

STATE OF NEW HAMPSHIRE  
ROCKINGHAM COUNTY SUPERIOR COURT

Docket No.: 218-2021-CV-01160

Daniel Richard

Kelley L. Potenza

Thomas W. Chapmon

*Plaintiffs*

v.

Christopher T. Sununu  
Governor  
In His Official Capacity,

John M. Formella  
Attorney General  
in his Official Capacity,

David Wheeler  
Executive Councilor  
In His Official Capacity,

Joseph D. Kenny  
Executive Councilor  
In His Official Capacity,

Ted Gatsas  
Executive Councilor  
In His Official Capacity,

Janet Stevens  
Executive Councilor  
In Her Official Capacity,

Cinde Warmington  
Executive Councilor  
In Her Official Capacity,

Karen Umberger  
Chair of House Finance  
Joint Legislative Fiscal Committee  
In Her Official Capacity,

Keith Erf  
House Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Peter Leishman  
House Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Jess Edwards  
House Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Tracy Emerick  
House Member  
Joint Legislative Fiscal Committee  
In Her Official Capacity,

Gary Daniels  
Chair of Senate Finance Committee  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Bob Giuda  
Senate Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Chuck Morse  
Senate Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Lou D'Allesandro  
Senate Member  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Cindy Rosenwald  
Senate Member  
Joint Legislative Fiscal Committee  
In Her Official Capacity,

Joseph Pitre  
House Member Alternate  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Bob Lynn  
House Member Alternate  
Joint Legislative Fiscal Committee  
In His Official Capacity,

Mary Jane Wallner  
House Member Alternate  
Joint Legislative Fiscal Committee  
In Her Official Capacity,

*Defendants*

**EX PARTE MOTION FOR A FOR TEMPORARY INJUNCTION**

**MOTION FOR A WRIT OF PROHABITION**

**MOTION THIS COURT TO ORDER THE DEFENDANTS TO SHOW CAUSE**

**MOTION FOR A PERMANENT INJUNCTIVE RELIEF**

**MOTION FOR DECLARATORY JUDGEMENT**

**THE COURT SHALL TAKE JUDICIAL NOTICE OF THE  
GOVERNOR'S TESTIMONY**

Plaintiffs bring this Motion for Temporary Injunctive Relief, and Motion for a Writ of Prohibition, Motion for Permanent Injunction and Motion for Declaratory Judgement against Christopher T. Sununu the Governor of the state of New Hampshire, the Attorney General, the Executive Council, and the Joint Legislative Fiscal Committee in their official capacity.

**INTRODUCTION**

Our Constitutional Republic rests on the unassailable proposition that we are a country of laws, not individuals. When public officials elevate and enforce alternative agendas over the laws of the State and our Constitution, it imperils our Republican form of

government. The Governor, Executive Council, and the Joint Legislative Fiscal Committee, have exercised undelegated powers by accepting Federal Grants (American Rescue Plan) with strings attached, thus creating contracts and obligations backed by the full faith and credit of the state, including but not limited to the terms and conditions and obligations of the recipients by accepting the Federal Grants, thereby establishing unconstitutional Federal Jurisdiction over issues reserved to the State or the people, in direct violation of the Constitution of New Hampshire and the Sovereignty of the State.

To prevent further irreparable harm, the Plaintiff's seek a Preliminary Injunction from this court enjoining the Defendants from exercising undelegated powers, or those reserved to the General Court; and to prevent the Governor from spending any Federal Grant Funds until a hearing may be convened on this matter and a written ruling is issued to preserve the Plaintiffs rights to appeal over this Claim. The acceptance by the Defendants of said Federal Grants now subjects the Plaintiffs and the people of this State to Federal Jurisdiction by suspending their rights to due process of law under the Constitution of New Hampshire and the Constitution for the United States of America by establishing colorable laws and taxes contrary to the due process required by both the Constitution of New Hampshire and the Constitution for the United States of America; and suspending the rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, under the State and Federal Constitutions.

The Plaintiffs seek a writ of prohibition from this court to prevent the Governor from exercising any undelegated powers by accepting any further Federal Grants not written pursuant to the Constitution of New Hampshire and the Constitution for the United States of America.

The Plaintiffs seek a permanent order enjoining the Defendants from exercising undelegated powers by accepting or spending any further Federal Grants in the future without the consent of the people, as required by the State and Federal Constitutions. The sovereignty lies with the people and only they may delegate such powers by the Constitution of New Hampshire. Such power establishes laws and taxes, which are delegated by the inhabitants in Part II, Art. 5, the power to the General Court, so as ***“they may judge for the benefit and welfare of this State.”*** Part II, Art. 18, requires all money bills to originate from the House. Under Part II, Art. 56, the Governor may only draw his warrant with the advice

and consent of the Executive Council, *“agreeably to the acts and resolves of the General Court.”* Opinion of the Justices, 118 N.H. at 15.

