

No. \_\_\_\_\_

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

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JOHN P. RAYNOR,

*Petitioner,*

v.

SKYLINE ACQUISITION LLC (“SKYLINE”)  
AND DENNIS WALKER,

*Respondents.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

Does the Equal Protection Clause of the Constitution of the State of Nebraska (Neb. Const., art. I, § 1-3) coupled with the Equal Protection Clause of the U.S. Constitution (U.S. Const., Amdt. 14, § 1, Cl. 4) circumscribe the Nebraska Supreme Court's discretion to disregard an appeal of a plainly Color of Law adjudication by the Nebraska Appellate Court?

Is a Color of Law adjudication by the Nebraska Appellate Court, the primary supervisory Court (appeal by right), coupled with the Nebraska Supreme Court's (appeal by permission) failure to address such adjudication, an affront to the Due Process Clause of the Fifth Amendment of the U.S. Constitution (U.S. Const., Amdt. 5, § 4), as applied to State Court action under the Fourteenth Amendment of the U.S. Constitution (U.S. Const., Amdt. 14, § 1, Cl. 3). Restating the above in common sense and in common language –

Does Nebraska's primary supervisory court, the Nebraska Appellate Court, offend the Constitutions of both the United States and the State, by arbitrarily departing from the primary statutory law, by acting without Subject Matter Jurisdiction and by mandating Neb. District Court enter a judgment without Subject Matter Jurisdiction by reason of the Internal Affairs Doctrine; and further,

Can the Nebraska Supreme Court have the discretion to turn a blind eye to such action by the Nebraska Appellate Court?

## **PARTIES TO THE PROCEEDING**

Petitioner John Raynor (“Raynor”) is the Petitioner.

Skyline Acquisition LLC (“Skyline”) is the holder of the contested judgment.

Dennis P. Walker (“D. Walker”) is an indispensable party.

## **DISCLOSURE STATEMENT**

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

## **RELATED CASES**

*Walker v. Probandt*,  
29 Neb. App. 704, 958 N.W.2d 459 (Neb. App. 2021)

*Probandt and Raynor v. Dennis Walker*,  
Petition for a writ of Certiorari, No. 18-166, docketed  
August 8, 2018, Petition denied October 9, 2018

*Walker v. Probandt*,  
25 Neb. App. 30, 902 N.W.2d 468 (Neb. App. 2017)

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING.....	ii
DISCLOSURE STATEMENT.....	ii
RELATED CASES .....	ii
TABLE OF CONTENTS .....	iii
INDEX TO APPENDICES .....	iii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES.....	2
STATEMENT OF THE CASE.....	8
REASONS FOR GRANTING THE PETITION.....	13
CONCLUSION.....	23

## INDEX TO APPENDICES

**Appendix A (“App. A”)**

May 20, 2021, Neb. Sup. Ct. declining the Mo- tion for Further Review .....	App. 1
--	--------

**Appendix B (“App. B”)**

March 30, 2021, Neb. Ct. App. Op. <i>Walker v. Probandt</i> , 29 Neb. App. 704 (2021) (the “2021 Appeal).....	App. 2
--	--------

## TABLE OF CONTENTS – Continued

	Page
<b>Appendix C (“App. C”)</b>	
May 8, 2018, Neb. Sup. Ct. declining the Motion for Further Review .....	App. 16
<b>Appendix D (“App. D”)</b>	
Sept. 12, 2017, Neb. Ct. App. Op., <i>Walker v. Probandt</i> , 25 Neb. App. 30 (2017) (the “2017 Appeal”) .....	App. 17
<b>Appendix E (“App. E”)</b>	
Oct. 2, 2015, Neb. D. Ct. Mem. Op. & Judgment.....	App. 46
<b>Appendix F (“App. F”)</b>	
Aug. 8, 2018, Neb. D. Ct. Judgment, Mr. Probandt.....	App. 65
<b>Appendix G (“App. G”)</b>	
Mar. 12, 2020, Neb. D. Ct. Judgment, Petitioner (Raynor) .....	App. 67
<b>Appendix H (“App. H”)</b>	
April 17, 2012, Bankr. Nebr. Clarification Order.....	App. 71
<b>Appendix I (“App. I”)</b>	
May 8, 2018, Case No. 18-166, U.S. Supreme CT Writ of Certiorari denial .....	App. 77
<b>Appendix J (“App. J”)</b>	
April 28, 2021, Petitioner’s filing with the Nebraska Supreme Court – Petition for Further Review .....	App. 78

