

No. 21-7941

In the  
Supreme Court of The United States

**ORIGINAL**

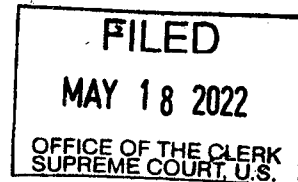
Linda A. Petralia,

*Petitioner,*

v.

AMERICAN EXPRESS NATIONAL BANK,

*Respondent.*



**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE NEW HAMPSHIRE SUPREME COURT OF APPEALS**

**NH Supreme Court Case No. 2021-0315  
NH Superior Court Case No. 226-2020-CV-00517**

**PETITION FOR WRIT OF CERTIORARI**

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May 18, 2022

## QUESTIONS PRESENTED

1. Having legally granted *Pro Se* Defendant's/Petitioner's, Linda A. Petralia, Motion to Dismiss *with prejudice* on December 2, 2020, and "(without objection by the plaintiff)/Respondent, American Express National Bank, did the N.H. Superior Court abuse discretion and due process, including violating Defendant's/Petitioner's Constitutional rights, when it unlawfully, illegally, improperly, and unjustly acted outside proper venue and competent jurisdiction, as if it were an Appellate Court, ignoring its own final order, and permitting the named Plaintiff/Respondent to re-open, re-litigate and maliciously prosecute a closed case for more than 6 months in violation of the Rule of Law, *Res Judicata*, culminating in the invalid named Plaintiff's/Respondent's Summary Judgment being unlawfully granted on June 16, 2021?"
2. Did the N.H. Supreme Court of Appeals incorrectly apply N.H. R. Super. Ct. 46(d) (1) (2) regarding "Appeals and Transfers to Supreme Court" in both its unanimously "Affirmed." decisions of January 14, 2022 and February 18, 2022, disregarding and violating both the Rule of Law, *Res Judicata*, and Defendant's/Petitioner's Constitutional Rights, when claiming under said rule that the lower Superior Court had "broad discretion" to revoke its

December 2, 2020 final and binding order for the Defendant/Petitioner granting dismissal *with prejudice* and “(without objection by the plaintiff)/Respondent, American Express National Bank?

3. Given that the United States Supreme Court grants and hears only 1% of the cases that are filed per Term resulting in 99% of cases left unheard, what is a party's legal recourse under the law in the event the Rule of Law and Constitutional Rights are being violated by State courts under the guise of “broad discretion”, as has occurred in this case, and a party is being forced by State courts to participate in unlawful, illegal, improper and unjust actions of oppression that compel the party under duress to act against their will, better judgment and to their detriment and peril, in essence forcing one's abandonment of inalienable Constitutional Rights?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page and are detailed below:

*Pro Se*<sup>1</sup> Defendant/Petitioner is Linda A. Petralia of 12 Fernwood Drive, Merrimack, N.H., 03054. Petitioner moved as the Defendant in the N.H. Superior Court and the Appellant in the N.H. Supreme Court.

Named Plaintiff/Respondent to this proceeding include: American Express National Bank<sup>2</sup>, by and through attorneys, Law Office of Randall L. Pratt, P.C. Randall L. Pratt<sup>3</sup> (filed the original complaint with the N.H. Superior Court and filed an Appearance with the N.H. Supreme Court as Counsel for American Express National Bank) and Marci Pearson (filed the original complaint in the N.H. Superior Court as Counsel for American Express National Bank and withdrew her appearance on November 25, 2020 prior to the December 2, 2020 judgment for the Defendant/Petitioner).

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<sup>1</sup> *Pro Se* Petitioner kindly requests this Court construe this Petition “liberally and held to less stringent standards than lawyers” according to *Haines v. Kerner, Warden of Illinois State Penitentiary at Menard*, (1972) 404 US 519 (1972). Additionally, the *Pickering v. Pennsylvania Railway*, (151 F2d.240) Third Circuit court of Appeals ruled: “the court should endeavor to construe the [sic] pleading without regard to technicalities.”

<sup>2</sup>Attorney Pratt of the Law Office of Randall L. Pratt, P.C., operates as an independent 3<sup>rd</sup>-party debt collection firm who purchases debt collection rights.

<sup>3</sup>American Express National Bank is a highly recognized international financial institution based in the United States and allows the use of its corporate name and influence for purchased debt-collection efforts, and is not the actual Plaintiff and owner of the alleged debt, as erroneously claimed in the case caption of these actions. (A fact the N.H. Superior and N.H. Supreme Courts, named Plaintiff/Respondent and attorneys faithfully and diligently conspired to conceal.)

