

# APPENDIX

# SOURCES

# EXHIBITS

## Sources

1. **Exhibit A: Original amended complaint**
2. **Exhibit B: Objection to Motion to dismiss**
3. **Exhibit C: Motion for expedited hearing**
4. **Exhibit D: Motion for reconsideration**
5. **Exhibit E: 2022 Remonstrance**
6. **Exhibit F Copy of 1976 Voters Guide Question 8**
7. **Exhibit G: Election results of voting age amendment in 1974.**

# **EXHIBIT**

**A**

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

DANIEL RICHARD

*Plaintiff*

v.

CHRISTOPHER T. SUNUNU,  
GOVERNOR of the “state” of NEW HAMPSHIRE,  
In His Official Capacity and Personal Capacity,

and

DAVID SCANLAN,  
SECRETARY OF STATE,  
In His Official Capacity and Personal Capacity,

and

JOHN FORMELLA  
ATTORNEY GENERAL of the “state” of NEW HAMPSHIRE  
In His Official Capacity and Personal Capacity,

and

SHERMAN PACKARD  
SPEAKER OF THE HOUSE OF REPRESENTATIVES  
In His Official Capacity and Personal Capacity,

and

CHUCK MORSE  
PRESIDENT OF THE SENATE  
In His Official Capacity and Personal Capacity,  
and  
KEITH N. LECLAIR  
CHAIRMAN OF THE BOARD OF SELECTMAN FOR THE TOWN OF AUBURN  
In His Official Capacity and Personal Capacity,  
and  
DANIEL A. GOONAN  
TOWN ADMINSTRATOR OF THE TOWN OF AUBURN  
In His Official Capacity and Personal Capacity,  
  
*Defendants*

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

Plaintiff Daniel Richard brings this Petition for Declaratory and Injunctive Relief against Christopher T. Sununu governor of the “state” of New Hampshire in his official and personal capacity, the Attorney General John Formella in his personal and private capacity, David Scanlan the Secretary of the “state” of New Hampshire in his official and personal capacity. The Speaker of the House of Representatives Sherman Packard in his official and personal capacity, and President of the Senate President Chuck Morse in his official and personal capacity, unconstitutional usurpation of power, exceeding lawful authority on the Rights of the Plaintiff by exercising of non-constitutional personal and

authoritative power that exceeds and in violation of limiting boundaries established by constitution at law.

Specifically, current voting laws within the State of New Hampshire and enforced by the New Hampshire Executive branch of government have been systematically designed and promulgated to permit inhabitants from other jurisdictional states to openly and freely vote within the State of New Hampshire. Altering by statute the exemption for Absentee voting and altering by statute, the manner in which votes are sorted and counted, in violation of the New Hampshire Bill of Rights and the New Hampshire Constitution.

### **Count I**

1. On March 2, 2022, the Plaintiff filed a Remonstrance and served a lawful notice of trespass with the Secretary of State David Scanlan, the office of the Governor, the office of the Attorney General, the Clerk of the House of Representatives and the Clerk of the Senate.

On March 7, 2022 the Plaintiff filed a Remonstrance and served a lawful notice of trespass with the Town of Auburn.

On March 9, 2022 the Plaintiff attempted to vote in the Town of Auburn where the Plaintiff is qualified inhabitant and is registered to vote in said town. The Plaintiff was deprived of his right to vote by the town of Auburn.

### **Count II**

2. The legislature has exercised undelegated powers by ignoring the voter integrity protection detailed in Part II, art. 32. and the usage and custom for more than 195 years of hand counting paper ballots. Part II, art. 32. mandates that three elected officials are to sort and count the votes in an open meeting.

The legislature has created a statutory mechanism by enacting N.H. RSA 656:40, which was written for a trial basis. Said statute introduced and authorized a new manner of counting votes not provided for by Part II, art. 32.

N.H. 656:40, authorizes and unelected body, the “Election Law Commission” oversight over the towns and cities, to authorize local use of programable electronic voting machines **exclusively, without counting the votes in an open meeting, and** without the consent of the inhabitants, required by Part II, art. 100. (Emphasis added).

The legislature cannot delegate the constitutional duties of three elected individuals, whose duty it is today under Part II, art. 32, the mandate to sort and count paper ballots by hand in an open meeting, to using electronic voting machines. The fact of the matter is the legislature has changed by statute, the counting of votes by hand as was customary prior to 1979. Said legislative act created a statutory scheme to allow the use of electronic vote counting device without the consent of the inhabitants. No one disputes that said statute was passed to make it easier to sort and count the vote. The fact of the matter is such a change was done without the consent of the voters required by Part I, art. 1 and Part II, art. 100. Said statute is defective on its face because the legislature has no delegated authority to amend the original intent of the mandatory voter integrity provision of the Constitution which is Part II art. 32.

### **Count III**

3. The national conference of state legislatures devised system standards, testing and certification of voting equipment nationwide.

N.H. has no federal testing or certification requirement, therefore, N.H. is federally required to develop and implement its own. Instead, N.H. is supposed to have a state-specific process to test and approve equipment. Such approval must be written pursuant to the teaching of the Constitution N.H. In this case that

require and amendment of Part II, art. 32, and then the legislature of the whole could then establish such standards and rules, and not an un-elected, unaccountable Ballot Law Commission.

The Plaintiff contends the Defendants, by tampering, modifying and removing components from certain electronic machines have voided the use of these machines.

#### **Count IV**

4. The design of these violations against my rights as a 40 year Citizen of the State of New Hampshire which permits resident aliens from other incorporated states by statute N.H. RSA 21:6, RSA 21:6-a, the rights of suffrage, by co-mingling the word resident and inhabitant to imply one equals the other, thereby allowing the act of declaring a residency in this state to be a qualifying event to establishing a domicile for the purpose of voting, in direct violation of Part I, art. 11, and Part II, art. 30. As a voter qualified as the constitution provides, is defined as an inhabitant, a citizen of this State.

#### **Count V**

5. N.H. RSA Chapter 657 expands the reason (exemptions) a person may claim in order to exercise an absentee ballot in this State. It is a mechanism to circumvent the Constitutional provisions of Part I, art. 11, for voting in my State of New Hampshire, and is a violation of the laws of the land. The current two constitutional absentee exemptions authorized by Part I, art 11. have not been amended as required by Part I, art. 1. Therefore, the expansion of exemptions in N.H. RSA Chapter 657 have not been authorized by the consent of the inhabitants. Said statutory enactment violates the substantive and procedural due process of Part II, art. 100, required to amend the Part I, art. 11. And further, as no-such amendments have been proposed to the inhabitants of this State to authorize the expansion of the existing exemptions provided for by the Constitution. As there

was no disclosure, there could not be any consent of the inhabitants, therefore RSA Chapter 657, must be void under Part I, art. 1.

### Count VI

6. The “state” committed voter-deception upon the **inhabitants** in 1976. The Voters’ Guide language from November 2, 1976 presented wording that was misleading and inappropriately combined into a single ballot question, thus disallowed those examining the questions the opportunity to answer each question independently. Therefore, said changes achieved by this amendment are the basis by which N.H. RSA 21: 6 and RSA 21:6-a, depend upon, **must** be struck down. See exhibit A copy of 1976 Voters Guide, Question 8.
7. All four claims stated herein, allege that the Defendants are causing me direct harm by permitting unqualified voters to vote, permitting unconstitutional exemptions for absentee voting, permitting the use of **an unconstitutional mode-of-operation for voting** (via the exclusive use of electronic machines), **thereby** permitting the unconstitutional amendment to the constitution, are all violative of the rights of suffrage protected by the state, as said trespass as they eliminated my vote.
8. When the Constitution is ignored and legislature is allowed to change the laws governing elections, it calls into question the integrity of such elections and the confidence of the voters.<sup>1</sup> When the Plaintiff is deprived of lawful elections, which are not conducted pursuant to the constitution, the Plaintiff rights are denied the protection afforded him under Part I, art 1. and Part I, art. 12. are thereby violated. The legislature’s provision to provide a mechanism for circumventing the constitutional mandates of the Constitution of New Hampshire, violate the substantive and procedural due process required under Part II, art. 100, to amend

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<sup>1</sup> The purpose of openly counting of the ballots is not only to observe the accuracy of the count, but also to determine any inappropriate or improprieties in the ballot, which a machine cannot perform.



the Constitution, the Defendants are causing me direct harm, as said actions dilute my vote.

9. **The Defendants currently permit and have endorsed exclusive use in cities and towns of the Dominion Voting Systems machine and the Votingworks<sup>2</sup> Voting System machine using open-source software, not authorized by the legislature or the Constitution. Both of these voting systems are electronic-type machines and both are known to possess and have the ability to be compromised in their accuracy. (Emphasis added)**

### **State Constitutional issues**

The plaintiff is asserting Six claims against the defendants specifically related to the legislative changes which violate NH Constitutional voting provision and voter qualification, specifically:

Count 1: Plaintiff was denied the right to vote.

Count 2: Plaintiff was deprived of his substantive and procedural due process rights which required to change, who and how the votes are sorted and counted.

Count 3: No constitutional authority or standard for testing or certifying electronic voting machines.

Count 4: Changing definition of a qualified voter by statute.

Count 5: Expanding the exemptions for absentee voting with out the consent of the inhabitants

Count 6: Constitutional amendment, violation of Procedural due process to amend the Constitution. There was no written disclosure to the voter, therefore no consent of the inhabitants.

### **PARTIES**

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<sup>2</sup> Part II, art. 32 has not been amended to authorize the use of vote counting machines.

10. Plaintiff, Daniel Richard an inhabitant of this State who dwelleth and hath a home at 95 Rockingham Rd. Auburn, NH.
11. Defendant, Chris Sununu, is Governor of the state of New Hampshire is being sued in his official and personal capacity. The address of the Governor's office is: Office of the Governor State House 107 North Main Street Concord, NH 03301.
12. Defendant, John Formella, is the Attorney General of the state of New Hampshire is being sued in his official and personal capacity. The address of the Attorney General's Office is 33 Capital St. Concord, NH 03301.
13. Defendant, David Scanlan is the Secretary of state of New Hampshire, and is being sued in his official and personal capacity. The address of the Secretary of State's office is: Office of the Secretary of the State House 107 North Main Street Concord, NH 03301.
14. Defendant, Sherman Packard is Speaker of the House of Representative of the state of New Hampshire, and is being sued in his official and personal capacity. The address of the office is State House 107 North Main Street Concord, NH 03301.
15. Defendant, Chuck Morse is President of the Senate of the state of New Hampshire. The address of the office is State House 107 North Main Street Concord, NH 03301.
16. Defendant, The Town of Auburn, located in Rockingham County N.H. in its official capacity
17. Defendant, Keith N. LeClair is Chairman of the Board of Selectman in his official capacity, for the Town of Auburn,
18. Defendant, Daniel A. Goonan is the Town Administrator in his official capacity, for the Town of Auburn N.H. 03032

### **JURISDICTION AND VENUE**

19. The court has jurisdiction under N.H. RSA 491:7 and jurisdiction to grant declaratory relief RSA 491:22.
20. The Court has personal jurisdiction over the Defendants, as their offices are located in New Hampshire, and the alleged conduct is said to have occurred in New Hampshire.
21. The court has venue under N.H. RSA 507:9. Venue is proper as the Plaintiff is located in Auburn, (Rockingham County).
22. Plaintiff has standing under NH RSA 491:22.
23. This Court has subject matter jurisdiction over this Complaint pursuant to 491:7, and RSA 491:22.
24. Venue is appropriate in Rockingham County pursuant to RSA 507:9 because the Plaintiff claims he was injured in Rockingham County.

#### **CLAIMS UPON WHICH RELIEF CAN BE GRANTED**

25. The Plaintiff claims that the Defendants, knowing that they were not licensed or privileged to do so, did commit malfeasance of office by trespassing on the Plaintiffs constitutional voting rights protected by the Bill of Rights, Part I, art.1, art. 2, art. 7, art. 8, art. 11, art 12, art. 14, art. 15, art. 29, art. 37, and Part II, art. 30, art. 32 and art. 100 of the Constitution of New Hampshire by passing the following legislation, which is now codified in statute law, NH RSA 21:6, N.H. RSA 21:6-a, and N.H. RSA 654:1, N.H. RSA 656:40. N.H. RSA 656:41. RSA656:42. N.H. RSA Chapter 657.
26. The combined operation and allowances of the above-mentioned state statutes permits, those residing in N.H. who are not its citizens, whom are citizens of other states, to vote within the State of New Hampshire, and altering by statute, the manner in which votes are sorted and counted, and most importantly examined. Expanding by statute the exemptions for absentee voting, along with the state sanction of said changes, is a violation of the New Hampshire Bill of Rights and the New Hampshire Constitution.

## COUNT I

N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.1.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.2.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.12  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.15.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.29.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 32.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art.37.  
N.H. CONSTITUTION BILL OF RIGHT, Part II, art. 100  
N.H. RSA 659:9-a City Clerk Uniform Practices  
N.H. RSA 659:12 Who Can Vote.  
N.H. RSA 659:13 Obtaining a Ballot.  
659:40 Bribing; Intimidation; Suppression. –

27. On March 2, 2022, The Plaintiff had a meeting with Secretary of State, David Scanlan in his office with 10 other people including 3 members of N.H. House Representatives. The Plaintiff expressed his serious concerns and lack of trust over the use of election voting machines. Upon investigating such use, the Plaintiff learned that there were a number of legal issues surrounding the use of electronic voting machines. The Plaintiff delivered in person to Sec. Scanlan, a Remonstrance and a notice of trespass, as the Plaintiff believed that to be his legal remedy under Part I, art. 14, art. 32. The Plaintiff then went on to notify through service the General Court, the Governor's office, the Attorney General office, detailing the trespass upon his constitutional rights. See exhibit B.
28. On March 7, I delivered in hand the tax collector Susan Jenkins of the Town of Auburn, an affidavit of notice of trespass, and a copy of the Remonstrance filed with the legislature.
29. On March 9, I checked in to vote with supervisor of the voter checklist and was given a ballot.
30. The Plaintiff asked where the hand counting deposit box was, so that I may have my vote counted pursuant to the Constitution of N.H. Part II, article 32.
31. The Plaintiff was informed that voting machines would be used to count the votes.
32. The Plaintiff objected and politely asked to speak with the Moderator.
33. The Plaintiff was directed to the Town Moderator, Thomas Lacroix, to voice my concerns.

