

STATE OF NEW HAMPSHIRE  
STRAFFORD COUNTY SUPERIOR COURT  
Docket No. 219-2012-CV-00458

Annemarie E. Guare  
Durham, NH 03824

Garret Healey  
Dover, NH 03820

Cody Blesedell  
Durham, NH 03824

Joan Ashwell  
Durham, NH 03824

The League of Women Voters  
Concord, NH 03301

v.

THE STATE OF NEW HAMPSHIRE  
By its Secretary of State,  
William Gardner  
(In his official capacity only)  
State House  
Concord, NH 03301

**SECOND AMENDED VERIFIED PETITION FOR PRELIMINARY  
INJUNCTION, DECLARATORY JUDGMENT, AND FINAL INJUNCTIVE  
RELIEF**

NOW COME Annemarie E. Guare, Garret Healey, Cody Blesedell, Joan Ashwell and The League of Women Voters (collectively, the "Petitioners") and respectfully petition the Court to issue a preliminary and permanent injunction and

declaratory judgment striking one paragraph from the amended voter registration form required by Senate Bill 318 (Chapter 285:2 of the 2012 Session Laws, amending RSA 654:7) (hereinafter “Chapter 285:2”), and declaring that including that paragraph in the form violates New Hampshire law and the Federal and State constitutions. In support of this petition, Petitioners state as follows:

### **INTRODUCTION**

1. In clear violation of federal and state constitutional principles, the State has sought to freeze out certain eligible voters from participating in the upcoming federal and state elections. A new law, enacted by Chapter 285:2 of the 2012 Session Laws, targets students and other mobile domiciliaries who are unable to declare that they intend to become permanent or indefinite residents of the State of New Hampshire.

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

3. 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.

4. New Hampshire’s law governing eligibility to vote does not require voters to be “residents” of the state as defined in RSA 21:6 or RSA 259:88. Specifically, unlike the requirements to be “resident” under those statutes, 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.

5. Chapter 285:2 directs the Secretary of State to prescribe a standard voter registration form for use throughout the state substantially in compliance with its provisions. The amended 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.*

In other words, the amended voter registration form 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.

6. The amended voter registration form does not amend the voting domicile statute, RSA 654:1, I, and the paragraph quoted above directly conflicts with its provisions, which govern who may register to vote in this state.

7. Furthermore, Chapter 285:2, which adopts the form, cannot be read to have changed the law governing who has the right to vote in New Hampshire. Forms, even when promulgated by statute, do not themselves alter the requirements of the underlying law. Moreover, the General Court specifically considered and rejected linking the meaning of domicile for voting purposes with that of resident for motor vehicle and other purposes. Finally, amending New Hampshire law to require voters to have a definite intention to remain in New Hampshire for the “indefinite future” would violate the state and federal constitutions and would conflict with the decision of a three-judge federal court in Newburger v. Peterson, 344 F. Supp. 559 (D.N.H. 1972) (three-judge court).

8. Petitioners’ constitutional right to vote is currently being chilled due to a conflict between the wording in the amended voter registration form and the explicit terms of specific statutes that define domicile and residency in varying ways for differing purposes. The amended registration form contains language that not only is directly contrary to the applicable law, but also violates the clear legislative intent to leave unchanged New Hampshire’s residency and motor vehicle statutes.

9. Petitioners respectfully petition this Court to issue a preliminary and permanent injunction requiring the State to amend the voter registration forms to strike the following language:

*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.*

(Hereinafter "offending paragraph"). This offending paragraph, in effect, improperly requires registrants to acknowledge that they are subject to laws applicable to "all residents" and required to register vehicles in New Hampshire and apply for New Hampshire driver's licenses. Petitioners also respectfully petition this Court to issue 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 285:2 are invalid as unlawful and unconstitutional.

### **PARTIES**

10. Petitioner Annemarie E. Guare lives at 17 Demeritt Circle, Durham, New Hampshire (with a mailing address of 83 Main Street, GSS Box. 7149, Durham, New Hampshire). She is 19 years of age and is a citizen of the United

States. In August 2012, she came from 39 James St., Bangor, Maine, to New Hampshire, in order to attend school at the University of New Hampshire. She expects to finish school in December of 2015 and does not currently intend to remain in New Hampshire after graduation. She is licensed to drive in Maine. (See supplemental appendix A-2 attached to First Amended Petition for sworn affidavit). She intends to vote in New Hampshire in the upcoming general election.<sup>1</sup>

11. Petitioner Garret Healey lives at 2 Everett Street in Dover, New Hampshire. He is 21 years of age and is a citizen of the United States. In August 2010, he came from 12 Robin Road, Wakefield, Massachusetts, to New Hampshire, in order to attend school at the University of New Hampshire. He expects to finish school in May of 2014 and does not currently intend to remain in New Hampshire after graduation. He is licensed to drive in Massachusetts. (See supplemental appendix A-3 attached to First Amended Petition for sworn affidavit). He intends to vote in New Hampshire in the upcoming general election to the extent he continues to maintain a single, continuous physical presence in New Hampshire at the time of the election.

