

STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

SUPERIOR COURT

Docket No. _____

Daniel Richard

Plaintiff

v.

DAVID SCANLAN
SECRETARY OF STATE OF NEW HAMPSHIRE
In his official Capacity

Defendant

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff Daniel Richard, a Citizen, Inhabitant, and Tax payer of the State of New Hampshire, pro se, brings this Complaint for Mandamus against David Scanlan, the current SECRETARY OF STATE OF NEW HAMPSHIRE (SOS) in his official capacity.

The Plaintiff seeks emergency relief from this Honorable Court in the form of a Writ of Mandamus compelling all election officials in the State of New Hampshire to henceforth the existing voter I.D. law NH RSA 659:13 I(a) prior to the next state and federal primary elections which are scheduled for September 10, 2024.

INTRODUCTION

Our Constitutional Republic rests on the unassailable proposition that we are a country of law, not of individuals exploiting their own personal agenda, position and authority. When public officials elevate and enforce alternative agendas over the properly enacted laws of the State in accordance with State and Federal constitutions and statutes

written pursuant thereof, it imperils our Republican form of Government, guaranteed by Article 4, Section 4 of the Constitution for the United States of America.

“No right is more precious in a free country than of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the basic, are illusory if the right to vote is undermined.”

Wesberry v. Sanders, 376 U.S. 1, 17 (1964).

When the Secretary of State of New Hampshire, David Scanlan, and or the local town moderators refuse to enforce the laws of the land and the election statutes written pursuant thereof, the inhabitants of this State have Standing under the Constitution of New Hampshire (Const. N.H.), Part I, art. 11 and art. 12, and Article 1, Section 4, clause 1, (Federal Elections Clause) to demand that all election official in this State must obey and uphold the election laws of New Hampshire which all public official have sworn an oath to faithfully execute.

PARTIES

1. Daniel Richard is a Citizen, Inhabitant (Part II, article 30), and taxpayer of the State of New Hampshire (N.H.) (Part I, article 12), domiciled at 95 Rockingham Rd, Auburn N.H. 03032.
2. David Scanlan serves as the Secretary of State of New Hampshire, whose office is located in Merrimack County at 107 North Main Street, Concord, New Hampshire 03110.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this Complaint pursuant to RSA 491:7.

4. This Court also has authority to issue orders that state which actions the Constitution proscribes. Those actions are defined by the Constitution: *See* N.H. Const., Part I, Art. 11, and Art. 12.
5. The Court has personal jurisdiction over the Defendant because his offices are located in New Hampshire, and his conduct occurred in New Hampshire.
6. Venue is appropriate in Merrimack County pursuant to RSA 507:9 because the Defendant's state office is located in this county.

A. Applicable State Constitutional and Statutory Provision

7. The Const. N.H. Part I, Art. 1, and Art. 11, Art. 12, provides that all election laws in the State of N.H. must be applied equally. These specifically include the following:
 8. Voter Identification statute, NH RSA 659:13 I(a).
 9. Town Moderator Constitutional duties, Part II, Art. 32.
 10. NH RSA 659:50(b), defines the local moderator's duty to examine the absentee ballot envelope to ensure the affidavit was properly executed.
 11. NH RSA 659:53, defines the moderator's duty if any absentee ballot affidavit has not been properly executed.
 12. NH RSA 659:30, Affidavit Statute defines the proper execution of an affidavit when required by state election statutes.
 13. NH RSA 5:1 II, Oath of Office.
 14. NH RSA 666:3 Official Misconduct.
 15. NH RSA 666:2 Official Malfeasance.
 16. NH RSA 42:1, Oath of Office, removal from office.

B. Applicable Federal Constitutional and Statutory Provisions

17. The Fourteenth Amendment to the U.S. Const. prohibits all of the states from establishing or enforcing any of its laws in an un-equal manner.

18. Under U.S. Code 52 U.S.C. § 10101- (a)(2)(A), state election law officials are prohibited from establishing or enforcing, “*any standard, practice, or procedure different from the standards, practices, or procedures applied under such laws, to other individuals within the same county, parish, or similar political subdivision...*” “Under the color of state law.”
19. Under U.S. Code 18 U.S.C. § 242, it is a federal felony to deprive a citizen of the United States their civil rights under the color of state law.
20. Under U.S. Code 18 U.S.C. § 241, it is a federal felony to conspire to deprive a citizen of the United States of their civil rights.