34. Mr. Lacroix was respectful of my concerns and objection.
35. The Plaintiff, asked Mr. Lacroix if he had received my notice of trespass regarding the unconstitutional use of the voting machines, in which he answered yes.
36. The Plaintiff asked My. Lacroix why the town would violate the Constitution, he stated that town Attorney was in receipt of said trespass notice and had advised him ignore the trespass notice and use the machines anyway.
37. The Plaintiff stated that his refusal to count the vote as required by the Constitution, Part II, art. 32. is a denial of my right to vote, by attempted coercion, as the only option made available to me was the use of unconstitutional programable, open source, electronic voting **machines**.
38. The Plaintiff thanked Mr. Lacroix for listening to my objections citing the violation of rights to vote under the State and Federal Constitutions.
39. On or about Mar 31, the Plaintiff contacted the Attorney General's Election Law division to file a complaint for being deprived of the right to vote. The Plaintiff received an E-mail response from Myles Matterson Deputy General Counsel of the Attorney General office, with an attached complaint form. The Plaintiff drafted his response in the form of an affidavit, but was concerned that Attorney General office was involved in instructing towns within this State, to ignore the N.H. Constitution, therefore the Plaintiff chose to file this complaint instead. See attached Exhibit C.
40. Post-election, the Plaintiff called the Town of Auburn, and left a message with the receptionist, to have town legal Counsel return my phone call. Attorney Michael J. Tierney Esq. did return the Plaintiffs phone call. Atty. Tierney explained why the Plaintiff was deprived of his constitutional right to vote. The reason given, was based on the Secretary State's e-mails instructing the towns to ignore the constitution a follow the statute law and to ignore the Plaintiffs notice of trespass. In response to the phone call Atty. Tierney forward the email he received from the Asst. Secretary of State Karen Ladd legal opinion. Apparently, the Deputy Secretary of State had been e-mailing various towns on March 7, 2022, instructing them to simply to ignore multiple inhabitants notice of trespass and continue to use machines unless and until a court of law directs otherwise. See attached e-mail exhibit D. Today I am not permitted to vote in accordance with N.H. Constitution Part II, art. 32.

41. N.H. Constitution Bill of Rights, Part I, art. 14. and art. 15, the Plaintiff authority for bring this civil and criminal complaint:

*“An Act relating to Attornies” passed February 17, 1791 “that the plaintiff or defendant in any cause, prosecution or suit, being a citizen of this State, may appear, plead, pursue or defend, in his proper person, or by such other citizen of this state, being of good reputable character and behavior, as he may engage and employ, whether the person so employed be admitted as an attorney at law, or not. Page 100-101 1805, and*

## Count II

### VIOLATION OF THE CONSTITUTIONAL MANDATE OF WHO AND HOW VOTES ARE SORTED AND COUNTED SOFTWARE, PROGRAMMING, AND OF ELECTRONIC VOTING MACHINES

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 1.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 2.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 11.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 12.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 14.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 15.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 37.

FORM OF GOV. Part II, art. 27.

FORM OF GOV. Part II, art. 30.

FORM OF GOV. Part II, art. 32.

FORM OF GOV Part II, art. 100

THE UNITED STATES CONSTITUTION

Article 1 Section 2.

Article 6,

and the 9<sup>th</sup> 10<sup>th</sup> and the 14th Amendments to the U.S. Constitution

42. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

43. The legislature has violated non-delegation doctrine; “The power of the *Legislative* being derived from the People by a positive voluntary Grant and Institution, can be no other, than what that positive Grant conveyed, which being only to make *Laws*, and not to make *Legislators*, the *Legislative* can have no power to transfer their Authority of making *Laws*, and place it in other hands.”

Locke, *Two Treatises of Government* (New York: New American Library, Laslett ed, 1963), pp 408-409. Accordingly, “[o]ne of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority.” Cooley, *Constitutional Limitations* (1886), pp 116-117.

44. “[T]he principal function of the separation of powers . . . is to . . . protect individual liberty[.]” *Clinton v City of New York*, 524 US 417, 482; 118 S Ct 2091; 141 L Ed 2d 393 (1998) (Breyer, J., dissenting). “[T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.’ ” *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 141; 719 NW2d 553 (2006), quoting *The Federalist No. 47* (Madison) (Rossiter ed, 1961), p 301. And as Montesquieu explained, “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.” Baron de Montesquieu, *The Spirit of the Laws* (London: J. Nourse and P. Vaillant, 1758), Book XI, ch 6, p 216.
45. The “Ballot Law Commission” is a creation of the legislature of an un-elected body, which was created by the following unconstitutional statutes; RSA 656:40, RSA 656:41, RSA 656:42. The legislature has delegated to an unelected “Ballot Law Commission, judicial power, legislative power, and executive powers to this un-elected body.
46. The legislature cannot amend the Constitution of N.H. by statute, it therefore cannot delegate by statute N.H. RSA 656:40 any authority to a mayor or alderman of any city, or any selectman of any town, the authority to apply to an unelected “Ballot Law Commission” for permission to use electronic voting machines.
47. N.H. RSA 656:41 grants to an unelected body the “Ballot Law Commission” the authority to police (executive power) the machines, to examine the devices, to

review current and new devices to determine whether the devices require upgrading.

48. There are no established standards or qualifications for the Ballot Law Commission to be qualified to examine electronic voting machines, in order to account such factors as hardware and software standards, policies and procedures, safety requirements, security requirements, and usability. There are no established N.H. standards or laws defining qualifications for examiners of electronic voting machines.
49. N.H. RSA 656:42 grants to an unelected body the “Ballot Law Commission” the authority makes rules, enforced as law. (Legislative Power). The “Ballot Law Commission” rules are not law and cannot be so, Part I, art 12.
50. N.H. RSA 665:1 was enacted in 2003 which delegates to the “Ballot Law Commission” the authority to act as a tribunal, to hear and decide ballot law disputes, and whose decisions shall be final as questions both of law and fact, and no court shall have jurisdiction to review such decisions.
51. The Ballot Law Commission existence violates separation of powers, Part I, art. 37, as this un-elected body has been delegated by statute, legislative power, executive power, and judicial power, by N.H. RSA 656:40, RSA 656:41 and 656:42, which is repugnant and contrary to the Constitution of N.H.
52. Part II, art. 32 was written and ratified in 1784 when there was no electricity or technology. The original intent of this article was used for 195 years, until 1979. The Constitution of N.H. is clear that three individual bodies are required to preserve the integrity of the vote. Such usage and custom were the sorting and counting by three elected officials, the moderator, the selectman and town or city clerk, whose duty it shall be, to sort and count paper ballots by hand by the three



elected officials aforesaid. This is the original intent under the aforesaid common law, *Wooster v. Plymouth*, 62 N.H. 193, 200 (1882).<sup>3</sup>

53. The use of voting machines comes into existence in 1979 with the following legislative act, NH RSA 656:40. Prior to said statutory changes, voting was conducted by paper ballot, ink, and hand counting which preserve constitutional voter integrity. The use of electronic examination (sorting and counting) of Ballots instead of the human examination by the three individuals elected to perform such a task.
54. Under non delegation doctrine, the legislature cannot delegate the constitutional duties of those three elected individuals, whose duty it is today, the requirement to sort and count the ballots, and not the use of an unconstitutional electronic counting device. No one disputes that said statute was passed to make it easier to sort and count the vote, and such a change was done without the consent of the voters. Said statute is defective on its face because the legislature has no delegated authority to amend the original intent of the mandatory voter integrity provision of the Constitution Part II art. 32, the manner in which votes are to be sorted and counted.
55. NH RSA 656:40 is also defective, as even if the legislature had the authority to pass such a statute, it cannot delegate any discretionary powers of the legislature to an unelected body, “the ballot law commission”. The commission cannot delegate authority to the towns, which the commission its self does not possess. The “Ballot Law Commission” has no authority to make law authorizing the use of electronic voting machines.

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<sup>3</sup> *Wooster v. Plymouth*, 62 N.H. 193, 200 (1882) below. (quotations omitted, alterations in original) “*In interpreting an article in our constitution, we will give the words the same meaning that they must have had to the electorate on the date the vote was cast. In doing so, we must place [ourselves] as nearly as possible in the situation of the parties at the time the instrument was made, that [we] may gather their intention from the language used, viewed in the light of the surrounding circumstances.*”

56. The legislature with no authority to do so, enacted NH RSA 656:40 in 1979, which only authorized temporary statutory use of electronic vote counting machines on a trial basis with no end date. 40 years is no longer a trial basis.
57. The fact is, the original intent of the founders was paper ballots and hand counting, and such was used for more than 200 years in this State. Part II, art 32. original intent has not been amended. The legislature is prohibited from exercising undelegated powers, and such legislative actions are a direct violation of the due process required to amend the Constitution of New Hampshire as required in Part II, article 100.
58. The Defendants' sanctioning of the discretionary use of voting machine at the local level also violate the 14<sup>th</sup> amendment equal protection clause by authorizing unconstitutional use of programmable, open source, electronic vote counting machines in some towns, cities, or other political subdivision of the State or not, depriving the Plaintiff of a lawful count of all the ballots within this State as required by the constitutional voting process established by the people in Part II, art. 32. and the equal protection clause of the N.H. Bill of Rights, Part I, art. 1.
59. The Plaintiff believes that he has been disfranchised, and his vote diluted by said legislative acts, and said injury continues to this day, as said statute and unconstitutional use of programmable, opensource, electronic voting machines is still in effect.
60. Said legislative actions are prohibited, as such actions are repugnant and contrary to Part I, art. 1, art. 2, art. 7, art. 8, art. 11, art.12, art. 15, and Part II, art. 5, art. 30, art. 32, art. 100, and the U.S. Const. Article 1 Section 2, Article 6, and the 9<sup>th</sup> and 10<sup>th</sup> Amendments to the U.S. Constitution, which prohibit the legislature from amending the Constitution of New Hampshire without the consent of the inhabitants of this State.

### **Count III**

N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 1.

N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 12.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 15.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 29.  
N.H. CONSTITUTION BILL OF RIGHTS, Part I, art. 37.  
N.H. CONSTITUTION FORM OF GOV. Part II, art. 2.  
N.H. CONSTITUTION FORM OF GOV. Part II, art. 5.  
N.H. CONSTITUTION FORM OF GOV. Part II, art.32  
The 14<sup>th</sup> Amendment to U.S. Constitution  
N.H. RSA 656:42 et seq.

61. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

62. Part II, art. 2. *“The Supreme Legislative power, within this State, shall be vested in the Senate and House of Representatives,”*. Part II, art. 5 states twice that the legislature’s actions must not be repugnant or contrary to the Constitution; *“That clause, which confers upon the ‘general court’ the authority ‘to make laws’, provides at the same time that they must not be ‘repugnant or contrary to the constitution....’”* Id. 210 Merrill v. Sherburne 1818. Mason’s Manual of Legislative Rules of Procedure, Chapter 45, § 518, *A Legislative Body Cannot Delegate Its Powers*, 1. ***“The power of any legislative body to enact legislation or to do any act requiring the use of discretion cannot be delegated to a minority, to committee, to officers or members or to another body.”*** (Emphasis added.)

63. Federal law states in title 29 CFR 1910.399 that if you tamper with any electronic device, you void any safety certification required for use. There is no rule, regulation, or statute referencing any recognized authority or qualified person, to officially certify, the modifications or changes made to a previously listed, labeled, and certified by a nationally recognized testing laboratory (NTRL).

#### **Count IV**

N.H. CONSTITUTION BILL OF RIGHTS Part I, art I.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art 7

N.H. CONSTITUTION BILL OF RIGHTS Part I, art 11.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 14.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 15.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 12  
N.H. CONSTITUTION BILL OF RIGHTS Part II, art. 30

64. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

65. The legislature has changed the constitutional definition of a qualified voter by statute, violating the procedural and substantive due process required by Part II, art. 100 to amend the voter qualification, defined by the Constitution of N.H. The laws of land define those people who poses political rights in this State. The word used to define a citizen of this State who possesses political rights, is called an Inhabitant and this word is used in twenty-five places in the Constitution of N.H.<sup>4</sup>

66. The right to elect or be elected is defined as an inhabitant. Part I, art. 11, specifically defines a Qualified voter as an inhabitant in four places; “*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. **“Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile.”***... -see art. 11 above.  
(Emphasis added)

67. The founding fathers in 1783, after writing Part I, article 11, included in Part II, the form of government, its very own article, the specific constitutional definition of the word inhabitant (a person with political rights) in Part II, article 30: *And **every person qualified as the constitution provides, shall be considered an inhabitant for the purpose of electing or being elected** into any office or place within this State, in that town, parish and plantation where he **dwelleth and hath***

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<sup>4</sup> Inhabitant is used in Part I, art. 11, art. 12, and Part II, art. 4, art. 5, art. 9, art. 9-a, art. 10, art. 11, art. 14, art. 27, art. 28, art. 29, art. 30, art. 31, art. 32, art. 42 art. 51, art. 56, art. 71, art. 72, of the Constitution of N.H.

his home. was the original text before the 1976 amendment by Question 8 of the Voters' Guide. See exhibit A.

68. In 1808, twenty years after the ratification of the U.S. Constitution, the N.H. legislature passed An Act to determine who shall be legal Voters in town meetings, and to secure to the inhabitants of this State their rights of suffrage. Approved December 21, 1808 [chapter 49] defined who was a citizen of this State (a person native born or naturalized to the State). It defined how a citizen of the United States (a citizen of another state by birth or naturalization), becomes a citizen of this State upon meeting the residency requirements of this State. Said residency requirement was identical (two years) to Federal durational residency requirement to become a citizen of the United States under the federal law, and such was the law of the land until 1973.
69. N.H. HB 363 in 1973 amended [chapter 54] and removed the descriptive language from the statutes, that only a Citizen of the State of New Hampshire could vote in our elections, thus allowing resident aliens (citizens of other states residing in N.H.) the right to vote in New Hampshire elections.
70. The original law of 1808 Chapter 49:
- Section 1. *Be it enacted by the Senate and House of Representatives in General Court convened. That every male inhabitant of each town and parish with town privileges, and places unincorporated in this State, (being a natural born or naturalized citizen of the United States) of twenty-one years of age and upwards, excepting paupers and persons excused from paying taxes at their own request, shall have a right, at the annual and other meetings of the inhabitants of said towns and parishes, to vote in the town or parish wherein he dwells and hath his home; — provided however, That no person shall be considered an inhabitant in any town or parish in this State for the purpose of voting, unless he has resided in such place six months, or has become a free-holder.*
71. Sec. 2. *And be it further enacted, That no person, not being a citizen of this State or of the United States, shall be entitled to vote at any town meeting for the choice*

*of State, County or town officers, unless he shall have resided within this State two years and shall have made oath before some Justice of the Peace, or other person authorized to administer oaths — That he will bear faith and true allegiance to the State of New Hampshire, and to the United States, and will support the Constitutions thereof. Provided however, That no person, not a citizen of this State or of the United States, shall be considered qualified to fill any County or State office.*

72. The last printing of the original 1808 public policy [chapter 49] version was in 1955, and was in effect until 1973. Chapter 54. Section 1. “natural born” had been amended to read “being a native.” The original prohibition clause in Section 2. was amended into NH RSA 54:7 Aliens, “No alien not naturalized shall be entitled to vote at any town-meetings.”<sup>5</sup> These state statutes refer to state citizenship, as federal naturalization law applies to foreign nationals not born or naturalized in the United States of America.

