

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

DANIEL RICHARD

Plaintiff

v.

CHRISTOPHER T. SUNUNU, et al.

Defendants

PLAINTIFF'S OBJECTION TO THE DEFENDANTS MOTION TO DISMISS

INTRODUCTION

I, Daniel Richard, pro se, have filed a complaint against Defendants CHRISTOPHER T. SUNUNU, DAVID SCANLAN, JOHN FORMELLA, SHERMAN PACKARD, CHUCK MORSE, KEITH N. LECLAIR, and DANIEL A. GOONAN, collectively I refer to as “Defendants” for trespassing on the Rights of the Plaintiff by exercising powers not delegated to them by the New Hampshire Constitution, and under the statutory laws of the State.

First, current voting laws within the State of New Hampshire and enforced by the New Hampshire Executive branch of government have been systematically designed and promulgated to permit inhabitants from other jurisdictional states to openly and freely vote within the State of New Hampshire. Altering by statute the exemption for Absentee voting and altering by statute, the manner in which votes are sorted and counted, in violation of the New Hampshire Bill of Rights and the New Hampshire Constitution.

Secondly, notwithstanding page 9, paragraphs 25 and 26 of the Plaintiff’s complaint, where he provides the constitutional and statutory authorities for his claims upon which the relief

he seeks can be granted, but provides a cause of action in each of his six “XI” claims, which provide Plaintiff’s standing in the instant controversy.

Although the Plaintiff demonstrates a disability in legal form and certain particulars, the merits of his claims are clear and precise when detailing his constitutional Counts and the associated statutory authorities.

1. First and foremost, the Defendants are asking the court to treat the Plaintiff’s complaint as an argument, and not a set of allegations as required by the New Hampshire rules of civil procedure.

2. In reading the Plaintiff’s pro se complaint, the Defendants ignore a long-standing U.S. Supreme court decision in *Cruz v. Beto*, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972), where “. . . "a court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively, and take them as true for purposes of deciding whether they state a claim.”

3. The Plaintiff has alleged real and unequivocal electrical and electronic safety hazards currently exposing him and the public at large. *See Count III, pgs. 16-17 of the Plaintiff’s Complaint*. It is ironic, that the Defendants, elected to provide safety and security to the Defendants and inhabitants of the State, would knowingly and willingly argue a motion to maintain these hazards in the public domain, exposing the Plaintiff and the public at large to these hazards as complained of by the Plaintiff. Nonetheless, the Defendants did argue to maintain these hazards in the workplace of election workers and to the voting public, in their Motion to keep the Plaintiff’s Expert Witness from testifying to the safety and efficacy of these electrical and electronic tabulating voting machines. By doing so, and successfully, the Defendants elected to keep the instant controversy alive.

4. The Defendants now cannot ask the Court to ignore these existing hazards and dismiss an ongoing statewide safety issue, in light of an upcoming state-wide election that will expose me and tens of thousands of New Hampshire citizens (wearing cardiac pacemakers, electronic AED implants, ear amplification devices, etc) to hazards, which the Plaintiff’s and the Defendants experts have not had the opportunity to testify to and adjudicate? In this regard, I will refer to the report prepared by the Plaintiff’s safety expert, Wayne P. Saya, Sr., and previously made a part of the record by this Court during the above-named motion hearing in question.

MEMORANDUM OF LAW

5. In light of the numerous Federal and U.S. Supreme court decisions regarding the 2020 elections, *Donald J. Trump for President, Inc. v. Boockvarthe*, 493 F. Supp. 3d 331, (2021); *1. DCCC v. Ziriak*, 487 F. Supp. 3d 1207, (2020); *Democratic Nat'l Comm. v. Bostelmann*, 488 F. Supp. 3d 776, (2020), and more cases, the federal courts have made it clear that elections are state-specific and driven by state constitutions and state statutes.

6. For the physical safety of the Plaintiff, the non-safety-tested tabulating voting equipment should and must not be used, and in accordance with the New Hampshire Bill of Rights and Constitution, regardless of the use or non-use of the said voting equipment, the Plaintiff's vote must be hand-counted, and this hand-counting must include all voters under the equal protection clause of the New Hampshire Bill of Rights and Constitution.

7. The Plaintiff here claims; as in the Delaware Supreme court decision of Anthony J. Albence v. Michael Higgin, et al, docket no. 342, 2022,¹ New Hampshire statute Chapter 669—Town Elections §§ 669:1 — 669:75), contains the following:

a. The Vote-by-Mail Statute impermissibly expands the categories of absentee voters identified in Article _____, section _____ as written violates the State's Bill of Rights and Constitution.

b. The Same-Day Registration Statute also conflicts with the provisions of Article _____, section _____ of the State's Bill of Rights and Constitution.

c. Additionally, the reason the above-named tabulating equipment does not have a current OSHA safety-rating, is because the voting equipment in question were tampered-with in order to modify their originally intended use. This tampering is a violation of New Hampshire law

¹ Delaware Court ORDER, October 7, 2022.

