

UNITED STATES DISTRICT COURT OF NEW HAMPSHIRE

For the District OF New Hampshire

ALBERT S. BRANDANO

Plaintiff

v.

Case No 1:24- CV-00333-SM\_AJ

DAVID SCANLAN, in his official capacity as

Secretary of State New Hampshire

Defendant

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, Albert S. Brandano acting Pro Se; I have no legal training and respectfully request of this court any mistakes in my pleading or omissions are not intentional, or out of disrespect. In this spirit I respectfully request to move this Court for a preliminary injunction to preserve evidence of the Nov. 5, 2024 election as set out below and for the reasons:

- i. Plaintiff and The Public Interest Will Suffer Irreparable Injury Without an Injunction
  - i. Albert S. Brandano personally, as there is no way to distinguish my vote from another New Hampshire voter. All will be harmed as there is no guarantee my vote or the votes of others have been saved and counted accurately.
  - ii. The New Hampshire Secretary of State has consistently failed to follow the federal 22-month record retention law 42 USC §20701 and allowed the destruction of

digital election records in violation of 42 USC §20702. In previous state and federal election cycles, the Secretary of State failed to instruct New Hampshire towns and cities to maintain possession of the Accuvote Memory Cards containing critical election records for the required 22-month retention window after federal elections, as is his duty, per NH RSA 656:42 III (c). Trust in the Nov. 5, 2024 presidential election is critical. Practices of policy and procedures that ensure integrity of outcomes ( Help America Vote Act - Federal Infrastructure Security Act) are all based on transparency, security and must be auditable. Failure to follow exactly usurps voter confidence and the US Constitutional rights to a free and fair election and equal protection guaranteed in the 14<sup>th</sup> Amendment. It also violates the rule of law and causes irreparable injury to not only, New Hampshire citizens, but could also impact the balance of power in the USA if the election falls into question.

- iii. Each Accuvote Memory Card for each machine in each town contains critical voting information along with documented chain of custody requirements the Accuvote scanner uses to determine winners and losers. This evidence must only be preserved in its original existence not a copy of.
- iv. The New Hampshire memory cards are programmed by an independent third party, LHS Associates and or its contractors. LHS codes the memory cards with their proprietary software without oversight from the state. Each memory card is unique by town, contains all race history and is un-auditable by both election officials and citizens due to LHS proprietary software. Memory cards, being the central calculator of ballot counts, are the foundation for determining the race position of every

candidate in New Hampshire. Succinctly, the memory cards memorialize the winners and the losers in towns that use LHS Associates owned or managed voting machines.

## II. Plaintiffs Have a Strong Likelihood of Success on the Merits and Definitions

### i. 44 U.S. Code § 3301 - Definition of records

*(a)Records Defined - In general.—As used in this chapter, the term “records”—includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them;*

### ii. 42 USC §20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

*Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth*

*of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

- iii. 42 USC §20702. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties

*Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 20701 of this title to be retained and preserved shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

- iv. The RSAs in New Hampshire for election record retention have been detailed to exclude digital records from the defined items required for retention per 42 USC §20701 :

- i. RSA 33-A:3-a XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer. The failure of the Secretary of State to follow the Federal Laws requiring the retention and preservation of election records causes harm and violates the constitutional right of due process.

v. The failure of the Secretary of State to follow the Federal Laws requiring the retention and preservation of election records causes harm and violates the constitutional right of due process.

- ii. No Authority has been delegated to Secretary of State Scanlan to ignore federal law. " a delegated power cannot be again delegated" 2 Inst 597; Black's 2d, 347: 2 *Bouv. Inst.* N 1300 A deputy cannot have ( or appoint) a deputy.
- iii. The derivative power cannot be greater than the original form which it was derived. *Noy, Max Wing, Max 66: Finch, Law, b.1,c.3*
- iv. Power can never be delegated which the authority said to delegate never possessed itself. *NJ Steam Co. v. Merch Bank, 6 How, ( 47 US) 344, 407.*
- v. The State of New Hampshire does not currently require voting machine error rates to be tested or utilized as a measurement of accuracy or service in NH. (HAVA-- requirement) making the auditability of electronic records critical for the assessment of integrity.

III. The Injunction Will Not Substantially Injure Others, Furthers the Public Interest, and seeks to enforce requirements mandated by federal law and will not cause any unforeseen or additional costs to the state, towns, cities, or citizens. Without action, 1.3 million NH Citizens will be disenfranchised and possibly the United States presidential election. The 14<sup>th</sup> amendment guarantees equal protection under the law. The failure of the New Hampshire Secretary of State to follow the federal laws while other States comply places the New Hampshire voter as a second class of voter.

Executive branch changes in case law have recognized system over outcome is paramount.(  
exclusionary rules). Redundancy & verification of key events (witnesses to outcomes, logs, and  
chain of custody), and finally policies and procedures that ensure integrity of outcomes  
(Certifications- Audits)

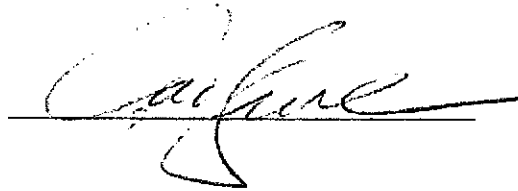
*The exercise of the elective franchise is a social duty of as solemn a nature as a man can be  
called to perform ... Daniel Webster*

### CONCLUSION

Pro Se Litigant Alberts S. Brandano will make himself available to the Court as the court  
requests, for oral arguments, or other requests to support this motion for preliminary  
injunction.

### VERIFICATION

I, Albert S. Brandano, certify that the foregoing facts are true and correct to the best of my  
knowledge and belief.



Albert S. Brandano

STATE OF NEW HAMPSHIRE

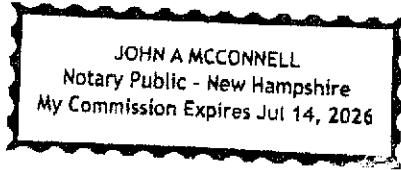
COUNTY OF Buckingham

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of October, 2024, by  
Albert S. Brandano

*John A. McConnell*

(Seal)

Signature of Notary Public



July 14, 2026

Date of Commission ending

Personally known: \_\_\_\_\_

OR Produced Identification: License

Type of Identification Produced: License

**CERTIFICATION OF SERVICE**

I, Albert S. Brandano, do hereby swear that on October 23, 2024 I did hand deliver a copy of this Motion for Preliminary Injunction was served to Brendan O'Donnell Assistant Attorney General, serving as council for Nh Sec. of State David Scanlan.

Dated October 23, 2024.

*[Signature]*