

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No.: 218-2022-CV-00676

DANIEL RICHARD

*Plaintiff*

v.

CHRISTOPHER T. SUNUNU,  
GOVERNOR of the “state” of NEW HAMPSHIRE,  
In His Official Capacity and Personal Capacity, et al.

**PLAINTIFFS’ EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 48(b) of the New Hampshire Rules of the Superior Court, the Plaintiff hereby moves the Court to enter a preliminary injunction barring Defendants from using computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election until such time that the propriety of a permanent injunction is determined. This motion is based on Plaintiff’s memorandum of law and the Declarations by affidavit, see exhibit C submitted with complaint, and the following violations in where said electronic voting machines have been modified, changed, maintained, and tampered-with against the following electronic voting machine’s manufacturer and state and federal laws prohibiting such unlawful changes. The Plaintiff further contends; because of the methodology for counting votes in the town of Auburn, I was denied by the town of Auburn the right to vote, even though my right to vote is constitutionally guaranteed by both the New Hampshire and federal constitutions. As a

result of the Plaintiff's denied access to vote, he was publicly embarrassed and suffered emotional distress and continues to suffer emotional and psychological issues, aware he will yet again be denied his constitutional right to vote once he complains of the town's failure to comply with state and nationally-known regulatory protections used to protect his vote, and his state-authorized request to vote by paper ballot.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

1. The state of New Hampshire has no federal testing or certification requirements for the repair and modification of its tabulation voting systems and electronic voting machines. New Hampshire's statutes and/or regulations make no mention of any federal agency, certification program, laboratory, or standard; instead, the state relies solely upon the cities and towns to implement state-specific "analytical calibration" processes to test and approve the functionality of equipment. Although, the Defendants are aware; testing after the implementation of hardware modification/alteration is far different from analysis calibration testing. Notwithstanding, this type of state-independence does not relieve New Hampshire from federal OSHA Safety laws and regulations, along with other related state safety regulations required under the state Fire Marshall's office.
2. It is here alleged; that the state of New Hampshire does not test their voting machines after hardware alteration or modification with any known safety or performance standard, but rather relies upon analytical calibration testing only.

3. It is here alleged; with this failure to use certified, new or reconditioned manufacturer's hardware components—incorporated into these electronic tabulation machines, a statistical analysis of “electronic deviation” is not performed to evaluate the logic cards. There is no verification or validation of the “open-source” logic cards.
4. Upon information and belief, voting in New Hampshire is non-validated and not in accordance with any known electrical and electronic safety standards - by design, in order to maintain the Country's “first-in-the-nation” vote status.
5. In fact, the reason the state of New Hampshire maintains its' independence from all nationally recognized hardware testing programs, is because the Defendants are aware they are unable to meet or come close to the current National Institute of Standards and Technology requirements for Voting System Testing,<sup>1</sup> including, but not limited to:

#### **6.6 Externally provided products and services**

**6.6.1** All core voting system testing shall be conducted by a VSTL (which may include individuals hired on a contract, see 6.2.10). Core testing includes technical data package review, physical configuration audit, source code review, functional configuration audit, system integration test, interoperability tests, volume tests, accuracy testing, accessibility testing, telecommunications testing and, and usability tests, security tests, vulnerability testing, and penetration testing.

**6.6.2** When the VSTL subcontracts testing for any core voting system testing within its scope of accreditation, the subcontracted laboratory shall also be a NVLAP-accredited VSTL authorized to do business in the United States.

**6.6.3** When any specialized parts of a core test (i.e., within vulnerability testing or penetration testing, or within usability or accessibility testing) is subcontracted to a non-NVLAP-accredited VSTL, a VSTL shall first receive written authorization by the EAC.

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<sup>1</sup> <https://nvlpubs.nist.gov/nistpubs/hb/2021/NIST.HB.150-22-2021.pdf>

**6.6.4** VSTLs shall use U.S. based accredited laboratories recognized by the EAC (See EAC's Voting System Test Laboratory Program Manual) for non-core testing. When an accredited laboratory is not available for non-core testing, the VSTL shall conduct an audit of the subcontracted laboratory and shall document that the laboratory is competent and qualified for use. See footnote 1, page 14.