## RELATED CASES

There is a second, same-named case directly related to this case and is also on Petition for Writ of Certiorari with this Court<sup>4</sup>:

- American Express National Bank v. Linda Petralia, No. 226-2021-CV-00078, Hillsborough, N.H. Superior Court, Southern District. Judgment entered October 6, 2021.
- American Express National Bank v. Linda Petralia, No. 2021-0468, N.H. Supreme Court of Appeals. Judgment entered February 22, 2022.

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<sup>4</sup> Requesting that this Case No. 226-2020-CV-00517 be reviewed prior to the second Case No. 226-2021-CV-00078 as the established protections of the *Res Judicata* in the first case are relevant to re-litigation protections of the subsequent second case.

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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.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to

the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to

the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☒ reported at \_\_\_\_\_ unknown \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the lower court appears at Appendix B to the petition and is

☒ reported at \_\_\_\_\_ unknown \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date)

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was on January 14, 2022 (Decision)

A copy of this decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: February 18, 2022, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

This Petition for Writ Certiorari is filed under the United States Supreme Court Rule 11.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a), 28 U.S.C. §1651, and 5 U.S.C. §705.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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## STATEMENT OF THE CASE

On October 21, 2020, Defendant/Petitioner, Linda A. Petralia, received a complaint filed into the N.H. Superior Court Hillsborough South (Case No. 226-2020-CV-00517) by the named Plaintiff/Respondent, American Express National Bank, for breach of contract, collection of alleged debt. On November 18, 2020, Defendant/Petitioner filed, along with her Appearance, a *Motion to Dismiss with prejudice* due to the lack of legal standing. (See Defendant's *Motion to Dismiss*, Appendix B, pp. 32-35.) Without any objection by the named Plaintiff/Respondent of said motion, the Superior court judge, Charles S. Temple, granted Defendant's/Petitioner's dismissal with *prejudice* on December 2, 2020, stating, "Granted (without objection by plaintiff)". (See Court Decision on Defendant's *Motion to Dismiss*, Appendix B, p. 34.)

Regardless of the lower court's final and binding ruling of "*with prejudice*" on December 2, 2020, this case was later resurrected outside and against the Rule of Law in violation of *Res Judicata*, and then allowed to illegally re-open and re-litigate to the culmination of a Summary Judgement filed by the named Plaintiff/Respondent on May 13, 2021, and subsequently a filed Objection on June 10, 2021 by the Defendant/Petitioner reiterating that *Res Judicata's* protection was in full force and effect and that it was unlawful for the case to continue, and then concluding with the lower court's faulty decision on June 16, 2021, favoring the named Plaintiff/Respondent, American Express National Bank, in granting their

*Motion for Summary Judgment* curiously stating verbatim,

“Granted the affidavits and exhibits that are not any genuine issues of material fact regarding liability and damages in this case. Additionally, the defendant has failed to file a counter affidavit in violation of RSA 491:8-a. The defendant’s objection does not in any address or dispute the motion for summary judgment or the attached affidavits and exhibits.” (See Court’s Decision on file with N.H. Superior Court within *Plaintiff’s Motion for Summary Judgment*.)

Defendant/Petitioner raised the issue of illegality regarding the continuation of this case based on Rule of Law, *Res Judicata*, as well as the violation of Defendant’s/Petitioner’s legal and Constitutional rights, and plead, exhaustively, on several other occasions between February to June, 2021, for the court to uphold its own granted order of December 2, 2020 of dismissed *with prejudice*. Additionally, Defendant’s/Petitioner’s pleadings, including a *Motion for Interlocutory Appeal* along with the *Statement of Interlocutory Appeal*, and subsequently its *Reconsideration*, were all denied by the lower court regardless of the December 2, 2020 case dismissal *with prejudice*. (See *Motion*, *Statement*, and *Reconsideration* on file with N.H. Superior Court.)

The Defendant’s/Petitioner’s additional pleadings are listed and detailed as follows:

On February 13, 2021, filed *Defendant’s Motion to Uphold Justice Charles S. Temple’s Granted Dismissal of Plaintiff’s Case with Prejudice*. The lower court’s decision dated February 24, 2021 stated, “Denied this motion does not set forth a sufficient basis for relief.” (See *Motion*, *Supporting Documents*, and *Court Decision* within *Defendant’s Motion to Uphold Justice Charles S. Temple’s Granted*

*Dismissal of Plaintiff's Case with Prejudice* on file with N.H. Superior Court.)

On March 4, 2021, filed *Motion to Reconsider Defendant's Motion to Uphold Justice Charles S. Temple's Granted Dismissal of Plaintiff's Case with Prejudice*. The lower court answered on March 18, 2021, "Denied-pursuant to Superior Court Rule 12(e)." (See Motion, Supporting Documents, and Court Decision within *Motion to Reconsider Defendant's Motion to Uphold Justice Charles S. Temple's Granted Dismissal of Plaintiff's Case with Prejudice* on file with N.H. Superior Court.)

