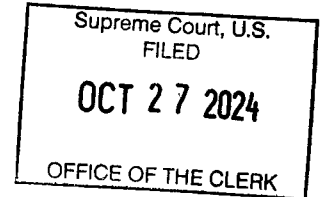


24-5873
No. 5873

ORIGINAL

IN THE
Supreme Court of the United States



IN RE DANA ALBRECHT,

Petitioner

On Petition for a Writ of Mandamus to the
Supreme Court of New Hampshire

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Recent national news coverage describes a current crisis in the Supreme Court of New Hampshire wherein Justice Anna Barbara Hantz Marconi, a sitting Justice of the Supreme Court of New Hampshire, is presently facing two Class B felony charges (Attempt to Commit Improper Influence and Criminal Solicitation of Improper Influence) and five Class A misdemeanors, including allegations of misuse of her judicial position.

The criminal charges involve allegations that Justice Marconi misused her judicial position to influence New Hampshire Governor Christopher Sununu with regard to a criminal investigation into her husband, Geno Marconi, who was indicted for two Class B felonies and four Class A misdemeanors.

Justice Marconi has submitted a sworn affidavit claiming that Chief Justice Gordon MacDonald indicated it was permissible for her to meet with Governor Sununu regarding the investigation into her husband.¹

The first question presented is: *Whether a writ of mandamus should issue directing Chief Justice Gordon MacDonald of the Supreme Court of New Hampshire to disclose whether he agrees or disagrees with Justice Anna Barbara Hantz Marconi's sworn affidavit regarding their conversation about her meeting(s) with Governor Chris Sununu, as this disclosure is essential for litigants to file appropriate motions for recusal.*

¹ See the Appendix to this Petition ("Apx.") at 15a, ¶11.

On December 9, 2021, the Supreme Court of New Hampshire issued a supervisory order creating a multidisciplinary “Task Force on domestic violence in the New Hampshire Judicial Branch.”² The order did not specify which justices approved it, although Justice Marconi was appointed as chair of the Task Force, and Chief Justice MacDonald’s former law partner, David Vicinanza, was appointed as a member.³

The second question presented is: Whether a writ of mandamus should issue directing the Supreme Court of New Hampshire to identify which justice(s) approved the supervisory order issued on December 9, 2021, establishing a multidisciplinary Task Force on domestic violence, as this disclosure is essential for litigants to file appropriate motions for recusal.

Petitioner alleges that trial court transcripts in his case were deliberately falsified to omit evidence of judicial misconduct. Petitioner further alleges that former New Hampshire Chief Circuit Court Administrative Judge David King committed perjury during his sworn deposition on August 26, 2022, by falsely stating that he had informed the Judicial Conduct Committee of his findings about these transcripts, when he had not. This resulted in several years of delays and required the Supreme Court of New Hampshire to order multiple revisions of the transcripts. Only a partial, redacted copy of Judge King’s deposition is currently available, and Petitioner seeks the complete deposition for full clarity.⁴

² See Apx. at 106a-107a.

³ Membership is identified at <https://www.courts.nh.gov/news-and-media/new-hampshire-judicial-branch-releases-internal-review-denial-final-domestic>

⁴ The complete August 26, 2022 deposition of Judge King appears to be 31 pages in length. See Apx. at 83a-93a for the heavily redacted portion that has been released.

The third question presented is: *Whether a writ of mandamus should issue to address allegations that former Chief Circuit Court Administrative Judge David King committed perjury during his August 26, 2022 deposition concerning the falsification of trial court transcripts, and to compel the Supreme Court of New Hampshire to provide clarity regarding the oversight and multiple revisions related to those transcripts, which were ordered by the Court. Petitioner also seeks the production of the complete deposition of Judge King, as only a partial, redacted copy is currently available.*

Because of the recent and rapidly involving developments that have taken place just last week and have directly affected Petitioner, Petitioner has sought an extension of time from the Supreme Court of New Hampshire (No. 2023-0181) to file appropriate responsive pleadings, which was denied on October 24, 2024 by Justice Melissa Countway.⁵

The fourth question presented is: *Whether a writ of mandamus should issue to compel the Supreme Court of New Hampshire to allow Petitioner (or other litigants) to request a stay in proceedings below or otherwise to have additional and adequate time to prepare appropriate responsive pleadings?*

⁵ See Apx. at 5a.

PARTIES TO THE PROCEEDING

Petitioner in this Court (defendant-appellee in the Supreme Court of New Hampshire) is Dana Albrecht, a resident of New Hampshire.

Respondent in this Court is the Supreme Court of New Hampshire. Respondents also include Judge David King, in his official capacity as the former Chief Administrative Judge of the New Hampshire Circuit Court; Robert Mittelholzer in his official capacity as the Executive Secretary of the New Hampshire Judicial Conduct Committee; Kristin Bertrand, Catherine E. Shanelaris, Hon. John T. Pendleton, Stephen R. L'Heureux, John Mullen, Delton Record, Jr., Hon. Jennifer A. Lemire, Thomas J. Moses, Hon. Neals-Erik William Delker, Larry Gilpin, and Sherry Bisson in their official capacity as members of the New Hampshire Judicial Conduct Committee; John Formella, in his official capacity as Attorney General of New Hampshire; and Katherine Albrecht, a resident of Michigan, in her individual capacity as petitioner in the proceedings below.