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Catlett v. Catlett</i> , 23 Neb. App. 136, 869 N.W.2d 368 (2015)....	13, 14, 17
<i>Colo. River Water Conservation Dist. v. United States</i> , 424 U.S. 800 (1976) .....	20
<i>Coker v. Coker</i> , 2012 Ark. 383, 423 S.W.3d 599 (Ark 2012).....	19
<i>Cummins Mgmt., Ltd. P'ship v. Gilroy</i> , 266 Neb. 635, 667 N.W.2d 538 (2003).....	15, 16
<i>Forster v. Milone (In re Forster)</i> , 22 Neb. App. 478, 856 N.W.2d 134 (2014).....	14
<i>In re Estate of Reed</i> , 267 Neb. 121, 672 N.W.2d 416 (Neb. 2003).....	20, 21
<i>In re Neb. Cnty. Corr. Council</i> , 274 Neb. 225, 738 N.W.2d 850 (2007).....	11
<i>J.S. v. Grand Island Pub. Schs.</i> , 297 Neb. 347, 899 N.W.2d 893 (2017).....	13
<i>Lambert v. Lincoln Pub. Sch.</i> , 306 Neb. 192, 945 N.W.2d 84 (Neb. 2020) .....	15
<i>Midwest Renewable Energy, LLC v. American Engineering Testing, Inc.</i> , 296 Neb. 73, 894 N.W.2d 221 (2017) ("Midwest I").....	8, 9, 13, 14
<i>Myers v. Neb. Inv. Council</i> , 272 Neb. 669, 724 N.W.2d 776 (2006) .....	14

## TABLE OF AUTHORITIES – Continued

	Page
<i>North Carolina Utilities Commission v. F.C.C.</i> , 552 F.2d 1036 (4th Cir. 1977).....	18
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015) .....	19
<i>Walker v. Probant</i> , 29 Neb. App. 704 (2021) (the “2021 Adjudication”) .....	1, 13
<i>Walker v. Probant</i> , 25 Neb. App. 30 (2017) (the “2017 Adjudication”) .....	1
<i>W. Ethanol Co., LLC v. Midwest Renewable Energy, LLC</i> , 305 Neb. 1, 938 N.W.2d 329 (2020) (“Midwest II”) .....	8, 9, 12, 13
<i>Wetovick v. Cty. of Nance</i> , 279 Neb. 773, 782 N.W.2d 298 (2010).....	14

## STATUTES, RULES AND OTHER AUTHORITIES

Equal Protection Clause, Neb. Const., art. I, § 1-3 .....	2, 10, 11
Equal Protection Clause, U.S. Const., Amdt. 14, § 1, Cl. 4 .....	2, 11
Due Process Clause, U.S. Const., Amdt. 5, § 4 .....	3, 10
Due Process Clause applied to states, U.S. Const., Amdt. 14 § 1, Cl. 3 .....	3, 10
Due Process Clause, Neb. Const., art. I, § 1-3 .....	3, 10, 11

## TABLE OF AUTHORITIES – Continued

	Page
The Bankruptcy Clause, U.S. Const., art. I, § 8, Cl. 4 .....	3, 10, 22
The Supremacy Clause – U.S. Const., art. VI, Cl. 2 .....	3, 10, 22
<i>11 U.S.C. § 524(a)(2)</i> .....	3
<i>11 U.S.C. § 524(c)</i> .....	4, 24
<i>Neb. Rev. Stat. § 25-301</i> . Real party in interest....	4, 8, 15
<i>Neb. Rev. Stat. § 25-322</i> . Substitution of parties .....	4
<i>Neb. Rev. Stat. § 25-323</i> . Necessary parties; brought into suit; procedure .....	5, 8, 15
<i>Neb. Rev. Stat. § 25-501</i> . Actions; how com- menced.....	5, 15
<i>Neb. Rev. Stat. § 21-155</i> . Governing Law (Ne- braska ULLC) .....	5, 8, 9, 14
<i>Neb. UCC § 1-103</i> . Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental princi- ples of law .....	5, 9, 16, 21
<i>Neb. UCC § 3-102</i> . Subject matter .....	6, 16, 21
<i>Neb. UCC § 3-419</i> . Instruments signed for ac- commodation .....	6, 9, 10, 18, 21
<i>Neb. Ct. R. Pldg. § 6-1112</i> . Defenses and objec- tions – when and how presented; by pleading or motion; motion for judgment on the plead- ings .....	7, 15
<i>Neb. Ct. R. Pldg. § 6-1115</i> . Amended and supple- mental pleadings.....	7

