

**STATE OF NEW HAMPSHIRE**  
**UNITED STATES DISTRICT COURT**  
**OF NEW HAMPSHIRE**

ALBERT S. BRANDANO

Plaintiff

v.

Case No 1:24- CV-00333-SM\_AJ

DAVID SCANLAN, in his official capacity as

Secretary of State New Hampshire

Defendant

**Objection to Defendant's Motion to Dismiss Preliminary Injunction**

I. **Introduction:**

Now comes, the Plaintiff Albert S, Brandano, pro se, objecting to quash the defendant's objection to the preliminary motion of injunctive relief. As a pro se litigant I have no legal training and respectfully request of this court understand any mistakes in my pleading or omissions are not intentional, or out of disrespect, especially under the compressed timeline for responding and acting in this case.

1. The Plaintiff's arguments compelling the Secretary of State to follow federal law (52 U.S.C. §20701), the New Hampshire and US Constitution are strong and unassailable.
2. The Defendant asserts the Plaintiff is not entitled to mandamus relief and the merits against the Secretary of State by this court as he is not a federal employee

however in fact, Secretary of State Scanlan is the designated Chief Election Officer for the State of New Hampshire, an agent for the federal government and the steward of millions of dollars in federal funding allocated to New Hampshire via the Help America Vote Act. His responsibilities are to not only tied to the State of New Hampshire but to the Federal government in his leadership role in federal elections. Secretaries of State are responsible for ensuring compliance with both federal election laws ( e.g. Help America Vote Act and the Voting Rights Act) and state laws. Secretary of State Scanlan must fulfill his official duties, correct abuses and address his failure to retain electronic election records including memory cards programmed for each voting machine in its original programmed format for the federal document limit of 22 months per 42 USC §20701 and prevent its destruction 42 USC §20702.

As the Chief election officer for the State of New Hampshire, the secretary of state directs all town and city clerks in the retention requirements for federal elections and as such should instruct in compliance to federal law. RSA 656:42 (c) guides town and city clerks in the preservation of election records at the direction of the Secretary of State:

*(c) The town or city clerk shall securely preserve each memory device used in any election as directed by the secretary of state*

Moreover, The Writ of Mandamus in its legal definition and use is an instrument under the current law and does NOT exclude the application by a citizen. Rights not

enumerated cannot be taken away. See; US 9<sup>th</sup> and 10 the Us Constitution amendment. (See; Marbury V Madison ) –

The Plaintiff has a clear right to relief. The defendants assertion that the Plaintiff has no private right to enforce federal law is a smokescreen to divert from the blatant violation of the Plaintiffs civil rights by the failure of the defendant to follow the law. It is the Plaintiffs civil right and Constitutional duty to file writ of mandamus in federal court, to order the New Hampshire Secretary of State, David Scanlan to retain all election records for 22 months under the jurisdiction/ rules of:

- a. HAVA ( Help America Vote Act)
- b. NH Constitution
  1. Part 1 ( Art.) 8. Accountability of Magistrates and Officers: Public Right to Know.
  2. Part 1 ( Art.) 38. Social Virtues Inculcated
  3. Part 1 ( Art) 7. State Sovereignty
  4. Part II ( Art.) 32. Biennial Meetings , How warned, Governed, and Conducted: Return of Votes
- c. US Constitution – 9<sup>th</sup>,10<sup>th</sup> and 14<sup>th</sup> Amendments - Bill of Rights
  - 1) The Bill of Rights 9th Amendment states : *“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”*

2) The 10th Amendment states: *“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”*

3) The 14<sup>th</sup> Amendment states: *“No State shall... deny to any person within its jurisdiction the equal protection of the laws.”*

3. The Plaintiff has a duty to Act: The plaintiff has a civil right to transparent elections that allow for post-election audit and investigations. He is entitled to a retention period which provides window to investigate allegations of fraud and irregularities .(Public Law 107–252 107<sup>th</sup> Congress Sec.402) Without the retention of electronic election records, the plaintiff has no confidence in the elections which is his right.

The 14<sup>th</sup> Amendment ( Equal Protection under the US Constitution) and the plaintiff’s sacred, sovereign and honored right to vote; to have that vote fairly and accurately counted – and audited, must not be infringed. The Plaintiff, as a voter for the 2024 federal election in the State of New Hampshire is entitled to this.

The Plaintiff will be personally harmed without the intervention of this court. Under Sec.402, as well as HAVA Title III , the Plaintiff was been granted safeguards to ensure his right to free and fair elections will be protected by the retention of all election records. The plaintiff’s Writ of Mandamus meets the standard of harm outlined by HAVA, as well as electronic retention of records and violations of (*violations which have occurred , is occurring, or is about to occur*)

to file such a complaint. (HAVA SEC. 402. Establishment of State based administrative complaint procedures to remedy grievances- ( 2) Requirements for procedures. – (2B)

Hava Title III Sec.402

- Ensures Transparency and Accountability: *Retaining these records allows for post-election audits, investigations, and recounts if needed.*
- Protects Against Voter Suppression and Fraud: *The retention period provides a window to investigate any allegations of fraud, irregularities, or voter suppression.*
- Supports Federal Investigations: *The retention period is also intended to assist the Department of Justice and other federal agencies in enforcing federal election laws, especially those relating to voter rights and access.*

The plaintiff and all NH citizens in fact have great concern in the election process and the integrity of the 2024 federal presidential and general election results. The Plaintiff is a citizen called under his civic duty to have constant and exact oversight of officials and duty to help improve New Hampshire's election process. NH Constitution, Part 1 ( Art: 8 and 38). The Plaintiff has increased standing outlined in:

Hava Title III Sec 402 - (2). (2) Requirements for Procedures.—

The requirements of this paragraph are as follows:

(A) The procedures shall be uniform and nondiscriminatory. H. R. 3295—51

(B) Under the procedures, any person who believes that there is a violation of any provision of title III (including a violation which has occurred, is occurring, or is about to occur) may file a complaint .....

