THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
SOUTHERN DISTRICT

Case No. 226-2023-CV-00613

DEMOCRATIC NATIONAL COMMITTEE and
NEW HAMPSHIRE DEMOCRATIC PARTY,

Plaintiffs,

v.

DAVID M. SCANLAN, in his official capacity as the Acting New Hampshire Secretary of State, and JOHN M. FORMELLA, in his official capacity as the New Hamsphire Attorney General,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Jury Trial Requested

INTRODUCTION

1. For nearly three decades, Granite Staters have been allowed to both register and vote on election day, by either presenting documentary proof of identity at their polling place or attesting to their identity under penalty of perjury at their polling place.

2. Nevertheless, on June 17, 2022, the New Hampshire General Court enacted Senate Bill ("S.B.") 418 (Exhibit A), which forces anyone who seeks to register and vote on election day without documentary proof of identity (and does not happen to be personally known to an election official on the scene) to submit an "affidavit ballot"—a ballot that will be excluded from the final vote count unless the person complies with a burdensome identity-verification process within seven days of the election. The law also directs the secretary of state to refer persons who do not respond to the secretary or who do not provide the required voter qualifying information to the state attorney general for investigation and possible criminal penalties.

3. S.B. 418 conflicts with the New Hampshire Constitution's requirement that city and town clerks report the results of an election to the secretary of state "within five days following the election," N.H. Const. pt. 2, art. 32. In particular, S.B. 418 precludes a final vote count until at least "the seventh day after the election," S.B. 418 §2, V, making it impossible for city and town clerks to comply with the constitutionally mandated five-day reporting period.

4. S.B. 418 also violates the New Hampshire Constitution's Due Process Clause. The seven-day identity-verification period is an unreasonably short amount of time to submit the relevant documents, and the law's omission of any notice to those whose verification submissions are incomplete unnecessarily risks erroneous deprivation of the fundamental right to vote.

5. These constitutional deficiencies were well-publicized before the enactment of S.B. 418, and then again after. The secretary of state himself recognized the significant constitutional problems with the law, noting—with substantial understatement—that "there may be a constitutional issue with" S.B. 418. *See* DeWitt, *As Sununu Indicates Support, Legal Questions Around 'Provisional Ballot' Bill Persist*, New Hampshire Bulletin (June 7, 2022).[1]

6. The state's articulated basis for enacting S.B. 418 is voter fraud. Yet the state has no basis for asserting that New Hampshire has a voter-fraud problem, much less that the problem is tied to the lack of a proof-of-identification requirement for election-day voter registration, or that the affidavit-ballot process would address voter fraud if it existed. The law thus serves no legitimate purpose.

[1] https://newhampshirebulletin.com/2022/06/07/as-sununu-indicates-support-legal-questions-around-provisional-ballot-bill-persist/.

7. S.B. 418 is, in fact, the latest in a series of recent attempts by the General Court to invoke unfounded fears of voter fraud as a pretense to deny the voting rights guaranteed by the New Hampshire Constitution. New Hampshire courts have enjoined each prior effort in this series, holding that each violated the state constitution's guarantee of the right to vote. *See, e.g.*, *N.H. Democratic Party v. Sec'y of State*, 174 N.H. 312, 332 (2021) (affirming an injunction of S.B. 3, which imposed new requirements for proving a would-be voter's domicile); *Guare v. New Hampshire*, 167 N.H. 658, 669 (2015) (affirming an injunction of S.B. 318, which added confusing language to the standard voter-registration form). The same outcome is required here. The courts must again safeguard New Hampshire residents' constitutional rights. S.B. 418 should be permanently enjoined.

PLAINTIFFS

8. The Democratic National Committee ("DNC") is the oldest continuing party committee in the United States. It is a "national committee" as that term is defined in 52 U.S.C. §30101(14), with a principal place of business at 430 South Capitol Street S.E., Washington, D.C. 20003.

9. The DNC's organizational purposes and functions are to communicate the Democratic Party's position and messages on issues; protect voters' rights; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats but also to cast their ballots for Democratic nominees and candidates.

10. The DNC is composed of the chair (Jaime Harrison), vice chairs, and over 200 members elected by Democrats in every U.S. state and territory and the District of Columbia.

11. The New Hampshire Democratic Party ("NHDP") is a state committee as that term is defined in 52 U.S.C. §30101, and a political party as defined in N.H. RSA 652:11. It is located at 105 North State Street, Concord, N.H. 03301. NHDP's purpose is to elect candidates of the Democratic Party to public office throughout New Hampshire. To accomplish this purpose, NHDP supports Democratic candidates in national, state, and local elections through fundraising and organizing efforts; protects voters' rights; and ensures that all eligible Granite Staters—including those who register to vote on election day—can cast a ballot and have that ballot counted.

12. NHDP has members and other constituents across the state, including many who regularly vote for and otherwise support candidates affiliated with the Democratic Party, and many who will do so if they are able to register on election day and cast a ballot that day that will be counted. NHDP also engages in voter-education and voter-participation activities across the state, including explaining voter-eligibility, registration, and identification requirements.

13. The DNC and NHDP bring this action on their own behalf to redress the harm S.B. 418 inflicts on each of them by preventing or deterring New Hampshire residents who would vote for Democratic candidates from doing so. In New Hampshire, there are over 264,000 registered members of the Democratic Party. *See Party Registration History 1970-2023*, N.H. Sec'y of State.[2] It is thus extremely likely that one or more members of the Democratic Party, or other individuals who would vote for Democrats in New Hampshire, already have been or will soon be required to fill out an affidavit ballot, will be unable to successfully navigate the cure requirement, and will therefore have their ballots removed from the total vote count. Moreover, the burdens that S.B. 418 imposes likely deters some would-be voters who either lack or simply

[2] https://www.sos.nh.gov/party-registration-history-1970-2023 (visited Dec. 22, 2023).

forget the necessary proof of identification and would vote for Democrats from registering—and voting—on election day because of the additional time required at their polling place and in the seven days thereafter. Democrats in New Hampshire also face longer lines at the polls as poll workers and those attempting to register for the first time navigate the new and burdensome affidavit-ballot process. These effects reduce the number of votes for Democratic candidates, injuring DNC and NHDP, both of which have as a core goal maximizing the number of votes for those candidates.

14. S.B. 418 also harms the DNC and NHDP as organizations because it requires both to divert their time and resources toward educating voters about how to comply with the law and ensure the ballots they cast are actually counted. Because S.B. 418 fundamentally changes how voters must cast their ballots, the DNC and the NHDP will have to engage in a broad-based education program targeting thousands of New Hampshire Democratic voters as well as Democratic candidates. Voters will have to be informed that they can no longer use affidavits to establish their identities and that, in the absence of an accepted type of photo ID, they will have to produce specific types of documents within seven days of voting or be at risk of being disenfranchised and investigated by the New Hampshire Attorney General. The magnitude of this change and the severity of the consequences of non-compliance will require the DNC and the NHDP to implement a carefully designed and coordinated information campaign that will likely include:

- providing new training to volunteers who participate in get-out-the-vote programs;
- revising online voting information;

- developing, printing, and distributing customized voter-education mail targeting Democratic voters most likely to be affected;
- developing and launching customized voter-education digital ads targeting Democratic voters most likely to be affected;
- recruiting and deploying post-election volunteers to knock on doors, make calls, and conduct other forms of voter outreach (e.g., public information sessions) to all Democratic voters who cast affidavit ballots to help them successfully complete the process; and
- extending payroll end dates for staff by an additional week so they can support post-election programs.

These efforts, which could require hiring additional staff, likely will cost at least tens of thousands of dollars and hundreds, if not thousands, of hours of work by DNC and NHDP employees. This large diversion will leave the DNC and the NHDP with fewer resources for the core work that is essential to their mission of electing Democratic candidates—work that includes get-out-the-vote initiatives, voter-registration campaigns, and myriad activities to support Democratic candidates.

15. S.B. 418 also harms the DNC and the NHDP by interfering with their core mission of electing Democratic candidates. The law creates a significant risk that Democratic voters who do not have photo IDs or who lack the documents necessary to prove their identities will choose not to vote. Further, the provision in S.B. 418 that threatens an investigation by the attorney general for noncompliance with the law will have a chilling effect on Democratic voters, many of whom may choose not to vote instead of putting themselves at risk of being

investigated. These effects could materially decrease the likelihood of electing Democratic candidates—a direct injury to the DNC and the NHDP.

16. Separate and apart from the harm that S.B. 418 threatens to cause the DNC and the NHDP directly, members and constituents associated with the organizations face harm in the form of potential disenfranchisement—not having their votes count if they do not fully comply with the law's detailed requirements. And they also face material harm through the risk of being investigated by the attorney general for an act as simple as not providing documents within the seven-day verification deadline that S.B. 418 establishes. For purposes of establishing the harm to the DNC and the NHDP, both organizations stand in the shoes of their members and constituents who face these material consequences. Both organizations also stand in the shoes of the Democratic candidates whose chances of being elected are threatened by these effects on voters.

DEFENDANTS

17. David M. Scanlan is the New Hampshire Secretary of State, whose office is located at 25 Capitol Street, Concord, N.H. 03301, and who is sued in his official capacity. The secretary of state is the chief elections officer for New Hampshire, charged with administering its election laws. RSA 652:23 (2010). The secretary is also charged with accepting and totaling the results from the local election officials who will administer S.B. 418's affidavit-ballot provisions. Under that statute, moreover, the secretary is responsible for designing, producing, and distributing the "affidavit voter package" at issue in this lawsuit. S.B. 418 §2, II(a)-(b). The law also makes the secretary's office responsible for reviewing the verification letters submitted by those who cast affidavit ballots, and for then instructing local election officials on whether to deduct such ballots from vote totals. *Id.* §2, V. The secretary is further required to refer the

names of affidavit voters whose verification letters are either not returned to the secretary of state or which do not provide the required information to the New Hampshire Attorney General's office for investigation. *Id.* §2, VII. The secretary, personally and through the conduct of his agents, servants, and employees, has acted and will act under color of state law at all times relevant to this action.

18. Defendant John Formella is the New Hampshire Attorney General, whose office is located at 1 Granite Place South, Concord, New Hampshire 03301, and who is sued in his official capacity. The attorney general enforces the state's election laws. RSA 7:6-c, I (2015). This enforcement power includes the authority to impose civil penalties on individuals found liable for wrongful voting as well as to institute civil actions to collect those penalties. RSA 659:34, V (2017). The attorney general is also responsible for approving the official manual of New Hampshire election laws and procedures for conducting elections. RSA 652:22 (2009). As mentioned, the secretary of state is required by S.B. 418 to refer the names of affidavit voters who do not provide sufficient verification information to the attorney general's office for investigation. S.B. 418 §2, VII. The attorney general, personally and through the conduct of his agents, servants, and employees, has acted and will act under color of state law at all times relevant to this action.

JURISDICTION AND VENUE

19. As the court of general jurisdiction in New Hampshire, this Court has subject-matter jurisdiction over this complaint and jurisdiction to grant both declaratory and equitable relief. RSA 491:7; RSA 491:22, II; RSA 498:1.

20. Venue is proper in this district because plaintiffs conduct activities in it and the violations complained of will harm plaintiffs and Democrats domiciled in this district. RSA

507:9. Plaintiff NHDP has 17,177 members in Nashua alone. *See Party Registration History*, *supra* ¶13. Venue is also appropriate because defendants are responsible for administering S.B. 418 across the state, including within this district. *Id.*

PRINCIPAL ALLEGATIONS

A. New Hampshire's Pre-Existing Scheme For Election-Day Registration

21. For nearly three decades, New Hampshire has provided for election-day voter registration, under which new voters can both register and then vote on election day. *See* RSA 654:7a.

22. To register to vote in New Hampshire, an applicant must complete a voter-registration form and present proof of identity, citizenship, age, and domicile. RSA 654:12, I. Before S.B. 418 became effective on January 1, 2023, *see* S.B. 418, §7, an applicant without acceptable documentation of these prerequisites could attest under the penalties for committing voter fraud (which include imprisonment) that he or she met them. RSA 654:12, I(a)-(b), (c)(2)(A). By executing a "sworn statement," therefore, even those who could not or just did not present acceptable identification could register and vote on election day. *Id.*

23. The pre-existing election-day registration process has required each would-be voter to provide her name, date and place of birth, domicile and mailing addresses, and additional identifying information. RSA 654:12, I(a)-(b), (c)(2)(A). And applicants that used the sworn statement have had to have their photographs taken and have been mailed a request for written verification that they in fact registered and voted. RSA 654:12, III-a, V(b). When such a mailing has been returned as undeliverable, the secretary of state's office has conducted an inquiry to identify the voter—including by examining public records or interviewing state residents—and has referred to the attorney general for further investigation those applicants

whose identity and qualifications the secretary could not confirm. RSA 654:12, V(e). The attorney general then investigates whether the applicant tried to register fraudulently. *Id.*

24. Under this system, New Hampshire enjoyed some of the highest voter turnouts in the country. An unprecedented 75,612 voters successfully registered to vote at their polling place on election day in 2020, representing nearly 10 percent of New Hampshire's electorate. *See* Rayno, *Election Statistics Show Growing Percentage of Independent Voters*, InDepthNH (Jan. 23, 2021).[3]

25. In the 2020 general election, the New Hampshire precincts with the highest number of election-day registrations tended to be areas with the highest number of young, non-white, and/or low-income voters. Most of these precincts also voted overwhelmingly for Democratic candidates.

26. Upon information and belief, when the General Court enacted S.B. 418, it was aware both that young, low-income, and non-white voters in particular benefit from election-day registration, and that effective election-day registration improves turnout among these groups. It was also aware that long-term trends in party affiliation show that these groups tend to vote Democratic.

B. Election-Day Registration Under S.B. 418

27. S.B. 418 overhauls New Hampshire's existing system for New Hampshire residents who register to vote on election day. It does so by requiring any such voter who lacks sufficient documentary proof of identity at the polling place to cast an "affidavit ballot"—a new type of provisional ballot that is excluded from the final vote tally unless the voter subsequently complies with the law's identity-verification requirements.

[3] https://indepthnh.org/2021/01/23/election-statistics-show-growing-percentage-of-independent-voters/.

28. At the same time, S.B. 418 exempts some new registrants without sufficient identification from the affidavit process: Section 5 provides that "[i]n addition to the forms of photo identification authorized[,] … the identification requirements … may be satisfied by verification of the person's identity by a moderator or supervisor of the checklist or the clerk of a town, ward, or city" who is willing to affirm the voter's identity "under penalty of perjury." Voters identified via the happenstance of an election official claiming "personal recognizance" (*id.*) are accordingly permitted to submit a regular ballot, rather than having to comply with the seven-day post-election verification process for their ballots to be counted.

29. Under S.B. 418, a voter registering for the first time in New Hampshire on election day who does not provide sufficient documentary proof of identity and whom an election official does not claim to personally recognize is handed (1) an "affidavit ballot," S.B.418 §2, I, and (2) an "affidavit voter package" containing (a) a prepaid envelope addressed to the secretary of state and (b) an "affidavit voter verification letter, in duplicate form, which lists all the documents required to qualify to vote in … New Hampshire," *id.* §2, II(b). An election official at the polling place will then "mark on both copies of the verification letter which qualifying documents were not provided" by the voter. *Id.* One copy of this letter is retained by the official; the other is provided to the voter, who must return it (along with the requisite documentation of identity) to the secretary of state "within 7 days of the date of the election in order for the ballot to be certified." *Id.* The voter must *also*, as was required before S.B. 418, "execute a challenged voter affidavit" and have his or her photograph taken by an election official. *Id.* §4 (amending RSA 659:13, I(c)).

30. Unlike with regular, anonymous ballots, state officials may trace affidavit ballots back to the voters who cast them. To enable election officials to do that, S.B. 418 requires them

to "mark each affidavit ballot 'Affidavit Ballot #__' sequentially, starting with the number '1.'" S.B. 418 §2, III. After a voter casts a numbered "affidavit ballot" in person at the polling place, it is segregated from other ballots and "placed in a container designated 'Affidavit Ballots.'" *Id.* §2, IV. Town moderators must separately announce the number of affidavit ballots cast. *Id.*

31. Within one day after any election, S.B. 418 requires election officials to send the retained copies of "all affidavit ballot verification letters to the secretary of state." S.B. 418 §2, IV. On the seventh day after the election, if a voter has not delivered to the secretary the verification letter along with the required documentation of identity, the secretary must instruct the appropriate local election official to "retrieve the associated numbered affidavit ballot and list on a tally sheet, by candidate or issue, the votes cast on that ballot," *id.* §2, V (although S.B. 418 does not specify how the letter is to be linked to the associated ballot in the first place). Officials must, in other words, track how each person whom S.B. 418 singles out voted, all the way down the ballot.

32. Then, "[n]o later than 14 days after the election," local election officials must "provide to the secretary of state a summary report, by race or ballot issue, of the total votes cast" on the affidavit ballots of voters who did not complete the verification process. S.B. 418 §2, VI. The votes cast on those ballots "shall be deducted from the vote total for each affected candidate or each affected issue," *id.* §2, V, again without specifying any mechanism to ensure that ballots are accurately associated with the voters who failed to return their affidavit letters on time. In other words, "[t]he total vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority." *Id.* §2, VI.

33. Affidavit-ballot voters who do not complete the verification process within seven days are not just disenfranchised, however. S.B. 418 also requires the secretary of state to

compile "[t]he names of affidavit voters whose verification letters are either not returned to the secretary of state or which do not provide the required voter qualifying information," and to refer those names "to the New Hampshire attorney general's office for investigation in accordance with RSA 7:6-c," which in turn authorizes criminal prosecution. S.B. 418 §2, VII.

34. S.B. 418 does not require that these individuals be informed that their votes will not be counted or that they have been referred for potential prosecution.

35. Moreover, "[a]ny written, electronic, or other information related to an affidavit voter who" did not "provide[] the required information" to the secretary of state is not protected from "disclosure" under New Hampshire's Right to Know Law. S.B. 418 §2, VIII (citing RSA 91-A).

C. The Acknowledged Nonexistence Of Voter Fraud In New Hampshire

36. S.B. 418 purports to "prevent the nullification of legitimate votes by the casting, counting, and certification of illegitimate ballots." S.B. 418 §1, II. Yet there is no evidence that New Hampshire elections have been meaningfully affected (if it all) by attempts to vote fraudulently, or even that there have been a significant number of such attempts.

37. To the contrary, there is ample evidence that the state's registration process (including election-day registration) is and long has been secure, and that voter fraud is and long has been exceedingly rare in this state. *See N.H. Democratic Party*, 174 N.H. at 318. Indeed, prior to signing S.B. 418 into law, Governor Sununu said that "in New Hampshire our elections are secure, accurate, and reliable—there is no question about it." Press Release, *Governor Chris Sununu Statement Following Certification of 2020 Election Results* (Dec. 2, 2020).[4] He also confirmed that "there is no evidence of widespread voter fraud" in the state. Solender, *GOP*

[4] https://www.governor.nh.gov/news-and-media/governor-chris-sununu-statement-followingcertification-2020-election-results.

N.H. Governor Calls Biden President-Elect, Says 'No Evidence' of Voter Fraud There, Forbes (Nov. 12, 2020).[5] And he explained that a post-election audit was "proof that New Hampshire's voting process is the most reliable, safe, and secure in the country." Brown, *For Some Bills, the Legislative Session Is Just Beginning*, New Hampshire Business Review (June 28, 2021).[6] He later reiterated at a January 2022 hearing on S.B. 418 that "New Hampshire elections are sound" and that he had "complete confidence in them." Ex. B (Jan. 20, 2022 Senate Elections Law & Municipal Affairs Committee Hearing Transcript) at 10-11.

38. Indeed, even though New Hampshire residents cast over a million votes in the 2020 elections (which preceded S.B. 418's enactment), including 75,612 general-election votes by election-day registrants, the state has not brought a single voter-fraud prosecution in connection with those elections. *See* Ex. C (Apr. 8, 2022 Letter from New Hampshire Attorney General).

39. The lack of any such prosecution is unsurprising, because even without S.B. 418's enactment, New Hampshire has a comprehensive and effective voter-fraud prevention system in place to ensure that only qualified voters can register and vote. As discussed, state law requires all voters to present documentary proof of identity or sign an affidavit under penalty of felony attesting to identity and qualification to register and vote, and requires the secretary to try to contact and then investigate applicants whose identities and qualifications the secretary cannot confirm. RSA 654:12, V(e).

40. Legislators and state officials were well aware before S.B. 418's enactment that the state has no voter-fraud problem and that S.B. 418 would not address the types of isolated

[5] https://www.forbes.com/sites/andrewsolender/2020/11/12/gop-nh-governor-calls-biden-president-elect-says-no-evidence-of-voter-fraud-there/?sh=4a59855b2bb9.

[6] https://www.nhbr.com/for-some-bills-the-legislative-session-is-just-beginning/.

incidents that have occurred. As one legislator pointed out, the single instance of double voting mentioned in the statute's legislative findings—a 2016 voter who cast ballots in both New Hampshire and Massachusetts—would not have been prevented by S.B. 418. *See* Ex. D (Apr. 8, 2022 House Election Law Committee Hearing Transcript) at 41. That is because S.B. 418 segregates ballots that are cast by voters without proof of identity, not voters without proof of domicile. Senator Bob Giuda, S.B. 418's lead sponsor, even acknowledged that the "bill was not targeting fraud." Ex. B at 35.

41. As shown by state officials' acknowledgement that there was little to no evidence of voter fraud in the state, New Hampshire's prior system was sufficient to prevent fraud. No further restrictions on New Hampshire residents' access to the ballot box were needed.

D. S.B. 418 Was Enacted Despite Recognition Of Its Likely Unconstitutionality

42. S.B. 418's proponents in the General Court ignored repeated warnings about the law's unconstitutionality—from *supporters* of the bill, including the secretary of state—and rebuffed the secretary's repeated requests to have those concerns addressed.

43. At the first Senate hearing on S.B. 418, for example, Secretary Scanlan testified (in support of the bill) that there were "constitutional questions" as to whether a ballot could be "removed after the fact after it's already been counted," as S.B. 418 requires. Ex. B at 10. Believing the bill "should not be simply … approved on its face," he recommended that the Senate "send those questions to the [New Hampshire] Supreme Court" for an advisory opinion. *Id*. The Senate declined to use this "tool that the legislature ha[d]" at its disposal. *Id*.

44. At a later hearing, Senator James Gray (another supporter of S.B. 418) reported that he had "consult[ed] with various attorneys on the constitutionality of [the] Bill" and that "some said it wasn't constitutional." Ex. D at 1, 17. Explaining why the legislature had not sought an advisory opinion, Senator Gray stated that "to do that would take this Bill and move it

to, at least, the next legislative session." *Id.* at 17. Senator Gray did not want, he said, to "lose [his] ability to take action on" the bill in 2022. *Id.* Later at that hearing, Secretary Scanlan reiterated his "belie[f] that there are constitutional questions that need to be addressed"—including whether the bill was compatible with the state constitution's deadline for reporting election results—and again requested that the legislature "send a Resolution to the Supreme Court and ask them for an advisory opinion on those questions." *Id.* at 55. When Senator Giuda was asked why the Senate had ignored that advice, he responded that the legislature should not "subordinate our laws that are proposed to the opinion of justices," i.e., that "we, as a legislative branch," should not "subordinate our actions to the courts." *Id.* at 64, 67.

45. After the bill's passage, Secretary Scanlan repeated both his concern "that there may be a constitutional issue with it" and his view that it "should be sent to the court for an opinion." DeWitt, *supra* ¶5. He concluded that "if the bill becomes law, then we're going to administer it and leave it up to somebody else" to resolve any constitutional issues. *Id.*

E. S.B. 418 Unconstitutionally Delays Election Results

46. S.B. 418 will necessarily delay final election results until at least seven days after election day, in violation of the New Hampshire Constitution's requirement that final vote totals be delivered to the secretary of state "within five days following the election," N.H. Const. pt. 2, art. 32.

47. S.B. 418 provides that "if an affidavit ballot voter has failed to return the verification letter with the missing voter qualifying documentation to the secretary of state" by "the seventh day after the election," the secretary must "instruct the moderator of the town, city, ward, or district in which the affidavit ballot was cast" that the affidavit ballot is "unqualified" and must be "deducted from the vote total." S.B. 418 §2, V.

48. Moreover, the law does not require towns, cities, wards, or districts to report "the total votes cast by the unqualified voters" to the secretary of state until "14 days after the election." S.B. 418 §2, VI. But until that total is reported, the election result cannot be certified, because the law states that "[t]he total vote *minus the unqualified affidavit ballot vote for each race or issue* shall be the final vote to be certified by the appropriate certifying authority." *Id.* (emphasis added).

49. Accordingly, under S.B. 418, "the final vote to be certified" cannot be determined until at least seven days after the election, S.B. 418 §2, VI, and in practice may not be determined until fourteen days after, *see supra* ¶48. That is incompatible with the New Hampshire Constitution, which requires local election officials to count, record, and report to the secretary of state "within five days following the election" the total number of votes cast in their locality by persons "qualified to vote." N.H. Const., pt. II, art. 32. Under S.B. 418, the only vote total possibly available before the seventh day after the election could include votes cast by "unqualified voters." S.B. 418 §2, VI.

50. As a result, S.B. 418 denies plaintiffs, their candidates, and their members of the right to obtain timely election results guaranteed by New Hampshire's constitution.

51. S.B. 418 also conflicts with existing statutory law that S.B. 418 does not purport to repeal or amend. And "repeal by implication is disfavored" in New Hampshire. *In re Regan & Regan*, 164 N.H. 1, 7 (2012).

52. First, it conflicts with state law requiring that all votes be counted in a single session, without interruption. RSA 659:63 requires that the "counting of votes … shall not be adjourned nor postponed until it shall have been completed." Yet S.B. 418 requires election

officers to adjourn the counting of votes for up to two weeks until the affidavit ballots can be verified. S.B. 418 §2, VI.

53. Second, S.B. 418 conflicts with law requiring officials to report final results the morning after the election. Specifically, RSA 659:75 continues to require local election officials to forward a "copy of the election return … to the secretary of state … no later than 8:00 a.m. on the day following a state election," unless the secretary specifies a different deadline. The "election return" referred to in that provision must reflect "the *final* count," RSA 659:70 (emphasis added), because RSA 659:71 requires the "election return" to be prepared only "[a]fter the tabulation of votes has been completed and the result has been announced by the moderator as provided in RSA 659:70," which in turn requires the moderator to "announce the *final* count for each office and question."

F. S.B. 418 Imposes Undue Burdens On The Right To Vote

54. S.B. 418 makes it significantly more difficult to register to vote on election day, and to cast a ballot that will be counted. The complicated and potentially costly verification process, intimidating threat of criminal prosecution, and violations of ballot privacy will deter some unregistered voters from attempting election-day registration at all.

55. Those who do attempt election-day registration will often suffer significant harm. New Hampshire residents who lack or simply forget to bring qualifying documentation to the polls will no longer be able to attest to their qualifications, and instead will have to follow a difficult and confusing process unless a poll worker who recognizes them happens to be there. This requirement is likely to disproportionately burden certain groups, such as students, low-income individuals, and others who do not have or cannot quickly obtain the necessary paperwork and do not encounter an election official willing to vouch for them.

56. These people will need to procure the relevant documentation, properly return it to the secretary of state, and remember to also return their verification letters—all within seven days of the election. S.B. 418 §2, II(b). Voters who are unable to obtain and send the documentation within that window, or who simply forget or misplace the verification letter will have no recourse; their ballots will be omitted from the final election tally. *Id.* S.B. 418, that is, offers no carveout or opportunity to cure for voters who believe in good faith that they successfully navigated the verification procedures but are unaware that (for example) the post office delivered their verification a day late or that they failed to meet some other technical requirement. S.B. 418 does not even require that these individuals be notified that their attempt to verify their identity failed before their ballots are discarded.

57. In addition to being disenfranchised, affidavit-ballot voters who do not successfully complete the verification process are referred to the attorney general for investigation and possibly criminal prosecution. S.B. 418 §2, VII. So, for example, if an affidavit-ballot voter wakes up the morning after election day and sees that the final tally will be unchanged even if all affidavit ballots are deducted and decides to not return the verification letter, that voter could be subject to criminal prosecution. The fear of that process alone burdens would-be election-day registrants.

58. The flaws in S.B. 418's affidavit-ballot process intensify these burdens. Because the law does not ensure that a voter's verification letter will be properly associated with his or her affidavit ballot, the law imposes a significant risk of disenfranchisement even for people who meet all of S.B. 418's technical requirements within the seven-day verification period.

59. Finally, even many pre-registered voters are burdened by S.B. 418, because the statute's new and onerous requirements will create long lines at polling places, particularly in

college towns or other areas with high numbers of unregistered voters. Those impediments could leave all kinds of potential voters, including registered ones, unable or unwilling to vote, particularly if school, work, childcare needs, or a physical disability make standing in long lines infeasible. And given the many competitive races in this state, such decisions not to vote—which are likely to be made by people who are disproportionately likely to vote Democratic—could well decide elections.

G. S.B. 418's Implementation Is Harming Voters

60. Since S.B. 418 took effect on January 1, 2023, *see* S.B. 418 §7, it has been implemented in statewide municipal elections and regional special elections for state office, *see 2022-2023 New Hampshire Political Calendar*, N.H. Sec'y of State.[7] Even in local elections, the ballot-segregation regime has burdened voters and candidates.

61. For example, in the first election for statewide office to apply S.B. 418's requirements, the Democratic candidate, finding himself in a tied election, had to devote limited campaign resources to informing potential voters in his runoff election of S.B. 418's requirements. *See* Dandurant, *Rochester Special Election: Grassie vs. Walker First Test for New NH Voting Law*, Foster's Daily Democrat (Feb. 17, 2023).[8] He stated that his campaign had to "avoid a provisional ballot issue" because he knew from personal experience that voters "get frustrated and they just leave" because they "don't understand the process." DeWitt, *New 'Provisional Ballot'-Type System to Debut Next Week During Rochester Special Election*, N.H.

[7] https://www.sos.nh.gov/documents/2022-2023-new-hampshire-political-calendar-0 (visited Dec. 22, 2023).

[8] https://www.fosters.com/story/news/2023/02/17/rochester-nh-special-election-first-for-nh-affidavit-ballot-voting-law/69906393007/.

Bulletin, (Feb. 13, 2023).[9] After another near-tie and a recount, he lost the runoff by a single vote. *See* Porter, *In Rochester, N.H., A Win By Just One Vote*, Boston Globe (Nov. 20, 2023).[10]

62. Despite knowing the constitutional concerns with S.B. 418 and its rollout, the state waited until the Friday before the February 2023 runoff election to release guidance to cities and towns on how to implement S.B. 418. *See* DeWitt, *supra* ¶61. Until then, city officials responsible for administering the critical runoff election described above had implemented no procedures for complying with S.B. 418. *Id.* The complicated ten-page guidance and a two-page letter to voters advised affidavit voters to mail their identification paperwork to the state a mere five days after the election (or drive to Concord and deliver it by hand within seven). *See* Ex. E (Affidavit Ballot Verification Letter) at 1; Ex. F (Feb. 10, 2023 Guidance Letter) at 4-5.

63. In a different, special municipal election, the winner had to wait until affidavit ballots could be counted to learn which of his near-tied opponents would face him in a second, runoff election. *See* Ford, *Candidates for Pontotoc Alderman Runoff Now Set*, WTVA (last updated Apr. 21, 2023).[11]

64. If S.B. 418 is not enjoined, it will continue to burden voters' rights in elections for federal and state offices in 2024. *See 2024-2025 Political Calendar*, N.H. Sec'y of State.[12] Those elections are likely to attract a record turnout, including record numbers of election-day registrants.

[9] https://newhampshirebulletin.com/2023/02/13/new-provisional-ballot-type-system-to-debut-next-week-during-rochester-special-election/.

