

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

Rockingham, SS.

SUPERIOR COURT

Adele Robertson, et al.

v.

David M. Scanlan, et al.

Docket No. 218-2025-CV-00951

ORDER ON DEFENDANT'S MOTION TO DISMISS

Plaintiffs Adele Robertson, Daniel Frye, and Regina Wilson bring this action against Defendants David M. Scanlan, in his capacity as the New Hampshire Secretary of State, and John M. Formella, in his capacity as the New Hampshire Attorney General, seeking declaratory and injunctive relief arising from a new statute regulating absentee voting. See Doc. 1. Defendants now move to dismiss. Doc. 6. Plaintiffs object. Doc. 11 (Obj.); Doc. 12 (Mem. Law). After review, the Court concludes it can resolve the Motion without a hearing. Defendants' motion to dismiss is **GRANTED**.

Background

Unless otherwise noted, the following facts are derived from the Complaint, see Doc. 1, and are assumed true for purposes of this Order. Plaintiffs are three visually impaired New Hampshire residents who regularly vote by absentee ballot. Id. ¶¶ 3, 6–8. On August 1, 2025, Governor Kelly Ayotte signed SB 287¹ into law which imposed identification requirements on absentee voters. Id. ¶ 2. Specifically, RSA 657:17-c requires absentee voters to provide identification verification for every election, either by

¹ Since the filing of Plaintiffs' Complaint, SB 287 has been codified as RSA 657:17-c. For purposes of this Order, the Court will refer to the challenged law as RSA 657:17-c.

including with their ballot a copy of their photo identification, including a notarized signature on their ballot, or bringing their photo identification to their local city or town clerk. Id. ¶ 31.

Plaintiffs assert that these identification requirements will impose burdens on them and other New Hampshire voters. Id. ¶ 34. Specifically, Plaintiffs assert that the identification requirements will essentially deter disabled voters from voting because it will require them to access technology, travel to their local clerk's office, or pay for a notary. Id. ¶ 35. Ultimately, Plaintiffs allege that the identification requirements will disenfranchise voters with disabilities, mobility issues, or limited financial means. Id. ¶ 44. Based on the new identification requirements, Plaintiffs assert that RSA 657:17-c violates Part 1, Article 11 of the New Hampshire Constitution because it imposes undue burdens on a category of New Hampshire voters. Id. ¶¶ 56–62.

Analysis

In ruling on a motion to dismiss, the Court analyzes whether the plaintiff's factual allegations are "reasonably susceptible of a construction that would permit recovery." Mentis Scis., Inc. v. Pittsburgh Networks, LLC, 173 N.H. 584, 588 (2020). "The trial court need not accept allegations in the writ that are merely conclusions of law." Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 711 (2010) (quotations and citation omitted). The relevant inquiry is whether, drawing all reasonable inferences in the plaintiff's favor, the allegations provide a basis for legal relief. Mentis Scis., 173 N.H. at 588. If not, dismissal is proper. Id.

Here, Defendants argue that Plaintiffs fail to allege that RSA 657:17-c is facially unconstitutional because the Legislature merely aligned the requirements for absentee

voting with the requirements for in person voting. Doc. 6 ¶ 15. In addition, Defendants assert that RSA 657:17-c is nondiscriminatory and does not burden the fundamental right to vote because voters may still request accommodations and people with disabilities are not prohibited from voting due to the identification requirements. Id. ¶¶ 17–18. Moreover, Defendants contend that the identification requirements are reasonable and justified by New Hampshire’s interest in securing elections and are therefore constitutional. Id. ¶¶ 28, 30.

In response, Plaintiffs assert that absentee voting is a constitutional privilege and any regulations on that privilege must be reasonable. Doc. 12 at 4. Plaintiffs argue that RSA 657:17-c is unconstitutional because the identification requirements are unreasonable, unduly burdensome, and discriminatory. Id. at 5. Specifically, Plaintiffs assert that RSA 657:17-c fails intermediate scrutiny review because it forces voters to comply with unreasonable requirements and disproportionately affects disabled, elderly, and low-income voters. Id. at 6–7. Lastly, Plaintiffs contend that RSA 657:17-c is unconstitutional under any level of scrutiny because it does not aim to solve any known election fraud or election administration problem. Id. at 12.

