hampshire in the upcoming 2014 general election because she currently lives here, but she has not yet registered to vote in this state. *Id.* at 14:13-18; 16:13:16; 17:7-13. She finds the affidavit language promulgated by Senate Bill 318 to be confusing. *Id.* at 20:16-21; 38:2-39:13. As she testified at deposition, the language “confuses me because it seems to me that they’re using the word domicile and resident interchangeably. I don’t understand what rules would apply to me as a domicile or resident because I’m not a legal resident of New Hampshire.” *Id.* at 20:16-21.

Petitioner Cody Blesedell is 19 years old and lives in Durham, New Hampshire. *See* Exhibit C, Deposition of Cody Blesedell (“Blesedell Depo.”) at 6:7-11, 20-23. He has lived in Durham since August 2012, when he came from Massachusetts to attend the University of New Hampshire. *See id.* at 7:17; 29:10-17; 6:7-8, 16-19. He is currently a sophomore interested in justice studies. *Id.* at 10:22-23; 7:16-17. Since he came to New Hampshire, he has lived in this state for approximately 8 months out of the year. *See id.* at 29:14-17. He calls New Hampshire his “home.” *Id.* at 7:7-13. He and his family pay, excluding loans that will need to be repaid, “about a third” (or approximately \$13,000) of the nearly \$40,000 annual UNH tuition price. *Id.* at 44:7-45:7. He participates in a number of community activities in New Hampshire. *Id.* at 13:15-18. He also works at UNH. *Id.* at 11:23-13:14. In addition, he engages in substantial commerce in New Hampshire, including dining at restaurants. *See id.* 41:17-43:8; 57:4-12. He does not participate in recreational activities in Massachusetts. *Id.* at 11:6-8. He has a Massachusetts driver’s license, and a motorcycle that is registered there. *Id.* at 14:8-11, 17-22.



Mr. Blesedell does not currently intend to remain in New Hampshire after graduation in May 2016, and therefore cannot be considered a “resident” of New Hampshire. *Id.* at 18:8-14. He will likely move back to Massachusetts to “[h]opefully work in law enforcement.” *Id.*

He intends to vote in New Hampshire in the 2014 general election because he currently lives in New Hampshire and considers it “home,” but he has not yet registered to vote in this state. *Id.* at 16:20-17:6; 19:3-5. He finds the amended voter registration form required by Senate Bill 318 to be confusing. *Id.* at 25:15-26:17. As Mr. Blesedell testified at deposition, he is confused by the language stating “including laws requiring a driver to register a motor vehicle and apply for a New Hampshire’s driver’s license.” *Id.* at 26:4-11. As he explained, “I have to abide by all the laws of the [New Hampshire] residents, but I am not sure if I have to get a driver’s license in New Hampshire and register my motorcycle here in order to vote in New Hampshire.” *Id.* at 26:12-17; *see also id.* at 51:9-15.

Petitioner Garret Healey is 21 years old and lives in an apartment in Dover, New Hampshire where he pays rent 12 months out of the year. Exhibit D, Garret Healey Deposition (“Healey Depo.”) at 4:8-9; 17:12-13; 52:13-15. He has lived in New Hampshire since August 2010, when he came from Massachusetts in order to attend the University of New Hampshire. *See id.* at 4:12-16. He is majoring in mathematics, and he is also a musician; he expects to graduate in May 2014. *Id.* at 14:5-8; 9:10-21. Since he came to New Hampshire, he has lived in this state for approximately 8 months out of the year. *Id.* at 16:9-14; 24:23-25:3. He calls New Hampshire his “home.” *Id.* at 16:11-14; 24:16-22. He and his family pay some of the nearly \$40,000 annual UNH tuition price. *Id.* at 22:17-23:20. He has a Massachusetts driver’s license. *Id.* at 17:1-5.

He participates in a number of community activities in New Hampshire, including UNH music groups and a mathematics honor society, and he performs in a two-person jazz group

called the "Healey Gallo Duo" in and around Durham, Somersworth, and Concord. *Id.* at 9:10-21; 11:15-22; 39:4-40:23. He also teaches piano. *Id.* at 38:13-14. He engages in substantial commerce in New Hampshire, including dining at restaurants. *See id.* 43:16-44:13.

Mr. Healey does not currently intend to remain in New Hampshire indefinitely after graduation in May 2014, and therefore cannot be considered a "resident" of New Hampshire. *Id.* at 33:21-34:1; *see also id.* at 35:6-8. As he testified at deposition, he is "a little unsure" about what he will be doing after graduation. *Id.* at 14:9-15. He is "considering trying to get a job related to music and trying that out for a few years. And if that doesn't work out, [he will] start looking for math jobs. But [he is] not sure about the specifics." *Id.* Given this uncertainty, he does not know if he will be staying in New Hampshire following graduation. *Id.* at 14:16-21.

