STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT

No. 226-2022-CV-00181

MILES BROWN,
ELIZABETH CROOKER,
CHRISTINE FAJARDO,
KENT HACKMANN,
BILL HAY,
PRESCOTT HERZOG,
PALANA HUNT-HAWKINS,
MATT MOOSHIAN,
THERESA NORELLI,
NATALIE QUEVEDO, and
JAMES WARD,

v.

DAVID M. SCANLAN,
in his official capacity as the New Hampshire Secretary of State

AFFIDAVIT OF SECRETARY OF STATE DAVID SCANLAN IN SUPPORT OF THE DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

1. I am the Secretary of State for the State of New Hampshire. I have served in this capacity for approximately six months.

2. Previously, I served as Deputy Secretary of State for the State of New Hampshire for approximately 20 years.

3. The Secretary of State is the chief election officer for the State of New Hampshire. The Secretary of State's office oversees the implementation, administration, and monitoring of the state election laws. The Secretary of State's office ensure that elections in New Hampshire are fair, impartial, and well-run.

4. I am responsible for the administrative oversight of New Hampshire elections. I also work with local election officials through training them, addressing their questions, and assisting them during elections.

5. On August 19, 2020, the Secretary of State issued its Election Procedure Manual, an approximately 400 page detailed guidance document that is used and relied on heavily by local election officials. The Election Procedure Manual is the guidance manual local election officials use and rely on to prepare for and administer elections. It takes several months to accurately update and distribute. Last minute changes to the procedures outlined in it cannot be timely changed through editing and re-publication. The Secretary of State anticipates issuing an updated version of this document this summer. Attached hereto as Exhibit A is a true and correct copy of the August 19, 2020 New Hampshire Election Procedure Manual.

6. New Hampshire has approximately 309 different polling places. Each one of those has a moderator. There are approximately 650 supervisors of the checklist in New Hampshire, who are locally elected by their towns. The cities typically have a Board of Registrars that handle voter registrations. The Secretary of State does not control these local election officials and can only provide them with training and guidance. During a state primary and general election cycle these local election officials, as well as town, city, and ward clerks, are busy preparing to administer the elections that are now underway. In my experience, materially changing the election processes and guidance that these local election officials use and rely on in order to prepare for and administer these elections while the election process is already unfolding can destabilize the election system, disrupts local operations, creates confusion among local election officials, creates confusion among voters, and can lead to local election officials administrating election processes incorrectly.

7. In the lead-up to the 2022 NH Primary Election, the Secretary of State's Office has made great efforts to keep the public informed about the upcoming elections, including sharing important information about deadlines. These efforts have included extensive engagement and outreach with state and local election officials. In the lead up to the 2022 election cycle, the Secretary of State's Office has been utilizing social media to enhance election official and voter awareness. The Secretary of State's Office has also worked diligently to keep voters and election officials informed about developments and guidance as they relate to the upcoming elections. These releases go out statewide and are picked up by numerous media outlets.

8. The Secretary of State's Office also handles a large volume of telephone inquiries in the lead up to a large election cycle. The telephone lines that field inquires for the ElectioNet system average approximately 150 calls per day in the weeks leading up to an election. The Secretary of State's Office itself also fields telephone calls from local election officials and the public regarding the upcoming election cycle.

9. The Secretary of State's Office provides guidance for voters to register to vote, and for election officials to meet all obligations relating to accepting voter registrations and updating voter checklists. There are timelines mandated in law relating to preparing the documents election officials will use at both primary and general elections. For example, RSA 654:27 [Session for Correction] requires the supervisors of the checklist to hold a session 6 to 13 days prior to the election to update the checklist to be used at the election. Disrupting the timelines for registration, party registration, and review of the checklist can impact voters' participation in elections, particularly for party primaries. And, in reference to party affiliations, the Secretary of State keeps records on party registration and names on checklists. As of the

latest update on May 9, 2022, the following party registrations were recorded: Democratic (275,220), Republican (265,116), and Undeclared (330,466). These records can be found at "Party Registration/Names on Checklist History" available at https://www.sos.nh.gov/elections/voters/voting-new-hampshire/party-registrationnames-checklist-history.

10. The Secretary of State is responsible for producing the declaration of candidacy forms for each race. *See* RSA Chapter 655. The Secretary of State is authorized to change or extend the filing period as necessary to implement revised elective districts where those elective districts have not been amended according to the most recently completed federal decennial census. RSA 655:14-c. As the elective districts have been amended per the enactment of SB 240 and SB 241, it is not clear that RSA 655:14-c is applicable. The Secretary of State has undertaken efforts to publicize the requirements and timelines for candidates to submit the required declaration of candidacy forms during the candidate filing period that runs from June 1, 2022, to June 10, 2022. I am reluctant to change the filing period given the effort it would take to conduct outreach to potential candidates and the confusion that might arise from candidates who filed, but may have to file again or may no longer be eligible to run in their filed elective district if the underlying district maps have changed. In the event it is necessary in order to accommodate late elective district changes, I could consider extending the filing period by up to one week, to June 17, 2022.

