

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT

Docket No. 226-2022-CV-00233

603 Forward,
Open Democracy Action,
Louise Spencer,
Edward R. Friedrich, and
Jordan M. Thompson

v.


David M. Scanlan,
in his official capacity as the New Hampshire Secretary of State, and
John M. Formella,
in his official capacity as the New Hampshire Attorney General

**DEFENDANTS' MOTION TO STAY PLAINTIFFS' FIRST REQUESTS FOR
PRODUCTION TO DEFENDANT ATTORNEY GENERAL JOHN M.
FORMELLA**

NOW COME the Defendants, New Hampshire Secretary of State David M. Scanlan and the New Hampshire Attorney General John M. Formella, by and through their counsel, the New Hampshire Department of Justice, and submit the following Motion, stating as follows:

1. On June 17, 2022, Plaintiffs 603 Forward *et al.* filed a Complaint for Declaratory and Injunctive Relief in the present matter. The Attorney General's Office accepted service on behalf of both named Defendants on June 29.
2. On June 21, Plaintiffs Manuel Espitia, Jr. et al. filed a Complaint for Declaratory and Injunctive Relief in a similar matter. The Attorney General's Office accepted service on behalf of both named Defendants on June 27.

Clerk's Notice of Decision
Document Sent to Parties
on 02/15/2023

Granted

Honorable Charles S. Temple
February 14, 2023

3. On July 19, the Defendants filed an Assented To Motion to Consolidate on the grounds that the Plaintiffs challenged the same law, sought the same relief, and asserted a common legal theory.

4. On July 27, the Court granted this Motion and made the current docket the lead case.

5. On August 26, the Defendants filed a Motion to Dismiss for Lack of Standing and Ripeness.

6. On September 1, the New Hampshire Republican State Committee (NHRSC) filed a Motion to Intervene in the current case. 603 Forward *et al.* responded to this Motion on September 12, 2022, arguing that this Court should deny NHRSC's Motion to Intervene. Manuel Espitia Jr. et al. joined this response on that same date. The NHRSC replied to this filing on September 22.

7. On September 26, both sets of Plaintiffs each filed an Objection to the Defendants' Motion to Dismiss. On October 6, the Defendants filed a Reply to the Plaintiffs' Objections.

8. On September 29, this Court set a hearing on NHRSC's Motion to Intervene for Thursday, November 10 at 10:00 am. On October 11, this Court informed the Parties that it would also hear argument on the Defendants' Motion to Dismiss on November 10.

9. On October 14, the Parties filed a Joint Motion to Reschedule Hearing Date as the November 10 date was two days after the 2022 General Election. The Court granted this Motion on October 19. The hearing was rescheduled to November 15 at 10:00 am.

10. On November 14, the NHRSC filed a Joinder in the Defendants' August 26 Motion to Dismiss.

11. On November 15, the Parties appeared for the scheduled hearing. At the hearing's outset, Judge Temple raised potential grounds for recusal related to the NHRSC and the Motion to Intervene and entered a limited recusal order. Judge Colburn was assigned to consider the pending Motion to Intervene. If that Motion were denied, Judge Temple would continue to preside over this case and consideration of the Motion to Dismiss.

12. On December 21, Judge Colburn denied the NHRSC's Motion to Intervene.

13. On January 12, 2023, this Court notified the Parties that a hearing on the Motion to Dismiss was scheduled for January 30 at 2:00 pm.

14. On January 13, 603 Forward *et al.* filed a number of interrogatories and requests for production from the Defendants. Specifically, 1) Plaintiffs' First Set of Interrogatories to Defendant Attorney General John M. Formella; 2) Plaintiffs' First Requests for Production to the New Hampshire Attorney General; 3) Plaintiffs' First Set of Interrogatories to Defendant Secretary of State David M. Scanlan; and 4) Plaintiffs' First Requests for Production to the New Hampshire Secretary of State.

15. All four filings are extensive and call for responses within 30 days.

16. Without waiving further objections to the form or substance of the interrogatories and requests for production, the Defendants object to the 30 day timeframe to reply to these requests while a Motion to Dismiss is outstanding and a hearing on that Motion to Dismiss is now less than two weeks away. These extensive

discovery requests and interrogatories may be appropriate at some point in the future, but not prior to the consideration of a dispositive motion. To require such responses at this point in the proceedings is inappropriate and unduly burdensome to the Defendants.

17. The Defendants reached out to the Plaintiffs' counsel on January 26 requesting their position on this Motion. On January 30, this Court held a hearing on the Defendants' Motion to Dismiss. At that time, the Plaintiffs indicated their opposition to this Motion.

18. On January 31, the Plaintiffs contacted the Defendants indicating that they may be reconsidering their position. The parties have had conversations on this matter since that time and an agreement on this issue may be possible.

19. On February 1, the Court indicated that the Defendants' initial filing on this matter, initially submitted on January 31, had been rejected. The Defendants are now resubmitting despite the conversations that occurred among the parties on January 31 to ensure that their claims are preserved in the event that no agreement is reached.

WHEREFORE, the New Hampshire Secretary of State and the New Hampshire Attorney General, respectfully request that this Honorable Court:

A. Stay any requirement for the production of discovery or materials per the Plaintiffs' January 13, 2022, filing until this Court issues an Order on the Motion to Dismiss; and

B. Grant such other and further relief as justice may require.


Respectfully submitted,

DAVID SCANLAN
SECRETARY OF STATE

JOHN FORMELLA
ATTORNEY GENERAL

By their attorneys,

Date: February 3, 2023

By: 
Matthew G. Conley, Bar No. 268032
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic filing system to all parties of record.

Date: February 3, 2023


Matthew G. Conley.