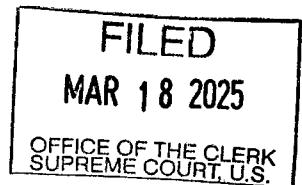


24-6829

ORIGINAL

No: TBD

Vermont Supreme Court Court
Case: 23-AP-408



IN THE
SUPREME COURT OF THE
UNITED STATES

TIMOTHY DASLER,

Defendant-Appellant *Petitioner*,

v.

JENNIFER KNAPP(DASLER), Defendant-Appellee *Respondant*,

On petition for Writ of Certiorari
from the Vermont Supreme Court

Petition for Writ of Certiorari

Timothy Dasler,
pro se, petitioner
488 NH Rt 10 Apt D
Orford, NH 03777

Jennifer Knapp(Dasler)
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Statement of the Issues Presented for Review

1. Does a state violate the Due Process Clause and fundamental common law principles when it retroactively imposes litigation restrictions on a pro se litigant without requiring specific findings tied to statutory definitions, heightened procedural safeguards, or reasonable application of constitutionally required evidentiary standards—or by shifting the burden of proof, restricting meaningful judicial review, or creating a presumption in favor of the opposing party?

Parties to the Proceeding

The parties to the proceeding in the court below were:

TIMOTHY DASLER,

Defendant-Appellant

JENNIFER KNAPP(DASLER), Plaintiff-Respondent,

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Constitutional and Statutory Provisions Involved

1. U.S. Constitutional Provisions

First Amendment to the United States Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment to the United States Constitution; Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

2. Vermont Statutory Provisions

1. 15 V.S.A. § 1181 – Definition of Abusive Litigation (Pertinent Portions)

"(1) 'Abusive litigation' means litigation where:

- (A) The opposing parties have a current or former family or household member relationship or there has been a civil order or criminal conviction determining that one of the parties stalked or sexually assaulted the other party.
- (B) The party who is filing, initiating, advancing, or continuing the litigation has been found by a court to have abused, stalked, or sexually assaulted the other party pursuant to:
 - (i) a final order issued pursuant to subchapter 1 of this chapter (abuse prevention orders);...
 - (iv) an order under section 665a of this title (conditions of parent- child contact in cases involving domestic violence);
 - (v) a conviction for domestic assault pursuant to 13 V.S.A. chapter 19, subchapter 6; stalking pursuant to 13 V.S.A. chapter 19, subchapter 7; or sexual assault pursuant to 13 V.S.A. chapter 72; or
 - (vi) a court determination of probable cause for a charge of domestic assault and the court imposed criminal conditions of release pertaining to the safety of the victim, which include

distance restrictions or restrictions on contact with the victim.

(C) The litigation is being initiated, advanced, or continued primarily for the purpose of abusing, harassing, intimidating, threatening, or maintaining contact with the other party.

(D) A rebuttable presumption of abuse exists if:

(i) the same or substantially similar issues between the same parties have been litigated and decided against the filing party within the past five years;

(ii) within the last 10 years, the filing party has been sanctioned by any court for frivolous, vexatious, or bad-faith filings involving the same opposing party; or

(iii) a court has previously found the filing party to have engaged in abusive litigation or imposed prefilings restrictions.

...

(3) "Litigation" means any kind of legal action or proceeding, including:

(A) filing a summons, complaint, or petition;

(B) serving a summons, complaint, or petition, regardless of whether it has been filed;

(C) filing a motion, notice of court date, or order to appear;

(D) serving a motion, notice of court date, or order to appear, regardless of whether it has been filed or scheduled;

(E) filing a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request; or

(F) serving a subpoena, subpoena duces tecum, request for interrogatories, request for production, notice of deposition, or other discovery request.

(4) "Perpetrator of abusive litigation" means a person who files, initiates, advances, or continues litigation in violation of an order restricting abusive litigation."

2. 15 V.S.A. § 1183 – Hearing; procedure (Pertinent Portions)

"At the hearing, evidence of any of the following shall create a rebuttable presumption that litigation is being initiated, advanced, or continued primarily for the purpose of harassing, intimidating, or maintaining contact with the other party:

(1) The same or substantially similar issues between the same or substantially similar parties have

been litigated within the past five years in the same court or any other court of competent jurisdiction.

(2) The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were decided on the merits or dismissed.

