

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

DANIEL RICHARD

v.

SHERMAN PACKARD & CHUCK MORSE

No. 217-2021-CV-00178

RESPONSE TO MOTION TO DISMISS

NOW COMES the Plaintiff, Daniel Richard, who respectfully requests that this Court dismiss the Defendant's Motion to Dismiss. As grounds for this answer to the Motion to Dismiss, the Plaintiff relies upon the contemporaneously filed Memorandum of Law. The Plaintiff briefly states as follows:

1. At its core, the Defense relies upon ignoring the Constitution, ignoring its own knowledge of historical precedent, usage, and custom of Citizen's petitions (more than 18,000 petitions between 1817-1864) or remonstrances, and the N.H. Supreme Court opinion and precedence in *Burt v. Speaker of the House of Representatives*, Case # 2019-0507.
2. The separation of powers and justiciability issues were addressed by the N.H. Supreme Court in *Burt v. Speaker of the House of Representatives*, Case # 2019-0507: **The legislature may not, even in the exercise of its "absolute" internal rulemaking authority, violate constitutional limitations** (Id. at 284, 288.) and **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 without authority."** (Id. at 177.)

3. The Defense has already confessed that it did, in fact, deny the Plaintiff of his rights, (Part I, Art. 8, Art. 31, Art. 32, and Art. 38), by citing that it may do so by changing the legislative rules procedure to abolish public access to the legislature for redress of grievances by remonstrance. In answering the Legislative Ethics Committee and speaking on behalf of House Speaker Shurtleff, Attorney Cianci, stated as his defense that “**It was again explained that there was no process under House Rules by which the House of Representatives could consider the Remonstrance.**”
4. The Plaintiff has clearly stated that he has constitutional rights under Part I, Art. 8, Art. 31, Art. 32, and Art. 38, and that such rights are a cause of action requiring a constitutional remedy and are the obligation of the legislature and its elected officers. Said articles require that a Citizen Remonstrance shall be referred to the legislature to be heard and considered so that the legislature may judge for the benefit and welfare of this State, and they also require that a Citizen Remonstrance be not concealed or obstructed by the Speaker of the House or President of the Senate.
5. A mandamus is an appropriate remedy, as Part II, Art. 22. and Part II, Art. 37 are both causes of action that prescribe that the legislature shall elect its leaders to carry out the duties of the legislature as established by the Constitution. These Articles establish an obligation on the Speaker of the House and the President of the Senate to cause Citizen petitions and remonstrances (Part I, Art. 31 and Part I, Art 32.) to be referred to the legislature. The Plaintiff respectfully requests that the Court instruct the Defendants to act pursuant to the Constitution and to restore

the previous rules of procedure, as established by historical usage and the customs of more than 212 years.

6. Prohibition is proper, as the Speaker of the House and the President of the Senate have acted ultra vires, as such actions are acts of nonfeasance. There is no constitutional authority delegated to the Speaker of the House and the President of the Senate to alter or amend any provisions of the Constitution. They have no authority to conceal or obstruct (by rule or omission of previous rule) any referral of Citizen petitions or remonstrances to the legislature (committees). The Plaintiff requests that the Court prohibit the Defense from concealing or obstructing the referral of the Plaintiff's Remonstrance to the legislature as a committee of whole.

7. All told the Defense has failed to cite any constitutional authority for refusing to perform that which the Constitution requires and has acted ultra vires by concealing and obstructing the referral of said Remonstrances, so that they may be heard and considered by the legislature.

WHEREFORE, for these reasons and those set forth more fully in the accompanying Memorandum of Law, the Plaintiff respectfully requests that this Court:

- A. Dismiss the Defendant's Motion to Dismiss;
- B. Award such other relief as may be just and equitable.

Date: April 28, 2020

Respectfully submitted,
/s/ Daniel Richard

Daniel Richard
95 Rockingham Rd.
Auburn, N.H. 03032
(603) 315-5755
1danielrichard@protonmail.com

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: April 28, 2021

/s/ Daniel Richard
Daniel Richard