THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket No. 2023-0097

Daniel Richard

v.

Governor Christopher Sununu, et al.

SUPPLEMENTAL BRIEF FOR THE GOVERNOR, SECRETARY OF STATE, AND THE STATE OF NEW HAMPSHIRE

THE NEW HAMPSHIRE GOVERNOR, SECRETARY OF STATE AND
THE STATE OF NEW HAMPSHIRE

By their Attorneys,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE[1]

The Plaintiff, Daniel Richard, advances the following six counts in this matter: (1) the Town of Auburn denied him his alleged constitutional right to have his ballot counted by hand; (2) the statutes in RSA 656:40 *et seq* are unconstitutional because they permit the use of ballot counting devices; (3) the statutes in RSA 656:40 *et seq* are unconstitutional because ballot counting devices lack testing or certification procedures; (4) RSA 21:6, RSA 21:6-a; and RSA 654:1 unconstitutionally change who may vote in New Hampshire; (5) RSA chapter 657 unconstitutionally expands access to absentee voting; and (6) the 1976 amendments to the State Constitution related to elections are invalid because the amendment process was contrary to the State Constitution.

The Defendants moved to dismiss all of these counts on standing and substantive grounds. The superior court (*Ruoff*, J.) reached the substantive arguments, ruling that the Plaintiff failed to state a claim upon which relief could be granted. The superior court declined to reach the Defendants' standing arguments, noting only that the "Defendants persuasively argue that Plaintiff lacks standing to bring some or all of his above-described claims." SA5. The Plaintiff moved for reconsideration, which the trial court denied, and appealed. On appeal, the parties briefed the matters reached and resolved by the trial court. On November 29, 2023, this Court held oral argument. Thereafter, this Court ordered the parties to file supplemental briefs addressing whether the Plaintiff has standing as to each of the specific counts in his complaint.

[1] The Plaintiff's Brief dated June 26, 2023 will be cited as "PB#"; the State's Appendix submitted August 18, 2023 will be cited as "SA#"; the September 9, 2022 Emergency Hearing Transcript will be cited as "T#". Unless explicitly stated otherwise, all references to "the Plaintiff's brief" refer to his 2023 brief, not his supplemental brief filed on April 24, 2024.

The Defendants file this supplemental brief in response to the Court's order.

ARGUMENT

I. THE PLAINTIFF HAS FAILED TO ALLEGE A CONCRETE, PERSONAL INJURY CAPABLE OF JUDICIAL REDRESS AND THUS LACKS STANDING TO MAINTAIN ALL OF HIS CLAIMS.

"[S]tanding under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress." *State v. Actavis Pharma, Inc.*, 170 N.H. 211, 214 (2017) (quoting *Duncan v. State*, 166 N.H. 630, 642-43 (2014)). "In evaluating whether a party has standing to sue, [the Court] focus[es] on whether the party suffered a legal injury against which the law was designed to protect." *Id*. at 215 (quoting *O'Brien v. NH Democratic Party*, 166 N.H. 138, 142 (2014)). "Neither an 'abstract interest in ensuring that the State Constitution is observed' nor an injury indistinguishable from a 'generalized wrong allegedly suffered by the public at large' is sufficient to constitute a personal, concrete interest." *Id*. (quoting *Duncan*, 166 N.H. at 643, 646). "Rather, the party must show that its 'own rights have been or will be directly affected.'" *Id*. (quoting *Eby v. State*, 166 N.H. 321, 334 (2014)). "The requirement that a party demonstrate harm to maintain a legal challenge rests upon the constitutional principle that the judicial power ordinarily does not include the power to issue advisory opinions." *Id*. (quoting *Birch Broad v. Capital Broad Corp.*, 161 N.H. 192, 199 (2010)).

A. THE PLAINTIFF WAS NOT DISENFRANCHISED AND HIS VOTE WAS NOT DILUTED

The Plaintiff appears to make blanket allegations that he has been injured or harmed because he has been disenfranchised or his vote has been

diluted. *See* SA54[2]. The facts the Plaintiff presents do not support either of these allegations as they relate to any part of the Plaintiff's complaint.