STATEMENT OF RELATED PROCEEDINGS

In the Matter of Anna Barbara Hantz Marconi, Esquire
Supreme Court of New Hampshire
Case No. LD-2024-0014

State of New Hampshire v. Anna Barbara Hantz Marconi
Case No. 217-2024-CR-01167
Merrimack County Superior Court, New Hampshire

State of New Hampshire v. Geno Joseph Marconi
Case No. 218-2024-CR-01426
Rockingham County Superior Court, New Hampshire

In the Matter of Bruce F. DalPra
Supreme Court of New Hampshire
Case No. JD-2022-0001

In the Matter of Julie A. Introcaso, Esquire
Supreme Court of New Hampshire
Case Nos. LD-2021-0001; JD-2020-0001

In the Matter of Paul S. Moore, Esquire
Supreme Court of New Hampshire
Case Nos. LD-2018-0005; JD-2018-0001

Katherine Albrecht v. Dana Albrecht
Supreme Court of New Hampshire
Case Nos. 2020-0118; 2021-0192; 2022-0284; 2023-0181; 2023-0602

Katherine Albrecht v. Dana Albrecht
9th Circuit Court – Family Division – Nashua, New Hampshire
Case Nos. 659-2019-DV-00341; 659-2016-DV-00120

Dana Albrecht v. Katherine Albrecht
Supreme Court of New Hampshire
Case Nos. 2022-0517

Dana Albrecht v. Katherine Albrecht
9th Circuit Court – Family Division – Nashua, New Hampshire
Case No. 659-2016-DM-00288

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<i>Cheney v. United States Dist. Ct.</i> , 542 U.S. 367 (2004).....	31
<i>Erickson v. Pardus</i> , 551 U.S. 89, 94 (2007).....	12
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PETITION FOR A WRIT OF MANDAMUS

Petitioner Dana Albrecht respectfully petitions this Court for *narrow relief* that it issue a *writ of mandamus* to compel the Supreme Court of New Hampshire, and/or the New Hampshire Judicial Conduct Committee; and/or the Attorney General of New Hampshire to take various specific actions to ensure both equal protection and due process of law for Petitioner and the citizens of New Hampshire.

PETITIONER APPEARS PRO SE

Petitioner appears *pro se*, without any formal training in the law, and has prepared this Petition without the assistance of any professional counsel. Petitioner therefore respectfully requests that it “be so construed as to do substantial justice.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

OPINIONS AND ORDERS BELOW

The most recent *Order* of the Supreme Court of New Hampshire, No. 2023-0181, finding against the Petitioner, was issued on October 24, 2024.⁶

An *Order* wherein the four remaining active sitting justices of the Supreme Court of New Hampshire (Chief Justice Gordon MacDonald; Senior Associate Justice James P. Bassett; Associate Justice Patrick E. Donovan; and Associate Justice Melissa B. Countway) recused themselves in recent disciplinary proceedings

⁶ See Apx. at 5a. This *Order* is purely procedural in nature, denying a request for an extension of time for Petitioner to file substantive responsive pleading(s). See Apx. at 21a-23a; 26a.

to disbar their colleague Associate Justice Anna Barbara Hanz Marconi was issued on October 23, 2024.⁷

An *Order*⁸ in Petitioner's case (No. 2023-0181) wherein all five justices approved that "Justice Hantz Marconi has reviewed this matter and has determined that she is not [emphasis added] disqualified" was issued on July 8, 2024.⁹

An *Order*¹⁰ *directly related* to Petitioner's case (No. 2021-0192)¹¹ finding that former New Hampshire marital master Bruce F. DalPra¹² committed multiple violations of the Code of Judicial Conduct arising directly out of his conduct in Petitioner's case, was issued on November 10, 2022.¹³

An *Order* disbarring former New Hampshire Circuit Court Judge Julie A. Introcaso after she entered an Alford plea¹⁴ concerning her alleged falsification of official court records (a Class B felony) was issued on February 25, 2022.¹⁵ An *Order* finding that Judge Introcaso committed multiple violations of the Code of Judicial

⁷ See Apx. at 13a.

⁸ See Apx. at 81a and 82a; related deposition excerpt (Apx. at 83a-93a); and related transcript excerpt (Apx. at 94a-97a).

⁹ See Apx. at 35a. Cf. Apx. at 37a-49a, wherein Petitioner sought additional information about Justice Marconi and Geno Marconi both from the Supreme Court of New Hampshire and the New Hampshire Attorney General's office.

¹⁰ See Apx. at 81a-82a.

¹¹ See Apx. at 100a-105a.

¹² New Hampshire marital masters "have no inherent power, but rather derive all their power from the appointing judge or from the agreement of the parties." Witte v. Justices of New Hampshire Superior Court, 831 F. 2d 362, 365 (1st Cir. 1987). "Thus, under the marital master system, it is a judge, not a master, which determines the case." *Id.*

¹³ *Supra* note 10.

