

THE STATE OF NEW HAMPSHIRE SUPREME COURT

No. 2023-0097

Daniel Richard

v.

Christopher Sununu, et al.

MEMERANDUM OF LAW

THE ISSUE OF STANDING

The Honorable Supreme Court of N.H. is soliciting amicus briefs or memoranda on the issue of Standing in the Richard v. Sununu et al. case number 2023-0097. I offer the following memoranda in support of the Appellant's position on Standing.

Appellant has Standing under State and Federal law because he is a *Citizen* of the State of New Hampshire, an *inhabitant* of Auburn (Part I, Art. 11, Part II, Art. 30) and a *tax payer* (Part I, Art. 12) therefore, he has an a constitutionally protected right to vote for state and federal offices under the Constitution of New Hampshire (Const. of N.H.) Part I, Art. 11. and Art. 12 (1784) and Article 1. Section 2. (1788), and the Seventeenth Amendment (1913) to the Constitution of the United States of America (U.S. Const.).

The Const. of N.H. Bill of Rights Part I, Art. 1, Art. 2, Art. 8, Art. 11, Art. 12, Art. 14, Art. 15, and Art. 20. All provide the authority for the Appellant to 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 of the laws of 1805,

“...This suit was brought by the petitioner as a "citizen, elector and taxpayer" of the state...” [Smiley v. Holm, 285 U.S. 355, (1932)].

The last article on the Const. of N.H. Part II, Article 101 ... “declares that this form of Government shall be enrolled on parchment ... “and be part of the laws of the land.” Blacks Law 4th edition defines the law of the land as:

Due process of law (q.v.). By the law of the land is most clearly intended the general law which hears before it condemns, which proceeds upon inquiry, and render judgment only after trial. Duppy v. Tedor, a 204 La. 560, 15 So.2d 886, 891. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Rich Hill Coal Co. v. Bra-shore, 334 Pa. 449, 7 A.2d 302, 316; ...

Both constitutions, state and federal, (Const. of N.H. Part I, Art. 11; Part II, Art. 5, and Art. 32, (1792); and U.S. Const. (1788) Article 1. Section 4) proscribe that the N.H. legislature shall establish the time, place, and manner in which all elections in the State of N.H. shall be conducted. [Smiley v. Holm, 285 U.S. 355, (1932)], Moore v. Harper et al. (2023).

The N.H. legislature is defined by the Const. of N.H. Part II, [Art.] 2 [Legislature, How Constituted.] The Supreme Legislative Power, within this State, shall be vested in the Senate and House of Representatives, each of which shall have a negative on the other (June 2, 1784). As the constitutionality of the N.H. Legislature actions affecting the Appellant’s federal rights and the federal election process is in question, the recent Moore v. Harper et al. (2023) decision is now binding precedent on this Court.

“A state legislature’s “exercise of ... authority” under the Elections Clause, we held, “must be in accordance with the method which the State has prescribed for legislative enactments.” Smiley, 285 U. S., at 367. Nowhere in the Federal Constitution could we find “provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the

constitution of the State has provided that laws shall be enacted.” Id. at 368, Pg. 15... [Smiley v. Holm, 285 U.S. 355, (1932)], (Moore v. Harper, et al. (2023)).

The Appellant has standing, as he stated in his complaint that the Defendants have improperly exercised undelegated powers, by establishing colorable statutes to control all local, state, and federal elections, in manner prohibited by the Const. of N.H. Part I, Art. 1, Art. 12, Art. 15, and Part II, Art. 100; and Article 1. Section 4. which has disenfranchised the Appellant and improperly diluted his vote by the state’s passage and use of the following colorable state election statutes.

The statutory election laws schemes complained of, namely NH RSA 21:6, NH RSA 21:6-a, NH RSA 654:1, NH RSA 654:13, NH RSA 656:40, NH RSA 656:41, NH RSA 656:42 and NH RSA Chapter 657, enforced as law by the Defendants, has unconstitutionally amended or altered the election law provisions of the Const. of N.H. Part I. Art. 1, Art. 11, Part II. Art. 32, and Article 1. Section 2 without the consent of the inhabitants, in direct disregard and violation of the mandatory procedural due process requirements of the Const. of N.H. Part I. Art. 1, Art. 12, Art. 15 and is prohibited by Part II. Art. 5 as follows: *“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) and Part II, Art. 100, and also prohibited by Article 1. Section 4 and the due process clause of the 14th Amendment to the U.S. Const. [Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)).*

The Defendants enactment and or enforcement of such colorable state election laws in a manner not provided for by the Const. of N.H. Part I, Art. 11 and Article 1. Section 4 of the U.S. Const. is prohibited by the due process clause of the Const. of N.H. Part I. Art. 1, Art. 12, and Art. 15; and such state legislative actions are also prohibited by Article 1. Section 4 and the due process clause of the 14th Amendment to the U.S. Const.

[Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)). They thereby deprive the Appellant of a free, fair, and equal election process.

The Appellant claims that NH RSA 21:6, NH RSA 21:6-a, and NH RSA 654:1, NH RSA 654:13, NH RSA 656:40, NH RSA 656:41, NH RSA 656:42, and NH RSA Chapter 657, enforced as law by the Defendants, permits the state and federal elections to be conducted manner that is contrary and repugnant to the mandatory due process provisions of the Const. of N.H. Part I. Art 11, and Part II. Art. 32, and Article 1. Section 4 of the U.S. Const. in a scheme which has disenfranchised the Appellant and diluted his vote by the state's passage and use of the following colorable state election statutes.

The Appellant claims that the statutory schemes complained of have caused the unequal application of the election laws, and deprive the Appellant of a free, fair, and equal election process and outcome for *all* offices, local, state, and federal elections in N.H. It is a fundamental federal and state right for equal application of election laws as between all citizen inhabitant taxpayer voters of this state and their equal fair vote is protected by the Const. of N.H. Part I, Art. 1, Art. 11, Art. 12, Art. 15, and the equal protection clause of the 14th Amendment.

Constitutional language synchronicity

The U.S. Const. (adopted in 1788 -- 4 years after the passage of the NH State constitution in 1784) established the election process for all federal offices (regardless of state) in Article 1, Section 2 (qualification clause) and Article 1, Section 4 (the elections clause). Therefore, the power to choose federal representation cannot be dismissed or overlooked. While reserved to the states (under the 9th and 10th Amendments to the U.S. Const) this use of the exact same word inhabitant (and definition) is also in federal Article 2, Section 1 of the U.S. Const (qualification clause) used in the State Const. of N.H. Part I, art. 11, and Part II, art. 30.

The Appellant's lower court complaint raised federal questions from the start in his complaint, which was briefed on Appeal to this Court. The Appellant claims that NH RSA 21:6, NH RSA 21:6-a, NH RSA 654:1, NH RSA 654:13, NH RSA 656:40, NH RSA 656:41, NH RSA 656:42 and NH RSA Chapter 657; enforced as law by the Defendants, violates Article 1. Section 2, Article 1. Section 4, Article 6, the 9th and 10th Amendments, and both the due process clause and the equal protection clause of the 14th Amendment and 17th Amendment by acting to override the state constitutionally mandated process using rules, legislative statutes, and email and oral communications to voting officials across the state. This failure to follow and uphold the law by authorities, while substituting alternative voting processes as though legitimate is egregious violation and an untrustworthy public act under color of law.

The Appellant filed new late authorities supporting this state voting error/violation position on August 14, 2023, and such authorities are now part of the record unrebutted by Defendants. The Appellant asserts *Moore v. Harper, et al.* (2023), (cited by this court Nov. 29, 2023) to be relevant and binding on this Court.

“Although the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law, federal courts must not abandon their duty to exercise judicial review. This Court has an obligation to ensure that state court interpretations of state law do not evade federal law. For example, States “May not sidestep the Takings Clause by disavowing traditional property interests.” Phillips v. Washington Legal Foundation, 524 U. S. 156, 167. While the Court does not adopt a test by which state court interpretations of state law can be measured in cases implicating the Elections Clause, state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections... Moore v. Harper et al. (2023) Syllabus Pg. 5.

[*Smiley v. Holm*, 285 U.S. 355, (1932)] (*Moore v. Harper et al.* (2023)).
Established a duty upon the state courts to perform judicial review of any state legislative

act resulting from the state legislature's improper exercise of powers delegated to it by Article 1, Section 4 of the U.S. Const; and for the state courts to ensure that the legislature (1) acted with-in the scope of its enumerated powers when exercising its law-making authority under the Election clause Article 1, Section 4 of the U.S. Const; and (2) for the state courts to ensure compliance with federal election laws.

[Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023) are redistricting cases, requiring SCOTUS to examine the powers delegated to the state legislature in Elections Clause, Article 1, Section 4 of the U.S. Const. The Moore court cited Smiley from 1932, which SCOTUS detailed as other duties of the state legislatures incorporated into Article 1, Section 4 (time, place and manner).

SCOTUS lists some of the state legislatures' other Article 1, Section 4 duties besides redistricting on pg. 21 and 22 of the Moore v. Harper opinion:

*“By fulfilling their constitutional duty to craft the rules governing federal elections, state legislatures do not **consent**, ratify, or elect—they make laws. Elections are complex affairs, demanding rules that dictate everything from **the date** on which voters will go to the polls to **the dimensions and font of individual ballots**. Legislatures **must “provide a complete code for congressional elections,” including regulations “relati[ng] to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.”** (Emphasis Added) [Smiley v. Holm, 285 U.S. 355, (1932)]; (Moore v. Harper et al. (2023)).*

This Court recently cited the Moore v. Harper on November 29, 2023; “*see also Moore v. Harper, 143S. Ct. 2065, 2088-90 (2023) explaining that, in redistricting cases, the Supreme Court has an obligation to ensure that the state court interpretations of [state] law do not evade federal law.*”

The Appellant believes that since right to vote is the first fundamental right in the U.S. Const. Article 1, Section 2 as ratified by the states in 1788, predates the establishment of the U.S. Bill of Rights in 1791. Therefore, the federal standards of review on the Appellants federal voting rights apply.

The 2nd Amendment decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) [hereinafter “*Heller*”] and *New York State Rifle & Pistol Assn., Inc., et al. v. Bruen* [hereinafter “*Bruen*”] decisions have changed the methodology that all state Courts must now employ when examining any controversy involving federally protected rights incorporated into the U.S. Const. and its Amendments.

Therefore, the Appellant believes that current federal standard of review use in the *Heller*, case and then used in *Bruen*, is the proscribed SCOTUS methodology for examining any of other enumerated individual rights in the U.S. Constitution and its Bill of Rights.

The Bruen Court abolished the past practice by state and federal courts of applying a means, ends scrutiny test which called for subjective judging. SCOTUS now requires all courts both state and federal, when examining federal constitutional rights, the courts must apply a two-part test: (1) examination of the plain text, (2) its historical context, usage and custom *at the time the right was adopted and ratified* by the people.

The Bruen Court found that “*when plain text of the constitution covers an individual’s conduct, the Constitution presumptively protects that conduct.*”

The Bruen Court citing the Heller Court expanded this protection:

“*This Second Amendment standard accords with how we protect other constitutional rights. Take, for instance, the freedom of speech in the First Amendment, to which Heller repeatedly compared the right to keep and bear arms.*” 554 U.S., at 582, 595, 606, 618, 634–635. “[w]hen the Government

restricts free speech, the Government bears the burden of proving the constitutionality of its actions.

... “*And beyond the freedom of Speech, our focus on history also comports with how we assess many other constitutional claims. If a litigant asserts the right in court to “be confronted with the witnesses against him,” U. S. Const., Amdt. 6, we require courts to consult history to determine the scope of that right. See, e.g., Giles v. California, 554 U. S. 353, 358 (2008) (“admitting only those exceptions [to the Confrontation Clause] established at the time of the founding” (internal quotation marks omitted)). Similarly, when a litigant claims a violation of his rights under the Establishment Clause, Members of this Court “loo[k] to history for guidance.” American Legion v. American Humanist Assn., 588 U. S. ___, ___ (2019) (plurality opinion) (slip op., at 25). We adopt a similar approach here.” Pg. 16 of the New York State Rifle & Pistol Assn., Inc., et al. v. Bruen.*

Therefore, the same standard applies to the Appellant’s federal voting rights in this case.

INJURIES IN FACT

Count I

The Appellant has standing as he was denied the right to vote on March 8, 2022 by the Town of Auburn under color of state law thereby creating the current controversy. The Town of Auburn and the state Defendants cite the statutory schemes complained of in the case, as their authority to disenfranchise the Appellant on that day. In an attempt to appease the Appellant, the Town of Auburn now claims that they have exercised the powers of the legislature (not the Constitution) to enact and establish an ad hoc hand count policy (by local rule) thereby establishing (at this time) at least two different ways of counting votes in the Town of Auburn for all local, State and Federal, elections. Said continued actions by the Town of Auburn violate the equal protection clauses of the Const. of N.H. Part I. Art. 1 and 11; This non-compliant exercise of non-delegatable powers by the Town of Auburn is also prohibited by the equal protection clause of the

14th Amendment. Accordingly, Appellant continues to be harmed by the deprivation of a free, fair, and equal election process and reliable Constitutionally-faithful outcome.

