

NEW HAMPSHIRE SUPREME COURT

Case No. 2025-0297

2025 TERM

DANIEL RICHARD

V.

CHRISTOPHER T. SUNUNU, et al.

**MOTION TO DISQUALIFY ATTORNEY GENERAL JOHN FORMELLA AND
THE NEW HAMPSHIRE DEPARTMENT OF JUSTICE DUE TO CONFLICT OF
INTEREST AND ALLEGED CRIMINAL CONDUCT**

The Appellant, Daniel Richard, moves to disqualify Attorney General John Formella and the New Hampshire Department of Justice from representing the Defendants in this matter due to a clear conflict of interest arising from Formella's role as the state's chief law enforcement officer while allegedly engaging in criminal conduct that undermines the integrity of the electoral process. The Attorney General's actions, as detailed below, violate state and federal laws, compromise his impartiality, and infringe upon the Appellant's due process and equal protection rights under the New Hampshire and United States Constitutions. Disqualification of the AG and his office is necessary to ensure a fair and impartial proceeding.

I. Introduction

This motion seeks to disqualify Attorney General Formella and the DOJ based on: (1) alleged misconduct in overseeing election procedures, (2) conflicts of interest arising from Formella's role as chief law enforcement officer, (3) prior relationship with Defendant Sununu, and (4) lack of statutory authorization, and (5) bias demonstrated by his prosecution of Justice Anna Barbara Hantz Marconi, which

caused her recusal from this case. These issues, supported by prior filings and public records, necessitate disqualification to protect the Appellant's constitutional rights and public confidence in the judicial process.

II. Alleged Misconduct by Attorney General John Formella

The Appellant has consistently alleged that the Defendants, including Attorney General Formella, have violated his constitutional rights to free, fair, and equal elections through the use of voting machines and a statutory scheme that dilutes the votes of the Appellant and others similarly situated. *See Avery v. State*, 173 N.H. 726, 736-37 (2020); *Baker v. Carr*, 369 U.S. 186, 205-06 (1962). Specifically, the Attorney General's oversight of election procedures has facilitated practices that constitute criminal violations under New Hampshire and federal law, including:

- **Improper Handling of Absentee Ballots:** The Appellant's briefs (filed June 25, 2023) and oral arguments (November 29, 2023) assert that Formella permitted the counting of uncertified absentee ballots with improperly executed affidavits, processed through voting machines. This practice, combined with:
- **Ballot Box Stuffing and Fraudulent Execution of Documents:** The Defendants, under Formella's authority as chief law enforcement officer, have permitted the counting of uncertified and unqualified absentee ballots with improperly executed affidavits. These ballots are inserted into voting machines and counted as legal votes, a practice that amounts to ballot box stuffing. This conduct violates:
 - **N.H. RSA 666:2 (Official Malfeasance)**, which prohibits willful neglect or misconduct by public officers in the execution of their duties;
 - **N.H. RSA 666:3 (Official Misconduct)**, which penalizes public officers for knowingly violating election laws;
 - **N.H. RSA 638:12 (Fraudulent Execution of Documents)**, which addresses the fraudulent creation or use of documents with intent to deceive; and

- **52 U.S. Code § 20511(1)(A), (2)(A)(B)**, which prohibits knowing and willful interference with federal election processes, including the submission of fraudulent voter registrations or ballots.
- **Official Oppression:** By enforcing Secretary of State election procedure manuals as colorable state election laws without delegated authority, Formella has exercised unconstitutionally broad powers, suppressing the Appellant's voting rights. This alleged conduct violates **N.H. RSA 643:1 (Official Oppression)**, which prohibits public officials from knowingly committing unauthorized acts to harm another's rights.

These allegations, detailed in the Appellant's briefs filed on June 25, 2023, and argued orally on November 29, 2023 before this Court, demonstrate that Formella's actions are not merely administrative but constitute criminal misconduct that directly and substantively impacts the integrity of the electoral process at issue in this case.

III. Conflict of Interest Precluding Representation

The Attorney General's role as the state's chief law enforcement officer, responsible for upholding election laws, creates an inherent conflict of interest when he is accused of violating those same laws. This conflict is compounded by additional factors:

- **Lack of Statutory Authority Under Qualified Immunity Statute:** The Attorney General's representation of the Defendants in this case lacks statutory authorization under **N.H. RSA 99-D:2**, which governs the provision of legal counsel by the Department of Justice for state officials. On May 6, 2025, the Appellant submitted a Right-to-Know request under RSA 91-A to Executive Councilors David Wheeler and Joe Kenny (see exhibit A, B,) seeking records of communications granting permission for the Attorney General's office to act as legal counsel in *Richard v. Sununu et al.*, Rockingham County Superior Court, Case No. 218-2022-CV-00626, and New Hampshire Supreme Court, Case No. 2023-0097. The request specifically sought confirmation that the Attorney General complied with RSA 99-D:2. A follow-up request via e-mail (see exhibit C, D,)

was sent on May 15, 2025. Neither Councilor responded, raising serious questions about the legality of Formella's representation. Without documented authorization, the Attorney General's involvement is procedurally improper and further evidence of his conflict.

