

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**No. 2019-0693**

Caroline Casey  
&  
Maggie Flaherty

v.

William M. Gardner,  
In his official capacity as the  
New Hampshire Secretary of State  
&  
Gordon J. MacDonald,  
In his official capacity as the  
New Hampshire Attorney General

**Consolidated with**

New Hampshire Democratic Party

v.

William M. Gardner,  
In his official capacity as the  
New Hampshire Secretary of State  
&  
Gordon J. MacDonald,  
In his official capacity as the  
New Hampshire Attorney General

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CERTIFIED QUESTIONS OF LAW PURSUANT TO RULE 34 FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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**DEFENDANTS BRIEF**

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(Oral Argument Requested: 15 minutes)

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**CERTIFIED QUESTIONS**

I. Are the definitions of “resident” and “residence” in RSA 21:6 and RSA 21:6-a, as recently amended, effectively the same as the definition of “domicile” as used in RSA 654:1, such that one with a New Hampshire “domicile” is necessarily a New Hampshire “resident”?

II. Is a student who claims a New Hampshire “domicile” pursuant to RSA 654:1-a necessarily a New Hampshire resident under RSA 21:6, as recently amended?

III. Can an individual with a New Hampshire “domicile” pursuant to RSA 654:1 ever be an individual “who claims residence in any other state for any purpose” and thus is not a resident for the purposes of RSA 259:88?

IV. Does an individual who claims a New Hampshire “domicile” pursuant to RSA 654:1, I or RSA 654:1, I-a necessarily establish a “bona fide residency” for the purposes of RSA 261:45 and RSA 263:35?

V. Given the definition of nonresident in RSA 259:67, I for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers’ licenses by RSA 263:1 if they wish to drive in the state and required by RSA 261:40 to register in New Hampshire any vehicles they keep in the state?

**RELEVANT LAWS & STATUTES**

**N.H. Laws 1939**

**CHAPTER 190**

**AN ACT RELATIVE TO THE OPERATIONS OF MOTOR  
VEHICLES OF NON-RESIDENTS ON THE HIGHWAYS OF THIS  
STATE**

*Be it enacted by the Senate and House of Representatives in General Court  
convened:*

...

**4. Operator.** Amend chapter 100 of the Public Laws by striking out section 27 and inserting in place thereof the following: **27. License Not Required.** No owner of a pleasure vehicle, as defined in section 26, and *no* non-resident chauffeur or driver of such vehicle who is the holder of a license to operate such vehicle in the state, district, or country in which he resides shall be required to obtain a license to operate such vehicle within this state.

...

**9. Takes Effect.** This act shall take effect upon its passage.

[Approved June 15, 1939]

**N.H. Laws 1979**

**CHAPTER 436 (HB 575)  
AN ACT CODIFYING THE ELECTION LAWS**

*Be it enacted by the Senate and House of Representatives in General Court convened:*

**436:1 Recodification of the Election Laws.** Amend RSA by inserting after chapter 651 the following new title:

**TITLE LXIII  
ELECTIONS**

...

**CHAPTER 654  
VOTERS AND CHECKLISTS**

**ELIGIBILITY**

**654:1 Legal Voter.** Every inhabitant of the state, having a fixed and permanent established domicile, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he is domiciled. The determinant of one's domicile is a question of factual physical presence incorporating an intention to reside for an indefinite period. This domicile is the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year.

...

**436:13 Effective Date.** This act shall take effect July 1, 1979.

[Approved June 25, 1979]  
[Effective Date July 1, 1979]

## N.H. LAWS 1981

### CHAPTER 261 (SB 135)

#### AN ACT RELATIVE TO RESIDENTS AND INHABITANTS

*Be it enacted by the Senate and House of Representatives in General Court convened:*

**261:1 New Definitions.** Amend RSA 21:6 by striking out said section and inserting in place thereof the following:

**RSA 21:6 Resident; Inhabitant.** A resident or inhabitant or both of this state and of any city, town, or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

**RSA 21:6-a Residence.** Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

**261:2 Other Words, Other Statutes.** In the following citations to RSA and anywhere else in the RSA except in Title LXIII, the use of the words "live", "lives", "abode", "domicile", "domiciled", "domiciliary", "in-state", "out-of-state", "situated", or any form or variant of these words or any similar word making reference to the same idea contained in such words shall mean "resident", "inhabitant", "residence", "residency", or any verbal, adjectival, adverbial or other form or variant of such words as defined in RSA 21:6 and RSA 21:6-a as the context requires: RSA 32:2; RSA 42:6; RSA 72:48; RSA 77-B:1; RSA 80:5, RSA 86:6, I; RSA 86:71; RSA 86:88; RSA 86:89; RSA 87:1; RSA 89:5; RSA 89:21; RSA 90:2; RSA 90:4; RSA 90:5; RSA 147:4; RSA 169-B:7; RSA 169-C:8, I; RSA 169-D:6; RSA

187:14-a; RSA 187:29; RSA 187:31; RSA 188-A:8-a; RSA 189:6; RSA 194:5; RSA 198:6; RSA 200-J:2; RSA 207:1, XXIII; RSA 234:4; RSA 234:5; RSA 234:30; RSA 259:1, XVIII; RSA 259:1, XXXVII; RSA 260:35; RSA 402-C:58; RSA 402-C:60; RSA 406-A:3; RSA 438:18; RSA 457:3; RSA 458:5; RSA 458:6; RSA 458:19-a; RSA 459:1; RSA 459:2; RSA 464-A:8; RSA 464-A:17; RSA 471-A:2; RSA 471-A:24; RSA 553:31; RSA 553:31-a; and RSA 604:1.

**261:3 Effective Date.** This act shall take effect upon its passage.

[Approved June 16, 1981.]

[Effective Date June 16, 1981.]

**N.H. Laws 2003**

**CHAPTER 289 (HB 627)**

**AN ACT RELATIVE TO DOMICILE FOR VOTING PURPOSES,  
PENALTIES FOR VOTER FRAUD, AND ACCESS TO PRESERVED  
BALLOTS**

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

...

**289:23 Voter; Office Holder.** Amend RSA 654:1 to read as follows:

**654:1 Voter; Office Holder.**

I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

...

**289:63 Effective Date.** This act shall take effect September 1, 2003.

(Approved: July 18, 2003)

(Effective Date: September 1, 2003)

**N.H. Laws 2018**

**CHAPTER 370 (HB 1264)**  
**AN ACT RELATIVE TO CONSTRUCTION OF THE TERMS**  
**“RESIDENT,” “INHABITANT,” “RESIDENCE,” AND**  
**“RESIDENCY”**

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

**370:1 Statutory Construction; Resident; Inhabitant.** Amend RSA 21:6 and RSA 21:6-a to read as follows:

**21:6 Resident; Inhabitant.** A resident or inhabitant or both of this state and of any city, town, or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.

**21:6-a Residence.** Residence or residency shall mean a person’s place of abode or domicile. The place of abode or domicile is that designated by a person as his or her principal place of physical presence to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

**370:2 Effective Date.** This act shall take effect July 1, 2019.

Approved: July 13, 2018  
Effective Date: July 01, 2019

**TITLE I**  
**THE STATE AND ITS GOVERNMENT**

**CHAPTER 21**  
**STATUTORY CONSTRUCTION**

**21:1 Application.** – In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute.

**Source.** RS 1:30. CS 1:30. GS 1:1. GL 1:1. PS 2:1. PL 2:1. RL 7:1.

**21:6 Resident; Inhabitant.** – A resident or inhabitant or both of this state and of any city, town, or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.

**Source.** RS 1:5. CS 1:5. GS 1:6. GL 1:6. PS 2:6. PL 2:6. RL 7:6. RSA 21:6. 1981, 261:1, eff. June 16, 1981. 2018, 370:1, eff. July 1, 2019.

**21:6-a Residence.** – Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his or her principal place of physical presence to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

**Source.** 1981, 261:1, eff. June 16, 1981. 2018, 370:1, eff. July 1, 2019.



**TITLE XXI  
MOTOR VEHICLES**

**CHAPTER 259  
WORDS AND PHRASES DEFINED**

**259:1 Definition of Words and Phrases.** – The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter, except where the context otherwise requires.

**Source.** 1981, 146:1, eff. Jan. 1, 1982.

**259:23 Domicile.** – “Domicile” shall mean a natural person taking up residence in a town or city within the state and includes but is not limited to occupying a primary place of habitation, placing children in a public school within the state, accepting gainful employment, or being a registered voter liable for a resident tax, provided, however, that no person shall be considered to be domiciled in this state who simultaneously claims residence in any other state for any of the purposes indicated above. In the case of other than a natural person, domicile shall also apply in the case of vehicles principally garaged or kept on the premises of a firm or corporation with a place of business within the state.

**Source.** RSA 259:1, XXXVII. 1979, 135:4. 1981, 146:1, eff. Jan. 1, 1982.

**259:67 Nonresident.** –

“Nonresident” shall mean:

I. Except as provided in paragraph II, any person whose legal residence is in some state, district or country other than New Hampshire, but a nonresident, having a regular abode or place of business within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode or place of business and the director for the purposes of registration shall determine what vehicles are so used;

II. For the purposes of the reciprocal provisions as to arrest of nonresidents, RSA 262:27 and 28, a person who is a resident of or holds a driving license issued by a reciprocating state.

**Source.** 1905, 86:1. 1911, 133:1. 1913, 81:1. 1915, 129:1. 1917, 229:1. 1919, 161:1. 1921, 119:1. 1923, 75:1. 1925, 25:1; 68:1. PL 99:1. 1927, 52:1. 1929, 43:1. 1935, 73:2, 3. 1939, 47:1; 130:1; 189:1, 2, 3, 5; 190:1. 1941, 98:1; 111:1; 142:2. RL 115:1. 1943, 189:1. 1947, 177:1. 1949, 189:1, 2; 197:1; 212:2; 233:1; 286:4. 1953, 252:3. RSA 259:1, XIX. 1974, 45:1. 1981, 146:1, eff. Jan. 1, 1982.

**259:74 Person.** – “Person” shall mean the same as provided in RSA 21:9.

**Source.** 1905, 86:1. 1911, 133:1. 1913, 81:1. 1915, 129:1. 1917, 229:1. 1919, 161:1. 1921, 119:1. 1923, 75:1. 1925, 25:1; 68:1. PL 99:1. 1927, 52:1; 54:1. 1929, 43:1. 1935, 73:2, 3. 1937, 161:1. 1939, 47:1; 130:1; 189:1, 2, 3, 5; 190:1. 1941, 98:1; 111:1; 142:2; 198:4. RL 115:1; 122:1. 1943, 65:1; 189:1. 1947, 177:1. 1949, 188:1; 189:1, 2; 197:1; 212:2; 233:1; 286:4. 1953, 252:3. RSA 259:1, XXII; 263-A:1, II; 265:2, IV; 268:1, II. 1955, 208:1. 1981, 146:1, eff. Jan. 1, 1982.

**259:88 Resident.** – “Resident” shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

**Source.** 1921, 120:6. PL 100:20. RL 116:26. RSA 260:35. 1977, 572:2. 1978, 40:17. 1979, 135:3. 1981, 146:1. 1985, 213:3, eff. Jan. 1, 1986.

