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.

Case No. 1:24-cv-00291-SE-TSM

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The Court should deny the Motion to Dismiss filed by Defendant Secretary of State David M. Scanlan. ECF No. 24 ("Motion" or "Mot."); ECF No. 24-1 ("Mem.").

INTRODUCTION

In this case, the New Hampshire Youth Movement challenges a provision of H.B. 1569 (2024) that restricts voter registration, making it more difficult, and in some cases impossible, for eligible New Hampshire voters to register and vote in the state's elections. ECF No. 1 ("Compl.") ¶¶ 1, 39–45. The law, which went into effect on November 11, 2024, requires all new registrants to provide documentary proof of citizenship at the time of registration, with no exceptions. *Id.* ¶¶ 1, 34. Under prior law, including that which applied in the November 2024 election, voters who lacked such proof or did not have it with them could swear an affidavit attesting to their citizenship. *Id.* ¶¶ 27, 31–33. Under H.B. 1569, those voters will be unable to vote. *Id.* ¶ 36. The New Hampshire General Court passed H.B. 1569 even though there is no evidence that any ineligible voter had ever used an affidavit to falsely affirm citizenship and vote—evidence that would exist if such votes were being cast because information about voters who have affirmed their citizenship is available to state officials. *Id.* ¶¶ 46–50, 56. Because the new requirement burdens the

fundamental right to vote without serving state interests, it violates the First and Fourteenth Amendments to the U.S. Constitution. *Id.* ¶¶ 62–69. After the Governor signed H.B. 1569, the Youth Movement promptly filed this action to protect its interests in the efficacy of its mission-critical voting rights programs as well as the rights of its members who are threatened by unconstitutional burdens on their voting rights in upcoming elections. *Id.* ¶¶ 8, 14–19.

The Secretary asks this Court to decline to hear this case at the threshold, and nearly all of his Motion to Dismiss is devoted to his argument that the Youth Movement lacks Article III standing. The Motion suggests that the Complaint's allegations do not plausibly allege an organizational injury because they do not allege an "impediment" to the Youth Movement's "core" advocacy activities. Mem. at 3, 10. But that argument is irreconcilable with allegations in the Complaint that directly allege such an impediment—allegations that must, at this stage, be taken as true. In particular, the Complaint alleges that the proof of citizenship requirement poses a significant threat to the Youth Movement's members and constituents, who are often young and marginalized voters without access to citizenship documentation. Compl. ¶¶ 14, 18–19. The Complaint further alleges that when those voters are prevented or dissuaded from voting by the burdens imposed by the proof of citizenship requirements, the Youth Movement's investment-backed programs to "get out the vote" are undermined. *Id.* ¶ 18.

The standing allegations in this case are therefore very different from those at issue in the Supreme Court's recent decision in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024), and here—unlike in that case—the Complaint alleges that the challenged law "perceptibly impair[s]" the plaintiff organization's ability to carry out its "core . . . activities," *id.* at 395 (quoting *Havens Realty Corp. v. Coleman*, 455 U. S. 363, 379 (1982)). The Complaint also independently pleads facts sufficient to show associational standing—which was not at issue in *Alliance for*

Hippocratic Medicine—because it describes Youth Movement members threatened by the proof of citizenship requirement, the organization's mission is plainly germane to its members' stake in their fundamental voting rights, and neither Plaintiff's claim nor the relief it seeks requires the participation of individual members. Compl. ¶¶ 14–19; *see id.* at 26 (Prayer for Relief).

The Secretary devotes less than two pages to arguing that the Complaint fails to state a claim. This effort fares no better. Here, too, the Complaint contains exactly the allegations the Secretary asserts are missing, alleging facts showing that the proof of citizenship requirement unconstitutionally burdens the right to vote because it will prevent voters from voting in upcoming elections while failing to advance state interests that can justify that severe burden. *Compare* Compl. ¶¶ 18–19, 32, 33, 37, 40–61, *with* Mem. at 15–16 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 430 (1992)).

Because the Complaint alleges facts plausibly showing that Plaintiff has standing and that the proof of citizenship requirement is unconstitutional, the Motion should be denied.

RELEVANT BACKGROUND

I. Registering to Vote in New Hampshire Before HB 1569

Voters are eligible to vote in New Hampshire elections if they are (a) 18 years of age, (b) domiciled in the town or city where the individual is registering, and (c) a citizen of the United States. Compl. ¶ 26 (citing RSA 654:7, I). Voters must register before they vote, but they may register at the polling place on election day. *See* Compl. ¶¶ 24–25, 27–29; *see also* Act of May 23, 1994, Ch. 154:1, I, 1994 N.H. Laws (H.B. 1506). First-time voters routinely do so, with thousands registering to vote on election day in every election. Compl. ¶¶ 30, 32.

Under New Hampshire law before H.B. 1569, voters seeking to register could prove their citizenship either by showing documentary proof of citizenship or by signing a qualified voter affidavit attesting under oath that they are a U.S. citizen. *Id.* ¶ 27 (citing Act of July 18, 2003, Ch.

289, 2003 N.H. Laws (H.B. 627) and Act of July 29, 2009, Ch. 278, 2009 N.H. Laws (H.B. 265)). In recent elections, thousands of New Hampshire voters have relied on such affidavits to prove their citizenship. Compl. ¶¶ 32–33. There is no evidence that the system served as a vector for fraud. *See id.* ¶¶ 47–50, 56. And if the affidavits were being used for fraud, election officials would know it, because they know the identities of the voters who use citizenship affidavits and are able to investigate their eligibility after the fact. *See id.* ¶ 57 (describing requirement that affiants to "provide their name, place of birth, date of birth, domicile address, mailing address, and additional contact information" (citing RSA 654:12 (2023))).

