This is a case of first impression. This involves new national standards of review

under recent U.S. Supreme Court case rulings regarding Constitutional standards applied to state legislative statutes including the June 2023. (*Moore v. Harper, 600 U.S.\_\_\_ (decided June 27, 2023)* [hereinafter, *“Moore”]* and *New York State Rifle & Pistol Assn., Inc., et al. v. Bruen* [hereinafter, “*Bruen*”] No. 20-843 (U.S. Supreme Court, June 23, 2022) which rulings are applicable in this case.

1. Now comes, the Plaintiff Daniel Richard, pro se, submitting this sur reply in response to the state defendants Answering Brief.
2. The Plaintiff’s claims that his right to remedy of certain voting right violations was summarily and improperly denied without hearing on the merits in this case where he seeks both remedy and redress for violations of his State and Federal voting rights, under the Constitution of New Hampshire Part I, art. 11 [hereinafter “Const. N.H.”] and the Constitution of the United States. Article 1. Section 2 and the 17th Amendment, [hereinafter U.S. Const. & 17th Am.”].
3. The Attorney General and the lower Court have intentionally mis-represented constitutionally relevant facts presented by Appellant and prior case law in their responses to illegitimately support their flawed arguments in opposition. Further, they filed no response regarding the new national controlling case law on this topic. This gaslighting the public and Plaintiff has created a deceptive factually and procedurally faux-excuse to justify or overlook and ignore state officials' illegitimate behavior in material alteration of the state voting process in a manner that is otherwise unable to be corrected by Plaintiff and/or any member of the voting public absent appeal. The harm is significant and irreparable.
4. For example, state absentee voting for the election years 2014, 2016, 2018, averaged 4%. But for the 2020 election, absentee voting under new election voting expansion “laws” without oversight and improperly enacted and applied at a local level, was improperly expanded to 32%, 260,217 illegal (wrongly printed, distributed, and processed) absentee ballots were counted by Ballot Counting Devices. This expansion of an unconstitutional voting process *in violation of the State Constitution* represents a hidden manipulation of the state constitution by politicians and election officials to wrongfully expand and create a new unauthorized class of voters not qualified to vote under Constitutional standards.
5. **Un-Constitutional Ballot Counting Devices**

Appellant states in his amended complaint on pg. 16, Item 58 and 59 that the moderator (and/or asst. moderator) failed to perform their mandatory duty required by the Const. N.H. Part II, art. 32. This violation is a substantive due process violation as the moderator is constitutionally mandated (“shall”) to “sort,” verify signatures and affidavits, and count the absentee ballots – as well as other ballots now being cast by a significant number of non-constitutional voters. Defendants sanctioned the unlawful *discretionary* use of vote tabulation equipment and enhanced absentee balloting at the local level perversely employing and distorting NH RSA 656:40, [which allows some towns, cities, or other political subdivisions of the State to use Ballot Counting Devices or not] in a political process/system which violates the State Constitution, thereby depriving the plaintiff of a fair, equal and uniform voting process throughout the State. These illegitimate state-actor practices are ongoing and officials flaunt their abuse of power, while distorting the facts and moving to dismiss any review, again without public hearing on the issue. The “manner” in which this complex and multi-tiered “statutory-scheme” of improper vote-generating activity was performed and instigated by various state officials acting under color of law--is unconstitutional and unlawful for the reasons re-stated herein.

1. The state practice is an infringement of Plaintiff’s Equal Protection Rights

(a). NH RSA 656:40 impermissibly infringes on the plaintiff’s State equal protection rights (Const. N.H. Part I, art. 11.);

(b). NH RSA 656:40 also impermissibly infringes on the plaintiff’s equal protection rights under the 14th Amendment of the U.S. Const [hereinafter 14th Am;

(c). Meanwhile, NH RSA 656:40 impermissibly shifts the state burden of proof for review onto the plaintiff to prove that he is harmed by the defendants' statutory scheme to “amend” the constitutional duties of the moderator, (i.e., the manner in which votes have been not verified yet were counted and with the introduction of ballot tabulation electronic equipment);

(d). Appellees failed to show a historical analogue burdening the right of the plaintiff to the equal application of the law in State and Federal elections;