## **CHAPTER 261 CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES**

### **Registration Required**

**261:40 Registration Required.** – Except as otherwise provided, it is a violation for any person to drive or any owner or custodian to knowingly permit or cause to be driven on the ways of this state any vehicle which is not specifically exempt by statute or rule from the requirement of registration, unless the same has been registered and the appropriate fee paid in accordance with the provisions of this chapter. The fine for a violation of this section shall be \$100.

**Source.** 1905, 86:5. 1911, 133:2. 1917, 229:2. 1919, 41:2. 1921, 119:2. PL 100:5. 1935, 73:6. 1939, 132:1. RL 116:9. RSA 260:12. 1981, 146:1. 2005, 177:45. 2006, 317:14, eff. Aug. 18, 2006.

### **Reciprocity for Nonresidents**

**261:44 Operation Without Registration; Reciprocity.** – A vehicle, other than an OHRV or snowmobile, owned by a nonresident and duly registered for the current year in the state, district or country of which the owner is a resident may be driven upon the ways of this state without registration under this chapter to the extent, as to period of driving and otherwise, that the state, district or country of registration grants similar privileges for the operation of such vehicles owned by residents of this state and registered under its laws. The director for the purposes of this section shall determine the nature and extent of the privileges for the driving of vehicles granted by other states, districts or countries to residents of this state and his determination shall be final.

**Source.** 1911, 133:3. 1913, 81:2. 1917, 229:3. 1921, 119:3. 1923, 76:1. 1925, 85:1. PL 100:26. 1939, 190:3. 1941, 99:1. RL 116:35. 1945, 45:1. RSA 260:39. 1981, 146:1. 2006, 90:11, eff. July 1, 2006 at 12:01 a.m.

**261:45 Obligation to Register Vehicle. –**

I. Notwithstanding the provisions of RSA 261:44, when a nonresident has established a bona fide residency in this state, said resident shall have a maximum of 60 days from the date of his or her residency in which to register his or her vehicle or vehicles in New Hampshire.

II. When a nonresident business entity has established a place of business in this state and principally garages or regularly keeps overnight in this state a vehicle or vehicles owned by or leased to the business entity for conducting intrastate commerce in New Hampshire, the business entity shall be considered domiciled in New Hampshire and shall have a maximum of 60 days from the date of establishing such domicile in which to register the vehicle or vehicles with division or with an apportioned registration through the international registration plan. The director may adopt rules pursuant to RSA 541-A relative to procedures for such registration.

**Source.** RSA 260:39-a. 1979, 135:1. 1981, 146:1; 479:2, eff. Jan. 1, 1982. 2015, 111:1, eff. Jan. 1, 2016.

## CHAPTER 263 DRIVERS' LICENSES

### Issuance of Licenses

#### **263:1 License Required; Penalty. –**

I. No person, except those expressly exempted under RSA 263:25 or other provisions of this title, shall drive any motor vehicle upon any way in this state unless such person has a valid driver's license, as required under the provisions of this chapter, for the class or type of vehicle being driven.

II. Any person who held a driver's license of the appropriate class or type but whose driver's license has been expired for not more than 12 months shall be guilty of a violation or, for a second or subsequent offense shall be guilty of a class B misdemeanor.

III. Any person who drives a motor vehicle in this state and who has never had a license shall be guilty of a class B misdemeanor.

**Source.** 1905, 86:4. 1911, 133:8. 1921, 119:7, 8. PL 101:1, 9. 1927, 11:2. 1937, 69:1. 1939, 103:1. RL 117:1, 9. 1945, 44:3. RSA 261:1, 13; 262:27-a. 1965, 207:1. 1967, 281:1. 1973, 528:138. 1981, 146:1. 1985, 213:15, eff. Jan. 1, 1986. 2014, 296:1, eff. Jan. 1, 2015.

### License Reciprocity

#### **263:35 Nonresident Who Establishes a Residency in the State. –**

Notwithstanding the provisions of RSA 261:44 or any other law to the contrary, any nonresident driver of a motor vehicle who holds a valid driver's license in another jurisdiction, upon the establishment of a bona fide residency in this state, shall have a maximum of 60 days from the date his residency was established to obtain a driver's license issued by the state of New Hampshire.

**Source.** RSA 261:1-a. 1979, 135:2. 1981, 146:1, eff. Jan. 1, 1982.

**263:36 Reciprocal Driving of Pleasure Vehicles.** – No owner of a pleasure vehicle, and no nonresident or driver thereof, holding a license to drive in the state, district, or country in which he resides shall be required to obtain a license to drive such vehicle within this state.

**Source.** 1911, 133:3. 1913, 81:2. 1917, 229:3. 1921, 119:3. 1923, 76:1. PL 100:27. 1939, 190:4. RL 117:11. RSA 261:17. 1981, 146:1, eff. Jan. 1, 1982.

**263:37 Nonresident Privileges.** – Whenever a motor vehicle of a nonresident may be driven on the ways of this state, without registration, or is driven under a neutral zone registration, such vehicle may be driven by its owner or by his employee without a license from the director if the driver is duly licensed under the laws of the state, district, or country in which the motor vehicle is registered, or has complied fully with the laws of the state where said motor vehicle is registered respecting the licensing of motor vehicle drivers; provided, that said state, district, or country grants like privileges to residents of this state.

**Source.** 1911, 133:9. 1913, 81:4. 1921, 119:8. 1925, 86:1. PL 101:12. RL 117:13. 1945, 115:1. RSA 261:18. 1981, 146:1, eff. Jan. 1, 1982.

**263:38 Special License Not Required.** – A nonresident driver of a motor vehicle, who is the holder of a license to drive a motor vehicle in the state, district or country in which he resides, shall not be required to obtain a license to drive any pleasure vehicle within this state, provided he does not receive pay for such driving.

**Source.** 1941, 99:2. RL 117:14. RSA 261:19. 1981, 146:1, eff. Jan. 1, 1982.

## **TITLE LXIII ELECTIONS**

### **CHAPTER 654 VOTERS AND CHECKLISTS**

#### **Eligibility**

##### **654:1 Voter; Office Holder. –**

I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

I-a. A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution of learning if such student's claim of domicile otherwise meets the requirements of RSA 654:1, I.

II. Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served. Any vacancy so created shall be filled as prescribed by law.

**Source.** 1979, 396:1; 436:1. 2003, 289:23. 2007, 9:1. 2009, 288:1. 2012, 285:1, eff. Aug. 26, 2012.

### **STATEMENT OF THE FACTS AND CASE**

The plaintiffs filed this case in the United States District Court for the District of New Hampshire (federal district court) challenging the facial constitutionality of House Bill 1264 (2018) (“HB 1264”). In their original complaints, the plaintiffs and their counsel asserted that HB 1264 makes the statutory definitions of “resident” and “residence” under RSA 21:6 and RSA 21:6-a equivalent to the statutory definition of “domicile.” D.Apx.III<sup>1</sup> 138 (“In their original complaints, the plaintiffs’ arguments assumed that HB 1264 achieved its alleged intended effect.”); *see Opinion of the Justices (Definition of Resident and Residence)*, 171 N.H. 128, 140 n.4 (2018) (“None of the parties who have submitted memoranda in support of or in opposition to HB 1264 disputes that the bill makes the definitions of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a equivalent to the definition of ‘domicile’ in RSA 654:1, I.”) (*Lynn, CJ.*, and *Hantz Marconi and Donovan, JJ.*); *id.* at 149 (“Both the proponents and opponents of HB 1264 posit that the proposed amendments will render the statutory definitions of ‘resident’ and ‘residence’ equivalent to the statutory definition of ‘domicile.’”) (*Hicks and Bassett, JJ.*).

The plaintiffs changed their position after the federal district court raised the prospect of certifying certain questions of state law to this Court *sua sponte* and amended their federal court complaints accordingly.

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<sup>1</sup> “D.Add. \_\_\_\_” refers to defendants’ addendum attached to this brief;  
 “D.Apx.I \_\_\_\_” refers to volume I of the appendix to the Defendants’ brief;  
 “D.Apx.II \_\_\_\_” refers to volume II of the appendix to the Defendants’ brief;  
 “D.Apx.III \_\_\_\_” refers to volume III of the appendix to the Defendants’ brief.



D.Apx.III 138. The federal district court ultimately certified five state law questions to this Court for resolution. All of these state law questions concern New Hampshire’s law of domicile and how certain state statutes defining or using the terms “resident,” “residence,” “residency,” and “domicile” interact. An understanding of New Hampshire’s law of domicile and how it has developed is therefore essential to understanding what HB 1264 seeks to accomplish across all New Hampshire statutes: a single, uniform definition of “domicile” so all persons who claim New Hampshire as their “domicile” for any purpose are treated the same.

#### **A. New Hampshire’s Common Law Definition of Domicile**

In 1839, this Court held that “[t]wo things must concur to constitute domicil; first, residence; and, secondly, intention of making it the home of the party;’ but ‘in many cases actual residence is not indispensable to retain a domicil, after it is once acquired.’” *Moore v. Wilkins*, 10 N.H. 452, 455 (1839) (quoting *Story’s Confl. Of Laws* 42). “To make a place the home of a person,” this Court later explained, “two things are essential – actual residence and an intention to remain indefinitely; in other words, a general intention to remain, with no definite purpose to remove elsewhere.” *Concord v. Rumney*, 45 N.H. 423, 427 (1864). Under this common law definition of domicile, two things are observable: (1) “residence” is a lesser ingredient of domicile; and (2) an intent to remain indefinitely, with no definite purpose to remove elsewhere, is required to create a domicile. Many early cases reflect these principles. *See, e.g., McGee v. Bragg*, 94 N.H. 349 (1947); *Bailey v. Bailey*, 93 N.H. 259 (1945); *Felker v.*

*Henderson*, 78 N.H. 509 (1917); *Foss v. Foss*, 58 N.H. 283 (1878); *Atherton v. Thornton*, 8 N.H. 178 (1835).

## **B. The *Newburger* Schism**

The common law definition of domicile persisted in New Hampshire, including in the voting context, until 1972 when voter registration officials in Hanover refused to allow Frank Newburger, III, a Dartmouth College student whose parents lived in Hawaii, to register to vote “solely because he stated . . . that he intended to leave Hanover upon his graduation in June of 1974.” *Newburger v. Peterson*, 344 F. Supp. 559, 560 (D.N.H. 1972). The voting statute in effect specified that an inhabitant shall have the right “to vote in the town in which he dwells and has his home.” *Id.* (quoting RSA 54:1 (1972)). This statute incorporated into it New Hampshire’s common law of domicile. *Id.* (citing *State v. Daniels*, 44 N.H. 383 (1862)); see *Moore*, 10 N.H. at 455 (reviewing similarly worded statute and stating that, under the statute, “[n]o doubt is entertained that such person is to vote in the place of his domicil”). As noted in Section A above, this common law definition “views an intention to remain permanently or indefinitely in a particular town as essential to the acquisition of domicile.” *Newburger*, 344 F. Supp. at 560.

In *Newburger*, a three-judge panel of the federal district court held that this indefinite intention to remain requirement violated the equal protection clause of the Fourteenth Amendment when applied in the voting context. *Id.* at 563. The court reasoned:

In this day of widespread planning for change of scene and occupation we cannot see that a requirement of permanent or

indefinite intention to stay in one place is relevant to responsible citizenship. Or, to state it legally, the state has not shown that the indefinite intention requirement is necessary to serve a compelling interest.

