



PROTECTING THE VOTE FOR ALL AMERICANS

March 23, 2022

New Hampshire Senate
107 North Main Street
Concord, NH 03301

Dear Senators:

Fair Elections Center¹ writes to express its opposition to SB 418, which would upend New Hampshire’s long-established same-day voter registration process by making it more confusing and burdensome. The bill would also endanger the right to a secret ballot. The Center respectfully requests that this letter be entered into the record as written testimony.

SB 418, as amended by the Senate Election Law and Municipal Affairs Committee, would require a voter to cast an “affidavit ballot” if the voter “does not have a valid photo identification establishing such voter’s identification” or “is registering to vote for the first time in New Hampshire, and does not possess proper documentation, as defined in statute, establishing citizenship and establishing domicile in that town, city, ward, or district . . .”. It would further require a voter to return “a copy of any required documentation [not provided at the polls] to the secretary of state in the provided prepaid U.S. Postal Service envelope within 10 days of the date of the election in order for the ballot to be certified.” Voters who fail to return this information will have their ballots rejected.

Under current law and following recent litigation over SB 3, a voter who lacks acceptable documentary proof of identity, citizenship, or domicile may execute an affidavit or sworn statement and cast a regular ballot.² This makes voting accessible to individuals who do not possess

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration. Since 2012, Fair Elections Center has operated Campus Vote Project to help students understand and exercise their right to vote.

² *Registering to Vote in New Hampshire*, N.H. SEC’Y OF STATE 1 (Sep. 2020), available at <https://sos.nh.gov/media/jauab2fd/registering-to-vote-in-new-hampshire-sept2020.pdf>.

acceptable forms of documentary proof of domicile. These citizens are more likely to be young people and lower-income earners, who will be disproportionately impacted if the state removes the affidavit option.³ By apparently purporting to remove voters' ability to affirm their qualifications under penalty of law, SB 418 would effectively end universal same-day registration in New Hampshire and potentially subject the state to the federal National Voter Registration Act, thus depriving it of its long-cherished independence in deciding its own election rules.

Last year, the New Hampshire Supreme Court struck down SB 3 because it unreasonably burdened the freedom to vote, as enshrined in the state constitution.⁴ As the Supreme Court explained:

Under SB 3, persons seeking to register to vote more than 30 days before an election must present documentation proving that they are domiciled in the town or ward or they will not be permitted to register. Persons seeking to register within 30 days of an election or on election day are not required to have documentation with them proving their place of domicile in order to vote; however, they must fill out [Voter Registration] Form B and elect one of two verification options.⁵

Voters without documentation at the polls could nonetheless affirm their domicile under penalty of law and cast a regular ballot; election officials would subsequently take steps to independently verify the voters' domiciles.⁶

The Supreme Court agreed with the trial court's ruling that SB 3 confused voters and election workers, including by driving away eligible student voters who did not believe they had the proper documentation to register. It also threatened to create long lines at the polls and additional administrative burdens for election officials.

SB 418 would go even further than SB 3 by purporting to remove a voter's ability to register and cast a regular ballot by signing an affidavit, thereby also ending universal same-day registration. Like SB 3, it would lead to increased administrative burdens for election officials to process affidavit ballots, and likely result in longer lines at polling places to cast such ballots, as well as costly, protracted litigation ultimately funded by taxpayers. The new processes the bill would create also endanger voters' right to a secret ballot. SB 418 is wholly unnecessary in light of New Hampshire's proven track record of running secure elections with robust same-day registration, and would erode voters' confidence in election results by needlessly excluding voters from the democratic process. For these reasons, the Senate should reject SB 418.

³ See *N.H. Dem. Party v. Sec'y of State*, 262 A.3d 366, 371 (N.H. 2021).

⁴ *N.H. Dem. Party v. Sec'y of State*, 262 A.3d 366, 380 (N.H. 2021), available at <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-07/2021027-secretary-of-state.pdf>.

⁵ 262 A.3d at 369–70.

⁶ *Id.* at 370; RSA 654:12(I)(c)(2)(B).

Thank you for allowing Fair Elections Center to express its opposition to SB 418. Should you have any questions, I can be reached at caguilera@fairelectionscenter.org or (202) 331-0114.

Sincerely,

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