No. _____

In The
# Supreme Court of the United States

JOHN M. PROBANDT and JOHN P. RAYNOR,

*Petitioners,*

v.

DENNIS P. WALKER,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Nebraska Court Of Appeals**

## PETITION FOR A WRIT OF CERTIORARI


Petitioners:

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## QUESTIONS PRESENTED

1. Is the State Courts' intentional refusal to apply the provisions of the Nebraska Uniform Commercial Code ("Neb. UCC") (a preemptive and uniform Code which is the primary law) to adjudicate liability among the co-makers of a negotiated instrument (the "Note"), a violation of the U.S. Constitution, Amend. XIV, § 1?

2. Is the knowing and intentional refusal to apply the Neb. UCC by the Courts, without any justification whatsoever, a violation of 18 U.S.C. § 242, *Deprivation of rights under color of law*?

3. Does the Nebraska Appellate Court's mandate to the Nebraska District Court directing the entry of a judgment against a former managing member for his expenditures of an Oregon Limited Liability Company (LLC) funds violate the Internal Affairs Doctrine?

## PARTIES TO THE PROCEEDING

Petitioners ("J. Raynor") and John M. Probandt ("J. Probandt") were members of the Oregon Limited Liability Company ("LLC"). J. Probandt was the managing member of the Oregon LLC.

Dennis P. Walker ("D. Walker") was a member of the Oregon LLC. D. Walker and J. Raynor were co-makers of negotiable instrument (the "Note") the proceeds of which in March of 2008 refinanced the debt of the Oregon LLC.

## DISCLOSURE STATEMENT

J. Raynor is a member of the Nebraska Bar Association and a member of this Court's Bar.

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## PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

The opinions/decisions at issue are:

After a timely appeal, the Nebraska Court of Appeals (the "Appellate Court" or "NAC") affirmed in part and reversed in part the District Court's decision on September 12, 2017, which Appellate Court decision is reported as *Walker v. Probandt*, 25 Neb. App. 30, 902 N.W.2d 468 (2017). *See* Pet. App. 5-31.

The Dawson County District Court (the "Trial Court" or "NDC") entered its Memorandum Opinion, Order and Judgment on October 2, 2015. The Trial Court's decision is not reported. *See* Pet. App. 32-48.

## JURISDICTION

On May 8, 2018, the Nebraska Supreme Court declined to consider Petitioner J. Raynor's timely filed Petition for further review. This Court has jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

*Neb. UCC § 1-103(a) –*

> The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:
>
> (1) to simplify, clarify, and modernize the law governing commercial transactions;
>
> (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
>
> (3) to make uniform the law among the various jurisdictions.

*Neb. UCC § 1-103(b) –*

> Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity . . . supplement its provisions.

*Neb. UCC § 3-102(a) –*

> This article applies to negotiable instruments. . . .

*Neb. UCC § 3-419(a) –*

> If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the

instrument, the instrument is signed by the accommodation party "for accommodation."

*Neb. UCC § 3-419(e)* –

> An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against and is not entitled to contribution from, an accommodation party.

*U.S. Const. Amend. XIV, § 1* –

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws.

*18 U.S.C. § 242* –

> Whoever, under color of any law . . . willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the . . . laws of the United States. . . .

*11 U.S.C. § 524(a)(2)* –

> A discharge in a case under this title – . . . (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal

liability of the debtor, whether or not discharge of such debt is waived. . . .

## STATEMENT OF THE CASE

This case encapsulates many of the issues arising because of legal reasoning which results in decisions by courts which knowingly depart from the results mandated by the express provisions of a preemptive, uniform code and involve the issuance of judgments, without jurisdiction by reason of the Internal Affairs Doctrine. Additionally, in effect, the judgment against Petitioner J. Raynor is a collateral attack upon the efficacy statutory discharge injunction.

