

THE STATE OF NEW HAMPSHIRE SUPREME COURT

No. 2023-0097

Daniel Richard

v.

Christopher Sununu, et al.

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Motion for leave of the Court to Present New Late Authorities, Newly Enacted Legislation, And Other Intervening Matters

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Now comes, the Plaintiff Daniel Richard, pro se, pursuant to Supreme Court Rule

16 (7), and respectfully gives notice to this court of five new cases impacting the pending New Hampshire Supreme Court appellate case, including important precedents established by the U.S. Supreme Court on March 4, 2024 [“SCOTUS”] in the matter Trump v. Anderson, et al. (see attached exhibit A) plus four other recent relevant federal decisions citing Moore v. Harper et al.

Also directly impacting this appeal, it has come to my attention that the State Legislature and the State Ballot Law Commission, while waiting on the opinion of this Court in this instant case, have acted in haste to rush through a statutory amendment to the voting machine law(s) presently challenged and pending before this Court in this case.

That rushed new law state “HB 154” was signed into law by the governor today, Wednesday, March 6th, 2024. The law now authorizes the use of new voting machines in New Hampshire on a permanent basis replacing the trial basis under which the current (old) vote counting machines were originally authorized in 2008.

It was done without the consent of the inhabitants, and is now it is deemed effective as of March 1, 2024. Arguably, this is another unconstitutional state statute, also covered under the Moore v. Harper ruling, both by the U.S. Supreme Court and other federal-level court rulings recently decided in 5 other jurisdictions across the country.

Notably also, both Dominion and LHS executives informed the Secretary of State last week that the companies will/can-not comply with new state law mandating accuracy testing for the new Dominion-Acura voting equipment (already manufactured and in warehouse storage) as there is ‘insufficient time’ before the upcoming November 2024 election.

Upon information and belief from

- (a) the oral testimony of the NH SOS legislative testimony (reported in the Boston Globe Dec 29, 2023).
- (b) followed by an in-person interview (Plaintiff and SOS Scanlon]
- (c) plus, statements of voting machine corporation executives reported by SOS Scanlon
- (d) the Executive and SOS together anticipate a waiver exemption from the present machine certified accuracy testing law requirement that will extend the equipment testing mandate up 2026. Their public statements are that the New Hampshire accuracy testing certification is unreasonable and there is not enough time do machine accuracy testing before the November 2024 election.

The new U.S. Scotus case plus 4 new federal case citations (see below) all demonstrate important new precedent for this pending appeal as a matter of new national authority regarding voting and ballot law precedent.

The new NH state law, plus the public comments of NH SOS Scanlon, Dominion, and LHS executives, also represent significant new information for this court's consideration as to the state's manipulation of 14th Amendment rights under the U.S. Constitution in anticipation of the upcoming 2024 election. As such, this motion to amend for new authorities represents not only new binding authority but an urgent need to prioritize this appeal decision, consistent with the intent and precedent in the Moore v. Harper line of decisions.

## Summary

The following list of cases represents other district decisions under Moore v. Harper, and are also relevant election law cases of other districts and are especially relevant to this appeal. All are recent decisions written after June 27, 2023, and reference relevant findings and rulings in Moore v. Harper which are relevant to this present case.

1. U. S. Supreme Court Trump v. Anderson et al. decided March 2, 2024.
2. U. S. District Court, Northern District of Texas, Texas v. Garland, published Feb 27, 2024
3. U. S. Court of Appeals, Eleventh Circuit, Georgia v. Meadows, decide published Dec 18, 2023.
4. Supreme Court of Kentucky, Graham v. Adams, decided Dec. 14, 2023.
5. U. S. Court of Appeals, Fourth Circuit, Appalachian Voices v. United States Dep't of the Interior, 78 F.4th 71, 81 (4th Cir. 2023) decided Aug 11, 2023.

The Plaintiff now presents the aforesaid decisions as compelling precedent applicable to the case at bar.

