STATE OF NEW HAMPSHIRE
SUPREME COURT

DANIEL RICHARD

Plaintiff, pro se

VS.

SPEAKER OF THE HOUSE OF REPRESENTATIVES & NEW HAMPSHIRE SENATE PRESIDENT.

Defendants

Argued: April 21, 2022
Opinion Issued: July 6, 2022

Daniel Richard, self-represented party, on the brief and orally.

James S. Cianci, house legal counsel, on the brief and orally, for the Speaker of the New Hampshire House of Representatives.

Lehmann Major List, PLLC, of Concord (Richard J. Lehmann on the memorandum of law and orally), for the New Hampshire Senate President.

Supreme Court Docket
No. 2021-0325

PLAINTIFF'S MOTION FOR RECONSIDERATION

Now comes the Plaintiff, Daniel Richard, pro se, in the above-numbered and entitled action, and respectfully request, pursuant to rule 22 of the New Hampshire Supreme Court rules, that the court reconsider its opinion dated July 6, 2022, and in support thereof state as follows:

1. I believe the court did not consider or properly examine certain evidence or correctly apply the law and the New Hampshire Constitution as written; and

2. The New Hampshire Bill of Rights as written; apparent and obvious on its face, will have been changed by the court, by eliminating a due-process provision and constitutional article, if my motion for reconsideration is not granted, thereby creating a Constitutional crisis in the state of New Hampshire.

Standard of review

1. In requesting the New Hampshire's Supreme court to reexamine its findings, I wish to open my motion for reconsideration by offering its decision in Claremont *Sch. Dist. v. Governor,138 N.H. 183, 186, 635 A.2d 1375, 1377–78 (1993)*, cited in the case of *Wooster v. Plymouth, 62 N.H. 193, 200 (1882) below*. (quotations omitted, alterations in original) "In interpreting an article in our constitution, we will give the words the same meaning that they must have had to the electorate on the date the vote was cast. In doing so, we must place [ourselves] as nearly as possible in the situation of the parties at the time the instrument was made, that [we] may gather their intention from the language used, viewed in the light of the surrounding circumstances." *In Wooster*, the court continued: "It was universally understood by the founders of our institutions that jury trial, and the other usual provisions of bills of rights, were not grants of rights to the public body politic, but reservations of private rights of the subject, paramount to all governmental authority; and this constitutional principle has never been abandoned." Id. at 141.

2. Based on the current precedent of *Wooster v. Plymouth*, and precedents cited therefrom, I respectfully submit this Court's ruling and subject of this reconsideration, regarding its' constitutional interpretation of New Hampshire's Bill of Rights and the Federal Bill of Rights, is in error.

   It should be noted; *Wooster v. Plymouth* has been cited 48-times since 1882, last cited in 2019 and it currently represents' New Hampshire common law and constitutional standard.

3. I feel it is important enough to cite the following language from *Wooster v Plymouth: "The clause of the fifteenth article of the bill in which it is reserved "is so manifestly conformable to the words of Magna Charta, that we are not to consider it as a newly invented phrase, first used, by the makers of our constitution; but we are to look at it as the adoption of one of the great securities of private right, handed down to us as among the liberties and privileges which our ancestors enjoyed at the time of their emigration, and claimed to hold and retain as their birthright." Wooster @ pg.196 "This provision of the bill of rights was unquestionably designed to restrain the legislature, as well as the other branches of government, from all arbitrary interference with private rights. It was adopted from Magna Charta, and was justly considered by our forefathers, long before the formation of our constitution, as constituting the most efficient security of their rights and liberties." Mason's argument for the plaintiff in Dartmouth College v. Woodward, Farrar's Report, 56. In the decision of that case, this court said, — "The object of the clause in our bill of rights seems always to have been understood in this state to be the protection of private rights." 1 N.H. 129.*
   The division of the constitution into two parts was not made without a purpose, and the name of each part is not without significance. The first is a "bill of rights:" the second is a "form of government." The second is, in general, a grant of powers, made by the people to "magistrates and officers of government," who are declared (in Part 1, art. 8) to be the grantors' "agents." The first contains a list of rights not surrendered by the people when they formed themselves into a state. Part I, arts. 1, 2, 3; Part II, art. 1. By the reservation of these, they limited the powers they granted in the

second part, and exempted themselves, to the stipulated extent, from the authority of the government they created."