Said funds, including but not limited to FIS 21-257 (See Exhibit A), which was presented to the Executive Council and the Joint Legislative Fiscal Committee under the pretense of a sexually transmitted disease grant instead of its true intent—Federal COVID Funds. On October 21, 2021, with no public notice, Governor Sununu resubmitted as a late agenda item to the Joint Legislative Fiscal Committee the same Federal Grants (See Exhibit B) that had been previously rejected by the Executive Council. On November 10, 2021, with no public notice, Governor Sununu resubmitted as a late agenda item to the Executive Council the same Federal Grants (See Exhibit C) that had been previously rejected by the Executive Council. Governor Sununu met with the Executive Council on November 10, 2021, in a nonpublic manner during the scheduled Executive Council hearing. Governor Sununu convinced three of the councilors to vote yes based on the false premise that a nonbinding resolution (See Exhibit D) would absolve the state of its Federal Grant obligations which are in direct opposition to the plain language in the text of the grant and state statute NH RSA 124:2 or any other conditions which are repugnant or contrary to the Constitution of New Hampshire or the Constitution for the United States of America.

The Plaintiffs seek further order that the Defendants produce all necessary documentary evidence of such faith and credit of the people of this State as required by NH RSA 124:2 as condition of accepting Federal Grants; all contracts written pursuant to Federal Grants; and all evidence of funds received from the Federal Government. In addition, the Plaintiffs seek further order that the Defendants produce all evidence of monies received directly or indirectly from any COVID related expenditures including but not limited to all COVID vaccine and testing manufacturers to verify there is no conflict of interest between the Defendants and their official roles as Trustees of the rights of the citizens of New Hampshire.

The Plaintiffs seek further Temporary and Permanent order from this Court to prevent any agency of the state from exercising or acting directly or indirectly upon any statutes, rules, regulations or orders whose authority is derived from any Federal Grant or other Federal Aid which is not written pursuant to any State or Federal Constitutional authority.

The Plaintiffs seek further relief of this court for a Declaratory Judgement to declare NH RSA 124:1, NH RSA 124:2, and NH RSA 14:30-a VI unconstitutional for being

repugnant and contrary to the Constitution of New Hampshire and the Constitution for the United States of America.

**PARTIES**

1. Daniel Richard an inhabitant of this State, an individual who dwelleth and hath his home in Rockingham County, 95 Rockingham Road, Auburn, NH 03032.
2. Kelley L. Potenza an inhabitant of this State, an individual who dwelleth and hath her home in Strafford County, Rochester, New Hampshire, with a mailing address of 75 South Main Street, Unit 7-229, Concord, NH 03301.
3. Thomas W. Chapmon an inhabitant of this State, an individual who dwelleth and hath his home in Grafton County, 59 Abbott Avenue, Bath, NH 03740.
4. Christopher T. Sununu serves as Governor of the state of New Hampshire with a mailing address of NH State House, 107 North Main Street, Concord, NH 03301.
5. John M. Formella serves as Attorney General of the state of New Hampshire, with a mailing address of NH Department of Justice, 33 Capitol Street, Concord, NH 03301.
6. Joseph D. Kenny serves as Executive Councilor - District 1.
7. Cinde Warmington serves as Executive Councilor - District 2.
8. Janet Stevens serves as Executive Councilor - District 3.
9. Theodore L. Gatsas serves as Executive Councilor - District 4.
10. David K. Wheeler serves as Executive Councilor - District 5.

*Executive Councilor Office Address:*

NH State House, 107 North Main Street, Concord, NH 03301

11. Karen Umberger serves on the Joint Legislative Fiscal Committee.
12. Keith Erf serves on the Joint Legislative Fiscal Committee.
13. Peter Leishman serves on the Joint Legislative Fiscal Committee.
14. Jess Edwards serves on the Joint Legislative Fiscal Committee.
15. Tracy Emerick serves on the Joint Legislative Fiscal Committee.
16. Gary Daniels serves on the Joint Legislative Fiscal Committee.
17. Bob Giuda serves on the Joint Legislative Fiscal Committee.
18. Chuck Morse serves on the Joint Legislative Fiscal Committee.
19. Lou D'Allesandro serves on the Joint Legislative Fiscal Committee.
20. Cindy Rosenwald serves on the Joint Legislative Fiscal Committee.

