

STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY

SUPERIOR COURT

Docket No.: 217-2021-CV-00178

DANIEL RICHARD

*Plaintiff*

v.

SHERMAN PACKARD,  
SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
In His Official Capacity,

and

CHUCK MORSE,  
PRESIDENT OF THE SENATE,  
In His Official Capacity,

*Defendants*

**VERIFIED COMPLAINT FOR MANDAMUS AND PROHIBITION**

Plaintiff Daniel Richard brings this Complaint for Mandamus and Prohibition against Sherman Packard, the current Speaker of the House of Representatives, in his official capacity, and Chuck Morse, the President of the Senate, in his official capacity.

**INTRODUCTION**

Our Constitutional Republic rests on the unassailable proposition that we are a country of laws, not of 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. When the leaders of the legislative bodies refuse to (call to assembly of the representatives of the people) assemble for redress of a grievance – the right of citizens to instruct their representatives, and consult upon the common good and request of the legislative body, for their consideration, a

citizen's remonstrance – they neglect their sworn duty, violate their oath, and keep other representatives ignorant of what people are telling them. Mr. Richard seeks a remedy for the deprivation of this fundamental right and requests that this Court restore his Constitutional right to be heard.

### **PARTIES**

1. Daniel Richard is an individual who resides at 95 Rockingham Road, Auburn, New Hampshire 03032.

2. Sherman Packard serves as a Representative for Rockingham District 5, and is the Speaker of the House of Representative. He has an office at 107 North Main Street, Concord, New Hampshire 03110.

3. Chuck Morse serves as a Senator of District 22, and is the President of the Senate. He has an office at 107 North Main Street, Concord, New Hampshire 03110.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this Complaint pursuant to RSA RSA 491:7.

5. This Court also has authority to issue orders that state which actions the Constitution proscribes. Those actions are defined by the Constitution: that the legislative bodies shall assemble for redress of grievances of the people. *See* N.H. Const., Part I, Art. XXXI, XXXII.

6. The Court has personal jurisdiction over the Defendants because their offices are located in New Hampshire, and their conduct occurred in New Hampshire.

7. Venue is appropriate in Merrimack County pursuant to RSA 507:9 because the Defendants are located in this county.

## FACTUAL ALLEGATIONS

### **A. Applicable New Hampshire Constitutional Provisions**

8. The Constitution of New Hampshire is part of the Laws of the Land. It begins and ends with the consent of the people, who are the qualified inhabitants who retain power unto themselves. The Constitution precludes any branch of government from amending the Constitution; rather, the legislative body may propose amendments to the people for their consideration and approval of the representative body of the people, by a two-thirds majority of the voters in the bi-annual elections. One of the sovereign powers retained by the people is the right to redress of grievances and to present a petition or remonstrance to the legislative body.

9. Mr. Richard has the fundamental right to require that all public officials be held accountable at all times. N.H. Const., Part I, Art. VIII.

10. Mr. Richard has the fundamental right to require that his law-givers constantly observe the fundamental principles of the Constitution, and that the people may direct the formation and executions of the laws necessary for the good administration of government. N.H. Const. Part I, Art. 38.

11. Mr. Richard is not controllable by any other laws than those to which the inhabitants of this state, or their representative body (the voters), have given their consent, including, but not limited to, observing and directing the creation, enactment, and enforcement of, or the repeal of, or the amending of the laws of the land. N.H. Const., Part I, Art. 12. Indeed, no branch of the State government may deprive the people of this State any of their fundamental rights secured in Part I of the New Hampshire Constitution by legislative fiat, or by enacting any

order, laws, statutes, ordinances, directions, or instructions that are repugnant or contrary to the Constitution. “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.

12. “The Legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.” N.H. Const., Part I, Art. 31.

13. “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.” N.H. Const., Part I, Art 32 (emphasis added).

14. While the General Court selects a speaker of the house and a president of the senate for their bodies, their previous rules have customarily delegated the power to their office[s] to, “decide questions of order”; and not to “decide” questions of content to be presented to legislative body.

15. No authority permits the Speaker to actively suppress a petition or remonstrance addressed to the General Court , or obstruct their presentment, or conceal them, from those legislative bodies. “The legislature may not, even in the exercise of its “absolute” internal rule making authority, violate constitutional limitations.” Id. At 284, 288 BURT V. SPEAKER.

