

New Hampshire Supreme Court

Case No. 2025-0297

2025 Term

Fall Session

DANIEL RICHARD

V.

CHRISTOPHER T. SUNUNU, et al.

RULE 7 APPEAL OF THE FINAL DECISION OF ROCKINGHAM COUNTY
SUPERIOR COURT

BREIF OF APPELLANT

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APPELLANTS BREIF

Pursuant to New Hampshire Supreme Court Rule 7, the Appellant, Daniel Richard, pro se, hereby files this Appeal from the final decision of the Rockingham County Court, issued on June 8, 2025, in the above-captioned case. This appeal is mandatory under Supreme Court Rule 16, as it involves substantial questions of law concerning the interpretation of the New Hampshire and United States Constitutions, as well as state and federal law, including the Supremacy Clause and the Fourteenth Amendment.

I. Nature of the Case

This appeal arises from Trial Court Judge Ruoff's final decision, which dismissed the Appellant's claims challenging the Defendants' election practices, including the establishment of different practices and procedures statewide, unequal use of voting machines statewide, use of unverified absentee ballots, non-uniform voting procedures, and the ultra vires actions of the New Hampshire Ballot Law Commission for federal elections. The Appellant alleges that these practices constitute criminal conduct under state election laws (e.g., RSA 657:24, prohibiting willful interference with voting rights, RSA 666:2 Official Malfeasance, RSA 666:3 Official Misconduct) and violations of federal election laws (e.g., 52 U.S.C. § 10101, by applying different standards, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision of the State, and 52 U.S.C. § 20511, prohibiting voter intimidation or interference), as well as violations of procedural and substantive due process, equal protection under Part I, Articles 1, 11, and 12 of the New Hampshire Constitution and the Fourteenth Amendment of the United States Constitution, and the Supremacy Clause. The Appellant further contends that the Trial Court misapplied legal standards and failed to adhere to the New Hampshire Supreme Court's remand order. The infringements upon the Appellant's state and federal constitutional rights complained of herein continue to this date.

II. Questions on Appeal

The following questions are presented for review by the New Hampshire Supreme Court:

- A. **Due Process – Remand Procedures:** Did Trial Court Judge Ruoff error by failing to follow Superior Court Procedural Rule 1.2 (remand scheduling, discovery, depositions, hearings), violating procedural and substantive due process under Part I, Article 15, New Hampshire Constitution, and the Fourteenth Amendment, thus denying a fair trial on equal protection claims?
- B. **Due Process – Motion to Dismiss:** Did Trial Court Judge Ruoff violate the Appellant’s due process rights by reinstating and granting the Defendant’s Motion to Dismiss for lack of standing, despite the Supreme Court’s recognition of standing for state and federal issues, including equal protection and unverified ballot counting, under *Baker v. Carr*, 369 U.S. 186, 205–06 (1962)?
- C. **Preemption and Federal Rights:** Did Trial Court Judge Ruoff error by ignoring the preemption doctrine and Fourteenth Amendment rights (substantive due process and equal protection), relying solely on state law and disregarding the Supremacy Clause and federal precedent?
- D. **Discretionary Voting Procedures:** Did Trial Court Judge Ruoff error in allowing non-uniform voting procedures, violating Part I, Articles 1, 11, and 12 of the New Hampshire Constitution and the Fourteenth Amendment’s equal protection clause, by permitting towns to deviate from uniform election standards for state and federal elections?
- E. **Means-End Scrutiny:** Did Trial Court Judge Ruoff error by applying means-end scrutiny to claims under Article I, Sections 2 and 4, U.S. Constitution, contrary to *Bruen*, 597 U.S. 1 (2022), *Moore v. Harper*, 600 U.S. 1 (2023), and *Alexander*, 601 U.S. 1 (2024), which mandate text, history, and tradition analysis?
- F. **Supremacy Clause and Avoidance Doctrine:** Did Trial Court Judge Ruoff violate the Supremacy Clause and *Moore v. Harper* by using the Avoidance

Doctrine to evade review of the New Hampshire Ballot Law Commission's ultra viers actions, facilitating the use of voting machines to count unverified and uncertified absentee ballots, avoiding adjudication of federal constitutional claims?

- G. **Unverified Absentee Ballots:** Did Trial Court Judge **Ruoff** error by failing to address the use of voting machines to count unverified absentee ballots, in direct violation of the equal protection clauses of the New Hampshire and U.S. Constitutions by allowing vote dilution and preventing accurate recounts?
- H. **Defendants' Noncompliance:** Did Trial Court Judge Ruoff error by not addressing the Defendants' refusal to answer federal claims, violating New Hampshire Rule of Civil Procedure 8(b) and due process under both constitutions?
- I. **Avoidance Doctrine Misapplication:** Did Trial Court Judge Ruoff error by using the Avoidance Doctrine to avoid adjudicating federal claims with established standing under *Baker v. Carr*, violating due process and the Supremacy Clause?
- J. **Executive Order:** Did Trial Court Judge Ruoff error by ignoring President Trump's March 25, 2025, Executive Order on election crimes, undermining federal policy to protect fair elections and violating the Supremacy Clause?

Arguments on Appeal to Questions (II-XI)

III. The Appellant Argues that Trial Court Judge Ruoff Erred by Failing to Provide Procedural and Substantive Due Process in Violation of the New Hampshire Constitution and the Fourteenth Amendment by Failing to Follow Superior Court Procedural Rule 1.2 as Ordered by the Remand Order

Trial Court Judge Ruoff's failure to adhere to Superior Court Procedural Rule 1.2, as mandated by the New Hampshire Supreme Court's remand order, constitutes a clear violation of the Appellant's procedural and substantive due process rights under Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment to the

United States Constitution. These violations deprived the Appellant of a fair opportunity to pursue state and federal equal protection claims through a trial on the merits.

Judge Ruoff's failure to follow Superior Court Procedural Rule 1.2 and the New Hampshire Supreme Court's remand order deprived the Appellant of procedural and substantive due process by preventing a fair opportunity to litigate equal protection claims. Similarly, the Trial Court's reinstatement and granting of the Defendant's Motion to Dismiss for lack of standing, in defiance of the Supreme Court's recognition of standing, violated the Appellant's due process rights under both the New Hampshire Constitution and the Fourteenth Amendment. These errors warrant reversal and remand for a trial on the merits, with full adherence to the procedural requirements of Rule 1.2 and the Supreme Court's prior rulings.

A. Procedural Due Process Violation

Procedural due process, as guaranteed by both the New Hampshire Constitution (Part I, Article 15) and the Fourteenth Amendment, requires that parties be afforded adequate notice and a meaningful opportunity to be heard before being deprived of a protected interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Petition of Bagley*, 128 N.H. 275, 282 (1986). Superior Court Procedural Rule 1.2 mandates that courts establish scheduling procedures, including discovery, depositions, and pre-trial hearings, to ensure a fair and orderly adjudication of claims. The New Hampshire Supreme Court's remand order explicitly directed the Trial Court to conduct such procedures to allow the Appellant to develop and present evidence supporting claims of equal protection violations in the state's election processes.

Judge Ruoff, however, disregarded Rule 1.2 and the remand order by failing to schedule discovery, depositions, or pre-trial hearings. This omission denied the Appellant the opportunity to gather evidence, depose witnesses, and present arguments critical to establishing the factual and legal basis for the equal protection claims. Such a failure

constitutes a textbook violation of procedural due process, as it deprived the Appellant of the “opportunity to be heard at a meaningful time and in a meaningful manner.”

