

MERRIMACK COUNTY, SS

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

DANIEL RICHARD

v.

SHERMAN PACKARD & CHUCK MORSE

No. 217-2021-CV-00178

**MOTION TO RECONSIDER**

Plaintiff respectfully requests a Motion to Reconsider the Defense Motion to Dismiss, as the Court appears to have either overlooked the Constitution and the current rules of the House of Representatives or misapprehended the Historical precedent and/or the facts of this case.

1. The Court finds and states its awareness of the fundamental right to redress of grievances going back to the Magna Carta, the Petition of Right, the English Bill of Rights, and the NH colonial period; thereafter, such rights were incorporated into the State and U.S. Constitutions. The right to petition the government for Redress of Grievances, so fundamental to colonial politics, meant that legislature spent most of its time considering and acting upon petitions from its citizens. The right included a governmental duty to hear and consider petitioners' grievances. The people of England struggled for more than 600 years to secure the unalienable right to redress of grievance by petition or remonstrance before the King, before the Parliament, and before the colonial assemblies in America. Very often the Sovereign ignored the injuries and the suffering of the people from unjust laws and refused to provide redress of grievance. In a great many cases, the petitioners were retaliated against by the Sovereign. Said rights of the citizens of New Hampshire are protected by a trust indenture: the Constitution of New Hampshire.

2. The Court has overlooked the current 2021-2022 House Rules (Rule #4), as stated on Page One in the Objection to Motion to Dismiss, which establishes a clear mandate on the Speaker (trustee) that the speaker shall refer all “memorials” and other matters coming before the House to the appropriate committee or to a special committee.
3. Memorials are written statements of facts presented to a sovereign, a legislative body, etc., as a ground of, or expressed in the form of a petition or remonstrance (Dictionary.com).
4. House Rule #4 (Referral of bills, etc., to Committees) states the following:

**The Speaker shall refer all bills, resolutions, memorials, accounts and other matters coming before the House to the appropriate committees, unless otherwise ordered by the House. The Speaker may refer the same jointly to two committees or to a special committee.**
5. In its oral arguments, the Defense raised the point that it has met its trust obligations by providing the Plaintiff his rights to redress of grievances under Part I, Art.32 by not retaliating against him for filing a remonstrance (memorial). The argument of the Defense is not true, as such a statement implies that the Plaintiff’s Remonstrances have been addressed and considered by the legislature, which they have not.
6. As Defense Attorney Lehmann pointed out, the Plaintiff does have a right not to be retaliated against while exercising his rights to redress of grievances under Part I, Art. 32. The first clause under Part I, Art. 32 protects the right to assemble with the legislature. The second clause protects the right to consult upon the common good. Part I, Art. 30, protects the freedom of deliberation, speech, and debate while exercising those two rights. The Plaintiff cannot be retaliated against for exercising his rights when addressing a legislative body assembled for redress of public grievances under Part I, Art. 31 and Art. 32, as follows:

***The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever. (Part I, Art. 30)***

7. Under this aforementioned clauses, the rights of the sovereign people, the freedom of deliberation, the freedom of speech, the freedom to debate, the right to address a legislature assembled for redress of public grievances (to repeal unjust laws), They are the laws of land.
8. Part I, Art 31 is an obligation on the legislature and requires that the legislature shall assemble for redress of public grievances (for correcting or repealing unjust laws, Part I, Art 29). Moreover, the first two clauses of Part I, Art. 32 obligates the legislature to hear and consider the grievances of the people, **assemble** with the people, and **consult upon the common good** so as the people’s grievances may be heard and considered.
9. The third clause of Part I, Art. 32 (the right to instruct their representatives), obligates the General Court, the legislative body of the whole, assembled to receive and consider the grievances of the people written memorials (petitions or remonstrances) so that the legislature shall judge for the benefit and welfare of this State, not the Speaker, President, or Clerk as they have no delegated power to exercise the discretion of the legislature.
10. The power of suspending the laws is delegated to the legislature—such power requires the consideration and deliberation of the legislative body so as it may judge for the benefit and welfare of this State. **“The power of suspending laws or the execution of them, ought never to be exercised but by the legislature”** (Part I, Art. 29). Mason’s Manual of Legislative Procedure, Sec. 518, states that a legislative body cannot delegate its powers:

**The power of any legislative body to enact legislation or to do any act requiring the use of discretion cannot be delegated to a minority, to committee, to officers or members or the other body.**