16. A petition may be used to make a request of the General Court to perform an act constitutionally delegated to the General Court by the Constitution.

17. A “remonstrance” is defined as an “[e]xpostulation; showing of reasons against something proposed; a representation made to a court or legislative body wherein certain persons

unite in urging that a contemplated measure be not adopted or passed. A formal protest against the policy or conduct of the government or of certain officials drawn up and presented by aggrieved citizens.” *Professional Ass'n of College Educators v. El Paso County Cmty. Dist.*, 678 S.W.2d 94, 95 (Tex. App. 1984) (quoting Black’s Law Dictionary, Fifth Ed. (1979)).

18. In other words, a “remonstrance” is “a formal document stating reasons for opposition or grievance.” *Courtyard Manor Homeowners' Ass'n v. City of Pelham*, No. 1180683, at \*9 (Ala. Oct. 18, 2019) (quoting *Black’s Law Dictionary* 1549 (11th ed. 2019)). It permits citizens to “ask[] their government to consider a request.” *Courtyard Manor*, No. 1180683, at \*9.

19. The first use of a remonstrance in New Hampshire was on February 7, 1786, to repeal the Navigation Act of 1785. After the legislature considered that remonstrance, it repealed the Act:

*“TUESDAY, February 7, 1786. The hon. Senate and House being again met in committee of the whole, His Excellency the President in the chair, again took under consideration the resolve of Congress, of the 27th of September, Took under consideration a remonstrance and petition of a [considerable] number of the inhabitants of this State, relative to the want of a circulating medium of trade. —Repeal of Navigation act, &c, and after some debate thereon, postponed the further consideration thereof until tomorrow morning: — the committee then adjourned 'till to-morrow morning, and the Speaker resumed the chair.”* PG. 491 Early State Papers. (UNH Law school library).

20. James Madison famously remonstrated in his Memorial and Remonstrance in June 1785 to protest (“remonstrate”) the petition that Patrick Henry proposed to the General

Assembly of the Commonwealth of Virginia on December 3, 1784, a bill “establishing a provision for Teachers of Religion” as was reported to the General Assembly of Virginia. After the legislative body considered that Remonstrance, the petition was defeated.

21. Accordingly, a remonstrance may be used to protest any legislative act that is repugnant or contrary to the Constitution or to remonstrate (protest) a proposed legislative act. These two words – “petition” and “remonstrance” are not synonymous.

#### **B. Mr. Richard’s Remonstrances**

22. Mr. Richard filed a Remonstrance on May 20, 2019, with the office of the Secretary of State of New Hampshire, office of the Governor, Clerk of the House of Representatives, and the Clerk of the Senate. See Exhibit A (5/20/2010 Remonstrance). He remonstrated that RSA Chapter 654 of the voting laws of the state disenfranchise the inhabitants by diluting Mr. Richard vote. The legislature cannot grant the right of suffrage to unqualified resident aliens by statute, that which the New Hampshire and United States Constitutions do not proscribe.

23. The voter qualification clauses of the Constitution of New Hampshire established that the Citizens of the State, who are qualified to vote are called “inhabitants”.

24. When Mr. Richard filed his first Remonstrance with the House Clerk, Paul Smith, Mr. Smith tried to refuse Mr. Richard’s filing. Mr. Smith then attempted to coerce Mr. Richard to change his Remonstrance to a petition. Mr. Richard refused and instructed him to review the Constitution. Upon reviewing Part I, Article 32, Mr. Smith confirmed Mr. Richard’s right and received the Remonstrance, but failed to recognize or publish the existence of it in the House

Calendar that said Remonstrance had been filed. It was concealed from legislative body for 19 months until it is refiled and published on the House calendar December 31, 2020.

25. The New Hampshire House of Representatives Rule 4 states “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.”

26. On July 23, 2019, a meeting was held with the previous administration under Stephan Shurtleff as Speaker, at the request of the Chief of Staff of the House, Eileen Kelly, and House legal counsel Jim Cianci, from the Office of Speaker Shurtleff. Mr. Smith and Ms. Kelly represented the Speaker’s position. They cited the House’s rules of “procedure for a petition” to justify concealing Mr. Richard’s Remonstrance.