## TABLE OF AUTHORITIES – Continued

	Page
<i>Neb. Ct. R. App. P. §2-102. Court of Appeals .....</i>	7, 10
<i>18-134 Moore's Federal Practice – Civil § 134.01 .....</i>	18

**IN THE SUPREME COURT  
OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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**OPINIONS BELOW**

The opinions/decisions at issue organized by Court are:

May 20, 2021, Nebraska Supreme Court declining the Motion for Further Review. App. A.

May 8, 2018, Nebraska Supreme Court declining the Motion for Further Review. App. C.

March 31, 2021, Nebraska Court of Appeals, *Walker v. Probandt*, 29 Neb. App. 704 (2021) (the “2021 Adjudication”). App. B.

Sept. 12, 2017, Nebraska Court of Appeals, *Walker v. Probandt*, 25 Neb. App. 30 (2017) (the “2017 Adjudication”). App. D.

Oct. 10, 2015, the Dawson County District Court, Memorandum Opinion and Judgment (Petitioner). App. E.

Aug. 8, 2018, the Dawson County District Court, Judgment (Mr. Probandt). App. F.

Mar. 12, 2020, the Dawson County District Court, Judgment (Petitioner). App. G.

April 17, 2012, Nebraska Bankruptcy Court Order.  
App. H.

May 8, 2018, the U.S. Supreme Court, Case No. 18-166, denial of Writ of Certiorari. App. I.

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## **JURISDICTION**

On May 20, 2021, the Nebraska Supreme Court (“Neb. Sup. Ct.”) declined to consider Petitioner J. Raynor’s timely filed Petition for Further Review from the Nebraska Court of Appeals (“Neb. Ct. App.”). App. A. This Court has jurisdiction under 28 U.S.C. § 1257.

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## **CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT RULES**

Equal Protection Clause, Neb. Const., art. I, § 1-3 –

I-3. Due process of law; equal protection.

No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws.

Equal Protection Clause, U.S. Const., Amdt. 14, § 1, Cl. 4 –

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Due Process Clause, U.S. Const., Amdt. 5, § 4 –

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . .

Due Process Clause applied to states, U.S. Const., Amdt. 14, § 1, Cl. 3 –

. . . ; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . .

Due Process Clause, Neb. Const., art. I, § 1-3 –

See Neb. Const., art. I, § 1-3, set out above.

The Bankruptcy Clause, U.S. Const., Art. I, § 8, Cl. 4 –

To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States. . . .

The Supremacy Clause – U.S. Const., Art. VI, Cl. 2 –

This Constitution, and the laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

*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. . . .

*11 U.S.C. § 524(c) –*

An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if – . . . .

*Neb. Rev. Stat. § 25-301. Real party in interest.*

Every action shall be prosecuted in the name of the real party in interest except as otherwise provided in section 25-304. An action shall not be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for joinder or substitution of the real party in interest. Joinder or substitution of the real party in interest shall have the same effect as if the action had been commenced by the real party in interest.

*Neb. Rev. Stat. § 25-322. Substitution of parties; death; disability; transfer of interest.*

An action does not abate . . . by the transfer of any interest therein during its pendency, if the cause of action survives or continues. . . . In case of any other transfer of interest, the action may be continued in the name of the original party or the court may allow the

person to whom the transfer is made to be substituted in the action.

*Neb. Rev. Stat. § 25-323.* Necessary parties; brought into suit; procedure.

The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in. . . .

*Neb. Rev. Stat. § 25-501.* Actions; how commenced.

A civil action must be commenced by filing a complaint in the office of the clerk of a proper court.

*Neb. Rev. Stat. § 21-155.* Governing Law (Nebraska Uniform Limited Liability Company Act).

(a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs: (1) the internal affairs of the company; and (2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

*Neb. UCC § 1-103.* Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.

(a) The Uniform Commercial Code must be liberally construed and applied to promote

its underlying purposes and policies, which are. . . .

(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. Subject matter.*

(a) This article applies to negotiable instruments. . . .

*Neb. UCC § 3-419. Instruments signed for accommodation.*

(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”.

(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.

*Neb. Ct. R. Pldg. § 6-1112.* Defenses and objections – when and how presented; by pleading or motion; motion for judgment on the pleadings.