On April 14, 2021, filed *Motion for Interlocutory Appeal*, together with *Statement of Interlocutory Appeal* with Superior court signature page and Appendix. On April 27, 2021, the Superior court stated, "Denied-an interlocutory appeal is not warranted under Superior Court Rule 46(a)." (See Motion, Statement, Supporting Documents, and Court Decision within *Motion for Interlocutory Appeal* on file with N.H. Superior Court.)

On May 5, 2021, filed *Motion to Reconsider Motion for Interlocutory Appeal* which the Superior court decided, "Denied-pursuant to Superior Court Rule 12(e)" on May 19, 2021. (See Motion, Supporting Documents, and Court Decision within *Motion to Reconsider Motion for Interlocutory Appeal* on file with N.H. Superior Court.)

On October 3, 2021, it was necessary for the Defendant/Petitioner to preserve her Constitutional Rights by filing a Rule 7 Mandatory Appeal with the N.H. State Supreme Court of Appeals. The Appellant/Petitioner put forth one question on

appeal as follows:

“Having legally granted Pro Se Defendant, Linda A. Petralia’s Motion to Dismiss *with prejudice* on December 2, 2020, and without objection by the Plaintiff, American Express National Bank, did the Superior Court abuse discretion and process, including Defendant’s Constitutional rights, when it illegally, improperly, and unjustly acted outside proper venue and competent jurisdiction, as if it were an Appellate Court, ignoring its own granted order, and permitting the Plaintiff to re-open, re-litigate and maliciously prosecute a closed case for more than 6 months, in violation of the Rule of Law, *res judicata*, culminating in the invalid Plaintiff’s Summary Judgment being unlawfully granted on June 16<sup>th</sup>, 2021?” (Quoted from the *Brief for Defendant-Appellant* on file with the N.H. Supreme Court.)

On January 14, 2022, the N.H. Supreme Court, consisting of a full court of at least five justices, “Affirmed,” the lower court’s decision for Summary Judgment for the named Plaintiff/Appellee/Respondent, American Express National Bank, stating the following:

“Having considered the defendant’s brief, the plaintiff’s memorandum of law, and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The defendant, Linda A. Petralia, appeals the granting of summary judgment by the Superior Court (Temple, J.) in favor of the plaintiff, American Express National Bank. She argues that granting the plaintiff summary judgment was in error because, she claims, the trial court had already entered a “final and binding” dismissal of the case several months earlier. In its memorandum of law, the plaintiff asserts, and the defendant has not disputed, that five days after the earlier dismissal order, the plaintiff moved to vacate the dismissal, and that the trial court granted its motion and vacated the dismissal two weeks later.

Until a case has gone to final judgment, the trial court retains broad discretion to reconsider any decision in order to correct error, including a decision dismissing a case. Goudreault v. Kleeman, 158 N.H. 236, 249 (2009); Redlon Co. v. Corporation, 91 N.H. 502, 503, 505-06 (1941). A non-appealed dismissal does not go to final judgment until either the thirty-first day from the trial court’s notice of decision on the dismissal, or, if a timely post-dismissal motion was filed, the thirty-first day from the notice of decision on a ruling denying that motion. Super. Ct. R. 46(d)(1), (2); see Kalil v. Town of Dummer Zoning Bd. of Adjustment, 159 N.H. 725, 729 (2010)

(observing that, under predecessor to Rule 46, trial court's final order became a "final judgment" thirty-one days after the trial court had issued its decision). Here, the trial court vacated its dismissal order well before the dismissal went to final judgment. Accordingly, the dismissal did not preclude the subsequent granting of summary judgment." (See *The State of New Hampshire Supreme Court Decision* dated February 18, 2022, Appendix A, pp. 28-29.)

Due to the N.H. State Supreme Court's "Affirmed." decision and the several inaccuracies within its unanimous decision above, it necessitated the Defendant/Appellant to file a *Motion for Reconsideration* with the Appeals Court on January 24, 2022. (See *Motion for Reconsideration* on file with the N.H. Supreme Court.)

