19-34

NO. ____

In the Supreme Court of the United States

PAUL MARAVELIAS,

Petitioner,

v.

DAVID DEPAMPHILIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of New Hampshire

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The NH Supreme Court permits itself through "Rule 23" to "award attorney's fees related to an appeal" "in extraordinary cases" if "deemed by the court to have been frivolous or in bad faith". In 2018, they fully resolved Petitioner's appeal on the merits without any suggestion it was frivolous or in bad faith.

Months later in 2019, they granted Respondent's post-mandate motion for punitive attorney's fees with no explanation. They denied *pro se* Petitioner any opportunity to contest Respondent's fraudulent fees itemization totaling $4,900 over a 6-month period, when only fees in connection with two 10/19/18 pleadings ($530 max) had been sought and granted.

THE QUESTIONS PRESENTED ARE

1. Did the NHSC violate the Due Process Clause to deny Petitioner's requested pre-deprivation hearing and by failing to make a single finding of fact in support, while exercising original jurisdiction over the "extraordinary" sanction?

2. Did the NHSC retaliate against Petitioner to punish his critical speech, violating the 1st Amendment, and/or violate the "class of one" Equal Protection doctrine by issuing a two-sentence Order awarding $4,900 against him?

3. Is NHSC Rule 23 facially invalid under the 14th Amendment for vagueness and/or substantial lack of due process protections?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Paul J. Maravelias respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Hampshire in this case.

OPINIONS BELOW

Below are the three (3) Orders of the New Hampshire Supreme Court ("NHSC") in *Paul Maravelias v. David DePamphilis* (2018-0376) being appealed for review herein, *viz.*, its:

(1) 3/29/19 unreported post-mandate Order awarding the $4,900.00 amount and rejecting Petitioner's Motion for Rehearing on the anomalous 2/21/19 Rule 23 award;

(2) 2/21/19 unreported post-mandate Order granting an unspecified Rule 23 award and inviting Respondent to itemize attorney's fees; and

(3) 11/30/18 non-precedential Decision on the merits of the state appellate case.

JURISDICTION

Petitioner timely invokes this Court's Certiorari jurisdiction under 28 U.S. Code § 1257 to review the 3/29/19 decree of the New Hampshire Supreme Court

below, as well as the connected 2/21/19 Order and 11/30/18 Decision on the merits of the appeal case, where said state supreme court's judgments or decrees are repugnant to the Constitution of the United States and violate fundamental rights of Petitioner therein guaranteed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **U.S. Const. amend. I**

  Congress shall make no law . . . abridging the freedom of speech, or of the press; or the . . . to petition the Government for a redress of grievances.

- **U.S. Const. amend. XIV, § 1**

  No State shall . . . enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- **N.H. Rev. Stat. Ann. ("RSA") 490:4**

  The supreme court shall have general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses, including the authority to approve rules of court and prescribe and administer canons of ethics with respect to such courts, shall have exclusive authority to issue writs of error, and may issue writs of certiorari, prohibition, habeas corpus, and all other writs and

processes to other courts, to corporations and to individuals, and shall do and perform all the duties reasonably requisite and necessary to be done by a court of final jurisdiction of questions of law and general superintendence of inferior courts.

- **N.H. Rev. Stat. Ann. ("RSA") 498:1**

  The superior court shall have the powers of a court of equity . . . cases in which there is not a plain, adequate and complete remedy at law; and in all other cases cognizable in a court of equity . . .

- **N.H. Sup. Ct. R. 23 ("Rule 23")**

  In the interest of justice in extraordinary cases, but not as a matter of right, the supreme court in its sole discretion may award attorney's fees related to an appeal to a prevailing party if the appeal is deemed by the court to have been frivolous or in bad faith.

INTRODUCTION

A bright apocalypse of judicial extortion nonpareil, this cause uncovers the clandestine villainy of a state's highest court gone rogue, executor of its capricious and retaliatory whims, self-excepted from the rule of law circumscribing other state courts to consummate arbitrary larceny against a *pro se* appellant, all while obfuscating its crime *sub rosa* beneath a lupine cloak of self-serving procedural rules promulgated yet ignored by the same despots.

The conduct of the complicit Justices of the Supreme Court of New Hampshire is unprecedented.

Paul Maravelias is the single *pro se* Appellant in the entire 143-year modern history of the New Hampshire Supreme Court to be ordered under its unconstitutional Rule 23 to pay a prevailing party's entire attorney's fee bill for a whole state appeal case. Where no higher state judicial authority exists to cure this repressive tyranny against a citizen's legal right to appellate recourse in his state's sole appellate forum, this Court must intervene.

STATEMENT OF THE CASE

A. Rule 14.1(g)(i) Statement

The underlying original and appellate state proceedings are finished. Petitioner raised federal constitutional questions in his 2/26/19 NHSC Motion to Reconsider. The NHSC 3/29/19 Order disregarded all federal questions. App.1a.

