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No. 18-9054

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In The  
**Supreme Court of the United States**

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SANDRA FORQUER,  
*Petitioner,*

v.

WELLS FARGO BANK, N.A.,  
*Respondent.*

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*On Petition for Writ of Certiorari to the  
Maryland Court of Appeals*

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**PETITION FOR REHEARING**

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## **PETITION FOR REHEARING**

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Pursuant to Rule 44 of this Court, the Petitioner hereby respectfully petitions for re-hearing of this case before a full nine-Member Court.

By Law and precedent, and in accordance with the Supreme Court of the United States, *pro se* pleadings MAY NOT be held to the same standard of perfection as an attorney's; and whose motions, pleadings and all papers may ONLY be judged by their function and never their form.

*See: Haines v. Kerner*, 404 U.S. 519-421; *In re Haines*: *pro se* litigants are held to less stringent pleading standards than admitted or licensed bar attorneys. Regardless of the deficiencies in their pleadings, *pro se* litigants are entitled to the opportunity to submit evidence in support of their claims. *Platsky v. C.I.A.*, 953 f.2d. 25; *In re Platsky*: court errs if court dismisses the *pro se* litigant without instruction of how pleadings are deficient and how to repair pleadings. *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000).

It is the Petitioner's wish that the court allow her the opportunity to correct any defects or errors in order to conform to the rules and procedures.

The matter before this court began as a Verified Claim for Replevin in the District Court of Maryland for Harford County, Case No. 09-01-0002012-2018. This was an action to have the court cause Respondent to return the Petitioner's chattel property.

Pursuant to Md. Rule § 4-401, and specifically § 4-401(2), a replevin action to acquire the chattel property of the Petitioner, regardless of the amount, is proper in the lower district court of Maryland. The case involves the Petitioner's personal chattel property, the Genuine Original Note # 242162C and the Genuine Original Deed of Trust, that are being wrongfully detained.

The Petitioner has followed the rules of the courts and the law, in order to attain her remedy, but has been denied by the lower courts for erroneous reasons. The Petitioner has gone before three state courts, the district court, the circuit court and the appellate court. All of these courts have dismissed the Petitioners replevin action, refusing to honor their own rules and procedures pursuant to Md. Rule § 4-401. The lower state courts pattern and practice in this replevin action also failed to protect the Petitioner's constitutional rights established by Md. Const. Decl. of Rts. Art. 19.

MD. CONST. DECL. OF RTS. ART. 19 provides:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

In essence Petitioner has been denied her state's constitutional rights and the United States Constitutional rights under the Fourteenth Amendment of due process and equal protection of the law. Now it appears that the Supreme Court, the highest court in the land, has also denied the Petitioner access to the courts to have her case adjudicated properly and according to the law.

In California Casualty Ins. Co. v. Appellate Department (1996) 46 Cal.App.4th 1145, 1147, the Second District Court of Appeal observed, "This is a small case, as cases go, but it raises a significant principle: judges, including appellate judges, are required to follow the law."

The matter before this honorable court is a small case. It is a case of a pro se defending her constitutional right for a remedy against a multi-million dollar corporation. If the Petitioner is not allowed to seek a remedy in the lower courts, it is up to the Supreme Court to make sure that a United States citizen's constitutional rights are protected. If this court does not accept the Petitioners Petition than where does a citizen go to have their constitutional rights enforced, and to have their case adjudicated according to the laws of the United States of America?

The Uniform Commercial Code (“UCC”) is a set of laws that provide legal rules and regulations governing commercial or business dealings and transactions. The UCC regulates the transfer or sale of personal property.

The goal of the UCC was to achieve substantial uniformity in commercial laws across the 50 states. The UCC was adopted, enacted and codified into the Maryland code of statutes as Maryland Commercial Law Code (Md. Comm. Law).

