

STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY, SS

SUPERIOR COURT

DANIEL RICHARD

v.

SHERMAN PACKARD & CHUCK MORSE

No. 217-2021-CV-00178

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF**  
**RESPONSE TO MOTION TO DISMISS**

The office holders of the Speaker of the House and the President of the Senate have sworn an oath to faithfully and impartially discharge and perform all duties incumbent on them as constitutional officers so as to carry into effect that which the Constitution of New Hampshire demands. The Defendants acted ultra vires by ignoring the obligation clauses and the cause of action required by the Constitution itself in Part I, Art. 31 and Part I, Art. 32 and in its historical usage and custom for more than 200 years (House Rule # 4, Senate Rule # 2-32, and the previous Joint rules of both the Senate and the House). The Constitution (Part I, Art. 31) defines a cause of action—that the legislature shall, as its first and primary duty, assemble for redress of public grievances. The right of the people under Part I, Art. 32 to assemble with their representatives and consult upon the common good and to receive instructions from the Citizens of this State is required by Part I, Art. 32. The second duty in Part I, Art. 31 “...and for making such laws as the public good may require” is the remedy.

Part II, Art. 22 and Part II, Art. 37 are also a cause of action on the legislature to establish their respective leaders and to enact such necessary rules of procedure so as to carry out the

provisions of Part I, Art. 31 and Part I, Art. 32, as required by the Constitution as well as historical usage and customs. These rights and duties are the laws of the land.

There has never been any amendment to the Constitution that has repealed the duty of the legislature, nor has there been any amendment repealing any of the rights of the Citizens of this State. The House and Senate actions are ultra vires, as Part II, Art. 22 and Art. 37 are void of any Constitutional authority to amend the Constitution or its provisions, obligations, or constitutional duties by changing its rules of procedure to obstruct public access to the legislative body for redress of public grievances, as required by the Constitution.

The Constitution delegates to the legislature, in Part II, Art. 22, the power to “settle the rules of proceedings” in the House and, in Art. 37, to “determine their own rules of proceedings” in the Senate. The power delegated by these articles to the legislature is to establish its rules of procedure so that the legislature may carry into effect its duties delegated to it by the Constitution. **The legislature may not, even in the exercise of its “absolute” internal rulemaking authority, violate constitutional limitations.** *Id.* at 284, 288. **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. *Burt v. Speaker of the House of Representatives*, the opinion of the New Hampshire Supreme Court.

The Defendants’ motion to dismiss should be denied, as their motion is void of any constitutional authority granted to the legislature to suspend its obligations to perform its duties, as required by the Constitution, or any authority that they, and they alone, may now decide to suspend or deny the Plaintiff of his rights secured by the Constitution. The laws of the land (the Articles of the Constitution) may only be amended or repealed by the Inhabitants (Part I, Art. 12 and Part II, Art. 100) and not by the legislature or any other branch of government. The issues in

this case are justiciable, and this Court has a duty in this matter. The N.H. Supreme Court (Case #2019-0507) opined in *Burt v Speaker of House of Representatives* that **“[n]o branch of State government can lawfully perform any act which violates the State Constitution.”** *LaFrance*, 124 N.H. at 176..., and “[c]laims regarding compliance with . . . mandatory constitutional provisions are justiciable,” *id.* at 288. (quotation omitted; emphasis added). “It is our duty,” we stated, “to interpret constitutional provisions and to determine whether the legislature has complied with them.” *Id.* *Burt v Speaker of House of Representatives*, case # 2019-0507.

The Defense then argues and misleads the court in its motion when it claims that no federal case law exists to support obligatory clauses of Part I, Art. 31 and Part I, Art. 32. The First Amendment is void of the obligatory instruction’s clauses; therefore, no such right is established by the First Amendment. There cannot be any federal case law to support a non-existent federal right. This is why the Defense claims there is no supporting federal case law.