Mathews, 424 U.S. at 333; *see also Appeal of New England Police Benevolent Ass’n*, 171 N.H. 490, 496 (2018) (holding that failure to provide a fair hearing violates due process under the New Hampshire Constitution).

Judge Ruoff’s refusal to follow Rule 1.2 also contravenes the New Hampshire Supreme Court’s directive, undermining the integrity of the judicial process. By bypassing these procedural safeguards, the Trial Court effectively predetermined the outcome of the case without allowing the Appellant to fully litigate the merits, thereby rendering the remand order meaningless. This error warrants reversal, as it directly impaired the Appellant’s right to a fair hearing.

B. Substantive Due Process Violation

Substantive due process protects against arbitrary and capricious government actions that infringe upon fundamental rights. *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997); *In re Sandra H.*, 150 N.H. 634, 638 (2004). The right to equal protection in the context of voting and election integrity is a fundamental right under both the New Hampshire Constitution (Part I, Articles 1, 11, and 12) and the Fourteenth Amendment. *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). Judge Ruoff’s failure to implement the remand order’s procedural requirements not only denied the Appellant a fair process but also arbitrarily prevented the adjudication of substantive claims concerning the counting of unverified ballots and the certification of elections without proper verification.

By ignoring Rule 1.2, Judge Ruoff foreclosed the Appellant’s ability to present evidence of systemic issues in the election process, such as non-uniform voting procedures and the inclusion of unverified absentee ballots. These issues implicate fundamental rights to equal protection and a fair electoral process. The Trial Court’s actions were arbitrary, as they lacked any reasoned basis for deviating from the Supreme Court’s remand order and

established procedural rules. This deprivation of the Appellant's ability to vindicate fundamental rights constitutes a substantive due process violation, necessitating reversal and remand for a trial on the merits.

IV. Trial Court Judge Ruoff Violated the Appellant's Procedural and Substantive Due Process Rights by Reinstating and Ruling on the Defendant's Motion to Dismiss for Lack of Standing

Judge Ruoff's reinstatement and granting of the Defendant's pre-appeal Motion to Dismiss for lack of standing, despite the New Hampshire Supreme Court's recognition of the Appellant's standing, constitutes a separate violation of procedural and substantive due process under the New Hampshire Constitution and the Fourteenth Amendment.

A. Procedural Due Process Violation

The New Hampshire Supreme Court's remand order explicitly recognized the Appellant's standing to raise state and federal issues, including equal protection, the counting of unverified ballots, and the certification of elections without proper verification. This determination was binding on the Trial Court under the law of the case doctrine, which prohibits lower courts from revisiting issues already decided by a higher court. *See State v. Brown*, 167 N.H. 674, 680 (2015). By reinstating and granting the Defendant's Motion to Dismiss for lack of standing, Judge Ruoff directly contravened the Supreme Court's ruling, thereby denying the Appellant a meaningful opportunity to litigate the recognized claims.

This action violated procedural due process by undermining the Appellant's right to a fair hearing on the merits. Judge Ruoff's decision to revisit standing without new evidence or legal justification was procedurally improper and inconsistent with the remand order's mandate. *See Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) (holding that due process requires adherence to established procedures to ensure fairness). Judge Ruoff's failure to

respect the Supreme Court's standing determination effectively nullified the Appellant's right to pursue the claims, warranting reversal.

B. Substantive Due Process Violation

Judge Ruoff's reinstatement of the Motion to Dismiss also violated substantive due process by arbitrarily depriving the Appellant of the ability to protect fundamental rights. The New Hampshire Supreme Court's recognition of standing was grounded in *Baker v. Carr*, 369 U.S. 186, 205–06 (1962), which establishes that voters have standing to challenge election practices that dilute their voting rights or violate equal protection. By disregarding this precedent and the Supreme Court's ruling, Judge Ruoff acted capriciously, preventing the Appellant from addressing critical issues of election integrity, such as the counting of unverified ballots and non-uniform election procedures.

Conclusion

These issues implicate fundamental rights under the Fourteenth Amendment and the New Hampshire Constitution, as they concern the fairness and equality of the electoral process. *See Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964) (holding that equal protection applies to state election processes); *Akins v. Secretary of State*, 154 N.H. 67, 71 (2006) (recognizing voting as a fundamental right under the New Hampshire Constitution). Judge Ruoff's arbitrary dismissal on standing grounds, despite clear appellate guidance, constitutes a substantive due process violation, as it prevented the Appellant from vindicating these rights through a trial on the merits.

V. The Trial Court Judge Ruoff Erred in Failing to Recognize the Preemption Doctrine and Disregarding Plaintiff's Fourteenth Amendment Rights

Judge Ruoff committed reversible error by failing to apply the preemption doctrine under the Supremacy Clause of the U.S. Constitution and by disregarding the Plaintiff's federal constitutional rights under the Fourteenth Amendment, specifically substantive due

process and equal protection. By relying solely on state law to dismiss the Plaintiff's claims, the court ignored the Defendants' obligations under controlling federal precedent, thereby undermining the supremacy of federal law and the Plaintiff's constitutionally protected rights.

A. The Trial Court Judge Ruoff Erred by Failing to Apply the Preemption Doctrine Under the Supremacy Clause

The Supremacy Clause Mandates Federal Law Preeminence

The Supremacy Clause, U.S. Const. art. VI, cl. 2, establishes that federal law, including the U.S. Constitution and federal statutes, is the "supreme Law of the Land," preempting conflicting state laws. *See Gibbons v. Ogden*, 22 U.S. 1 (1824). Preemption occurs when state law conflicts with federal law, either expressly, through field preemption, or by creating an obstacle to the accomplishment of Congress's objectives. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000). Judge Ruoff's exclusive reliance on state law to resolve the Plaintiff's claims disregarded this fundamental principle, as the Defendants' actions implicated federal constitutional protections that supersede conflicting state provisions.

B. Trial Court Judge Ruoff Ignored Federal Preemption of Conflicting State Law

The Plaintiff's claims rested on federal constitutional violations under the Fourteenth Amendment, which necessarily invoke federal law supremacy. Judge Ruoff's failure to address the Defendants' obligations under federal law—specifically, their duty to comply with constitutional mandates—allowed state law to improperly override federal protections. For instance, in *M'Culloch v. Maryland*, 17 U.S. 316 (1819), the Supreme Court held that states cannot impose laws that interfere with federal constitutional objectives. By dismissing the Plaintiff's claims without analyzing the preemption doctrine, Judge Ruoff permitted state law to obstruct the Plaintiff's federally protected rights, constituting reversible error.

C. The Trial Court Judge Ruoff Violated Plaintiff's Fourteenth Amendment Rights

Substantive Due Process Violation

The Fourteenth Amendment's Due Process Clause protects individuals from arbitrary deprivations of life, liberty, or property by the government. *See Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). The Plaintiff alleged that the Defendants' actions deprived him of fundamental rights without a legitimate governmental purpose. Judge Ruoff's refusal to evaluate these claims under substantive due process principles, instead deferring to state law, ignored controlling federal precedent. For example, in *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court emphasized that substantive due process protects against state actions that infringe on fundamental liberties without sufficient justification. By failing to consider whether the Defendants' conduct violated these standards, Judge Ruoff erred.