The District Court of Maryland for Harford County had exclusive jurisdiction of this civil action, pursuant to MD. Code, Courts & Judicial Proceedings § 4-401<sup>1</sup> and 4-401(2)<sup>2</sup>. A replevin action is proper in the district court, when a Petitioner is attempting to have personal property returned that is being wrongfully detained, regardless of the amount in controversy. Pursuant to Maryland laws, an action for replevin is under the exclusive jurisdiction of and can only be filed in the state's lower district court.

The Petitioner filed the replevin action in the District Court of Maryland for Harford County Case No. 09-01-0002012-2018, on April 11, 2018. A show cause hearing was held on May 18, 2018, and the lower court erroneously dismissed the case, based on the presumption that a note is not a negotiable instrument regulated under Article 3 of the Maryland Code, Commercial Law, and therefore did not have to be returned to the Petitioner. Under Definitions in the Md. Comm. Law § 3-104(b), “Instrument” means a negotiable instrument”. The Uniform Commercial Code (“UCC”) governs all commercial activities, which include notes, under Article 3-Negotiable Instruments<sup>3</sup>.

An appeal was timely filed in the Circuit Court of Harford County, Maryland, Case No. C-12-CV-18-000315, on June 15, 2018. The circuit court held a hearing de novo on September 12, 2018. At the hearing, the judge erroneously dismissed the Petitioner's appeal for the replevin action, stating that the case was res judicata. As this Court is aware,

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<sup>1</sup> § 4-401 - Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

<sup>2</sup> (2) An action of replevin, regardless of the value of the thing in controversy;

<sup>3</sup> Articles: 3 (negotiable instruments, promissory notes, banknotes, and drafts), 4 (bank deposits and check collection), 5 (letters of credit), and 7 (warehouse receipts, bills of lading, and documents of title) all regulate **commercial paper**, devices used to transfer funds from one party to another. These Articles regulate the form such devices can take, the manner in which they can be created, fulfilled, and transferred to third parties. *Business Law Basics*.

Res Judicata means “the thing has been decided.” The principle that a final judgment of a competent court is conclusive upon the parties in any subsequent litigation involving the same cause of act. The circuit court erred in its decision because the Petitioner had not previously filed a replevin action prior to the filing of this case. The circuit court cannot provide any material fact evidence that the Petitioner previously filed a replevin action. Res judicata did not apply to the replevin action.

The Petitioner filed the Petition for Writ of Certiorari, case no. COA-PET-0358-2018 in the Maryland Court of Appeals. On January 18, 2019, the Maryland Court of Appeals denied the Petitioner’s unopposed Petition for Writ of Certiorari, stating that “there has been no showing that review by certiorari is desirable and in the public interest.”

The Petitioner timely filed the Petition for Writ of Certiorari in the Supreme Court of the United States.

The Petitioner’s note and deed of trust obligations are fulfilled. Upon demand, Respondent is required by the laws of Maryland, especially and specifically, *inter alia*, Md. Comm. Law § 3-501, to surrender the Genuine Original Note and the Genuine Original Deed of Trust relating to the real property, back to the maker upon request pursuant to Md. replevin law, 4-401(2).

The Petitioner is the maker, creator and issuer of the personal, chattel property known as the Note and Deed of Trust dated October 31, 2005, as evidenced by her signature.

Under Md. Comm. Law § 3-103(a)(5) maker is defined: “Maker” means a person who signs or is identified in a note as a person undertaking to pay.

Wells Fargo Bank, N.A., the Respondent, was never a party to the contract that was created between GSF Mortgage and the Petitioner; and Wells Fargo Bank, N.A. has failed and refused to provide any fact evidence to the contrary. The Petitioner is a party to those instruments<sup>4</sup>. The Petitioner in the replevin action is the legal and lawful maker, issuer and owner of the chattel property, the note and deed of trust.