*Id.* Thus, after *Newburger*, New Hampshire had two separate tests for domicile: one test applied in the voting context and *did not require* an indefinite intention to remain to create a domicile; the other test applied in every other context and *required* an indefinite intention to remain to create a domicile.

### C. N.H. Laws 1979, Chapter 436, An Act Codifying The Election Laws

In 1979, the legislature re-codified the election laws including RSA 654:1, which read at that time as follows:

**Legal Voter.** Every inhabitant of the state, having a fixed and permanent established domicile, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he is domiciled. The determinant of one's domicile is a question of factual physical presence incorporating an intention to reside for an indefinite period. This domicile is the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year.

N.H. Laws 1979, Chapter 436, Section 436:1. Despite the holding in *Newburger*, this definition mirrored the common law definition of domicile and contained an indefinite intention to remain requirement.

**D. N.H. Laws 1981, Chapter 261, An Act Relative To Residents And Inhabitants**

In 1981, the legislature passed N.H. Laws 1981, Chapter 261 (SB 135), An Act Relative To Residents and Inhabitants. The legislation contained three sections. The first section added new definitions of “resident,” “inhabitant,” “residence,” and “residency” in RSA 21:6 and RSA 21:6-a. N.H. Laws, 1981, Chapter 261, Section 261:1. These definitions were consistent with New Hampshire’s common law definition of domicile.

The second section made clear that, except under Title LXIII [the Election Code], the use of the words “live”, “lives”, “abode”, “domicile”, “domiciled”, “domiciliary”, “in-state”, “out-of-state”, “situated”, or any form or variant of these words or any similar word making reference to the same idea contained anywhere in the RSAs shall mean “resident”, “inhabitant”, “residence”, “residency”, or any verbal, adjectival, adverbial or other form or variant of such words as defined in RSA 21:6 and RSA 21:6-a as the context requires. N.H. Laws 1981, Chapter 261, Section 261:2. It then listed numerous statutes across the RSAs where such equivalencies might occur, including within the motor vehicle code. *Id.*

The third section established the legislation’s effective date as the date of its passage. The legislation was passed on June 16, 1981. As a result, the second section of the legislation (N.H. Laws 1981, Chapter 261, Section 261:2), while not appearing in the RSAs, remains in effect today.

After N.H. Laws 1981, Chapter 261 passed, this Court recognized its effects. In *In re Gary B.*, 124 N.H. 28, 31 (1983), this Court explained that the definitions of “resident” and “residence” in RSA 21:6 and RSA 21:6-a

“equate a person’s residence with his ‘domicile,’ and would demand an inquiry into his intent to remain in one place of abode ‘as his principal place of physical presence for the indefinite future to the exclusion of all others.’” A year later, in *Every v. Supervisors of Madison Checklist*, 124 N.H. 824, 827-28 (1984), this Court identified that “‘domicile’ is defined differently for voting purposes than for other purposes of the law,” citing to RSA 21:6 and RSA 21:6-a and N.H. Laws 1981, Chapter 261.

### E. Modern Revisions to RSA 654:1

In 2003, the legislature removed the indefinite intention to remain requirement from RSA 654:1, I as follows:

Every inhabitant of the state, having a ~~fixed and permanent~~ **single** established domicile **for voting purposes**, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he **or she** is domiciled. ~~The determinant of one’s domicile is a question of factual physical presence incorporating an intention to reside for an indefinite period. This domicile is the voter’s residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year.~~ **An inhabitant’s domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.**

N.H. Laws 2003, Chapter 289, Section 289:23.

In 2007, the legislature added the following sentence to the end of RSA 654:1, I: “A person’s claim of domicile for voting purposes shall not be conclusive of the person’s residence for any other legal purpose.” N.H. Laws 2007, Chapter 9, Section 9:1.

In 2009, the legislature added Section I-a to RSA 654:1, specifying that students at institutions of learning in New Hampshire may claim domicile for voting purposes in New Hampshire so long as their claim of domicile meets RSA 654:1, I. N.H. Laws 2009, Chapter 288, Section 288:1.

In 2012, the legislature removed the sentence it had added to RSA 654:1, I in 2007. N.H. Laws 2012, Chapter 285, Section 285:1. This 2012 law also added language to the voter registration form established in RSA 654:7 that stated: “In declaring New Hampshire as my domicile, I am 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.” N.H. Laws 2012, Chapter 285, Section 285:2. This change to the voter registration form triggered a new lawsuit that resulted in *Guare v. State*, 167 N.H. 658 (2015).

#### **F. *Guare v. State*, 167 N.H. 658 (2015)**

In *Guare*, the petitioners argued that the above-referenced form language was confusing because it conflated the statutory definitions of “domicile” and “residence” and therefore violated a citizen’s right to vote. 167 N.H. at 660. The trial court struck the language from the form as

unconstitutional under Part I, Article 11 of the New Hampshire Constitution. *Id.* at 660-61. The State appealed. *Id.* at 659.

On appeal, the parties pressed the same arguments made below. On May 15, 2015, this Court issued a decision. In it, this Court spoke broadly about the statutory terms “domicile” under RSA 654:1 and “resident” and “residence” under RSA 21:6 and RSA 21:6-a, explaining the only basic difference between them as the indefinite intention to remain requirement. 167 N.H. at 662-63. In doing so, however, this Court inaccurately summarized New Hampshire law. Specifically, the *Guare* decision appears to state that the legislature has statutorily defined the term “domicile” and the terms “resident” and “residence” differently *for all purposes*, such that the test for establishing a “domicile” in New Hampshire *for all purposes* requires less than establishing a “residence” *for all purposes*, and that one may therefore be “domiciled” in New Hampshire generally without being a “resident” of the state. *See id.* at 662 (“The legislature has defined ‘residence’ differently from ‘domicile.’ . . . . The basic difference between a ‘resident’ and a person who merely has a New Hampshire ‘domicile,’ is that a ‘resident’ has manifested an intent to remain in New Hampshire for the indefinite future, while a person who merely has a New Hampshire ‘domicile’ has not manifested that same intent.”). These summary propositions and suggestions are legally inaccurate.

When *Guare* was decided, the legislature had statutorily defined “residence” and “residency” as equivalent to the common law definition of domicile. N.H. Laws 1981, Chapter 261; *see In re Gary B.*, 125 N.H. at 31. The legislature exempted only the Election Code from this general equivalency. N.H. Laws 1981, Chapter 261, Section 261:2. The legislature

removed the indefinite intention to remain requirement from RSA 654:1 in 2003, consistent with the *Newburger* decision. Thus, while a person could have been domiciled solely for voting purposes and not for any other purpose in New Hampshire in 2015, a person could not be domiciled in New Hampshire in 2015 for all other general purposes without also meeting the definitions in RSA 21:6 and RSA 21:6-a or the common law definition of domicile. *See Opinion of the Justices*, 171 N.H. at 138 n.2 (“The connection to place defined by RSA 21:6 and :6-a, either with or without the amendments that would be effectuated if HB 1264 becomes law, satisfies the traditional test of domicile, rather than mere residency.”).

#### **G. N.H. Laws 2017, Chapter 205 (SB 3)**

In 2017, the legislature amended RSA Chapter 654 through N.H. Laws 2017, Chapter 205 (SB 3). While SB 3 did not amend RSA 654:1, it provided substantial additional context regarding what “domicile” means under RSA 654:1. N.H. Laws 2017, Chapter 205, Section 205:1. Shortly after SB 3’s passage, the League of Women Voters of New Hampshire, several individual plaintiffs, and the New Hampshire Democratic Party filed a lawsuit challenging the constitutionality of SB 3. These plaintiffs argued, in part, that SB 3 changed the definition of what it means to be domiciled for voting purposes in a manner that violates Part I, Article 11 of the New Hampshire Constitution. D.Apx.I 50.

On October 22, 2018, the superior court entered a preliminary injunction enjoining SB 3 in its entirety. D.Apx.I 4-27. On October 25, 2018, the superior court entered a further order attempting to clarify its October 22, 2018 preliminary injunction order. D.Apx.I 28-30. On



October 26, 2018, this Court stayed the superior court’s preliminary injunction until after the November 6, 2018 general election. D.Apx.I 31-33. Thus, as of November 7, 2018, SB 3 has been preliminarily enjoined in its entirety.

The defendants subsequently moved for summary judgment in part on the plaintiffs’ claim that SB 3 impermissibly changes the definition of domicile under Part I, Article 11. D.Apx.I 35. In granting summary judgment to the state defendants on this claim, the superior court found that SB 3 “expands upon the definition [of domicile] lawfully established by the legislature.” D.Apx.I 51.

The parties tried the SB 3 case from December 2, 2019 to December 12, 2019. Post-trial briefing remains underway. A decision from the superior court is not expected until sometime after the New Hampshire presidential primary. It is likely that an appeal will be taken from the superior court’s decision, regardless of which side prevails.

#### **H. N.H. Laws 2018, Chapter 370 (HB 1264)**

In 2018, the legislature passed N.H. Laws 2018, Chapter 370 (HB 1264). The legislation was introduced in November 2017, when the changes SB 3 made to RSA Chapter 654 were in effect. HB 1264 proposed to strike the four words “for the indefinite future” from RSA 21:6 and RSA 21:6-a to make the definitions of “resident,” “inhabitant,” “residence,” “residency,” and all similar terms used throughout the RSAs conveying the same idea, equivalent to the concept of “domicile” as used in RSA 654:1 and the Election Code. The goal was to ensure a single, uniform definition of “domicile” under New Hampshire statutory law regardless of the specific

terminology used. D.Apx.II 6, Majority Committee Report, Statement of Intent (“What this legislation does do is clear decades of confusion and conflation of common terms used in our statutes: resident, domicile, and inhabitant. Under this legislation, someone who is domiciled in our state will be considered a resident and must follow the laws of our state.”).

The House and Senate passed HB 1264. Thereafter, questions arose regarding HB 1264’s constitutionality. Thus, the Governor and Executive Council requested an opinion of the justices regarding HB 1264. *Opinion of the Justices (Definition of Resident and Residence)*, 171 N.H. 128, 131 (2018). The questions asked whether HB 1264 was constitutional under the Part I, Articles 2 and 11 of the New Hampshire Constitution and under the Fourteenth Amendment of the United States Constitution by subjecting those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire. *Id.* at 131-32.

On July 12, 2018, three justices of this Court answered “no” to each of the above questions, advising that HB 1264 was constitutional under Part I, Articles 2 & 11 of the New Hampshire Constitution and under the Fourteenth Amendment of the United States Constitution. *Id.* at 136-49. Two justices requested to be excused from answering the above questions due to the lack of a developed factual record. *Id.* at 149-57. On July 13, 2018, Governor Christopher T. Sununu signed HB 1264 into law.

## **I. The Federal Case**

The New Hampshire State Primary Election occurred on September 11, 2018. The New Hampshire General Election occurred on November 6,

2018. On July 1, 2019, HB 1264 went into effect. In February 2019, the plaintiffs filed identical lawsuits in federal district court challenging the constitutionality of HB 1264. The cases were consolidated, and the defendants moved to dismiss the federal actions on various legal grounds. D.Apx.III 3-36. On July 30, 2019, the federal district court denied the motions to dismiss, declining to resolve the defendants' legal arguments at that stage of the litigation. D.Apx.III 37-59. The parties structured the case and proceeded with expedited discovery.