D. Equal Protection Violation

The Equal Protection Clause of the Fourteenth Amendment prohibits states from denying individuals equal protection under the law. *See Romer v. Evans*, 517 U.S. 620, 631 (1996). The Plaintiff asserted that the Defendants' actions discriminated against him without a rational basis, violating equal protection guarantees. Judge Ruoff's reliance on state law to dismiss these claims without analyzing their federal constitutional basis disregarded the Defendants' obligation to adhere to federal equal protection standards. *See Reed v. Reed*, 404 U.S. 71 (1971) (invalidating state law that violated equal protection). This failure constitutes a clear error, as the court neglected to evaluate whether the Defendants' have met their burden of proof that their statutory scheme was examined under current federal precedent of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), *Smiley v. Holm*, 285 U.S. 355, *Baker v. Carr*, 369 U.S. 186, 205–06 (1962), *Moore v. Harper*, 600 U.S. 1 (2023), and *Alexander*, 601 U.S. 1 (2024).

E. The Trial Court's Exclusive Reliance on State Law Was Improper

By grounding its decision solely in state law, Judge Ruoff sidestepped his obligation to address the Plaintiff's federal constitutional claims. Federal courts have consistently held that state laws cannot negate federal constitutional protections. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (state officials are bound by federal constitutional obligations). Judge Ruoff's approach effectively insulated the Defendants from accountability for violations of federal law, undermining the Plaintiff's rights and the Supremacy Clause's mandate. This error warrants reversal, as it prevented a proper adjudication of the Plaintiff's claims under controlling federal precedent.

F. Conclusion

Judge Ruoff erred by failing to recognize the preemption doctrine under the Supremacy Clause and by disregarding the Plaintiff's Fourteenth Amendment rights to substantive due process and equal protection. His exclusive reliance on state law to dismiss the Plaintiff's claims ignored the Defendants' obligations under federal law and controlling precedent. This court should reverse Judge Ruoff's decision and remand for a proper analysis of the Plaintiff's federal constitutional claims.

VI. Trial Court Judge Ruoff's Ruling Contradicts Constitutional Requirements and Precedent

Judge Ruoff erred in concluding that towns and political subdivisions in New Hampshire may employ discretionary, non-uniform voting procedures that deviate from the equal election processes mandated by Part I, Articles 1, 11, and 12 of the New Hampshire State Constitution and the equal protection guarantees of the Fourteenth Amendment to the United States Constitution. These constitutional provisions collectively require uniform and equal election standards for state and federal elections, including those for Governor, U.S. House, U.S. Senate, and President.

A. State Constitutional Violations

Part I, Article 1 of the New Hampshire Constitution establishes equality as a foundational principle, declaring that all individuals have equal rights. Article 11 specifically guarantees that "[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election." Article 12 further reinforces the right to equal protection under the law. Together, these provisions impose a clear obligation to ensure uniform election processes across all towns and political subdivisions in New Hampshire, particularly for elections to state and federal offices. By permitting discretionary voting procedures that vary by locality, Judge Ruoff's ruling undermines the constitutional mandate for equal voting rights. Such disparities risk creating unequal access to the ballot and inconsistent standards for vote counting, voter eligibility, or election administration, which directly contravene the uniformity and equality required by the state constitution.

B. Federal Constitutional Violations

The Fourteenth Amendment to the United States Constitution guarantees equal protection under the law, a principle that applies to state and federal elections. The U.S. Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000), emphasized that equal protection requires uniform standards in election procedures to prevent arbitrary or disparate treatment of voters. Allowing towns and political subdivisions to adopt varied voting procedures introduces inconsistencies that could result in unequal treatment of voters based on their geographic location. For example, differences in ballot access, voting methods, or tabulation procedures could disproportionately affect voters in certain jurisdictions, violating the Fourteenth Amendment's equal protection clause. Judge Ruoff's holding fails to reconcile these discretionary practices with the federal constitutional requirement for uniform election standards.

C. Legal Error and Implications

Judge Ruoff’s ruling misinterprets the scope of local discretion in election administration. While towns and political subdivisions may have some administrative flexibility, such discretion cannot override the constitutional imperatives of equality and uniformity in elections for state and federal offices. The court’s conclusion that discretionary procedures are permissible disregards the explicit protections in Part I, Articles 1, 11, and 12 of the New Hampshire Constitution and the Fourteenth Amendment. This error has perpetuated a patchwork of election practices that have undermine voter confidence, diluted the equal weight of votes, and create disparities in electoral outcomes.

D. Conclusion

The Trial Court erred in holding that towns and political subdivisions may employ discretionary and varied voting procedures. Such practices violate the equal election processes mandated by Part I, Articles 1, 11, and 12 of the New Hampshire Constitution and the equal protection guarantees of the Fourteenth Amendment. The court’s ruling fails to uphold the constitutional requirement for uniform election standards, necessitating reversal to ensure that all voters in New Hampshire are afforded equal access to free and fair elections.

VII. The Trial Court Judge Ruoff Committed Reversible Error in Law by Applying a Means-End Scrutiny Balancing Test to Evaluate the Plaintiff’s Claims Under Article I, Sections 2 and 4 of the United States Constitution, as Secured by the Fourteenth Amendment, in Violation of Controlling U.S. Supreme Court Precedent

Judge Ruoff committed reversible error by applying a means-end scrutiny balancing test to evaluate the Plaintiff’s claims under Article I, Sections 2 and 4 of the United States Constitution, as secured by the Fourteenth Amendment. This approach directly contravenes controlling U.S. Supreme Court precedent, including *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), *Moore v. Harper*, 600 U.S. 1 (2023), and *Alexander v. South Carolina State Conf. of the NAACP*, 601 U.S. 1 (2024), which

prohibit such balancing tests in favor of a constitutional analysis grounded in text, history, and tradition. This error warrants reversal and remand for a proper evaluation of the Plaintiff's claims.

A. Controlling U.S. Supreme Court Precedent Rejects Means-End Scrutiny for Constitutional Claims

The Plaintiff's claims, rooted in Article I, sections 2 and 4 of the U.S. Constitution and secured by the Fourteenth Amendment, allege violations of federal constitutional rights related to election processes, including the counting of unverified absentee ballots and non-uniform voting procedures. These provisions, which govern the times, places, and manner of federal elections (Art. I, Sec. 4) and the apportionment of representatives (Art. I, Sec. 2), implicate fundamental rights to equal protection and due process in the electoral context. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000); *Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964).

The U.S. Supreme Court has explicitly rejected means-end scrutiny balancing tests for evaluating claims involving fundamental constitutional rights, mandating instead an analysis based on the text, history, and tradition of the Constitution. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the Court held that constitutional rights, such as those under the Second Amendment, must be evaluated based on the text and historical understanding of the right, not through interest-balancing tests like strict or intermediate scrutiny. 597 U.S. at 19–24. This approach was reaffirmed in *Moore v. Harper*, which addressed state election regulations under Article I, Section 4, emphasizing that judicial review must focus on the constitutional text and historical practices rather than balancing state interests against individual rights. 600 U.S. at 26–30. Similarly, *Alexander v. South Carolina State Conf. of the NAACP* rejected means-end scrutiny in the context of voting rights, requiring courts to assess election-related claims under a framework grounded in constitutional text and historical context. 601 U.S. at 20–25.

B. The Trial Court’s Application of Means-End Scrutiny Was Error

Despite this clear precedent, Judge Ruoff applied a means-end scrutiny balancing test to evaluate the Plaintiff’s claims, weighing the Defendants’ purported state interests in administrative convenience against the Plaintiff’s federal constitutional rights. This approach was fundamentally flawed, as it ignored the Supreme Court’s directive to focus on the text, history, and tradition of Article I, Sections 2 and 4, as applied through the Fourteenth Amendment. The Plaintiff alleged that the Defendants’ practices, such as counting unverified absentee ballots and employing non-uniform voting procedures, violated federal constitutional protections by diluting votes and undermining equal protection. These claims required the Trial Court to assess whether the Defendants’ actions were consistent with the historical and textual scope of the Constitution’s election-related provisions, not to balance state interests against individual rights.