Replevin is a type of action that can be used by anyone with a genuine claim to personal property, and the Petitioner has demonstrated that she has a genuine claim to her property. Pursuant

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<sup>4</sup> Md. Comm Law Code § 3-103(a)(8) definition: “Party” means a party to an instrument.

to Md. Comm. Law § 3-501(b)(2)(iii), upon demand the Respondent is required to return the personal chattel property to the Petitioner once the obligation is satisfied. If they do not, they are in violation of Md. Commercial Law and they are liable. "Where one acquires possession of the property in a lawful manner . . . his refusal to relinquish possession or control over the property after a demand by [p]laintiff gives rise to the action."<sup>5</sup>

In a long standing case, the Supreme Court stated in *Olson v. Thompson*, OK 18, 52 P. 388, 6 Okla. 576 (1898):

"...where the possession of a note that has become invalid is sought by the maker, it is not because he claims to be entitled to it as property, (so far as his relation to it is concerned,) **but because he is entitled to be protected against it as evidence of a claim.**" *Sigler v. Hidy, et al.*, [Ia.] 9 N.W. 374, (*Emphasis added*).

The Supreme Court case *Olson v. Thompson* also stated that "**the true rule is that the maker of a promissory note—not void, ab initio—is entitled to the immediate possession of the same when it has been paid or cancelled by order of court, or when, for any other reason, it has become absolutely void and invalid as an obligation.**" This Supreme Court decision has never been overturned.

Black's Law Dictionary 2nd Ed. defines maker, "(A) *This term is applied to one who makes a promissory note...*".

A *prima facie* case for replevin requires a Petitioner to show they are entitled to immediate possession of personal property (chattel) and has made a demand to the person or entity possessing the property, but the demand has been refused.

The Respondent has admitted they are in possession of the Petitioner's note and deed of trust. The Petitioner has demonstrated that a demand was made to the Respondent prior to initiating the replevin action, and that the Respondent has failed and refused to return the personal chattel property. The Petitioner has demonstrated that pursuant to Md. Comm. Law § 3-501(b)(2)(iii) – the Petitioner is entitled to immediate possession of the chattel property, the note and deed of trust. All three requisites for a replevin action have been met.

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<sup>5</sup> *Greenline Equip. Corp., Inc. v. Covington Cty. Bank*, 873 So. 2d 950, 958 (Miss. 2002) (quoting *Natl Benefit Adm'rs, Inc. v. Miss. Methodist Hosp. & Rehab. Ctr., Inc.*, 748 F. Supp. 459, 466 (S.D. Miss. 1990))

Petitioner has stated a claim upon which relief should have been granted by the lower state district court.

Respondent's failure to return Petitioner's personal, chattel property, constitutes a willful, deliberate act of wrongdoing. *Scott v. Jenkins*, 345 Md. 21, 690 A.2d 1000 (1997). *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 849 A.2d 504 (2004); *Garcia v. Foulger Pratt*, 155 Md. App. 634, 845 A.2d 16 (2003) "in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will or fraud."

In *Lawson v. Commonwealth Land Title Ins. Co.*, 518 A. 2d 174, Md. Court of Special Appeals 1986. The court agreed that tort claims permit recovery for the loss or deprivation of intangible property. "In the first stage, the law came to regard the physical document evidencing an intangible right — a **promissory note**, a stock certificate, a bank book, etc. — as itself a chattel capable of conversion. In the second, it merged the underlying intangible right with the document so that the injured owner could recover not just the nominal value of the document itself that was wrongfully withheld but also the value of the right evidenced or represented by the document." *Emphasis added*.

"A person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment." *Berry & Gould v. Berry*, 360 Md. 142, 151 (2000) (quoting Restatement (Second) of Restitution § 1 (Tentative Draft No. 1, 1983)). In *Penniman v. Winner*, 54 Md. 127 (1880), it held that an action of trover would lie for the wrongful detention of "a valuable security," in that case the equivalent of a promissory note.

Maryland Commercial Law Code and Md. Rule 4-401 clearly indicates that the Petitioner has a legal and lawful right to demand to have her personal property returned, but the Maryland courts are not following the law in a manner that is equal to all parties in the case. That is a denial of equal protection under the law by the Maryland courts.

The intended protections of the UCC are recognized across the United States. One of the UCC's primary goals is to promote certainty and predictability in commercial transactions. The UCC mandates and regulates how commercial activity is to be conducted.

