

No. 25-1390

**In the
Supreme Court of the United States**

Daniel Richard, *pro se*
Petitioner.

v.

Governor, State of New Hampshire, et al.
Respondents

**On Petition for Writ of Certiorari
to the Supreme Court of New Hampshire**

**TOWN of AUBURN RESPONDENTS'
BRIEF in OPPOSITION**

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1. Questions presented for review.

i. Question 1 - Meaningful Judicial Review

Whether the New Hampshire Supreme Court denied meaningful judicial review under the Elections Clause and Qualifications Clauses of the U.S. Constitution, in violation of *Moore v. Harper*, 600 U.S. 1 (2023), by declaring N.H. Const, pt. II, art. 32 “silent” on the method of ballot counting expressly required by that provision and by disregarding its own binding precedent in *Fischer v. Governor*, 145 N.H. 28 (2000).

ii. Question 2 - Vote Dilution

Whether the Equal Protection Clause of the Fourteenth Amendment, as interpreted in *Bush v. Gore*, 531 U.S. 98 (2000), and *Reynolds v. Sims*, 377 U.S. 533 (1964), is violated when a state court dismisses as a non-justiciable “generalized grievance” a qualified voter’s claim that his in-person, hand-counted ballot was commingled and tabulated with hundreds of thousands of absentee and machine-counted ballots processed under materially weaker verification and transparency standards.

2. Parties to the proceeding in the New Hampshire Supreme Court.

Petitioner is Daniel Richard, a taxpayer domiciled in Auburn, New Hampshire.

Respondents are: Governor, State of New Hampshire; Speaker of the New Hampshire House of Representatives; New Hampshire Attorney General; President of the New Hampshire Senate; New Hampshire Secretary of State; Chairman, Board of Selectman of the Town of Auburn,* and Town Administrator of the Town of Auburn.* Town of Auburn Respondents are natural persons acting in their official capacities on behalf of a governmental entity.

*Herein collectively referred to as “the Town of Auburn.” Remaining Respondents are collectively referred to as “the State of New Hampshire.”

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5. Citations of the official and unofficial reports of the opinions and orders entered in the case.

Richard v. Governor, 2024 N.H. 530.

Richard v. Governor, No. 2025-0297, 2026 WL 296564, at *1 (N.H. Jan. 13, 2026).

6. Jurisdictional statement.

28 U.S.C. § 1257(a) “provides for this Court's exercise of jurisdiction over final judgments or decrees rendered by the highest court of a State in which a decision could be had.” *Moore v. Harper*, 600 U.S. 1, 16 (2023). However, “[i]n the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional.” *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025). Because the New Hampshire Supreme Court's decisions rest on independent and adequate state grounds, this Court lacks jurisdiction under 28 U.S.C. § 1257(a).

7. Constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case.

i. U.S. Const. Article I, Section 4, Clause 1

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

ii. U.S. Const. Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

iii. N.H. Const. Pt. I, Art. 1.

All men are born equally free and independent: Therefore, all government, of right, originates

from the people, is founded in consent, and instituted for the general good.

iv. N.H. Const. Pt. II, Art. 74.

Each branch of the legislature as well as the governor and council shall have authority to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions.

8. Statement of the case.

Petitioner, Daniel Richard, voted in a local election in March of 2022. *Richard v. Governor*, 2024 N.H. 53, at ¶ 2. At that local election, his ballot was not counted by hand but instead counted by electronic ballot counting device pursuant to N.H. Rev. Stat. Ann. 656:40. *Id.* Petitioner then filed suit in August of 2022 against various State defendants and two Town of Auburn officials, the Chair of the Town’s Board of Selectmen and the then-Town Administrator. *Id.* His complaint contained six counts:

