Memorandum of Law

Facts of the Case

1. The Plaintiff's petition for an emergency hearing was granted, but the Court erred in ignoring the emergency and the Plaintiff's due-process rights to present his expert witness to validate the emergency, viz: ignoring the state's violation in both state and federal regulatory laws concerning the safety and efficacy of electronic devices exposed to election workers and the general public at-large, specifically, RSA: 659:42. OSHA regulatory law 29 CFR, section 1910.7, 1910.303(b)(2), and the expert report submitted in this case.
    a) The Plaintiff's expert witness testimony was denied, leaving the Court with no safety expert witness, nor was there any hearing of any experts for this Court to make a fair judgment of the Plaintiff's claim.
    b) Plaintiff's claim was not permitted to be appropriately examined or validated by any experts for this Court to make a fair judgment regarding the safety and efficacy of the public.
2. The Court order cites in error; that "some of the devices have been altered such that they violate State law tampering with machines certain Occupational Safety and Health Administration ("OSHA") federal regulatory law." The Plaintiff's complaint states all voting machines in the State have been altered (modified) by removing the modems by unqualified personnel, which voids the UL (United Laboratories) safety certification obtained by the manufacturer.
3. For two reasons, UL will not recertify dominion vote tabulation equipment.
    a) The modifications to voting tabulation equipment were not performed by a factory-authorized technician but were tampered with by an unqualified company in violation of state and federal laws.
    b) The manufacture of dominion vote tabulation equipment no longer supports said equipment (hardware or software); therefore, UL will not recertify the safety or efficacy of said voting equipment.
4. During September 7, 2022, hearing on Plaintiff's Emergency Motion to Allow Expert Testimony, the attorney for the Town of Auburn represented that the town would provide a ballot box for voters who prefer to have their vote counted by hand. See Page 3.

5. Said statement is a recognition that Plaintiff's claim/claims held merit regarding a problem denying qualified voters and myself the right to vote according to the Constitution of New Hampshire (N.H.) and Federal Laws. The Town of Auburn's statement that they "would provide a ballot box for voters who prefer to have their vote counted by hand."

STANDARD OF REVIEW

6. To interpret the meaning of the Constitution of N.H., the Courts rely on; "we examine its purpose and intent. See Baines v. N.H. Senate President, 152 N.H. 124, 133 (2005). In so doing, "we will give the words in question the meaning they must be presumed to have had to the electorate when the vote was cast." Opinion of the Justices, 126 N.H. 490, 495, 494 A.2d 261 (1985). "By reviewing the history of the constitution and its amendments, the court endeavors to place itself as nearly as possible in the situation of the parties at the time the instrument was made, that it may gather their intention from the language used, viewed in the light of the surrounding circumstances." Baines, 152 N.H. at 133 (quotation omitted). "The language used by the people in the great paramount law which controls the legislature as well as the people, is to be always understood and explained in that sense in which it was used at the time when the constitution and the laws were adopted." Id. at 133-34 (quotation omitted).
7. The Plaintiff believes that the opinion of this Court is an error in law because the state asserts that the Plaintiff lacks standing to bring some or all of his above-described claims on Page 3 of the Court Order. The Plaintiff argues the following precedent applies to this case, *Grinnell v. State*, 121 N.H. 823, 825 (N.H. 1981) states, "*[1, 2] The State first asserts that it is immune from suit in the courts of this State. We need not pause long to consider this asserted jurisdictional hurdle. RSA 491:22 has long been construed to permit challenges to the constitutionality of actions by our government or its branches. In Levitt v. Maynard, 104 N.H. 243, 182 A.2d 897 (1962), brought as a petition for declaratory judgment against the attorney general and the*

secretary of state, the Plaintiff brought a fourteenth amendment due process attack against a provision of our State constitution addressing the apportionment of senatorial districts. We reaffirmed that "[f]or more than half a century pleading and procedure in this jurisdiction has been a means to an end and it should never become more important than the purpose which it seeks to accomplish." Id. at 244, 182 A.2d at 898 (quoting Ricker v. Mathews, 94 N.H. 313, 318, 53 A.2d 196, 199 (1947)). We have thus granted taxpayers standing to raise constitutional issues by bringing declaratory judgment petitions. See, e.g., Gerber v. King, 107 N.H. 495, 497, 225 A.2d 620, 621 (1967).

8. *"The fundamental principles governing our determination of the validity of constitutional amendments are set out at length in a well-reasoned opinion by Justice Hyatt in Keenan v. Price, 68 Idaho 423, 195 P.2d 662, 667.* The aforesaid and the following are such opinions and well-established precedents in the Courts of N.H.