1. The Trump v. Anderson et al. case follows the recent decision in Moore v. Harper et al., and the Courts' opinion of the state's powers and duties under Art. I, §4, cl. 1; Art. II, §1, cl. 2. Accordingly, I respectfully submit to the Court, where Trump v. Anderson is an election law case reaffirming the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution, and Art. I, §4, cl. 1; Art. II, §1, cl. 2, it is applicable and binding in this case. Detailed in my appeal to New Hampshire's highest court and raise now as late authority, for the following three relevant reasons.

A. It reinforces the Fourteenth Amendment arguments raised in this appeal, which deal with my rights to due process, equal protection, and/or the denial of male inhabitants the right to vote.

B. The prohibition upon the states to exercise of powers that are neither enumerated nor delegated to the State.

C. Failure of the State of Colorado to cite any historical analog or precedent.

The unanimous decision of the Supreme Court of the United States [9-0] on March 4, 2024, reinforces the substance of my appeal now before this Court, and it also supports the reason why the new legislation HB 154, which has just been signed into law today by the Defendants is also unconstitutional.

The first relevant issue raised in Trump v. Anderson is that the court reinforced by explanation, the separation of powers between State and Federal governments after the passage of the Fourteenth Amendment to the U. S. Constitution.

The second issue for this court to consider in Trump v. Anderson et al. is the Court's ruling that the powers delegated to legislature to make elections laws by the state and federal constitutions must be delegated to the state legislature and not assumed, just like in my case, where Defendants improperly exercised what they call "permissible legislative judgment" by acting where the Defendants decide on their own that the Constitution of N.H. is silent.

The respondents nonetheless maintain that States may enforce Section 3 against candidates for federal office. But the text of the Fourteenth Amendment, on its face, does not affirmatively delegate such power to the States. The terms of the Amendment speak only to enforcement by Congress, which enjoys power to enforce the Amendment through legislation pursuant Section 5.

This can hardly come as a surprise, given that the substantive provisions of the Amendment "embody significant limitations on state authority." *Fitzpatrick v. Bitzer*, 427 U. S. 445, 456 (1976). Under the Amendment, States can-not abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection, or deny male inhabitants the right to vote (with-out thereby suffering reduced representation in the House). See Amdt. 14§§1, 2. On the other hand the Fourteenth Amendment grants new power to Congress to enforce the provisions of the Amendment against the

States. It would be incongruous to read the particular Amendment as granting the States the power—silently no less—to disqualify a candidate for federal office.

“powers over elections and qualifications must be specifically “delegated to, rather than reserved by, the States.” U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 803-804 (1995) (quoting 1 J. Story, Commentaries on the Constitution of the United States §627, p. 435 (3d ed. 1858)).

Trump v. Anderson (2024)

Justices Sotomayor, Kagan, and Jackson, JJ., also concurring in this unanimous judgement:

“All the Reconstruction Amendments (including the due process and equal protection guarantees and prohibition of slavery) “are self-executing” meaning that they do not depend of legislation. City of Boerne v. Flores, 521 U. S. 507, 524 (1997): see Civil Rights Cases, 109 U. S. 3, 20 (1883).”

The third relevant issue to my case, addressed in Trump v. Anderson is the failure of the State to cite any history or tradition of the exercise of un-delegated or un-enumerated.

Nor have the respondents identified any tradition of state enforcement of Section 3 against federal enforcement of Section 3 against federal officeholders or candidates in the years following ratification of the Fourteenth Amendment. Such lack of historical precedent is generally a “telling indication” of a “severe constitutional problem” with the asserted power. United States v. Texas, 599 U.S. 670, 677 (2023) (quoting Free Enterprise Fund v. Public Company Accounting Oversight Bd., 561 U. S. 477, 505 (2010)). And it is an especially telling sign here, because as noted, States did disqualify persons from holding state offices following ratification of the Fourteenth Amendment. That pattern of disqualification with respect to the state, but not federal offices provides “persuasive evidence of a general understanding” that States lacked enforcement power with respect to the latter. U. S. Term Limits, 514 U. S., at 826.

