

THE STATE OF NEW HAMPSHIRE SUPREME COURT

No. 2023-0097

Daniel Richard

v.

Christopher Sununu, et al.

PLAINTIFF'S SUR REPLY TO THE TOWN OF AUBURN'S

MEMORANDUM OF LAW

AND MOTION FOR SEPARATION OF THE PARTIES

Now comes, the Plaintiff Daniel Richard, pro se, submitting this sur reply in response to the defendant Town of Auburn response to my Appeal. The Court should take notice that there are two Parties at this juncture namely the Town of Auburn, and the state defendants each of which have their own separate counsel of record with each party filling its own separate brief or memorandum of law. Therefore, the Plaintiff respectfully motions this court to allow the Plaintiff to reply to each defendant separately.

The Town of Auburn's *Memorandum of Law* presented by its legal counsel failed to answer and or make any legal arguments on behalf the Town of Auburn, in response to the Plaintiff's Brief, and the Town has chosen to remain silent while asserting its Fifth Amendment rights. The limited one-page Memorandum of law by the Town of Auburn should now be considered by the Court as failure to answer the Plaintiff's Brief.

The Town of Auburn acknowledged in its brief that the Plaintiff claimed that his State and Federal constitutional voting rights have been violated under color of state law

by the use of unconstitutional voting machines. Therefore, the Town of Auburn has reinforced the justiciability of the Plaintiff's claims, in the instant case.

Erroneously, the Town of Auburn now claims in its memorandum of law that: **"The Plaintiff does not allege that the Town violated any statute regulating how the Town conducted election."** (Emphasis added). This statement is patently untrue.

Criminal Claims

The Appellant claims that the Town of Auburn: knew or should have known that they were not licensed to do so, acted under color of state law (a violation of 18 U.S. Code § 242) when the Town of Auburn violated the following state statutes: RSA 643:1- Abuse of Office -Official Oppression pg. 30, 43, RSA 666:3- Official Misconduct pg. 30, pg. 45. By depriving the Appellant of his right to vote, unless (coercion, a violation 52 U.S. Code § 20511 (1)(A)(C)) the Appellant used the Town Ballot Tabulation machine.

Civil Claims

The U.S. Const. Art. I, §4, cl. 1. delegates to the N.H. Legislature the duty to establish, the Time, Manner, and Place for holding federal elections. N.H. RSA 656:40 is contrary and repugnant to U.S. Const. Art. I, §4, cl. 1, because it delegates to the Ballot Law Commission (BLC) an un-elected body, the ability to establish the "Manner" in which electronic vote tabulation equipment are to be used, which it cannot do legally under our state and federal constitutions. That power is reserved to the N.H. Legislature in Part II, art. 5, and the U.S. Const. Art. I, §4, cl. 1.

Further, N.H. RSA- 656:40 authorizes the towns, or cities to use electronic vote tabulation devices on a trial basis, and said statute is void of any mention that hand counting paper ballot (N.H. Const. Part II, art. 32), which has been in effect since 1792- is now to be suspended by the N.H. Legislature in lieu of electronic vote tabulation equipment.

The Town of Auburn's failure to answer or deny these facts that were in my brief. For example, (found in the Plaintiff's Complaint): the responsible parties, both past and present are still unnamed. The town officials who separated un-certified Absentee Ballots from their envelopes and inserting them into the electronic vote tabulation equipment, are still unknown. Such actions by all of the named Defendants have destroyed the constitutional integrity of the absentee voting process. According to the Secretary of State's web site (public), the "manner" in which the absentee ballots were counted increased the average absentee voter turnout from 4% in 2014, 2016, 2018, to 32% in 2020.

The persons responsible for ordering, printing and delivering defective absentee ballot envelopes to the towns is still unknown.

Because the Plaintiff's case was summarily dismissed without hearing by the lower court, the Plaintiff was denied discovery, which would have revealed the names of public officials, the dates, and specifically acts that worked together in multiple stages over several decades to deny voters of N.H. the fundamental constitutional rights for a fair and equal election. The current absentee voting and electronic "manner" of conducting the state and Federal elections, violates those basic constitutional rights and processes, ipso facto.

The Plaintiff claims that the Town of Auburn violated the following state voting statutes which govern the manner in which state and Federal Absentee Ballots shall be certified (RSA 659:30); and the manner in which they are examined and verified (RSA 659:50 (b)); and the manner in which they are declared defective for lack of an Affidavit certificate (RSA 659:53); and the manner in which they are disposed of pursuant to state law RSA 659:53. The Town of Auburn failed to answer or deny these facts.