D. Walker, an "accommodated party" pursuant to the Neb. UCC, on June 15, 2011, settled with the Bank and acquired domination and control over the negotiable instrument (the "Note"). Petitioner J. Raynor, by reason of Statutory Injunction, was an "accommodation party" pursuant to the Neb. UCC. Pursuant to Neb. UCC and *as a matter of law*, D. Walker had no legal right of recourse or contribution from Petitioner J. Raynor by reason of Neb. UCC § 3-419(e). Further, pursuant to Neb. UCC § 3-419(e), if Petitioner J. Raynor had to pay the Note, he would then have recourse against D. Walker. Simply, pursuant to Neb. UCC § 3-419(e), as between an "accommodated party" and an "accommodation party," the final burden for repayment of the Note gets allocated to the "accommodated party;" in this case, D. Walker.

The Trial Court and the Appellate Court both refused to apply the Neb. UCC and make the judicial determination that D. Walker was an "accommodated party." Petitioner J. Raynor was denied the application of and the benefit of Neb. UCC § 3-419, the primary and preemptive law as determined by the Neb. UCC. Further, the facts establishing Petitioner J. Raynor's legal status as an "accommodated party" rests upon his 2005 Bankruptcy Discharge, the statutory injunction emanating from 11 U.S.C. § 524(a)(2), and a final order of the U.S. Bankruptcy Court clarifying the discharge injunction. The Courts' decisions are a collateral attack on the lawful and final orders of a U.S. Bankruptcy Court.

Petitioner J. Probandt did not participate in Trial Court proceedings nor in the Appellate Court proceedings to preserve his claim that Nebraska Courts could not exercise personal jurisdiction over him. A default judgment was not entered against Petitioner J. Probandt by the Trial Court on March 9, 2012, for the alleged misappropriation of the Oregon LLC's funds ("Misappropriation COA") because of the precedent in *Fla. ex rel. Dep't of Ins. v. Countrywide Truck Ins. Agency, Inc.*, 258 Neb. 113, 602 N.W.2d 432 (1999) (allowing judgment to be deferred for consistency of judgments and requiring the moving party to prove damages). Petitioner J. Raynor, in pre-trial briefing, made the Trial Court aware of the subject-matter jurisdictional issues at stake; the Internal Affairs Doctrine. Additionally, on February 13, 2013, the Trial Court dismissed a claim against another LLC member

which mirrored the same relevant time-frame as the Misappropriation COA because it was time-barred (the "2013 Order"). Pursuant to the law of the case as set forth in the 2013 Order, the Misappropriation COA against Petitioner J. Probandt was time-barred. In its final order, the Trial Court refused to enter judgment for the Misappropriation COA stating in its Memorandum Opinion and Final Order: "[t]he evidence offered by the plaintiffs and by Raynor on causes of action, two through six, the counterclaims, and defenses failed to establish the necessary elements required to entitle any party to relief." Pet. App. 45. With respect to the Misappropriation COA, the Appellate Court intentionally ignored the Internal Affairs Doctrine, reversed the Trial Court, and ordered the entry of a judgment by the Trial Court against Petitioner J. Probandt.

The Nebraska Supreme Court on May 8, 2018, declined, without opinion, to review the decision of the Nebraska Appellate Court. *See* App. 1-2.

### A. Factual Background.

The facts underlying this legal controversy are not disputed. The Joint Pre-Trial Memorandum ("JPTM") sets out nearly all of the facts in paragraphs 73 through 161, inclusive, which were stipulated ("STIP") facts. *See* App. 78-91, filed December 1, 2014. The stipulations and other relevant facts are:

1. The operating LLC was an Oregon LLC. *See* App. 79-83, STIP ¶¶ 88-93.

2. The Trial Court found the Oregon LLC to be legally dissolved in 2006. App. 34, Mem. Op. & Order.

3. The original financing LLC was organized as a South Dakota LLC. *See* App. 81-82, STIP ¶¶ 94-98.

4. The Trial Court found the South Dakota LLC to be legally dissolved in 2010. App. 34, Tr. Ct's Mem. Op. & Order.

5. The proceeds of the 2008 Note, which was stipulated to be a negotiable instrument pursuant to the Neb. UCC, were used to pay off the previous financing which had been secured in 2002. *See* App. 82-83, STIP ¶¶ 99-102, 104 & 105.

6. In 2005 Petitioner J. Raynor received a bankruptcy discharge. *See* App. 119, Bankruptcy Court's Clarification Order, entered as Tr. Exhibit 169; App. 90, STIP ¶¶ 151-152, & 155.