659:42. (Tampering With Electronic Ballot Counting Devices), and currently violate the Plaintiff's due-process rights under Article 15 of the New Hampshire Bill of Rights and Constitution, and a violation of federal regulatory law under OSHA.

8. In the instant case, for the purpose of injunction relief, the Plaintiff has clearly established an actual, concrete, particularized, and imminent threat of physical harm as well as harm from a constitutional tort, to establish standing. See *Memphis A. Philip Randolph Inst. v. Hargett*, *United States Court of Appeals for the Sixth Circuit* | Oct 15, 2020 | 978 F.3d 378. Compare the federal court's stance regarding mail-in absentee ballot fraud, *Donald J. Trump for President, Inc. v. Boockvar*, *United States District Court for the Western District of Pennsylvania* | Oct 10, 2020 | 493 F. Supp. 3d 331, where the State's constitution was not invoked.

9. In the case here before this court, judicial intervention is necessary because, as in the Delaware case, *supra*, statutory deadlines for mail-in registration applies opposite to State's Bill of Rights, and absentee voting under RSA Chapter 657 'as written' must be deemed unconstitutional in New Hampshire. Compare *Democratic Nat'l Comm. v. Bostelmann*, *United States District Court for the Western District of Wisconsin* | Sep 21, 2020 | 488 F. Supp. 3d 776.

10. Preliminary injunction was granted in part because limited relief from statutory deadlines for mail-in registration and absentee voting under Wis. Stat. §§ 6.86, 6.87, 6.88 was necessary to avoid an untenable impingement on Wisconsin citizens' right to vote, including those voters relying on the state's absentee ballot process.

11. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1941 were evidence of his claims, (see Count V), see attached certified archive copies of the Constitutional Convention resulting

in the amendment of Part I, art. 11 detailing the 2 constitutional exemptions for absentee voting, and the statutes written pursuant thereof.

12. Count V claims that statutes in RSA Chapter 657 expands the exceptions by which absentee voting (mail in voting) may be claimed or exercised, in direct violation of the current constitutional requirements defined by Part I, art. 11, without the consent of the voters required by Part I, art, 1. And the procedural due process required to amend or alter the constitution as required by Part II, art. 100.

13. The Plaintiff motions the court for expedited hearing of expert testimony, and eye witness accounts of poll workers tuning off voting machines, after witnessing them short circuit and malfunction, when paper ballots get wet on rainy days or exposed to hand sanitizer after use of hand sanitizer used at polling places.

14. As the Plaintiff stated in his oral arguments at the first hearing, The state is to blame for the timing of this direct challenge of said statutes which alter and infringe upon the Bill of Rights, without the consent of the voters as detailed in Count II. IV. V. The Plaintiff has exhausted all available means of redress since May 20th of 2019 before the legislature which has jurisdiction to repeal laws under Part First, article 29, but unfortunately the legislature has refused to hear the Remonstrances of the Plaintiff, which is why this complaint is now before this Honorable Court.

15. The Plaintiff notices the Court to take Judicial Notice of the statement made by the Defendants in their Motion to Dismiss, item number fourteen.

16. The Plaintiff submits the following evidence, so that your honor may the judge weather the Defendants statements submitted to this Court in this matter were disingenuous or negligent.

17. Defendants have stated the following in their motion to dismiss, Item # 14

“There is not, nor has there ever been, a constitutional right to have one’s vote hand counted in New Hampshire. Outside of statutorily described circumstances such as recounts, there is no constitutional provision, statute, or jurisprudence that would support such a right.” Defendants Motion to Dismiss Item #14.

18. The Attorney General Office and the Attorneys representing the state and Town of Auburn, have sworn an oath, and they have accepted an emolument, therefore they have a fiduciary duty as trustees of the public trust, to uphold and support the Constitution of New Hampshire and the Constitution of the United States, and the laws written pursuant thereof.

19. The Defendants state there is no law, no constitutional provision, statute, or jurisprudence that would support such a right. Such a statement by the Defendants is not true.

Opinion of the Justices, 53 N.H. 640 (1873) May 28, 1873 · New Hampshire Supreme Court 53 N.H. 640, last cited by the N.H. Supreme Court in 1974.

The following sections of chapter 30 of the General Statutes relate to the “Election of Representatives in Congress:”

“Section 4. The meetings in the several towns in each district shall be warned and governed, and the returns of votes for representatives shall be made out, signed, certified, sealed, directed, transmitted, receipted for, examined, and counted, at the same time and in the same manner as provided for the returns of votes for senators.”

*“Section 5. Upon such examination and count, the person having the largest number of votes returned in any district shall be declared *642duly elected, and tlie governor shall forthwith transmit to the person so elected a certificate of such election under the seal of the state, signed by himself, and countersigned by the secretary.”*

Article 32 of Part II of the Constitution, provides that town-meetings for the choice of senators shall be governed by a moderator, who shall, in the presence of the selectmen, in open meeting, receive the votes, and shall, in the presence of the selectmen and town-clerk in said meetings, sort and count the votes, and make a public declaration thereof, with the name

of every person voted for, and the numb'er of votes for each person, and the town-clerk shall make a fair record of the same, at large, in the town-book, and shall make out a fair attested copy thereof, to be sent to the secretary of state.

