

STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT, SOUTHERN DIVISION
Docket No. 226-2017-cv-00340

BETTE R. LASKY
15 Masefield Rd., Nashua, NH 03062

and

NEAL KURK
RR 1, Weare, NH 03281

and

AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION
18 Low Ave # 12, Concord, NH 03301

v.

THE STATE OF NEW HAMPSHIRE
By its Secretary of State
William Gardner
(In his official capacity only)
107 N Main St #112, State Office Building
Concord, NH 03301

**VERIFIED AMENDED PETITION FOR PRELIMINARY INJUNCTION,
DECLARATORY JUDGMENT, AND FINAL INJUNCTIVE RELIEF**

NOW COME Bette R. Lasky, Neal Kurk, and the American Civil Liberties Union of New Hampshire Foundation (collectively, the “Petitioners”) and respectfully petition the Court to issue a preliminary and permanent injunction and declaratory judgment barring the Defendant New Hampshire Secretary of State from disclosing statewide voter information to the Presidential Advisory Commission on Election Integrity absent the Secretary of State’s compliance with RSA 654:31(II)–(III).

SUMMARY OF FACTS

On Wednesday, June 28, 2017, the Vice Chair of the recently created Presidential Advisory Commission on Election Integrity (hereinafter, “the Commission”)—Kansas Secretary of State

Kris Kobach—sent letters to all 50 states and the District of Columbia, including New Hampshire, requesting a list of all registered voters (first and last name and middle initial), the last four digits of their social security numbers, their addresses, dates of birth, political party affiliation, and voting history from 2006 onward, as well as any information regarding felony convictions, military status, overseas voting, and registration in another state. The Commission—of which Defendant New Hampshire Secretary of State William Gardner is a member—acknowledged that any information sent to it “will also be made available to the public.” The Commission requested a response by July 14, 2017.

On Friday, June 30, 2017, the New Hampshire Secretary of State agreed to produce to the Commission statewide voter information that is deemed “public” under RSA 654:31-a and RSA 654:25. This information consists of each voter’s name, domicile address, mailing address, and party affiliation, if any. The Secretary of State also planned to produce “voter history” dating back to 2006, though this information is not viewed as public information under RSA 91-A (and political parties can only obtain this information “for the preceding 2 years”). *See* RSA 654:31-a; RSA 654:31(IV). The Secretary of State did not say whether he would charge the Commission for the statewide public checklist, though (i) political parties and political committees currently pay in excess of \$8,000 for this statewide information under RSA 654:31(IV), and (ii) any member of the public would be charged for receiving the public checklist on a municipality-by-municipality basis under RSA 654:31(II). As a result of the Secretary of State’s response, Petitioners filed this lawsuit on July 6, 2017, and a hearing on Petitioners’ request for a preliminary injunction was scheduled for July 11, 2017.

Meanwhile, on July 3, 2017, the Electronic Privacy Information Center filed a complaint seeking a Temporary Restraining Order (“TRO”) in connection with the June 28, 2017 letter sent

by the Commission requesting various voter information. *See Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, 1:17-cv-1320 (CKK) (D.D.C. filed July 3, 2017) (hereinafter, “the DC Lawsuit”). On July 10, 2017, a representative of the Commission wrote to election officials in all 50 states—including Defendant Secretary of State—requesting that they not submit any data pursuant to the June 28, 2017 letter until the U.S. District Court for the District of Columbia rules on this TRO Motion. As the Defendant Secretary of State agreed to comply with the Commission's request, the parties stayed this action on July 11, 2017.

On July 24, 2017, the D.C. District Court denied without prejudice the request for a TRO. On July 25, 2017, the plaintiff in the DC Lawsuit filed a Notice of Appeal seeking expedited review, thereby rendering the TRO decision not final. On July 26, 2017, the Commission sent a letter renewing its request for voter information “that is already available to the public under the laws of your State.” The Commission now noted—in stark contrast to its June 28, 2017 letter—that it “will not publicly release any personally identifiable information regarding any individual voter or any group of voters from the voter registration records you submit.”

SUMMARY OF ARGUMENT

On July 27, 2017—in light of the Commission’s renewed request—counsel for the Secretary of State once again informed counsel for Petitioners that the Secretary intends to produce statewide voter information. This decision continues to be unlawful.