Facts in this case

4. This Court overlooked the all-important, the first constitutional question presented in this appeal presented on page 8. The question and heart of this appeal: What Constitutional, statutory, or House rules of procedure are delegated to the Speaker of the House of Representatives granting any authority to ignore the Constitution of N.H. and the House Rules of procedure written pursuant to Part II, art. 22?
5. The Defendants have stated in their pleadings and in oral arguments; that the right to apply or request of ***the legislative body***, by way of petition or remonstrance, is in fact a substantive right. Contrary to this Court's opinion, the Constitution of N.H. Part I, art. 32. states that such a right is a request made upon ***the legislative body***, and not the Speaker of the House. The Constitutionally promulgated House Rules of procedure, rule #4, requires of the Speaker, the duty to refer all (i.e., memorials) and, ***or other matters, shall be referred, unless otherwise ordered by the house.***" to ***the legislative body***. Said rule includes the word ***"Memorial"***, and "***and other matters coming before the House***" (emphasis added), both of which provide the due process required of the Speaker, that he "shall" referrer all legislative business to the legislature to decide. Two different sources of the definitions of 'Memorial'.[1]

[1] 1. Blacks Law 4th edition: "A document presented to a legislative body, or to the executive, by one or more individuals, containing a petition or a representation of facts."

6. The legislative body is elected, so that it may judge for the benefit and welfare of this State, and not one man. What good is the legislature if one man with no delegated authority of any kind, is allowed by this Court to exercise the discretion of the legislature, where the power of discretion resides. As matter of fact, not only does the Speaker not have any such authority MASON'S LEGISLATIVE MANUAL SEC. 518. Prohibits such behavior:

   "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 minority, to a committee, ***to officers*** (emphasis added) or members or to another body." The current House Rules of procedure site mason manual as a reference source in its chain of hierarchy.

7. The due process the Appellant believes he is entitled to, and deprived of, emanates from the Bill of Rights, Part I, art. 31 and art. 32, and the precedent established by the Framers of the Constitution of N.H. who, two years after ratification of the Constitution of N.H. did exercise this right of Remonstrance. There could-not be a clearer, and more important precedent, than that which was established shortly thereafter, by the men who wrote the Constitution. N.H. Such legislative actions are detailed by the first Remonstrance on record, filed with the legislature, after the adaptation of our current Constitution and Bill of Rights in 1784. The 1st Remonstrance was filed in 1786 (see exhibit J certified copy for the State

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Merriam Webster definition of Memorial: "a statement of facts address to a government and often accompanied by a petition or remonstrance."

Archives.) The legislature actions were as follows. The 1786 House Journal records shows that a Remonstrance was receive by the House, prompting the House and the Senate to assembled as body of the whole. A legislative decision was made by such an assembled ***legislative body,*** (emphasis added) who did erect a special joint committee to investigate whether the legislature should repeal the Navigation and commerce act of 1785. The committee conducted an inquiry and reported its findings back to the legislative body, and issued its opinion to legislature, so that legislature may decide what to do. This ultimately led to the repeal of the 1785 Navigation and commerce act under the authority of Part I, article 29. The Defense has repeatedly stated that every piece of legislative business is voted on by the legislative body, but now they claim that such legislative action no longer applies (as it fell out of favor).

8. This Court's opinion on page 5. Is in error as the legislature did establish rules, but the Speakers of the House have refuse to follow said rules established by said legislature. The Remonstrance have not been referred to the legislative body by the Speaker, therefore the legislature has not exercised its discretion over the substance of said Remonstrance.

