UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

New Hampshire Youth Movement, *Plaintiff*, v. David M. Scanlan, in his official capacity as New Hampshire Secretary of State, *Defendant*.	Consolidated Cases Case No. 1:24-cv-291-SE-TSM
Coalition for Open Democracy, *et al.*, *Plaintiffs*, v. David M. Scanlan, in his official capacity as New Hampshire Secretary of State, *et al.*, *Defendants*.	Case No. 1:24-cv-312-SE-TSM

OPEN DEMOCRACY PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendants' motion for summary judgment is perfunctory and unserious. The motion is unworthy of even a hearing. To begin, Defendants failed to make an effort to comply with the Federal and Local Rules' requirements of a short and concise statement of material facts. Instead, they pass their obligations off onto Plaintiffs and the Court, who must comb through nearly 50 pages of argumentative briefing to unearth their factual assertions.

But those buried factual assertions do not even matter, because Defendants choose to ignore this Court's pronouncements of the relevant law. Defendants insist Alexander Muirhead, Lila Muirhead, and Miles Borne (collectively, the "Individual Plaintiffs") can raise no material dispute as to their lack of standing. But they disregard this Court's ruling that complying with a requirement "to produce documentary proof of citizenship to register" suffices to confer standing, *Coal. for Open Democracy v. Scanlan*, 794 F. Supp. 3d 28, 46 (D.N.H. 2025), while conceding the Individual Plaintiffs must do so. Similarly, they insist Coalition for Open Democracy ("Open Democracy"), League of Women Voters of New Hampshire ("LWV-NH"), and The Forward Foundation (collectively, the "Organizational Plaintiffs") can raise no material dispute as to their lack of standing based solely on arguments related to an alternative diversions-of-resources theory of standing. But, again, they wholly ignore this Court's holding that the Organizational Plaintiffs have standing if they can show "HB 1569 will directly affect and interfere with their core business activities." *Id.* at 40. Conspicuously absent from Defendants' brief is any reference to the reams of evidence that bear out the impediments discussed in the Court's prior Order.

Even taking Defendants' arguments and facts on their own terms, it takes little effort to see they have cherry-picked evidence and misstated the factual record at every turn. Individual Plaintiffs *have* raised disputes as to their cognizable injuries. Organizational Plaintiffs *have* raised disputes as to perceptible impairments and drains on their resources. These injuries *are* caused by

Defendants' enforcement of HB 1569's provisions and *would be* redressed by an injunction. Indeed, the material facts concerning these injuries are proven beyond any meaningful dispute, and therefore Plaintiffs encourage the Court to consider not only denying Defendants' motion for summary judgment, but also *sua sponte* granting partial summary judgment to Plaintiffs on standing in order to avoid relitigating these same issues for a third time at trial.[1]

RESPONSE TO DEFENDANTS' LACK OF STATEMENT OF UNDISPUTED FACTS

Local Rule 56(a) requires that the party seeking summary judgment incorporate "a short and concise statement of material facts, supported by appropriate record citations, as to which the moving party contends there is no genuine issue to be tried." The required statement "is not a mere technicality; it exists to aid the parties and the court in identifying whether genuine issues of material fact prevent the entry of summary judgment in the moving party's favor. The defendant's failure to file such a statement undermines this process." *Auritt v. Auritt*, No. 2:18-CV-00471-DBH, 2020 WL 1956810, at *2 (D. Me. Apr. 23, 2020), *R. & R. adopted*, No. 2:18-CV-471-DBH, 2020 WL 2310898 (D. Me. May 8, 2020).

While Defendants' motion purports to include a section titled "Statement of Material Facts," it only states the legislative history and roles of the Defendants—facts that are largely irrelevant to their standing-based arguments. In lieu of itemizing and providing record cites for relevant facts regarding the Plaintiffs' standing, Defendants improperly leave a placeholder directing the Court to facts "identified herein where they apply to Defendants' arguments for summary judgment." Defs.' Mem. of Law in Support of Defs.' Mot. for Summ. J., ECF No. 88-1

[1] Plaintiffs did not believe that their seeking a motion for partial summary judgment solely on the issue of standing would be an efficient use of judicial resources in advance of a bench trial, but given that the Court may rule on standing in response to Defendants' motion, Plaintiffs believe the Court should consider finding summary judgment in Plaintiffs' favor on the issue, which would narrow the scope of trial.

("Defs.' Mem.") at 8–9; *see Evans v. Taco Bell Corp.*, No. 04CV103JD, 2005 WL 2333841, at *1 (D.N.H. Sept. 23, 2005) (a party "fails to comply" with this Court's local rules requiring a "short and concise statement of material facts" when "summary judgment briefs . . . 'go directly to arguing their positions, referring to certain facts as they pertain to each section of argument, rather than following the more customary (and helpful) format of prefacing argument with a statement of all the underlying facts of the case'" (quoting *Ulmann v. Anderson*, 2004 DNH 73, 2004 WL 883221, at *1 n. 2 (D.N.H. Apr. 26, 2004))).

This has left Plaintiffs—and the Court—the unenviable task of hunting through nearly 50 pages of argumentative briefing for factual assertions to admit or dispute.[2] To aid the Court, Plaintiffs have compiled (and cited to) an exhibit that collects Defendants' scattered factual statements into one source, as would typically be provided with a motion for summary judgment, and provides Plaintiffs' responses to each. This statement is attached as Exhibit 1 ("SOF").

LEGAL STANDARD

"Summary judgment is appropriate only if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." *Ahmed v. Johnson*, 752 F.3d 490, 495 (1st Cir. 2014). The Court must "view the evidence in the light most favorable to the non-moving party," the Plaintiffs, "and draw all reasonable inferences in [their] favor." *Id.* "To determine whether a trial-worthy issue exists, [the Court must] look to all of the record materials on file, including the pleadings, depositions, and affidavits," but it "may neither evaluate the

[2] Defendants' non-compliance may be reason enough to deny their motion, or at the very least, to accept Plaintiffs' appended statement of facts as undisputed. *See Auritt*, 2020 WL 1956810, at *2 (holding defendant's "fail[ure] to comply with the requirement . . . that a party seeking summary judgment file a statement of material facts citing record evidence in support thereof . . . in itself, is fatal to her bid for summary judgment"); *Evans*, 2005 WL 2333841, at *1 (concluding under this Court's local rules that "all of the properly supported material facts set forth in [the compliant party's] memorandum . . . are deemed admitted for purposes of this order").

credibility of witnesses nor weigh the evidence." *Id.* Thus, "[s]ummary judgment is inappropriate if the evidence is sufficiently open-ended to permit a rational fact finder to resolve the issue in favor of either side." *Id.* (internal quotation marks omitted).

ARGUMENT

Defendants' motion for summary judgment—which nearly exclusively addresses standing and mootness—should be denied. To prevail, they must show "that the record is devoid of evidence raising a genuine issue of material fact that would support the plaintiff's ultimate burden of proving standing." *Suárez-Torres v. Panaderia Y Reposteria España, Inc.*, 988 F.3d 542, 550 (1st Cir. 2021) (quoting *Day v. Bond*, 500 F.3d 1127, 1132 (10th Cir. 2007)). They cannot come close to meeting that exacting standard. In fact, the record is so replete with undisputed evidence establishing Plaintiffs' standing that the Court should consider *sua sponte* granting partial summary judgment under Federal Rule of Civil Procedure 56(f)(1) in Plaintiffs' favor on this threshold issue to avoid having to relitigate the matter for a third time at trial. *See Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First Bos.*, 853 F. Supp. 2d 181, 197 (D. Mass. 2012) ("A district court may enter summary judgment *sua sponte* as long as 'discovery is sufficiently advanced that the parties have enjoyed a reasonable opportunity to glean the material facts,' and the party against whom judgment is to be entered has been given [informal] 'notice and a chance to present its evidence on the essential elements of the claim.'" (quoting *Berkovitz v. Home Box Off., Inc.*, 89 F.3d 24, 29 (1st Cir. 1996))). At a minimum, the record easily precludes summary judgment by raising genuine disputes of material fact that Defendants cannot overcome.[3]

[3] Should the Court not be inclined to *sua sponte* grant summary judgment for Plaintiffs, it should conserve resources by assessing the Motion as to only as many Plaintiffs as necessary to deny it. For instance, the Court can deny the Motion because Open Democracy raises material disputes as to its standing for all claims, or because the Muirheads have standing to challenge the removal of the QVA, and Open Democracy has standing for the remaining CVA-related claims.

I. Individual Plaintiffs have standing to challenge the removal of the Qualified Voter Affidavit ("QVA").

A. Standing requirements pose a low bar for individuals challenging documentary proof restrictions.

"[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). "The second and third standing requirements—causation and redressability—are often flip sides of the same coin." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) ("*AHM*") (quotation omitted). "If a defendant's action causes an injury, enjoining the action . . . will typically redress that injury." *Id.* at 381; *accord Coal. for Open Democracy*, 794 F. Supp. 3d at 47.