Mr. Healey is registered to vote in New Hampshire, and he voted in this state in November 2012 because he lived here at the time of the election and "wanted to vote where [his] home was." *Id.* at 18:2-4; 24:16-22. He intends to vote in New Hampshire in the upcoming 2014 general election if he lives in New Hampshire at the time of the election, though he is "not completely sure" he will be living in New Hampshire at that time. *See id.* 29:20-30:23. He finds the language in the amended voter registration form required by Senate Bill 318 to be confusing. Indeed, he testified that, if the language meant that one had to be a New Hampshire resident in order to vote, then this form would directly impact him even though he has already registered to vote here because he is not a New Hampshire resident. *Id.* at 47:23-48:6 ("Well, it would impact me because I don't consider myself a resident [of New Hampshire] but I do consider myself domiciled [in New Hampshire], so it's a little confusing. I just don't know if I would be able to agree to that [language added to the form].").<sup>3</sup>

<sup>3</sup> The State does not contest standing as to Petitioners Guare, Blesedell, or Healey. In any event, it is clear that they each have standing to challenge the voter registration form required by Senate Bill 318 because (i) they each are "domiciled" in New Hampshire under RSA 654:1, 1, and (ii) have testified under oath that they are confused as to whether Senate Bill 318 imposes additional obligations on them to vote, including obligations that apply to New

Petitioner Joan Ashwell lives in Durham, New Hampshire. Exhibit E, Affidavit of Joan Ashwell ("Ashwell Aff.") ¶ 1. She is a volunteer with Petitioner New Hampshire League of Women Voters ("League") as the Election Law Specialist, and has been a member of the League for 8 years. *See id.* ¶ 2. The League is a nonpartisan political organization encouraging the informed and active participation of citizens in government, which includes voter services and citizen-education programs about elections and the voting process. *Id.*; *see also id.* ¶¶ 3, 7.

As a member of the League, Ms. Ashwell works to educate voters to ensure they have correct information, and that everyone eligible to vote is able to cast their ballot. *Id.* ¶ 7. Ms. Ashwell is uncertain as to whether a student should be advised to register their car or obtain a New Hampshire driver's license if they choose to cast their ballot in New Hampshire in light of the amended voter registration form required by Senate Bill 318. *Id.* ¶ 11. As she has explained by affidavit, the language contained within the new voter registration form conflicts with other state laws and appears to violate established law, thus making it impossible to educate students and others with accurate information as to New Hampshire voting requirements during elections. *Id.* ¶¶ 8-11.

### **Senate Bill 318 and Background Law**

New Hampshire law permits all inhabitants with a voting domicile to vote in New Hampshire. RSA 654:1, I. A voting domicile 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

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Hampshire "residents." Each of these petitioners (i) lives in New Hampshire more than any other place, (ii) participates in community and school activities in the Durham area, and (iii) pays money to the State through UNH tuition payments. *See Every v. Supervisors of Madison Checklist*, 124 N.H. 824, 828 (1984) (where plaintiff and his wife spent approximately 220 days per year in a New Hampshire town, owned a home in that town near which they and their family attended church, participated extensively in sports activities in New Hampshire, were active members of a property owners association in the town, and had a son attending school in New Hampshire, plaintiff was "domiciled" in New Hampshire under RSA 654:1, I.). Indeed, these three petitioners clearly are "in every meaningful sense members of [the] New Hampshire political communit[y]" and therefore cannot constitutionally be prohibited from voting in this state. *See Newburger v. Peterson*, 344 F. Supp. 559, 563 (D.N.H. 1972).

continuous presence . . . .” RSA 654:1, I. New Hampshire law explicitly permits students attending school here to choose New Hampshire as their voting domicile. RSA 654:1, I-a.

The definition of “resident” is different than the definition of “domicile” under New Hampshire law. A “resident” is a person “who is domiciled or has a place of abode or both” in New Hampshire 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.” RSA 21:6 (emphasis added). As the State agrees, the law governing eligibility to vote does not require voters to be “residents” of the state as defined in RSA 21:6. Unlike a “resident,” a New Hampshire voter need not have a “current intent” to maintain his “principal place of physical presence” here for the “indefinite future” in order to be considered “domiciled” in New Hampshire. *See* RSA 654:1, I; Ex. A, Gardner Tr. at 92-93.

In 2012, the New Hampshire General Court enacted Senate Bill 318, which became Chapter 285 of the 2012 Session Laws. Chapter 285 directs the Secretary of State to prescribe a voter registration form for use throughout the state substantially in compliance with its provisions. The voter registration form prescribed by the new statute and promulgated in accordance with its provisions requires those registering to vote to affirm, *inter alia*, that:

In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.

RSA 654:7, IV (as amended by 2012 Session Laws ch. 285). It also requires the Secretary of State to send a letter to each person who executes a domicile affidavit, “informing him or her of a driver’s obligation to obtain a New Hampshire driver’s license within 60 days of becoming a New Hampshire resident.” RSA 654:12, V(d) (as amended by 2012 Session Laws ch. 285).