21. Joseph Pitre serves on the Joint Legislative Fiscal Committee.
22. Bob Lynn serves on the Joint Legislative Fiscal Committee.
23. Mary Jane Wallner serves on the Joint Legislative Fiscal Committee.

*Joint Legislative Fiscal Committee Address:*

NH Legislative Office Building, 33 North State Street, Concord, NH 03301

### **JURISDICTION AND VENUE**

24. This Court has subject matter jurisdiction over this Complaint pursuant to RSA 491:7.
25. This Court also has authority to issue orders that state which actions the Constitution of New Hampshire proscribes.
26. The Court has personal jurisdiction over the Defendants because their offices are located in New Hampshire, and their conduct occurred in New Hampshire.
27. Venue is appropriate in Rockingham County pursuant to RSA 507:9 because the Plaintiffs are located in this State.

### **FACTUAL BACKGROUND**

**A. Governor Sununu, the Attorney General, Executive Council and the Joint Legislative Fiscal Committee have stated they may accept and spend Federal Grants which are repugnant and contrary to the Constitution of New Hampshire and the Constitution for the United States of America, and the Sovereignty of the State.**

28. Governor Sununu has violated his fiduciary duty to the citizens of New Hampshire by presenting to the Executive Council and the Joint Legislative Fiscal Committee, proposed Federal Grants in which they have accepted and spent said Federal Funds. Governor Sununu has publicly stated in his news conference in Concord on September 29, 2021, that there is no meeting of the minds between himself and the Federal Government over the terms and conditions of these contracts (the Federal Grants) between the state and the Federal Government. The Governor was asked by reporter Kevin Landrigan of the New Hampshire Union Leader newspaper, who stated, (See Exhibit E):

*“But Governor, when the language in the Contract says New Hampshire has to “assist the United States Government in the implementation and enforcement of Federal Orders related to quarantine and isolation”, how does that mean, if we take this money, New Hampshire Officials have to enforce any Biden Mandates?*

Sununu responded by stating that the language is...

*“It's incredibly vague. So, again, I'm going to push a little bit off to the Attorney General to explain the hows and whys. But what I'll tell you is it's incredibly vague. There's no specifics that they're asking us to adhere to. And with that vague boilerplate language, we've seen it before. It really doesn't hold water and it doesn't infringe on the sovereignty of the State. This Council has passed a Contract with that language in it. As I said, the Fiscal Committee has -- when we took all that money from ARP, had similar-type language in it. So this isn't something new. I think maybe some folks have seen it and they're trying to grab onto it to try to slow down the process because they're upset about the Vaccine Registry or whatever it might be.”*

Governor Sununu goes on to state that the Executive Council and the Joint Legislative Fiscal Committee have already accepted other Federal Grants and he further repeats his defense on air and in his transcripts that such text in the contract is not binding and therefore State Sovereignty is not violated by accepting Federal Grants.

*“This Council has passed a Contract with that language in it. As I said, the Fiscal Committee has -- when we took all that money from ARP, had similar-type language in it. So this isn't something new. I think maybe some folks have seen it and they're trying to grab onto it to try to slow down the process because they're upset about the Vaccine Registry or whatever it might be.”*

29. Now comes the aggrieved Plaintiffs under the authority of **Part I, Article 12 [Protection and Taxation Reciprocal.]** *“Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property;”* Under Part I, Article 38, the Plaintiff’s *“have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.”* (Emphasis added.)
30. Plaintiffs are seeking relief from this Court asserting that the acceptance by the Defendants of said Federal Grants and the Federal Jurisdiction that goes with it, trespasses on the rights of the Plaintiffs who state that the Defendants’ actions in this Claim are

repugnant and contrary the rights protected by the Constitution of New Hampshire and the Constitution for the United States of America.

31. The First issue; The confession by Governor Sununu that he has accepted such Federal Grants and wishes to continue to do so. Sununu does not agree with plain written text in the Federal Grants, but he states verbally and in writing that he may take the Federal Funds with no meeting of the minds. There cannot be a contract if there is no meeting of the minds between the state and the Federal Government.
32. The Second issue; The Governor states that the plain text of the Federal Grants is not binding on the people, and Federal Grants do not infringe on the Sovereignty of this State. Such a statement is contrary to the plain text of statute NH RSA 124:2.

**124:2 Faith and Credit Pledged.** – The faith and credit of the state are pledged to make adequate provision, from time to time, by appropriation or otherwise, *to meet all obligations of the state incident to the acceptance of federal aid under the provisions of any act referred to in RSA 124:1* and the governor and council are authorized to issue all necessary documentary evidence of such faith and credit. **Source.** 1933, 162:3. RL 6:3.

