

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Case No.: 218-2022-CV-00676

DANIEL RICHARD

Plaintiff

v.

CHRISTOPHER T. SUNUNU, et al.

Defendant

OBJECTION TO THE STATE DEFENDANTS

MOTION TO DISMISS

1. In the interest of judicial economy, Plaintiff's Objection to the State's Motion to Dismiss dated 12/04/2024 is hereby incorporated by reference.
2. This case has been remanded back to this court to address Plaintiff's equal protection claims raised in this case. The N.H. Supreme Court on 09/12/2024 found that "*Based upon the alleged facts, we determined that 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*".
3. Defendants' Motion to Dismiss should be dismissed because they failed to meet their burden of proof (*Alexander v. South Carolina State Conference of the NAACP*, No. 22-807 602 U.S. (2024)). Under recent precedents of the Supreme Court of the United States (SCOTUS), the burden of proof now lies with Defendants to establish why their statutory scheme is free, fair and equal and is

not a violation of Plaintiff's constitutional rights to a free, fair, and equal election process. Defendants' arguments are mere sophistry designed for delay because their citations of earlier state precedents are inferior and overruled pursuant to *Avery v. Comm'r, N.H. Dep't of Corr.* (2020). Defendants' citations of lower federal court decisions are also inferior and not applicable by the recent line of Scotus decisions and precedent established in *Baker v. Carr*, 369 U.S. 186, 205-06 (1962), *Moore v. Harper et al*, 600 U.S. 1 (2023), *Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 576 U. S. 787. *Alexander v. South Carolina State Conference of the NAACP*, No. 22-807 602 U.S. (2024).

4. All Defendants exhibit structural blindness: they argued in past briefs and now in this second Motion to Dismiss, their continued belief that their old statutory scheme (N.H. RSA 656:40, RSA 656:41, RSA:656:42) allows Defendants to delegate unconstitutional government power as the Ballot Law Commission and/or local towns or cities in a Dillon Rule State cannot make law. Under the Paragraph 3 line of cases, this is now clearly understood to be executive fallacy an invalid use of authority to assume the ability and discretion to establish by local rule or policy an unequal manner in which ballots will be counted throughout the State for local, State and Federal elections. Plaintiff alleges that Defendant's statutory scheme is a direct violation of separation of powers (Part I, art. 37), as the Ballot Law Commission and the towns or cites cannot make law. Defendants statutory scheme is also prohibited by the equal protection clause in the Const. of N.H. Part I, art. 1, art. 11, and the 14th Amend. to the U.S. Constitution, *Moore v. Harper et al*, 600 U.S. 1 (2023), *Arizona State Legislature v. Arizona Independent Redistricting Comm'n*, 576 U. S. 787. *Baker v. Carr*, 369 U.S. 186, 205-06 (1962).
5. Plaintiff alleges that Defendant's statutory scheme (N.H. RSA 656:40, RSA 656:41, RSA:656:42) is in conflict and is contrary and repugnant to the state election procedure statutes (absentee voter verification) N.H. RSA 659:50(b)(c)

and RSA 659:53 *FORMS NOT IN ORDER*. Plaintiff further argues that the Defendant’s statutory scheme is also prohibited by the Federal Elections Clause Article 1, Section 4, and 14th Amendment of the U.S. Constitution. *Moore v. Harper et al*, 600 U.S. 1 (2023), *Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 576 U. S. 787. *Baker v. Carr*, 369 U.S. 186, 205-06 (1962).

6. The Federal Elections Clause, Article 1. Section 4, delegated to the N.H. Legislature the duty to establish *the time, place and manner* in which Federal Elections are conducted. This is a well-established fact in law and now settled law under the aforesaid precedent that the **duty** to establish the time, place and manner of conducting **Federal** election in this State cannot be exercised by any state actor other than by the Legislature of this State for any reason; this is a fact in law under the aforesaid Federal laws and precedent.

7. The *Moore v. Harper et al.* (2023) case addressed the federal issues relevant to this case, concerning the state legislatures exercise of lawmaking power.