Accordingly, no nationally recognized NIST or EAC oversight testing is conducted by the individual cities and towns in New Hampshire, including the town of Auburn, to validate or certify the safety and reliability of the said tabulation and electronic voting systems in New Hampshire.

6. Through years of neglect and the state's dereliction of duty to the safety, reliability and security of its antiquated voting systems, New Hampshire tabulating and electronic voting machines are not safe and grossly unreliable in accuracy.
7. The Plaintiff submits; that a majority of electronic voting machines in New Hampshire use the AccuVote tabulating systems, which are no longer manufactured and supported by the original manufacturer, but rather are operated unlawfully under both state and federal standards, or at the very least, questionably supported by LHS Associates, hereinafter "LHS",<sup>2</sup> of whom is not the manufacturer of these various voting and tabulating machines, but a third-party contractor hired by the state of New Hampshire.
8. The problem, the Defendants have and continue to allowed LHS to use cannibalized parts (not certified reconditioned parts) from old non-functional

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<sup>2</sup> LHS Associates was founded in 1972 in Andover Massachusetts as Lynn Haas Services. The company began providing computer-based services to municipalities in the areas of voter lists, tax billing services, jury lists and similar products. In-time, LHS Associates evolved to the point where they are now, almost exclusively, an election services company.

machines to repair the antiquated 'dot matrix' printer or, what has been written as, the "joke-worthy" memory card, because these cards require a working battery or else, they will lose all the information about the ballots it has just counted.

9. Additionally, the President of LHS, Mr. Jeff Silvestro, has publicly acknowledged and expressed a heavy concern; that the AccuVote operating system runs on Windows XP, a variant that Microsoft has not supported for years, and leading to concerns about software crashes and software bugs that can raise questions about voting and ballot results.<sup>3</sup>
10. These types of maintenance and operating conditions performed on electronic equipment, that is exposed to the Public, violates my physical and emotional safety during the times I am exposed to these electronic machines, and was a major contributor to the town of Auburn, NH preventing me from voting during the last voting cycle, causing me severe emotional harm and a violation of my New Hampshire and federally-protected constitutional rights.
11. In-turn the State of New Hampshire, by endorsing these unlawful voting-machine practices, knowingly and willingly violate 29 CFR §1910.301(a) through (d), and

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<sup>3</sup> <https://www.concordmonitor.com/voting-machines-nh-accuvote-23521350> Concord Monitor, Published Feb. 16, 2019.

§1910.399 (Acceptable),<sup>4</sup> and completely ignore the “Voluntary Voting System Guidelines”<sup>5</sup> of the United States Election Assistance Commission “EAC”.

*Electric utilization systems, states: Every electric utilization system and all utilization equipment installed after March 15, 1972, and every major replacement, modification, repair, or rehabilitation, after March 15, 1972, of any part of any electric utilization system or utilization equipment installed before March 15, 1972, shall comply with the provisions of [OSHA] §1910.302 through §1910.308. See footnote 4 below.*

12. The EAC expressly indicates; that these and (the Plaintiff will show) all voting machines in New Hampshire can no longer be accredited because they can no longer meet safety certification as outlined in 29 CFR §1910.301(a) through (d), and the NIST <sup>6</sup> standards, placing me as a voter and poll-watcher exposed to these machines, and the public at large, in danger.

13. The Plaintiff contends; that all modified AccuVote machines incorporating used non-certified components for the machines they are used in, must be Safety certified by a U.S. Nationally Recognized Testing Laboratory as required under federal law for testing all electronic and electrical machines exposed to the

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<sup>4</sup> In North America (USA and Canada) for several products there is mandatory requirement for products to be approved by NRTL's (Nationally Recognized Test laboratories). For example, As per OSHA (Occupational Safety and Health Administration) in the US, it is mandatory for Electrical and Electronic equipment used in a workplace and exposed to the public to be approved and tested via a NRTL.