The Defense misleads the Court by citing irrelevant case law from Federal and State cases that deal with petitions in those jurisdictions that rely on judicial opinions based on the First Amendment cases over the right to petition the federal government for redress of grievances and not the right to petition or remonstrate the State of New Hampshire legislature for redress of grievances under the New Hampshire Constitution (Part I, Art.31 and Part I, Art. 32). Each jurisdiction has its own Constitution and laws, and none of the Defense’s cited cases are relevant to the right of Petition or Remonstrance under the New Hampshire Constitution. A N.H. Citizen’s right to Petition under Part I, Art. 32, the right to request of the legislative body to “make a law,” is not a Citizen Remonstrance to “repeal any law” that is repugnant or contrary to the Constitution of N.H. Therefore, its arguments are irrelevant to this case, which involve the deprivation of a Citizen’s right to Remonstrance in this State.

## COUNTER ARGUMENT

### **1. The Court Should Dismiss the Defendants' Motion to Dismiss**

The New Hampshire Supreme Court answered similar questions of separation of powers and justiciability in *Burt v Speaker of the House, Shurtleff* Case no. 2019-507. As detailed in its opinion, the Court struck down House Rule # 63 for infringing on Rep. Burt's rights under the Constitution (Part I, Art. 2-a.).

The Plaintiffs' claim is similar to the *Burt* case, as legislative rules, or lack thereof, have been used to infringe upon and deny the Plaintiff his Rights as detailed in his complaint.

Legislative rules that have been adopted under Speaker Shurtleff's/President Soucy's leadership and are now under Speaker Packard's/President Morse's leadership have infringed on the constitutional rights of the Plaintiff by either ignorance of the Constitution itself or by intentional acts or omissions of old procedural rules, or by the modification of existing procedural rules. Procedural rules of the legislature cannot be used to infringe on or deny the Citizens of this State any of their Constitutional rights.

Whether a controversy is nonjusticiable presents "...a question of law, which we review de novo." *Hughes v. Speaker*, N.H. House of Representatives, 152 N.H. 276, 283 (2005). "The nonjusticiability of a political question derives from the principle of separation of powers," *id.* (quotation omitted), a principle which is set forth in Part I, Art. 37 of our State Constitution:

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.

“The justiciability doctrine prevents judicial violation of the separation of powers by limiting judicial review of certain matters that lie within the province of the other two branches of government.” *Hughes*, 152 N.H. at 283 (quotation omitted). “Deciding whether a matter has in any measure been committed by the Constitution to another branch of government is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the [State] Constitution.” *Id.* quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962) (ellipsis omitted). “Where there is such commitment, we must decline to adjudicate the matter to avoid encroaching upon the powers and functions of a coordinate political branch.” *Id.* “A controversy is nonjusticiable — i.e., involves a political question — where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Id.* (quotation omitted).

Here the State Constitution demonstrably commits to the legislature the authority to enact its own internal rules of proceedings. Part II, Article 22 provides that the House of Representatives “...shall choose their own speaker, appoint their own officers, and settle the rules of proceedings in their own house.” N.H. CONST., Pt. II, art. 22 (emphasis added). However, “[o]ur conclusion that the constitution commits to the legislature [such] exclusive authority . . . does not end the inquiry into justiciability.” *Horton v. McLaughlin*, 149 N.H. 141, 145 (2003). “The court system [remains] available for adjudication of issues of constitutional or other fundamental rights.” *Id.* (quotation omitted). “While it is appropriate to give due deference to a co-equal branch of government as long as it is functioning within constitutional constraints, it would be a serious dereliction on our part to deliberately ignore a clear constitutional violation.” *Baines v. N.H. Senate President*, 152 N.H. 124, 129 (2005) (quotation omitted).

In *Baines*, we faced the question of whether a law passed by the legislature constituted a “money bill” and, therefore, whether the constitution required that the bill originate in the House. See *id.* at 125; N.H. CONST. Part II, Art. 18. Although we recognized that the constitutional authority to adopt internal procedural rules had been demonstrably committed to the legislature, we held that “the question of whether the procedures set forth in Part II, Articles 2, 20, 37, and 44 [of the State Constitution] were violated is justiciable.” *Id.* at 130, 132. Thus, as the final arbiter of state constitutional disputes, we concluded that, “[w]hile we will not inquire into every allegation of procedural impropriety in the passage of legislation, when the question presented is **whether or not a violation of a mandatory constitutional provision has occurred**, it is not only appropriate to provide judicial intervention, **we are mandated to do no less.**” *Id.* at 129, 132 (quotations and ellipsis omitted).

