

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

SUPERIOR COURT

Daniel Richard

v.

Governor Sununu et al.

No. 218-2022-CV-00676

Motion to Reconsider

1. The Plaintiff respectfully request a Motion to Reconsider granting the Motion to Dismiss. The Plaintiff believes that whether this lower Court's opinion is by mistake or design, this Court's actions and opinion in this case materially and fatally circumvent the NH Supreme Court remand order, which is binding on the lower Court. The NH Supreme Court order mandates that the lower Court conduct further proceedings consistent with its explicit ruling/decision that the Plaintiff has standing in this instant case; for this court to ingeniously work to circumvent a higher court order is to deny justice and a fair outcome based on law, rules, and proper procedure.
2. The Plaintiff believes this lower Court's opinion overlooked several important material and uncontested facts and ruling in law in this case warranting corrective action to reverse the lower court Judge Ruoff ruling issued on March 31, 2025. That ruling, ORDER OF DEFENDANTS' MOTION TO DISMISS, Richard v. Goonan, et al. is wrong in law, wrong in reason, wrong in precedent, and violates standards and recent precedential rulings of the U.S. Supreme Court in 2022, 2023, and 2024. As such it is illegitimate for New Hampshire to defy and flaunt federal mandates, using the reasons and judicial processes argued below. The Plaintiff submits the following in support of his Motion for the lower Court to Reconsider and reverse its decision in this case, and for such other and further relief including but not limited to replacement of the presiding justice for bias and or incompetence, based on political or other fatal flaw.

BACKGROUND

3. This case was remanded back to Rockingham County Court, Judge Ruoff, by the NH Supreme Court after it found that the Plaintiff had sufficiently demonstrated his right to claim relief and had therefore demonstrated standing as to his equal protection claim set forth in Count II, under the following State precedent *Avery*, 173 N.H. at 736-37; and Federal precedent, *Baker v. Carr*, 369 U.S. 186, 205-06 (1962). The NH Supreme Court also stated in its Remand Order that under such precedent, voters have standing to “*bring equal protection challenges to complain of vote dilution*” ...

“(noting that voters have standing to bring equal protection challenges to complain of vote dilution and observing that “[m]any of the cases have assumed rather than articulated the premise in deciding the merits of similar claims”). Because the trial court did not address the plaintiff’s equal protection claim, we remained for further proceedings consistent with this decision. In doing so, we expressed no opinion on the merits of the plaintiff claim.”

THE TRIAL COURT ORDER IS DEFECTIVE ON ITS FACE

4. The Trial Court order permitting the Defendants to file a supplemental motion to dismiss is also defective because the Supreme Court Remand Order does not say anything about the fact that Defendants did not address the Plaintiff’s equal protection claims in their original Complaint. Such a statement by the trial court is an admission to a fact, because Defendants failed to address the Plaintiff’s equal protection claims. Therefore, under Sup. Ct. Rule 9 all facts well alleged in the Complaint and not denied or explained in the Answer, will be held to be admitted.
5. The Remand Order specifically states “*Because the trial court did not address the plaintiff’s equal protection claim, we remained for further proceedings consistent with this decision*”. (Emphasis added).
6. The Trial Court order of 11/04/2024 (2.) Judge Ruoff states “the Court notes that the original Motion to Dismiss did not address the equal protection claim.” Is an acknowledgment by the trial court to a fact that the Defendants did not answer or deny the Plaintiff equal protection claims, under Sup. Ct. Civ. R. 9

7. When on appeal the N.H. Supreme Court overturned Judge Ruoff's lower court ruling that granted the Defendants' earlier Motion to Dismiss, the N.H. Supreme Court determined that the complaint was sufficient and it adequately stated "*a claim upon which relief can be granted.*" Therefore, the effect of the Supreme Court decision is that the plaintiff's complaint is reinstated, meaning the case is no longer subject to dismissal for alleged insufficiency at this stage after remand. Under the remand order of the N.H. Supreme Court, the Plaintiff's case should have proceeded to discovery, mediation, and other pre-trial processes, and trial scheduling. The plaintiff is entitled to both discovery and to be heard on the merits of his claims.
8. The issue of Plaintiffs standing on his equal protection claims were address by the NH Supreme Court and the basis for finding standing was detailed in its remand order. The Defendants arguments and pleadings before the NH Supreme Court to dismiss the Plaintiffs equal protection claims were rejected by the Court, and subsequently over turned this lower court's earlier ruling granting the Defendants first Motion to Dismiss. In response the NH Supreme Court issued a remand order, which is binding on this lower Court.