As this Court has already held, individuals suffer "an injury sufficient to confer standing" when they "plan[] to register to vote when they are eligible to do so" but the law requires them "to produce documentary proof of citizenship to register." *Coal. for Open Democracy*, 794 F. Supp. 3d at 46. That principle is firmly in line with the national consensus: the burden of satisfying an eligibility requirement—whether citizenship papers or photo identification—is itself a cognizable injury. *See, e.g.*, *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009) (holding that "[r]equiring a registered voter . . . to produce [certain] identification" to participate in the electoral process "is an injury sufficient for standing," and "the lack of an acceptable photo

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See, e.g., *Davis v. Grimes*, 9 F. Supp. 3d 12, 24 n.12 (D. Mass. 2014). While attention to each plaintiff can help lessen the discovery burden at the motion-to-dismiss stage, there is no such benefit at the summary-judgment stage. Discovery against each Plaintiff is now complete, the record of their injuries is finalized, and there are accordingly no efficiencies to be had by evaluating the standing of six plaintiffs where one will do. And duplicative analysis is especially unwarranted here given that Defendants have failed to provide a compliant statement of undisputed facts to aid the Court in its task.

identification is not necessary to challenge a statute that requires photo identification"); *Brakebill v. Jaeger*, 932 F.3d 671, 677 (8th Cir. 2019) ("[T]he burden of obtaining a qualifying identification or supplemental document is sufficient to constitute an injury that gives a citizen standing to sue."); *One Wis. Inst., Inc. v. Nichol*, 186 F. Supp. 3d 958, 966 (W.D. Wis. 2016) (holding that "individual voters who currently have IDs" still suffer "injuries [that] are sufficient to confer standing to challenge the voter ID law"). That injury flows directly from the proof-of-citizenship requirement and would be redressed by an order enjoining its enforcement. *See Coal. for Open Democracy*, 794 F. Supp. 3d at 47.

B. The Muirhead Plaintiffs raise a material dispute as to their standing to challenge the removal of the QVA.

Alexander and Lila Muirhead raise material evidence demonstrating their standing to challenge HB 1569's elimination of the QVA. In fact, their standing is undisputed. Defendants' sole contention—that the Muirheads lack standing because they "are in possession of everything they need to register to vote and just need to turn 18"—Defs.' Mem. at 47—has already been squarely rejected by this Court.[4]

It is undisputed that both children are seventeen, U.S. citizens born in Texas, domiciled in New Hampshire, and intend to register to vote when they turn eighteen. SOF Resps. to ¶¶ 168-69, 192, 195, 199; *see* Defs.' Mem. at 43. It is also undisputed that, in order to register in New Hampshire in the future, they will be required to comply with the State's documentary-proof-of-

[4] In their summary judgment briefing, Defendants do not argue that the hypothetical future operation of HB 464 impacts the Muirheads' potential injuries. Defendants have largely refused to produce evidence related to HB 464. Accordingly, there is there is no nonspeculative evidence in the record that proves the State is capable of establishing any database crosscheck system or that such a system will be made operational on any determinable timeline. Further, there is no record evidence that proves the Muirheads will not be among the tens of thousands of registrants who will fall through the cracks of whatever system may ultimately be implemented under HB 464. SOF Resp. to ¶ 168; SOF ¶ 216.

citizenship mandate, which took effect on November 11, 2024. *See* SOF Resps. to ¶¶ 1, 169, 192, 199. As this Court has already recognized—and as Defendants have conceded—being forced to satisfy that requirement constitutes a sufficient injury to confer standing. *See Coal. for Open Democracy*, 794 F. Supp. 3d at 46 (noting Defendants' concession that "'even just pulling' a documentary form of citizenship 'out of your back pocket' can create an injury sufficient to establish standing.").

Defendants offer no developed argument as to how this Court erred in its Order denying in relevant part their Motion to Dismiss, nor could they. Instead, they selectively cite deposition transcripts to suggest that the scale of the injury faced by the Muirheads is small enough to be surmountable. In doing so, Defendants fail to heed this Court's warning not to "conflate[] standing with the merits of the claim." *Coal. for Open Democracy*, 794 F. Supp. 3d at 46; *see id.* ("Standing does not require such a comparison point; instead, it 'merely requires that the plaintiff be "adversely affected" or "aggrieved," which can be established through "an identifiable trifle."'" (quoting *Sagar v. Kelly Auto. Grp., Inc.*, No. 21-cv-10540-PBS, 2021 WL 5567408, at *2 (D. Mass. Nov. 29, 2021)); *see also Veasey v. Perry*, 29 F. Supp. 3d 896, 910 (S.D. Tex. 2014) ("Being able to overcome the injury [to the right to vote] does not eliminate it for standing purposes.").

Moreover, even if Defendants' arguments had traction—and they do not—they wholly ignore record evidence raising material disputes about the severity of the burdens on these Plaintiffs. For instance, while it is undisputed that both children have been issued driver's licenses, birth certificates, and passports, Defendants elide the very real risk that those documents may be lost or misplaced. For example, at the time of his deposition, Alexander had lost his wallet and driver's license. SOF ¶ 210. Moreover, there is a tangible risk that their father, Russell Muirhead, who frequently misplaces important items, will lose or be unable to access the required documents.

SOF Resp. to ¶ 190; SOF ¶¶ 211–12. In fact, shortly before his deposition, Russell Muirhead lost his own birth certificate which was supposed to be stored in the same location as his children's. SOF ¶¶ 211–12. Nevertheless, the Court need not weigh the magnitude of these burdens and risks, because the record more than suffices to raise a material dispute as to the Muirheads' injuries.

Additionally, Defendants raise no arguments in their brief to suggest the Muirheads fail to meet the causation or redressability elements of the standing inquiry. The Muirheads "satisfy these prongs of the standing inquiry easily. HB 1569 eliminates the Qualified Voter Affidavit, which directly causes the Minor Plaintiffs to incur an injury by requiring them to produce documentary proof of citizenship. As for the related redressability inquiry, a court order enjoining the elimination of Qualified Voter Affidavit would 'redress the professed injur[ies].'" *Coal. for Open Democracy*, 794 F. Supp. 3d at 47 (quoting *Dantzler, Inc. v. Empresas Berrios Inventory & Operations, Inc.*, 958 F.3d 38, 47 (1st Cir. 2020)).

Because it is undisputed that the Muirheads will be forced to present documentary proof of citizenship when they turn 18 and register to vote, the Court should deny summary judgment to Defendants as to Count I.

C. The Court need not consider arguments that Miles Borne's claims are moot or, in the alternative, should reject them.

Miles Borne has standing for the same reasons that the Muirheads do. At the time the complaint was filed, Borne was not yet registered to vote, and for him to do so, HB 1569 would have required him to produce documentary proof of citizenship. *See Davis v. FEC*, 554 U.S. 724, 734 (2008) (standing is assessed at the time the complaint is filed).

Defendants do not challenge Borne's standing. Instead, they seek summary judgment on their argument that Plaintiff Borne's claims are moot because he recently registered to vote. Defs.' Mem. 41. Mootness is distinct from standing, and "[t]he heavy burden of persuading the court"

lies with Defendants, as "the party asserting mootness." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up).

Fortunately, there is no need for the Court to address this mootness argument, as only one plaintiff with live claims is needed to maintain any suit. Because the Muirheads have standing to challenge the removal of the QVA, there is no need for the Court to conduct a plaintiff-by-plaintiff analysis for the same claim at the summary-judgment stage. *See, e.g.*, *Davis*, 9 F. Supp. 3d at 24 n.12 (declining to address argument that "Plaintiff Thompson may no longer have standing, as he was granted a[] . . . license" during the pendency of the case, because when "the other individual plaintiffs have standing," "[t]he Court also need not decide whether [remaining] plaintiff[s] . . . ha[ve] standing" as their "lack of standing is not an issue.") (citing *Montalvo-Huertas v. Rivera-Cruz*, 885 F.2d 971, 976 (1st Cir. 1989)); *Comfort v. Lynn Sch. Comm.*, 418 F.3d 1, 11 (1st Cir. 2005) (en banc) ("So long as one plaintiff has standing to seek a particular form of global relief, the court need not address the standing of other plaintiffs seeking the same relief.").

In any event, Borne's claims are not moot. The "heavy burden" of "establishing the facts necessary to sustain [a mootness] defense" rests squarely on Defendants' shoulders. *Ramirez v. Sanchez Ramos*, 438 F.3d 92, 100 (1st Cir. 2006). Yet Borne's circumstances "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review," which is routinely "appropriate" "in the context of election cases." *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462–63 (2007) (quoting *Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974)).