FACTUAL ALLAGATIONS

21. The Plaintiff alleges that the Defendant, David Scanlan is the New Hampshire’s Secretary of State, and under NH RSA 652:23 he is N.H. top election official. Therefore, he is responsible for conducting all state and federal elections pursuant to the laws of the land and that he purposefully and knowingly violated this duty in past elections, and is poised to do so in upcoming elections.
22. Secretary Scanlan, either knew or should have known that failure to faithfully enforce the state’s election laws would be violation of his sworn oath of office, official misconduct, and official malfeasance of the election process.
23. The Plaintiff alleges that the Defendant, David Scanlan conspired with past and present bad faith state actors since at least *Saucedo v. Gardner* case in 2017, to cover up a newly adopted and unauthorized voting practice, of ignoring the existing election laws and no-longer checking the identification of absentee voters who vote by mail, and by using unsafe voting machines to conceal illegal un-verified ballots and un-qualified absentee ballots and previously demonstrated machine vote data manipulation. Such practices continue as the reason for this action.
24. The Plaintiff alleges that David Scanlan’s, “interpretation” and alteration of NH RSA 659:50(b), is contrary and repugnant to the historical usage and custom since

1942, and that the statute NH RSA 659:30 (definition of a properly executed affidavit), according Mr. Scanlan, no longer applies. Mr. Scanlan believes he can omit the affidavit certificates used to I.D. absentee voters from the return envelopes and still call them affidavit envelopes, in direct violation of the aforesaid laws.

25. The Plaintiff alleges that Dave Scanlan has intentionally mal-instructed moderators throughout the state, so that when the moderator performs his duty under RSA 659:50(b) (the affidavit appears to be properly executed) when it is not. When a moderator now examines an absentee ballot envelope, it has been revised to permit absentee voters to self-authenticate their name on the absentee ballot, and as long as the name matches one listed on the supervisors check list, now it is considered “good enough”, to be counted, even when in violation of the affidavit law NH RSA 659:30, the which requires an affidavit certification and an I.D. check under NH RSA 659:13 I(a).
26. The magnitude of the problem and the ongoing harm done was fully realized in 2020, as approximately 233 communities counted 260,217 defective absentee ballots (un-verified and un-certified ballots) which diluted the 554, 282 legal votes cast in November 3, 2020 General Election for Federal Offices. That’s right — 32% of 814,499 votes cast were in violation of state and federal laws that govern state, and federal elections, for the President of the United States, the U.S. House of Rep. and the U.S. Senate.

HISTORICAL BACKGROUND

27. The Const. N.H. in 1784 did not provide for absentee voting in 1784. Discussion of absentee voting first appeared during the Civil War. In 1863, the NH legislature under Part II, Art. 74 requested an advisory of the NH Supreme Court, “Can the NH legislature establish by statute absentee voting?” and the Court answer was no. Many other states did the same and the answer was the same, no.

28. In 1942 the NH legislature wrote the first set of absentee voting statutes pursuant to the amendment of Part I, Art. 11, which also provided for the equal application of the laws governing the election process for in-person and absentee voting.

29. The first statutes in 1942 provided for absentee voting following similar requirements to the in-person voting process—

A. The act of marking your ballot must be performed in the presence of a public official authorized by law to administer an oath, and no other person.

B. He shall deliver said ballot to said official for examination, who shall satisfy himself that it is unmarked and unsealed, and the voter shall not allow said official to see how the voter marks it.

C. After marking the ballot, the voter shall enclose and seal the same in the envelope provided.

D. Then, the voter shall execute before said official the affidavit on the envelope as set forth in said paragraph, and shall enclose and seal the envelope containing the ballot in the envelope provided for in paragraph four of section 2, endorse their name, address and voting place, and then mail the envelope, postage prepaid, or cause it to be delivered.

30. The origins of the current controversy began in 1979. The NH Legislature with no constitutionally lawful authority to amend the existing absentee voting statute governing the physical disability clause. Said statute regulated absentee voting under Part I, Art. 11. Bad faith state actors established the current statutory scheme involving absentee ballots and affidavits now at issue in this case. This was all done under the cover of the Legislative Act 436:1 in 1979.

A. It was common law and a well-established fact that the legislature had no legitimate authority to grant anyone the right of suffrage. Despite this absence of power and authority, the legislature illegally commenced to create a statutory right to religious exemption to vote absentee anyway. The following issues were achieved by the Legislature by the removal of the previous statutes necessary to achieve the previous, fair and equal election process.