33. The Third issue; Are the statutes (Chapter 124 and NH RSA 14:30-a VI) the Governor, Executive Council, and Joint Legislative Fiscal Committee relying upon for their authority, constitutional?

### ARGUMENT

34. The Plaintiffs after filling their Claim on November 16, 2021, with this Court, did exercise their rights under Part I, Article 32, and tried to assemble with members of their legislative body on November 17, 2021, to consult upon the common good, and did give instructions to their Representatives (the Joint Legislative Fiscal Committee) to not proceed with accepting any Federal Funds until a hearing may be held before a court of competent jurisdiction.
35. On November 17, 2021, the Attorney General having sworn an oath to protect the rights of the people, intervened directly in the legislative process by involving himself in reviewing the Plaintiff's Claim which was served by the Plaintiffs to the members of the Joint Legislative Fiscal Committee. The Attorney General while holding and reviewing the Plaintiff's Claim, made phone calls to unknown persons. The Attorney General ignored said Claim. The Governor and the Attorney General have used heavy State Police

presence to oppress and intimidate by threat of arrest the Plaintiffs free exercise of their rights of assembly to consult upon the common good. The Plaintiffs have been further deprived of their rights to due process of law, freedom of deliberation, speech, debate, and the right to instruct their representatives to obey the Constitution of New Hampshire and the Constitution for the United States of America.

36. The Plaintiffs now claim that Attorney General Formella has conflict of interest as he continues to represent Governor Sununu and not the public interest of this State as required by NH RSA 21-M:5.
37. John Formella served Governor Sununu for four years as his personal attorney in the State House. Formella was appointed to the office of the Attorney General by Governor Sununu with no judicial experience. The Governor is now using the Attorney General's office as his own law firm as stated in Governor Sununu's press conference detailing that Attorney General Formella has given his opinion that Federal Grants are legal and the language in the Contracts are not binding (See Exhibit D) all while ignoring the plain text of the Federal Grants (See Exhibit E) and NH RSA 124:2, as stated in this Claim.
38. The Attorney General's conflict of interest and bias is in full display in the following two documents: Exhibit F - "Memorandum: Federal COVID-19 Grant Award Fund Requirements", which is an unsigned opinion document; and Exhibit D - "Non Binding Resolution To Attach To Late Item A 111021", which is also an unsigned nondescript document with no named parties and no official reference to its authenticity.
39. The Defendants have no constitutional authority to accept or authorize the spending of Federal Grants which are repugnant and contrary to the Constitution of New Hampshire and the Constitution for the United States of America, as they violate the separation of powers under the Constitution of New Hampshire Part I, Article 37.

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Baron de Montesquieu, *The Spirit of the Laws* (London: J. Nourse and P. Vaillant, 1758), Book XI, ch. 6, p. 16. "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." Cooley, *Constitutional Limitations* (1886), pp. 116-117. "It is incumbent on the courts to ensure decisions are made according to the rule of law, not hysteria...One hopes that this great principle-essential to any free society,

including ours-will not itself become yet another casualty of COVID-19.” Dept. of Health and Human Services v. Manke, CC: 20-004700-CZ (Mich. 2020, Justice Viviano, concurring).

“One branch of government . . . is not constitutionally permitted to usurp the essential power of another.” In re Petition of Judicial Conduct Committee, 151 N.H. 123, 125 (2004).”

“The separation of powers directive is violated by an improper imposition upon one branch of constitutional duties belonging to another, or, an encroachment by one branch upon a constitutional function of another branch of government.” Id. “When the actions of one branch of government defeat or materially impair the inherent functions of another branch, such actions are not constitutionally acceptable....” Opinion of the Justices, 129 N.H. 714, 717 (1987).

“There is no liberty, if the power of judging be not separated from the legislative and executive powers. (16) *Montesquieu*, B. 11, Ch. 6. In other words that the union of these powers is tyranny, (17) 7 Johnson 508, or, as Mr. Madison observers, may just be pronounced the very definition of tyranny, (18) *Federalist*, No. 47; or in the language of Mr. Jefferson, “is precisely the definition of despotik government.’ (19) *Notes on Virginia* 195.” *Id.* 209.

“Not a single constitution therefore, exists in the whole union, which does not adopt this principle of separation as part of its basis.” *Id.* 209. *Id.* 210, *Merrill v Sherburne* 1 N.H. 199 (1818).