State/Federal Implications and Conflicts

Each of the following violations of the aforesaid election law statutes by the Town of Auburn affects the manner in which state and Federal Elections are conducted. Each of the violations of the aforesaid state voting statutes by the Town of Auburn also triggers a

violation of the following federal election laws, 52 U.S. Code § 10101 (2)(A)(B), (pg. 9, 10, 13, 27, 29, 30. 47); 52 U.S. Code § 20511 (1)(A)(B)(C)(2)(A)(B), and 18 U.S. Code § 242, (pg. 9, 13, 27, 46) as cited in the Plaintiff's brief.

The Town of Auburn has been mailing out defective (lack of affidavit certificate) Absentee Ballot envelopes under color of state law since 1979.

The Absentee Ballot affidavit envelopes are defective because they are void of any affidavit certificate provisions to allow the swearing of an oath (certificate), before any person authorized by law to administer oaths or before any election officer, as required by NH RSA 659:30 (Proper execution of affidavit), cited in the Plaintiff's Brief on pg. 9, 12, 29, 30, 32, 33, 43. This is a violation of criminal fraud under N.H. statute RSA 638:12- Fraudulent Execution of Documents. pg. 30, 43, and RSA- Abuse of Office 643:1 pg. 30, 43, RSA 643:1- Official Oppression pg. 30, 43, RSA- 666:3- Official Misconduct pg. 30, pg. 45. These violations of state election laws also trigger a violation of 18 U.S. Code § 242 pg. 9, 13, 27, 46, 52 U.S. Code § 10101 (2)(A)(B) pg. 9, 10, 13, 27, 29, 30. 47, 52 U.S. Code § 20511 (2)(A)(B).

The Town of Auburn, knowing that they were not licensed to do so, is using (plans to continue to do so in future elections) electronic vote tabulation devices authorized by the legislature (RSA 656:40) on a trial basis in 1979, to conceal and count un-certified and un-verified Absentee Ballots, in direct violation of state statute requiring the moderator to verify that the Affidavit required by NH RSA 659:30 was properly executed, as cited in the Plaintiff's Brief on pg. 9, 12, 29, 30, 32, 33, 43. The aforesaid is a violation of the following N.H. statutes: RSA 638:12- Fraudulent Execution of Documents, pg. 30, 43; Abuse of Office 643:1 pg. 30, 43, Official Oppression pg. 30, 43, RSA 666:2 Official Malfeasance. RSA- 666:3 Official Misconduct pg. 30, pg. 45. The Town's use of vote tabulation machines to conceal the counting of un-certified, and un-verified absentee ballots also triggers violations of 18 U.S. Code § 242 pg. 9, 13, 27, 46,

52 U.S. Code § 10101 (1)(2)(A)(B) pg. 9, 10, 13, 27, 29, 30, 47, 52 U.S. Code § 20511 (1)(A)(B)(C), (2)(A)(B), pg. 9, 13, 27, 29, 30, 47.

The rate of absentee voting from 2019 to 2020 went from less than 4% to 32%, therefore this illegitimate practice is of significant impact on the validity of the election.

The Moderator or asst Moderator for the Town of Auburn, knowing that they were not licensed to do so (and that plan to continue to do so in future elections) failed to perform the Moderator's mandatory constitutional duties under the N.H. Const. Part II, art. 32, namely to sort the votes, by following N.H. RSA 659:50 (b) to examine the inner envelope (called an affidavit envelope without a certificate) to ensure that the affidavit is properly executed. This is a violation of N.H. criminal statutes--RSA 638:12-Fraudulent Execution of Documents, as cited in the Plaintiff's Brief on pg. 30, 43; RSA 643:1 Abuse of Office Official Oppression pg. 30, 43; RSA 666:3 Official Misconduct pg. 30, pg. 45. The Town's use of vote tabulation machines to conceal the counting of un-certified and un-verified absentee ballots also triggers federal law violations of 18 U.S. Code § 242 pg. 9, 13, 27, 46, 52 U.S. Code § 10101 (1)(2)(A)(B) pg. 9, 10, 13, 27, 29, 30, 47, 52 U.S. Code § 20511 (1)(A)(B)(C), (2)(A)(B), pg. 9, 13, 27, 29, 30, 47.

The Town of Auburn, knowing that they were not licensed to do so, failed to ensure that the Moderator's constitutional duties under the N.H. Const. Part II, art. 32 were followed, by sorting the Ballots, and by discarding the defective Absentee Ballots pursuant to N.H. RSA 659:53 Forms not in order. – *“If the moderator finds that the absentee voter is not entitled to vote, the moderator shall not open the envelope and shall mark across the face of the envelope”* ... *“affidavit improperly executed,”*. The moderator or asst moderator failed to verify that the affidavit was properly executed (certified) and then removed the Ballot from the un-certified affidavit envelope and put it through the voting machine to be counted. This is Ballot Box stuffing by Town of Auburn actors and violation of the following criminal statutes, cited in the Plaintiff's Brief, RSA 638:12-Fraudulent Execution of Documents. pg. 30, 43; and, RSA 643:1

Abuse of Office - Official Oppression pg. 30, 43; RSA 666:2 Official Malfeasance; RSA 666:3 Official Misconduct pg. 30, pg. 45. Failure of the moderator or asst. moderator to examine the absentee ballot envelope for properly executed affidavit also triggers a violation of federal 52 U.S. Code § 10101 (2)(A)(B), 52 U.S. Code § 20511–(2)(A)(B).