The State interprets the offending paragraph in the amended voter registration form language as follows:

- “[t]he registration form does **not** require any voter to register their vehicle in this State and obtain a New Hampshire driver’s license in order to vote.” *See* State’s Prelim. Hearing Mem. at 2 (emphasis in original); Ex. A, Gardner Tr. at 66.
- “[t]he form does not require the voter to swear or affirm that they are a resident, will register their vehicle in this State and/or will obtain a New Hampshire driver’s license.” *See* State’s Prelim. Hearing Mem. at 2; Ex. A, Gardner Tr. at 66.
- “[t]he Voter Registration Law does not . . . alter the definition of domicile or resident.” *See* State’s Prelim. Hearing Mem. at 7; Ex. A, Gardner Tr. at 95-96.
- “[w]ithout regard to whether or not a voter is a resident, the Voter Registration Law does not affect an individual’s right or ability to register or vote in the State of New Hampshire.” *See* State’s Prelim. Hearing Mem. at 7; Ex. A, Gardner Tr. at 96;
- “[w]hile the Voter Registration Law does inform registrants that they are subject to the residency laws, it specifically does not identify registrants as residents.” *See* State’s Prelim. Hearing Mem. at 7; Ex. A, Gardner Tr. at 97.

The State also contends that the offending paragraph was necessary to avoid confusion when “Line 9” was added to the Voter Registration Form in 2003. Ex. A, Gardner Tr. at 30-31. Line 9 requires a person registering to vote to disclose his/her driver’s license number and state of issuance. *See* Exhibit F, SB 318-FN at page 2; Ex. A, Gardner Tr. at 30-31. Because Line 9 might require a person to consult an out of state driver’s license when registering to vote, Secretary of State William Gardner—who testified on the State’s behalf at deposition—believed the offending paragraph was necessary. Ex. A at 30-35. However, Line 6 of the Form requires a person registering to vote to disclose the “Place last registered to vote.” *See* Ex. F, SB 318-FN at page 2. Although this question has been in the form since the 1970s and might also require consulting an out of state driver’s license, at no time has the State believed that the offending paragraph was required to clarify the information requested by Line 6. Ex. A, Gardner Tr. at 37-43.

Secretary Gardner conducted no studies regarding whether the offending paragraph would be more or less confusing for potential voters. *Id.* at 50-52. Secretary Gardner could not cite to a single example of a voter actually confused by Line 9. Nor is there any evidence that the

registration form, without the offending paragraph, caused any confusion during the 2012 election, or in prior or subsequent years when it was absent (2003 to 2007 and 2013 to the present). There is also no evidence in the record that New Hampshire domiciliaries are generally confused about the requirements of being a resident in this state, thereby requiring that these requirements be made clear in, of all places, the affidavit language of a voter registration form that nonresidents are required to execute in order to vote in New Hampshire.

### **Procedural Background on Petitioners' Suit**

On September 12, 2012, Petitioners petitioned for a preliminary and permanent injunction requiring the State to strike the offending paragraph from the voter registration form.<sup>4</sup>

Following a hearing and the submission of written information by the State, on September 24, 2012, this Court issued an Order granting Petitioners' request for a preliminary injunction. The Court labeled the offending paragraph an "inaccurate and confusing expression of the law."<sup>5</sup>

Following the filing of a Motion for Reconsideration in the Superior Court, on October 4, 2012, this Court held a further hearing. On October 5, 2012, this Court denied the State's Motion for Reconsideration, except with regard to the statement on the Secretary of State's website.

On October 1, 2012, the Supreme Court accepted the State's Petition for Expedited Original Jurisdiction in the Supreme Court. The State also filed an Emergency Motion for Stay,

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<sup>4</sup> Petitioners also sought a judgment declaring that citizens who are both drivers and eligible to vote in New Hampshire, but who intend to cease living here at a defined point of time in the future, do not have any obligation to obtain driver's licenses or motor vehicle registrations from the State of New Hampshire; and to issue a judgment declaring that the portions of Senate Bill 318 are invalid. Petitioners also sought a permanent injunction prohibiting the New Hampshire Secretary of State from sending a letter to those who executed domicile affidavits informing them of the need to obtain a New Hampshire driver's license. Finally, Petitioners sought an order directing the Secretary of State to put a notice on its website; the Court initially granted such an order, but rescinded it upon reconsideration.

<sup>5</sup> This Court also ordered the Secretary of State to re-issue the voter registration form without the offending paragraph, notify every New Hampshire Town and City that the re-issued voter registration form must be used forthwith in registering new voters, and add to its website by October 1, 2012 information regarding driver licenses and car registration. The portion of the order regarding the website was rescinded on reconsideration.

which the Supreme Court denied on October 9, 2012. On October 26, 2012, the Supreme Court denied the State's Motion for Reconsideration.