II. HB 1569's Documentary Proof of Citizenship Requirement

A divided General Court passed H.B. 1569 on May 23, 2024. *See* Compl. ¶ 34. The bill revised the state's voter qualification statute by eliminating the ability to use a qualified voter affidavit to meet the citizenship requirement, instead requiring all first-time registrants to produce a birth certificate, passport, naturalization papers, or other documentation deemed "reasonable" by an election official. *See id.* ¶¶ 34–35. As a result, qualified voters who are unable to produce compliant citizenship documents at the time of registration will now be entirely prevented from voting. *See id.* ¶ 36; *see also infra* Background § III.

After Governor Sununu expressed doubt about the necessity of H.B. 1569, legislative leaders waited nearly four months to finalize the enrolled bill, ensuring that the legislation would not take effect until after the November 2024 general election. Governor Sununu ultimately signed H.B. 1569 on September 12, 2024, and the law went into effect 60 days later on November 11. *See* Compl. ¶¶ 1, 5.

III. The Youth Movement's Complaint

Plaintiff filed its Complaint on September 17, 2024. The Complaint asserts that H.B. 1569's documentary proof of citizenship requirement violates the First and Fourteenth

Amendments of the U.S. Constitution and seeks an order declaring it unconstitutional and enjoining its enforcement. *See generally* Compl.

As the Complaint alleges, the Youth Movement is a "nonpartisan, nonprofit membership organization composed of young people" whose mission is to "effectuate political change through civic action and democratic participation" and "strengthen the influence of young people, marginalized individuals, and others who share their common values by helping them navigate the political system and rise to positions of power and governance." *Id.* ¶ 14. In furtherance of its mission, the Youth Movement has invested in programs, events, and communication campaigns aimed at encouraging "participat[ion] in state and local elections" and providing direct assistance to its members and constituents who seek to participate. *Id.* ¶ 16. This includes "major days of action" and—"during key elections"—"direct engagement in the community," "social media campaigns, text banking, and pledge-to-vote campaigns," as well as targeted voter outreach. *Id.*

The Youth Movement has more than 100 dues-paying members, and it serves them along with a broader constituency of young New Hampshirites, many of whom participate in the organization's mission-critical activities. *See id.* ¶¶ 15–19. As the Complaint specifies, "the young, low-income, and other marginalized people who make up the Youth Movement's membership and constituency are at a particular risk of disenfranchisement and other burdens under the new requirement. These populations are less likely to possess or have ready access to their birth certificates, passports, or naturalization papers—if they have them at all." *Id.* ¶ 19.

The Complaint further describes the severe burdens that the proof of citizenship requirement threatens. For example, some qualified voters "simply do not have a passport, birth certificate, naturalization papers, or other documents that would affirmatively prove their citizenship," and "[w]hen those individuals arrive at the polls to register to vote on election day,

they will not be able to prove their qualifications" and therefore unable to vote. Compl. ¶ 41. Others may have these documents but "do not have them in their possession or access to them because they have moved to attend school or for other reasons." *Id.* ¶ 42. Circumstances beyond voters' control will also "prevent access to the documents deemed permissible by the requirement." *Id.* ¶ 43.

Even those voters who can overcome the proof of citizenship requirement will face significant burdens in complying with it. The Complaint alleges these burdens as well, explaining that "voters who currently lack the documents deemed acceptable by the requirement . . . will be forced to take the time and expend money and other resources to obtain them in time to vote." *Id.* ¶ 44. It details that "[p]assports can take multiple months to obtain and cost more than $110," and that "naturalization papers, for those citizens born outside of the United States, can cost more than $500." *Id.* Testimony "throughout the General Court's consideration of HB 1569" documented and "put legislators on notice" of these and other burdens that the proof of citizenship requirement imposes on New Hampshire voters. *Id.* ¶ 45.

The Complaint also alleges facts demonstrating that the proof of citizenship requirement does not advance even legitimate state interests. It alleges that "[b]etween 2015 and today, the Attorney General's Election Law Unit has investigated only seven people for unlawfully voting as noncitizens," that "only one of those people was criminally convicted, and that "[n]one of those people relied on a qualified voter affidavit to prove their citizenship." Compl. ¶ 56. The Complaint also alleges that prior law already prevented noncitizen voting: the "qualified voter affidavit prescribed by statute prior to HB 1569's enactment required voters to provide their name, place of birth, date of birth, domicile address, mailing address, and additional contact information." *Id.* ¶ 57 (citing RSA 654:12, I(a) (2023)). Existing law further provided that any person who "purposely

or knowingly" "votes for any office or measure at an election if such person is not qualified," *id.* ¶ 59 (quoting RSA 659:34, I), was "subject to felony prosecution, with penalties of up to seven years of prison time and additional fines," *id.* ¶ 58 (citing RSA 651:2). Such conduct would also result in the loss of voting rights and the right to run for office, RSA 654:5; RSA 607-A:2, as well as liability under federal law, Compl. ¶ 4. And it would render any such violator permanently "inadmissible" and subject to deportation under immigration law. *Id.* (citing 8 U.S.C. §§ 1182(a)(6)(C)(ii), (a)(10)(D)). Finally, the Complaint alleges that legislators in the General Court who introduced H.B. 1569 could not point to anything more than vague, speculative concerns about voter fraud as the reason to enact the legislation, and did not claim that there is any "issue of voter fraud" that the provision addresses. Compl. ¶¶ 46–50.

Based on these and other allegations in the Complaint, the Youth Movement has more than adequately alleged that the proof-of-citizenship requirement is unconstitutional because it burdens the right to vote with no state interest to justify the requirement. *Id.* ¶¶ 62–69.