11. The Secretary of State is responsible for supplying ballots for state elections. *See* RSA 656:1 [General Responsibility]. There are a number of requirements in New Hampshire law the Secretary of State must observe in the creation of ballots, illustrated by the titles of the following sections:

a. RSA 656:4 Name and Domicile

b. RSA 656:5 Party Columns

c. RSA 656:5-a Order of Candidate Names on Ballots

d. RSA 656:6 Designation of Office

e. RSA 656:7 Order of Offices

f. RSA 656:7-a Order of Representative Districts

g. RSA 656:9 Party Designation

h. RSA 656:12 Write-In Blanks

i. RSA 656:13 Questions on the Ballot

j. RSA 656:14 Constitutional Amendments

k. RSA 656:16 Uniformity; Folding

l. RSA 656:17 Endorsement

m. RSA 656:18 Sample Ballots

12. As mentioned above, there are approximately 309 polling places in New Hampshire. For a primary election, where separate ballots are required for the Democratic and Republican primaries, this means 618 different ballots. For each ballot, the Secretary of State's Office is also required to prepare different formats:

a. Election Day paper ballot;

b. Sample Election Day ballot – on paper – identical to (a), with word "Sample" added and the Secretary's signature removed;

c. Sample Election Day ballot – PDF of (b);

d. Absentee paper ballot – same as (a), with word Absentee added;

e. Absentee UOCAVA ballot PDF of (d);

f. Federal office only absentee paper ballot;

g. Federal office only PDF ballot for UOCAVA voters;

h. Electronic election day ballot for use in accessible tablet voting system for use election day at the polls, visible & audible; and

i. Electronic election day ballot for use in accessible system for voters with print disabilities, visible & audible.

13. Assembling ballot proofs that meet all of the statutory requirements, while also managing the thousands of candidate names in the elective districts at question, represents a significant undertaking for the Secretary of State's Office. It is a lengthy process.

14. Additionally, the Secretary of State is responsible for printing ballots on suitable paper that is compliant with the requirements of ballot counting devices. *See* RSA 656:15. As a result of recent supply chain disruptions, the Secretary of State's Office has had to spend considerable time and expense securing sufficient paper to cover the expected ballots for the primary and general elections. Utilizing an extraordinary measure such as putting different types of races on different ballots—should elective maps be confirmed at different times—would threaten to exhaust the secured paper supply before ballot needs are met. If paper that is not suitable for use with ballot counting devices is not available in sufficient quantities, ballots would have to be printed on alternate paper that would require hand counting. Hand counting ballots at polling places that serve large numbers of voters would be onerous, disruptive, and time consuming.

15. The dates on which election events occur are often set in statute. The Department of Justice and Department of State prepared a 2022-2023 New Hampshire Political Calendar that lays out those dates. It is attached as Exhibit B. Important dates in the 2022 election cycle are as

follows, up until the federal deadline to send ballots to uniformed armed service members and overseas voters:

a. June 1-10 – filing period for all offices for state primary election. RSA 655:14; 652:20. Filing period for declarations of intent for all candidates who wish to file nomination papers to run as independents in general election. All candidates filing declarations of intent shall file with the Secretary of State. RSA 655:14-a, 17-a, 17-b, 17-c, 40-45. Examination and rejection of primary petitions. RSA 655:26. Forward of petitions and assents by clerks to Secretary of State, on same day they are received. RSA 655:27

b. June 15 - Deadline for candidates to file complaints that an opposing candidate is not a bona fide candidate (straw candidate) RSA 655:31. Last day for appropriate party committee to fill vacancy on party tickets. Affidavit of qualifications required for candidates for governor, executive councilor, state senator, and state representative. RSA 655:32.

c. June 17 – Last date for extension of filing period without resorting to extraordinary measures to administer election.

d. June 24 - Ballot print layout and proofing documents submitted to printers.

e. July 8 – Printing begins.

f. July 29 – Ballots shipped to election officials. Last day city or town clerks must mail or e-mail Write-In Ballots to UOCAVA voters for the primary. RSA 657:10-a.

g. July 30 - 45 day deadline for city or town clerks to mail or email all ballots to UOCAVA voters for the primary who have a request on file. RSA 657:19.

16. The above detailed procedures, forms, guidance, instructions, and processes work together as a regulatory system that has been extensively trained and refined over a period of years. In order to affect the relief the plaintiffs seek in this case, significant portions of the above election procedures, actions, and timelines would have to be altered, reworked, redistributed, and redone, all in a compressed timeline that threatens the ability to administer a fair, transparent, and well-run election. While the I have the authority to modify Secretary of State procedures to some degree, New Hampshire already operates its primary and general election cycle on a tight timeline. Delays of more than a week past regularly-scheduled events would require extraordinary measures to administer the ongoing election processes. Utilization of extraordinary measures threatens the orderly administration of the election and compliance with state and federal statutes. It risks confusion for candidates, voters, and election officials alike. It risks confidence in the administration of our elections. It also risks the ability of voters to meaningfully participate in our elections should certain deadlines not be met. For example, the July 30, 2022, obligation to send ballots to UOCAVA voters, and a corresponding 45-day requirement before the General Election in November. Delays in satisfying that obligation would threaten the ability of our uniformed armed service members deployed overseas to vote in our upcoming primary and general elections.

17. As the above timetable of events reveals, the schedule for the present election—already underway—provides no meaningful time for state and local election officials to shift course. They must put their time and energies into administering the state primary election, administering any subsequent recounts, preparing and distributing the general election ballots, and preparing for and administering the general election all within the next 60 days. Changing election requirements—such as altering the underlying elective district landscape—risks

increasing state and local election official workload and burden and causing confusion to election officials, voters, and candidates. All of these challenges can lead to disenfranchisement and election failure.

FURTHER THE AFFIANT SAYETH NOT

June 1, 2022

David Scanlan
Secretary of State of New Hampshire

State of New Hampshire
Merrimack County
Subscribed and sworn to, before me,

June 1, 2022

Notary Public/Justice of the Peace
Exp. 3-22-25