

No. 23-6682

IN THE SUPREME COURT OF THE UNITED STATES

KARYN M. KELLEY,

Petitioner,

v.

KEVIN M. KELLEY,

Intervenor / Respondent,

Petition for Rehearing a Writ of Certiorari
To the United States Court of Appeals
For The First Circuit Pursuant to Rule 44

PETITION FOR REHEARING

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May 8, 2024

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Petition for Rehearing pursuant to Rule 44	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Introduction	3
Grounds for Petition for Rehearing	6
Reasons for Granting Rehearing	8
Conclusion	13
Certification pursuant to Rule 44	14
Proof of Service	15

TABLE OF AUTHORITIES

Adams v. Roberson 520 U.S. 83 (1997)	12
Air Sunshine, Inc. v. Carl 663 F.3d 27 (1 st Cir. 2011)	11
Ashcroft v. Iqbal 556 U.S. 662 (2009)	10
Bostock v. Clayton County 590 U.S. ____ (2020)	9
Dionne v. Bouley 757 F.2d 1344 (1 st Cir. 1985)	7,8
Endicott Johnson Corp. v. Encyclopedia Press 266 U.S. 285, 45 S. Ct. 61 (1924)	7,8
Fuentes v. Shevin 407 U.S. 67 (1970)	7
Glebe v. Frost 574 U.S. 21 (2014)	6
Garcia-Rubiera v. Fortuno 665 F.3d 261 (1 st Cir. 2011)	11
Giragosian v. Ryan 547 F.3d 59 (1 st Cir. 2008)	10
Goldberg v. Kelly 397 U.S. 254 (1970)	7,8
Haidak v. Univ. of Mass-Amherst 933 F.3d 56 (1 st Cir. 2019)	11
Hemphill v. New York Awrit of Certiorari No. 20-637 (January 20, 2022)	11,12,13
Howell v. Mississippi 543 U.S. 440 (2005)	12

In Re Estate of Edna V. Kelley Commonwealth of Massachusetts Essex County Probate #ES17P3683EA	4
In re Manter Corporation v. Ballard et al N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion	8
Mary Feeney v. Karyn Kelley New Hampshire Hillsborough Superior Court North 216-2010-EQ-00193	4
Mathews v. Eldridge 424 U.S. 319 (1976)	8,11
Ocasio-Hernandez v. Fortuno-Burset 640 F.3d 1 (1 st Cir. 2011)	10
People v. Reid 19 N.Y.3d 382 (2012).	13
State v. LaClair 121 N.H.74 (1981)	9
Street v. New York 394 U.S. 576 (1996)	12
Wendt v. Leonard 431 F.3d 410 (4 th Cir.2005)	6
<u>U. S. Constitution</u>	
U. S. Constitution, V Amendment	1,5,6,7,8,9
U. S. Constitution, XIV Amendment	1,5,6,7,8,9,10
<u>Statutes</u>	
MA GL c. 190B, section 3-1201	1,9
MA GL c. 194, Sec. 2	2,9
NH RSA 510:1	2,5,6,7,8,9
NH RSA 511-A:1	2,5,6,7,8,9

NH RSA 511-A:3 2,5,6,9

NH RSA 527:6 2,4,9

Rules

New Hampshire Superior Court Rule 15 2,10

New Hampshire Superior Court Rule 47(b) 2,5,6,7,8,10

Other

Doctrine of Laches 4

Open the door doctrine 11,12

Right to Intervene 4

**PETITION FOR REHEARING UNDER RULE 44
ON DENIED WRIT OF CERTIORARI**

Petitioner, Karyn M. Kelley, respectfully petitions a rehearing on denied writ of Certiorari dated April 15, 2024. Petitioner originally requested this Court review the State of New Hampshire Supreme Court Order that erred in affirming the tribunal courts judgment that violated the requirement for due process under the Fifth or Fourteenth Amendments of the United States Constitution. The lower courts deprived Petitioner of her property or funds for \$37,436.40 to the Estate of Edna Kelley, which failed to have any asset or judgment creditor listed for \$37,436.40 that Intervenor claimed, without jury trial request by Petitioner, as a matter of Law.