Chapter 28, "Section 15. The moderator shall, in the meeting, in presence of the selectmen and town-clerk, sort and count the votes, and make a public declaration of the whole number of tickets given in, with the name of every person voted for, and the number of votes for each person, and the town-clerk shall make a fair record thereof at large in the books of the town."

Chapter 29, "Section 2. The town-clerk shall make out a fair and exact copy of the record of all votes given in at any such meeting, for governor, for councilor, and for senator, upon distinct and separate pieces of paper; shall certify upon each copy that the same is a true copy of said record, and shall seal said copies separately, and direct and forward the same to the secretary of state, with a superscription upon each expressing the purport thereof, on or before the first day of April next ensuing."

*In any case to which these constitutional provisions are applicable, they are the controlling and the supreme law of the state, and, by the statute first cited, they are made applicable to representatives in congress. The constitution and these statutes are too explicit to leave any doubt in our minds of the general duty of the moderator to count the votes, and make a public declaration of the result of his count, or of tlio general duty of the town-clerk to make a record of the moderator's declaration of that result. The only construction we are-able to give to the words "a fair record of the same" in the constitution, and "a fair record thereof" in the statutes, is, that they mean a record of the "public declaration." The clerk is not an appellate tribunal to overrule the moderator, or to correct an error in the moderator's count and declaration, or to make a record, of the votes, in accordance with a count made by himself, or in accordance with any other evidence than the moderator's count and declaration. The clerk is responsible, not for the accuracy of the moderator's count or declaration, but for his own accuracy in making a correct record of that count and declaration, and in making a correct copy of the record to be sent to the *643 secretary of state. The moderator's declaration is to be public, in open town-meeting, in presence of the selectmen, town-clerk, and all others who may take an interest in the election, and be able and willing to detect and expose any error,*

and obtain a correction of it immediately, when it can be most easily corrected. And 'the framers of the constitution and of the statutes referred to evidently relied to a considerable extent upon the publicity of the declaration as a means of obtaining a correct count and a correct record, and did not rely upon the clerk as a tribunal for the silent correction of errors, not publicly corrected by the moderator himself in open town-meeting.

20. The Plaintiff cited in his complaint and in oral arguments that the Amendments of Part First the Bill of Rights article 11, for absentee voting in the 1942 were evidence of his claims, see attached certified archive copies of the amendments and the statutes written pursuant thereof. The following statutes requires that the moderator shall count the ballots. And just like they did in 1784, and then 89 years later in 1873, and then 69 years later in 1942, the ballots were examined and counted by hand as voting machines don't exist during this period in history, this is a historical fact. Prior to the introduction of electronic voting tabulating devices, ballots were examined (sorted) and counted by humans who have hands, but more importantly is the ability to examine ballots and the signatures, in order to verify the legitimacy of the ballot, which a machine cannot do.

21. Revised laws of N.H. 1942, pg. 148, 79. Counting ballots:

Immediately after the polls are closed the ballots shall be examined and the votes for the several candidates and on any questions submitted shall be counted by the moderator, in the presence of the town clerk, the selectmen and the other election officers herein provided. The counting shall be public but within the quad-rail, and shall not be adjourned nor postponed until it shall have been completed, and the whole number of ballots cast for each person and on each question submitted to the voters shall have been announced...

22. With the addition of absentee voting, we see the statutory application that the examination of mail in ballots must be done by hand as a voting machine cannot examine the ballots and the signatures of the mail in votes, therefore they must sorted and counted by the

moderator by hand, as this is the usage and custom of the law until the introduction of machine counting of ballots.

23. The Plaintiff moves the Court to take judicial notice that the Town of Auburn failed to provide a hand count box which Atty. Michael Tierney told the court would be made available at the Town of Auburn, which it did not. The Plaintiff protested and refused to deposit his vote in the machine, until election officials went and retrieved a box, putting into doubt the secrecy of the Plaintiffs right to a secret ballot. Such actions are also a violation of the equal protection clause of the 14th amendment and federal voting law *Title 52 U.S. Code § 10101 Voting rights* (2) (A), all voters must be treated the same.

WHEREFORE, the Plaintiff respectfully motions this Court for an expedited hearing, due to the urgency of resolving the Safety and Constitutional issues before the election on November 8th, 2022, as stated in this motion.

I, Daniel Richard, swear under pains and penalties that foregoing is true and accurate to the best of my knowledge and belief.

Daniel Richard

Date: October 14, 2022

/s/ Daniel Richard

CERTIFICATE OF SERVICE

I hear by certify that a copy of the foregoing was served upon the Defendants Attorneys of record in this matter via the Court's electronic filing system.

Daniel Richard

Date: October 14, 2022

/s/ Daniel Richard