11. The Legislature cannot delegate its constitutionally delegated power (Part I, Art. 29) to suspend any laws to anyone. Discretion to repeal laws cannot be delegated to a minority, to a committee, to officers or members, or to any other body. Therefore, neither the Speaker of the House nor the President of the Senate may exercise any discretion as to what public grievances the sovereign people may present to the legislature, which is constitutionally required to assemble for redress of such grievance as repealing unjust laws.
12. The address of the convention for framing a New Constitution of Government for the State of NH declares that *“The Bill of Rights contains the essential principles of the Constitution. It is the foundation on which the whole fabric is reared, and consequently, a most important part thereof”* (Pg. 15). Your Honor and the Defendants (the trustees) have all sworn and affirmed an oath to faithfully and impartially discharge and perform all the duties incumbent on them as trustees, according to the best of their abilities, agreeably to the rules and regulations of the Constitution and the Laws of New Hampshire. Your Honor and the Defendants have accepted consideration (money) to protect the rights of the people (the property of the people), the beneficiaries of the trust, thereby establishing a fiduciary duty to the trust indenture, to carry into effect all the provisions of the trust—the Constitution of New Hampshire.
13. The Defendants (the trustees) have violated their fiduciary duty to ensure that the Plaintiff’s freedom to exercise his protected rights under Part I, Art. 8, Art. 29, Art. 30, Art. 31, Art. 32, and Art. 38 by infringing on the Plaintiff’s freedom of speech and denying him access to the

legislative body so that he may exercise his aforesaid rights. They cannot claim that there are no rules or procedures or enact any rules of procedure which infringe on or deny the people access to the legislative body, as protected by the Constitution. Any such action is malfeasance of office.

*Therefore, “[a]ny legislative act violating the constitution or infringing on its provisions must be void because the legislature when it steps beyond its bounds, acts with no authority. (The Supreme Court of New Hampshire, Case No. 2019-0507, Opinion in John Burt V. Speaker of the House of Representatives.)*

14. The Court is in breach of its sworn oath and fiduciary duty under Part I, Article 35 to impartially interpret the laws of the land when it ignores the Constitutional rights of the Plaintiff under Part I, Art. 8, Art. 29, Art. 30, Art. 31, Art. 32, and Art. 38. The Court cannot ignore the first three clauses of Part I, Art. 32: “**the right to assemble with the legislature,**” the right to “**consult with the legislature,**” and the right “**to give instructions to their representatives.**” These three clauses come first and are obligatory. (see exhibit A, The Bill of Rights: A Documentary History, the debates over the First Amendment to the Constitution the U.S. Bill of Rights). The fourth clause of Part I, art. 32, secures the rights of the people to have their written memorials presented to the legislative body to be heard and considered. This right is not arbitrary, and neither is it subject to discretion of the Speaker of the House, President of the Senate or Clerk of House or Senate. Ignoring the Constitution, the historical precedence, usage and customs, and citing the fourth clause of Part I, Art. 32 out of context and non-relevant case law is sophistry. The Defendants have no discretion to decide what memorials (content) the legislature should consider.

## FACTS OF LAW

15. In 2015 Attorney Charles Douglas (House Legal Counsel at the time) wrote his analysis of the New Hampshire Constitution redress of grievances (see) attached exhibit A, process between the people and the legislature in its early history (provincial period until the third Constitutional period). Attorney Douglas begins by stating that Part I, Art. 31 and Art. 32 work together. He then provides the reader a history lesson of the function of the legislature and of the sovereign people exercising their rights under the Constitution of New Hampshire, as follows:

From New Hampshire's provincial period, through early statehood and into the nineteenth century, the State Legislature (or "General Court") **spent a great deal of its time considering and acting upon petitions from its citizens.** A review of the New Hampshire House and Senate Journals and all extant legislative records from 1770 to 1810 **reveals that it was common in the early period of this State's history for citizens to petition and instruct their representatives in the General Court.** According to the Archives approximately 18,000 petitions preserved in the original manuscript form at the New Hampshire State Archives from the period of approximately 1680 to 1864.

During this period there were few standing committees in the legislation or bureaucratic agencies in the executive branch to directly address the needs or grievances of individuals or groups of citizens, **so much of the legislation introduced and enacted was in response to petitions.** Some petitions were from individual citizens and some were submitted by groups of citizens, including citizens gathered at town meeting. Many requested the formation of corporations or appointment of justice of the peace—now handled by standing laws and the office of the Secretary of State. Some petitions requested an address of an individual grievance, such as request for money they felt the state owed them, while others concerned general public policy issues, such as

requests for roads, a bridge or ferry across a waterway, paper money, or means of curtailing law suits.

The legislative process relative to petitions is apparent from the House and Senate Journals: a petition would be submitted and read (often by the clerks) in the Houses and Senate. The body that first heard the petition would vote on whether or not to form a committee to consider it and would usually invite the other body to join the committee. Sometimes the petitioner, petitionee, and other relevant persons would be invited or ordered “to be heard” before the General Court at a future date. After consideration of the petition, the committee would report back a recommendation as to whether a bill should be drafted in response. If such a recommendation were made, a bill would be introduced and voted upon, if passed, the bill would then be sent to the other legislative body for consideration and possible enactment.

Although provisions for petitions to the legislature remained in the statutes until 1925 (***and the constitutional articles, of course, still remain.***) (Redress of Grievances Analysis of 2015, Charles G. Douglas, III, House Legal Counsel.)