First, Defendants' injury against Borne is "in its duration too short to be fully litigated prior to cessation." *Id.* at 462. Borne was too young to register to vote when this case was filed, which kept his injury-in-fact imminent. Yet upon turning eighteen, he was forced to subject himself to

that injury-in-fact to register to vote (or remain wholly disenfranchised for years in the interests of preserving his claim). Defendants' theory poses a catch-22 for young prospective voters: If they are young enough that their claim could survive the pendency of a trial and subsequent appeals, they risk failing on imminence grounds; but if they are old enough to face imminent injury, the normal course of litigation almost certainly moots their claims. Moreover, the record makes clear that Borne has "a reasonable expectation" that he "will be subject to the same action again." *Id.* Borne has started college out of state and the Court could reasonably infer that he may move within New Hampshire when he graduates. *See* SOF ¶ 153. Even if he does not move, he intends to vote in future elections in New Hampshire, *see* SOF ¶¶ 163, 165, 167, at which time he may be subject to the same treatment as other burdened voters. Undisputed evidence shows that, even in the few low-turnout elections under which the law has been applied thus far, dozens of previously registered voters have been forced to reprove their citizenship on Election Day, despite HB 1569's assurances otherwise. SOF ¶¶ 4, 32. This evidence is sufficient to meet the low bar of defeating a mootness defense. *See Friends of the Earth, Inc.*, 528 U.S. at 190 ("The plain lesson of [the Supreme Court's] cases is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.").

Accordingly, the Court need not determine whether Borne's claims are moot, as Count I easily survives the motion for summary judgment through other individuals. Alternatively, the Court should conclude that Borne's standing has not been mooted and deny summary judgment to Defendants on Count I.

II. Organizational Plaintiffs raise material disputes as to their standing to challenge the removals of the QVA and Challenged Voter Affidavit ("CVA").

Because Individual Plaintiffs raise material disputes at to their standing to challenge the removal of the QVA, the Court may conserve its resources and limit its review of the Organizational Plaintiffs' standing solely to Open Democracy's challenges to the removal of the CVA. *See, e.g.*, *Davis*, 9 F. Supp. 3d at 24 n.12 (district court denying motion for summary judgment "need not decide whether [organizational] plaintiff . . . has standing" when "other individual plaintiffs have standing"); *League of Women Voters of N.H. v. Kramer*, No. 24-CV-73-SM-TSM, 2025 WL 919897, at *17 (D.N.H. Mar. 26, 2025) (holding "[i]t is enough that the individual plaintiffs plainly have standing" because "when multiple plaintiffs file suit, it is sufficient if at least one plaintiff has standing to assert each claim advanced"). However, should the Court choose to re-evaluate each Organizational Plaintiffs' standing to challenge the removal of the QVA, the Court should find, as it did in its July decision denying in large part the motion to dismiss (the "July Decision") that each Organizational Plaintiff has been harmed by HB 1569's removal of the QVA and thus has standing to challenge the law.

A. Organizations have standing to sue when challenged actions perceptibly impair their core business activities.

"Under [the Supreme] Court's precedents, organizations may have standing 'to sue on their own behalf for injuries they have sustained.'" *AHM*, 602 U.S. 367 at 393 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982)). Organizations thus have standing when they "satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals." *Id.* (citing *Havens*, 455 U.S. at 378–79).

"[P]laintiffs seeking to demonstrate injury-in-fact need not establish a particularly damaging injury." *CoxCom, Inc. v. Chaffee*, 536 F.3d 101, 107 (1st Cir. 2008) (internal quotation marks omitted). "[A] perceptible impairment of an organization's activities"—which is "not a

demanding" threshold—is enough. *Louis v. Saferent Sols., LLC*, 685 F. Supp. 3d 19, 32 (D. Mass. 2023) (internal quotations omitted). "The second and third standing requirements—causation and redressability—are often flip sides of the same coin." *AHM*, 602 U.S. at 380 (internal quotation marks omitted). "Causation requires the plaintiff to show 'that the injury was likely caused by the defendant,' and redressability requires the plaintiff to demonstrate 'that the injury would likely be redressed by judicial relief.'" *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025) (quoting *TransUnion*, 594 U.S. at 423). "If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *AHM*, 602 U.S. at 381.

As this Court has already held, the proper "legal framework" for assessing organizational standing derives from *Havens Realty Corp. v. Coleman*. *Coal. for Open Democracy*, 794 F. Supp. 3d at 40. Thus, "[t]he question before the court . . . is whether the Organizational Plaintiffs [can point to facts raising a material dispute as to whether] HB 1569 will directly affect and interfere with their core business activities. If they have, then they have adequately [proven] standing under *Havens Realty*." *Id.* (citing *AHM*, 602 U.S. at 395).

In so holding, the Court rejected Defendants' prior argument that *AHM* overhauled *Havens* standing. *See id*. However, instead of accepting the "legal framework established" by this Court's prior order, *id.*, Defendants opt to ignore it. Notably absent from Defendants' brief is any meaningful effort to grapple with the relevant injuries that support the Organizational Plaintiffs' standing—*i.e.*, HB 1569's impediment of their core services. Instead, Defendants wholly focus on the nature and scale of the organizations' resource diversions.

That approach is a red herring. As precedent makes clear—and as this Court has already held—when an organization demonstrates that a law's operation "perceptibly impair[s]" its pre-

existing core services, *that impediment* is the key "injury in fact" for Article III's purposes. *Havens*, 455 U.S. at 379; *see, e.g.*, *Afr. Cmtys. Together v. Trump*, No. 19-10432-TSH, 2019 WL 5537231, at *4 n.5 (D. Mass. Oct. 25, 2019) ("The pivotal inquiry is therefore not whether the organization has diverted resources from one priority to another, but whether its activities have been directly impeded by defendant's activities, thus necessitating the diversion of resources."). Evidence of a "consequent drain on the organization's resources" serves to bolster that the injury is more than "simply a setback to the organization's abstract social interests." *Havens*, 455 U.S. at 379. But the perceptible impairment of services and any consequent resource drain are flipsides of the same coin: "that drain is 'simply another manifestation' of the injury to the organization's noneconomic goals." *Fla. State Conf. of NAACP. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008) (quoting *Fair Emp. Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1277 (D.C. Cir. 1994)); *see id.* (an organization has standing where "the diversion of personnel and time to help voters resolve matching problems effectively counteracts what would otherwise be [the challenged law's] negation of the organizations' efforts to register voters").[5] The facts in the record demonstrate perceptible impairments of Plaintiffs' services, as well as consequent resource drains.

[5] The D.C. Circuit's detailed explanation of this framing of injury-in-fact is informative:

> The Court [in *Havens*] did not base standing on the diversion of resources from one program to another, but rather on the alleged injury that the defendants' actions themselves had inflicted upon the organization's programs. To be sure, the Court did mention the "drain on the organization's resources". Yet this drain apparently sprang from the organization's need to "counteract" the defendants' assertedly illegal practices, and thus was simply another manifestation of the injury that those practices had inflicted upon "the organization's noneconomic interest in encouraging open housing", an interest that is quite intelligible apart from the allied efforts at increasing legal pressure on civil-rights violators.

Fair Emp. Council of Greater Washington, Inc., 28 F.3d at 1277.

In addition to *Havens*-style impairment-of-services standing, several courts have also recognized circumstances in which an organization can demonstrate standing when it diverts resources to respond to a law that "frustrates" its "goals" or "mission," if that diversion rises to the level of causing an injury to the organization's *other activities*. *See, e.g.*, *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015) (finding standing because "[r]esources Plaintiffs put toward registering someone who would likely have been registered by the State, had it complied with the NVRA, are resources they would have spent on some other aspect of their organizational purpose—such as registering voters the NVRA's provisions do not reach, increasing their voter education efforts, or any other activity that advances their goals"); *La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Props., L.L.C.*, 82 F.4th 345, 353 (5th Cir. 2023) (explaining that to "plead an injury" under this theory, an organization must show its "diversion of resources . . . away from planned projects . . . impaired its ability to achieve its mission"); *see also Equal Means Equal v. Ferriero*, 3 F.4th 24, 31 (1st Cir. 2021) (citing *Nat'l Council of La Raza* affirmatively as example of organizational standing).[6]

[6] Defendants should be well aware of this distinction, as they relied heavily at the motion-to-dismiss stage on a Ninth Circuit opinion that sought to argue that, after *AHM*, one of these forms of organizational standing survives while the other does not. *See Ariz. All. for Retired Ams. v. Mayes*, 117 F.4th 1165, 1170 (9th Cir. 2024) (approving standing when an organization "show[s] that a challenged governmental action directly injures the organization's pre-existing core activities and does so apart from the plaintiffs' response to that governmental action." (citing *AHM*, 602 U.S. at 395–36)); *id.* at 1175 (disapproving the "theory of standing under which . . . the organization decides to further its mission in a *different* way, by shifting resources from one activity that advances its goals to new activities that *also* further its goals by opposing the new policy" (cleaned up)); *see also* Defs.' Reply in Supp. of Mot. to Dismiss, *Coal. for Open Democracy*, No. 1:24-cv-312, ECF No. 48. *Mayes* has been vacated, and the en banc Ninth Circuit appears poised to reject its reasoning. *See* Notice of Suppl. Authority, *Coal. for Open Democracy*, No. 1:24-cv-312, ECF No. 55-1. While Plaintiffs disagree with the *Mayes* panel's reasoning, the record supports their standing under either theory.

