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NEW HAMPSHIRE
CIVIL LIBERTIES UNION

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ACLU of NH's Asks Court to Hold Secretary of State in Contempt for Chilling Voting Rights in Blatant Violation of Injunction

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FOR IMMEDIATE RELEASE

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Yesterday, on February 2, 2015, the American Civil Liberties Union of New Hampshire (ACLU-NH) filed a motion in Strafford County Superior Court seeking an emergency court order requiring the Secretary of State to comply with a permanent injunction issued by that Court on July 24, 2014. The ACLU-NH is also seeking an order requiring the Secretary of State's Office to show why it should not be held in contempt for its actions since the November 2014 general election that blatantly violate the July 24, 2014 permanent injunction and chill voting rights in New Hampshire in violation of Part I, Article 11 of the New Hampshire Constitution. The motion further asks the Court to order the Secretary of State to take immediate action to correct this violation. In this case, the Petitioners are being represented by ACLU-NH cooperating attorneys William Christie and Benjamin Siracusa Hillman of Shaheen & Gordon, P.A. and Alan Cronheim of Sisti Law Offices, as well as ACLU-NH staff attorney, Gilles Bissonnette.

The Strafford County Superior Court's July 24, 2014 order issued an injunction preventing the Secretary of State from, among other things, sending letters to voting registrants who executed domicile affidavits informing them of the "obligation" to obtain a New Hampshire driver's license pursuant to RSA 654:12(V)(d). RSA 654:12(V)(d) became law as part of a controversial 2012 bill that also changed the state's voter registration form to deliberately suppress voting rights.

In clear violation of the Court's July 24, 2014 order, the Secretary of State's Office nonetheless sent such letters following the November 2014 general election to those who registered to vote prior to and during that general election pursuant to RSA 654:12(V)(d). It is likely that the Secretary of State's Office has sent thousands of such letters since July 24, 2014 in violation of the Superior Court's order.

The Secretary's letters—like the voter registration form language that the Court also deemed unconstitutional in its July 24, 2014 order—deliberately conflate the definition of "domicile" for voting purposes with the definition of "residency" for motor vehicle purposes. This is significant because the definition of "domicile" for voting purposes—a standard enshrined in Part I, Article 11 of the New Hampshire Constitution—and the definition of "residency" for motor vehicle purposes are fundamentally different, and one need not be a motor vehicle "resident" in order to vote. The definition of "domicile" for voting purposes appropriately allows individuals to vote where they live and call home. Unlike the definition of "domicile" for voting purposes, a "resident" for motor vehicle purposes must also have *an intention to remain in New Hampshire "for the indefinite future."*

This deliberate conflation in the Secretary's letters clearly violates the Court's July 24, 2014 order and will—and likely has—burdened voting rights in New Hampshire protected under Part I, Article 11 of the New Hampshire Constitution. This is true for two reasons.

First, these letters—like the similar language in the voter registration form that the Superior Court also deemed unconstitutional—burden voting rights because they serve no purpose other than to give the inaccurate and confusing impression to voting registrants that they must comply with motor vehicle residency rules in order to vote, including the



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requirement to obtain a New Hampshire driver's license. Even worse, these letters intimidate voters into thinking that, as a condition of exercising their fundamental right to vote, they need to pay money to the state in the form of motor vehicle fees. This is no different than a poll tax. As the Superior Court correctly explained in its July 24, 2014 order, the conflating of the definitions of "domicile" for voting purposes and "residency" for motor vehicle purposes "is a confusing and unreasonable description of the law" that chills the right to vote.

Second, these letters' equating of "domicile" for voting purposes with "residency" for motor vehicle purposes is unconstitutional because it disenfranchises groups of eligible voters who live in New Hampshire and call this state their home. Indeed, to require an "indefinite intention to remain" motor vehicle residency standard as a criteria to vote would disenfranchise: (i) a 55-year-old executive who has lived in New Hampshire his whole life but has a firm intention to retire to his Florida cottage at age 65; (ii) a Navy officer who lives in Portsmouth but knows that he will be transferred elsewhere in four years; and (iii) a hospital resident in Lebanon who plans on moving after she completes her three years of medical training. This is precisely why a federal court in *Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972) rejected a similar attempt by New Hampshire to restrict voting rights by limiting eligibility to those voters who had an intention to remain in New Hampshire for the "indefinite future."

The Office of the Secretary of State's actions have damaged voting rights in New Hampshire in violation of the Court's July 24, 2014 order and the New Hampshire Constitution. As explained in the filed motion, absent immediate relief from the Court requiring the Secretary of State's Office to issue corrective letters, voters will undoubtedly—and incorrectly—believe that that they are required to pay money to the state through motor vehicle fees as a condition to exercising their right to vote.