IV. The Secretary's Motion to Dismiss

On December 20, 2024, the Secretary filed his Motion to Dismiss. The Motion first claims that the Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because Plaintiff's allegations fail to facially establish Article III standing, depriving the Court of subject matter jurisdiction. *See* Mem. at 2, 6–15. The Secretary then makes a brief argument that the Complaint should be dismissed under Rule 12(b)(6), claiming that Plaintiff's allegations fail to establish burdens that outweigh the state's asserted interest in preventing voter fraud. *Id.* at 15–16.

LEGAL STANDARD

Article III of the U.S. Constitution requires plaintiffs to establish "standing" to sue by showing that (1) the plaintiff suffered an "injury in fact," (2) the alleged injury is "fairly traceable to the challenged action of the defendant," and (3) it is "likely that the injury will be redressed by

a favorable decision." *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th 295, 308 (1st Cir. 2024) (alteration adopted) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). At the pleading stage, a plaintiff "need not definitively prove its injury or disprove" the defendant's "defenses"; it need only "plausibly plead on the face of [the] complaint" facts supporting standing. *Tyler v. Hennepin County*, 598 U.S. 631, 637 (2023) (citing *Lujan*, 504 U.S. at 561). Courts accordingly apply "to questions of standing" raised under Rule 12(b)(1) the "same plausibility standard used to evaluate a motion under Rule 12(b)(6)." *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th at 307–08 (alteration adopted) (quoting *Gustavsen v. Alcon Lab'ys, Inc.*, 903 F.3d 1, 7 (1st Cir. 2018)). This means the Court must "accept as true all well-pleaded factual averments . . . and indulge all reasonable inferences therefrom." *Id.* (cleaned up) (quoting *Katz v. Pershing, LLC*, 672 F.3d 64, 70 (1st Cir. 2012)).

ARGUMENT

I. The Youth Movement has standing.

Plaintiff's allegations demonstrate its standing to bring this case. As detailed below, the Youth Movement easily clears its burden of "plausibly plead[ing] . . . facts" establishing each of the requirements from Article III standing. *See Tyler*, 598 U.S. at 636–37.[1]

[1] The Secretary's standing argument focuses on Plaintiff's injuries and makes no argument (independent of the argument that the Complaint fails to allege an injury-in fact) that Plaintiff's claim fails to meet the causation or redressability requirements of Article III standing. *See* Mem. at 9 (arguing only that, "since Youth Movement has not plausibly alleged that any specific member has suffered a concrete and particularized harm . . . it follows that the alleged harm cannot be fairly traceable to the Secretary's challenged action, nor can the Court redress the alleged harm"). That, no doubt, is because the Complaint's allegations establish the remaining standing requirements: that the harms alleged are traceable to the Secretary because he directs and oversees election procedures in the state, including enforcement of the proof of citizenship requirement, and that an order from this Court declaring H.B. 1569's proof of citizenship requirement unconstitutional and preventing its enforcement would redress the injuries to the Youth Movement and its members. *See* Compl. ¶ 20; *accord, e.g.*, *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 224 (D.N.H. 2018) (granting summary judgment against Secretary of State, issuing order declaring election law unconstitutional and requiring Secretary to prevent enforcement).

A. No heightened pleading standard applies to standing allegations.

The Secretary's argument that a "heightened specificity" standard applies to standing allegations is contrary to controlling First Circuit and Supreme Court precedent. Mem. at 7–9. Recent decisions from the First Circuit are clear: "at the motion to dismiss stage, [courts] apply the same plausibility standard used to evaluate a motion under Rule 12(b)(6)" when addressing a motion to dismiss for lack of standing. *Gustavesen*, 903 F.3d at 8; *see also, e.g.*, *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th at 307. That is no surprise, because the Supreme Court held in 1993 that federal courts have no authority to impose heightened pleading requirements other than those imposed by Federal Rule of Civil Procedure 9(b) for claims of fraud or mistake. *See Leatherman v. Tarrant Cnty. Narcotics Intell. & Coordination Unit*, 507 U.S. 163, 168 (1993).

In nevertheless arguing for a heightened pleading standard for standing, the Secretary relies on a First Circuit decision from 1992—the year before *Leatherman*. *See United States v. AVX Corp.*, 962 F.2d 108, 115 (1st Cir. 1992) (stating that "where standing is at issue, heightened specificity is obligatory at the pleading stage"). Subsequent First Circuit panels have noted *AVX Corporation*'s evident inconsistency with *Leatherman* and limited any heightened pleading standard to establishing standing to intervene on appeal (an issue not governed by Rule 9), not standing to bring suit in the first instance. *See Sea Shore Corp. v. Sullivan*, 158 F.3d 51, 55 n.3 (1st Cir. 1998); *Adams v. Watson*, 10 F.3d 915, 919 n.8 (1st Cir. 1993).

Regardless, as Judge Laplante has explained, *AVX Corporation*'s "description of th[e pleading] standard as one of 'heightened specificity' merely reflects the pleading paradigm in 1992, the year that case was decided." *Conservation L. Found. v. Pub. Serv. Co. of New Hampshire*, No. 11-CV-353-JL, 2012 WL 4477669, at *2 (D.N.H. Sept. 27, 2012). At that time, "a complaint was facially deficient only if 'it appears beyond doubt that the plaintiff can prove no

set of facts in support of his claim which would entitle him to relief.'" *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957), *abrogated by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). *AVX*'s demand to "clearly alleg[e] facts sufficient to ground standing" was "heightened" only relative to *Conley*'s very-lax standard that otherwise then applied. *AVX Corp.*, 962 F.2d at 115. But "[i]n today's post-*Twombly* pleading paradigm, [*AVX Corporation*'s] standard is the rule, not the exception." *Conservation L. Found.*, 2012 WL 4477669, at *3. Applying what is now the ordinary pleading standard to standing allegations is therefore entirely consistent with what *AVX Corporation* demanded—"alleging facts sufficient to ground standing" rather than "purely conclusory allegations." 962 F.2d at 115.