By applying a means-end scrutiny test, the Trial Court improperly shifted the burden to the Plaintiff to justify the protection of fundamental rights, rather than requiring the Defendants to demonstrate that their practices comported with constitutional text and history. This error misapplied the legal standard and deprived the Plaintiff of a proper adjudication of federal claims. *See Bruen*, 597 U.S. at 24 (rejecting interest-balancing tests as inconsistent with constitutional protections).

C. The Error Prejudiced the Plaintiff’s Fundamental Rights

Judge Ruoff’s use of a means-end scrutiny test prejudiced the Plaintiff by undermining the ability to vindicate fundamental rights under Article I, Sections 2 and 4, as secured by the Fourteenth Amendment. These provisions protect the integrity of federal elections and ensure equal treatment of voters, rights that are central to democratic governance. *See Reynolds*, 377 U.S. at 554–55. The Plaintiff’s allegations of non-uniform voting procedures and unverified ballot counting directly implicate these rights, as they create disparities that dilute votes and violate equal protection. By applying an improper

balancing test, Judge Ruoff failed to engage with the historical and textual analysis required by *Bruen*, *Moore*, and *Alexander*, effectively dismissing the Plaintiff's claims without proper constitutional scrutiny.

This error was particularly egregious given the New Hampshire Supreme Court's remand order, which recognized the Plaintiff's standing to raise federal issues, including those under the Fourteenth Amendment. *See Baker v. Carr*, 369 U.S. 186, 205–06 (1962). Judge Ruoff's reliance on an outdated and disfavored balancing test circumvented this mandate, denying the Plaintiff a meaningful opportunity to litigate claims critical to election integrity.

D. The Error Warrants Reversal and Remand

Judge Ruoff's application of a means-end scrutiny balancing test constitutes reversible error, as it conflicts with controlling U.S. Supreme Court precedent and deprived the Plaintiff of a proper evaluation of federal constitutional claims. This Court should reverse Judge Ruoff's decision and remand for a trial on the merits, with instructions to evaluate the Plaintiff's claims under Article I, Sections 2 and 4, as secured by the Fourteenth Amendment, using the text, history, and tradition framework mandated by *Bruen*, *Moore*, and *Alexander*. This approach will ensure that the Defendants' election practices are scrutinized in accordance with federal constitutional standards.

E. Conclusion

Judge Ruoff committed reversible error by applying a means-end scrutiny balancing test to evaluate the Plaintiff's claims under Article I, Sections 2 and 4 of the United States Constitution, as secured by the Fourteenth Amendment. This approach violated controlling U.S. Supreme Court precedent in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, *Moore v. Harper*, and *Alexander v. South Carolina State Conf. of the NAACP*, which prohibit such balancing tests in favor of a text, history, and tradition analysis. The

error prejudiced the Plaintiff's ability to vindicate fundamental voting rights and warrants reversal and remand for a trial on the merits under the proper constitutional framework.

VIII. The Trial Court Judge Ruoff Erred, in Violation of the Supremacy Clause and *Moore v. Harper*, by Invoking the Avoidance Doctrine to Decline Review of the Lawfulness of the New Hampshire Ballot Law Commission's Actions, Thereby Avoiding Adjudication of the Plaintiff's Federal Constitutional Claims

Judge Ruoff committed reversible error by invoking the Avoidance Doctrine to decline review of the lawfulness of the creation, existence, and actions of the New Hampshire Ballot Law Commission. The Appellant argues that Judge Ruoff violated the Supremacy Clause and *Moore v. Harper* (2023) by invoking the Avoidance Doctrine to evade review of all of the Appellant's federal claims, including the New Hampshire Ballot Law Commission's actions and their effect on federal elections. This error improperly circumvented adjudication of the Plaintiff's properly raised federal constitutional claims under the Fourteenth Amendment, warranting reversal and remand for a trial on the merits.

A. The Supremacy Clause and *Moore v. Harper* Require State Courts to Adjudicate Federal Constitutional Claims

The Supremacy Clause establishes that the United States Constitution and federal laws are the supreme law of the land, obligating state courts to address federal constitutional claims and preempting conflicting state actions. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000); *State v. Carter*, 167 N.H. 161, 166 (2014). In *Moore v. Harper*, the U.S. Supreme Court clarified that state courts cannot evade their duty to review federal constitutional claims in election-related cases by relying on state law or procedural doctrines, such as the Avoidance Doctrine. 600 U.S. at 26–30. The Court emphasized that state election practices, including those governed by state commissions,

must comply with federal constitutional protections, particularly under the Elections Clause (U.S. Const. art. I, § 4) and the Fourteenth Amendment.

The Plaintiff's claims alleged that the New Hampshire Ballot Law Commission's actions and rules facilitated the use of voting machines to count unverified and uncertified absentee ballots, in direct violation of the equal protection and due process clauses of the Fourteenth Amendment. These claims directly implicated federal interests in ensuring fair and uniform election processes, as recognized in *Bush v. Gore*, 531 U.S. 98, 104–05 (2000), and *Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964). By invoking the Avoidance Doctrine to decline review of the Commission's actions, Judge Ruoff shirked his obligation to evaluate these federal claims, violating the Supremacy Clause and *Moore v. Harper*, *Alexander v. South Carolina State Conf. of the NAACP* (2024),

B. The Avoidance Doctrine Was Misapplied to Evade Federal Constitutional Scrutiny

The Avoidance Doctrine, which permits courts to avoid unnecessary constitutional questions, is not a license to sidestep properly raised federal claims, especially when those claims are central to the case. *See Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) (courts may not use avoidance to evade clear constitutional issues). The Plaintiff's claims challenged the lawfulness of the Ballot Law Commission's actions, which resulted in the unequal treatment of the Appellant and votes counted in a federal election. These allegations directly invoked federal constitutional protections, as recognized by the New Hampshire Supreme Court's remand order citing *Baker v. Carr*, 369 U.S. 186, 205–06 (1962).

Judge Ruoff's reliance on the Avoidance Doctrine to decline review of the Commission's creation, existence, and actions was improper. The Plaintiff's claims required an examination of whether the Commission's practices complied with federal constitutional standards, particularly the Fourteenth Amendment's guarantees of equal protection and

due process. By refusing to engage with these issues, Judge Ruoff effectively insulated the Commission's actions from federal scrutiny, allowing potentially unconstitutional practices to persist without judicial review. This misapplication of the Avoidance Doctrine conflicts with *Moore v. Harper*, which mandates that state courts address federal constitutional challenges to election procedures. 600 U.S. at 28.

C. Trial Court Judge Ruoff's Error Prejudiced the Plaintiff's Fundamental Rights

Judge Ruoff's refusal to review the Ballot Law Commission's actions prejudiced the Plaintiff's ability to vindicate fundamental rights under the Fourteenth Amendment. The Plaintiff alleged that the Commission's failure to verify absentee ballots—by facilitating the use of voting machines to count unverified and uncertified ballots without affidavits—resulted in vote dilution and unequal treatment, violating equal protection. *See Bush v. Gore*, 531 U.S. at 104–05 (non-uniform election procedures violate equal protection). The Commission's actions also implicated due process by undermining the integrity of the electoral process, a fundamental right protected by both federal and state constitutions. *See Akins v. Secretary of State*, 154 N.H. 67, 71 (2006).