In the intervening sixteen months, Petitioners and the State have conducted discovery, which has concluded, and the 2012 and 2013 elections have occurred in orderly fashion without the offending paragraph on the voter registration form. The preliminary injunction remains in effect, and Petitioners' request for a permanent injunction remains pending. As there are no material facts in dispute and nothing has changed since this Court's September 24, 2012 Order that would require reversing that decision, Petitioners now move for summary judgment.

#### STANDARD

The right to vote is fundamental under both the Federal and State Constitutions. *E.g.*, *Newburger v. Peterson*, 344 F. Supp. 559, 560 (D.N.H. 1972) (three-judge court); *Akins v. Sec. of State*, 154 N.H. 67, 71 (2006) (“[T]he right to vote is fundamental”); N.H. Const. Pt. I, Art. 11. When an election law imposes “‘severe’ restrictions” on voters’ rights, “the regulation must withstand strict scrutiny to be constitutional.” *Akins*, 154 N.H. at 72 (quotation omitted). Such regulations must “‘be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.’” *Id.* at 73 (quotation omitted).

“The granting of an injunction is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.” *Holl v. Claremont Assocs.*, 143 N.H. 563, 565 (1999). To obtain a permanent injunction, the moving party must prevail and establish irreparable harm, no adequate remedy at law, and that an injunction is in the public interest. *See, e.g., New Hampshire Dep't of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007); *UniFirst Corp. v. City of Nashua*, 130 N.H. 11, 14 (1987); *Murphy v. McQuade Realty, Inc.*, 122 N.H. 314, 316 (1982).

“Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits filed, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” RSA 491:8-a, III. While “the court must consider the evidence in the light most favorable to the party opposing the motion and take all reasonable inferences from the evidence in that party’s favor,” *High Country Assocs. v. N.H. Ins. Co.*, 139 N.H. 39, 41 (1994), the party opposing the motion “may not rest upon mere allegations or denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial,” RSA 491:8-a, IV.

### ARGUMENT

This Court accurately decided this matter in its September 24, 2012 Order, and the relief granted should now be made permanent, with the addition of a prohibition on sending a letter to those who executed domicile affidavits. The September 24, 2012 Order did not alter the statutory definitions of domicile or resident, but simply struck language from the voter registration form that gave voters information that was inaccurate, misleading, and in conflict with those statutory definitions. In reaching its determination, this Court appropriately applied strict scrutiny and rejected the inadequate, and constantly changing, justifications advanced by the State for the offending paragraph.

Refusing to grant a permanent injunction would restore inaccurate statements of the law to the form, would bring about confusion, and would threaten the ability of students, including Petitioners, and mobile domiciliaries to exercise their fundamental right to vote. Residents of this state already recognize that they are subject to its laws. Even reading the form as the State does, State’s interest is, at best, providing a civics lesson regarding potential responsibilities, albeit in a form that citizens must swear to under oath under the penalties of the law. This apparent interest in informing the public—in a fashion that misstates the law or, at the very least, confusingly



conflates definitions of “residency” and “domicile” for voting purposes—cannot override the fundamental right of New Hampshire domiciliaries to vote here.

Because no material facts are in dispute, this matter can be decided on summary judgment. This Court should grant a permanent injunction.

**I. Because No Material Facts are in Dispute, Summary Judgment is Warranted.**

There is no genuine issue of material fact in this matter, making summary judgment warranted. *See* RSA 491:8-a, III. The definitions of “domicile for voting purposes” and “resident” for motor vehicle purposes are not identical. *Compare* RSA 654:1, 1, with RSA 21:6. Those domiciled for voting purposes but who are not residents are entitled to register to vote in New Hampshire. *See id.*; State’s Prelim. Hearing Mem. at 2; Ex. A, Gardner Tr. at 66, 95-97. The voter registration form promulgated by Senate Bill 318 causes confusion. *See* Ex. B, Guare Depo. at 20:16-21; Ex. C, Blesedell Depo. at 26:4-17; 51:9-15; Ex. D, Healey Depo. at 47:23-48:6; Ex. E, Ashwell Aff. ¶¶ 8-11.

Secretary Gardner testified that the offending paragraph was necessary to avoid confusion relating to Line 9 of the form. Ex. A, Gardner Tr. at 30-31. However, Secretary Gardner could not cite to any study establishing confusion and could not cite to a single example of a voter confused by Line 9 (as opposed to the offending paragraph). Nor could he give an example of a single individual confused by the voter registration form without the offending paragraph during the 2012 election—the single largest same day registration in the State’s history. The one example, from the 2008 election, he did discuss involved a voter who made no reference to Line 9, her out of state driver’s license, or registering her motor vehicle in the State of New Hampshire. *Id.* at 61-64. Additionally, even though Line 6, unlike Line 9, may actually require a prospective voter to disclose an out-of-state address, Secretary Gardner testified that

Line 6 does not create confusion requiring the offending paragraph to be included in the Voter Registration Form. *Id.* at 37-43.