Defendants' arguments rely on cases in which plaintiffs invoked this related, but distinguishable form of organizational standing. *See, e.g.*, *Coal. for Humane Immigrant Rts. v. DHS*, 780 F. Supp. 3d 79, 88 (D.D.C. 2025) (recognizing that an organization must show *either* "that the defendant's conduct has forced it to 'expend resources in a manner that keeps [it] from pursuing its true purpose[s]' *or* has 'directly affected and interfered with' the organization's 'core . . . activities'") (emphasis added) (first quoting *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.D.C. 1995); then quoting *AHM*, 602 U.S. at 395).[7]

Even under this pure diversion-of-resources theory, the record evidence would more than suffice to—at minimum—raise a genuine dispute as to the Organizational Plaintiffs' standing. Diverted resources can be financial, but they need not be. For instance, organizations can ground their standing in diversions of "personnel and time" away from other projects. *Fla. State Conf. of NAACP*, 522 F.3d at 1165–66; *see, e.g.*, *Coal. for Open Democracy*, 794 F. Supp. 3d at 41–42 (Open Democracy has standing to challenge removal of CVA, in part, based on its "need to shift volunteers who would otherwise serve as poll workers to serve as poll observers"). And even minor

[7] *See, e.g.*, *Deep S. Ctr. for Env't Just. v. EPA*, 138 F.4th 310, 318–19 (5th Cir. 2025) (alleging only that the organization "had to remove staffing, resources, and time" from other programming to "fight" the challenged action; and distinguishing precedents that "justify a much broader category of standing based on 'diversion of resources'" from cases in which "organizations demonstrate standing by showing a defendant's action interferes with their activities"); *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 173 (2d Cir. 2021) (organization alleged "its work was perceptibly impaired because 'it expend[ed] resources to counteract illegal activity touching on its core mission' and in so doing 'divert[ed] resources away from other activities'"); *Mil.-Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110, 1129 (Fed. Cir. 2021) (involving allegations that conduct "frustrat[ed] the Organizations' general purpose of helping veterans obtain benefits and drain[ed] their resources" on other programs); *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (noting that "an organization may establish injury in fact by showing that it had diverted significant resources to counteract the defendant's conduct" but finding "Plaintiffs ha[d] only conjectured that the resources [expended] could have been spent on other unspecified HBA activities"); *Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001) (organization claimed standing "simply by reason of its expenditure of time and money in pursuing the alleged fraud").

resource diversions can suffice for standing. *See Massachusetts v. HHS*, 923 F.3d 209, 222 (1st Cir. 2019) ("[E]ven an identifiable trifle—is enough to confer standing." (quoting *Katz v. Pershing, LLC*, 672 F.3d 64, 76 (1st Cir. 2012))); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) ("The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury."), *aff'd*, 553 U.S. 181, 189 n.7 (2008) (adopting circuit court's standing analysis).

Defendants rest their arguments largely on cherry-picked references to "routine activities" being insufficient for diversion-of-resources standing. First, the Court need not address this issue because Defendants wholly ignore evidence supporting *Havens*-style impairment-of-services standing. *See Friends of Animals v. Zinke*, 373 F. Supp. 3d 70, 89 (D.D.C. 2019), *aff'd sub nom. Friends of Animals v. Bernhardt*, 961 F.3d 1197 (D.C. Cir. 2020) (holding an organization must *either* show that challenged conduct "inhibit[s] the organization's daily operations, *or* ma[k]e[s] the organization's activities more difficult") (emphasis added) (internal quotation marks and citations omitted). Even so, Defendants overstate the burden required to show standing. It is immaterial whether some general category of activity has previously been part of an organization's work—the proper analysis is substantially more granular. For instance, the Ninth Circuit reversed a district court's conclusion that an organization which previously conducted "[voter registration] drives in low-income communities" was simply "doing business as usual" when it "expended additional resources . . . on efforts to assist [low-income] individuals with voter registration" as a result of the state's unlawful actions. *Nat'l Council of La Raza*, 800 F.3d at 1040–41. The Ninth Circuit emphasized that those individuals "should have been offered voter registration" through other means and, as a result, "Plaintiffs expended additional resources that they would not otherwise have expended." *Id.*

Whether under this Court's framing of these Plaintiffs' organizational standing—as laid out in the Court's order denying in relevant part the motion to dismiss—or any other theory, facts in the record are more than sufficient to raise a material dispute.

B. Open Democracy raises a material dispute as to its standing to challenge the removals of the QVA and CVA.

In ruling on Defendants' motion to dismiss, this Court identified the factual showings that—if borne out in discovery—would establish Open Democracy's standing to challenge the elimination of the QVA and CVA. *See Coal. For Open Democracy*, 794 F. Supp. 3d at 41. The record now amply satisfies these requirements.

Whether under the proper standard this Court has articulated *or* under Defendants' preferred diversion-of-resources theory, Open Democracy has raised a material dispute as to—and in fact, proven beyond any dispute—its standing to challenge the removal of the QVA. Further, Defendants declined to raise any argument that Open Democracy lacks standing to challenge the removal of the CVA; even if they had, Open Democracy easily survives summary judgment on Counts II and III, as well.

i. *Open Democracy has raised a material dispute as to whether the removal of the QVA impairs its core services.*

The removal of the QVA harms Open Democracy's core services: facilitating voter registration drives and recruiting, training, and deploying volunteer poll observers during elections. These direct impediments to Open Democracy's core services are not, as Defendants claim, a "mere setback" to "abstract social interests." *See* Defs.' Mem. at 21–22. Instead, the harms to Open Democracy's high school voter registration drives, poll observer services, and more, are comparable to the impediments to HOME's housing counseling service at issue in *Havens Realty*.

One of Open Democracy's core activities is planning and executing high school voter registration drives. SOF Resp. to ¶ 33. Open Democracy works with students to operate voter

registration drives in approximately two dozen high schools across New Hampshire annually. SOF Resp. to ¶ 34. As this Court recognized at the pleadings stage, the removal of the QVA means Open Democracy can no longer help facilitate the registration of students who "lack immediate access to documentary proof of citizenship." *Coal. for Open Democracy*, 794 F. Supp. 3d at 41. Defendants do not dispute this remains true, and indeed the record evidence bears out the harm to this core service.

Prior to HB 1569, Open Democracy could facilitate the registration of voters who lack qualifying proof of citizenship by relying on the QVA. But no more. Because of HB 1569, Open Democracy can no longer register those individuals using a QVA, and as a result, "[s]tudents wishing to register have been turned away from Open Democracy drives for lacking qualifying documentary proof." SOF Resp. to ¶ 58. The impact of this harm is borne out in the number of high school students Open Democracy has been able to help register, which has "fallen noticeably compared to past years." SOF ¶ 68. For instance, at an Open Democracy drive in Manchester this spring, "more students were turned away [and] not able to register to vote at the high school voter registration drive, than actually registered the day of the voter registration drive." SOF ¶ 70. These students "were told they were unable to register because they didn't bring all of the documents needed, despite educational efforts" to avoid that outcome. *Id.*

This impact extends beyond Open Democracy's high school drives. Prior to HB 1569, Open Democracy would help register "people who have lost critical documentation in home fires, unhoused individuals who lack access to documentary proof of citizenship, citizens who have recently moved to a new town and could not access or locate the necessary documents, and more." SOF ¶ 72. But now Open Democracy cannot rely on the QVA to aid those individuals through its core voter registration services on the phone, Zoom, and in person. SOF ¶¶ 71–72. And at the time

of Ms. Zink's deposition (before the municipal elections in November), Open Democracy had identified over 100 people who were turned away due to the new law. SOF ¶ 74. Defendants do not grapple with this foundational fact: HB 1569 not only harmed, but completely thwarted Open Democracy's ability to facilitate those individuals' registration.

This undisputed evidence is sufficient to raise a material dispute as to Open Democracy's standing to challenge the QVA and deny Defendants' motion for summary judgment on Count I.

ii. *Open Democracy has also raised a material dispute as to standing under Defendants' resource-diversion theory.*

Open Democracy can also satisfy Defendants' alternative diversion-of-resources theory, as the record evidence demonstrates the drain on its resources as a consequence of the QVA's removal. The removal of the QVA has forced Open Democracy to overhaul its voter education materials, including handouts and stickers for high school voter registration drives. *See* SOF Resps. to ¶¶ 35, 40, 45. Open Democracy spent at least 56 hours of staff time to update its materials so that when it informed new registrants of the law, its guidance was accurate. SOF Resp. to ¶ 35.