The Secretary of State has no statutory authority to release a copy of the statewide public checklist to anyone other than a political party, political committee, or candidate for New Hampshire office. *See* RSA 654:31(IV). Since the Commission is not a political party, political committee, or political candidate, the Secretary of State must comply with RSA 654:31(II)-(III), which places strict and binding requirements on how the State is to produce this “public” voter

information to all other persons and entities. These requirements allow requesters (i) only to view the statewide public checklist on the statewide centralized voter registration database at the state records and archives center during normal business hours where requesters are prohibited from printing, duplicating, transmitting, or altering the data and (ii) only to obtain hard copies of the public checklist from local municipalities on a town-by-town/ward-by-ward basis at a fee of at least \$25 per municipality or ward. *See* RSA 654:31(II)–(III).

These restrictions imposed by the legislature concerning who can obtain the statewide list (and how) exist for good reason: to protect voter privacy by limiting the prospect of mass dissemination of this statewide voter information, help ensure that voter information is only used for political purposes, and help prevent statewide information from ultimately being used for commercial purposes. RSA 654:31(VI)—consistent with New Hampshire’s “live free or die” libertarian streak—explicitly prohibits this information from being used for commercial purposes to protect voters’ privacy. In furtherance of this goal, the Secretary of State’s Office can *only* send the statewide voter checklist to political parties, organizations, and candidates for a fee.

RSA 654:31(II)-(III)’s privacy restrictions were enacted during the 2006 legislative session in House Bill 1238.¹ As the House Election Law Committee Report authored by former Representative William O’Brien (R)—House Bill 1238’s co-sponsor—explains: “House Bill 1238, as amended, does allow the statewide voter database to be distributed, *but subjects this distribution to restrictions that are intended to protect* both the revenue traditionally received by town and cities from selling voter lists, and also *voters’ [privacy]* Also, anyone receiving the

¹ Under Senate Bill 437 from the 2008 legislative session, further modifications were made to RSA 654:31. These included: (i) allowing political parties, committees, and candidates to obtain “voter history,” (ii) permitting candidates to access this information in their districts from the Secretary of State’s Office, (iii) removing gender and date of birth from the public list, and (iv) giving the Secretary of State the ability to insert inauthentic names into the statewide list to help ensure that the list is not being used commercially. *See* 2008 SB 437 and Committee Report, attached as *Exhibit 5*.

checklist from the secretary of state will be prohibited from using it for commercial purposes, and distribution will be limited to candidates for elective office and political committees of political parties.” See 2006 HB 1238 Legislative History, at p. 025-27, attached at Exhibit 4 (emphasis added). The bill’s Democratic co-sponsor stated that, under this legislation, “[t]he sole purpose [of the statewide voter database] is really for political parties within the state or the people running for office on a statewide basis, to go to one central point, and that would now be the Secretary of State’s Office to buy that list.” *Id.* at 052. The Secretary of State’s Office supported these privacy provisions, stating that House Bill 1238 “allow[s] the Secretary of State’s Office to provide [the] statewide [voter] checklist[] to political parties, major candidates, or ... candidate[s] [in] a smaller district.” *Id.* at 018, 49-50, 53-55 (emphasis added).

Although the Commission has now indicated in its July 26, 2017 letter that any personally identifiable information it receives will not be publicly released (in contrast to its June 28, 2017 statement that all information would be publicly available), this does nothing to change the fact that the release would violate New Hampshire law. These statutes’ protections exist regardless of any promises a non-political requester may make concerning how it will handle voter information. The New Hampshire legislature provided no mechanism for RSA 654:31(II)-(III)’s protections to be cast aside if a non-political requester makes various privacy promises; there still would be no statutory authority to produce statewide information to this requester. Simply put, a requester saying “trust me” does not permit the Secretary of State to ignore the law and disclose information to unauthorized recipients.

In sum, the Secretary of State’s willingness to disseminate this statewide information on over 984,000 registered voters (over 755,000 of whom voted during the 2016 election) to the Commission outside the privacy protections of RSA 654:31(II)–(III) violates New Hampshire law.

There is no statutory authority to, as the Secretary of State plans to do, simply transmit this information to the Commission without following RSA 654:31(II)–(III)’s strict and binding parameters. The Secretary of State is not entitled to grant the Commission special, unwritten exemptions that circumvent New Hampshire law. Rather, the Secretary of State must apply the law to the Commission no differently than he would apply the law to a regular member of the public seeking this information. The Commission must follow the same rules that apply to members of the public.

These statutory protections are especially important here where, if the Commission receives this statewide information, this information could then become widely disseminated contrary to the legislature’s intent. Indeed, under the State’s apparent (but incorrect) interpretation of the law allowing the Commission to obtain this statewide information, *any member of the public* seeking this information must also be able to obtain it (regardless of motive or assurances that this information will be kept secret and secure). The law, of course, must be applied consistently. And voter information sent by the Secretary of State to the Commission is subject to disclosure under New Hampshire’s open records laws (see Chapter 91-A). In short, if the Commission gets it, then anyone can get it upon request and disseminate it. The legislature explicitly rejected such a result.