¹⁴ See North Carolina v. Alford, 400 U.S. 25 (1970).

¹⁵ See Apx. at 98a-99a.

Conduct arising, *inter alia*, directly out of her conduct in Petitioner's case,¹⁶ was issued on March 23, 2021.¹⁷

An unattributed Supreme Court of New Hampshire *Supervisory Order* "establish[ing] a multidisciplinary Task Force¹⁸ ... to conduct a systemic review of domestic violence in the New Hampshire court system"¹⁹ attested to *only* by Clerk Timothy Gudas was issued on December 9, 2021.²⁰ This *Order* does not state which Justices approved it.²¹

An *Order* disbarring former New Hampshire Circuit Court Judge Paul S. Moore after he was convicted of violating N.H. Rev. Stat. Ann. § 100-C:16, *Protection Against Fraud*, a class B felony, was issued on July 5, 2018.²²

Judge Paul S. Moore's initial temporary civil "domestic violence" finding against Petitioner, that first *initiated* the underlying family law proceedings, was issued on April 8, 2016.²³

16 Judge Introcaso appointed her close friend Kathleen Sternenberg as *Guardian ad Litem* in Petitioner's family law case, violating conflict of interest rules. Cf. *Albrecht v. Sternenberg*, No. 24-1217, (1st Cir.). Judge Introcaso later stated she had no recollection of Petitioner's family law case, despite signing multiple orders in Petitioner's family law case.

17 See Apx. at 108a-110a.

18 *Supra* note 3.

19 This "Multidisciplinary Task Force to Review Domestic Violence Cases in the New Hampshire Judicial Branch" was apparently created in response to an "Internal Review of the Denial of Final Domestic Violence Order," concerning an order issued by New Hampshire Circuit Court Judge Polly Hall. See *Lindsay Smith v. Richard Lorman*, No. 641-2021-DV-00070 (N.H. 10th Cir. Dist. Ct. Hampton Oct. 20, 2021). The *Report of the Internal Review Committee* is available online at: <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-11/report-of-the-internal-review-committee-on-the-case-of-l.s.-v.-r.l.pdf>

20 See Apx. at 106a-107a.

21 *Id.*

22 See Apx. at 142a.

23 See Apx. at 143a-149a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section One of the Fourteenth Amendment to the United States Constitution requires:

“[N]or 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. ”

Article 8 of the New Hampshire Constitution requires:

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government. Therefore, any individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding.

June 2, 1784

Amended 1976 by providing right of access to governmental proceedings and records.

Amended 2018 by providing that taxpayers have standing to bring actions against the government

Article 10 of the New Hampshire Constitution requires:

[Art.] 10. [Right of Revolution.] Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is

absurd, slavish, and destructive of the good and happiness of mankind.
June 2, 1784

Article 35 of the New Hampshire Constitution requires:

[Art.] 35. [The Judiciary; Tenure of Office, etc.] It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, that the Judges of the Supreme Judicial Court should hold their offices so long as they behave well; subject, however, to such limitations, on account of age, as may be provided by the Constitution of the State; and that they should have honorable salaries, ascertained and established by standing laws.

June 2, 1784

Amended 1792 to provide for age limitation as provided by the constitution.

N.H. Rev. Stat. § 173-B (“Protections of Persons from Domestic Violence”).

N.H. Rev. Stat. § 633-3:a (“Stalking”).

N.H. Rev. Stat. § 461-A:4-a (2023) (*repealed*).

N.H. Rev. Stat. § 461-A:4-a (2025)²⁴ (“Enforcement of Parenting Plans”).

N.H. Rev. Stat. § 641:1 (“Perjury”).

N.H. Rev. Stat. § 641:6 (“Falsifying Physical Evidence”).

INTRODUCTION

This case raises serious concerns about the integrity of the entire New Hampshire judicial system in light of recent felony criminal charges involving a sitting justice of the Supreme Court. In October 2024, Justice Anna Barbara Hantz Marconi and her husband, Geno Marconi, were both indicted on multiple charges. Geno Marconi, the former Director of Ports and Harbors for New Hampshire, faces two Class B felony counts and four misdemeanor counts. Justice Marconi, in her

²⁴ New Hampshire House Bill 1006, signed into law on July 19, 2024, takes effect on January 1, 2025. This bill repeals N.H. Rev. Stat. § 461-A:4-a (2023) and re-enacts a substantively different statute, N.H. Rev. Stat. § 461-A:4-a (2025). See Apx. 32a-33a.

capacity as a sitting Supreme Court Justice, faces two Class B felony counts and five misdemeanor counts. These charges suggest an attempt to influence the investigation into her husband's conduct, including a key communication with Chief Justice Gordon MacDonald. According to her affidavit, Chief Justice MacDonald advised her, "*I think you can do that – You are a constituent and have concerns.*" Justice Marconi affirmed under penalty of perjury that this account is accurate.