7. The Note, dated March 31, 2008, was executed by Petitioner J. Raynor, D. Walker, and others. None of the Note proceeds were personally received by any of the makers of the Note. *See* App. 82-84, STIP ¶¶ 103-112.

8. At the time of the 2008 refinancing, the Oregon LLC members were given an option to execute the Note. Petitioner J. Probandt declined to execute the Note. *See* App. 84-85, STIP ¶¶ 113-116.

9. The Bank holding the 2008 Note instigated suit on February 5, 2009 ("Note Litigation"). *See* App. 35, Tr. Ct's Mem. Op. & Order.

10. On March 9, 2009, D. Walker acting on his behalf and also on behalf of the Oregon LLC and the South Dakota LLC instigated an adversary proceeding in the Nebraska Bankruptcy Court to set aside Petitioner J. Raynor's Discharge (the "Walker Adversary Proceeding"). *See* App. 114, Bankruptcy Court's Clarification Order.

11. On March 31, 2009, D. Walker acting on his behalf and also on behalf of the Oregon LLC and the South Dakota LLC filed an answer in the Note Litigation and asserted, for the time, various claims against other Members including the Misappropriation COA against Petitioner J. Probandt. Tr. Exhibit 188.

12. The Walker Adversary Proceeding filed in Bankruptcy Court was dismissed by the Bankruptcy Court on July 1, 2009. *See* App. 114, Bankruptcy Court's Clarification Order.

13. On April 30, 2010, the Trial Court entered an Order striking Petitioner J. Raynor's right to raise his 2005 Discharge first raised in an amendment [Tr. Exhibit 221] on March 1, 2010. *See* App. 97-99, the NDC Order; App. 114, Bankruptcy Clarification Order.

14. As a result of a June 15, 2011 Settlement Agreement with the Bank, D. Walker became

the constructive owner of the Note and D. Walker exercised his authority by having the Note assigned to Skyline Acquisition, LLC ("Skyline LLC"). *See* App. 88-89, STIP ¶¶ 137-148; App. 36, NDC Mem. Op. & Or.

15. On April 17, 2017, the Nebraska Bankruptcy Court exercised limited jurisdiction over the Discharge Order and Statutory Injunction and issued an Order finding that Petitioner J. Raynor was not an owner of the Oregon LLC and the South Dakota LLC since 2004 and further, found that Petitioner J. Raynor had no personal liability for the 2002 note which was repaid on March 31, 2008, with the proceeds of the 2008 Note. App. 121-123, Bankruptcy Clarification Order.

16. Petitioner J. Raynor sought to reopen bankruptcy proceedings after an amended complaint was filed by D. Walker which transgressed upon the Discharge Order and Statutory Injunction. D. Walker responded by making the representation to the Nebraska Bankruptcy Court which became Stipulation 156, to wit: "Plaintiffs' [sic] agree that the sole basis for asserting recovery against John Raynor for the FSB Note rests upon John Raynor's expressed intent to assist Mark Herz's (sic)" [referred to as the Sole Basis Stipulation]. *See* App. 91.

## B. Proceedings Below.

The above factual background is supplemented by this statement of relevant proceedings:

1. After a trial, the Trial Court entered judgment on October 2, 2015. *See* App. 32-48, NDC Memorandum Opinion, Order & Judgment.

2. The Trial Court's Mem. Op., Or. & Judgment entered a judgment against Petitioner J. Raynor in favor of Skyline LLC for $2,306,244.76 together with interest accruing thereafter. App. 47-48.

3. The Trial Court's Mem. Op., Or. & Judgment dismissed, *with prejudice*, all other claims including the Misappropriation COA against Petitioner J. Probandt. *See* App. 47-48.

4. After post-trial motions, D. Walker timely appealed and Petitioner J. Raynor timely appealed, to wit:

   a. D. Walker appealed the failure of the Trial Court to enter a judgment against Petitioner J. Probandt; and

   b. Petitioner J. Raynor appealed on numerous grounds which included the failure to apply the primary and preempting law, the Neb. UCC, and the use of Skyline LLC, as a gratuitous assignee of the Note designated by D. Walker, to circumvent the Neb. UCC.