B. Petitioner Filed a Rightful 2018 NHSC Appeal Patently Necessary to Vindicate His Property Rights.

1. On 7/2/18, Petitioner Maravelias filed a Rule 7 Notice of Mandatory Appeal in the New Hampshire Supreme Court ("NHSC"). Petitioner was a 23-year-old *pro se* litigant and a recent college graduate. His opponent David DePamphilis was a 49-year-old business executive represented by attorney counsel

at every stage. The NHSC docketed the appeal as *Paul Maravelias v. David DePamphilis*, 2018-0376.

The appeal was a "mandatory" civil appeal by right pursuant to N.H. Sup. Ct. R. 7. The NHSC receives and dockets hundreds of such appeals per annum. Petitioner challenged the trial court's (1) denial of his civil protective order petition against Respondent DePamphilis, filed on 12/8/17, and its (2) punitive award of attorney's fees, in the amount of $9,029.51, against Maravelias.

2. The meritorious necessity of Petitioner's state appeal was implicitly indisputable for many reasons:

First, the trial court judge falsely awarded Respondent a cost part of the $9,029.51 amount which was dated 10/25/17, months-before Petitioner ever initiated the case. The trial court refused to correct this plain accounting error, denying Petitioner's Motion for Rehearing with no explanation.

Second, the same trial court judge made-up a fantasy legal citation to a non-existent case as grounds for the unheard-of attorney's fees award.

Third, *pro se* Petitioner consulted with lawyer counsel about the matter and obtained the agreement of a practicing attorney that the punitive fee award was shocking and ripe content for an appeal.

Fourth, the trial court never indicated to Petitioner that appealing its order would be itself considered "bad faith" or "frivolous" conduct. In fact, the trial court routinely ignored the content of Petitioner's pleadings and invariably scribbled-off its robotic approval on pleadings filed by Respondent's lawyer, using exiguous words and non-descript recitals.

Fifth, the protective order petition was the first and only legal action Petitioner had ever taken against Respondent and remains so to this day.

Sixth, the trial court judge granted the unheard-of $9,029.51 punitive fee award against Petitioner upon a false allegation of "bad-faith" and "patently unreasonable" conduct while (1) failing to make a single specific factual finding supporting this incorrect finding and (2) ignoring Maravelias's ample evidence of DePamphilis's bad-acts underlying the protective order petition, *e.g.*, DePamphilis's harassing, threatening phone calls to Maravelias and DePamphilis's incitative cyberbullying Maravelias through social media with vulgar gestures, *inter alia*. Petitioner submitted such evidence uncontested; only the legal sufficiency of the evidence was disputed. Therefore, the trial court's finding Petitioner's protective order petition was "patently unreasonable" was itself "patently unreasonable" because Petitioner's allegations could plausibly have resulted in relief.

Seventh, the trial court judge in question, John J. Coughlin, has been credibly accused of hostile bias against Maravelias, bad-faith conduct, and willful deprivation of federal rights under color of law in a separate yet contemporaneous case. *See Maravelias v. Coughlin, et al.*, 1:19-CV-00143-SM (D.N.H. 2019).

Faced with an unheard-of $9,029.51 punitive attorney's fees judgment solely for filing a truthful civil protective order petition—where an itemized portion of said $9,029.51 was indisputably extraneous to Respondent's defense of the case—filing an appeal with the NHSC was a patently necessary act for Petitioner to vindicate his property rights.

3. The state appeal process took its course in a routine fashion. Petitioner paid Respondent the full wrongful $9,029.51 amount before filing his appellate brief citing extensive NHSC case law which eliminated any doubt the $9,029.51 attorney's fees award was indefensible error. Nobody—neither the NHSC nor Respondent—ever expressed to Petitioner that his pursuit of the appeal itself was believed to be "frivolous" or "in bad faith".

In a 11/30/18 Final Order, the NHSC affirmed the trial court's fee award without citing a single part of the record to support the untenable finding Petitioner had acted in bad faith. The NHSC's entire resolution of the gravamen of the appeal was the following threadbare sentence: "To the extent that the plaintiff argues that he did not act in bad faith, based upon our review of the record, we conclude that the trial court's determination is supported by the evidence and not legally erroneous". App.10a.

However, the NHSC did note Respondent had waived the erroneous pre-dating 10/25/17 expense in his appellate brief. App.10a. The excessive original monetary amount of the award was corrected only because Petitioner brought the NHSC state appeal and enjoyed this limited success. This case finished when the 12/27/18 Mandate issued; no further pleadings should have been filed thereafter.