(I) that he was “deprived of his right to vote by the town of Auburn” on March 9, 2022 when he “attempted to vote” but was not permitted to vote by hand instead of using an electronic voting machine; (II) the statutes contained in RSA 656:40 et seq. are unconstitutional because they allow the use of electronic voting machines; (III) RSA 656:40-:42 (2016 & Supp. 2023) are unconstitutional because they permit the use of electronic vote counting devices which lack testing or certification procedures; (IV) RSA 21:6 (2020), RSA 21:6-a (2020), and RSA 654:1 (2016) are unconstitutional because they changed the definition of who can vote in New Hampshire; (V) RSA chapter 657 is unconstitutional because it improperly expands access to absentee voting; and (VI) the 1976 amendments to the State Constitution resulting from the outcome of

a statewide ballot question related to elections are invalid because the amendment process was contrary to the constitution.

Id.

The trial court dismissed Petitioner's complaint for failure to state a claim upon which relief can be granted without determining whether he had standing to pursue any of his claims. *Id.*, at ¶ 4.

On appeal, the New Hampshire Supreme Court determined that, under the New Hampshire Constitution, Petitioner lacked standing to bring Counts III through VI, but that he had standing to bring Counts I and II. *Id.*, at ¶ 1. Nonetheless, the Court affirmed the dismissal of Counts I and II for failure to state a claim upon which relief could be granted "to the extent they were based on ... Part II, Article 32" of the New Hampshire Constitution. *Id.*, at ¶ 19.

The New Hampshire Supreme Court concluded, however, that Petitioner's Count II made an equal protection claim that Petitioner had standing to pursue and remanded the case for consideration by the trial court. *Id.*, at ¶ 21.

On remand, the trial court dismissed Petitioner's equal protection claim under the New Hampshire State Constitution's equal protection clause. Pet. App. 22a.

Petitioner appealed the trial court's decision, and the New Hampshire Supreme Court affirmed the trial court's "well-reasoned order." *Richard v. Governor*, No. 2025-0297, 2026 WL 296564, at *2 (N.H. Jan. 13, 2026).

9. Summary of the argument.

Petitioner proposes two questions, both of which concern matters of state constitutional law for which the New Hampshire Supreme Court is the final authority.

First, Petitioner challenges the New Hampshire Supreme Court's determination that Part II, Article 32 of the New Hampshire Constitution does not require that all votes in New Hampshire be hand counted. Second, Petitioner challenges the state courts' determination that he lacks standing to bring generalized grievances over how the New Hampshire courts have interpreted the New Hampshire Constitution. Though he contends that these challenges are rooted in the Elections and Equal Protection Clauses of the federal constitution, his claims were disposed of on independent and adequate state constitutional grounds

10. Argument.

Petitioner has not identified an important federal question decided by the New Hampshire Supreme Court that warrants this Court's review under U.S. Sup. Ct. R. 10. On the contrary, the decisions of the New Hampshire Supreme Court that Petitioner seeks to challenge by writ of certiorari rest on independent and adequate state grounds.

*i. Petitioner was not denied
meaningful judicial review.*

Petitioner argues that the New Hampshire Supreme Court denied him meaningful judicial review by deciding that Part II, Article 32 of the New Hampshire Constitution does not require ballots to be counted by hand. Pet., at 19.

But the New Hampshire Supreme Court’s decision about the meaning of the New Hampshire Constitution is not a federal question. “It is fundamental... that state courts be left free and unfettered by us in interpreting their state constitutions.” *Fla. v. Powell*, 559 U.S. 50, 56 (2010) (quotation omitted). The exception lies only when this Court must “safeguard limits imposed by the Federal Constitution.” *Moore v. Harper*, 600 U.S. 1, 35 (2023). And Petitioner has identified no federal constitutional limitation preventing states from using electronic ballot counting machines.

Moreover, the election about which Petitioner complains was a *local* election, not a federal one. *Cf. Moore*, 600 U.S., at 36 (“We hold only that state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate *federal elections*.” (emphasis added)).