JURISTICTION

This Honorable Court denied a Petition for Writ of Certiorari on April 15, 2024. A timely petition for rehearing is due on or before May 10, 2024.

Constitutional and Statutory Provisions Involved

U. S. Const., Amend V provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law [.]"

U. S. Const., Amend XIV section 1 provides in relevant part: "No State shall . . . 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[.]"

MA GL c. 190B, Sec. 3-1201 (2017), If a person domiciled in the commonwealth dies leaving an estate consisting entirely of personal property the total value of which may include a motor vehicle of which the decedent was the owner, and other personal property not exceeding \$25,00000 in value.

MA GL c. 194, Sec. 2 (2017), A public administrator shall give bond for the faithful administration of each estate . . .

NH RSA 510:1 (2014) All original writs . . . shall be served by the service date specified by the court on the summons, and shall be returnable to the superior court

NH RSA 511-A:1 (2014) In civil actions . . . a defendant shall be given notice and an opportunity for a preliminary hearing before any pre-judgment attachment, including attachments of property held by a trustee, shall be made.

NH RSA 511-A-3 (1977) When a defendant objects to the making of attachments, the court shall set a hearing on such objection within 14 days of the receipt of such objection.

NH RSA 527:6 (2001) Executions may be issued at any time within two years after judgment rendered . . .

New Hampshire Superior Court Rule 15, Any person shown to be interested may become a party to any civil action upon filing and service of an Appearance and pleading briefly setting forth his or her relation to the cause; or, upon motion of any party, such person may be made a party by order of court notifying him or her to appear therein.

New Hampshire Superior Court Rule 47(b), The following procedure is to be used where the plaintiff requests permission to attach using the method that does not require notice to the defendant prior to the attachment. If the motion is granted, the plaintiff to prepare a Writ of Attachment in accordance with the Order granting the request, shall be delivered to the sheriff with directions to serve them within the time directed by the court's order. The Return of Service are to be filed immediately after service has been completed.

INTRODUCTION

Petitioner and Intervenor are sister and brother, Petitioner was sole care take for their Mother, Edna V. Kelley (Edna) from October 1999-February 2014. Edna lived with Petitioner in New Hampshire and Florida as Edna had with multiple heath issues, moreover the summer of 2013 showed signs of dementia subsequently, diagnosed with dementia.

Petitioner discovered in July 2014 Intervenor granted himself Power of Attorney over Edna, stole all of Edna's assets for self-enrichment then physically moved Edna from her 16-year quality life with Petitioner to a couch in Massachusetts. Intervenor's actions were retaliatory against Petitioner because Petitioner refused to rent Intevenor's home in Florida, he manufactured and manipulated police and courts with lies/fraud. Intervenor under Oath in Merrimack District Court, New Hampshire committed perjury, impeachment and Intervenor's testimony claimed Edna was a Massachusetts resident, Petitioner and Edna never lived together, which opened the door for further testimony. Hon. Paul S. Moore refused to have Edna testify then issued an order in November 2014, for \$33,000.00.

Intervenor stole from Petitioners home \$45,000.00 of her personal property, was caught by police, Intervenor lied to the police, " I own this home and produced false paperwork", which is on record with Petitioners homeowner's insurance company. *See Merrimack Police Reports July 31, 2014 - June 20, 2016.*

In October 2017, Hon. Paul s. Moore was removed from the Bench in open Court, charged with fraud, plead guilty subsequently, disbarred by (5) New Hampshire Supreme Court Justices, State of New Hampshire Conduct Committee #JC-17-042-C.

Edna never intended to collect this judgment or she could have executed an attachment on Petitioners real property, filed for period payments, non-compliance, under her rights at the time. Edna sat on her hand or rights, let her judgment lapse and was time-barred from execution within 2-years after judgment rendered or November 16, 2016 under NH RSA 527:6.