On February 18, 2022, the N.H. State Supreme Court issued the following order affirming their January 14, 2022 decision and denied all other relief requested in the Defendant's/Appellant's *Motion for Reconsideration* in Paragraph 3 of its decision:

"...Turning to the defendant's January 24, 2022 motion for reconsideration, Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points or fact that she claims the court has overlooked or misapprehended. We have reviewed the claims made in the motion for reconsideration and conclude that no points of law or fact were overlooked or misapprehended in our decision. Regardless of whether the trial court's dismissal order had been "with prejudice", it retained discretion to reconsider and vacate that order at any time prior to the entry of final judgment. See *State v. Haycock*, 139 N.H. 610, 611 (1995) (observing that trial court's discretionary power to reconsider prior decision in continuous, and may be exercised at any time prior to final judgment); cf. *Silva v. Warden, N.H. State Prison*, 150 N.H. 372, 373-76 (2003) (reversing in part, and vacating in part, trial court's dismissal "with prejudice" of certain claims). Accordingly, upon reconsideration, we affirm our January 14, 2022 decision and deny the relief requested in the motion." (See *The State of New Hampshire Supreme Court Decision* dated February 18, 2022, Appendix A pp. 30-31.)



## REASONS FOR GRANTING THE PETITION

The N.H. Superior court's decision to grant the named Plaintiff's/Respondent's, American Express National Bank, Summary Judgment of June 16, 2021, directly conflicts and contradicts with the Rule of Law, *Res Judicata*, as well as the lower court's prior non-appealable permanent, final and binding granted dismissal *with prejudice* dated December 2, 2020 for the Defendant/Petitioner, Linda A. Petralia.

The Summary Judgment granted by the lower court in favor of the named Plaintiff/Respondent is in plain sight unlawful, illegal, improper, unjust and therefore null and void because the case is a final and binding "matter judged" protected under the Rule of Law, *Res Judicata* upon the N.H. Superior Court's granted dismissal *with prejudice*, and "(without objection by the plaintiff)" 6-months prior and effective on December 2, 2020, as the named Plaintiff/Respondent was without option for reconsideration.

Unmistakably, "*with prejudice*" is a purposeful legal distinction from its contrasting counterpart "*without prejudice*." Unlike "*without prejudice*", a dismissal "*with prejudice*" is a permanent, final and binding, resolved "matter judged" immediately protected under the Rule of Law of *Res Judicata*, strictly barring any further action. *Res Judicata*, "limits a litigant to one opportunity to litigate aspects of the case to prevent inconsistent results and multiplicity of suits

and to promote finality and judicial economy.” *Dorrance v. Lee*, 90 Hawai‘i 143, 148 49, 976 P.2d 904, 909-10 (1999).

Additionally, the fact is, the named Plaintiff/Respondent, during the course of their claim, had a full and fair opportunity to litigate the claim they brought forth. Not only did the named Plaintiff/Respondent not object to the Defendant’s/Petitioner’s *Motion to Dismiss* with *prejudice*, they never motioned the N.H. Superior court for a continuance within the allowable procedural time-frame within their claim, thus voluntarily conceding further litigation of the claim, particularly in light of the fact that the named Plaintiff/Respondent knew it would have no opportunity for appeal after a final and binding judgment of “*with prejudice*.”

Given the named Plaintiff’s/Respondent’s, American Express National Bank, failure to initially litigate its claim, it tactically circumvented the law, with the liberal assistance of the Superior Court and judge, in an attempt to recapture what the named Plaintiff/Respondent had previously forfeited and conceded to by then using the Superior Court as an Appellate Court to illegally, improperly, and unjustly advance and steer its claim to a favorable win for the named Plaintiff/Respondent. However, these tactical moves were intentionally orchestrated to revive an unappealable claim, an unlawful and illegal maneuver that the named Plaintiff/Respondent, attorney, and lower court and judge in this matter all knew or should have known was unlawful and illegal.

The N.H. Superior Court knowingly went against *Res Judicata* when the lower court judge, Temple, ruled against his own previously granted order, dismissed *with prejudice*, and allowed the case to continue against the Rule of Law, abusing the court's discretion. Clearly, "A . . . court abuses its discretion whenever it exceeds the bounds of reason or disregards rules or principles of law or practice to the substantial detriment of a party." *Shanghai Inv. Co., Inc. v. Alteka Co., Ltd.*, 92 Hawai'i, 482, 491-92, 993 P.2d 516, 525-26. Consequently, the lower court breached and absconded with the Defendant's/Petitioner's rightful win protected under the law, *Res Judicata*, and steered the Defendant's/Petitioner's entitlement to the generous accommodation and advancement of the named Plaintiff/Respondent's, American Express National Bank, rigged win.

Additionally, when the N.H. Superior Court abused its discretion and violated the Rule of Law, *Res Judicata*, allowing for the named Plaintiff/Respondent to continue its unlawful and illegal re-litigation strategy and malicious prosecution of "a matter judged", it lacked competent jurisdiction and was an improper venue because the lower court did not have the authority or the discretion to function as if it were an Appellate Court, particularly because the decided matter "*with prejudice*" was non-appealable:

"We (judges) have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. *Cohen v. Virginia*, (1821), 6 Wheat, 264 and *U.S. v. Will*, 449, U.S. 200.