- B. Legislative act of 436:1, was used as pretext (a pretense) to alter the absentee ballot envelope to add a new absentee exemption on the envelope, which caused the current issue, namely the removal of the *Affidavit Certificate* from the envelope at printing. Meanwhile officials continued calling the return envelope an “affidavit envelope” even though the modified envelope no longer is legal affidavit pursuant to NH RSA 659:30, as it did not contain the necessary witness certificate of an official authorized by law to administer an oath.
- C. It also omitted the aforesaid constitutional requirement (see above), namely the voter’s duty to appear before any person authorized by law to administer an oath. This alteration thereby removed the mandatory I.D. check as part of the mandatory process of executing a lawful affidavit under NH RSA 659:50(b), as well as depriving the moderators of each Town or City, of an authenticated signature under NH RSA 659:50(c). This requirement is a historical fact of law, was also omitted by the *Saucedo v. Gardner* Court. So, between the SOS, the state court, and the state official ordering new “designs” and text while dropping required text, public officials informally and illegally altered absentee, affidavit, envelope, and verification mandates without following the constitutional process required to make these changes or any other voting interferences which have subsequently developed by state actors misusing their authority of office.
- D. As the NH legislature, the SOS, and other political actors put in place the current illegitimate statutory scheme, using NH RSA 656:40, 656:41, 656:42, 656:43, their purpose and effect was to disguise and conceal the counting of a significant quantity of un-verified and un-certified ballots to deprive voters of a fair election process by means of absentee inputs, and to make it impossible to challenge the illegitimately include ballots on recount.
- E. The new substitute SOS voting system was widely utilized in 2020 (see Paragraph 26) with systemic mathematical flaws as 32% of votes counted were

unstable, non-constitutionally conforming, and non-verifiable ballots. These unreliable votes were allowed by the SOS and state election officials despite being non-conforming and constitutionally deficient, labile, and therefore unreliable. To the extent this is an unconstitutional and a repeating error, it is a disastrous fundamental flaw in design, and without Mandamus relief, (due to the positions of power and authority of the Defendant) will continue as a major construction flaw without remedy and ability to conduct a fair and equal constitutionally mandated election process in 2024.

SUMMARY

31. The Plaintiff, Mr. Richard repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.
32. The Const. N.H. Part I, Art. 1, and Art. 11, Art. 12, are the reservation of the private right of the people that they will always be equal in the law.
33. NH RSA 659:13 I(a) requires that all qualified voters must provide a photo identification when exercising their right vote in NH, no exception. There are no statutory or constructional exemptions.
34. “A writ of mandamus is used to compel a public official to perform a ministerial act that the official has refused to perform, or to vacate the result of a public official's act that was performed arbitrarily or in bad faith” *In re Petition of Cigna Healthcare, Inc.*, 146 N.H. 683, 687 (2001).
35. A court “will, in its discretion, issue a writ of mandamus only where the petitioner has an apparent right to the requested relief and no other remedy will fully and adequately afford relief.” *Id.*
36. Mr. Richard requests an order compelling the Secretary of State, to faithfully execute the duties of his office by enforcing state voter I.D. law and its local verification, by Town of City moderators as required by the State and Federal Constitutions and the laws written pursuant thereof.

37. As the state voter I.D. law NH RSA 659:13 I (a) affects state and federal elections, the recent precedent U.S. Supreme Court decision of Moore v Harper et al, 600 U.S.____ (2023) is now binding on this Court, and therefore this court has a duty to ensure that all the state elections statutes affecting Federal elections must be in harmony with the Const. of N.H.

REQUEST FOR RELIEF

Wherefore, the Plaintiff respectfully requests that this Honorable Court enter the following relief:

- A. An order compelling the office holder of Secretary of State, David Scanlan, and to instruct all moderators in New Hampshire to properly enforce the voter identification law NH RSA 659:13 I.(a) as provide in the State Constitution – namely for all voters casting a ballot for any election, to including all absentee ballots sent by mail to produce identification and swear a proper affidavit prior to submitting the ballot and having it counted.
- B. An order compelling the office holder of Secretary of State, David Scanlan, and to instruct all moderators in New Hampshire to properly enforce, the requirements of the affidavit statute NH RSA 659:30 pursuant to the State Constitution.
- C. An order compelling the office holder of Secretary of State, David Scanlan, to instruct all moderators in New Hampshire to properly enforce the language and terms requirements of the statute, NH RSA 659:50(b) “*the affidavit appears to be properly executed:*” pursuant to NH RSA 659:30, in order to meet the voter I.D. requirements of NH RSA 659:13 I.(a).
- D. Any ballot submitted without all these constitutional requirements properly enforced shall NOT be counted in the election, and shall be preserved separate and apart as an uncounted provisional ballot, pending further hearing and order of the Court.

E. And for other relief as is just and proper.

VERIFICATION

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

Daniel Richard

STATE OF NEW HAMPSHIRE

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day, 2024, by Daniel Richard.

(Seal)

Signature of Notary Public

—

Date of Commission ending

Personally known: _____

OR Produced Identification: _____

Type of Identification Produced: _____

CERTIFICATION

I Daniel Richard do hereby swear that on August ____, 2024 I did mail or hand deliver a copy of this Writ of Mandamus.

Dated August ____, 2024