Edna passed on December 5, 2017, which Intervenor filed in Massachusetts Probate Court, Essex County to probate Edna's estate with total assets of \$860.00, which the Estate of Edna V. Kelley (Estate) opened and closed with a total asset of \$860.00. *See docketed #ES17P3683EA, writ appendix H-8, H-9, H-10, J-1, J-2.* Intervenor failed to have Estate proceedings on judgment which the Probate records support the findings, no judgment creditor exists for \$33,000.00. The Estate was subject to the Doctrine of Laches and time-barred from execution within 2-years after judgment rendered under NH RSA 527:6.

September 30, 2020, Intervenor filed motions to Intervene and Ex- Parte Attachment on a stale judgment from Edna Noticed November 18, 2014. Intervenor filed in NH Superior Court, docket 216-2010-EQ-00193, a 10-year old concluded Partition case between Mary Feeney v. Karyn Kelley, claimed to be a judgment creditor representing the Estate and had a right to Intervene and execute an Ex-Parte attachment on property of Petitioner for \$46,107.72. Partition case was tried to conclusion with a (2) day trial in July 2020 with the Final Partition Order Noticed August 31, 2020, such that there was no open court case in which to intervene.

October 15, 2020, Petitioner timely objected to both motions to intervene and ex-parte attachment, requested a jury trial under her right, should the court grant execution of ex-parte attachment of Petitioners property and grant Estate had a right to intervene.

October 19, 2020, the court granted Intervenors motions, which by Order and Law Intervenor must serve Petitioner within 30 days or no later than November 11, 2020. *See writ appendix G-1 through G-7, NH RSA 510:1, NH RSA 511-A:1, NH RSA 511-A:3, NH Superior Court Rule 47(b).*

October 26, 2022 over 2-years later Intervenor without Notice or Service upon Petitioner, filed a motion for judgment and to disburse funds, which the court granted, which failed to adhere to its own Order, Law or Due Process. *See writ appendix E-1 through E-4, Amendment V, Amendment XIV, NH RSA 510:1, NH RSA 511-A:1, trial court case summary LC September 30, 2020-December 22, 2022.*

November 22, 2022, the court granted Intervenor \$37,436.40 of Petitioners property without Due Process, Served or an opportunity to be heard which deprived Petitioner of substantial property. The order had an appearance of impartiality or bias when the court stated, **“The Court will not repeat the long and tortured procedural history of this case . . .”**, (bold added) which this matter failed to have a procedural history. *See writ appendix E-2.*

November 22, 2022, the court stated, **“Karyn’s objection . . . argues that the attachment order was never served upon her. Even if that were true, it would not matter at this point”**. (bold added) *See writ appendix E-3 paragraph 2, Appendix C-1, D-1 through D-11, E-1 through E-4, F-1 through F-4, G-1 through G-7, Amendment V,*

Amendment XIV, NH RSA 510:1, NH RSA 511-A:1, NH RSA 511-A:3, NH Superior Court Rules 47(b).

1 *LC:* Refers to documents filed in the case summary for Hillsborough Superior Court Northern District #216-2010-EQ-00193

Brief: Refers to Appellant's Brief filed with the State of New Hampshire Supreme Court

GROUNDS FOR PETITION FOR REHEARING

This court by Notice of April 15, 2024 denied Petitioners Writ of Certiorari to review the lower courts decision that deprived Petitioner \$37,436.40 Due Process under the V or XIV Amendment of the United States Constitution.

Petitioner seeks a new determination based on errors of fact or law so justice may be done. The merits of Petitioners case supports the lower courts order should be vacated with Petitioners relief request.

Petitioner requested in the Writ of Certiorari that this Court review a lower courts order that violated Petitioners XIV Amendment, all persons born . . . No state shall make or 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.