Consequently, too, by falsely acting as if it were an Appellate court and allowing the illegal “appeal” by re-opening and re-litigating and maliciously prosecuting a “matter judged”, the Superior Court did in fact render two diametrically opposing determinations and failed to “prevent inconsistent results” as well as neglected to “promote finality and judicial economy”, as *Res Judicata* undoubtedly states it must.

By doing so, in this case, however, the N.H. Superior Court knew or should have known it was abusing its discretion by complicitly accommodating the win-at-all-costs vexatious and malicious re-litigation strategy in blatant violation of the law, due process, and other Constitutional rights, aggressively subjecting and compelling the Defendant/Petitioner, by forcing her against her will and liberties while under duress, to participate in continued illegal hostile warfare to her detriment and to her irreparable harm after Defendant’s/Petitioner’s legitimate win of the granted dismissal *with prejudice*.

Also, in this case, when the court abused discretion by violating *Res Judicata*, it simultaneously obstructed Defendant’s/Petitioner’s Constitutional right to due process, in particular but not exclusively. When the Defendant/Petitioner attempted to seek relief for injustices of the N.H. Superior Court, the lower court also denied both Defendant’s/Petitioner’s *Motion for Interlocutory Appeal*, filed on April 14, 2021, and her subsequent *Motion for Reconsideration of Motion for Interlocutory Appeal*, filed on May 5, 2021. By refusing and thus withholding the

required judicial signature, the lower court further controlled the case's direction and obstructed the Defendant's/Petitioner's legal access and due process rights to appeal to the higher court to preserve entitled rights. The only explanation for the the lower court continually abusing its discretion under the auspices of "broad discretion" throughout this case was to play out and protect an apparent concerted hidden agenda largely resembling an illegal debt collection scheme via wrongful use of the courts.

The N.H. Superior Court and justice as well as the named Plaintiff/Respondent and their attorneys knew or should have known that erroneously using the lower court as if it were an Appellate court is not a lawful, legal, reasonable, and sustainable workable strategy to a just and proper win but a blatantly shameful weaponizing of the legal system and a gross abuse of discretion that lends itself to the disturbingly bold and brazen appearance of judicial and professional impropriety, whether by acts or omissions, if not an outright concerted effort of criminal collusion,

"It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution."  
*Downes v. Bidwell*, 182 U.S. 244 (1901).

Equally shocking to this *Pro Se* Defendant/Petitioner is that the N.H. Courts', named Plaintiff/Respondent and attorneys' deliberate gaslighting and gang-stalking, even conducted by the courts during the two same-named actions, was intentional constructed and deployed because most *pro se* defendants obviously lack the sufficient legal know-how of highly schooled, trained, and licensed legal professionals in navigating the daunting legal process. It definitely leaves one to conclude that the naivete' of this *Pro Se* Defendant/Petitioner was targeted against her from the onset and that the outrageous events that have occurred in this case happened because this Defendant/Petitioner is a *pro se* party, and whistleblower, unskilled and unwittingly disadvantaged in the "law" while traversing a very inhospitable and already inequitable legal process stacked against *pro se* parties. It is crucial to mention here, too, that the *Pro se* Defendant/Petitioner, in two-same-named actions before the same lower court and judge, was unsuspectingly forced to navigate a sundry of unnaturally and illegally contrived tricks, twists, traps, and caveats of the so-called legal system so that the N.H. Courts, justices, named Plaintiff/Respondent, and attorneys could sustain their collusively felonious plot and a winning trajectory to their desired outcome.<sup>5</sup> (See footnote on p.15)

Clearly, Defendant/Petitioner would have never consented or been party to a rigged court case had she prior knowledge of the illegal debt collection scheme and criminal conspiracy that played out against her and the law under the guise of justice.

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<sup>5</sup>Important to note, February 22, 2021, one week following the Defendant/Petitioner filed her *Motion to Uphold Justice Charles S. Temple's Granted Dismissal With Prejudice*, a second same-named breach of contract complaint, against Rule of Law, *Res Judicata*, was filed at the same lower court on behalf of the named Plaintiff/Respondent, American Express National Bank, this time by Attorneys Lawrence Gagnon and Richard Tirrell for Zwicker & Associates, P.C., and heard by the same lower court judge. The Superior Court, the judge, American Express National Bank and the attorneys all knew or should have known that the Rule of Law, *Res Judicata*, was in full force and effect from the first same-named breach of contract action which precluded them from both (1) filing a same-named breach of contract complaint; and, (2) the lower court from accepting and adjudicating the second complaint.