9. Remonstrance's filed with the General Court protesting violations of the Constitution of N.H. and not political questions as claim by the Defendants, therefore a public matter and not political question.

   Burt v. Speaker established the precedent that the legislature rulemaking authority cannot be used by the legislature to alter or infringe upon the Constitution, the

Speaker of House and the President of the Senate definitely cannot use the legislatures rulemaking authority to grant themselves powers reserved to the legislative body.

10. The Defendants Attorneys have been disingenuous in their pleadings to the court. This is case is not about the constitutional authority of the legislature to make its own rules under Part II, art. 22 and article 37, as argued by the opposing council.

11. The claim by the Defendants, that there are no rules by which a remonstrance may be heard and considered is a distraction and not true. The Court has failed to notice an all-important point, that since 1784, the legislature has always delegated to the speaker the following duties. Here is an early example; House Rule 5. (1824), stating that "***The Speaker shall designate*** *to which of the standing committees,* ***all memorials, petitions,*** *accounts,* ***or other matters, shall be referred, unless otherwise ordered by the house.***" (emphasis added) The only fundamental change from the past, to the current rules is the removal of the word petition in the aforesaid current house rule 4. So, in other words every elected legislature since the beginning of this current Constitution of, June 2, 1784 till the current House Rule #4, a legislative body has established under the Constitution, Part II, article 22, that the Speaker "shall" refer all matters or business requiring the attention of the legislature to be referred to the legislative body.

12. "*That clause, which confers upon the 'general court' the authority 'to make laws', provides at the same time that they must not be 'repugnant or contrary to the constitution….''''* *Id. 210* Merrill v. Sherburne 1818

13. This Court's opinion of Merrill v. Sherburne 1.N.H.199, is void of the most relevant part, The clarification of the separation of powers of Part I, art. 37.

14. [A] *marked difference exist between the employment of judicial and legislative tribunals. The former decides upon the legality of claims and conduct; the latter makes rules, upon which, in connexion with the constitution, those decisions should be founded*. ***It is the province of judicial power also, to decide private disputes 'between or concerning persons***,' ***but of the legislative power to regulate publick concerns*** ***and*** to '***make laws***' for **the benefit and welfare of the State**. (Id. 204, Merrill v Sherburne 1 N.H. 199; emphasis added).

15. The Judicial power is to decide ***private disputes "between or concerning persons"***. (Emphasis added)

    This opinion details two functions of the legislature, ***"The legislative power to regulate publick concerns"*** is the first part, and the second part is "***and to 'make laws' for the benefit and welfare of the State.***" (Emphasis added) The power of the legislature to make laws under Part I, art. 31 and Part II, art. 5 is separate from its ability to repeal laws which comes first under Part I, article 29. As such, the legislature still retains jurisdiction under Part I, art. 31 to redress public grievances of legislative acts that are repugnant or contrary to the Constitution by repealing them under Part I, art. 29. Part I, art. 31. originally stated "for correcting, strengthening, and confirming the laws" this intent still remains, because the legislature can correct the law, as that jurisdiction still remains with the legislature in Part I, art. 29 as it did in 1784, preserving the ability of legislature to repeal

unconstitutional law is still incorporated in the first part of Part, art.31, as its intent, was not abolished by its 1792 amendment. Then comes the second part cited by the Court, “and for making new ones (laws)”, as common good may require.” The use of “and” after the first part means a second ability of the legislature. The amended version of Part I, art. 31 is still one sentence, it still has two parts. “The Legislature shall assemble for the redress of public grievances” …. The first part is still mandatory “shall”. What is mandatory? The duty upon the legislature to assemble for the Redress of public grievances” … This is the first duty of the legislature in article 31. Next comes the second duty in the sentence, “and for making such laws as the public good may require.” As article 31 is one sentence with two parts, the second part is the constitutional guarantee that the legislature shall make such laws as the public good may require to carry out the first part of the sentence, that the legislature shall assemble for the redress of public grievances. This is the private right of the Appellant and not the right of the State. This Court’s opinion of Article 31 is an error in constitutional interpretation. Part II, form of Government, article 5, is the power delegated to the legislature to make laws for the State (the government) is separate and distinct from making law for the “people” in Part I, article 31. Under article 29 and under article 31 the legislature can repeal a law, or it can make a law to redress public grievances. The Appellant Representatives, (Dick Marple (deceased) or Rep. Raymond Howard) both appealed in person to both Speaker Shurtleff and Speaker Packard who refused to refer the Appellants Remonstrance to the legislative body, as required