27. On July 23, 2019, Representative Raymond Howard, David Dapkus, and Mr. Richard called the Office of the President of the Senate and were received by the Chief of Staff of the Senate, Donald Manning. Manning denied all knowledge of Mr. Richard’s Remonstrance, which had been filed two months earlier. Manning assured them he would get back to them with an answer. As of the date of this filing, he has failed to do so.

28. Mr. Richard also spoke with Legal Counsel for the Senate, Greg Silverman, and received the same response: a polite denial with the promise of a return call with an answer. As of the date of this filing, Mr. Silverman has failed to do so.

29. Mr. Richard filed a second Remonstrance on January 6, 2020 with the office of the Secretary of State of New Hampshire, office of the Governor, Clerk of the House of Representatives, and the Clerk of the Senate. *See* Exhibit B (1/6/2020 Remonstrance). He remonstrated against the proposed legislation of HB 687-FN, a.k.a. a Red Flag Bill.

30. On January 8, 2020, Speaker Shurtleff summoned Representative Raymond Howard from Alton, New Hampshire, to his Office to inform him that Mr. Richard's Remonstrance was received, and that notice of its receipt would be published in the next publication of the House Calendar. This publication occurred. It violates, however, the Speaker's duty to assign the Remonstrance (to a committee for hearing by the people) to the legislature of the whole so as they may judge for the benefit and welfare of this State.

31. On January 8, Speaker Shurtleff, after receiving Mr. Richard's second Remonstrance, and as the custodian of both of Mr. Richard's Remonstrances, concealed a Remonstrance for the second time (the second Remonstrance Mr. Richard filed, above) from the members of the House, thereby denying the House knowledge of it.

32. On January 10, 2020 the Clerk of the House, Mr. Smith, published a notice in the House calendar, stating: "A remonstrance has been filed with the New Hampshire House regarding House Bill 687, It is available for inspection in the Office of the Clerk of the House."

33. Despite Mr. Smith's published notice, Speaker Shurtleff and President Soucy refused to address either Remonstrance as was their duty. They suspended the legislative activities on March 14, 2020 in response to the fear of Covid-19 and did later resume limited activities remotely until mid-June 2020.

34. Said suspension also prevented the legislative ethics committee from meeting in person or remotely to hear the Plaintiffs complaint for deprivation of redress of grievances and due process of law and concealing such from the legislative body.

35. A legislative ethics committee to hear a complaint filed against the Speaker (select by the accused) cannot be said to be impartial, by meeting in secret, and to hear charges



against those, whom have been appointed by them to the committee. Such a secret hearing deprived the Plaintiff of his rights to due process of law.

36. No provision in the New Hampshire Constitution, however, permits the Legislature to suspend its activities for any period of time. Part 2, Article 3 of the New Hampshire Constitution states, “The senate and house shall assemble biennially on the first Wednesday of December for organizational purposes in even numbered years, and shall assemble annually on the first Wednesday following the first Tuesday in January, and at such other times as they may judge necessary; and shall dissolve and be dissolved at 12:01 A.M. on the first Wednesday of December in even numbered years.” Nothing permits the Legislature to suspend its operations.

37. Upon information and belief, the Defendants suspended the activities of the legislature in part, to prevent the legislative ethics committee from assembling or hearing the Plaintiffs complaint against both Speaker Shurtleff and President Soucy for the concealment of the Remonstrances from the legislative body.

38. Only after the legislative session is over on August 5, a secret hearing was held in direct violation of Part I, art. VIII, the accountability of all agents of government. Public matters may not be held in secret.

39. The Plaintiff’s Remonstrance’s are concealed, and rejected by Speaker Shurtleff and President Soucy, and the Plaintiffs right to redress of grievances is denied for second time.

40. On December 31, 2020 The Clerk published the public notice of the refiling of the 1<sup>st</sup> Remonstrance on voting laws filed on May 20, 2019.

41. On January 15, 2021 The Clerk published the public notice of new Remonstrance over the emergency orders statutes, NHRSA 4:45, NHRSA 4:47.