[10] https://www.bostonglobe.com/2023/11/20/metro/rochester-nh-win-by-just-one-vote/.

[11] https://www.wtva.com/news/candidates-for-pontotoc-alderman-runoff-could-be-set-today/article_af221c36-e05c-11ed-b9d9-771f4729d708.html.

[12] https://www.sos.nh.gov/elections/2024-2025-political-calendar (visited Dec. 22, 2023).

65. NHDP, DNC, and their affiliated candidates have already expended significant resources since S.B. 418's implementation in January on, among other things, educating New Hampshire residents about the new law and monitoring the state's implementation of its requirements (including by educating poll workers to watch out for this issue). They expect to expend significantly higher resources in the lead up to 2024 elections.

CAUSES OF ACTION

COUNT I

(Violation of New Hampshire Constitution, pt. II, art. 32 – Return-of-Votes Clause)

66. Plaintiffs reallege and incorporate by reference all other paragraphs of this complaint as though fully set forth herein.

67. The New Hampshire Constitution requires local election officials to count, record, and report to the secretary of state—"within five days following the election"—the total number of votes cast in their locality by persons "qualified to vote." N.H. Const., pt. II, art. 32. This provision is "[t]he paramount law … by which town-clerks must be governed in performing their duties respecting elections." *Bell v. Pike*, 53 N.H. 473, 476-477 (1873).

68. S.B. 418 violates this provision of the New Hampshire Constitution, by making it impossible for local election officials to count, record, or report the total number of votes cast by those "qualified to vote" within five days after the election. Under S.B. 418, local election officials almost certainly will not know which affidavit ballot voters are "unqualified voters" until at least "the seventh day after the election." S.B. 418 §2, V-VI.

69. Moreover, S.B. 418 does not require local election officials to report "the total votes cast by the unqualified voters" to the secretary of state until "14 days after the election." S.B. §2, VI. Until that total is reported, no election result can be certified, because "[t]he total

vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority." *Id*.

70. Because it delays the final vote count until seven—and potentially up to fourteen—days after the election, S.B. 418 is incompatible with the New Hampshire Constitution. And the two cannot be reconciled, because any interpretation of S.B. 418 to enable compliance with the return-of-votes clause would exacerbate the law's other constitutional defects by requiring that voters verify their identity within an even shorter time frame.

71. Because S.B. 418 unconstitutionally delays the reporting of New Hampshire's final election results, the law's implementation and enforcement should be enjoined.

COUNT II

(Violation of New Hampshire Constitution, pt. I, art. 15 – Procedural Due Process)

72. Plaintiffs reallege and incorporate by reference all other paragraphs of this complaint as though fully set forth herein.

73. S.B. 418's affidavit-ballot process violates the due-process rights of those who seek to both register and vote on election day. The New Hampshire Constitution provides that "[n]o subject shall be … deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land." N.H. Const. pt. I, art. 15. The "'law of the land'" means "'due process.'" *State v. Veale*, 158 N.H. 632, 636 (2009) (quoting *Petition of Harvey*, 108 N.H. 196, 198 (1967)).

74. In addressing a due-process challenge, a court "[f]irst … determine[s] whether the challenged procedures concern a legally protected interest," and "[s]econd … determine[s] whether the procedures afford the requisite safeguards." *Petition of Bagley*, 128 N.H. 275, 282-

283 (1986). The court next balances "(1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Id.* at 285.

75. The right to a "free" election and the "equal right to vote" is a protected interest under the New Hampshire Constitution. *See* N.H. Const. pt. 1, art. 11. Yet S.B. 418's affidavit-ballot procedure and the law's onerous verification process allow people to be deprived of that right without adequate procedural protections.

76. New Hampshire voters also have a liberty interest in avoiding criminal penalties such as incarceration. *See* N.H. Const. pt. 1, art. 15. And they have a related interest in not being placed on a list of allegedly fraudulent voters transmitted to the attorney general, because "stigmatization that attends" such governmental labeling "may amount to a deprivation of constitutionally protected liberty." *Petition of Bagley*, 128 N.H. at 284 (citations omitted).

77. The verification process does not give voters sufficient time to cure any identification or documentation problems. In particular, people without state-approved photo identification and those who have a harder time obtaining such identification—including young people, students, voters who have recently moved, low-income individuals, the disabled, and the homeless—are unlikely to be able to complete the verification process within the seven-day period following an election. College students, for example, may not receive the identity-verification mailing at the right campus address or be able to respond with the necessary documentation within the tight seven-day timeframe. A disproportionate number of these

individuals are likely to be Democratic voters, as election-day registrants have historically and disproportionately identified with the Democratic Party.

78. In addition, S.B. 418 does not give voters any notice (let alone an opportunity to be heard) if their verification submission is rejected. Nothing in the law requires state or county officials to inform a voter if attempts to verify her identity within the established time period are unsuccessful, even when doing so would allow the voter to successfully correct any problem.

79. Furthermore, if local election officials follow the state constitution's mandate to report their final election results to the secretary of state within five days, then even the already-insufficient seven-day cure period expressly provided by S.B. 418 becomes an empty gesture: Voters who take the full seven-day period will nonetheless be too late to have their votes counted.

80. Because of this, S.B. 418 is likely to result in erroneous rejection of qualified voters' ballots, including the ballots of those who attempt in good faith to navigate the state's procedures.

81. For the same reasons, the law is likely to lead to erroneous referrals of law-abiding New Hampshire residents to the attorney general for criminal prosecution without any notice or opportunity to be heard. These referrals violate due process, which in New Hampshire "requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Petition of Bagley*, 128 N.H. at 286. They will also deter likely Democratic voters from registering on election day.

82. The state has no countervailing interest that could justify this lack of procedural protection for a fundamental right. The state has not demonstrated that a less onerous

verification process, or even just giving voters timely notice of any errors in their verification submissions, would in any way interfere with the state's ability to securely and efficiently administer elections.

83. Because S.B. 418 violates the New Hampshire Constitution's guarantee of due process, the law's implementation and enforcement should be enjoined.

PRAYER FOR RELIEF

Plaintiffs request that this Court:

A. Declare that S.B. 418 violates the New Hampshire Constitution.

B. Permanently enjoin each defendant and his or her agents, officers, employees, successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving effect to S.B. 418.

C. Award plaintiffs their costs, disbursements, and reasonable attorney's fees incurred in bringing this action, pursuant to the Court's inherent equitable power, *see Claremont Sch. Dist. v. Governor*, 144 N.H. 590, 595 (1999).

D. Award such other relief as the Court deems just and proper.

Dated: December 22, 2023

Respectfully submitted,

/s/ William E. Christie
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**Pro hac vice applications forthcoming*

EXHIBIT A

SB 418-FN - VERSION ADOPTED BY BOTH BODIES

03/31/2022 1096s
21Apr2022... 1487h
4May2022... 1870h

2022 SESSION

22-3015
11/04

SENATE BILL ***418-FN***

AN ACT relative to verification of voter affidavits.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. French, Dist 7; Sen. Gannon, Dist 23; Rep. Howard, Belk. 8

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill provides for verification of voter affidavits by establishing affidavit balloting.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 418-FN - VERSION ADOPTED BY BOTH BODIES

03/31/2022 1096s
21Apr2022... 1487h
4May2022... 1870h

22-3015
11/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to verification of voter affidavits.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings.

I. According to the secretary of state, over the past 45 years, New Hampshire has had 44 state elections that ended in a tie or in a one-vote victory. On average, that is almost once per year, not including the 1974 U.S. Senate race that was won by 2 votes - the closest U.S. Senate race in history. This clearly proves that just one improperly cast vote can adversely influence an election each year. Every improperly cast vote invalidates one legal vote. In the 2016 general election, at least 10 illegal ballots were cast by voters who admitted guilt and were prosecuted by the attorney general and counted, including one woman who was caught voting in both Massachusetts and in Plymouth, New Hampshire. She only paid a $500 fine; hardly a deterrent. In that same election, the attorney general's office, after extensive investigation, was unable to verify the identity of 230 qualified and domicile affidavit voters. Allowing unverified votes to count in an election enables the corruption of New Hampshire's electoral process. This must be addressed immediately to restore the integrity of New Hampshire elections.

II. Currently, New Hampshire law allows for votes to be cast and counted by signing an affidavit, even when the voter fails to produce documents to prove his or her identity, or that he or she is a New Hampshire citizen or an inhabitant of that town, city, ward, or district. Although these laws do allow for the post-election investigation of these unverified ballots, this merely identifies when unqualified votes have been cast. It does nothing to prevent the nullification of legitimate votes by the casting, counting, and certification of illegitimate ballots.

2 New Section; Election Procedure; Affidavit Ballot. Amend RSA 659 by inserting after section 23 the following new section:

659:23-a Affidavit Ballots.

I. For all elections, if a voter on election day is registering to vote for the first time in New Hampshire and does not have a valid photo identification establishing such voter's identification, or does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot pursuant to this section.

II. The authorized election official shall hand the affidavit ballot voter an affidavit voter package and explain its use. The affidavit voter package shall be designed, produced, and distributed by the secretary of state, and shall contain the following:

(a) A prepaid U.S. Postal Service Priority Mail Express (overnight delivery) envelope addressed to the secretary of state for the affidavit voter to return the affidavit verification letter described in subparagraph (b) and any required missing documentation that necessitated voting by affidavit ballot. The return address on this envelope shall be for the office of the secretary of state.

(b) An affidavit voter verification letter, in duplicate form, which lists all the documents required to qualify to vote in the state of New Hampshire. The authorized election official shall mark on both copies of the verification letter which qualifying documents were not provided, thereby necessitating voting by affidavit ballot. One copy of the affidavit verification letter shall be given to the voter; the other copy shall be retained by the authorized election official. The voter shall be required to return their copy of the affidavit verification letter and a copy of any required documentation to the secretary of state in the provided prepaid U.S. Postal Service envelope within 7 days of the date of the election in order for the ballot to be certified.

III. The moderator shall mark each affidavit ballot "Affidavit Ballot #___" sequentially, starting with the number "1".

IV. All affidavit ballots shall be cast in person at the polling place, placed in a container designated "Affidavit Ballots," and hand counted after polls have closed using a method prescribed by the secretary of state for hand counting and confirmation of candidate vote totals. After completion of counting, the moderator shall note and announce the total number of votes cast for each candidate, and the total number of affidavit ballots cast in the election. No later than one day after the election, the moderator shall forward all affidavit ballot verification letters to the secretary of state using a secure means of transmission or delivery.

V. On the seventh day after the election, if an affidavit ballot voter has failed to return the verification letter with the missing voter qualifying documentation to the secretary of state, either in person or using the prepaid U.S. Postal Service Priority Mail Express Envelope, the secretary of state shall instruct the moderator of the town, city, ward, or district in which the affidavit ballot was cast to retrieve the associated numbered affidavit ballot and list on a tally sheet, by candidate or issue, the votes cast on that ballot. The counting of votes on affidavit ballots identified by the secretary of state as unqualified shall be conducted by the town, city, ward, or district using the same methods of counting and observation utilized on the day of the election for hand counted ballots. The votes cast on such unqualified affidavit ballots shall be deducted from the vote total for each affected candidate or each affected issue.

VI. No later than 14 days after the election, any town, city, ward, or district in which any affidavit ballots were cast, and not subsequently verified, shall provide to the secretary of state a summary report, by race or ballot issue, of the total votes cast by the unqualified voters. The total vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority.

VII. The names of affidavit voters whose verification letters are either not returned to the secretary of state or which do not provide the required voter qualifying information shall be referred by the secretary of state to the New Hampshire attorney general's office for investigation in accordance with RSA 7:6-c.

VIII. Any written, electronic, or other information related to an affidavit voter who provides the required information verifying their right to vote shall not be subject to disclosure under RSA 91-A or any other law.

IX. All written documentation relating to affidavit ballots shall be delivered to the secretary of state by local election officials in sealed packages using a secure means of transportation and stored pursuant to RSA 659:95 through 659:103.

3 New Section; General Provisions for Recounts; Affidavit Ballots. Amend RSA 660 by inserting after section 17 the following new section:

660:17-a Affidavit Ballots; Recounts. In any election or referendum, if the total number of affidavit ballots submitted for any local, district, county, or statewide race or issue would, if counted in favor of either candidate or position, alter the outcome of the election, the deadlines for filing recount requests imposed by RSA 660:1, 660:7, 660:10, 660:12, and 660:13 shall be extended until after the deadline for submitting affidavit verification materials in RSA 659:23-a. In such instance, the secretary of state shall publish new deadlines for filing recounts.

4 Election Procedure; Obtaining a Ballot. Amend RSA 659:13, I(c) to read as follows:

(c)(1) If the voter does not have a valid photo identification, the ballot clerk shall ***direct the voter to see the supervisor of the checklist.***

(2) The supervisor of the checklist shall review the voter's qualifications and determine if the voter's identity can be verified.

(3) If the supervisor of the checklist cannot verify the voter's identity, the supervisor of the checklist shall inform the voter that he or she may execute a challenged voter affidavit ***and cast an affidavit ballot in accordance with RSA 659:23-a***. The voter shall receive an explanatory document prepared by the secretary of state explaining the proof of identity requirements. If the voter executes a challenged voter affidavit ***and casts an affidavit ballot***, the ballot clerk shall mark the checklist in accordance with uniform procedures developed by the secretary of state.

[~~(2)~~] ***(4)*** If the voter executes a challenged voter affidavit ***and casts an affidavit ballot***, the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to[~~, and thus make it a part of, the affidavit form. However, if a photograph was taken under RSA 654:12, then a notation shall be made on the challenged voter affidavit stating that the photograph is attached to the qualified voter affidavit or sworn statement on the general election day registration form~~] ***the duplicate copy of the affidavit voter verification letter to be delivered to the secretary of state***. The photograph shall be 2

inches by 2 inches, or larger, and may be in color or in black and white. The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit ***and cast an affidavit ballot*** without a photograph.

[~~(3)~~] ***(5)*** If the voter objects to the photograph requirement because of religious beliefs, he or she may execute an affidavit of religious exemption in accordance with RSA 659:13-b, which shall be attested to by an election officer and attached to the challenged voter affidavit.

[~~(4)~~] ***(6)*** The person entering voter information into the centralized voter registration database shall cause the records to indicate when a voter has not presented a valid photo identification and has executed a challenged voter affidavit ***and cast an affidavit ballot***.

5 Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II(b) to read as follows:

(b) In addition to the forms of photo identification authorized in subparagraph (a), the identification requirements of paragraph I may be satisfied by verification of the person's identity by a moderator or supervisor of the checklist or the clerk of a town, ward, or city, provided that if any person authorized to challenge a voter under RSA 659:27 objects to such verification, identifies the reason for the objection in writing, and states the specific source of the information or personal knowledge upon which the challenge of the photo identification is based, the voter shall be required to execute a challenged voter affidavit as if no verification was made. ***When an election official uses personal recognizance as a substitute for required documentation under this section, the moderator or clerk shall print in the margin of the checklist, next to the name of the voter so qualified, one of the following to identify the official who validated the voter: "P-x-AB" where "P" indicates personal recognizance; "x" shall be "M" for moderator or "C" for clerk; and AB are the first and last initials of the moderator or clerk. By initialing the checklist, the moderator or clerk personally affirms, under penalty of perjury, the identity of the voter they are qualifying to vote.***

6 New Subparagraphs; Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II by inserting after subparagraph (c) the following new subparagraphs:

(d) The secretary of state shall provide training for supervisors of the checklist on how the nonpublic data in the statewide centralized voter registration database may be used to satisfy voter identification requirements.

(e) The secretary of state shall develop and make available an informational pamphlet explaining the procedure established in RSA 260:21 for obtaining a picture identification card for voter identification purposes only.

7 Effective Date. This act shall take effect January 1, 2023.

LBA
22-3015
Revised 4/27/22
Amended 4/25/22

SB 418-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2022-1487h)

AN ACT relative to verification of voter affidavits.

FISCAL IMPACT: [X] State [ ] County [X] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	$48,000	$0	$72,000
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	$0	Indeterminable Increase

METHODOLOGY:

This bill establishes affidavit balloting for voters who are registering to vote in New Hampshire for the first time and who do not have a valid photo identification. The affidavit balloting would include a serial numbered ballot to be used for voting at the municipality. The voter would also receive a voter packet containing a USPS Priority Mail Express (overnight delivery) envelope and an affidavit voter verification letter, in duplicate form. The voter is to leave one copy of the verification letter with the authorized election official and return their affidavit verification letter with required documentation, in the provided envelope, within 7 days of the election to the Secretary of State's Office. If an affidavit voter fails to send the required documentation to the Secretary of State within 7 days, the Secretary of State would notify local election officials, who would retrieve the voter's ballot and deduct it from the election totals and votes contained on the ballot.

The Department of State indicates there would be an increased expense to the General Fund in FY 2023 and FY 2025 of $48,000 and $72,000 respectively. The Department assumes they would need 3,000 packets, accounting for both the primary and general elections to ensure a sufficient amount of packets at each polling locations. The cost of the preparation of the packets is estimated to be $5 per packet equating to $15,000. The Department assumes in FY 2023 there will be the same amount of voters using the challenge voter affidavit process due to

lack of ID as the November 2020 election (733) and an additional 50% for the primary (367). The Department is not able to separate out how many of the voters in the November 2020 election were registering to vote for the first time in NH versus those who were already registered and didn't have an ID on election day, so the Department is making the assumption that all voters using the challenged voter affidavit were first time voters. The postage for each returned envelope is $26.95. Multiplying the 1,100 voters by the postage cost rounds to an estimated $30,000 for postage cost. The Department also would incur $3,000 in overtime pay. The Department assumes in FY 2025, because it is a presidential year, the expenses will increase by 1.5 times.

The New Hampshire Municipal Association (NHMA) states there could be a small indeterminable fiscal impact on local expenditures. The NHMA states due to the potential increase in hand counted ballots and the need to take additional action with respect to those ballots after elections the expenditure could increase. The expenditures will vary depending on the municipality.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association

EXHIBIT B

Mr Chairman: **[No dictation] [01:30:00 - 01:36:17]**. And I'll try that again with the mic on. 418, Senator Giuda.

Senator Giuda: Thank you, Mr. Chairman and members of the committee. For the record, Bob Giuda, State Senator from District II. Senate Bill 418 is a bill of extreme importance to the people and the election integrity of the State of New Hampshire. It's an attempt to close a loophole in our laws that enables anyone in the United States to come to New Hampshire to vote in any election in our state regardless of whether or not they're legally qualified to do so. And to have their votes count towards the election of our local, state, and national offices. This is a conundrum caused in large part by the constitutional requirement that all votes be counted on election day. In the absence of any means to ensure that a voter who votes without presenting the required qualification documents but attests to their qualifications by affidavit is, in fact, qualified to vote in our state. There is, however, no such same-day requirement for the certification of the results of our elections. And that is the genesis of this legislation. Our right to vote is not an unqualified right as the legislature holds the constitutional authority to establish qualifications to lawfully vote here in New Hampshire. For years, we have failed to address the fact that votes cast by unqualified and, therefore, unlawful voters are included in our final vote counts and affect the outcome of our elections.

The ballots of these unqualified voters actually nullify the votes of those who meet our legal voting requirements and further given the large number of very close election results over the years, as detailed in the findings section of this amendment. And I speak to Amendment 2022-0054S, in which I request to replace all amendments for the bill. As detailed in those findings, it shows that 230 unverified and unverifiable affidavit voters influenced the 2016 elections. We must give credence to the fact that the votes of unqualified voters who cast their ballots in New Hampshire do influence and can determine the outcome of our elections. Amendment 2022-0054S to Senate Bill 418 meets the constitutional requirements that all votes be counted on election day. It establishes a mechanism by which the Secretary of State can after the votes are counted but before the election results are certified, verify the

qualifications of those voters who voted without proper photo ID or documentation of domicile at no cost to the voter. We do everything except go to their home and pick up their verification documentation. This measure will enable the true and accurate certification of the qualifications and returns of our elections. A constitutional function which, as in recent memory and largely ceremonial, this bill is a result of many hours of discussion with recently retired Secretary of State Bill Gardner. And it earned his support. And we will shortly hear testimony from newly sworn Secretary of State Dave Scanlan as the state's senior election official.

I respectfully ask your support for Amendment 2020-0054S to Senate Bill 418FN. I do need to point out one additional change to the language that's required. That's on Page 1, Line 25, and that documentation was handed to you by the clerk prior to the start of this amendment hearing. Implementing these changes to our existing election laws will go a long way toward ensuring that every legitimate vote cast by a qualified New Hampshire voter is protected. That votes cast by those unqualified to do so are not certified and do not influence our final election outcomes. And that we're doing everything in our power to protect the integrity of the elections which determine the leadership and the direction of our communities, our state, and our nation. I thank you for your consideration. And I'm happy to take any questions.

Mr. Chairman: Did we have copies of the amendments for anyone in the public that wants one? I can see a lot of heads shaking that they have copies. I only have one extra.

Female Speaker: I have one extra.

Mr. Chairman: The senators are collecting up their extra copies to make sure that people who don't have them if not –

Senator Giuda: I've got one extra one here.

Mr. Chairman: Well, I don't know how many people have the added language, but that's neither here nor there. All right. So, how close are we to everybody that wants a copy having a copy? Is there anybody that doesn't have a copy that wants

one? Good. Hey, we're doing well. Sorry for that delay, Senator, but I wanted to make sure –

Senator Giuda: I apologize for amendments and –

Mr. Chairman: Anyone that wants to can at least read it while we're asking any questions that we have. Questions from the committee members? Senator Perkins Kwoka.

Senator Perkins Kwoka: Thank you, Chair. And thank you, Senator Giuda, for being here to introduce this bill. So, in the original version of the bill, we targeted same-day registration for a voter that doesn't have a valid photo identification. But in the new amendment, as amended by our additional text today, you're trying to just target voters who don't have valid photo identification when they come to vote. Is that correct?

Senator Giuda: I'm not targeting anyone. I'm specifically saying that you can vote by affidavit. But you, as a citizen of the state, do have obligations, one of which is to provide documentation. And we give you that opportunity. We pay for you to send it back. We have 10 days. That's more than adequate time for the Secretary of the State to procure his functions or her functions to perform them. And so, we don't target anyone. We just make all citizens equal because, in the absence of this, every citizen in this state could vote by affidavit ballot and have no way of knowing actually that citizens from outside the side can vote without any ability to certify the validity of their qualifications to vote. That is a wide-open loophole. Anyone in the United States under current state law can come to this state and vote.

And as you'll hear in later testimony, the number of those unverified voters, 230 in the 2016 election that remain unverified and unverifiable today. Given the close elections and statistics provided by the Secretary of State is a concern. This doesn't target anyone. It just makes all citizens equal. Thank you.

Senator Perkins Kwoka: Follow up, Chair.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: Thank you, Senator Giuda. So, just to be clear. The procedures under the bill if someone at this point doesn't pose as adequate by the SOS, then the ballot they cast is then removed from the vote count within 10 tens? Or within 14 days?

Senator Giuda: It would be removed from the vote count by the Secretary of State in time to certify and also in sufficient time to allow for recounts that might be required by this. And they have time to do that. And the Secretary of State's office will testify to this here shortly.

Senator Perkins Kwoka: Follow-up, Chair.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: Okay. So, under the procedures you're proposing in Page 2, Lines 12 through 16 of your amendment, in order to remove those vote count totals across our state from the various elections held on election day, the moderator is maintaining a non-public list of affidavits ballot numbers, the name of the affidavit ballot voter associated with each number, and the missing documents necessitated. So, are you telling us that one of our most fundamental rules in elections, which is ballot privacy, will now be violated by the moderator maintaining a list of who voted and how?

Senator Giuda: No. What I'm telling you is we already have, as a moderator, I look at absentee ballots. Okay. I don't care how they vote or who they vote, but I know who they are. The same process here. This uses established law and the processes therein. Okay? We don't provide any further power to moderators or any less. We just use the powers already existing in the law to enable them to provide the information to the Secretary of State, to reduce the vote counts appropriately for ballots whose votes were not qualified and, therefore, should not be certified.

Senator Perkins Kwoka: In 2000 – follow up, Chair.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: In 2016, we saw close to 100,000 same-day registration. So, even though you're saying it would be an extension of

the same powers that would exist under the law, the effect would be that potentially 100,000, if not more, voters could have their votes tabulated on lists across our state. Is that correct?

Senator Giuda: No. We're not going after same-day registrants. We're going after unqualified. So, if you have to sign an affidavit because you have not produced the documentation that certifies you to be qualified to vote, then this process would go in. The same-day registrant shows up that required photo and domicile proof; there's no action taken because they've met the qualifications.

Senator Perkins Kwoka: Thank you. We've heard you and others defend the integrity of our elections, and we've used that to make sure that New Hampshire maintains its position as first in the nation with our First in the Nation Primary. Are you saying that the results of the First in the National Primary could be provisional for up to a 14-day period following our elections?

Senator Giuda: That's a possibility. That's a possibility. However, I will state for the record, okay, the integrity of our elections is paramount. And the primacy of a First in the National Primary with an inaccurate vote total that possibly, as you'll hear in later testimony, could influence the outcome of national elections is more important to me, okay, than the commercial appeal of a First in the National. We need to do first. We also need to do it best. That's what New Hampshire is known for.

Senator Perkins Kwoka: Follow up, Chair.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: Have you thought of the logistical challenges of this. So, depending on how many people need to fill out this affidavit, the follow-up packet needs to be processed within a 10-day period depending on how many hours that would take. I mean, it could even require additional staff. Are we relying on cities and towns to hire that additional staff?

Senator Giuda: Cities and towns will not be required to hire any additional staff. That will be addressed, I think, by Secretary Scanlon

here shortly. The work is done. The Secretary of State designs, produces, and pays for the affidavit ballot package. Okay. All that's done right now is no more than is done already by the moderator to mark and number the ballot. Okay. The letter and the envelope go home with the voter. And the voter then sends back the documentation that's required that's shown as not being presented but necessary in the letter, the verification letter. The work is done by the Secretary of State, not the local clerks.

Senator Perkins Kwoka: Follow-up, Chair.

The Chairman: Yes, ma'am.

Senator Perkins Kwoka: In one version of the bill, you have anyone who doesn't return this packet or who's not able to be verified within that 10-day period is being referred to the Attorney General for further investigation. So, someone who forgets their driver's license but goes to exercise their civic duty runs the risk of being referred to the Attorney General simply for forgetting that?

The Chairman: That happens today under current law. Okay. If you sign an affidavit ballot, they are forwarded to the Secretary of State. The Secretary of State then performs an investigation of sorts for people that don't meet the requirements for whom they can't get documentation are referred to the Attorney General for prosecution. And that has happened a number of times in the past. Unfortunately, that problem is minor. The real problem is that unqualified votes were cast in the election and certified as valid and can impact the outcome of the election.

Senator Perkins Kwoka: No further questions, Chair.

Senator Soucy: Perkins Kwoka started the question. If I'm a very small town, you said that the moderator already knows who votes by absentee ballot. But if my vote is provisional, and I'm the only provisional ballot, and it's disqualified after the fact, the vote totals are gonna reflect how I voted. So, therefore, how does this not violate my privacy in that case?

Senator Giuda: No one's going to know how you voted?

Senator Soucy: Well, they were with the election result – if the election were decided by one vote and 10 days later if I haven't provided this, then you're gonna subtract one from that vote total. So, that would be my one vote if I were that individual in a town.

Senator Giuda: One could assert that because you voted unqualified and, therefore, illegally, you're gonna be prosecuted by the Attorney General. And your right to privacy doesn't exist. You have violated the law.

Senator Soucy: So, may I ask a second question? Different topic.

Mr. Chairman: Yes, ma'am.

Senator Soucy: As I read this amendment, this amendment makes no provision for – let me give you an example because this happens frequently. So, I represent five wards in the city of Manchester. Three of them are tangentially inner city, so they're people that live in townhouse apartments. In addition to changing the ward lines, it's not unusual for people to move from various apartments periodically, looking for either better rates or more affordable housing. It's conceivable for somebody who is a registered voter in Ward 7 to move across the street and be in Ward 5. They would then appear at the polling place, not necessarily prepared to provide proof of identity. They're already a registered voter. They just didn't realize that they're now in another ward. So, they have to be processed as a new voter. Is there any exception for people that are already registered voters because the people working at the polling place in Ward 5 are not going to know other than the representation of the individual? But that's gonna make a lot of work particularly in our cities, for people that are trying to process all of these claims. Is there any provision for someone if it's shown that they are actually, in fact, changing registration within the state?

Senator Giuda: They can sign, and they do now. An affidavit that says what I show on my driver's license for an address is not my domicile. That's required under current law. So, we're not creating anything new. Further, I would assert that the last thing I'm worried about is the work effort of the election

officials as compared to the need for the sanctity of our elections and their integrity.

Senator Soucy: But, Senator, I don't think you understood my question. I understand that the voters are still gonna be able to vote. My question is, do we make any exception once that information is taken? Do we do any kind of search to see if they were already on a checklist in another New Hampshire community and then put that aside because we know they're registered voters?

Senator Giuda: At this time, I don't think that's possible, but I do think there's a system that's in work to enable that to be put into place. But at this time, we have to do that anyway. So, if your wards or you change towns or districts, you're still gonna be required by **[audio cuts out] [01:53:21]** your rent contract, or your utility bill, and a photo ID, you're gonna be required to vote by affidavit ballot. That's required today.

Senator Soucy: Okay.

Mr. Chairman: Questions from anyone else? All right. I'll ask a couple of expanding questions. There's a provision in state law right now, as I understand is that voters that come without an ID can be verified by the moderator, by the Supervisor of the Checklist, or the ward clerk. Has any of that changed?

Senator Giuda: No. Not according to the amendment. It might have changed in the original bill. We talked with the Secretary of State's office and a number of other people. So, the answer is that will not change.

Mr. Chairman: After the election, the city clerks, in the cases that the senator brought up, would be tasked with entering the people who voted into the database. And as far as I know, the New Hampshire voter database will pop up the name of someone who was registered in a different ward. In fact, that's a category on the thing. Would that be identified at that time?

Senator Giuda: Is that a question?

Mr. Chairman: Yes. Will it be identified when they go to put that

information in, to the best of your knowledge?

Senator Giuda: I can't answer that question.

Mr. Chairman: All right. We'll have the Secretary of State answer that later. Any additional questions? Okay. Thank you very much.

Senator Giuda: Thank you, Mr. Chairman.

Mr. Chairman: Secretary, I would normally wait for you for a couple of people. At least you can testify now, or you can wait until after the League of Women Voters and the ACLU, whichever you choose.

Secretary of State: If you don't mind, Mr. Chair, I'll testify now.

Mr. Chairman: Absolutely.

Secretary of State: Thank you, Mr. Chairman, and members of the committee. I'm David Scanlan, Secretary of State. I'm here to support this bill. But I wanna explain the reason why. I believe that the largest problem that we have facing our elections today is a pretty dramatic erosion in voter confidence. It's happening here in New Hampshire, and it's certainly happening nationwide. A lot of it's because of national rhetoric. A lot of it's because of unique situations that happened in New Hampshire at the last election. But the end result is that there are voters that are just not feeling like their votes are being accurately counted. And there's a lot of suspicions out there in terms of the practices. And there's certainly steps that we can help to alleviate some of those concerns with the way we manage elections.

But we have to address a much larger fundamental issue. And that is that not only should we make it as easy as possible for all qualified voters for the Voter Registration Act, and that act Help America Vote Act and has a provision in there of qualification or if there's some question about it vote on a provisional ballot. And that ballot gets counted at some point after the election if the information on that voter can be verified. What's being proposed in this bill is, I call it, a New Hampshire version of that. A provisional ballot that is actually counted on the

day of the election with a provision that if a voter can't prove their qualifications or verify their qualifications that the vote is then subtracted after the fact. So, in one respect, we are no different than the way most other states treat the subject. But, in a true New Hampshire fashion, the vote would be counted on the day of the election, thereby complying with our state Constitution that all votes be counted on the day of the election. I think that there are some questions that were raised by Senator Soucy and Senator Perkins Kwoka that are fairly taken before a court. And I know that it is a tool that the legislature has for the Senate to determine what those constitutional questions might be. Whether in fact, the vote can be counted or removed after the fact after it's already been counted.