Similarly, in *Hughes*, we found that the legislature’s internal rulemaking authority, although “continuous” and “absolute,” remains subject to constitutional limitations. *Hughes*, 152 N.H. at 284, 288 (quotations omitted). We observed that “[c]ourts generally consider that the legislature’s adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review **unless the legislative procedure is mandated by the constitution.**” *Id.* at 284 (quotation omitted; emphasis added). Thus, although claims regarding the legislature’s compliance with such rule-based or statutory procedures are not justiciable (see *id.* at 284-85, 287-88), **“[c]laims regarding compliance with . . . mandatory constitutional provisions are justiciable,”** *id.* at 288 (quotation omitted; emphasis added). **“It is our duty,” we stated, “to interpret constitutional provisions and to determine whether the legislature has complied with them.”** *Id.*

In *LaFrance*, we considered the constitutionality of a statute mandating that law enforcement officers be allowed to wear firearms in any courtroom in the state. See *id.* at 175. Because the statute infringed upon the judiciary’s inherent authority to make its own internal procedural rules, we found that the statute violated the separation of power, and, therefore, was unconstitutional. See *id.* at 180, 182-83. We stated that “[i]t would not be within the constitutional prerogative of the judiciary to tell either of the other two branches of government who could or could not wear guns in the Executive Council Chamber or in the Representatives’ Hall.” *Id.* at 181 “That,” we said, “would properly be a matter for those branches of government to resolve.” *Id.* This is the specific language that the Speaker cites in arguing his position, contending that “[t]his statement alone provides sufficient grounds for this Court to uphold the [s]uperior [c]ourt’s dismissal of this action.”

However, because it was not necessary in *LaFrance* to decide the extent to which any branch could regulate guns or other deadly weapons in Representatives Hall, the language relied on by the Speaker is dicta. See *Appeal of Town of Lincoln*, 172 N.H. 244, 253 (2019) (observing that nonessential judicial pronouncements are nonbinding dicta). Moreover, the cited dicta did not directly address the constitutionality of a limitation on an individual’s fundamental constitutional rights, but rather, it dealt only with the interplay between branches of government. See *LaFrance*, 124 N.H. at 181. In other words, in *LaFrance*, we addressed the separation of powers issue implicated by the legislature’s encroachment upon the internal procedures of the judicial branch; we did not directly address the related issue of whether a limitation on an individual’s right to keep and bear arms would be constitutional. See *id.* at 175, 179-82. Nor did we address the specific question presented here: whether the judiciary has the constitutional authority to determine whether House Rule 63 violates the appellant’s fundamental rights under

the State Constitution. Indeed, *LaFrance* did not involve a limitation on an individual's fundamental right under the State Constitution to keep and bear arms, but rather, a statute safeguarding that right. See *id.*

Regardless, our decision in *LaFrance* does not permit us to treat the separation of powers as an “impenetrable barrier[],” *State v. Carter*, 167 N.H. 161, 166 (2014) (quotation omitted), and thereby disregard our “duty to interpret constitutional provisions and . . . determine whether the legislature has complied with them.” *Hughes*, 152 N.H. at 288. **The legislature may not, even in the exercise of its “absolute” internal rulemaking authority, violate constitutional limitations.** *Id.* at 284, 288. **Indeed, “[n]o branch of State government can lawfully perform any act which violates the State Constitution.”** *LaFrance*, 124 N.H. at 176. **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.

Accordingly, because “[i]t is the role of this court in our co-equal, tripartite form of government to interpret the Constitution,” *Petition of Judicial Conduct Comm.*, 145 N.H. 108, 113 (2000)., and “to determine whether the legislature has complied with [its provisions],” *Hughes*, 152 N.H. at 288, . . . *Burt v. Speaker of the House*.