Further compounding the concerns about judicial integrity, there are allegations that former Chief Administrative Judge David King engaged in perjury and facilitated the falsification of trial court transcripts. Despite King's sworn statement that he informed the Judicial Conduct Committee of transcript omissions, the need for multiple revisions raises serious doubts about the truthfulness of his testimony. These allegations underscore the petition's emphasis on the necessity for transparent judicial conduct and due process, as well as the immediate need for clarity on potential judicial misconduct.

The implications of these charges are far-reaching, potentially undermining the public's confidence in the impartiality and fairness of New Hampshire's highest court. This petition underscores the necessity for transparent judicial conduct and raises critical due process concerns, calling for immediate action to address possible conflicts of interest and judicial misconduct.

STATEMENT OF CASE

A. Background on the underlying action

Petitioner Dana Albrecht and Respondent Katherine Albrecht, once married and now divorced, have been locked in a complex legal struggle for over eight years across four states (New Hampshire, Massachusetts, California, and Michigan). Their dispute encompasses two primary issues: child custody and civil domestic violence allegations, involving their four children: P.A., C.A., S.A., and G.A.

Petitioner asserts that the underlying family law case is a “textbook example” fitting nearly precisely those fact patterns articulated by the Fifth Circuit Court of Appeals in United States v. Rahimi, 61 F. 4th 443,465-66 (2023) wherein, separate and apart from any Second Amendment concern, Judge Ho described that civil domestic violence petitions are frequently “deployed as ‘an affirmative element of divorce strategy,’” (*Id.*) and as a “a powerful strategic tool in custody disputes,” (*Id.*) wherein “a plaintiff willing to exaggerate past incidents or even commit perjury can have access to a responsive support group, a sympathetic court, and a litany of immediate relief.” (*Id.*)

When the Fifth Circuit’s *Opinion* was subsequently reviewed by this Court, it strictly confined its analysis solely to analyzing the *prima facie* constitutionality of U.S.C. § 922(g)(8), noting that “Our analysis starts and stops with Section 922(g)(8)(C)(i)....” United States v. Rahimi, 144 S. Ct. 1889, 1898 (2024). This Court further explicitly stated in Rahimi that “in any event, we need not address any due process concern here because [the] challenge was not litigated as a due process challenge and there [was] no such claim before us.” Rahimi at 1947 n.2.

To be clear, however, Petitioner is not requesting for this Court to provide any further substantive review of *Rahimi* at this time, nor to form any opinion on the underlying dispute between Petitioner Dana Albrecht and Respondent Katherine Albrecht at this time.

Rather, it is Petitioner's intent to highlight to this Court that the underlying dispute in the lower state courts is rife with numerous "due process" challenges that involve, in particular, the issuance and extension of civil domestic violence orders of protection. This underscores the relevance and importance of the *narrow* issues which Petitioner *has* requested for this Court to address in this Petition.

B. Criminal charges against Justice Marconi and her husband Geno Marconi

Justice Anna Barbara Hantz Marconi is a sitting justice of the Supreme Court of New Hampshire. Justice Marconi's husband is Geno Marconi, who has served as the Director of Ports and Harbors for the State of New Hampshire,²⁵ part of the PEASE Development Authority (PDA).²⁶

In October 2024, Geno Marconi was indicted on two Class B felonies: *Tampering with Witnesses and Informants* (N.H. Rev. Stat. § 641:5, II)²⁷ and *Falsifying Physical Evidence* (N.H. Rev. Stat. § 641:6, I).²⁸ He was also indicted on four Class A misdemeanors: two counts of *Driver Privacy Act Violations* (N.H. Rev. Stat. § 260:14, IX(a))²⁹ and two counts of *Obstructing Government Administration* (N.H.

25 See, e.g., recent news articles such as "New Hampshire's Port Director and His Wife, a Judge, Are Both Facing Criminal Charges," published by U.S. News and World Report, available at: <https://www.usnews.com/news/us/articles/2024-10-17/new-hampshires-port-director-and-his-wife-a-judge-are-both-facing-criminal-charges>

26 Further background information describing the PEASE Development Authority (PDA) is available online at: <https://peasedev.org/about-2/>

27 See Apx. at 57a.

28 See Apx. at 51a.

29 See Apx. at 55a-56a.

Rev. Stat. § 642:1, I).³⁰ The New Hampshire Attorney General's office alleges that Geno Marconi deleted voicemails and provided confidential motor vehicle records to a third party.³¹ He has been on paid administrative leave since April 2024.³²

Supreme Court of New Hampshire Associate Justice Anna Barbara Hantz Marconi was also indicted for two Class B felonies: one count of *Attempt to Commit Improper Influence* (N.H. Rev. Stat. § 629:1, I; N.H. Rev. Stat. § 640:3, I(b))³³ and one count of *Criminal Solicitation of Improper Influence* (N.H. Rev. Stat. § 629:2, I; N.H. Rev. Stat. § 640:3, I(b)).³⁴ She also faces five Class A misdemeanors: two counts of *Criminal Solicitation of Misuse of Position* (N.H. Rev. Stat. § 629:2, I; N.H. Rev. Stat. § 21-G:23, II),³⁵ one count of *Criminal Solicitation of Official Oppression* (N.H. Rev. Stat. § 629:2, I; N.H. Rev. Stat. § 643:1),³⁶ one count of *Official Oppression* (N.H. Rev. Stat. § 643:1),³⁷ and one count of *Obstructing Government Administration* (N.H. Rev. Stat. § 642:1, I).³⁸

Justice Marconi is accused of attempting to influence the investigation into her husband by soliciting New Hampshire Governor Chris Sununu to expedite its conclusion.³⁹

³⁰ See Apx. at 53a-54a.