**II. Because the Offending Paragraph Conflicts with Statutory and Constitutional Law, a Permanent Injunction Is Warranted.**

A. This Court Appropriately Concluded that the Offending Paragraph Had to Be Struck, and Should Make that Determination Permanent.

As this Court properly concluded, there are crucial differences in the definitions of “domicile for voting purposes” and “resident.” New Hampshire law permits all inhabitants with a voting domicile to vote here. RSA 654:1, I. A voting domicile 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 . . . .” RSA 654:1, I. New Hampshire law permits students attending school in New Hampshire to claim New Hampshire as their voting domicile. RSA 654:1, I-a. New Hampshire law separately defines “resident” as a person “who is domiciled or has a place of abode or both” in New Hampshire *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.” RSA 21:6 (emphasis added).

New Hampshire’s law governing eligibility to vote does not require voters to be “residents” of the state as defined in RSA 21:6. Specifically, unlike the requirements to be a “resident,” a New Hampshire voter need not have a “current intent” to maintain his “principal place of physical presence” in New Hampshire for the indefinite future.

Like this Court’s preliminary injunction order, a permanent injunction will not alter any of the pre-existing statutory definitions of “domicile for voting purposes” or “resident.” Rather, it will simply keep the following offending paragraph out of the voter registration form:

In declaring New Hampshire as my domicile, I am subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.

RSA 654:7, IV. As this Court correctly found, this language provided would-be voters with information that was inaccurate, misleading, and in conflict with existing statutory definitions.

Senate Bill 318 did not alter the statutory definitions of domicile except to strike a sentence that previously provided that a person's claim of domicile "shall not be conclusive of the person's residence for any other legal purpose." Senate Bill 318 also did not alter the definition of "resident." The offending paragraph that this Court struck from the form directly conflicted with the law governing who may register to vote in this state, the relevant portion of which was not amended. Furthermore, the form conflicted with the decision of the three-judge federal court in *Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972) (three-judge court), which rejected a previous attempt by New Hampshire to restrict student voting by limiting eligibility to those voters who had an intention to remain in New Hampshire for the "indefinite future" (i.e., residents).

As this Court has previously concluded, the voter registration form required by Senate Bill 318 requires those registering to vote to affirm that they are subject to the New Hampshire laws applicable to residents, even though voters are not required to be "residents" of the state. As the State agrees, Senate Bill 318 does not change the law governing who has the right to vote in New Hampshire, because it does not amend the voting domicile statute, RSA 654:1, I, which governs who may register to vote in this state.<sup>6</sup> Because the voter registration form contains language directly contrary to applicable law, a permanent injunction must be granted.

B. Strict Scrutiny Is Appropriate

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<sup>6</sup> Even if it did, amending state law to require voters to have an intention to remain in New Hampshire for the "indefinite future" would violate the state and federal constitutions and would conflict with *Newburger*.

As this Court previously concluded, strict scrutiny is appropriately applied to the State's justification for the paragraph at issue. This Court correctly concluded that the offending paragraph had a chilling effect on the fundamental right to vote. *See* Order at 5-7.

The affirmation in the offending paragraph—that one who registers to vote must register his or her vehicle and change his or her driver's license to New Hampshire within 60 days or else face criminal prosecution—is not only an inaccurate statement of the law, but would actually require a voter to pay money to the state in order to vote. There could be no more "severe" restriction on a voter's right than one that prevents him or her from even registering to vote. *See Akins*, 154 N.H. at 71-73 (holding that severe restrictions on voters' rights are subject to strict scrutiny). Indeed, as the *Newburger* Court explained in striking down as unconstitutional a state law that required a "permanent or indefinite intention" to stay in the state in order to register to vote: "[W]e cannot see that a requirement of permanent or indefinite intention to stay in one place is relevant to responsible citizenship. Or, to state it legally, the state has not shown that the indefinite intention requirement is necessary to serve a compelling interest." 344 F. Supp. at 563. Such a requirement "forces persons"—like Petitioners in this case—"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." *Id.* This is precisely what is occurring in this case. The offending paragraph wrongly imposes requirements of residency—namely, the requirement that the voter intend to stay in New Hampshire indefinitely and register one's car and obtain a drivers' license here—on those seeking to vote in this state. The impact of this language is significant. It would disenfranchise people, like Petitioners, who currently call New Hampshire "home," spend money in this state, and are active in this state's affairs, but who do

not have the intention to stay here indefinitely. There is no compelling interest justifying the substantial burden that this language imposes.