C. Angered NHSC Facilitated "$4,900" Punitive Theft Conspiracy Months After Appeal Case Was Finished.

1. Before the 11/30/18 Final Order, both parties filed Motions to Strike portions of the other's brief(s),

Respondent's containing a boilerplate prayer for attorney's fees. The 11/30/18 Final Order granted in-part and denied in-part Respondent's 10/19/18 Motion to Strike, stating:

> To the extent that the [DePamphilis] requests attorney's fees in connection with the motion [DePamphilis's 10/19/18 Motion to Strike], the request is denied without prejudice to the [DePamphilis] moving for attorney's fees pursuant to Supreme Court Rule 23.

(Emphasis added) App.5a-6a.

Neither the NHSC Final Order nor Respondent's 10/19/18 Motion to Strike ever mentioned, requested, or contemplated attorney's fees against Petitioner beyond the limited scope of the one single motion. Respondent's Motion explicitly requested, "Award Mr. Depamphilis his attorney's fees in connection with having to file the instant motion".

Taking the NHSC's cue almost a month after the Final Order, Respondent filed a 12/28/18 pleading in the ended case entitled "Appellee's Request for Taxation of Costs and the Award of Attorney's Fees" seeking attorney's fees (1) again in connection with filing his 10/19/18 Motion to Strike, and (2) newly in connection with filing his 10/19/18 Objection to Petitioner's Motion to Strike.

Respondent's 12/28/18 "request" never sought any attorney's fees beyond those connected with his two 10/19/18 pleadings; it explicitly stated:

> It is submitted that the two described pleadings were frivolous and, accordingly, Mr. DePamphilis should be awarded his attor-

neys' fees associated with having to respond to them. (Emphasis added)

2. Petitioner objected on 12/31/18. Months-later on 2/21/19, the NHSC granted Respondent's "request" for costs and attorney's fees, directing Respondent to itemize his "attorney's fees that he is seeking" by 3/4/19. App.2a. The NHSC gave no explanation for the extraordinary sanction. *Id.* Per Rule 23, award of "attorney's fees", is extraordinary.

On 2/26/19, Petitioner filed a "Motion to Reconsider Anomalous, Arbitrary Rule 23 Award of Appeal Attorney's Fees" requesting a hearing on the matter.

3. On 3/4/19, Respondent filed a jaw-dropping "Appellee's Itemization of Attorney's Fees and related Affidavit". Respondent's itemization included every single hour his attorney worked in the entire totality of the months-long litigation from "07/05/2018" to "12/28/2018", totaling $4,900.00, even including the time the lawyer spent reading the "Supreme Court's [4-page] order denying Mr. Maravelias' appeal" and "communicat[ing] with client re: same".

The itemization revealed an absolute maximum of $530.00 in fees related to the filing of the two 10/19/18 pleadings for which Respondent's granted 12/28/18 request sought reimbursement. Simon R. Brown, Respondent's attorney, submitted an affidavit indicating he knew these fees exceeded the limited scope of the 10/19/18 pleadings. Since Petitioner had already exhausted his single Motion for Reconsideration pursuant to N.H. Sup. Ct. R. 22, the hearing he had requested was his only avenue to contest Respondent's wildly dishonest itemization.

4. On 3/29/19, the NHSC relied upon Respondent's inexplicably metastasized fees itemization and awarded $4,900 in attorney's fees against Petitioner. App.1a. The NHSC 3/29/19 Order failed still to offer any specific reasoning. *Id.* The NHSC denied Petitioner's requested hearing. The two-sentence Order ignored the federal constitutional claims Petitioner raised in his 2/26/19 Motion and refused Petitioner's request to "state specific facts and reasons why this appeal was allegedly 'frivolous or in bad faith'".

D. Objective Facts Show the NHSC's Frivolous Conduct and Alarming Retaliatory Bad Faith.

1. Endeavoring to conceal their scandalous conduct from the public's awareness, the NHSC has inexplicably self-censored and published nowhere their Final Order on the merits of the appeal case in 2018-0376. To this day, it remains mysteriously singled-out for baseless exclusion. It is unavailable on LexisNexis and Westlaw where other such non-precedential NHSC Final Orders as recent as May 2019 are accessible. It remains excluded from the NHSC's Final Orders webpage (https://www.courts.state.nh.us/supreme/finalorders/2018/), where such Final Orders up to 6/5/2019 are listed.

2. The timing and manner of the NHSC's anomalous 2/21/19 Order granting the Rule 23 attorney's fees sanctions suggests retaliatory bad faith. Petitioner Maravelias had initiated a second, separate NHSC appeal (2018-0483) on 8/15/18 in relation to another DePamphilis-Maravelias matter. The 2018-0483 Maravelias-DePamphilis appeal was about 1.5 months ahead of the 2018-0376 appeal underlying this action. The NHSC issued a Final Order in that appeal on 1/16/19, prompting Maravelias to file a Motion for Recon-

sideration on 1/28/19 wherein he exposed the NHSC's hostile abandonment of duty.