Lay the bill on the table and send those questions to the Supreme Court to see what their reaction is to that. But I believe that we really need to have this discussion and that a bill like that should not be simply discarded on its face or approved on its face. But we have that debate that is gonna help reinstill the confidence that voters have had in New Hampshire elections for a long, long time. And with that, I would be happy to answer any questions.

Mr. Chairman: Questions from senators. Senator Perkins Kwoka.

Senator Perkins Kwoka: Thank you, Chair, and thank you, Secretary Scanlan, for being here. You know we've heard you, we've heard former Secretary of State Gardner, we've heard the governor, we've heard members of the committee talk about the integrity of New Hampshire elections. We saw that even when we needed to audit or we did that job, the integrity of the election was upheld. So, bills like this, for some reason, to be concerned about our elections. In 2016, an investigation by the Attorney General was able to prove that doesn't mean those 66 people even committed a crime, but they just won't able to establish that identity. So, there isn't a problem here, in my opinion. And so, I wonder why render support to something that could put our elections and the results that we receive the same day in such jeopardy instead.

Secretary of State: That's a really good question. And I will be the first to say that New Hampshire elections are sound. I have complete

confidence in them. I know that the local election officials, 6,000 of them on any given election day statewide, do a tremendous job. They're all dedicated. And they undertake this volunteerism with the right attitude. Despite that, however, we have leaders in both political parties that are saying things that shake that confidence, and it's spelled out. Even though, from my perspective, things are running smoothly. But we have to address the perceptions. And we have to address the concerns that voters have. And really, the best way to do it is to show them.

And I think that this is a multi-faceted task on our part. One is to create as much transparency in the process as we can. No. 2 is we do additional training for local election officials so that the unfortunate errors that take place and they're human errors. They're not intentional errors. But if we can limit those to the extent possible, that's beneficial.

And then, the one area where we really have been taking it for granted and how that's spent a lot of effort addressing it is the education of the average voter out there. I was in a couple of committee hearings on the House side today. And I heard individuals testifying on the legislation. And it was very clear to me that they were not just informed with major portions of the election process. And they were making assumptions that just weren't based on fact. But it's what they believe. And so, we have to spend a lot more time addressing those situations as well.

Senator Perkins Kwoka: Follow up, Chair.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: You were asked the similar questions in the last 24 hours, but, I mean, why not instead of spending our time and effort on legislative like this –

Secretary of State: I'm sorry. I'm not hearing you.

Senator Perkins Kwoka: Sorry. Why not, instead of spending our time on legislation like this, why not run an education campaign out of the Secretary of State's office or take other action that increases education and confidence in our election instead of a bill like this, which jeopardizes people's ability to

vote?

Secretary of State: New Hampshire – but the other side of that is that you have a major segment of a population that wants to make sure that the people that are participating in our process are qualified. And it is not unreasonable. It is not suppression to say or implement things that where people simply demonstrate the qualifications that they have. It's not meant to be burdensome, but there should be some effort to show that, "Yeah, I'm qualified. And I'm willing to let my fellow voters know that I'm qualified."

Senator Perkins Kwoka: Follow up, Chair.

Mr. Chairman: Senator.

Senator Perkins Kwoka: Just last question. Do you not have concerns over the privacy implications of this bill? I mean, I am alarmed by the idea of there being a list maintained with our ballot numbers of – I mean, we saw, and maybe Senator Giuda's not targeting same-day registrations anymore. It's a little unclear since we're receiving all these last-minute documents from him. But we saw almost 100,000 people same-day register in 2016. So, at this moment, where I don't have an official amendment that changes this target from same-day registration, we have to assume this could affect up to 100,000 people in the next election. That's a lot of people to maintain their votes and their records. And it affects a lot of elections across the state. That's concerning to me. And I was hoping you could just share some thoughts on that.

Secretary of State: Certainly, that's a concern of mine. And I'm not sure I was clear when I started my remarks. But I support this bill with the amendments that Senator Giuda offered. I think the earliest introduced version did have some larger problems with the privacy issue. The way this language is designed is to mirror the way a Challenged Absentee Ballot is treated. And so, there is some precedent for the way it's done. The moderator is responsible for keeping track of that information. I believe Senator Giuda mentioned that the moderators also are responsible for processing the absentee ballots. And there's an opportunity there for that person to see voter's marks on the ballot even though the state law

says that the moderator shouldn't look and just put the ballot in a pile. But that's why we elect moderators locally is because we trust those individuals based on their integrity and their reputation to run a clear, fair election and keep certain things private. The other aspects of an election where it's difficult to keep the voter's identity private, too, if you have one UOCAVA voter in town and they send their paper ballot in, it's going to look different than the others.

And the same is true with accessible voting. Although, we've come a long way in terms of standardizing that process now. But individuals with print disabilities can print off a ballot on their home printer, mark it, and send it back. I mean, there's another example where privacy may be compromised a little bit. There is going to be some of that in any given election. I would not want to see it widespread, but I do share that concern.

Mr. Chairman: Yes, ma'am.

Senator Perkins Kwoka: I understand **[inaudible] [02:06:04]**.

Secretary of State: I'm sorry. I didn't hear you.

Senator Perkins Kwoka: Let's turn on my microphone.

Mr. Chairman: The question has to do with an absentee ballot and the order of when the absentee ballot is challenged and when the content of that ballot would be available to somebody.

Senator Perkins Kwoka: Is challenged, yeah.

Secretary of State: So, my understanding of the absentee ballot challenge is that if the moderator finds that the challenge is grounded, the moderator will write on the back of the absentee ballot, "Challenged No. 1," in sequential as those challenges are made. And granted, I don't believe that there are many of those, if any, in any given election. But that's the process. And then, the moderator, I believe, writes the same challenge voter number on the envelope of the absentee ballot that it was contained in.

Mr. Chairman: Senator Soucy.

Senator Soucy: Could I just follow-up on that, but you said the challenge is written on the envelope by the moderator, but that means that the ballot hasn't been removed. I think what Senator Perkins Kwoka was trying to get at is in those cases, the challenge occurs before the removal of the ballot, so you're less likely to have somebody see the ballot. Whereas, in this case, the ballot will have been removed and will be part of the count. So, I think there's a distinction.

Secretary of State: I'm actually referring to an absentee ballot that has been challenged where – I really don't have the statute book in front of me. But where the moderator has made a determination that the ballot should still get counted. He or she would write challenge voter number, challenged ballot number on the back of the ballot. And then proceed to process it. I'll find that reference and make sure you get it.

Senator Soucy: May I ask one additional question?

Mr. Chairman: Absolutely, senator.

Senator Soucy: My question is regarding the UOCAVA ballots. You mentioned that they are distinct. They look different. Under this scenario, though, wouldn't it take us nearly 14 days to prepare the UOCAVA ballot? So, in a case where we have a primary because we're late. We're in September. We have to get those UOCAVA ballots out to comply with federal law. If there were a discrepancy, so we were off – we had primary for one of the congressional seats. What would happen? How would we be able to comply with federal law in that case and get those UOCAVA ballots because, for federal elections, they're certainly able to vote?

Secretary of State: That part of the bill probably needs a little bit of work. I think the standard time between the primary and having to get the UOCAVA ballots out is about 10 days.

Senator Soucy: But you do agree, this would be 14 days to verify, so we could run afoul.

Secretary of State: There's a compromise. There's a conflict in there.

Senator Soucy: Very easily into some disenfranchised military voters. Okay. Thank you.

Mr. Chairman: Senator **[inaudible] [02:09:28]**.

Female Senator: Thank you. Yesterday I heard that this fall's elections will be illegitimate. Do you have any concerns about the legitimacy of this fall's elections in New Hampshire?

Secretary of State: No. Absolutely not.

Female Senator: Thank you.

Mr. Chairman: Seeing there are no other questions, I have one request of you to introduce your new member of your staff.

Secretary of State: Thank you for –

Mr. Chairman: The Honorable Ms. Lovejoy.

Secretary of State: Yeah. I have been on this job now for a little over a week. And it seems like it's well over a month. But things are going smoothly. I've been putting a team in place that is bipartisan. I'm selecting members from both political parties. And I'm happy to introduce former Representative Patti Lovejoy for those of you who do not know her. Patti has worked with us for years on recounts. Does an outstanding job. She has a background in accounting. And served on the House Finance Committee for at least a couple of terms, if not more. And she has jumped in with both feet. And she's in the position of senior deputy secretary of state, which is part-time, but it's the role that Bob Ambrose was in while he was here with Bill Gardner.

Mr. Chairman: Welcome.

Secretary of State: Thank you.

Mr. Chairman: Thank you. The League of Women Voters, Liz.

Liz Tentarelli: I'm not big enough. Thank you, senator. Thank you, committee, for this opportunity to speak. I do have written testimony prepared, and I will give that to the clerk in a minute. But two things came up in what I've heard so far

today about this bill that I would like to address. I'm sorry. I didn't introduce myself formally. Liz Tentarelli. I'm president and partisan of the League of Women Voters of New Hampshire. And we oppose this bill. What I heard today is from two people that there is a lack of confidence in our elections.

I would challenge this committee and even the sponsors to say how do we foster confidence in an election when some voters are given ballots of a different color, have little serial strips attached to their votes, are sent away with a packet with instructions that may be very confusing for them to fill out, which they may simply stick in their cars or in their pockets and never get it to it because they think they've already voted. I don't see how any of that is going to foster confidence in our elections. In 2017, we had Senate Bill 3, which the League challenged in court. And while that court case was going on, the bill was stayed. So, Senate Bill 3 operated in only one election from the time it was passed. The reason given for Senate Bill 3 was to avert voter fraud. Do we have voter fraud since 2017 in any numbers much bigger than there ever were? I don't think so. We have some having homes in two towns entitled them to two votes. This is not the kind of voter fraud that we're worried about if this is all that's happening.

I appreciate what Senator Giuda said about the closeness of some elections. And we do find that out, and we want to avoid that, of course, that fraudulent votes are cast, but they are so rare that I would ask whether the complications of this bill for both the voters and for the election officials is worth the effort when it may very well discourage voters. As you know, the League of Women Voters works very hard to educate voters about what they need to do in order to register and in order to cast a ballot. The more complicated that gets, the harder it is for us to explain it in terms that everyone would understand. And the harder it is for voters to feel they can do it. I've seen people look at a description of what you need to do to vote and say, "I don't get it." And I suspect they never vote. So, that's very different from what I wrote to you, but I think I covered what I wanted to. And I will give you written testimony, but I'm happy to take questions if you have any.

Mr. Chairman: Questions from the senators. Seeing none. Thank you very much, Liz.

Liz Tentarelli: Thank you.

Mr. Chairman: And we'll go to ACLU New Hampshire, Henry.

Henry Klementowicz: Thank you, Mr. Chairman and members of the Senate Election Law and Municipal Affairs Committee. My name is Henry Klementowicz. I'm a senior staff attorney at the ACLU of New Hampshire. We're a non-partisan, non-profit organization which has been working to protect civil liberties throughout the state for over 50 years. I also have, in one capacity or another, served as counsel in the last two voting rights cases to go to the New Hampshire Supreme Court. That was League of Women's Voters of New Hampshire versus Gardner and Caroline Casey versus Gardner. Now, I think that this bill, which we are due to oppose sends exactly what Governor Sununu said, "Here in New Hampshire, our elections are secure, accurate, and reliable. There's no question about it." With that being the case, what are we doing passing laws that would potentially throw out thousands of votes? In my view, this legislation could violate the Constitution in at least three ways, and I'm happy to go through them. As Secretary of State Scanlan testified, it's been a long-standing position of the Secretary of State and Attorney General's office that the New Hampshire Constitution requires that all ballots be counted in the day that they were cast. That's why, for example, that office has historically opposed and one of the reasons why we don't have a period for absentee ballots to be cured or after they've been cast is because those ballots need to be counted on the day that they were cast.

And that is what the Constitution requires. Establishing absent affidavit ballots could cause 10's of thousands, 100's of thousands, depending on what category people have to vote by affidavit ballot to be counted and then possibly subtracted 10 days later. This could lead to, as the previous speaker suggested, a situation in which our presidential primary the results are tabulated for one candidate. Nevada happened. They voted. Then three days later, we find out that, in fact, somebody else one the New Hampshire presidential primary. In addition, this would

significantly change the way that New Hampshire voters are able to vote if they don't have any of the required documents. So, for example, it's unclear to me under the various versions of the bill under consideration whether one would vote by affidavit ballot, for example, if one did not have proof of citizenship. But if that were the case, a person would need to – every single person who is registering to vote would need to produce either a birth certificate, naturalization papers, or passport. These can be expensive and time-consuming to get. For example, a passport costs $110.00.

And routine service takes 10 to 12 weeks. The time to acquire a birth certificate can vary depending on the municipality of birth. But in New Hampshire, for example, it costs $15.00. Whereas, a birth record for an American born abroad requires a notarized request to the State Department. And I imagine it takes a significant period of time. Probably well beyond the 10-day cure period that a person would have to produce documents to prove citizenship. And, perhaps, that's why in 2020, the 10th Circuit Court of Appeals, in a case called Fish versus Schwab, struck down as unconstitutional a documentary proof of citizenship requirement, which required everyone in Kansas who wanted to vote to produce documentary proof of citizenship. And the court found that the state's interests were, "Insufficient way to justify the limitations on the right to vote imposed by the DPOC requirement." So, the same would be true for proof of domicile requirements. So, left out of the conversation today are people who validly live in New Hampshire have a domicile in New Hampshire but don't have any documentation to prove that.

So, it could be somebody who's couch surfing or subleasing. It could be a person who's experiencing homelessness who's entitled to vote but won't have a scrap of paper with their address on it anywhere that they can produce. Under this bill, if it became law, all those people would be erroneously deprived of their right to vote. We know that in 2020, 814,499 voters cast a ballot. That was an increase over the 7,550 people who voted in the presidential election in 2016. Nonetheless, the legislative findings identified 10 cases of illegal ballots out of those

700,000 plus ballots that were cast. And moreover, none of those cases – we don't know if any of those cases would have been deterred by this bill. And that's a crucial point is we have no idea if any of those people who were found to have committed double voting or voting fraud used an affidavit. Maybe they had a fake document. Maybe they voted under someone else's name. Right?

We don't know that this bill would do anything to actually solve those 10 cases of voter fraud. But we do know that it would impose significant burdens on many people. In addition, there is, I think, a real possibility that this bill could put New Hampshire's exemption from the motor voter law at risk. As this committee knows, New Hampshire's exempt from the NVRA because it has maintained a continuous law since 1993, which allows all same-day registrants to vote. It would be up to the Department of Justice to determine whether this bill, if it were enacted, significantly changes the law around same-day voter registration, or prevents some people who register on election day from voting. And, of course, once we lose our same-day registration exemption from the NVRA, we can't get it back.

This proposal would destroy ballot secrecy, as some have said. Under this provision, every single moderator would create a list identifying by name the affidavit ballot of every single person who votes with an affidavit ballot. I just wanna tell you what the U.S. Supreme Court has said about ballot secrecy in a case from 1992. They said, "All 50 states together with numerous other western democracies settled on the same solution. A secret ballot secured and part by a restricted zone around the voting compartments. We find that this widespread and time-testing consensus demonstrates that some restriction zone is necessary in order to serve the state's compelling interests in preventing voter intimidation and election fraud." So, we have voters' ballot secrecy for a reason. It's not just because people are entitled to be able to cast their vote in secret because it's such a manner of consciousness, but it's also to prevent voter intimidation. It's to prevent someone from saying, you vote this way or else, or particular way. What we would be doing under this statute is creating, literally creating, a list of every person who votes by absentee

ballot, along with a reference that can be used to determine how they voted. And that's different from how the absentee ballot process works.

In the normal processing of absentee ballots, of course, the envelopes are processed, and the affidavits are reviewed before the ballets are reviewed. Secretary of State Scanlan suggested that it may be a different procedure for those that are challenged affidavit absentee ballot voters. But we know that is a significantly smaller number. And just to give you an idea of what we're talking about. Tens of thousands of people use same-day voter registration every election. Whether all of those people would have to vote by affidavit ballot, I think, is unclear depending on the text that we're looking at. But, certainly, 637 people used following the 2020 election the qualified voter affidavit when registering without photo ID. And 816 people used the qualified voter affidavit when registering without proof of citizenship. So, potentially, 1,400 people's ballots could be easily identified by the moderator. Under the initial version, as I understand it, those people would be given a different colored ballot, a sort of scarlet letter, if you will. Making it noticeable to the entire community that they're voting by affidavit ballot and further increasing the risk of erosion to valid secrecy.

And then, the last thing that I just wanna talk about is the possibility that this could cost the state millions of dollars in legal fees. Following 2017's enactment of Senate Bill 3, which was also passed with the support of the Secretary of the State's office, three superior court judges struck down parts of the law before the New Hampshire Supreme Court ruled it unconstitutional in its entirety in 2021. Following that determination, the state paid $3,350,000.00 to the lawyers suing the state. As well as over $800,000.00 to outside counsel that the state had hired to help defend the law. So, that was in excess of $4 million that the state spent just to pay lawyers to fight over a law that was enforced for one election and, ultimately, deemed unconstitutional. I think the same problems exist with this bill. I think that the packets given to people when they vote by affidavit ballot would cause the same sort of problems with confusion in lines that the court found so problematic in the League of Women Voters of New Hampshire versus Secretary of

State lawsuit. And I just point out that, like all elections, materials would be printed only in English. And especially incomprehensible for people who are entitled to vote who may not speak English or read English. And so, in conclusion, I'll just say that the goal of SB 418 seems to be to impose new unnecessary burdens on voters. This flies in the face of Governor Sununu's statements about our elections being safe and reliable.

There's no need for this bill. And it risks upending our electoral system by injecting confusion, delay, erroneous disenfranchisement, and costs for no obvious benefit.

Mr. Chairman: Questions from the senators? Senator Soucy.

Senator Soucy: Just one. I wanted to get back to one of the issues we raised in the process in terms of if someone is homeless, they may use the homeless shelter if, in fact, they're staying there as an address. But we would have no way to prove that there's where they're staying. So, if I'm wondering what in that instance, they may or may not have access, as you said, to certain other documents like a birth certificate, passport, or anything, and may not have the money to able to obtain them?

Henry Klementowicz: Right. I think that person would be disenfranchised after 10 days when they're unable to return proof of documentation of domicile to the Secretary of State's office. Those are for the homeless people that are experiencing homelessness that are lucky enough to stay in a shelter. They may be able to get documentation. But those who don't, who are camping, who are living in a park, there won't be any documentation to be had at all.

Senator Soucy: Well, but they are entitled to vote because they are New Hampshire residents, and we've established in statute a process to allow people who are homeless at the time of elections to vote.

Henry Klementowicz: Absolutely. And that's consistent with the New Hampshire Constitution's requirement that all inhabitants of New Hampshire are entitled to vote.

Senator Soucy: Thank you.

Mr. Chairman: See that others have not. I'll ask a few. What are the provisions in state law for Supervisor of the Checklist to accept a signed letter from a landowner or an operator of a shelter to prove domicile identity and other things?

Henry Klementowicz: So, there's a list of documents that are enumerated in statute to be used to prove the four qualifications age, identity, citizenship, and domicile. A signed letter from a landlord probably would qualify. But some people who are couch surfing or who are subletting in violation of a lease may not have access to that letter. And, actually, Senator Gray, this just reminds me I wanted to respond to an earlier question you had asked about the verification of a voter's identity by an election official. And looking at the second to last line on Page 4 of Amendment 20-220054S, that would actually repeal RSA 659:13 II(B) relative to the verification of a voter's identity by election officials.

Mr. Chairman: I'm sure Senator Giuda has just taken note of that. So, a person who is couch sitting could get a letter from the owner or renter of that property. I believe that's still consistent with what you quoted before. And I don't understand why they wouldn't have access because that would be their access.

Henry Klementowicz: So, I would have to look at the statute. I think that it does talk about – and it's been a little while since I looked specifically at the statute. But I think it does talk about a lease or note from the landlord. I'm not sure that it explicitly allows a note from sort of a lessor to a sub-lessor to count. It also is not clear that in all situations – you could have a situation in which a tenant's relationship with their landlord is fraud. Right? We know this happens for a number of reasons. People get delinquent on their rent, or there's issues with the heating in their house, and people are not talking to each other beyond just dropping off the check. There's no requirement in the statute that a land lord has to furnish such a letter for a tenant who wants one. And so, for many people, that may be an option, it may not be for some people. And those people would still be entitled to vote but wouldn't have a way to do so under this bill.

Mr. Chairman: Senator Perkins Kwoka.

Senator Perkins Kwoka: Thank you, Chair. And, Henry, you mention that this bill has the potential to disqualify us from our waiver under the National Right to Vote Act. Could you just talk a little bit about what the consequences would be if we were then subjected to that authority again?

Henry Klementowicz: Sure. New Hampshire's same-day voter registration exemption from the National Voter Registration Act is what exempts us from the requirement that people have to be able to register to vote at DMV or other similar state agencies that provide resources directly to the public. So, in the 46 states that are subject to NVRA, you can register to vote at DMV. That's not the case in New Hampshire. People in New Hampshire can only register to vote either at a meeting of the Supervisors of the Checklist, at the polling place before those supervisors, or sort of indirectly at town hall, a meeting with the town clerk. And so, if we were to lose our exemption, New Hampshire would have to create an entirely new system to allow people to register to vote at DMV and other state agencies, which I assume would cost billions of dollars.

Mr. Chairman: I will defer any more of my questions for later since we are going quite late. So, thank you for your testimony. Thank you. And we'll call the next, which is Kristina Gilford.

Kristina Gilford: Hello. And thank you for listening to what I have to say. I do wanna apologize because I just saw –

Mr. Chairman: For the record, introduce –

Kristina Gilford: I'm sorry. Kristina Gilford. Durie Town and School Moderator. I do want to apologize because I only got the amendment when it was just handed to me. The amendment did answer a lot of the concerns that I had. But it does bring up a couple of others. So, as moderator, I kind of have a little bit of an issue with creating a list with people's names. And I know it's not subject to disclosure on the 91A or any other means whatsoever, but it makes me nervous making a list like that. I also have a huge issue on the 11th. It's on Page 2, Sections 23 to 30. And you're sitting here talking about basically re-opening the boxes to pull out these ballots.

Such a big deal is made about election integrity and security. And we take at least in Durie great care to take the ballots and do all those things. And those seals are not to be broken. The only time they're broken is if they go for a recount up to the Secretary of State's office. And all of a sudden, we're going to be opening and basically leafing through, for example, November 2020, 18,000 ballots in Durie trying to find the ballots with these numbers. And that's a double-sided ballot. So, it's not like you can even write it kind of large on one side or whatever. It's going to need to be very small in a corner. That's going to take a lot of time. It says with using methods of counting and observation. I understand that.

It just makes me, again, very nervous to be re-opening all these boxes all over again. And then, I do feel that there are a lot of people who arrive at the polling place. I know because I've been working elections for a very long time. In fact, we just had a special election in December. And I had a woman who came in with a cane. It was December. It was cold. It was late. And she got all the way in and completely realized that she had forgotten her ID. And so, she had to fill out the Challenge Voter Affidavit, take her picture, sign the form, and she was easily able to vote. She's already on the checklist.

And now it seems like an innocent mistake now is gonna cause a specialty ballot. And then, they're gonna have to what go get a copy of their license and send it in. We also have some voters in Durie I know that they're very – they're old. I have one gentleman who's almost always within the first five voters through the door. He comes in with his son. He's in his late 90s. He no longer knows where his ID is, and he doesn't have one. Every election, I remind him that there's a free ID available from the state for voting purposes. And his answer to me is, "Just take my picture, and I'll sign the form." And how is he then afterward going to be able to fix that, but he's been a Durie resident for 50 some odd years? And he's been voting in Durie for 50 some odd years.

At this point, I could – I know him personally at this point after working elections many, many years and seeing him

around town and his family around town. But the provision to identify him is removed here. So, it just – I'm concerned that this is going to discourage legitimate voters, and people are gonna bring in – I don't know. The ones that really want to fraudulently vote are just probably going to come in with fake documents and vote that way. I don't know. I'm concerned that we're just gonna turn away legitimate voters.

Mr. Chairman: Okay. Thank you. Questions from Senator Perkins Kwoka.

Senator Perkins Kwoka: So, in your opinion, Kristina, – thank you for being here today. We heard the prime sponsor say that this bill would not cost towns and cities a dime. But it sounds like just anticipating what the workload would be this would create additional time and energy that needs to be put into elections.

Kristina Gilford: Well, I have no problem putting more time and energy in for election integrity myself personally. It's not like moderators make a lot of money anyway. It's not a big deal. But I can tell you that if I'm gonna have to re-open 65 boxes of ballots because that's how many we had from the November 2020 election, that's gonna involve myself, the town clerk, other election officials. I'm gonna need some poll workers. There is gonna be an expense definitely because I have to hunt down those ballots. Unless we're gonna make them put a ballot in a separate box. I'm not sure if there's a solution here. I'm just trying to understand the logistics of it. I mean, the original bill had Supervisors of the Checklist handing out ballots. So, I was glad to see that's been fixed, but that's more my issue there is just how do we actually execute this in a normal manner.

Mr. Chairman: Additional questions? Seeing none. Thank you very much. Dr. David Strang.

Dr. David Strang: Good afternoon, senators. My name is Dr. David Strang. And I'm speaking in support of this amendment to this legislation that seeks to improve New Hampshire election law and reduce the concern over same-day registration currently shared by many of the citizens of the state. Election integrity is an idea that we all, regardless of political parties, should seek, should strive for with the

utmost zeal. The thought that someone occupying an office did not, in fact, earn the right to do so should be repugnant to us all. For nearly a half-century in our state, almost one election per year has been decided by just one vote or resulted in a tie, often to be decided by the flip of a coin or some other means of chance. In the 2016 general election, the last for which we have final data, 230 voters cast ballots yet could not have their identities or their residence verified by the Attorney General's office. Does that level of uncertainty concern you? It certainly would have to New Hampshire politicians Louis Wyman and John Durkin whose 1974 U.S. Senate matchup was decided by just two votes. The closest in not just New Hampshire history but U.S. history. This bill would not add a significant workload to the election officials processing these voters on the day of the election, as all they would have to do is circle the documentation missing on a piece of paper and hand that letter and an envelope to the voter.

At the end of the day, they would send their copy of that letter to the Secretary of State. Done. Yes, more work would need to be done by the Secretary of State's office, but Secretary of State Scanlan has already gone on the record stating that this could be managed quickly so as not to unduly delay recounts and certification of the vote. The beauty of Senate Bill 418 is that it builds on existing New Hampshire law that has been in place for many, many years. Already in RSA 654 and 659 is the requirement to vote by Challenged Voter Affidavit if you attempt to vote without a photo ID as well as by qualified voter affidavit if you attempt to register without a photo ID. And by domicile affidavit, if you register without the documentation to prove that you actually reside and have a domicile in that town, city, ward, or district. This bill strengthens those existing RSAs. It also reinforces the legislature's constitutional authority to establish voting requirements with now the ability to enforce those requirements. Gone will be the time when we had to count and certify all votes only to find out months later that we potentially had been duped into certifying illegitimate votes with no means to remove that officeholder who was improperly installed. I strongly urge all members of this committee to support the amendment to this bill as it will provide one more means to ensure that New Hampshire's

elections are as far as possible.

Before I conclude, I'd like to just address a few comments that were made by previous individuals who offered testimony. The woman from the League of Women Voters said that we should simply trust all people who show up to cast a ballot. I'm reminded by Ronald Reagan's wisdom when dealing with the Soviet Union. Trust but verified. She also insinuated that we would be discouraging voters from actually voting. We're not discouraging anything. We're simply giving them yet a third and final opportunity to show that they have a legitimate right to cast a ballot. People should be registering before the election. But if you want to wait until the last minute, you still have to come in with proper identification proving who you are and that you actually reside in that town, city, ward, or district. And if you don't do it on the day of the elections, we're giving you one final chance to do that before the vote is certified. If you wanna take a flight from Logan Airport and you show up without your passport, try boarding that fight by claiming that you're being discriminated against.

If you are on a flight from Logan and there were five people whose identity was not known, wouldn't that make you nervous? Someone also mentioned that this might create a violation of privacy. And I would assert that this is already happening in our state. Dixville Knotch has what five voters, and they love to announce their voting results at midnight. If all five voters voted for the same candidate, there is no right to privacy. And I guarantee you, even if the vote is four to one or three to two, that people in that town know how they voted. But if someone seeks to deceive by voting illegitimately, I assert there is no right to privacy. Currently, in New Hampshire, RSA – when it comes to prescription violation, and this is something I know something about as an emergency physician. If someone comes in and attempts to deceive me in an attempt to induce a prescription for a controlled substance like Oxycodone, there is no right to privacy. It's right in RSA 318-B. I believe it's B:21. So, if you come in and lie to me about who you are or that you haven't received the same substance and try and get me to write a prescription, there is no right to privacy.

And I assert that the same would hold true if you're attempting to deceive voting officials. Someone else mentioned the issue of homeless shelters. If we don't have some sort of check and balance, then everyone in the world, all seven billion people, can come to New Hampshire and claim they live in a homeless shelter and they want to vote. If you're not going to hold people accountable, then there are no voting requirements in New Hampshire. Anyone and everyone can vote. And I don't think that that's what you're really striving to achieve by saying we're not even gonna have homeless people have some form of documentation. Someone else mentioned a concern. I believe it was the moderator from Durie about maintaining lists. We already have lists. People who vote by absentee ballot have it marked right on the voter registration list. It says, "AB," and it's on every single page. We already have these lists.

She also mentioned that it would be an incredible workload to, "Re-open all these boxes." These affidavit ballots are hand-counted. They should go in one box. You will not have to go and re-open every single box of ballots in order to retrieve them. They should be segregated on the day of the election. And finally, the example was given of the elderly man who has been here for 50 some odd years and has no photo ID. Does anyone have a problem with someone not being able to obtain a photo ID in 50 some odd years? Right now, it is a New Hampshire law you have to produce a photo ID in order to vote. Are we supposed to just ignore that out of inconvenience to someone? Or do our laws actually mean something? I thank you for your time. And I'd be happy to answer any questions.

Mr. Chairman: Questions? Senator Perkins Kwoka.

Senator Perkins Kwoka: Yeah. Thank you for being here today. So, contrary to, I guess, what other folks have testified here today, do you have evidence of voter fraud occurring in New Hampshire?

Dr. David Strang: I worked with Senator Giuda on this bill, and we met frequently with Secretary of State Scanlan, former Secretary of State Gardner. Secretary of State Gardner has many examples of people who have voted illegitimately. Again, the Attorney General's office is still working on

2020 data. The last election that we have, I guess I would say, settled data from is 2016. And in that election, a woman who is a Massachusetts resident was caught voting in Plymouth, New Hampshire, visiting her boyfriend at PSU. She admitted that she had broken the law. She paid a $500.00 fine. That's hardly a deterrent. Secretary of State Gardner has numerous other examples of people who would fly here from Florida. Despite being Florida residents and vote in their prior locale. He's got quite a few examples.

So, I think when we have an opportunity to hear from former Secretary of State Gardner, he can give you much more specific data than I can.

Senator Perkins Kwoka: Follow-up, Chair. Are you aware that there's actually a right to ballot privacy that's protected by the U.S. Supreme Court?

Dr. David Sprang: Okay.

Senator Perkins Kwoka: Okay. Thank you.

Mr. Chairman: Additional questions. Thank you, Dr.

Dr. David Sprang: Thank you.