The First Circuit's passing quotation of *AVX Corporation*'s "heightened specificity" language in its 2016 decision in *Draper v. Healey*, 827 F.3d 1, 3 (1st Cir. 2016), does not change this analysis. *Draper*, too, merely demanded that the complaint "set forth reasonably definite factual allegations, either direct or inferential, regarding each material element needed to sustain standing"—precisely what *Twombly* already demands when pleading any issue. *Id.* at 3. *Draper* therefore in no way undermines or modifies the First Circuit's repeated holdings that "the same plausibility standard used to evaluate a motion under Rule 12(b)(6)" applies to "questions of standing." *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th at 307 (quoting *Gustavsen* 903 F.3d at 7).[2]

B. The Complaint alleges facts sufficient to establish organizational standing.

The Youth Movement's Complaint sufficiently pleads organizational standing. As the Supreme Court recently affirmed, organizations like the Youth Movement may have standing "to

[2] *Draper* also addresses whether an associational plaintiff must identify an injured member to have standing to sue on behalf of that member, a separate issue discussed below in Part I.C.

sue on their own behalf for injuries they have sustained." *All. for Hippocratic Med.*, 602 U.S. at 394 (quoting *Havens*, 455 U.S. at 378-79 & n.19). To do so, organizations must satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals. *See Havens*, 455 U.S. at 378–79. In *Alliance for Hippocratic Medicine*, the Supreme Court confirmed that *Havens* does not allow organizations to establish an injury-in-fact merely by "divert[ing] . . . resources in response to a defendant's actions," but instead must allege that an unlawful law or practice "perceptibly impair[s]" their ability to carry out "core" activities. 602 U.S. at 395. Consistent with that understanding, the First Circuit has similarly held that an organization may establish organizational standing based on "allegations that [the challenged law or practice has] perceptibly impaired the organization's ability to provide [core] services, such that it has had to devote significant resources to identify and counteract that conduct." *Equal Means Equal v. Ferriero*, 3 F.4th 24, 30 (1st Cir. 2021) (cleaned up).

The Secretary's argument that Plaintiff lacks organizational standing boils down to an assertion that the Youth Movement's allegations describing its injuries are "nearly identical" to those at issue in the U.S. Supreme Court's decision in *Alliance for Hippocratic Medicine*, Mem. at 14, where the group at issue alleged resource diversions but no perceptible impairment of core activities. In reality, they could not be more different. In *Alliance for Hippocratic Medicine*, the plaintiff groups were ideologically opposed to mifepristone but otherwise unaffected by it; they "claim[ed] to have standing based on their incurring costs to oppose FDA's actions" in approving mifepristone, including by "conduct[ing] their own studies . . . drafting citizen petitions to FDA, as well as engaging in public advocacy and public education." 602 U.S. at 370. The Court accordingly found the complaint's allegations insufficient because they were devoid of any

allegation that the challenged action interfered with the groups' ability to provide services core to their missions. *Id.* at 395.

In contrast, the Youth Movement has squarely and explicitly alleged that the proof of citizenship requirement actually impairs its core advocacy efforts and get-out-the-vote programs. For example, in paragraph 17, the Complaint expressly alleges that the

> proof-of-citizenship requirement inflicts direct harm on the Youth Movement as well as its members and constituents by directly *undermining the efficacy of its educational and get out the vote efforts: no matter how persuasive those efforts are, they will come to naught if the targeted voters are disenfranchised by the new requirement*.

Compl. ¶ 18 (emphasis added). The Complaint then goes on to plead with specificity several ways HB 1569's proof of citizenship requirement will prevent qualified voters from registering and voting, *id.* ¶¶ 41–45; *see also infra* Argument § II, and describes why the Youth Movement's members and constituents (*i.e.*, voters the Youth Movement invests its resources reaching and supporting) will be prevented from voting and otherwise burdened by the requirement, *see id.* ¶¶ 18–19; *see also infra* Argument § I.C (explaining why Youth Movement members have standing in their own right). These allegations show that, far from alleging merely an impact on abstract "lobbying activities" and "pure issue-advocacy," as the Secretary contends, Mem. at 13 (quoting *Equal Means Equal*, 3 F.4th at 30), the Complaint plausibly alleges a specific "impediment" and "impairment" to the Youth Movement's core, mission-critical activities. Put simply, the proof-of-citizenship requirement undermines the efficacy of the Youth Movement's investment-backed advocacy programs by ensuring that voters it supports will nevertheless be prevented and dissuaded from voting. *See* Compl. ¶¶ 18–19.

The Secretary ignores many of the Complaint's allegations in an attempt to make his contrary argument, focusing myopically on Plaintiff's allegations that it must divert resources

away from these mission-critical programs in order to suggest that the Youth Movement seeks to "spend its way into standing." Mem. at 14 (citation omitted). But this mischaracterizes both the Youth Movement's allegations and the Supreme Court's holding in *Alliance for Hippocratic Medicine*. Consistent with that opinion, the Complaint is clear that the Youth Movement must make such expenditures specifically to "combat the harms" to its mission-critical activities (rather than merely in response to the law as an abstract matter). Compl. ¶¶ 18–19; *accord All. for Hippocratic Med.*, 602 U.S. at 395; *Equal Means Equal*, 3 F.4th at 30. In other words, the Complaint pleads the ingredient that was held missing in *Alliance* and *Equal Means Equal*.[3]

For all these reasons, the Secretary is wrong that the Complaint fails to plead organizational standing. The Motion to Dismiss for lack of subject matter jurisdiction should be denied.