5. On September 12, 2017, the Appellate Court entered its decision on the appeals. *See* App. 5-31, the reported decision – *Walker v. Probandt*, 25 Neb. App. 30, 902 N.W.2d 468 (2017).

6. The Appellate Court held:

a. That the Trial Court should enter a judgment against Petitioner J. Probandt on the Misappropriation COA which effectively orders a Nebraska Trial Court to adjudicate the Internal Affairs of the Oregon LLC;

b. Skyline LLC, not D. Walker, was treated as the owner of the Note;

c. After offset for the payments made by other members to the Note, Skyline LLC is entitled to a Judgment against Petitioner J. Raynor; and

d. The Neb. UCC is not applicable nor relevant to determine the apportionment of liability of D. Walker and Petitioner J. Raynor and further found that Petitioner J. Raynor could not seek contribution from D. Walker until Petitioner J. Raynor's contribution exceeds D. Walker's contribution.

7. On September 22, 2017, Petitioner J. Raynor timely filed a rehearing motion with the Appellate Court raising six grounds:

a. Void Judgment relying upon the Internal Affairs Doctrine;

b. The decision was Antithetical to the Code effectively striking Neb. UCC § 3-419 from the Code;

c. The Opinion is Antithetical to Amendment XIV to the U.S. Constitution (citing also to 18 U.S.C. § 242) by denying Petitioner J. Raynor of the benefit of Neb. UCC § 3-419(e) which apportions the liability to the accommodated parties;

d. Improperly giving effect to the assignment to Skyline LLC to circumvent the result mandated by the Neb. UCC; and

e. Ordering a judgment inconsistent with the Law of the Case Doctrine.

*See* App. 62-68, NAC Rehearing Motion.

8. On January 29, 2018, the Appellate Court denied, without further opinion, Petitioner J. Raynor's Rehearing Motion. *See* App. 3-4.

9. On February 27, 2018, Petitioner J. Raynor filed with the Nebraska Supreme Court a Petition for Further Review. The grounds were errors:

a. By displacing the statutory test, the "Direct Benefits Test," of Neb. UCC § 3-419(a), the applicable primary law (the Neb. UCC is referenced by the use of "UCC");

b. By depriving the Appellee of the statutory protection afforded an "accommodation party" by the plain language of UCC § 3-419(e), the applicable primary law;

> c. By not applying this Court's binding precedent – the "*Mandolfo* Rule";
>
> d. By mandating the entry of a void judgment against Defendant, John Probandt; and
>
> e. By violating the equal protection clause of Amend. XIV to the U. S. Constitution (18 U.S.C. § 242 was cited in the supporting brief).

*See* App. 49-62, NSC Petition for Further Review.

10. On May 5, 2018, the Nebraska Supreme Court declined to review the case. *See* App. 1-2, NSC Petition for further review is declined.

11. Petitioner J. Raynor decided to seek review of this Court. Petitioner J. Probandt also decided to join in this action.

## REASONS FOR GRANTING THE PETITION

Generally, Petitioner J. Raynor is a lawyer and because of a former tax practice, understands code sections, the relationships between code sections, regulations, Court-made doctrines as applied to the interpretation of the law, and the applicability of the rules of statutory construction. With respect to the major theories of Statutory Interpretation it has been said –

> The two predominant theories of statutory interpretation today are purposivism and textualism. As discussed, both theories share the

> same general goal of faithfully interpreting statutes enacted by Congress. This goal is grounded in the belief that the Constitution makes the legislature the supreme lawmaker and that statutory interpretation should respect this legislative supremacy. Interpretive problems arise, however, when courts attempt to determine how Congress meant to resolve the particular situation before the court. The *actual* intent of the legislature that passed a given statute is usually unknowable with respect to the precise situation presented to the court. Accordingly, purposivists and textualists instead seek to construct an objective intent.

- *See* Congressional Research Service ("CRS"), Statutory Interpretation: Theories, Tools, and Trends (April 5, 2018), Major Theories of Statutory Interpretation at p. 10 (Footnotes omitted) (the "CRS Report").