Petitioners Senator Bette Lasky and Chairman Neal Kurk are registered voters whose personal information the Secretary of State plans on conveying to the Commission in violation of New Hampshire law. In addition, Petitioner ACLU of New Hampshire is a membership organization, and the personal information of its members who are registered voters will also be conveyed to the Commission in violation of New Hampshire law.

Because the Secretary of State has stated publicly that he will comply with the request to convey this statewide information to the Commission—and because the Attorney General’s Office

is not independently enforcing these statutory provisions—Petitioners seek a preliminary and permanent injunction barring the disclosure of this information absent the Secretary of State’s full compliance with RSA 654:31(II)–(III). Without such an injunction barring disclosure, the public will be irreparably harmed upon unlawful disclosure to the Commission, as will Petitioners’ right to have their voting information only conveyed consistent with New Hampshire law. Further, Petitioners seek a declaration ordering the Secretary of State to comply with RSA 654:31(II)–(III) if he produces any public voter information to the Commission.

PARTIES

1. Petitioner Bette R. Lasky lives in Nashua, NH. She is a registered New Hampshire voter. She is a Democratic member of the New Hampshire Senate, where she represents District 13 (comprising Wards 3 through 9 in Nashua). She has served four terms in the Senate. While in the Senate for the 2008–2009 term, she chaired the Election Law and Veterans’ Affairs Committee. Senator Lasky opposes the dissemination of her voting information to the Commission in a manner inconsistent with RSA 654:31(II)–(III). Defendant’s decision to disseminate Senator Lasky’s voter information would cause her direct injury and both impair and prejudice her right to only have her information disseminated to the Commission under the specific confines of RSA 654:31(II)-(III). This personal injury will directly result from the Defendant’s violation of RSA 654:31(II)-(III). See *Avery v. N.H. Dep.’t of Educ.*, 162 N.H. 604, 608 (2012) (“A party will not be heard to question the validity of a law, or any part of it, unless he shows that some right of his is impaired or prejudiced thereby.”) (quoting *Baer v. N.H. Dep’t of Educ.*, 160 N.H. 727, 730 (2010)); *City of Manchester et al. v. Secretary of State*, No. 2012-0338 (N.H. May 22, 2012) (same; petitioners had standing to challenge redistricting plan); *ACLU v. Clapper*, 785 F.3d 787, 801 (2d Cir. 2015) (standing exists in challenge to National Security Agency’s bulk collection of telephone

metadata where “the government’s own orders demonstrate that appellants’ call records are indeed among those collected as part of the telephone metadata program”).

2. Petitioner Neal Kurk lives in Weare, NH. He is a registered New Hampshire voter. He is a Republican member of the New Hampshire House of Representatives, where he represents Hillsborough County, District 2 (comprising Weare and Deering). He has served 16 terms in the New Hampshire House of Representatives. He is also Chairman of the House Finance Committee. In both his personal and professional capacity as an elected official, Chairman Kurk has been a staunch privacy advocate. He commented on the privacy restrictions in RSA 654:31(II)-(III) during the 2006 legislative session—which were enacted in House Bill 1238—and he raised concerns that this bill did not go far enough to protect voter privacy given its dissemination of statewide voter information to political parties and organizations. Minutes from a January 10, 2006 meeting of the Election Law Committee of the House of Representatives addressing House Bill 1238 summarized Chairman Kurk’s House testimony on this bill: “[A]nyone who gets the list [should] only be able to use it for electioneering. [Parties] should only have access to names and addresses of voters and not any other information that might be in a database. Rep. Kurk is concerned about voters [sic] privacy and making sure the voters do not get into mailing lists, etc.” See 2006 HB 1238 Legislative History, at p. 017, attached at *Exhibit 4*; see also *id.* at 056-57. Chairman Kurk opposes the dissemination of his voting information to the Commission in a manner inconsistent with RSA 654:31(II)–(III). Defendant’s decision to disseminate Chairman Kurk’s voter information would cause him direct injury and both impair and prejudice his right to only have his information disseminated to the Commission under the specific confines of RSA 654:31(II)-(III). This personal injury will directly result from the Defendant’s violation of RSA

654:31(II)-(III). *See Avery*, 162 N.H. at 608; *City of Manchester et al. v. Secretary of State*, No. 2012-0338 (N.H. May 22, 2012); *ACLU*, 785 F.3d at 801.