The Defense has confessed that they did, in fact, deny the Plaintiff his constitutional rights protected by Part I, Art. 31 and Part I, Art. 32, as stated in this case. The following are quotes from the Defense as stated by the House staff (the Clerk, Chief of Staff Eileen Kelly, and Atty. Cianci) at a meeting in the Speaker's office conference room on July 23, 2019, as well as the Speaker's answers to the Legislative Ethics Committee complaint by the Plaintiff on March 27, 2020 (concealed from the Plaintiff for 4 months.):



## STATEMENT OF FACT

*“On May 20, 2019, the Complainant filed a remonstrance with the House and Senate Clerks and the Secretary of State, at which time the House Clerk discussed at length the nature of the remonstrance and explained that “there was no process under House Rules by which the House of Representatives could consider the remonstrance.””*

*“On July 23, 2019, the House Clerk, the House Chief of Staff, and the House Legal Counsel met with the Complainant, Representatives Richard Marple, Raymond Howard, and three of the Complainant’s colleagues to discuss the remonstrance. It was again explained that there was no process under House Rules by which the House of Representatives could consider the remonstrance and, to the extent that he wished the House to consider the subject matter of the remonstrance, the proper avenue was through legislation.”*

The Defense discloses a frightening confession when it states that it may use its constitutional rule making authority (Part II, Art. 22 and Part II, Art. 37) to establish new rules of procedure in order to suspend its obligations to carry out its duties, as required by the Constitution (Part I, Art. 31) and the rights of the Plaintiff and the people under Part I, Art. 32:

*“But this history and tradition of public participation has been chosen by the House and the Senate pursuant to its authority under Part II, Arts. 22 and 37. It has not been imposed by citizens petitioning their elected officials and it has not been imposed by judicial intervention.”*

The above statement is not true. The history and tradition of public participation (redress of public grievances) was established by the Constitution—it was not established because of legislative rules. The previous legislative rules of procedure provided a cause of action upon the Speaker of the House and the President of the Senate to assemble so that they may carry out the

obligations of the Legislature as demanded by the Constitution. The House and the Senate have exercised undelegated powers by amending their rules so as to suspend their obligations to carry out their duties, as required by the Constitution (Part I, Art. 31), and disregard the rights of the Plaintiff (and the people) under Part I, Art. 32. The Defense argues that it has no duty to act, when in fact they have acted by changing their rules and obstructing and/or concealing four of the Plaintiff's Remonstrances from being referred to the legislature (a committee). The Defense is relying on the omission of the previous legislative rules, which incorporated a cause of action, and the citation of lack of federal case law to justify their refusal to perform their sworn duties as required by the Constitution.

The Defense raises the following statement (Pg. 3): “...whether Part I, Article 32 places a mandatory duty on the General Court to act in response to individual petitions, remonstrances, or other correspondence sent to the body by citizens. The express language of “Part I, Article 32 does not state that the Speaker of the House or the President of the Senate are required to take up the plaintiff’s remonstrance.””

This Defense statement is misleading, as it is Part I, Article 31 that places a mandatory duty on the legislature: “[*Meeting 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**” is the primary job of the legislative body. “**The redress of public grievances**” is the first order of business of the legislature, and the second part is the remedy “**for making such laws as the public good may require,**” so that under Part I, Article 32 the people may “**assemble,**” “**consult upon the common good,**” and “**give instructions to their representatives.**” These Constitutional provisions (Part I, Art. 31 and Part I, Art. 32) are, in and of themselves, a cause of action on the legislature. Part II, Art. 22 and Part II, Art. 37 establishes

that the legislature shall enact such rules as to cause petitions or remonstrances to be referred to committees so that Citizens may “give instructions to their representatives.” They are obligatory instructions that secure to the people the right to be heard and considered, as evidenced by usage and custom of the historical record. The legislative process relative to petitions or remonstrances is apparent from the House and Senate Journals—a petition or remonstrance would be submitted and read “often by the clerks” in the House and the Senate. As the legislature evolved, it did adopt rules of procedure written pursuant of said articles so that the legislature could carry into effect its Constitutional duties under Part I, Art. 31 and Part I, Art. 32. Such previous rules have customarily been delegated to the Speaker of the House as his duty, so that the Speaker shall, as the first order of business of the day, refer the grievance(s) of the people to a committee as previously required.