On page 11 of the CRS Report, it states that: "Purposivists argue 'that legislation is a purposive act, and judges should construe statutes to execute that legislative purpose.'" (Footnote omitted). On page 13 of the CRS Report, it states that: "textualists focus on the words of a statute, emphasizing text over any unstated purpose." (Footnote omitted).

The legal reasoning of the Nebraska District Court and the Nebraska Appellate Court does not remotely resemble or comport with either the purposivists or textualists approach to statutory interpretation. If adhering to precedent, pursuant to this

Court, as stated in *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015), "promotes the evenhanded, predictable, and consistent development of legal principles" then; what can be said about adhering the plain language of statute especially when the statute, pursuant to the Act [the Neb. UCC] is not only the primary law but is also preemptive. This Court's holding and the Nebraska Supreme Court holdings supporting the adherence to balance struck by statute are too numerous to cite. Adherence to the law promotes civil resolution of disputes, *i.e.*, the rule of law.

Rather, in this case, the legal reasoning of the Nebraska courts resembles a court which closes its eyes to the express and plain language of the statute to reach a contrary result. This proper result with respect to Petitioner J. Raynor rests primarily upon facts determined by a final order of the U.S. Bankruptcy Court (Nebraska); a result the Nebraska Courts undermined.

It is settled law that the Bankruptcy Court had jurisdiction to enter the 2012 Clarification Order with respect to Petitioner J. Raynor's Discharge, to wit: "A proceeding to enforce the discharge injunction is a core proceeding under section 157(b)(2)(O) of title 28, and courts should readily **reopen** a closed bankruptcy case to ensure that the essential purposes of the discharge are not undermined." 4 Collier on Bankruptcy P 524.02 (16th Edition 2018). *See also*, *Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2205 (2009) (Given the Clarifying Order's correct reading of the 1986 Orders [issued more than a decade later], the only question left is whether the Bankruptcy Court had subject-matter

jurisdiction to enter the Clarifying Order. The answer here is easy: . . . the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders.); *Local Loan Co. v. Hunt*, 292 U.S. 234, 239 (1934) (That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled.) The Bankruptcy Court confined its ruling to its jurisdiction and its expertise. Further, the Petitioner was forced to Bankruptcy Court because the Trial Court and the Plaintiffs would not allow the Petitioner to plead his 2005 Discharge.

The Bankruptcy Court's April 17, 2012 Clarification Order ultimately resulted in Stipulation 156: "Plaintiffs' [sic] agree that the sole basis for asserting recovery against John Raynor for the FSB Note rests upon John Raynor's expressed intent to assist Mark Herz's [sic]." *See* App. 91, STIP ¶ 156. The Clarification Order and the Stipulation 156 means that, pursuant to Neb. UCC § 3-419(a), Petitioner J. Raynor is an "accommodation party." The stipulated facts make it indisputable that D. Walker is an "accommodated party." Pursuant to Nebraska UCC, the ultimate outcome of the litigation, *i.e.*, the ultimate apportionment of the burden for the Note repayment among co-makers, apportions the final burden for repayment of the Note to D. Walker.

Neb. UCC § 3-419(e) makes the "accommodated party" responsible for the final burden of the Note

repayment by barring the "accommodated party" seeking contribution and/or enforcing the Note *against the accommodated party*. On the other hand, the Nebraska UCC authorizes Petitioner J. Raynor to seek contribution and to enforce the Note against the accommodation party.

A litmus test of the Nebraska Courts' willingness to circumvent the Nebraska UCC is the fact that neither court would enter a finding that D. Walker was an "accommodated party;" notwithstanding repeated requests by Petitioner J. Raynor for such a determination.

A further illustration of just how far the Nebraska Courts were willing to go to avoid the Neb. UCC and the Bankruptcy Court's Clarification Order revolves around Skyline LLC. D. Walker settled with Bank and then designated Skyline LLC to hold the Note as a gratuitous assignee which previously had no connection to the controversy. To Petitioner J. Raynor, the interjection of Skyline LLC was not relevant, since pursuant to Neb. UCC § 3-419(e), Petitioner J. Raynor could enforce the Note to the extent of any payments to Skyline LLC against D. Walker, the accommodated party. Notwithstanding Neb. UCC § 1-103(a) and their own precedent, the Nebraska Courts gave effect to a sham transaction, *i.e.*, Skyline LLC.

