

THE STATE OF NEW HAMPSHIRE

SUPREME COURT  
2024 TERM  
NO. 2024-0247

DEMOCRATIC NATIONAL COMMITTEE and  
NEW HAMPSHIRE DEMOCRATIC PARTY,

v.

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

**MOTION FOR EXPEDITED APPEAL**

Plaintiffs—the Democratic National Committee and the New Hampshire  
Democratic Party—move this Court to expedite this appeal so that the constitutional issue  
presented in this case can be resolved well in advance of the September 10 and  
November 5, 2024 elections.

1. Plaintiffs filed this voting-rights lawsuit in December 2023, seeking to  
enjoin New Hampshire Senate Bill 418 (“S.B. 418”), which establishes an “affidavit-  
ballot” system in the state. *See Democratic National Committee v. Scanlan*, No. 226-  
2023-cv-613 at 2-3 (N.H. Super. Ct. Apr. 16, 2024); RSA 659:13, 659:23-a, 660:17. Of  
most relevance to this appeal, the law requires voters who seek to register and then vote  
on the same election day to cast an “affidavit” ballot if they lack certain forms of photo  
identification (and if an election official on-site does not claim to personally recognize  
them). S.B. 418 §§2, 5 (codified at RSA 659:23-a; RSA 659:13, II(b)). The law further

provides that an affidavit ballot must be excluded from the vote count if the voter does not verify her identity within seven days after election day. *Id.* §2, V.

2. Count I of plaintiffs’ complaint alleges that the affidavit-ballot provisions of S.B. 418 violate Part 11, Article 32 of the state constitution—the “return of votes” clause—by “prevent[ing] town clerks from reporting the number of qualified votes to the Secretary of State within five days of an election,” as Article 32 requires. *Democratic National Committee* at 11. Count II of the complaint alleges that S.B. 418 “violates procedural due process under Part I, Article 15” of the state constitution, by denying voters their fundamental right to vote without notice or an opportunity to be heard. *Id.* at 14.

3. The Republican National Committee and the New Hampshire Republican State Committee intervened in the litigation to defend S.B. 418.

4. On April 16, 2024, the Merrimack County Superior Court, after concluding that plaintiffs have standing to press their claims, granted defendants’ and intervenors’ motions to dismiss count I of the complaint (the return-of-votes count) and denied the motions to dismiss count II (the due-process count). *See Democratic National Committee*, No. 226-2023-cv-613 at 1, 10-11. The court also denied plaintiffs’ motion for a preliminary injunction (which plaintiffs had sought based on each count). *Id.* at 20. Recognizing the need for urgency, the court ordered the parties to “develop an expedited discovery schedule” on the resolution of count II by April 22, 2024. *Id.* at 18.

5. On that date, plaintiffs filed an unopposed motion to non-suit count II so that they could immediately appeal the rulings on count I. The court granted that motion on April 25.

6. That same day, plaintiffs sought the consent of defendants and intervenors to expedite this appeal and set an agreed-upon briefing schedule. On April 29, intervenors stated that they oppose an expedited briefing schedule. On April 30, defendants stated that they are evaluating whether to cross-appeal and therefore could not agree to plaintiffs' proposed schedule.

7. Expedition of this appeal is warranted so that plaintiffs' challenge to S.B. 418 can be resolved before the upcoming September 10 and November 5 elections, thus ensuring that election officials have clarity regarding how to conduct those elections.

8. During proceedings in the trial court, counsel for defendants represented to counsel for plaintiffs that so long as this Court issues its decision in this case by July 30, defendants will be able to implement that decision (whatever it says) in training election officials to run the September 10 primary election. Plaintiffs seek to expedite this appeal—and propose the schedule laid out below—in order to accommodate the state's preferred timeline.

9. Plaintiffs' expedition request is consistent with other courts' recognition that election cases often need to be heard on an expedited basis, given the importance of the right to vote and the immutable timelines of elections. As one court put it, "election cases require courts to be particularly careful to expedite disposition so that excessive

procedural niceties do not result in delays making the relief useless in an upcoming election.” *Greenberg v. Bolger*, 497 F.Supp.756, 772 (E.D.N.Y. 1980).

10. Plaintiffs propose the following schedule for briefing and oral argument, which is intended to accommodate any cross-appeal defendants may decide to pursue:

- i. Appellants’ opening brief due May 10, 2024;
- ii. Appellees’ response briefs (and opening briefs in any cross-appeal) due May 30, 2024;
- iii. Appellants’ reply brief (and response briefs in any cross-appeal) due June 14, 2024;
- iv. Appellees’ reply brief in any cross-appeal due June 21; and
- v. Oral argument on a date that is both convenient for the Court and will allow it to resolve this appeal by July 30, 2024.

11. Whether or not defendants ultimately decide to cross-appeal, the foregoing schedule provides sufficient time for the parties’ briefing. The record in this case is extremely modest, and plaintiffs’ appeal presents a single, purely legal question—whether the affidavit-ballot provisions of S.B. 418 conflict with the constitution’s return-of-votes clause—an issue the trial court needed less than three pages to analyze. Any cross-appeal would similarly involve a single issue, one as to which there are no genuinely disputed facts. Moreover, the parties are quite familiar with both issues, having briefed and argued them to the trial court very recently. Under these circumstances, and regardless of whether the appeal involves one issue or two, the schedule plaintiffs propose would allow the parties to adequately brief the appeal. (That

said, plaintiffs have no objection to any lengthier briefing schedule that would still allow the Court to decide the appeal by July 30.)

12. As noted above, counsel for plaintiffs conferred with counsel for defendants and intervenors regarding the relief sought herein. Because defendants are considering a cross-appeal, they could not agree to an expedited schedule at this time. Counsel for intervenors object to an expedited schedule.

WHEREFORE, the parties request that this Court:

- A. Grant this motion and adopt the briefing schedule just proposed; and
- B. Award such other relief as is just and proper.

Dated: April 30, 2024

Respectfully submitted,

DEMOCRATIC NATIONAL  
COMMITTEE, NEW HAMPSHIRE  
DEMOCRATIC PARTY,

DAVID M. SCANLAN, and JOHN M.  
FORMELLA,

REPUBLICAN NATIONAL  
COMMITTEE, and NEW HAMPSHIRE  
REPUBLICAN STATE COMMITTEE

/s/William E. Christie

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*\*Pro hac vice applications  
forthcoming*

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## **CERTIFICATE OF SERVICE**

Pursuant to this Court's Rule 26(3)(b), a copy of the foregoing was transmitted by electronic filing to all counsel of record on this 30th day of April, 2024.

/s/ William E. Christie  
William E. Christie

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