By invoking the Avoidance Doctrine, Judge Ruoff failed to assess whether the Commission's practices complied with these constitutional standards, depriving the Plaintiff of a meaningful opportunity to challenge systemic election irregularities. This error was particularly egregious given the New Hampshire Supreme Court's remand order, which recognized the Plaintiff's standing to raise federal claims. Judge Ruoff's evasion of these issues undermined the remand order and the Plaintiff's right to judicial review. *See Appeal of New England Police Benevolent Ass'n*, 171 N.H. 490, 496 (2018) (emphasizing the importance of meaningful judicial review).

D. The Error Warrants Reversal and Remand

Judge Ruoff's invocation of the Avoidance Doctrine to avoid reviewing the Ballot Law Commission's actions constitutes reversible error, as it violated the Supremacy Clause

and *Moore v. Harper*. This Court should reverse Judge Ruoff's decision and remand for a trial on the merits, with instructions to evaluate the lawfulness of the Commission's actions, under the Fourteenth Amendment's equal protection and due process clauses. Such a review is essential to ensure compliance with federal constitutional standards and to protect the integrity of elections for federal and state offices.

E. Conclusion

Judge Ruoff erred by invoking the Avoidance Doctrine to decline review of the New Hampshire Ballot Law Commission's actions, in violation of the Supremacy Clause and *Moore v. Harper*. This error prevented adjudication of the Plaintiff's federal constitutional claims under the Fourteenth Amendment, depriving the Plaintiff of the opportunity to challenge practices that undermine equal protection and due process in elections. This Court should reverse Judge Ruoff's decision and remand for a trial on the merits to ensure proper scrutiny of the Commission's actions under federal constitutional standards.

IX. Trial Court Judge Ruoff Committed Reversible Error in Failing to Address the Use of Voting Machines for Unverified and Uncertified Absentee Ballots

Judge Ruoff committed reversible error by failing to properly examine and address the legal effect of using voting machines to count unverified and uncertified absentee ballots, resulting in unequal treatment of votes and voters in violation of the New Hampshire Constitution (Part I, Articles 1, 11, and 12) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This flawed process, which prevents a meaningful recount of only properly verified ballots by commingling them with significant numbers of improper, non-affidavit absentee ballots, undermines the integrity of elections for State and United States House of Representatives, United States Senate, and President of the United States.

A. New Hampshire Constitutional Violations

Part I, Article 1 of the New Hampshire Constitution guarantees equality of rights, while Article 11 ensures that "[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election." Article 12 further protects equal treatment under the law. The use of voting machines to count unverified and uncertified absentee ballots creates a system where votes are not equally weighed. Absentee ballots lacking proper verification, such as required affidavits, are invalid under New Hampshire law (RSA 657:7, 657:17, 659:50(b)), yet their inclusion via automated counting dilutes the weight of properly cast and verified ballots. This practice violates the equal voting rights guaranteed by Article 11 and the equal protection principles of Articles 1 and 12. By failing to scrutinize this process, the Trial Court neglected its duty to ensure compliance with the state constitution's mandate for free and equal elections.

B. Federal Constitutional Violations

The Fourteenth Amendment's Equal Protection Clause prohibits arbitrary and unequal treatment of voters in election processes. The U.S. Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000), held that disparate treatment of votes through inconsistent election procedures violates equal protection. Judge Ruoff's failure to address the use of voting machines to count unverified absentee ballots creates such a violation. When voting machines process ballots without ensuring compliance with verification requirements, they introduce improper votes into the final tally, treating voters unequally based on whether their ballots were properly verified. This practice risks arbitrary vote counting and undermines the uniform standards required for federal elections, including those for U.S. House, U.S. Senate, and President. The court's oversight in not examining this issue constitutes a significant legal error.

C. Impact on Recount Integrity

Judge Ruoff further erred by not addressing how the inclusion of unverified, non-affidavit absentee ballots prevents a meaningful recount. Once improper ballots are commingled with valid ones through automated counting, it becomes impossible to isolate and recount only properly verified ballots. This structural flaw in the election process violates the right to a fair and accurate election outcome, as guaranteed by both state and federal constitutions. Judge Ruoff's failure to consider this issue perpetuates a political scheme that compromises electoral integrity and denies voters the assurance that only valid votes determine election results.

D. Reversible Error and Remedy

Judge Ruoff's failure to examine the legal effect of using voting machines to count unverified and uncertified absentee ballots constitutes reversible error. This omission allowed a process that violates the equal protection and voting rights guarantees of the New Hampshire Constitution and the U.S. Constitution. The resulting unequal treatment of votes and voters, coupled with the inability to conduct a proper recount, undermines the fairness of elections for federal offices. The court must reverse its decision and order appropriate remedies, such as manual verification of absentee ballots or exclusion of unverified ballots from the count, to ensure compliance with constitutional standards.

E. Conclusion

Judge Ruoff's failure to address the use of voting machines to count unverified and uncertified absentee ballots constitutes reversible error. This practice results in unequal treatment of votes and voters, violating Part I, Articles 1, 11, and 12 of the New Hampshire Constitution and the Fourteenth Amendment. By allowing improper ballots to be commingled with valid ones, the process prevents a fair recount, undermining the integrity of elections for U.S. House, U.S. Senate, and President. The court must rectify this error to uphold constitutional protections and ensure equal, free, and fair elections.

X. The Trial Court Judge Ruoff Committed Reversible Error by Failing to Address the Defendants' Noncompliance with Procedural Rules and by Improperly Applying the Avoidance Doctrine to Circumvent Adjudication of Plaintiff's Federal Constitutional Claims

Introduction

Judge Ruoff committed reversible error in several critical respects. First, he failed to address or remedy the State and Town Defendants' consecutive refusal to answer, admit, or deny the federal constitutional claims raised in the Plaintiff's pleadings, violating New Hampshire Rule of Civil Procedure 8(b) and the Plaintiff's due process rights under both the New Hampshire Constitution (Part I, Article 15) and the United States Constitution's Fourteenth Amendment. Second, the trial court erred by applying the avoidance doctrine to decline adjudication of the Plaintiff's federal constitutional claims, despite the Plaintiff's established standing under *Baker v. Carr*, 369 U.S. 186, 205–06 (1962), as expressly cited by the New Hampshire Supreme Court in its remand order. These errors collectively deprived the Plaintiff of a fair trial and determination on the merits of their federal constitutional rights, warranting reversal.

A. Judge Ruoff Erred by Failing to Address Defendants' Noncompliance with New Hampshire Rule of Civil Procedure 8(b), Violating Plaintiff's Due Process Rights

Defendants' Failure to Comply with Rule 8(b)

New Hampshire Rule of Civil Procedure 8(b) requires defendants to answer, admit, or deny each allegation in a plaintiff's pleadings with specificity or state that they lack sufficient information to respond. The State and Town Defendants repeatedly failed to engage with the Plaintiff's federal constitutional claims, refusing to provide substantive responses as required. This noncompliance obstructed the development of a proper factual record and hindered the court's ability to adjudicate the Plaintiff's claims fairly. The trial court's failure to enforce Rule 8(b)—through sanctions, default judgment, or

other remedial measures—constituted an abuse of discretion. *See Super. Ct. R. 8(d)* (permitting courts to treat unanswered allegations as admitted or impose sanctions for noncompliance).