3. Petitioner ACLU of New Hampshire Foundation (“ACLU-NH”)—which has hundreds of members in Hillsborough County—is the New Hampshire affiliate of the American Civil Liberties Union (“ACLU”). The ACLU is a nationwide, nonpartisan, public-interest organization with over 1.2 million members. This includes over 8,000 New Hampshire members and supporters. The ACLU-NH represents its members by engaging in litigation to encourage the protection of individual rights guaranteed under federal and state law, including the right to vote and the right to privacy. The ACLU-NH has appeared before federal and state courts on behalf of its clients in numerous voting cases. These cases include *Guare v. New Hampshire*, 167 N.H. 658 (2015) (striking down voter registration form language that would impose a chilling effect on the right to vote of those domiciled in New Hampshire) and *Saucedo v. New Hampshire*, No. 1:17-cv-00183 (D.N.H., filed May 10, 2017) (pending federal lawsuit challenging state law allowing election officials to invalidate absentee ballots based on “signature mismatch,” which disenfranchises voters, many of whom are disabled, without warning and due process). The ACLU-NH is also committed to the right to privacy and testified on the restrictions in RSA 654:31(II)-(III) during the 2006 legislative session, which were enacted in House Bill 1238. *See* 2006 HB 1238 Legislative History, at p. 063-65, attached at *Exhibit 4*. Many of the over 8,000 New Hampshire members and supporters of the ACLU who are registered voters have indicated that they wish to protect their voting information consistent with current New Hampshire law and do not want their personal information disseminated to the Commission.

4. Defendant William Gardner is Secretary of State of the State of New Hampshire and, as such, is charged with overseeing the custody of the statewide voter database. He has limited

authority to release certain categories of information in the database through methods that vary depending upon the nature of the requesting entity. He is also a member of the Presidential Advisory Commission on Election Integrity. He is joined solely in his official capacity as Secretary of State. The Secretary of State's Office supported the amendments in RSA 654:31(II)-(III) during the 2006 legislative session, which were enacted in House Bill 1238. *See* 2006 HB 1238 Legislative History, at p. 018, 49-50, 53-55, attached at Exhibit 4.

JURISDICTION

5. This is an action by Petitioners seeking injunctive and declaratory relief pursuant to Superior Court Rule 48 and RSA 491:22(I). Petitioners seek an injunction barring the Secretary of State from disclosing voter information to the Commission in a manner inconsistent with RSA 654:31(II)-(III). Petitioners request a judicial declaration ordering the Secretary of State to comply with RSA 654:31(II)-(III) if he discloses any voter information to the Commission. RSA 491:22(I) provides in part, "Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such a right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive."

6. The Court has personal jurisdiction over the Defendant, as he is responsible for overseeing the custody of the statewide voter database in New Hampshire.

7. The Court has subject matter jurisdiction pursuant to RSA 491:22 and Supreme Court Rule 48.

8. The venue in Hillsborough County Superior Court, Southern Division is proper because one of the petitioners—Senator Bette Lasky—is domiciled in the Southern Division of Hillsborough County. In addition, the ACLU-NH has hundreds of members in the Southern

Division of Hillsborough County. Moreover, violations complained of will, if unchecked, harm the voters domiciled in the Southern Division of this County.

STATEMENT OF FACTS

9. On Wednesday, June 28, 2017, the Vice Chair of the recently created Presidential Advisory Commission on Election Integrity—Kansas Secretary of State Kris Kobach—sent letters to all 50 states and the District of Columbia, including New Hampshire, requesting a list of all registered voters (first and last name and middle initial), the last four digits of their social security numbers, their addresses, dates of birth, political party affiliation, and voting history from 2006 onward, as well as any information regarding felony convictions, military status, overseas voting, and registration in another state. *See* June 28, 2017 Kobach Letter, attached as Exhibit 1.

10. The Commission—of which New Hampshire Secretary of State William Gardner is a member—acknowledged that any information sent to it “will also be made available to the public.”

11. The Commission’s June 28, 2017 letter also requested a response by July 14, 2017.

12. On Friday, June 30, 2017, the New Hampshire Secretary of State agreed to produce to the Commission statewide information concerning voters that is deemed “public” under RSA 654:31-a and RSA 654:25, which consists of each voter’s names, domicile address, mailing address, and party affiliation, if any. The Secretary of State also planned to produce “voter history” dating back to 2006, though this would violate New Hampshire law because “voting history” is not viewed as public information under RSA 91-A. *See* RSA 654:31-a (noting only the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters

are “public information subject to RSA 91-A”²; *see also* Kevin Landrigan, *Firestorm Over Call for Info on Elections*, UNION LEADER (July 1, 2017), <http://www.unionleader.com/Firestorm-over-call-for-info-on-elections> (“The information New Hampshire will give up is names, addresses, party affiliation and voting history dating back to 2006. Gardner said voting history includes whether a person voted in a general election and which party’s ballot a voter took during a primary election Gardner said he hasn’t decided whether to make the commission pay for the public records his office will produce.”); John DiStaso, *Sununu, Gardner Say NH Will Turn Over Public Voter Information to Trump Election Commission*, WMUR (June 30, 2017), <http://www.wmur.com/article/sununu-gardner-say-nh-will-turn-over-public-voter-information-to-trump-election-commission/10246459> (“New Hampshire will provide President Donald Trump’s Commission on Election Integrity with the names, addresses and other public information about Granite Staters included on the voter rolls, Gov. Chris Sununu and Secretary of State William Gardner told WMUR on Friday.”), articles attached as *Exhibits 3 A-C*.

13. The Secretary of State did not say whether he would charge the Commission for the statewide public checklist, though (i) political parties and political committees currently pay in excess of \$8,000 for this statewide information under RSA 654:31(IV), and (ii) any member of the public would be charged for receiving the public checklist on a municipality-by-municipality basis under RSA 654:31(II).

14. As a result of the Secretary of State’s response, Petitioners filed this lawsuit on July 6, 2017. A hearing on Petitioners’ request for a preliminary injunction was scheduled for July 11, 2017.

² “Voting history” is only available to political parties and candidates under RSA 654:31(IV), and even then this information can only be produced “*in each state election for the preceding 2 years.*” *See* RSA 654:31(IV) (emphasis added).

15. Meanwhile, on July 3, 2017, the Electronic Privacy Information Center filed a complaint in the U.S. District Court for the District of Columbia seeking a Temporary Restraining Order (“TRO”) in connection with the June 28, 2017 letter sent by the Commission requesting various voter information. *See Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, 1:17-cv-1320 (CKK) (D.D.C. filed July 3, 2017). On July 10, 2017, a representative of the Commission wrote to election officials in all 50 states—including Defendant Secretary of State—requesting that they not submit any data pursuant to this June 28, 2017 letter until the U.S. District Court for the District of Columbia rules on this TRO Motion. *See July 10, 2017 Kobach Affidavit and Hold Email*, attached as Exhibit 6. As the Defendant Secretary of State agreed to comply with the Commission's request to hold on submitting any data until receiving further notice from the Commission, the parties stayed this action on July 11, 2017 before the scheduled hearing was conducted.

16. On July 24, 2017, the D.C. District Court denied without prejudice the request for a TRO. On July 25, 2017, the plaintiff in the DC Lawsuit filed a Notice of Appeal seeking expedited review, thereby rendering the TRO decision not final. *See July 25, 2017 Notice of Appeal*. Attached as Exhibit 7.

17. On July 26, 2017, the Commission sent a letter renewing its request for voter information. *See July 26, 2017 Kobach Letter*, attached as Exhibit 8.

18. On July 27, 2017—in light of the Commission’s renewed request—counsel for the Secretary of State once again informed counsel for Petitioners that the Secretary intends to produce statewide voter information.

THE SECRETARY OF STATE'S DECISION VIOLATES NEW HAMPSHIRE LAW

19. The Secretary of State's decision to produce this statewide voter information is unlawful. The Secretary of State has no statutory authority to release a copy of the statewide public checklist to anyone other than a political party, political committee, or candidate for New Hampshire office.³ See RSA 654:31(IV).⁴ Since the Commission is not a political party, political committee, or political candidate under RSA 654:31(IV), the Secretary of State must comply with RSA 654:31(II)-(III), which places strict and binding requirements on how the State is to produce this "public" voter information to all other person and entities. These requirements do not give any discretion to the Secretary of State to act in any way other than as authorized. There are no exemptions from RSA 654:21(II)-(III)'s requirements that apply to the Commission's request.

20. RSA 654:31(II) states:

In towns and cities, the public checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors of the checklist or city or town clerk shall furnish one or more copies of the most recent public checklist of their town or city to any person requesting such copies. The supervisors of the checklist or city or town clerk may only provide checklist information for their town or city. The supervisors of the checklist or city or town clerk shall charge a fee of \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist or city or town clerk shall charge a fee of \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist or city or town clerk may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.

21. RSA 654:31(III) states:

Any person may view the data that would be available on the public checklist, as corrected by the supervisors of the checklist, on the statewide centralized voter registration database maintained by the secretary of state at the state records and

³ Candidates can only obtain voter information for registered voters "in the state or in the candidate's district." RSA 654:31(IV).