Unlawful vote dilution occurs when deliberate steps are taken to reduce the power of a given voting bloc. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 57 (1986) (discussing racial voting blocs and how the "loss of political power through vote dilution is distinct from the mere inability to win"); *Below v. Gardner*, 148 N.H. 1, 9-10 (2002) ("Political gerrymandering is the practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition's voting strength").

Disenfranchisement occurs when a voter is denied the right to vote. *See Fischer v. Governor*, 145 N.H. 28, 29 (2000) (referring to statutes exercising the legislature's authority to determine voter qualifications as "the felon disenfranchisement statutes").

Accepting the Plaintiff's factual allegations as true, he was not disenfranchised, and his vote was not diluted.

1. The Plaintiff's vote was not diluted

The Plaintiff does not explain what "vote dilution" is in his complaint or his brief. Nor does he explain the legal standards underlying such a claim or how those standards support his specific claims. As a practical matter, the more individuals vote in an election, the more any one vote is "diluted" as that word is used colloquially. This fact alone does not give rise to a claim of vote dilution under the law.

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[2] "All four claims stated herein, allege that the Defendants are causing me direct harm by permitting unqualified voters to vote, permitting unconstitutional exemptions for absentee voting, permitting the use of **an** unconstitutional **mode-of-operation for voting** (via the exclusive use of electronic machines), **thereby** permitting the unconstitutional amendment to the constitution, are all violative of the rights of suffrage protected by the state, as said trespass as they eliminated my vote." SA54 (emphasis in original).

Rather, a vote dilution injury has only been recognized in the context of redistricting. *See Brown v. Secretary of State*, 2023 N.H. LEXIS 220 *29 (2023); *City of Manchester v. Secretary of State*, 163 N.H. 689, 698 (2012); *Burling v. Chandler*, 148 N.H. 143, 144 (2002) (referring to the "one person/one vote" standard); *Below*, 148 N.H. at 9-10; *Levitt v. Maynard*, 105 N.H. 447, 449 (1964). The Plaintiff's claims of vote dilution clearly do not resemble recognized claims of vote dilution that stem from redistricting.

Courts routinely dismiss for lack of standing claims of vote dilution outside of the redistricting context like those that the Plaintiff alleges. The United States Court of Appeals for the Eleventh Circuit recently rejected a claim that the counting of absentee ballots conferred standing for a claim of vote dilution, even where those votes were allegedly unlawfully counted. *See Wood v. Raffensperger*, 981 F.3d 1307, 1313-16 (11th Cir. 2020). The plaintiff alleged, *inter alia*, that "the inclusion of unlawfully processed absentee ballots diluted the weight of his vote" and gave him standing to sue the Georgia Secretary of State and challenge the results of the 2020 presidential election. *Id*. at 1312, 1314. In affirming the district court's finding that this claim of "vote dilution" did not confer standing, the Eleventh Circuit wrote:

> To be sure, vote dilution can be a basis for standing. But it requires a point of comparison. For example, in the racial gerrymandering and malapportionment contexts, vote dilution occurs when voters are harmed compared to irrationally favored voters from other districts. By contrast, no single voter is specifically disadvantaged if a vote is counted improperly, even if the error might have a mathematical impact on the final tally and thus on the proportional effect of every vote. Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing.

Id. at 1314-15 (citations and quotations omitted). The plaintiff then petitioned for a writ of certiorari, which the United States Supreme Court denied. *Wood v. Raffensperger*, 2021 U.S. LEXIS 798 (2021).