40. Under **Part II, Article 2**, “*The Supreme Legislative Power, within this State, shall be vested in the Senate and House of Representatives*”. **Part II, Article 18**, establishes that “*All money bills shall originate in the house of representatives*”. Part II, Article 56, [Disbursement from the Treasury] establishes that the Governor and the Executive Council may only authorize spending, “*agreeably to the acts and resolves of the General Court*”. (Emphasis added.)
41. Plaintiffs cite Opinion of the Justices, 118 N.H. 7 (1978), for the proposition that the legislature retains exclusive control over state appropriations of Federal Funds. In that case, the New Hampshire Supreme Court observed that:
42. Unless proper regard is given to the respective roles of the policy-making legislature and the administrative Governor, “the legislative branch of our State government would have little or no role to play with respect to Federal Aid programs with the corollary result that

the executive branch in the name of supreme executive power would not be faithfully executing the laws of this Commonwealth but rather, as it saw fit, seeking and administering Federal Aid programs free of any checks or balances and with little political accountability for such actions.”

43. Opinion of the Justices, 118 N.H. at 15 (quoting *Shapp v. Sloan*, 367 A.2d 791, 797 (Pa. Commw. Ct. 1976)). The supreme court stated that “[t]he legislature may take a variety of approaches to the structuring and spending of Federal Funds.” *Id.* at 15. However, it went on to state that “Part II, Article 56, of the New Hampshire constitution provides that monies coming into the treasury shall not be disbursed by Governor and Council except as ‘agreeably to the acts and resolves of the general court.’” *Id.* “It is clear that the governor has no authority to draw his warrant upon the treasury in a particular case, unless there is some existing act or resolve of the legislature authorizing such payment.” *Id.* (quoting Opinion of the Justices, 75 N.H. 624, 626 (1910)) (Emphasis added.)

44. A Declaration of Rights of the People of the State of New Hampshire 1778;

***Nineteenth: “The said General Court, elected and constituted as aforesaid, shall be invested with the supreme power of the State. And all acts, resolves, or votes, except grants of money, lands, or other things, may originate in either house; but such grants shall originate in the House of Representatives only.”***  
(Emphasis added.)

45. The Defendants’ actions establish involuntary servitude (violation of the Thirteenth Amendment) as the people of the State our now subject to two forms of taxation without representation in the form of repayment of Federal Grants by federal income tax, and the hidden tax called inflation; and further subjects the inhabitants of this State to laws that they, nor their representative body, have consented to, as it violates Part I, Article 12;

***“But no part of man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this State controllable by any other laws than those which they, the representative body have given their consent”.*** (Emphasis added.)

46. Part II, Article 100, establishes the manner in which the General Court may obtain the consent of the inhabitants through the amendment process by which the Form of Government may be altered, changed, or abolished;

***“That clause, which confers upon the ‘general court’ the authority ‘to make law,’ provides at the same time, that they must not be ‘repugnant or contrary to the constitution.... ’”*** Merrill v Sherburne 1 N.H. 199 (1818) (Emphasis added).

47. Part I, Article I, establishes that *“all government of right originates from the people, is founded in consent.”* Only through the consent of the inhabitants, may the laws of the land be altered, amended or abolished. Mason’s Legislative Manual, § 73, Power of Courts over Legislative Bodies Generally: 2. ***“While the people of the state have vested in them sovereign authority, their representatives in the legislature have only such authority as is delegated to them by the constitution.”*** (Emphasis added.)

Mason’s Legislative Manual, Chapter 2, Sec. 6; Legislative Procedure is Controlled by Constitutional Provisions. 2. ***“A constitutional provision regulating procedure controls over all other rules of procedure.”*** (Emphasis added.)

Chapter 2. Constitutional Rules Governing Procedure, Sec. 7. § *Constitutional Requirements Concerning Procedure Must Be Complied With.* 1;

***“Being organic in character, constitutional provisions stand on a higher plane than statutes and are mandatory and must be complied with. Constitutional provisions prescribing exact or exclusive time or methods of certain acts are mandatory and must be complied with.”*** (Emphasis added.)

Chapter 2 § 21. 2; ***“A legislative body cannot make a rule which evades or avoids the effect of a rule prescribed by the constitution or statutes governing it, and it cannot do by indirection what it cannot do directly.”*** (Emphasis added.)

The natural and inherent right to acquire, possess and protect property set out in Part 1, Art. 2, of the New Hampshire Constitution *“limits all subsequent grants of power which deal adversely with this right.”* Burrows, 121 N.H. at 596 (quoting Metzger v. Town of Brentwood, 117 N.H. 497, 502 (1977)). Moreover, the State may not do indirectly that which it is constitutionally prohibited from doing directly. *Id.* at 597.