C. The Complaint alleges facts sufficient to establish associational standing.

The Youth Movement's Complaint also more than adequately pleads facts establishing associational standing, supplying another independent basis for subject matter jurisdiction in this

[3] Consistent with that understanding, federal courts—before and after *Alliance for Hippocratic Medicine*—have routinely concluded that organizations like the Youth Movement possess Article III standing to challenge laws and practices that impede their core voter advocacy efforts by threatening disenfranchisement and other burdens on voters. *LUPE v. Abbott*, No. 5:21-cv-0844, 2024 WL 4488082, at *36 (W.D. Tex. Oct. 11, 2024) (discussing *Alliance for Hippocratic Medicine* and concluding that, "[a]s in *Havens*, the organizational injury here is a perceptible impairment of one of Plaintiffs' core services—voter assistance—resulting from violations of a federal law"); *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 397 (4th Cir. 2024) (party had Article III standing where it alleged diversion of resources in response to impairment of core mission of "organizing lawful voters and encouraging them to support Republican candidates" (citing *All. for Hippocratic Med.*, 602 U.S. at 395)); *see also, e.g.*, *Common Cause Indiana v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (explaining that "a voting law can injure an organization enough to give it standing 'by compelling [it] to devote resources' to combatting the effects of that law that are harmful to the organization's mission" (quoting *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008))); *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341–42 (11th Cir. 2014) (organizations engaged in voter registration as part of core mission had standing to challenge program designed to remove non-citizens from the roll because they diverted resources to addressing problematic misidentification of noncitizens that impeded core mission of getting out the vote).

case. Under the doctrine of associational standing (which was not at issue in *Alliance for Hippocratic Medicine*) a group has standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th at 308 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). The Secretary appears to contest all three of these factors ("the *Hunt* factors"), *see* Mem. at 6–12, but the Complaint satisfies each: (1) it plausibly alleges that the Youth Movement's members and constituents would have standing in their own right by describing those whose rights are threatened by the proof of citizenship requirement, (2) it details the group's mission of ensuring that its members and constituents are able to participate in the state's elections, and (3) it requests forms of declaratory and injunctive relief that require no individual's participation. The Secretary's arguments to the contrary do not withstand scrutiny.

1. The Youth Movement has pleaded facts sufficient to show that members and constituents have standing as individuals.

The Secretary largely focuses his argument that the Youth Movement has failed to sufficiently allege associational standing on the theory that any group seeking to bring a claim on behalf of members must always include on the face of its pleading "***names***" of specific injured members, relying on the First Circuit's brief discussion of associational standing in *Draper*. Mem. at 2, 8–9 (emphasis in Mem.) (citing *Draper*, 827 F.3d at 3); *see also Draper*, 827 F.3d at 3 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 498–99 (2009)). But no such a rigid, bright-line rule exists, and the Secretary's Motion otherwise fails to explain why the Complaint's allegations do not plausibly show that at least one of the Youth Movement's members is threatened by the proof of citizenship requirement.

Draper's demand for an identified member must be understood in the context of the claim at issue in that case—a challenge to a regulation barring the sale of a particular type of firearm. *Draper*, 827 F.3d at 2–3. The group whose standing was at issue in *Draper* sought to pursue such a challenge based only on general allegations that the organization had members and that it sought to bring the case on their behalf (even though the group's co-plaintiffs in the case adequately pleaded injury by claiming that they had been or would be prevented from purchasing or selling the type of gun at issue). *See Draper v. Healey*, No. 14–12471–NMG, ECF No. 1 ¶ 7 (D. Mass. June 11, 2014); *see also Draper v. Healey*, 98 F. Supp. 3d 77, 80 (D. Mass. 2015), *aff'd*, 827 F.3d. 1. While the group argued that an affidavit "asserting that many of its members asked it to take legal action challenging the regulation" was sufficient to show injury at the pleading stage, the First Circuit rejected the argument because "the complaint did not identify any member of the group whom the regulation prevented from selling or purchasing [the kind of gun at issue]," noting "the Supreme Court has said that an affidavit provided by an association to establish standing is insufficient unless it names an *injured* individual." *Draper*, 827 F.3d at 3 (emphasis added) (citing *Summers*, 555 U.S. at 498).[4] In reaching this holding, however, *Draper* emphasized that, in that specific case, "why the advocacy group would have needed formal discovery to identify which of its own members may have been injured by the regulation is a mystery the group leaves unsolved." *Id.* And in the context of *Draper*, this omission was a mystery indeed, because the group's members either sought to buy or sell the type of firearm affected by the regulation or they did not, such that it should have been easy for it to determine which members were affected in that way.

[4] *Draper* quotes from *Summers*, but that case was notably not decided on a motion-to-dismiss. Rather, *Summers* reversed a *final judgment* on the ground that the plaintiffs failed to *prove* associational standing through its affidavits. 555 U.S. at 499. It therefore has nothing to say about requirements for pleading associational standing.

In contrast, courts have consistently *not* required that an organization name an individual member who will be injured in cases like this one, where the organization challenges a voting restriction that will, by its terms, necessarily apply to *all* voters seeking to register to vote—including the Youth Movement's members. This follows from the well-established principle that "a voter always has standing to challenge a statute that places a requirement on the exercise of his or her right to vote." *People First of Alabama v. Merrill*, 487 F. Supp. 3d 1237, 1246 (N.D. Ala. 2020); *see also, e.g.*, *Frank v. Walker*, 17 F. Supp. 3d 837, 866 (E.D. Wis.) (organization established standing on behalf of members who would be required to "present a photo ID at the polls" in upcoming elections because "it is the need to present such an ID that injures a voter and confers standing to sue" (citing *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009))), *rev'd on other grounds*, 768 F.3d 744 (7th Cir. 2014).