... “*But fashioning regulations governing federal elections “unquestionably calls for the exercise of lawmaking authority.” Arizona State Legislature, 576 U. S., at 808, n. 17. And the exercise of such authority in the context of the Elections Clause is subject to the ordinary constraints on lawmaking in the state constitution.*”

“*Were there any doubt, historical practice confirms that state legislatures remain bound by state constitutional restraints when exercising authority under the Elections Clause. We have long looked to “settled and established practice” to interpret the Constitution. The Pocket Veto Case, 279 U. S. 655, 689 (1929). And we have found historical practice particularly pertinent when it comes to the Elections and Electors Clauses. Smiley, 285 U. S., at 369 (Elections Clause); Chiafalo v. Washington, 591 U. S. (2020) (slip op., at 12–14) (Electors Clause)*” ...

8. The following alleged facts raised by Plaintiff in this case were acknowledged as conferring standing by the N.H. Supreme Court, item 20 and 21 of their order. The following questions of law must now be addressed in this case. Plaintiff asserts the Defendant's statutory scheme violates the equal protection clauses of the State and Federal Constitutions by the election laws written or otherwise dictated or practiced by state actors pursuant thereto.

9. For the court to decide this issue, the following questions provide the answer:
 - A. Can the legislature permit by statute the un-equal application of the election laws of this state, by permitting 103 communities to count ballots by hand, and at the same time permitting 135 communities to use voting machines? The answer is no.
 - B. Is it legal for any moderator in this state to remove absentee ballots from their envelopes if the affidavit is not properly executed? The answer is, no.
 - C. Is it legal for any moderator in the state to count unverified and uncertified absentee ballots? The answer is no.
 - D. Is it legal for any moderator in the state to use a voting machine to conceal the counting of un-verified and un-certified absentee ballot (mail-in ballot)? The answer is no.
 - E. Is it possible to lawfully recount un-verified and un-certified absentee ballots after they've been inserted into a voting machine and mixed with other lawful ballots? The answer is no.
 - F. Is it legal for any moderator in the state to certify the count of their local election results if they counted un-verified and un-certified absentee ballots (mail-in ballots)? The answer is no.

10. Defendants have chosen not to answer Plaintiff's claims, but instead filed two superfluous motions to dismiss in order to avoid answering the aforesaid

questions. What Defendant's are accused of doing is illegal under State and Federal laws. The following is the statutory consequences for failing to conduct the election in a manner prescribed by the State and Federal Constitutions, and the election laws written pursuant thereof.

11. It is an undisputed fact that Defendants' statutory scheme (N.H. RSA 656:40, RSA 656:41, RSA:656:42) permits an un-equal application of the State and Federal election laws, which Defendants do not dispute, as they believe there is nothing wrong with doing so. This overlooks and evades that there is a defect in the election laws of this state created by the legislature, which Defendants evade addressing for political reasons allowing improper manipulation of the voting process, resulting in unreliable and unverifiable voting outcomes. In order to establish trust in the voting system, the following vital question must be answered, "under what authority is it permissible for Defendants to allow those who vote by mail not to verify who they are, when every other voter in this state who cast a ballot, must verify who they are with a state approved identification in order to prove that they are in fact qualified to vote?" In the 2020 State and Federal Elections, the state counted **260,217** non-conforming, un-verified absentee ballots, out of a total of 814,449 ballots cast altogether. Thus, 32% represents not only the highest number of absentee votes ever cast in this State elections but a record-shattering increase in non-conforming, unverified able absentee voting. This 32% of the total vote represents an illegal and unverified record number of votes impacting the trustworthiness and validity of the reported outcomes.
12. It is an undisputed fact that in this state that those who mail-in their absentee ballot under the Defendant's *statutory scheme* do not have to prove who they are, or whether they are qualified to vote or not. This is unequal application of State and Federal elections laws.