An equally troubling fact was that during the entire second case, which ran for nine months, the named Plaintiff/Respondent, American Express National Bank, never once filed a motion into the Superior Court, yet the case rapidly moved forward in the last couple of months, especially, via the lower court's frequent abuse, and generous assistance, of *sua sponte* (to the point of final judgment and to the degree where the lower court broke their own Rule 42), culminating to an advanced order of default judgment that was actually never "ordered" but erroneously placed on the official case record as such, and without the Defendant's/Petitioner's notification as N.H. Superior Court Rule 42 requires, and subsequently reversed by the N.H. Supreme Court on Appeal.

Indisputably, the N.H. Supreme Court is to function as part of a system of critical checks and balances, in protection of the Rule of Law, ensuring that the lower court in its jurisdiction and competency has interpreted and administered the law in a manner that is correct, lawful, legal, reasonable and sustainable in accordance with the law and with unbiased consideration of all parties.

When the lower court judge in the N.H. Superior court adjudicated against the Rule of Law, *Res Judicata*, for the named Plaintiff/Respondent, American Express National Bank, the Defendant/Petitioner appealed to the N.H. Supreme Court with the expectation that within its jurisdiction the Appeal Court would provide the necessary correction that the Defendant/Petitioner knew to be unquestionably the Rule of Law, *Res Judicata*.

In this case, on October 3, 2021, the Defendant/Petitioner raised one clear, succinct question on mandatory Appeal with the N.H. Supreme Court of Appeals. The question raised was, in essence, completely ignored by the full court in both its initial "Affirmed." decision of January 14, 2022 and its subsequent affirmation on reconsideration of February 18, 2022. Instead, a contrived issue put forth by the named Plaintiff/Appellee in its intentionally miscaptioned and misleading, "*Appellant Memorandum of Law in Opposition to Defendant's Brief*" was answered by the N.H. Supreme Court in lieu of the Defendant's/Appellant's question. (See Plaintiff's/Appellee's "*Appellant Memorandum*" on file with the N.H. Supreme Court.) Evidently, using such, the Court purposefully circumvented addressing the



challenging legal factors raised within Defendant's/Petitioner's question on Appeal including: *with prejudice*, *Rule of Law*, *Res Judicata*, *jurisdiction*, *abuse of discretion*, *due process* and *Constitutional Rights*, as well as *malicious prosecution*. None of which were specifically acknowledged or addressed in their "Affirmed." decisions. The named Plaintiff's/Appellee's "*Appellant Memorandum*" was a slick switch and set-up designed to hijacked the actual Appellant's question on Appeal for the more advantageous and desirable defense of judicial "broad discretion", one that conveniently accommodated the N.H. Supreme Court's escape plan, and inability, in having to lawfully answer the Appellant's question on Appeal without having to both incriminate the lower court in its obvious abuses of discretion as well as answer to the case's malicious prosecution against the Defendant/Petitioner.

On January 14, 2021, the N.H. Supreme Court's decision cited N.H. R. Super. Ct. 46(d)(1) (2). However, this procedural Rule is for "Appeals and Transfers to the Supreme Court", as captioned, and is a blatant misapplication of the rule, as used in this case, and in fact, irrelevant, because the rule is not intended for dismissals directly decided with the particular legal distinction of "*with prejudice*" because if this Rule included cases decided "*with prejudice*" it would explicitly contradict and conflict with the Rule of Law, *Res Judicata*. When a case is decided dismissed "*with prejudice*" the judgment becomes final and binding upon decision, and *Res Judicata* is therefore in full force and effect upon that judgment and considered "a matter judged", thus rendering that judgment permanently resolved and not appealable

and thereby protected under the law precluding a Plaintiff from filing any further action into the claim or future re-filing of the case.

Therefore, the cited Rule 46 does not afford the lower court judge the “broad discretion” to revoke a final and binding judgment, especially given, in this case, the named Plaintiff/Respondent had a full and fair opportunity for litigation of their claim within the allotted procedural time and chose not to do so thereby forfeiting reconsideration, well-knowing “*with prejudice*” once granted would preclude any further litigation within the action, any appeal, or subsequent new actions.

The abovementioned procedural Rule obviously applies to court decisions granted “*without prejudice*” because they are subject to appeal, ineligible to the protections of *Res Judicata* until the 31<sup>st</sup> day when they become a final judgment, and if not appealed then protected under the Rule of Law, *Res Judicata*.