*“The right or privilege of voting is one arising under the constitution of the state, and not under the constitution of the United States.” The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States.” UNITED STATES V. ANTHONY. June 18, 1873.*

73. Non-Citizen of this State; Persons in the State not its citizens are either: (a) Citizens of other States; or (b) Resident Aliens.

74. ***“One who has been for many years a citizen of a state is still a citizen thereof although residing temporarily in another state, but without any purpose of***

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<sup>5</sup> This is referring to naturalization law referenced in chapter 49, sec.2. as previously stated,.

*abandoning citizenship in the former*". Steigleder v. McQuesten, 198 U.S. 141 (1905)

75. "Residence and Citizenship are wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the circuit courts of the United States; **and a mere averment of residence in a particular State is not an averment of Citizenship in that state for the purposes of jurisdiction.**" Steigleder v. McQuesten, 198 U.S. 143. (Emphasis added)

76. The 1973 N.H. legislature passed HB 363 which is the beginning of the problem, as it was proposed for a nonexistent problem, (see exhibit B, archive copy of May 22, 1973 Senate Committee on Ex. Depts., Munic. & County Govt's.) Rep Sanborn's language in the bill is a series of negligent or mis-statements "Some 8 or 10 years ago in N.H. law," is grossly inaccurate. The public policy was 165 years old in 1973 and the removal of the definition of "being a" and "native or naturalized" abolishes State Citizenship definition and the power of Sovereign State to naturalize Resident Aliens unto its self. This denies the State of New Hampshire the highest exercise of its Sovereign power as a State to choose who are its Citizens.

77. Rep. Sanborn's claims that his children were born in foreign country has no bearing on the proposed removal of descriptive language in the statute. Children born abroad of American parents; citizens of the United States have always inherited the nationality of their parents, as detailed by the first Naturalization Act of 1790:

*"And the children of citizens of the United States that may be born beyond Sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States"* An act to establish a uniform Rule of Naturalization (March 26, 1790).

78. Rep. Sanborn confesses that “This does nothing to their voting rights except that it is a technicality and the law needs to be corrected to include the rights of a voter born outside this country of American parents.” (See exhibit E)
79. If existing public policy does nothing to their voting rights why is such an amendment being proposed when the federal law governs the issue and the remedy. Rep. Sanborn propose is a solution, for a nonexistent problem?
80. Sen. Johnson: “This merely establishes the right to a child born overseas of American parents to vote?” (See exhibit E)
81. Rep. Sanborn: “That is correct. I am sure that if we’re challenged the federal law would find the error in New Hampshire law.” (See exhibit E) HB 363 is void for lack of jurisdiction. The General Court cannot amend the Constitution of N.H. in direct violation Part II, art. 100. and surrender the sovereignty of the State to decide for itself who are its citizens. The stated purpose of the amendment was to confer voting privileges of foreign-born children of American parents. Children born of Citizens of New Hampshire living outside of this country are automatically considered natural born citizens of New Hampshire and citizens of the United States, under federal naturalization law and the 14<sup>th</sup> Amendment. This statutory change cannot achieve its stated goal as the remedy is in federal jurisdiction.
82. The stated purpose and the consequence of the redaction of the original descriptive text allows resident aliens (who are citizens of the United States) (citizens of any of the 49 other states and federal territory) to move to our State and vote in are election without the 189-year requirement that they be naturalized to the State, and become a Citizen of the State of New Hampshire, in order to qualify as an inhabitant of this State.



83. NH RSA 21:6, NH RSA 21:6-a, alter by statute the Constitutional voter qualifications, by allowing unqualified resident aliens the right to vote, in violation of Part I, art. 11.<sup>6</sup>
84. Residents have no constitutional right of suffrage. This statute co-mingles the word resident and inhabitant to imply one equals the other. Said statutes have created a mechanism where all that is needed to vote in N.H. is a declaration of residency, in the form of preprinted affidavit, which is provided by the state at the polling station. In turn a potentially unqualified voter receives a bona fide ballot, which is then counted as legitimate vote.
85. Under the Constitution of New Hampshire Part II, art. 5 and federal immigration law, a resident is an alien to the State, or the United States, as they are not a citizen thereof. Part II, art. 5 provides that those residing within the State shall be subject to our laws, our courts, and taxation, as residents (aliens), are those people who are not citizens of this State, therefore they are not qualified to vote as that right is reserved to those persons defined by the Constitution of N.H. as an inhabitant of this State.
86. The word resident only appears in this one place (Part II, art. 5) in the Constitution of N.H. The word resident does not appear in Part I, the Bill of Rights. The words used in the Bill of Rights to describe those people who possess said rights, and whom are entitled to the protection of the State, are called citizens of this State, and those who possess political rights within this State are called inhabitants. NH RSA 21:6 and NH RSA 21:6-a, is repugnant and contrary to the constitutions, as it conveys political rights by allowing the act of declaring a residency to be a qualifying event to establishing a domicile for the purpose of voting, in direct violation of Part I, art. 11, and Part II, art. 30.

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<sup>6</sup> **NH 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”,...

**NH RSA 21:6-a Residence.** —“Residence or residency shall mean a person's place of abode or domicile.” Reinforces 21:6 by statute, the right suffrage for a resident, that which Constitution does not provide.

87. The aforesaid actions by the Defendants are in fact prohibited, as such actions are repugnant and contrary to Part I, art. 1, art. 2, art. 7, art. 8, art. 11, art.12, art. 15, and Part II, art. 5, art. 30, art. 32, art. 100, of the N.H. Constitution, and Article 1 Section 2, Article 6, the 9<sup>th</sup> and 10<sup>th</sup> Amendments to the U.S. Constitution, which prohibit the legislature from amending the Constitution of New Hampshire without the consent of the inhabitants of this State.

**Count V**

EXPANDING BY STATUTE THE EXEMPTIONS FOR ABSENTEE VOTING

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 1.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 2.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 11.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 12.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 14.  
N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 15.  
N.H. CONSTITUTION FORM OF GOV. Part II, art. 27.  
N.H. CONSTITUTION FORM OF GOV. Part II, art. 30.  
N.H. CONSTITUTION FORM OF GOV. Part II, art. 100

THE UNITED STATES CONSTITUTION

Article 1 Section 2.

Article 6,

and the 9<sup>th</sup> 10<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution

88. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

89. Absentee voting did not exist in this State until Part I, article 11 was amended in 1942. Part I, art 11, has been amended 7 times since 1903. Absentee voting was not permitted until the 1942 amendment, which was submitted to the inhabitants as required by the constitution. Said amendment was submitted to the inhabitants for their consent as required by Part I, art. 1, and art. 12, and Part II, art. 100. Absentee voting in Part I, art. 11 was amended again in 1956 by the same aforesaid manner. The 1942 and 1956 amendments of Part I, art. 11 (the creation

of absentee voting) and their precedence, reaffirm Part I, art. 1, that all government of right originates from the people and is founded in their consent.

90. The current NH RSA chapter 657 begins with HB 1266 which was passed before the 2020 election, under the Covid 19 lock down, which led to the current N.H. RSA Chapter 657. Said exemption become HB 144 and SB 31 which amends RSA Chapter 657. Said statutes expand the exceptions by which absentee voting may be claimed or exercised, in direct violation of the current constitutional requirements defined by Part I, art. 11. N.H. RSA Chapter 657 expands constitutional exemptions for absentee voting without the due process required to amend or alter the constitutional requirements, without the consent of the voters as required by the Constitution.

91. The Bill of Rights, Part I, art 11. Delegates to the general court that it:

*“shall provide by law for voting by **“qualified” voters** who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, **are absent from the city or town of which they are 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 or upon any question submitted at such election.”*

This section makes two important points. First that voters must be **“qualified”** as the constitution provides, Part I, art. 11 and Part II, art. 30; qualified voters are called **“inhabitants”** and not residents. (Emphasis added).<sup>7</sup>

92. NH RSA 657:1, grants by statute the following exemptions for absentee voting, that which the constitution does not provide, in direct violation of the mandate detailed in Part II. art. 27 and Part II, art. 30. which reaffirm the fact that voting laws must be written pursuant to the Constitutions. Here are the new statutory exemptions:

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<sup>7</sup> This is only place in the N.H. Constitution that instructs the legislature to act relative to voting.

## Eligibility

### Section 657:1

#### **657:1 Absence, Religious Observance, and Disability Absentee Voting. –**

I. Any person who will be absent on the day of any state election from the city, town, or unincorporated place in which he or she is registered to vote or who cannot appear in public on any election day because of his or her observance of a religious commitment or who is unable to vote there in person by reason of physical disability may vote at such elections as provided in this chapter. A person who is unable to appear at any time during polling hours at his or her polling place because of an employment obligation shall be considered absent for purposes of this chapter. For the purposes of this section, the term "employment" shall include the care of children and infirm adults, with or without compensation.

II. When the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning for election day applicable to the city, town, or unincorporated place:

(a) A person who otherwise would have voted in person but has concerns for his or her safety traveling in the storm, shall be considered absent for purposes of this chapter and may vote absentee on the day immediately prior to the election.

(b) A person who cares for children or infirm adults who reasonably anticipates that school, child care, or adult care will be canceled, who otherwise would have voted in person but will be deterred from voting by the need to care for children or infirm adults, shall be considered absent for purposes of this chapter and may vote absentee on the day immediately prior to the election.

93. Former Secretary of State William Gardner stated publicly, the absentee voting expansion of exemptions by statute has increase absentee voting participation from an average of 4% of the total in 2014, 2016, 2018 to a new total of 30.6% in 2020. HB 1266 was passed under a state of emergency declared for Covid-19 in 2020 which led to a dramatic increase after its passage. The Plaintiff believes that such unconstitutional changes to absentee voting exceptions have disenfranchised the Plaintiff, and diluted his vote, by said legislative acts. The legislature has no delegated authority to amend, nor to grant absentee rights or exceptions by statute. *Burt v. Speaker* (2020). The opposite is true, said legislative actions are prohibited, as such actions are repugnant and contrary to Part I, art. 1, art. 2, art. 7, art. 8, art. 11, art.12, art. 14. art. 15, and Part II, art. 5, art. 30, art. 32, art. 100, and Article 1 Section 2, Article 6, and the 9<sup>th</sup> and 10<sup>th</sup> Amendments to the U.S. Constitution,

which prohibit the legislature from amending the Constitution of New Hampshire without the consent of the inhabitants of this State.

94. The Plaintiff has been injured by Such actions which have subjected the Plaintiff to unconstitutional laws, taxes, representation and changes to our form of government not consented to by the inhabitants of this State and secured by the State and Federal Constitutions.

95. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

### Count VI

#### VIOLATION OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIRED TO AMEND THE CONSTITUTIONAL VOTER QUALIFICATION

1976 Voters' Guide, Question 8 (see exhibit C)

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 1.

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 2.

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 11.

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 12.

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 14.

N.H. CONSTITUTION BILL OF RIGHTS Part I, art. 15.

N.H. CONSTITUTION Part II, art. 27.

N.H. CONSTITUTION Part II, art. 30.

N.H. CONSTITUTION Part II, art. 32.

N.H. CONSTITUTION Part II, art. 100

THE UNITED STATES CONSTITUTION

Article 1 Section 2.

Article 6,

and the 9<sup>th</sup> 10<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution

96. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.

97. The petition now before this court alleges that the 1976 Question 8, as submitted to the voters, incorrectly stated the effect of the proposed amendments, and failed to give the voters an accurate idea of the question or questions to be voted upon.

The Plaintiff seeks a declaratory judgment as to the validity of the adoption of the amendments involved, claiming they are defective on their face, and the Plaintiff

claims that said question would be declared unconstitutional under *Gerber v. King*, 107 NH 495. *CONCRETE, INC. v. RHEAUME BUILDERS* 101 N.H. 59 (1957), *Penrod v. Crowley*, 82 Idaho 511)

98. N.H. RSA 21:6 and RSA 21:6-a rely on this change to constitutional definition of a qualified voter. Question 8 was not properly presented to the inhabitants of this State. Question 8 was confusing and impossible to answer correctly and its resulting changes and damages could not have been understood by the voters.

99. A constitutional convention was convened in 1974. Said convention drafted and proposed to the voters', "Question 8" with its 5 sub-questions, with one yes or no choice. This resulted in multiple constitutional amendments which were not disclosed to the voters, nor could the voters have understood such confusing questions, choices, or outcomes. Here is Question 8:

100. QUESTION: 8. Are you in favor of amending the Constitution to make the following changes relating to elections:

- a) to reduce the minimum age of voters to eighteen;
- b) to make domicile rather than being an inhabitant a prerequisite for voting privilege;
- c) to repeal certain provisions relating to voting in unincorporated places;
- d) to specify that ballots and notification of winners in biennial election contest will be handled by the Secretary of State; and
- e) to provide the right to vote by absentee ballot in biennial or state elections, or in the primary elections therefor, or in city elections or town elections by official ballot?
- f) The voters were given one yes or no choice for all five questions. See attached exhibit A.

101. The actual outcome of Question 8 removes all reference to the words "dwell" and "dwelleth and hath a home" which are repealed in three places in the

constitution in which it had been used for the previous one hundred ninety-three years, with no disclosure to the voters.