Also, the plaintiff has a bonafide personal stake in the outcome of the election in which he was denied to vote, with a personal stake in his right under the NH Constitution Part I, Art. 11 to cast a ballot that is free from potential or actual manipulation by invisible electronic means. The Defendant Town and NH Secretary of State " did cause harm" to the plaintiff for these named reasons. Defendants continue to enforce and promulgate their 'statutory' scheme(s) as law, as continuing harm to Appellant who continues to be deprived of a free, fair, and equal election process and outcome in local, State and Federal Elections.

The NH legislature recently established a hand count prohibition in all towns that use electronic voting machines, which now requires that any town or city that uses a voting machine can no longer have their ballots hand counted. Therefore, voters like the Appellant, who object to using voting machines on safety or constitutional grounds will now be denied the right to vote unless they use a voting machine. This is the nature of the Appellants complaint on March 9, 2023, which issue is now a Statewide problem, as 103 communities use hand count ballots in this State with the rest using electronic voting machines.

Count VI: harm caused by amending the Constitution without Consent

The statutory scheme used by the Defendants to justify depriving the Appellant his constitutional right to vote originates in details of Count VI. The 1976 ballot question #8 improperly *statutorily* amended the election law provisions of the Const. of N.H. Part I, Art. 11 and Part II, Art.30. Said statutory "amendment" repealed the constitutional definition of qualified voters by "repealing" Art.13 [Qualification of Electors.]; it also repealed Art.28 [Senator, How and by Whom Chosen; Right of Suffrage]; repealed and altered Art.30 [inhabitant defined] by substituting "is domiciled" for "dwelleth and hath his home"; and repealed Art. 3 [inhabitants of unincorporated places; Their rights, etc.]

All of these purported alterations to the Const. of N.H. claimed to repeal or alter vote-provisions state constitution but were improperly presented and later improperly

enrolled as valid state “law” but without the informed consent of the inhabitants, as required by Part I, Articles 1, 12, 15, and Part II, Art. 5. Art. 100.

The Appellant has standing as this Court has already declared for question #8(b) (inhabitant, domicile change), and question #8(d) (notification of election results) which accordingly are null and void. See the argument that follows: the questions were improperly stated as a 5-part substantive question with only one available answer. The state failed to properly inform voters as to what changes would occur with a yes vote on that 1976 ballot question #8 with five illegitimate subparts.

The Defendants rely upon the “inhabitant, domicile change” of the 1976 ballot question #8 to write multiple and ongoing ‘statutes’ regarding voting pursuant thereof, however, these subsequent exercises of state actor authority under color of law are fundamentally flawed and corrupted. Quoting the Fischer Court in 2000:

...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," Fischer v. Governor, 145 N.H. 28, 38-39 (N.H. 2000).

Fischer is cited 8 times on the motion to reconsider on pg. 4, 5, 6, 7, 8, 10 on pg. 23-24. of the appeal. *Gerber v. King*, [107 N.H. 495](#), [500](#), [225 A.2d 620](#), [623](#) (1967) is cited on pg. 28 item 97 of the complaint and item 10, 17, 26 of the motion to reconsider.

The dependent intertwined vote-modification power issue is long settled law, *Gerber v. King* (Concrete Co. v. Rheame Builders, 101 N. H. 59, 61; Opinion of the Justices, 101 N. H. 541, 542; *Penrod v. Crowley*, 82 Idaho 511). This Court has already declared in *Gerber v. King* (1967) that the legislature can not properly submit 5 substantive questions, and only provide the voter with one yes or no choice, as this is a direct violation of the procedural due process required by the Const. of N.H. Part I, Art.

1, Art. 12, Art. 15. and Part II, Art. 100; It cannot be used to amend any provision of the Const. of N.H.

