

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Case No.: 218-2022-CV-00676

DANIEL RICHARD

Plaintiff

v.

CHRISTOPHER T. SUNUNU, et al.

Defendant

**EX PARTE EMERGENCY MOTION**  
**FOR PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff Daniel Richard, pro se, brings this Ex Parte Emergency Motion seeking Temporary Injunctive Relief before this Honorable Court to prohibit the counting of any un-verified absentee ballots in the upcoming November 5<sup>th</sup> election. Also, to prohibit the use of voting machines to be used state wide.

**INTRODUCTION**

1. This controversy has been remanded back to this Court by the New Hampshire Supreme Court, case number 2023-0097 on September 12, 2024. The Court Order was sent back to this Court on October 22, 2024.

The N.H. Supreme Court found that:

“based upon the alleged facts, we determine that the plaintiff has sufficiently demonstrated his right to claim relief and has therefore demonstrated standing as to his equal protection claim set forth in Count II.”

2. The N.H. Supreme Court recognized four specific equal protection claims raised by the Plaintiff in this case. The following equal protection claims have been remanded for further proceedings consistent with their decision.
  - A. The sanctioning of, and discretionary use of voting machines in some cities or towns or other political subdivision of the State or not. Currently “103 communities in the State hand count, while at same time permitting voting machine counts in 135 communities.”
  - B. The “non-verifiability” of ballots submitted by voting machines” at the time of Counting.
  - C. And, later auditing (recounts) of the validity of each ballot/vote” produce “an unreliable outcome and hidden opportunity to manipulate computer-counted data,”.
  - D. Thereby depriving the Plaintiff of a lawful count of the ballots and diluting his vote.

### **RELEVANT FACTS**

3. The Plaintiff seeks injunctive relief because he believes that he will suffer irreparable harm, by being deprived again of his constitutional right to a free, fair and equal election process if the injunction is not granted for the aforesaid reasons. If the State and Federal election process is conducted in the manner complained of, the election results themselves will be question and surrounded in a cloud of controversy, as this case has taken two years to go through the court process and while government actors who should know better, continue to permit the un-equal

execution of the election process in direct violation of state and federal election laws.

4. The following specific harm will happen (as an un-equal election process) if the injunction is not granted.

A. It is estimated that 103 communities will count ballots by hand and 135 communities will use voting machines. Such a disparity is in fact un-equal and un-constitutional under both the State and Federal Constitutions. In order for the election process to be free, fair, and equal, this court must either order 103 communities in this state to use machines or it must order the 135 communities to put away their voting machines until the legislature corrects this disparity. In order for the Secretary of State to certify the election results he must ensure that the election was conducted in an equal manner in order for the election to be free, fair and constitutional. The disparity (un-equal) in counting ballots state wide effects all elections outcomes, and is compounded when bigger communities use a voting machine to count un-verified absentee ballots.

B. All Absentee Ballots Envelopes currently being use in this upcoming election on November 5, 2024 will not be verified by the moderator as required by state law. The verification process (N.H. RSA 659:50(b) for absentee voter is not being followed, unverified absentee ballots are being counted by election officials as lawful ballots. The defect was cause by the legislature as it has removed from the inner absentee return envelope the previous election official certificate to verify the identity and qualification of the absentee voter. The current election procedure which is not being followed is statute N.H. RSA 659:50(b) which requires that the moderator must examine the return envelope to ensure that the “affidavit appears to be properly executed.”

N.H. RSA 659:53 **Forms not in Order**, requires that when a moderator finds that an “affidavit is improperly executed,” he shall mark across the face of the envelope, rejected “affidavit improperly executed.”

Currently the affidavit law 659:30 is being ignored under the color of law, at the direction of the Secretary of State and the Attorney General Office who instructed election officials “to follow the guidance of the Election Procedure Manual page 154” which is not law, instead of following the only election procedure law N.H. RSA 659:30 which controls the proper execution of an affidavit.

- C. If the injunction is not granted the following will harm will happen. Once any moderator removed the absentee ballot from the un-verified return envelope and inserted into a ballot box or a voting machine and separated from the envelope and mixed with all the other ballots, there is no way to audit un-verified ballots upon challenge or recount.
  - D. The use of a voting machines to conceal the counting of un-verified absentee ballots dilutes the total votes cast, an illegal manipulation of the machine count, which leads to an unreliable tally and irreparable harm.
5. The issuance of this injunction will ensure a free, fair, and equal election process, free from unapproved governmental interference. And further all the polling stations in this state use hand counting when performing recounts. Requiring all communities to hand count ballots for this election will not cause any harm as the practice of counting ballots without a machine is hundreds of years old. To do otherwise is to permit governmental interference and the un-equal application of the election laws in this upcoming election.
  6. This injunction is the best interest of public at large well, as all the qualified voters in this State are entitled to a free, fair and equal process protected by the State and Federal Constitutions and the election laws written pursuant thereof.

7. In light of the N.H. Supreme Court order the Plaintiff has a substantial likelihood of success on the merits.
8. The Defendants Motion to Dismiss and all of their pleadings (including oral arguments) on appeal, failed to answer or deny any of the equal protection claims raised by the Plaintiff. The Defendants also failed to answer or deny the Plaintiffs state equal protection claims, and of the Federal claims raised by the Plaintiff in this instant case. In fact, the Defendants don't and have not denied the Plaintiffs claims, but rather the Defendants have argued that the un-equal application of the election laws is lawful, and claimed that Plaintiff lacks standing, the N.H. Supreme Court disagrees. See also Baker v. Carr, 369 U.S. 186, 205-06 (1962).
9. Wherefore, under Superior Court Rule 9 "*All facts well alleged in the Complaint and not denied or explained in the Answer, will be held to be admitted.*" That is the case here.
10. The N.H. legislature has established a statutory duty (N.H. RSA 659:50(b) "*the affidavit appears to be properly executed*") upon which all moderators in the state must follow before they can remove a ballot and count it. Moderators must therefore reject any absentee ballots in any election that is void of a properly executed affidavit as required by N.H. RSA 659:53.

### **CONCLUSION**

11. The Defendants have not articulated under what authority they may apply the State and Federal election laws in an un-equal manner. The bottom line is the State and Federal Constitutions and the election statutes written pursuant thereof, require

that all election laws for State and Federal offices must be conducted in an equal manner.

12. The State has a compelling interest and a duty to ensure that every ballot cast must be that of a qualified voter.

WHEREFOR, the Plaintiff respectfully request that this honorable Court:

- (A) Grant injunctive relief and issue an order that voting machines not be used until this controversy is settled.
- (B) Grant injunctive relief and issue an order prohibiting the counting of any un-verified absentee ballots in the upcoming November 5<sup>th</sup> election.
- (C) Grant any other relief that the Court deems just and proper.

Respectfully submitted;

Daniel Richard  
Pro, se

Date: October 29, 2024

/s/ Daniel Richard  
Daniel Richard  
95 Rockingham Rd.  
Auburn, N.H. 03032  
[1danielrichard@protonmail.com](mailto:1danielrichard@protonmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing was served upon the Defendants via Court's electronic filing system.

Date: October 29, 2024

/s/ Daniel Richard  
Daniel Richard