Moreover, courts have repeatedly held that organizations need not name an individual member at the pleading stage to assert associational standing "[w]here it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action," and "where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015); *March. for Our Lives Idaho v. McGrane*, 697 F. Supp. 3d 1029, 1041 (D. Idaho 2023).[5] This is undoubtedly the case here.

[5] *See also, e.g.*, *Ranchers-Cattlemen Action L. Fund v. U.S. Dep't of Agric.*, 573 F. Supp. 3d 324, 334 (D.D.C. 2021) (concluding that an organizational plaintiff's burden at the pleading stage is satisfied by "alleg[ing] facts supporting a plausible inference that an unnamed (but identifiable) member has or will suffer a cognizable harm," even if more may be required at later stages of the litigation); *Sierra Club v. Energy Future Holdings Corp.*, 921 F. Supp. 2d 674, 680 (W.D. Tex. 2013) ("Defendant . . . argues that the Court lacks subject matter jurisdiction because the Plaintiff fails to identify a single member in its pleadings. . . . The Court disagrees because the Plaintiff is not required to 'name names' in its Complaint."); *Garcia v. City of Los Angeles*, 611 F. Supp. 3d 941, 951 (C.D. Cal. 2020) (similar, collecting cases).

As the Complaint explains, much of the harm from the challenged law will flow to voters who may in theory have proof-of-citizenship documents but who will lack access to them on election day, whether because they have moved to New Hampshire to attend school, because they have suffered a home fire or other disaster, or because they simply do not have them with them when they appear to vote. Compl. ¶¶ 41–43. That it is difficult to identify such voters in advance does not change the fact that they will be harmed, and the Complaint alleges facts showing that the Youth Movement's members are particularly likely to fall into those categories of injured voters. *See id.* ¶ 19. Other courts considering challenges to identification requirements at the pleading stage have concluded that similar allegations of injuries to members are sufficient. *E.g.*, *March. for Our Lives Idaho*, 697 F. Supp. 3d at 1041 (holding youth organization established standing where it alleged that its members included segments of voters likely to lack "accepted forms of voter identification"). The Secretary's argument that *Draper's* use of the words "identify" and "name" establish an "unambiguous" rule that an organization must allege the actual names of specific members suffering an injury-in-fact to establish associational standing at the pleading stage in every single case, and that even specific factual allegations explaining why and how unnamed members are injured *cannot* suffice, Mem. at 7–8, overreads that decision and would impose an impractical burden on organizations seeking to protect their members' voting rights in cases like these, putting it out of step with other courts and at odds with Supreme Court precedent. *See supra*.

Here, the Youth Movement's Complaint meets the burden of identifying injured members at the pleading stage by describing who they are, what they do with the Youth Movement, and the specific threats to their ability to vote in upcoming elections. As explained, Plaintiff's membership is composed of young people and marginalized individuals in New Hampshire who are motivated

to effectuate political change. Compl. ¶ 14. They include more than 100 dues-paying formal members as well as members of the group's constituency who participate in mission-critical activities—such as organizing the group's "hubs" as well as planning and "execut[ing] events aimed at uplifting the voice and influence of [the Youth Movement's] constituency." *Id.* ¶¶ 15–19.[6] And the Complaint plausibly alleges that such members will be prevented from voting and otherwise burdened by the requirement, particularly given that the "young, low-income, and other marginalized people who make up the Youth Movement's membership and constituency are at a particular risk of disenfranchisement." *Id.* ¶ 19; *see also supra* Background § III (summarizing the Complaint's supporting allegations).

The Secretary's suggestion that the Youth Movement "offers no facts to support its claim" is inconsistent with these allegations. Mem. at 9. And Plaintiff does not rely only on mere "[s]tatistical probability of harm" to its membership. *Id.* (citing *Summers*, 555 U.S. at 499). Rather, as just explained, the Complaint's allegations describe who Plaintiff's affected members are and the specific threats to their ability to register and vote in upcoming elections, which is sufficient at the pleading stage. For all these reasons, the Court should reject the Secretary's argument that the Youth Movement's Complaint fails to satisfy the first *Hunt* factor.

[6] Under both Supreme Court and First Circuit precedent, the Youth Movement's "members" for purposes of associational standing consist both of dues-paying formal members and constituents who identify with the group's mission and significantly influence its core activities. *See Hunt*, 432 U.S. at 344; *see also* Compl. ¶¶ 15-19. And consistent with *Hunt*, the First Circuit recently explained that the "indicia of membership" test, rather than any "rigid" or "formal" requirement, defines an organization's membership for this purpose. *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 110 F.4th at 310, 312 ("What undergirds the analysis is whether the organization is sufficiently identified with and subject to the influence of those it seeks to represent as to have a personal stake in the outcome of the controversy." (cleaned up)).

2. The interests at stake in this lawsuit are germane to the Youth Movement's purpose.

The interests at stake in this lawsuit are also plainly "germane" to the Youth Movement's organizational purpose. *Housatonic River Initiative v. EPA*, 75 F.4th 248, 265 (1st Cir. 2023); *Animal Welfare Inst. v. Martin*, 623 F.3d 19, 25 (1st Cir. 2010). This factor requires only that the interests be "related to [Plaintiff's] core purposes." *Housatonic River Initiative*, 75 F.4th at 265. The core aspects of the Youth Movement's mission are to "effectuate political change through civic action and democratic participation" to "strengthen the influence of young people, marginalized individuals, and others who share their common values by helping them navigate the political system." Compl. ¶ 14. And the Youth Movement invests heavily in voter education and voter support activities targeted at such members in furtherance of this core mission. *Id.* ¶¶ 14–19; *see also supra* Background § III. Courts have consistently held that these kinds of allegations are sufficient to meet the germaneness requirement. *E.g.*, *League of Women Voters of Fla., Inc. v. Lee*, 576 F. Supp. 3d 1004, 1009 (N.D. Fla. 2021) (groups with "core purposes [that] involve registering voters, voter education, encouraging electoral participation, and advocating for accessibility" satisfied germaneness requirement in right to vote case); *LUPE v. Abbott*, 614 F. Supp. 3d 509, 526 (W.D. Tex. 2022) (similar); *Fla. State Conf. of NAACP v. Lee*, 576 F. Supp. 3d 974, 981 (N.D. Fla. 2021) (similar).