PROCEDUREAL STEPS POST-REVERSAL

9. When the New Hampshire Supreme Court determined that this lower Court's dismissal was erroneous, it overturned [Judge Ruoff of the Rockingham County Superior Court] the lower Court's ruling granting Defendant's Motion to Dismiss and the plaintiff's complaint was reinstated. Therefore, this case should have proceeded to the next stage of litigation. Under the NH rules of civil procedure, Superior Court rule 3.9.(e)(3) and Rule 9(e)(3), the Defendants are then required by the aforesaid rules to file an answer within 30 days. This Court's order instructing the Defendants to file a new motion to dismiss in lieu of an answer is un-fair and material error in law and procedure.
10. It is unjust and illegitimate to this pro se litigant for this Court to circumvent the NH supreme Court remand order by ordering a new motion to dismiss to be

briefed by only one side, instead of proceeding to the next step in the established legal process required by rules of civil procedure after establishing standing.

11. This Court's order avoided the Plaintiff's right to be heard at such a hearing under Sup. Ct. Rule 12(d) on Motions to Dismiss. The Plaintiff believes this Court's Order instructing the Defendants to file *a new motion to dismiss* was a serious violation of the N.H. Supreme Court Remand Order because this Court lacks authority to circumvent the orders of the NH Supreme Court and also because the one-sided second provision/order improperly delayed the case, established bias in favor of the state and against the pro se, and thwarted the proper handling of a litigated matter by using discretionary judicial power to avoid or violate rules of civil procedure and the remand orders of the state's highest court.
12. The Plaintiff believes that the manner in which this Court circumvented N.H. Supreme Court remand order was un-fair and politically biased, and such order violates the Plaintiff's **due process rights** under the N.H. Const. Part I, art. 14, art. 15, Instead, Judge Ruoff avoided a fair hearing for the Plaintiff and alternately solicited and offered the State a one-sided second Motion to Dismiss. This new unique 'protocol' represents an illegitimate back door to rule for the state while failing to adhere to court rules that deprived Plaintiff of his right to a trial by jury under Part I, art. 20.
13. This Court's Order also deprives the Plaintiff of his state and federal equal protection rights under the N.H. Const. part I, article 1, and the Equal Protection Clause of the 14th amendment, by treating a pro se litigant differently (un-equally) with discrimination in an un-fair contest with government, namely the Defendants.
14. The NH Supreme Court remand order specified that the Plaintiff had established standing on 6 specific issues relevant to the Plaintiff's equal protection claims.
 - a. Plaintiff has equal protection rights under the State Const. Part I, art. 1, art. 11, and the 14th Amendment to the U.S. Constitution.

- b. Recent estimates indicated that state wide there are 103 communities that hand count ballots verses 135 communities who use voting machines to count un-verified, un-certified, absentee ballots; a dual system that is patently un-equal and un-fair.
- c. Plaintiff claims that counting “non-verified”, “non-certified” absentee ballots fed into an electronic voting machine “at the time of counting” is unlawful, as such acts violates state and federal election procedure laws.
- d. Plaintiff claims the fact that inserting “un-verified”, un-certified absentee ballots fed into a voting machine makes it imposable to recount un-verified and un-certified absentee ballot when conducting re-counts.
- e. Plaintiff also claims that Defendants statutory scheme calls into question the “*validity of each ballot\vote*” and such procedure produces “*an unreliable outcome and a hidden opportunity to manipulate computer-counted data*” ... leads to the counting of un-verified, un-certified, absentee ballots in order to certify the election.
- f. Plaintiff claims that the Defendants statutory scheme deprived him of a lawful count of ballots and diluted his vote.

15. This lower Court’s order circumvents the NH Supreme Court remand order by addressing only one of the issues (b) while at the same time ignoring and circumventing a hearing on the other five issues (a)(c)(d)(e)(f) detailed in the remand order for further proceeding consistent with the NH Supreme Court decision. This is also a further bias and substantive error in law. When six issues are remanded for lower court processing to trial, and only one is selectively considered, (with the other five issues ignored), and the case dismissed - the overwhelming appearance is that of extreme ‘outcome’ bias in favor of the State actors, with concordant extreme discrimination against the pro se. The appearance is this was not a fair and impartial court.