ERROR OF LAW

Item 1. Count VI -The Validity of the 1976 Amendments

9. Question 8 on the 1976 ballot has been already been addressed multiple times by the N.H. Supreme Court on the constitutionality of parts of Question 8. On the 1976 ballot, citing Fischer v. Governor, 145 N.H. 28 (N.H. 2000) and the *Opinion of the Justices*, 117 N.H. 310 (N.H. 1977). As well as *In re Justices*, 157 N.H. 265, 270 (N.H. 2008).
10. Unfortunately, the Court overlooked the foundation under which Gerber v. King was decided, as well as all other precedents relating to Question 8. All other precedents vital to the Plaintiff's arguments are based on CONCRETE, INC. v. RHEAUME BUILDERS 101 N.H. 59 (1957), Opinion of the Justices, 101 N.H. 541 (N.H. 1957), *Penrod* v. *Crowley*, 82 Idaho 511), and Keenan v. Price, 68 Idaho 423 (Idaho 1948).

11. The Plaintiff cited on Page 34 of his complaint that the amendment repealed articles of the Constitution of N.H., which defined "proper qualifications." In Article 28 of Part Second, the voter qualification to elect Senators; in Article 13 of Part Second, voter qualifications for Representatives of the House; and in Article 31, voter qualification of the inhabitants in unincorporated places were removed with no notice to the voters.
12. The amendment removed the "proper qualifications" provided by the Constitution of N.H.; Page 523 of the Constitutional Convention (con con) record states in the relevant part: *V. That Article 13 of Part Second of the Constitution of New Hampshire, relative to voting qualifications in the election of representatives, be hereby repealed.*
13. *VI. That Article 28 of Part Second of the Constitution of New Hampshire, relative to voting qualification in the election of senators, be hereby repealed.*
14. *VII. That Article 31 of Part Second of the Constitution of New Hampshire, relative to the voting qualification of inhabitants of unincorporated places, be hereby repealed.*
15. The Plaintiff argues that his complaint is a direct challenge to the changes made to the Constitution of N.H. by the removal of Part II, art. 13, art. 28, and art. 31, which are some of the issues not raised in Fischer v. Governor, 145 N.H. 28 (N.H. 2000), and the Opinion of the Justices, 117 N.H. 310 (N.H. 1977), as the change created the repeal of the constitutional definition of voter qualification. The Plaintiff believes that his novel challenges to the other parts of question 8 were not addressed in said opinions and therefore, the amended changes still stand. The Plaintiff believes question 8 should be struck down in its entirety for the same legal reasoning used by the Courts of this state, in those cases cited in this motion. The Court declared those questions submitted to them unconstitutional for lack of informed consent from the voters. Said legal opinions stated that question 8 failed to disclose many relevant issues to the voters, *"Indeed, as noted by the State, the ballot questionnaire submitted to the citizens for ratification of the 1974 amendment failed to alert the voters to any substantive change"* as removing the "proper qualifications" language was the question in *Fischer v. Governor, 145 N.H. 28, 37 (N.H. 2000)*

16. The opinion of the Supreme Court on question 8 (d) makes another very important point that the subject of a Referendum to Amend on November 2, 1976, ballot, intended to change the date from December to January, but since there is no notice to the voter, the amendment "*was not effective in changing month from December to January, notwithstanding fact that constitutional convention resolution which proposed amendment stated the month "January", since voters guide used to inform voters did not mention change of month. N.H Const. pt. II, art. 33." Opinion of the Justices, 117 N.H. 310 (N.H. 1977)*
17. *"In our opinion, this resolution was concerned only with the transfer of responsibility and not with the date the legislature was to meet and the voters were not informed that the adoption would undo the change in dates which they had made by adoption of resolution in November 1974. Opinion of the Justices, 117 N.H. 310 (N.H. 1977) Opinion of the Justices, 115 N.H. 104, 333 A.2d 714 (1975); Concrete Co. v. Rheaume Builders, 101 N.H. 59, 132 A.2d 133 (1957); Gerber v. King, 107 N.H. 495, 225 A.2d 620 (1967).*
18. Plaintiff believes that the Court should strike down Question 8 (b) and declare it unconstitutional for the same legal reasoning as the other parts of this amendment as all the supporting case law reinforces that multiple changes to the Constitution of N.H. were, in fact, unconstitutional.
19. Question 8 (b) conflicts with the precedent cited above as it states "*to make domicile rather than being an inhabitant a prerequisite for voting privilege*;" said question is repugnant and contrary to the amendment of Part I, art 11, which now states: "*Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile*."; which did not remove the historical and current use of the word inhabitant. Clearly, this is in direct conflict with the historical definition of a citizen of this State who possesses political rights both before the amendment and after; such is defined as an inhabitant. The language "*Every person shall be considered an inhabitant for the purposes of voting."* The proposed change of question (b) is the undisclosed (no notice to voter) removal of the

constitutional definition of domicile, "dwelleth and hath his home" for the synonymous word domicile is not the question cited on the ballot.