Open Democracy has shown granular monetary expenditures, too. For example, Open Democracy spent $159.73 printing new stickers with updated guidance on how to register. SOF Resp. to ¶ 40.[8] And contrary to Defendants' suggestions, it is not optional for Open Democracy to update its materials. As the Department of Justice's 30(b)(6) witness, Election Law Unit Chief Brendan O'Donnell, explained: "[I]f they are going to continue to provide materials to the public about voter registration requirements, they should make sure that they are correct and accurately

[8] To the extent Defendants complain they cannot probe Open Democracy's monetary expenditures in sufficient detail, that failure is self-inflicted. For example, at her deposition, Open Democracy's Executive Director offered to "pull . . . records" about the cost to materials for high school voter registration drives. SOF Resp. to ¶ 49. Defense counsel stated: "I don't think that's going to be necessary. Thank you. I'm just trying to get a broad picture of, you know, Open Democracy's operations and what these sorts of operations cost." *Id.*

reflect current New Hampshire law." SOF Resp. to ¶ 57. He continued: "I agree that if anyone is providing information about voter registration procedures, they need to be correct as to current law." *Id.*

The time and expense of combatting HB 1569 has gone well beyond "business as usual." For instance, Open Democracy has had to change its programming "to try to capture more young voters or first-time voters," and others who are more likely to lack ready access to documentary proof of citizenship. SOF Resp. to ¶ 62. Due to HB 1569, Open Democracy engaged in novel outreach at a Job Corps program, at food pantries, and on college campuses, to reach populations likely to lack ready access to qualifying forms of citizenship. SOF Resps. to ¶¶ 35, 48, 62. This included developing new materials about "how to get a voucher from your town clerk in order to get a driver's license" because many students at the Job Corps program lack a driver's license. SOF Resps. to ¶ 35. Open Democracy's first-time outreach efforts as a result of HB 1569 required "[a]dditional staff time" and expenditures for "additional materials." SOF Resp. to ¶ 35.

These staff hours and expenditures were redirected away from its other core services. For instance, Open Democracy had planned more work on campaign finance reform and efforts to secure fair districting maps in 2025—additional core activities—which it was not able to accomplish because it had to "spen[d] time and energy" combatting the effects of HB 1569. SOF Resp. to ¶ 59. Open Democracy had to forego this critical work because "there's only so many hours in the day." *Id.*

Defendants argue that because "[a] grant funded 100% of its registration activities in 2024" and this grant was "renewed in 2025 for the same amount," Open Democracy lacks standing. Defs.' Mem. at 14. Not so. As explained above, precedent makes clear that diversions of resources may include nonmonetary resources. Indeed, that Open Democracy has received the same finite funding

in 2024 and 2025 for its voter registration activities, only confirms the concreteness of Open Democracy's diversion of resources from its other core services to its increased voter registration efforts required by HB 1569. *See, e.g.*, *Nat'l Council of La Raza*, 800 F.3d at 1040–41 (organization that conducts voter registration drives in specific communities is not simply "doing business as usual" when it "expend[ed] additional resources . . . on efforts to assist [that community] with voter registration").

iii. *Defendants fail to offer any meaningful argument that Open Democracy lacks standing to challenge the removal of the CVA.*

At the pleadings stage, this Court recognized that the elimination of the CVA interferes with Open Democracy's core services of "recruiting, training, and deploying poll observers and poll workers, some of whom help voters whose eligibility will be challenged at the polls." *Coal. for Open Democracy*, 794 F. Supp. 3d at 43. Defendants do not contest that the CVA's elimination has harmed these activities, nor do they address the harms of HB 1569 to those services at all.

No portion of the organizational standing section of Defendant's brief addresses the harms Open Democracy has shown specific to the CVA removal. They simply do not cite any facts related to that aspect of Open Democracy's standing. Indeed, the phrase "poll observer" appears only once in Defendants' brief—in reference to The Forward Foundation's standing. Defendants were well aware that one of Open Democracy's core services is recruiting, training, and deploying poll observers, and probed these issues extensively at Ms. Zink's deposition. SOF Resp. to ¶ 33.

Defendants have thus failed to raise any argument that Open Democracy lacks standing to challenge the CVA's removal. The Court should accept Plaintiffs' undisputed facts on this issue and deny Defendants' motion as to the CVA on that basis alone.

iv. *Open Democracy has shown a material dispute as to standing to challenge the removal of the CVA.*

It is hardly a surprise Defendants skipped over the removal of the CVA in their standing argument, as the record demonstrates the myriad harms of the CVA's removal to Open Democracy. It has harmed Open Democracy's poll observer services because voters are now at higher risk of disenfranchisement on Election Day. *See* SOF ¶¶ 75, 225–30. Whereas before HB 1569 Open Democracy's poll observers could identify a challenged voter and direct them to use a CVA if they met the criteria for eligibility, that option is no longer available. *Id.* Further, more poll observers are needed because of the heightened stakes of Election-Day challenges, and Open Democracy has been forced to change its strategy in response, now seeking to deploy "a trained observer in every polling location in the state," whereas it previously focused on college towns. SOF ¶ 78. Indeed, Open Democracy typically only "run[s] the poll observing program in even [numbered] years, but this year, [it] had to do it in an odd year." SOF ¶ 76. As Ms. Zink explained during her deposition, this is because of the changes to the law imposed by HB 1569, and the increased risk of disenfranchisement to voters. *Id.* And due to the elimination of the CVA, Open Democracy has been forced to "change its poll observer trainings and re-educate those who have already been trained as poll observers." SOF ¶ 77.

These harms manifest as diversions of financial resources and staff time at the expense of other organizational priorities, as well. Because the elimination of the CVA results in an increased threat of disenfranchisement for challenged voters, HB 1569 has required Open Democracy to "redirect scarce staff time and financial resources away from other organizational priorities in order to recruit more volunteers," and "re-assign volunteers who would otherwise serve as poll workers, instead training them to serve as poll observers." SOF ¶ 79. Again, Defendants do not even attempt to raise facts to support a diversion-of-resources argument against Open

Democracy's standing to challenge the CVA's removal. Open Democracy undeniably has standing to challenge the removal of the CVA, and at the very least raises a material dispute.

C. Plaintiffs raise a material dispute as to LWV-NH's injuries from the removal of the QVA.

LWV-NH has a mission "to empower voters and defend democracy." SOF Resp. to ¶ 93. To achieve this mission, LWV-NH provides "unbiased, nonpartisan voter services and citizen education. The organization creates and distributes a wide array of information about elections and the voting process through printed materials, postings on its website and social media, trained volunteers, and tabling at community events across the state." SOF ¶ 105. These voter services include distributing information in print and electronic form about how to vote, what documents you need to vote, finding your local town clerk's office, and anything else voters need information on. SOF Resp. to ¶ 83; *see* SOF Resps. to ¶¶ 81–82.

i. *The LWV-NH has raised a material dispute as to its standing based on HB 1569's impairment of its core services.*

The facts bear out the Court's holding in its July Decision: LWV-NH has, at the very least, raised a material dispute as to its standing to challenge HB 1569's removal of the QVA, which perceptibly impairs LWV-NH's ability to perform its core activities. *Coal. for Open Democracy*, 794 F. Supp. 3d at 42–43 ("League of Women Voters has adequately alleged that its ability to advise prospective voters regarding how to register 'as part of its preexisting core voter education services' . . . will be impaired and that the injury is substantially likely to occur."). The record demonstrates that HB 1569's removal of the QVA has interfered with—and will continue to interfere with—LWV-NH's ability to provide voter education in multiple ways, each of which would be independently sufficient to demonstrate that LWV-NH has standing to challenge the law. *See, e.g.*, *People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094–95 (D.C. Cir. 2015) (finding organization that serves its mission through educational services has standing

when government action impacts those services and makes it more difficult to accurately "educate the public"); *Am. Anti-Vivisection Soc'y v. USDA*, 946 F.3d 615, 619 (D.C. Cir. 2020) (same). Each of these impediments—which Defendants largely ignore in their brief—amounts to more than a mere "setback to abstract social interests." Defs.' Mem. at 22.