102. The passage of Question 8 amended Part I, Article 13, Article 28, and it also amended Article 30, which removed all reference to “dwell” and “dwelleth and hath a home.” Exchanging the words “dwelleth and hath his home” for “domicile” was not disclosed to the voters, but rather question b) proposed a different outcome which is evidenced by these bad faith actions by all the elected officials involved and the Defendants for failure to act after lawful notice of trespass. The amendment replaced the common-law definition of “dwell” and “dwelleth and hath a home”<sup>8</sup> for domicile which was not a question presented to the inhabitants.

103. The contention made in support of the petition is that an affirmative vote on the question before the voters was a vote for a change which the amendments proposed by the Legislature would not accomplish. Analysis of the question voted upon confirms this view.

104. **Question a)**

Voters who examined the 1976 "Voters' Guide" could not have learned the true intent of questions as proposed to them in Question 8 of the voters' guide. It is a fact that the constitution as amended is different from its stated objective, as detailed in this claim.

105. In point of fact, no article of the constitution was proposed by the Legislature to voters in the Question 8 of the 1976 voters' guide.

106. In this connection Question 8 was misleading for the aforesaid reasons. It failed to disclose the actual outcome of the vote. An ordinary voter could not have understood multiple questions as proposed or the outcome of a single yes vote, or a yes vote for one question and no vote for another.

107. Voters' Guide language<sup>9</sup> from November 2, 1976 presented wording that was misleading and inappropriately combined into a single ballot question thus

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<sup>9</sup> “several constitutional provisions governing the right to vote and to hold office are unnecessarily complicated and confusing. For example, although the voting age is already 18 and the reference in the Constitution to

disallowed those examining the questions the opportunity to answer each question independently. It admits that the 1<sup>st</sup> portion of the question is already law. So why is it there? Question 8, *a) to reduce the voting age of voters to eighteen;*

The first question is already law as ratified the inhabitant of N.H in 1974. The legislature submitted a proper amendment with one question and one answer, see the attached copy of the November 5, 1974 Voters' Guide. This is the question presented to the voters, 6; *Are you in favor of amending the New Hampshire Constitution to conform with the Federal requirements allowing eighteen-year-olds to vote?* (Emphasis added).

This was 1 yes or no question. This amendment was passed in the affirmative by the voters by 71.9% as preserved in the State archives. This Voters Guide also states; AT THE PRESENT TIME: The State Constitution provides that in order to vote, a person must be twenty-one and *an inhabitant of the district where he votes*. The 26th Amendment was ratified on July 1, 1971.

108. The voter examining 1976 Question 8 was only presented with one yes or no choice for five questions. A voter could not say no to the rest of the questions if the first question asked repeats the same question already approved of by the recent amendments of the State and Federal Constitutions over the voting age. The Plaintiff believes this apparent deception is intentional as the office of the Governor, the office of the Attorney General, the office the Secretary of State, and the office of legislative services are supposed to prevent such legislative actions that our repugnant or contrary to the constitutions.

### **Question b)**

109. The following is the question and expected outcome of a yes answer to Question b) which stated as its intended purpose "*b) to make domicile rather than*

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"inhabitant" is already interpreted to mean a person's "domicile" neither of these facts is clear in the Constitution." – Voters Guide, November 2, 1976



**being an inhabitant a prerequisite for voting privilege;**” the voters were told on the second page of the voters’ guide that IF THE AMENDMENT IS ADOPTED: ...the following changes will occur:

**“b) Every eligible New Hampshire citizen may choose one place within the state to exercise the right to vote.”**

110. Said question failed to achieve its stated objective. The word Domicile is not exchanged for inhabitant, which in fact must remain as it is required in twenty-five places in the Constitution. Said amendment after the election ends up replacing the words used in common law “dwelleth and hath his home.” See, *Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972) “*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).

No mention of a citizen of this State becomes part of this amendment in any way, which stated as an outcome by the voters’ guide.

111. The 1974 N.H. Constitutional Convention voted for replacing domicile for inhabitant. The voters of 1976 were presented the same Question 8, b) **to make domicile rather than being an inhabitant a prerequisite for voting privilege;**”

Since the outcome of the changes achieved by the passage of question 8 are different than that which is stated in 1976 voters’ guide, the voters could not have known what they were actually voting for. Such confusing or deceptive language, or lack of clear intent was ruled unconstitutional by *Gerber vs King* 107 N.H. 495 (1967), *CONCRETE, INC. v. RHEAUME BUILDERS* 101 N.H. 59 (1957), *Penrod v. Crowley*, 82 Idaho 511)

112. The word Inhabitant and its definition were not amended or repealed and still appear in 25 places in constitution as stated above. The voters were not presented the amendment as ratified. The effects of Question 8 now appear in the

constitution foot notes: “Amended 1976 twice deleting reference to electing and substituting “is domiciled” for “dwelleth and hath his home.” This change was not submitted to the constitutional convention or the voters in 1976 voters’ guide.

113. If inhabitant is already interpreted to mean a person’s “domicile” why is it there and with 3 other questions? The word domicile does not exist in the Constitution until this amendment is passed. The amendment fails to achieve its stated objective and domicile is inserted to replace its common law definition of “dwelleth an hath his home” and it does not replace the word inhabitant. See Gerber vs King 107 N.H. 495 (1967), CONCRETE, INC. v. RHEAUME BUILDERS 101 N.H. 59 (1957), *Penrod v. Crowley*, 82 Idaho 511), and

**Question c)**

114. *c) to repeal certain provisions relating to voting in unincorporated places;*

The voters were told on the second page of the voters’ guide that IF THE AMENDMENT IS ADOPTED: ...the following changes will occur; *c) Provisions relating to voting in unincorporated places will be covered in a more appropriated part of the Constitution.*

115. In point of fact, no article of the constitution was proposed by the Legislature to voters in question c) of the voters’ guide. Said question is defective on its face, as none of the relevant articles to unincorporated voting were presented to voters to consider, thereby depriving the inhabitants of the knowledge of actual changes proposed, so that inhabitants accept or reject such a change, as required by Part I, art 1.

116. In this connection Question 8 was misleading for the aforesaid reasons, as it also failed to disclose the actual outcome of the vote. An ordinary voter could not have understood multiple questions as proposed or the outcome of one yes or no vote, as there was no ability to vote no for one question and yes for another.

**Question d)**

117. *d) to specify that receipt and counting of ballots and notification of winners in biennial election contest will be handled by the Secretary of State: and... the voters were told on the second page of the voters' guide that IF THE AMENDMENT IS ADOPTED: ...the following changes will occur: **The Secretary of State will be constitutionally required to examine the records or the votes cast and to notify winners of elections.***

118. In point of fact, no article of the constitution was proposed by the Legislature to voters in question d) of the voters' guide. Said question is defective on its face, as none of the relevant articles to amending to powers of the Secretary of State were presented to voters to consider, thereby depriving the inhabitants of the knowledge of actual changes proposed, so that inhabitants may consent to as required by Part I, art 1.

119. In this connection Question d) was misleading for the aforesaid reasons, the Secretary of State already possessed such constitutional authority, and an ordinary voter could not have understood the questions proposed or the outcome of a yes vote, or a yes vote for one question and no vote for another.

**Question e)**

120. The following is the question and the expected outcome of a yes answer to Question e) which stated, as its intended purpose: ***“e) to provide the right to vote by absentee ballot in biennial or state elections, or in the primary elections therefor, or in city elections or town elections by official ballot?”***

The voters were told on the second page of the voters' guide that IF THE AMENDMENT IS ADOPTED: ...the following changes will occur: ***The right of every person entitled to and wishing to vote by absentee ballot in the specified elections will be constitutionally guaranteed.***

121. This is voter deception by adding proposed changes mixed with words in phases already incorporated permitted within the constitution, by bad faith state

actors. Absentee voting is already law since 1942 by amendment of Part I, art. 11 and amendment of 1956 of Part I, art. 11.

122. Article 11 of Part I was not in the voter guide which was repealed with no consent.
123. Article 13 of Part II was not in the voters' guide and was repealed with no consent. This also repealed an article referencing the word dwell.
124. Article 28 of Part II was not in the voter's guide and was repealed with no consent. This also repealed an article referencing the word dwell.
125. Article 30 Part II was not in the voters' guide and neither was twice deleting reference to electing. Also, substituting "is domiciled" for "dwelleth and hath his home" is misleading as the said word and phrase are synonymous.
126. This is an attempt to redefine the definition of dwelleth and hath his home to the word domicile. Also,
127. Article 31 Part II was not in the voters' guide and was repealed with no consent.
128. Also, the 1976 Voters' guide, Question 8 as presented to the voters, is illegal under the current NH RSA 663:3 Form of Ballot: *A constitutional question shall include, in the text of the question, the text of the article of the constitution as it is proposed to be amended.* See *Gerber vs King* 107 N.H. 495 (1967), *CONCRETE, INC. v. RHEAUME BUILDERS* 101 N.H. 59 (1957), *Penrod v. Crowley*, 82 Idaho 511), and

### **CONSTITUTIONAL ISSUES**

129. The Plaintiff claims that he has been disenfranchised and his vote diluted by the state's passage and use of the following statutes, NH RSA 21:6, NH RSA 21:6-a, and NH RSA 654:1. NH RSA 654:13, NH RSA 656:40, NH RSA Chapter 657. Each of these statutes has the same constitutional conflict. That flaw is the intentional exercise of undelegated powers by bad faith state actors, altering the

constitutional mandates (voting requirements and definitions), by legislative and executive actions, in direct violation of the procedural due process required to amend the relevant articles of the Constitution of N.H. No branch of government has any delegated authority to amend the laws of the land, *Burt v. Speaker* (2020).

*The legislature may not, even in the exercise of its “absolute” internal rulemaking authority, violate constitutional limitations. Id. at 284, 288. Indeed, “[n]o branch of State government can lawfully perform any act which violates the State Constitution.” LaFrance, 124 N.H. at 176. Therefore, “[a]ny legislative act violating the constitution or infringing on its provisions must be void because the legislature, when it steps beyond its bounds, acts without authority.” Id. at 177.*

And, as all government of right originates from the people and is founded in their consent, Part I, art. 1.

130. *Citing Wooster v. Plymouth (1882):*

*“The distinctive character of our bill of rights as the first chapter of constitutional law in which the people, as the original sovereigns, before delegating certain public powers in the second chapter, reserve for themselves, as subjects of their collective body politic, certain rights which they do not give to that body, ...”*

*The division of the constitution into two parts was not made without a purpose, and the name of each part is not without significance. The first is a "bill of rights:" the second is a "form of government." The second is, in general, a grant of powers, made by the people to "magistrates and officers of government," who are declared (in Part I, art. 8) to be the grantors' "agents." The first contains a list of rights not surrendered by the people when they formed themselves into a state. Part I, arts. 1, 2, 3; Part II, art. 1. By the reservation of these, they limited the powers they granted in the second part, and exempted themselves, to the stipulated*

*extent, from the authority of the government they created.” Wooster v. Plymouth (1882).*

131. The Constitution of New Hampshire Bill of Rights establishes in Part I, art. 1, that “**all government of right originates from the people, is founded in consent**... (emphasis added)

132. Bill of Rights, Part I, art. 2. Established the entire purpose of a written constitution, by the declaration of enumerated natural rights, the people defined the very reason a government was created for in the first place, the protection of said rights: “**All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.**” (Emphasis added)

133. The people as the original sovereigns, declared in Part I, Bill of Rights, art. VII that all power not delegated to the State or Federal government by either the State or Federal Constitutions is retained by the people:

“**The people of this State, have the sole and exclusive right of governing themselves as a free, sovereign and independent State, and do, and forever hereafter shall exercise, and enjoy every power, jurisdiction and right pertaining thereto, which is not, or may not hereafter be by them expressly delegated to the United States of America in Congress assembled.**” (Emphasis added)

134. Article 6 of the United States Constitution, and the 9<sup>th</sup> and 10<sup>th</sup> Amendments of the U.S. Constitution reinforce the principal that all power not delegated to the State by the people, or delegated by the States to the Federal government, is reserved to the people as it is not delegated.

135. Article 6 of the United States Constitution: “**This Constitution, and the laws which shall be made in pursuance thereof;**” (Emphasis added)

136. The 9<sup>th</sup> Amendment of the U.S. Constitution: **“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”** (Emphasis added)
137. 10<sup>th</sup> amendment of the U.S. Constitution: **“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”** (Emphasis added)
138. Part I, article VII, the sovereignty of the people is reinforced by Part I, art. VIII: **“All power residing in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them.”** (Emphasis added)
139. The Constitution of New Hampshire is a social compact, a trust indenture. The people are the creator, and beneficiary of the trust; and by their allegiance and financial support, they are entitled to the protection of the laws of the land by the State. Public officials are defined by Part I, article 8, as public servants (trustees), who swear an oath under Part II, art. 84. to uphold the Constitution. In exchange trustees receive an emolument in kind, establishing a fiduciary duty upon the trustees, to uphold the provisions of the trust indenture, the Constitution of N.H. In law, the process of choosing of a domicile within the jurisdiction of a specific government is called “animus manendi.” That choice makes you a consenting party to the “civil contract” “social compact” and “private law” that attaches to and therefore protects all “inhabitants” and things physically situated on or within that specific territory, venue, and jurisdiction.
140. Part I, art 12 establishes that Taxation and Protection are reciprocal and that **“every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection,”** (Emphasis added)
141. The second part of Part I, art. 12 is the private right of the people by its declaration in the Bill of Rights, which established a prohibition upon Part II, form

of government from violating the consent clause of Part I, art. 1. And Part I, art. 12:

*“But no part of a man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people (voters). Nor are the inhabitants of this State controllable by any other laws than those to which they, or their representative body, have given their consent.”*

(Emphasis added).

142. Due process of law, Part I, art. 14: *Every subject of this State is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.*

143. Part I, article 15, the second part, declares that people shall not be deprived of due process of law or put out of the protection of the law; **“No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land;”** Part II art. 101 defines the articles of the Constitution of N.H. “some of the Laws of the Land.”