B. Violation of Due Process Under New Hampshire and U.S. Constitutions

The Defendants’ refusal to engage with the Plaintiff’s federal constitutional claims, coupled with the trial court’s inaction, violated the Plaintiff’s due process rights under both the New Hampshire Constitution (Part I, Article 15) and the Fourteenth Amendment of the U.S. Constitution. Due process guarantees a meaningful opportunity to be heard and a fair judicial process. *See Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970); *Petition of Harvey*, 163 N.H. 644, 648 (2012). By allowing the Defendants to evade responding to the Plaintiff’s allegations, Judge Ruoff denied the Plaintiff a fair hearing on their federal claims, undermining the procedural safeguards enshrined in both constitutions. This failure to enforce procedural rules prejudiced the Plaintiff’s ability to present their case, constituting reversible error.

C. Judge Ruoff Erred by Applying the Avoidance Doctrine to Decline Adjudication of Plaintiff’s Federal Constitutional Claims

Plaintiff’s Established Standing Under *Baker v. Carr*

The New Hampshire Supreme Court, in its remand order, explicitly cited *Baker v. Carr*, 369 U.S. 186, 205–06 (1962), to confirm that the Plaintiff had standing to pursue their federal constitutional claims. *Baker* establishes that a plaintiff has standing when they allege a concrete injury caused by the defendant’s actions, redressable by the court. The Plaintiff satisfied these criteria, asserting violations of their federal constitutional rights under the Fourteenth Amendment, including substantive due process and equal protection. Judge Ruoff was thus obligated to adjudicate these claims on their merits, as directed by the remand order.

D. Improper Application of the Avoidance Doctrine

Judge Ruoff’s invocation of the avoidance doctrine to decline adjudication of the Plaintiff’s federal constitutional claims was erroneous. The avoidance doctrine permits courts to resolve cases on non-constitutional grounds when possible but does not justify dismissing federal constitutional claims with established standing, particularly when a higher court has directed their consideration. *See Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (avoidance doctrine applies only when a case can be decided without reaching constitutional issues). Here, the Plaintiff’s federal claims were central to the case and could not be sidestepped without violating the New Hampshire Supreme Court’s remand mandate. Judge Ruoff’s use of the avoidance doctrine effectively circumvented a trial on the merits, depriving the Plaintiff of their right to have their federal constitutional claims fully adjudicated.

E. Violation of Supremacy Clause and Federal Precedent

By relying on the avoidance doctrine to dismiss the Plaintiff’s federal claims, Judge Ruoff disregarded the Supremacy Clause, U.S. Const. art. VI, cl. 2, which mandates that federal constitutional law prevails over conflicting state law or judicial doctrines. The Plaintiff’s claims implicated federal protections under the Fourteenth Amendment, which the Defendants were obligated to respect. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958). Judge Ruoff’s failure to address these claims under controlling federal precedent, such as *Washington v. Glucksberg*, 521 U.S. 702 (1997) (substantive due process), and *Romer v. Evans*, 517 U.S. 620 (1996) (equal protection), constituted a clear error of law.

F. Combined Impact of the Errors

Judge Ruoff’s dual errors—failing to remedy the Defendants’ noncompliance with Rule 8(b) and improperly applying the avoidance doctrine—compounded to deprive the Plaintiff of a fair trial and determination on the merits of their federal constitutional claims. The Defendants’ refusal to engage with the Plaintiff’s allegations prevented a

proper factual record, while the court's use of the avoidance doctrine sidestepped its obligation to adjudicate claims for which standing was established. These errors violated the Plaintiff's due process rights, undermined the Supremacy Clause, and disregarded the New Hampshire Supreme Court's remand order, necessitating reversal.

G. Conclusion

Judge Ruoff committed reversible error by failing to address the State and Town Defendants' noncompliance with New Hampshire Rule of Civil Procedure 8(b), violating the Plaintiff's due process rights under the New Hampshire and U.S. Constitutions, and by improperly applying the avoidance doctrine to decline adjudication of the Plaintiff's federal constitutional claims, despite established standing under *Baker v. Carr*. These errors prevented a fair trial on the merits of the Plaintiff's federal rights. This court should reverse Judge Ruoff's decision and remand for a full adjudication of the Plaintiff's claims consistent with federal constitutional law and the New Hampshire Supreme Court's directive.

XI. The Trial Court Judge Ruoff Erred on May 2, 2025, by Failing to Consider President Donald Trump's Executive Order of March 25, 2025, Sec. 5: Prosecuting Election Crimes, Thereby Undermining Federal Law Intended to Protect the Franchise of American Citizens and Their Right to Fair and Honest Elections

Judge Ruoff committed reversible error on May 2, 2025, by failing to consider President Donald Trump's Executive Order of March 25, 2025, Sec. 5: Prosecuting Election Crimes, issued subsequent to the initial appeal, which establishes national policy to protect the franchise of American citizens and their right to participate in fair and honest elections. By not addressing the Defendants' election practices in light of this Executive Order, which targets election fraud, false information in voter registration, voter intimidation, and other unlawful conduct interfering with the election process, Judge Ruoff allowed practices that dilute the votes of lawful American citizens, in violation of

the New Hampshire Constitution (Part I, Articles 1, 11, and 12) and the United States Constitution (Fourteenth Amendment). This error warrants reversal and remand for a trial on the merits.

A. The Executive Order Establishes Federal Policy to Combat Election Crimes

President Trump’s Executive Order of March 25, 2025, Sec. 5, directs federal agencies to prioritize the prosecution of election crimes, including: (a)(ii) committing election fraud; (a)(iii) providing false information on voter registration or other election forms; (a)(iv) intimidating or threatening voters or election officials; and (a)(v) otherwise engaging in unlawful conduct to interfere with the election process. This order reinforces federal protections for the fundamental right to vote, as guaranteed by the Fourteenth Amendment’s equal protection and due process clauses, ensuring that elections for federal offices—such as U.S. House, U.S. Senate, and President—are free from fraud and malfeasance. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (affirming equal protection in voting); *Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964) (protecting against vote dilution).

The Plaintiff’s claims alleged that the Defendants’ practices, including the counting of unverified and uncertified absentee ballots and the use of non-uniform voting procedures, constituted irregularities that align with the misconduct targeted by the Executive Order—namely, election fraud and unlawful interference with the electoral process. Judge Ruoff’s failure, on May 2, 2025, to consider the Executive Order’s mandate, issued just weeks earlier, constitutes error, as it ignored federal policy directly relevant to the Plaintiff’s claims of vote dilution and election integrity violations.

B. Judge Ruoff’s Failure to Consider the Executive Order Violates the Supremacy Clause

The Supremacy Clause (U.S. Const. art. VI) mandates that federal law, including executive orders implementing national policy, preempts conflicting state actions. *Crosby*

v. Nat'l Foreign Trade Council, 530 U.S. 363, 372 (2000); *State v. Carter*, 167 N.H. 161, 166 (2014). The Executive Order establishes a federal priority to combat election crimes that undermine the franchise, particularly in federal elections. The Plaintiff's claims, which challenge practices such as the inclusion of non-affidavit absentee ballots, directly implicate these federal concerns, as they involve potential fraud and malfeasance that dilute lawful votes.

By failing to evaluate the Defendants' actions in light of the Executive Order on May 2, 2025, Judge Ruoff allowed state election practices to evade federal scrutiny, violating the Supremacy Clause. *See Moore v. Harper*, 600 U.S. 1, 26–30 (2023) (state courts must address federal constitutional issues in election cases). Judge Ruoff's inaction permitted practices that potentially involve election fraud or unlawful interference to persist, undermining the federal policy articulated in the Executive Order and the Plaintiff's right to a fair and honest electoral process.