First, HB 1569's removal of the QVA makes it significantly more likely that LWV-NH will encounter would-be voters through its voter information programs that it will no longer be able to advise on and assist with voter registration. It is undisputed that, prior to HB 1569, LWV-NH was routinely able to assist individuals who do not possess or cannot access documentary proof of citizenship by informing them they were still able to register to vote, thanks to the availability of the QVA. SOF ¶ 106. Nor is it meaningfully disputed that HB 1569's elimination of the QVA directly impedes LWV-NH's ability to provide services to assist such individuals with actively participating in elections. SOF ¶ 107. For those individuals that lack access to qualifying documentation, no amount of voter services or education will help them—they will be disenfranchised. *Id.*

Since the passage of HB 1569, LWV-NH has witnessed widespread confusion about the requirements of HB 1569 when tabling in person and through comments from its members and the public on its social media posts and by email. These include citizens who are confused about the nature of the citizenship requirement and prospective voters who fear they may not be able to locate their proof of citizenship or that their proof of citizenship does not match their current name. *See, e.g.*, *id*. For example, LWV-NH has spoken with citizens who are concerned that their birth certificate is in a former name that does not match their current identification. This particularly impacts women voters who were married and subsequently changed their name, a core constituency that LWV-NH interacts with through its social media and at events. SOF ¶ 108. A

married woman who took her husband's last name upon marriage, if relying on her birth certificate to prove citizenship, needs to show evidence of her name change in order to register to vote. SOF ¶ 109. If these married women do not have access to a copy of their marriage license, or a passport in their married name, LWV-NH will not be able to successfully inform the potential-voter how to register to vote. *Id*. LWV-NH is also unable to assist voters who do not possess a form of documentary proof of citizenship that would be accepted by the State. For example, LWV-NH has encountered citizens who were never issued a birth certificate, such as Bob Davies, who never had a birth certificate due to issues with closed adoption records in the state of New York. SOF ¶ 110.

Second, because of ambiguities and lack of clarity in the law and guidance, LWV-NH does not know what the law means by "other reasonable documentation which indicates the applicant is a United States citizen," which hinders LWV-NH's ability to provide to clear explanations of the kinds of documents that prospective voters can use to register to vote. SOF ¶ 111. To date, even the State has not been able to confidently define what documents do or do not satisfy the "other reasonable documentation" standard to prove citizenship. SOF ¶ 112. Due to this ambiguity, LWV-NH cannot advise prospective voters who might lack access to a traditional birth certificate, passport, or naturalization papers how to comply with the documentary proof of citizenship requirements. SOF ¶ 111–13. At most, LWV-NH can refer citizens trapped without answers to the Secretary of State's office and hope for the best, but that is little consolation given the Secretary's lack of guidance on what can be considered "other reasonable documentation" and the hundreds of voters already turned away in town and city elections. SOF ¶ 113; *see also* SOF ¶ 32.

Defendants aim to sidestep these critical facts by suggesting that technically "HB 156[9] did not stop the LWV-NH from continuing to educate voters." Defs.' Mem. at 17. They miss the

point. While LWV-NH may be able to instruct *some* prospective voters on what documents to bring to register, it remains clear that LWV-NH is now unable to provide effective services to a large class of potential voters who it could previously assist. "In light of the uncertainty surrounding what constitutes 'other reasonable documentation'" and the impediments to assisting those without any qualifying documentation, LWV-NH "has adequately [demonstrated] that its ability to advise prospective voters regarding how to register as part of its preexisting core voter education services will be impaired and that the injury is substantially likely to occur." *Coal. for Open Democracy*, 794 F. Supp. 3d at 42 (cleaned up).[9] Accordingly, Plaintiffs have raised at least a material dispute as to the impairment of LWV-NH's core services for standing to challenge the QVA's removal.

ii. *The LWV-NH has raised a material dispute as to its standing even under Defendants' alternative diversion-of-resources theory.*

Even if the Court were to analyze LWV-NH's standing under Defendants' alternative diversion-of-resources theory, LWV-NH has raised a material dispute, given that the facts demonstrate the drain on LWV-NH's resources as a consequence of HB 1569. Defendants cherry-pick quotes from the testimony of Liz Tentarelli, the President of LWV-NH, *see* Defs.' Mem. at 17–18, in an attempt to minimize evidence of LWV-NH's resource diversion. But the record makes clear LWV-NH has had to divert significant resources, in the form of staff time and financial expenditures, into efforts to attempt to salvage its core service of providing voters with information on how to register after HB 1569. LWV-NH expects these efforts will only continue as higher turnout elections approach, which—particularly due to the limited staff at LWV-NH—will

[9] Defendants do not, and could not, raise any meaningful dispute that Defendants' enforcement of HB 1569's requirements causes these injuries-in-fact, and that an injunction reinstating the QVA would remedy these injuries.

inevitably detract from other core services of LWV-NH. *See Fla. State Conf. of NAACP*, 522 F.3d at 1165–66 (diversions of "personnel and time to educating volunteers and voters on compliance with [the law]" suffice for standing); *id.* ("The net effect is that the average cost of registering each voter increases, and because plaintiffs cannot bring to bear limitless resources, their noneconomic goals will suffer").

Defendants' brief admits that LWV-NH has expended financial resources to combat the effect of HB 1569's removal of the QVA. Defs.' Mem. at 18. HB 1569 has required LWV-NH to revise, reprint, and redistribute its voter education materials, which had to be tested to see how they perform with members of the public and then redesigned in an attempt to address further confusion caused by HB 1569's unique ambiguities. SOF Resp. to ¶ 86. Because the removal of QVAs threatens to disenfranchise voters, LWV-NH has also created additional social media posts seeking to combat confusion around HB 1569's documentary proof requirements, and has spent money to have those posts "boosted" by Facebook, which allows the posts to be designated to reach a statewide audience. SOF ¶ 114. Financial resource diversions need not be of a particular amount to suffice for standing. *See Crawford*, 472 F.3d at 951. These are significant expenditures for a small nonprofit like LWV-NH and represent an increase from normal costs. In fact, LWV-NH spent more on voter services in May and June 2025 ($813.5) responding to HB 1569 than it did in October and November 2024 leading into a major Presidential Election ($681.55). SOF Resps. to ¶¶ 100, 104. Such expenditures draw limited resources away from LWV-NH's work on its other priorities, including its advocacy and education services related to other priorities. SOF Resps. to ¶¶ 100–01; SOF ¶ 118.

LWV-NH has also had to dedicate its limited staff time to responding to the removal of the QVA. Liz Tentarelli is the only paid staff member of LWV-NH. SOF ¶ 115. As a result, Ms.

Tentarelli is the one to perform most actions taken in response to HB 1569, such as updating the website, updating and redistributing materials, posting on social media, and providing updated information to volunteers. SOF ¶ 116. Ms. Tentarelli has devoted significant time to making changes to LWV-NH's voter information handouts, posting to social media, attending events explaining the changes, and performing other actions necessary for LWV-NH to respond to the impact of HB 1569. SOF ¶ 117. Ms. Tentarelli expects to continue to devote substantial time to these efforts, particularly as more high-participation elections approach, and any time she spends on efforts relating to HB 1569 detracts from time she may have spent responding to other LWV-NH priorities. SOF ¶ 118.

Despite Defendants' contention, the actions described above are not "normal operating costs and voluntary expenditures related to routine activities." Defs.' Mem. at 18. The record demonstrates these are actions LWV-NH had to undertake as a direct result of HB 1569's change to the QVA scheme, or else its core services towards many voters would be rendered ineffective. Expenditures and time commitments like those described draw resources away from LWV-NH's work on its other priorities, including its advocacy and education services related to other priorities and are sufficient to raise a material dispute as to standing.

D. Plaintiffs raise a material dispute as to The Forward Foundation's standing to challenge the removal of the QVA.

In denying the motion to dismiss in relevant part, this Court concluded that "the Forward Foundation is substantially likely to suffer an injury because of HB 1569's elimination of the Qualified Voter Affidavit," because "[a]s with League of Women Voters, HB 1569 impairs the Forward Foundation's ability to advise prospective voters regarding how to register, which is one of its core functions." *Coal. for Open Democracy*, 794 F. Supp. 3d at 43. At this stage, the evidence confirms that the removal of the QVA harms The Forward Foundation's core services of

nonpartisan voter education and outreach and poll worker recruitment and training. Defendants' mischaracterization of the record evidence misses the mark, and The Forward Foundation has more than established a material dispute of fact that HB 1569's removal of the QVA has caused a "perceptible impairment" to its core services. *See Havens*, 455 U.S. at 379. Even under Defendants' alternative theory of organizational standing, the record more than suffices to deny summary judgment.

i. *The Forward Foundation has raised a material dispute as to its standing based on HB 1569's impairment of its core services.*

First, the removal of the QVA has harmed The Forward Foundation's core services of conducting voter education and outreach, including for its core constituencies and communities with lower turnout. SOF Resps. to ¶¶ 119–21, 136; SOF ¶¶ 146–50. Defendants do not contest—nor could they—that the removal of the QVA "prevents The Forward Foundation from helping facilitate . . . participation in the democratic process for individuals without ready access to documentary proof of citizenship." SOF ¶ 146. The Forward Foundation could previously assist such individuals with successfully registering by providing education on the QVA, but the voters now face the risk of disenfranchisement regardless of the amount of voter services they receive. *Id.*; SOF Resp. to ¶ 136. The elimination of the QVA has also introduced additional ambiguities, complexities, and the possibility for disparate application of laws that impair The Forward Foundation's ability to effectively educate prospective voters. SOF ¶ 147. That is, previously, The Forward Foundation could provide clear and concise education about how to register to vote, but HB 1569's ambiguous changes impede that service. *Id.* For example, "it is entirely unclear" to The Forward Foundation "what materials could qualify as 'other reasonable documentation which indicates the applicant is a United States citizen,' and the law creates substantial uncertainties for how individuals who have undergone a name change can prove their eligibility." SOF ¶ 148.