There is also discrimination inherent in the statute. The statute treats non-resident domiciliaries differently than it treats residents. Those who are residents will not be chilled from registering to vote by a voter registration form that informs them of a requirement with which the vast majority of residents already comply. However, the form chills non-resident domiciliaries—including college students whose exercise of the franchise remains tentative and vulnerable—from registering to vote because the form wrongfully suggests that, in registering to vote, they become “subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire’s driver’s license . . . .” RSA 654:7, IV. In fact, such requirements only apply to one who “demonstrate[s] a current intent to designate” a New Hampshire city or town “as his principal place of physical presence for the indefinite future to the exclusion of all others.” *See* RSA 21:6. Restrictions that discriminate against classes of voters and that severely restrict those would-be voters from even registering to vote are appropriately subject to strict scrutiny.<sup>7</sup>

The State contends that the offending paragraph does not actually impose residency obligations on voters and instead merely informs voters that residents must follow all the laws that apply to all residents, including the obligation to register one’s car or obtain a driver’s license in New Hampshire. Even if the State is correct that the language did not change the law, the offending paragraph is, at the very least, confusing. As explained above, it creates the appearance to a reasonable person that a voter is (unconstitutionally) required to meet the

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<sup>7</sup> It is axiomatic that the State cannot present false information to its citizens, especially when a fundamental right is the topic of consideration. *See* N.H. Const., Pt. I, Art. I. The voter registration form required by Senate Bill 318 not only presents an inaccurate statement of the law, it provides criminal penalties for individuals who provide false information. Moreover, under New Hampshire law, those who are domiciled in New Hampshire, but who are not residents, *cannot* apply for driver’s licenses and face criminal penalties if they make a false statement in an application for license by falsely claiming residency. *See* RSA 261:44, 263:5-a, 263:35. The false, conflicting, and confusing statements clearly chill a fundamental right and appropriately warrant strict scrutiny.

definition of a “resident” in order to register to vote. Further highlighting the confusion inherent with the language in the form, some legislators claim the intent in changing this language was, contrary to the State’s interpretation, to actually change the law and (unconstitutionally) impose on New Hampshire voters the requirements and obligations of residency. As Senator Peter Bragdon explained in an editorial in the *Union Leader* on September 17, 2012, the purpose of the new language was to “inform[] individuals who move here from another state and register to vote that they are also required to obtain a New Hampshire driver’s license and register their car here (if they have a driver’s license or own a car).” Senator Peter Bragdon, “Another View: Let’s stop the drive-by voting in New Hampshire,” Exhibit G, *Union Leader*, Sept. 17, 2012, (emphasis added). Unfortunately, as Senator Bragdon made clear, the explicit goal behind Senate Bill 318 was to disenfranchise students like Petitioners who have moved to New Hampshire to attend college and have become a part of our state’s community. Senate Majority Leader Jeb Bradley also was quoted in the *Concord Monitor* as stating that “[i]f there’s not the residency requirement [to voting], then what’s to prevent somebody who may be on the rolls in another state from voting in another state by absentee?” See Molly A.K. Connors, “NHCLU suit challenges election law,” Exhibit H, *Concord Monitor*, Sept. 13, 2012 (emphasis added). Secretary Gardner, himself, told the *Concord Monitor* that “[i]f you’re voting, you’re not just voting for president, you’re voting for those individuals who are going to make decisions on how you’re going to live. . . . It means that you register your car here, you get your driver’s license here.” *Id.* (emphasis added). Simply put, if the State and various political actors who were instrumental in passing Senate Bill 318 cannot agree on the scope and meaning of the offending paragraph, then how is a college student expected to not only understand this language on the voter registration form, but swear under oath that he or she is qualified to vote? This is the

definition of confusion, and this is why, as this Court previously held, the offending paragraph represents an “inaccurate and confusing expression of the law.”

Since this Court issued its Order on September 24, 2012, discovery has further revealed the extent to which the paragraph at issue causes confusion. *See* Ex. B, Guare Depo. at 20:16-21; Ex. C, Blesedell Depo. at 26:4-17; 51:9-15; Ex. D, Healey Depo. at 47:23-48:6; *see also* Ex. E, Ashwell Aff. ¶¶ 8-11.

C. Regardless of the Standard Applied, the State Cannot Justify Deliberately Misleading Voters

In prior briefing, the State has claimed that the offending paragraph is justified by interests in notifying individuals of the residency laws at the time that they register to vote, in ensuring that they pay all applicable fees and taxes, in assisting the state in maintaining compliance with the Help America Vote Act of 2002 (HAVA), and because there is a “statutory link that is shared.” At deposition, however, the State’s primary witness, Secretary of State William Gardner, claimed that the offending paragraph was justified solely to avoid confusion among individuals who might have a driver’s license from a different state and who would have to put information from that license on the New Hampshire voter registration form. Ex. A, Gardner Tr. at 30-31. Regardless of the State’s actual interest, none of these interests justify providing a misleading, “inaccurate, and confusing expression of the law,” Order at 5, to would-be voters.