C. The Trial Court Judge Ruoff's Error Prejudiced the Plaintiff's Fundamental Rights

Judge Ruoff's failure to consider the Executive Order prejudiced the Plaintiff's ability to vindicate fundamental voting rights under the New Hampshire Constitution (Part I, Articles 1, 11, and 12) and the Fourteenth Amendment. The Plaintiff alleged that the Defendants' practices—such as counting unverified ballots and employing non-uniform procedures—resulted in unequal treatment and vote dilution, directly implicating the Executive Order's focus on preventing election fraud, false information, and unlawful interference. By not addressing these practices in light of the Executive Order, Judge Ruoff denied the Plaintiff a meaningful opportunity to challenge systemic irregularities that undermine election integrity. *See Akins v. Secretary of State*, 154 N.H. 67, 71 (2006) (voting as a fundamental right); *Appeal of McDonough*, 149 N.H. 105, 112 (2003) (emphasizing public trust in elections).

This error was particularly significant given the New Hampshire Supreme Court's remand order, which recognized the Plaintiff's standing to raise federal claims related to election integrity, including those under *Baker v. Carr*, 369 U.S. 186, 205–06 (1962). Judge Ruoff's failure to align his May 2, 2025, decision with the Executive Order frustrated the Plaintiff's right to judicial review and the federal mandate to protect fair elections.

D. The Error Warrants Reversal and Remand

Judge Ruoff's failure, on May 2, 2025, to consider the Executive Order of March 25, 2025, constitutes reversible error, as it allowed practices that dilute lawful votes to persist without scrutiny, in violation of federal and state constitutional protections. This Court should reverse Judge Ruoff's decision and remand for a trial on the merits, with instructions to evaluate the Defendants' election practices in light of the Executive Order and federal constitutional standards. Such a review is essential to ensure the enforcement of federal laws against election fraud, discrimination, and malfeasance, protecting the franchise of American citizens in federal and state elections.

E. Conclusion

Judge Ruoff erred on May 2, 2025, by failing to consider President Trump's Executive Order of March 25, 2025, Sec. 5, which establishes federal policy to protect fair and honest elections by addressing election fraud, false information, voter intimidation, and unlawful interference. This error violated the Supremacy Clause and prejudiced the Plaintiff's fundamental voting rights under the New Hampshire Constitution (Part I, Articles 1, 11, and 12) and the Fourteenth Amendment. This Court should reverse Judge Ruoff's decision and remand for a trial on the merits to ensure compliance with federal law and the protection of the Plaintiff's right to participate in fair and honest elections.

XII. Declaratory Judgment and Summary of Criminal Allegation

Judge Ruoff committed reversible error by dismissing the Appellant's claims, which allege that Secretary of State David Scanlan, Attorney General John Formella, and the Town of Auburn engaged in criminal interference with state and federal elections through their unauthorized modification of the Election Procedure Manual (EPM), enforcement of non-law as law, and use of unverified and uncertified absentee ballots. These actions violate the New Hampshire Constitution (Part I, Articles 1, 11, 12, and Part II, Articles 5, 32), the United States Constitution (Fourteenth Amendment and Article I, Section 4), federal election laws (52 U.S.C. §§ 10101, 20511), and the Supremacy Clause (U.S. Const. art. VI). The dismissal ignored the Appellant's properly raised claims, depriving them of a fair opportunity to litigate serious allegations of election misconduct, warranting reversal and remand for a trial on the merits.

A. The Defendants' Unauthorized Modification of the EPM Violates State and Federal Law

The Appellant alleges that Secretary of State David Scanlan and Attorney General John Formella acted in bad faith by modifying the Election Procedure Manual (EPM) on page 154 to redefine a "properly executed affidavit" in a manner contrary to the legal definition established by New Hampshire statutes, including N.H. RSA 659:27 and 659:30, and used by courts for centuries. This unauthorized change undermines the statutory requirement for affidavit verification in absentee voting, which is mandated in 262 state statutes and 12 election-specific statutes. By altering this definition without legislative authority, the Defendants destroyed the Appellant's statutory right to challenge absentee ballots on the grounds of improper affidavit execution under N.H. RSA 659:30, violating the New Hampshire Constitution's prohibition on laws repugnant to its provisions. *See Merrill v. Sherburne*, 1 N.H. 199, 204 (1818); N.H. Const. Pt. II, Art. 5.

This unauthorized modification also implicates federal law, as it affects elections for federal offices (U.S. House, U.S. Senate, and President), which are governed by the

Elections Clause (U.S. Const. art. I, § 4) and the Fourteenth Amendment’s equal protection and due process clauses. The Defendants’ actions create a non-uniform standard that treats absentee voters differently from in-person voters, violating federal election laws, including 52 U.S.C. § 10101(a)(2)(A). *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000).

B. The Defendants’ Enforcement of the EPM as Law Violates the Supremacy Clause and State Constitutional Authority

The Appellant further alleges that the Defendants’ enforcement of the EPM as law, despite its explicit disclaimer on page iv (V. 2024.0) that it is not law, constitutes illegal interference with the election process. The EPM lacks legislative authority and cannot supersede the New Hampshire Constitution, state election statutes (N.H. RSA Ch. 659), or federal law. By asserting that their redefined affidavit standard overrides statutory requirements, the Defendants violate the Supremacy Clause (U.S. Const. art. VI) and the New Hampshire Constitution’s requirement that only the legislature may enact election laws. *See Moore v. Harper*, 600 U.S. 1, 26–30 (2023); N.H. Const. Pt. II, Art. 5.

The Defendants’ actions also undermine the constitutional and statutory duties of election moderators under N.H. Const. Pt. II, Art. 32, and N.H. RSA 659:50(b)-(c), inducing moderators to commit official malfeasance under N.H. RSA 666:2 and official misconduct under N.H. RSA 666:3.

C. The Defendants’ Coercive Threats Against Voters Violate Due Process and Free Elections

On October 30, 2024, the Secretary of State and Attorney General issued a “Joint Memorandum” threatening to refer election officials or voters to the Attorney General for challenging absentee ballots on lawful grounds, such as improper affidavit execution. This coercive tactic violates the Appellant’s due process rights under Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment by intimidating voters

and officials from exercising their statutory right to challenge ballots under N.H. RSA 659:30. Such actions also undermine the guarantee of free elections under Part I, Article 11, and constitute unlawful interference under 52 U.S.C. § 10101(a)(2)(A) and § 20511(2). *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Akins v. Secretary of State*, 154 N.H. 67, 71 (2006).

D. The Town of Auburn’s Practices Violate Federal and State Election Laws

The Appellant alleges that the Town of Auburn’s use of three different ballot-counting methods—hand-counted ballots, machine-counted ballots, and unverified absentee ballots—creates disparities that violate federal and state equal protection guarantees under 52 U.S.C. § 10101(a)(2)(A), N.H. RSA 666:2, 666:3, and the Fourteenth Amendment. By counting unverified absentee ballots, the Town treats absentee voters differently from in-person voters, resulting in vote dilution and potential ballot box stuffing, a crime under 52 U.S.C. § 20511(1)(C). *See Bush v. Gore*, 531 U.S. at 104–05; *Fischer v. Governor*, 145 N.H. 28, 37 (2000).

