



## AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION

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### **New Hampshire Law Imposing An Unreasonable Burden On The Right To Vote Found Unconstitutional By New Hampshire Supreme Court**

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CONCORD, NH – Today, the New Hampshire Supreme Court struck down a controversial 2012 New Hampshire law which added language to the state’s voter registration form that threatened to disenfranchise voters who live in this state. The American Civil Liberties Union of New Hampshire (ACLU-NH) brought the case on behalf of three voters. The voters were represented by ACLU-NH cooperating attorneys William E. Christie and Benjamin Siracusa Hillman of Shaheen & Gordon, PA and Alan J. Cronheim of Sisti Law Office, as well as ACLU-NH Legal Director Gilles Bissonnette.

In the Supreme Court’s opinion—which was authored by the Court as a whole—the Court made clear that the challenged language was unreasonable and would create a chilling effect on voting rights in New Hampshire. The Court ruled: “Because the challenged language is confusing and inaccurate, and because, as the trial court found, it could cause an otherwise qualified voter not to register to vote in New Hampshire, we hold that, as a matter of law, the burden it imposes upon the fundamental right to vote is unreasonable.”

“The Court’s decision today is a victory for all voters in New Hampshire,” said attorney William Christie. “In striking down this unreasonably burdensome law, the Supreme Court has acknowledged that constitutional rights, especially the most fundamental right to vote, are essential to a functioning democracy.”

In June 2012, the New Hampshire legislature, overriding Governor John Lynch’s veto, passed Senate Bill 318, which added the challenged language to New Hampshire’s voter registration form. This added language requires those registering to vote to sign an affidavit agreeing that they are subject to the state’s residency laws. But, in order to vote in New Hampshire, a voter need not actually meet the definition of legal “residency.” Instead, to vote in New Hampshire, one needs to be “domiciled” here. This distinction matters because the definition of “resident” is very strict, as it also requires an intent to live in New Hampshire for the “indefinite future” (above and beyond actually living in the State). If legal “residency” was the criteria to vote, thousands of people who live in New Hampshire would be disenfranchised simply because they may have plans—perhaps years in the future—to leave the state.

For example, imposing such a “residency” condition on the right to vote—i.e., a condition that one have an intent to live in New Hampshire for the “indefinite future”—would disenfranchise many college

students who live in New Hampshire, an executive living in Manchester who has a firm intention to retire to his Florida cottage at age 65, a hospital resident living in Hanover with a career plan requiring her to spend three years in New Hampshire to complete her medical training, and a member of the Navy who lives in Portsmouth but knows that she will be transferred elsewhere in two years. These individuals who live in New Hampshire possess no less knowledge, intelligence, or commitment to this state than those who meet the definition of legal “residency.” Moreover, they have nowhere else to vote.

What does it mean to be “domiciled” in New Hampshire for voting purposes? It means that a voter must, more than any other place, have “established a physical presence” in New Hampshire and manifest “an intent to maintain a single continuous presence” here “for domestic, social, and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I. It does not mean that anyone can vote in New Hampshire simply if they want to or simply because they are in this state on election day. In other words, one is domiciled in New Hampshire for voting purposes if that person has a continuous physical presence here and treats this state as “home.”

The New Hampshire Supreme Court found that the language added to the voter registration form “inaccurately states New Hampshire law” because it “informs a potential voter that, upon declaring New Hampshire as her domicile, she is ‘subject to the laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire[] driver’s license within 60 days of becoming a resident.’” The Court explained that this statement is inaccurate because “[a] person who has only a New Hampshire domicile, but who does not meet the statutory definition of ‘resident,’ is not ‘subject to the laws of the state of New Hampshire which apply to all residents.’”

The Supreme Court also concluded that “the challenged language is confusing because it is susceptible of different interpretations.” In support, the Court cited the fact that the State’s interpretation that the challenged language did not change the definition of “domicile” and “residency” actually conflicted with the public statements of certain members of the New Hampshire House of Representatives after litigation commenced.

Finally, the Court rejected the State’s purported justification for the law—to comply with the federal Help American Vote Act (HAVA). The Court noted that this justification “appears to have been ‘invented post hoc in response to [this] litigation.’” The Court added: “[E]ven if complying with HAVA had been the State’s actual interest in enacting [the law], the State has failed to establish that the challenged language is actually necessary or that it actually addresses that interest.” Thus, the Court concluded, “not only has the State failed to establish that the challenged language is necessary to comply with HAVA, but it also has failed to demonstrate that the challenged language actually addresses HAVA compliance.”

This decision follows the decision of two Superior Court judges who also concluded that the challenged language was inaccurate, confusing, and unconstitutional.

“Today’s ruling acknowledges that elections should be free, fair, and accessible to all people in a democracy,” said Gilles Bissonnette. “By protecting voting as a fundamental right, the decision affirms that all New Hampshire voters should have the opportunity to participate equally in the democratic process.”