

New Hampshire Supreme Court

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NEW HAMPSHIRE
SUPREME COURT

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Case # 2018-0267

**Request for an Opinion of the Justices
(Amending Definition of Resident and Residence)**

MEMORANDUM OF LAW FILED BY:

Ray F. Chadwick, Chairman, On Behalf Of:

Granite State Taxpayers

PO Box 6212, Manchester, NH 03103

May 31, 2018

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GRANITE STATE TAXPAYERS

Granite State Taxpayers is New Hampshire's oldest state-wide Taxpayer Advocacy Group. We are a non-partisan non-profit group with a Mission to inform, educate and motivate New Hampshire taxpayers and to lobby the legislature on their behalf.

THE INTEREST OF GRANITE STATE TAXPAYERS IN IMPROVED ELECTION LAW

Granite State Taxpayers has studied election law and advocated for improvements for over 5 years. We advocate for low taxes, balanced budgets, frugal, limited government that works within its constitutional authority, and local control of spending.

REPUBLICAN GOVERNMENT RELIES ON VOTERS TO PROVIDE A CHECK ON IT

Informed voters acting through the ballot box provide a check on government. That check relies on voters having to live with the legislators and governance they elect. Accountability is undermined when people who do not actually have to live with the results of an election can vote and affect the electoral outcome.

Allowing voters who are not *bona fide* residents of New Hampshire to vote in New Hampshire creates a case of "Representation Without Taxation" and effectively negates the validity of the votes of bona fide New Hampshire residents..

Election law should ensure that only *bona fide* New Hampshire resident voters can exercise the right to vote in the state. No New Hampshire voter should have their vote cancelled by an out-of-state voter. The integrity of the voting process requires that laws protect against that potential.

The status of current New Hampshire election law, along with various court decisions and interpretations, gives rise to several practices illustrating a lack of integrity.

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Currently, individuals can vote in our elections by merely asserting they are domiciled here without proving they live in New Hampshire and in the voting precinct where they want to vote.

The registrant presently has no obligation to provide proof of actualizing that intent.

People (6,540 in 2016) can register and vote in our state with an out of state driver's license as proof of identity. **(Appendix I, Page 10, Summary Matrix)**

Follow up on whether people actually move here after registering to vote in the state is nearly non-existent. Except for double voting, prosecuting for voter fraud is impossible due to the practical inability to prove intent or the lack thereof.

NEW HAMPSHIRE KNOWINGLY ALLOWS OUT OF STATE RESIDENTS TO VOTE

While an out of state driver's license provides proof of identity, it also proves residency in another state.

The Secretary of State reported that, in 2016, 6,540 people used an out of state driver's license to register to vote in New Hampshire. Not all were people who just moved and were not yet able to get a New Hampshire license. Of that total, 491 used an out of state driver's license to change registration from one town to another town within New Hampshire, and 146 people used an out of state driver's license to re-register on the voter rolls after being previously removed. **(Appendix I, Page 10, Summary Matrix)**

Detailed information from the Secretary of State supporting that summary showed that in 2016, out of 5,903 new registrants using out-of-state drivers' licenses, 2,246 of those used a Massachusetts license. Obtaining a Massachusetts driver's license requires

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proving residency with documentation showing an address in Massachusetts. (Ref.1)

Consequently, 2,246 persons registered to vote in New Hampshire in 2016 by using a Massachusetts driver's license proving they were actually residents of Massachusetts

NEW HAMPSHIRE KNOWINGLY ALLOWS OUT OF STATE STUDENTS TO VOTE

New Hampshire statutes (Title LXIII, Chapter 654:1, 1-a) provide that *"a student of any institution of learning may lawfully claim domicile for voting purposes in the New Hampshire town or city in which he or she lives while attending such institution."* (Ref. 2)

Other states require students to declare residency or domicile in order to vote. For example, a student can vote in Maryland if it is *"the place that you consider to be your 'official' or 'permanent' home."*, *"the address you use most frequently on tax returns or other government documents, driver's license, bank accounts, and so forth."* (Ref. 3)

HB 1264 (ALONG WITH SB 3) CLOSSES CURRENT LOOP HOLES IN THE LAW.