The Respondents are refusing to follow the commercial code, which is law in 50 states. If Maryland state courts refuse to comply with

its own laws by not enforcing compliance under the Md. Comm. Law, where does a Maryland state citizen go to have their rights protected?

There is significant case law regarding the protection of the maker of a note or deed of trust, from multiple claims on their instruments. It is not an unreasonable request for the maker of the instruments to demand they be returned. *5-Star Management, Inc. v. Rogers*, 940 F.Supp. 512 (USD Ct. E.D. NY 1996) Recognizing a policy to “protect the maker of the Note, who also issues a mortgage, from being exposed to liability twice in respect of the same underlying debt.”

*Wells Fargo Bank v. Sessley*, 2010-Ohio-2902 (OH Ct. App. 2010), Noting an “underlying concern about multiple judgments on the same debt.”

*Weingartner v. Chase Home Finance*, No. 2:09-cv-02255-RCJ-RJJ (USD Ct. D. NV 2010) Rejecting a MERS claim of independent authority to assign the beneficial interest in the underlying debt, **the Court indicated a need to avoid the risk of “rival claimants to the same underlying debt.”** *Marks v. Branstein*, No. 09-11402-NMG (USD Ct D. MA 2010) and, also, *In re Kemp*, No. 08-18700-JHW (Bankr. D. NJ 2010). *Emphasis added.*

*Adams v. Madison Realty & Development, Inc.* 853 F2d 163 (3<sup>rd</sup> Cir. 1988) Holding that strict compliance with the UCC protects each intended owner of the note as it get passed about; *Cogswell v. Citifinancial Mortgage*, 624 F.3d 395 (US Cir.7<sup>th</sup> 2010). Otherwise, the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument.” *Emphasis added.*

It’s obvious from the lower court’s rulings, that the Petitioner is not being allowed access to the court to have the case decided by a jury of her peers. Petitioner is not being provided equal protection and due process under the law. The lower courts used erroneous reasons to dismiss the Petitioners case.

*Sherer v. Cullen*, 481 F 946, “We could go on, quoting court decision after court decision, however, the Constitution itself answers our question. Can a government legally put restrictions on the rights of the American people at any time, for any reason? The answer is found in Article Six of the U.S. Constitution.”; “An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.”, *Norton v. Shelby County*, 118 U.S. 425 p. 442.

The issues in the replevin action are not assumptions, presumptions, nor conclusions, they are facts before the court. The Petitioner asserts that she has been denied equal protection of the law, and access to a remedy in the judicial system through the unreasonable denial of the replevin action by the District Court, the Circuit Court, and also the Maryland Court of Appeals. The law clearly states that the Petitioner is entitled to have her personal property returned. The Petitioner is being deprived of her personal property, which is a violation of her Constitutional rights. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution states:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any Thing in the Constitution or laws of any state to the contrary notwithstanding."

The responsibility of a judge is to follow the rule of law and uphold the constitution and laws as they are written, in order to protect the public. They must apply the written law to each case without being biased.

The Md. Comm. Law Code § 3-501(b)(2)(iii) is law that clearly states: "**Upon demand** of the person to whom presentment is made, the person making presentment must – sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made. *Emphasis added.*

The courts are refusing to follow the law as it is written. It is in the public's interest to have this case of first impression heard and decided in order to set precedent for the state courts to follow for future cases. The District Court of Harford County, the Circuit Court of Harford County and the Maryland Court of Appeals all refused to enforce Maryland's commercial law, and MD. Code, Courts & Judicial Proceedings § 4-401, as it is written.

"To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State." *City of Dallas v. Mitchell*, 245 S.W. 944.

The scope of the Due Process Clause and the Equal Protection Clause of the Federal Constitution are not coterminous, however, the due process of law as guaranteed by the Fifth Amendment includes, at least in part, equal protection as guaranteed by the 14<sup>th</sup> Amendment.