---

<sup>1</sup> As in all things, current intentions can change, and personal and professional demands may result in one or more Petitioners becoming a permanent resident of New Hampshire at the conclusion of their studies or at some other time in the future.

12. Petitioner Cody Blesedell lives at 40 Gables Way, P.O. Box 94, Durham, New Hampshire. He is 19 years of age and is a citizen of the United States. In August 2012, he came from 96 Hull St., Hingham, Massachusetts, to New Hampshire, in order to attend school at the University of New Hampshire. He expects to finish school in May of 2016 and does not currently intend to remain in New Hampshire after graduation. He is licensed to drive in Massachusetts. (See supplemental appendix A-4 attached to First Amended Petition for sworn affidavit). He intends to vote in New Hampshire in the upcoming general election.

13. Petitioner Joan Ashwell lives at 15 Bayview Road, Durham New Hampshire. She is a volunteer with the New Hampshire League of Women Voters as the Election Law Specialist. She has been a member of the New Hampshire League of Women Voters for over 8 years. She works to educate voters to ensure correct information is distributed, and everyone eligible to vote is able to cast their ballot. She is uncertain as to whether a student should be advised to register their car or obtain a NH driver's license if they choose to cast their ballot in New Hampshire in light of the conflicting New Hampshire statutes regarding residency. (See appendix A-5 to original Verified Petition for sworn affidavit).

14. Petitioner The League of Women Voters is located at 4 Park Street, Concord, New Hampshire. The organization was formed in November 1919 to encourage the active participation of citizens in government. It conducts voter

services and citizens education programs about elections, the voting process, and issues. The language contained within the new voter registration form conflicts with other state laws, appears to violate established law, thus making it impossible to educate students and others with accurate information as to New Hampshire voting requirements for the upcoming general elections.

15. Defendant William Gardner is Secretary of State of the State of New Hampshire and as such is charged with overseeing all aspects of the conducting of elections in New Hampshire. He is joined herein solely in his official capacity.

### **JURISDICTION**

16. This is an action by Petitioners seeking injunctive and declaratory relief pursuant to Superior Court Rule 161(b) and RSA 491:22(I). Petitioners seek an injunction striking one paragraph from the voter registration form required by RSA 654:7, IV, as amended by Chapter 285:2. Petitioners request a judicial determination that RSA 654:7, IV, as amended, violates state law, Part 1, Articles 1, 2, 10, 11 and 14 of the New Hampshire Constitution, and the Fourteenth and Twenty-Fourth Amendments to the Constitution of the United States. RSA 491:22(I) provides in part, "Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive."

17. The Court has personal jurisdiction over the Defendant, as he is responsible for voter registration forms to be distributed within the County.

18. The Court has subject matter jurisdiction pursuant to RSA 491:22 and Superior Court Rule 161(b).

19. The venue in Strafford County Superior Court is proper because certain of the parties are domiciled in or provide electoral education with the County, and the violations complained of have harmed and will, if unchecked, continue to harm, the rights of voters domiciled in the County.

### **FACTUAL AND LEGAL BACKGROUND**

The Right to Vote Is Available to All With a Voting Domicile in New Hampshire, and Is Not Limited to New Hampshire “Residents” As Defined by State Residency

#### Laws Enacted for Different Purposes

20. New Hampshire law provides that “[e]very inhabitant of the state, having a single established domicile for voting purposes,” is entitled to vote in New Hampshire. RSA 654:1, I.

21. New Hampshire law defines domicile for voting purposes as follows:

*An inhabitant’s domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves. RSA 654:1, I.*

22. This same law explicitly permits students attending school in New Hampshire to choose New Hampshire as their voting domicile:

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

RSA 654:1, I-a.

23. Furthermore, the New Hampshire Secretary of State, who is the state official charged with administering the Election Laws, has interpreted this law to permit college students attending school in New Hampshire to choose to vote here:

*New Hampshire election law provides college students with a special privilege when determining where they register to vote. A college student in New Hampshire may choose as his/her voting domicile, either the domicile he/she had before entering college or the domicile he/she has established while attending college.*

New Hampshire Secretary of State, *Voting as a College Student in New Hampshire*  
and *Voter Registration*, available at  
[http://sos.nh.gov/Voting\\_As\\_A\\_College\\_Student.aspx](http://sos.nh.gov/Voting_As_A_College_Student.aspx)

24. New Hampshire law 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.

25. For motor vehicle purposes, New Hampshire law defines resident 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.” RSA 259:88. The Division of Motor Vehicles references the residency requirements of RSA 21:6 on its web page as a condition for drivers to obtain a New Hampshire license. See <http://www.nh.gov/safety/divisions/dmv/new-resident/index.htm>.

26. New Hampshire’s law governing eligibility to vote does not require voters to be “residents” of the state as defined in RSA 21:6 or RSA 259:88. Specifically, unlike the requirements to be “resident” under those statutes, 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.