*The clause of the fifteenth article of the bill in which it is reserved "is so manifestly conformable to the words of Magna Charta, that we are not to consider it as a newly invented phrase, first used, by the makers of our constitution; but we are to look at it as the adoption of one of the great securities of private right, handed down to us as among the liberties and privileges which our ancestors enjoyed at the time of their emigration, and claimed to hold and retain as their birthright. These terms, in this connection, cannot, we think, be used, in their most bald and literal sense, to mean the law of the land at the time of the trial; because the laws*



may be shaped and altered by the legislature, from time to time; and such a provision, intended to prohibit the making of any law impairing the ancient rights and liberties of the subject, would under such a construction be wholly nugatory and void. **The legislature might simply change the law by statute**, and thus remove the landmark and barrier intended to be set up by this provision in the bill of rights. It must therefore have intended the ancient established law and course of legal proceedings, by an adherence to which our ancestors in England, before the 197 settlement of this country, and the emigrants themselves and their descendants, had found \*197 safety for their personal rights." *Jones v. Robbins*, 8 Gray 329, 342, 343, 344. "**This provision of the bill of rights was unquestionably designed to restrain the legislature, as well as the other branches of government, from all arbitrary interference with private rights.** (emphasis added) It was adopted from Magna Charta, and was justly considered by our forefathers, long before the formation of our constitution, as constituting the most efficient security of their rights and liberties." *Mason's argument for the plaintiff in Dartmouth College v. Woodward*, *Farrar's Report*, 56. In the decision of that case, this court said, — "The object of the clause in our bill of rights seems always to have been understood in this state to be the protection of private rights." 1 N.H. 129. *Wooster v. Plymouth* (1882). This case has been cited 48-times since 1882, last cited in 2019 and it currently represents' New Hampshire common law and constitutional standard.

144. No constitutional convention has been convened for the purpose of amending the legislature's power. The legislature has no delegated power to change by statute the voting laws established by the people in the Constitution and required in Part II, art.30.
145. Nor have any proposed amendments, been submitted to the people for their consent to change the laws of the land defined by the Constitution by the inhabitants.

146. Part II, art. 5 states twice that the legislature’s actions must not be repugnant or contrary to the Constitution; “*That clause, which confers upon the ‘general court’ the authority ‘to make laws’, provides at the same time that they must not be ‘repugnant or contrary to the constitution....’*” *Id.* 210 Merrill v. Sherburne 1818
147. Part II, art. 27. states that voter qualifications are defined by the constitution: “**The freeholders and other inhabitants of each district, qualified as in this constitution is provided...**” (Emphasis added)
148. Part II, art. 30. states that “**Every person qualified as the constitution provides,**” (Emphasis added). These articles reaffirm the sovereignty of the people, that the laws of land governing voting, were created by the people under the authority of Part I, art. 1, that all government of right originates from the people, is founded in their consent, and not the consent of the legislature. Public servants who are defined by Part I, art.8, don’t have any authority to change the qualifications for voting established by the inhabitants.
149. This is important: the Constitution of N.H. Part II, art. 32, defines who, and how the votes are to be sorted and counted. Part I, art. 32 went in to effect on June 2, 1784. It Defines that the moderator will receive the votes of all the inhabitants in such towns or wards, and that it shall be the duty of the selectman to attend, and that the moderator, in said open meeting, shall sort and count the votes in the presence of the selectman and town or city clerk. This provision of the constitution remains as it did in 1784, as it has not been amended. See foot note 7, *Wooster v. Plymouth, 62 N.H. 193, 200 (1882)*
150. Part II, article 100, establishes the due process required by the Constitution of New Hampshire in which it may be amended, therefore, preserving the mandate in Part I, art. 1, and art. 12 that all government of right originates from the people and is founded in their consent.
151. “*A Law repugnant to the Constitution is void.*” Marbury v. Madison, 5 U.S. 137 (1803)

152. Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436 (1966)

153. The Plaintiff claims that said statutory enactments “NH RSA 21:6”, “NH RSA 21:6-a”, and “NH RSA 654:1. NH RSA 654:13 and NH RSA 656:40, NH RSA Chapter 657,” are all a violation of the substantive and procedural Due Process required to amend the Constitution, as such due process is protected by the laws of land cited above. Such legislative enactments have changed or altered the constitutional definitions of Part I, art. 11, Part II, art. 30 and art. 32 by statute, that which requires an amendment. Such legislative actions are a direct violation of the due process required to amend the Constitution of New Hampshire as required by Part II, article 100, and the 14<sup>th</sup> amendment. Said statutory changes have never been submitted to the inhabitants for their consent as required by Part I, art. 1.

154. The Plaintiff is now deprived of the following constitutional rights and continues to suffer irreparable psychological and emotional pain, resulting in physical pain. The Plaintiff is further injured by the cost, and the time and labor necessary to fight the unconstitutional encroachments upon his rights, which the Defendants swore an oath to protect. Said injuries include:

- a. Deprivation of substantive and procedural due process of law
- b. Abolishing all effective means of redress of grievances
- c. Alterations to the voter qualifications required by the Constitution without the consent of the inhabitants
- d. changes to our statutory voting laws
- e. changes to our laws
- f. changes to our form of government
- g. changes to our representation at the State and Federal level
- h. changes to our taxes

## Criminal Complaint

155. I adopt all of the preceding paragraphs and incorporate them by reference, as if fully set forth herein.
156. The Plaintiff did give lawful notice, and service upon the Defendants, for trespass upon Plaintiffs constitutional rights detailed in this claim. Said notices are as follows
157. May 20, 2019, the Plaintiff filed a Remonstrance with the office of the Secretary of State, the office Governor, the Clerk of the Senate, and the Clerk of the House of Representatives, protesting statutory changes to mandatory Constitutional voting laws.
158. On February 24, 2022 a Remonstrance was filed with the office of the Secretary of State, the office Governor, the office of the Attorney General, the Clerk of the Senate, and the Clerk of the House of Representatives, protesting statutory changes to mandatory Constitutional voting laws, protesting the unconstitutional use of electronic voting machines.
159. Attorney John Formella was Governor Sununu was the personal Attorney at the time of the filing of the first Remonstrance on May 20, 2019. Therefore, both Governor Sununu and A.G. Formella have prior knowledge of the substance of the Remonstrance, and notice of trespass.
160. Governor Sununu of the “state” of New Hampshire and the “state” legislative bodies of 2016-2018 and the “state” legislative body of 2018-2020 knowing that they were not licensed or privileged to do so, did enact by legislative fiat and governor Sununu did sign HB 1264 (2018) into law (amending N.H. RSA 21:6, and RSA 21:6-a).

HB 1266 (2020) amended the excuses for absentee voting, changing the voter qualification requirements of the Constitution of New Hampshire and the Federal

Constitution five months before an election by enacting statutes that are repugnant and contrary to the Constitutions.

161. HB 1266 was justified by the Emergency declaration Christopher Sununu, acting under color of law, has used the repeated citation of his Executive and Emergency orders to continue and unlimited renewal of emergency management powers (hereafter referred to as EMP) as such are repeated encroachments by the Governor on the Plaintiff's rights, and has caused a constitutional crisis now before this court as detailed in this complaint, as such continued renewal has been used to justify the following state actions separate from the stated purpose of the emergency orders.
162. Christopher T. Sununu, having knowledge that he had no authority to do so, did in fact conspire with others to alter the voting qualifications of the Constitutions, the State and Federal, in direct violation of his oath, and he did violate the due process required to amend the Constitution of New Hampshire without the consent of the Inhabitants as required by the Constitution of New Hampshire Bill of Rights, Part I, art. 1, art. 12, and Part II, Art. 100.
163. Whereas, Christopher T. Sununu, knowing he had no authority to do so, did in fact conspire with others, by sanctioning the 2018 and 2020 elections in direct violation of the aforesaid constitutional articles, and therefore the Plaintiff requests the Court declare said elections void for fraud as such actions our Malfeasance of office, and such actions are repugnant and contrary to the Constitutions State and Federal.
164. The Attorneys for Speaker Sherman Packard, and President Chuck testified on their behalf, at trial in the Merrimack County Superior Court case # 217-2021-CV-00178 in 2021 and before the New Hampshire Supreme Court case # 2021-0325, in 2022, that they possess the discretion to ignore constitutional voting laws they swore an oath to uphold and defend. They acknowledged in open court to

depriving the Plaintiff of his constitutional rights, and the Plaintiff further complains that they conspired to do so.

165. The Defendants, knowing that they were not licensed or privileged to do so, did grant the rights of suffrage to unqualified resident aliens, after a lawful notice by the Plaintiff, by way of remonstrance and notice of trespass upon the Plaintiff's constitutional protected rights.

166. The Defendants, knowing that they were not licensed or privileged to do so, did authorize the continued use of unconstitutional electronic voting machines, after a lawful notice by the Plaintiff, by way of remonstrance and notice of trespass upon the Plaintiff's constitutional protected rights.

167. The Defendants, knowing that they were not licensed or privileged to do so, did sanction the unconstitutional counting of absentee ballots, by allowing absentee exceptions not provided for by the Constitution of N.H.

168. All acts claimed of in this complaint are incorporated into this. That the Defendants' actions have deprived the Plaintiff of the protection of the laws, as required by the Bill of Rights, Part I, art. 14. and art. 15.

169. The Plaintiff charges that the Defendants, knowing that they were not licensed or privileged to trespass upon the Plaintiff's constitutional rights as stated in this complaint, did violate Title 643: ABUSE OF OFFICE: Section 643:1 Official Oppression, of the criminal code.

170. The Plaintiff further charges that such aforesaid actions by the Defendants violated the due process protection and the equal protection clauses of the 14<sup>th</sup> Amendment, and 18 U.S. Code § 241 Conspiracy against rights and 18 U.S. Code § 242, deprivation of Rights under the Color of Law.

### **Relief Sought**

1. The Plaintiffs seeks relief from the physical, phycological trauma, and public embarrassment experienced from the Defendants continued violation described

here with regard to their intentional failures to provide relief to allow his vote to count.

2. Plaintiff Demands a Trial by Jury.
3. The Plaintiff seeks injunctive relief restraining the Defendants from exclusively using electronic means of vote counting in place of the requirements of Part II, art. 32.
4. The Plaintiff seeks injunctive relief restraining the Defendants from ignoring the hand counting required by N.H. Constitution, should electronic vote counting continue.
5. The Plaintiff seeks to enjoin the Defendants from using electronic open-source voting machines.
6. The Plaintiff seeks injunctive relief restraining the Defendants from entering any contractual agreements used for voting without legislative approval of the body of the whole.

#### **Count I**

7. The Plaintiff seeks injunctive or declaratory relief enjoining the Town Defendants from prohibiting the Plaintiffs right to vote in accordance with the teaching of the Constitution of N.H. – requiring my vote to be hand counted.

#### **Count II**

8. The Plaintiff seeks a declaratory judgement striking down N.H. RSA 656:40, N.H. RSA 656:41, RSA 656:42, declaring the legislatures statutory authorization of electronic voting machines unconstitutional, and be voided for being repugnant and contrary to the Constitution.

#### **Count III**

9. The Defendants do not possess and they have not established any independently recognized testing procedures or authorities to determine the functional validity of changes or modification made to electronic voting machines. The Plaintiff seeks to strike down N.H. RSA 656:40, N.H. RSA 656:41, N.H. RSA: 656:42, in as much

as the Plaintiff seeks declaratory and injunctive relief, prohibiting the use of Dominion/Di bold voting machines as currently used and described. Until and unless a professionally recognized standards are devolved and implemented to protect any and all changes of previously listed and label electronic equipment. Until such lawful standards are implement, the Defendants must be enjoined from using such questionable electronic equipment.

#### **Count IV**

10. The Plaintiff seeks a declaratory and injunctive relief striking down N.H. RSA 21:6, RSA 21:6-a, RSA 654:1, declaring that said statutory authorization of comingling the word resident and inhabitant to mean the same thing, redefining the definition of a qualified voter by statute. The Plaintiff seeks an acknowledgment of the differences.
11. The Plaintiff seeks a declaratory judgement from the Court, that use of the word resident within the statutes, grants the right of suffrage to resident aliens be declared unconstitutional in direct violation of Part I, art. 1, art. 2, art. 11, art. 14, art. 15, and Part II, art.30.

#### **Claim V**

12. The Plaintiff seeks a declaratory and injunctive relief striking down N.H. RSA Chapter 657, and declaring said statutory authorization for expanding the exemptions for absentee voting by statute, be declared unconstitutional, thereby suspending or declaring such as being repugnant and contrary to Part I, art. 1, art. 2, art. 11, art. 12, art. 14, art. 15.

#### **Claim VI**

13. The Plaintiff seeks a declaratory judgement striking down the effects of the 1976 amendments resulting from the outcome of Question 8 of the 1976 Voters Guide, declaring said question 8, be declared un-constitutional, thereby suspending or



declaring such as being repugnant and contrary to, Part I, art.1, art. 11, art. 12, art. 14, art. 15, Part II, art. 100

14. And any other relief this court find just and Proper.

### **VERIFICATION**

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

/s/ Daniel Richard

Daniel Richard

### **CERTIFICATION OF SERVICE**

I Daniel Richard hereby swear that on August 24, 2022, I did e-mail or hand deliver a copy of this complaint to the Defendants.

Dated August 22, 2022

/s/ Daniel Richard

Daniel Richard

# **EXHIBIT**

## **B**

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

DANIEL RICHARD

*Plaintiff*

v.

CHRISTOPHER T. SUNUNU, et al.

*Defendants*

**PLAINTIFF'S OBJECTION TO THE DEFENDANTS MOTION TO DISMISS**

**INTRODUCTION**

I, Daniel Richard, pro se, have filed a complaint against Defendants CHRISTOPHER T. SUNUNU, DAVID SCANLAN, JOHN FORMELLA, SHERMAN PACKARD, CHUCK MORSE, KEITH N. LECLAIR, and DANIEL A. GOONAN, collectively I refer to as “Defendants” for trespassing on the Rights of the Plaintiff by exercising powers not delegated to them by the New Hampshire Constitution, and under the statutory laws of the State.

First, current voting laws within the State of New Hampshire and enforced by the New Hampshire Executive branch of government have been systematically designed and promulgated to permit inhabitants from other jurisdictional states to openly and freely vote within the State of New Hampshire. Altering by statute the exemption for Absentee voting and altering by statute, the manner in which votes are sorted and counted, in violation of the New Hampshire Bill of Rights and the New Hampshire Constitution.

Secondly, notwithstanding page 9, paragraphs 25 and 26 of the Plaintiff’s complaint, where he provides the constitutional and statutory authorities for his claims upon which the relief

he seeks can be granted, but provides a cause of action in each of his six “XI” claims, which provide Plaintiff’s standing in the instant controversy.