Mr. Chairman: Brenda. I'm not exactly sure what you put at the end. Whether it's an E-I or a U or – so, I didn't try.

Brenda Towne: Okay. If you look at that handwriting, it's after raising four kids. You just kind of lose a grip on that. Anyhow, thank you, committee, and thank you, Chairman, for hearing me today. I am Brenda Towne. I'm a business owner, and I also run a large business unit for Contree Manufacturing. Have four kids. Three in the military.

Female Speaker: Could move the microphone closer, please?

Brenda Towne: Sure. This is the best part. And eight grandkids. Okay. So, this past fall, I started to participate with a very large group of people who are the group that gets talked about. The ones that are concerned about election integrity. And we started a statewide citizens audit. We executed 243 plus

requests and have pulled all the records from every town. To complement that, I led a canvasing group, and we started canvassing in a couple of towns. And instead of going down any of the paths that the prior speakers discussed. I just wanted to discuss the canvasing results to date.

In front of me here are affidavits for homes that we canvased that the people in the homes did not vote. So, people voted on their behalf. So, what we found so far is almost 15% of the homes that we got people to answer the door were people who did not vote in the election. So, included in that are same-day voters. As far as a consequence to our state, if we were to extrapolate our canvas base, which was just about 800 folks, that would mean that one percent of all the votes because that was our experience one percent of the people that we got responses from had same-day voters vote from their homes, but that really weren't residents of their homes. So, I'm here to tell you that this is a problem. There is no handwaving here that this doesn't exist. There is a problem. We will finalize our affidavits to share that. And it's that cry of the heart that we address the process gaps that we have as a state. We just really are looking for every voice to be heard.

And if one percent of the people in the State of New Hampshire are having their voices canceled out by people who shouldn't be voting, then that is a truly huge, huge problem. So, thank you. I'd be glad to take any questions.

Mr. Chairman: My recommendation on your documentation is that the originals go to the Attorney General. Copies can be distributed to the committee and also the Secretary of the State. But the Attorney General would be the one that would be the one that would be conducting any investigations.

Brenda Towne: Okay.

Mr. Chairman: Questions from committee members? Seeing none. Thank you very much.

Brenda Towne: Thank you.

Mr. Chairman: Ken.

Ken Herring: Thank you for the opportunity to speak. My name's Ken Herring. I live in Wyndham. I just got some notes that I scribbled based on testimony that was given. And first of all, I just wanna thank you for the opportunity to speak, Mr. Chairman, and all the senators here. I also want to express my enormous gratitude to Senator Giuda for putting this bill in. This is something that's a long time in coming. I've been sworn in as a same-day voter registration person multiple times, and I have to assure you that most people come with their identification for who they are and where they live, and that they're a U.S. citizen. Yes, there's some people who signed an affidavit. But if we have 100,000 people in an election that register on the same day, you're not going to have 100,000 people that you're going to need to expect them to provide any kind of documentation or proof after the election in order to verify their affidavit ballot was cast properly.

So, if there is a reason to be concerned – I heard that comment made at least once during previous testimony that there's really no reason to be concerned because the numbers are so minor. Well, if you look at the beginning of Senator Giuda's bill **[audio cuts outs out] [02:52:06]** as an American citizen, that comes with responsibility. And that's one thing that all the arguments that came up here today that oppose this bill, they dismiss the fact that people have personal responsibility. And what the arguments are stating is that our laws should be written to accommodate their lack of addressing what their responsibilities are. And there's many, many different examples. You could talk forever. That's not the purpose of this. The purpose of our voting is for people in our country to vote and then elect who they want their representatives to be. People lie. Happens all the time. But what's being suggested by the people who have come up here and opposed the bill, they're suggesting that we need to believe them.

Why? It's not difficult to show an ID. Dr. Strang gave a perfect example. You're not going to get on a plane without an ID. You're not gonna buy beer without an ID. I could go on and on. It's hundreds and hundreds of examples. But somehow, we are supposed to **[inaudible] [02:53:41]** to all

these people who say, "Well, it's **[inaudible] [02:53:44]** the people." There's no cost too high to make sure of the integrity of our elections. None. If one illegal vote is cast, it disenfranchises one legal vote.

That might be the vote that decides one of those 45 elections over the past 45 years. The homelessness issue was addressed. The issue of the ballots being counted was addressed, and pulling the ballots if – so, another argument was that, "Well, people will lose their right to privacy." With all due respect, how dare anybody protect someone who illegally voted and saying they have a right to privacy. And if they choose not to – and even if they are legal voters, but they forgot their ID, if it's not important enough for them to take the time to show that ID within a 10-day period, then they lose their right to vote. That's on them, not on us. Don't put everybody else's votes in jeopardy and the integrity of our election in jeopardy simply because somebody didn't do their job and provide their responsibilities to provide the documentation that's required by law. When I was sitting there in with him, as a sworn in election official, it killed me to see that people could literally come in with nothing, sign a document, and go over and vote. And their vote counted. That's not right. Senator Giuda took the time with Dave Strang, with the Secretary of State. They tried to address every issue.

They addressed the issue in the Constitution that the votes have to be counted on election day. That's happening. But it doesn't mean that those votes if they were cast illegally or not with the proper – not by properly registered voters, it doesn't mean that those votes should be certified. So, that's what this bill is all about. It's trying to protect everybody's rights. And with that, I'll end my testimony. I appreciate the time that you gave me to talk. I believe that everything that Senator Giuda said was spot on. I appreciate all the time and effort it takes for him to write this bill. I appreciate the words that Dave Strang expressed. He addressed a lot of the things that were on my mind.

And I just wanna, again, thank you for allowing me to take the time to express my concerns as well.

Mr. Chairman: Questions from the senators? **[Inaudible]**.

Female Speaker: Thank you. Thank you for coming up, Ken. I appreciate it. I know earlier, based on what you had said, that if someone casts an illegal ballot, it disregards a legal ballot. I know there were a number of – the League of Women Voters named a number of individuals who violated the law and were found guilty. Would you not agree that even though there were 5, 10, 15 of them, they disrespected other voters?

Ken Herring: How many times have you heard your vote counts. Your votes only one vote. So, does it count? Or doesn't it count? Should it count? Absolutely. Everybody's vote counts. And it should be given the proper due respect and protection of the law. And if people are voting illegally where they haven't done their due diligence because of their personal responsibility, let's not forget that. If they don't wanna take the time and effort and it's minimal. Don't buy into that narrative that it's very difficult for these people to provide the documentation or to go through the process.

We all have to do that. We're all adults. We're talking about electing the people who are gonna represent us in our government. It's one of the most important things we can do during every election. We need to ensure the integrity of our elections. They are of the utmost, impeccable, and unquestionable, especially since New Hampshire is the first in the national state. We don't want anybody questioning whether our elections are accurate or not. I hear it's $2 billion worth of revenue every time we have a presidential election. That's an important aspect and fact to consider regarding the integrity of our elections.

Mr. Chairman: Okay. Seeing there are more questions. We have one more person. Looks like Brandano. All right.

Al Brandano: Thank you so much for this opportunity. First of all, a really important –

Mr. Chairman: Introduce yourself.

Al Brandano: My name is Al Brandano. A resident of Kensington, NH. And I'm a citizen of Kensington. **[Audio cuts out] [02:59:24]** 33 years in a small town. We know everyone.

We like everybody. Town clerk, moderators, we're all friends, personal friends. This became very difficult for me because I was hearing all this stuff about voter fraud and all this. And I said you know what, one day I'm driving by the little local park, and we have a flag up. And in that flag is an honor to Andrew Nicole was a five-time army ranger. I've never served anything, never been a part of the military, but every time I go by that flag, I know I have to do something.

So, I went to the town clerk this last time and started asking questions. And the town clerk gave us an attorney to work with. We worked with the town clerk and the attorney. And when you say that – or I heard today that there is no fraud in election. I just wanna refer to, and I'll give this to you as testimony. January 7, Bernard H. Campbell, Esquire, it's the response to follow-up question to the Town of Wyndham election that's from William Gardner. So, when he comes maybe, you can ask him. I will, "Wyndham election night results were not just imprecise, they were fundamentally flawed." I'll produce this document for you. So, there's way more than meets the eye. What the governor said in the very beginning, he had no knowledge of this.

No one did. This just came out on January 7th. But let me tell you why I lost faith and trust in elections. The big part for me is the audit process. What I really learned, and this is with the help of the town, is it was alarming to me. There's no chain of custody requirement for memory chips or cards. There's no software security review and defined specifications. There's no audit capability as defined by the legislature or state law. There's no best practices, audits for town clerks, moderators. And as we heard in the other hearing, it's voluntary. They don't have to attend.

There's no testing against controls. The last security update on the machines was done in April 9, 2010. I ask you – I'm the face of those people who have lost trust. And I've done just a preliminary review for the Town of Kensington. I'm asking you to be bold and unite us. We are divided. If you look at the statistics in voting, 50% of the population doesn't believe for whatever reason. But my little town of Kensington, my little test, told me that I can't trust but

verify. We need to do that. And you need to be bold and act boldly on this bill in support of this bill. So, you can help and unite us. It needs to happen. I'll take any questions.

Mr. Chairman: I just want you to verify for – because there are people that are listening online. It sounds like that is the letter from the Attorney General and Secretary of State to the Town of Wyndham?

Al Brandano: That is correct. It's to Bernard H. Campbell, Esquire.

Mr. Chairman: Yeah. I just wanted to make sure that people, if they wanted to know what you were referencing that they could – questions from the senators. Seeing none. Thank you very much. And we'll close to the public hearing portion of this right after Senator Giuda has less than a minute to rebut. But –

Senator Giuda: Thank you, Mr. Chairman, members of the committee. As I stated initially, this is a bill that is critical to the integrity of our elections and the trust of the public. Okay. It establishes no greater requirements than already exist. It's predicated upon existing law, and I think, perhaps, the best testimonial was that of the lady in the back who's working as a citizen and is discovering significant indications of certainly unqualified voters. I hesitate to use the term fraud. That's a crime. This bill was not targeting fraud. This bill was targeting making all election processes as good as it can be. I would caution the committee of the words of my dearly departed friend Roger Johnson, "Let's not make the perfect enemy of the good." This bill isn't perfect. I'm willing to amend pieces of it that are concerning.

But it's a bill that's necessary because it closes a gaping loophole in the election integrity in our state. And I thank you.

Mr. Chairman: Thank you, senator. Hearing is closed. This scheduling stuff for the community members. There's a couple of different schedules out there. So, watch out since we didn't have a meeting on Martin Luther King Day. And we also have the House bills. I've tried to schedule two of the minor redistricting House bills, the county commissioners, and the delegations so that we can get those out of the way

because I don't anticipate that there will be a large attendance. And then we have House Bill 50, which we're scheduling.

Female Speaker: We're still meeting.

Mr. Chairman: Quiet in the room, please. So, we scheduled that for **[inaudible] [03:05:20]** hall. We will try to do anything else, the big bills at that same time that need a public hearing. I know that there may be amendments coming from one side or the other in this. And certainly, we want to give people at least some time to be able to do it as much as we can. And with that, are there any comments from you guys? Good night.

[End of Audio]

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Executed this 18th day of May 2022.

Sincerely,

Beth Worthy
President
Email: Beth@gmrtranscription.com
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EXHIBIT C

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

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JOHN M. FORMELLA
ATTORNEY GENERAL

~~JANE E. YOUNG~~
DEPUTY ATTORNEY GENERAL

April 8, 2022

SENT BY EMAIL ONLY
Henry Klementowicz, Esquire
American Civil Liberties Union of New Hampshire
henry@aclu-nh.org

Re: April 6, 2022, Follow-up Right to Know re Wrongful Voting cases relative to September 8, 2020, and November 3, 2020, elections

Dear Attorney Klementowicz:

We have completed our search for and review of records with regard to your request under New Hampshire RSA 91-A for open investigations for wrongful voting and/or voter fraud from the September 8, 2020, and November 3, 2020, elections.

This office currently has five active alleged wrongful voting investigations stemming from the September 8, 2020, or November 3, 2020, elections, and have closed 18 investigations relating to those two elections. This office does not have any criminal or civil proceedings pending in relation to alleged wrongful voting stemming from the September 8, 2020, or November 3, 2020, elections at this time.

This Office does not have any documents that are responsive to this request. At this time, no convictions or final judgments have been entered with respect to wrongful voting matters stemming from the September 8, 2020, or November 3, 2020, elections.

Sincerely,

Myles B. Matteson
Deputy General Counsel
Attorney General's Office

EXHIBIT D

[No dictation] 00:00:00 - [00:11:48]

Chair: We are on. This is the New Hampshire House Election Law Committee. Today is Friday. We have some public hearings and then we're going to be execing some bills because we have deadlines coming up and before we begin that official business, I'd like you to all join me in a Pledge of Allegiance.

Audience: I pledge Allegiance to the Flag of the United States of America. And to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Chair: Thank you very much everybody. The first bill scheduled for public hearing this morning at 10:00 and my apologies to the prime sponsor for starting late is SB348. And with us to introduce 348 is the prime sponsor, Senator Gray. Welcome back to Election Law, Senator Gray, a former home of Senator Gray.

Senator Gray: My name is James Gray. I represent Senate District 6 and my legislative career on committees started in this room and so. I'm familiar with election law. I was a moderator for many, many years in Rochester.

This Bill here, one of the most confusing things for people is finance for campaigns. In fact, the Attorney General's office has a piece of paper that they say, well, this is what it really means, the statute. And we're not doing the right thing if we have to have another piece of paper from another person that says, "this is what it really means."

And they had a table there. So, I went down to **Oyless** and I says, "I want you to put a table in." He says, "Well, we don't have any tables. We don't have any part of the statute anywhere." I says, "I don't care, I want the table in." Okay. So, I guess from my request and other requests that they've had, both now and in the past, they think that they've figured a way to get a table in. And that is the genesis of what you see in this Bill as amended by the Senate is two tables.

And we had a rousing discussion about what's in there. We thought that last year that we had gotten it down so it was Pre-Primary and Primary expenses and then a second category for General Election expenses. The Attorney General says, "No, you didn't get there. You still have the three categories."

So, the table reflects the first table that you see, pretty much

reflects what's in the statue right now, about different things. The second table in the Senate Bill as amended actually is a reduction. In that first line that you have in the table, the rest of it says Unlimited, Unlimited, and Unlimited. Well, the Attorney General says that the actual statutes that we have in place, all of those lines would be Unlimited. And I said, "Well, that goes a little too far for me." I had it even smaller and if you look back at the Bill's history, you will see where I suggested other things. But you know like many of the House members, I'm very frugal about what I spend on my campaign and I spend a lot, a lot less than a lot of other Senators on their campaigns.

And the problem that you get into is when you're transferring money at the end of your tenure or when you lose or whatever and you want to pass that money on to someone else. You can pass it on to a charitable organization. You can pass it on to another campaign, campaign committee. And that's the reason why some of those numbers, especially the middle row in the amended version, which was quite a bit less than that when the bill started out went to Unlimited because if somebody's already donate that money for campaign expenses, then it is certainly reasonable that that money continue to be used for campaign expenses, especially for the candidate in the same district.

But again, that's all fair game for you guys. The main thrust of this Bill is to make it so that a person who gets that, picks up that statute, can understand what the limits are, understand the difference between candidates, candidate committees, advocacy organizations, what happens to union, what happens to partnerships, what happens to all of that stuff. We did put in special provision that unions, etc. would be able to form a Political Action Committee of their own and to be able to use segregate funds for that purpose, which matches federal law.

So, I believe it's a great Bill. You know, certainly I'd like to see a 20-0 vote out of here or whatever your current committee membership is. And I'll shut up now and listen to you.

Chair: Questions from committee members for Senator Gray? I'm not seeing any. You've made it very clear apparently, so thank you very much for joining us this morning, Senator Gray. We do have someone who has signed up to speak on this Bill. Olivia **Zinc**. Welcome to this Senate portion of our year.

Olivia Zinc: Good morning. And for the record, my name is Olivia Zinc, Executive Director for Open Democracy Action and I live in the

city of Franklin.

The reason I signed up to oppose this Bill today is one because of under the prohibited political contributions part of the law. So, Senator Gray explained that these are in statute right now. It should be in the statute part of the law, not prohibited. And I get that there's a double negative in Line 17, but then when you say it's "Unlimited," it really throws me off.

So, you're limited to Unlimited. That should be in the regular part of the law and not prohibited political contributions section of the law. And I will just speak that I do believe Unlimited political spending does not protect our democracy and further transparency in our elections. So, I think it's really important that we have good standards and that our campaign finance laws provide the clarifications they need. But by putting this under the prohibition and creating these double negatives in statute, I think creates further confusion. Thank you.

Chair: Thank you very much. I'm trying to think what the double negative means to the term "Unlimited."

Olivia Zinc: Because you're prohibited to be Unlimited.

Chair: But isn't a contribution an amount by definition, so it's never Unlimited. I mean, you're causing me to think about the double negative. You can never not – you will always be not Unlimited, regardless of the amount.

Olivia Zinc: If you're prohibiting something that's Unlimited –

Chair: Right.

Olivia Zinc: – how are you making a prohibition on something that's Unlimited? That's the confusion that I think this causes.

Chair: Well, I think that the answer is it can be any amount. But you're right. It does seem a little confusing.

Any other questions for Olivia Zinc? Seeing none, thank you very much.

Is there anybody else here who wants to speak on SB348? Come on down. Welcome to the Committee on our Senate Session of our year here.

Bob Perry: Thank you for recognizing me on a moment's notice.

Chair: You will have to do a pink card and I know you know that procedure.

Bob Perry: Yes, ma'am.

Chair: All right. Thank you.

Bob Perry: I take no position –

Chair: I need you to identify yourself.

Bob Perry: Yeah, I'm sorry. Bob Perry. Town of Strafford. Served on this committee a number of years ago for seven years. Again, I take no position on the Bill, but I would like to stress my angst at the word "Unlimited." When I see the word "Unlimited" connected to the words "Campaign Contributions" I worry. There is much concentrated wealth in America and we know in so many instances, wealth begets wealth.

This week we learned that Elon Musk bought 9.2% of Twitter. According to Forbes, he is the world's richest person with a wealth of $275 billion. Buying a controlling interest in Twitter cost him a mere $2.9 billion, one person. Twitter reaches 230 million people with roughly 206 million monetized daily users. For someone on a mission, which Musk seems to be, he has a sizeable megaphone, outsizing every voice in this room times millions.

He admits he bought it, not only to assert his position among the wealthy who own media giants, but to make changes at Twitter, likely code for increasing profitability at his now personal mouthpiece. I can imagine he will use controversy to increase profits. I don't have to imagine that. He has already stirred controversy, according to reporting from *Politico* magazine.

Chair: Mr. Perry, I appreciate your experience and your position, but really am going to ask you to focus in on this Bill and not the motives of Elon Musk and buying shares of Twitter.

Bob Perry: My point, Madam Chair, is that if anyone has the ability to buy an election, it's Elon Musk.

Chair: Representative Perry, you're going to have to speak to the Bill because I think every member on this Committee can point at a number of other people under that same logic that could buy

elections. So, let's continue with focusing on the Bill.

Bob Perry: Some people believe more money and more speech is good, that it will lead to an expansion of ideas upon which to build a more perfect Union. To those, I refer to the present political environment of misinformation, disinformation, outright lies, and –

Chair: Mr. Perry, I'm going to ask you to conclude now. I have never done that in a hearing, but we are not going to become a platform for agenda. I want comment on the Bill and if your next statement is not related to the Bill, in regard to what you would like us to do with the portion of the Bill that you find objectionable, I'm going to thank you for your testimony and close the public hearing.

Bob Perry: Bottom line is with the words "Unlimited" in this amendment, I hope we can begin to make changes by eliminating the word "Unlimited" with respect to campaign contributions.

Chair: Thank you –

Bob Perry: Thank you.

Chair: – for that input to what could be an amendment. Does anybody have any questions for Mr. Perry? Thank you.

Is there anybody else here who would like to speak to SB348? And Mr. Perry, if you could give me that pink card, that would be great.

Seeing none, I'm going to close the public hearing on 348 and we are in recess for a few minutes until 10:30 when we will have a hearing on 425 and the prime sponsor is here. So, if it wasn't for our clerk, I would just go right into it, but I will wait until 10:30. We are in recess. Thank you.

All right. We are rolling, everybody. This is the New Hampshire House Election Law Committee. We are back in session on this Friday, April 8th. It is 10:30 somewhere and with us to introduce House Bill 425 is the prime sponsor, Senator Gray. Welcome back this morning.

Senator Gray: Thank you. My name for the record is James Gray. I'm a Senator from District 6, which starts in Rochester, goes up Route 11 into Alton, Barnstead and Gilmanton.

Portal. This is an idea that I think its time has come, but it has one thing that you are going to find that it has a very healthy price tag.

And the reason for that price tag is that we're the only ones right now that are trying to do this. That if other departments, other divisions of state government come into this and use that portal that that price tag will be reduced and reduced and reduced.

Certain things that you could do for the DMV. Certain things that you could do for your taxes, combining that into the portal. Things that you can do for other functions in state government. What is my vision? My vision as Chair of the Senate Election law is that a citizen, there is never a question of can they vote and the question just comes where can they vote.

So, through the portal we want to use information that's out there. Probably this isn't secure information anymore, but I have a brother who was here with his then girlfriend, later his wife. They got married in New Hampshire in 1966 and my brother and sisters stood up for him at the City Hall in Dover. Okay. The city clerk has information. They can go into the vital records and look at that marriage certificate. And somebody can go in and tell me what my brother and my sister's first name is. I'm pretty sure that is somebody that has the right to go vote.

But there's other things out there. You send people a tax bill. Tax bill's got an account number on it. They can tell me what that account number is. That's pretty good information. But that's not the kind of information portal gives us. The portal uses a service, the way I understand it and IT department can correct me if I'm wrong, but there are services out there.

You know, when you go into the bank and you say, "Oh, I forgot my password." And they ask you who your grandfather's mother's maiden name is and they ask you, here's three addresses. Please pick the one that was associated with you. They give you a list of phone numbers and say, okay, which one of these. That information is in a database out there and it's the same one or run by the credit card companies the way I've been told. May be true, not true, but I'll let you figure it out.

And all that information is in a big database out there. And you know what? Because of all these other data breaches, you know, for social security number and other things, they have looked for these other things to be able to prove identity and prove who you are. And that's where I'm trying to get to that in every polling place, they will have internet access and they will be able to log in and say, okay, we know this about you.

Right now, in the current registration form, we ask for place of birth, date of birth. We ask for the driver's license and if you don't have the driver's license, please give me the last four digits of your social security number. We also know if they were registered in the state in another location. Part of this you'll actually see when you look at 418 that's going to come in front of you, or you look at the amendment that was never introduced over in the Senate for ways that that could happen.

But the thing is identity. In the statute right now, it says first of all you have to establish identity so that the records you present for citizenship, domicile, etc. and age we know that they apply to you. Okay. So, this comes with a price tag and the price tag is a lot more than what I wanted to debate. A lot more. But again, that cost as other departments at other functions in the state get on to this program, it will be cut half. It will be cut into a third, it will be cut into a fourth. It will be cut in whatever number of others. And New Hampshire is poised on that precipice where we need to start into this digital age. We've got people out there.

You know, I look at the polling place and I see a line at the registration table. If there was an app, the person in line could start typing in the information that's required and it's not all that much information that by the time they get there, hit the button, the person says, "Well, I got this number from the portal." The person goes in and checks, "Yep. Yep." We got all the stuff we need, have one form, they write the number up at the top, they sign to show you their ID and they walk out registered. Okay.

Those are my visions. But you've got to take small steps. And one of those steps is this portal. It's expensive. Yep. We're right upfront about it. It's expensive. And with that, I hope that you'll look kindly on this Bill. Again, I'd like to see the 20-0. But you know, I'm willing to discuss this with anybody who wants to vote against it and try to convince you. So, thank you, Madam Chair.

Chair: Thank you, Senator Gray. Any questions for Senator Gray?

Representative Torosian.

Rep. Torosian: Thank you, Madam Chair. Thank you, Senator, for taking the question. So, as I understand this legislation it would get the ball rolling with setting this portal up. With regards to towns and municipalities, would they have a choice to use it or not use it or would they have to all be enrolled in this once it's complete?

Senator Gray: The portal as it's described in this Bill would be for the collection of information to change party affiliation, to change name because you got married, to change address because you've moved, to change, to change, to change. And right now, that would have an interface. My vision is that it have an interface with the existing computer that we have and a notification would go to the supervisor, the checklist, and the clerk and that they would take the additional actions that was needed to accomplish the change. I think I forgot to mention party affiliation, if somebody wants to change that.

But this portal would not be able to do anything by itself. It would mean that that's the way you could notify the two groups, the clerk's office and the supervisor of the checklist, and then they would take it from there. Let's say a change of name because you got married. Certainly the city clerk could go into vital records if they were married in New Hampshire and be able to look in there and say, "Yep." And probably accept just the information that was on that form. But again, that's all up to the Secretary of State and the clerks and the supervisors of the checklist who are already trained in what they need for information.

Committee Chair: Further questions from Committee members? Representative Prudhomme O'Brien.

Rep. Prudhomme O'Brien: Thank you, Madam Chair. I'm looking at the expenditures on this and it just keeps going up and up. Why is that and do you think that trend would continue? Would it continue to go up and double each year?

Senator Gray: Well, part of what I've talked about is that this would be a subscription service, okay, that the person who turns 18 this year probably doesn't have a lot of credit card, banking, or other information that's in that portal. And so, two years from now there will be additional information. So, part of it is a subscription thing but for the real details on that they should be addressed to Commissioner **Goule**.

Rep. Prudhomme O'Brien: And Commissioner Goule would be commissioner of what?

Senator Gray: IT.

Rep. Prudhomme O'Brien: Thank you.

Chair: Thank you. Further questions from Committee members? Representative Muirhead.

Rep. Muirhead: Thank you, Madam Chair. Thank you, Senator. Could I just follow up on your answer to Rep. Prudhomme O'Brien? Would this election portal have my credit card information?

Senator Gray: This database would have access to data that was in the subscription service that they had. So, it would not contain any information that is not either public record or whatever.

Rep. Muirhead: I have a follow-up, Madam Chair. How many other states use a system like this or this system that you're imagining?

Senator Gray: If the question is not that the state government uses that system, which is that thing I don't know, but like the city of Rochester. For their economic development group to be able to say, Gee, this data says that we need a clothing store over here. Gee, this data says that a shoe store we'll do over there. It's all the same kind of data that you've got so I wouldn't hesitate to say that that data is being used in every state and in quite a few municipalities within the state. But I couldn't tell you that any of it is state sanctioned.

Rep. Muirhead: May I have one more small follow up, Madam Chair?

Chair: Follow-up.

Rep. Muirhead: Would you welcome a study group to flush out this idea or are you convinced that it should be legislated at this point in time?

Senator Gray: Would I welcome a study group? The answer to that is when you're the sponsor of a Bill is always No. I mean, the reason I put the Bill in is because I think it's something that the time has come. We have in the Senate as some of the people behind me probably will testify that it's an idea that we've talked about. COVID probably got in the way. But, you know, Mrs. **Tentorelli** probably even in some of her other statements told me I was her best friend forever about three years ago. You know, because I introduced –

Chair: We try to not hold anybody to prior statements before they come in this room, Senator Gray. It just causes all sorts of problems for everybody.

Senator Gray: We have that love-hate relationship.

Chair: Say no more. That's fine. Let's move on.

Senator Gray: I mean, this Bill is your Bill now, okay. It is in your Committee. You have control of it. Okay.

Chair: All right. Thank you. Representative Bergeron.

Rep. Bergeron: Yes, thank you. This is a very simple question I think, Senator Gray. Were you aware that the New Hampshire cities and towns and the Department of Vital Records already uses the service you described for VitalChek? If someone wants to order a vital record, they have to prove their identity. And VitalChek, which is a private corporation, uses that type of service.

There'll be four or five questions that are generated using credit reports and other public records and the person has to answer those questions correctly in order to have access to be able to order a birth certificate. Because here in New Hampshire those records are confidential and this is how they establish the identity of the person that wants to access the record.

Senator Gray: I will certainly inform Commissioner Goule of your statement and make sure he's got your phone number.

Rep. Bergeron: Thank you.

Chair: Any further questions for Senator Gray? Representative Hamer.

Rep. Hamer: Hi, Senator Gray. Is there – you mention about changing your party affiliation. Is there a time limit on that prior to the election?

Senator Gray: That's kind of not really part of this Bill. But certainly there is that traditionally, like in the General Election, the period for being able to change your party affiliation stops at the period of time when you can sign up as a candidate so that there isn't people that are swapping in and out of the parties during that time and trying to use that as a way to get an advantage. When they see somebody that's not signed up for a particular political party in an office they want, I'm told that in the far past they used to go down and register for that party, put their name on the ballot. But that's prohibited now.

Rep. Hamer: Thank you.

Chair: Further questions from Committee? It appears the members have no more questions for you, Senator Gray. Thank you for joining us this morning and for introducing the Bills.

Senator Gray: It's been a pleasure.

Chair: Also, signed up to speak on 425, I'm going to recognize Liz Tentorelli next. Lest she forgets what Senator Gray expects her to say.

Liz Tentorelli: Thank you, Madam Chair. My name is Liz Tentorelli. I'm President of the League of Women Voters of New Hampshire. And when I first became of this Bill it was as an amendment to, I think it was a proposed automatic voter registration bill that was, as you can imagine, didn't go anywhere. And that was two years ago. So, I was testifying in support of that on the theory that people ought to be able to register. They can go to the DMV and get their driver's license and maybe there's a way to register at the same time. And then Senator Gray kind of waved these papers at me and said, "Look at this." And I embarrassed myself in the public hearing by saying "You're my BFF now." So, he's quite right in this story.

While it's not an automatic voter registration bill, it does allow people to start the voter registration process online. They already have information in the system and it also allows them to change addresses. My grandson at that time was moving from between jobs from college to job to next job and changing apartments in another state. And he was able to do all those address changes online so that he could continue voting. And I believe that this system as it was described then would be an advantage to voters. You know, we can all change our party affiliation back to "Undeclared" as we leave the polling place. And sometimes that's confusing and people forget to do it. This would allow someone to do that online later.

So, I see this Bill as a real boon for voters for convenience. And so, I testified when this Bill was in the Senate a few weeks ago and said it's probably the only time that I've been able to testify in support of a Bill that had all the sponsors that were on the Committee, bi-partisan support, sitting there. And then it got voted out of Committee unanimously, "Ought to Pass." That was a joyous me for me and I just wanted to encourage you to do the same thing. Thank you.

Chair: Thank you. Any questions for Miss Tentorelli? Seeing none, thank you for being with us this morning. Also, signed up to speak we are on SB425 is Michael O'Brien.

Michael O'Brien: Thank you, Madam Chairwoman to the Committee. My name is Michael O'Brien here on behalf of America Votes. I'm here in support of the election commission portal for many of the reasons

that Miss Tentorelli just expressed to you all. But also, think about it in a slightly different context. I think, you know, in a very short amount of time we're about to spend a lot of time talking about voter registration and that process. And one of the advantages to the portal is that if folks are able to do this before they get to election day, it lessens the number of folks who will have to make these changes on election day.

Oftentimes when we see affidavits filled out, if you talk to moderators and clerks around the state it's because the person has moved, either out of ward or into a new town and doesn't have the necessary documentation with them. And so, then they get put onto this affidavit and now they're part of the numbers that we see and may eventually do prove, obviously, these things. But getting ahead of this and allowing folks to do this online would help to eliminate some of those numbers. It would give the Attorney General more time to use their limited resources on folks who maybe didn't use – they're trying to track down these folks. They try to track down after elections.

And so, for those reasons I think it's a good tool to help us get in front of some of these numbers that we see and for people that may have a hard time proving they are who they say they are or where they say they live. And so, that would be part of the reason why we're supporting this here today and I'm happy to take any questions about it.