(3) Within the last 10 years, the party allegedly engaging in abusive litigation has been sanctioned by any court for filing one or more cases, petitions, motions, or other filings that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party.

(4) Any court has determined that the party allegedly engaging in abusive litigation has previously engaged in abusive litigation or similar conduct and has been subject to a court order imposing prefiling restrictions."

3. 15 V.S.A. § 1184 – Hearing; Burden of Proof (Pertinent Portions)

"(a) If the court finds by a preponderance of the evidence that a party is engaging in abusive litigation and that any or all of the motions or actions pending before the court are abusive litigation, the litigation shall be dismissed, denied, stricken, or resolved by other disposition with prejudice.

(b) After providing the parties an opportunity to be heard on any order or sanctions to be issued, the court may enter an order restricting abusive litigation that may include conditions deemed necessary and appropriate including:

(1) awarding the other party reasonable attorney's fees and costs of responding to the abusive litigation, including the cost of seeking the order restricting abusive litigation; and

(2) identifying the party protected by the order and imposing prefiling restrictions upon the party found to have engaged in abusive litigation that pertains to any future litigation against the protected party or the protected party's dependents.

(c) If the court finds that the litigation does not constitute abusive litigation, the court shall enter written or oral findings and the litigation shall proceed. Nothing in this section or chapter shall be construed as limiting the court's inherent authority to control the proceedings and litigants before it."

4. 15 V.S.A. § 1185 – Prefiling Restrictions (Pertinent Portions)

"(a) Except as otherwise provided in this section, a person who is subject to an order restricting

abusive litigation is prohibited from filing, initiating, advancing, or continuing the litigation against the protected party for the period of time that the filing restrictions are in effect.

(b) A person who is subject to an order restricting litigation against whom prefiling restrictions have been imposed pursuant to this subchapter who wishes to initiate a new case or file a motion in an existing case during the time the person is under filing restrictions shall make an application to a judicial officer. A judicial officer shall review such application and determine whether the proposed litigation is abusive litigation or if there are reasonable and legitimate grounds upon which the litigation is based. The judicial officer shall determine whether a hearing is necessary.

(c)

(1) If the judicial officer determines the proposed litigation is abusive litigation based on reviewing the files, records, and pleadings, it is not necessary for the person protected by the order to appear or participate in any way. If the judicial officer is unable to determine whether the proposed litigation is abusive without hearing from the person protected by the order, then the court shall issue an order scheduling a hearing and notifying the protected party of the party's right to appear or participate in the hearing. The order shall specify whether the protected party is expected to submit a written response. When possible, the protected party shall be permitted to appear remotely.

(2) If the judicial officer believes the litigation that the party who is subject to the prefiling order is making application to file will constitute abusive litigation, the application shall be denied, dismissed, or otherwise disposed of with prejudice.

(3) If the judicial officer believes that the litigation the party who is subject to the prefiling order is making application to file will not be abusive litigation, the judicial officer may grant the application and issue an order permitting the filing of the case, motion, or pleading. The order shall be attached to the front of the pleading to be filed with the clerk. The party who is protected by the order shall be served with a copy of the order at the same time as the underlying pleading.

(d) The judicial officer shall make findings and issue a written order supporting the ruling. If the party who is subject to the order disputes the finding of the judicial officer, the party may seek review of the decision as provided by the applicable court rules.

(e) If the application for the filing of a pleading is granted pursuant to this section, the period of time commencing with the filing of the application requesting permission to file the action and ending with the issuance of an order permitting filing of the action shall not be computed as a part of any applicable period of limitations within which the matter must be instituted.

(f) If, after a party who is subject to prefiling restrictions has made application and been granted permission to file or advance a case pursuant to this section, any judicial officer hearing or

presiding over the case, or any part thereof, determines that the person is attempting to add parties, amend the complaint, or is otherwise attempting to alter the parties and issues involved in the litigation in a manner that the judicial officer reasonably believes would constitute abusive litigation, the judicial officer shall stay the proceedings and refer the case back to the judicial officer who granted the application to file, for further disposition.

(g)

(1) If a party who is protected by an order restricting abusive litigation is served with a pleading filed by the person who is subject to the order, and the pleading does not have an attached order allowing the pleading, the protected party may respond to the case by filing a copy of the order restricting abusive litigation.