20. The outcome of this question does not achieve the outcome as stated in the records of the Convention to Revise the Constitution 521-522 (1974) because the convention did not discuss the removal of the constitutional language ("dwelleth and hath his home".) All established precedent states, you cannot remove constitutional language without disclosure to the voters. *"...It is clear, however, that the removal of the "proper qualifications" language from the voting provision did not conform to the scope of the amendment intended by the constitutional convention*. (Emphasis added*). Fischer v. Governor, 145 N.H. 28, 37 (N.H. 2000)* The words "dwelleth and hath his home." was addressed and defined in Newburger v. Peterson, 344 F. Supp. 559 (D.N.H. 1972), and said precedent gives an excellent description of "dwelleth and hath his Home", the Court stated, "*But it is also stipulated that New Hampshire's venerable common law of domicile, as embodied in State v. Daniels*, 44 N.H. 383 (1862).
21. *In re Justices, 157 N.H. 265, 270-71 (N.H. 2008) the court opined on the amendment removing the constitutional language "proper qualifications."*
22. *"To the extent that the amendments to Part I, Article 11 could be read to have removed this authority, we concluded that they were ineffective because removing this authority was not one of the stated purposes of the amendments and because voters had no notice that they were removing it." Id.* at 37-39. *In re Justices,* 157 N.H. 265, 270 (N.H. 2008). And, removed the constitutional definition of proper qualification, detailed in Part II, art. 13, art. 28. art. 31.
23. The *Fischer v. Governor*, 145 N.H. 28, 32 (N.H. 2000) further opined;
24. "*The definition of "qualified voters" in the absentee ballot provision, however, is not clear on the face of the article. "[Q]ualified voters" may encompass only those qualifications enumerated within Article 11 itself;*"
25. The changes caused by question 8 to the Constitution of N.H. are not the objective stated by the delegates in the convention. The amendment failed to remove the

constitutional language that "*every person shall be considered and inhabitant for the purposes of voting*".

26. "*The amendment, once ratified, incorporated the proposed substantive changes. It also severed the voting and candidacy clauses and placed them in separate sentences. The "proper qualifications" language, which prior to the amendment modified both voting and candidacy rights, was removed from the voting provision and retained solely in the sentence granting every inhabitant an equal right to run for elected office. Thus, the first sentence of Article 11 provides in part: "All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election;" and the last states: "Every inhabitant of the state, having the proper qualifications, has an equal right to be elected into office." Thus, Part I, Article 11 was not properly amended to cause the removal of "proper qualifications" from the voting clause. Because it is evident that this change was neither "dependent upon nor interwoven with" the other changes to Article 11 nor with the amendments to additional articles simultaneously ratified by the electorate,"... Gerber v. King,* 107 N.H. 495, 500, 225 A.2d 620, 623 (1967) (quotation omitted). *Fischer v. Governor*, 145 N.H. 28, 38 (N.H. 2000)
27. *Opinion of the Justices*, 83 N.H. 589, 591 (N.H. 1927) gives us insight to constitutional definitions of "proper qualifications."
28. ". . . every inhabitant of the state, having the proper qualifications, has equal right to elect, and be elected, into office . . . ." Bill of Rights, art. 11. " *Opinion of the Justices*, 83 N.H. 589, 591 (N.H. 1927)
29. "*Every person, qualified as the constitution provides, shall be considered an inhabitant for the purpose of electing and being elected into any office*." Ib., art. 30. *Opinion of the Justices*, 83 N.H. 589, 592 (N.H. 1927)
30. "*The meaning of these provisions is entirely clear. The right of suffrage is made the general test of the right to hold elective office*." *Opinion of the Justices*, 83 .H. 589, 592 (N.H. 1927)

31. "*By the bill of rights, art. 11, and the constitution of New Hampshire, pt. II, arts. 28, 30, the rights of electing to office and being elected being equal, save for certain specific constitutional limitations,* ***whatever constitutional amendments limit or enlarge the right to vote*** (emphasis added) *have the same effect upon the eligibility to elective office." Opinion of the Justices*, 83 N.H. 589 (N.H. 1927) (rights to elect and be elected are equal);" *Fischer v. Governor*, 145 N.H. 28, 39 (N.H. 2000)
32. "It being provided that the qualifications prescribed in the constitution should be the test for office-holding capacity," *Opinion of the Justices*, 83 N.H. 589, 592 (N.H. 1927)
33. The Constitution uses the following language in 3 place reserving unto the people their sovereign authority to specifically define voter qualification.