On October 9, 2019, the federal district court issued a procedural order *sua sponte* asking whether the court should certify to the New Hampshire Supreme Court certain questions of law relating to how RSA 21:6, RSA 21:6-a, RSA 654:1, and various provisions of the New Hampshire Motor Vehicle Code interact. D.Apx.III 60-67. The federal district court also inquired into whether the defendants would agree to a temporary injunction prohibiting law enforcement from using certain voter registration and/or voter history evidence in prosecutions initiated under RSA 261:45 and RSA 263:35. D.Apx.III 65-66.

The parties provided their views on certification. The defendants opposed certification, D.Apx.III 68-85, and the Attorney General would not agree to suspend in part the operation of valid state motor vehicle laws, the constitutionality and legality of which are not in question, pending certification. *See, e.g., N.H. Const.* Pt. II, Art. 84 [Oath of Civil Officers]: RSA 7:6 [Powers and Duties as State's Attorney].

The plaintiffs then moved for a preliminary injunction on the ground that HB 1264 and how it interacts with various provisions of the New Hampshire Motor Vehicle Code is confusing and therefore violates the First

and Fourteenth Amendments of the United States Constitution. *See* D.Apx.III 86-87. The defendants opposed the motion. D.Apx.III 86-130. Following an evidentiary hearing, the federal district court denied the plaintiffs’ motion for a preliminary injunction, D.Apx.III 131-61, and certified five questions of state law to this Court for resolution, D.Add. 66-82. This proceeding followed.

## **J. State Agency Guidance**

Since HB 1264 passed, the defendants, with the New Hampshire Department of Safety, have issued guidance regarding the effects of HB 1264. On November 7, 2019, they issued a letter directed to Hanover Town Clerk Elizabeth McClain, but disseminated generally to all local election officials and posted publicly on the Internet regarding how HB 1264 interacts with the Motor Vehicle Code. *See, e.g.,* N.H. Dept. of Justice, Office of the Attorney General, Election Law, Forms and Publications, Letter to Elizabeth McClain re Casey v. Gardner, available at <https://www.doj.nh.gov/election-law/documents/20191107-mcclain-letter.pdf> (last visited Jan. 5, 2020). In December 2019, they issued a series of “Frequently Asked Questions,” publicly posted on their websites, regarding how HB 1264 interacts with the Motor Vehicle Code. *See, e.g.,* N.H. Dept. of Justice, Office of the Attorney General, Election Law, Establishing a Domicile/Residence in New Hampshire FAQ, available at <https://www.doj.nh.gov/election-law/domicile-residence-faq.htm#domicile-residence> (last visited Jan. 5, 2020).

### **SUMMARY OF THE ARGUMENT**

I. HB 1264 amended RSA 21:6 and RSA 21:6-a to make the definitions of “resident,” “inhabitant,” “residence,” and “residency” equivalent to the definition of “domicile” contained in RSA 654:1. It accomplished this goal by removing the only “basic difference” between those definitions: the “for the indefinite future” requirement. *Guare*, 167 N.H. at 662. Thus, even though RSA 21:6 and RSA 21:6-a are worded differently than RSA 654:1, these three statutes embody the same basic concept of domicile: a person’s intent to make a town or ward in New Hampshire his or her principal place of physical presence to the exclusion of all other places.

II. RSA 654:1, I-a does not establish a separate or different domicile requirement from RSA 654:1, I. RSA 654:1, I-a merely recognizes that students attending institutions of learning in New Hampshire may lawfully claim New Hampshire as their domicile for voting purposes if their claim of domicile meets RSA 654:1, I. A person whose claim of domicile meets RSA 654:1, I is now a “resident” under RSA 21:6 and has established a “residence” under RSA 21:6-a, as demonstrated above. Consequently, a student who claims a New Hampshire domicile under RSA 654:1, I-a is a resident under RSA 21:6, as recently amended by HB 1264.

III. A person claiming domicile under RSA 654:1 cannot be a person “who claims *residence* in any other state for any purpose” under RSA 259:88. Within the Motor Vehicle Code, RSA 259:88 defines the

term “Resident” to mean “a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.” After HB 1264, RSA 259:88 effectively reads as follows: “‘Resident’ shall mean a resident of the state as defined in RSA 21:6 [*i.e.*, a domiciliary], except that no person shall be a resident [*i.e.*, a domiciliary] who claims residence [*i.e.*, domicile] in any other state for any purpose.” It is blackletter law that a person can have only one domicile at a time. *Whitehouse v. C.I.R.*, 963 F.2d 1, 1-2 (1st Cir. 1992) (“A person can have only one domicile at a time.”). Thus, because a person claiming “domicile” under RSA 654:1 is also a “resident” under RSA 21:6 who has a “residence” under RSA 21:6-a, and a person can have only one domicile or statutorily defined residence under RSA 21:6-a at a time, a person claiming domicile in New Hampshire under RSA 654:1 cannot be a person “who claims *residence* [*i.e.*, domicile] in any other state for any purpose” under RSA 259:88.

IV. A person who is domiciled in New Hampshire consistent with RSA 654:1, I or RSA 654:1, I-a has established “a bona fide residency” in New Hampshire under RSA 261:45 and RSA 263:35. RSA 21:6-a defines the term “residency” consistent with the concept of domicile. N.H. Laws 1981, Chapter 261, Section 261:2 also equates the term “domicile” with the word “residency” as used in RSA 21:6-a for all general purposes. The term “bona fide residency” therefore means that the person’s domicile/residence in a state is genuine and not for some other sham purpose, such as avoiding taxation or higher motor vehicle registration fees in the jurisdiction where the person actually has his or her domicile/residence. Thus, a person who

is a domiciliary of a New Hampshire community consistent with RSA 654:1, I or RSA 654:1, I-a establishes a bona fide residency in that community under RSA 261:45 and RSA 263:35 and has 60 days from that time to obtain a New Hampshire driver's license and register her motor vehicle in New Hampshire.

V. The definition of “nonresident” in RSA 259:67, I requires nonresident college students, and all other nonresidents, who have a regular abode in New Hampshire for more than six months in any year to obtain New Hampshire driver's licenses under RSA 263:1, if they wish to drive in the state, and to register any vehicles they own and keep in the state under RSA 261:40. With an exception not relevant to this litigation, RSA 259:67, I defines the term “nonresident” as used throughout the Motor Vehicle Code to mean “any person whose legal residence is in some state, district or country other than New Hampshire, but a nonresident, having a regular abode . . . within the state for more than 6 months in any year, *shall be deemed a resident as to all vehicles principally used in connection with such abode* . . . and the director for the purposes of registration shall determine what vehicles are so used.” (Emphasis added.) Once a person is “deemed a resident” under RSA 259:67, I, that person is no longer a “nonresident” and does not benefit from the “nonresident” licensing and registration exemptions under the code, RSA 261:44; RSA 263:36, RSA 263:37; RSA 263:38. That person therefore needs to be licensed under the code and have any motor vehicles he or she owns and keeps in New Hampshire registered.

### **STANDARD OF REVIEW**

The certified questions present questions of law that involve statutory interpretation. In interpreting statutes, this Court “first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning.” *Petition of Carrier*, 165 N.H. 719, 721 (2013). It “interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Id.* “The legislature is not presumed to waste words or enact redundant provisions and whenever possible, every word of a statute should be given effect.” *Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009) (quotation omitted). The New Hampshire Supreme Court “construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” *Petition of Carrier*, 165 N.H. at 721. Only if the statutory language used is ambiguous will the Court examine the legislative history. *Forster v. Town of Henniker*, 167 N.H. 745, 750 (2015).



## ARGUMENT

### **I. RSA 21:6 AND RSA 21:6-A, AS AMENDED BY HB 1264, CONVEY THE SAME BASIC CONCEPT AS THE DEFINITION OF “DOMICILE” CONTAINED IN RSA 654:1.**

RSA 654:1, I states, in part, that “[e]very inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place *in which he or she is domiciled*.” (Emphasis added). One’s “domicile” is commonly defined as “[t]he place at which a person has been physically present and that the person regards as home.” Black’s Law Dictionary at 558 (West 9th Ed. 2009). RSA 654:1, I defines the term “domicile for voting purposes” as “that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” This definition is consistent with the common definition of the freestanding term “domicile.”

What the term “domicile” means in RSA 654:1 is also informed, in part, by the statutory context in which it exists, including by RSA 654:2, which expands upon the definition of domicile in RSA Chapter 654. This statutory context is in a state of flux due to the superior court’s order preliminarily enjoining SB 3. Nonetheless, in *Guare*, this Court identified the basic difference between the definitions of “resident” and “residence” in RSA 21:6 and RSA 21:6-a and the definition of domicile used in RSA Chapter 654 as follows:

The basic difference between a ‘resident’ [under RSA 21:6] and a person who merely has a New Hampshire ‘domicile’ [under RSA 654:1], is that a ‘resident’ has manifested an intent to remain in New Hampshire for the indefinite future, while a person who merely has a New Hampshire ‘domicile’ has not manifested that same intent.

*Guare*, 167 N.H. at 661-62.

HB 1264 eliminated the “for the indefinite future” requirement from RSA 21:6 and RSA 21:6-a in order to equate the terms “resident,” “inhabitant,” “residence,” and “residency,” as used in RSA 21:6 and RSA 21:6-a, with the term “domicile,” as used in RSA 654:1. In doing so, HB 1264 created a single statutory concept of domicile and resolved the confusion created by having two different concepts of domicile in New Hampshire law, one concept for voting purposes (RSA 654:1) and one concept for all other statutory purposes (RSA 21:6 and RSA 21:6-a). *See Opinion of the Justices*, 171 N.H. at 142 (“HB 1264 amends the definition of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a for purposes of the application of other provisions of New Hampshire law so that those definitions are equivalent to the definition of ‘domicile’ found in RSA 654:1, I.”).

In fact, until mid-October 2019, the plaintiffs and their counsel believed that HB 1264 operated in this precise manner. D.Apx.III 138 (“In their original complaints, the plaintiffs’ arguments assumed that HB 1264 achieved its alleged intended effect.”); *see Opinion of the Justices*, 171 N.H. at 140 n. 4 (“None of the parties who have submitted memoranda in support of or in opposition to HB 1264 disputes that the bill makes the

definitions of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a equivalent to the definition of ‘domicile’ in RSA 654:1, I.”).

Accordingly, RSA 21:6 and RSA 21:6-a, as amended by HB 1264, contain the same concept of “domicile” that is contained in RSA 654:1, such that one who is “domiciled” under RSA 654:1, I (or RSA Chapter 654 generally) is also a “resident” under RSA 21:6 and has a “residence” under RSA 21:6-a. The plain language of the statutes involved and the legislative history associated with HB 1264 reveal that to be the case. SB 3’s expansion of the definition of “domicile” within RSA Chapter 654 only strengthens this conclusion.

**II. A STUDENT WHO CLAIMS A NEW HAMPSHIRE  
DOMICILE UNDER RSA 654:1, I-A IS A RESIDENT UNDER  
RSA 21:6, AS RECENTLY AMENDED.**

By its plain terms, RSA 654:1, I-a does not establish a separate or different domicile requirement from RSA 654:1, I. Rather, RSA 654:1, I-a merely recognizes that students attending institutions of learning in New Hampshire may lawfully claim New Hampshire as their domicile for voting purposes if their claim of *domicile* meets RSA 654:1, I. A person whose claim of domicile meets RSA 654:1, I is now also a “resident” under RSA 21:6, as demonstrated in Section I above. Consequently, a student who claims a New Hampshire domicile under RSA 654:1, I-a is a resident under RSA 21:6, as recently amended by HB 1264.