48. The Defendants’ acceptance and spending of the previous Federal Grants establishes a vaccine registry in direct violation of Part I, Article 2-b, and to the IV Amendment:

***“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or***

*affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”*

49. The Defendants’ acceptance and spending of Federal Grants establishes laws and taxes upon the inhabitants in direct violation of the due process required by both the State and Federal Constitutions, to establish laws and taxes upon the inhabitants of this State. Due process of law is protected by Part I, Article 15;

*... “No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgement of his peers, or the law of the land;”*. (Emphasis added.)

The Constitution for the United States of America, Fourteenth Amendment:

*“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 a person of life, liberty, or property, without due process of law;”* (Emphasis added.)

50. NH RSA Chapter 124 are colorable statutes, as said chapter is repugnant and contrary to Part II, Article 2, Part II, Article 18; and Part II, Article 56, as the Defendants cannot do indirectly (statute) what they cannot do directly (the Constitution of New Hampshire). Under non-delegation doctrine the legislature cannot delegate its powers.

Mason’s Legislative Manual, Chapter 45, § 517: *Action Must Be Within Power or Vote Is Ineffective*, 1. *“No motion or measure is in order that conflicts with the constitution of the state or the constitution of the United States or with treaties of the United States, and if such motion or measure be adopted, even by a unanimous vote, it is null and void.”* (Emphasis added.)

2: *“No rule that conflicts with a rule of a higher order is of any authority. Thus, a legislative rule providing for the suspension, by general consent, of an article of the constitution would be null and void.”* (Emphasis added.)

Chapter 45, § 518, *A Legislative Body Cannot Delegate Its Powers*, 1. *“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 to another body.”* (Emphasis added.)

51. Mason’s Legislative Manual, Chapter 2, Sec. 7. § *Constitutional Rules Governing Procedure.*) According to Mason’s Legislative Manual, Constitutional Requirements Concerning Procedure must be complied with:
- “Being organic in character, constitutional provisions stand on a higher plane than statutes and are mandatory. Constitutional provisions prescribing exact or exclusive time or methods for certain acts are mandatory and must be complied with”.*** (Emphasis added.)
52. The acceptance of any Federal Law in order to receive Federal Grants, is repugnant and contrary to the Constitution for the United States of America; Ninth and Tenth Amendments and violates the Sovereignty of the State. The state statute NH RSA 124:2 written in 1933 is very clear, the acceptance of Federal Aid, establishes an obligation on the state incident to any Federal Aid.
53. The Ninth Amendment establishes; ***“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”*** (Emphasis added.)
54. The Ninth issue; The Tenth Amendment establishes; ***“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.”*** (Emphasis added.)
55. The Constitution for the United States of America; Article 1, Section 10 prohibits the State from enacting any bill or law impairing the obligations of contract, as the “state” has no Constitutional authority to borrow money from Congress, as there is no disclosure or consent of the people;
- “No State shall...; pass any bill..., or law impairing the obligation of contracts,”*** (Emphasis added.)
56. Manson’s Legislative Manual, Chapter 8, § 73. Powers of the Court over the Legislative Bodies Generally, 3; ***“The legislature cannot do by indirection that which it cannot do directly.”*** (Emphasis added.)
57. NH RSA Chapter 124 also violates the following Articles of the Constitution for the United States of America; Article I, Section 8, Clause 2 permits the Federal Congress to borrow money on the credit of the United States; therefore, Congress may borrow real money to carry out its enumerated powers delegated by the States of the Union, but Congress has no delegated powers to borrow federal reserve notes from a foreign owned

central bank for the purpose of lending debt instruments (federal reserve notes) to the States of the Union. Congress has no authority to lend money as it is not a bank and the Constitution of New Hampshire is void of any delegated powers to borrow money on behalf of the citizens of New Hampshire.

58. Article I, Section 8, Clause 4 delegates to Congress the responsibility to coin money, regulate the value thereof, and foreign coin, and fix the standard of weights and measures; This Article has never been amended or repealed and is still the supreme law of the land. This Article was specifically established to ensure a uniform medium of exchange for the States of the Union to prevent the hidden tax called inflation as paper currency always leads to an unstable medium of exchange by printing more paper than held in reserve to back the paper.
59. Article I, Section 8 establishes the enumerated powers of the Federal Congress, and Section 17 establishes that the exclusive legislative powers of Congress shall not exceed the Federal District (the 10-mile square), Federal Territory or the exercise of regulation of commerce among the several States.

**B. The following New Hampshire Constitutional Articles are some of the laws of the land and are therefore due process of law.**

**Part 1, [Art.] 1. [Equality of Men; Origin and Object of Government.]** 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. June 2, 1784

**Part 1, [Art.] 2. [Natural Rights.]** All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin. June 2, 1784

**Part I, [Art.] 2-b. [Right of Privacy.]** An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent. December 5, 2018

**Part I, [Art.] 7. [State Sovereignty.]** The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by

them expressly delegated to the United States of America in Congress assembled.  
June 2, 1784

**Part I, [Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.]** All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government...