(h) Waiver or Preservation of Certain Defenses.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

*Neb. Ct. R. Pldg. § 6-1115.* Amended and supplemental pleadings.

(a) Amendments. A party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may amend it within 30 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires. . . .

*Neb. Ct. R. App. P. §2-102.* Court of Appeals.

(G) Scope of Review. Further review by the Supreme Court is not a matter of right, but of judicial discretion. If the Supreme Court grants review of a Court of Appeals decision, the Supreme Court will review only the errors assigned in the petition for further review and discussed in the supporting memorandum brief. The Supreme Court may limit the issues

to one or more of those raised by the parties and may notice plain error at its discretion.

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### **STATEMENT OF THE CASE**

This controversy involves a trial before Nebraska District Court, two appeals by right to the Nebraska Court of Appeals (“Nebraska Appellate Court”) which were adjudicated, and two Petitions of Further Review to the Nebraska Supreme (discretionary appeals) which were denied.

The Petitioner contends that in two adjudications, the Nebraska Appellate Court made fundamental errors which were dispositive including but not limited to:

- a. Without Subject Matter Jurisdiction, the Nebraska Appellate Court ordered the Nebraska District Court to enter a judgment against the Petitioner. *Neb. Rev. Stat. §§ 25-301, 25-323, Midwest I, Midwest II.*
- b. Without Subject Matter Jurisdiction because of the Internal Affairs Doctrine, the Nebraska Appellate Court ordered the Nebraska District Court to enter a judgment against Mr. Probandt. *Neb. Rev. Stat. § 21-155, Midwest I.*
- c. The Nebraska Appellate Court conflated provisions of the Nebraska Uniform Commercial Code (“Neb. U.C.C.”) [*Neb. UCC*

§ 3-419(a)] to sustain a judgment against the Petitioner under surety law in contravention of the plain language of *Neb. UCC* § 1-103, making the *Neb. U.C.C.* is the primary law, and *Neb. UCC* § 3-419, which excludes the Petitioner from liability for a promissory note due to his status as an accommodation party. App. B, App. D. The Nebraska District Court issued the 2015 judgment under the *Neb. U.C.C.* App. E. Without Subject Matter Jurisdiction this point is moot; however, its relevance is the Nebraska Appellate Court's departure from disciplined legal reasoning.

In supplementation of the above, the Nebraska Appellate Court's adjudications [App. B, App. D]: (i) contravene Nebraska case law that establishes that without Skyline Acquisition LLC ("Skyline") as a party to the proceeding after the 2011 Note assignment, the Nebraska District Court had no Subject Matter Jurisdiction [*Midwest I*, *Midwest II*]; (ii) contravene Nebraska case law which holds Court actions without Subject Matter Jurisdiction are void [cited hereinbelow]; (iii) contravene Nebraska case law which holds that *Neb. Rev. Stat.* § 21-155 of the Nebraska Uniform Limited Liability Company Act codifies the Internal Affairs Doctrine and deprives Nebraska courts of the Subject Matter Jurisdiction necessary to adjudicate the alleged misuse of funds of an Oregon Limited Liability Company by the Managing Member (Mr. Probandt) [*Midwest I*]; (iv) nullified the efficacy of a final Nebraska Bankruptcy Court Order [App. H] (Discharge

Protection) which indisputably established Petitioner's status under the Neb. U.C.C. as an accommodation party within the meaning *Neb. UCC § 3-419(a)* denying the Petitioner of the protection afforded by *Neb. UCC § 3-419(e)*; and (v) contravene stipulations by parties that the subject note is a negotiable instrument within the meaning of the Neb. U.C.C. These errors were made by the Nebraska Appellate Court and not the Nebraska District Court.

Civil cases' last appeal by right is to the Nebraska Appellate Court which is the primary Appellate court for civil cases and which is the primary court exercising supervisory authority over lower courts. *Neb. Ct. R. App. P. §2-102(G)*. The Nebraska Supreme Court has discretion according to *Neb. Ct. R. App. P. §2-102(G)* to hear a Petition for Further Review.