- **Bias and Refusal to Address Federal Questions:** Throughout this litigation, Attorney General Formella has demonstrated bias by refusing to engage with the federal constitutional questions raised by the Appellant, which directly challenge the Defendants' election practices. This refusal appears motivated by a desire to protect his clients' interests and maintain the status quo, rather than uphold the law impartially, undermining his duty as Attorney General to serve the public interest. Such conduct violates the principles of fairness and impartiality required of a prosecutor and legal counsel. See *Berger v. United States*, 295 U.S. 78, 88 (1935) (prosecutors must act with impartiality to ensure justice). Specifically, Formella's actions create a conflict of interest under **N.H. R. Prof. Conduct 1.7**, which prohibits representation where a lawyer's personal or professional interests materially limit their ability to provide objective counsel. By prioritizing the Defendants' interests over his public duty, Formella's representation compromises his objectivity. Additionally, his role as a potential witness in related proceedings (e.g., *State v. Anna Barbara Hantz Marconi*), as discussed in Section IV, implicates **N.H. R. Prof. Conduct 3.7**, which restricts a lawyer from acting as an advocate in a case where they are likely to be a necessary witness. These ethical violations further demonstrate Formella's inability to represent the Defendants impartially in this matter.
- **Prior Relationship with Governor Sununu:** Formella's prior role as legal counsel to Governor Chris Sununu from 2017 to 2021 creates an additional conflict, as Sununu is a named Defendant in this case. This relationship, detailed in public records, suggests a loyalty to Sununu that compromises Formella's ability to act independently. See; N.H. RSA 7:6 and RSA 7:6-c, the Attorney General's dual role as both a defender of the state's interests and a former personal

attorney to a key Defendant raises concerns about his professional ethics and impartiality, particularly when the AG's actions are alleged to protect the Defendants' unlawful conduct.

IV. Newly Exposed Bias: Prosecution of Justice Hantz Marconi and Recusal from This Case

Recent filings in the criminal case against New Hampshire Supreme Court Associate Justice Anna Barbara Hantz Marconi (*State of New Hampshire v. Anna Barbara Hantz Marconi*, Merrimack County Superior Court) reveal additional bias by AG Formella, directly impacting this case. Justice Hantz Marconi's attorneys allege that Formella initiated prosecution of a sitting state supreme court justice without a sworn complaint or legal basis. This investigation violates Department of Justice policy and a 2021 memorandum requiring a signed written request for investigations into state officials. This unauthorized prosecution, which includes charges of attempting to improperly influence Governor Sununu regarding an investigation into the judge's husband, Geno Marconi, caused Justice Hantz Marconi to recuse herself from cases involving the Attorney General's office, including the Appellant's case. The Appellant asserts that Formella's actions, whether by design or by flaw, strategically forced the removal of Justice Hantz Marconi from this pending case, where Formella and Sununu are named Defendants, thereby manipulating the judicial process to avoid an impartial arbiter. This conduct constitutes a deliberate attempt to prejudice the Appellant's right to a fair hearing. The following points support this claim:

- **Lack of Sworn Complaint:** According to Hantz Marconi's attorneys, Formella's investigation lacked a formal complaint, rendering it procedurally invalid. This suggests Formella acted with ulterior motives, potentially to silence judicial oversight in cases like the Appellant's, where the AG's conduct is under scrutiny.
- **Formella as a Witness:** creating a conflict under N.H. Rules of Professional Conduct, Rule 3.7. New evidence indicates Formella was the first to interview Sununu and his legal counsel, Rudy Ogden, about Hantz Marconi's June 6, 2024,

meeting, making the AG a necessary witness in the judge's case. His dual role as prosecutor and witness further taints his impartiality in this case, where Sununu is a Defendant and Hantz Marconi's recusal altered the court's composition.

- **Prejudice to the Appellant:** By causing Hantz Marconi's recusal, Formella ensured that a Justice potentially sympathetic to the Appellant's election fraud claims was removed, undermining the Appellant's right to an impartial tribunal. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (due process requires recusal when bias is probable).

These allegations, reported in recent news and court filings, demonstrate Formella's pattern of bias and misconduct, necessitating his disqualification.

V. Disqualification is Necessary to Protect Due Process

Formella's alleged criminal violations, lack of statutory authorization, refusal to address federal questions, prior relationship with Sununu, and newly exposed bias in causing Justice Hantz Marconi's recusal violate the Appellant's constitutional rights. Allowing Formella to continue representing the Defendants risks further prejudice and undermines public confidence in the judicial process. *See State v. Coburn*, 165 N.H. 144, 151 (2013) (disqualification warranted for conflicts compromising fairness). The appointment of a special prosecutor or independent counsel is required to investigate the AG conflicts of interest and abuse of office, in order to restore an appearance of fairness and impartiality to the court. Formella's actions, particularly his unauthorized prosecution of a sitting Justice, suggest a deliberate strategy to manipulate judicial proceedings and or inconvenient political outcomes involving election manipulation, including this case, to shield himself and his clients from accountability.

VI Conclusion

The Appellant respectfully requests that this Court disqualify Attorney General John Formella and the New Hampshire Department of Justice from representing the Defendants in this matter, and refer the AG for further conduct proceedings. Formella's

alleged criminal conduct, conflicts of interest, and demonstrated bias, including his role in causing Justice Hantz Marconi's recusal, render his continued involvement untenable. In addition, a special prosecutor or independent counsel must be appointed to ensure a fair resolution.

July 10, 2025

Respectfully submitted,

/s/ Daniel Richard

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CERTIFICATE OF SERVICE

I hear by certify that a copy of the forgoing was served through the Court's e-filing system to all parties of record.

July 10, 2025

/s/ Daniel Richard

Daniel Richard