As an initial matter, the Court notes that Plaintiffs’ have brought this action alleging a claim under the New Hampshire Constitution only. Therefore, the Court will address the issues raised by Plaintiffs under state law, making reference to federal law only for purposes of guidance. See State v. Ball, 124 N.H. 226, 231–33 (1983).

“Whether or not a statute is constitutional is a question of law[.]” New Hampshire Democratic Party v. Sec’y of State, 174 N.H. 312, 321 (2021). The Court “presume[s] a statute to be constitutional and will not declare it invalid except upon inescapable

grounds.” Id. “In other words, [the Court] will not hold a statute to be unconstitutional unless a clear and substantial conflict exists between it and the constitution.” Id.

Part I, Article 11 of the New Hampshire Constitution provides, in relevant part:

All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. . . . The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election.

First, the Court must determine what level of scrutiny applies to the challenged statute. “Although the right to vote is fundamental, [the Court] do[es] not necessarily subject any impingement upon that right to strict scrutiny.” Guare v. State, 167 N.H. 658, 663 (2015). Instead, the Court applies a balancing test to determine the level of scrutiny to apply. Id. “Under that test, [the Court] weigh[s] the character and magnitude of the asserted injury to the [voting] right sought to be vindicated against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” Id. (cleaned up). “Under this standard, the rigorousness of [the Court’s] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens the fundamental right to vote.” Id. (cleaned up).

Generally, when the right to vote is subjected to “severe” restrictions, the restriction must be “narrowly drawn to advance a state interest of compelling

importance." Id. (citation omitted). However, when a law imposes "reasonable, nondiscriminatory restrictions" upon the right to vote, "the State's important regulatory interests are generally sufficient to justify the restrictions." Id. "Most cases fall between these two extremes." Id.

"Courts in other jurisdictions have recognized that a test similar to intermediate scrutiny applies to a voting restriction that falls between the two extremes." Id. at 666. "Our intermediate level of scrutiny requires that a challenged law be substantially related to an important government objective." Id. at 665. The State bears the burden under this level of review, and "may not rely upon justifications that are hypothesized or invented post hoc in response to litigation, nor upon overbroad generalizations." Id. Where a law imposes unreasonable restrictions on the right to vote, "the State must articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is actually necessary, meaning it actually addresses, the interest set forth." Id. The New Hampshire constitutional framework for evaluating challenges to burdens imposed on voters is derived from the analysis developed by the United States Supreme Court in Burdick v. Takushi, 504 U.S. 428 (1992) and Anderson v. Celebrezze, 460 U.S. 780 (1982). See Guare, 167 N.H. at 663; see also Akins v. Secretary of State, 154 N.H. 67, 71–72 (2006).

Accordingly, the Court must determine whether the challenged statute imposes severe restrictions, or only reasonable, nondiscriminatory ones upon Plaintiffs' right to vote, or something in between. Here, RSA 657:17-c provides:

I. Every applicant for an absentee ballot shall provide verification before being issued an absentee ballot. Verification shall be satisfied by one of the following methods:

(a) Including a copy of the voter's photo identification with the absentee ballot application. The identification shall meet the requirements of RSA 659:13, II(a);

(b) Including a notarized signature on the absentee ballot application form; or

(c) Personally presenting a qualifying photo identification, as defined in RSA 659:13, II(a), to the city or town clerk or their designee prior to the issuance of the absentee ballot.

II. No absentee ballot shall be issued unless one of the verification methods under paragraph I has been satisfied.

Upon review, the Court concludes that the identification requirements imposed upon absentee voters are not severe and do not unreasonably burden the right to vote. "Ordinary and widespread burdens, such as those requiring 'nominal effort' of everyone, are not severe." Crawford v. Marion Cnty. Election Bd., 553 U.S. 181, 205 (2008) (Scalia, J., concurring); id. at 198 (plurality opinion). Burdens are generally deemed severe when they outright exclude voters from the process. See, e.g., Dunn v. Blumstein, 405 U.S. 330, 337 (1972) (requirement that voters reside in state for one year and county for three months to register); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1996) (finding poll tax requirement unconstitutional). Here, the identification requirements impose ordinary burdens on all absentee voters, and the possibility that it may cause additional burden on a subset of absentee voters does not render the entire statute unconstitutional. See Crawford, 553 U.S. at 205 (Scalia, J., concurring). Moreover, the identification requirements allow various methods to prove a voter's identification, including providing a copy of their photo identification, notarizing their signature, or presenting their identification to the town or city clerk. Although each of these methods may impose an additional requirement on absentee voters requesting absentee ballots, they do not unreasonably burden an absentee voter's ability to obtain