Petitioner asserts that the adjudications by the Nebraska Appellate Court are arbitrary adjudications made under the Color of Law without jurisdiction and which conflict with Nebraska Law. Further, the departure from the Neb. U.C.C. intentionally nullified the efficacy of the Petitioner's 2005 Bankruptcy Discharge as interpreted by a final order of the Nebraska Bankruptcy Court [App. H] violating the Bankruptcy Clause and the Supremacy Clause of the U.S. Constitution. U.S. Const., Art. I, § 8, Cl. 4, Art. VI, Cl. 2. The Nebraska Appellate Court's adjudications violate the Petitioner's right to due process rights which protects Petitioner from arbitrary action by the Nebraska Appellate Court. U.S. Const., Amdt. 5, § 4, Amdt. 14 § 1, Cl. 3; Neb. Const., art. I, § 1-3. Petitioner further asserts that he

has been denied equal protection of the law under both the Nebraska State Constitution and the U.S. Constitution. U.S. Const., Amdt. 14, § 1, Cl. 4: Neb. Const., art. I, § 1-3.

Given the unjustified departure from fundamental legal precepts which deny Petitioner the equal protection of law and the due process guarantee that the law will not be arbitrarily applied, Petitioner asserts that U.S. Constitution and the Nebraska Constitution circumscribe the Nebraska Supreme Court's discretion. Vested with the authority to exercise the Judicial Power of the State of Nebraska, the Nebraska Supreme Court cannot turn a blind eye to Nebraska Appellate Court's adjudications in this case. This case represents more than a simple case of abuse of discretion; rather, it represents an abject failure of the Nebraska Supreme Court to discharge its supervisory authority under the State and U.S. Constitutions. *In re Neb. Cnty. Corr. Council*, 274 Neb. 225, 231, 738 N.W.2d 850, 855 (2007) (This court also has inherent judicial power to do whatever is reasonably necessary for the proper administration of justice, and this includes supervisory power over the courts.)

Given this Petition rests upon the failure of the Nebraska Supreme Court to act upon the Petition for Further Review, the Petitioner hereby incorporates by reference Appendix J, the last Petition for Further Review which was denied.

The Petition for Further Review, Appendix J, must be examined in the context of all the evidence and law

that is available to the Nebraska Supreme Court, to wit:

- “ . . . we must take judicial notice of facts admitted by Midwest Renewable in the prior appeal which obviate the need for evidence of a written assignment to Vind.” *Midwest II*, 305 Neb. at 16.
- “The *Midwest Renewable Energy* opinion is a source of which the accuracy cannot reasonably be questioned.” *Id.*, 305 Neb. at 16 (Note omitted).
- “In interwoven and interdependent cases, we may examine our own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties.” *Id.*, 305 Neb. at 16-17 (Note omitted).
- “We have further held that we may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court.” *Id.*, 305 Neb. at 17 (Note omitted).

In the interest of justice, the Nebraska Supreme Court must read the Petition for Furthered Review supplemented by the record, the facts, and the law submitted to the Nebraska Appellate Court in the prior appeals. App. B, App. D.

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## REASONS FOR GRANTING THE PETITION

Fact and law, then known by the Nebraska Supreme Court, includes but is not limited to:

1. The Nebraska Appellate Court's failure to revisit the Neb. U.C.C. in its *2021 Adjudication* [App. B] was without merit. *Midwest II*, 305 Neb. at 15-19.
2. As the recipient of the June 2011 Note assignment, Skyline is the only party that can maintain suit thereon. *Midwest I*, 296 Neb. at 88 (the assignee is the proper and only party who can maintain the suit thereon); *Midwest II*, 305 Neb. at 5 (we concluded that the judgment . . . was assignable and that "if [the] judgment was assigned, then . . . Vind would be the only party capable of enforcing or defending the judgment and judgment lien"). Without Skyline, as a party to the proceeding, the Court has no subject matter jurisdiction over the cause of action to enforce the note. *Midwest I*, 296 Neb. at 88-92 (the absence of an indispensable party to a controversy deprives the court of subject matter jurisdiction to determine the controversy and cannot be waived). Skyline is both an indispensable party and the real party in interest. *Midwest II*, 305 Neb. at 5 ("We determined that Vind was an indispensable party"); *Midwest II*, 305 Neb. at 10 ("We conclude . . . that Vind is the real party in interest . . .").
3. "Subject matter jurisdiction is the power of a tribunal to hear and determine a case . . . A court action taken without subject matter jurisdiction is void." *J.S. v. Grand Island Pub. Schs.*, 297 Neb. 347, 352-53, 899 N.W.2d 893, 898 (2017); *Catlett v. Catlett*, 23 Neb.