**Part I, [Art.] 12. [Protection and Taxation Reciprocal.]** Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this State controllable by any other laws than those to which they, or their representative body, have given their consent. June 2, 1784

**Part I, [Art.] 19. [Searches and Seizures Regulated.]** Every subject hath a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. Therefore, all warrants to search suspected places, or arrest a person for examination or trial in prosecutions for criminal matters, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order, in a warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued; but in cases and with the formalities, prescribed by law.  
June 2, 1784

**Part I, [Art.] 28. [Taxes, by Whom Levied.]** No subsidy, charge, tax, impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their Representatives in the Legislature, or authority derived from that body. June 2, 1784

**Part I, [Art.] 29. [Suspension of Laws by Legislature Only.]** The power of suspending the laws, or the execution of them, ought never to be exercised but by the Legislature, or by authority derived therefrom, to be exercised in such particular cases only as the Legislature shall expressly provide for. June 2, 1784

**Part I, [Art.] 30. [Freedom of Speech.]** 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. June 2, 1784

**Part I, [Art.] 31. [Meetings of Legislature, for What Purposes.]** The Legislature shall assemble for the redress of public grievances and for making such laws as the public good may require. June 2, 1784

**Part I, [Art.] 32. [Rights of Assembly, Instruction, and Petition.]** The People have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their Representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer. June 2, 1784

**Part I, [Art.] 37. [Separation of Powers.]** In the government of this State, the three essential powers thereof, to wit, the Legislative, Executive, and Judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the Constitution in one indissoluble bond of union and amity. June 2, 1784

**Part I, [Art.] 38. [Social Virtues Inculcated.]** A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives, and **they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of government.** June 2, 1784. (Emphasis added.)

**Part II, [Art.] 2. [Legislature, How Constituted.]** The Supreme Legislative Power, within this State, shall be vested in the Senate and House of Representatives, each of which shall have a negative on the other. June 2, 1784

**Part II, [Art.] 18. [Money Bills to Originate in House.]** All money bills shall originate in the House of Representatives; but the Senate may propose, or concur with amendments, as on other bills. June 2, 1784

**Part II, [Art.] 56. [Disbursements from Treasury.]** No moneys shall be issued out of the treasury of this state, and disposed of, (except such sums as may be appropriated for the redemption of bills of credit, or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court. June 2, 1784

## **CAUSE OF ACTION**

### **COUNT I Preliminary Injunction**

60. All factual allegations in this Complaint are incorporated here.
61. The Plaintiffs seek a preliminary injunction from this court to prevent the Governor from spending any Federal Grant Funds until a hearing may be convened to hear arguments and a written ruling be issued to preserve the Plaintiffs rights to appeal over this Claim to prevent further irreparable harm.

### **COUNT II Writ of Prohibition**

62. All factual allegations in this Complaint are incorporated here.
63. A Writ of Prohibition prevents "officers or persons from usurping or exercising jurisdiction with which they are not vested." *Petition of CIGNA Healthcare*, 146 N.H. at 687. A Writ of Prohibition will lie "when the necessity to act is clear." *American Fed'n of State, County and Municipal Employees Local 572 v. City of Dover*, 115 N.H. 491, 492 (1975); *see also New Hampshire Retail Grocers Ass'n v. State Tax Comm'n*, 113 N.H. 511, 516 (1973) (prohibition issued to prevent state agency from enforcing an erroneous interpretation of the law.)
64. Governor Sununu has stated he may unconditionally and unilaterally authorize the expenditures of state and Federal Funds unappropriated by the legislature of this State under color of law.
65. Plaintiffs request an order prohibiting Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority from enforcing any

provision of Federal Grants that is repugnant or contrary to State Sovereignty or the rights of the people.

**COUNT III**  
**Motion to Show Cause**

66. All factual allegations in this Complaint are incorporated here.
67. Under Part I, Article 8, and Part I, Article 38, the Plaintiffs request of this Court to issue an order compelling the Defendants to produce the constitutional authority and all necessary documentary evidence of such faith and credit of the people of this State as required by NH RSA 124:2 as condition of accepting Federal Grants, and any or all documents relating to acceptance and or disbursement of Federal Grant Funds.

**COUNT IV**  
**Declaratory Judgment**

68. All factual allegations in this Complaint are incorporated here.
69. Plaintiffs request an order declaring that NH RSA 124:1, RSA 124:2, RSA 124:3 and all relevant statutes used by the state to receive and spend Federal Grants by Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority, be declared unconstitutional.