16. The above analysis of the archived records reaffirms that from 1680 until 1864 (184 years) approximately 18,000 petitions and 51 remonstrances were filed by the people, who exercised their rights under Part I, Art. 31 and Part I, Art. 32, which are the laws of the land.
17. Under Part II, Article 90 of the New Hampshire Constitution, the laws of the land, the common law, and its customs and usage shall remain in full force and effect until repealed by the inhabitants.
18. The Court is in error when it states that it will rely on federal cases interpreting the First Amendment to the Federal Constitution by citing Opinions of the N.H. Justices of the State Supreme Court (Voting Age in Primary Elections II), 158 N.H. 661, 667 (2009). “The question to the Court is whether Part I, Art. 31 and Part I, Art. 32, are in conflict with the

First and Fourteenth Amendments and whether Part I, Art. 32 is less protective than the First and Fourteenth Amendment to the Federal Constitution. The Court answered both questions in the Negative. The Court addressed the protection of the association rights under Part I, Art. 32. The Court stated that **Article 32 “guarantees the same right to free speech and association”** as does the First Amendment to the Federal Constitution. It stated in its opinion that it would “rely upon federal cases for interpreting the Federal First Amendment rights of speech and association in the First Amendment for guidance.”

19. “**Because Part I, Article 32 provides at least as much protection to associational rights of political parties as do the First and Fourteenth Amendments to the Federal Constitution, see Opinion of Justices, 121 N.H. at 437, 430, A.2d 191, we necessarily reach the same conclusion under both constitutions. In light of this, we find no conflict between Part, I Article 32 of the State Constitution and no need to yield to the Federal Constitution under the Supremacy Clause.** Opinion of Justices (Voting Age in Primary Elections II), 158 N.H. 661, 667 (2009).
20. This Court has misapprehended the significant difference between the Plaintiff’s rights of redress of grievances (repeal of unjust State laws) under the State Constitution (a positive right) vs. the Plaintiff’s rights under the First Amendment to the U.S. Constitution. The First Amendment prohibits the Federal Congress from making any laws infringing on the rights of speech, the right to assemble, or the right to petition the Federal government for redress of grievances of Federal matters, not the right to redress grievances involving State laws.
21. The Federal Congress considered and debated the proposed Amendment to the Federal Constitution in the summer of 1789. “...when Madison introduce his proposed list of amendments and On June 8<sup>th</sup> 1789. He separated the clause for the rights of assembly,

*consultation, and petition from the clause containing the free expression guarantees of speech and the press. **The express function of the assembly-petition clause was to protect citizens “applying to the Legislature... for redress of grievances.”***

Second, both the House and Senate debated whether to include with the guarantees of free speech, press, and petition, “the peoples right to ‘instruct their Representatives.’ Members defeated the amendment because they feared that the obligatory instruction would subvert Congress’ deliberative character and lead to irreconcilable factionalism. Yet, in statements made denying the right, members expressly affirmed Congress’ duty to receive and consider,...” A Short History of the Right to Petition Government for Redress of Grievances, The Yale Law Journal, Vol. 96: 142, 1986; see attached exhibit #2.

On Saturday, August 15, 1789, The Congress debated whether or not to insert the rights incorporated into several of the State Constitutions to “instruct their representatives.” The motion was defeated, since the Congress recognized the obligations of such a clause would require a duty of the federal legislative body and feared that such obligations would obstruct or factionalize the deliberative nature of a federal legislature. Mr. Sherman stated, “**If we establish this right, we shall be bound by those instructions;**” Pg. 1094. The Bill of Rights: A Documentary History, see attached exhibit #3. The debate detailed the opinions of the founding fathers over the assembly-petition clause and the right to instruct your representatives clause, as established by the Constitutions of several of the States. The Congress did not adopt the aforesaid protections of the State Constitution.

22. All the cases cited by the Defense and this Court cite First Amendment case law brought under the 14<sup>th</sup> Amendment of the Federal Constitution is sophistry and is irrelevant. The rights and obligations clauses of the Constitution of New Hampshire detailed in this case are

much stronger and they are not incorporated into the First Amendment. There cannot be any relevant federal case law, as there is no federal right. Such rights are retained to the people under the Constitution of New Hampshire.

23. The First Amendment right to petition the Federal government for redress of grievances, secures to the citizens of the United States all the rights, privileges, and immunities detailed in the U.S. Constitution and its amendments. The First Amendment does not provide any jurisdiction or remedy to the Federal legislature to repeal unjust State laws. Wherefore, under the Tenth Amendment, the power to repeal state law is not delegated to the federal legislature; it is retained to the State legislature in Part I, Art. 29. Further, the First Amendment has no delegated power to remedy State Constitutional rights; therefore, case law citing the First Amendment does not apply to this State Rights case, as no Federal right exists.

### **CONCLUSION**

WHEREFORE, in light of the foregoing, the Plaintiff respectfully requests that this Court:

- A. Reconsider the Court's order and reverse its order dismissing the Defendants' Motion to dismiss.
- B. Award such relief sought by the Plaintiff in this case.
- C. Award any other relief as may be just and equitable.

Respectfully submitted,  
/s/ Daniel Richard  
Daniel Richard

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to all parties and counsel of record pursuant to the Judicial Branch's e-filing system.

Date: June 9, 2021

/s/Daniel Richard  
Daniel Richard