**III. A PERSON CLAIMING DOMICILE UNDER RSA 654:1 CANNOT BE A PERSON “WHO CLAIMS *RESIDENCE* IN ANY OTHER STATE FOR ANY PURPOSE” UNDER RSA 259:88.**

RSA Chapter 259 exists in the New Hampshire Motor Vehicle Code. It defines words and phrases used throughout the code. RSA 259:88 defines the term “Resident” to mean “a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.” This statutory definition incorporates RSA 21:6 into it by reference and, in doing so, expressly contemplates that changes made to RSA 21:6 will change the definition of the term “resident” under RSA 259:88. N.H. Laws 1981, Chapter 261, Section 261:2, which remains the law, also contemplates this result.

RSA Chapter 259 does not define the term “residence.” It does, however, equate the terms “residence” and “domicile.” “Domicile” is defined in the motor vehicle code as

a natural person taking up *residence* in a town or city within the state and includes but is not limited to occupying a primary place of habitation, placing children in a public school within the state, accepting gainful employment, or being a registered voter liable for a resident tax, provided, however, that no person shall be considered to be domiciled in this state who simultaneously claims *residence* in any other state for any of the purposes indicated above.

RSA 259:23 [Domicile]. RSA 21:6-a, as recently amended, also defines “residence” to be synonymous with the concept of “domicile” in RSA 654:1. N.H. Laws 1981, Chapter 261, Section 261:2 also expressly

contemplates equating the term “residence” with the term “domicile” as used in the Motor Vehicle Code, citing to RSA 259:1, XXXVII, the predecessor to RSA 259:23. *See also* RSA 21:1 (“In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute.”).

Thus, RSA 259:88 reads as follows: “‘Resident’ shall mean a resident of the state as defined in RSA 21:6 [*i.e.*, a domiciliary], except that no person shall be a resident [*i.e.*, a domiciliary] who claims residence [*i.e.*, domicile] in any other state for any purpose.” The definition of domicile contained in RSA 259:23 reveals how a person might “claim residence” in another state, such as by occupying a primary place of habitation in that state, placing children in public school in that state, accepting gainful employment in that state, or being a registered voter in that state. A “resident” under RSA 259:88 is therefore someone who claims a New Hampshire residence/domicile consistent with RSA 21:6-a; someone who claims a residence/domicile in another state for any purpose is not a “resident” under RSA 259:88.<sup>2</sup>

The plaintiffs may argue that the term “residence” as used under RSA 259:88 should be construed in accordance with its common meaning (*i.e.*, the mere act or fact of living in a given place for some time), Black’s

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<sup>2</sup> This result conforms to the black letter rule of a law that a person can only have one domicile at a time. *Whitehouse v. C.I.R.*, 963 F.2d 1, 1-2 (1st Cir. 1992) (“A person can have only one domicile at a time.”).

Law Dictionary at 1423 (West 9th Ed. 2009). That argument should be rejected for at least several reasons.

*First*, it is contrary to the dictate of RSA 21:1.

*Second*, it fails to recognize that RSA 259:88 expressly incorporates RSA 21:6 into it. A comparison of the definitions in RSA 21:6 and RSA 21:6-a shows that a person who is a “resident” under RSA 21:6 necessarily has a “residence” under RSA 21:6-a. It therefore makes sense in the context of RSA 259:88 that a person who claims a “residence” consistent with RSA 21:6-a in another state or country for any purpose would no longer be a “resident” under RSA 21:6.

*Third*, assigning the common meaning to the term “residence” in RSA 259:88 would lead to an absurd result. Under that definition, a person who has an established domicile or “bona fide residency” in New Hampshire under RSA 263:35, lives in New Hampshire nearly the entire year, and regularly drives in New Hampshire would not be a “resident” under the Motor Vehicle Code if he claims to live or dwell in another state or country for any portion of the year for any purpose. Such a result conflicts at least with: RSA 263:35, which requires persons who have established residency in New Hampshire to obtain a New Hampshire driver’s license within 60 days; RSA 263:5-b, which recognizes that certain military personnel and government employees who are state “residents” are not considered to have lost their “residence” while they are living elsewhere for military or governmental purposes; and the general purpose of the Motor Vehicle Code, which is to regulate persons who live and drive predominately in New Hampshire.

Thus, as established in Section I above, a person claiming domicile under RSA 654:1 is also a “resident” under RSA 21:6 and someone who has a “residence” under RSA 21:6-a. A person who is a “resident” under RSA 21:6 is also a “resident” under RSA 259:88, unless that person claims a “residence,” as defined in RSA 21:6-a (*i.e.*, domicile), in another state for another purpose. Since a person can only have one domicile at a time, a person who claims domicile in New Hampshire consistent with RSA 654:1 cannot also be a person “who claims residence [*i.e.*, domicile] in any other state for any purpose” under RSA 259:88.



**IV. A PERSON WHO IS DOMICILED IN NEW HAMPSHIRE CONSISTENT WITH RSA 654:1, I OR I-A HAS ESTABLISHED “A BONA FIDE RESIDENCY” UNDER RSA 261:45 AND RSA 263:35 IN NEW HAMPSHIRE.**

RSA 261:45 and RSA 263:35 provide that when a “nonresident” establishes a “bona fide residency” in New Hampshire, he or she has 60 days from the establishment of that residency to obtain a New Hampshire driver’s license, if he or she drives in New Hampshire, and to register his/her vehicle, if he or she owns one in New Hampshire.

The Motor Vehicle Code does not specifically define the term “bona fide residency” or “residency.” However, RSA 21:6-a defines the term “residency” consistent with the concept of domicile. N.H. Laws 1981, Chapter 261, Section 261:2 also equates the term “domicile” with the word “residency” as used in RSA 21:6-a for all general purposes. The Motor Vehicle Code defines the term “resident” consistent with RSA 21:6 and uses the term “residence” consistent with RSA 21:6-a. The term “residency” in the Motor Vehicle Code is therefore properly defined by reference to RSA 21:6-a.

The broader phrase “bona fide residency” is used in the law and, in part, implicates a person’s intent. The phrase is used in different legal contexts, including tax and election law. *See, e.g., Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972) (“the States have the power to require that voters be bona fide residents of the relevant political subdivision.”); *Comm’r of IRS v. Estate of Sanders*, 834 F.3d 1269, 1275 (11th Cir. 2016) (“What matters for the bona fide residency test is not the taxpayer’s good faith belief that he has satisfied some formulaic residency test, but his good faith

intention to actually become a resident of a certain place for a legitimate reason.”); *Chasan v. Vill. Dist. of Eastman*, 128 N.H. 807, 822 (1986) (“RSA 670:3, which prescribes bona fide residency among a legal voter’s qualifications, has several important objectives. It insures that the voters are most likely to be cognizant of the full range of issues confronting the community. It designates those citizens who are likely to be the most informed of the needs of the particular community. It assures that the voter has a common interest in all matters pertaining to the government of the subdivision and that the franchise will be exercised intelligently.”).

The term “bona fide residency” therefore means that the person’s residence in a state is genuine and not for some other sham purpose, such as avoiding taxation or higher motor vehicle registration fees in the jurisdiction where one actually has his or her bona fide residence. Because the terms “resident,” “residence,” “residency,” and “domicile” are equivalent under New Hampshire statutory law, the term “bona fide residency” means “bona fide domicile.” Thus, when a person establishes a domicile in New Hampshire consistent with RSA 654:1, I, he or she has established a “residency” under RSA 21:6-a, and has established a “bona fide residency” under RSA 261:45 and RSA 263:35. That person then has 60 days from the establishment of his or her “bona fide residency” to obtain a New Hampshire driver’s license, if he or she intends to drive in New Hampshire, and register his or her vehicle, if he or she owns and keeps one in the state.

Accordingly, the fourth certified question is most appropriately answered as follows: A person who establishes a domicile in a New

Hampshire community consistent with RSA 654:1, I establishes a bona fide residency in that community under RSA 261:45 and RSA 263:35.

**V. RSA 259:67, I REQUIRES NONRESIDENTS WHO HAVE A REGULAR ABODE IN NEW HAMPSHIRE FOR MORE THAN SIX MONTHS IN ANY YEAR TO OBTAIN NEW HAMPSHIRE DRIVER'S LICENSES IF THEY WISH TO DRIVE IN THE STATE AND TO REGISTER ANY VEHICLES THEY OWN AND KEEP IN THE STATE.**

The New Hampshire Motor Vehicle Code provides for reciprocal licensing and registration arrangements that permit “nonresidents” to own and operate certain motor vehicles within New Hampshire while they are temporarily present in the state. RSA 261:44; RSA 263:36, RSA 263:37; RSA 263:38. However, after a nonresident has maintained a regular abode in New Hampshire for more than six months in a year, the New Hampshire Motor Vehicle Code deems that person to be a resident with respect to any vehicles principally used in connection with their New Hampshire abode. RSA 259:67, I. As a result, these persons no longer benefit from the nonresident licensing and registration exemptions under the code and must obtain New Hampshire driver’s license and/or motor vehicle registrations. The statutory regime works as follows.

**Licensing.** RSA 263:1 provides that “[n]o person, except those expressly exempted under RSA 263:25 or other provisions of this chapter, shall drive any motor vehicle upon any way in this state unless such person has a valid driver’s license, as required under the provisions of this chapter, for the class or type of vehicle being driven.” An exemption to this licensing requirement exists for “nonresidents” who drive “pleasure vehicles”: “No owner of a pleasure vehicle,<sup>3</sup> and no nonresident or driver

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<sup>3</sup>A “pleasure vehicle” is an “automobile . . . designed for the transportation of persons on highways.” *Am. Mut. Liability Ins. Co. v. Chaput*, 95 N.H. 200, 202 (1948). “Motor

thereof, holding a license to drive in the state, district, or country in which he resides shall be required to obtain a license to drive such vehicle within this state.” RSA 263:36.

A careful analysis of RSA 263:36 reveals that the plain language of the statute cannot control its meaning without creating an unintelligible result and resulting in surplusage. *See, e.g., U.S. Nat. Bank of Oregon v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 462 (1993) (“In these unusual cases, we are convinced that the placement of the quotation marks in the 1916 Act was a simple scrivener’s error, a mistake made by someone unfamiliar with the law’s object and design. . . . The true meaning of the 1916 Act is clear beyond question, and so we repunctuate.”); *Owner-Operator Independent Drivers Ass’n v. United Van Lines, LLC*, 556 F.3d 690, 694 (8th Cir. 2009) (explaining the exception to the plain meaning doctrine as “the rare case of a ‘scrivener’s error’ . . . produces an ‘absurd result.’”); *United States v. Coatoam*, 245 F.3d 553, 558 (6th Cir. 2001) (“When . . . a plain meaning analysis of a statute produces an absurd result, in that the interpretation is clearly at odds with Congress’s intent in drafting the statute, then the language of the statute must yield to interpretive guidance from legislative history or statutory structure.”).

Specifically, the first phrase of the statute, “No owner of a pleasure vehicle, and *no nonresident or driver thereof*,” does not make sense. (Emphasis added.) While there is such thing as a “driver of a pleasure vehicle,” there is no such thing as a “nonresident of a pleasure vehicle.”