In light of the Complaint's allegations, which the Secretary hardly acknowledges, *see* Mem. at 10–11, his argument that the "Youth Movement's core purpose is not voting rights" is demonstrably unfounded, Mem. at 10. The Secretary suggests that Paragraph 14 of the Complaint, which alleges that members and constituents are motivated by some particular policy goals, somehow renders the Youth Movement's purpose too "broad" to establish germaneness to the "voting rights" at stake. *Id.* But, even accepting the Secretary's premise that an organization's

purpose could be too broad to satisfy the germaneness requirement, that allegation simply supplies detail as to *why* particular members and constituents find it critical to participate in elections and does not even purport to define the scope of the Youth Movement's "core" purpose. *See* Compl. ¶ 14. The Complaint plausibly alleges facts showing that the interests at stake in this litigation are related to the Youth Movement's purpose, satisfying the second *Hunt* factor.[7]

3. Participation of individual members is not required.

Finally, individual members' participation is not necessary. *Housatonic River Initiative*, 75 F.4th at 265–66 (citing *Animal Welfare Inst.*, 623 F.3d at 25). The Youth Movement requests an order declaring the proof of citizenship requirement unconstitutional and enjoining its enforcement. Compl. ¶ 8; *id.* at 26 (Prayer for Relief). Because such relief would "inure to the benefit of those members" who are injured, the third *Hunt* factor is readily satisfied. *Housatonic Rivier Initiative*, 75 F.4th at 265–66 (quoting *Warth v. Seldin*, 422 U.S. 490, 515 (1975), and *Playboy Enters., Inc. v. Pub. Serv. Comm'n of P.R.*, 906 F.2d 25, 35–36 (1st Cir. 1990)).

The Secretary concedes that this factor is typically satisfied where, as here, Plaintiff seeks only declaratory and injunctive relief, yet he argues that it is not satisfied in this case because it is not clear whether "individual inquiry" might be necessary. Mem. at 12. But as courts have found, even assuming the Secretary were "correct that the [Plaintiff's claim] will require individualized consideration of these members' experiences, this is no bar to associational standing because the requested injunctive relief will inure to the benefit of all injured class members." *Louis D. Brandeis Ctr. for Hum. Rts. Under L. v. President & Fellows of Harvard Coll.*, No. CV 1:24-cv-11354-

[7] The Secretary is simply wrong that, "[t]o establish germaneness, Youth Movement must allege that New Hampshire's proof-of-citizenship voting registration requirement impeded its mission." Mem. at 11. That is not the test. *Compare id.*, *with Housatonic River Initiative*, 75 F.4th at 265, *and Animal Welfare Inst.*, 623 F.3d at 25. In any event, the Youth Movement did plead an impediment to its core mission. *Supra* Argument § I.B.

RGS, 2024 WL 4681802, at *4 (D. Mass. Nov. 5, 2024) (citing *Warth*, 422 U.S. at 515); *accord Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 56 (1st Cir. 2023) (explaining there is no jurisdictional or prudential bar to an organization seeking "equitable relief on behalf of some of its individual members"), *cert. denied*, No. 23-1137, 2024 WL 5036302 (U.S. Dec. 9, 2024).

In sum, Plaintiffs have satisfied all the factors necessary to establish associational standing. The Secretary's Motion to Dismiss the case for lack of subject matter jurisdiction should therefore be denied on this ground as well.[8]

II. The Complaint plausibly alleges that HB 1569 is unconstitutional.

Finally, the Secretary's meager attempt at showing that the Complaint fails to plausibly allege a violation of the First and Fourteenth Amendments comes up short. *See* Mem. at 15–16. The parties agree that Plaintiff's claim is assessed under the *Anderson-Burdick* framework. *Id.* at 15. Under this rubric, to determine whether a law unconstitutionally burdens the right to vote, courts "weigh the 'character and magnitude of the asserted injury to' the voters' rights against the 'precise interests put forward by the State as justifications for the burden imposed.'" *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (quoting *Anderson*, 460 U.S. at

[8] Even if the Court is inclined to find that the Youth Movement has not adequately pleaded associational standing, it should not dismiss Plaintiff's Complaint, given that it independently pleads organizational standing. *See, e.g.*, *Louis D. Brandeis Ctr. for Hum. Rts. Under L.*, 2024 WL 4681802, at *4 & n.7 ("Because Brandeis Center has associational standing, the court need not determine whether it separately has organizational standing."); *March for Our Lives*, 697 F. Supp. 3d at 1041 (noting that, "[b]ecause Plaintiffs allege organizational standing, they need not also have associational standing"); *see also supra* Argument § I.B. Should the Court conclude that the Youth Movement has failed to adequately allege both organizational and associational standing for any reason, the Youth Movement requests an opportunity to supplement or amend the pleadings to cure the defect. *See, e.g.*, *Bos. All. of Gay, Lesbian, Bisexual & Transgender Youth v. United States Dep't of Health & Hum. Servs.*, 557 F. Supp. 3d 224, 235–36 (D. Mass. 2021) (resolving motion to dismiss after plaintiffs were allowed an opportunity to "supplement the pleadings with additional declarations to demonstrate standing").

788–89). "However slight the burden may appear . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (cleaned up) (Stevens, J., controlling op.).