*Radio Position Finding Corp. v. Bendix Corp.*, 205 F. Supp. 850 (D. Md. 1962), judgment aff'd, 371 U.S. 577, 83 S. Ct. 548, 9 L. Ed. 2d 537 (1963) (applying Maryland law).

The Due Process Clause of the 14<sup>th</sup> Amendment inhibits only such action as may fairly be said to that of the states.<sup>6</sup> Accordingly, the first prerequisite to raising a due process argument is that the action complained of must constitute state action.<sup>7</sup> It obliges one to do what is just, not merely refraining from doing what is improper,<sup>8</sup> and it erects no shield against merely private conduct, however discriminatory or wrongful.<sup>9</sup>

Prior to considering whether an individual's right to due process was violated, courts must determine first that **(1) State action has been employed (2) to deprive that individual of a substantial interest in property.** *In re Ryan W.*, 434 Md. 577, 76 A.3d 1049 (2013); *Rhoads v. Sommer*, 401 Md. 131, 931 A.2d 508 (2007). *Emphasis added.*

The Petitioner is the maker and the only remaining party to those instruments, and is requesting the instruments, as defined in the Md. Comm. Law Code, Article 3 Negotiable Instruments, to be returned. The Respondent is not a party to those instruments/contracts. Any and all obligations of the instruments have been fulfilled. The Respondent has no valid claim on those instruments in order to retain possession of them.

A demand was made for the note and deed of trust to be returned to the Petitioner, pursuant to Md. Comm. Law Code 3-501. The Respondents refused to return the instruments. The Respondents are unlawfully withholding the Petitioner's personal chattel property.

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<sup>6</sup> *Pitsenberger v. Pitsenberger*, 287 Md. 20, 410 A.2d 1052 (1980); *Riger v. L and B Ltd. Partnership*, 278 Md. 281, 363 A.2d 481 (1976); *Barry Properties, Inc. v. Fick Bros. Roofing Co.*, 277 Md. 15, 353 A.2d 222 (1976).

<sup>7</sup> *Toland v. Futagi*, 425 Md. 365, 40 A.3d 1051 (2012); *New Bd. Of School Com'rs of Baltimore City v. Public School Adm'r's and Sup'r's Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).

<sup>8</sup> *Campbell v. State*, 37 Md. App. 89, 376 A.2d 866 (1977).

<sup>9</sup> *Edwards v. Maryland State Fair and Agr. Soc.*, 476 F. Supp. 153 (D. Md. 1979), judgment, aff'd in part, rev'd in part on other grounds, 628 F.2d 282 (4<sup>th</sup> Cir. 1980)(applying Maryland law); *Fenner v. Bruce Manor, Inc.*, 409 F. Supp. 1332 (D. Md. 1976)(applying Maryland law); *Green v. Cooperstone Ltd. Partnership*, 28 Md. App. 498, 346 A.2d 686 (1975).

The Petitioner's Petition to this Court for a Writ of Certiorari involves a case of first impression<sup>10</sup>. The issues of this case have not been previously addressed by a higher court, and it involves an issue that requires interpretation and direction by the Supreme Court, and to protect the public's interest in having their property returned to them.

Pursuant to the Md. Comm. Law, the Petitioner has made a demand to have personal property returned to her, but was denied. The Respondent cannot be harmed financially or in any other way by returning the Original Note and Deed of Trust to the Petitioner. The Petitioner has demonstrated all of the requirements for a proper replevin action are present in this case and that the matter has never been previously litigated, but yet the Petitioners replevin action was continuously dismissed by the lower state courts. The Md. Comm. Law is the law in the State of Maryland and it clearly states that the Petitioners instruments must be returned.

It is important for state courts to follow state laws as they are written, and allow state citizens the opportunity to access its courts for redress of grievances in a valid state court action. This is how the judiciary instills confidence in the public's perception of the court system. The public's perception of how the judiciary system works in this country has been very much affected by the actions of lower state courts who do not follow and apply the law in an equal and unbiased manner.