Conjunctively on 2/21/19, the NHSC issued two one-page Orders in both Maravelias-DePamphilis appeal cases: in 2018-0483 (the separate appeal), they blanket-denied Maravelias's Motion for Reconsideration with zero specific discussion; in this case, (2018-0376), they issued the above-referenced non-descript blanket-granting of DePamphilis's request for an "extraordinary" Rule 23 sanction.

In other words, the NHSC played "wait-and-see" for almost three months then retaliated against Petitioner for his stirring Motion to Reconsider in 2018-0483 by means of punitive theft masquerading as lawful "appeal fees" in 2018-0376, the same day as reflexively denying said Motion with no explanation.

3. The NHSC Final Order contained no indication they found Petitioner appeal "frivolous" or "in bad-faith". The NHSC frequently use a boilerplate one-page Final Order to dispose of truly "frivolous" appeals. *See e.g.*, NHSC Case Nos. 2018-0289, 2018-0209, 2018-0090, 2018-0042, *etc.* The NHSC treated the appeal as a meritorious, rightful appeal all the way through its final adjudication on the merits.

NHSC Rule 23 requires that such an "extraordinary remedy" be reserved to appeals "frivolous or brought in bad-faith". Unlawfully, the NHSC never made any such finding. They never once hinted it was an inappropriate exercise of Petitioner's legal right to appeal before punishing him with an indiscriminate, unexplained $4,900.00 sanction, itself far in excess of the $530 of fees sought and granted.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW VIOLATES FEDERAL DUE PROCESS REQUIREMENTS FOR DEPRIVATION OF PROPERTY.

1. The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving a person of "life, liberty, or property, without due process of law." "This guarantee has both substantive and procedural components." *Pagán v. Calderón*, 448 F.3d 16, 32 (1st Cir. 2006). Plaintiff claims three liberty or property interests the NHSC deprived without valid due process. First, Maravelias's $4,900.00 US dollars from the Rule 23 conspiracy is a monetary property interest. Second, Maravelias's $9,029.51 from the underlying matter is a monetary property interest. Third, wrongly implying Maravelias filed a "frivolous or bad-faith" appeal infringes on his personal liberty interest and right to be free from social or reputation stigma, which the NHSC recognized in *State v. Veale*, 158 N.H. 632, 972 A.2d 1009 (2009).

The NHSC is aware that "under the fourteenth amendment . . . procedural due process applies [where] an individual faces a potential deprivation of a liberty or property interest." *State v. Gibbons*, 135 N.H. 320, 605 A.2d 214 (1992). Nevertheless, they manifoldly denied Petitioner due process of law.

2. The NHSC violated due process by depriving Petitioner of fair notice (1) that he was engaging in any sanctionable conduct and separately (2) as to the true scope of the Rule 23 award sought against him.

2.(a) No state appellant in Petitioner's shoes could have possibly known filing an appeal in the above-described circumstance was improper, a condition upon which the validity of the NHSC's unprecedented $4,900.00 Rule 23 award is necessarily contingent. "[A] regulation 'violates the first essential of due process of law' by failing to provide adequate notice of prohibited conduct." *Stephenson v. Davenport Community Sch. Dist.*, 110 F.3d 1303 (8th Cir. 1997), citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 70 L.Ed. 322, 46 S.Ct. 126 (1926) (citations omitted). Petitioner had no warning from the trial court, neither from the NHSC at docketing stage, nor from Respondent himself that the good-faith appeal raising legitimate legal questions was improper. This is contrast to true "frivolous" or "bad faith" conduct, where an appeal is taken of issues already adjudicated and rejected by the appellate court. The instant case, however, was Petitioner's first appearance ever as a plaintiff.

2.(b) Yet worse, Petitioner was never put on notice that the sought Rule 23 sanction contemplated fees for the entire appeal case ($4,900), the vast majority of which predated the two allegedly sanctionable 10/19/18 pleadings. The plain language of Respondent's granted Rule 23 "request" sought the attorney's fees incurred in connection with responding to two the 10/19/18 pleadings, a maximum of $530. Accordingly, the NHSC denied Petitioner "adequate notice" of the nature of "the proceedings against [him]" and "deprived [him] of property without the due process of law required by the Fourteenth Amendment." *Greene v. Lindsey*, 456 U.S. 444, 102 S.Ct. 1874 (1982). Petitioner was tricked, befuddled, and duped upon seeing

Respondent's wayward 3/4/19 itemization granted in the NHSC's hasty negligence.

3. The NHSC separately violated procedural due process when they rejected or ignored Petitioner's written 2/26/19 request for a pre-deprivation hearing. Where a rightful "extraordinary" application of Rule 23's appeal-fees-punishment is distinguished from criminal theft solely by the factual question of the "frivolity" or "bad-faith" nature of conduct, the right to hearing was paramount. *Cf. Codd v. Velger*, 429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977) (pre-deprivation hearing not necessary for due process where there was not a factual dispute).