Although the Plaintiff demonstrates a disability in legal form and certain particulars, the merits of his claims are clear and precise when detailing his constitutional Counts and the associated statutory authorities.

1. First and foremost, the Defendants are asking the court to treat the Plaintiff’s complaint as an argument, and not a set of allegations as required by the New Hampshire rules of civil procedure.
2. In reading the Plaintiff’s pro se complaint, the Defendants ignore a long-standing U.S. Supreme court decision in *Cruz v. Beto*, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972), where “. . . "a court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, and take them as true for purposes of deciding whether they state a claim.”
3. The Plaintiff has alleged real and unequivocal electrical and electronic safety hazards currently exposing him and the public at large. *See Count III, pgs. 16-17 of the Plaintiff’s Complaint*. It is ironic, that the Defendants, elected to provide safety and security to the Defendants and inhabitants of the State, would knowingly and willingly argue a motion to maintain these hazards in the public domain, exposing the Plaintiff and the public at large to these hazards as complained of by the Plaintiff. Nonetheless, the Defendants did argue to maintain these hazards in the workplace of election workers and to the voting public, in their Motion to keep the Plaintiff’s Expert Witness from testifying to the safety and efficacy of these electrical and electronic tabulating voting machines. By doing so, and successfully, the Defendants elected to keep the instant controversy alive.
4. The Defendants now cannot ask the Court to ignore these existing hazards and dismiss an ongoing statewide safety issue, in light of an upcoming state-wide election that will expose me and tens of thousands of New Hampshire citizens (wearing cardiac pacemakers, electronic AED implants, ear amplification devices, etc) to hazards, which the Plaintiff’s and the Defendants experts have not had the opportunity to testify to and adjudicate? In this regard, I will refer to the report prepared by the Plaintiff’s safety expert, Wayne P. Saya, Sr., and previously made a part of the record by this Court during the above-named motion hearing in question.

## MEMORANDUM OF LAW

5. In light of the numerous Federal and U.S. Supreme court decisions regarding the 2020 elections, *Donald J. Trump for President, Inc. v. Boockvarthe*, 493 F. Supp. 3d 331, (2021); *1. DCCC v. Ziriak*, 487 F. Supp. 3d 1207, (2020); *Democratic Nat'l Comm. v. Bostelmann*, 488 F. Supp. 3d 776, (2020), and more cases, the federal courts have made it clear that elections are state-specific and driven by state constitutions and state statutes.

6. For the physical safety of the Plaintiff, the non-safety-tested tabulating voting equipment should and must not be used, and in accordance with the New Hampshire Bill of Rights and Constitution, regardless of the use or non-use of the said voting equipment, the Plaintiff's vote must be hand-counted, and this hand-counting must include all voters under the equal protection clause of the New Hampshire Bill of Rights and Constitution.

7. The Plaintiff here claims; as in the Delaware Supreme court decision of Anthony J. Albence v. Michael Higgin, et al, docket no. 342, 2022,<sup>1</sup> New Hampshire statute Chapter 669—Town Elections §§ 669:1 — 669:75), contains the following:

a. The Vote-by-Mail Statute impermissibly expands the categories of absentee voters identified in Article \_\_\_\_\_, section \_\_\_\_\_ as written violates the State's Bill of Rights and Constitution.

b. The Same-Day Registration Statute also conflicts with the provisions of Article \_\_\_\_\_, section \_\_\_\_\_ of the State's Bill of Rights and Constitution.

c. Additionally, the reason the above-named tabulating equipment does not have a current OSHA safety-rating, is because the voting equipment in question were tampered-with in order to modify their originally intended use. This tampering is a violation of New Hampshire law

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<sup>1</sup> Delaware Court ORDER, October 7, 2022.

659:42. (Tampering With Electronic Ballot Counting Devices), and currently violate the Plaintiff's due-process rights under Article 15 of the New Hampshire Bill of Rights and Constitution, and a violation of federal regulatory law under OSHA.

8. In the instant case, for the purpose of injunction relief, the Plaintiff has clearly established an actual, concrete, particularized, and imminent threat of physical harm as well as harm from a constitutional tort, to establish standing. See *Memphis A. Philip Randolph Inst. v. Hargett*, *United States Court of Appeals for the Sixth Circuit* | Oct 15, 2020 | 978 F.3d 378. Compare the federal court's stance regarding mail-in absentee ballot fraud, *Donald J. Trump for President, Inc. v. Boockvar*, *United States District Court for the Western District of Pennsylvania* | Oct 10, 2020 | 493 F. Supp. 3d 331, where the State's constitution was not invoked.

9. In the case here before this court, judicial intervention is necessary because, as in the Delaware case, *supra*, statutory deadlines for mail-in registration applies opposite to State's Bill of Rights, and absentee voting under RSA Chapter 657 'as written' must be deemed unconstitutional in New Hampshire. Compare *Democratic Nat'l Comm. v. Bostelmann*, *United States District Court for the Western District of Wisconsin* | Sep 21, 2020 | 488 F. Supp. 3d 776.

10. Preliminary injunction was granted in part because limited relief from statutory deadlines for mail-in registration and absentee voting under Wis. Stat. §§ 6.86, 6.87, 6.88 was necessary to avoid an untenable impingement on Wisconsin citizens' right to vote, including those voters relying on the state's absentee ballot process.

11. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1941 were evidence of his claims, (see Count V), see attached certified archive copies of the Constitutional Convention resulting

in the amendment of Part I, art. 11 detailing the 2 constitutional exemptions for absentee voting, and the statutes written pursuant thereof.

12. Count V claims that statutes in RSA Chapter 657 expands the exceptions by which absentee voting (mail in voting) may be claimed or exercised, in direct violation of the current constitutional requirements defined by Part I, art. 11, without the consent of the voters required by Part I, art, 1. And the procedural due process required to amend or alter the constitution as required by Part II, art. 100.

13. The Plaintiff motions the court for expedited hearing of expert testimony, and eye witness accounts of poll workers tuning off voting machines, after witnessing them short circuit and malfunction, when paper ballots get wet on rainy days or exposed to hand sanitizer after use of hand sanitizer used at polling places.

14. As the Plaintiff stated in his oral arguments at the first hearing, The state is to blame for the timing of this direct challenge of said statutes which alter and infringe upon the Bill of Rights, without the consent of the voters as detailed in Count II. IV. V. The Plaintiff has exhausted all available means of redress since May 20<sup>th</sup> of 2019 before the legislature which has jurisdiction to repeal laws under Part First, article 29, but unfortunately the legislature has refused to hear the Remonstrances of the Plaintiff, which is why this complaint is now before this Honorable Court.

15. The Plaintiff notices the Court to take Judicial Notice of the statement made by the Defendants in their Motion to Dismiss, item number fourteen.

16. The Plaintiff submits the following evidence, so that your honor may the judge weather the Defendants statements submitted to this Court in this matter were disingenuous or negligent.

17. Defendants have stated the following in their motion to dismiss, Item # 14

*“There is not, nor has there ever been, a constitutional right to have one’s vote hand counted in New Hampshire. Outside of statutorily described circumstances such as recounts, there is no constitutional provision, statute, or jurisprudence that would support such a right.”* Defendants Motion to Dismiss Item #14.

18. The Attorney General Office and the Attorneys representing the state and Town of Auburn, have sworn an oath, and they have accepted an emolument, therefore they have a fiduciary duty as trustees of the public trust, to uphold and support the Constitution of New Hampshire and the Constitution of the United States, and the laws written pursuant thereof.

19. The Defendants state there is no law, no constitutional provision, statute, or jurisprudence that would support such a right. Such a statement by the Defendants is not true.

**Opinion of the Justices, 53 N.H. 640 (1873)** May 28, 1873 · New Hampshire Supreme Court 53 N.H. 640, last cited by the N.H. Supreme Court in 1974.

The following sections of chapter 30 of the General Statutes relate to the “Election of Representatives in Congress:”

*“Section 4. The meetings in the several towns in each district shall be warned and governed, and the returns of votes for representatives shall be made out, signed, certified, sealed, directed, transmitted, receipted for, examined, and counted, at the same time and in the same manner as provided for the returns of votes for senators.”*

*“Section 5. Upon such examination and count, the person having the largest number of votes returned in any district shall be declared \*642duly elected, and tlie governor shall forthwith transmit to the person so elected a certificate of such election under the seal of the state, signed by himself, and countersigned by the secretary.”*

*Article 32 of Part II of the Constitution, provides that town-meetings for the choice of senators shall be governed by a moderator, who shall, in the presence of the selectmen, in open meeting, receive the votes, and shall, in the presence of the selectmen and town-clerk in said meetings, sort and count the votes, and make a public declaration thereof, with the name*



*of every person voted for, and the numb'er of votes for each person, and the town-clerk shall make a fair record of the same, at large, in the town-book, and shall make out a fair attested copy thereof, to be sent to the secretary of state.*

*Chapter 28, "Section 15. The moderator shall, in the meeting, in presence of the selectmen and town-clerk, sort and count the votes, and make a public declaration of the whole number of tickets given in, with the name of every person voted for, and the number of votes for each person, and the town-clerk shall make a fair record thereof at large in the books of the town."*

*Chapter 29, "Section 2. The town-clerk shall make out a fair and exact copy of the record of all votes given in at any such meeting, for governor, for councilor, and for senator, upon distinct and separate pieces of paper; shall certify upon each copy that the same is a true copy of said record, and shall seal said copies separately, and direct and forward the same to the secretary of state, with a superscription upon each expressing the purport thereof, on or before the first day of April next ensuing."*

*In any case to which these constitutional provisions are applicable, they are the controlling and the supreme law of the state, and, by the statute first cited, they are made applicable to representatives in congress. The constitution and these statutes are too explicit to leave any doubt in our minds of the general duty of the moderator to count the votes, and make a public declaration of the result of his count, or of tlio general duty of the town-clerk to make a record of the moderator's declaration of that result. The only construction we are-able to give to the words "a fair record of the same" in the constitution, and "a fair record thereof" in the statutes, is, that they mean a record of the "public declaration." The clerk is not an appellate tribunal to overrule the moderator, or to correct an error in the moderator's count and declaration, or to make a record, of the votes, in accordance with a count made by himself, or in accordance with any other evidence than the moderator's count and declaration. The clerk is responsible, not for the accuracy of the moderator's count or declaration, but for his own accuracy in making a correct record of that count and declaration, and in making a correct copy of the record to be sent to the \*643 secretary of state. The moderator's declaration is to be public, in open town-meeting, in presence of the selectmen, town-clerk, and all others who may take an interest in the election, and be able and willing to detect and expose any error,*

*and obtain a correction of it immediately, when it can be most easily corrected. And 'the framers of the constitution and of the statutes referred to evidently relied to a considerable extent upon the publicity of the declaration as a means of obtaining a correct count and a correct record, and did not rely upon the clerk as a tribunal for the silent correction of errors, not publicly corrected by the moderator himself in open town-meeting.*

20. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1942 were evidence of his claims, see attached certified archive copies of the amendments and the statutes written pursuant thereof. The following statutes requires that the moderator shall count the ballots. And just like they did in 1784, and then 89 years later in 1873, and then 69 years later in 1942, the ballots were examined and counted by hand as voting machines don't exist during this period in history, this is a historical fact. Prior to the introduction of electronic voting tabulating devices, ballots were examined (sorted) and counted by humans who have hands, but more importantly is the ability to examine ballots and the signatures, in order to verify the legitimacy of the ballot, which a machine cannot do.

21. Revised laws of N.H. 1942, pg. 148, 79. Counting ballots:

*Immediately after the polls are closed the ballots shall be examined and the votes for the several candidates and on any questions submitted shall be counted by the moderator, in the presence of the town clerk, the selectmen and the other election officers herein provided. The counting shall be public but within the quad-rail, and shall not be adjourned nor postponed until it shall have been completed, and the whole number of ballots cast for each person and on each question submitted to the voters shall have been announced...*

22. With the addition of absentee voting, we see the statutory application that the examination of mail in ballots must be done by hand as a voting machine cannot examine the ballots and the signatures of the mail in votes, therefore they must sorted and counted by the

moderator by hand, as this is the usage and custom of the law until the introduction of machine counting of ballots.

23. The Plaintiff moves the Court to take judicial notice that the Town of Auburn failed to provide a hand count box which Atty. Michael Tierney told the court would be made available at the Town of Auburn, which it did not. The Plaintiff protested and refused to deposit his vote in the machine, until election officials went and retrieved a box, putting into doubt the secrecy of the Plaintiffs right to a secret ballot. Such actions are also a violation of the equal protection clause of the 14<sup>th</sup> amendment and federal voting law *Title 52 U.S. Code § 10101 Voting rights* (2) (A), all voters must be treated the same.

WHEREFORE, the Plaintiff respectfully motions this Court for an expedited hearing, due to the urgency of resolving the Safety and Constitutional issues before the election on November 8<sup>th</sup>, 2022, as stated in this motion.

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

Daniel Richard

Date: October 14, 2022

/s/ Daniel Richard

**CERTIFICATE OF SERVICE**

I hear by certify that a copy of the foregoing was served upon the Defendants Attorneys of record in this matter via the Court's electronic filing system.

Daniel Richard

Date: October 14, 2022

/s/ Daniel Richard

# **EXHIBIT**

# **C**

Clerk's Notice of Decision  
Document Sent to Parties

on 11/02/2022

## STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

Motion Denied. Based on a review of the pleadings and related filings, the Court is not persuaded that another interim hearing is warranted.

DANIEL RICHARD

*Plaintiff*

v.



Honorable David W. Ruoff

November 2, 2022

CHRISTOPHER T. SUNUNU, et al.

*Defendants*

**MOTION FOR EXPEDITED HEARING TO DETERMINE  
THE SAFETY, EFFICACY, AND CONSTITUTIONALITY  
OF NEW HAMPSHIRE VOTING EQUIPMENT, AND VOTING STATUTES**

Now Come the Plaintiff, Daniel Richard, in the above-numbered and entitled action, pursuant to a Bonafide emergency, and moves the Court for this Motion for an Expedited hearing to Determine the Safety, Efficacy and Constitutionality of New Hampshire Voting Machines. The Plaintiff believes this motion to be imperative, pursuant to the absence of critical testimony that was earlier challenged by the Defendants under NH Rules Civ. P. 27 (Expert Witness), where such testimony is not limited to the Expert report, and was intended to expand the court's understanding toward the safety-hazards associated with the voting equipment in question, and for the Plaintiff

to protect himself and in-turn fellow voters of New Hampshire from physical hazards, emotional stress, and from a constitutional tort, before the November 8, 2022 State voting date. It is for the following reasons the Plaintiff believes an amicable solution can be achieved without “any” hardship to the Defendants, while simultaneously providing a safe and accurate New Hampshire election for the Plaintiff and the people at large.