These bills rectify issues in current law that enables non-residents to vote and hold office in New Hampshire.

HB 1264 (Ref. 4) is the subject of this memorandum. SB 3 is described for reference.

HB 1264 clarifies definitions of the terms "resident," "inhabitant," "residence," and "residency." in state law. It eliminates the phrase "for the indefinite future," enabling a residency requirement compliant with previous court decisions.

SB 3, currently being challenged in Court, requires voters to provide documentation that they are domiciled in New Hampshire. It provides a mechanism for following up on voters who are unable to provide such documentation in a timely manner, and penalties for those who fail to provide the required documentation.

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**THE FOLLOWING STATEMENTS SUPPORT, OR RESPOND TO ARGUMENTS
AGAINST, THE CONSTITUTIONALITY OF HB 1264.**

**REQUIRING VOTERS BE *BONA FIDE* RESIDENTS, AND PROVE THAT THEY ARE,
IS COMMON IN OTHER STATES.**

The United States Supreme Court, in DUNN v. BLUMSTEIN, March 21, 1972, stated:

"We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision." (Ref. 5)

Requiring residency, and providing proof thereof, can hardly be unconstitutional, as 49 other states and the District of Columbia have identical expectations. Of those states, 47 states and the District of Columbia require proof of duration of actual residency before being able to vote. Of those jurisdictions, 27 require 30 days of residency.

For example, Massachusetts requires residency documentation with proof of the name and address of the registrant. The registrant has until the polls close to present their proof of residency, or they will not be able to vote. (Ref. 1) (Ref. 6)

The penalty for illegal registration in Massachusetts is *"a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both."* (Ref. 7)

With expectations of voter residency and proof thereof in other states, which have been upheld as constitutional, it would be difficult to find that similar expectations could be unconstitutional in New Hampshire.

HB 1264 DOES NOT CONSTITUTE, CREATE OR IMPLEMENT A POLL TAX

HB 1264 makes residency a pre-requisite for voting in New Hampshire.

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Residency exposes one to subsequent obligations (licenses, taxes) by statute, but none of those requirements are conditions precedent to registering to vote.

Since current residents of New Hampshire are not subject to any poll taxes, neither could newly registered voters be.

HB 1264 PROVIDES EQUAL PROTECTION UNDER LAW

The Constitution guarantees the right to vote, and not to have the votes by validly registered voters negated.

The 14th Amendment provides that representation is based upon census and that no person's vote should be less effective than another person.

Currently, certain groups are accorded the privilege of voting alongside New Hampshire residents, but at the same time, being non-residents, they are freed from undertaking the obligations to the State that are expected from New Hampshire residents.

The current situation is an affront to the concept of Equal Treatment under the Law.

HB 1264 provides that all voters in New Hampshire must meet the expectations of residency and domicile as established under the New Hampshire Constitution, and could be obliged to present proof that they meet those requirements.

New Hampshire statutes currently provide that residents are obliged to fulfill obligations of residency including, for example, obtaining licenses for specific activities, registering and inspecting vehicles, reporting and paying taxes, etc.

Consequently, HB 1264 will provide for an equal treatment of all voters with regard to their right to vote and to their other obligations to the State under statute.

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INTEGRITY IN ELECTION LAW REQUIRES LAWS TO BE EASILY UNDERSTOOD

The current body of statute and case law is incomprehensible to average voters.

The ability of people to vote here with out of state licenses is particularly problematic.

This lower perception of integrity reduces voter commitment and faith in election results.

THE LEGISLATION UNDER REVIEW WILL NOT DISENFRANCHISE VOTERS

Requiring that New Hampshire voters must be *bona fide* residents of the state will not disenfranchise anyone.

The same requirement when applied in other states has not been perceived as disenfranchising their voters.

A variety of organizations offer guidance and assistance in how and where to vote.

Internet access and State voter websites make the process of absentee voting simple.

Federal law provides a period for people moving to vote absentee in their prior district.

Those temporarily in New Hampshire (including students) are able to vote absentee.

SUMMARY OF ISSUES WITH CURRENT LAWS

People are currently able to vote in New Hampshire without presenting valid New Hampshire identification or proof of citizenship in the state.