Procedural due process requires "some form of hearing" before deprivation of property. *Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1, 19 (1978). When an appellate court volunteers itself as an original fact-finder to determine whether to command a *pro se* 23-year-old Appellant to pay $4,900 to his affluent lawyer-represented Executive VP & COO victimizer, it must at least grant an evidentiary hearing wherein said Appellant may deliver an oral presentation contesting the purported factual grounds of his alleged bad conduct. This holds especially true under the circumstances for two reasons:

3.(a) The NHSC gave no opportunity whatsoever for Petitioner to be heard in response to Respondent's wildly fraudulent 3/4/19 itemization of appeal attorney's fees, the origin of the "$4,900.00" figure. "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Respondent's 3/4/19 itemization deceptively furthered his original 12/28/18 request for attorney's

fees (solely in connection with filing two motions) into the suddenly expanded realm of his entire attorney fee bill for the entire appeal, start-to-finish. The NHSC accepted at face value Respondent's hyperextended "$4,900" figure and denied Petitioner's requested hearing. Having exhausted his single Motion for Reconsideration pursuant to N.H. Sup. Ct. R. 22, Petitioner's only remedy to challenge the fees itemization was the hearing he requested, which the NHSC denied.

3.(b) Since Petitioner had repeatedly alleged and exposed Respondent's other fraudulent, malicious litigation conduct, the due process right to cross-examine at a physical hearing was "even more important". *Greene v. McElroy*, 360 U.S. 474 (1959). "The policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law." *Id.*

In such circumstances, the right to physical witness cross-examination is paramount for fair fact-finding.

Even if some form of a "Rule 23" award were justified, the NHSC's refusal to hold a hearing suffocated Petitioner's ability to correct the excessive "$4,900.00" amount. "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). "Written submissions do not afford the flexibility of oral presentations . . . [p]articularly where credibility and veracity are at issue, . . . written submissions are a wholly unsatisfactory basis for decision". *Id.* at 299. *See also ICC v. Louisville & Nashville R.R.*, 227 U.S. 88, 93-94 (1913). Denying Petitioner a hearing deprived him of an "opportunity [to be heard] which must be

granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

4. The NHSC further violated procedural due process by issuing a "$4,900" "award" under "Rule 23" without making any explicit finding the appeal was "frivolous or in bad faith" as Rule 23 requires. *But see Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980). "In this case, the trial court did not make a specific finding as to whether counsel's conduct constituted or was tantamount to bad faith, a finding that should precede any sanction under the court's inherent powers." *Id.* (Emphasis added). Since the NHSC failed to reference any of Petitioner's specific arguments, rebuttals, and requests in the Rule 23 matter, it is dubitable they even devoted more than a cursory glance at his 12/31/18 Objection and 2/26/19 Motion to Reconsider. The NHSC's heedless, reflexive "screw-Maravelias" orders amount to a shameful abjuration of his right to be heard. The denied hearing would have forced the NHSC to listen.

5. "The substantive due process guarantee functions to protect individuals from particularly offensive actions on the part of government officials, even when the government employs facially neutral procedures in carrying out those actions. *Pagán*, *supra*, at 32., citing *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986). "[C]onscience-shocking conduct is an indispensable element of a substantive due process challenge". *DePoutot v. Raffaelly*, 424 F.3d 112 (1st Cir. 2005).

The NHSC's conduct is conscience-shocking because they 1) accepted and fully adjudicated Petitioner's appeal, 2) knowingly observed that said appeal was

necessary, at a bare minimum, to correct the erroneous 10/25/17 cost the trial court failed to correct, and 3) months later, after being angered by Petitioner's speech in a separate case, fraudulently implied the appeal was "frivolous or in bad faith" to grant retaliatory punishment against Petitioner.

Further exacerbating its extreme and outrageous conduct, the NHSC (1) denied Petitioner a hearing on the Rule 23 Motion, (2) failed to make a single finding of fact, upon request, explaining why the appeal was possibly "frivolous or in bad faith", (3) failed to make an explicit finding that the appeal was "frivolous or in bad faith" in the first place, and (4) ordered punitive payment of Respondent's entire attorney's fees bill, whereas the function of Rule 23 is intended to be deterrent and not compensatory.

All the above was subsequent to the NHSC's initial abuse of power, issuing a shocking "screw-Maravelias" affirmation in the underlying appeal so utterly baseless that they intentionally self-censored it from their Final Orders webpage to avoid public backlash. Accordingly, it is beyond peradventure that the NHSC's conduct is "truly outrageous, uncivilized, and intolerable". *Hasenfus v. LaJeunesse*, 175 F.3d 68, 72 (1st Cir. 1999).