The Plaintiff has also not had the opportunity to provide adequate evidence and testimony in his argument regarding the constitutionality of the voting equipment in question, where testimony regarding documents from the New Hampshire State Archives can support the Plaintiff’s contention, that the current statutory laws in place are unconstitutional.

The Defendants are now attempting to circumvent the Plaintiff’s ability to provide an adequate “cause of action” and appropriate “standing” in his complaint.

In support of the Plaintiff’s Motion; the reasons herein provided by the Plaintiff are not novel in nature, and have been addressed in the State of New Hampshire and other jurisdictions.

First, on October 7, 2022 of this month, the Delaware Supreme Court and its Order in the case of *Albence v. Higgin, et al. file number 342, 2022*, count V of the *Albence* case duplicates item 1 of the Plaintiff’s complaint.<sup>1</sup>

Secondly, the Boston regional office of the Federal Occupational Safety and Health Administration, “OSHA” is currently reviewing the issue of appropriate Safety

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<sup>1</sup> In the case of *Albence v Higgins, supra*, the Court considered on an expedited basis the parties’ brief, the record of appeal, and the argument of counsel.

Certification requirements for New Hampshire election workers, as a result of communications between the Plaintiff's Public Safety Expert, (*See attached email communication*). These communications are predicated upon the Defendant's third-party distributor and maintenance contractor, LHS Associates, LLC, apparently hired by the Defendants as the only company to maintain the Safety and efficacy of the New Hampshire tabulating voting equipment.

Accordingly, with the question of public safety outstanding, the Plaintiff believes it imperative to have the State's expert witness—the State Fire Marshall<sup>2</sup>, along with the Plaintiff's safety expert, both to attest to the recommendations for the current outstanding questions regarding safety of the Dominion Diebolt tabulating equipment.

Third, See attached copy of the certified archive copy of the 1941 Constitutional Convention amending Part I, art. 11. And the Certified Archived Copy of the Revised Laws of 1942 written pursuant to the amendment of Part I, art. 11.

### **Memorandum of Law**

1. In light of the numerous Federal and U.S. Supreme court decisions regarding the 2020 elections, *Donald J. Trump for President, Inc. v. Boockvarthe*, 493 F. Supp. 3d 331, (2021); *1. DCCC v. Ziriox*, 487 F. Supp. 3d 1207, (2020); *Democratic Nat'l Comm. v. Bostelmann*, 488 F. Supp. 3d 776, (2020), and more cases, the federal courts have made it clear that elections are state-specific and driven by state constitutions and state statutes.

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<sup>2</sup> The New Hampshire State Safety Code requires the "Authority Having Jurisdiction" (AHJ) as the final authority for safety in the State. The AHJ in New Hampshire is the State's Fire Marshall.

2. For the physical safety of the Plaintiff, the non-safety-tested tabulating voting equipment should and must not be used, and in accordance with the New Hampshire Bill of Rights and Constitution, regardless of the use or non-use of the said voting equipment, the Plaintiff's vote must be hand-counted, and this hand-counting must include all voters under the equal protection clause of the New Hampshire Bill of Rights and Constitution.

3. The Plaintiff here claims; as in the Delaware Supreme court decision of Anthony J. Albence v. Michael Higgin, et al, docket no. 342, 2022,<sup>3</sup> New Hampshire statute Chapter 669—Town Elections §§ 669:1 — 669:75), contains the following:

- a. The Vote-by-Mail Statute RSA Chapter 657, impermissibly expands the categories of absentee voters identified in Part I, art 11 as written as it violates the State's Bill of Rights and Constitution.
- b. The Same-Day Registration Statute also conflicts with the provisions of Part I, art. 11 of the State's Bill of Rights and Constitution.
- c. Additionally, the reason the above-named tabulating equipment does not have a current OSHA safety-rating, is because the voting equipment in question were tampered-with in order to modify their originally intended use. This tampering is a violation of New Hampshire law 659:42. (Tampering With Electronic Ballot Counting Devices), and currently violate the Plaintiff's due-process rights under Article 15 of the New

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<sup>3</sup> Delaware Court ORDER, October 7, 2022.



Hampshire Bill of Rights and Constitution, and a violation of federal regulatory law under OSHA.

4. In the instant case, for the purpose of injunction relief, the Plaintiff has clearly established an actual, concrete, particularized, and imminent threat of physical harm as well as harm from a constitutional tort, to establish standing. See *Memphis A. Philip Randolph Inst. v. Hargett*, *United States Court of Appeals for the Sixth Circuit* | Oct 15, 2020 | 978 F.3d 378. Compare the federal court's stance regarding mail-in absentee ballot fraud, *Donald J. Trump for President, Inc. v. Boockvar*, *United States District Court for the Western District of Pennsylvania* | Oct 10, 2020 | 493 F. Supp. 3d 331, where the State's constitution was not invoked.
5. In the case here before this court, judicial intervention is necessary because, as in the Delaware case, *supra*, statutory deadlines for mail-in registration applies opposite to State's Bill of Rights, and absentee voting under RSA Chapter 657 'as written' must be deemed unconstitutional in New Hampshire. Compare *Democratic Nat'l Comm. v. Bostelmann*, *United States District Court for the Western District of Wisconsin* | Sep 21, 2020 | 488 F. Supp. 3d 776.
6. Preliminary injunction was granted in part because limited relief from statutory deadlines for mail-in registration and absentee voting under Wis. Stat. §§ 6.86, 6.87, 6.88 was necessary to avoid an untenable impingement on Wisconsin citizens' right to vote, including those voters relying on the state's absentee ballot process.
7. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1942 were evidence

of his claims, (see Count V), see attached certified archive copies of the Constitutional Convention resulting in the amendment of Part I, art. 11 detailing the 2 constitutional exemptions for absentee voting, and the statutes written pursuant thereof.

8. Count V claims that statutes in RSA Chapter 657 expands the exceptions by which absentee voting (mail in voting) may be claimed or exercised, in direct violation of the current constitutional requirements defined by Part I, art. 11, without the consent of the voters required by Part I, art. 1. And the procedural due process required to amend or alter the constitution as required by Part II, art. 100.

9. The Plaintiff motions the court for expedited hearing of expert testimony, and eye witness accounts of poll workers tuning off voting machines, after witnessing them short circuit and malfunction, when paper ballots get wet on rainy days or exposed to hand sanitizer after use of hand sanitizer used at polling places.

10. As the Plaintiff stated in his oral arguments at the first hearing, The state is to blame for the timing of this direct challenge of said statutes which alter and infringe upon the Bill of Rights, without the consent of the voters as detailed in Count II. IV. V. The Plaintiff has exhausted all available means of redress since May 20<sup>th</sup> of 2019 before the legislature which has jurisdiction to repeal laws under Part First, article 29, but unfortunately the legislature has refused to hear the Remonstrances of the Plaintiff, which is why this complaint is now before this Honorable Court.

11. The Plaintiff notices the Court to take Judicial Notice of the statement made by the Defendants in their Motion to Dismiss, item number fourteen.

12. The Plaintiff submits the following evidence, so that your honor may the judge weather the Defendants statements submitted to this Court in this matter were disingenuous or negligent.

13. Defendants have stated the following in their motion to dismiss, Item # 14

*“There is not, nor has there ever been, a constitutional right to have one’s vote hand counted in New Hampshire. Outside of statutorily described circumstances such as recounts, there is no constitutional provision, statute, or jurisprudence that would support such a right.”* Defendants Motion to Dismiss Item #14.

14. The Attorney General Office and the Attorneys representing the state and Town of Auburn, have sworn an oath, and they have accepted an emolument, therefore they have a fiduciary duty as trustees of the public trust, to uphold and support the Constitution of New Hampshire and the Constitution of the United States, and the laws written pursuant thereof.

15. The Defendants state there is no law, no constitutional provision, statute, or jurisprudence that would support such a right. Such a statement by the Defendants is not true.

**Opinion of the Justices, 53 N.H. 640 (1873)** May 28, 1873 · New Hampshire

Supreme Court 53 N.H. 640, last cited by the N.H. Supreme Court in 1974.

The following sections of chapter 30 of the General Statutes relate to the “Election of Representatives in Congress:”

*“Section 4. The meetings in the several towns in each district shall be warned and governed, and the returns of votes for representatives shall be made out, signed, certified, sealed, directed, transmitted, receipted for, examined, and*

*counted, at the same time and in the same manner as provided for the returns of votes for senators.”*

*“Section 5. Upon such examination and count, the person having the largest number of votes returned in any district shall be declared \*642duly elected, and the governor shall forthwith transmit to the person so elected a certificate of such election under the seal of the state, signed by himself, and countersigned by the secretary.”*

*Article 32 of Part II of the Constitution, provides that town-meetings for the choice of senators shall be governed by a moderator, who shall, in the presence of the selectmen, in open meeting, receive the votes, and shall, in the presence of the selectmen and town-clerk in said meetings, sort and count the votes, and make a public declaration thereof, with the name of every person voted for, and the numb'er of votes for each person, and the town-clerk shall make a fair record of the same, at large, in the town-book, and shall make out a fair attested copy thereof, to be sent to the secretary of state.*

*Chapter 28, “Section 15. The moderator shall, in the meeting, in presence of the selectmen and town-clerk, sort and count the votes, and make a public declaration of the whole number of tickets given in, with the name of every person voted for, and the number of votes for each person, and the town-clerk shall make a fair record thereof at large in the books of the town.”*

*Chapter 29, “Section 2. The town-clerk shall make out a fair and exact copy of the record of all votes given in at any such meeting, for governor, for councilor, and for senator, upon distinct and separate pieces of paper; shall certify upon each copy that the same is a true copy of said record, and shall seal said copies separately, and direct and forward the same to the secretary of state, with a*

*superscription upon each expressing the purport thereof, on or before the first day of April next ensuing.”*

*In any case to which these constitutional provisions are applicable, they are the controlling and the supreme law of the state, and, by the statute first cited, they are made applicable to representatives in congress. The constitution and these statutes are too explicit to leave any doubt in our minds of the general duty of the moderator to count the votes, and make a public declaration of the result of his count, or of the general duty of the town-clerk to make a record of the moderator's declaration of that result. The only construction we are-able to give to the words “a fair record of the same” in the constitution, and “a fair record thereof” in the statutes, is, that they mean a record of the “public declaration.” The clerk is not an appellate tribunal to overrule the moderator, or to correct an error in the moderator's count and declaration, or to make a record, of the votes, in accordance with a count made by himself, or in accordance with any other evidence than the moderator's count and declaration. The clerk is responsible, not for the accuracy of the moderator's count or declaration, but for his own accuracy in making a correct record of that count and declaration, and in making a correct copy of the record to be sent to the \*643 secretary of state. The moderator's declaration is to be public, in open town-meeting, in presence of the selectmen, town-clerk, and all others who may take an interest in the election, and be able and willing to detect and expose any error, and obtain a correction of it immediately, when it can be most easily corrected. And 'the framers of the constitution and of the statutes referred to evidently relied to a considerable extent upon the publicity of the declaration as a means of obtaining a correct count and a correct record, and did not rely upon the clerk as a tribunal for the silent correction of errors, not publicly corrected by the moderator himself in open town-meeting.*

16. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1942 were evidence of his claims, see attached certified archive copies of the amendments and the statutes written pursuant thereof. The following statutes requires that the moderator shall count the ballots. And just like they did in 1784, and then 89 years later in 1873, and then 69 years later in 1942, the ballots were examined and counted by hand as voting machines don't exist during this period in history, this is a historical fact. Prior to the introduction of electronic voting tabulating devices, ballots were examined (sorted) and counted by humans who have hands, but more importantly is the ability to examine ballots and the signatures, in order to verify the legitimacy of the ballot, which a machine cannot do.

17. Revised laws of N.H. 1942, pg. 148, 79. Counting ballots:

*Immediately after the polls are closed the ballots shall be examined and the votes for the several candidates and on any questions submitted shall be counted by the moderator, in the presence of the town clerk, the selectmen and the other election officers herein provided. The counting shall be public but within the quad-rail, and shall not be adjourned nor postponed until it shall have been completed, and the whole number of ballots cast for each person and on each question submitted to the voters shall have been announced...*

18. With the addition of absentee voting, we see the statutory application that the examination of mail in ballots must be done by hand as a voting machine cannot examine the ballots and the signatures of the mail in votes, therefore they must sorted and counted by the moderator by hand, as this is the usage and custom of the law until the introduction of machine counting of ballots.

19. The Plaintiff moves the Court to take judicial notice that the Town of Auburn failed to provide a hand count box which Atty. Michael Tierney told the court would be made available at the Town of Auburn, which it did not. The Plaintiff protested and refused to deposit his vote in the machine, until election officials went and retrieved a box, putting into doubt the secrecy of the Plaintiffs right to a secret ballot. Such actions are also a violation of the equal protection clause of the 14<sup>th</sup> amendment and federal voting law *Title 52 U.S. Code § 10101 Voting rights (2) (A)*, all voters must be treated the same.

WHEREFORE, the Plaintiff respectfully motions this Court for an expedited hearing, due to the urgency of resolving the Safety and Constitutional issues before the election on November 8<sup>th</sup>, 2022, as stated in this motion.

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

Daniel Richard

Date: October 12, 2022

/s/ Daniel Richard

**CERTIFICATE OF SERVICE**

I hear by certify that a copy of the foregoing was served upon the Defendants Attorneys of record in this matter via the Court's electronic filing system.

Daniel Richard

Date: October 12, 2022

/s/ Daniel Richard

# **EXHIBIT**

# **D**



STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

DANIEL RICHARD

*Plaintiff*

v.

CHRISTOPHER T. SUNUNU, et al.

*Defendants*

SUPERIOR COURT

Memorandum of Law in support of

Motion to Reconsider

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 by 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 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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the Defendants Attorneys of record in this matter via the Court's electronic filing system.