⁴ RSA 654:31(IV) governs the disclosure of the public checklist, as well as "voter history," to a "political party" or "political committee" or political candidate running for office. Under this provision, the checklist, along with "voter history" can be purchased directly from the Secretary of State.

archives center during normal business hours, but the person viewing data at the state records and archives center may not print, duplicate, transmit, or alter the data.

22. In sum, these requirements allow requesters to (i) only view the statewide public checklist on the statewide centralized voter registration database at the state records and archives center during normal business hours where requesters are prohibited from printing, duplicating, transmitting, or altering the data and (ii) only obtain hard copies of the public checklist from local municipalities on a town-by-town/ward-by-ward basis at a fee of at least \$25 per municipality or ward. *See* RSA 654:31(II)–(III). Each municipality can only release data relating to its own voters. Thus, a member of the public cannot obtain a copy of the statewide public checklist from the Secretary of State’s Office, and instead must make requests to individual towns and wards directly to obtain a copy of that town’s or ward’s public checklist.

23. These restrictions imposed by the legislature concerning who can obtain the statewide list (and how) exist for good reason: to protect voter privacy by limiting the prospect of mass dissemination of statewide voter information, help ensure that voter information is only used for political purposes, and help prevent statewide information from ultimately being used for commercial purposes. RSA 654:31(VI) explicitly prohibits this information from being used for commercial purposes to protect voters’ privacy. “Commercial purposes” means “knowingly using, selling, giving, or receiving the checklist information for the purpose of selling or offering for sale any property or service unrelated to an election or political campaign.” *See* RSA 654:31(I)(b). In furtherance of this goal, the Secretary of State’s Office can only send the statewide voter checklist to political parties, organizations, and candidates for a fee.

24. RSA 654:31(II)-(III)’s restrictions were enacted during the 2006 legislative session in House Bill 1238. In this bill, the legislature made clear that how and to whom voter information is disseminated makes a difference. As the House Election Law Committee Report authored by

former Representative William O'Brien (R)—House Bill 1238's co-sponsor—explains: “House Bill 1238, as amended, does allow the statewide voter database to be distributed, but subjects this distribution to restrictions that are intended to protect both the revenue traditionally received by town and cities from selling voter lists, and also voters' [privacy] Also, anyone receiving the checklist from the secretary of state will be prohibited from using it for commercial purposes, and distribution will be limited to candidates for elective office and political committees of political parties.” See 2006 HB 1238 Legislative History, at p. 025-27, attached at Exhibit 4 (emphasis added). The bill's Democratic co-sponsor stated that, under this legislation, “[t]he sole purpose [of the statewide voter database] is really for political parties within the state or the people running for office on a statewide basis, to go to one central point, and that would now be the Secretary of State's Office to buy that list.” *Id.* at 052. The Secretary of State's Office supported these privacy provisions, stating that House Bill 1238 “allow[s] the Secretary of State's Office to provide [the] statewide [voter] checklist[] to political parties, major candidates, or ... candidate[s] [in] a smaller district.” *Id.* at 018, 49-50, 53-55 (emphasis added). That Office also acknowledged that, without House Bill 1238's changes to RSA 654:31, it had no statutory authority to disseminate the statewide public checklist to anybody, including political entities. This further proves that the Secretary of State's current ability to disseminate this statewide information is limited to the strict parameters of RSA 654:31. *Id.* at 053; *see also* 025-27 (noting that the law “does not allow the secretary of state to disseminate this checklist to anyone”).

25. Although the Commission has now indicated in its July 26, 2017 letter, *see Exhibit 8*, that any personally identifiable information it receives will not be publicly released (in contrast to its June 28, 2017 statement that all information would be publicly available), this does nothing to change the fact that the release would violate New Hampshire law. These statutes' protections

exist regardless of any promises a requester may make concerning how it will handle voter information. The New Hampshire legislature provided no mechanism for RSA 654:31(II)-(III)'s protections to be cast aside if a non-political requester makes various privacy promises; there still would be no statutory authority to produce statewide information to this requester. Simply put, a requester saying "trust me" does not permit the Secretary of State to ignore the law and disclose information to unauthorized recipients. Moreover, there is an open legal question as to whether the Commission can, in fact, keep this information private under federal law.⁵

26. It is important to note that RSA 654:45—which authorizes the Secretary of State to enter into agreements to share voter information from the statewide centralized voter database for the purpose of comparing duplicate voter information “with other states or groups of states”—does not provide authority for the Secretary of State to convey this information to the Commission outside the clear and specific parameters of RSA 654:31(II)–(III). *See* HB 1482, 2016 Gen. Court., 164th Sess. (N.H. 2016), available at http://www.gencourt.state.nh.us/bill_Status/billText.aspx?sy=2016&id=775&txtFormat=html.