Critically, the Plaintiff's allegations of vote dilution rest on an assumption for which he offers no support: that voters who use the tools and legal mechanisms with which he takes issue will vote for candidates and positions different than his.[3] Courts routinely reject such unsupported assumptions. In rejecting a similar challenge to the Pennsylvania's absentee ballot laws over fifty years ago, the Pennsylvania Supreme Court found:

> Basic in appellant's position is the *assumption* that those who obtain absentee ballots, by virtue of statutory provisions which they deem invalid, will vote for candidates at the November election other than those for whom the appellants will vote and thus will cause a dilution of appellants' votes. This assumption, unsupported factually, is unwarranted and cannot afford a sound basis upon which to afford appellants a standing to maintain this action. While the voter-appellants in *Baker v. Carr* were able to demonstrate injury distinct from other voters in the state, the interest which appellants claim is nowise peculiar to them but rather it is an interest common to that of all other qualified electors. In the absence of any showing of a legal standing or justiciable interest to maintain this action, we cannot permit their challenge to the validity of this statute.

Kauffman v. Osser, 441 Pa. 150, 157 (1970) (emphasis in original).

The Defendants did not locate any instances of any court finding standing where a plaintiff brought a claim of vote dilution like those

[3] The Plaintiff does not explicitly state this, but the Defendants infer it from the nature of a vote dilution claim. If the allegedly unlawful votes aligned with the Plaintiff's votes, they would be strengthened, not weakened.

presently before this Court. There are, however, a myriad of cases to the contrary. *See Viera v. Hudman*, 2024 U.S. App. LEXIS 681, 4 (5th Cir. 2024) ("As for their asserted vote-dilution injury [plaintiffs] are correct that an injury to a citizen's right to vote resulting from 'dilution by a false tally,' 'a refusal to count votes from arbitrarily selected precincts,' or 'stuffing of the ballot box' *can* confer standing. But only where the voters have 'plausibly allege[d] facts showing disadvantage to themselves as individuals'"); *O'Rourke v. Dominion Voting Sys.*, 2022 U.S. App. LEXIS 14625, *6 (unpublished) (10th Cir. 2022) ("Accordingly, no matter how strongly Plaintiffs believe that Defendants violated voters' rights in the 2020 election, they lack standing to pursue this litigation unless they identify an injury to themselves that is distinct or different from the alleged injury to other registered voters"); *Hall v. D.C. Bd. of Elections*, 2024 U.S. Dist. LEXIS 48966, *8-9 (unpublished) (D.D.C. 2024) ("But not every alleged dilution of voting rights gives rise to an injury that would support a finding of standing"); *Bost v. Ill. State Bd. of Elections*, 2023 U.S. Dist. Lexis 129509, *16 (unpublished) (N.D. Ill. 2023) (holding standing failed because alleged injury was "not specific to Plaintiffs"); *Schroeder v. United States*, 2023 U.S. Dist. LEXIS 160452, *7-8 (unpublished) (E.D. Wash. 2023) ("Here, Plaintiff alleges the injury is vote dilution, but he does not contend he lives in a cracked or packed district…[a]s such, Plaintiff has not established standing under the standard set forth in *Gill* and discussed in *Rucho*"); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596, 609 (unpublished) (E.D. Wis. 2020) ("The plaintiff has not alleged that, as a voter, he has suffered a particularized, concrete injury sufficient to confer standing"); *Carson v. Simon*, 494 F. Supp. 3d 589, 602 (D. Minn. 2020) ("Indeed, the Electors' claim of vote dilution is a paradigmatic generalized grievance that cannot support standing"); *Bonner v. Chapman*, 298 A.3d

153, 163-64 (Pa. Cmwlth. 2023) (holding that vote dilution theory insufficient to grant standing).[4]

For the reasons stated above, a claim of vote dilution that rests solely on the allegation that unlawful votes have been counted, like the claim the Plaintiff advances in his complaint, does not confer standing.

2. The Plaintiff was not disenfranchised

The Plaintiff does not explain what "disenfranchisement" is in his complaint or his brief. The word "disenfranchisement" has a specific meaning that the Plaintiff does not present to the Court and none of his arguments support that meaning.