(e). NH RSA 656:40 impermissibly infringes on the constitutional manner (previously existing at Const. N.H. Part II, art. 32) where the moderator was required to “sort,” count and verify the votes; this constitutional mandate was improperly and illegally altered by statute. The inhabitants of this State were deprived of informed consent (Const. N.H. Part I, art. 1.) by the changes to amend the Const. N.H. secretly through legislative sophistry --in direct violation of the due process clause of the Const. N.H. Part II, art. 100. This thereby deprived the inhabitants of this State (which the plaintiff is one of) of fundamental due process required at law Const. N.H. Part II, art. 100 – which requires an open voter amendment process to alter any terms of the Const. N.H. This also violates the due process protection of the Const. N.H. Part I, art. 1, art. 15 and the due process clause of the 14th Am. to the U.S. Const. as recently decided in *Moore. It is an ongoing violation and harm.*

7. **The Un-constitutional Expansion of Absentee Voting by State Officials**

(a). NH RSA Chapter 657 impermissibly infringes on the Const. N.H. Part I, art. 11 (The Qualified Absentee Voter Clause), and The Voter Qualification Clause of the U.S. Const. Article 1, Section 2 and the 17th Am;

(b). Further, NH RSA Chapter 657 has impermissibly shifted the burden of proof onto Appellant to prove that he was harmed by Appellees’ (progressively implemented) statutory scheme to alter the constitutional language in order to surreptitiously expand absentee voting “rights” (thereby increasing illegitimate ballots cast and counted) **without the consent of the voters** and outside of the Constitutional safeguards and requirements provided in Const. N.H. Part I, art. 1).

(c). NH RSA Chapter 657 violates the Const. N.H. Part I, art. 11 (The Qualified Absentee Voter Clause), and The Voter Qualification Clause of the U.S. Const. Article 1. Section 2 and also the 17th Am, as the Const. N.H. Part I, art. 11, only authorizes those

“…*who are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person;”*

(d) The Appellant was disenfranchised by this scheme and his vote diluted, as his State and federal voting rights, are violatedby depriving the Appellant of the fair and equal election process established by each Constitution. The illegitimate government alteration of the constitutional election process by sophistry and sleight of hand alterations in various legislative (i.e., political) manipulations of the constitutional language – in order to artificially create more votes, without submitting their “scheme” to significantly alter the constitutional “manner” to create an exponential number of new-sub-par votes – is both an abrogation of the valid constitutional amendment process and overall integrity of the vote casting process reasonably expected by citizens, including Appellant. The unfair increase in constitutional voting by the additional tabulation of various non-constitutional absentee and other legislative with other political manipulations is largely hidden from common and public observation, and it represents voter fraud of the worst kind – the dilution of proper votes cast using bogus unconstitutional votes *politically newly* manufactured and processed as valid votes under color of law. It alters the entire landscape of bona fide voting process – by creating and allowing a calculated and artificial dilution of bona fide votes using expanded and unverified ‘absentee’ *and other* processes that lacks constitutional validity.

(e). The inhabitants of this State are deprived informed consent (Const. N.H. Part I, art. 1.) for what is an illegal expansion of votes that avoid the mandatory process to amend the Const. N.H. This scheme deprives (and will continue to deprive) the inhabitants of this State (which the Appellant is one of) of the fundamental due process required and essential before an amendment to the Const. N.H. Part II, art. 100. It also violates the due process protection of the Const. N.H. Part I, art. 1, art. 15 and the due process clause of the 14th Amendment to the U.S. Const. *Moore*.