Criminal interference in State and Federal Elections

13. Secretary of State David Scanlon and Attorney General John Formella have acted in bad faith by modifying the *Election Procedure Manual* (herein after E.P.M.) on page 154, by changing the legal definition of a properly executed affidavit. The S.O.S. and the A.G. without authority to do so, have changed the affidavit requirement to vote by creating a new definition which is contrary and repugnant to the legal definition of an affidavit used for hundreds of years by every court in this State; as required by state statute in 262 places where the execution of an affidavit is required, and in 12 election law statutes, including N.H. RSA 659:27. This unauthorized illegal change by state actors destroys Plaintiff's right to mount election challenge(s) (pursuant to the election challenge statute) on the grounds that the affidavit is not properly executed under the statutory definition of a properly executed affidavit in RSA 659:30.

14. Plaintiff alleges that S.O.S. and the A.G. are illegally interfering with the election process by established a new definition of a properly executed affidavit, created by them on page 154 of the E.P.M. The S.O.S. and the A.G. are enforcing the E.P.M. as law; Defendants assert or imply that their definition of properly executed affidavit in the E.P.M, somehow supersedes or legally replaces the State and Federal Constitutions and the election procedure statutes written pursuant thereof. Let's be clear the E.P.M. is their work product and written by the S.O.S. and approved of by the A.G. and not the N.H. Legislature, *and therefore not law* as stated in the E.P.M. on page iv, V. 2024.0.

15. The S.O.S. and the A.G. are now threatening voters into compliance with their non-law E.P.M. On October 30, 2024, an e-mail from the A.G. and the S.O.S. was sent out statewide, "*Joint Memorandum*" to New Hampshire Election Officials informing them that if any voter attempts to challenge an absentee ballot on lawful grounds (such as the affidavit is improperly executed) they will be referred to the

A.G. This raises the Question? Referred for what exactly? Not following the E.P.M.? This coercive control implies improper state retaliation for voter challenges to an overreaching A.G. and S.O.S. scheme that improperly impacts elections.

16. The fact of the matter is the moderator in every voting location in this State has a Constitutional duty under Part II, art. 32, and statutory duty under Chapter 659, Election Procedure, *Processing Absentee Ballots*, N.H. RSA 659:50(b) which requires that every moderator in the State shall verify (b)(c) that: “The affidavit appears to be properly executed;” and if the affidavit is not properly executed, then it can’t be counted. Then under N.H. RSA 659:53 *Forms Not in Order...* “the moderator, shall not open the envelope containing the ballot and shall mark across the face of the envelope the reason the ballot is rejected, such as "rejected as not a voter" "voted in person," "affidavit improperly executed," (Emphasis added) ... This mandatory affidavit requirement has been law in this State since 1942 (still is) when the first election statutes for absentee voting procedure were created by the N.H. Legislature. The Secretary of State and the Attorney General are acting in bad faith in this case by instructing all election officials in New Hampshire to ignore the aforesaid mandatory election laws written by the legislature (to verify absentee voters are in fact qualified to vote). The S.O.S. and the A.G. are interfering with the election process by instructing moderators state-wide to enforce and follow their E.P.M. as law, instead of the laws of the land.
17. The Town of Auburn and every other voting location in the state relies on the E.P.M. as law. The S.O.S. and the A.G.’s enforcement of the E.P.M. as law causes the following criminal offense to happen by knowingly instructing moderators state-wide to count illegal ballots under the color of state law. When any moderator in the State removes an absentee ballot from a return envelope that is void of a lawfully executed affidavit and permits such a ballot to be inserted into a

voting machine to conceal the fact the ballot is un-verified, it is a criminal offense under state statute for the following three reasons detailed in Chapter 666 PROVISIONS FOR PURITY OF ELECTIONS, N.H. RSA 666:2 *Official*

Malfeasance:

- I. He shall knowingly receive and count any illegal vote;
- IV. He shall knowingly add any illegal vote to the number of legal votes cast;
- VI. He shall fraudulently declare the outcome of the election of any officer.