<sup>5</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VVSG1.0Vol.2.PDF](https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG1.0Vol.2.PDF) (2005) See also <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines> Major Updates of Voluntary Voting System Guidelines (2022).

<sup>6</sup> NIST HANDBOOK 150-22 - 2021 Edition NVLAP Voting System Testing. **National Institute of Standards and Technology (NIST)** - An agency within the U. S. Government's Department of Commerce tasked with developing, maintaining, and disseminating standards within the United States. NIST also conducts research in fundamental measurement processes and provides technology services to public and private sector organizations. NVLAP is the laboratory accreditation group within NIST. Link: <https://nvlpubs.nist.gov/nistpubs/hb/2021/NIST.HB.150-22-2021.pdf>

public, and as recommended by the U.S. Election Assistance Commission “EAC”.

14. New Hampshire is also not a participant of the U.S. Election Assistance Commission’s ‘Voluntary Voting System Guidelines’ regarding its ‘Voting System Test Laboratories, or VSTL:

*System Components: The VSTL must review the submitted voting system to ensure all components required to configure the voting system as defined in the system TDP are delivered to the VSTL and appear to be operational and in good working order. System Component information must match the manufacturer’s application submitted to the EAC. All components submitted for testing must be equivalent to the final production model of the voting system in fit, form and function. Any component not available at the time of this review must be delivered to the VSTL by the manufacturer within 30 days of the initial TRR or testing of the system must be halted and the EAC notified that the system is not ready for testing. Laboratory Program Manual, Version 2.0 21 OMB Control Number: 3265-0018 within 30 days of the initial TRR, or testing of the system will be halted and the EAC notified that the system is not ready for testing. Voting System Test Laboratory Program Manual, Version 2.0, pg. 20-21 (2015).<sup>7</sup>*

15. Additional electronic voting systems used in New Hampshire include; Dominion Voting Systems, such as the Democracy Suite (D-Suite), Version 5.5-C Voting System, along with other Dominion and DIEBOLT Election Systems products.<sup>8</sup>

*4.7.2.2. Modified Voting System. A modified system must be tested in a manner necessary to ensure all changes meet the VVSG and that the modified system will function properly and reliably. Any modified system is subject to testing of the modifications (delta testing) and those systems or subsystems altered or impacted by the modification (regression testing). The system is also subject to system integration testing to ensure overall functionality. See pg. 30, EAC Voting System Testing and Certification Program Manual Version 3.0.*

<sup>7</sup> Link: [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VSTLManual.4.1.15.FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual.4.1.15.FINAL.pdf)

<sup>8</sup> Link: <https://blackboxvoting.org/docs/diebold/diebold-accuvote-optical-scan-hardware-guide-revision-2.0.pdf>

16. In June of 2022, the U.S. Cybersecurity and Infrastructure Security Agency “CISA” issued an ICS Advisory (ICSA-22-154-01) Vulnerabilities Affecting Dominion Voting Systems.
17. This advisory identifies vulnerabilities affecting versions of the Dominion Voting Systems Democracy Suite ImageCast X, which is an in-person voting system used to allow voters to mark their ballot. However, earlier versions of the Dominion voting systems have not been analyzed such as those used in New Hampshire, incorporated here under scrutiny for their maintenance practices pertaining to safety and reliability.
18. Until the above-safety-violations have been corrected, I will be unable to safely perform my constitutional right to cast my vote and to participate in performing as a poll watcher in the town of Auburn.
19. The Town of Auburn must be restrained from using the existing electronic voting machines until such time as the Defendants can show this court that they have complied with all OSHA safety codes and regulations, and related state and federal safety codes, and state and federal voting standards.
20. As an emergency court order, I must have the opportunity to cast a paper-ballot vote and to watch in person the confirmation that my vote has been counted by watching a hand-counting of all votes within my town’s voting place.
21. The right to vote and know that one’s vote is fairly and accurately counted is foundational to our democracy. With this case Plaintiffs seek to eliminate the black box voting system that has developed in the town of Auburn, NH as it is used in this State of New Hampshire. Accordingly, The Plaintiff in the town of



Auburn, NH no longer knows whether his vote has been accurately tabulated or electronically manipulated, and there can be no spot check within reasonable levels of confidence. This is a violation of Plaintiffs' rights under the New Hampshire Constitution and the relative amendments to the Federal Constitution.