The Youth Movement's Complaint contains detailed factual allegations that plausibly establish that the proof of citizenship requirement is unconstitutional. As to the character and magnitude of the asserted injury, the Complaint alleges that the proof of citizenship requirement burdens New Hampshire voters by preventing qualified voters who "simply do not have a passport, birth certificate, naturalization papers, or other documents that would affirmatively prove their citizenship" from voting. Compl. ¶ 40. Some will be prevented from registering and voting, especially in New Hampshire's system of election-day registration, since they do not have "access to [their documents] because they have moved to attend school or for other reasons," and circumstances beyond the control of the voter will "prevent [others from] access[ing] the documents deemed permissible by the requirement." *Id.* ¶¶ 41–43. And the "state knows from experience [that] this circumstance presents regularly at the polls." *Id.* ¶ 5. Denial of the right to vote is, by definition, a severe burden on that right. *See, e.g.*, *Jones v. U.S. Postal Service*, 488 F. Supp. 3d 103, 137 (S.D.N.Y. 2020) (citing *Florida Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1257 (N.D. Fla. 2016)); *see also Fish v. Schwab*, 957 F.3d 1105, 1131 (10th Cir. 2020) (concluding that the disenfranchisement of voters resulting from Kansas's proof of citizenship requirement "impose[d] a significant burden" under *Anderson-Burdick*).

The Complaint's allegations further establish that even voters who are able to satisfy the proof of citizenship requirement will have to undertake significant burdens to comply and protect their fundamental right to vote from being entirely denied. Compl. ¶ 44 (alleging that "[a]ny voters who currently lack the documents deemed acceptable by the requirement . . . will be forced to take

the time and expend money and other resources to obtain them in time to vote," and that [p]assports can take multiple months to obtain and cost more than $110," and "naturalization papers, for those citizens born outside of the United States, can cost more than $500"). The Complaint alleges facts showing that these burdens are more likely to affect identifiable subgroups, such as college students as well as low-income individuals and other marginalized groups. *Id.* ¶ 19; *see Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 1006 (D. Ariz. 2024) (explaining "laws that impose a particular burden on an identifiable segment of voters are more likely to raise constitutional concerns and demand more exacting review" (cleaned up) (citing *Crawford*, 553 U.S. at 199–203, *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1190 (9th Cir. 2021), and *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016) (en banc)). Testimony "throughout the General Court's consideration of HB 1569" documented and "put legislators on notice" of the burdens that the proof of citizenship requirement imposes on voters. Compl. ¶ 45. And as explained, the Complaint further alleges specific facts showing that the proof of citizenship requirement does not serve the asserted interest in preventing fraud. *See* Background § I.C.

The Secretary's Motion does not even attempt to explain why these allegations are not plausible, instead baldly asserting that the Court should not "credit Youth Movement's threadbare assertions that HB 1569 is unconstitutional." Mem. at 16 (citing *Alston v. Spiegel*, 988 F.3d 564, 571 (1st Cir. 2021)). But *Alson*, relied upon by the Secretary, explains that under the plausibility standard, allegations are only insufficient where they are "too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture." 988 F.3d at 571 (quoting *SEC v. Tambone*, 597 F.3d 436, 442 (1st Cir. 2010)). The Secretary offers no reason why the factual allegations just described do not clear this threshold. *See* Mem. at 15–16. And, notably, the

Secretary does not argue that the Complaint fails to state a claim upon which relief can be granted even if these allegations are credited. *See id.*[9]

Finally, the Secretary's argument merely assumes that the proof of citizenship requirement is supported by the state's regulatory interest in preventing fraud, *see* Mem. at 1–2, 15, but that issue (like the character and magnitude of the burden at issue) presents factual questions that make resolution of Plaintiff's claim inappropriate at the pleading stage. *See Crawford*, 553 U.S. at 191; *accord Fish*, 957 F.3d at 1136; *see also, e.g.*, *Soltysik v. Padilla*, 910 F.3d 438, 447, 450 (9th Cir. 2018). Indeed, because both ends of the *Anderson-Burdick* framework's "sliding-scale" typically require resolution of such factual issues, well-pleaded challenges to laws that burden voting rights are typically not amenable to resolution on a motion to dismiss.[10] For all these reasons, the Secretary's Motion to Dismiss for failure to state a claim under Rule 12(b)(6) fails.

[9] Instead, the Secretary appears to ask the Court to credit *his* factual allegations over those of the Plaintiffs, asserting that he is unaware of anyone who had been prevented from registering or voting as of December 20, 2024. Mem. at 2. Even accepting that unsupported extra-pleading fact as true, enforcement of the requirement in the weeks following a major presidential election is obviously not relevant to the harms H.B. 1569 threatens in upcoming elections. *See, e.g.*, Compl. ¶¶ 24–25, 37 (explaining New Hampshire's system of election-day voter registration, when a large share of new residents and newly qualified voters, especially young people and college students, seek to register); *see also id.* ¶¶ 17–19, 41–45.

[10] *E.g.*, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509-PHX-SRB, 2023 WL 8183070, at *14 (D. Ariz. Feb. 16, 2023) ("Plaintiffs correctly note that because *Anderson-Burdick* claims are particularly fact-sensitive, dismissal under Rule 12(b)(6) is disfavored."); *Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1278 (N.D. Ga. 2021) (denying motion to dismiss *Anderson-Burdick* claim asserting that state interests justified challenged provision because defendants' attempt to "weigh[] the alleged burden on voters" against asserted interests "is not appropriate" at this stage).

CONCLUSION

The Court should deny the Secretary's Motion to Dismiss Plaintiff's Complaint.

Dated: January 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing were forwarded to all counsel of record on this 3rd day of January, 2025 via the Court's e-filing system.

/s/ Steven J. Dutton
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