App. 136, 143, 869 N.W.2d 368, 376-77 (2015). Effectively, the Nebraska Appellate Court in the 2021 Appeal [App. B] determined that Court action without Subject Matter Jurisdiction was voidable, not void.

4. The “internal affairs doctrine is codified under Neb. Rev. Stat. § 21-155.” *Midwest I*, 296 Neb. at 83. “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 – matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders – because otherwise, a corporation could be faced with conflicting demands.” *Midwest I*, 296 Neb. at 82-86 (recognizing that Corporate law addressing the Internal Affairs Doctrine applies with equal force to Limited Liability Companies). The Nebraska Appellate Court had no authority to order the Nebraska District to enter a judgment against Mr. Probandt. App. D, the 2017 Appeal: App. F, the Probandt Judgment.

5. The Mootness Doctrine applies whenever a change in circumstances precludes the Court from providing relief. *Myers v. Neb. Inv. Council*, 272 Neb. 669, 682, 724 N.W.2d 776, 792 (2006); *Forster v. Milone (In re Forster)*, 22 Neb. App. 478, 483, 856 N.W.2d 134, 142 (2014); *Wetovick v. Cty. of Nance*, 279 Neb. 773, 783-84, 782 N.W.2d 298, 309 (2010). Without Skyline as a party to the 2nd, the 3rd, and the 4th Amended Complaints, the Nebraska District Court was precluded from providing relief to the Note enforcement cause of action.

6. Nebraska's Subject Matter Law and Court Rules mirror Federal Subject Matter Law and Federal Rules.

Without Skyline becoming a party to the proceeding within a reasonable period after the June 2011 assignment [*Neb. Rev. Stat.* §§ 25-301, 25-323], the Nebraska District Court had no Subject Matter Jurisdiction over the Note cause of action. See above, ¶ 1. Subject Matter Jurisdiction cannot be conferred by consent or waived. *Cummins Mgmt., Ltd. P'ship v. Gilroy*, 266 Neb. 635, 638, 667 N.W.2d 538, 542 (2003) (Parties cannot confer subject matter jurisdiction upon a judicial tribunal by either acquiescence or consent, nor may subject matter jurisdiction be created by waiver, estoppel, consent, or conduct of the parties). Subject Matter Jurisdiction cannot be acquired by the Nebraska District Court's error, *i.e.*, Petitioner's 2011 Motion to Dismiss for reasons that [the Bank] is no longer the real party in interest should have been granted. *Id.*, 667 N.W.2d at 544 ("When, however, the basis for the plea in abatement is the court's lack of subject matter jurisdiction, the court is obligated to dismiss without prejudice, rather than to suspend the action."); *Neb. Ct. R. Pldg.* § 6-1112(h)(3) ( . . . the court shall dismiss the action.); See above, ¶ 2. After 2011, to reestablish the Note cause of action, Skyline had to instigate jurisdiction by filing a complaint. *Neb. Rev. Stat.* § 25-501. The Nebraska District Court had no authority to continue the Note proceeding on the merits after 2011. *Lambert v. Lincoln Pub. Sch.*, 306 Neb. 192, 945 N.W.2d 84 (Neb. 2020) ("Whether a court has

subject matter jurisdiction is a threshold issue that should be resolved prior to an examination of the merits . . . ”); See above, ¶ 2. Concerning the cause of action over the expenditure of the Oregon LLC’s funds, the Nebraska District Court never had and could never acquire Subject Matter Jurisdiction thereof. See above, ¶ 4. The Nebraska Appellate Court had no Subject Matter Jurisdiction if the Nebraska District Court lacked jurisdiction. *Cummins Mgmt., Ltd. P’ship v. Gilroy*, 667 N.W.2d at 544. Additionally, in 2017, the Nebraska Appellate Court had no authority to avoid the application of the primary law, the Neb. U.C.C. *Neb. UCC §§ 1-103, 3-102*.

In 2017, the Nebraska Appellate Court should have been vacated the Nebraska District Court’s 2015 Judgment against the Petitioner with a mandate directing the Court to dismiss the case.