Chair: Thank you. Questions? I have a question, Mr. O'Brien.

Michael O'Brien: Sure.

Chair: As I'm listening to all this wonderful information that you can get online, talking to someone who hates having to get online for anything. I heard one of the things that would say that you put in a couple of pieces of data and you get to pick. I think the example this morning was your phone number. So, depending on the design of the system, do you agree that you might be able to find your way into somebody else's information? And I say that speaking to someone who I recall at prior hearings saying something, which we're not supposed to – I just said don't do.

Talking about how common a name some people have and that by inputting it –

Michael O'Brien: That's a good name. That was a long time ago we had that conversation.

Chair: – you can input it and end up with somebody completely different.

Michael O'Brien: So, here's what I'll say about this portal that we've seen. I think New Hampshire now is in a very small minority of states that don't have some sort of online portal that they can use to register to vote or to update addresses or update information. So, luckily, we don't need to start from scratch here in figuring this out. We have, I think, last time I knew and I can email, but I think it's 39 or 40 states have some sort of online portal where folks can register, including other states that are MVRA exempt states, or motor voter exempt states.

And so, luckily, we can look to them because these folks have been doing this, and it's not new anymore. We're talking about something that states started doing over a decade ago. Finally doing here. And so, we can look to them and help figure out what safeguards they used to make sure that the right Michael O'Brien is the one that's accessing that record. It's also important to note that ultimately, the final decision here still rests with the supervisor of the checklist. The supervisor sees something that they feel isn't quite right, that doesn't quite, you know, compute for them. They still have the ultimate say on if that name goes on the checklist or not, right? This is not an automatic voter registration program or an automated voter registration program as Liz Tentorelli just said. And so, I think there are safeguards with system and we can look to other places to figure out how best to secure the information that we're talking about.

Chair: And seeing nobody else on the Committee. I'll recognize Representative Prudhomme O'Brien.

Rep. Prudhomme O'Brien: I just wanted to make a personal comment about common names. I am not related to the man speaking right now and the reason I have such a long name and two last names is because the last name is so common and I have experienced a lot of problems, such as almost getting a medical procedure that I was not signed up for because there was another Kathy O'Brien. And that's not really my name but that was her name and she was in the waiting room and caused a lot of problems.

Michael O'Brien: Sure. Listen, I've been, you know, this was a long time ago probably in a different time in history. But when I was younger my name was on a list when I went in the airplane because there was a Michael O'Brien, probably somewhere in Ireland or Northern Ireland I suspect that get flagged for some reason, right. But they were able to determine who I was. There were steps to be taken to

figure out that the little 12-year-old boy who was trying to get on the airplane was not the same one they were looking for.

And that's the point here, right? Is there are steps that you can take, there are places we can look to to help figure this out. This is not new. We're not venturing into some unknown land that we've never been to before and so there are answers here that we can find. I saw our Secretary of State has put out an RFP for a program like this and I'm sure the vendors can help explain that and make sure that we're finding the right folks.

Chair: All right. And then Representative **Wellher**.

Rep. Wellher: Thank you, Madam Chair. I just want to clarify that you're not the Honorable State Representative from Nashua. Is that correct?

Michael O'Brien: I am not, not the Honorable –

Rep. Wellher: Okay.

Michael O'Brien: As he would often tell me when I worked in the Democratic Caucus that he's the Original Michael O'Brien.

Rep. Wellher: Thank you.

Chair: I would like to ask your opinion on the development of this because you just spoke to the fact that we have other states that we can go to and you heard the sponsor be asked a question about a study committee. So, this Bill proposes that our government bureaucracies themselves develop this portal. There is no outside input. This Bill proposes the Secretary of State consulting with GIT, Department of Safety, Division of Motor Vehicles, city and town clerks, supervisors of the checklist. Do you have any experience with other legislation dealing with this type of thing as to whether or not those things either have an oversight or people other than employees of the bureaucracy overseeing it.

Michael O'Brien: I guess I don't have a – I would have to think about that. I don't think that I have personal experience with that. I will say that, again, I think you'd look at other states. You can see this is the way they're developed. And the fact that we're talking about supervisors and clerks and moderators having this voice is really important.
I also, I would have to look at the effective date, but I don't think it's tomorrow, right? I think there's a bit of time here for this to be developed in a way.

Chair: Sixty days.

Michael O'Brien: I'd have to re-look at the Bill. That's probably from passage, but then there's a time before the system becomes live.

Chair: Oh, yeah.

Michael O'Brien: Correct? So, there's going to be time for this thing to be built out. This is not 4/20/22. We're not trying to like jam this in in the next six months. I think it's probably before the 2024 election. So, there is time for this to be built out in an appropriate way within this Bill.

Chair: Further questions for Mr. O'Brien? Seeing none, thank you for joining us this morning. Also signed up to speak on SB425 is Olivia Zinc.

Olivia Zinc: Olivia Zinc, Open Democracy. And we're in support of 425. I just want to speak to a couple of things. I think it's really important that we have a clean checklist. That the checklists are updated and that we know what are the voters. I was once checking in voters and somebody came. They name was T-O and they weren't there. And I was like, you're not a registered voter and they said to me, "Well, I've voted before." And I just happened to check and they were under the checklist as T-A, and when the supervisor put them in they made a mistake because their handwriting. And we pulled back the form and we could understand how the supervisor of the checklist made that error on the checklist.

But I think if people are typing in their own name, you're likely not to have those kinds of errors happen. I just checked the National Committee on State Legislators said there's 42 states that have these other systems to answer that question. This Bill is not a new idea. I think it's been floating around the legislature for at least six years in concept form. So, as far as studying I feel like it gets better and better each time it's been introduced.

To the point of the fiscal note, it did not cost California this much money to implement a program like that. And I would venture to guess California has a lot more registered voters than we do in New Hampshire. So, I don't think that the fiscal note will be quite so high as what is being proposed.

And I want to remind the committee that the cost of keeping the checklist up to date is actually on the backs of our local communities. It costs about $3 to $4 to input the data. Between the

clerks and the supervisors of the checklist, many communities don't pay their supervisors of the checklist but a lot of them do pay their supervisors of the checklist to come in and enter that data and it is about $3 to $4 per person that they entered in. And that cost currently is being paid for by cities and towns and so this does centralize those costs and can save municipal communities a little bit of money on that registration. Madam, I'm happy to take any questions.

Chair: Thank you. Any questions for Miss Zinc? I'm not seeing any. Thank you for coming.

That is the last card I have for 425. Is there anybody else who wants to speak to 425? Seeing none, I'm going to close the public hearing on 425. And it looks to me that we might be right at 11:00. So, I am going to move on and open the public hearing on 418. Senator Giuda has sent a message that he is not available for a little bit. I suspect that this will take until at least that point. Representative Torosian, would you – Senator Gray, what?

Senator Gray: Since it came out of my Committee, I'd be happy to fill in –

Chair: If you wouldn't mind having a seat and introducing it, just to tell us it's yours now and we'll move on to public testimony. I understand Senator Giuda is planning on being here later and we'll recognize him when he arrives.

Senator Gray: Excellent.

Chair: Thank you.

Senator Gray: My name is James Gray. I'm a Senator from District 6 and this is Senate Bill 418, relative to the verification of voter affidavits.

As I've testified earlier today, certainly it is my intention that we make it as unobtrusive as possible for people to vote and one of the amendments that you'll actually see in there talks about—that was incorporated into the bill—talks about being able to use prior election data to verify some of the information that's in there.
Many people have talked about the constitutionality of this Bill, whether or not it will be found by the courts. Certainly, I consulted as Chair of the Senate Election Law Committee with various attorneys on that and I got a variety of answers. But to sum up my opinion after talking to all of those people is that on its face, this Bill is not unconstitutional. But then when you look at the Supreme Court decision about SB3, talking about long lines, talking about

other things that are in there that are not really provisions in the Bill, but were reported to be consequences of the Bill.

And that's why I believe that cutting down that number of people who would have to fill out an affidavit in the first place and some of the things that aren't in this Bill that you may want to consider. You know, ways to reduce that number of lists or collect additional data that would help you find that individual afterward. The Secretary of State's office, I believe, will testify on whether or not this Bill would cause a problem with the General Election if done in Primary or other elections, so I won't need to go there. But this does not create – it creates an affidavit ballot and the reason that we use that term instead of provisional ballot is to distinguish it from the characteristics of the provisional ballot.

So, if you have any more questions since I'm just a substitute here, I'll try to answer them but when Senator Giuda does get here or the other people to testify behind me, certainly they can answer things I can't.

Chair: Thank you, Senator. Questions? Representative Bergeron.

Rep. Bergeron: Thank you, Madam Chair. Senator, this is a question I think you might be able to help us out with. During Senate testimony, didn't Secretary of State Scanlan suggest that the Senate might want to table it and ask for an opinion from the Supreme Court on the constitutionality of this Bill. And since that wasn't done, could you explain the reasons behind that, why nothing was done?

Senator Gray: Certainly. To be able to do that in the Senate, we would have to create a Resolution, take the Bill that was subject to that Resolution, and then pass the Resolution and send it off to the Supreme Court. Right now, to do that would take this Bill and move it to, at least, the next legislative session since there was still work going on on this Bill up until about a week and a half before crossover.

And you know that once I get to crossover, if it's a Senate Bill, I lose my ability to take action on it this year. So, for all those reasons, as I did testify originally, I did consult with various attorneys on the constitutionality of this Bill. Some said it was constitutional, some said it wasn't constitutional. But the ones who said it wasn't led me to go back and look at the decision on SB3 and read that from the Supreme Court and the reasons that they used. And that again, the amendment that you see in there about using prior data, other data that's in the election database, to be

able to cut down on the process time, etc. was one of the reasons why that was done.

Rep. Bergeron: Thank you.

Chair: Further questions from Committee members for Senator Gray? Representative Torosian.

Rep. Torosian: Thank you, Madam Chair. Thank you again, Senator, for taking the question. So, just to kind of follow up on that a little bit, there's been some chatter suggesting that this would have a legal problem, similar to Senate Bill 3. But you commented that it's different enough that this should pass any kind of legal challenge?

Senator Gray: I would answer that question by telling you that I have been surprised many times by decisions of both the New Hampshire Supreme Court and the Supreme Court of the United States. And so, my confidence, I really can't speak to it because of the number of times I was surprised.

Chair: Further questions from Committee members? Seeing none, thank you – Representative Muirhead.

Rep. Muirhead: Thank you, Madam Chair. Would you accept another question?

Senator Gray: Oh, I thought I was done.

Chair: Yes, I'm sorry. I said "thank you" and then as I was turning my head, I saw Representative Muirhead. I apologize.

Senator Gray: As many questions as you've got, I'll attempt to answer.

Rep. Muirhead: Thank you, Senator.

Chair: All right. Remember we have the sponsor of the Bill coming later.

Rep. Muirhead: Oh, we do? Okay. I thought the sponsor wasn't coming. I'm so sorry. I'll pass but thank you for so generously offering to answer the question.

Chair: Thank you. All right. Now any more questions for Senator Gray before I thank him for being here? All right. That's it. I think I've seen everybody now. Thank you, Senator.

Senator Gray: All right.

Chair: All right. We have a number, as you all might suspect, a number of people signed up to speak on this Bill. We are going to limit testimony to three minutes to make sure – and I need to tell you at that, we are still at well over an hour. So, with that, I'm going to start going through my pink cards and I won't be surprised if I continue to get them throughout the hearing. And the first person I'm going to recognize here is Sue **Nestasee** from Rollinsford Dover. Oh, sorry. Did you not want the honors of going first? Come on up. All right, good. Come on up.

Sue Nestasee: I'm Sue Nestasee, a voter Rollinsford, one of the town's three supervisors of the checklist, planning board member, and proudly a League of Women Voters New Hampshire State board member. Chair, Miss Barbara Griffin, and members of the Election Law Committee, thank you for your time to discuss Senate Bill 418.

There are three main issues why I am here opposing this Bill. First, in the case of a registered voter that does not have their ID available or a resident wants to register on election day but without enough ID. The provisional ballot plus possible new voter packet causes lines and confusion. Next, remember when the September is, that you will carve out the military or those citizens overseas. The ballots must be mailed 45 days before the General Election. There is a strong possibility that those ballots will not be received to be counted. Those ballots do not count. They're not received, not counted.

Next, there are privacy issues. When a ballot must be pulled by the moderator, names matched, and sent to Concord when the voter did not contact the town or city clerk with complete documentation. Election night results are just "sort of" totaled, subject to change 10 days later. These "sort of" totals for New Hampshire and being first-in-the-nation state, with the "eh" election results, that is very difficult to take on the national scene. Quotes from co-election day workers, the Bill: "It is a solution in search of a problem." Where and who will fit the bill for the $27.00 pre-paid mailers? The state or town/city.

Downshifting to local levels of expenses exist. The current affidavit used on election day is sufficient without the provisional ballot. As one of Rollinsford's supervisors, I look forward to being serviceable to the voters. Use the right to vote without the constitutional right of privacy, the right to register and vote on election day.

I can visualize an example of a parent carrying a very young child,

arriving at the polling location, picked up from a sitter after work, and the supervisor asks for an ID that by chance was forgotten. The parent is tired, very tired and here she must go through extra procedures to be sure his or her vote counts. A photo must be taken, clipped to paperwork, and the additional chore receiving –

Chair: Just so you know, you're at three minutes, so I'm going to ask you to finish up.

Sue Nestasee: Oh, I didn't realize. But thank you.

Chair: I'll tell you an old trick when I started this. I used to time myself on the microwave.

Sue Nestasee: The microwave.

Chair: I couldn't figure out how to work the clock on my phone.

Sue Nestasee: Well, encourage voters and I want to thank you for your time. I ask you for you all to support who you are serving. Your constituents, the voters, and I'm sorry I have to give shoutout of terrific Patricia, that trains and takes care of all the help line people for all the supervisors. Oh, the best. At first, I was concerned when new of calling the help line. They're terrific, and they really are. And I brought my campaign button when I first ran as supervisor. This was made in your house, Senator Gray. Yes, from his campaign machine.

Chair: Secrets, secrets, secrets here. Unknown facts. All unrelated so I let her go over the three minutes.

Sue Nestasee: Thank you for your time.

Chair: Thank you for coming. Does anybody have any questions? Representative Bergeron.

Rep. Bergeron: Madam Chair.

Chair: Representative Bergeron would like to ask you a question. Are you okay? You don't have to take it if you don't want.

Sue Nestasee: Okay.

Chair: Representative Bergeron is usually pretty nice.

Rep. Bergeron: I try to be kind, so I won't put you on the spot. But this is a

question that I think is perfect for us to ask of a supervisor of the checklist. At the polls, what's your role? Is it to register people to vote?

Sue Nestasee: Yes, that's part of it. Yes.

Rep. Bergeron: Currently – I'm sorry, follow-up. Currently if someone goes to the checklist and doesn't have an ID they're directed to go to a "No ID" table, where they fill out the affidavit, and have their picture taken. This Bill would require the voter to go to your table, the Voter Registration table, even though they're already registered to vote. At that point, you redirect them back to the moderator for the "No ID" table and they have to fill out the affidavit and have their picture done. Does it make any sense to you that the voter is going to have to get away from the checklist, wait in line at your table, only to be sent over to see the moderator?

Sue Nestasee: Well, I guess it's situational per town of exact placement and sequence of events. But I do know in Rollinsford that when they don't have their ID with the ballot clerk and they come to one of three of us and if they are busy, I'm here to make sure that they fill out the affidavit and let them know to bring in their ID. But maybe due to the size of Rollinsford, that if they don't bring it in, everyone seems to know who to call to get their ID and it's fine. It's amazing. Even if someone doesn't have their ID and there's recognizing some people. I know some people have lived forever in generations in one little locale. But so, for Rollinsford they fill out the affidavit and they get the photo and then go back to the ballot clerk and everything's fine.

Rep. Bergeron: Thank you.

Chair: Any further questions? Seeing none, thank you. Also signed up to speak on this Bill is Louise Spencer. I can't understand you. I'll do him next. How about we do that?

Louise Spencer: Dr. **Peransovich**. He had put his card up and it got lost in the shuffle.

Chair: Well, I mean, I'm getting. Okay.

Louise Spencer: Thank you so much.

Chair: All right. Go ahead.

Louise Spencer: Hi. My name's Louise Spencer and I'm from Concord, New

Hampshire. And I am the co-founder of the Country Coalition, which is an all-volunteer, grassroots advocacy organization. I'm speaking here today on my own behalf, but I know for a fact that many, many members of our organization signed in on this Bill to oppose it and that I feel very comfortable saying that Country opposes this bill.

What I'd like to speak is following up on what the prior speaker spoke to, which is the logistical nightmare that this Bill would present on election day. And it speaks to many of the issues that were raised in the SB3 lawsuit in terms of the amount of extra time that will be added to the process of registering to vote and voting. So, I know that there's an effort to try to provide alternative ways to verify voter information for those voters who are already registered but perhaps don't have their ID. When I observed the election in Windham recently, I spoke to the supervisors of the checklist there.

They said it's one thing if it's a slow election, but when it's a busy General Election, particularly a presidential election, they have very little time to do anything but to actually register the voters and move them along. So, they have very little time to get on a computer to check ElectioNet and often during a very busy election, ElectioNet is down and they can't even access that information at all. So, we're talking about adding a whole other layer of process on top of, in busy precincts, a process that's already can be resolved in lines.

So, I think when we're talking about a small town, this may not appear to have much of an impact. But if you've ever been to elections in Durham or Windham or Hanover or some of the places where – and Manchester – where you tend to get long lines anyway. As soon as you start adding on extra steps and extra process, you start adding extra time. And that is something that creates difficulties for the voter and certainly for election officials. So, I really urge you to vote ITL on this Bill. So, thank you very much.

Chair: Thank you. Any questions for Miss Spencer?
Representative Bergeron.

Rep. Bergeron: No, sorry.

Chair: Representative Torosian.

Rep. Torosian: Thank you, Madam Chair. Ma'am, thank you for taking the

question. So, under current law, is it more efficient and more timely if the voter when they come to the polls has a ballot ID with them?

Louise Spencer: It certainly is and when I go out to speak with voters, I always encourage them to bring the documentation – whatever documentation that will help make the process as smooth as possible. I would love to see us do more education prior to election so that voters really aware of what they need to bring. That's not always clear on town and city websites and I think we could do a huge effort, in terms of voter education about what can make the process go smoother.

I'm also aware, as someone who spoke to about, the mother that shows up quickly after work having picked up her kid at childcare. Oh my gosh, I forgot my license. That happens. It's going to happen. The other issue I would point out is, this was a purge year, and a lot of people are going to be showing up thinking that they are on the rolls, only to find out they aren't. And they will not necessarily come their passport in hand and their birth certificate in hand because they will think that they've already established those qualifications.

Chair: Further questions from Committee members? Seeing none, thank you.

Louise Spencer: Thank you.

Chair: All right. Next to speak, Nick – thank you. I'm not going to beg for forgiveness, I'm going to ask you to just pronounce your name and thank you.

Nick Peransovich: My name is Nick Peransovich. I've lived in Concord for 34 years. Retired now. When I read about this Bill – I'd like to focus pretty much on the absentee ballot part, which has already been mentioned briefly. And thank you for allowing me to speak. Thank you.

Chair: Excuse me just a minute. Committee members, you're going to have to share a little bit on this. We don't have 20 copies.

Nick Peransovich: I don't have enough, I'm sorry.
Chair: Okay. Thanks.

Nick Peransovich: I'd like to start my testimony by asking the Committee a question. Have you seen the movie *Saving Private Ryan*? It's been almost 25

years. So, that movie came out in 1988. I saw it with my wife and friends. And before it left the movie theaters then, there wasn't any HBO thing then. I got my three late-teenage children to go see the movie with me, which I don't think I had done before or since. I wanted them to see that first 23 minutes. If you remember the movie, it was pretty stark about invading Omaha Beach on June 6, 1944. And I remember when we got out of the movie, one of my children said, "So, what's the message, Dad?" and I said, "Well, if I find out you don't vote, I'm going to disown you." And you're all about to go to college.

And I track it. They do both. I looked up a little history because it was a personal thing to me, to some extent. During World War II, it was very hard to get those GIs to get to vote. So, they passed a Bill in '42 saying we'll them absentee ballots. But it wasn't happening. So, by '44, right about the time of D-Day, more emphasis was pushed on the state to do it. And it didn't work all that well either. I mean, it was not coincidental because D-Day was in the news, and so forth.

Going fast forward a bit I found myself living in Scotland for two years and I wanted to vote in the election at that point. My residence was Massachusetts. It was a bit of a problem getting the absentee ballot, but I got it and I voted. And then two years later I found myself living for two years as an active-duty person in the Air Force. And when I was overseas then it was also a challenge. My state at that point, by record, was Massachusetts. So, I felt at that point something better ought to happen. And it did. In 1986 under the Reagan administration, they passed the UOCAVA, the thing you are all talking about. And it's uniformed and overseas citizens. So, back when I was in Scotland for a year, I was an overseas citizen. I fit that category.

And that's where you heard all the rules about 45 days. I'm not going to go over it, it's already been mentioned. So, basically, this Bill makes it really hard for that absentee ballot, not only for the uniformed folks but anybody who's working a job in say London for a year or two to get through and vote not only in this Primary, but in the General Election will be very difficult. Adding the 10-14 days makes it virtually impossible. So, my final comment is basically, let's not forget what those folks did on Omaha Beach. This law that was based on the Reagan administration is a really good idea and should be enforced.

And I think the solution – I have to believe the people who wrote this Bill just didn't think about this. But if you're going to pass this

Bill and you want a solution, one of two things. Either you lengthen the time between the Primary and Election, so you've got those 14 days kicked in and you still have those 45 days. Or the other option is make it possible like 31 other states. We're in a group of 19 that you can't do an absentee ballot electronically. So, that may be even a quicker solution. You might even have time between now and the fall. And that's all I'd like to say.

Chair: Thank you very much for your testimony. Does anybody have any questions for the witness? Seeing none, thank you for joining us here this morning.

Nick Peransovich: Thank you.

Chair: Also signed up to speak on this Bill is Lisa **Daniss**. Good morning.

Lisa Daniss: Good morning. My written testimony should have been submitted also.

Chair: Okay. Great.

Lisa Daniss: Promise I'm not going to read this binder. Good morning. My name is Lisa Daniss and I am testifying on behalf of the Brennan Center for Justice about the significant chance that New Hampshire will lose its exemption to the National Voter Registration Act if it passes Senate Bill 418.

I have been working on NVRA implementation and enforcement for over 15 years and, in fact, I brought with me today one of the original paper handbooks on implementation of the NVRA. You can see the handbook is hundreds of pages long, detailing requirements that New Hampshire will have to implement and comply with if it loses its exemption. And losing its exemption is a one-way street. Once New Hampshire loses its exemption, it cannot get it back. SB 418 could cost New Hampshire its exemption for two reasons, at least.

First, SB418 would be a substantive change to election day registration, such that the law likely will not qualify as in effect continuously and, therefore, the law that triggered the exemption will no longer remain in effect. Second, SB418 changes the NVRA law so that not every eligible voter is able to register at the polling place, a key requirement of the NVRA exemption. If New Hampshire loses its NVRA exemption, the law must be implemented immediately and New Hampshire will face multiple consequences requiring money, time, and staffing resources.

I'm going to try to get through the whole list of what New Hampshire will have to do. I don't know if I can do it in the time limit, but I'll try.

Chair: I'll actually stipulate you can't. How's that?

Lisa Daniss: All right. Well, I'll do my best. First, New –

Chair: So, my suggestion is if there's something you want to say in conclusion to the list, because I'm pretty familiar with the list – I know I'm familiar with the list. So, go ahead. Okay, all right.

Lisa Daniss: So, first New Hampshire will have to begin offering simultaneous driver's license and voter registration applications in person and online and will have to do the same for driver's license renewal applications. It will have to implement robust voter registration services as part of each application, renewal, and change of address through any agencies providing public assistance and any state-funded office primarily serving people with disabilities. These changes require New Hampshire to design and distribute new forms, rewrite policies, and re-train employees at all of these agencies.

New Hampshire would have to begin accepting the federal mail voter registration form from any eligible citizen who submits it. This could greatly increase the volume of New Hampshire voters using mail registration and also would preclude New Hampshire from requiring the federal form to be notarized or a requirement that a voter provide documentary proof of citizenship. New Hampshire would have to change the way election officials handle voter list maintenance and purging.

The NVRA regulates list maintenance in a lot of ways including a bar on systemic removal of voters within 90 days of any federal election and removing voters for suspicion – sorry, for inactivity without first sending a specific notice and waiting through federal election cycles. And significantly, if New Hampshire fails to implement any of these new requirements, does so out of compliance with the statute or fails to take the requirement seriously, the state can be sued, indeed, should expect to be sued by the Department of Justice or private litigants. And any private party that prevails against the state would be able to seek payment of attorney's fees, costs, and expenses.

Chair: I'm going to need you to wrap up. I knew you wouldn't make it.

Lisa Daniss: Thank you for the opportunity to testify. I urge the Committee to refrain from advancing it.

Chair: Any questions? Representative Berry.

Rep. Berry: Thank you. Thank you for taking my question. So, when I read this Bill the first thing I saw was they're trying to find a way to get around the NVRA. I'm a fan of the NVRA. There's things in the NVRA that I really like. Like we could get rid of same day registration and have a robust registration program before the day, thereby ending the lines on Election Day, smoothing up the process of getting people through to the ballot. We could do other things such as not having a 10-year purge where if the – like right now we just did our purge and our voter rolls shrank 25%, which means 25% of our voter roll was inaccurate.

We can't do it any more often than that because we're not in NVRA. We can't actually require somebody to show an ID when they're registering to vote or voting because of the NVRA, because we're not doing these things. So, you're saying that with this Bill we would trigger the NVRA and New Hampshire would go under the NVRA and then we could implement the other provisions of the NVRA?

Lisa Daniss: You would have to implement the other provisions of the NVRA.

Rep. Berry: Oh. Thank you.

Chair: Further questions? Representative Wilhelm.

Rep. Wilhelm: Thank you, Madam Chair, and thanks for taking my question. Do you have a sense of how much it would cost the State of New Hampshire to implement the NVRA programs that you outlined?

Lisa Daniss: So, there is an independent estimate of that and if it's okay – it's actually in a text on my phone. Is it okay for me to get that out?

Rep. Wilhelm: Sure.

Chair: Go ahead.

Lisa Daniss: Thanks. I got that estimate just before I walked in the door. An independent estimate has put it at $6.5 million in upfront costs. $2.5 million annually and then whatever is awarded as part of attorney's fees, costs, and expenses in the litigation that's sure to come.

Rep. Wilhelm: Thank you.

Lisa Daniss: You're welcome.

Chair: Further questions. Seeing none, thank you.

Lisa Daniss: Thank you so much.

Chair: Also signed up to speak on this Bill is Peter **Vasalier** from Milford.

Peter Vasalier: Thank you, Madam Chair. My name is Peter Vasalier. I'm from Milford. I am the town moderator and the school district moderator and I've been serving in those roles since 2008. My goal as a moderator, as I've said many times over the years, is to ensure that we have a safe, secure, and trustworthy election. I'm opposed to the legislation as proposed and as amended, as I understand it. I've provided the Committee with a lengthy email last night. I don't intend to go into that in detail today, unless you prompt me to.

But I would like to point out five important items that relate to the proposed legislation. First is that there is no definition of "affidavit ballot." And by that I'm talking about the description of the actual ballot itself. What does it look like? And one point to consider is, does it need to have the phrase "affidavit ballot" printed on the document? There's nothing in the language that addresses how this will look. What kind of paper it ought to be on? Is it a colored paper? If it's a colored paper, how do we distinguish it between other ballots, like at a Primary Election, for example. And another aspect of this legislation is that it is going to be very difficult to disguise a voter's name and keeping that person confidential if their ballot is removed from the tally.

In Milford we have almost 10,000 voters and at the March election last month we had one CVA. So, if that person doesn't provide the appropriate documentation to the Secretary of State within 10 days, that person – their vote is going to be removed. Now during the course of the day, depending upon what that ballot looks like, voters who are in the polling place, election officials who are in the polling place, will know that. Oh, there's the one person that went through, had an affidavit ballot and now their vote is being removed because they didn't provide documentation in a timely fashion.

This gets me to another very important point and that is the 10 days within which the voter has to provide the necessary

information. I think that's a serious flaw because what happens if a person mails the package to the Secretary of State's office on the 10th day and it arrives at the Secretary of State's office on the 12th or 13th day because of a weekend or a holiday. I suggest strongly that you consider a postmark. The packet has to be postmarked by a certain date so that everybody knows, including the voter, and the voter can prove to anybody after the fact that they did submit their documentation. And indeed, if they were to be wrongly removed because they did provide the information, at least they would have evidence to show to the Secretary of State that I did my part. The postal service, for whatever reason, did not deliver it on time.

Chair: Thank you. If you could wrap up.

Peter Vasalier: I'm sorry.

Chair: If you could wrap up, you're over the three minutes.

Peter Vasalier: Yes, okay. The other is what I would really like to suggest is, based partly on my experience back in 2013 or '15 when we first had the voter ID, photo ID. The very first person to come into the Milford polling place and ask me to vouch for them, no lie, was Senate President Peter Bragdon. It was March election, he had left his ID out in the car, and he had to get the car as quickly as possible. I think that if you were to make this work, focus, please on the people who are trying to register to vote and don't have the necessary information. But if a voter, like Mr. Bragdon or like myself, I've been voting in town for many, many decades now.

If we know that those people are already registered and they only forgot their ID, why do we ask them to go out to the car, why do we ask them to go home? Let's have them fill out the CVA and just follow the normal course as it exists today. But have a separate, if you wish, process for the voter who would like to register and does not have the necessary information. Let's not penalize the people who have made a sincere effort to come to the polls and vote by having them do something that a person who is voting by absentee does not have to do.

Chair: Thank you.

Peter Vasalier: Thank you.

Chair: Are there any questions? Representative Bergeron.

Rep. Bergeron: Thank you, Madam Chair, and thank you for your testimony. The talk about the need to describe what an affidavit ballot is. There's a provision in state law 656.16, which currently states: "There shall be no impression or mark to distinguish one general election ballot from another." That's not being repealed under Senate Bill 418. In your opinion as a moderator, where the Bill says "The Moderator shall mark each affidavit ballot, affidavit ballot 'No. such'." Wouldn't that be in conflict with existing law that there shall be no impression or mark place on the ballots to distinguish them?

Peter Vasalier: It would certainly seem to be.

Rep. Bergeron: Thank you.

Chair: Further questions? Representative.

Rep. Telerski: Telerski. Thank you, Madam Chair. Thank you for taking my question. The way you described your example of having one challenged voter affidavit. When you, at the end of the night, pull out all the ballots and sort them and just count them to make sure that your numbers all line up, what I understand is that if you have that one yellow or marked ballot or whatever, the election officials who know that John Doe filled out that one would be able to see exactly who he voted for. Did I understand that correctly?

Peter Vasalier: Yes, that's correct. Under the proposal if there's the one affidavit ballot and whoever the election official is that is handling that ballot will, if they know who completed the ballot, they'll know how they voted. Absolutely. But we also, on the other hand, we also trust our election officials and when I'm assisting a voter, I'm not really looking at how they vote. And so, we're still in that process. While it's entirely possible for me pulling the ballot out of the box of the placket on the side of the AccuVote machine in order to have it counted by hand. The bigger point is that that ballot, if it's distinguished enough that it's different from the town or the school or the Primary or the General Election ballot or whatever the election is, other people who are in the polling place, who are not constrained by election law to handle this information confidentially, will have an idea of who that individual was and how they voted, if the tally is removed.

Rep. Telerski: Thank you very much.

Chair: Further questions? Seeing none, thank you.

Peter Vasalier: Thank you, Madam Chair.

Chair: Also signed up to speak is Linda Bundy. Welcome back this week.