To "disenfranchise" a person means "to deprive of a franchise, of a legal right, or of some privilege or immunity" especially defined as "to deprive of the right to vote." "Disenfranchise." *Merriam-Webster.com* Dictonary, Merriam-Webster, http://www.merriam-webster.com/dictionary/disenfranchise. Accessed Apr. 25, 2024. This Court's understanding of "disenfranchise" is apparent in its own jurisprudence regarding disenfranchisement. For example, in *Fischer v. Governor*, this Court referred to RSA 607-A:2 and RSA 654:5 as "the felon disenfranchisement statutes" when discussing a legislative change in voter qualifications that excluded certain felons. 145 N.H. at 29. RSA 607-A:2 is titled "Rights Lost" and RSA 654:5 reads "[a] person sentenced for a felony shall forfeit his rights as provided in RSA 607-A:2" (emphasis added). These laws and this jurisprudence illustrate this Court's recognition that "disenfranchisement" means the loss of the right to vote as a matter of law.

[4] Defendants limited their citations to a small number of cases finding that the kind of vote dilution the Plaintiff raises, based in general grievances with New Hampshire's voting scheme and vague allegations of unlawfully counted votes outside of the contexts of malapportionment and gerrymandering, do not confer standing. A complete recitation of all cases that the Defendants were able to find would considerably lengthen this brief.

The Plaintiff has not put forward any facts illustrating that he was denied the right to vote.

This Court recognizes that "[t]he legislature has the authority to prescribe the manner by which a voter may express his or her vote." *Kibbe v. Town of Milton*, 142 N.H. 288, 294 (1997). Reasonable restrictions on the manner and means of voting do not amount to disenfranchisement. *See id.* (holding that provision that sticker votes shall not be tabulated was a reasonable exercise of legislative authority). A municipality's choice to use ballot counting devices to count ballots that have been cast does not disenfranchise anyone. None of the other claims the Plaintiff asserts advance factual allegations showing that the was denied the right to vote in any way. Expanding the voting franchise does not impermissibly deny the right to vote to anyone else. Tabulating absentee ballot votes does not deny the right to vote to anyone else.

Accordingly, the Plaintiff has failed to allege an injury grounded in vote dilution or disenfranchisement. He therefore lacks standing to maintain his claims on those theories.

B. THE PLAINTIFF HAS FAILED TO ALLEGE A CONCRETE, PERSONAL INJURY CAPABLE OF JUDICIAL REDRESS AS TO COUNT I.

Count I alleges that the Town of Auburn denied the Plaintiff his alleged constitutional right to have his ballot hand counted. The Plaintiff lacks standing to maintain this claim. In his complaint, the Plaintiff alleges that "[the moderator's] refusal to count the vote as required by the Constitution, Part II, art. 32 is a denial of my right to vote, by attempted coercion, as the only option made available to me was the use of unconstitutional programable, open source, electronic voting **machines**." SA59 (emphasis in original). The Plaintiff appears to have extrapolated from Part II, Article 32 a personal constitutional right to have one's vote

hand counted by the moderator. The trial court found that no such right existed and "decline[d] to create one here." SA16-7. The trial court's decision should be affirmed.

The right to have one's vote *hand* counted by the moderator does not exist in New Hampshire, and the Plaintiff has offered no legal basis for the right to have one's vote hand counted. Part II, Article 32 does not limit the tools the election officials may use to execute their duties, nor does it purport to establish a personal right to have one's ballot hand counted. Such matters are issues of policy that could be enacted by the legislature but should not be read into the Constitution by this Court.

The legislature "has the authority to prescribe the manner by which a voter may express his or her vote." *Kibbe*, 142 N.H. at 294. That power, in turn, is a subset of the legislature's general authority to "regulate the time, place, and manner of elections in New Hampshire" *Id* at 293-94. So long as those restrictions are reasonable, this Court will enforce them. *Id* at 294. The legislature has authorized the use of ballot counting devices in New Hampshire. Their use is not mandatory. Rather, each individual municipality determines whether or not to use ballot counting devices at their elections. *See* RSA 656:40.