(2) If it is brought to the attention of the court that a person against whom prefilings restrictions have been imposed has filed a new case or is continuing an existing case without having been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose of the matter. This action may be taken by the court on the court's own motion or initiative. The court may take whatever action against the perpetrator of abusive litigation deemed necessary and appropriate for a violation of the order restricting abusive litigation."

Opinions Below

The opinions and orders below are as follows:

Vermont Supreme Court Final Opinion (10/25/24) Knapp v. Dasler, 2024 VT 65, No. 23-AP-408(A.P.0003) Affirmed the trial court's order restricting litigation under 15 V.S.A. §§ 1181–1185.

Vermont Supreme Court Denial of Reargument (12/18/24) Knapp v. Dasler, No. 23-AP-408(A.P.0021) Denied Appellant's motion for reargument.

Vermont Superior Court Decision on Renewed Motion for Contempt & Abusive Litigation Order (12/4/23) Knapp v. Dasler, No. 74-6-17 Oedm(A.P.0022) Granted the order restricting abusive litigation and applied prefilings restrictions.

Vermont Superior Court Order Restricting Abusive Litigation (12/4/23) Knapp v. Dasler, No. 74-6-17 Oedm(A.P.0037) Entered final order restricting litigation.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1257(a), which permits review of final judgments rendered by the highest court of a state where a federal question is raised.

The Vermont Supreme Court issued its final decision on 10/25/24(A.P.0003), and denied reargument on 12/18/24(A.P.0021). Pursuant to Supreme Court Rule 13.1, a petition for a writ of certiorari must be filed within 90 days of the denial of reargument.

The deadline for filing this petition is March 18, 2025. This petition is timely filed.

Statement of the Case

I. Introduction

1. This case arises from the Vermont Supreme Court's decision upholding a trial court order that imposed pre-filing restrictions on Petitioner, a pro se litigant, under Vermont's Abusive Litigation statute, 15 V.S.A. §§ 1181–1185. The trial court applied this statute retroactively, restricting Petitioner's future access to the courts based on past filings, including motions that had not been previously found frivolous or abusive. The order was issued without specific findings, under a burden-shifting framework that presumed Petitioner's litigation to be abusive unless proven otherwise.
2. The Vermont Supreme Court affirmed, concluding that the trial court had broad discretion to impose these restrictions. Petitioner now seeks review because the lower court's retroactive application of legal restrictions, burden-shifting framework, and failure to provide heightened due process protections raise serious constitutional concerns under the First and Fourteenth Amendments.

II. Factual Background

A. The Underlying Litigation

3. The parties have been engaged in family court proceedings for 8 years.
4. Respondent attempted to block visitation after the parties separation with hundreds of pages of accusations, at least 7 post-judgement filings to block visitation, at least 4 false criminal allegations, ultimately culminating in 50/50 visitation for the parties and Primary Parental Rights for Respondant with Equal Access to the child's records and shared decision making provisions under the 8/17/18 Divorce Order
5. Petitioner, who proceeded pro se and in forma pauperis, filed multiple motions addressing custody, enforcement of prior orders, and correction of the court record. Some of these filings were granted or ruled in Petitioner's favor, including a 10/5/23 Motion to

Correct the Record that identified deficiencies in the trial court's handling of key evidence and opposing counsel failing to upload 90 pages of medical records in Exhibit 13, and he then read the excluded portions into the record at trial.

6. In response, to Petitioner's Meritorious Motion to Correct/Enforce and related Motion for Contempt on the same issue, Respondent filed the 10/2/23 Motion for an Order Restricting Abusive Litigation(A.P.0039), arguing that Petitioner's filings constituted harassment under Vermont's new Abusive Litigation statute(15 V.S.A. § 1181-1185).

7. Petitioner objected(10/13/23 Objetion, 10/21/23 Motion to Dismiss, and Appellant Brief 23-AP-408), arguing that:

1. None of the cited filings had previously been found to be frivolous or abusive.
2. Respondant failed to identify any filing as abusive by the statutory definition and the conclusory allegations did not satisfy pleading requirements
3. The statute was being applied unlawfully retroactively to filings resolved before its enactment.
4. The court had denied prior sanctions requests based on the same filings(most recently on 5/10/23), yet was now reconsidering them under a new legal framework.