Obviously, too, in this case, N.H. R. Super. Ct. 46(d) (1) (2) was a gross misapplication of the Rule because it clearly contradicts and conflicts with the Rule of Law, *Res Judicata*, which was intentionally designed to promote finality and economy. Waiting for a decision to become final and binding on the 31<sup>st</sup> day when the decision is already final and binding and non-appealable from the onset of the decision, as in this case, would be unlawful, unreasonable and illogical to decisions made “*with prejudice*”.

Additionally, because N.H. R. Super. Ct. 46(d)(1) (2) makes no explicit mention of the legal distinction of “*with prejudice*”, and by misapplying this rule to

its decisions without regard to the legal difference between “*with prejudice*” and “*without prejudice*”, the N.H. Courts have seemingly similarly treated decisions “*with prejudice*” as though they are indistinguishable from “*without prejudice*” thereby blurring and minimizing this important legal distinction and thusly going against everything that “*with prejudice*” lawfully and legally affords.

Clearly, there is a legal distinction between “*with prejudice*” and “*without prejudice*” that was disregarded by the N.H. Supreme Court in both of its “Affirmed.” decisions when they knew or should have known the correct application of this Rule. “The state cannot diminish rights of the people.” *Hertado v. California*

Evidently, in this case, too, it appears that the N.H. Courts intentionally disregarded this obvious legal distinction between *with prejudice* and *without prejudice* by misapplying the rule, along with citing irrelevant case precedence, in both of their ingenuine decisions in defense of legitimizing the lower court’s judicial “broad discretion” instead of upholding the Rule of Law and addressing the lower court’s abuse of discretion, and subsequent indiscretions, as it should have.

Curiously, too, in this case, the N.H. Supreme Court cited three cases in its initial “Affirmed.” decision of January 14, 2022, and two additional cases were cited in its February 18, 2022 affirmation, as their defense of the lower court’s “broad discretion”, quite notably, however, without reliance of any rules or cases put forth by the named Plaintiff/Respondent in their “*Appellant Memorandum*” to the higher court in response to the Defendant’s/Petitioner’s Appeal, because the simple truth is

is that the named Plaintiff/Respondent could not put forth a valid argument and required and relied upon the Court's generous assistance in advancing a favor and directing a winning trajectory from the onset.

Importantly, too, the Defendant/Petitioner did not find a single mention of any case law cited within the Supreme Court's decisions that was overturned from a decision of "*with prejudice*" and therefore their claim is significantly flawed and irrelevant in defending their position for the lower court's "broad discretion". Likewise, the cited cases involved decisions that were "*without prejudice*" and where errors were objected to prior to final judgment and brought up on reconsideration, unlike in this case.

Furthermore, the N.H. Supreme Court claimed in their initial decision that the Superior court judge had the "broad discretion" to correct any errors prior to final judgment, however they disregarded the fact that this case was decided dismissed *with prejudice* and was already a final and binding matter judged by law. Additionally, with no objection by the named Plaintiff/Respondent there could be no error in the judgement. Therefore, the lower court had no discretion to revoke the disposed decision of dismissed *with prejudice*. Accordingly, "broad discretion" cannot lawfully transfer the Defendant's/Petitioner's legal right and win to the named Plaintiff/Respondent simply because they desire to recapture what they voluntarily forfeited.

Surprisingly, too, it was only upon the Defendant's/Petitioner's reconsideration of February 18, 2022 that the N.H. Supreme Court first acknowledged in their unanimously "Affirmed." decision that the lower court judge granted Defendant's/Petitioner's dismissal *with prejudice*, a considerable legal deviation from *without prejudice* to have been totally disregarded in its initial decision and then marginalized in its subsequent answer, clearly because it was a significant legal fact in the case and within the question on Appeal. Notably, too, the higher court, disregarded any address of the Rule of Law, *Res Judicata*, in their two decisions. Perhaps, the Supreme Court's total disregard of "*with prejudice*" in their first "Affirmed." decision was because this initial decision could be published and the cited "precedence" would go unquestioned by the reader, perpetuating a false precedence not representative of the true facts of this case and further obscuring the legal difference between "*with prejudice*" and "*without prejudice*".

The erroneous actions of the N.H. Supreme Court, in this case, can be explained by the fact that a second, same-named case from the same lower court was on Appeal at the same time the N.H. Supreme Court made their initial "Affirmed." decision, and by diminishing issues raised on Appeal in this case, particularly the lower court's abuse of discretion to one of "broad discretion", the N.H. Supreme Court avoided having to address the violations of the Rule of Law, *Res Judication*, as well the Defendant's/Petitioner's Constitutional rights that are at issue in both cases.

The procedural rule and case law precedence, particularly misapplied rule and the faulty precedence cited in this case, does not viably trump the established, clear-cut Rule of Law under the guise of “broad discretion”, as the N.H. Supreme Court deceives one to think.