As established by *Harper, state officials may not duck and ignore its responsibility to review the state’s impermissible voter-interference* practices(In *Harper it was gerrymandering) by similarly claiming in this case that voter-machine and absentee ballot processing are non-justiciable issues for this Plaintiff in this case. Here, absentee balloting is the new gerrymandering.*

1. **Legislature improperly passed an unconstitutional statute permitting so-called Resident Aliens *the Right to Vote* without a Constitutional Amendment**

(a) “*N.H. Const. pt. I, art. 11. By the article’s plain language, an individual must be an inhabitant of this State,” Fisher*. (a). NH RSA 21:6, RSA 21:6 (a) impermissibly infringes on the Const. N.H. Part I, art. 11 (Voter Qualification Clause) and The Voter Qualification Clause of the U.S. Const. Article 1. Section 2. and the 17th Am;

(b) NH RSA 21:6 impermissibly shifts the burden of proof onto this plaintiff for him to prove that he is harmed by the defendant’s statutory scheme *to amend* the Constitutional definition of a qualified voter without following Constitutional Amendment requirement, which specifically require the consent of “***the inhabitants”*** of N.H;

(c). NH RSA 21:6 is a state statute that allows ***resident aliens*** the right to vote in N.H. in direct violation of both State and Federal Constitutional requirements.

(d). Under state and federal Constitutions, the Appellant was disenfranchised, and his vote diluted by this non-constitutional statutory scheme practiced by state election officials. The depravation and harm to a constitutionally fair and equal election process will continue.

(e). The inhabitants of this State have been deprived informed consent (Const. N.H.) about the illegitimate statutory process that alters constitutional voting using a series of legislative changes that expand voting to include ‘new’ unqualified votes and voters. This expansion of new voters classes is not allowed by definition in the State Constitution. These back-door alterations of the State Constitution occurred by the implementation of new ‘laws’ promoted by government officials over a period of time – each which circumvents the definition of those permitted to vote defined in the Constitution, thereby depriving the inhabitants of this State (which the Appellant is one of) the due process required before amendment. *Moore.* Const. N.H. Part II, art. 100. Const. N.H. Part I, art. 1, art. 15 and Federal due process, 14th Am.

1. *Bruen (2022)* - a recent U.S. Supreme Court decision – *Bruen* further articulated a two-step analysis for determining whether a law or regulation of constitutionally protected conduct is unconstitutional (as is claimed in this case.) First, courts must determine whether any enumerated right (*plain text)* covers an individual’s conduct. *Bruen*.
2. If so, then the “*Constitution presumptively protects that conduct,*” and the Governmentmust justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition regulating the right in question*.* Only then may a court conclude that the individual’s conduct falls outside the enumerated right’s unqualified command.
3. In the instant case, the ***plain text*** of the State Constitution uses the specific word “inhabitant” (used 25 times in the document) which exact word underlies Plaintiff claims because he is **an inhabitant** of N.H. Therefore, the burden falls on the Appellees to justify the law showing that it is consistent with State and Federal constitutions and election laws written pursuant thereof – after this plain text word has been abrogated and changed into new words to include expanding populations and groups eligible to vote. By altering the plain text meaning to include whole new groups and class of voters not included in the original language, the legislature improperly impinged on the Constitutional authority. New groups of voters includes out-of-state students, foreign and aliens, immigrants, and out-of-state residents, and a plethora of others who under expanded and redefined words, do not qualify to vote under the plain text language meaning of the State Constitution.
4. Appellees cited no relevant authority to amend the Const. N.H. *without the consent* of her inhabitants as mandated by the state constitution (Part I, art. 1). Appellees needed to and failed to show some historical analogue relating to: (a). Discretionary Ballot Counting Devices; (b). Statutory expansion of absentee voting; (c). Legislative or other legitimate authority for sua sponte granting resident aliens voting rights, notwithstanding the Constitution; (d). and must point to some “*historical precedent from before, during, and even after the founding [that] evince a comparable tradition of regulation.*” *Bruen*.
5. **Lynch Pin is the depravation of due process by state actors who altered the State Constitution** by using new legislative terms and “voting processes” to improperly expand the number of new voters (and ballots counted) without first properly submitting the proposed changes to the people for approval or disapproval as required under state and federal law. The use of legislative fiat promoted and enacted to the constitutional requirements necessary for these and other voter-enhancement changes to occur.
6. All of the specific statutory voting schemes (including widespread new absentee balloting manipulations and the new extensive use of ballot tabulating machines) complained of in this case are novel issues to the court, but each is a type of bureaucratic manipulation to improperly and illegitimately expand the votes counted.
7. Appellees rely on *their materially flawed 1976 Amendment, Question 8 b)*. *argument*. This was declared by this Court to be unconstitutional in *Fischer v Governor 145 N.H. 28, 37 (2002)*.
8. However, these earlier decisive precedent/rulings at law were ignored by Defendants and the Court when dismissing the Plaintiff’s claims. Plaintiff claims that under *Moore.* *The 1976 Question 8 amendments violate* his substantive and procedural due process rights under both state and federal Constitutions.
9. The lower Court and Appellees further evaded the historical facts and controlling 2000 state Court precedent in Fisher, which previously declared the *1976 Amendment Question 8 b) - The Domicile Question -* to be unconstitutional -