B. Prior Denials of Sanctions & Lack of Preclusion

8. Before the statute's enactment, the trial court had already ruled on multiple motions seeking sanctions against Petitioner, denying each one on the merits:

9. 10/2/19 – Plaintiff's Motion for Sanctions denied(Final Order 10/29/19).
10. 1/27/20 – Plaintiff's Objection to Defendant's filings denied; court stated: "Declines to award sanctions or attorneys' fees against Defendant."(Final Order 4/1/20).
11. 4/13/20 Objection to Modify Child Support(Petitioner prevailed on Modification, and

sanctions were clearly inappropriate but not explicitly denied 12/8/20)

12.3/24/23 and 4/6/23 – Plaintiff's Motion for Sanctions denied on 5/10/23, finding no violations of Rule 11.

13. Despite these final determinations, the trial court's order reconsidered the same filings under the newly enacted statute and did not grant preclusive effect to the prior rulings. This resulted in retroactive penalties based on conduct that had already been adjudicated under prior law(A.P.0022-0038 and A.P.0003)

III. Procedural History

14. A. The Trial Court's Abusive Litigation Order

15. On 12/4/23(A.P.0022 and A.P.0037), the Vermont Superior Court granted the opposing party's motion and issued a pre-filing order restricting Petitioner's access to court. The order:

1. Found that Petitioner's filings satisfied a pattern of abusive filing without identifying any specific filing as abusive by statutory definitions.
2. Relied on a rebuttable presumption that litigation was abusive based on prior filings, without requiring specific findings for each motion.
3. Shifted the burden to Petitioner to prove that his filings were not abusive
4. Failed to require proper pleading, allow adequate time to respond to the vague allegations, and applied new consequences to past actions retroactively.

16. Petitioner opposed the order by Filing a Pretrial Objection, Motion to Dismiss, was denied permission to file a Motion to Reconsider(under the new order), and appealed to the SCOV arguing

B. Appeal to the Vermont Supreme Court

17. Petitioner appealed to the Vermont Supreme Court, asserting that:

18. The trial court applied the Abusive Litigation statute retroactively to past filings, violating due process (10/25/24, at 7-8, A.P.0009-0010).
19. The order imposed litigation restrictions without heightened procedural safeguards, despite restricting a fundamental right ((10/25/24, at 9-10, A.P.0011-0012).
20. The trial court's reliance on a rebuttable presumption effectively shifted the burden onto Petitioner, rather than requiring the opposing party to prove abuse by clear and convincing evidence (10/25/24, at 8-9, A.P.0010-0011).)
21. On October 25, 2024, the Vermont Supreme Court affirmed the trial court's decision, finding that the statute was properly applied and that the trial court's findings were within its discretion (10/25/24, at 1-2, A.P.003-0004). The court did not address the retroactivity issue in detail and did not reconcile the ruling with established principles regarding litigation restrictions and heightened procedural protections (10/25/24, at 7-8, A.P.0009-0010).).

C. Denial of Reargument & Finality of Judgment

22. Petitioner moved for reargument, contending that the Vermont Supreme Court misapplied the statute and overlooked key procedural deficiencies(A.P.0003). On 12/18/24, the Vermont Supreme Court denied reargument without explanation (A.P.0021). This petition is timely under Supreme Court Rule 13.1.

IV. Conclusion of Statement of Case

23. The Vermont Supreme Court's decision upheld a preemptive restriction on litigation access without requiring specific findings of abuse or heightened procedural safeguards. The ruling also allowed retroactive application of litigation restrictions removed safeguards available under previous law, and a burden-shifting presumption that presumed litigation was abusive unless proven otherwise. These issues present important constitutional questions concerning the limits of state authority in restricting access to

courts, warranting this Court's review.

Reasons for Granting Certiorari

I. The National Trend of Restricting Pro Se Court Access Without Due Process Warrants This Court's Review

24. Vermont takes a recent state trend of targeting pro se litigants and pushes it farther than previous legislation, and this court has yet to weigh in on the proper boundaries of laws of this nature..

25. State courts are increasingly restricting pro se litigants through vexatious litigant statutes and procedural barriers, yet this Court has not set clear constitutional limits on such restrictions. The Vermont Supreme Court's decision exemplifies a growing trend of judicial and legislative overreach, imposing litigation restrictions on indigent litigants without procedural safeguards, clear evidentiary standards, or meaningful review.