2. U. S. District Court, Northern District of Texas, Texas v. Garland (2024)

B. Historical Practice

In addition to the original public meaning of the text, courts “look [] to ‘settled and established practice’ to interpret the Constitution.” Moore v. Harper, 143 S.Ct. 2065, 2086 (<https://casetext.com/case/moor-v-harper#p2086>) (2023) (quoting The Pocket Veto Case, 279 U.S. 655, 689 (<https://casetext.com/case/the-pocket-veto-case#p689>) (1929)).

3. U. S. District Court of Appeals, Eleventh Circuit, for the Northern District of Georgia, Georgia v. Meadows, decide Dec. 18, 2023.

see U.S. CONST, art. I, § 4, art. II, § 1. As the Supreme Court has explained, the "Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections." *Shelby County v. Holder*, 570 U.S. 529, 543 (<https://casetext.com/case/shelby-cnty-v-holder-8#p543>) (2013) (internal quotation marks omitted) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (<https://casetext.com/case/gregory-v-ashcroft-2#p461>) (1991)). The states are responsible for enacting "a complete code for . . . elections," including "regulations relati[ng] to... prevention of fraud and corrupt practices [and] counting of votes." *Moore v. Harper*, 143 S.Ct. 2065, 2085 (<https://casetext.com/case/moor-v-harper#p2085>) (2023) (first alteration in original) (internal quotation marks omitted) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (<https://casetext.com/case/smiley-v-holm#p366>) (1932)).

4. Supreme Court of Kentucky, *Graham v. Adams*, decided Dec. 14, 2023.

"State courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause....In interpreting state law in this area, state courts may not so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution." *Moore v. Harper*, 600 U.S. 1 (<https://casetext.com/case/moor-v-harper>), 143 S.Ct. 2065, 2089-90 (<https://casetext.com/case/moor-v-harper#p2089>) (2023). With these precepts in mind, we turn now to the merits of this appeal."

5. *Appalachian Voices v. United States Dep't of the Interior*, 78 F.4th 71, 81 (4th Cir. 2023) U. S. Court of Appeals, Fourth Circuit, decided Aug 11, 2023.

"Courts maintain an enduring "duty to evaluate the constitutionality of legislative acts" so as to ensure "that an act of the legislature[ ] [is not] repugnant to the constitution" and therefore "void." *Moore v. Harper*, — U.S. —, 143 S. Ct. 2065, 2079-80 (<https://casetext.com/case/moor-v-harper#p2079>), 216 L.Ed.2d 729 (<https://casetext.com/case/moor-v-harper>) (2023)" *Appalachian Voices v. United States Dep't of the Interior*, 78 F.4th 71, 81 (4th Cir. 2023)

The Plaintiff's right to vote in State and Federal elections is protected by both the Const. N.H. Part I, art. 11 and U.S. Constitution Article 1, Section 2, and the Seventeenth Amendment and the laws written pursuant thereof. As the manner in which the Federal elections are conducted is question, the *Heller/Bruen* methodology applies, as the Plaintiff's Federal voting rights are affected. The plain text of the Plaintiff's voting rights is satisfied as he is an inhabitant of N.H. (defined by the Const. Part I, art. 11), and the Plaintiff is one of the people under the U.S. Constitution Article 1, Section 2, and the

Seventeenth Amendment. Therefore, these cases  
are relevant and controlling in this

instant case.

Respectfully submitted,

/s/ Daniel Richard

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Certificate of Service

I hereby certify that a copy of the foregoing was served through the Court's e-filing system to all parties  
of record.

March 6, 2024

/s/ Daniel Richard

Daniel Richard

7:08 AM