6. This Court should be disturbed that a state's highest court would commit the above-described lackadaisical rapine of an impecunious 23-year-old's monetary property with such careless incompetence and rife absence of proper procedure. The NHSC's pervasive, purposeful misconduct is in violation of the Fourteenth Amendment and must be reversed by the sole judicial entity capable of correcting its acts.

II. THE DECISION BELOW WAS AN ARBITRARY RETALIATION FOR PETITIONER'S CRITICAL SPEECH ABOUT THE NHSC, VIOLATING FEDERAL CONSTITUTIONAL PROTECTIONS AND CHILLING NEW HAMPSHIRE CITIZENS' RIGHT TO PETITION BY STATE APPELLATE RECOURSE.

1. First, the NHSC has singled-out one appellant they dislike for disparate, unequal treatment. To show an equal protection violation, Petitioner must "identify and relate specific instances where persons situated similarly 'in all relevant aspects' were treated differently, instances which have the capacity to demonstrate that [litigants] were 'singled . . . out for unlawful oppression.'" *Dartmouth Review v. Dartmouth College*, 889 F.2d 13, 19 (1st Cir. 1989).

1.(a) The NHSC's erratic, hyperactive punishment of Petitioner radically differs from the manner they have treated similarly situated litigants. For example, the NHSC entertained a Rule 23 attorney's fees request in *Funtown USA, Inc. v. Town of Conway*, 129 N.H. 352 (1987). First, said Rule 23 request was properly introduced and adjudicated as one "to require [defendant] to pay plaintiff's [entire] fees incurred in defending this appeal", not as a limited fees request for a certain motion and later surreptitiously metastasized into covering the whole appeal as with the NHSC's 3/29/19 Order here. Second, in *Funtown*, the court allowed both parties a fair opportunity to be heard and adjudicated the request in a full opinion (as opposed to a two-sentence procedural order). Third, the *Funtown* court denied the request, concluding, "the amount of attorney's fees awarded was quite large and by no stretch of the imagination could it be said that the appeal

[thereof] was frivolous, particularly in view of the fact that the defendant has prevailed on one of the issues it raised."

There can be no question "$9,029.51" is a "quite large" sum for a then-22-year-old, nor any doubt that Petitioner Maravelias indeed "prevailed on one of the issues" his appeal raised: for Respondent waived the erroneous 10/25/17 expense in his Opposing Brief. As such, the same factors present in *Funtown* through which "by no stretch of the imagination could it be said that the appeal was frivolous" were present in Maravelias's appeal. The NHSC is therefore violating Petitioner's Fourteenth Amendment right to equal application of laws, placing him capriciously into an indiscriminate "class-of-one". *See Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

1.(b) In more recent case law, the NHSC has given fair warning to dispel actual misconduct yet have temperamentally extorted Petitioner Maravelias with zero warning, after he committed no misconduct. In *Branch Banking and Trust Company v. Samson Duclair & a*, (NHSC Case No. 2015-0545), the NHSC warned as follows,

> At this time, we deny the lender's request for attorney's fees and other sanctions. However, if in future cases the defendants continue to press issues that have been finally resolved or are not properly before us, we will entertain a properly supported motion for attorney's fees.

Id.

By comparison, the NHSC's 3/29/19 Order below did not even retroactively identify any specific misconduct justifying their $4,900 fee award, let alone grant Petitioner a fair warning to desist in future misbehavior as was dispensed in *Branch Banking*.

1.(c) In fact, it appears impossible to discern a single instance in history where the New Hampshire Supreme Court has ever granted any Rule 23 attorney's fees sanction against a *pro se* litigant. *See e.g., Indorf v. Indorf*, 132 N.H. 45, 47 (1989) (denying Rule 23 fee award request against *pro se* litigant); *Walker v. Walker*, 119 N.H. 551 (1979) (not granting award of appeal attorney's fees even after "the fourth time the plaintiff has litigated these same issues and the fourth time he has been denied relief"), *etc.*

1.(d) To the extent the NHSC caused or permitted Respondent DePamphilis's original 12/28/18 request (seeking fees in connection with his 10/19/18 pleadings) to blossom into a fraudulent, surreptitious request on 3/4/19 for comprehensive appeal attorney's fees—four months after the Final Order—the NHSC violated equal protection by failing to reject the *de facto* untimely request. *See e.g., In the Matter of Tanya Braga-Pillsbury and Mickey Pillsbury* (NHSC Case No. 2018-0560), where the NHSC squarely denied an untimely "frivolous appeal" attorney's fees request a just few days before committing theft against Petitioner here, highlighting the extremity of their arbitrary differential treatment.

Accordingly, the NHSC's conduct blatantly disregards the equal rights of Petitioner, who has been treated much differently than similarly situated individuals. By subjecting Petitioner Maravelias into an

arbitrary "class-of-one"—a target of their bad-faith harassment and meritless subjective frustration—the NHSC has violated the Equal Protection Clause of the U.S. Constitution.