#### **ORDER OF BUSINESS OF THE DAY**

51. The speaker shall call for petitions from members of the House. The petitions having been presented and disposed of, re-ports, first from the standing and then from the select committees, shall be called for and disposed of. And the above business shall be done in no other part of the day, except by permission of the House.

The current rules of the House are half the problem and the intentional obstruction of Citizen access to the legislative body itself. The new rules have removed the duty of the Speaker of the House (the obligatory clause) to refer all petitions to a committee, but not **memorial(s)**, i.e., (Remonstrance):

*4. Referral of bills, etc., to committees. **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.***

The second problem is the current rules for a petition. House Rule # 18 is unconstitutional, as it removes the previous constitutional obligation of the Speaker to call for petitions from members of the House and, after having them presented and disposed of, referred to a committee (under House Rule # 4). Such duty has been removed by new rules void of the previous cause of action. Petitions are now filed under House Rule # 18, which now omits any cause of action required by the Constitution for a petition. This is the heart of the defense. The omission of the previous rules is used to justify the Defense's claims that it has no duty to act while it ignores the provision of the Constitution.

18. Petitions. Before any petition is received and read, the substance of the petition shall be in concise form, the name of the member(s) presenting it shall be recorded on the petition and a summary of the substance of the petition shall be printed in the House Calendar. The Clerk of the House shall state the substance of the petition in summary **and a copy shall be placed on file with the House Clerk.**

This is where all petitions and remonstrances go to die with no due process of law. The aforesaid House Rule # 18 is void of cause of action or due process. A copy placed on file might as well be thrown in a trash can, as placing a petition or remonstrance on file with the clerk's office is an act of nonfeasance and not due process of law. The Defense claims that the Plaintiff's rights under Part I, Art.31 and Part I, Art.32 are intact, when they are not—as proven by the Defendant's actions and confessions.

The Defense has stated in its confession that the House rules are void of any cause of action to bring a petition or a remonstrance before the legislative body, as required by the Constitution, and it has removed the previous duties of the Speaker of the House that he “shall” refer all petitions or remonstrances (memorials) to the appropriate committee or committees. This tactic is what has been done to three of the Plaintiff’s Remonstrances, as the first one was concealed from the legislature for 20 months until it was refiled and treated the same way. The Plaintiff is again denied redress of grievances and due process of law.

House Rule # 18 is the due process the Defense deems a suitable remedy for a petition or remonstrance. The defense states that it is not violating the Plaintiff’s rights when it is, in fact, doing so by obstructing access to the legislature.

The Defense assumes it may simply omit or modify House and Senate rules and ignore the cause of action of the Constitution itself (Part I, Art. 31 and Part I, Art. 32 and/or the historical usage and custom of more than 200 years of history). The first Remonstrance of 1786 established a precedent under the N.H. Constitution The legislature assembled as a body of a whole to hear a Remonstrance by the cause of action of the Constitution itself and not because of legislative rules. The Defense has stated in person (meeting in the Speaker’s office on July 23, 2019) and in its answer before the Legislative Ethics Committee that it may ignore the Remonstrance by citing lack of legislative rules, thereby depriving the Plaintiff of the right to remonstrate—in other words, the omission of the old legislative rules that where in effect for 212 years. The Joint Rules of the Senate and House of Representatives provided that “When a convention of the two houses is to be formed by a requirement of the Constitution,” the following rule applied:

**When a convention of the two houses is be formed, whether by requirement of the Constitution, or by vote or resolve of the two houses, a message shall be sent from the House of Representatives to the Senate, giving notice when the House will meet the Senate in convention. As soon thereafter as the convenience of the Senate will permit, they will attend in the House. The speaker of the House shall be chairman of the convention, and shall state the reasons for forming the convention.**

This rule was in effect for 212 years until 1996. This rule, among others, was simply abolished. Such a rule has a cause of action and duty on both the House and the Senate to assemble by requirement of the Constitution. The Speaker shall be Chairman of the Convention, and the Speaker shall state the reasons for forming the convention.