Further, confusion injected by HB 1569's ambiguous requirements has forced The Forward Foundation to update its website, mailers, and one-page educational materials to reflect the effects of eliminating the QVA. SOF ¶ 149. Specifically, it now must explain the new requirements imposed by HB 1569, which takes up more space on its mailers, causing them to be overcrowded and less impactful. *Id.*

Moreover, The Forward Foundation's poll worker recruitment, engagement, and training have been harmed by the elimination of the QVA. Because of HB 1569, The Forward Foundation has been required to "revise its trainings," and "administer new volunteer training programs focused on the documentary proof-of-citizenship requirement." SOF Resps. to ¶¶ 121, 126, 138. Even with these new trainings, however, The Forward Foundation's volunteers' and staff's work is impaired by HB 1569 and Defendants' implementation thereof, because when asked by prospective voters what satisfies "other reasonable documentation," "they are left to speculate." SOF ¶ 150; *see id.* ("I don't think the Secretary of State ever clarified what exactly was acceptable as other reasonable documentation.").

Defendants neglect to engage with these perceptible impairments of The Forward Foundations' core services, which more than suffice to raise a material dispute as to the organization's standing.

ii. *The Forward Foundation has raised a material dispute as to its standing even under Defendants' alternative diversion-of-resources theory.*

Even if the Court were to analyze The Forward Foundation's standing under Defendants' alternative diversion-of-resources theory, Plaintiffs have raised a material dispute, as the facts demonstrate the drain on The Forward Foundation's resources as a consequence of HB 1569. This drain of resources has, in part, manifested in "divert[ing] resources away" from core constituencies less likely to be impacted by HB 1569 (and toward those most likely to be impacted), SOF Resps.

to ¶¶ 119, 121, and diverting scarce staff time away from other priorities such as its governance program, *see* SOF Resps. to ¶¶ 121, 140.

The passage of HB 1569 has required The Forward Foundation to expend funds to "fulfill its mission" in part through additional, targeted "voter education." SOF Resp. to ¶ 127. For instance, in an effort to combat the effects of HB 1569, The Forward Foundation has pursued additional text and mailer campaigns and hired a different vendor to target voters less likely to possess documentary proof of citizenship. SOF Resps. to ¶¶ 121, 138; *see* SOF Resp. to ¶ 127 ("Q. So was this change [in who The Forward Foundation targets for voter education and outreach] in response to HB 1569? A. Yes."). As an example, "[p]rior to the passage of HB 1569, The Forward Foundation would typically spend resources on one mailer per targeted voter prior to a non-federal election. This year, because of HB 1569, The Forward Foundation invested additional resources to send out two mailers per targeted voter." SOF Resp. to ¶ 121. "The Forward Foundation also pursued a text campaign this year because of HB 1569, which it does not normally do for non-federal elections." *Id.*

HB 1569's harm to The Forward Foundation's poll worker recruitment, engagement, and training has also led to resource drains. Because of HB 1569, The Forward Foundation has diverted additional staff time and resources to "educate additional poll observers who might otherwise serve as poll workers," so that they can instead "document the reasons why would-be voters are turned away from the polls" and potentially help those who are "turned away . . . track down qualifying proof of citizenship, if the voter possesses it." SOF Resp. to ¶ 140. Likewise, The Forward Foundation has been required to spend resources "re-train[ing] its volunteers to make clear to potential voters that the Qualified Voter Affidavit is not available to them, and that they should be prepared to bring documentation satisfying one of a limited number of categories of proof of

citizenship required by law." SOF Resps. to ¶¶ 121, 136. Because the Town Meetings held in Spring 2025 had a much smaller turnout than statewide and federal elections, "The Forward Foundation expects that the resources required to reach out to and educate voters will only increase in upcoming elections." SOF Resp. to ¶ 136.

Defendants insist that the "documentary evidence reflects no material resource allocation changes to Forward Foundation's core activities in response to HB 1569" and offer, in support, an unspecific citation to The Forward Foundation's Responses to Request for Production of Documents. Defs.' Mem. at 19. Defendants are wrong. As borne out by the record evidence, HB 1569 has undeniably manifested in a drain on The Forward Foundation's resources. *See, e.g.*, SOF Resp. to ¶ 121 (describing drains and citing documentary evidence).

Accordingly, under any theory of organizational harm, Plaintiffs have raised a material dispute as to The Forward Foundation's standing to challenge the removal of the QVA.

E. Redressability

"If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *AHM*, 602 U.S. at 380–81. As detailed above, HB 1569 has injured Organizational Plaintiffs in multiple ways, including interfering with the effectiveness of their core activities of registering and educating eligible voters and causing them to divert volunteers and other resources to counteract that impact. The record further shows that HB 1569 has reduced the number of high school voter registrations and caused hundreds of registered voters, even in low-turnout elections, to be turned away, confirming the need for the Organizational Plaintiffs to continue diverting additional resources to mitigate that harm. SOF ¶¶ 32, 66–70, 74. An injunction against HB 1569 would prevent that ongoing injury, by reducing the number of voters who are unable to register and obviating the burdens of conducting trainings and education on HB 1569's restrictive and ambiguous requirements that the Organizational Plaintiffs must

otherwise attempt to provide. *N.H. Youth Movement v. Scanlan*, No. 24-CV-291-SE, 2025 WL 2336868, at *5 (D.N.H. Aug. 13, 2025) ("[A] court order enjoining the elimination of the Qualified Voter Affidavit would 'redress the professed injur[ies].'" (citation omitted)).

Defendants misrepresent the factual record when they contend that "Plaintiffs offer no proof whatsoever that reenacting QVAs would result in more voter registrations or how that would mitigate their purported resource diversion." Defs.' Mem. at 28–29. For that sweeping proposition, Defendants rely solely on a single plaintiff's lack of knowledge as to the exact number of QVAs that were signed at a single high school registration drive in 2024—notably, a narrow question that was not part of the noticed deposition topics. *Id*. (citing deposition testimony that affidavit usage numbers are tracked by local election officials, not Open Democracy, participating at the drive). That question has no apparent connection to redressability, resource diversion, or any Plaintiff other than Open Democracy, and it cannot possibly support Defendants' ambitious claim. Regardless of the specific number of QVAs signed at one high school in 2024, Ms. Zink testified that Open Democracy has observed students and other individuals being unable to register because they lacked the documents required by HB 1569 and were unable to use a QVA instead. SOF ¶¶ 66–70, 74. That fact alone shows that HB 1569 has in fact interfered with Open Democracy's voter registration services and enjoining it would redress the harm. Defendants' selective and misleading omission of Ms. Zink's testimony, as well as the rest of the factual record, cannot support summary judgment.

Defendants' argument that this Court is unable to redress Plaintiffs' injuries is similarly unfounded. Defendants prematurely wade into the appropriate scope of injunctive relief that this Court should issue if Plaintiffs prevail on the merits, *see* Defs.' Mem. at 29 (citing *Ayotte v. Planned Parenthood*, 546 U.S. 320, 329 (2006)), when the redressability prong of standing merely

asks "whether a federal court has the power to grant" any relief, *Swan v. Clinton*, 100 F.3d 973, 976 (D.C. Cir. 1996); *accord Munoz-Mendoza v. Pierce*, 711 F.2d 421, 424 (1st Cir. 1983). And as to this Court's authority, "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 56 (1st Cir. 2023) (citation omitted). That holds true in cases asserting violations of voting and due process rights. *Griffin v. Burns*, 570 F.2d 1065, 1079 (1st Cir. 1978) (holding that "the trial court is vested with broad discretionary power" to fashion equitable relief).

This Court undoubtedly has the power to "declare a state law unconstitutional and enjoin [its] enforcement," as Defendants must concede. Defs.' Mem. at 29; *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 222 (D.N.H. 2018). Here, HB 1569 purports to repeal the prior version of RSA 654:12, which had allowed for use of voter affidavits. SOF Resps. to ¶¶ 1, 10, 12. When statutory language is invalidated as constitutional, it is rendered null and void. *Frost v. Corp. Comm'n*, 278 U.S. 515, 526 (1929). And if the repealing statute is voided, the prior law is generally restored as the last valid expression of the legislature's intent. *See id.* (holding that newly enacted law was unconstitutional and therefore "was a nullity, wholly 'without force or vitality,' leaving the provisions of the existing statute unchanged"); *accord Lindenbaum v. Realgy, LLC*, 13 F.4th 524, 528 & n.2 (6th Cir. 2021). Invalidation of HB 1569 would therefore, for instance, restore RSA 654:12 to the version in effect on November 10, 2024, prior to HB 1569's effective date.