Linda Bundy: Good morning, Madam Chair and members of the House Election Law Committee. My name is Linda Bundy. I'm from Antrim. I agree with Governor Sununu that New Hampshire's election process has integrity, that it works, and that our citizens believe in our system. Cases of fraudulent voting are rare. In 2016, over 6,000 voters signed domicile affidavits. Only 66 could not be verified. The Attorney General's office said that these do not necessarily represent fraud, rather an investigation that could not be closed. SB418 will require that when voters do not have the valid photo IDs and do not mail in missing documents within 10 days, their votes will be deducted from the count.

Final election results may be delayed as much as 14 days after the election. This delay affects the votes of active service members and other citizens living outside of the United States. By law, they are required to received ballots at least 45 days before federal elections, which may not be possible under SB418. This situation could violate New Hampshire's motor voter exception to the National Voter Registration Act. Governor Sununu said that this legislation would be contrary to that agreement.

The process involved with this proposed affidavit ballot is likely to confuse voters. Some may decide not to vote. Others may not understand what to do with the packet and not follow through after voting. Lines at the polls will move more slowly as election workers take the time to explain the affidavit packet to voters. The packet will incur the added expense of a pre-paid, overnight mailing envelope. Secretary of State Scanlan has said that additional temporary staff will have to be hired to handle the workload resulting from the ballots.

The affidavit ballot process has the potential to violate the privacy of the vote. After 10 days, the Secretary of State's office will notify towns which ballots are missing required documents. Town officials will retrieve those ballots and deduct the votes from the final counts. Especially in small towns but really in any town, the identity of the voters could be known. The prime sponsor of SB418 has said that voters just have to sign a piece of paper to vote without valid photo IDs. However, they are not simply signing a paper. They're signing an affidavit, a legal document, and swearing to and affirming the truth of their statements.

Conviction of lying on an affidavit has consequences of a fine up to $5,000.00 and up to one year in jail. SB418 is unnecessary. It

attempts to solve a problem that doesn't exist. By alleging fraud, it sows distress among voters. It creates hurdles that will suppress the vote when our elections are already secure, accurate, and reliable. Democracy works when people participate. I urge you to oppose this Bill and I thank you for this time.

Chair: Thank you for coming. Does anybody have any questions for Miss Bundy? I'm not seeing anything. Also signed up to speak on this Bill is Jessica **Grille**. And if you want to come up. Senator Giuda, I have not missed you. I'm going to call you next, okay. You want to wait a little bit? All right. I didn't want to infringe on whatever else you might have on your schedule today. Thank you. Welcome, Miss Grille.

Jessica Grille: Good morning, Madam Chair and members of the Committee. And I'd like to start by thanking you for your time and the opportunity to appear today. Over the last two years, I've had the unique opportunity to participate in our democracy by volunteering in the town of Bedford's elections. My experience has shown me how dedicated New Hampshire officials are to running fair, free, and honest elections and has given me an understanding of the checks and balances that are currently in place to ensure that all votes are cast legally and that all eligible voters have the opportunity to make their voices heard.

Rather than protect election integrity, SB418 would hamper the election's process by adding additional, redundant steps for those registering to vote for the first time as well as voters who do not have identification with them at the polls. Implementing these steps would create difficulty for election officials requiring additional staffing and funding. Furthermore, the 10-day waiting period for affidavit verification would inevitably delay the process of finalizing and certifying vote totals. At a time when election officials have already faced unprecedented controversy, this additional roadblock could inspire further distrust in our elections as well as encourage bad faith actors to promote accusations of fraud or wrongdoing.

For voters, SB418's affidavit verification requirements negates the privacy that is currently ensured by secret ballots. Currently, affidavit voters are given the same paper ballot as all other voters, paired with an affidavit form ensuring that their vote is legitimate. However, SB418 would require that affidavit ballots are given a unique identifier to track the ballot for removal if the packet of information given to the voter is not returned to the polling place within 10 days.

It bears noting that the contents of this packet are not outlined in this bill, so it's unknown how deeply this packet distribution will complicate on-site voting. The unique identifier also means that poll workers could potentially identify who voters cast their ballots for. The Senate Committee hear testimony from local elections officials expressing their concern about compiling this sensitive information and for good reason. These privacy concerns, coupled with the time needed to complete these steps creates a two-tiered voting system with the likely impact of discouraging turnout.

I also have concerns regarding the unknown fiscal impact of SB418 on the state and local level. The fiscal note associated with the Bill states that "an indeterminable increase in expenditures would be needed in order to fund the materials and labor needed to implement this new system." It's unlikely that these costs will come cheap and these new resources would be necessary for all future elections. Given the potential harms of this Bill and the rarity of fraudulent voting, it's only fair that stakeholders are given a clear understanding of the additional costs SB418 would incur.

I ask that the Committee reconsider whether it's appropriate to invest these expenditures and additional bureaucratic resources into such drastic reforms. I strongly oppose SB418 and I urge all Committee members to vote against its passage. This Bill takes drastic steps to complicate election administration and delay vote counting, creates unnecessary difficulties for countless voters, and as others have stated, particularly marginalizes our overseas military voters.

If this Committee is truly concerned with election irregularities, members ought to consider strategies that streamline and modernize the voting process, like enrolling in the electronic registration information center and implementing an online voter information portal instead of enacting more burdensome, expensive, and punitive legislation. New Hampshire voters, election officials, and taxpayers deserve better solutions than SB418. Thank you for your time.

Chair: Thank you for your testimony. Thank you for working in Bedford at the polls. Does anybody have any questions? Seeing none, thank you for joining us this morning. Also signed up to speak on this Bill is Representative Tim Horrigan. I just realized you were sitting there, so come on up. Three minutes.

Rep. Horrigan: I have two. I have a written testimony, then I also have a copy of an article from the *Union Leader* today so I guess I'll – don't count

against my first three minutes, please. I guess I'll start the ball rolling getting these things passed around the table. Hopefully they'll make it all the way around.

Chair: Why don't you just hand those to Representative Merner on your left and we'll just do the passing out. Representative Merner drove a long way today to substitute so we're going to put him to work.

Rep. Horrigan: I'm used to being on my right where we're both on these judiciary committees. So, I'm Representative Timothy Horrigan. I represent Stratford County District 6, the towns of Durham and Madbury. My primary objection to SB418, my first one is that it's extraordinarily complicated and error prone. One of the things I'm on the backside of my written testimony is a letter that is published the *Union Leader* yesterday where I describe as a Rube Goldberg scheme, which is actually unfair to Rube Goldberg because he's machines actually worked. I don't think this scheme outlined in the Bill is going to work.

On further reflection after sitting here I realize first of all, the number of people who are going to be filling out these ballots is going to be pretty small because the number of people who actually show up with no ID and who aren't known to any of the poll workers is **[inaudible] [01:50:16]** small. I worked in a municipal election in March and I didn't see a single person show up without ID, although there are citizens who for one reason or another don't have their ID and still have the right to vote though. And that could be especially tragic given what happened two years ago in the Presidential election and you probably don't want me to go into that.

But any complication we have is one less thing for people to be suspicious about when they don't like the way the election turned out. And let's keep them as simple, secure, and error free as possible. So, putting in this thing, which is complicated, error prone, and laughably insecure is a bad idea. As others said, it grossly compromises the secrecy of the ballot, slows down the count for 14 days, and some cases we might never have results that everybody accepts and that would be especially tragic if happened during our state Primary, which is only eight weeks before the General Election. And, of course, it would be possible to change the Primary date. I have mixed feelings about it and you do have another Bill on it.

But SB418 makes no provision for it. In fact, it could in theory be passed and take effect this year just weeks and even days before

the next Primary on September 13, 2022. I mean, it could even happen like the week before although that would have to involve the Bill passing and then being vetoed and then for some reason being overridden, which would mean that the party that I belong to, the Democrats, would have to all flip their votes. So, passing this thing on passage, especially during the middle of an election season, is extremely foolhardy. The schemes hastily cooked up by a handful of Senators as far as you can tell with no input from elections officials.

Certainly, we've heard from several election officials who think this is a terrible idea. Certainly without any field testing, although I have to confess, I'm not really sure of any way to field test something like this, aside possibly from using it during municipal elections although even then municipal elections are quite different from our state elections. Another possibility, of course, we could just field test this during the 2026 Presidential Primary. But I don't think anybody wants a – sponsors certainly don't want to wait that long and I think the last thing anybody wants to do when we have the Presidential Primary, which is often a very close election, is to have this complicated thing that's going to delay the final result for two weeks.

I'd also add in the findings they seem to be worried about multi-voting. This does absolutely nothing to prevent multi-voting as long the person shows up in one state with the proper ID, shows them in another state being Massachusetts as in the example I'm passing around. Or in New Jersey it's in the case of something that's been in the news lately. Does nothing about that since they wouldn't need to fill out this affidavit in New Hampshire or in the other state where the person is voting. So, it doesn't even solve the problem. It's worrying about, which as in any case is a rather small problem. So, I think the best thing to do with this Bill is just kill it. Like let's not pursue it any further. Thank you.

Chair: Thank you, Representative Horrigan. Are there any questions for Representative Horrigan? I'm not seeing anything. And thank you for all of the copies of your written testimony. We got it all the way around. Thank you.

Rep. Horrigan: Yes. Although I apologize, I was using the old smoking room and I couldn't figure out how to print it on and I noticed you have been apparently using that same thing before me. You may or not be able to print something so I tried sending it upstairs and they had a new person upstairs. So, the date –

Chair: There are many IT challenges to using the computers around this building.

Rep. Horrigan: Yes. Anyway, that's a story that came out today and the person –

Chair: Not the story about me using the computer downstairs?

Rep. Horrigan: No, no, no. The story about the man who voted both in Sanbornton and Weymouth, Massachusetts. And he was actually punished much more harshly than the case that was mentioned in the findings. Thank you.

Chair: Okay, thank you, Representative Horrigan. Also signed up to speak on this Bill is Ken **Iring**.

Ken Iring: Good morning. Thank you for the opportunity to talk. My name is Ken Iring. I live in Windham, New Hampshire. I've listened to a lot of unfounded arguments that are stirring up fear regarding this Bill. Regarding cost, rather it's legal or not and potential logistical nightmares. And I believe, and I hope all of you believe that there should be no cost, no threshold that should be put on making sure that our elections are valid and that only New Hampshire citizens are able to vote in our state.

The logistical nightmare arguments that it will take extra time to vote. That's only if people don't bring their photo ID. Adults are the only people who can vote, based on the voting age, and they need to take personal responsibility for that. I live in Windham. I heard one reference before about the nightmares that might ensue with long lines. I know two of the supervisors of the checklists very personally. They're my friends. They are frustrated with the ability of people to vote with literally being able to sign a piece of paper with no proof of who they are, where they live, or whether they are a U.S. citizen or not.

I've served during election day to sign up voters and it's really a mockery of our system, how easy it is for anyone to come in and vote on election day. This Bill gave a lot of consideration and time to address all the issues that have been brought up in the past and Senator Giuda and others, including former Chief Justice Bob Lynn, Chief Justice of the New Hampshire Supreme Court who is also a State Rep. He worked on this Bill. He supports this Bill, and he does not believe that there will be any issues regarding New Hampshire's exemption is passed. I spoke with him a few minutes ago when he was sitting back here; he had to leave. He gave me permission to make those statements.

You need a license to get on a plane. You need a license to buy alcohol. Would you suggest that people be able to do these activities by simply signing an affidavit without proving who they are? I would hope not. The integrity of our elections, as everybody knows after 2020, is important and in the front of many people's minds. This Bill puts a lot of questions and concerns to rest. I urge you to pass this Bill. Thank you.

Rep. Hayward: Any questions for Mr. Iring? Thank you very much for your testimony.

Ken Iring: Thank you for your time.

Rep. Hayward: Okay. Also signed up to speak we have Barbara, and I apologize for last name, I'm going to mispronounce it. Passaler? I'm not if I was close on the pronunciation or not. **Pachelli**. I'm sorry.

Barbara Pachelli: My name is Barbara Pachelli. I've lived in Concord for 24 years now. And I read on behalf of Paul J. Hake from Newbury, New Hampshire and Robin Larson from Londonderry, New Hampshire.

As veterans and New Hampshire residents we write to express our strong opposition to SB418. When Americans join the military, we take an oath to protect and defend the United States from all enemies, from all threats, foreign and domestic. Service members should not risk their lives to protect our rights only to have their right to vote put at risk by laws like SB418.

This Bill, as currently written is unconstitutional and is an unacceptable threat to the right to vote of military members stationed overseas. In New Hampshire the timeline for Uniformed and Overseas Citizens Absentee Voting Act ballots for military members is already tight. SB418 would make it nearly impossible for service members stationed overseas to received and return their ballots on time. This is not a partisan issue. One of us is a registered Republican. The others tend to vote Democratic. The right to vote transcends partisan politics.

While serving in the U.S. military, we relied on absentee ballots to participate in the democratic process during our many years of service. Today, as veterans, we stand united in support for the right to vote. Current service members deserve better than to have their vote, their right to vote, taken away simply because they are stationed overseas protecting our country. Frankly, it is outrageous and a breach of faith that the New Hampshire legislature would seek to enact a law that in any way, shape, or form restricts,

impedes, or denies a service member's right to participate in the most basic of constitutionally provided rights.

We urge you to vote "No" on SB418 to protect the right of our military and of all Americans to vote. Thank you for your time.

Chair: Thank you for your testimony. Representative Torosian has a question if you'll indulge us.

Rep. Torosian: Thank you, Madam Chair.

Chair: You can turn your mic back on.

Barbara Pachelli: Great. Thank you.

Rep. Torosian: Thank you, Madam Chair, and thank you, ma'am for taking the question. Could you point out in the proposed legislation where it would infringe on the military from exercising their right to vote?

Barbara Pachelli: Unfortunately, I could not point that out specifically. I must say I came here to read this on behalf of other people and I'm sure they could point it out to you. So, unfortunately, I cannot answer you directly. Could I call on someone to answer that because I do know someone else who testified who could speak to that.

Chair: I think we'll wait for somebody to say it in future testimony.

Rep. Torosian: Thank you.

Barbara Pachelli: Okay, thank you.

Chair: Thank you. I think it probably has something to do with the UOCAVA issue. All right, great. Thank you. Daniel **Healey** from Derry is also with us this morning. Welcome back to the Committee.

Daniel Healey: Good afternoon, members of the Committee. Thank you for giving me the opportunity to speak. My name is Daniel Healey. I am the Derry Town Clerk and I am here on behalf of the New Hampshire City and Town Clerks Association where I serve as co-chair of our legislative committee and as second vice president of the association.

I would like to offer our opposition to SB418 as it is a solution to a problem that does not really exist and ends up creating additional issues. If a resident comes to my town office and registers to vote

prior to an election, before the checklist is closed, they can register with affidavits and have their name added to the checklist. On election day when they come in to vote, they would not be getting an affidavit ballot yet they registered with affidavits. There is also currently not follow-up with voters that register at the town office for additional proof of verification when they use an affidavit. But new registrants on election day will need to provide proof.

We are now treating voters differently if they cannot make it to the town office prior to an election. I also question how many voters that register on election day will end up following through with sending the paperwork in on time as it needs to be received by the Secretary of State within 10 days. Mail sometimes is delayed for various reasons and this could cause many legitimate votes to be negated to counter the rare occurrence of an illegally cast ballot. Depending on the number of affidavit ballots used, or lack of, voter privacy could become an issue. If we only have one voter that needs this type of ballot, everyone will know exactly how they voted and that is a major issue.

The way the Bill is written, if a person does not send in the paperwork, their vote for that election will not count but they will still be added to the checklist for future elections. For the previously stated reasons, I would recommend to this Committee to ITL this Bill. Thank you, and I'm open to any questions.

Chair: Thank you, Mr. Healey. Any questions for Mr. Healey?

Daniel Healey: Thank you.

Chair: Also signed up to speak on this Bill is Gail **Lakerfelts**. Welcome. There you go. When the red light goes on, it will be one. Thank you.

Gail Lakerfelts: Okay, great. Chairman Griffin and the Committee members, my name is Gail Lakerfelts and I'm from Chichester. Thank you for allowing me to give my personal opinion on this Bill.

I feel that this Bill would support an environment that would separate one vote from another, which I believe violates a citizen's right to a secret and unidentifiable ballot. In addition to creating more complexities to our election process, and more expense, this Bill also endangers the legitimately cast votes of citizens serving overseas in our military. This is unconscionable and unnecessary. I think the whole thing is unnecessary. SB418 would take New Hampshire down the slippery slope of voter suppression by

enabling the invalidation of votes cast in good faith. I think that's a big concern.

I'm worried that we are going down the path of states like Georgia and Texas. Let's keep New Hampshire free of interference with a citizen's right to cast a secret ballot. So, please vote against this Bill SB418.

Chair: Thank you for coming. Does anybody have any questions? I'm not seeing any. Thank you. Vincent **Giambavo**. And I apologize, I know I did that last name wrong. Come on up.

Vincent Giambavo: Actually, everybody gets it wrong, so don't worry about it. I'm Vincent Giambavo. I live Loudon, New Hampshire. I come from a family that's often served in the U.S. military. I, myself was in the U.S. Navy in a helicopter combat support squadron during the Vietnam War. I also serve in the American Legion for more than 20 years. I'm currently the Service Officer for Post 88 in Loudon. I have seven cousins who served in the Korean War, a brother-in-law and two cousins who served in Vietnam, and several nephews who served in Kuwait and Iraq.

I believe the right to vote is perhaps the most important right have as a democratic society. So, I'm asking, why would anyone vote for a Bill that makes it harder for military people who are serving our country and securing our right to vote, to have trouble getting their own votes counted? It's hard enough to vote when you're serving. We need not make it more difficult or even impossible to exercise their vote themselves. The delay caused by the additional administrative process this Bill creates to voter registration can delay getting ballots to our servicemen and women serving around the world and would impede their ability to exercise their very right to vote for which they're fighting.

It is our military who have secured and maintained our voting rights since the Revolutionary War almost 250 years ago. I think those who followed us in serving their country should not find it more difficult to exercise their very rights their service has secured for all Americans. I urge you to defeat SB418 to protect the voting rights of military personnel wherever in the world they may be called to serve. Thank you.

Chair: Thank you for coming. Any questions? I'm not seeing any. The Honorable Bob Perry has signed up to speak on this. Come on down. Great. We'll pass that around. Thank you.

Rep. Perry: My original presentation was five minutes and 15 seconds. I will knock off two minutes.

Chair: There you go. Another legislator times themselves before they come. I like it. All right.

Rep. Perry: Bob Perry. Town of Strafford. My presentation will focus on the introductory paragraph at Roman I. Among other thoughts I have a personal interest in the mention of the 1974 U.S. Senate campaign having worked with Judge Wyman in the 1980s. I could not find, and I'm leaving out a paragraph, about that. I could not find the specific reference to the incident involving the $500.00 fine involving double voting in Massachusetts and Plymouth, New Hampshire. However, even without the details I will assume the fine was commensurate with the crime and I am grateful that as of today in America, prosecutors and judges still have discretion in punishing and sentencing. I have witnessed many of them.

Because the AG was unable to verify the identity of certain voters, no inference can be drawn there from, thus cannot be used as justification for this Bill. Once again, I am grateful that as of today in America, the accused are presumed innocent until proven guilty. The Governor has gone beyond rejecting the unfounded claims of massive voter fraud made by the former President. Instead, he has praised the integrity of the New Hampshire vote on multiple occasions including his formal post-election statement made December 2, 2020, which reads as follows: "Here in New Hampshire our elections are secure, accurate, and reliable. There is no question about it. I thank Bill Gardner, our town moderators and clerks, and all local election officials for delivering results to the people of New Hampshire timely and accurately, just as they have always done."

And I'll skip a couple of paragraphs where the glowing remarks continue. And most recently the Governor reprised his prior remarks during an interview at WMUR saying in part, "Our citizens believe in our system that it does have integrity. Ninety-nine percent of the folks polled say that they know that the system works very, very well and that's really where we need to be."

If the Governor is correct that there is 99% trust in New Hampshire elections, why are we here today further regulating the franchise with this Bill? I suggest this Bill or any other will not fix the 1% that remains because no legislation will produce that level of purity or perfection and we will never know how many people will decide not to vote after hearing about the complexities of 418.

Conclusions based on extensive research have demonstrated repeatedly that only a tiny percentage of miscast votes involve malice or criminal intent. And that tiny percentage must not be used to punish voters and impose greater responsibilities on poll workers.

Finding volunteers to work elections becomes more difficult and demanding with every new election cycle, every new law, every new headline, and every new threat to election workers. This Bill will exacerbate the problem. Do I have time, Madam Chair, to continue with my last paragraph?

Chair: Yes, you do. We will read along with you.

Rep. Perry: Thank you, thank you. I will finish with this, on a happy note. Let's commit to celebrating our right to vote, embrace it as the crown jewel of civic responsibility and pride. Give it a holiday. Encourage participation through legislation and celebration and rejoice in its importance to the health and security of home and family. I maintain in this political environment it is important to prove to the global community and leans towards autocracy that democracy is America's preferred form of government. I urge ITL and thank you.

Chair: Thank you. Any questions for Mr. Perry. I'm not seeing any. Thank you. Also signed up to speak on this Bill is **Shazeko Tarri**. And we have your written testimony. I'm passing it out right now.

Shadiko Tera: Two minutes and 10 seconds.

Chair: See, there's a whole bunch of us out there.

Shazeko Tarri: Dear members of the House Election Law Committee and Madam Chair. Thank you for listening. My name is Shazeko Tarri. I live in Cornish and I have for 43 years. I drove one and half hours to be here this morning because I believe our elections in New Hampshire are fair just as they are. I worry that the many voter bills have been written intentionally to cast doubt on the integrity of our elections in New Hampshire. In so many cases on other bills you oppose, I have heard you imply that if it ain't broke, don't fix it. But SB418 gives the impression that there is something wrong with our voting system.

I heard the author of this Bill stand up and say just the opposite and the Senators who voted alongside him reinforced that idea. I worked at the polls and saw some of my neighbors who forgot

their ID or didn't have a driver's license and they started to walk away. To the sister of one voter, and her brother was a Vietnam veteran, he had some drinking problems due to PTSD and lost his license. I said, just have him bring proof of being a resident, like a utility bill. Better yet, have him go over and talk to the supervisors of the checklist. They will help him. I mean, the election officials knew him. He could fill out an affidavit.

To one woman I said, you can fill out an affidavit, don't go, because she was heading out the door. She said, "I'm a Republican. Why would you help me?" She knew me and many in town know me. I said that all votes count. It doesn't matter what party you come from. But now with Senate Bill 418, if you fail to return the documents required by the affidavit, not only will your ballot be opened publicly and deducted from the totals, but your name and address will be forwarded to the New Hampshire Attorney General for further investigation. This Bill makes demands on eligible voters that not all of them will be able to fulfill.

I come from a small town. There are time constraints and fines, as someone else mentioned. Please vote "No" on SB418. Thank you.

Chair: Thank you very much for coming this morning. Any questions from Committee members. I'm not seeing any. Thank you.

Shazeko Tarri: Thank you.

Chair: Also signed up to speak on this Bill is Lucas Meyer.

Andrew Hassmer: Good morning. I am not Lucas Meyer.

Chair: I was going to say. I just looked up and I'm like I know I saw him here.

Andrew Hassmer: He had to leave and he dropped this on my lap, so. My name is **Andrew Hassmer**. I work with Lucas Meyer. And I'm reading a statement from Dr. Robert Kiefner from Concord who wanted this read.

Chair: All right. I am apologizing. With your permission, I'm changing this pink card from Lucas Meyer to Andrew Hassmer.

Andrew Hassmer: That'd be just great.

Chair: And who were you representing because he did not fill that out.

Andrew Hassmer: Yeah, I guess I'm just reading a document on behalf of Robert Kiefner from Concord who could not be here today. It's very brief and the reason he's not here is he's with his son who's an Army pilot in Washington, DC. And I quote:

"My name is Robert Kiefner, MD. I practiced family medicine in Concord for over 30 years and was proud to serve in the Medical Corps United States Naval Reserve for eight years. My son is an active-duty aviator in the Army. One of my brothers served in Vietnam, another in Korea. My dad was a Naval officer in the Pacific during World War II and several uncles served our country from the beaches of Normandy to Guadalcanal.

"In a legislative session, which featured an array of galactically inane bills targeting public health, reproductive rights, and public schools, SB418 is put forth as a fix to a New Hampshire voting process, which is clearly not broken or engulfed in fraud. I would just highlight the effect that this voter suppression bill might have upon active-duty military, men and women who may be deployed in service of our Constitution and country. There exists the very real possibility that the processing of their votes may be delayed by the enactment of SB418 and perhaps not counted.

"On behalf of our servicemen and women, new Americans, and those perhaps trying to exercise their constitutional right to vote for the first time, I say that this Bill is a travesty. I vehemently oppose this Bill and believe that its authors should be ashamed for their thinly guised effort to manipulate election results."

Thank you very much for allowing me the opportunity to read on behalf of Dr. Kiefner.

Chair: It's Dr. Keifner? Would you spell that.

Andrew Hassmer: It is, which is K-I-E-F-N-E-R.

Chair: Great. Thank you.

Andrew Hassmer: Thank you, Madam Chair.

Chair: Also signed up to speak on this Bill is Matt **Mouchian**. Sorry. I'm not doing very good on names.

Matt Mouchian: Mouchian. You got it right the first time.

Chair: Great. Thank you. Welcome.

Matt Mouchian: Thank you. Good morning, Madam Chairwoman and members of the House Election Law Committee. My name is Matt Mouchian. I live in Claremont where I serve as a city councilor. I've also worked with 603 Ford, a nonpartisan, nonprofit organization dedicated to educating, activating, and empowering young people in our state, which is why I'm here today to testify in opposition to Senate Bill 418.

This Bill creates confusion and complicates our voting process, which will disproportionately burden the right to vote for working age and military voters who are also predominantly younger. And that's why I urge the Committee to vote Inexpedient to Legislate on Senate Bill 418. First and foremost, this Bill does nothing to improve our elections and it's rooted in conspiracy theories that only serve to weaken faith in our elections. In 2020, 50% of working age voters aged 18-29 participated in the democratic process and voted in the election. Senate Bill 418 seeks to only make it harder for voting age voters to participate in the process by making same day voter registration more difficult and burdensome.

Further, this Bill creates a provisional ballot system for those registering to vote for the first time on election day, which is again something that a lot of young folks do if they've moved here for work or for school. By implementing this provisional ballot system as a means to track someone's vote, there are also serious threats to ballot privacy and security because these provisional ballots would have a unique number or identifier connecting them to the name of a voter, meaning that in a small town or a city like Claremont your community members who are working at the polls could know who you voted for.

Also, as this Bill currently stands it violates federal law, the Uniform and Overseas Citizen Absentee Voting Act, making it harder for military members, their families, and other United States citizens living out of the country to vote. I have friends and family who have served overseas and some currently do and their service to our country should be honored in the most basic possible way by protecting their right to vote and making sure that they are included in our democracy, no matter where they are. These are just some of the barriers that this legislation creates for young people exercising their constitutional right to vote.

This legislation creates unnecessary confusion and complicates our voting process, as I said, and as a result voters may feel too burdened to participate in the process. I've worked at my local polling before and I know that our election officials work hard to

keep our elections safe and secure and adding these additional needless and confusing steps to our election day operation will only burden local election officials and confuse everyone involved. Confusion leads to longer lines, which are proven to disenfranchise eligible voters. This body should be prioritizing, making it easier for people to participate in the bedrock of our democracy – free and fair elections – not creating unnecessary burdens that sow distrust in our elections.

I ask you please to vote Inexpedient to Legislate on Senate Bill 418 and I thank you for your time and consideration.

Chair: Thank you for coming this afternoon. Any questions? I'm seeing none. Thanks a lot.

Matt Mouchian: Thank you.

Chair: Also signed up speak is Kate **Horgan**.

Kate Horgan: Thank you, Madam Chairman. I'm Kate Horgan. I'm from the Dupont Group and today I'm representing Secure Democracy who is a nonpartisan, nonprofit group that is focused on voter integrity and voter access. They have extreme concerns and you've had a lot of great speakers, so I will be very brief around the UOCAVA ballots.

Just to walk through what the process is, so if this Bill were in place for this year, the ballots would have to go out 45 days before the General Election. That would be September 24th. This year's Primary is on the 13th. Affidavit ballots wouldn't be finalized until September 23rd, and then the Secretary of State would have 14 days after that Primary, meaning September 27th, to finalize the election. I have great faith in our Secretary of State; however, I do not know how if he's not done until September 27th he can make September 24th deadline.

So, we wanted to just bring that to the Committee's attention. I'm happy to take any questions that the Committee has, but I will conclude my testimony at this point. Madam Chair.

Chair: Thank you, Miss Horgan. Any questions from Committee members? I'm not seeing any. Thank you.

Kate Horgan: Thank you.

Chair: Also signed up to speak on this is Henry **Clementoich** from

ACLU.

Henry Clementoich: Thank you, Madam Chair and members of the Committee. My name is Henry Clementoich. I'm a senior staff attorney with the American Civil Liberties Union of New Hampshire. I submitted written testimony, which details in our view the new risks of legal problems with this Bill. But in the interest of brevity, I will just focus on two.

The first concerns the documentary proof of citizenship requirement. So, under this Bill if a person registering to vote for the first time on election day does not have proof of citizenship, they'd be allowed to sign an affidavit that they then would have 10 days to provide proof of citizenship to the Secretary of State's office or their ballot would be uncounted. For most people who are natural born citizens, the only proof of citizenship that exists is a U.S. passport or a birth certificate. A passport book costs $110.00 and takes 10-12 weeks to get. And a birth certificate, depending ono the municipality of birth.

So, for an American born abroad to U.S. parents they need to send a notarized request to the United States State Department and $50.00. For someone who's born in Hawaii it takes probably five days to and from Hawaii, so probably wouldn't have time to get a birth certificate from Hawaii and submit it to the Secretary of State to have their vote counted. And the fact that it's so hard to prove citizenship is probably why in 2020 the 10th Circuit in a case called Fish vs. Schwabb, ruled as unconstitutional Kansas' similar effort to documentary proof of citizenship to those who would vote.

The court concluded in sum we conclude that documentary proof of citizenship requirement is unconstitutional and uphold the District Court's injunction. That decision was affirmed when the U.S. Supreme Court in 2020 declined to review it. Just so we know how many people we're talking about, in 2020 in the General Election 816 people in New Hampshire used the qualified voter affidavit to prove citizenship. So, probably about that number of people would be in danger of having their votes discounted if they did not return with a passport or birth certificate within 10 days.

In addition, the process by which the moderators would know how everyone who votes who casts an absentee ballot in my view violates the newest part of the New Hampshire Constitution enacted by the voters in 2018, which is Part 1, Article 2B, which provides an individual's right to live free from governmental intrusion and private or personal information is natural, essential,

and inherent. My view and the view of the ACLU of New Hampshire is that the way that a person voted is exactly the type of private or personal information that the electorate thought they were enshrining Constitutional protections against governmental intrusion from.

So, I think there's a number of issues with this Bill. You've heard people talk about UOCAVA. You've heard people talk about the court decision from SB3. I'm happy to take any questions from the Committee, but I did just want to uplift one thing. I sent late last evening a letter from the Attorney General's office to the Committee indicating that they do not have any criminal or civil enforcement proceedings pending in relation to wrongful voting stemming from the September 8, 2020 or November 3, 2020 elections, nor have they instituted any criminal or civil enforcement proceedings at all.

They had opened 23 investigations and 18 of those have been satisfactorily resolved. So, there's five pending investigations, not even allegations, criminal or civil, that anyone committed any type of voter fraud in the 2020 elections. So, that's the type of state interest that the state would have to contend with in defending this law in court. The fact that the Attorney General's office has found no cases of wrongful voting. So, I'm happy to take any questions if there are any.