In the 2021 Appeal, the Nebraska Appellate Court confirmed all the mistakes made in its 2017 adjudication. Subject Matter Jurisdiction law is basic and is fundamental to every Judicial proceeding. As the primary supervisory Court, the Nebraska Appellate Court knows Subject Matter Jurisdiction law, to wit:

Jurisdiction is defined as a court’s power or authority to hear a case. *Kuhlmann v. City of Omaha*, 251 Neb. 176, 556 N.W.2d 15 (1996). Parties cannot confer subject matter jurisdiction upon a judicial tribunal by either acquiescence or consent, nor may subject matter jurisdiction be created by waiver, estoppel, consent, or conduct of the parties. *Id.* A

judgment entered by a court which lacks subject matter jurisdiction is void. *Id.* It is a longstanding rule in Nebraska that such a void judgment may be attacked at any time in any proceeding. *Id.* This is true even if a party attacks subject matter jurisdiction only after being displeased with the decision of a district court. See *Paulsen v. Paulsen*, 11 Neb. App. 582, 658 N.W.2d 49 (2003) (vacating judgment for lack of subject matter jurisdiction where mother raised jurisdictional issue on appeal only after custody was awarded to child's father).

- See *Catlett v. Catlett*, 23 Neb. App. 136, 143, 869 N.W.2d 368, 376-77 (2015).

It cannot be said that the Nebraska Appellate Court's misapplication of law was unintentional.

It has been said –

The doctrine of stare decisis is a fundamental feature of the American common law system of adjudication. . . .

The doctrine of stare decisis is supported by principles that are central to American jurisprudence. Thus, stare decisis prevents the courts from deciding cases in an arbitrary way. It reflects the central idea that like cases should be treated alike.<sup>7</sup> One recent district court decision explained that the doctrine of stare decisis “is derived from considerations of stability and equal treatment.” Among the many reasons for adhering to stare decisis, the Supreme Court has emphasized that

“[s]tare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” Because of the great social utility of legal certainty and stability, the Supreme Court continues to repeat Justice Brandeis’s famous words: “in most matters it is more important that the applicable rule of law be settled than that it be settled right.” And the Court has observed that “[r]especting stare decisis means sticking to some wrong decisions.” At the most practical level, “no judicial system could do society’s work if it eyed each issue afresh in every case that raised it.”

- See *18-134 Moore’s Federal Practice – Civil § 134.01* (notes, therefore citations are omitted).

A deeper dive into the Nebraska Appellate Court’s adjudications would reveal the manipulation, the undermining, of the statutory test in the Neb. U.C.C. set forth as *Neb. UCC § 3-419(a)* as well as extensive precedent ignored to judicially engineered the result: holding on albeit different causes of action, Petitioner and Mr. Probandt liable directly or indirectly to Mr. Walker.

The Nebraska Appellate Court adjudications were rogue. See *North Carolina Utilities Commission v. F.C.C.*, 552 F.2d 1036 (4th Cir. 1977) (“The mere fact that a prior opinion exists is not sufficient in itself to call the doctrine of stare decisis into play: otherwise

one rogue opinion could deprive the law of the accumulated expertise that stare decisis strives to safeguard.”). In *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599 (Ark. 2012), Judge Danielson dissented because the majority did not overrule what “was quite clearly a rogue opinion which changed the law and basically rewrote the applicable statute.” *Id.*, 423 S.W.3d at 605. “The Supreme Court of the United States has descended from the disciplined legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2630, n22 (2015) (Justice Scalia’s Dissent). Disciplined legal reasoning was wholly wanting in the Nebraska Appellate Court’s adjudications.

The Nebraska Appellate Court’s adjudications are under the Color of Law but are not of the law. The Nebraska Appellate Court adjudications were arbitrary violating Petitioner’s rights as a citizen of Nebraska and the United States due process rights and equal protection of the law.

Twice, the Nebraska Supreme Court had an opportunity to correct the Nebraska Appellate Court’s adjudications and twice the Nebraska Supreme Court declined to take up the matter. Petitioner asserts that the Nebraska Supreme Court lacks the discretion to ignore arbitrary adjudications by the Nebraska Appellate Court which violate the Petitioner’s due process rights and rights for equal protection of the law. The Nebraska Supreme Court has broad inherent powers, to wit:

We have considered the issue of this court's authority on previous occasions. We have stated: The inherent judicial power of a court is that power which is essential to the court's existence, dignity, and functions. Such power is not derived from legislative grant or specific constitutional provision, but from the very fact that this court has been created and charged by the Constitution with certain duties and responsibilities. The Nebraska Supreme Court has been charged with administering the system of justice by exercising managerial authority over the inferior courts. Through its inherent judicial power, this court has authority to do all things that are reasonably necessary for the proper administration of justice, whether any previous form of remedy has been granted or not.