The bias is clearly evident in this case. The Petitioner is a pro se litigant and the Respondent is a well-known corporation with unlimited resources. Regardless of the stature of each party, the law should have been applied equally, and it was not.

This is a case of first impression that needs to be heard on its merits, which will have a substantial and significant controlling effect on future replevin cases filed in the Maryland State courts and other state courts. Current Supreme Court case law needs to be implemented to prevent future incidents of state citizens, who are pro se litigants from being denied possession of their personal chattel property. Both parties need to be treated in a manner that is fair, honest and equal. The Petitioner is being deprived of personal property without due process and equal protection of law, which is a violation of the Petitioners United

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<sup>10</sup> A case of first impression involves a legal issue, or question of law, that has not been ruled on by a court that has jurisdiction over the case. Because this type of case requires the court to make an interpretation of some point of law, these decisions often become binding precedent, at least in the jurisdiction in which the case is decided.

States Constitutional rights, as well as the State of Maryland Constitution.

This Court's silence on the question presented encourages the lower state courts to continue to use their positions in a manner that is unjust and unequal to all who come to the courts for relief and fairness in the justice system. The Petitioner deserves to have her case be properly and lawfully adjudicated in a manner that is fair, honest and unbiased to all involved, as does every State and American citizen.

This court is the final arbitrator in this issue. The Petitioner has nowhere else she can go in order to seek her remedy. There is a strong need for a definitive decision by this superior court. If this court does not reconsider accepting the Petitioners Writ of Certiorari, then the lower state courts and the multi-million dollar corporations, i.e., Wells Fargo Bank, N.A., will be allowed to continue to ignore the law and deprive the United States citizens of their property.

This issue in this petition is of national importance due to the fact that there has been no recent Supreme Court decisions regarding this matter since 1898 in the case of *Olson v. Thompson*. Unless this Court resolves the issues in this case in a precedential manner, there will be others cases of citizens being denied their civil and constitutional rights from various states that will come before this court. Md. Comm. Law and replevin rules are clear, the Petitioner's property must be returned.

The rehearing is necessary because this case is not an isolated incident. Pro se litigants all across the country are being discriminated against because they cannot afford legal counsel to handle their cases. This is the Petitioner's last recourse in order to have the state courts follow the law and to return the Petitioners property. If this court does not accept the Petitioner's Petition, than the state courts will continue to ignore and deny pro se litigants their right to have their cases lawfully adjudicated in a manner that is consistent with the laws of the United States of America and in the state of Maryland.

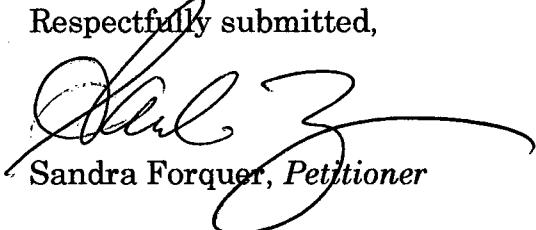
This case has more significance than the court realizes. Precedence needs to be set in order to instruct the state courts and tribunals to follow the law regardless of the status of the person seeking a remedy. This court's decision on this matter will have a substantial and controlling effect that will be binding and/or persuasive for the lower courts and tribunals, to follow the law as it is written when deciding subsequent cases. It is in the public's interest for this superior court to accept the petition and to set national precedence in this matter.

## CONCLUSION

For all of the foregoing reasons, it is the wish of the Petitioner that the Petition for Rehearing should be granted.

Date: August 5, 2019

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Sandra Forquer".

Sandra Forquer, Petitioner

## CERTIFICATE

Petitioner states that the grounds for rehearing are substantial and will have a controlling effect on the future outcome of how pro se litigants continue to be denied equal protection under the law of the United States, in the lower state courts and tribunals. This superior court's decision on this matter will have a substantial and controlling effect that will be instructive and binding for the lower courts and tribunals, to follow the law as it is written when deciding future cases.

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

Date: August 5, 2019

Respectfully submitted,



Sandra Forquer, Petitioner