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vehicle,’ more often used as a generic term, has a somewhat broader meaning, and is commonly applied to any form of self-propelled vehicle suitable for use on a street or roadway.” *Id.*

Additionally, the words “driver” and “nonresident” are separately defined in the code, RSA 259:25; RSA 259:67, and the term “driver,” standing alone, is broad enough in meaning to include the term “nonresident” within it. Thus, a literal reading of the statute would render the term “nonresident” surplusage.

The problem with the current version of RSA 263:36 is that the legislature inadvertently left the word “or” between the words “nonresident” and “driver” when it amended the statute in 1981. The immediate prior version of RSA 263:36, in effect from 1939 to 1981, reveals this to be the case. That version of the statute provides as follows:

**License Not Required.** No owner of a pleasure vehicle, as defined in section 26, and *no non-resident chauffeur or driver of such vehicle* who is the holder of a license to operate such vehicle in the state, district, or country in which he resides shall be required to obtain a license to operate such vehicle within this state.

N.H. Laws 1939, Chapter 190, Section 4 at 256 (emphasis added).

In other words, in the previous version of RSA 263:36, the term “nonresident” was used as an adjective to modify the terms “chauffeur” and “driver.” However, when the legislature removed the word “chauffeur” from the statute in 1981, it left the conjunction “or” in the statute, separating the adjective (“nonresident”) from the noun it is intended to modify (“driver”) and rendering the standalone term “nonresident” unintelligible surplusage. To avoid this absurd, unintelligible result, RSA 263:36 is properly read to refer to, “No owner of a pleasure vehicle, and no nonresident . . . driver thereof, holding a license to drive in the state,

district, or country in which he resides shall be required to obtain a license to drive such vehicle within this state.”

A person benefits from the exemption in RSA 263:36 only so long as she remains a “nonresident.” Under the definition of “nonresident” in the motor vehicle code, a “nonresident, having a regular abode . . . within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode and the director for the purposes of registration shall determine what vehicles are so used.” RSA 259:67, I. Thus, a nonresident who has a regular abode (*i.e.*, a regular place of habitation) in New Hampshire for more than six months in a year is deemed a resident as to all vehicles principally used in connection with that abode, cannot claim the nonresident driver exemption in RSA 263:36, and therefore must obtain a New Hampshire driver’s license in order to drive legally in New Hampshire, consistent with RSA 263:1.

Most, if not all, nonresident college students have had, or may currently have, a regular abode in New Hampshire for more than six months during the year. The college school year typically runs from the beginning of September to the end of May, approximately eight months, and some schools, like Dartmouth College, even hold classes during the summer. Consequently, before their second year at college, New Hampshire law requires nonresident college students to obtain New Hampshire driver’s licenses, if they are driving in New Hampshire, and to register their motor vehicle, if they own one and keep it in New Hampshire.

These nonresident licensing and registration provisions are common features of motor vehicle codes and exist to protect the public. *See, e.g.*, Ark. C. Ann. § 27-16-606(b) (“Any nonresident who has been physically

present in this state for a period of six (6) months shall obtain an Arkansas driver's license in order to drive upon the streets and highways of this state."); Cal. Vehicle Code § 12505 (explaining that "[p]resence in the state for six months or more in a 12-month period gives rise to a rebuttable presumption of residency"); N.C. Stat. § 20-4.01(34) (defining the term "resident" in the motor vehicle code to mean "[a]ny person who resides in this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; . . ."); 60 C.J.S. Motor Vehicles § 328 ("A nonresident owner or operator may be required to obtain a license as a condition to operating a motor vehicle within a state or a municipality."); *Comm. v. Chown*, 948 N.E.2d 394, 400-01 (Mass. 2011) (explaining that laws limiting the period of time a nonresident may operate a motor vehicle in Massachusetts without a Massachusetts driver's license and without furnishing liability insurance "exist for the protection of the public").

Consequently, the Motor Vehicle Code does not create a safe harbor where a person can regularly live and drive in New Hampshire for most of the year and avoid the state's vehicle licensing and registration requirements. Rather, the code deems those persons to be residents, thereby removing them from the nonresident licensing and registration exemptions. RSA 259:67, I. This result furthers the primary purposes of the Motor Vehicle Code, which are to protect the public and ensure that person's regularly operating vehicles on New Hampshire roadways are properly licensed and their vehicles are safe to operate in accordance with New Hampshire law. *See, e.g.*, RSA 21-P:1 ("The purpose of this chapter [titled "Department of Safety"] is to improve the administration of state



government by consolidating and providing unified direction of procedures, programs, and related functions in the field of public safety, in order to help assure the security and physical safety of the citizens of New Hampshire.”); RSA 21-P:8 (establishing the “Division of Motor Vehicles”); RSA Chapter 260 [Administration of Motor Vehicle Laws].

The plaintiffs will argue that the general definition of “nonresident,” which applies throughout the entire Motor Vehicle Code, only applies to *registering* motor vehicles. That argument makes no sense, is inconsistent with the plain language RSA 259:67, I, and is contrary to the statute’s function and purpose within the code for at least two reasons. First, if RSA 259:67 was limited solely to motor vehicle registrations one would expect it to be located solely in RSA Chapter 261, which deals exclusively with motor vehicle registrations. RSA 259:67 is not located there, but instead exists in the general definition section of the motor vehicle code and applies whenever the word “nonresident” is used in the motor vehicle code, including in RSA Chapter 263, which governs licensing. *See* RSA 259:1 (“The following words and phrases *when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter*, except where the context otherwise requires.”) (Emphasis added).

Second, the plaintiffs’ argument ignores the fact that the definition of “nonresident” does two separate things. It deems a nonresident to be a resident as to all vehicles principally used in connection with that person’s regular abode after six months. In other words, regardless of a person’s true domicile or residence, if that person has a regular abode in New Hampshire for more than six months in a year and is driving in connection with that abode, the motor vehicle code deems that person to be a resident.

Then, for the purposes of registration, RSA 259:67, I requires the director to determine what vehicles are principally used in connection with the abode. Limiting this definition solely to motor vehicle registrations reads out of the statute the provision that transforms a nonresident into a resident under the code for all other motor vehicle purposes. That result does not implement the manifest purpose of the code, or of RSA 259:67, I, which is to ensure that New Hampshire is regulating persons who principally reside in New Hampshire and are operating motor vehicles here.

Using the maintenance of a regular abode for more than six months as the benchmark after which the code deems a nonresident to be a resident is consistent with and reinforces all the other provisions that define residence/domicile as “that person’s principal place of physical presence to the exclusion of all others,” RSA 21:6-a, or “that one place more than any other place, [where a person] has established a physical presence . . .,” RSA 654:1. Indeed, measuring where a person has an abode and for how long during the year is one aspect of the domicile analysis this Court undertook in *Every v. Supervisors of Madison Checklist*. 124 N.H. 824, 826 (1984) (plaintiff spent 140 days per year in Massachusetts and 220 days per year in New Hampshire). RSA 259:67, I reinforces the notion that a person is a resident/domiciliary where they have their principal abode and, construed in this manner, keeps the various statutes at issue (RSA 21:6; RSA 21:6-a; 259:67; RSA 259:88; RSA 263:35; and RSA 261:45) in harmony.

Accordingly, the definition of nonresident in RSA 259:67, I requires nonresidents who have a regular abode in New Hampshire for more than six months in any year to obtain New Hampshire driver’s licenses under

RSA 263:1 if they wish to drive in the state and requires them to register any vehicles they own and keep in the state under RSA 261:40.

### **CONCLUSION**

For the foregoing reasons, this Court should answer the certified questions presented as follows:

I. Yes. RSA 21:6 and RSA 21:6-a, as amended by HB 1264, convey the same basic concept as the definition of “domicile” contained in RSA 654:1.

II. Yes. A student who claims a New Hampshire domicile under RSA 654:1, I-a is a resident under RSA 21:6, as recently amended.

III. No. A person claiming domicile under RSA 654:1 cannot be a person “who claims *residence* in any other state for any purpose” under RSA 259:88.

IV. Yes. A person who is domiciled in New Hampshire consistent with RSA 654:1, I or RSA 654:1, I-a has established “a bona fide residency” for the purposes of RSA 261:45 and RSA 263:35 in New Hampshire.

V. Yes. The definition of nonresident in RSA 259:67, I requires nonresidents who have a regular abode in New Hampshire for more than six months in any year to obtain a New Hampshire driver’s licenses under RSA 263:1 if they wish to drive in the state and to register any vehicles they own and keep in the state under RSA 261:40.

**STATEMENT REGARDING ORAL ARGUMENT**

Anthony J. Galdieri, Esquire, will present oral argument.

The decisions certifying the questions presented are appended to this brief.

Respectfully submitted,

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and

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**CERTIFICATE OF COMPLIANCE**

I, Anthony J. Galdieri, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,340 words, excluding the table of contents, the table of authorities, and the texts of the pertinent laws and statutes, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

January 13, 2020

/s/ Anthony J. Galdieri  
Anthony J. Galdieri

**CERTIFICATE OF SERVICE**

I, Anthony J. Galdieri, hereby certify that a copy of the Defendants' brief and accompanying three volumes of appendices shall be served on all counsel of record through the New Hampshire Supreme Court's electronic filing system.

January 13, 2020

/s/ Anthony J. Galdieri  
Anthony J. Galdieri



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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Caroline Casey, et al.

v.

Case No. 19-cv-149-JL

NH Secretary of State, et al.

CLERK'S CERTIFICATION OF QUESTION  
TO NEW HAMPSHIRE SUPREME COURT

I, Jadean Barthelmes, Deputy Clerk of the United States District Court for the District of New Hampshire, do hereby certify that the original of the certification order and twelve (12) copies of the following are herewith transmitted to the New Hampshire Supreme Court to constitute the record pursuant to Rule 34:

DOCUMENT NUMBERED: 86

Also attached is a copy of the docket entries.

IN TESTIMONY WHEREOF, I hereunto  
set my hand and affix the seal  
of said Court, at Concord, in  
said District, on this day,  
December 2, 2019.

**DANIEL J. LYNCH, Clerk**

**By: /s/ Jadean Barthelmes, Deputy Clerk**

**Dec 02, 2019**



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Caroline Casey, et al.

v.

Civil No. 19-cv-149-JL  
Opinion No. 2019 DNH 199

NH Secretary of State, et al.

**Order Certifying Question  
to the New Hampshire Supreme Court**

In this voting rights case, two young New Hampshire voters and the New Hampshire Democratic Party challenge recent changes to New Hampshire's statutory definitions of "resident" and "residence." They allege that the impact of these changes remains unclear. But they allege that the changes were intended to burden the right to vote, by indirectly making voter registration an effective declaration of residency that triggers obligations and fees for drivers and vehicle owners under New Hampshire's Motor Vehicle Code. The plaintiffs allege that if the changes have this intended effect, the resulting statutory scheme violates the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments. The plaintiffs argue that the statutory changes did not achieve the intended effect. But they allege that the unresolved confusion over the impact of the changes itself burdens the right to vote, violating the First and Fourteenth Amendments.

The plaintiffs' constitutional claims are intertwined with several questions of New Hampshire law upon which this court has found no controlling precedent. Resolution of these questions may be determinative. Pursuant to New Hampshire Supreme Court Rule 34, this court thus certifies the following questions to the New Hampshire Supreme Court:

- Are the definitions of "resident" and "residence" in RSA § 21:6 and :6-a, as recently amended, effectively the same as the definition of "domicile" as used

in RSA § 654:1, such that one with a New Hampshire “domicile” is necessarily a New Hampshire “resident”?