by House Rules and the Constitution of N.H. A Remonstrance referred to the legislative body, must issue its opinion and its recommendations, just like it does with all bills, and the legislature must take a vote to either except or reject their opinions or recommendations. This is how it worked from 1784 till 1825 as 51 Remonstrances have been preserved in the State Archives in their original manuscript form. This usage and custom and constitutional precedent cannot be ignored, as such is an error in constitutional interpretation and recognition of legislative precedent.

16. Part I, art. 30. The Freedom of Speech clause must be interpreted in light of the framer's intent in 1784, it is the private right the people, reserved to the Appellant in the Bill of Rights of N.H. It is not delegated to Part II, form of government. The fact of the matter is, from 1784 till at least 1864, it was common during that period of the State's history under are current Constitution, for citizens to petition or remonstrate, to instruct their representatives, to testify before legislative tribunals. Part I, article 30 was written for the specific purpose, to protect the people when testifying before legislative tribunals or public testimony. This right is extended to the citizens representative in the legislature when they are acting on their behalf. In this case the Appellants representatives were both denied that right, to present the appellants remonstrance the legislative body. Therefore, by denying the Appellants representatives the ability to speak on the Appellants behalf, the Appellants freedom of speech was thereby violated. The State suppression of a citizen's written protest (remonstrance), also violates the Appellants Freedom of

Speech clause under the N.H. Bill of Rights, article 30, and also 1st Amendment Freedom of speech clause under the incorporation doctrine of the 14th Amendment. The substantive and procedural Due Process rights under the 14th amendment to the U.S. Constitution are also violated by the state's actions.

17. A constitutional right without a remedy is no right at all. The citation by both Courts in this case, of the 1st amendment case law and all the opinions cited therein is an error in constitutional law by both Courts. This Court cannot Ignore the Constitution of N.H. its Bill of Rights, and its provisions, its legislative precedent, historical usage and customs as summitted in this case and preserved in the House and Senate Journal in the State Archives, and look for precedent in the Federal Bill of Rights. The first amendment to the U.S. Constitution does not apply to this case as the Federal Bill of Rights is prohibition upon the Federal Congress from enacting any law, to prohibit the people from petitioning the Federal Government for redress of Federal grievances, not grievances with their State government. Each and Every case cited, is correctly decided, as each case cited is a state case, seeking the protections of the 1st Amendment, which the 1st Amendment cannot provide a remedy for a state grievance. Said 1st Amendment right is void of the duties of the legislature in N.H. Bill of Rights, art. 29. art. 30. art 31. and art. 32.

18. Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436 (1966)

19. A lawyer today, representing someone who claims some constitutional protection and who does not argue that the State constitution provides that protection, is skating on the edge of malpractice. *(State v. Jewett*, 500 A.2d 233, 234 (Vt. 1985)

CERIFICATION OF COMPLIANCE WITH WORD LIMIT

The Plaintiff certifies that Microsoft Word count in this brief complies with Supreme Court Rule 16(11). This brief contains 3000 words.

CERTIFICATION

I, Daniel Richard, do hereby swear that on July 17, 2022, I did mail, e-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 July 17, 2022

VERIFICATION

I, Daniel Richard, certify that the foregoing facts are true and correct to the best of my knowledge and belief.

/s/ *Daniel Richard*

Daniel Richard