Chair: Thank you. Do Committee members have any questions? Seeing none, thank you. Also signed up to speak on this Bill is Michael O'Brien.

Michael O'Brien: Hello again, Madam Chair and members of the Committee. My name is Michael O'Brien. I am with **Purdy** Strategies here today representing America Votes in opposition to this Bill. We've talked a lot already about some of the points that I was going to make, so I'm going to skip over those and just talk about a couple of instances of concern for me.

So, under this Bill it specifies that a first-time registrant in New Hampshire would be the one to fall under SB418 and the affidavit ballot. However, it does not give any example of how you would define or figure out how a person is a first-time New Hampshire voter. Certainly on the voter registration form we ask where their previous registration was and that form, I suppose, you could take that voter at their word and trust that they are in fact have been registered in New Hampshire before. But, under this Bill we are already saying to people that we are not going to take them at their

word for filling out a form, so that seems a little contradictory to begin with.

But secondly, what about the voter who registered in New Hampshire, voted, left, and now has come back? Their last known voter registration may be in Massachusetts, may be in Hawaii, may be anywhere that was not New Hampshire. How do we figure out if that voter has, in fact, registered in New Hampshire before? Are we going to ask them? If we ask them and they tell us, are we going to believe them? What if the voter is wrong? As often happens if you ask local election officials, someone will attest that they, in fact, have registered to vote before and when we go into the voter file that person is not there. Often that is because that person has come from a motor voter state and assumes when they get their driver's license that they have automatically qualified to register to vote and that is not the case.

Does that person, has that person violated the law in any way? I think these are procedural questions that are real that have not been addressed. I also think when you look back to 2016 you look at the number of individuals who pulled the domicile affidavit you can see that over 6,000 of them pulled this as has been stated before. The Secretary of State's office was able to verify, I think, all but 353 of those voters. So, I'm going to be real generous here and say that the SOS verified all but 353 within 10 days. Right? They get them all done within 10 days. The AG wasn't able to verify all but 66, and again, they're not saying that 66 people committed fraud

But that leaves you with 290 voters that basic – maybe not quite – but just about, whose ballots would have been thrown away under this law and who were legitimate voters, found by the state to be legitimate voters. That's a problem. We cannot be, should not be looking to throw away legitimate votes. And that would happen under 418. So, in addition to all the UOCAVA concerns that we have heard, the privacy concerns that we have heard, I just wanted to point out two very specific instances where this law runs into some very serious trouble. And I'm happy to take any questions.

Chair: Thank you. Questions for Mr. O'Brien? Seeing none, thanks.

Michael O'Brien: Thank you very much.

Chair: Also signed up to speak on this Bill is Joe Magruder.

Joe Magruder: Good afternoon, Chairwoman Griffin and members of the Committee. My microphone is on. My name is Joe Magruder. I

live in Concord. I am a long-time voter and I am also from a military family. And spent four years in the Navy during the latter part of the Vietnam War.

I strongly oppose Senate Bill 418 for a number of reasons that others have mentioned. But in particular the deadline if you are military deployed overseas, the deadline in New Hampshire has already been mentioned, makes it extremely hard to get a ballot, fill it out, absentee ballot, and send it back in. I was a Connecticut voter when I was serving but I also have letters from two New Hampshire veterans who were unable to come today and I am going to tell you, I will hand these in. These are the only copies I have so I can't let go of them at the moment.

David Cacciotti, hope I have that pronunciation right, is a retired Senior Master Sergeant in the Air Force, 22 years in the military. Served overseas for 10 of those years and that he strongly opposes this Bill. He says he and everyone he served with took their right to vote seriously and did vote when they were able to and were aware of and discussed being under more time constraints than their friends and family back home. Our right to vote is sacred and no more so than for military members who are fighting to reserve that right overseas.

This Bill does not successfully define the logistics of ensuring ballot access for overseas military personnel, making it near impossible for them to get their ballots, get them returned in time to be counted. "This is unacceptable and unconstitutional." I'm here to ask you to vote "No" on Senate Bill 418 to protect the right to vote of the military members serving overseas. Mr. Cacciotti, I forgot to mention, is from Atkinson.

The second letter is from Bob Baker, also an Air Force veteran. Lives in Columbia, New Hampshire. "I strongly believe that no American should have to fight for the right to vote, especially true for the brave men and women in uniform serving overseas. Our right to vote is sacred and no more so than for deployed military." He obviously is against Senate Bill 418, which he says does not adequately protect the right to vote and targets military members in particular. It makes it nearly impossible for military personnel overseas to get their ballots, have them returned on time and counted. This is an unconscionable violation of the right to vote.

Quoting again, "When I served overseas during the Vietnam War, I always tried to vote. Sometimes the duty mission prevented it. I always felt badly about missing a vote. I share that experience.

Please don't take away that voting right from our New Hampshire deployed military by setting up completely unnecessary restrictions on the exercise of our most fundamental right."

Chair: Thank you, Mr. Magruder. You're way over time but I know that you're reading testimony from a couple of other people.

Joe Magruder: All right. Thank you for the opportunity to testify.

Chair: And are you going to be able to submit those letters to us?

Joe Magruder: Yes, I'm going to do that right now.

Chair: Okay. If you want to give those to Representative Merner we'll get them in the record. Great. Thank you. Also signed to speak from NHMA is Mr. Greyes.

Natch Greyes: Thank you, Madam Chair. Natch Greyes from the New Hampshire Municipal Association. We don't oppose efforts to ensure voters provide proper identification documentation, but we are concerned about the process set up by this Bill.

You've already heard from a number of municipal officials today. I won't reiterate anything that they said. Suffice to say we've heard the same concerns at NHMA. The only additional thing I'd like to add is that one concern that came to our attention was from those election officials who stand next to the ballot counting device. There was a concern from a number of municipalities that they would have to engage with a dialog with a voter other than put in your ballot any way you want because the process set up by this Bill would require the voter, after voting, to put the affidavit building into a side pocket. Obviously, that could result in some confrontation, depending on how the voter takes that and how they understand the law to work.

With that, I don't want to prolong this hearing any longer than necessary, so I'm happy to take any questions anybody has.

Chair: Any questions? Not seeing any. Thank you.

Natch Greyes: Thank you.

Chair: Also signed up to speak is Liz Tentorelli.

Liz Tentorelli: Thank you for this opportunity to speak. My name is Liz Tentorelli. I'm President of the League of Women Voters of New

Hampshire. We're a nonpartisan organization whose mission is to empower voters. And we do that in many ways. One of them is to prepare brochures that are distributed, it's online, we're distributed at all sorts of places and to all sorts of groups. We also do presentations about the voting process. And about two months ago I was talking to a group of people called the Granite Leaders. These are formerly homeless people who are being taught to find their civic voices and use it to advocate for those who are still homeless.

And they had lots of questions about voting, as you can imagine. They were very surprised when I told them that you don't need a driver's license to prove identity that you can get a nondriver's ID from the DMV and we talked about that. Of course, one of them said, "So how do I get to the DMV?" Well, you know, good point. We have to find a better to do that. But they want to vote. They may not have the documents that are required in here. So, I started looking at it from that point of view.

Our documents, the flyers and so on that we produce, are getting more and more complicated every year. As the legislature passes one law after another, trying to chase away that phantom of the white vans from Massachusetts bringing up voters illegally on election day, the laws get more complicated. Not for you and me. We understand what these laws are. But for the average voter this threatens to make those eligible voters not vote. So, on the second page of my testimony I admit I had a little fun. I tried to imagine what the document would look like that would be given to this person who did not show up with a voter ID, for instance, or did not have citizenship papers.

Now unlike SB3 where everything was spelled out and that was one of the reasons it was defeated because the language was way, way, way too confusing. I tried to imagine here, since it's not in the Bill, what the language would look like. So, you see that in the box on page two. And it might look something like this. It's not even complete. I said here I expect you'll put in this language, that language.

The point I am trying to make is the average person coming in to vote, maybe for the first time, maybe an 18-year-old is simply not used to reading this. Imagine being handed this by the supervisor of the checklist and saying you've got 10 days to fill out this form and get a copy of whatever is checked off there and mail it back in this envelope, which by the way costs $27.00 and we don't know if it's the city, town, or state who pays for that. And then they walk

out. And they say, "But I already voted. Why do I do this?" That kind of confusion is what we need to avoid in order to restore the public's faith in elections.

I don't think our faith has been destroyed, but it's teetering, and the more complicated the process gets, the worse it is for people to feel that they have the power to exercise their right to vote. I'm going to leave these brochures, which are dated 2021 but they're still applicable. We haven't changed the law since then in case anybody wants to pick one up on the way out. So, thank you very much for your attention. If you have questions, I'm glad to answer them.

Chair: Thank you very much. I'm impressed you got the box done in the middle of the text. I can't do that. Any questions for Miss Tentorelli? I see none. Thank you. Will Hopkins has signed up to provide us some input on this Bill.

Will Hopkins: Thank you so much for giving me a little bit of time. I won't take much of it. I was born in Plymouth, grew up in Plymouth. I lived a year in Concord, I've lived in Belmont for the last 10 years but I've always called New Hampshire home, with the exception of 2004-2005 when I was in Iraq as a U.S. Army Infantryman. I voted absentee and I wanted to make sure that I came in ask the Committee to vote inexpedient to Legislate on this. In particular, I know that there are provisions that suggest that you could print out a ballot or do online ballots.

The posts when you are in a combat zone is extremely unreliable. Can take a couple weeks. I was lucky enough to be stationed on a major life support area, LSAM Aconda. But for folks on forward operating bases, mail could take several weeks to get in and out, so the timeliness factor is definitely important. We had one printer for our Company. I was certainly not allowed to use it. It was in the supply sergeant's office and so printing something off is not possible. Internet access in particular on forward operating bases can't happen. So, the timing here means that this would almost certainly disenfranchise folks who are in combat zones. And I just wanted to make sure that as somebody who has experienced voting from a combat zone that this Bill really shouldn't be something that we're looking at seriously. So, thank you for your time.

Chair: Thank you very much for coming. Does anybody have any questions? Thanks so much. I also have someone from the Secretary of State's office signed up to speak on this. I actually have David Scanlan signed up, but I haven't seen him. Oh, look at that. I didn't even make you out there. And then following that,

Senator Giuda, who is the prime sponsor of Bill has asked to speak last. I have no other pink cards on 418, so if you want to speak on 418, please. Hold on, Secretary. Your name, ma'am. Oh, all right. I thought, sorry. When I left for a minute, I thought you had spoken. So, we'll go to you next. And then Senator Giuda and Senator Gray are here. I do need pink cards from the two Senators. So, thank you. All right. Welcome Secretary Scanlan.

SOS Scanlan: Thank you, Madam Chair and members of the Committee. I'm David Scanlan, Secretary of State. And I will say Senator Giuda is braver than I to be between the Committee and the cafeteria at this time of day.

I'm here in general support of Senate Bill 418 and the efforts that Senator Giuda has undertaken, along with others. Secretary Gardner and I had worked with Senator Giuda last fall on his ideas and I think that, you know, he is addressing an area that is probably the greatest threat to our elections moving forward and that is a serious decline in voter confidence. We're seeing it in New Hampshire but we're also seeing it nationally. There's a number of reasons for that, but the bottom line is that we have to take steps to make sure that the voters that participate in New Hampshire elections feel that the elections are fair, that their votes are being accurately counted, and that those individuals that are participating in the election are qualified to participate.

And that's what this Bill attempts to get at. Our system in New Hampshire is based on a series, a set of checks and balances. You see it in the polling place by the locally elected officials that work there. We also see partisan participation in the fact that the political parties get to submit names for individuals to serve as ballot clerks and also individuals that can serve as challengers in the election. And in the voting process itself, there is a natural tension that exists between ease of voting and making sure that those individuals that are voting are qualified to vote. And I will say, and I think everybody in this room should agree, that it is extremely easy to vote in New Hampshire. And I would argue that if we're the easiest state to participate in an election we're pretty darn close.

We're also seeing, although it hasn't been reflected in testimony today that there is a growing sense in many voters that there are problems with the election, that there is fraudulent voting that takes place, or it is easy to allow that to happen. And they believe that, even if it's just a perception, they believe that perception. I will say very openly and clearly, I don't agree with that position.

Voting in New Hampshire is fair, I believe the results are accurate. There are isolate instances of inappropriate voting and the Attorney General's office has made prosecutions along those lines in recent years. But there is nothing that appears to be organized or widespread

So, that gets back to Senator Giuda's Bill, Senate Bill 418. And it tries to address the security side of the voting process. Trying to take some steps that will let other votes see that those that are participating in the election are qualified. This is not the end all. There's many other things that we have to do. And as the Secretary of State, we have plans this summer and fall to be very visible. We want to have an open discussion about these issues. We want to a lot more related to voter education on this process of voting. And we're also going to do a lot more work with local election officials on training, focusing on transparency. This process to be as transparent as we can make it every step of the way.

And while I generally support the efforts of this legislation, I believe that there are constitutional questions that need to be addressed. I would like to see this Bill amended to address some of the other concerns that have been mentioned. But there is a tool the legislature has to lay a Bill like this on the table, send a Resolution to the Supreme Court and ask them for an advisory opinion on those questions that they would like to ask.

And some of those, you know, I would start off by asking if Part 2, Article 32 of the Constitution requires that all ballots that are cast in an election by counted with the results declared in one continuous meeting. In other words, when the polls close do all of the results have to be accounted for at that time. Or, is there any scenario where vote tallies from ballots not counted on the day of the election can be added to the declared results announced on election day? And that's a question directly related to provisional ballots, which is something by the way that is used in just about every other state in the country. New Hampshire is unique in that all ballots are cast in election are counted on the day of the election and there is no provisional ballot process.

Similarly, is there any scenario where vote tallies can be subtracted from the declaration of results after the election that were counted on the day of the election? And that is specific to this novel version of a provisional ballot where it's called an affidavit ballot in the Bill, would be counted on the day of the election. But if the voter did not respond to the request for documentation, then the votes on their ballot would be discounted from the election some days after

it took place. And then, does requiring a voter to provide documentation qualifications after having voted on the day of the election constitute a burden as was determined by the court in Senate Bill 3?

There is also the question that was raised today about the UOCAVA ballots and those absentee ballots that are sent to our military and overseas personnel. I can tell you that there is no desire on my part or the part of the Secretary of State's office to not meet that 45-day deadline and, in fact, if we did not meet it then the U.S. Department of Justice would be all over us in very short order. And certainly that's an experience that none of us want. You know, there are ways to deal with that timeframe. You could shorten it up and give a voter fewer days to comply with the request for documentation.

There's a pending bill before the legislature to move the date of the state Primary, although I'm not advocating for that. My position is that the state Primary is fine just the way it is. I will stop there, Madam Chair, and I will be happy to answer any questions.

Chair: Questions for Secretary Scanlan? Representative Bergeron.

Rep. Bergeron: Thank you, Madam Chair. Thank you, Secretary Scanlan. A small constitutional question, 28A. An earlier speaker said that there about 6,000 affidavits used in the 2016 election. I thought it was closer to 7,500. But be that as it may, the postage cost for that many affidavits would then run between $160,000.00 to $202,000.00 and I'm sure it would have to be more because the polling sites would have to have more envelopes than they would possibly need. There's no fiscal note in this and it doesn't say who's going to be responsible for those exorbitant postage prices. Is it your intent that this is going to be taken up by the Secretary of State's? Are you going to write it out of your budget?

SOS Scanlan: That was my understanding the way I read the Bill is that the Secretary of State is supposed to provide the packets that would be issued to a voter that was voting by an affidavit ballot with pre-paid overnight postage on those documents. We're working on refining the fiscal note, in fact Patty Lovejoy has been working on that. And we should have a figure for you that is in the hundreds of thousands of dollars.

Rep. Bergeron: Thank you.

Chair: Thank you. Further questions? Representative Muirhead.

Rep. Muirhead: Thank you, Madam Chair. Thank you, Mr. Secretary. I have two quick questions, please. One is some earlier witnesses testified that they were concerned that passage of this Bill might cause the state to lose its exemption to the National Voter Registration Act. And putting aside the prediction that whether that might happen, would anything important to New Hampshire citizens be lost if the state were to lose its exemption to the National Voter Registration Act?

SOS Scanlan: We had developed a unique election process over time that works incredibly well. I would not want to see us lose our exemption to the National Voter Registration Act. I really want to see the analysis that prior testimony has that would suggest that that would happen. I'm not convinced at this point that it would.

Rep. Muirhead: Thank you. Actually, I'll just stop there. Thank you for coming.

Chair: Thank you. Further questions? Representative Hamer.

Rep. Hamer: Thank you. How confident are you with voter's privacy is kept private where the methodology the Bill establishes at the day of the balloting for voters? And the affidavit balloting would include a ballot in a different color other than the ballot. And it would contain a serialized, tear-off strip and would require local election officials to mail the strips to the Secretary of State. I'm finding this is not keeping the privacy.

SOS Scanlan: We're very concerned about the privacy. I believe what you just read was from the original Bill. And as amended by the Senate, that language is no longer there.

Rep. Hamer: Okay. Thank you.

Chair: Yeah, just for clarification the Bill you're looking at should be as amended by the Senate. Representative Torosian.

Rep. Torosian: Thank you, Madam Chair. Thank you, Secretary Scanlan, for taking the question. I just want to clarify a little bit on what you said in regard to, because there were longer questions on UOCAVA and the military vote. Do you believe the Bill could be amended to satisfy that, notwithstanding moving the Primary date?

SOS Scanlan: We would have to get creative in how that would happen, but there is no question that there is a federal deadline under both UOCAVA and the federal MOVE Act that absentee ballots to military and overseas personnel have to be out no later than 45 days before the election. The Bill allows us – it's the only, it's no longer the only

opportunity to email ballots to voters. But for UOCAVA voters we can actually email their ballot to them. They then have to download it, mark it, and then send it back through some type of mail service. There is a provision now that also exists for individuals with print disabilities to take advantage of the same type of email balloting.

Chair: Representative Hayward.

Rep. Hayward: Thank you, Madam Chair, and thank you, Mr. Secretary. I'm glad that you brought that up, the point about whether electronic means were available under UOCAVA has been overlooked until this time. And so, I'm glad that you mentioned that. Thank you.

Chair: Representative Berry.

Rep. Berry: Yes. Thank you. Mr Secretary, you said in your testimony something that I've pondered many times before, which is about the requirement that New Hampshire's ballots be counted on election night, which stems from the fact that the moderator has to announce the results in one continuous meeting. Can you elaborate at all, because I had the same thought. It doesn't actually say it has to be counted that night. It just says "one continuous meeting." Can you elaborate on how that would work with this Bill if we were to implement this and how it could be compliant with the New Hampshire Constitution?

SOS Scanlan: Well, I have a question in my own mind whether we can have some type of a provisional ballot, whether it's an affidavit ballot or a true provisional ballot. And then deal with adding or subtracting votes to the overall total some days after the election. And I think that based on the way that provision in the Constitution is written, it would require an interpretation.

Chair: Follow-up.

Rep. Berry: When we do a recount, how does a recount factor in with that part of the Constitution? Not that a recount is going to change election results, they rarely do, but they could. They most certainly change, not election outcomes but election results. So, how does that work? It seems to me like we already are kind of – I don't want to say violating it – but are past it, if you will.

SOS Scanlan: The recount is only of votes that were cast in the election. And so, it's verifying a count, but it is not adding or subtracting additional ballots that were not counted on the day of the election.

Chair: So, to clarify, you're distinguishing between the counting of ballots and the actual total?

SOS Scanlan: Yes.

Chair: Representative Telerski.

Rep. Telerski: Thank you, Madam Chair. Thank you for taking my question. I'm just wondering if you could comment with your thoughts on how the 10-day time period after election day, how that could potentially affect our position as first-in-the-nation for the Presidential Primary?

SOS Scanlan: I don't think it really would impact that. I mean, if we're talking about counting or subtracting votes, I don't know that there would be that any affidavit ballots that would affect the outcome of a Presidential Primary. I suppose there's an outside possibility that it could, but I think that generally speaking, the margins are such that there's usually a clear winner of the New Hampshire Primary.

Chair: Follow-up.

Rep. Telerski: So, you don't think the view from other parties looking in on New Hampshire would question the validity, in case we did have a close Primary?

SOS Scanlan: Well, I don't think that an affidavit-type ballot or let's just say it's a provisional ballot, would make that much of a difference because every other state is operating under the same set of conditions. Most other states have a provisional ballot. If the qualifications of a voter are in doubt on the day of the election the voter gets the voter provisional ballot and that ballot is counted, if it makes a difference in the outcome and only after those qualifications have been proven in another state. And I think in a Presidential Primary the results are going to be announced at the end of the night. That's going to be the winner. I don't know how much of an impact adding or subtracting some votes, subsequent to that, is going to affect the outcome of that process.

Chair: Further questions? Representative Groen.

Rep. Groen: Thank you, Madam Chair. Thank you for taking the question. Really the only problem we have with these "affidavit ballots" is on Primary for the 45 days. Every other election we do not have that problem. Is that correct?

SOS Scanlan: That's right. After we prepare the ballots for the Primary election, whether it's the Presidential or the State, there's more than enough time to get the absentee ballots out to military and overseas citizens. It's just that tight timeframe between the State Primary and the General Election that creates an issue.

Chair: Further questions? Representative Wilhelm.

Rep. Wilhelm: Thank you, Madam Chair, and thank you, Secretary, for taking the question. Would you agree with the Governor's statement earlier this week that 99% of Granite Staters have confidence in our election?

SOS Scanlan: I would that a few years ago there were some polls that reflected that. However, more recently the polling is suggesting that that statistic is shaken. And as I mentioned before, there's a number of reasons for that. It's rhetoric at the national level. There's statements being made from the left and the right that put doubt in voters' minds and social media is playing a big role in that as well. And the trick is how do we put the brakes on that and convince our voting population that nothing has changed. Our elections are just as sound today as they were 20 years ago.

Rep. Wilhelm: Thank you.

Chair: Thank you. Any other questions? Representative Hamer.

Rep. Hamer: Thank you. People registering to vote on election day for the first time in New Hampshire would be given an affidavit ballot, provisional ballot if they don't have proof of citizenship or domicile. Do supervisors of the checklist at the polls know whether a potential registrant has ever been registered in New Hampshire before?

SOS Scanlan: That's probably a better question to ask one of the local election officials. But it may depend on whether they have direct access to ElectioNet, which is the statewide, centralized database. I'm sure they could look a voter up to see if they had voted elsewhere in New Hampshire. There's still many polling places that don't have the connectivity at the polling place itself and I would expect that that might be a tough thing to do.

Chair: Follow-up.

Rep. Hamer: So, how would you handle Senate Bill 418 when it affects a voter who comes into the polls on election day and says he's just bought

a new home in a different ward in Manchester. He sold his home in the other ward. He's voted all his lifetime. So, he's a new voter or would he be subject to this provisional affidavit ballot?

SOS Scanlan: I don't have the answer to that at the moment. But I'd be happy to think about it and get back to you.

Rep. Hamer: Thank you.

Chair: Representative Wilhelm.

Rep. Wilhelm: Thank you, Madam Chair, and thank you, Secretary, for taking the question. So, someone from the Brennan Center shared what some of the additional expenses might be if we were to implement Senate Bill 418. One of the things that she talked about was adding temporary staff on election day. I'm just having a tough time wrapping my head around all the expenses that would be required if this Bill becomes law. What are your thoughts on what those expenses would be? Because the fiscal note just isn't helpful. Could you just kind of break it down for us, including temporary staff.

SOS Scanlan: I'd be happy to. Let me, not at the moment, but we'll get the work that we've been doing to you very quickly so that you can see the numbers that we've been working on.

Rep. Wilhelm: Okay.

SOS Scanlan: The numbers that were expressed by the Brennan Center were about what it would cost to have to comply with the National Voter Registration Act are consistent with what my belief is in terms of those costs.

Rep. Wilhelm: Okay. Thank you.

Chair: Further questions from Committee members? All right. Seeing none, thank you Secretary Scanlan. Also signed up to speak on this and I apologize for putting you in the "Already Spoken" file. Judy **Strackilastis**. Come on up. So, every understands what the intent of this Chair is. I know the hearing has gone long. I knew this would be long hearing, but it has gone longer than I thought and this meeting has to be over by 2:00 for the Chair. So, we are not breaking. Keep that in mind for yourselves. We are going straight through.

I have one more, two more people after this person. Three more?

Two more after this. Representative Moffett wants to speak to this Bill and Senator Giuda, the prime sponsor is here to speak to it. It is my intent to close the public hearing at that time. We have noticed exec session. Given the time and the fact that there are amendments flying around, we are not going to exec all the bills that I had hoped to exec. However, given that we have six members who have driven here today because your Chair said were going to exec.

We will exec one bill and it will be 364. So, after this hearing, we're going right into an exec on 364 and then we will be breaking for the day. So, thank you for indulgence. If people need to talk a walk because we're probably going to be here for another 15-20 minutes, if you need to take a walk down the hall. So, having said that, I apologize for taking you literally to my sort of snapshot of the end of the day. And welcome for your attest to us for this Bill.

Judy Strackilastis: Thank you, Chairman Griffin and Representatives. I'm a supervisor of the checklist in Derry. I'm just beginning my third term. And Derry has the largest voter checklist in the state. So, I'm happy to answer procedural questions for anybody. I've submitted written testimony because I didn't think I could be here this afternoon. So, I hope you'll read that. But I just wanted to talk about some questions that have been raised by other speakers and points that haven't already been made.

The first thing is that, in my experience, SB418 will affect a far higher number than is being anticipated because Mr. **Clementoitz** mentioned 816 people used citizenship affidavits in 2020. That's only what's recorded in the state database. Nearly everyone who completes a citizenship affidavit is not entered in the database because the database only allows us to flag a checkbox for a qualified voter affidavit for citizenship if the person was born outside the U.S. Most of the people born outside the U.S. became naturalized citizens and they are aware that they are going to be asked to establish citizenship and they generally tend to bring documents with them. A passport or a naturalization certificate. It's the people that are born in the U.S. that are more likely to fill it out.

So, the database can easily be reprogrammed to allow us to flag them but the problem is that the estimates based on what's in the system now are grossly inadequate. In Derry we have 2,200 people registered to vote on a non-COVID Presidential election. At least half of those people will complete a citizenship affidavit. It only exists in paper form in the files in town offices around the state.

So, Derry would have 1,100 alone, solely for citizenship. Domicile is easy to establish. People carry license or other ID around in their wallets. Same with identity. But citizenship is not something people carry around with them or keep handy as other speakers mentioned. And real ID doesn't apply, social card doesn't establish it, and military ID doesn't establish it.

So, I think that the costs will be much higher at $27.00 per envelope than anticipated. The number of affidavit ballots, therefore, will also exceed the margins of victory. Meaning that most races in most towns will be in limbo for two to three weeks. And that affects the ability for the town clerks to get military and overseas ballots. And it will also negatively affect public confidence in the integrity of elections when the results change. And also, people want news immediately. When it takes longer, people think there's fraud.

Mr. O'Brien brought up the explanation for first-time voters and Secretary Scanlan mentioned that also. The way that the current law is and SB418 would be the same, it exempts voters who have previously registered in New Hampshire. The way to tell that is to look them up in the database. But we have three supervisors of the checklist in Derry. And with 2,200 people only the three elected supervisors are able to look that information up. Even if we have laptops and a secure connection and a reliable connection, there's no way that we could ever look up 1,110 people. We have between 24-36 assistant supervisors helping people on election day and they can't funnel all those people in to see three people at the end.

So, what we do, we require everyone since it's a constitutional requirement to prove citizenship, even if they list they were born in the U.S. we require them to fill out a qualified voter affidavit for citizenship.

Chair: Thank you. **[inaudible – crosstalk] [03:18:07]**

Judy Strackilastis: The other thing is I think that this defeats voter ID because it allows the supervisor of the checklist to verify the identity of voters who don't possess a photo ID when they check in. That presumably would mean us looking people up in the voter list. There's not all that many people that don't have an ID, so that's not the issue. The issue is there's nothing in the voter ID that would prevent somebody from voting in the name of a recently – That process means that allows supervisors to identify through the voter checklist means that person didn't present a photograph and is not photographed is part of an affidavit process.

The voter records don't contain photographs and all the information that's in there has the nonpublic information is generally available in obituaries. So, anybody who recently died, their obituary is going to have their date of date, where they were born, the kind of questions that supervisors could ask is publicly available. So, I oppose it on that grounds. One other thing that would need to be clarified, if this passes, is that supervisors of the checklist cannot touch ballots. We couldn't hand affidavit ballot packets to people and we can't instruct people on how to complete the voting process. So, that right now it says authorized election official and that should be clarified. Thank you.

Chair: Thank you very much. And thanks for waiting all morning. Are there any questions? That's okay. You can get away. Representative Moffett, did you want to speak?

Rep. Moffett: Thank you, Madam Chair, for indulging me. I had not planned to speak. I will take a minute or less. I just wanted to follow up on the Secretary of State's comments by just quickly sharing that – I am a State Rep by the way, for the record. Mike Moffett, Merrimac District 9, Canterbury and Loudon.

I did a State Rep race a few years ago that ended in a tie, a tie. So, obviously there's a recount and on the recount, I dropped one vote on the recount. So, I just wanted to underscore that every vote counts. In my case, later on it supposedly came to same day registrants. Some of the same day registrants could not be tracked down. They may have voted for me, we don't know. So, these last few minutes I wanted to say was every vote counts and efforts to ensure the integrity of our elections I think need full consideration. Thank you, Madam Chair. And I'll take questions if there are any.

Chair: Any questions for Representative Moffett? Thank you.

Rep. Moffett: Thank you.

Chair: And then, we have Senator Giuda. I have nobody else left to speak on this, and so. The sponsor usually goes first, so this is I think my first hearing where the sponsor is actually going last. So, welcome Senator Giuda.

Senator Giuda: Thank you, Madam Chair. For the record, Senator Bob Giuda, District 2, Prime Sponsor on Senate Bill 418. I appreciate the Committee's indulgence in allowing me to speak after the commencement of the hearing. I was at a medical appointment as the saying goes, growing old is not for sissies.

The right to vote is not an unqualified right. It is a qualified right and we as a legislature are constitutionally empowered to establish those qualifications. Every living, breathing person on the planet is not entitled to vote in New Hampshire. But under current law, any living, breathing person on the planet can come here and vote. Think about that. I can come here. I sign a paper that says I'm a citizen, or I live here. Okay. We've had over 2.5 million come across the southern border of the United States in the last few years and more are coming.

How do we know whether they're here voting? We don't. With the affidavit system a person vouches that I am who I am, I live where I live, I'm a citizen, whatever the case might be. But the follow-up is irrelevant. Why do I say that? The follow-up is irrelevant because by the time the 60-day window has expired for the Secretary of State to deliver the questionable ballots to the Attorney General, and by the time the Attorney General has completed the investigation, the vote has already been counted, cast, and certified. That's the loophole that we're trying to close.

This Bill stops no one from voting. It creates no new restrictions. It says within the existing qualifications already established in law you would have failed in your civic duty to mee the obligation to qualify to vote. We're giving you an extra 10 days and telling what it is you need to provide. And I do that to protect the sanctity of the vote not to exclude anyone. I don't target college kids, I don't target immigrants, I target qualified voters. It is not an unqualified right.

If you look at the notes, the preamble, if you will, the findings, on average basically one race a year is one or lost by a vote. When you go to look at the number by two or three or five the number goes up very significantly. This data was given to me by Bill Gardner. Bill and myself and Secretary Scanlan worked very hard on this Bill as did Representative, former Justice Bob Lynn. I told Representative Lynn put your Justice hat on and rip this to shreds.

Chair: Senator, you may not know it. He's walked in the room.