    a) Part II, Senate; *There shall be annually elected by the freeholders and other inhabitants of this State, "qualified as in this constitution is provided*."
    b) Part II, Senate "*And every person qualified as the constitution provides*."
    c) Part II, Senate "*And the inhabitants of plantations and places unincorporated, qualified as the constitution provides,"*

34. The Constitution of 1784 provided the following constitutional qualifications upon inhabitants (those who possessed political rights) and those State Citizens who were qualified to elect and be elected to office. The following are said qualification of the inhabitants in 1784, which must be read in light of *Baines*, *152 N.H. at 133*

    a) Part I, art. XII. Tax payer "bound to contribute his share in such expense"
    b) Part II, (Part II was not enumerated in 1784) Must be a Male who possess town privileges
    c) Part II, must be 21 years of age.
    d) Part II, must pay a poll tax.
    e) Part II, must vote in the town or parish wherein he dwells

f) Part II, defines inhabitant and the fact that constitution defines every person qualified to vote
g) Part II, defines that, the inhabitants of plantations and places unincorporated, qualified as this constitution provides.
h) Part II, Senators must be of the protestant religion,
i) Part II, Senators must be seized of a freehold estate in his own right, of the value of two hundred pounds, lying within this State
j) Part II, Senators must be thirty years old
k) Part II, Senators must have been an inhabitant for the past seven years.
l) Part II, persons qualified to vote in the election of senators, shall be entitled to vote with in the town district, parish, or place where they dwell, in the choice of representatives.
m) Part II, House Representatives shall have been an inhabitant of this State, shall have an estate within the town, parish or place which he may have chosen to represent, of the value of one hundred pounds, one half of which to be a free-hold whereof he is seized in his own right; shall be at the time of his election, an inhabitant of the town parish, or place he may be chosen to represent;
n) Part II, shall be of the protestant religion
o) Part II, Governor must be an inhabitant for 7 years.
p) Part II, Governor must be 30 years old.
q) Part II, Governor must have an estate of the value of five hundred pounds of which shall consist of a free-hold in his own right within the State;
r) Part II, Governor must be of the protestant religion.

35. Plaintiff believes that the Court should strike down Question 8 (c) and all claims cited in his petition, for the same legal reasoning cited above, and the precedent all which N.H. precedent in this matter is base on, CONCRETE, INC. v. RHEAUME

BUILDERS 101 N.H. 59 (1957), Opinion of the Justices, 101 N.H. 541 (N.H. 1957), (*Penrod* v. *Crowley*, 82 Idaho 511), Keenan v. Price, 68 Idaho 423 (Idaho 1948)

36. "*it must give "the ordinary person a clear idea of what he [or she] is voting for or against." Id. at 61, 132 A.2d at 135. With this standard in mind, we turn to the ballot question presented to the voters for their ratification of the 1974 amendment.*" Fischer v. Governor, 145 N.H. 28, 37 (N.H. 2000)
37. The Court opining over question 8 (b) stated… "*we held, when the voters voted to amend Part I, Article 11 in 1976. See id. at 38-39. To the extent that the amendments to Part I, Article 11 could be read to have removed this authority, we concluded that they were ineffective because removing this authority was not one of the stated purposes of the amendments and because voters had no notice that they were removing it. Id.* at 37-39. *In re Justices*, 157 N.H. 265, 270 (N.H. 2008)
38. Two of the issues address in the aforesaid opinions of Gerber v King are cited in CONCRETE, INC. v. RHEAUME BUILDERS 101 N.H. 59 (1957), *Penrod* v. *Crowley*, 82 Idaho 511) as precedent, and the legal grounds in which Gerber v King was decided. The following precedent are now binding on this Court.
39. *The constitution cannot be amended by lumping together in a single question diverse questions readily divisible into questions distinct and independent so that any one of them can be adopted without in any way being controlled, modified or qualified by the other. In such case there are as many questions as there are distinct and independent questions or subjects.* McBee v. Brady, 15 Idaho 761, 100 P. 97; Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434; Keenan v. Price, *68 Idaho 423*, *195 P.2d 662*.
40. *In determining its validity, the court will presume that the Legislature acted regularly in submitting the same to the voters of the State and will uphold and sustain the validity of such amendment, unless it appears that the same has not been submitted and adopted in accordance with the provisions of the Constitution of this state which regulates and controls the method and manner of amending such Constitutions.* McBee v. Brady, 15 Idaho 761, at page 773, 100 P. 97; Keenan v. Price, 68 Idaho 423, 195 P.2d 662…

41. *In his answer defendant alleges that:*

1. Const. art. 20, § 2, providing that

"If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately" was not complied with, in that the proposed amendment consists "of several amendments" and that they were not submitted in such manner that the electors should vote for or against each of them separately.