³¹ See the *Press Release* dated October 17, 2024 from the New Hampshire Department of Justice, available at: <https://www.doj.nh.gov/news-and-media/indictments-geno-marconi-and-bradley-cook>

³² *Supra* note 25.

³³ See Apx. at 47a.

³⁴ See Apx. at 46a.

³⁵ See Apx. at 52a and Apx. at 43a.

³⁶ See Apx. at 44a.

³⁷ See Apx. at 45a.

³⁸ See Apx. at 53a.

³⁹ See the *Press Release* dated October 16, 2024 from the New Hampshire Department of Justice, available at <https://www.doj.nh.gov/news-and-media/state-new-hampshire-v-anna-barbara-hantz-marconi>

The indictments⁴⁰ for crimes allegedly committed between approximately April 4, 2024 and June 6, 2024 by either Justice Marconi or her husband Geno Marconi were not made publicly available prior to October 16, 2024.⁴¹

C. Justice Marconi's claims about Chief Justice Gordon MacDonald

On October 23, 2024, Justice Marconi, through her counsel, filed a *Motion to Recuse Chief Justice Gordon MacDonald*⁴² on the grounds that he was a material witness in the adversarial proceedings against her.

At ¶11 of her *Motion*, Justice Marconi stated that she “communicated with Chief Justice MacDonald prior to meeting with Governor Sununu. Justice Hantz Marconi explained to Chief Justice MacDonald that she was considering requesting a meeting with the Governor. The Chief Justice’s response was, ‘I think you can do that – You are a constituent and have concerns.’”

Justice Marconi further attached a sworn affidavit⁴³ wherein she “affirmed under penalty of perjury that the facts stated in [her] motion are true and correct to the best of her knowledge, information, and belief.”

D. New Hampshire Attorney General John Formella's Public Statements

New Hampshire Attorney General John Formella commented on the case against Justice Marconi, stating, “The decision to charge a sitting Justice of the Supreme Court of New Hampshire was not made lightly, and it comes after careful and thoughtful deliberation. It is my hope that the public will be reassured that all

⁴⁰ See Apx. at 43a-57a.

⁴¹ *Supra* note 39.

⁴² See Apx. at 14a-19a.

⁴³ See Apx. at 19a.

individuals, including public officials, are treated equally [emphasis added] under the law.”⁴⁴

E. Equal Protection Jurisprudence

Petitioner wishes respectfully to remind this Court that the “Bill of Rights” adopted in 1784 in the New Hampshire State Constitution predates (by seven years) the “Bill of Rights” in the United States Constitution that were ratified in 1791.

The Supreme Court of New Hampshire has recognized for over a century that Article 10 of the N.H. State Constitution requires, *inter alia*, equal protection. Opinion of the Justices, 144 N.H. 374 (1999), citing State v. Pennoyer, 65 N.H. 113 (1889).

Other jurisdictions, such as Vermont, have also relied upon Pennoyer as persuasive authority when deciding equal protection cases. *See, e.g., Baker v. State*, 744 A.2d 864 (Vt. 1999) (“holding that same-sex couples were entitled to the same benefits and protections as opposite-sex couples”), which in turn was cited by this Court in Obergefell v. Hodges, 576 U.S. 64 (2015), as part of a lineage of cases affirming equality in matters of personal rights.

This Court has also recently recognized successful equal protection claims under the Fourteenth Amendment brought by a “class of one.” *See, e.g., Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

If it was Chief Justice MacDonald’s prior position that Justice Marconi had every right to engage in the activities for which Justice Marconi is now being criminally charged, then likely *either* the Chief Justice shares culpability for

⁴⁴ *Supra* note 39.

Justice Marconi's alleged wrongdoing, *or* the New Hampshire State Attorney General has erred, *or* both.

Consequently, under any reasonable "equal protection" jurisprudence, it is of the utmost importance for the public to learn Chief Justice MacDonald's position on Justice Marconi's claims.

F. Justice Marconi's criminal charges are not an isolated incident.

The New Hampshire Judiciary has recently suffered from an inordinate number of incidents of extreme judicial misconduct.

In Petitioner's case alone, three different New Hampshire trial court judicial officers have been removed from the bench resulting from proven judicial misconduct,⁴⁵ arising in two instances directly from Petitioner's case. Of these three, two subsequently faced Class B felony criminal charges and were disbarred.