The Defense misleads the Court when it cites *Sousa v. State*, 115 N.H. 340, 344 (1975), a personal injury case, as it is not relevant, and it is cited out of context. The Court opined that a Part I, Art. 32 petition before the legislature was ill-suited to conduct a civil trial for a personal injury claim resulting from an accident on State property, not because the legislature is no longer capable of its constitutional duties.

The Defense misleads the court when it cites *Voting Age in Primary Elections II* (158 N.H. 661, 667 (2009)). When the Supreme Court of New Hampshire opined over the “free speech” and “association” clauses of the State and Federal Constitutions, it stated it would “rely on the First Amendment to the Federal Constitution for guidance” on the “free speech” clause and the “association” clause. It expresses no opinion on the right to “**assemble**” and “**consult**” upon the common good or to “**instruct their representatives,**” or the right to redress of grievance by petition or remonstrance. Therefore, this case is not relevant.

Citing Federal case law on the First Amendment out of context does not apply to this case, as the protections under the N.H. Constitution, Part I, Art. 31 and Art. 32 are stronger than the Federal First Amendment right, as such right is void of the obligation of the legislature to assemble for redress of public grievances (Part I, Art. 31) and the obligatory instruction clause of Part I, Art. 32, “the right to give **instructions to their representatives;**” therefore, it is not relevant to this case. The N.H. Constitution and its common law customs predate the Federal Constitution. The protections provided by the N.H. Constitution are much stronger. The Constitution, Part I, Art. 32, provides, in the first three clauses, that the express function of the assembly-petition/remonstrance clause is to protect the Citizen’s right of “applying to the Legislature.” (1) The right to “**assemble**” and “**consult**” upon the common good; (2) the right to give “**instructions to their representatives,**” and (3) The final clause is the remedy: “and to request of the “**legislative body**” (not the Speaker of the House or the President of the Senate) [emphasis added] by way of petition or remonstrance, **redress of the wrongs done them** and the **grievance they suffer**. This is a historical fact reinforced by more than 150 years of regular usage and custom that the Defense chooses to ignore.

“When Madison introduced his proposed list of amendments (which became the U.S. Bill of Rights) on June 8, 1789, he separated the clause for the rights of assembly, consultation, and petition from the clause containing the free expression of speech and press. The express function of the assembly-petition clause was to protect citizens “applying to the Legislature...for redress of their grievances.” During the debate, “the people’s right to ‘instruct their Representatives,” (THE YALE LAW JOURNAL Vol. 96: 142, 1986.) was not included in the U.S. Bill of Rights, but it remains in the N.H. Bill of Rights in Art. 32. It is stronger and in effect to this day.

The Tennessee case is not similar to the Plaintiff's case at all, as the opinion of the Tennessee Court is related to the right to petition in Tennessee, a different Constitution and different laws, especially after reconstruction. Said case is on appeal to the U.S. Supreme Court. This case is also void of the New Hampshire's constitutional provisions, historical usage, and customs for redress of public grievances and the N.H. legislative process.

All the rest of the Defendant's citations of opinions of the U.S. Supreme Court over the First Amendment right to petition the federal government for redress of grievances does not apply to this State case. Also, as stated above, the First Amendment is void of the obligatory instructions clauses of the right of "the people to instruct their representatives" and "the obligation on the legislature to assemble for public grievances," as codified in the N.H. Constitution, Part I, Art. 31 and Art. 32.

The Defense misleads the court when it claims that no federal case law exists with the following statement:

"No federal case law to supports a claim that the legislative body", "is required to take action on a citizen's petition or remonstrance, absent specific statutory or constitutional dictate..."

There cannot be federal case law in the absence of a federal right. The First Amendment is void of the obligatory instructions clauses of the N.H. Constitution, as no such right is established by the First Amendment. There cannot be any federal case law to support a non-existent right. This is why the Defense claims there is no supporting federal case law.



In the second part of its point, The Defense claims that there is “no constitutional dictate” when, in fact, there is “a constitutional dictate.” Such dictate is codified in the N.H. Constitution, Part I, Art. 31; Part I, Art. 32; Part II, Art. 22; and Part II, Art. 37.