Local officials determining whether ballot counting devices will be used at their elections to assist the moderator constitutes a reasonable regulation of the conduct of those elections. That reasonable regulation occurs within the bounds of the legislature's explicit authorization according to its power to regulate elections. The Plaintiff does not have free reign to vote in any manner that he pleases or insist on any election procedure he prefers. *See Kibbe*, 142 N.H. at 294 (regulation of the manner by which a voter *may not* express their vote is not an unreasonable restriction of the right to vote).

The Plaintiff framed Count I as an issue of "disenfranchisement," but he misuses that word. As discussed *supra*, he was not denied the right to vote. He does not allege, for example, that he was denied entry to the polling place, that he was denied a ballot, or that he was otherwise denied the opportunity to vote. Rather, he was given a ballot and was directed to the ballot counting device. He claims that his vote was denied because he could not vote in the manner he preferred. However, the Plaintiff has no right to insist on voting in a manner that does not accord with the election laws and rules to which every other New Hampshire voter is subject. Because Count I asserted a non-existent constitutional or legal right, and because the Plaintiff was permitted to cast a ballot, Count I fails to assert a concrete, personal injury to the Plaintiff capable of judicial redress. This Court should therefore affirm the dismissal of Count I on standing grounds.

C. THE PLAINTIFF ASSERTED NO INURY RELATED TO COUNT III.

The Plaintiff has not plead how the testing and safety certifications for ballot counting devices have resulted in a concrete, personal injury to him. He did not allege a physical injury to himself, nor did assert a more general claim that rose above speculation and "possible" risk. Nothing the Plaintiff argued in support of Count III rose above a wholly speculative, hypothetical injury or an injury indistinguishable from a generalized wrong allegedly suffered by the public at large. The trial court appropriately found (1) that the ballot law commission "mandate[d] the testing of each device before each election"; and (2) "[p]laintiff cite[d] no authority for the broad proposition that the alleged existence of OSHA violation(s) would create a private cause of action for non-employees, or that the remedy in such case would be to invalidate the statute authorizing the use of the devices at issue on constitutional grounds." SA15.

The Plaintiff made no mention of Count III in his brief or in his notice of appeal. He has therefore waived any challenge with respect to the trial court's resolution of Count III on appeal. *See State v. Litvin*, 147 N.H. 606, 610 (2002) (arguments that have not been briefed are deemed waived). But even if he had not waived this issue on appeal, the Plaintiff has not demonstrated standing as to Count III. Accordingly, the trial court's dismissal of Count III may also be affirmed on standing grounds.

D. THE PLAINTIFF HAS NOT ALLEGED A PERSONAL, CONCRETE INJURY AS TO ANY OF HIS REMAINING CLAIMS.

None of the Plaintiff's remaining claims allege an injury that rises above an abstract interest in ensuring that the State Constitution is observed or an injury distinguishable from a generalized wrong allegedly suffered by the public at large. These claims are a "laundry list" of complaints not properly developed for the Court's review. The alleged injures that flow from those claims amount to general allegations of "disenfranchisement" and "vote dilution," discussed *supra*, and none amount to a personal, concrete injury specific to the Plaintiff.

1. Count II – The Plaintiff did not demonstrate any injury related to the constitutionality of ballot counting devices.

The use of ballot counting devices did not create a personal and concrete injury to the Plaintiff. The Plaintiff argued that the legislature unlawfully delegated power to the ballot law commission, thereby creating his alleged injury. *See* SA60-64. He then wrote, "[t]he Plaintiff believes that he has been disenfranchised, and his vote diluted by said legislative acts, and said injury continues to this day, as said statute and unconstitutional use of programmable, opensource, electronic voting machines is still in effect." SA64. The trial court ultimately found that there

was no unlawful delegation of authority and "Count II must be dismissed because it fails to state a claim upon which relief may be granted." SA14.