2. Furthermore, the NHSC's conduct is a direct retaliation for Petitioner's public critical speech about the NHSC, in violation of the First Amendment. "[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Mercado-Berrios v. Cancel-Alegría*, 611 F.3d 18, 25 (1st Cir. 2010) (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006)).

2.(a) To assert a retaliation abridgment of the First Amendment, Petitioner must show 1) he engaged in constitutionally protected conduct, 2) the government took an adverse action against him, and 3) the protected conduct was a "substantial" or "motivating factor" in the government's decision to take the adverse action. *Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977); *Hartman*, *supra*; *Centro Medico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 10 (1st Cir. 2005); *Davignon v. Hodgson*, 524 F.3d 91, 106 (1st Cir. 2008). Petitioner's legal pleadings in the NHSC are protected speech. The NHSC's "$4,900" order, masked as a valid "Rule 23 attorney's fees award", is an adverse act against Petitioner.

2.(b) Temporal proximity overwhelmingly satisfies the causation element of the First Amendment retaliation doctrine here and can do so even amid factual circumstances far less compelling than the NHSC's two concomitant knee-jerk Orders on 2/21/19, issued in two temporally disjunct appeal cases coincidentally

on the same day. *See e.g., Philip v. Cronin*, 537 F.3d 26, 33 (1st Cir. 2008). Petitioner's 1/28/19 Motion for Reconsideration in 2018-0483 was firm in tone but does not authorize the NHSC's retaliatory acts. Absent fighting words or true threats, offensive speech to governmental actors is protected from retaliation. *See e.g., Greene v. Barber*, 310 F.3d 889, 895–97 (6th Cir. 2002) (calling a police officer an "asshole" and "stupid" protected from retaliation). By contrast, the furthest Petitioner went was to term the NHSC the "Holy Feminist Court" in his prayer for relief—an accurate appellation.

2.(c) The NHSC issued an unlawful order wrongly depriving Petitioner of $4,900 in their subjective displeasure with the content of his speech and in punitive retaliation therefor—chiefly, for his 1/28/19 Motion for Reconsideration and firm 2/26/19 "Motion to Reconsider Anomalous, Arbitrary Rule 23 Award of Appeal Attorney's Fees". The NHSC wrongfully retaliated against Petitioner, disparaging his First Amendment rights and necessitating this Court's corrective *vacatur* of the offending decisions.

3. The NHSC's conduct injures the public at large, not just Petitioner. The NHSC's frightening conduct creates a chilling effect for all New Hampshire citizens who might consider exercising their legal right to appeal. The First Amendment's Right to Petition clause is incorporated against the states. *Edwards v. South Carolina*, 372 U.S. 229 (1963). The First Amendment protects citizens' right to access state courts and litigate civil actions. *Bill Johnson's Restaurants, Inc. v. Nat'l Labor Relations Bd.*, 461 U.S. 731, 734 (1983). "[T]he Petition Clause protects the right of individuals

to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea, et al. v. Guarnieri*, 564 U.S. 379 (2011).

The NHSC abused its power to punish Petitioner for rightfully filing a patently non-frivolous, necessary Rule 7 Mandatory Appeal in New Hampshire's only appellate court. If left uncorrected, this conduct will have a chilling effect repressing First Amendment-protected usage of New Hampshire's only appellate forum. The NHSC Orders below against Petitioner are known to the public and have a repressive effect upon all potential state appellants. Petitioner Maravelias and similarly situated New Hampshire litigants have good case to fear suffering bad faith extortion and punitive abuse of power should they petition the government for redress by appealing, wherever it may be assumed the NHSC's personal feelings are not aligned to an appellant's legal posture nor particularly fond of his or her personal, subjective identity.

III. THE NHSC ACTED IN COMPLETE ABSENCE OF ITS APPELLATE JURISDICTION.

1. The Full Faith and Credit Clause of the U.S. Constitution, Art. IV. § 1 entrusts state courts to render binding judgments on claims arising under federal law. The lawful operation of said state courts thus implicates an important federal interest, even though the jurisdictional organization of state courts is a matter of state law. In their mercurial punishment of Petitioner, the NHSC blatantly exceeded its appellate jurisdiction as designated by the New Hampshire legislature and acted as an original finder of fact. They exercised original jurisdiction over their unprec-

edented retaliatory act casted into the false optics of a "Rule 23 fee award".