RSA 654:45 prohibits the release of data from the statewide voter database and specifies that “[a]ny person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.” RSA 654:45(VI). Disclosure to the Commission would not only circumvent this statute’s plain terms, but also would be unlawful. This is for several reasons.

⁵ There may be a good reason for any information the Commission lawfully receives under state law to become public—namely, so the public can independently vet the conclusions of the Commission. At least one lawsuit has already been filed alleging that the Commission has violated the transparency and public access requirements of the Federal Advisory Committee Act. This case, which was filed on July 10, 2017, is still pending. *See ACLU v. Trump et. al.*, No. 1:17-cv-01351 (D.D.C., filed July 10, 2017); *see also* <https://www.aclu.org/news/aclu-files-federal-lawsuit-over-trump-election-commission-secrecy>. Of course, neither the Secretary of State nor the Commission can guarantee that this information will not be released while this federal litigation remains unresolved.

27. First, RSA 654:45(VIII) only allows the Secretary of State to enter into agreements “with other states or groups of states” in order to compare duplicate information.⁶ Here, the Commission is not a “group of states” with which the State of New Hampshire intends to engage to assess duplicate registrations. Rather, the Commission consists of a group of “individuals with knowledge and experience in elections” tasked with studying “the registration and voting processes used in Federal elections.” *See* Exec. Order No. 13,799, 82 Fed. Reg. 2238 (May 11, 2017), attached as Exhibit 2.

28. Second, RSA 654:45(VIII) places strict limitations on what and how information is disclosed. RSA 654:45(VI) states that the centralized voter database “shall be private and confidential and shall not be subject to RSA 91-A.” This statute also requires that the information the Secretary of State discloses as part of this program be “secure.” Indeed, RSA 654:45(VIII) limits the extent of the information that the Secretary of State can share (e.g., only information “necessary for matching duplicate voter information”), and only allows this information to be used for “the purpose of comparing duplicate voter information.” This statute also recognizes the risk of disclosure of confidential information by authorizing the Secretary of State to solicit input from the Department of Safety and the Department of Information Technology regarding how to keep confidential voter data confidential. Moreover, RSA 654:45(IV)(c) and (V) limit which officials may access the information, which highlights the sensitive nature of the data and the strict limits on access. Here, however, disclosure to the Commission would upend these protections. If the

⁶ RSA 654:45(VIII) states: “The secretary of state may enter into an agreement to share voter information or data from the statewide centralized voter registration database for the purpose of comparing duplicate voter information with other states or groups of states. The secretary of state shall only provide information that is necessary for matching duplicate voter information with other states and shall take precautions to make sure that information in the database is secure in a manner consistent with RSA 654:45, VI. The secretary of state may solicit input from the department of safety and the department of information technology and shall ensure that any information or data shared between the agencies that is of a confidential nature remains confidential.”

Commission receives this statewide information, this information could then become widely disseminated.

29. Under the State’s apparent (but incorrect) interpretation of the law allowing the Commission to obtain this statewide information, *any member of the public* seeking this information must also be able to obtain it (regardless of motive or assurances that this information will be kept secret and secure). The law, of course, must be applied consistently. And voter information sent by the Secretary of State to the Commission is subject to disclosure under New Hampshire’s open records laws (see Chapter 91-A). In short, if the Commission gets it, then anyone can get it upon request and disseminate it. The legislature explicitly rejected such a result. Moreover, though the Commission has stated that it “will not publicly release any personally identifiable information,” there is no indication that the Secretary of State has, per the terms of RSA 654:45(VIII), independently “take[n] precautions to make sure that information in the database is secure in a manner consistent with RSA 654:45, V.”

COUNT I
[VIOLATION OF RSA 654:31(II)–(III) and RSA 654:45]

30. Petitioners adopt the allegations contained in the preceding paragraphs.

31. The Secretary of State’s willingness to disseminate this statewide information to the Commission outside the privacy protections of RSA 654:31(II)–(III) and RSA 654:45 violates New Hampshire law and breaches his statutory duty.

32. There is no statutory authority to, as the Secretary plans to do, simply transmit this information to the Commission without following RSA 654:31(II)–(III)’s strict and binding parameters.

33. The Commission is not entitled to special, unwritten exemptions from the Secretary of State that circumvent New Hampshire law.

34. Rather, the Secretary of State must apply the law to the Commission no differently than he would apply the law to a regular member of the public seeking this information. Put another way, the Commission must follow the same rules that apply to members of the public.

35. The petitioners are in a class—namely, registered voters—that these statutes are designed to protect and the injury that will be created by disclosure—namely, violation of privacy to an unauthorized recipient—is of the type that these statutes are specifically intended to prevent. Moreover, these statutes prescribe specific conduct concerning the dissemination of voter information.