27. At the close of the legislative session, the New Hampshire Legislature passed Senate Bill 318 (which became 2012 Session Laws Chapter 285) without the Governor’s signature on June 27, 2012. Chapter 285:2 amended RSA 654:7, IV so as to add, *inter alia*, the following new language to the voter registration form, to be affirmed under oath:

*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.*

28. The statute governing voting domicile has not, however, been amended to impose the requirements contained in the new form. The law does not require that New Hampshire voters be “residents” within the meaning of RSA 21:6 or RSA 259:88.

29. If a person is domiciled in New Hampshire but nevertheless has the intent to leave at the end of a concrete, limited period of time, he/she is not a resident under RSA 259:88 and 21:6, and is not required to re-register his or her vehicle or switch his or her driver’s license to New Hampshire. Those presently domiciled in New Hampshire are permitted to vote despite “a firm intention of leaving [New Hampshire] at a fixed time in the future,” Newburger, 344 F. Supp. at 560, and hence not meeting the definition of “resident.”

30. Nevertheless, Chapter 285:2 requires Petitioner students, and those similarly situated, to execute a declaration affirming their obligation to personally register their automobiles and obtain a New Hampshire driver’s license.

31. It violates the New Hampshire and federal Constitutions for the government to deliberately convey inaccurate information about state law with the purpose and/or effect of dissuading from voting those New Hampshire domiciliaries who do not intend to reside in New Hampshire for the indefinite future.

32. Because the amended registration form deliberately conveys such inaccurate information to the voters, the above-quoted paragraph must be struck from the form.

Chapter 285:2 Cannot Be Read to have Changed the Law Governing Who  
May Vote in New Hampshire

*Amendments to Forms Do Not Change Substantive Law*

33. Chapter 285:2 alters the voter registration form without making any change to the underlying substantive statutes governing domicile for voting purposes or residency for motor vehicle or other purposes.

34. Because the form has no impact on these statutes, the law governing voting domicile and residency for motor vehicle and other purposes remains unchanged.

*The General Court Specifically Considered and Rejected Amendments*

*Linking the Meaning of Domicile for Voting Purposes with That of Resident for  
Motor Vehicle and Other Purposes*

35. The 2012 legislative session saw lawmakers presented three times with proposals to amend the definition of resident as contained in New Hampshire law for the purpose of eliminating the requirement of an intent to stay indefinitely—two times for general purposes and once specifically for motor vehicle purposes.

36. The legislature each time declined to change the substantive law regarding residency and chose instead to retain the provision limiting residents (for motor vehicle and other purposes, but not for voting) to those persons who intend to remain in New Hampshire indefinitely.

37. House Bill 1478 as filed (Appendix E-9 to original Verified Petition) sought to amend RSA 654 by making the definition of domicile for voting to be the same as the definition of residence for motor vehicle purposes:

*The requirements for physical presence and manifestation of an intent to make the place where a physical presence has been established as a person's one domicile for election law purposes shall be the same as for determining residence for motor vehicle law purposes. A person who declares an address in a New Hampshire town or ward as his or her domicile for voting purposes shall be deemed to have established his or her residence for motor vehicle law purposes at that address.*

38. The bill was amended in the House by replacing the above paragraph with the following:

*A person who declares an address in a New Hampshire town or ward as his or her domicile for voting purposes shall be deemed to have established his or her residence for motor vehicle law purposes at that address.*

(See Docket HB 1478—Appendix E-12 to original Verified Petition—and Amendment 2012-1226h—Appendix E-11 to original Verified Petition).

39. This amended version passed the House, but was tabled by the Senate, where it remained until adjournment. The bill did not pass. (Docket HB 1478, Appendix E-11 to original Verified Petition).

40. The Legislature thus considered, but chose not to adopt, a specific provision that would have explicitly linked one's residence for voting and motor vehicle purposes, and would have required voters to have a definite intention to remain in New Hampshire for the "indefinite future."

41. House Bill 1354 presented a second instance where the Legislature ultimately declined to change the substantive definitions of residency so as to have motor vehicle registration laws conform to the new voter registration form. (Docket HB 1354, Appendix E-9 to original Verified Petition).

42. HB 1354 was more expansive in scope than HB 1478 in that it equated domicile for voting purposes, a definition that does not include intent to remain indefinitely, with residency for all purposes under New Hampshire law. The proposed legislation sought to amend 654:1 by providing:

A person's claim of domicile for voting purposes shall ~~not~~ be conclusive of the person's residence for ~~any~~ all other legal ~~purpose~~ purposes. (E-6—HB 1354 as introduced)

43. HB 1354 originally passed the House with the above quoted provision. The Senate did not approve the bill, and it was tabled.

44. On the last day of the session, after the legislature had passed a separate voter ID bill, the Senate removed HB 1354 from the table as a vehicle to address a defect in the voter ID bill, relating to the type of affidavit used for voting. In turn, the Senate stripped all of the original HB 1354's language and completely

rewrote it to address the defect in the voter ID bill, a bill that was wholly unrelated to the issues of domicile and residency. (Docket HB 1354, Appendix E-9 to original Verified Petition).

45. The Senate passed the amendment related to the affidavit. The House concurred on the same day and it subsequently became law without the Governor's signature. (Docket 1354, Appendix E-8 to original Verified Petition).