The Appellate Court's failure to adhere to the Internal Affairs Doctrine with respect to Petitioner J. Probandt only further demonstrates how far afield this Court went. The Appellate Court failed to ascertain

whether it had jurisdiction to enter a mandate regarding the judgment *even though* Petitioner J. Raynor pointed out the Internal Affairs Doctrine. Then, when made clear in the Motion for Rehearing that the Court ordered the entry of a void judgment, the Appellate Court refused to grant a rehearing.

The Appellate Court's decision, which is awash with legal citations to law which are not relevant, is antithetical to the Rule of Law for so many reasons including:

**1. Void Judgment: Violation of this Court's Precedent:**

The Appellate Court ordered the District Court to enter a judgment on a cause of action on the internal affairs of an Oregon LLC, which adjudication conflicts with this Court's precedent and the Nebraska Supreme Court precedent. This Court's precedent states: "The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs. . . ." *Edgar v. Mite Corp.*, 457 U.S. 624, 645 (1982). The Nebraska Supreme Court adopted this ruling in *Johnson v. Johnson*, 272 Neb. 263, 269, (2006) recognizing the jurisdictional constraint upon Nebraska Courts. Later, the Nebraska Supreme Court held that the Internal Affairs Doctrine was codified in Neb. Rev. Stat. § 21-155 and applied to limited liability companies. *Midwest Renewable Energy, LLC v. American Engineering Testing, Inc.*, 296 Neb. 73, 83 (2017) (applying

the Internal Affairs Doctrine to LLCs). The Judgment if entered is void.

**2. A Uniform Act, Codifying a Commercial Code, Is Binding on the Court:**

The UCC is a more comprehensive, self-contained code than the Bankruptcy Code. This Court has held: "It is hornbook law that §105(a) does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." *Law v. Siegel*, 571 U.S. 415, 421 (2014) (internal citations omitted). *See also, Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) ("Whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code."). The Bankruptcy Code is not preemptive unless the language expressly provides preemption. On the other hand, Neb. UCC § 1-103(b) states: "Unless **displaced** by the particular provisions of the Uniform Commercial Code, the principles of law and equity . . . supplement its provisions." (Emphasis added). The stated provisions of the Nebraska UCC displace or are preemptive *as a matter of law* by its enactment. The Neb. UCC is far more preemptive than the Bankruptcy Code, to wit: " . . . the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by . . . the enacting legislatures about the appropriate policies to be furthered in the transactions it covers." UCC § 1-103, Cmt. 2. The Note, as stipulated, is subject to the Nebraska UCC. *See* Neb. UCC § 3-102(a) (This article

applies to negotiable instruments.). Neb. UCC § 3-419 provides express language to resolve the apportionment of the burden of repayment among co-makers or co-obligors of a Note. This controversy can be completely resolved by application of the provisions of the Neb. UCC. The Appellate Court's holding is unsupportable by any precept of statutory construction; purposivism, textualism or any other rules of statutory interpretation. The Neb. UCC is not advisory, a law the courts can choose to ignore. Because the Nebraska Courts choose to ignore statutes which govern the controversy; the decision is under the color of law but is far afield from the Rule of Law.

### 3. Equity Does Not Support the Appellate Court's Holding:

There is no legal support for any equitable exception to the outcome mandated by Neb. UCC § 3-419. This Court has held: "[a]s a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990). The Nebraska Supreme Court quoting the foregoing case has held: "We agree with the Court's reasoning, and we likewise find that if an exception to § 81-2032 is to be created for circumstances such as these, it is a matter for the Legislature to undertake." *J.M. v. Hobbs*, 281 Neb. 539, 546 (2011). The allocation by statute of the burden to D. Walker does not create the right to depart from express provisions of the statute, to wit:

"We acknowledge that our ruling forces Siegel to shoulder a heavy financial burden . . . , and that it may produce inequitable results for trustees and creditors in other cases . . . it is not for courts to alter the balance struck by the statute." *Law v. Siegel*, 571 U.S. 415, 426-27, 134 S. Ct. 1188, 1197-98 (2014). There is no authority, equitable or otherwise, to allow the Nebraska Courts to apportion the burden of repayment among co-makers or co-obligors of a Note inconsistent with Neb. UCC § 3-419. *See State v. Erick M. (In re Erick M.)*, 284 Neb. 340, 345, 820 N.W.2d 639, 644 (2012) (We will not look beyond the statute to determine the legislative intent when the words are plain, direct, or unambiguous.). The ruling is unsupportable.