36. Because the Secretary of State has stated publicly that he will comply with the request to convey this statewide information to the Commission—and because the Attorney General’s Office is not independently enforcing these statutory provisions⁷—Petitioners seek a preliminary and permanent injunction barring the disclosure of this information absent the Secretary of State’s compliance with RSA 654:31(II)–(III). Without such an injunction barring disclosure, the public will be irreparably harmed upon unlawful disclosure to the Commission, as will Petitioners’ right to have their voting information only conveyed consistent with New Hampshire law.

37. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the Secretary of State’s Office and the Attorney General’s Office have refused to enforce current election laws—namely, RSA 654:31(II)–(III).

38. Given the clarity of RSA 654:31(II)–(III) and the Secretary of State’s imminent violation of its terms, there is a substantial likelihood of success on the merits.

⁷ Under RSA 7:8, the Office of the Attorney General “exercise[s] a general supervision” over state agencies “to the end that they perform their duties according to law.” *See* RSA 7:8.

39. Further, Petitioners seek a declaration ordering the Secretary of State to comply with RSA 654:31(II)–(III) if he produces any public voter information to the Commission.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that:

1. The Court schedule a preliminary injunction hearing (which is currently scheduled for August 7, 2017).
2. Following said hearing, in light of the irreparable harm to Petitioners caused by the Secretary of State’s decision to release statewide voter information, Petitioners’ lack of an adequate remedy at law if the Secretary of State produces this information, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue a preliminary injunction barring, for the duration of this case, the Secretary of State from disclosing voter information to the Commission absent the Secretary of State’s compliance with RSA 654:31(II)–(III).
3. The Court schedule an expedited final hearing on this matter.
4. Following the final hearing, the Court issue a declaratory judgment ordering the Secretary of State to comply with RSA 654:31(II)–(III) if he discloses any statewide voter information to the Commission.
5. Following the final hearing, and as a consequence of the above-requested declaratory relief, the Court issue a permanent injunction barring the Secretary of State from disclosing statewide voter information to the Commission absent the Secretary of State’s compliance with RSA 654:31(II)–(III).
6. Award Petitioners costs and reasonable attorneys’ fees.
7. And for such other relief as may be just and proper.

Respectfully submitted,

Petitioners Bette R. Lasky, Neal Kurk, and the American
Civil Liberties Union of New Hampshire Foundation,

By and through their attorneys in cooperation with the
American Civil Liberties Union of New Hampshire
Foundation,



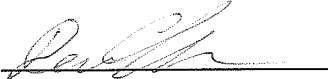
Gilles R. Bissonnette (N.H. Bar No. 265393)
Legal Director
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org

Paul Twomey (N.H. Bar No. 2589)
44 Ring Road
Chichester, NH 03258
Tel. 603.568.3254
paultwomey@comcast.net

July 28, 2017

VERIFICATION

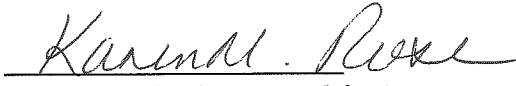
I hereby certify that the facts asserted in this Petition are true and correct to the best of my knowledge and belief.


Devon Chaffee, ~~Legal~~ Director of the ACLU of
New Hampshire *Executive*

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

Personally appeared the above named Devon Chaffee of the Town of Henniker\, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of her knowledge and belief.

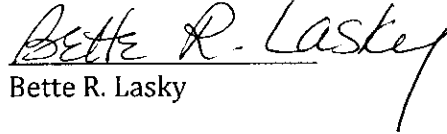
Before me,


Notary Public/~~Justice of the Peace~~

KAREN M. ROSE, Notary Public
My Commission Expires November 18, 2020

VERIFICATION

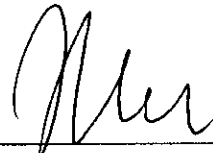
I hereby certify that the facts asserted in this Petition are true and correct to the best of my knowledge and belief.


Bette R. Lasky

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

Personally appeared the above named Bette Lasky of the City of Nashua, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of her knowledge and belief.

Before me,

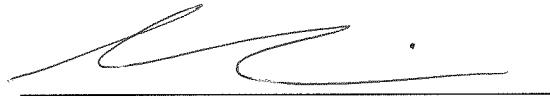


Notary Public/Justice of the Peace

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Amended Petition for Preliminary Injunction, Declaratory Judgment, and Final Injunctive Relief has been hand-delivered to the New Hampshire Department of Justice on this date, July 28, 2017.

7.28.17
Date


Gilles Bissonnette