The Gerber Court (1967) reaffirms the Appellants claims that only *the inhabitants* can consent to an amendment to the Const. of N.H. and such also protected by Part II, Art. 5 and Art. 100 that the legislature may only propose an amendment to the constitution one question at a time in order to properly meet the consent provision of the Const. of N.H. in Part I, Art. 1, 12, & 15 and Part II. Art. 100. Said amendments to the Const. of N.H. were achieved in a manner that is contrary and repugnant to the mandatory procedural due process clauses of the Const. of N.H. Part I, Art. 1, 12, 15, and Part II. Art. 5. Art. 100; and said amendment process is also prohibited federally by Art. 1 Section 4 and the due process clause of the 14th Amendment.

Said statutory scheme complained of and used by the Defendants relies on the question #8 (b) to enact a change of the historic definition of a qualified voter from inhabitant to domicile, leaving the legislature to define domicile by political design. Said Amendment question 8 b) is the poisonous tree, and the offending statutes now in operation are its poisonous fruit as an illegitimate statutory scheme presently denying Appellant his rightful constitutional vote.

By exercising undelegated powers and interfering in the election process under color of state law, the Appellees continue to deprive the Appellant of a free, fair, and equal election process. The statutory construction statutes so relied upon by the State improperly redefine the definition of a qualified voter in a manner which is both fatally flawed and unconstitutional.

Count IV: harm caused from amending the Constitution without consent

Count VI of Petitioner's Brief in Chief similarly was used in 1976 to attempt to amend the state constitution to redefine who is a qualified voter. Count IV, NH RSA 21:6 and NH RSA 21:6-a work together, and both statutes are contrary and repugnant to the definition of a qualified voter as provided in the state constitution the constitution Part I,

Art. 11 and Part II. Art. 30, plus Federal Art. 1 Section 2 and the Seventeenth Amendment.

The harm caused by Counts VI and IV is that by enrolling NH RSA 21:6 & 21:6-a. they grant voting rights to non-qualified persons (namely resident aliens) who are not qualified to vote under the state and federal constitutions: [Const. of N.H. Part I Art.11. and the U.S. Const. Article 1, Section 2. By including non-qualified outside voters, the dilution of those properly qualified are not only diluted, but the propensity for manipulation and recruitment of the non-qualified (paid, incentivized, or otherwise engaged ‘to vote’) opens doors to political voter fraud tactics that alter election outcomes.

NH RSA 21:6 & 21:6-a dilute the Appellants vote, because it allows persons not properly qualified and registered pursuant to constitutional mandates to vote under Part I, Art. 11 and to cast ballots in all N.H. Elections, local, state and federal which are then counted as a legal ballot. There is also the inability to properly conduct accurate audits under this convoluted and evolving non-constitutional political system flowing from the post 1976-modifications to the constitution.

The Const. of N.H. Part I, Art.11 provides that “*Every person shall be considered an inhabitant for the purpose of voting*” and Part II, Art. 30 provides “*And every person, qualified as the constitution provides, shall be considered an inhabitant.*”

Statutorily however, NH RSA 21:6 & 21:6-a extends voting rights to resident aliens; as those persons who are not born or naturalized in N.H. All persons born or naturalized in one of the other states of the union or federal territory are citizens of the United States and a citizen of their state also under the 14th Amendment. The right to travel is protected by Article 4. Section 4. (privileges and immunities clause), but it does not convey state citizenship upon emigration from another state. *United States v. Anthony*, [June 18, 1873. Pg. 20. Item 72 of the complaint.]

Under the 9th and 10th Amendment to the U.S. Const. the states retain the authority to define who are its citizens, (1790 Naturalization Act); and the Const. of N.H. Part I. Art. 11, Part II, Art. 30, and Article 1. Section 2. defines voter qualifications. Federal law on emigration defines a resident in 8 U.S. Code § 1101- Definitions:

(33) The term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

Neither the Const. of N.H. nor the U.S. Const. provides the right to vote to a resident alien, and the use of a durational residency as a requirement to vote is prohibited by federal law. 52 U.S. Code § 10502 - Residence requirements for voting

*(b) Congressional declaration: durational residency requirement, abolishment; absentee registration and balloting standards, establishment
Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.*

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

Count II: harm caused by voting machine statutes

The Appellant claims that he was harmed by Defendants exercising undelegated powers to create and or enforce colorable state election laws contrary to the state

constitutional voting laws. The statutory schemes complained of herein impermissibly violate Appellant's right to an election process free of illegal governmental interference. (Const. of N.H. Part I. Art. 11). The three impermissible acts of the legislature (NH RSA 656:40, 656:41 & 656:42) are impermissible legislative (political) acts causally leading to the following injuries:

NH RSA 656:40 materially alters Part II. Art. 32 (without the consent of the inhabitants), materially altering the 200-year-old practice of hand count votes. Hand counting votes were the current (2020 et al) practice in 103 communities throughout the State that follow Part II. Art. 32 (as amended in 1792). Part II, Art. 32. is the N.H. Constitution election clause created by the people. NH RSA 656:40 is the creation of the legislature and politicians manipulating constitutional alterations under color of law.