#### 4. Skyline LLC; Noteworthy of Court's Determination to Alter the Neb. UCC Mandated Result:

D. Walker inserted Skyline LLC into transaction after the Note default and after the Note litigation commenced by having the Bank gratuitously assign the Note thereto pursuant to his settlement agreement with the Bank. Besides the numerous issues created by this sham transaction, *e.g.*, holder in due course, Nebraska precedent clearly denies D. Walker any benefit from such manipulation. Citing *Mandolfo v. Chudy*, 253 Neb. 927 (1998) the Nebraska Supreme Court, addressing the right to contribution, has held: "The assignment of promissory note . . . neither enhances nor diminishes this right." *Rodehorst v. Gartner*, 266 Neb. 842, 853 (2003). That case extended the *Mandolfo* Rule

to Neb. UCC. Additionally, the Courts closed their eyes to the sham transaction ignoring the Legislative direction that the "Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies." Neb. UCC § 1-103(a). *See Putnam Ranches, Inc. v. Corkle*, 189 Neb. 533, 535 (1973) (Courts are to construe and apply the Uniform Commercial Code liberally to promote its underlying purposes and policies.) Both the Appellate Court and the Trial Court were willing to turn a blind-eye to clear and binding precedent to reach their result. This legal reasoning encourages the commission of frauds upon the Court.

**5. Construction of Neb. UCC; Uniform Laws & the U.S. Constitution's Commerce Clause:**

Long ago, this Court recognized the benefit to interstate commerce of uniform laws stating: "The uniform laws proposed by the National Conference of Commissioners on Uniform State Laws and adopted by individual States have (among other benefits) **increased ease of interstate commercial relationships** by providing uniformity in commercial laws through uniform Acts governing sales and negotiable instruments." *New York v. O'Neill*, 359 U.S. 1, 10, 79 S. Ct. 564, 570 (1959) (Emphasis added). Commerce between the states was so important that the framers of the U.S. Constitution included the commerce clause within its provisions. U.S. Const. Art. I, § 8, Cl. 3. Petitioners are not asserting that the decision is a violation of the Commerce Clause of the U.S. Constitution.

Rather, the Appellate Court's decision is inconsistent with the purpose and policies of the uniform act, *i.e.*, to foster interstate commerce, and that there exists a Federal interest in fostering interstate commerce. Consideration of this writ would promote the end of substantial Federal Public Policy; to increase commerce between the States.

**6. Discharge and the Statutory Injunction:**

Petitioner J. Raynor is not claiming and has not claimed that the Note is discharged by reason of his 2005 Discharge. However, the refinanced debt was discharged as to Petitioner J. Raynor and the bankruptcy stripped him of his ownership of the Oregon LLC and the South Dakota LLC. The discharge means, as to the 2008 Note, that Petitioner J. Raynor is an "accommodation party" within the meaning of Neb. UCC § 3-419. D. Walker is an accommodated party within the meaning of Neb. UCC § 3-419. One could argue that the Courts faced a Hobson Choice: give effect to the Discharge, apply the Neb. UCC, and thereby have burden of the Note repayment fall disproportionately upon D. Walker or, on the other hand, treat the Neb. UCC as advisory and fashion a remedy that apportions part of the burden of the Note repayment upon Petitioner J. Raynor. The law does not present that choice. First, the Neb. UCC is the primary law and is preemptive to the extent its provisions, as in this case, apply. Neb. UCC § 1-103(b). *See Koperski v. Husker Dodge, Inc.*, 208 Neb. 29, 38 (1981) (If the seller has not committed mistake, fraud, or the like, we believe that the Code **preempts**