(E) At the request of the complainant, there shall be a hearing on the record

302- (2) Audit Capacity.— (A) In General—*The voting system shall produce a record with an audit capacity for such system. ( No Audit capability for Memory Cards it not held for #22 months ).*

52 U.S.C. § 20701 Retention and Destruction of Electronic Records -*This law requires all state and local election officials to preserve and retain any records related to federal elections for a period of **22 months** after the election.*

42 USC §20702. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties- *Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 20701 of this title to be retained and preserved shall be fined not more than \$1,000 or imprisoned not more than one year, or both.*

44 U.S. Code § 3301 - Definition of records (a)Records Defined - In general.—*As used in this chapter, the term “records”— includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them;*

NH Constitution Part 1 ( Art.) 8. Accountability of Magistrates and Officers:

Public Right to Know. / Part 1 ( Art.) 38. Social Virtues Inculcated/ Part 1 ( Art) 7.

. State Sovereignty

4. No other Adequate Remedy exists under the time line for Nov.5, 2024 federal election.

## **II Standard of Review for Injunctive Relief:**

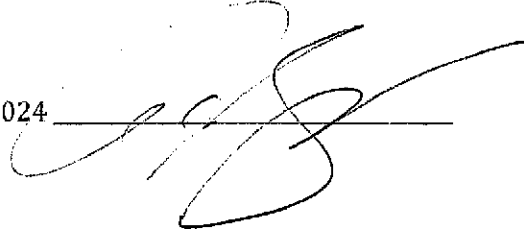
- a) Without this injunctive relief, the Secretary of State will allow the destruction of 2024 federal presidential and general election records before the 22-month retention window eliminating any opportunity for evidence to be secured for audit of those records.
- b) There is little to no harm or cost to the Secretary of State, cities, towns, or duties required of Town Clerks or Moderators, to retain the electronic election records in accordance to Federal Law for a time period by which the writ can be properly and fairly heard by this court. It in fact raises more concerns that the Secretary of State would be unwilling to save these records in a time when election confidence is at an all-time low.
- c) The injunction is not adverse to public interest. On the contrary, it builds trust in the judicial and administrative process.
- d) The Plaintiff asserts as described above that there is a substantial likelihood of success on the merits of the relief requested and the basis of the Writ of Mandamus filed with this court.

*(e.g., [Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008)])*

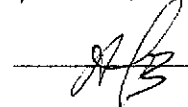
**CERTIFICATE OF SERVICE**

I, Albert S. Brandano, do hereby swear that on October 29, 2024 I did hand deliver a copy of this  
Objection was served to David Scanlan Secretary of State and Brendan O'Donnell Assistant  
Attorney General.

Dated October 29, 2024

A large, stylized handwritten signature in black ink, appearing to be 'ASB', written over a horizontal line.

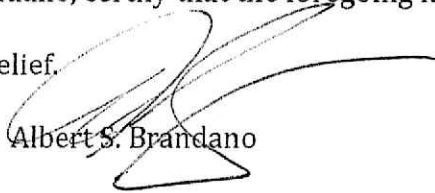
/s/Albert S, Brandano

A smaller, stylized handwritten signature in black ink, appearing to be 'ASB', written over a horizontal line.

Albert S, Brandano

**VERIFICATION**

I, Albert S. Brandano, certify that the foregoing facts are true and correct to the best of my knowledge and belief.

  
Albert S. Brandano

STATE OF NEW HAMPSHIRE


COUNTY OF Rockingham

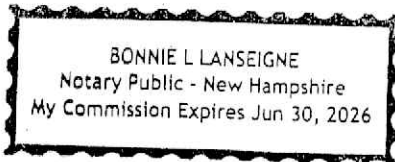
The foregoing instrument was acknowledged before me this 29th day of October, 2024, by

Albert S. Brandano

(Seal)

Signature of Notary Public

  
Bonnie Lanseigne 10/29/2024



06/30/2026  
Date of Commission ending

Personally known: \_\_\_\_\_ LN

OR Produced Identification: DL

Type of Identification Produced: \_\_\_\_\_

WHEREFORE, the Plaintiff respectfully request that this Court:

- A. Dismiss the Secretary Scanlan's motion to dismiss the preliminary Injunctive relief.
- B. Grant the Preliminary Injunctive Relief to retain all digital records from the New Hampshire Federal Election November 2024
- C. Order Secretary of State, David Scanlan, to instruct all moderators and town clerks in New Hampshire to properly enforce the retention and preservation of evidence -records and papers by officers of elections to prevent the theft, destruction, concealment, mutilation, or alteration of records or papers by retaining all AccuVote memory cards, any Voting Works digital election records and any poll pad electronic records for 22 months in said town or city.
- D. And for other relief as is just and proper.

October 29, 2024

Respectfully submitted,

Albert S. Brandano, pro se,

Albert S. Brandano

2 West School Road

Kensington, NH 03833