. . . we stated that when the Supreme Court was created, it brought with it inherent powers, *i.e.*, powers that are essential to the existence, dignity, and functions of the court from the very fact that it is a court.

- See *In re Estate of Reed*, 267 Neb. 121, 672 N.W.2d 416, 423-424 (Neb. 2003) (internal citations omitted)

This Court has held unanimously that there is a “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (“The Court also says that federal courts have a ‘virtually unflagging obligation . . . to exercise the jurisdiction given them.’ I agree.” *Dissent*, 242 U.S. at

821). When adjudications by Nebraska Appellate Court are so arbitrary and so contrary to Nebraska Law (case law and statutory law), it is inconsistent for the Nebraska Supreme Court to possess *inherent judicial power . . . which is essential to the court's existence, dignity, and functions* [*In re Estate of Reed, supra*] and simultaneously possesses the discretion to decline the Petitioner's appeals. It is incongruent for the Nebraska Supreme Court to possess inherent authority under Nebraska's Constitution and simultaneously possess the discretion to ignore violations of the Nebraska Constitution as well the statutory designation that the Neb. U.C.C. is the primary law [*Neb. UCC §§ 1-103, 3-102*]. The Nebraska Supreme Court has the inherent authority in the interest of justice to address the miscarriage of justice by the Nebraska Appellate Court in the 2017 Appeal and the 2021 Appeal even if no Petition for Further Review was filed; therefore, the Nebraska Supreme Court lacks the discretion to decline the Petitioner's 2021 Petition for Further Review. App. A.

Additionally, the April 17, 2012, Nebraska Bankruptcy Court 'Clarification Order' [App. H] emanating from Petitioner's 2004 personal bankruptcy when coupled with *Neb. UCC § 3-419*, Instruments signed for accommodation, was dispositive of Note action. Petitioner is an accommodation party. The facts support that Mr. Walker is an accommodated party. App. D. Under the Neb. U.C.C. Mr. Walker bore the burden of the note repayments as between parties to the Note. *Neb. UCC § 3-419(e)*. The Nebraska Appellate Court's

adjudications couple with the failure of the Nebraska Supreme Court to accept the appeals both transgresses upon Petitioner's 2005 Discharge as interpreted by the Clarification Order [App. H] which is supported by the Supremacy Clause of the U.S. Constitution. U.S. Const., Art. I, § 8, Cl. 4, Art. VI, Cl. 2. Petitioner's only consideration for the Note was discharged debt. 11 U.S.C. § 524(c).

This Court should grant this Petition because the Color of Law violations are blatant, indisputable, and committed by Courts charged with the exercise of appellate and supervisory authority over lower courts in Nebraska. A deceased friend of the Petitioner, a retired law school professor that had the privilege of arguing before this Court, repeatedly emphasized to the Petitioner "that facts make the case" (his "Legal Mantra"). Implied in the Legal Mantra is the assumption that the Court will follow the law. At the same time, the former law professor furnished me a mid-1980s document of his creation that states in part:

Thy teachings are of enormity but only confuse.  
Thy knowledge now so vast, ye can no longer  
see.  
Thy halls of justice are with so many books  
filled, that none of thee knoweth what they  
speak.  
Thy priests of justice have unto thee like the  
locust multiplied. But in their temple, thou to  
thy confides, justice no longer resides.

The former Professor's Legal Mantra and his spiritual writings conflict. Based upon Petitioner's experience, the spiritual writings were forward-looking and now

apply to Nebraska Courts. This case establishes that in Nebraska Courts “justice no longer resides.” Justice is to be dispensed at the discretion of the Nebraska Court and statutes and/or precedent are followed at the Court’s discretion. A large segment of the population has lost faith in many Federal and State institutions including the judicial branch. The adjudications of the Nebraska Appellate Court and the failure of the Nebraska Supreme Court to act, in this case, do not serve the image nor the integrity of the Judicial Branch. This injustice must not be allowed to stand. Through the acceptance of this Petition, in addressing the Nebraska Supreme Court’s inherent supervisory responsibility which limits its discretion, this Court is speaking to the highest Court of every state and will make a self-policing branch of Government more effective. It will be a substantial step in restoring the integrity of the Judicial Branch in the eyes of many doubters.

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## CONCLUSION

The Petitioner respectfully prays that this Writ of Certiorari is granted.

Respectfully submitted,  
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