Importantly, on a grander scale, the intentional misuse of procedural rules and misapplied cited case precedence employed to anoint and engorge the court with greater discretion than it actually legally possesses by law insidiously chips away at and devolves the Rule of Law, Constitutional rights, and justice to the eventual tyrannical hijacking of the judicial and legal systems by despots against We The People for whom it seeks to protect.

Overall, it largely appears as though the N.H. higher court, in its decisions, defended the lower court, and not the Rule of Law, by crafting an illegitimate defense based on “broad discretion,” where there is none. No judge has the legal right to disregard, circumvent, pervert, go against or above the law at any time, as was repeatedly done in this matter. Here, too, the N.H. Supreme Court worked to collusively defend and shield the lower court, the justice, and corporate and protected interests against the Rule of Law and to the irreparable loss and harm of the Defendant’s/Petitioner’s Constitutional right.

In all, this case amply explains the named Plaintiff’s/Respondent’s, the attorneys’, and the lower court’s and judge’s craftily choreographed scheme to re-open and re-litigate a final and binding judgment against the law on an unwitting

*pro se*. And, because the N.H. Supreme Court obviously protected the lower court's abuse of discretion over the Rule of Law, *Res Judicata*, when they "Affirmed." the lower court's ruling in favor of the named Plaintiff/Respondent, it failed to operate in the expected checks and balances manner in which it is intended to sustain the Rule of Law and deliver justice.

In summary, this petition for Writ of Certiorari, or All Writs, if deemed necessary by this honorable U.S. Supreme Court, is for the following listed considerations also mentioned herein, and not in any particular order:

- (a) To uphold Defendant's/Petitioner's State of N.H. Superior Court's granted dismissal *with prejudice* of December 2, 2020, as protected under the Rule of Law, *Res Judicata*.
- (b) To answer Defendant's/Petitioner's questions put forth herein.
- (c) To address the State of N.H. Courts' serious indiscretions and gross injustices that conflict with the proper and just application of the law and which deviates from the usual course of judicial proceedings.
- (d) To address the State of N.H. Courts' decisions, in this case, that violate Constitutional Rights and Civil Liberties.
- (e) The decisions of the State of N.H. Courts conflict and contradict with Rule of Law, Law of the Land, and the Constitution.
- (f) Rule of Law is being insidiously devolved under the guise of judicial "broad discretion" in an ensuing threat of tyranny against We The People.

(g) This case involves biased, collusive, criminal racketeering and treasonous activities between the two State of N.H. Courts, the judges, attorneys and named client corporation, American Express National Bank, contrary to their professional oaths and entrusted duties and responsibilities which necessitate further inquiry.

(h) This case involves important public interest: the protection and preservation of entitled rights under the Constitution.

### CONCLUSION

It is indisputable that the prevailing and established, time-honored Rule of Law is King because it is reasonable and sustainable. In the United States, the Rule of Law is an expected mode of operation that predictably governs and delivers the law ensuring order and justice in our society for all. When courts abuse discretion under the guise of "broad discretion" and simultaneously violate the Rule of Law, as was perpetrated in this case, their decisions obviously become erroneous, unlawful, illegal, unreasonable, and uncontrollably unsustainable to the scale of tyranny.

Particularly in this case, in attempting to sustain an unsustainable decision against the Rule of Law, *Res Judicata*, both the N.H. Superior and Supreme Court of Appeals abused discretion and due process while concurrently committing indiscretions that are erroneous, unlawful, illegal, unreasonable and unsustainable which intended to confuse, mislead, deceive, and defraud, inflicting loss of the



Defendant's/Petitioner's legal entitlement to victory and her Constitutional Rights as well as the intentional infliction of emotional distress by giving the named Plaintiff/Respondent a favorably rigged litigation advantage and directed win through the improper, unjust and shameful weaponizing of the court and legal system for ulterior purpose and financial gain at the expense of the law, justice, and liberty.

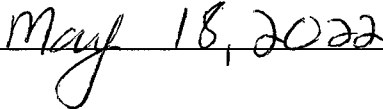
Unfortunately abuse of discretion under the guise of "broad discretion" is not an anomaly but a regular practice of the State of N.H. Courts used to satisfy their collusively tyrannical schemes. Because such, the N.H. Courts are totally unfit to deliver justice as We The People are entitled to under the Constitution of the United States. As wisely cautioned and predicted in 1886,

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*. We have no doubt that the legislative body is actuated by the same motives; but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of objectionable law." *Boyd v. United States*, 116 U.S. 616, 635.

This petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda C. Vitale", written over a horizontal line.

Date: A handwritten date "May 18, 2022" written in cursive script over a horizontal line.