G. Petitioner's prior request to recuse Justice Marconi was improperly denied.

The alleged crimes of Justice Marconi and her husband Geno Marconi were allegedly committed between April 4, 2024 and June 6, 2024.

After these dates, June 24, 2024, Petitioner sought clarification on whether Justice Marconi was qualified to preside over his case.⁴⁶

On July 8, 2024, all five justices of the Supreme Court of New Hampshire then affirmed that "Justice Hantz Marconi has reviewed this matter and has determined

⁴⁵ See Apx. at 81a-82a (finding against Bruce F. DalPra); Apx. at 98a-99a and Apx. at 108a-110a (finding against Julie A. Introcaso); and Apx. at 142a (finding against Paul S. Moore).

⁴⁶ See Apx. at 38a-40a.

that she is not [emphasis added] disqualified” in an *Order* authored by Chief Justice Gordon MacDonald.⁴⁷

For this reason alone, a *writ of mandamus* by this Court is now warranted.

H. Allegations against Judge King and the falsification of trial court transcripts

Concerning proven judicial misconduct⁴⁸ during the November 6, 2020 trial court hearing in Petitioner’s case, eScribers stated in an email to the New Hampshire Judicial Branch dated November 12, 2020 that “of course we are not going to transcribe that.”⁴⁹

The following day, Judge King wrote an email indicating he was fully aware of the omissions from the transcript.⁵⁰ In his sworn August 26, 2022 deposition, Judge King later stated:⁵¹

12 Q: Did you tell the Judicial Conduct Committee?

13 A: Did I tell the Judicial Conduct Committee what?

14 A: About what you had found regarding the transcript in
15 the Albrecht case?

16 A: Yes.

However, if Judge King had genuinely informed the New Hampshire Judicial Conduct Committee, it is extremely unlikely that the Supreme Court of New

47 See Apx. at 34a-36a.

48 See Apx. at 81a-82a.

49 See Apx. at 117a-118a.

50 See Apx. at 115a-116a.

51 See Apx. at 88a.

Hampshire would have needed to order multiple revisions of the transcript.⁵² The reasonable inference is that Judge King, more likely than not:

- Was under oath during the deposition.
- Knowingly lied by stating that he informed the Judicial Conduct Committee about his findings regarding the transcript.
- Intentionally did not disclose his findings to the Judicial Conduct Committee, fully aware that his deposition statement was false.
- Caused significant material delays, lasting several years, which necessitated the Supreme Court of New Hampshire's orders for multiple revisions of the initially falsified transcript.
- Made this false statement in a legal context where he was under an obligation to tell the truth.

The reasonable inference is that Judge King's actions in "covering up" the omissions from an official transcript likely satisfy the elements necessary for an indictment for perjury; or, at minimum, for other related criminal offenses such as *Falsification in Official Matters* (N.H. Rev. Stat. §§ 641:1–641:8) or *Abuse of Office* (N.H. Rev. Stat. §§ 643:1–643:2).

To be clear, Petitioner is not requesting for this Court to adjudicate these allegations on their merits. Rather, Petitioner is requesting for this Court to mandate that either the Supreme Court of New Hampshire, the New Hampshire Judicial Conduct Committee, or the New Hampshire Attorney General substantively address Petitioner's allegations against Judge King on their merits.

Further, for this Court to mandate that Judge King's complete and unredacted deposition about Petitioner's case be produced to Petitioner forthwith.

⁵² See Apx. at 105a, wherein a second version was ordered on December 20, 2021. See also Apx. at 94a-95a wherein a third version was ordered by the Judicial Conduct Committee on or about April 7, 2022.

Further, for this Court to require the Supreme Court of New Hampshire to provide further clarity regarding the oversight and underlying reasons for *multiple substantive revisions* of an official trial court transcript (affecting the outcome of an appeal) for a *single trial court hearing* over the course of several years.

I. The New Hampshire Judicial Branch Domestic Violence Task Force

As background, on October 20, 2021, New Hampshire Circuit Court Judge Polly Hall issued a final order denying a civil restraining order of protection requested under N.H. Rev Stat. § 173-B. See Lindsay Smith v. Richard Lorman, No. 641-2021-DV-00070 (N.H. 10th Cir. Dist. Ct. Hampton Oct. 20, 2021).

Judge Polly Hall found that testimony of graphic physical and sexual abuse, as well as photographic evidence of non-consensual bruises were “not important” at the October 20, 2021 hearing (*Tr. 6:10; Tr. 7:5-12*).