- Is a student who claims a New Hampshire “domicile” pursuant to RSA § 654:1-a necessarily a New Hampshire resident under RSA § 21:6, as recently amended?
- Can an individual with a New Hampshire “domicile” pursuant to RSA § 654:1 ever be an individual “who claims residence in any other state for any purpose” and thus is not a “resident” for the purposes of RSA § 259:88?
- Relatedly, does an individual who claims a New Hampshire “domicile” pursuant to RSA § 654:1, I or I-a necessarily establish “a bona fide residency” for the purposes of RSA §§ 261:45 and 263:35?
- Given the definition of non-resident in RSA § 259:67, I for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers’ licenses by RSA § 263:1 if they wish to drive in the state and required by RSA § 261:40 to register in New Hampshire any vehicles they keep in the state?

## **I. Facts**

The court acknowledges that the New Hampshire Supreme Court is familiar with much of the background underlying this case. See Opinion of the Justices, 171 N.H. 128 (2018). What follows is a summary of both the facts and relevant legal context of this federal civil rights litigation.

This case involves three areas of New Hampshire law: elections statutes, statutory construction provisions, and motor vehicle statutes. The plaintiffs’ civil rights action challenges recent changes to N.H. Rev. Stat. Ann. §§ 21:6 and 21:6-a, which altered statutory definitions of “resident” and “residence.” They claim that these changes, or confusion resulting from the changes, burden the right to vote and violate the First, Fourteenth, Twenty-Fourth, and Twenty-Sixth Amendments to the U.S. Constitution. 2018 House Bill 1264 implemented these changes,

and they became law on July 1, 2019. For simplicity and consistency with the parties' papers, the court will refer to the changes collectively as HB 1264.

**A. New Hampshire law prior to HB 1264**

New Hampshire election law provides that:

Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

N.H. Rev. Stat. Ann. § 654:1, I.

Voting is thus conditioned on domicile. The statute also specifically addresses students:

“A student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution of learning if such student's claim of domicile otherwise meets the requirements of RSA 654:1, I.” N.H. Rev. Stat. Ann. § 654:1, I-a1. The voter statute does not refer to “resident” or “residence”.

Chapter 21 of Title I of the New Hampshire Code (“Statutory Construction”) provides rules of statutory interpretation and definitions applicable under the Code. These include the definitions of “resident” and “residence” altered by HB 1264. Prior to the recent changes,

Section 21:6 provided:

A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

N.H. Rev. Stat. Ann. § 21:6 (2018) (amended 2019) (emphasis added). And Section 21:6-a similarly provided that:

Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

N.H. Rev. Stat. Ann. § 21:6-a (2018) (amended 2019) (emphasis added). Prior to the recent changes implemented by HB 1264, individuals were not deemed "residents" unless they intended to remain in New Hampshire "for the indefinite future."

Finally, this case implicates certain motor vehicle statutes because these provisions impose obligations on New Hampshire "residents." Section 259:88 addresses "resident for motor vehicle purposes" and provides that "[r]esident" shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose." N.H. Rev. Stat. Ann. § 259:88. A motor vehicle owner or driver that establishes bona fide residency in New Hampshire takes on certain legal obligations.

[W]hen a nonresident has established a bona fide residency in this state, said resident shall have a maximum of 60 days from the date of his or her residency in which to register his or her vehicle or vehicles in New Hampshire.

N.H. Rev. Stat. Ann. § 261:45.

[A]ny nonresident driver of a motor vehicle who holds a valid driver's license in another jurisdiction, upon the establishment of a bona fide residency in this state, shall have a maximum of 60 days from the date his residency was established to obtain a driver's license issued by the state of New Hampshire.

N.H. Rev. Stat. Ann. § 263:35.

**B. HB 1264's changes**

HB 1264 amended the definition of “resident” and “residence” in sections 21:6 and 21:6-a to remove the requirement that a resident intend to remain “for the indefinite future.” The bill was introduced in the New Hampshire House of Representatives in November 2017, and by May 2018 was passed by both the House and New Hampshire Senate.<sup>1</sup> The plaintiffs allege that the bill was a voting measure, primarily intended to discourage college students from voting in New Hampshire elections.<sup>2</sup> The aim of the bill, they allege, was to make “residency” equivalent to “domicile,” so that registering to vote would effectively declare residency and trigger exposure to motor vehicle obligations and fees.<sup>3</sup> The plaintiffs allege that the bill intended to require college students to incur the cost and burden of obtaining New Hampshire drivers licenses and registering their cars (if they own cars) in New Hampshire if they wish to both vote in New Hampshire and drive or own vehicles in the state.<sup>4</sup> Before HB 1264's changes, many such students could be domiciled in New Hampshire (and vote) under the election statutes without being residents under motor vehicle law, because they lacked the then-statutorily-required intent to remain for the indefinite future.

The plaintiffs point to various aspects of the legislative record to support their account of HB 1264. They allege that the bill was considered by the election law committees of the legislature, and that the Division of Motor Vehicles did not assess the bill.<sup>5</sup> Instead, the plaintiffs

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<sup>1</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 15-17; NHDP Am. Compl. (doc. no. 69) ¶¶ 14-16.

<sup>2</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 18-20; NHDP Am. Compl. (doc. no. 69) ¶¶ 17-19.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Casey Am. Compl. (doc. no. 68) ¶ 18; NHDP Am. Compl. (doc. no. 69) ¶ 17.

allege, the Secretary of State's office advocated for and testified about the bill.<sup>6</sup> They also cite alleged statements by legislators presenting the bill as a voting measure designed to discourage certain groups from voting or at least impose costs on them.<sup>7</sup> HB 1264 also fits, according to the plaintiffs, within a pattern of recent legislative efforts to discourage voting by college students.<sup>8</sup>

After HB 1264 passed the legislature, the Governor and Executive Council requested that the Justices of the New Hampshire Supreme Court opine on the constitutionality of the bill under the New Hampshire Constitution and the Fourteenth Amendment of the U.S. Constitution.

Opinion of the Justices, 171 N.H. 128, 131-32 (2018). A majority of three Justices determined that it was proper to issue an advisory opinion on these questions, and concluded that the bill did not violate either constitution. The “incongruity” between the definitions of “domicile” and “residency,” they explained, resulted from this court’s 1972 decision in Newburger v. Peterson that domicile for voting purposes could not be conditioned on an indefinite intention-to-remain test. Opinion, 171 N.H. at 138-139, 145 (citing Newburger, 344 F.Supp. 559 (D.N.H. 1972)). After Newburger, New Hampshire amended its law regarding domicile for voting purposes to remove the indefinite intention-to-remain requirement. Opinion, 171 N.H. at 138. Because the definition of “residency” was left unchanged, the majority explained, certain groups were permitted “to vote in New Hampshire without incurring responsibility for . . . obligations of state citizenship,” producing “an imbalance of rights and responsibilities.” Id. at 145. They opined that New Hampshire is not required to maintain that imbalance, and that even if the right to vote was burdened, the state “has a compelling justification” in “insuring that those who are permitted

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<sup>6</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 18-19; NHDP Am. Compl. (doc. no. 69) ¶¶ 17-18.

<sup>7</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 20-23; NHDP Am. Compl. (doc. no. 69) ¶¶ 19-22.

<sup>8</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 24-29; NHDP Am. Compl. (doc. no. 69) ¶¶ 23-28.



to vote are bona fide residents who share a community of interest with other citizens.” Id. at 142. Two other Justices wrote separately. They declined to opine on the submitted questions because they determined that resolving the questions appropriately would require a developed factual record. See id. at 154, 156-574.

After the Justices issued their advisory opinion, the governor signed the bill.<sup>9</sup> The new law took effect on July 1, 2019.<sup>10</sup>

### **C. These lawsuits**

The individual plaintiffs, Caroline Casey and Maggie Flaherty, filed their complaint in mid-February 2019, and the New Hampshire Democratic Party filed its complaint two weeks later. These complaints were identical except for the paragraphs describing the plaintiffs. Casey and Flaherty are students at Dartmouth College who both wish to vote in New Hampshire while attending the school but do not intend to remain in New Hampshire after graduation.<sup>11</sup> They currently have driver’s licenses from other states, and both registered to vote in New Hampshire in 2018. They allege that they will suffer injury if they must incur the expense and trouble of obtaining New Hampshire driver’s licenses. Neither alleges that they own a vehicle, so their claims do not implicate the requirement to register a vehicle in New Hampshire.<sup>12</sup>

The New Hampshire Democratic Party alleges that it is harmed by HB 1264 because voters inclined to support its candidates “will incur onerous fees to register to vote or will be too

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<sup>9</sup> Casey Am. Compl. (doc. no. 68) ¶ 17; NHDP Am. Compl. (doc. no. 69) ¶ 16.

<sup>10</sup> Casey Am. Compl. (doc. no. 68) at 1; NHDP Am. Compl. (doc. no. 69) at 1.

<sup>11</sup> Casey Am. Compl. (doc. no. 68) ¶¶ 1-2.

<sup>12</sup> Id.

intimidated to register or vote at all.”<sup>13</sup> The court, on the defendants’ motion and with the assent of the plaintiffs, consolidated the two cases.<sup>14</sup>

The defendants moved to dismiss the plaintiffs’ claims for lack of standing and failure to state claims. The court denied these motions.<sup>15</sup> The court then ordered the parties to provide their views on certifying certain questions to the New Hampshire Supreme Court.<sup>16</sup> Days later, the plaintiffs moved to amend their complaints. In their original complaints, the plaintiffs’ arguments assumed that HB 1264 achieved its alleged intended effect. In their amended complaints, the plaintiffs instead contended that the bill failed to accomplish its goal, because it left in place the exception of RSA § 259:88 that “no person shall be deemed to be a resident” for the purposes of the Motor Vehicle Code “who claims residence in any other state for any purpose.” They argue that registered voters with an out-of-state driver’s license or vehicle registration claim residence in another state for some purpose, and so are not residents for the purposes of the Motor Vehicle Code. The plaintiffs alleged that this ambiguity and the defendants’ failure to give adequate guidance on the law created voter confusion that impermissibly burdens the right to vote in violation of the First and Fourteenth Amendments. The court granted the plaintiffs leave to amend, over the defendants’ objection. The defendants later moved to dismiss the confusion-based claims.<sup>17</sup> These motions are stayed pending the certification described therein.

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<sup>13</sup> NHDP Am. Compl. (doc. no. 69) ¶ 1.

<sup>14</sup> Order of May 1, 2019.

<sup>15</sup> Order of August 29, 2019 (doc. no. 47).

<sup>16</sup> Order of October 9, 2019 (doc. no. 56).

<sup>17</sup> Mots. to Dismiss (docs. no. 74 and 75).

The parties responded to the court's request for their views on certification. The plaintiffs supported certification on the condition that the court enter a temporary order prohibiting the State from using evidence of voter registration in any judicial or administrative enforcement of RSA §§ 261:45 and 263:35 and requiring the Secretary of State to inform local election officials that the act of voting in the 2020 New Hampshire Presidential Primary or registering to vote at or before that primary election would not require a person to obtain a New Hampshire driver's license or vehicle registration. The defendants opposed certification as unnecessary and declined to agree to the temporary relief requested by the plaintiffs.