22. For centuries, American voters recorded their votes by hand on paper ballots that were counted by human beings. The New Hampshire Constitution and parts of New Hampshire state law still require this hand-counting of ballots. In the last two decades, New Hampshire has adopted electronic, computerized voting systems. Expert analyses, studies and investigations have determined that even the most sophisticated computers can be and have been hacked. It is now widely accepted that the equipment used is often assembled or made in countries like China that allows unauthorized access through, what is called, "open source"<sup>9</sup> systems. In response, states like Alabama, Colorado, Texas, and many more, and countries like France, Taiwan, and Israel ban or do not certify the use of these computerized voting machines because of their inherent design and security flaws and opaqueness.

23. This is not a partisan issue. Experts across the political spectrum have long sounded the alarm about the inherent insecurity and lack of transparency in computerized voting systems such as those used in New Hampshire. The right to vote is constitutionally guaranteed.

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<sup>9</sup> The term open source refers to something people can modify and share because its design is publicly accessible. "Open source" software is software with source code that anyone can inspect, modify, and enhance. "Source code" is the part of software that most computer users don't ever see; it's the code computer programmers can manipulate to change how a piece of software—a "program" or "application"—works. Programmers who have access to a computer program's source code can improve that program by adding features to it or fixing parts that don't always work correctly.

24. Computerized voting systems leave an open door for votes to be changed, deleted, or fabricated in violation of constitutional requirements. A return to the tried-and-true paper ballots of the past, at this time, is necessary. Plaintiffs submit this memorandum and related expert declarations and documentary evidence, and further request that the Court hear live testimony, in support of this request that this Court enter a preliminary injunction barring Defendants from using computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election until such time that the propriety of a permanent injunction is determined. Computerized equipment is vulnerable to manipulation by unauthorized persons, meaning that the true results of an election that relies upon computerized equipment can never be known and Plaintiffs' constitutional rights to vote will be denied, if computerized equipment is used in the town of Auburn, New Hampshire.

#### **NO HARM TO THE DEFENDANTS**

25. The Defendants, and each of them, will suffer no harm should the court grant the relief which the Plaintiff seeks, where the population in the town of Auburn was 5,946 at the 2020 census, and during the most recent March 2022 local town elections, around 460 residents cast their votes, or less than 500 residents voted.

26. The Plaintiff has shown, that counting approximately 500 paper ballots does not constitute a hardship to the town.

#### **PRELIMINARY INJUNCTION SOUGHT**

1. Where the state of New Hampshire and the town of Auburn, NH have no state or federal testing or certification requirements for the repair and modification of its' tabulation voting systems and electronic voting machines, and New Hampshire's statutes and/or regulations make no mention of any federal agency, certification program, laboratory, or standard, I move for an emergency hearing to present my case to the court, before the coming elections, and to produce expert testimony regarding the validity of my complaint;
2. Enjoin the Defendants, and each of them, from denying my access to vote by a non-electronic manual paper ballot.
3. Where the Defendants will suffer no harm in using the same paper ballots, but count around 500 ballots by hand in place of inserting these ballots into a non-certified and unsafe electronic tabulating machine, Enjoin the Defendants from using computerized equipment to administer the collection, storage, counting, and tabulation of votes in any election, until such time as each of the Defendants can implement policies and guidelines consistent with those protections as outlined here within this request for injunctive relief.

### **VERIFICATION**

I, Daniel Richard, hereby swear under pains and penalties of perjury on this 31<sup>st</sup> day of August, 2022, that foregoing is true and accurate to the best of my knowledge and belief.

/s/ Daniel Richard  
Daniel Richard

### **CERTIFICATION OF SERVICE**

I Daniel Richard hereby swear that on Sept 1, 2022, I did e-mail or hand deliver a copy of this complaint to the Defendants.

Dated September 1, 2022

/s/ Daniel Richard

Daniel Richard

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