46. Thus both houses voted to remove all language in HB 1354 that equated voting domicile with residence for other purposes, again leaving the language now included in the new voter registration form without any basis or support in New Hampshire law. In essence, the registration form amendment is an orphan of failed legislation.

47. Senate Bill 318, which became Chapter 285:2, represented a third occasion when the legislature explicitly chose not to change the substantive definitions of residency. The original version of the bill (Appendix E-1 to original Verified Petition) contained a provision identical to that of HB 1354 to make the requirements of residency the same as those for voting domicile:

*A person's claim of domicile for voting purposes shall [~~not~~] be conclusive of the person's residence for [~~any~~] all other legal [~~purpose~~] purposes.*

48. SB 318, as originally filed, thus would have made a person who met the requirements of domicile for voting purposes a resident for all purposes.

49. Since the Newburger case had ruled that voting domicile could not be denied to a person solely because they did not have an intent to remain permanently or indefinitely in New Hampshire, the proposed legislation would have meant that a person would have been a resident for all legal purposes if they were registered to vote, regardless of their intent to remain in New Hampshire.

50. Committee hearings in the Senate brought out that such a wholesale change in the definition of residency could have serious deleterious fiscal consequences for the state.

51. There are approximately 600 statutes on the books that reference the term "resident." Certain of these statutes establish obligations for residents such as the need to register cars and have a New Hampshire driver's license. Other statutes establish eligibility for benefits such as in-state fishing licenses, prescription drug benefits and in-state tuition at state colleges.

52. The New Hampshire University system is unique in its reliance upon the tuition of out of state students. It is first in the nation in terms of percentage of budget coming from such out of state tuitions and last in the nation in terms of percentage derived from state appropriations of moneys raised by taxes.

53. The University system testified to the disastrous fiscal effects on the University system of equating voting domicile with the definition of residence, and thereby removing the requirement that a resident need not intend to remain in New

Hampshire indefinitely. University Systems of New Hampshire general counsel, Ronald Rogers submitted the following testimony:

I am Ronald Rodgers, USNH General Counsel, here to testify on behalf of the University System and its component institutions, Granite State College, Keene State College, Plymouth State University, and the University of New Hampshire. Our interest in this bill is limited to section 3, which would make everyone who is registered to vote in the state of New Hampshire automatically eligible for in-state tuition rate.

Under RSA 187-A16, the USNH Board of Trustees has established differential tuition rates for in-state and out-of-state students. At UNH the difference is about \$13,000 per year; at KSC and PSU the difference is about \$7,500 per year. The Board also has adopted strict standards for determining eligibility for these reduced rates. Those standards are in rules promulgated through the state's Administrative Procedures Act, and provide, among other requirements, that to qualify for in-state tuition a student must intend to remain in New Hampshire for the indefinite future.

Section 3 of SSB 318 would effectively eliminate that requirement, making a potentially significant number of out-of-state students who intend to leave New Hampshire upon graduation eligible for in-state tuition rates. Every such case would cost USNH up to \$13,000 per year or \$52,000 over the course of a student's four years of undergraduate education.

For those reasons the University System of New Hampshire and its component institutions respectfully request this Public and Municipal Affairs Committee to exclude USNH from the coverage of section 3 of SB 318. Thank you.

54. The Senate committee first addressed the concerns of the University system by fashioning and adopting an amendment that gave it an exclusion from the proposed change:

*"Nothing in this section shall prevent the university system of New Hampshire or the community college system of New Hampshire from*

*establishing rules for in-state tuition.*" (Amendment 2012-1132S, Appendix E-2 to original Verified Petition).

55. While this addressed the concerns of the University system, other concerned groups noted that this still left hundreds of possibly serious consequences unexamined by the Senate and urged the Senate to simply strip the entire provision from the bill. (See, inter alia, the testimony of the League of Women Voters, Appendix E-14 to original Verified Petition).

56. In response to these concerns, Senator Barnes, Chair of the Senate Public and Municipal Affairs Committee that had heard the bill, spoke on the floor of the concerns raised about the language in the bill equating voting domicile with residence for all purposes. At that point, Senator Barnes moved on the floor to completely strip from the bill the provision that created such a global change to New Hampshire law of residency.

57. The Senate approved Senator Barnes' amendment and deleted the provision connecting voting domicile to residency. With this provision removed, the Senate then passed the bill and it was thereafter adopted into law. (Docket SB 318, Appendix E-5 to original Verified Petition).

58. If the Senate had intended to actually make voting domicile the same as residence for all purposes as the registration form suggests, the actions of the

Legislature in passing Senator Barnes floor amendment would not have taken place.

59. In failing to pass any of these three pieces of legislation, the General Court demonstrated clear legislative intent to leave the definitions of domicile for voting purposes and residency unchanged. In failing to pass any of these proposed laws, the General Court also declined to effectuate a substantive change in residency laws, thus leaving New Hampshire statutes that define residency for various purposes—including RSA 21:6 and RSA 259:88—unchanged.