The Constitution delegates to the legislature (Part II, Art. 22 to the House and Part II, Art. 37 to the Senate) the authority to determine the rules of proceedings in their respective bodies and to carry into effect their constitutional duties. The last two legislatures (2018-2020) and (2021-2022) have adopted procedural rules—changes that have omitted the obligatory clauses of the past legislative rules—which now deprive the Plaintiff and all Citizens of this State of a certain remedy required by Part I, Art. 14. The Defense claims it may simply amend its own rules procedure and suspend its constitutional obligations and duties. It claims that, by omitting the previous rules, it may simply state, “Since no rules now exist with a cause of action requiring the Speaker or Senate President to act, they now claim that they have no duty to act.”

Therefore, the Defense is acting in bad faith. All of the Defense’s citations are repugnant and contrary to the N.H. Constitution, its historical usage and customs, and the all-important fact that the rights under the Constitution, Part I, Art. 31 and Art. 32 have never been repealed. Falling out of favor, as claimed by the Defense, is not a constitutional amendment; therefore, said constitutional rights are still the laws of the land. All that has changed from the founding generation until now is that multiple generations of legislative bodies, ignorant of our Constitution and our customs, have altered the legislative rules of procedure in order to change the function and form of our government without amending the Constitution.

The Defense does not deny the existence of these Constitutional rights, nor does it claim they have been amended or repealed. In fact, it acknowledges that they are part of our early history and that more than 18,000 petitions and remonstrances were presented to those legislative bodies. As they were in common use and function for more than 200 years, it is an undisputed historical fact. Falling out of favor is not a constitutional amendment.

The Defense states as a fact, when it reaffirms these Constitutional rights and the historic usage and customs in its current answers to this Court and previous answers to the legislative ethics committee, “*The scope of these rights and the mechanism by which they are implemented by the legislature has evolved over time. In New Hampshire, petitions for redress and remonstrance, while once common in the early part of the state’s history, fell out of favor*”

(Atty. Jim Cianci, Defense for Speaker Shurtleff before the Legislative Ethics Committee).

Falling out of favor, as claimed by the Defense, is not a constitutional amendment; therefore, said constitutional rights are still the laws of land.

The Defense misleads the Court when it states that the Court should not be concerned about the Plaintiff’s rights. The Defense argues that the hollowing out of the Plaintiff’s substantive protections under Part I, Art. 32 is okay because they, the House and Senate, say so. They argue that the current function of the legislature is fine—that the Plaintiff’s rights are no longer needed—as the Plaintiff’s rights simply “fell out of favor.” The Defense wants us to believe that the current legislative process is good enough because they say so, constitutional rights are no longer needed, and such rights are now simply requests that they (the Speaker of the House and the President of the Senate) may decide as to what petitions or remonstrances may be referred to the legislature and what may be concealed from them.

Abolishing the constitutional right to redress of public grievances has led to a constitutional crisis (Part I, Art. 10): “...therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.” This Court is the last hope for the Plaintiff (and the people) of redress of public grievances. Such rights have been abolished by the legislature by amending their rules of procedure, that which the Constitution does not allow.

## **2. Mandamus is Proper onto the Speaker of the House of Representatives and the President of the Senate**

Since the Defense has refused to adopt the necessary rules of procedure to carry into effect the duties delegated to the legislature by the Constitution, the Plaintiff respectfully requests the Court to issue the Writ of Mandamus on the Defendants so that they shall reinstate the previous legislative rules of procedure, so as to comply with their Constitutional duties. The Plaintiff seeks a writ of Mandamus from this Court to compel the Speaker of the House of Representatives, Sherman Packard, and the President of the Senate, Chuck Morse, to perform previous ministerial actions, as required by their previous legislative rules, which have been historically delegated to the Speaker of the House and the President of the Senate their obligation to cause the legislature to perform its duties to which the Constitution requires. Such actions are well-established in precedence, historical usage and custom, previous rules of procedure, and current rules of procedure (House Rule # 4 and Senate Rules # 2-32). The Constitution, Part II, Art. 22 and Part II, Art. 37, delegates to the legislature that they shall select a leader, and they shall make such rules as may be required to carry into effect those obligations as required by the Constitution upon the legislature. The previous House and Senate journals detail the ministerial

duties of previous legislative rules procedure and are well established precedent by their historical usage and customs.