THIS COURT’S ANALYSIS OF THE PLAINTIFF’S CLAIMS IS
SUBSTANTIVE ERROR IN FACT AND LAW

16. The lower Court analysis of this case mis-characterizes the nature of Defendants responses meanwhile inventing on Defendants behalf a second Motion to Dismiss. After initiating it, he then ordered the case dismissed. Defendants did not move the court to dismiss this case on remand, but rather the Motion to Dismiss was initiated and then ordered by Judge Ruoff as an abuse of his discretionary authority. This is an error in law since the court rules require the Defendants to file an answer after the Supreme Court orders a remand, not for the judge to instead institute a discretionary second motion to dismiss to avoid a hearing on remand. The Judge avoided his duty under the remand order. The Trial Court also mis-characterizes the nature of the Plaintiff's complaint when he omitted to hear, consider, and try remand issues (a)(c)(d)(e)(f) specifically named in the remand order.
17. Plaintiff has argued from the beginning that the state legislative passage of the voting machine statutes in question established two different methods of counting votes in the State. The harm caused by the voting machine statutes is because they are used in counting comingled unverified and uncertified absentee ballots. This unequal method of counting ballots directly affects the reliability of election outcomes for both state and federal offices.
18. The question before the Court was never been about hand count versus machine count. Hand counting ballots has been the custom and usage since 1784 and is still the law of the land and used by 103 communities in the state. The question before the Court always was can the legislature establish a second alternative method of counting ballots that permits and incorporates counting un-verified, un-certified absentee ballots? The answer is NO the legislature statutory scheme is contrary and repugnant to the Plaintiff's equal protection rights under Part I, art. 1, art. 11 of the N.H. Const. The 14th amendment to the U.S. Const. This is the case here, in the Plaintiff's claims, upheld and remanded by the State Supreme Court, but circumvented and illegitimately dismissed by the lower court judge on the remand. The series of unusual, discretionary, and biased judicial protocols were *de facto*

designed to uphold the state's election absentee vote counting activity by manipulating law process and rules to deprive a pro se of a fair and protected trial process for this pro se under both state and federal laws.

The Supremacy Clause

This Court's deliberate and calculated circumvention of federal jurisdiction is a material and reversible error in fact and law

19. The lower court's opinion on page 4 circumvents the N.H. Supreme Court's Remand order. Judge Ruoff writes:

"...[B]ecause the Federal Constitution offers no greater protection than the State Constitution under its equal protection provisions the court relies on the State Constitution it will only use the federal caselaw to aid its analysis."

20. This quote in this Court's opinion is an error in law because the following federal election laws offer greater protections; 52 U.S. Code § 10101 (a)(2)(A)(b) – Voting Rights; 52 U.S. Code § 20511(1)(A), (2)(A)(B), written pursuant to the 14th Amendment and they are binding on this Court under the supremacy clause Article IV of the U.S. Constitution, and all the Federal precedent controlling this case detailed in The Plaintiff's supplemental briefing (see MEMORANDUM OF LAW THE ISSUE OF STANDING incorporated herein by reference) ordered by the NH Supreme Court and submitted on April 24, 2024. Both the Plaintiff and the Defendants were invited by the N.H. Supreme Court previously to submit supplemental briefs on standing on April 4, 2024. See, Exhibit A.
21. The lower court judge erred when he cited and relied upon *LeClair v. LeClair*, 137 N.H. 213, 222-23 (1993), It is not relevant because it is a divorce case dealing with a child support subject-matter dispute. *LeClair*, and all the cases cited in Judge Ruoff's opinion fail to address (nor do they supersede or control over new and relevant Federal election law precedent) involving the Plaintiff's federally protected rights under the 14th Amendment when the state election process is

electing members of the United States House of Representatives, United States Senate, or the President and Vice President of the United States.

22. The Plaintiff's has a constitutional right to vote for Federal offices, and that right is reserved under the U.S. Constitution Article I, Section 2, Section 4, Article II, and the Seventeenth Amendment. The right to vote in federal elections is reserved to the people of the several States, and the Plaintiff is one of those people, an inhabitant of N.H.