*Amending New Hampshire Law to Require Voters to Have a Definite Intention to Remain in New Hampshire for the “Indefinite Future” Would Violate the State and Federal Constitutions and Conflict with the Decision of the Three-Judge Federal Court in Newburger*

60. In Newburger v. Peterson, a three-judge federal court struck down New Hampshire’s attempt to require student-voters to express a “permanent or indefinite intention” to stay in the state in order to register to vote, holding that: “[i]n this day of widespread planning for change of scene and occupation we 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.” Id. at 563.

61. Part I, Article 11 of the New Hampshire Constitution guarantees that:

All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election.

62. If Chapter 285:2 were to be read so as to impose the requirement to register a motor vehicle and apply for a New Hampshire's driver's license only upon individuals registering to vote following its effective date, it would violate Petitioners' Rights under the state and federal constitutions and the principles set forth in Newburger. There is simply no constitutional basis for requiring voters to affirm that they have an indefinite intention to remain in this state in order to cast their ballots.

63. The Supreme Court of New Hampshire has made clear that the equal protection provisions of the State Constitution "are designed to ensure that State law treats groups of similarly situated citizens in the same manner." McGraw v. Exeter Region Co-op. Sch. Dist., 145 N.H. 709, 711 (2001).

64. Therefore, the first question in any Equal Protection analysis is whether or not the law treats groups of similarly situated persons differently. Id. (citing LeClair v. LeClair, 137 N.H. 213, 222 (1993)).

65. In Akins v. Secretary of State, 154 N.H. 67 (2006), the Supreme Court held that voting is a fundamental right and discussed the tests and standards to be employed in deciding an equal protection claim under Part I, Article 11:

*A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights ... that the Petitioner seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the Petitioner's rights.*

Id. (quoting Burdick v Takushi, 504 U.S. 428, 433-34 (1992)) (quotations omitted).

66. Under this analytical framework, when the election law at issue subjects the Petitioner's rights to “severe” restrictions, the regulation must withstand strict scrutiny to be constitutional. Burdick, 504 U.S. at 434; Akins, 154 N.H. at 72.

67. If Chapter 285:2 is read to impose the motor vehicle burdens only on those registering to vote after August 26, 2012, it would unequally subject this subset of residents to severe restrictions on their fundamental right to vote, triggering strict scrutiny.

68. In tying these individuals’ domicile for voting purposes to a requirement to register a motor vehicle and apply for a New Hampshire driver’s license, the statute would directly link unavoidable financial and practical costs to registering to vote and imposes the requirement of paying a municipal tax (required to register a vehicle) as a consequence of their choice to vote.

69. New Hampshire Supreme Court precedent makes clear that such a restriction on voting would be sufficient to subject the statute to strict scrutiny analysis.

70. Specifically, the Akins court applied strict scrutiny to a statute requiring the ordering of parties on the electoral ballot be based upon votes in the prior election. The court found the restriction on the right to be elected was severe as it discriminated against candidates running in minority parties. 154 N.H. at 73.

71. Given the heavy financial and practical costs placed here only on voters who register using the updated form, the same standard of review is appropriate.

72. Persuasive authority from other jurisdictions further supports the application of strict scrutiny. See Republican Party of Arkansas v. Faulkner County, Arkansas, 49 F.3d 1289 (8th Cir. 1995) (applying strict scrutiny to the requirement that political parties fund and conduct primary elections as such provisions effectively force voters who wanted to vote in the Republican primary to vote either in the Democratic primary or not at all); Greidinger v. Davis, 988 F.2d 1344 (4th Cir. 1993) (applying strict scrutiny to Virginia's voter registration process conditioning the right to vote on public disclosure of social security number constitutes a severe burden).

73. To survive a strict scrutiny analysis, a severe restriction must “be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.” Akins, 154 N.H. at 704 (quoting Follansbee v. Plymouth Dist. Ct., 151 N.H. 365, 367 (2004)) (internal quotation marks omitted). The State cannot demonstrate a compelling interest in imposing the licensing and registration requirements on voters and, therefore, the imposition of these burdens would violate Part 1, Article 11, of the New Hampshire Constitution.

The Amended Voter Registration Form Imposes an Illegal Poll Tax

74. The Twenty-Fourth Amendment to the United States Constitution prohibits conditioning the right to vote on the payment of a poll tax.

75. Part 1, Article 11 of the New Hampshire Constitution, similarly requires that “The right to vote shall not be denied to any person because of the non-payment of any tax.”

76. The United States Supreme Court invalidated a poll tax in Harman v. Forssenius, holding that a Virginia law requiring voters to either pay a fee of \$1.50 or file a certificate of residence violated the Twenty-Fourth Amendment. 380 U.S. 528, 544 (1965).

77. The Court made clear that the Twenty-Fourth Amendment “nullifies sophisticated as well as simple-minded modes of impairing the right guaranteed.”

Id. at 540-41. The category of forbidden poll taxes is broad in order to root out any procedural requirements that deny or abridge the right to vote. Id. at 541. It therefore covers not just direct taxes on the right to vote but any imposition that constitutes a “material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax.” Id.