On appeal, the Plaintiff states:

> Contrary to the Trial Court's opinion the Constitution is not silent on this matter but rather it is specific. The original intent of Part II, art. 32, the duty of the moderator is clear and specific that 'he' 'shall,' … 'sort' and 'count' the votes has remained unchanged since 1784.

PB24. The Plaintiff correctly identifies that Part II, Article 32 makes the moderator responsible for the counting of votes. However, the Constitution is silent as to *how* the moderator must conduct that counting and sorting and whether the moderator may receive assistance. The Plaintiff offers no authority to support his proposition, but instead reads a nonexistent requirement into the Constitution. *See In re Jesse F.* 143 N.H. 192, 195 (1998) ("It is a well-established principle of statutory construction that we will not add words to a statute, and thus bestow rights, that the legislature did not see fit to include"). The Plaintiff further argues that ballot counting devices are being used to conceal the submission of unlawful votes, but fails to allege how that is or could be happening and fails to allege how that has injured him in a personal, concrete way. PB26. The Plaintiff has therefore failed to establish standing on Count II. The trial court's dismissal of that count should therefore be affirmed.

2. Count IV – The Plaintiff did not demonstrate any injury related to New Hampshire voter qualifications.

Assuming that current New Hampshire voter qualifications exceed what the State Constitution permits,[5] the Plaintiff articulated no concrete, personal injury stemming from how the State Constitution or the legislature

[5] The Defendants oppose this position and only make this assumption for the purposes of the standing argument.

define voter qualifications. The Plaintiff argued that as a result of updates to New Hampshire's voter qualifications effected decades ago, he was disenfranchised and his vote was diluted. SA82. This assertion is speculative and, in this context, no different than a generalized grievance. *Cf. Wood*, 981 F.3d at 1314 (holding theory of vote dilution was a generalized grievance unsupportive of standing even where standing theory rested on unlawfully processed absentee ballots). As discussed *supra*, the hallmark of a claim of vote dilution is different groups' votes being assigned unequal weight or value. *See Boywer v. Ducey*, 506 F.Supp. 3d 699, 711-12 (D. Ariz. 2020) ("Contrary to the Voter Plaintiffs' conceptualization, vote dilution under the Equal Protection Clause is concerned with votes being weighed differently….This conceptualization of vote dilution – state actors counting ballots in violation of state election law – is not a concrete harm under the Equal Protection clause of the Fourteenth Amendment"). The Plaintiff has not alleged that his vote was treated differently than anyone else's vote. He has not alleged that his vote was assigned a different value than anyone else's vote. Because he does not articulate how his vote was treated or valued any differently, his claim cannot rise above a generalized grievance. The Plaintiff has therefore failed to adequately allege standing as to Count IV. The trial court's dismissal of Count IV should therefore be affirmed.

3. Count V – The Plaintiff did not demonstrate any injury related to absentee ballot access.

Assuming that current New Hampshire absentee ballot access exceeds what the State Constitution permits,[6] the Plaintiff alleged no concrete, personal injury stemming from that excess. In fact, the Plaintiff

[6] The Defendants oppose this position and only make this assumption for the purposes of the standing argument.

seemed to frame his own injury as one indistinguishable from a generalized wrong allegedly suffered by the public at large. In his complaint, the Plaintiff wrote, "[t]he Plaintiff has been injured by Such [sic] actions which have subjected the Plaintiff to unconstitutional laws, taxes, representation and changes to our form of government not consented to by the inhabitants of this State and secured by the State and Federal Constitutions." SA75. Again, the trial court ultimately found that the Plaintiff failed to state a claim for which relief could be granted. SA15.