The Defense has intentionally removed the previous constitutional obligation from its rules of procedure in order to avoid its duties and obligations. The Defense now claims it has no obligation to act, as the Defense has acted ultra vires by removing, without any authority, its constitutional obligations and duties. Such actions are nonfeasance.

The Defense has confessed to acting in bad faith (Pg.6 of motion to dismiss). Said actions are nonfeasance and ultra vires. The history and tradition of public participation in the legislative process was established by the inhabitants of this State by their written Constitution. The rules established by the House and Senate under Part II, Art 22. and Art. 37 [**the power to make rules for their proceeding**] is void of any authority to alter or abolish the constitutional rights of the Plaintiff (and the people) of their right(s) to redress of public grievances (participation) by the legislative process, as codified in Part I, Art. 8, Art. 31, Art. 32, and Art. 38. These rights to public redress of grievances (participation) are defined by the Constitution and not by House or Senate rules of procedure.

The Plaintiff seeks a writ of Mandamus from this Court, as both the Speaker of the House of Representatives, Sherman Packard, and the President of the Senate, Chuck Morse, refuse to communicate or respond to the Plaintiff so that he may consult upon the common good with the Senate and so that he may instruct his representatives in the legislature. After receiving the Plaintiff's Remonstrance, the Speaker of the House and the President of Senate have refused to act as required by the Constitution and its historical usage and customs in this State. The Plaintiff respectfully requests that the Writ of Mandamus be issued so that the House and Senate may assemble as a body of the whole (the right of the people to instruct their representatives.) The

Constitution guarantees the right to be heard and considered so that a Remonstrance seeking the repeal of unconstitutional laws may be referred for consideration before the legislative body.

Only the legislative body is delegated such powers to suspend laws under Part I, Art.29, and the only procedure provided by the Constitution to the Citizens to “instruct their representatives” to repeal laws that are repugnant or contrary to the Constitution is by Part I, Art. 31 and Art. 32 and by no other manner. The Remonstrance is the rightful remedy to request that any laws that have been enacted by ignorance or design be submitted to the legislature, as that power is delegated to them under Part II, Art. 5, so that they may judge for the benefit and welfare of this State. Such power is delegated to the legislature by the Constitution, not the Speaker of the House or the President of the Senate.

### **3. The Court Should Not Dismiss Count B**

In Count B the Plaintiff respectfully requests an order enjoining the Speaker of the House and the President of the Senate “from concealing, omitting, holding on file with the Clerk of the House or Senate, or preventing the Plaintiff’s lawfully-filed Remonstrance from being referred to a committee by omission of previous rules or the enactment of any rule (any combination thereof, House Rule # 18) that infringes on the rights of the Plaintiff to access the legislature so that the Remonstrance may be heard and considered. The Plaintiff respectfully requests that this Court grant such relief.

### **4. The Court Should Issue Injunctive Relief**

The Plaintiff has already suffered, and continues to suffer, irreparable harm. The legislature continues to act outside of its delegated powers. It has abolished the Plaintiff’s rights (and the rights of the people) to seek a constitutional remedy to request the legislative body to repeal by way of remonstrance changes to our voting laws that are repugnant and contrary to our

Constitution. The legislature should not be allowed to function outside of its delegated powers. Allowing the legislature to act ultra vires without Citizen oversight, as provided by the Constitution, has led to changes to our Constitution, changes to our voting law, changes to our laws, changes to our taxes, and changes to our representation at the State and Federal level without the consent of the inhabitants. The last two elections (2018 and 2020) were unconstitutional; changes to our voting laws by unlawful acts are nearly impossible to overturn once enacted. The Plaintiff respectfully requests this Court to issue a temporary injunction on the Defendants from any further legislative activities until a hearing may be held to ensure that public access to public redress of grievances by petition or remonstrance (public participation) be in compliance with the Constitution.

### **CONCLUSION**

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

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

Respectfully submitted,

Date: April 28, 2021

/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: April 28, 2021

/s/Daniel Richard  
Daniel Richard