78. Imposition of the costs associated with change of registration and license to those who seek to register and vote constitutes an illegal poll tax.

79. Imposition of the costs associated with changing registrations and licenses upon those who seek to vote also violates Part 1, Article 11’s guarantee of free elections.

80. Further, anyone who wishes to obtain a New Hampshire driver’s license must certify that he or she has “paid all resident taxes or Interest and Dividends Tax (RSA 77) for which I am liable.” Because of this required certification to obtain a New Hampshire driver’s license, it violates the New Hampshire Constitution to condition a New Hampshire domiciliary’s right to vote on the obtaining of a New Hampshire driver’s license.

81. In interpreting statutes, courts should do so in a manner so as to avoid unconstitutional results. The only way to do so in the instant case is to view the form prescribed in Chapter 285:2 as being in direct conflict with other relevant substantive law and to strike the offending paragraph from the form as an

impermissible interference with Petitioner's constitutional right to register to vote and to vote.

The Amended Voter Registration Form Unlawfully Dissuades New Hampshire Domiciliaries Who Have An Intent to Depart in the Future from Registering to Vote, Causing Immediate and Irreparable Harm

82. The Secretary of State has already distributed the new voter registration form as provided by Chapter 285:2.

83. On information and belief, it is currently being used by every municipality in New Hampshire to register new voters.

84. On information and belief, as a consequence of the use of the new voter registration form, certain students who are domiciled in New Hampshire for voting purposes have declined to register to vote in New Hampshire due to the reference to motor vehicle licensing and registration issues contained in the form and due to the uncertainty of their obligations under new Hampshire law.

85. As a result, eligible voters are declining to exercise their fundamental right to vote and are declining to follow through with the registration process.

86. Petitioners The League of Women Voters and Joan Ashwell also wish to educate the public about the laws related to registration of voters and the requirements of the laws of this State. As set forth above, RSA 654:7, IV, as

amended, is in conflict with other state statutes, and unconstitutionally infringes on the right to vote as guaranteed by the Federal and New Hampshire constitutions.

87. Because the new voter registration form dissuades potential voters from voting by providing them with legally inaccurate information regarding their burden to register vehicles and obtain driver's licenses, the law causes irreparable harm whether or not a would-be voter ultimately follows through with the registration process.

88. Petitioners and potential voters who do register are subject to immediate and irreparable harm if they are unlawfully forced to comply with motor vehicle and driver's licenses requirements as contained in the new voter registration form.

89. Petitioners have no alternate and adequate remedy at law if they are denied the requested relief.

90. The League of New Hampshire Voters and its election specialist cannot provide clear information to prospective voters as they seek to carry out their civic purpose.

91. The League of New Hampshire Voters and its elections specialist need an immediate resolution of the legal issues raised in this Petition so they can reliably respond to inquiries from prospective voters.

92. The League of New Hampshire Voters and its election specialist are also subjected to immediate harm because they cannot carry out their mission of providing accurate and certain information to the public and to prospective voters.

93. They have no alternate and adequate remedy at law if they are unable to obtain the requested relief.

There is a Substantial Likelihood of Success on the Merits

94. The information provided in the amended form is clearly inaccurate and in direct conflict with state substantive law.

95. When faced with a prior attempt to refuse to register student-voters because they did not have a “permanent or indefinite intention to stay in one place,” a three-judge federal court ruled those attempts unconstitutional. Newburger, 344 F. Supp. 559.

96. In light of Newburger and precedent from the New Hampshire Supreme Court and United States Supreme Court, Petitioners have a substantial likelihood of prevailing on the merits of their case.

**CAUSES OF ACTION**

**Count I**

(Violation of State Law; Violation of Part 1, Article 1 of the New Hampshire  
Constitution)

97. Petitioners adopt the allegations contained in Paragraphs 1 - 97.

98. The State of New Hampshire has a constitutional obligation to provide assistance to all of its citizens under Part 1, Article 1, of the New Hampshire Constitution.

99. When providing advice to its citizens, knowing that this advice will be relied upon, the State has a further duty to properly investigate and inform itself prior to the issuance of its opinion and advice.

100. Chapter 285:2 requires the New Hampshire Secretary of State to draft and distribute a new voter registration form “which shall be in substantially the following form” as outlined by the statute. The voter registration form required by Chapter 285:2 inaccurately informs would-be New Hampshire voters that “[i]n 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 driver’s license within 60 days of becoming a resident.”

101. Chapter 285:2 does not amend any of the definitions of domicile or residency in the New Hampshire Revised Statutes, including but not limited to definitions in RSA 654:7, RSA 21:6, or RSA 259:88.

102. Chapter 285:2 does not modify the provisions of RSA 261:44, the section that exempts non-residents from registering motor vehicles, nor RSA 263:38, the section that exempts non-residents from obtaining a New Hampshire

driver's license.

103. Because the voter registration form required by Chapter 285:2 provides inaccurate information to would-be New Hampshire voters, incorrectly informing them that they are subject to the state laws that apply to all residents, including the requirement to register a motor vehicle or obtain a New Hampshire driver's license, the distribution and use of the new voter registration form violates state law and Part 1, Article 1, of the New Hampshire Constitution.