Senator Giuda: I'm not concerned. And so, again this Bill is attempting to close a gaping loophole. And when people say that establishing this process, which increases nothing except if you show up, you sign an affidavit, you get a document that says, with an envelope paid by the state, you need to return the proof of that qualification that you claim you have. Not doing that renders our system vulnerable and dishonors the service of the millions who have given their

lives to protect the sanctity of the vote. The sanctity of the qualified vote. The sanctity of the citizens vote, not the sanctity of the vote of every living, breathing human being. It's a qualified vote.

With respect to the military, I served in the Marine Corps. I served during Vietnam, I served subsequent to that, I served my country as an FBI agent. My son is in the Navy as an officer at this time. My wife was a Navy nurse. So, those who might insinuate or imply that anything in this Bill ever intended to deny the right to vote to the military, I reject that assertion. I will say that there is a Bill before you, Senate Bill 328 that will move the Primary back to August. It was voted on, bipartisan in the Senate. It is before you now. And there's a reason for that. Doing so enables our federal candidates to have access to much more of the funding available, which is gone by the time our Primary in September is closed.

There's a reason for this. All right. You'll deliberate that bill. In concert with this, we don't have an overseas military ballot problem. So, again. It's not an unqualified vote. The process is not difficult. You won't have any longer lines than you have now. And yes, going to require someone that says, "Believe me. I'm a U.S. citizen." Or "Believe me. I live here." And can't produce any of the list of documents provided to prove residency. We're going to say, okay, we believe you. Your vote will be counted, but it will not be certified.

Certification of the ballots right now in the House and Senate is a ceremonial process. Secretary of State comes in, prepares the Senate, picks three people they go out. Yeah, yeah, yeah. They come back in. It's certified. This gives meaning to the certification of that ballot. It protects the sanctity of the right of qualified citizens of the United States to vote and it protects the sanctity of the vote of every New Hampshire resident who casts a ballot.
Thank you, Madam Chair. I'll take any questions.

Chair: Thank you, Senator. Questions for Senator. Representative Bergeron.

Rep. Bergeron: Thank you, Madam Chair. Thank you, Senator. Let me start with one question about process. Page 2, Lines 22-24. It states that "No later than one day after the election the Moderator shall forward all affidavit ballot verification letters to the Secretary of State using a secure means of transmission or delivery." There's really two questions here. First part, all the return of votes forms are returned to the Secretary of State by the Clerk on election night. Why in this

case are these forms being held on by the Moderator to return up to a day later?

Senator Giuda: Thank you for your question. The reason we worded it that way, that does not preclude those documents from going with the certification that's sent the day of the election. It just gives them an extra day in case perhaps something got misplaced or they wanted to verify. But it doesn't preclude them going at the same time. It just says you've got an extra day if you need it.

Rep. Bergeron: Okay. Further question, Madam Chair?

Chair: Follow-up.

Rep. Bergeron: And this is kind of a question I asked at the beginning of this hearing, hours ago. Given that the state spent almost $4 million litigating Senate Bill 3 and given that there was a federal court decision in 2020, Fish vs. Schwabb, in Kansas, which ruled that the requirement for documentary proof of citizenship was a violation of the 14th Amendment under the Equal Protection Clause. Why didn't the Senate take the Secretary of State's advice or suggestion that our Supreme Court be asked for opinion on the constitutionality of this Bill?

Senator Giuda: Well, I will share this will you. There have been three decisions in the nation made by the U.S. Supreme Court, which is irrelevant. Let me strike that remark. We opted not to do it because I don't believe that we should subordinate our laws that are proposed to the opinion of justices who, since they're not in law, what we send to them can be taken apart, based on whatever it is they choose to say. I don't believe we, as a legislative branch, subordinate our actions to the courts. The Constitution says we're separate and equal. Let's keep it that way. I thought about this question and I specifically said I will not subordinate this. This is an issue of the sanctity of the vote and to say that we're going to ask the courts, Mother, may I? I just will not do that.

Rep. Bergeron: I have no further questions.

Chair: Further questions from the Committee? Representative Groen.

Rep. Groen: Thank you, Madam Chair, and thank you, Senator Giuda. Wouldn't this Bill also say that make sure that my vote will not be overridden by somebody else's vote?

Senator Giuda: Your question is quite correct. Your answer is quite correct, in a

way. And it's true. We're here to protect the sanctity of each vote and the sanctity of the qualified voters ballots, not the sanctity of those unqualified. Note for the record, I didn't say "fraud." I didn't say "theft." I said "unqualified." And that's what must ensure as carrying the trust of the people of the state.

Chair: Further questions from Committee members? Oh, I'm sorry, Representative Muirhead. I had you down and forgot. Go ahead.

Rep. Muirhead: Thank you, Madam Chair. Thank you, Senator. My understanding is that someone who registers to vote 30 days or more in advance of an election, well everybody has to prove four things, as you know, Senator: citizenship, age, domicile, and identity. And votes registering more than 30 days in advance of an election can prove citizenship by signing a sworn statement on the voter registration form. As I read the Bill, it looks like those voters registering day of will need to produce a passport or a birth certificate or naturalization papers. Is the intention of the Bill to create two classes of voters?

Senator Giuda: Excellent question, thank you. No, it is not. I focused exclusively looking for hard at same day registrants. People that come up the day of the election. You got two years between elections to register and produce documentation. What we're looking at is to ensure that the last-minute person that comes up is in fact qualified to vote. And it is no way intended to create a dual class, if you will, on the qualifications for citizenship.

Rep. Muirhead: May I have a follow-up on the citizenship question, Madam Chair? On the type of fraud that a passport or a birth certificate or naturalization papers would guard against, which is someone voting who's not a citizen of the United States as opposed to say someone voting in two different states who is a citizen. Do you know how many people how many people have been located and convicted of having voted in New Hampshire who it turns out have not been citizens of the United States in some window of time like the last 10 or 20 years?

Senator Giuda: Don't know and I don't believe we have the data. We have no way of knowing. So, could a hundred, could a thousand, possibly. Could zero. Possibly. Again, what we're trying to do is close this loophole, this gaping hole in the integrity of our elections. And the quality of our elections and the process is not at question here. We have an excellent process. But the gatekeeping for that process is what's lacking. Once you're into our system it works fabulous. A moderator who just finished as a moderator for my town for eight

years. The system works great. We have great officials, we have great volunteers, and good process. But the entry into that system is what is the vulnerability to its integrity.

Rep. Muirhead: Thank you, Senator.

Senator Giuda: Thank you, sir.

Chair: Further questions? Thank you, Representative **[not identified]**.

Rep. I'm curious about what we heard earlier about a potential conflict with Part 1, Article 2B, the right to privacy and having our information protected. Would you agree that one's ballot and how they vote would fall under that part of our –

Senator Giuda: Absolutely. I would also state that there is no more disclosure of personal voting information in this than there is by the opening of absentee ballots by a moderator. Moderator handles a ballot, it's marked. So, what we did in this Bill is we structured very carefully all the processes in here mirror already existing processes in state law for particular election components. And again, that was with the help of the Secretary of State, with the help of some volunteers, and so I don't think there is that threat.

The ballots were never named, they're numbered. And the moderator does that now. They're separately placed because once you mark a ballot you run the risk of messing up a machine that might read it, so they're putting "hand counted." So, people that we trust, the moderator, are the ones that would see what was on a ballot if he or she chose to look. And no moderator that I know would do that. We respect fully the right to privacy of that ballot.

Rep: Just very quick.

Chair: Follow-up.

Rep: Thank you. We heard earlier today about a town election where there was one challenged voter affidavit and it seems to me in a small town, and we have a lot of small towns in New Hampshire, that anyone who was voting and was in there and saw someone walk out with one of those folders and then saw a change in the totals 10 days later would be able to put two and two together. You don't feel that that's a violation of that person's privacy?

Senator Giuda: Would you restate that question?

Rep: Sorry. We heard an anecdote about, I believe it was the town of Milford, the most recent election they had one person that had to had to sign a challenged voter affidavit. And if this Bill would become law they would have walked out with their $27.00 pre-paid envelope to return to the Secretary of State's office and if another voter was in the area, not necessarily an election official and saw their neighbor, John Doe, walking out with that envelope, wouldn't you think 10 days later if they then saw in Milford that certain races all dropped by one vote, that perhaps they would know that their neighbor, John Doe, voted for these different candidates.

Senator Giuda: If the total dropped by one vote it was because the person that voted was not qualified to vote and thereby violated the law. And so, the question then becomes do they have the right to privacy of that ballot since it's going to go to court, if the system works as it's supposed to. It's not going to be private knowledge anymore.

Chair: Thank you. Representative Bergeron.

Rep. Bergeron: Thank you, Madam Chairman. Just a follow-up question in response to the Representative's question. You said if that person's vote was disqualified because the voter wasn't eligible to vote, isn't it true that it's just that the voter didn't return the required documentation. He may have been certainly eligible to vote, but it was just the paperwork.

Senator Giuda: Eligible but not qualified. According to the Constitution and the laws of this State. And that is what we are sworn to uphold. I come back to the point that qualified voter, not any voter. It's qualified right, it's not an unqualified right. And for that reason, if a person does not produce those qualifications that ballot is invalid. It's not fraudulent. Fraud goes to intent. It's invalid. It's unqualified. The vote needs to be subtracted. This is not a provisional ballot. I'll throw that in because a provisional ballot doesn't count the vote until the qualification is proven by the voter.

In this case, we're counting it because the Constitution requires it. That's been the interpretation. But we're going to then say, well, Secretary of State gets a document that's required, it's over. Doesn't get the document that's required, an email goes up or a letter goes up to the town and then they will then send the number and the doc and the verification letter with the ballot will then go to the Attorney General for their taking care of potential prosecution.

Chair: Thank you. Further questions from the Committee? Seeing none. Thank you. Thank you for spending a bit of the morning and afternoon with us, Senator.

Senator Giuda: Thank you, Madam Chair and members of the Committee.

Chair: That concludes the public hearing on SB418. I want to thank everybody for participating in the hearing this morning. Everybody was good. We stuck to times.

And at this time, I am going to open the Executive Session in the Election Law. We had four bills that I'd hope to get to today. There are a couple of amendments, one of which I haven't even seen yet so, we are going to be back here next week with Executive Session and we will try to address as many bills as we can then. But, having said, there is one bill that I am thinking we might have pretty good results out of this Committee and that is SB364. SB364 was relating to electronic poll books. It had a public hearing on April 6th. The sponsor of this was Senator Perkins Kwoka and does anybody have a motion on this bill?

Rep. Prudhomme O'Brien: Yes. I have a Motion.

Chair: Representative Prudhomme O'Brien.

Rep. Prudhomme O'Brien I move to pass on this bill.

Chair: Is there a second?

Rep. Bergeron: Madam Chair. I'll second.

Chair: Second by Representative Bergeron. Is there any further discussion on this bill?

Rep. Prudhomme O'Brien I would explain.

Chair: Thank you, Representative.

Rep. Prudhomme O'Brien This bill is a very simple bill that changes the requirement that paper backups of electronic poll books are completed in 10 minutes. It changes it to 30 minutes. This allows the election workers a little bit more time to get this done and this is not very controversial and it's a housekeeping bill, really, and I think it's

good.

Chair: Any further discussion on SB364? Seeing none I'm going to ask our substitute Clerk for the day, Representative Hayward, to call the role.

Rep. Hayward:

Representative MacDonald	Yes
Representative Prudhomme O'Brien	Yes
Representative Sweeney	Yes
Representative Hayward	Yes
Representative Torosian	Yes
Representative Berry	Yes
Representative Moffett	Yes
Representative Qualey	Yes
Representative Murner	Yes
Representative Groen	Yes
Representative Bergeron	Yes
Representative Telerski	Yes
Representative Hakken-Phillips	Yes
Representative Sandler	
Representative Hamer	Yes
Representative Wilhelm	Yes
Representative Freitas	Yes
Representative Hamblet	Yes
Representative Muirhead	Yes
Representative Griffin	Yes

Vote is 20-0

Chair: Thank you very much. Without objection that will go on the Consent. I want to thank everybody for your indulgence in my scheduling this morning. Thank you very much for the substitutes who came down this morning. Welcome to Election Law is how I think is how you think after the end of this morning. I don't know. And with that, we are dismissed as concluded. We will be back together in this room next week. Thank you very much.

Time is 2:15 p.m.

[End of Audio]

Duration: 224 minutes

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Executed this 18th day of May 2022.

Sincerely,

Beth Worthy
President
Email: Beth@gmrtranscription.com
Phone: (714) 202-9653

EXHIBIT E

Affidavit Ballot Verification Letter

The Moderator will issue you this Affidavit Ballot Verification Letter. New Hampshire law requires you to return this letter with a photocopy of a valid photo identification or other proof of identity to the Secretary of State within 7 days by personal delivery or mail. If you use mail, please try to place the letter and proof of identity into the mail within 5 days of the election using the US Postal Service pre-addressed and prepaid envelope provided with this letter.

The Moderator or clerk will send a copy of this letter, with the photo taken of you attached, to the Secretary of State using a US Postal Service pre-paid and pre-addressed envelope provided by the Secretary of State.

This Affidavit Ballot Verification Letter is issued to you because you registered to vote on election day, are a first time registrant in New Hampshire, and did not present a qualified photo identification or have your identity verified by the Moderator, Clerk, or a Supervisor of the Checklist when registering to vote.

You must provide the Secretary of State with a photocopy of a qualified photo identification along with this letter.

Election: _____ Date _____/_____/_____

Town/City & Ward _____

Moderator's Name (Print): _____

Affidavit Ballot # _____ (Moderator: enter the sequential number also written on this voter's affidavit ballot).

Voter's Name (Print) _____

Voter Domicile Address; Street_____

Town/City _____

Voter Date or Birth _____/_____/_____

The attached "State of New Hampshire Voter ID Law, Explanatory Document, Proof of Voter Identity Instructions" explains the requirement to

provide proof of identity using a photo identification when registering to vote and when voting.

If you do not possess and cannot promptly obtain photo identification, you may obtain a voucher to receive, free of charge, a voter photo identification for voting purposes only, issued by the New Hampshire Department of Safety, Division of Motor Vehicles. A blank voucher is included with this letter. You must have your town or ward clerk sign the voucher to validate it for use at the DMV. You may also contact the Secretary of State's Office to obtain a voucher. elections@sos.nh.gov (603) 271-3242.

You will be required to prove your identity to the Division of Motor Vehicles. See "Identity and Residency Requirements" included with this letter.

You have cast an "Affidavit Ballot" which was counted on election day. If you do not return this letter and a photocopy of a qualified photo identification or other proof of identity to the Secretary of State within 7 days following the election your affidavit ballot will be used to deduct your votes from the totals determined on election day or at a recount for candidates and questions at this election. You must either:

- Deliver this completed letter and proof of identity in person to the Secretary of State's Office, Room 204, Statehouse, 107 North Main Street, Concord, New Hampshire within 7 days; or
- Mail this completed letter and proof of identity to the Secretary of State using the pre-paid, pre-addressed, U.S. Postal Service envelope provided to you with this letter. We request you mail the response within 5 days of the election.

Any written, electronic, or other information you provide to verify your right to vote shall not be subject to disclosure under the Right-to-Know law, RSA 91-A, or any other law. RSA 659:23-a, VIII.

If you do not return this letter and proof of identity to the Secretary of State a referral will be made to the Attorney General's Office in accordance with RSA 7:6-c, for investigation to determine whether any violation of the election laws occurred.

If you have questions please contact the Secretary of State's office at elections@sos.nh.gov or (603) 271-3242.

EXHIBIT F

To: New Hampshire Election Officials

From: Secretary of State David M. Scanlan

Re: SB 418 (2022), Affidavit Ballots

Date: February 10, 2023

SB 418, Chapter 239 of the Laws of 2022, requires that in-person voters registering in New Hampshire for the first time who are unable to prove their identity on election day must use a ballot marked as an "Affidavit Ballot." The voter has a duty to submit proof of identity to the Secretary of State within 7 days after the election. If identity is not proven, the affidavit ballot is removed and the votes on that ballot are deducted from the election results. This guidance addresses implementation of this new law.

A. Who is required to use an affidavit ballot?

A voter uses an affidavit ballot only if **all** of the following apply:

1. Election Day Registration;

2. First time registrant in New Hampshire;

   - ❖ When ElectioNet is available at the polling place, check for prior registration;

   - ❖ When ElectioNet is not available, rely on the Voter Registration Form entry for "Place Last Registered to Vote." If applicant enters a New Hampshire town/city ward, treat as previously registered in New Hampshire – affidavit ballot does not apply;

   - ❖ If the applicant left the "Place Last Registered to Vote" blank, ask the applicant to verify that they have never been registered to vote anywhere in New Hampshire in the past.

3. Applicant does not have valid Photo ID to prove identity; and

4. Applicant does not meet the identity requirements of RSA 659:13;

   RSA 659:13,I(c); RSA 659:23-a.

The greeter or a ballot clerk must direct an unregistered person seeking to register and vote without a valid photo identification to the Supervisors of the Checklist. RSA 659:13, I(c)(2).

B. Verifying Identity

The Supervisors of the Checklist, during processing of the voter's registration, shall review the voter's qualifications and determine if the voter's identity can be verified. RSA 659:13, I(c)(2).

For registered voters who do not have photo ID, a ballot clerk will work with the voters to determine if the Moderator, Clerk, or a Supervisor personally knows the voters well enough to verify each voters identity.

If identity is verified, mark the voter on the checklist as if they showed a New Hampshire driver's license and issue a ballot.

If identity is not verified, send the voter to the "No Photo ID" table where the staff will require the voter to complete a Challenged Voter Affidavit and take the voter's photo. The voter presents the completed Challenged Voter Affidavit with an attached photo to the ballot clerk. The ballot clerk marks the checklist, including a checkmark in the CVA box, and issues the voter a ballot. This new law does not change the established process for a registered voter without photo ID.

For voters registering for the first time in New Hampshire on election day without a photo ID, if the Supervisors of the Checklist cannot verify the identity of an applicant who is registering in New Hampshire for the first time, the applicant must execute a Challenged Voter Affidavit, have their photo taken, and vote using an affidavit ballot. The photo taken shall be attached to the second copy of the Affidavit Verification Letter and delivered to the Secretary of State. If the Moderator, Clerk, or a Supervisor personally knows the applicant well enough they can verify the voter's identity.

For a voter already registered in New Hampshire but who is registering in a new town or ward, the process for proof of identity by an applicant who is registering to vote but was previously registered in New Hampshire, which is known as a registration transfer, is not changed by SB 418. **A Moderator, Clerk, or Supervisor who personally knows the person can verify the applicant's identity.** Otherwise, the transfer registration applicant must complete a Qualified Voter Affidavit and have a photo taken or complete an affidavit of religious objection. The photo is

attached to the Qualified Voter Affidavit and kept with the Supervisors' records.

For all voter registration applicants:

- If the camera fails, the voter may vote without a photograph being taken.
- If the voter objects to being photographed based on religious beliefs, the voter shall complete an affidavit of religious exemption in accordance with RSA 659:13-b.

For an election day applicant who is registering to vote for the first time in New Hampshire without a photo ID, after the registration is approved by the Supervisors, the Moderator oversees the marking and issuing of an affidavit ballot and Affidavit Voter Package to the voter.

The Moderator shall direct a ballot clerk to add the voter to the checklist and ensure that the box for Challenged Voter Affidavit use (CVA) on the checklist is marked to show that the voter used a Challenged Voter Affidavit for proof of identity.

C. Affidavit Voter Package

A voter who uses an affidavit ballot shall be issued an "Affidavit Voter Package." The Secretary of State will issue each town and city ward a quantity of Affidavit Voter Packages prior to the next election and will establish a process for replenishing the supply as needed in advance of future municipal and state elections.

The Affidavit Voter Package must include:

- A prepaid and pre-addressed U.S. Postal Service envelope addressed to the Secretary of State;
- An Affidavit Verification Letter (two copies) with the document "Registering to Vote in New Hampshire," which explains the documents required to qualify to vote in New Hampshire;
    - One marked copy of the Affidavit Verification Letter shall be issued to the voter;
    - One marked copy of the Affidavit Verification Letter shall be retained by the local election official to send to the Secretary of State.

    - **At state elections**, include the state copy of the Affidavit Verification Letter(s) with the election night return of votes and the one4all tablet.
    - **At special state elections**, mail the state's copy of the Affidavit Verification Letter(s) to the Secretary of State using a pre-paid, pre-addressed, U.S. Postal Service envelope provided by the Secretary of State and ensure it is placed into the U.S. mail within one day of the election (by 5:00 P.M. on the Wednesday immediately following election day).
    - **At municipal elections**, the Moderator, with assistance as needed from the Clerk, shall place the copies of the Affidavit Verification Letter(s) in a pre-paid, pre-addressed, U.S. Postal Service envelope provided by the Secretary of State and ensure it is placed into the U.S. mail within one day of the election (by 5:00 P.M. on the Wednesday immediately following election day).
- The New Hampshire Voter ID Law – Explanatory Document, which has been revised to reflect the Affidavit Ballot law.
- A blank voucher for obtaining a free photo identification, for voting purposes only, from the Division of Motor Vehicles. The Moderator should inquire whether the voter has a photo identification that they just did not bring to the polls. If the voter does not have any photo ID, the Moderator should explain the availability of a free photo identification through the Division of Motor Vehicles. **Encourage the voter to obtain the Clerk's signature on the voucher while at the polling place.** In a city, Ward Clerks may sign the voucher. The vouchers provided in the Affidavit Voter Package will have a Secretary of State seal on the form and need not have the Clerk's seal on the form, just the Clerk's signature.
    - A Division of Motor Vehicles form explaining the proof of identity that must be presented to obtain a photo identification for voting purposes only should be included.

The voter must deliver the completed Affidavit Verification Letter and a proof of identity document in the pre-paid, pre-addressed, US Postal Service envelope to the Secretary of State within 7 days after the election. Delivery to the Postal Service no later than day 5 following the election is recommended. The voter may also have the completed package

delivered to the Secretary of State's office no later than day 7 following the election.

The Moderator should pre-number sets of Affidavit Verification Letters for each election. Number both the copy going to the voter and the copy going to the Secretary of state with a sequential number in the "Affidavit Ballot #___" space. This will ensure that if a Deputy or Assistant Moderator issues an affidavit ballot when covering for the Moderator, there is one unique number for each affidavit ballot.

The State's copy of the Affidavit Verification letter should be the only record containing the voter's name and the Affidavit Ballot number. Do not keep a copy or a separate list. This helps preserve the voter's right to a secret ballot. Once the State's copy of the Affidavit Verification letter is sent to the Secretary of State, there should be no local record that identifies which voter used an affidavit ballot or the Affidavit Ballot number that was written on a specific voter's ballot.

D. Affidavit Ballot

The "Affidavit Ballot" is an election day ballot on which the Moderator marks "Affidavit Ballot # ___." Enter the number "1" on the affidavit ballot for the first voter using an affidavit ballot, "Affidavit Ballot #2" on the affidavit ballot for the second voter using an affidavit ballot, continuing sequentially for all affidavit ballots used at the election. The "Affidavit Ballot #_" shall be written in red or blue ink in the header area of the ballot.

At town, school, and village district elections, where a voter receives ballots from both town and school elections and/or SB2/Official Ballot Referendum multiple page ballots, the "Affidavit Ballot # __" must be written on each ballot page using an identical number on each ballot page issued to one voter.

At polling places using a ballot counting device, a single thick black line must be drawn through at least 3 of the timing marks along the top and bottom of the ballot. If an affidavit ballot voter inserts their ballot into the ballot counting device, these markings will cause the device to reject/return the ballot. Affidavit ballots must be placed into the device's side pocket for hand counting with other hand count ballots. The side pocket is designated as the container for affidavit ballots as required by RSA 659:23-a, IV.

At polling places using a ballot box, a voter casting a marked affidavit ballot in a hand count polling place must cast the ballot in person and the

Moderator must place the marked ballot in a container designated "Affidavit Ballots." Each polling place must prepare this "affidavit ballots" box for each election to ensure its availability if needed. A cardboard box with a printed sign attached stating "Affidavit Ballots" satisfies this requirement. RSA 659:23-a, IV.

After the polls close to voting, the Moderator must manage the hand counting of affidavit ballots in a manner that protects those voters' right to a secret ballot. After counting is complete, the affidavit ballots must be kept segregated from all other ballots and sealed into a separate container. At most polling places, the affidavit ballots can be sealed into a large envelope or box if needed. The sealed container with the marked and counted affidavit ballot(s) must be placed in the custody of the Clerk who will securely store the container in the same place and manner as sealed boxes of ballots from the election. The separate, sealed, affidavit ballot container will allow retrieval of specific affidavit ballots without breaking the seal(s) on the other boxes used to store ballots following the election.

For state elections, if the ballots from the polling place are transferred to the custody of the Secretary of State for the purposes of an audit or re-count, the sealed affidavit ballot container shall also be transferred to the custody of the Secretary of State.

Best practice is for the Moderator to hand count all affidavit ballots using a tally sheet that will also be used for hand counting other ballots. When the Moderator completes entering the votes from the hand count of the affidavit ballot(s) on the tally sheet, the same sheet will be used by the team hand counting other ballots that will add marks on the tally sheet for the other ballots the team counts. When counting is complete, the combined marks from the affidavit ballots and other hand count ballots will not allow anyone to determine from the tally sheet how the affidavit voter(s) marked their ballots. **The tally sheet <u>shall</u> <u>not</u> be marked to show how affidavit voter(s) marked their ballot(s) versus how other hand count voters marked their ballots - all ballot totals must include both affidavit ballots and other hand count ballots.**

A tally of the number of affidavit ballots cast is public information and must be announced when the results of the election are announced. RSA 659:23-a, IV. Keep a record of the number of affidavit ballots that are issued to voters. **<u>Do not include the identity of the voters on that list.</u>**

Never disclose the name of any voter and the candidate(s) for whom that voter voted for or how that voter voted on a question. Announce

only the final total results that include all results from a ballot counting device and all results from hand counting of ballots. The ballot counting device results tape is a public document. After complete results are announced, the public gets to know how many votes a candidate received from device counted ballots versus from all hand counted ballots. Do not disclose the breakdown of how many votes a candidate received from affidavit ballots versus other hand counted ballots. This protects the affidavit ballot voter's right to a secret ballot.

E. Deducting Votes

The Secretary of State will notify the Moderator to retrieve an affidavit ballot if a voter does not return an Affidavit Verification Letter as required by law. The Moderator and Clerk shall schedule a public counting session by posting a notice "in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings." RSA 91-A:2, II. It is expected that the public counting session will take place in the Clerk's office or some other suitable room in a town/city building.

For state elections, the deduction count and transmittal of the revised Return of Votes to the Secretary of State shall be completed as soon as possible, but no later than 14 days after the election. RSA 659:23-a, VI. The counting of the votes on an affidavit ballot(s) shall use "the same methods of counting and observation utilized on the day of the election for hand counted ballots." RSA 659:23-a, V. "The counting of votes shall be public and conducted within [a] guardrail and shall not be adjourned nor postponed until it shall have been completed. No ballot shall be placed within 4 feet of the guardrail during the counting of votes." RSA 659:63. Any informal tool, such as a rope, ribbon, or a line of chairs can be used as the rail establishing a 4 foot space between ballot counters and observers. After counting, the affidavit ballot(s) shall be re-sealed in an envelope or appropriate container and returned to the custody of the Clerk to be kept in secure storage with the other ballots from the election, for the period of time required by law.

The Moderator and Clerk shall revise the Return of Votes form previously submitted, noting the number of votes deducted because of unverified affidavit ballots and the resulting revised total votes for each candidate and question. This revised Return of Votes form shall be signed and dated by the Moderator and Clerk. For a state election, the revised Return of Votes must

be submitted to the Secretary of State by fax or scanned and attached to an e-mail sent to: elections@sos.nh.gov.

For state elections, the Secretary of State will aggregate revisions and certify the revised total vote for each office and question. The results posted on the Secretary of State's web site shall be updated to reflect the deducted votes in a manner similar to that used to report recount results.

For municipal elections, the Moderator shall certify the revised Return of Votes. The Clerk shall update any posted results to reflect votes deducted because of unverified affidavit ballots. The Clerk will follow existing law to notify the candidates who are elected to office of their obligation to take the oath of office.

The Secretary of State will refer to the Attorney General's Office the names of all affidavit ballot voters who do not return an Affidavit Verification Letter with the required proof of identity. The New Hampshire Attorney General's Office will investigate to determine whether any election law was violated in accordance with RSA 7:6-c. RSA 659:23-a, VII.

F. Recounts

If the total number of affidavit ballots submitted for any local, district, county, or statewide race or measure would, if counted in favor of either candidate or measure, alter the outcome of the election, the Secretary of State shall extend the deadline for requesting a recount until after the deadline for submitting Affidavit Verification Letters with proof of identity. The Secretary of State shall publish the new deadline(s) for requesting a recount. RSA 660:17-a.

G. Requirements for Photo ID and Identity Verification

This is a review of existing law.

To be valid, photo identification must:

- Show the name of the individual to whom the identification was issued;
    - The name shall substantially conform to the name on the checklist/voter registration application signed by the applicant;
- Show a photograph of the individual to whom the identification was issued; and

- Be current or, if expired, have an expiration date that has not been exceeded by more than 5 years
    - Except, if the voter/applicant is 65 years old or older, there is no limit on use of an expired photo identification;
    - Except that a student ID is valid if it has either an expiration date or an issuance date that has not been exceeded by a period of more than 5 years.
- Be a driver's license issued by any state or the federal government; or
- Be a New Hampshire Voter ID issued by the Department Of Safety; or
- Be a non-driver ID issued by the NH Division of Motor Vehicles or any other state; or
- Be a United States Armed Services identification card; or
- Be a United States passport or passcard; or
- Be a valid student identification card issued by;
    - A college, university, or career school; or
    - A public high school in New Hampshire; or
    - A non-public high school in New Hampshire; or
    - Dartmouth College; or
    - A college or university operated by the University System of New Hampshire or the Community College System of New Hampshire; or

Lists of the educational entities that are recognized as issuing valid student photo identification are posted on the Secretary of State's web site here: https://www.sos.nh.gov/elections/elections/election-officials

- Be a photo identification not authorized by any of the subparagraphs above, but determined to be legitimate by the Supervisors of the Checklist, the Moderator, or the Clerk of a town, ward, or city (RSA 659:13, II (a)(7);
    - A voter using such an ID is subject to challenge;
    - Examples include, but are not limited to: Employer issued ID from an employer who the Supervisors, Moderator, or Clerk know to have appropriate controls;
- Verification of the voter's identity by a Supervisor of the Checklist, Moderator, or the Clerk;
    - **If verification of identity by a Supervisor of the Checklist, Moderator, or Clerk is used for a person registering on election day for the first time in New Hampshire**, the checklist must be marked in the margin by the voter's name with "P" indicating "personal recognizance," "S" if verified by a Supervisor, "M" if verified by the Moderator, or "C" if verified by

the Clerk, followed by the first and last initials of the individual providing the verification of identity. The mark on the checklist shall be made by the Moderator, Clerk, or Supervisor who identified the voter. "By initialing the checklist, the moderator [~~or~~] clerk [or supervisor] personally affirms, under penalty of perjury, the identity of the voter they are qualifying to vote." RSA 659:13, II (b). While RSA 659:13 lists the Moderator and Clerk, it relies on existing law that also gives the Supervisors of the Checklist authority to verify identity.

- "An election officer pro tempore as provided for in RSA 658:19 through 658:22 shall have all the powers and duties of the officer he replaces as provided in the election laws and shall take the oath of office in like manner." RSA 658:23. "Each town may have a deputy town clerk who shall be qualified in the same manner as the town clerk and who shall perform all the duties of the town clerk in case of his or her absence by sickness, resignation, or otherwise subject to the provisions of RSA 669:65." RSA 41:18. Therefore, a Deputy/Assistant Moderator, Deputy/Assistant Clerk, or a Supervisor Pro Tem may also verify the identity of an applicant for voter registration who does not have a qualified photo identification with them at the polling place when registering.