“ *It is clear, however, that the removal of the "proper qualifications" language from the voting provision did not conform to the scope of the amendment intended by the constitutional convention. Specifically, it did not relate to the four intended substantive changes regarding age, domicile, duties of the secretary of state, and absentee voting, and far exceeded the convention's remaining intent to "simplify" the wording of Article 11. Indeed, as noted by the State, the ballot questionnaire submitted to the citizens for ratification of the 1974 amendment failed to alert the voters to any substantive change to the legislature’s authority to generally determine voter qualifications.”* (Emphasis added) *id.*

1. This issue was pled as precedent in Plaintiff’s lower court claim, which Judge Ruoff avoided, so is raised again for appeal.
2. All Defendants’ ‘statements of facts and law’ regarding discussion of Question 8 (re the 1974 amendment) lack legitimacy, as *Gerber v. King 107 N.H. 495, 225 A.2d 620 (1967)* [hereinafter “Gerber”]forbids the comingling of five separate and distinct yes or no questions for one yes or no answer, as was done in the instant case. The issue was resolved more than two decades ago by this court.
3. It is disingenuous now for Appellees (who represent the state’s highest elected political and legal officers) to claim in 2023 that reason that 1976 Question 8 a) was presented to the voters was to reduce the voting age from 21 to 18. This is intentionally misleading as that was already law. So that ballot question was moot by the time it showed up on the ballot in question in 1976.
4. The voting age reduction/vote had already been completed and enrolled as law in 1974—two years before it was placed on the 1976 ballot. The issue was void – although referenced by Defense counsel as important ‘precedent’ to dismiss this case. The earlier 1974 age-vote stemmed from a CACR proposed by the legislature to voters who on November 5, 1974 voted 147,484 to 57,756 to reduced voter age. (See Exhibit E, *New Hampshire Manual,* cited at page 17, Plaintiff’s Brief).
5. It is disingenuous now for Defendants aver that 1976 Question 8 e) ballot somehow represents binding precedent allowing the use in 2020 of a new expanded multi-part voting process (for absentee and new voter ballots) – including after this court previously disallowed such tactics in Gerber in 1967, and other so-called “vote” cited as precedent was void.
6. The responses in opposition are stubbornly disingenuous applying error in fact and law, while omitting contemporary precedent, including *Harper* and *Moore* as reasons for review. Gerber for example, upholds the common law, and prohibits comingling of multiple unrelated questions to voters with one yes or no choice; *Gerber* pointedly disallowed the voter to vote yes to part of one specific question and no to another part of the same question. The plain text of the last sentence of the 1784 Const. N.H. Part II, Art. 99. In 1792 states:

*“Provided that no alteration shall be made in this constitution before the same shall be laid before the towns and unincorporated places, and approved by two thirds of the qualified voters present, and voting upon the “****question.****”” (Emphasis added) [N]o alteration, and question are singular terms, not plural.*

1. In addition to other causes of action and complaints in the Appellant’s Brief, these and other fundamental voter-integrity issues raised require review and reversal in 2023 under *Moore* and *Bruen*.
2. The Court is requested to schedule a review hearing with oral arguments on this matter at the earliest opportunity, as the issued raised are a matter of reoccurring public harm through the improper dilution of each citizen’s vote in the 2020, 2022 and upcoming elections.
3. Following hearing, this Honorable Court is requested to grant remedial, prospective, and other relief as appropriate.

August 28, 2023 Respectfully submitted,

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Certificate of service

I hereby certify that a copy of the foregoing was served through the Court’s e-filing system to all parties of record.

August 28, 2023 /s/ Daniel Richard

Daniel Richard