18. Plaintiff also alleges that it is criminal offense under N.H. RSA 666:3 *Official Misconduct for any Moderator* (including Town of Auburn) to count any un-verified and un-certified absentee ballots; I.(a) *Any public officer upon whom a duty relating to elections is imposed who shall knowingly fail to perform such duty or who shall knowingly perform it in such a way as to hinder the object thereof shall be guilty of a misdemeanor”* Item I. (b) exposes a major problem in this case, the very person responsible for enforcing the laws of this State, the A.G. and the S.O.S., are Defendants in this case for illegally interfering in the election process. The A.G.’s office repeatedly gaslights the public to coverup their illegal election practices that are contrary and repugnant to State and Federal election laws and equal protection rights.

19. Even if Defendants were to claim negligence under RSA 666:3 II. (a) in this case, such a claim of negligence would still subject them to civil penalties, and Federal liabilities for violation of Federal election laws. Part II of the Const. of N.H. article 5, prohibits the legislature from establishing any law, statute, or rule that is contrary or repugnant to the Const. of N.H.

“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 1 N.H. 199. (1818).

20. Defendants not only refused to address the aforesaid state issues, and they also have completely ignored the fact that when the Town of Auburn, and all other voting districts in this State conduct Federal elections in parallel with State elections, they are also bound by the Federal Elections Clause, Article 1, Section 4 (time, place and manner), and also in this case *the Equal Protection Clause* of the 14th Amendment of U.S. Constitution and U.S. Code § 10101 (a)(2)(A)(b), and 52 U.S. Code § 20511 (1)(C), (2)(A)(B), and the relevant precedent of the Supreme Court of the United States (SCOTUS) cited above.
21. Plaintiff alleges that the Defendants’ statutory scheme creates a disparity between the methods of counting votes statewide, as such practice is un-equal because it violates the *Equal Protection Clause* of the 14th Amendment as detailed in this case.
22. The Town of Auburn currently uses use three different methods of counting ballots, (1), The moderator hand counts ballots inserted in a ballot box, (2) At the same time the Town uses voting machines to count ballots also. (3) It counts un-verified and un-certified absentee ballots (mail-in ballots) in both processes.
23. Three different methods of counting ballots by Town of Auburn is prohibited under U.S. Code § 10101 (a)(2)(A)(b), which states: (2) *No person acting under color of law shall— (A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under*

such law or laws to other individuals with the same county, parish, or similar political subdivision who have been found by State officials to qualified to vote;

24. Plaintiff asserts that when the Town of Auburn chooses to use voting machines to count un-verified and un-certified absentee ballots in a Federal Election, it violates Federal law because qualified voters who cast their ballots in person are treated differently than absentee voters who mail-in their ballots, as those who vote in person must prove who they are, and absentee voters (mail-in voters) do not. This disparate treatment violates the law and also is subject to counting illegal and unqualified votes, which dilutes Plaintiff's vote and leads to multiple crimes, including ballot box stuffing.

25. When the Town of Auburn uses voting machines to count un-verified and un-certified absentee ballots (mail-in ballots) it violates Federal law. It's a Crime under 52 U.S. Code § 20511 (1)(C), to commit ballot box stuffing. When the Town of Auburn uses voting machines to counts un-verified and un-certified absentee ballots (mail-in ballots) to certify any election results in any election, including, but not limited to Federal Elections it deprives Plaintiff of free, fair, and equal election process, which dilutes his vote.

26. Plaintiff also alleges that Defendants counting of un-verified and un-certified absentee ballots (mail-in ballots) violates 52 U.S. Code § 20511 (2) *knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of the State of a fair and impartially conducted election process, by— (A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the state in which the election is held; or*

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the state in which the election is held, ...

REQUEST FOR RELIEF

Therefore, it is the wish of the plaintiff that this Court deny the State Defendants Motion to Dismiss, and issue sanctions for frivolous filings against Defendant.

VERIFICATION

I, Daniel Richard, certify that the foregoing facts are true and correct to the best of my knowledge and belief.

December 16, 2024

/s/ Daniel Richrd
Daniel Richard

CERTIFICATION

I Daniel Richard do hereby swear that on December 16, 2024, I did e-mail a copy of this Motion to the Defendants Attorneys of record on turbo court.

Dated: December 16, 2024

/s/ Daniel Richard