A judgment is void *ab initio* if it is entered in a manner inconsistent with due process. See Glebe v. Frost, 574 U.S. 21, (2014), Wendt v. Leonard, 431 F.3d 410, 413 (4th Cir. 2005). The Bill of Rights with the "Incorporation Doctrine" of the XIV Amendment provides that any state or court that denies one his rights is violating its duty to provide "equal protections of the laws". The doctrine is the recognition that no procedure can be

just if it deprives a person of his or her human liberties. One of these guaranteed rights is to redress of grievances. Article III, Section 2, Clause 1 states, “The Judicial Power shall extend to all cases in the Law and Equity, arising under the Constitution (and) Laws of the United States. . .” In this case Petitioner was deprived her due process rights secured by the United States Constitution. Petitioner was denied a jury trial, Due Process, that deprived her substantial property of \$37,436.40.

This case presents issues of importance to individuals who face potential violations of Constitutional Rights, Due Process if the Government deprives an individual of property, due process requires notice and an opportunity to be heard, the V and XIV Amendments state that no one shall be “deprived of life, liberty or property without the due process of law.”

The questions to be reviewed under Writ of Certiorari are important questions that were determined adversely by the New Hampshire Supreme Court. The decision directly conflicts with the due process under U.S. Const. V and XIV Amendments, Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), Fuentes v. Shevin, 407 U.S. 67 (1972) and Goldberg v. Kelly, 397 U.S. 524 (1970).

Due process is a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly. Due process requires notice and an opportunity to be heard. In this case, Petitioner was deprived \$37,436.40 of property by execution of ex-parte attachment without notice, service, or trial that as a matter of law should be VOID. *See Brief App. 58-65, 62-68, Amendment V, Amendment XIV, RSA 510:1, RSA 511-A:1, New Hampshire Superior Court Rule 47(b), Dionne v. Bouley*, 757 F.2d 1344 (1st Cir. 1985), *Endicott Johnson Corp. v. Encyclopedia Press*,

266 U.S. 285, 45 S. Ct. 61 (1924), *In re Manter Corporation v. Ballard et al, N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion, Mathews v. Eldridge, 424 U.S. 311, 96 S. Ct. 893 (1976).*

Just as cases have interpreted when to apply due process, others have determined the sorts of procedures, which are constitutionally due. In Goldberg, Court answered the question by holding the state must provide a hearing before an impartial judicial officer, the right to an attorney's help, the right to present evidence and arguments orally, the chance to examine all materials that would be relied on or to confront the cross-examine adverse witnesses, or a decision limited to the record thus made and explained in an opinion.

In this case, the court failed, as a matter of Law, to have Intervenor Serve Petitioner, denied her process that was "due"; right to; be heard, present evidence, present witness, cross-examine adverse witnesses, jury trial. *See Brief App. 58-65, 62-68, Amendment V, Amendment XIV, RSA 510:1, RSA 511-A:1, New Hampshire Superior Court Rule 47(b), Dionne v. Bouley, 757 F.2d 1344 (1st Cir. 1985), Endicott Johnson Corp. v. Encyclopedia Press, 266 U.S. 285, 45 S. Ct. 61 (1924), In re Manter Corporation v. Ballard et al, N.H. Bk. No. 98-11772-MWV, Adv. No. 99-1030-MWV September 1999 Opinion, Mathews v. Eldridge, 424 U.S. 311, 96 S. Ct. 893 (1976).*

REASONS FOR GRANTING REHEARING

The main reason to grant certiorari is the Estate was not a judgment creditor therefore had no standing to intervene or execute attachment for \$37,436.40.

Another reason to grant certiorari is Petitioners process that was "due" was violated whereby Petitioner was deprived her property for \$37,436.40 by execution of Ex-Parte

Attachment, which Intervenor failed to Serve Petitioner, as a matter of Law, that denied Petitioner an opportunity to be heard, invoke her right to a jury trial, submit evidence, cross-examine witnesses, which the results would have changed the findings. The constitutional provision encompasses the fundamental right to cross-examine witnesses to impeach their credibility. State v. LaClair, 121 NH 74 (1981).