On November 15, 2021, Lindsay Smith was subsequently brutally shot by Richard Lorman in Massachusetts in an attempted murder-suicide. Immediately upon learning of the events in Salem, Massachusetts on November 15, 2021, Chief Justice Gordon MacDonald called for an internal review of the Smith v. Lorman case.⁵³

The internal review committee was comprised of six members selected by Chief Justice Gordon MacDonald and (then) Circuit Court Administrative Judge David King, that included the Hon. Melissa Countway, then a Circuit Court judge and now

⁵³ See “Statement by the New Hampshire Judicial Branch on the Events of November 15, 2021 in Salem, Massachusetts,” dated November 18, 2021 and available online at: <https://www.courts.nh.gov/news-and-media/statement-new-hampshire-judicial-branch-events-november-15-2021-salem-massachusetts>

presently a Justice of the Supreme Court of New Hampshire.⁵⁴ It concluded that Judge Hall applied the statutory law, as as interpreted by New Hampshire Supreme Court precedent, in good faith and that her decision was not unreasonable given the current state of the law.⁵⁵

It was further announced on November 18, 2021 that “the New Hampshire Judicial Branch is also in the process of creating a multidisciplinary task force to conduct a systemic review of domestic violence cases in the court system. New Hampshire Supreme Court Associate Justice Anna Barbara Hantz Marconi will chair the task force.”⁵⁶

An unattributed Supreme Court of New Hampshire *Supervisory Order* “establish[ing] a multidisciplinary Task Force⁵⁷ ... to conduct a systemic review of domestic violence in the New Hampshire court system” attested to *only* by Clerk Timothy Gudas was issued on December 9, 2021.⁵⁸ This *Order* does not state which Justices approved it.⁵⁹

Chief Justice MacDonald’s former law partner David Vicinanza was appointed as a member, and the “Domestic Violence Task Force” subsequently held 10 meetings under the leadership of Justice Anna Barbara Hantz Marconi.

In light of the recent criminal charges against Justice Marconi, this Court should require the Supreme Court of New Hampshire to identify which justice(s)

54 See “Report of the Internal Review Committee on the Case of L.S. v. R.L” at page 3, available online at: <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-11/report-of-the-internal-review-committee-on-the-case-of-l.s.-v.-r.l.pdf>

55 *Id.* at page 18.

56 *Supra* note 51.

57 *Supra* note 3.

58 See Apx. at 106a-107a.

59 *Id.*

approved the supervisory order issued on December 9, 2021, establishing a multidisciplinary “task force” on domestic violence.

J. Due Process requires an impartial judiciary.

Article 35 of the New Hampshire Constitution requires that “[i]t is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit.” The Supreme Court of New Hampshire has explained that “[t]he test for the appearance of partiality is an objective one, that is, whether an objective, disinterested observer, fully informed of the facts, would entertain significant doubt that justice would be done in the case.” Tapplly v. Zukatis, 162 N.H. 285, 297 (2011).

By way of contrast, the objective standards required by the Fourteenth Amendment do not require any showing of actual bias. “Rather, the question is whether, ‘under a realistic appraisal of psychological tendencies and human weakness,’ [an] interest ‘poses such a risk [emphasis added] of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” Caperton v. AT Massey Coal Co., Inc., 556 U.S. 868, 883-84 (2009). See also Rippo v. Baker, 580 U.S. 285 (2017), articulating that Nevada Supreme Court erred by not considering “whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable.” Rippo at 287. Indeed, “justice must satisfy the appearance of justice.” Offutt v. United States, 348 U.S. 11, 14 (1954).

The recent criminal charges levied against Justice Marconi, who presided over the New Hampshire Domestic Violence Task Force, call into question whether there is *any* “appearance of justice” (*Id.*) *whatsoever* in the Supreme Court of New Hampshire at the present time.

K. New Hampshire regularly asserts jurisdiction well beyond its territorial borders.

In “domestic violence” cases brought under N.H. Rev Stat. § 173-B, New Hampshire explicitly rejects that any traditional territorial jurisdictional limitations of the Criminal Code apply. *Hemenway v. Hemenway*, 159 N.H. 680 (2010).⁶⁰

The underlying “domestic violence” order of protection between Petitioner and his ex-wife was originally issued based solely on the events of Sunday, November 3, 2019 wherein Petitioner attempted peacefully to attend a public church service in Massachusetts in an effort to contact his children, who resided at the time in California with their mother, and concerning whom Petitioner was awarded lawful parental rights and responsibilities.

The trial court originally found against Petitioner in the underlying “domestic violence” matter because “he did not have scheduled parenting time” on that day, despite that there was no contact whatsoever between the parties.⁶¹

More recently, New Hampshire has asserted that it may even incarcerate a resident of the Commonwealth of Massachusetts in preventative detention in New Hampshire prior to any finding of guilt under N.H. Rev Stat. § 173-B *because Massachusetts police* went “jurisdiction shopping” in New Hampshire *after*

⁶⁰ See also Apx. at 119a.

⁶¹ See Apx. at 123a-125a.

Massachusetts courts already rejected their claims. See State of New Hampshire v. Berard, No. 24-1943, (1st Cir.), presently pending.

This underscores that the recent criminal charges levied against Justice Marconi, who presided over the New Hampshire Domestic Violence Task Force, call into even *further* question whether there is *any* “appearance of justice” (Offutt at 14) *whatsoever* in the Supreme Court of New Hampshire at the present time.

L. New Hampshire denies litigants any ability even substantively to respond.

In light of the *very recent* and *rapidly escalating crisis* in the Supreme Court of New Hampshire, the Supreme Court of New Hampshire should at least afford litigants additional time and the ability to respond appropriately.