Petitioners do not dispute that the State has a general interest in informing individuals about the criteria required to vote. However, the state does not have an interest in providing inaccurate information that has the effect of dissuading domiciliaries from exercising the right to vote. Given that most residents already have New Hampshire driver’s licenses and car registrations, the State has not provided adequate justification for why it must provide this misleading, inaccurate notification to non-residents as part of the voter registration process. Nor

has the State provided an adequate justification as to why it is necessary to articulate the obligations of New Hampshire residents in, of all places, the affidavit language of a voter registration form that nonresidents are required to execute in order to vote in New Hampshire.

In prior pleadings, the State also claimed an interest in getting all applicable taxes and fees paid. However, Secretary Gardner did not cite this interest in support of the language at his deposition. Regardless, the federal and state constitutions explicitly require that no one be denied the right to vote on the basis of non-payment of fees or taxes. *See* N.H. Const., Pt. I, Art. 11; U.S. Const., Am. XXIV, § 1. Such an interest cannot be pursued through the voter registration process. Moreover, as this Court found, these interests “are not at all served by the paragraph at issue” and the language adopted “impermissibly imping[es] upon voting rights.” Order at 6.

The State also relies on certain aspects of HAVA and the legislative history of House Bill 627, a statute that was passed in 2003. Although this argument was first presented to this Court as an afterthought, Secretary Gardner exclusively relied upon it in deposition testimony to justify the offending paragraph. However, the State has not claimed that that HAVA was considered by the legislature when passing Senate Bill 318. Rather, the State claims that it was considered by the legislature in passing House Bill 627, passed in 2003, and the relevant portion of which was repealed in 2007.

In light of these circumstances, how HAVA or House Bill 627 can justify the placement, years after their enactment, of a misleading and inaccurate statement in the voter registration form is far from clear; regardless, however, the sources upon which the State has relied fail to support its argument. HAVA was passed to, *inter alia*, ensure that voters could register to vote without needing to show identification, if they had already identified themselves to a state or federal agency. This is achieved by HAVA requiring that the “database of the state motor vehicle authority” be made available to the official managing the statewide voter registration list, so that



a registrant's driver's license number can be matched with this database, if they have a "current and valid driver's license" number. 42 U.S.C. § 15483(a)(5)(A)(i)(I) & (a)(5)(B)(i). If a registrant does not have a valid license driver's license number, he or she may provide the last four digits of his/her social security number on the voter registration form, and if he or she does not have either number, then the state is required to give him or her a unique identifier. *Id.* § 15483(a)(5)(A)(i)(II), (a)(5)(A)(ii), (b). HAVA cannot be read to require that non-resident New Hampshire voters who are licensed to drive obtain a New Hampshire driver's license.

With regard to the legislative history of House Bill 627, the testimony makes clear that this bill made two separate and distinct sets of changes to state law: changes to bring it into compliance with HAVA, and changes to state residency and domicile laws. *See* Exhibit I, April 30, 2003 Memo from AAG Bud Fitch. Furthermore, the testimony notes that a "person can use . . . a driver's license from another state to prove his or her identity." *Id.* at 3. This phrase would not have been used if the intention was to remove the ability of persons to register to vote in New Hampshire while holding an out of state driver's license. Finally, the testimony includes a concern of the Committee that House Bill 627 should "not be so restrictive [as] to discourage voter registration, especially among college students." Exhibit J, April 30, 2003 Hearing Report at 2.

Finally, the State has sought to rely on its Election Procedure Manual and RSA 654:12, which provide that a New Hampshire driver's license and/or vehicle registration can be used as evidence that an individual is domiciled in New Hampshire, reflecting a shared "statutory link" that the State has an interest in highlighting. Petitioners do not dispute that possession of a New Hampshire driver's license and/or vehicle registration may constitute an objective manifestation of intent to be domiciled here. But such documents, while sufficient, are not *necessary or required* to establish domicile status. Under state law, there are individuals who are domiciled in

New Hampshire but who properly possess out of state driver's licenses and/or vehicle registrations. It is those individuals, including Petitioners and those similarly situated, whose rights are impacted by the offending paragraph. For them, the supposed "statutory link" is not applicable.

As this Court has already recognized, the State's justifications are not adequate.

Discovery has not revealed new justifications or created material disputes of fact regarding the State's justifications. Accordingly, this Court should make its preliminary injunction permanent, and, in addition, prohibit the Secretary of State from sending a letter to those who executed domicile affidavits informing them of the need to obtain a New Hampshire driver's license.

**III. A Permanent Injunction Is Necessary to Avoid Irreparable Harm to Students and Other Mobile New Hampshire Domiciliaries.**

This Court properly concluded that the issuance of an injunction was necessary to avoid further injury. For the same reasons that the offending paragraph would have caused injury in advance of the November 2012 election, failing to issue a permanent injunction will cause substantial injury to Petitioners and those similarly situated.