People are currently able to vote in New Hampshire without being a *bona fide* resident nor being domiciled in New Hampshire.

Known residents of other states are currently able to vote in New Hampshire, thereby effectively negating the votes of *bona fide* New Hampshire resident voters.

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CONCLUSION

Due to the reasons and rationale stated above, *Granite State Taxpayers* recommends a judicial review of HB 1264 and a finding that the legislation is constitutional.

CERTIFICATION


I certify that copies of this memorandum have been sent to the following:

Governor Chris Sununu, State House, 107 North Main Street, Concord, NH 03301

Executive Council, State House Room 207, 107 North Main Street, Concord, NH 03301

Gordon J. MacDonald, Attorney General, 33 Capitol Street, Concord, NH 03301

Respectfully submitted and certified

 5/31/18

Ray F. Chadwick

Date

As Chairman & On Behalf Of

Granite State Taxpayers

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May 31, 2018

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REFERENCES

(1) Guide to Massachusetts Identification (ID) Requirements

<https://www.mass.gov/guides/massachusetts-identification-id-requirements>

(2) New Hampshire RSA TITLE LXIII, CHAPTER 654, Section 654:1-I a

<http://www.gencourt.state.nh.us/rsa/html/LXIII/654/654-1.htm>

(3) Residency for Students enrolled in a Maryland institution of higher education

https://elections.maryland.gov/voter_registration/students.html

(4) HB 1264 - VERSION ADOPTED BY BOTH BODIES

www.gencourt.state.nh.us/bill_status/billText.aspx?sy=2018&id=1365&txtFormat=html

(5) *Dunn v. Blumstein*, 405 U.S. 330 (1972), 92 S.Ct. 995, 31 L.Ed.2d 274

Supreme Court of the United States Winfield DUNN, Governor of the State of
Tennessee, et al., Appellants, v. James F. BLUMSTEIN.

No. 70—13. Argued Nov. 16, 1971. Decided March 21, 1972

*“***1004 We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. E.g., Evans v. Cornman, 398 U.S., at 422, 90 S.Ct., at 1754; Kramer v. Union Free School District No. 15, supra, 395 U.S., at 625, 89 S.Ct., at 1888; Carrington v. Rash, 380 U.S., at 91, 85 S.Ct., at 777; Pope v. Williams, 193 U.S. 621, 24 S.Ct. 573, 48 L.Ed. 817 (1904).”*

(6) Massachusetts Identification Requirements (to be Presented by Close of Polls)

<https://www.sec.state.ma.us/ele/eleidreq/idrequirementsidx.htm>

(7) Massachusetts General Laws, Part I, Title VIII, Chap. 56, Sect. 8, Illegal registration

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVIII/Chapter56/Section8>

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APPENDIX I

Secretary of State Report issued February 14, 2017 in response to a RSA 91-A request for: Out-of-State Drivers Licenses Presented during Voter Registration

SUMMARY MATRIX

Voters Who Registered to Vote on 11-08-2016		
Source: NH Statewide Voter Registration System, as of 01-18-2017		
EDR Components	Election Day Registrations (EDRs)	EDR voters who registered using an out-of-state driver's license
Existing NH Voters who changed town or city ward to register to vote	32,448	491
New Voters to New Hampshire	44,341	5,903
Voters who re-registered in the same town or ward and were previously removed due to a 10-year purge or 30-day letter	4,453	146
Totals	81,242	6,540

THE SECRETARY OF STATE ALSO ISSUED SUPPORTING DOCUMENTATION FOR THE SUMMARY MATRIX INCLUDING A SPREADSHEET WITH THE NUMBER OF NEW REGISTRANTS BY EACH STATE AND THE DISTRICT OF COLUMBIA AND BY EACH NEW HAMPSHIRE CITY AND TOWN, WITH TOTALS FOR EACH.

THAT SPREADSHEET IS TOO LARGE TO INCLUDE IN THIS MEMORANDUM.

THE SECRETARY OF STATE DOCUMENTS SHOW THAT OF 5,903 NEW VOTERS IN 2016, 2,246 REGISTERED USING A MASSACHUSETTS DRIVER'S LICENSE.