In a landmark case the United States Supreme Court stated that the Supreme Court “. . . normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, the words on the page constitute the law adopted by Congress and approved by the President. If Judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and our own imaginations, we would risk amending statutes outside the legislative process reserved for the peoples representatives.” Bostock v. Clayton County, 590 U.S. ____ (2020)

Although the Supreme Court in Bostock analyzed the application of Title VII of the Civil Rights Act, the statutory construction used: “...From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex” applies to this case. Id

In this case using the formulation and statutory construction that “from the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: the language in U. S. Const., Amend V ; U. S. Const., Amend XIV section 1; MA GL c. 190B, Sec. 3-1201; MA GL c. 194, Sec. 2; NH RSA 510:1; NH RSA 511-A:1; NH RSA 511-A-3; NH RSA 527:6; New Hampshire Superior

Court Rule 15; New Hampshire Superior Court Rule 47(b) were all violated rendering said judgment VOID. *See writ pages 1-5.*

Due Process and fairness dictates that an individual should not have to guess as to whether a court is going to give an alternative meaning to unequivocal language and directives of Amendments, Statutes, Rules and orders of the court.

Petitioner had “sufficient factual matter, accepted as true, to ‘state a claim to relief’” *See Ashcroft v. Iqbal, 556 U. S. 662, 678 (2009).* The court treats as true all well-pleaded factual allegations and, after disregarding conclusory allegations, construes all reasonable inferences in plaintiff’s favor. *See Ocasio-Hernandez v. Fortuno-Burset, 640 F.3d 1, 12 (1st Cir. 2011).* In doing so, the court may consider “documents incorporated by referenced in, matters of public record, and other matters susceptible to judicial notice, “including publicly recorded documents from state court judicial proceedings. *See Giragosian v. Ryan, 547 F.3d 59, 65 (1st Cir. 2008).*

In this case Petitioner would have produced all records from Probate Court, have Intervenor confirm under Oath that \$37,436.40 was not an asset of the Estate, therefore not a judgment creditor. Petitioner would have Intervenor confirm under Oath that Estate opened and closed with a total asset of \$860.00. *See writ appendix D, F, H,J.* If a trial was granted, Testimony would have proven Intervenor committed fraud on the courts, perjury or impeached himself that opened the door for further action, whereby a jury would have found different results.

The XIV Amendment Due Process Clause provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” “Due process is flexible and calls for such procedural protections as the particular situations demands.” See

Mathews v. Eldridge, 424 U.S. 319, 334 (1976). To prevail on a procedural due process claim, a plaintiff must show that he or she “has a protected interest in life, liberty, or property, and that the defendants deprived him or her of that protected interest without constitutionally adequate process.” See Foley v. Town of Lee, 871 F. Supp. 2d 39, 47 (D.N.H. 2012) (citing Garcia-Rubiera v. Fortuno, 665 F.3d 261, 270 (1st Cir. 2011); Air Sunshine, Inc. v. Carl, 663 F.3d 27, 34 (1st Cir 2011)). “To determine what process is constitutionally due, “courts generally balance three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substituted procedural requirement would entail. See Haidak v. Univ. of Mass.-Amherst, 933 F.3d 56, 66, (1st Cir. 2019)(quoting Mathews, 424 U.S. at 335).

In this case Petitioner sufficiently alleged an interest in her property. The fundamental requirement of constitutionally adequate due process is the opportunity to be heard “at a meaningful time and in a meaningful manner. “ Mathews, 424 U. S. at 333. Petitioner was denied that opportunity. *See writ appendix E-2, H-5.*

This Honorable Court reversed and remanded No. 20-637 Darrell Hemphill, Petitioner v. New York on Writ of Certiorari to the Court of Appeals of New York [January 20, 2022]. That case was criminal that violated the VI and XIV Amendments, the right to confront a witness, the right to a fair trial and “opening the door” doctrine, which this Court upheld the Constitutional Rights, this recent decision should be a reason to grant

Petitioner her Petition for Rehearing as this Courts recent decision to overturn Hemphill conflicts with Petitioners denied Writ of Certiorari that argued the same Constitutional Rights.