N.H. is a Dillon-Rule State and not a Home-Rule State, and the cities and town officials have no constitutional authority to change the manner in which the moderator, selectman, or town or city clerk must exercise their constitutional duties under Part II, Art. 32.

The Appellant claims that legislature exercised un-delegated powers when the legislature enacted NH RSA 656:40, 41, & 42 to politically create a new statutory second 'manner' for counting votes (electronic voting machines) not provided by Part II. Art. 32. by acting without the proper consent of the inhabitants, one of the injuries caused by RSA 656:40 is that it sets up an unequal election process across the state. According to 2022 data from the NH Voting Rights Campaign, 103 communities in the State hand count, while at same time permitting voting machine counts in 135 communities. The disparity and non-verifiability at the time of counting and for later auditing (re-counts) of the validity of each ballot/vote is an unreliable outcome and hidden opportunity to manipulate computer-counted data as well as including non-distinguishable illegitimate votes (non-constitutional voters' ballots). Such ultra vires acts by the NH legislature are

prohibited by Part I. Art. 1 & 12; plus, the U.S. Constitutional due process clause and the equal protection clause of the 14th Amendment.

NH RSA 656:40 also, causes an un-equal application of the election laws, it permits local mayors, alderman, or selectman in any city to exercise law making power by adaptation of a local rule, or policy in some towns or cities or not; to count votes by hand or to use electronic voting machines. Now we have two ways of counting votes, the manner provided by the people in Part II, Art. 32. and the new manner created by the legislature to use voting machines. If the manner of counting votes is different, they cannot be equal. Therefore, the Appellant is deprived a free, fair, and equal election process, and outcome.

An injury occurs when cities or towns use electronic voting machines to allow and then count un-qualified, un-verified, and un-certified ballots – ostensibly permitted by statute (argued in Count II, Count III, Count IV, and Count V), to be counted as legal votes. The statutory scheme disenfranchises the constitutionally-legitimate voter as it ultimately affects the outcome in State and Federal races. Towns and cities are free to use machines to count both legal and illegal ballots. The 2020 race saw statistical improbability, and while the GOP maintained its majority in state offices, the all-Federal seats in last few elections have gone to the Democratic Party [Which logically makes no sense. Other voting numbers are similarly suspicious of altered voting political manipulation.]

NH RSA 656:40, 41, & 42 are also contrary and repugnant to **the separation of powers** under the Const. of N.H. Part I. Art. 37 previously cited in Appellant's complaint [pg. 12 item 51.] Appellant's standing to challenge legislative actions that encroach upon his rights for violation of the separation powers doctrine.

As the legislature cannot delegate its authority to make law to the towns or cities or the state ballot law commission - as it presently does, [State Constitution, Part II. Art. 5 and U.S. Constitution, Article 1. Section 4]. [Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)).

The NH Legislature acted without proper authority when it delegated its law-making powers by statute to a judicial body, the Ballot Law Commission using NH RSA 656:40 & 42, also prohibited by Part II. Art. 5; and Article 1. Section 4. [Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)). Such bad faith actions by the Defendants are prohibited by separation of powers under the Const. of N.H. Part I, Art. 37.

The NH Legislature acted without legitimate authority when it delegated by statute [RSA 656:40 & 41] to delegate executive branch enforcement powers using its own rules to other entities it created or caused using the so-called authority of NH RSA 656:42. [Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)). Such bad faith actions by the Defendants are prohibited by separation of powers under the Const. of N.H. Part I, Art. 37.