Even assuming for purposes of this motion that Defendants were correct that this Court somehow could not restore the use of voter affidavits and were instead limited to blocking the code provisions amended by HB 1569, Plaintiffs' injuries would still be redressable. Defendants appear to envision a world in which RSA 654:12, which sets forth the documentary requirements for

registering to vote in New Hampshire, is enjoined and nullified with no replacement, in which case there would be no proof of eligibility required—affidavit or otherwise—until the state legislature enacts a new, constitutional law. *See* Defs.' Mem. at 29 (suggesting that the Court may not "revive a statutory scheme that is no longer in force"). While that is not Plaintiffs' requested remedy, that result would nonetheless alleviate the burdens and harms imposed by HB 1569. Any need for the legislature to enact a new law following HB 1569's invalidation does not undermine this Court's remedial authority, and it is not relevant to redressability. *See M.S. v. Brown*, 902 F.3d 1076, 1088 (9th Cir. 2018) ("[F]ederal courts undoubtedly have the power to strike down existing laws as unconstitutional, even where doing so would require the enactment of a new law." (citing *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 87–88 (1982)).

III. Defendants are not entitled to summary judgment on the merits of counts II and III.

This Court should deny summary judgment to Defendants on Counts II and III, which challenge the CVA's elimination as an undue burden under the *Anderson-Burdick* test and as a violation of procedural due process. Defendants purport to seek summary judgment on the merits of these claims but make no effort to apply the legal standard for either count. Instead, they rely exclusively on a standing case to argue the harm to voters is too "conjectural and hypothetical." *See* Defs.' Mem. at 38–40 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (discussing components of injury-in-fact as part of standing analysis)). Regardless of how Defendants' arguments are construed, the record does far more than raise a material dispute as to whether the CVA's elimination creates a risk of disenfranchisement by burdening eligible voters and leaves inadequate safeguards for voting rights—all without advancing any state interest whatsoever.

On Count II, testimony from the State's own witnesses, including the Secretary of the State and the Chief Investigator of the Department of Justice, confirms that no "important regulatory interests" justify the elimination of the CVA. *Coal. for Open Democracy*, 794 F. Supp. 3d at 49

(quoting *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020)). The Secretary testified that the CVA has not caused any decline in voter confidence and that its elimination does not advance any known state interest. SOF ¶¶ 237–38. Similarly, Investigator Richard Tracy testified that, from a law enforcement perspective, there is no reason to eliminate the CVA while allowing challengers to submit affidavits attacking the voter's qualifications. SOF ¶ 238. The admitted lack of any regulatory interest means that, under the *Anderson-Burdick* balancing test, Plaintiffs prevail if the elimination of the CVA creates even the slightest of burdens.

As to burden, the record shows that the risks and costs imposed by the elimination of the CVA are far from conjectural or hypothetical. According to three defense witnesses, including both of Defendants' Rule 30(b)(6) designees, New Hampshire has a history of individuals making unfounded challenges, on a mass scale, against certain groups of voters, including college students. SOF ¶¶ 221–23. Most voters are unlikely to be carrying documentation to stave off a potential challenge at the polls, because they are unlikely to know that their eligibility is being challenged until after they arrive. SOF ¶¶ 214–15. Database checks have significant limitations, and depending on the polling location, election officials may not be able to access those databases. SOF ¶¶ 216–18. A voter who is turned away to gather proof of eligibility may not return to cast a ballot for a myriad of reasons. SOF ¶ 32. The CVA would have protected such voters and enabled them to vote when they are faced with a meritless challenge, but that safeguard has now been eliminated. SOF ¶¶ 225–27. And according to the Secretary, that could incentivize political parties to more aggressively challenge voters' eligibility in future elections. SOF ¶ 224.

On Count III, the record goes far beyond raising a material dispute as to whether judicial review of voter challenges under HB 1569 is too illusory to protect against erroneous deprivation of the right to vote and satisfy the requirements of procedural due process. The first element of

procedural due process examines the private interest at stake. Here, "[i]t is beyond dispute that 'the right to vote is of the most fundamental significance under our constitutional structure'" and is given great weight. *Saucedo*, 335 F. Supp. 3d at 217.

The second element of procedural due process—the risk of erroneous deprivation absent additional safeguards—also favors Plaintiffs. As Secretary Scanlan and Investigator Tracy admit, election officials will inevitably make mistakes, and there is a risk that they misjudge a voter's eligibility. SOF ¶ 230; *see Saucedo*, 335 F. Supp. 3d at 218. That danger is enhanced by the possibility of mass challenges, the unlikelihood that registered voters possess documents needed to re-establish their qualifications, and the incentive for political actors to increase the use of challenges in the future. SOF ¶¶ 214–15, 221–24. Under HB 1569, voters cannot defend their eligibility with an affidavit, and they do not receive a provisional ballot if their eligibility is challenged. SOF ¶¶ 228–29. HB 1569 also fails to provide for meaningful judicial review—voters must file a same-day lawsuit in New Hampshire Superior Court, where the filing fee is currently $325. SOF ¶¶ 220, 234–36. The process of filing an appeal is sufficiently complex as to warrant at least a few hours of a trained attorney's time, which will cost approximately $300 per hour, according to the Attorney General's Rule 30(b)(6) designee. *Id.* In pure monetary terms, setting aside the difficulty of finding and retaining an attorney on an emergency basis on Election Day, the cost of filing an appeal under HB 1569 could cost a voter around $1,000 or more in court and attorney's fees. *See* SOF ¶¶ 234–36. Because HB 1569 requires that a voter obtain judicial relief prior to the close of polls, SOF ¶ 220, the effort and cost needed to either prepare a lawsuit *pro se* or to retain an attorney is likely to deprive eligible voters of a reasonable opportunity to be heard before being denied the right to vote. *Coal. for Open Democracy*, 794 F. Supp. 3d at 50–51.

As to the final element, as noted above, the State has not articulated any state interest for eliminating the use of the CVA as a safeguard for the right to vote. SOF ¶¶ 237–38. All three factors favor Plaintiffs, which precludes summary judgment for Defendants on Count III.

Defendants argue Open Democracy has not identified a specific voter who has been denied the right to vote due to a challenge, but that fact is not relevant to Open Democracy's standing and not dispositive on the merits. Defs.' Mem. at 40. Rather, because of the significant risk of mass disenfranchisement, Open Democracy must, consistent with its mission, expend resources to train volunteers and protect voters to guard against a repeat of past attempts to baselessly challenge large numbers of voters, including students. SOF Resp. to ¶ 33; SOF ¶¶ 75–80, 221–24; *Coal. for Open Democracy*, 794 F. Supp. 3d at 42. Moreover, the absence of an identified voter who is known to have been disenfranchised because of the CVA's elimination proves little at this juncture—only a few low-turnout elections have taken place since HB 1569 took effect. SOF ¶ 32. Viewing the record in light most favorable to Plaintiffs, summary judgment must be denied as to Counts II and III.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion for summary judgment.

Respectfully submitted on this December 8, 2025,

COALITION FOR OPEN DEMOCRACY, LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE, THE FORWARD FOUNDATION, MILES BORNE, ALEXANDER MUIRHEAD, BY HIS NEXT FRIEND RUSSELL MUIRHEAD, AND LILA MUIRHEAD, BY HER NEXT FRIEND RUSSELL MUIRHEAD

By and through their attorneys,

/s/ Henry R. Klementowicz

Henry R. Klementowicz (N.H. Bar No. 21177)
Gilles R. Bissonnette (N.H. Bar No. 265393)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION
18 Low Avenue
Concord, NH 03301
(603) 333-2201
henry@aclu-nh.org
gilles@aclu-nh.org

Jacob van Leer*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, D.C. 20005
(202) 715-0815
jvanleer@aclu.org

Ming Cheung*
Clayton Pierce*
Ethan Herenstein*
Sophia Lin Lakin*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004
(212) 549-2500
mcheung@aclu.org
cpierce@aclu.org
eherenstein@aclu.org
slakin@aclu.org

Geoffrey M. Atkins*
John T. Montgomery*
Desiree M. Pelletier*
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7000
Geoffrey.Atkins@ropesgray.com
John.Montgomery@ropesgray.com
Desiree.Pelletier@ropesgray.com

** Admitted pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2025, a copy of the foregoing document was served upon counsel for via the Court's electronic filing system.

/s/Henry R. Klementowicz
Henry R. Klementowicz