The New Hampshire Supreme Court decided Petitioner’s claim that the New Hampshire Constitution forbade the electronic counting of votes

on the merits. *Richard*, 2024 N.H. 53, at ¶ 10. Its decision epitomizes “the ordinary bounds of judicial review” contemplated in *Moore*, and Petitioner has identified no *federal* limitation that would foreclose states from using electronic ballot counting machines.

ii. The New Hampshire Supreme Court’s decision that Petitioner lacks standing was decided under New Hampshire’s Constitution.

The New Hampshire Supreme Court determination that Petitioner lacks standing to raise challenges to various aspects of the New Hampshire voting system, *see Richard*, 2024 N.H. 53, at ¶ 22, was properly decided under the New Hampshire Constitution, Pet. App. 16a-22a. Under the New Hampshire Constitution, the doctrine of standing is a constraint on the judiciary, not upon individuals, *see Richard*, 2024 N.H. 53, at ¶ 7. ““In New Hampshire, standing in the traditional sense is grounded in Part II, Article 74 of the State Constitution . . .” *Id.* To establish standing under the New Hampshire Constitution, “[n]either an abstract interest in ensuring that the State Constitution is observed nor an injury indistinguishable from a generalized wrong allegedly suffered by the public at large is sufficient to constitute a personal, concrete interest.” *Id.*, at ¶ 8.

The New Hampshire Supreme Court determined that, with respect to four of Petitioner’s

six counts, his complaints were “generalized wrongs allegedly suffered by the public at large.” *Id.*, at ¶ 24. Those counts, therefore, fell outside the scope of the New Hampshire judiciary’s jurisdiction. That application of New Hampshire’s constitutional constraints upon the state judiciary to Petitioner’s claims does not violate the federal equal protection clause.¹

To the extent that Petitioner’s second proposed question may be read to challenge specifically the New Hampshire state courts’ dismissal of Petitioner’s equal protection claim on the merits, it should be rejected as it relied upon adequate and independent state grounds. The New Hampshire Courts resolved his equal protection claim under the New Hampshire Constitution. Specifically, the trial court explained that “[b]ecause the Federal Constitution offers no greater protection than the State Constitution under its equal protection provisions, the Court relies on the State Constitution and will only use federal case law to aid in its analysis.” Pet. App. 16a. In its analysis, the trial court indeed cited to only one federal decision from this Court and otherwise relied upon decisions of the New Hampshire Supreme Court

¹ Petitioner ought not be permitted to raise the standing issues that were decided in his first appeal to the New Hampshire Supreme Court. That decision was final in 2024. Richard, 2024 N.H. 53, at 1. *See T. M. v. Univ. of Maryland Med. Sys. Corp.*, 146 S. Ct. 1739, 1746 (2026) (noting this Court’s jurisdiction extends to “final judgments or decrees rendered by the highest court of a State in which a decision could be had.” (quotation and brackets omitted)).

deciding equal protection claims under the state constitution. Pet. App. 16a-22a. Petitioner has not articulated (nor has he preserved) an argument that New Hampshire's equal protection clause is less protective than the federal equal protection clause.

Petitioner does not appeal the New Hampshire courts' determination that he failed to state a claim for violation of the New Hampshire equal protection clause (and, necessarily, the federal equal protection clause) because the laws he challenges:

(1) do not treat similarly-situated persons differently; (2) are reasonable and nondiscriminatory, merely granting municipalities discretion to use ballot counting devices and regulating the use of such devices by those municipalities that adopt them; and (3) serve an important regulatory interest.

Richard v. Governor, No. 2025-0297, 2026 WL 296564, at *2 (N.H. Jan. 13, 2026).

11. Conclusion.

The petition for writ of certiorari should be denied. The New Hampshire Supreme Court's decisions rested on independent and adequate state grounds, and there is no federal question that merits this Court's review.

Respectfully submitted,

Town of Auburn Respondents

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