After oral argument, the court indicated that it was inclined to certify certain issues to the New Hampshire Supreme Court, but declined to issue any temporary injunctive order without the defendants' consent, which they declined to provide. The court set a briefing schedule for the plaintiffs to move for a preliminary injunction. The plaintiffs limited their motions to their confusion-based claims. On the day after the plaintiffs filed this motion, the Attorney General, Secretary of State, and Commissioner of Public Safety signed a letter to the Town Clerk of Hanover and copied to all election officials that purportedly "sets forth in simple terms the effect of" HB 1264.

The court held an evidentiary hearing and oral argument, and has denied the motions for preliminary injunctions (see doc. no. 87). At the hearing, the court expressed no opinion on whether the plaintiffs might secure temporary relief from the New Hampshire Supreme Court pending the resolution of the statutory interpretation questions here certified.

#### **D. Evidence presented by the parties**

The plaintiffs submitted affidavits or declarations from ten witnesses, two of whom testified at the evidentiary hearing. The defendants submitted declarations from two witnesses,

one of whom testified at the evidentiary hearing. These declarations and the transcript of the evidentiary hearing are available to counsel and the New Hampshire Supreme Court should they deem them relevant or useful with respect to the issues of state law described below. This court also discusses this evidence in its order on the motions for preliminary injunctions (doc. no. 87).

## II. State law issues

New Hampshire Supreme Court Rule 34 provides:

This court may answer questions of law certified to it by the Supreme Court of the United States, a court of appeals of the United States, or of the District of Columbia, or a United States district court when requested by the certifying court if there are involved in any proceeding before it questions of law of this State which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of this court.

This rule may be invoked by an order of any of the courts referred to above upon that court's own motion or upon the motion in that court of any party to the cause.

There are potentially determinative issues of New Hampshire law in this case. While it falls to this court (in this case) to determine the constitutional permissibility of the statutory enforcement scheme at least arguably created by HB 1264, it is impossible for the court to assess the scheme without resolving several state law questions about the meaning and interaction of New Hampshire statutes. The meaning of New Hampshire statutes is best (and only conclusively) determined by the New Hampshire Supreme Court. Furthermore, the plaintiffs have urged the court to apply the canon of constitutional avoidance.<sup>18</sup> See State v. Paul, 167 N.H. 39, 44-45 (2014) (describing the “well-established doctrine”); Northwest Austin Mun. Utility Dis. No. One v. Holder, 557 U.S. 193, 205 (2009) (same). The New Hampshire Supreme Court is better equipped to determine if it is “reasonably possible . . . to construe a [New

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<sup>18</sup> Casey Am. Compl. (doc. no. 68) ¶ 14.

Hampshire] statute so as to avoid bringing it into conflict with the constitution.” Paul, 167 N.H. at 45. This court is thus certifying these necessary questions of New Hampshire law to the New Hampshire Supreme Court. The answers to these questions could result in one or more interpretations of the enforcement regime that do not implicate the federal constitutional right to vote in any way.<sup>19</sup>

**Domicile and student domicile.** The parties in this case presume that an individual who is a New Hampshire domiciliary under RSA § 654:1 is necessarily a resident of New Hampshire under RSA § 21:6, as recently amended. If this assumption is accurate, an individual who certifies that he or she is a New Hampshire domiciliary in registering to vote would effectively admit that he or she is also a New Hampshire resident, and potentially be subject to the legal requirements of residency.

The same assumption was made by the Justices of the New Hampshire Supreme Court and all of the involved parties when the Governor and Executive Council sought an advisory opinion regarding the constitutionality of HB 1264. The certified questions there assumed that the bill “subject[ed] those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSAs 261:45 and 263:35 and to pay any fees or taxes associated therewith.” Opinion of the Justices, 171 N.H. 128, 131–32 (2018).

The opinion of Chief Justice Lynn and Justices Hantz-Marconi and Donovan stated:

By removing the words “for the indefinite future” from RSA 21:6 and :6-a, HB 1264 makes the definitions of “resident” and “residence” as used in those statutes

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<sup>19</sup> Several rules and canons of New Hampshire statutory interpretation, such as the rule against surplusage, or the presumption against implied repeals, see Winnacunnet Co-op. School Dist. v. Town of Seabrook, 148 N.H. 519, 525-26 (2002); Bd. of Selectmen v. Planning Bd., 118 N.H. 150, 152-153 (1978), could impact the Court’s consideration of these questions, especially since the Court is being asked to apply the constitutional avoidance canon. See supra Part II.

effectively the same as the definition of “domicile” as used in RSA 654:1, I, notwithstanding that the text of the amended version of RSA 21:6 and :6-a, on the one hand, and RSA 654:1, I, on the other, is not identical.

Id. at 139-40; see id. at 145 (describing HB 1264 as “equalizing the legal standard for domicile for voting purposes with the legal standard for residence for other purposes”). These Justices also noted that “[n]one of the parties who have submitted memoranda in support of or in opposition to HB 1264 disputes that the bill makes the definitions of ‘resident’ and ‘residence’ in RSA 21:6 and :6-a equivalent to the definition of ‘domicile’ in RSA 654:1, I.” Id. at 140 n.4

(emphasis added). The separate opinion of Justices Hicks and Bassett similarly explained:

Both the proponents and opponents of HB 1264 posit that the proposed amendments will render the statutory definitions of “resident” and “residence” equivalent to the statutory definition of “domicile.” See RSA 654:1, I (2016). Assuming this to be the case for purposes of this advisory opinion, HB 1264, if it were to become law, would subject those who are “domiciled” in New Hampshire for voting purposes to the same legal requirements as those who are “residents” of the State—e.g., HB 1264 would require them to register their vehicles here, see RSA 261:45 (Supp. 2017), and to obtain a New Hampshire driver's license, see RSA 263:35 (2014).

Id. at 149-50 (emphasis added).

Although, as an advisory opinion, Opinion of the Justices is not binding law, there is indirect support for the parties’ assumption in binding New Hampshire law:

The basic difference between a “resident” and a person who merely has a New Hampshire “domicile,” is that a “resident” has manifested an intent to remain in New Hampshire for the indefinite future, while a person who merely has a New Hampshire “domicile” has not manifested that same intent.

Guare v. State, 167 N.H. 658, 662 (2015). As HB 1264 removed this “basic difference,” it arguably rendered those who have a New Hampshire domicile “residents.”

But confirming this supposed equivalence is crucial to resolving the plaintiffs’ claims. If registering to vote does not in effect claim or admit New Hampshire residency, the potential

harms alleged by the plaintiffs would not come to pass and any voter confusion could be easily alleviated.

A further issue arises because the individual plaintiffs in this case are college students. RSA § 654:1-a specifically addresses college students. If this student-specific domicile provision alters the assumed relationship between “domicile” and “residence,” it may resolve the individual plaintiffs’ claims. If a student who claims domicile only via RSA § 654:1-a does not in effect claim or admit New Hampshire residency, the alleged burdens on the right to vote do not result.

**Claiming residence in another state.** Another question arises from RSA § 259:88, which defines “resident” for the purposes of the Motor Vehicle Code: “‘Resident’ shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.” N.H. Rev. Stat. Ann. § 259:88 (emphasis added). In their amended complaints, the plaintiffs argue that this exception includes those who possess out-of-state driver’s licenses or have cars registered out of state. The plaintiffs have identified one New Hampshire case briefly citing this provision. State v. Colley, Case No. 462-2014-CR-00855 (5th Circuit—District Division—Newport April 16, 2015) (dismissing charge of failing to obtain a New Hampshire license against defendant with Florida license who was also registered to vote in Florida). This court has found no other New Hampshire authority interpreting this language, or similar language elsewhere in the New Hampshire Code. See N.H. Rev. Stat. Ann. §§ 207:1, 215-A:1; 215-C:1.

If a registered voter can both claim a New Hampshire domicile and claim residence for motor vehicle purposes in another state, the plaintiffs would not face the harms they fear. The application might also depend on the student-specific domicile provision. If a college student

with an out-of-state license can “claim domicile for voting purposes” in New Hampshire pursuant to RSA § 654:1, I-a, but is excluded from the definition of resident in RSA § 259:88 because he or she claims residence for motor vehicle purposes in another state, the individual plaintiffs would not incur the licensing and registration obligations at issue here.

**Bona fide residency.** The language of RSA §§ 261:45 and 263:35 raises a further, similar question. These statutes require a nonresident who establishes “a bona fide residency” in New Hampshire to obtain a New Hampshire driver’s license if he or she drives and registers any vehicles in New Hampshire. If a student “claim[s] domicile for voting purposes” under RSA § 654:1, I-a, does he or she establish a “bona fide residency”? If not, the individual plaintiffs’ right to vote is not burdened as alleged.

**Non-resident motor vehicle requirements.** The defendants’ opposition to the motions for preliminary injunctions raised an additional state law question.<sup>20</sup> The defendants cite RSA § 259:67, I, which provides that:

[A] nonresident, having a regular abode or place of business within the state for more than 6 months in any year, shall be deemed a resident as to all vehicles principally used in connection with such abode or place of business and the director for the purposes of registration shall determine what vehicles are so used.

The defendants argue that this statute means that the individual plaintiffs and most college students were required to obtain New Hampshire driver’s licenses and register any vehicles they kept in New Hampshire before HB 1264 and independent of their voter registration. If plaintiffs

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<sup>20</sup> The plaintiffs’ motions for preliminary injunctions made certain arguments under the New Hampshire Constitution. Casey Mem. in Supp. of Mot. for Prelim. Inj. (doc. no. 72-15) at 32, 33 n. 16 (arguing that Part I, Art. 11 guarantees the right to vote to all domiciliaries and bars any additional restrictions on the right to vote). The New Hampshire Supreme Court considered the application of Part I, Article 11 in its advisory opinion. Opinion of the Justices, 171 N.H. 128, 131–32, 141, 151, 155–56 (2018). But the questions raised by the plaintiffs’ arguments are too indefinite and tangential to warrant certification at this time.



are correct, the individual plaintiffs' alleged harms would not flow from HB 1264, and all of the alleged burdens alleged by the plaintiffs might be significantly reduced in scope.

### III. Certified Questions

For the reasons set forth in this order, the court certifies the following questions to the New Hampshire Supreme Court:

- Are the definitions of "resident" and "residence" in RSA § 21:6 and :6-a, as recently amended, effectively the same as the definition of "domicile" as used in RSA § 654:1, such that one with a New Hampshire "domicile" is necessarily a New Hampshire "resident"?
- Is a student who claims a New Hampshire "domicile" pursuant to RSA § 654:1-a necessarily a New Hampshire resident under RSA § 21:6, as recently amended?
- Can an individual with a New Hampshire "domicile" pursuant to RSA § 654:1 ever be an individual "who claims residence in any other state for any purpose" and thus is not a "resident" for the purposes of RSA § 259:88?
- Relatedly, does an individual who claims a New Hampshire "domicile" pursuant to RSA § 654:1, 1 or 1-a necessarily establish "a bona fide residency" for the purposes of RSA §§ 261:45 and 263:35?
- Given the definition of non-resident in RSA § 259:67, 1 for the Motor Vehicle Code, are college students who reside in New Hampshire for more than six months in any year required to obtain New Hampshire drivers' licenses by RSA § 263:1 if they wish to drive in the state and required by RSA § 261:40 to register in New Hampshire any vehicles they keep in the state?

**SO ORDERED.**

  
Joseph N. Laplante  
United States District Judge

Dated: November 27, 2019

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