On appeal, the Plaintiff argued that the allegedly unlawful expansion of absentee voting diluted his vote. PB30-31. Again, he does not explain, for example, how his vote or a voting bloc to which he belongs was singled out or disadvantaged by other voters having access to absentee ballot voting. Courts have routinely rejected such generalized claims for decades. *See Kauffman*, 441 Pa. at 157. Voters, including the Plaintiff, having access to the absentee ballot does not substantiate an injury distinguishable from a generalized wrong allegedly suffered by the public at large. *See Wood*, 981 F.3d at 1314. The Plaintiff has therefore failed to adequately allege standing as to Count V. The trial court's dismissal of Count V should therefore be affirmed.

4. Count VI – The Plaintiff did not demonstrate any injury as to the 1976 amendments to the State Constitution.

Though the Plaintiff alleges the 1976 amendments are unconstitutional, he did not originally allege an injury related Count VI. *See* SA75-82. Rather, he explained why he believed there was a divergence between the language the voters ratified with the 1976 amendments and the effect of the amendments which the legislature proposed. *See* SA75-82. The trial court found that there was no divergence between the language adopted and the effect of the amendments and dismissed Count VI.

On appeal, the Plaintiff did not allege an injury related to the passage of the 1976 amendments outside of vote dilution. PB24. This does not substantiate an injury distinguishable from a generalized wrong allegedly suffered by the public at large. *See id*. The Plaintiff has therefore failed to adequately allege standing as to Count VI. The trial court's dismissal of Count VI should therefore be affirmed.

II. THE PLAINTIFF LACKS STANDING UNDER PART I, ARTICLE 8 AND RSA 491:22 AS TO ALL COUNTS HE RAISES.

The Plaintiff does not advance a challenge to any specific act or approval of spending that would give him taxpayer spending under Part I, Article 8 of the State Constitution. The Plaintiff makes no argument that he has standing under Part I, Article 8 beyond passing references throughout his brief. Part I, Article 8 does not provide taxpayers with standing to challenge any government action. Rather, Part I, Article 8 only provides a plaintiff with standing to "call on the courts to determine whether a specific act or approval of spending conforms with the law." *See Carrigan v. N.H. Dep't of Health and Human Servs.*, 174 N.H. 362, 369-70 (2021), (emphasis added); N.H. CONST., pt. I, art. 8 (providing taxpayer standing to petition the Superior Court to declare that the State "has spent, or has approved spending, public funds in violation of [law]"). The Plaintiff has not advanced any such argument before this Court and he lacks taxpayer standing.

The Plaintiff advances no challenge to any law based on an injury or prejudice to him and has not properly invoked standing under RSA 491:22. The Plaintiff makes passing reference to having standing under RSA 491:22. SA57. The Plaintiff has presented nothing beyond this passing reference to establish standing under RSA 491:22. That statute authorizes a plaintiff to challenge the validity of a law only when the law impairs or

prejudices some right held by the plaintiff. *See Carrigan v. N.H. Dep't of Health and Human Servs.*, 174 N.H. 362, 367 (2021) (noting that the plaintiff must demonstrate a present legal or equitable right personal to the party must be prejudiced, mere status as a taxpayer insufficient to support standing). Here, the Plaintiff lacks standing as to all his claims under RSA 491:22, because he has not alleged a concrete, particular injury specific to him, as discussed *supra*. The Plaintiff has therefore failed to establish standing sufficient to obtain a declaratory judgment under RSA 491:22.

CONCLUSION

The Plaintiff does not allege any injury that is concrete and personal to him, that rises above a generalized interest the public shares, or that is capable of judicial redress. Accordingly, he lacks standing as to all of his claims. The trial court's dismissal order should therefore be affirmed.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
AND THE SECRETARY OF STATE

By their attorneys,

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CERTIFICATE OF COMPLAINCE

I hereby certify that this brief contains approximately 5,589 words, which is fewer than the words permitted by this Court's order. Counsel relied upon the word count of the computer program used to prepare this brief.

April 25, 2024 */s/ Matthew G. Conley*
Matthew G. Conley

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State's brief was served on all parties through the court's electronic filing system.

April 25, 2024 */s/ Matthew G. Conley*
Matthew G. Conley