**COUNT V**  
**Declaratory Judgment**

70. All factual allegations in this Complaint are incorporated here.
71. Plaintiffs request an order from this Court declaring that NH RSA 14:30-a VI, and or all relevant statutes used by the state to receive and spend Federal Grants, by Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority, be declared unconstitutional.

**COUNT VI**  
**Declaratory Judgment**

72. All factual allegations in this Complaint are incorporated here.

73. Plaintiffs request an order declaring that expenditures of unappropriated state or Federal Funds by Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority, be declared unconstitutional.

**COUNT VII**  
**Declaratory Judgment**  
**Violation of Part I, Article 37, of the Constitution of New Hampshire**

74. All factual allegations in this Complaint are incorporated here.

75. The Constitution of New Hampshire provides that the three branches of government should be “kept as separate from, and independent of, each other, as the nature of a free government will admit...” N.H.CONST. pt. I, art. 37. A “general delegation of power with uncontrolled discretion even in a narrow field exceeds constitutional limits.” *Smith Ins., Inc. v. Grievance Comm.*, 120 N.H. 856, 861 (1980). The legislative branch’s exclusive power to make appropriations is a nondelegable duty.

76. Governor Sununu has stated he may unconditionally and unilaterally authorize the expenditures of state and Federal Grants unappropriated by the legislative branch. The executive branch has already spent unappropriated funds under color of law.

77. Plaintiffs request an order declaring that expenditures of unappropriated state or Federal Grants by Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority violate the separation of powers clause and be declared unconstitutional.

**COUNT VIII**  
**Expedited Preliminary Injunctive Relief**

78. All factual allegations in this Complaint are incorporated herein.

79. As set forth in Plaintiffs’ Memorandum of Law in support of their Motion for an Expedited Preliminary Injunction, the elements required for the issuance of a preliminary injunction are met here.

80. Plaintiffs seek an expedited order to enjoin Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any

other branch or agency of this state without constitutional authority from spending unappropriated state or Federal Grants.

### **REQUESTS FOR RELIEF**

81. Accordingly, Plaintiffs respectfully request that this Court enter the following relief:
- A. An expedited preliminary injunction to enjoin Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority from enforcing any undelegated powers by colorable state or federal statutes, rules or regulations written pursuant to any colorable state or federal acts named in this Claim.
  - B. Issue a permanent injunction enjoining Governor Sununu, and his respective agents, officers, employees, and or all persons acting on behalf of the executive branch, or any other branch or agency of this state without constitutional authority from enforcing any undelegated powers by colorable state or federal statutes, rules or regulations written pursuant to any colorable state or federal acts.
  - C. Issue a writ of prohibition on all forms of government of the “state” from accepting or spending any unappropriated state or Federal Funds without approval from the General Court (the Legislature) as required and authorized by the Constitution of New Hampshire.
  - D. Issue a Declaratory Judgment ruling that Chapter RSA 124 is repugnant and contrary to the Constitution of New Hampshire and therefore null and void.
  - E. Issue a Declaratory Judgment ruling that Chapter RSA 124 is repugnant and contrary to the Constitution for the United States of America.
  - F. Issue a Declaratory Judgment ruling that RSA 14:30-a, VI, is repugnant and contrary to the Constitution of New Hampshire and therefor null and void.

**VERIFICATION**

I, Daniel Richard, Kelley L. Potenza, and Thomas W. Chapmon certify that the foregoing facts are true and correct to the best of our knowledge and belief.

*Daniel Richard*  
Daniel Richard

*Kelley L. Potenza*  
Kelley L. Potenza

*Thomas W. Chapmon*  
Thomas W. Chapmon

STATE OF NEW HAMPSHIRE COUNTY OF NH

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of November, 2021, by Daniel Richard, Kelley L. Potenza, and Thomas W. Chapmon.

*Kyla Eileen Smith-Adamchik*

(Seal) Signature of Notary Public



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

OR Produced Identification: X Type of Identification Produced: Drivers License

August 18 2026 Date of Commission ending

**CERTIFICATION OF SERVICE**

I Daniel Richard, Kelley L. Potenza, and Thomas W. Chapmon, do hereby swear that on November \_\_\_\_, 2021, I did e-mail or hand deliver a copy of this Motion to the Defendants.

Dated November \_\_\_\_, 2021 \_\_\_\_\_ Daniel Richard

Dated November \_\_\_\_, 2021 \_\_\_\_\_ Kelley L. Potenza

Dated November \_\_\_\_, 2021 \_\_\_\_\_ Thomas W. Chapmon