As quoted in the Introduction, *supra*, this Court made several core factual findings regarding the offending paragraph. It concluded that the paragraph provided inaccurate and confusing information to prospective voters regarding the effects of declaring a New Hampshire domicile and the relationship between voting and residency obligations; that it substantially or severely burdened Petitioners and those similarly situated in exercising their right to vote in New Hampshire; and that it improperly inhibited and hindered education activities related to voting and the election. Order at 5-7. Most significantly, this Court's factual findings made clear the chilling effect that the offending paragraph has on the exercise of the fundamental right to vote.

These findings led the Court to the conclusion that it had to strike the offending paragraph. The passage of time and opportunity for discovery has not diminished the force of

these findings. Indeed, discovery has only further revealed the extent to which the offending paragraph causes and would cause confusion and chill students and other mobile domiciliaries from registering to vote and voting in New Hampshire. *See* Ex. B, Guare Depo. at 20:16-21; Ex. C, Blesedell Depo. at 26:4-17; 51:9-15; Ex. D, Healey Depo. at 47:23-48:6; *see also* Ex. E., Ashwell Aff. ¶¶ 8-11.

The offending paragraph tells prospective voters that they are subject to the residency laws, even though non-resident domiciliaries are not subject to such laws. Although Secretary Gardner ultimately testified that a person registering to vote needed to be domiciled in New Hampshire, but did not need to be a resident, Ex. A., Gardner Tr. at 92-93, he initially testified that to establish domicile for voting purposes, one needed to be a New Hampshire resident, *id.* at 67:6-9; 67:20-68:5; 68:23-69:1. There can be no greater evidence of the confusion caused by the offending paragraph than the misstatement of the law by the Secretary of State when attempting to justify the language at issue. If the language confuses the Secretary of State, it is clearly confusing to non-resident domiciliaries who are registering to vote in the State of New Hampshire.

The form therefore places false burdens on certain voters in an effort to discourage them from exercising their fundamental right to vote. Further, the form requires voters to execute an affirmation that a false statement on the voter registration form is a criminal offense. Restoring a form that threatens students and other mobile domiciliaries with potential criminal penalties should they choose to exercise their fundamental right to register to vote will have a negative impact by dissuading legitimate would-be voters from registering to vote.

As the State has conceded, the law modifying the form did not alter the definition of “domicile for voting purposes” in any relevant manner, or “resident” at all, and those domiciliaries who are not residents need not register their cars in New Hampshire or obtain New

Hampshire driver's licenses. Ultimately, Secretary Gardner, too, agreed that a domiciliary need not be a resident in order to register to vote and to vote in New Hampshire. *Id.* at 89-93. With these concessions, the State cannot justify the need to retain the offending paragraph in the voter registration form, much less show that the restoration of this inaccurate language will not cause substantial injury to Petitioners and those similarly situated. Nor can it justify sending letters with false information.

Moreover, following the Order, the new voter registration form has been used without incident in all New Hampshire cities and towns, including through the November 2012, March 2013, November 2013, and March 2014 election cycles. None of the parties disputes the fact that the voter registration form distributed in accordance with the Order contains an accurate statement of the law. Conversely, a refusal to make the preliminary injunction permanent would require distribution of another round of voter registration forms and would restore inaccurate statements of the law to those forms. It would bring about confusion as to the requirements for registering to vote, and would threaten the ability of students and other mobile domiciliaries to exercise their fundamental right to vote. A permanent injunction is warranted.

**IV. There is No Adequate Remedy at Law.**

Because voting is a fundamental constitutional right, *Akins*, 154 N.H. at 71, its denial cannot be redressed by money damages. Accordingly, there is no adequate remedy at law.

**V. The Public Interest Requires Making the Preliminary Injunction Permanent.**

For all of the reasons discussed above, the public interest requires a permanent injunction. Residents of this state recognize that they are subject to its laws, and the granting of a permanent injunction will not affect the legal requirement that state residents—including those students who qualify as “residents”—comply with the laws governing them. Nor, of course, will

a permanent injunction have any effect on compliance with the law by the vast majority of residents, who already possess New Hampshire driver's licenses and/or cars registered here.

Further, the parties agree that voting domiciliaries who are not residents need not obtain New Hampshire driver's licenses or vehicle registrations. The State has argued that the affirmation in the voter registration form does not, in fact, require voting domiciliaries who are not residents to register their cars or change their driver's licenses, but merely acts to provide would-be voters with information in case they become residents. At best, therefore, the State's interest is in providing a civics lesson regarding potential responsibilities, albeit one this Court correctly found to be inaccurate. Regardless, such an interest cannot override the fundamental right of New Hampshire domiciliaries to vote in this state.

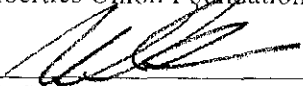
#### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that their Motion for Summary Judgment be granted and that a permanent injunction be issued.

Dated: March 14, 2014

Respectfully Submitted,

Petitioners, by and through their Cooperating  
Attorneys with the New Hampshire  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum of Law has been forwarded to  
the Office of the New Hampshire Attorney General this 14th day of March 2014.



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