### **Count II**

(Violation of State Law; Violation of Part 1, Articles 1 and 11 of the New Hampshire Constitution)

104. Petitioners adopt the allegations contained in Paragraphs 1 - 104.

105. The amended voter registration form conflicts with the New Hampshire statute governing domicile for voting purposes, which governs the right to vote.

106. Contrary to New Hampshire law, Chapter 285:2 purports to require would-be New Hampshire voters who intend to change their domicile in the future away from New Hampshire to nevertheless obtain New Hampshire driver's licenses and register their vehicles in New Hampshire in order to vote.

107. Under New Hampshire law, only those who designate New Hampshire as their "principal place of physical presence for the indefinite future to

the exclusion of all others” are considered residents for driver’s license and motor vehicle registration purposes.

108. To the extent Chapter 285:2 requires those registering to vote to affirm that they have designated New Hampshire as their “principal place of physical presence for the indefinite future to the exclusion of all others,” which affirmation and designation is not required to vote in New Hampshire, the law violates state law and Part 1, Articles 1 and 11 of the New Hampshire Constitution.

**Count III**

(Violation of State Law; Violation of Part 1, Articles 1 and 11 of the New Hampshire Constitution)

109. Petitioners adopt the allegations contained in Paragraphs 1 - 109.

110. Chapter 285:2 purports to require would-be New Hampshire voters who intend to change their domicile in the future away from New Hampshire to nevertheless obtain New Hampshire driver’s licenses and register their vehicles in New Hampshire in order to vote.

111. Under New Hampshire law, only those who designate New Hampshire as their “principal place of physical presence for the indefinite future to the exclusion of all others” are considered residents for driver’s license and motor vehicle registration purposes.

112. To the extent Chapter 285:2 requires those registering to vote to obtain New Hampshire driver's licenses and register their vehicles in New Hampshire, the law unconstitutionally imposes a condition on registering to vote that is not a requirement under state law, in violation of state law and Part 1, Articles 1 and 11 of the New Hampshire Constitution.

#### **Count IV**

(Violation of Part 1, Article 11 of the New Hampshire Constitution, and Amendment 24 of the United States Constitution)

113. Petitioners adopt the allegations contained in Paragraphs 1 to 113.

114. Part 1, Article 11, of the New Hampshire Constitution provides that “[t]he right to vote shall not be denied to any person because of the non-payment of any tax.” The Twenty-Fourth Amendment to the Constitution of the United States similarly prohibits the imposition of a poll tax, a tax imposed as a consequence of the choice to vote.

115. Anyone who wishes to obtain a New Hampshire driver's license must certify that he or she has “paid all resident taxes or Interest and Dividends Tax (RSA 77) for which I am liable.”

116. Because of this required certification to obtain a New Hampshire driver's license, it violates the New Hampshire Constitution to condition a New Hampshire domiciliary's right to vote on the obtaining of a New Hampshire

driver's license.

117. To the extent that Chapter 285:2 requires New Hampshire domiciliaries who intend to cease living in New Hampshire at a specified point in time and who are registering to vote to register their cars in New Hampshire, such individuals are required, as a consequence of their choice to vote, to pay registration costs as outlined in RSA 261:153.

118. Registration payments are remitted to town or city treasuries.

119. RSA 261:165 provides that these funds "shall be used for the general purposes of the city or town."

120. As a result, such would-be voters who choose to exercise their right to vote and own cars are forced by Chapter 285:2 to pay extra municipal taxes.

121. Because the voter registration form required by Chapter 285:2 purports to require would-be New Hampshire voters who drive to obtain a New Hampshire driver's license and to register any motor vehicles they may own, and obtaining a driver's license or registering a motor vehicle requires the payment of taxes and/or the certification that such taxes have been paid, the distribution and use of the form violates the federal and state constitutions.

### **Count V**

(Equal Protection and Due Process)

122. Petitioners adopt the allegations contained in Paragraphs 1 to 122.

123. Would-be voters who intend to cease living in New Hampshire at a specific point in time and who registered to vote prior to August 26, 2012 were not required to sign the amended voter registration form as contained in Chapter 285:2.

124. Only would-be voters who intend to cease living in New Hampshire at a specific point in time and who register after August 26, 2012 are burdened with the extra requirement that they register cars in New Hampshire and obtain a New Hampshire license pursuant to the statement in the voter registration form required by Chapter 285:2.

125. As a result, similarly situated voters who are domiciliaries in New Hampshire and intend to leave are divided into two classes, one that does not need to register motor vehicles in New Hampshire or obtain New Hampshire licenses, and one that does need to comply with the affirmation in the voter registration form.

126. There is no rational basis or compelling governmental interest for New Hampshire to require such domiciliaries to comply with these extra burdens as contained in the voter registration form simply because they registered to vote after August 26, 2012.

127. These burdens are unrelated to the act of voting and are not necessary to accomplish any compelling governmental interest.