Count V: harm caused from absentee voting statutes

The Appellant is harmed by the employment of another statutory overreach regarding absentee voting expansion beyond limits constitutionally imposed. NH RSA Chapter 657 is also contrary and repugnant to the Const. of N.H. Part I, Art. 11. Altering this constitutional mandate by statute is expressly prohibited by the Const. of N.H. Part I, Art. 1, 8, 11, 12, & 15. Also, Part II, Art. 5 & 100. The legislature can only propose an amendment to the Constitution, it cannot alter or amend the Const. of N.H. without the consent of the inhabitants, properly obtained under the constitutional provisions.

The harm caused by the expanded absentee voting scheme contained in RSA Chapter 657 is it purports to grant absentee voting rights *to persons neither absent, nor disabled* under Part I Art. 11 and these are the only two categories allowed. Therefore, by expanding this specifically enumerated class of absentee ballot voters, Appellant's true vote is diluted with countless non-true non-verifiable other votes in a political schema not constitutionally derived. Part I Art. 11 **guarantees** the Appellant an election process free from un-constitutional governmental interference in process. The harm cause is two-fold.

First, it creates a new class of voters, namely mail-in voters with all the potential for manipulation and dishonesty in throughout the request, two mailing, collection, and re-mailing processes (not provided for by Part I, Art. 11); and second authorizes overall an unverified, non-certifiable process representing an un-equal application of election laws.

The Appellant has a constitutional right under the state constitution (Part I. Art. 1 & 11) to insist that **only properly qualified ballots** are counted. Here all Inhabitants who vote in person must present identification at the local polling station in order vote, but absentee voters do not prove they are qualified, nor are their ballots re legitimately handled throughout and processed to avoid corrupt and unreliable practices. All absentee ballots since 1979 have this same fatal flaw, because there is no declaration of a specific exemption (seven reason and no selection of exemption) and no verified affidavit, which is proof that no one verifies the qualification or identities of absentee voters as required by Part, Art. 11 as part of the sloppy and omissive execution of the current statutory scheme.

This is prohibited by the equal protection clauses of the state Const. [Part I. Art. 1 & 11.] and prohibited by the equal protection clause of the 14th Amendment. The harm cause by this effect of this un-equal non-verified application of the ‘new’ elections laws as a significant impact on voting outcomes is evidenced on the N.H. Secretary of State's website. It states that the 2014, 2016, and 2018 absentee voting averaged 4%.

The 2020 election saw absentee voting increased to 32%. And 32% absentee ballots cast included un-qualified, un-verified, and un-sworn absentee ballots without proper qualifications.

Count III: depravation of due process

In an un-fair contest against the state, the Appellant was denied the ability to present his expert witness over the safety of voting machines raised in the complaint; and further was denied a trial by jury, depriving the Appellant of due process of law protected by the Const. of N.H. Part I, Art. 15 and 20; and prohibited by the due process clause of the 14th Amendment of the U.S. Const.

JURISDICTION OF THIS COURT

Under the precedent of [Smiley v. Holm, 285 U.S. 355, (1932)] (Moore v. Harper et al. (2023)), this Court has a duty to ensure that the N.H. Legislature acted within the scope of its enumerated powers. This Court must examine the acts of the N.H. Legislature in this case and ensure that the statutory schemes complained of, where enacted in a manner required by both the Const. of N.H. and the U.S. Const. and its amendments.

Therefore, the Appellant seeks the following relief from this Court, which is to declare the statutory schemes of the N.H. Legislature, complained of in Count I through VI (NH RSA 21:6, NH RSA 21:6-a, and NH RSA 654:1. NH RSA 654:13, NH RSA 656:40, NH RSA 656:41, NH RSA 656:42 and NH RSA Chapter 657;) enforced as law be declared void ab initio; and tell the legislature that the changes they seek to enact, must be done so by the consent of the inhabitants; and that state and federal election laws must be written pursuant to both the Const. of N.H. and the U.S. Const. and its amendments.

Remand the complaint back to a lower court for a trial by jury for civil and criminal resolution of the complaint.

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

The Plaintiff certifies that this memoranda complies with Supreme Court Rule 16(11). This brief does not exceed the 6000-word limit.

Dated: April 24, 2024

Daniel Richard
/s/ Daniel Richard

CERTIFICATION

I, Daniel Richard, do hereby swear that on April 24, 2024, I did e-mail a copy of this to all the name Parties via the Supreme Court web portal.

Dated: April 24, 2024

Daniel Richard
/s/ Daniel Richard

VERIFICATION

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

Dated: April 24, 2024

Daniel Richard
/s/ Daniel Richard