Instead, it has *suddenly* and *unexpectedly* shuttered public access to its Law Library except by prior appointment in advance, and denied (without explanation) requests for extensions of time wherein such extensions would in no way be unfairly prejudicial to an opposing party.⁶²

In light of multiple pending felony criminal charges against a sitting justice, such actions are unconscionable, further demonstrating that *any* so-called “appearance of justice” (Offutt at 14) in the Supreme Court of New Hampshire is purely illusory in nature at the present time.

⁶² See Apx. at 5a; Apx. at 21a-23a.

STANDARD OF REVIEW

This Court may “issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a).

A *writ of mandamus* is warranted where “(1) no other adequate means exist to attain the relief [the party] desires, (2) the party’s right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances.” Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (quoting Cheney v. United States Dist. Ct., 542 U.S. 367, 380–81 (2004)) (internal quotation marks and alterations omitted).

REASONS FOR GRANTING THE PETITION

I. Petitioner’s Right to Issuance of a Writ is Clear

A writ of mandamus is appropriate where a judicial officer or court has a clear duty to perform a specific act. In this case, Chief Justice MacDonald has a duty to confirm or deny the accuracy of Justice Marconi’s affidavit, the New Hampshire Supreme Court has a duty to disclose which justices approved the December 9, 2021 supervisory order, and clarity is required regarding the alleged perjury by Judge King. Petitioner also has a right to the complete deposition of Judge King to ensure full disclosure of the facts.

These disclosures are essential to ensure compliance with judicial ethics, to address allegations of judicial misconduct, and to maintain public confidence in the judiciary’s impartiality.

II. Petitioner's Standing to Seek the Writ

Petitioner has standing because he has a direct and concrete interest in ensuring an impartial judiciary and in uncovering any misconduct that affects the fairness of the judicial process. The prior recusal denial, the secretive approval of the supervisory order, the redacted nature of Judge King's deposition, and the allegations of transcript falsification create significant doubt about the New Hampshire judiciary's integrity.

Injury-in-Fact: Petitioner has suffered a particularized injury by being subject to a judicial environment that may lack impartiality and is potentially compromised by perjury and misconduct. The denial of the initial recusal motion, the ambiguity surrounding the supervisory order, the redacted deposition, and the falsified transcripts exacerbate this injury.

Causal Connection: There is a direct causal link between Chief Justice MacDonald's position on Justice Marconi's affidavit, Chief Justice MacDonald's position on July 8, 2024 that Justice Marconi should not be recused, the approval of the supervisory order, and Judge King's alleged perjury, all of which may affect the outcome of judicial proceedings. Clarification of these issues would directly address these concerns.

Redressability: A favorable ruling would provide Petitioner with the necessary information to file motions for recusal and to address any judicial misconduct, thereby directly mitigating the harm to his right to a fair and unbiased judiciary.

III. No Other Adequate Means to Obtain Relief Exist

No other procedural avenues exist for obtaining the critical information needed from Chief Justice MacDonald, the New Hampshire Supreme Court, or Judge King.

Absent these disclosures, litigants lack the necessary facts to file informed motions for recusal or to seek accountability for potential perjury, which undermines their right to a fair hearing.

Existing New Hampshire state processes do not provide an adequate remedy to compel the requested information, to address the alleged falsifications and misconduct, or to obtain the complete deposition of Judge King.

IV. Exceptional Circumstances Warrant Issuance of the Writ

The extraordinary nature of the pending felony criminal charges against a sitting state Supreme Court Justice, the ambiguity surrounding the December 9, 2021 supervisory order, the redacted deposition of Judge King, and the allegations of perjury by the former Chief Administrative Judge require immediate and transparent action. These situations have the potential to affect the legitimacy of the entire New Hampshire judicial system.

Allowing these ambiguities and allegations of misconduct to persist could undermine the public's confidence in the fairness and impartiality of the judiciary, particularly given the potential for undue influence, bias, and cover-ups in high-profile matters.

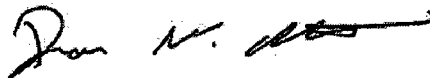
CONCLUSION

For the reasons stated above, the Court should issue a *writ of mandamus* compelling: (1) Chief Justice Gordon MacDonald to disclose whether he agrees or disagrees with Justice Marconi's affidavit regarding their conversation about her June 6, 2024, meeting with Governor Chris Sununu; (2) the New Hampshire Supreme Court to identify which justices approved the December 9, 2021

supervisory order; (3) clarification regarding the falsification of trial court transcripts, including compelling the production of the complete deposition of former Chief Administrative Judge David King, as only a partial, redacted copy is currently available; and (4) to compel that litigants be afforded adequate time to draft appropriate substantive responses to the very recent, rapidly developing, and ongoing crisis in the Supreme Court of New Hampshire.

These disclosures, along with mandating the commensurate extensions of time needed to respond, are necessary to ensure the integrity of judicial proceedings and to allow litigants to file appropriate motions for recusal and seek accountability if warranted.

Respectfully submitted,



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October 27, 2024

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