128. Because Chapter 285:2 imposes a burden on domiciliaries who intend

to cease living in New Hampshire at a specific point in time to register cars in New Hampshire and to obtain a New Hampshire license if they register to vote after August 26, 2012, but not if they have registered to vote prior to August 26, 2012, the law 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.

### **Count VI**

(Equal Protection and Due Process)

129. Petitioners adopt the allegations contained in Paragraphs 1 to 129.

130. Chapter 285:2 enacts a form that purports to require domiciliaries who intend to leave New Hampshire at a specific time and who choose to vote to obtain a New Hampshire driver's license and to register their cars in New Hampshire.

131. Domiciliaries who intend to leave New Hampshire at a specific time and who do not vote in New Hampshire are not required to obtain a New Hampshire driver's license or to register their cars in New Hampshire.

132. As a result, Chapter 285:2 purports to create two classes of such domiciliaries.

133. There is no rational basis or compelling governmental interest for New Hampshire to require voting domiciliaries to comply with these extra burdens as outlined in the new voter registration form while not requiring such non-voting

domiciliaries to comply with these requirements.

134. These burdens are unrelated to the act of voting and are not necessary to accomplish any compelling governmental interest.

135. Because Chapter 285:2 creates two classes of domiciliaries that intend to leave New Hampshire at a specific time, one that exercises its right to vote and is therefore burdened with the requirement of registering cars in New Hampshire and obtaining New Hampshire driver's licenses, and another class of such domiciliaries that does not vote and is not required to comply with these registration and licensing burdens, the law 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.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that:

1. Pending a final hearing on this matter, the Court schedule an immediate hearing given the need for an immediate resolution of the legal issues raised by Petitioners.
2. Following an immediate hearing, in light of the irreparable harm to Petitioners caused by the Secretary of State's use of the amended voter registration form, Petitioners' lack of an alternate adequate remedy at law if the Secretary of State continues to use the amended voter registration form, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue a preliminary injunction:

- a. Directing the New Hampshire Secretary of State to strike the offending paragraph from the amended voter registration form forthwith.
  - b. Directing the Secretary of State to re-issue voter registration forms without the offending paragraph.
  - c. Directing the Secretary of State to notify every New Hampshire town and city that the re-issued voter registration form must be used forthwith in registering new voters.
  - d. 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.
3. The Court schedule an expedited final hearing in this matter.
  4. Following the final hearing, the Court issue a declaratory judgment finding:
    - a. Chapter 285:2 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 285:2 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 Sessions Laws 285:2 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.
  5. That following the final hearing, and as a consequence of the above-requested declaratory relief, the Court issue a permanent injunction:
    - a. Directing the New Hampshire Secretary of State to strike the offending paragraph from the amended voter registration form forthwith.

- b. Directing the New Hampshire Secretary of State to re-issue voter registration forms without the offending paragraph.
  - c. Directing the Secretary of State to notify every New Hampshire town and city that the re-issued voter registration form must be used forthwith in registering new voters.
  - d. 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.
  - e. Directing the New Hampshire 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.
6. And for such other relief as may be just and proper.

Respectfully Submitted,

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



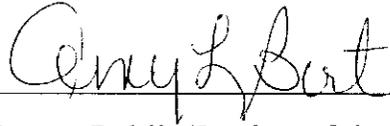
Gilles R. Bissonnette, NH Bar # 265393  
New Hampshire Civil Liberties Union  
18 Low Avenue  
Concord, NH 03301  
(603) 224-5591  
[gilles@nhclu.org](mailto:gilles@nhclu.org)

Alan J. Cronheim, NH Bar # 545  
Sisti Law Offices  
78 Fleet Street  
Portsmouth, NH 03801  
(603) 433-7117  
[acronheim@sistilawoffices.com](mailto:acronheim@sistilawoffices.com)

William E. Christie, NH Bar # 11255  
Benjamin T. Siracusa Hillman, NH Bar # 20967  
Shaheen & Gordon, P.A.  
107 Storrs Street  
P.O. Box 2703  
Concord, NH 03302  
(603) 225-7262  
[wchristie@shaheengordon.com](mailto:wchristie@shaheengordon.com)  
[bsiracusahillman@shaheengordon.com](mailto:bsiracusahillman@shaheengordon.com)

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

On this 2nd day of April 2014, before me, personally appeared Gilles Bissonnette and swore that the within instrument is true to the best of his/her knowledge and belief.



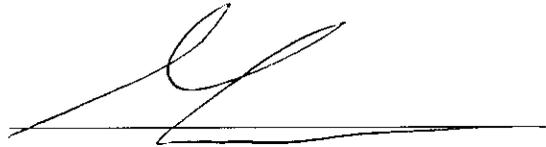
\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires: \_\_\_\_\_

~~AMY L. BITT~~  
Notary Public - New Hampshire  
My Commission Expires April 15, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Second Amended Verified Petition for Declaratory Judgment and Injunctive Relief Under Oath has been forwarded to the Office of the New Hampshire Attorney General this 2nd day of April, 2014.

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line that extends to the right.

Gilles R. Bissonnette