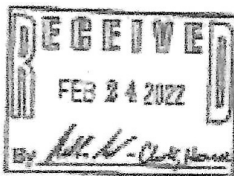
Date: December 12, 2022

/s/ Daniel Richard

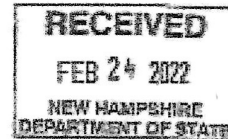
Daniel Richard

**EXHIBIT**

**E**



To the Honorable General Court  
of  
The State of New Hampshire



FEB 24 2022

*M. Schoenfeld*

RECEIVED  
DEPARTMENT OF STATE  
FEB 24 2022

**Memorial and Remonstrance**

Honorable and respected Ladies and Gentleman:

When a people, led to freedom by the hand of a patriotic virtue, entrust the Supreme power of Government in the hands of individuals selected and chosen from among the Citizens at large, it becomes the duty of the people to respect, honor, and support their representatives on one hand, while on the other it becomes the duty of the persons so promoted to guard and secure the political interest and privileges of the community at large. Further, whenever the representatives of a free people, either through design or inattention, do adopt measures that tend to injure the common interest or neglect to pursue those steps that would promote the public good, their constituents have a natural and a constitutional right to remonstrate against such conduct.

Although your Memorialists cannot persuade themselves that their representatives have ever adopted measures with the design of injuring the community, the experience and feeling of your Memorialist too dearly prove them, that by some fatal error, the most ruinous System of Policy has been adopted in New Hampshire, that could have been devised to bring the good people of this State into the deepest distress by trespassing on their constitutional rights.

We respectfully require the General Court to assemble, to hear and consider this Remonstrance. "Where rights as secured by the Constitution are involved, there can be no rule making or legislation which will abrogate them." *Miranda v. Ariz.*, 384 U.S. 436 at 491 (1966).



Affidavit

Notice of Trespass

Infringement on Constitutional Rights

Unconstitutional Use of Electronic Voting Machines

I, Daniel Richard, an inhabitant of the State of New Hampshire, hereby give notice to the General Court that the previous legislature of 1979, with no constitutional authority to do so, did adopt N.H. RSA 656:40, to allow local towns to use electronic voting machines on a trial basis in direct violation of Part II, art. 32, and art. 100.

You are hereby instructed under the sovereign authority of the people, protected by Part I, art. 1, art. 2, art. 7, art. 12, and art. 32, to cease and desist the use of electronic voting machines which are repugnant and contrary to the constitutional requirements for "sorting and counting votes," as detailed in Part II, art. 32.

You are hereby noticed that any further use of any electronic voting machine by any town, city, or other political subdivision of this State, under N.H. RSA 656:40 further infringes on the sovereignty of the people protected by Part I, art. 1, art. 7, and art. 12, which prohibits any of Part II, Form of Government from exercising any undelegated powers. RSA 656:40 also infringes on Part I, art. 1, and art. 12, as said articles reinforce the sovereignty of the people. The inhabitants are not subject to any other laws, other than those which they, the inhabitants of this State, have given their consent as required by Part I, art. 1. Part I, art. 32 is also the people's authority to instruct you to obey the Constitution.

Any act by the legislature, or any act by any town, city, or political subdivision of this State under the color of law, which amends the Constitutional definition of how votes must be counted, without the consent of the inhabitants protected by Part I, art. 1, infringes on the due process required to amend the Constitution of this State under Part II, art. 100, and is therefore an

B 2 of 7

infringement on the due process clause of Part I, art. 15 and the due process clause of the 14th Amendment of the U.S. Constitution.

*"The legislature may not, even in the exercise of its "absolute" internal rulemaking authority, violate constitutional limitations. Id. at 284, 288. Indeed, "[n]o branch of State government can lawfully perform any act which violates the State Constitution." Latrance, 124 N.H. at 176. Therefore, "[n]o legislative act violating the constitution or infringing on its provisions must be void because the legislature, when it steps beyond its bounds, acts without authority." Id. at 177. Burt v. Speaker 2020.*

Mason's Legislative Manual, Chapter 2, (Constitutional Rules Governing Procedure.)  
Section 7; According to Mason's Legislative Manual, Constitutional Requirements Concerning Procedure must be complied with:

1. *"Being organic in character, constitutional provisions stand on a higher plane than statutes and are mandatory. Constitutional provisions prescribing exact or exclusive time or methods for certain acts are mandatory and must be complied with."*

The laws of the land governing counting of votes in this State were established by the inhabitants on Oct. 31, 1783, as written in the Constitution in Part II, art. 32. Said article established that counting of votes be "governed by a moderator, who shall, in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and wards present...and shall, in said meetings, "in presence of the said selectmen, and of the town or city clerk, in said meetings, sort and count the said votes." and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person..." In other words, the votes must be counted by hand under the supervision of the town selectman, and town or city clerk.

Part I, of the Constitution of New Hampshire. The BILL of RIGHTS contains the essential principles of the Constitution. It is foundation on which the political fabric is "reared", and is consequently, a most important part thereof.

The people are the source and creator of the Constitution of New Hampshire. The people reserved unto themselves a Bill of Rights including, Part I, art. 7, which declares that:

*"The people of this State, have sole and exclusive right of governing themselves as a free, sovereign and independent State, and do, and forever hereafter shall exercise, and enjoy every power, jurisdiction and right pertaining thereto, which is not, or shall not hereafter be by them expressly delegated to the United States of America in Congress assembled."*

*"The division of the constitution into two parts was not made without a purpose, and the name of each part is not without purpose, and name of each part is not without significance. The first is a "bill of rights;" the second is a "form of government." The second is, in general, a grant of powers, made by the people to "magistrates and officers of government," who are declared (in Part I, art. 8) to be grantors' "agents." The first contains a list of rights not surrendered by the people when they formed themselves into a state. Part I, arts. 1, 2, 3; Part II, art. 1. By the reservation of these, they limited the powers they granted in the second part, and exempted themselves, to the stipulated extent, from the authority of the government they created."*

*It was universally understood by the founders of our institutions the jury trial, and other usual provision of bill of rights, were not grants of rights to the public body politic, but reservations of private rights of the subject, paramount to all governmental authority; and this constitutional principle has never been abandoned."*

*"The distinctive character of our bill of rights as the first chapter of constitutional law in which the people, as the original sovereigns, before delegating certain public powers in the second chapter, reserve for themselves, as subjects of the collective body politic, certain rights which they do not give that body," ... Wooster v. Plymouth 62 N.H. 193, 199 (N.H. 1882)*

*Part I, art. 1. All men are born equally free and independent; Therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.*

*Part I, art. 12, establishes a prohibition on Part II, form of government that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this State contrrollable by any other laws than those which they, or their representative body have given their consent."*

Part I, art. 15, provides that "No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgement of his peers, or the law of the land."

*"This provision of the bill of rights was unquestionably designed to restrain the legislature, as well as the other branches of government, from all arbitrary interference with private rights. It was adopted from Magna Charta, and was justly considered by our forefathers, long before the formation of our constitution, as constituting the most efficient security of their rights and liberties."*

*"The object of the clause in our bill of rights seems always to have been understood in this state to be a protection of private rights"* Dartmouth College v. Woodward 1 N.H. 129

*"...none of the reserved rights can be touched without resorting to the people to appoint another convention for the expressed purpose of permitting it."* December 4, 1790 Noah Webster. *Worster v. Plymouth* 62 N.H. 193, 199 (N.H. 1882)

*"That clause, which confers upon the 'general court' the authority 'to make laws,' provides at the same time, that they must not be repugnant or contrary to the constitution..."* Merrill v. Sherburne 1d.210 1818. Therefore, no city, town or political subdivision of this State may exercise powers not delegated to it by the Constitution.

All elected officials are required to take an oath. They swear that they will bear faith and allegiance to the Constitution of the United States, and the Constitution of New Hampshire, and they further swear to faithfully and impartially discharge and perform all duties incumbent upon them, agreeably to the rules and regulations of this Constitution and the Laws of the State of New Hampshire. So help them God. In exchange they have received an emolument from the inhabitants, thereby establishing a fiduciary duty upon them as trustees of the public trust (trust indenture), to protect the private rights of the inhabitants of this State.

Ignorance of the law is no excuse. It should be noted that you have chosen to ignore your obligation as a trustee of the trust indenture (the Constitution), and you have failed to faithfully

protect the private rights of the people in your performance of your duties as a public servant. Your actions are ultra vires, malfeasance of office and a violation of your oath. Therefore, you are now liable in your private capacity.

N.H. RSA 92:2 Oath Required. — No persons chosen or appointed to any public office or to any position where an oath is required...and any such person who violates said oath after taking the same shall be forthwith dismissed from the office or position involved.

Any exercise of undelegated powers by any officer, of any town, is a violation of their oath of office sworn under RSA 42:1, which requires them to protect the rights of the people. Failure to protect such rights subjects that person to removal from office.

*42:1-a Manner of Dismissal; The manner of dismissing a town officer who violates the oath as set forth in RSA 42:1 shall be by petition to the superior court for the county in which the town is located.*

Any use of voting machines, by any city, town or political subdivision of this State, is unauthorized by the Constitution. Such use infringes on the aforesaid rights. When any city, town or political subdivision steps beyond its bounds, it acts without authority. Therefore, such actions are unconstitutional.

Any deprivation rights protected by the Constitutions, by any actor of the State, is a violation of the due process clause of the 14<sup>th</sup> Amendment of the Constitution for the United States of America. Any such wrongdoer shall be liable to an action at law, suit in equity, or other proper proceeding for redress.

*14<sup>th</sup> amendment*

*"nor shall any State deprive any person of life, liberty, or property, without due process of law;"*

Any encroachment of any Constitutional Rights by any two public officials shall subject the offenders to criminal prosecution under Federal laws 18 U.S. Code § 241 - Conspiracy against rights;

*If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or*

enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of 10 years or for life, or both, or may be sentenced to death.

Therefore, any infringement of my Constitutional Rights by any public official's collusion (use of voting machines), shall subject the offender(s) to a civil action in a Federal Court for deprivation of Rights under the color of law.

42 U.S. Code § 1983. Civil action for deprivation of rights;

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

All public officials shall take notice hereof and conduct themselves according to the Constitution of New Hampshire and the Constitution of the United States of America.

I, Daniel Richard, an inhabitant of this State who dwelleth and hath my home in Rockingham County, swear that all the information provided above to be true and correct. Executed the 23<sup>rd</sup> day of the 2<sup>nd</sup> month, Two Thousand, Twenty-Two.

Daniel Richard

State of New Hampshire County of Rockingham

The foregoing instruments was acknowledged before me this 23<sup>rd</sup> day of February, 2022.

Donna T. Judge, JP

DONNA T. JUDGE  
Justice of the Peace, State of New Hampshire  
My Commission Expires March 3, 2026

# **EXHIBIT**

## **F**

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**VOTERS' GUIDE**  
EXPLAINING PROPOSED AMENDMENTS  
TO THE  
CONSTITUTION  
OF THE  
STATE OF NEW HAMPSHIRE  
November 2, 1976

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## QUESTION NO. 8

VOTING  
RIGHTS

### QUESTION:

8. Are you in favor of amending the Constitution to make the following changes relating to elections:

- a) to reduce the minimum age of voters to eighteen;
- b) to make domicile rather than being an inhabitant a prerequisite for the voting privilege;
- c) to repeal certain provisions relating to voting in unincorporated places;
- d) to specify that the receipt and counting of ballots and notification of winners in biennial election contests will be handled by the Secretary of State; and
- e) to provide the right to vote by absentee ballot in biennial or state elections, or in the primary elections therefor, or in city elections or town elections by official ballot?

Yes

No

### AT THE PRESENT TIME:

Several constitutional provisions governing the right to vote and to hold office are unnecessarily complicated and confusing.

For example, although the voting age is already eighteen and the reference in the Constitution to "inhabitant" is already interpreted to mean a person's "domicile," neither of these facts is clear in the Constitution.

The constitutional provision governing voting in unincorporated

places presently requires inhabitants to pay taxes before they can vote, and contains unnecessary details concerning voting procedures. The Constitution also specifies that the Governor and Council must examine the record of votes cast. Presently, however, that technical job is done by the Secretary of State; the Governor and Council act on his advice.

Finally, although the Legislature has provided by statute for absentee voting, there is no constitutional guarantee of this right.

***IF THE AMENDMENT IS ADOPTED:***

All of the following changes will occur:

- a) The New Hampshire Constitution will clearly state that eighteen-year-old citizens may vote.
- b) Every eligible New Hampshire citizen may choose one place within the state to exercise the right to vote.
- c) Provisions relating to voting in unincorporated places will be covered in a more appropriate part of the Constitution.
- d) The Secretary of State will be constitutionally required to examine the records of votes cast and to notify winners of elections.
- e) The right of every person entitled to and wishing to vote by absentee ballot in the specified elections will be constitutionally guaranteed.

**YOU MAY TAKE THIS  
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**EXHIBIT**

**G**

## (Questions proposed by the 1973 General Court)

6. Are you in favor of amending the New Hampshire Constitution to conform to the Federal requirements allowing eighteen year olds to vote?

Yes 147,484

No 57,756

7. Are you in favor of amending the Constitution to remove the restriction which provides that mileage may not be paid legislators for attendance at regular sessions after the first day of July following the convening of such session but retaining the restriction that they can not be paid mileage for more than 90 days for attendance at any such session?

Yes 112,638

No 82,706

GENERAL ELECTION  SUMMARY BY COUNTIES  November 5, 1974	CONSTITUTIONAL					
	Question No. 1		Question No. 2		Question No. 3	
	Yes	No	Yes	No	Yes	No
Belknap . . . . .	6797	3180	7061	3095	7351	2150
Carroll . . . . .	4126	2431	4417	2286	4594	1603
Cheshire . . . . .	9358	4058	10187	3337	10046	2417
Coos . . . . .	4374	3397	4555	3514	5040	2357
Grafton . . . . .	9348	4486	10109	4268	10288	3091
Hillsborough . . . . .	36762	23944	37985	22910	39684	17848
Merrimack . . . . .	16157	7743	16445	7907	17256	5587
Rockingham . . . . .	23207	13284	26658	10672	26088	8671
Strafford . . . . .	11648	5773	12788	5084	12837	3893
Sullivan . . . . .	5467	2655	5784	2348	5909	1665
Totals . . . . .	127244	70951	135989	65421	149093	49282