the field and that the buyer's only rights to return the goods are those stated in Article Two). Secondly, the Courts' rulings are a collateral attack on Discharge Order and Clarification Order. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152, 129 S. Ct. 2195, 2205 (2009) (Those orders are not any the less preclusive because the attack is on the Bankruptcy Court's conformity with its subject-matter jurisdiction, for [e]ven subject-matter jurisdiction . . . may not be attacked collaterally.). To circumvent the Neb. UCC to deny the benefit of the Clarification Order and the Discharge and further, it is a collateral attack upon the jurisdiction and order of the Bankruptcy Court. This Court cannot allow state courts to, under the color of law, collaterally undermine the efficacy of Discharge Orders and the Statutory Injunction.

**7. Amendment XIV; 18 U.S.C. § 242:**

The Note is a negotiable instrument; the UCC is the primary source of law [UCC § 1-103(a)]; the UCC is preemptive [UCC § 1-103(b)] and guaranty agreements are not involved. The Court of Appeals, in error, has, under the color of law, circumvented Neb. UCC § 3-419 and circumvented the Bankruptcy Court's Clarification Order. The holding violates the equal protection clause of the U.S. Constitution and 18 U.S.C. § 242. The FBI publishes the following statement on the color of law violations:

> U.S. law enforcement officers and other officials like judges, prosecutors, and security guards have been given tremendous power by

> local, state, and federal government agencies – authority they must have to enforce the law and ensure justice in our country. These powers include the authority to detain and arrest suspects, to search and seize property, to bring criminal charges, to make rulings in court, and to use deadly force in certain situations.
>
> Preventing abuse of this authority, however, is equally necessary to the health of our nation's democracy. That's why it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law. "Color of law" simply means that the person is using authority given to him or her by a local, state, or federal government agency.

- *See* FBI, Color of Law: https://www2.fbi.gov/hq/cid/civilrights/color.htm

Pursuant to a different page, the FBI describes the color of law violations as a priority issue. Intentional and undisciplined legal reasoning which tramples upon scores of binding precedent too extensive to cite to deny a party the benefit of the plain language of statutes are color of law violations that cannot be ignored by this Court. Prospectively apply 18 U.S.C. § 242, a constitutional statute that has been in existence since 1948, and this case will cause all courts to adhere to legislative statutes unless the departure is justified and exercise their authority only within the scope of their judicial authority.

**8. SUMMARY:**

In summary, why does a plaintiff pursue a cause of action after stipulating: "Plaintiffs' [sic] agree that the sole basis for asserting recovery against John Raynor for the FSB Note rests upon John Raynor's expressed intent to assist Mark Herz's [sic]?" Why does the Plaintiff seek a void judgment? Why does the Plaintiff seek to shut down Petitioner J. Raynor's effort to point out the Law of the Case Doctrine and the Internal Affairs Doctrine?

In his 2006 Year-End Report on the Federal Judiciary, Chief Justice John G. Roberts, Jr. made judicial pay the sole topic of his second annual report declaring that the failure by Congress to raise federal judges' salaries in recent years has become a "constitutional crisis" that puts the future of the federal courts in jeopardy. I cannot argue with the Court. The comments are also applicable to Judges in State Court. However, this is a country based upon the Rule of Law. Judges exercise the Judicial power of the constitutions of the States or the Federal Government. There cannot be a bargain whereby judges are free to rule based upon their personal proclivities and ignore statutes as the *quid pro quo* for being under-compensated. The Rule of Law must be followed. This case represents a complete and total break-down of the Rule of Law, to wit: the Courts completely and knowingly refused to apply the Nebraska Uniform Commercial Code, the Courts ignored the parties' voluntary stipulations, the Courts intentionally undermined the Bankruptcy Court's Clarification Order, and the Appellate Court exercised

jurisdiction they did not have by adjudicating the internal affairs of an Oregon LLC. This did not happen with respect to an isolated state law but rather a uniform law meant to foster interstate commerce. Further, the Appellate Court made the election to publish its decision with respect to a uniform law meant to enhance interstate commerce.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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