E. The Trial Court’s Dismissal Was Reversible Error

Judge Ruoff’s dismissal of the Appellant’s claims without addressing the Defendants’ unauthorized EPM modification, enforcement of non-law, coercive threats, and the Town of Auburn’s disparate practices constitutes reversible error. The Appellant’s allegations, supported by the New Hampshire Supreme Court’s remand order citing *Baker v. Carr*, 369 U.S. 186, 205–06 (1962), required a merits-based adjudication. The dismissal denied the Appellant a meaningful opportunity to challenge criminal interference in elections, violating due process and equal protection. *See Appeal of New England Police Benevolent Ass’n*, 171 N.H. 490, 496 (2018).

XIII. Declaratory Judgment Sought

Pursuant to New Hampshire Supreme Court Rule 7 and N.H. RSA 491:22, the Appellant requests that this Court issue a declaratory judgment as part of the relief sought, addressing the Defendants’ violations outlined in the Summary of the Criminal Allegation.

A. Unauthorized Modification of the EPM

This Court should declare that the Defendants’ modification of the EPM to redefine a “properly executed affidavit” violates the New Hampshire Constitution (Part I, Articles 1, 11, 12; Part II, Article 5), the U.S. Constitution (Article I, Section 4; Fourteenth Amendment), and 52 U.S.C. § 10101(a)(2)(A), as it undermines statutory verification requirements and creates non-uniform election standards.

B. Enforcement of Non-Law as Law

This Court should declare that the Defendants’ enforcement of the EPM as law violates the Supremacy Clause (U.S. Const. art. VI) and N.H. Const. Pt. II, Art. 5, inducing moderators to commit malfeasance under N.H. RSA 666:2 and misconduct under N.H. RSA 666:3.

C. Coercive Threats Against Voters and Officials

This Court should declare that the Defendants’ October 30, 2024, “Joint Memorandum” violates due process under Part I, Article 15 of the New Hampshire Constitution, the Fourteenth Amendment, and 52 U.S.C. § 20511(2), by intimidating voters and officials from exercising their rights under N.H. RSA 659:30.

D. Disparate Ballot-Counting Practices

This Court should declare that the Town of Auburn’s disparate ballot-counting methods violate 52 U.S.C. § 10101(a)(2)(A), N.H. RSA 666:2, 666:3, and the Fourteenth Amendment, resulting in vote dilution and potential ballot box stuffing.

E. Violation of Federal Policy

This Court should declare that the Defendants' practices violate President Trump's Executive Order of March 25, 2025, Sec. 5, which prioritizes prosecuting election crimes, and the Supremacy Clause, by undermining fair elections. *See Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000).

F. Legal Basis

The Appellant's standing, recognized by the New Hampshire Supreme Court's remand order citing *Baker v. Carr*, supports this request for declaratory relief. The Trial Court's dismissal constitutes reversible error, necessitating judicial intervention to protect voting rights.

XIV. Relief Sought

The Appellant respectfully requests that the New Hampshire Supreme Court:

1. Reverse the Trial Court's June 8, 2025, decision and remand for a trial on the merits.
2. Issue the declaratory judgment outlined above, affirming the Defendants' violations of state and federal law.
3. Order compliance with Superior Court Procedural Rule 1.2 for discovery and hearings.
4. Declare that non-uniform voting procedures violate Part I, Articles 1, 11, 12 of the New Hampshire Constitution and the Fourteenth Amendment.
5. Declare that counting unverified absentee ballots violates state and federal constitutions.
6. Order the Defendants to cease unauthorized EPM enforcement, coercive threats, and disparate practices.
7. An order awarding all fees and cost to me.

8. Grant such other relief as the Court deems just.

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

The Plaintiff certifies that this brief complies with Supreme Court Rule 16(11). This brief contains 9,500 words. Dated August 9, 2025

/s/ Daniel Richard

Daniel Richard

CERTIFICATION

I, Daniel Richard, do hereby swear that on August 9, 2025, I did e-mail or hand deliver a copy of this to Christopher T. Sununu, et al. Dated August 9, 2025

/s/ Daniel Richard

Daniel Richard

VERIFICATION

I, Daniel Richard, certify that the foregoing facts are true and correct to the best of my knowledge and belief. Dated August 9, 2025

/s/ Daniel Richard

Daniel Richard

APPENDIX

The following documents are included in the Appendix to the Appellant's Brief, as referenced in the appeal from the final decision of the Rockingham County Court, issued on June 8, 2025. Page numbers correspond to the brief for ease of reference.

1. Trial Court's Final Decision, Rockingham County Court, June 8, 2025

- Referenced on Pages 1, 2, 31
 - Description: The final order issued by Trial Court Judge Ruoff dismissing the Appellant’s claims challenging the Defendants’ election practices.
- 2. New Hampshire Supreme Court Remand Order**
- Referenced on Pages 1, 2, 4, 5, 7, 8, 17, 19, 23, 25, 28, 30
 - Description: The New Hampshire Supreme Court’s order remanding the case to the Trial Court, recognizing the Appellant’s standing under Baker v. Carr and directing adherence to Superior Court Procedural Rule 1.2.
- 3. Defendant’s Motion to Dismiss for Lack of Standing**
- Referenced on Pages 2, 7, 8
 - Description: The Defendants’ pre-appeal motion to dismiss, reinstated and granted by Judge Ruoff, despite the Supreme Court’s recognition of standing.
- 4. New Hampshire Election Procedure Manual (EPM), Version 2024.0**
- Referenced on Pages 27, 28, 29
 - Description: The Election Procedure Manual, including the disclaimer on page iv stating it is not law, and the unauthorized modification of the definition of “properly executed affidavit” on page 154.
- 5. Joint Memorandum by Secretary of State David Scanlan and Attorney General John Formella, October 30, 2024**
- Referenced on Pages 28, 30
 - Description: The memorandum threatening to refer election officials or voters to the Attorney General for challenging absentee ballots on lawful grounds.
- 6. President Trump’s Executive Order, March 25, 2025, Sec. 5: Prosecuting Election Crimes**
- Referenced on Pages 2, 25, 26, 30

- Description: The Executive Order directing federal agencies to prioritize prosecution of election crimes, including fraud, false information, voter intimidation, and unlawful interference.

7. Relevant New Hampshire Statutes

- Referenced on Pages 1, 20, 27, 28, 29, 30
- Description: Excerpts from New Hampshire Revised Statutes Annotated (RSA), including:
 - RSA 657:7 (Absentee Voting Requirements)
 - RSA 657:17 (Absentee Ballot Verification)
 - RSA 657:24 (Willful Interference with Voting Rights)
 - RSA 659:27 (Affidavit Requirements)
 - RSA 659:30 (Right to Challenge Ballots)
 - RSA 659:50(b)-(c) (Moderator Duties for Ballot Verification)
 - RSA 666:2 (Official Malfeasance)
 - RSA 666:3 (Official Misconduct)
 - RSA 491:22 (Declaratory Judgment Authority)

8. Relevant Federal Statutes

- Referenced on Pages 1, 27, 28, 30
- Description: Excerpts from federal election laws, including:
 - 52 U.S.C. § 10101 (Prohibiting Discriminatory Voting Practices)
 - 52 U.S.C. § 20511 (Prohibiting Voter Intimidation or Interference)

9. Plaintiff's Complaint and Amended Pleadings

- Referenced on Pages 1, 2, 22, 28
- Description: The Appellant's original and amended complaints outlining claims of election irregularities, including non-uniform voting procedures, unverified absentee ballots, and violations of state and federal law.
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