When issuing their unprecedented $4,900.00 "award" on 3/29/19, the NHSC acted in complete absence of its appellate jurisdiction established in N.H. Rev. Stat. Ann. ("RSA") 490:4 as a "court of final jurisdiction of questions of law and general superintendence of inferior courts". First, the "award" pertaining to the appeal case itself had nothing to do with "correct[ing] errors and abuses" of lower courts or "general superintendence of inferior courts". *Id.* Second, the illegal $4,900 "award" was not even a true application of Rule 23 since the NHSC failed to make the prerequisite finding the appeal was "frivolous or in bad-faith". Third, even if the NHSC's act was, in fact, a proper execution of Rule 23, they acted in absence of jurisdiction to delegate unto themselves a power, through a "court rule", which conflicts with the lower state courts' original jurisdiction over small claims and/or general civil actions to recover damages, which the New Hampshire Superior Court and Circuit Courts share depending on amount pursuant to RSA 491:7; 498:1 and 502-A:14 respectively. Fourth, the NHSC has no general equitable powers to fashion such other "extraordinary" remedies not codified by written rules or statutes; such powers are reserved to the Superior Court. *See* RSA 498:1. Respondent did not file a lawsuit against Petitioner to claim damages for tortious conduct; rather, he conspired with the NHSC to obtain a fraudulent post-mandate procedural "award"—predicated upon a hotly contested allegation of fact—issued without proper due process and in want of jurisdiction.

IV. NHSC RULE 23 IS FACIALLY INVALID UNDER THE FEDERAL CONSTITUTION.

1. Rule 23 lacks any explicit due process requirements for the fact-finder, the New Hampshire Supreme Court, to obey.

All applications, or a substantial number, of Rule 23 are likely to abrogate a party's due process rights absent specific requirements that 1) the court make specific findings of fact and state its reasoning for granting any Rule 23 appellate attorney' fees order, 2) hold an evidentiary hearing if the "bad faith" or "frivolous" nature of an appeal is disputed, and/or 3) include an explicit time limit expressed in days after which a party cannot move for Rule 23 attorney's fees. *Cf.* Federal Rules of Civil Procedure, Rule 11(c), establishing certain due process provisions for sanctions missing from NHSC Rule 23 (*e.g.*, requiring that the court "describe the sanctioned conduct and explain the basis for the sanction"). *Cf. also* Federal Rules of Appellate Procedure, Rule 38 ("If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee") (requiring notice and a "reasonable opportunity to respond").

2. Rule 23 is also void on its face for unconstitutional vagueness. "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703 (2000).

NHSC Rule 23 stands virtually alone among the comparable civil procedure rules of other jurisdictions because it fails to specify what kind(s) of "attorney's fees" are authorized and under what occasions. It does not narrow recovery to "reasonable" attorney's fees, which would imply a certain deterrent but not fully compensatory amount. Nor does Rule 23 distinguish on its face between attorney's fees in connection with a certain "frivolous or bad-faith" pleading and that for an entire appeal case from start to finish. This ambiguity encourages "arbitrary enforcement", as is currently visible within the NHSC's recent arbitrary course of conduct.

Comparable courts of law do not retain such problematic vagueness in their operative rules governing sanctions for improper litigation conduct. For example, F.R.C.P. 11, *supra*, leaves no uncertainty that the monetary sanction is limited to "the reasonable expenses, including attorney's fees, incurred for the [offending] motion". The language specifying the relief to be granted in F.R.A.P. 38, *supra*, likewise leaves no ambiguity. *Compare* "award just damages and single or double costs", *Id.*, *with* "award attorney's fees", N.H. Sup. Ct. R. 23.

V. SUMMARY REVERSAL IS AN IDEAL VEHICLE FOR RESOLVING THIS CASE.

The maxim of equity *ubi jus ibi remedium* commands that wherever there is a wrong, there must be a legal remedy. It "lies at the very foundation of all systems of law". *United States v. Loughrey*, 172 U.S. 206, 232, 19 S.Ct. 153, 163 (1898) (White, J., *dissenting*). The maxim impels this Court to correct the abuses of a state supreme court which (1) exercises

extraordinary original jurisdiction over an action, like here, and (2) acts in clear violation of federal law. Indeed, such circumstances are truly extraordinary: the vast majority of certiorari petitions filed in this Court seek review of judgments already subject to one or more levels of appellate scrutiny. The 2/21/19 and 3/29/19 decisions below, however, constitute a state appellate court's impetuous acts not bothering even to simulate an appearance of the due process all original fact-finding courts must obey.

"A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., *dissenting*). The extraordinary nature of this case renders summary reversal a well-suited remedy. The NHSC's factual conduct is implicit from the judicial record and reveals an alarming abuse of its unique status of immunity from supervisory correction by any higher court other than this Court. The relevant constitutional law controlling required due process protections, likewise, is "settled and stable". *Id.*

Finally, the NHSC's subsequent and connected Rule 23 misconduct reveals their underlying 11/30/18 affirmance was not the product of a fair judicial process. As such, Petitioner respectfully requests this Court reverse said 11/30/18 decision of the NHSC upholding the initial substantive $9,029.51 award as well as its 2/21/19 and 3/29/19 post-mandate Orders consummating the arbitrary $4,900.00 punishment.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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