an absentee ballot. Indeed, the burden imposed by the identification requirement is reasonable because it merely requires absentee voters to choose between three distinct methods to provide one form of identification.

To the extent Plaintiffs' assert that these methods are unreasonable and severe because a subset of voters may have difficulty copying their identification, traveling or paying for a notary, or traveling to their town or city's clerks' office, the Court is unpersuaded. These alleged burdens identify no more than different impacts of the non-severe burden that RSA 657:17-c imposes on all absentee voters. See DCCC v. Ziriax, 2020 WL 5569576, at *19 (N.D. Okla. Sept. 17, 2020) ("The mere possibility that the burden may be greater on a small subset of voters does not entitle the plaintiffs to the sweeping relief they seek here."). Absentee voters requesting absentee ballots were already required to mail or provide their application to the secretary of state or town or city clerk. See RSA 657:6; RSA 657:7, III. RSA 657:17-c merely requires absentee voters to include with their ballot application a copy of their identification, a notarized signature, or to provide their identification to the town clerk when returning their application. For the same reason, the Court concludes that the identification requirements are nondiscriminatory. Indeed, the RSA 657:17-c identification requirements align the requirements to obtain an absentee ballot with the requirements to obtain an in-person ballot. Compare RSA 657:17-c, with RSA 659:13, I(b) (requiring in-person voters to present proof of identity before obtaining a ballot).

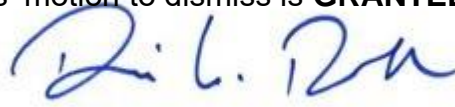
Having determined that the challenged identification requirements are reasonable and not discriminatory or severe, the Court next considers "the precise interests put forward by the State as justifications for the burden[s] imposed by [the

statutes],” bearing in mind that ‘the State's important regulatory interests are generally sufficient to justify the restrictions.’” Libertarian Party New Hampshire v. State, 154 N.H. 376, 382–83 (2006) (quoting Akins, 154 N.H. at 72). Here, Defendants assert that the identification requirements “seek to further secure New Hampshire’s absentee voting procedures, which are particularly vulnerable to fraud[.]” Doc. 6 ¶ 30. Moreover, Plaintiffs allege in their Complaint that the legislature explained RSA 657:17-c was intended to “prevent voter fraud and promote trust and integrity in New Hampshire elections.” Doc. 1 ¶ 46. The Court concludes that this is a sufficient justification for the identification requirements to establish that an absentee voter is who they claim to be and ensure the legitimacy of elections. “The Supreme Court and other courts have repeatedly emphasized that insuring that those who are permitted to vote are bona fide residents who share a community of interest with other citizens of the jurisdiction is a legitimate concern of the highest order.” Opinion of the Justices, 171 N.H. 128, 142–43 (2018). “Insuring a community of interest among voters and residents promotes confidence in political outcomes and guards against a distortion of the political community.” Id. at 144. “Surely the prevention of such fraud is a legitimate and compelling government goal.” Id. (quoting Dunn v. Blumstein, 405 U.S. 330, 343-44 (1972)). Thus, the Court concludes that Defendants have articulated a precise justification for the burden imposed by RSA 657:17-c.

Accordingly, the Court concludes that RSA 657:17-c imposes reasonable, nondiscriminatory identification burdens on absentee voters to protect the State’s interest in securing elections and limiting voter fraud. See Libertarian Party New Hampshire, 154 N.H. at 382–83. As such, Defendants’ motion to dismiss is **GRANTED**.

Conclusion

For the foregoing reasons, Defendants' motion to dismiss is **GRANTED**. Doc. 6.



Date: December 11, 2025

Hon. David W. Ruoff
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 12/11/2025