42. On January 26, 2021 the Plaintiff spoke with Speaker Packard and House Clerk Smith and was informed that they will not be calling the legislative body to assemble as body of whole and that the Remonstrances would not be submitted to the legislative so as they may judge for the benefit and welfare of this State.

43. Speaker Shurtleff and Speaker Packard both claim they may suspend, and continues to do so, Mr. Richard's Constitutional rights. "A board which when presented with a remonstrance immediately files it in a wastebasket," however, "can hardly be said to have 'considered' it." *Professional Ass'n of College Educators*, 678 S.W.2d at 98. In *Professional Ass'n of College Educators*, a Texas appellate court held the board of trustees of a local college district had to consider a remonstrance signed by an association of faculty employees requesting a proposed change to the official policies of the college concerning the tenure of faculty members. *Id.* at 96. The college district failed to consider or address it. *Id.*

44. Speaker Shurtleff and Speaker Packard have negated the Speaker's Constitutional obligation to call to assemble the legislative body as whole, as to provide Mr. Richard with redress of grievances, as well as to provide the legislative body with knowledge, so it may be informed as they may judge for the benefit and welfare of this State, as stated in Part I, Articles 31 and 32, of the New Hampshire Constitution. Rather, they have concealed the Remonstrances from the legislative body, by citing House rules of procedure for a petition. Those rules, however do not provide a Part I, Art. 31 remedy, and they cannot supersede the Constitutional provision required by Part I, Art. 31.

45. Speaker Packard and Speaker Shurtleff do not possess any authority to suspend Mr. Richard's Constitutional rights, conceal a Remonstrance, interfere with the legislative process by depriving members of the General Court knowledge of a Remonstrance, affect the

outcome of certain proposed legislation, or interfere with any investigation into Mr. Richard’s claims that they have violated their respective oaths of office. “Indeed, “[n]o branch of State government can lawfully perform any act which violates the State Constitution” Burt v. Speaker 2020.

## **CAUSES OF ACTION**

### **COUNT I** **Writ of Mandamus**

46. Mr. Richard repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

47. “A writ of mandamus is used to compel a public official to perform a ministerial act that the official has refused to perform, or to vacate the result of a public official's act that was performed arbitrarily or in bad faith” *In re Petition of Cigna Healthcare, Inc.*, 146 N.H. 683, 687 (2001).

48. A court “will, in its discretion, issue a writ of mandamus only where the petitioner has an apparent right to the requested relief and no other remedy will fully and adequately afford relief.” *Id.*

49. Mr. Richard requests an order compelling Speaker Packard (to assign to a committee for public hearing) to assemble the legislative body as whole for a public hearing as stated in the Constitution for redress of grievances. Mr. Richard requests that his Remonstrances be received and read into the public record for action upon the legislative body to act as per the Constitution.

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

50. Mr. Richard repeats and incorporates by reference the allegations of the paragraphs above as if fully stated herein.

51. “A writ of prohibition is used ‘to prevent subordinate courts or other tribunals, officers or persons from usurping or exercising jurisdiction with which they are not vested.’” *In re Petition of Cigna*, 146 N.H. at 687 (quoting *Hillsborough v. Superior Court*, 109 N.H. 333, 334 (1969)).

52. 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 N.H. 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).

53. Mr. Richard requests an order prohibiting Speaker Packard or President Morse from concealing, or exercising any jurisdiction over any document addressed to the General Court, by concealing, omitting, holding or preventing such a document from being publicly recorded and heard before the legislative body as whole.

### **REQUESTS FOR RELIEF**

Wherefore, Mr. Richard respectfully requests that this Honorable Court enter the following relief:

- A. An order compelling the office holder of Speaker, and the office holder of the President Senate, to assemble as a committee of the whole to consider the Remonstrance as defined by the Constitution.



(Seal)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Date of Commission ending

Personally known: \_\_\_\_\_  
OR Produced Identification: \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_

CERTIFICATION

I Daniel Richard do hereby swear that on March \_\_\_\_, 2021 I did mail or hand deliver a copy of this Writ to the Speaker of the House Sherman Packard and to the President of the Senate Chuck Morse.

Dated March \_\_\_\_, 2021

\_\_\_\_\_  
Daniel Richard