The Town of Auburn violated state and Federal election laws, knowing that they were not licensed to do so, by allowing the moderator or asst. moderator to count votes, by knowingly and willfully procuring, and or allowing the casting of, and enabling the “*tabulation of ballots that are known by the persons to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,*” 52 U.S. Code § 20511 (2)(A)(B), pg. 9, 13, 27, 29, 30, 47. This Is also a violation of RSA 638:12- Fraudulent Execution of Documents. pg. 30, 43, and RSA 643:1 Abuse of Office - Official Oppression pg. 30, 43., RSA 666:3 Official Misconduct pg. 30, pg. 45. This also triggers a violation of 18 U.S. Code § 242 pg. 9, 13, 27, 46, 52 U.S. Code § 10101 (2)(A)(B) pg. 9, 10, 13, 27, 29, 30. 47, 52. U.S. Code § 20511 (2)(A)(B), pg. 9, 13, 27, 29, 30, 47.

The Town of Auburn, knowing that they were not licensed to do so, has allowed the Moderator or asst. moderator to knowingly and willfully certify the election (RSA 659:95) using the “*tabulation of ballots that are known by the persons to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,*” 52 U.S. Code § 20511 (2)(A)(B), pg. 9, 13, 27, 29, 30, 47. The aforesaid acts also violate the following state civil and criminal statutes cited in this instant case, RSA 638:12— Fraudulent Execution of Documents. pg. 30, 43, And, RSA 643:1, Abuse of Office- Official Oppression pg. 30, 43, RSA 666:3 Official Misconduct pg. 30, pg. 45. These state violations of the election laws also trigger a violation of 18 U.S. Code § 242 pg. 9, 13, 27, 46, 52 U.S. Code § 10101 (2)(A)(B) pg. 9, 10, 13, 27, 29, 30. 47, 52 U.S. Code § 20511 (2)(A)(B)

The Town's Brief in the lower Court fatally omits a response to the substance of my complaint regarding voting machines and the counting ballots pursuant to the Const. N.H. Part II, art. 32, from the beginning, by ignoring the Plaintiff's citation of the current State Supreme Court precedent of *Baines v. N.H. Senate President*, 152 N.H. 124, 876 A.2d 768 (N.H. 2005) (cited in this case), which is now the current state Standard of Review and principles of Construction of controlling state questions of law.

Under such Standard of Review, the examination of the text of the Const. N.H. Part II. art. 32 as amended in 1792, must be "viewed in light of the surrounding circumstances." *Id.* "The language used by the people in the great paramount law which controls the legislature as well as the people, is to be always understood and explained in that sense in which it was used at the time when the constitution and the laws were adopted." *Id.* (Emphasis added)

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. As the manner in which the Federal elections are conducted is question, *New York State Rifle & Pistol Assn., Inc., et al. v. Bruen*, is controlling and Heller/Bruen precedent and 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 one of the people, an inhabitant of N.H.

Under the Heller/Bruen methodology, the Town of Auburn has failed to prove or argue any historical evidence that any of the issues (legislative encroachment) raised by the Plaintiff in this instant case where applicable at the time of the adaptation of any of the constitutional provisions relevant to this case.

The Town of Auburn has failed to meet its burden under the Heller/Bruen U.S. Supreme Court prerequisites at law. Therefore, the Plaintiff respectfully seeks the following relief from this Honorable Court as follows;

Reaffirmation of Relief Sought

- A. The Plaintiff reasserts his request for Oral arguments for the following reasons-
- The new authorities and the arguments presented by the Plaintiff are novel and recently determined by the U.S. Supreme Court as binding precedent in this case.
 - This case covers 50 years of voter fraud with civil and criminal violations of Law by the Executive Branch, the Legislative Branch, and local government actors.
 - The Plaintiff was denied a hearing on the merits of his case, including but not limited to discovery, oral arguments etc.
 - The Supreme Court rules controlling the word count to 9500-word limit has restricted the Plaintiff’s ability to fully present his case.
- B. Grant a summary judgment against the Town of Auburn.
- C. Grant Oral arguments, against the state defendants, which will allow the Plaintiff to fully present his claims and relief sought.

Respectfully submitted,

/s/ Daniel Richard

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.

August 15, 2023

/s/ Daniel Richard

Daniel Richard