23. The plaintiff has claimed from the beginning and throughout this case that his federal civil rights under 14th Amendment equal protection and due process clauses were being violated by the Defendants design and enforcement of their statutory scheme under the color of state law, which diluted the Plaintiff's vote, and that such vote dilution is ongoing and continues to this day.

24. The N.H. Legislature has chosen combine State and federal elections together. That statutory scheme complained of in this case directly affects Federal elections and is therefore controlled by Federal Supreme Court rulings. Therefore, under Article IV (Supremacy Clause) of the U.S. Constitution, when the legislature exercises its federal authority under Article I, Section 4, by establishing "*Time, Manner, and Place*" for conducting federal elections, it is constrained by both the state and federal constitutions, and subject to Federal election laws and the Precedent of the Supreme Court of The United States (SCOTUS):

"When a state legislature carries out its constitutional power to prescribe rules regulating federal elections, the "commission under which" it exercises authority is two- fold. The Federalist No. 78, at 467. The legislature acts both as a lawmaking body created and bound by its state constitution, and as the entity assigned particular authority by the Federal Constitution. Both constitutions restrain the legislature's exercise of power." Moore v. Harper decided June 27, 2023.

25. This lower court has no valid authority at law in this case to circumvent the fundamental nature of my election law complaint, by manufacturing a second

motion to dismiss and the granting it. To do so is to actively ignore and evade fair process to hear my federal rights claimed from the beginning of this case, as it was affirmed by the NH Supreme Court. The Remand Order-states that the Plaintiff has in fact demonstrated standing as to his equal protection claim set forth in Count II, under state precedent, See Avery, 173 N.H. at 736-37; and also under federal precedent, see also Baker v. Carr, 369 U.S. 186, 205-06 (1962).

“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.” Moore v. Harper decided June 27, 2023.

26. Therefore, under *Moore v. Harper* the lower state court cannot interpret State law in such a way as to evade federal law to thwart a pro se claim. Under *Moore v. Harper*, the lower court cannot circumvent the Plaintiffs federal rights by applying means-end scrutiny under state precedent to establish personal jurisdiction or, as this court did – to shift the Defendant/State’s burden of proof to the Plaintiff. However, Judge Ruoff did exactly that when he contrived new procedures designed to fatally disadvantage the claims of a pro se plaintiff, when he failed to set a hearing on these new (unique) procedures in law, he then dismissed the case for false grounds. All of these inventive judge practices failed to consider and adhere to the new controlling federal case precedent/law in election/ballot law equal protection cases.
27. In a case where the state has unlimited resources including state and bar attorneys and funding resources, and the pro se comparatively few, this discriminatory biased state – preference judge handling is particularly (politically) offensive.
28. Under the recent precedent of *Alexander v. South Carolina State Conference of the NAACP*, No. 22-807 602 U.S.____ (2024), the standard of review must be

examined under the *Heller/Bruen* methodology, and not by means-end scrutiny. Supreme Court Justice Clarence Thomas joining the majority opinion by concurring in part, in the *NAACP* decision, reinforces and joins the precedent of *Moore v. Harper* and the *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1, 26—27 (2022).

29. Both State and Federal Courts possess the authority to exercise judicial review over state legislative actions affecting the time, place and *manner* of conducting Federal Elections under Article I, Section 4, clause 1.
30. Under the aforesaid precedent argued and briefed before the NH Supreme Court, both the State and Federal Courts must now examine the Federal Elections clause of the Constitution of the United States, Article I, §4, clause 1 under the aforesaid precedent. And that applies to this case.
31. Under the aforesaid precedent (*Heller/Bruen methodology*), the burden of proof lies with the Defendants to prove that their state statutory scheme is constitutional under the equal protection clause of the 14th Amendment to the U.S. Constitution.

Relief Sought

WHEREFORE, in light of the forgoing, the Plaintiff respectfully request that this Court:

- A. Reconsider the Courts Order and reverse its order to Dismiss this case.
- B. Proceed to pre-trial proceedings.
- C. And for such other and further relief as is just and proper.

Date: April 8, 2025

Respectfully submitted,
/s/ Daniel Richard
Daniel Richard

Certificate of Service

I hear by certify that a copy of the foregoing was sent to all parties and counsel of record pursuant to the Judicial Branch's e-filing system.

Date: April 8, 2025

/s/ Daniel Richard
Daniel Richard