42. 3. *"Each of said proposed amendments is a radical departure from the previous constitutional provision, each is independent, completely segregable, and this defendant, who is, in additional capacity a licensed and practicing attorney at law as well as a citizen and resident of Boise County and an elector thereof, was denied at said general election his right to vote for or against the said three amendments separately, as were all other electors who voted at said election."…*

43. *In his brief on appeal defendant now contends that the resolution of the legislature proposed five constitutional amendments, and submitted same in one single question in violation of art. 20, § 2. The five alleged amendments are set out by defendant as follows:*

44. *In support of his contention that more than one amendment was submitted in the question, the defendant urges the rule followed in McBee v. Brady, 15 Idaho 761, 100 P. 97, therein stated as follows:*

45. *"The determination whether a proposed change in the Constitution constitutes one or more amendments, it seems to us, depends upon whether the change as proposed relates to one subject and accomplishes a single purpose, and the true test should be, can the change or changes proposed be divided into subjects distinct and independent, and can any one of them be adopted without in any way being controlled, modified, or qualified by the other? If not, then there are as many amendments as there are distinct and independent subjects, and it matters not whether the proposed change affects one or many sections or articles of the constitution." 15 Idaho at page 779, 100 P. at page 103….*

46. *"In that case the proposed amendment was lengthy. It proposed to repeal two sections of the constitution and to amend five others"....*

Defendant also cites Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434. Speaking through Justice Ailshie, the court said: " * * where the question submitted to the people for vote involves an amendment or change in the Constitution, even though it may contain what appears to be several or different questions, nevertheless, if they cannot be so intelligently divided that, when submitted separately, any one might be approved and all the others rejected, and when so approved become effective and operative, then they should be submitted as one amendment; otherwise they should be submitted as separate amendments. In other words, if a proposed amendment, when divided up into two or more amendments, reduces the questions to such form that the voters might reject the main or controlling question and adopt the collateral or subordinate amendment or amendments, and thus leave the amendment or amendments so adopted useless or inoperative, or so incongruous as to upset or impair an existing system, then of course it follows that the whole matter should be submitted as one amendment." 58 Idaho at page 224, 71 P.2d at page 441.*

47. *Adopting and applying as analogous the law governing the sufficiency of the title of a legislative act under Const. art. 3, § 16, providing that "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title", the court further said:*

Absentee Voting Intention of the Convention of 1941

48. The intent of the amendment for absentee voting is clearly established in Pages 30-31 of the 1941 con con journal. The "*Resolution providing for the voting rights of persons in civil and military service of the United States, reported the same with recommendations that the amendment as proposed be adopted be the convention."* The convention vote was one of unanimous consent of the delegates. Absentee voting provisions of Part I, art 11 in 1942 stand today, granting the legislature authority to provide by law for voting by "qualified voters." It does not say that the legislature will

specifically define voter qualifications, but rather for voters qualified as the Constitution of New Hampshire provides.

49. *CONVENTION TO REVISE THE CONSTITUTION, SEPTEMBER, 1941*

SPECIAL COMMITTEE REPORT

The President submitted the following amendment to the Resolution No. 35.

The General Court shall have power to "provide by law for voting by qualified voters" who at the time of biennial of state elections or at city elections are absent from the city or town of which they are in inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected of upon any questions submitted at such election. (emphasis added)

50. **QUESTION 8 sub question (a) and (f) stand as law, as they did before the amendment.** N.H. voters ratified the absentee voting amendment in 1942. N.H. voters ratified reducing the age from 21 to 18 in 1974. In 1976, question (a) voting age and question (f) absentee voting were already constitutional. The voters could not say no to the first and last questions because there were already law.

51. In conclusion, the Plaintiff believes that all the Constitutional questions raised in his complaint should be struck down for the reasons described above, and in said pleadings.

VERIFICATION

I, Daniel Richard, swear under pain and penalty that the foregoing is true and accurate to the best of my knowledge and belief.

Date: December 12, 2022

/s/ Daniel Richard

Daniel Richard