Before proceeding on the merits, the Court must address the State's threshold argument that Hemphill failed to present his claim adequately to the state courts. This Court "has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim 'was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.'" Howell v. Mississippi, 543 U. S. 440, 443 (2005)(per curiam)(quoting Adams v. Roberson, 520 U.S. 83,86 (1997)(per curiam)). "No particular form Cite as : 595 U.S. ____ (2022) 7 Opinion of the Court of words or phrases is essential'" for satisfying the presentation requirement, so long as the claim is "'brought to the attention of the state court with fair precision and in due time.'" Street v. New York, 394 U. S. 576, 584 (1969)(quoting New York ex rel. Bryand v. Zimmerman, 278 U.S. 63,67 (1928)). Hemphill has satisfied this requirement. See No. 20-637, Hemphill v. New York Opinion October Term 2021 decided January 20, 2022, 595 U.S. ____ (2022).

The same rights applied in this case which Petitioner was denied her right to; jury trial, confront witnesses, credibility of Intervenor that committed fraud on the courts, perjured , impeached himself that "opened the door" to further action.

In Hemphill the trial court allowed the State to introduce parts of the transcript of Morris' plea allocution as evidence to rebut Hemphill's theory that Morris committed the murder. The court reasoned that Hemphill's argument and evidence had "open[ed] the door" to the introduction of these testimonial out-of-court statements, not subject to

cross-examination, because they were “reasonably necessary” to ‘correct’ the “misleading impression” Hemphill created. 2 Hemphill v New York Opinion of the Court People v. Reid, 19 N.Y.3.d 382, 388 (2012).

Intervenor committed fraud on the court when he plead false claims that the Estate was a judgment creditor for \$33,000.00, which Intervenor claimed the complete opposite in Probate, total assets were \$860.00. *See writ appendix E,G,H-8,H-9,H-10, J-1, J-2.* Petitioner was denied her right to correct the misleading impression plead by Intervenor.

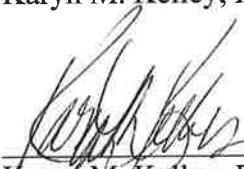
CONCLUSION

The Supreme Court of the United Sates is the “last resort” to defend its Citizens Constitutional Rights when lower courts violated those rights, whereby rehearing would be essential in this matter so that just may finally be done.

For the foregoing reasons, the petitioner respectfully requests that this Court grant her Petition for Rehearing on denied writ of certiorari dated April 15, 2024.

May 8, 2024

Respectfully Submitted by Petitioner,
Karyn M. Kelley, Pro Se



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PETITIONER'S CERTIFICATION PURSUANT TO RULE 44

Petitioner hereby certifies that this petition for rehearing grounds are limited to intervening circumstance of substantial or controlling effect or to other substantial grounds not previously presented.

Petitioner believes that this petition for rehearing is very likely to prevail on the merits of the case, which this Court has the discretion to grant for compelling reasons.

Petitioner hereby certifies that this petition for rehearing is presented in good faith and not for delay.

Mary 8, 2024

Karyn M. Kelley, Pro Se



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IN THE SUPREME COURT OF THE UNITED STATES

KARYN M. KELLEY,

Petitioner,

v.

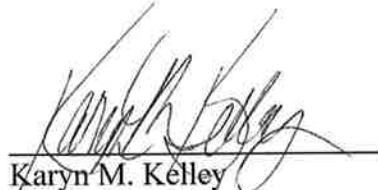
KEVIN M. KELLEY,

Intervenor / Respondent,

PROOF OF SERVICE

I, Karyn M. Kelley, do swear and declare that on this date, May 8, 2024, as required by Rule 29, I have served the enclosed petition for rehearing on the Intervenor's counsel, Attorney William J. Amann, 757 Chestnut Street, Manchester, NH 03104. I declare under penalty of perjury that the foregoing is true and correct.

May 8, 2024



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