26. For indigent litigants proceeding in forma pauperis (IFP), the right to self-representation is not a choice but a necessity. These litigants lack the means to hire an attorney and, as a result, may file motions that are procedurally imperfect or unsuccessful due to the complexities of laws/rules that require a deeper understanding of case law to understand. Without access to legal databases, the task of understanding court procedures and precedents becomes extraordinarily burdensome. However, lower success rates and procedural errors do not equate to abuse. By imposing preemptive litigation restrictions without heightened due process protections, courts are effectively severing access to justice for those who have no alternative.

27. Petitioner was granted IFP status in trial court proceedings(4/19/23 Order granting Motion to Waive Fees, and IFP granted in independent Federal case 21-cv-135) and in the U.S. Supreme Court appeal of that case, demonstrating financial hardship. As such,

he cannot be expected to hire counsel to access the court.

28. This Court has long recognized that access to courts is a fundamental right, particularly where indigent litigants are concerned. See *Boddie v. Connecticut*, 401 U.S. 371, 380-81 (1971) (holding that due process prohibits states from blocking indigent litigants from access to the courts in a manner that burdens fundamental rights); *M.L.B. v. S.L.J.*, 519 U.S. 102, 110-13 (1996) (finding that indigent litigants could not be denied access to appeal in parental termination cases based on inability to pay). Without this Court's intervention, states will continue to enact overbroad litigation restrictions without clear constitutional safeguards, disproportionately harming self-represented and indigent litigants.

29. Petitioner specifically raised concerns about access to courts and improper restrictions in both trial and appellate filings (Appellate Brief Pg.14-18(A.P.0064-0072) and generally, 10/13/23 Objection to Plaintiff's Request Pg.1-2 and generally, 10/22/23 Motion to Dismiss Pg 1-2, and generally, Transcript Pg.14-15, 38 and generally).

A. National Trend in Vexatious Litigant Laws: Increasing Restrictions and Lowering Evidentiary Standards

Higher Threshold States: 5+ Frivolous Lawsuits Required for Pre-Filing Restrictions

30. California – Cal. Code Civ. Proc. § 391(b) (Requires 5+ litigations in the past 7 years, determined adversely).

31. Texas – Tex. Civ. Prac. & Rem. Code § 11.054 (Requires 5+ litigations in 7 years, finally determined adversely).

Lower Threshold States: Automatic Pre-Filing Restrictions in Domestic Cases

32. California – Cal. Code Civ. Proc. § 391.1 (Restraining orders trigger vexatious litigant restrictions).

33. Vermont – 15 V.S.A. § 1181-1185 (Restraining order recipients face litigation restrictions under "Abusive Litigation" provisions).

Higher Standard States: Clear and Convincing Evidence Required

34. New Hampshire – N.H. Rev. Stat. § 507:15-a (Must prove by clear and convincing evidence 3+ frivolous lawsuits filed with intent to harass).

35. Utah – Utah R. Civ. P. 83 (Requires clear and convincing proof of vexatious behavior).

Lower Standard States: Preponderance of Evidence or Favoring Court's View

36. California – Cal. Code Civ. Proc. § 391.1 (Court evaluates likelihood of success, similar to summary judgment standard).

37. Vermont – SCOV precedent (Findings are not erroneous if any evidence exists to support them (Mullin v. Phelps, 162 Vt. 250, 260, 647 A.2d 714, 720 (1994))).

Federal Circuit Split on 28 U.S.C. § 1927 (Sanctions for Pro Se Litigants)

38. Second Circuit – Holds that § 1927 does not apply to pro se litigants. See Sassower v. Field, 973 F.2d 75, 80 (2d Cir. 1992) (finding that pro se litigants should not be subject to § 1927 sanctions, as the rule presupposes an attorney-client relationship).

39. Ninth Circuit – Holds that § 1927 sanctions can apply to pro se litigants. See Wages v. IRS, 915 F.2d 1230, 1235-36 (9th Cir. 1990) (holding that § 1927 may apply to pro se litigants despite the absence of an attorney-client relationship).

Summary of National Trend

40. This trend shows an increasing lowering of evidentiary standards and expansion of restrictions, particularly in family court and domestic abuse contexts. Some states require multiple frivolous filings determined adversely before restricting access to court, while others automatically impose pre-filing restrictions based on protective orders, without

requiring a pattern of misconduct. States such as Vermont have adopted a particularly problematic model by allowing abusive litigation determinations based on preponderance of the evidence and by permitting courts to exclude modifying evidence, creating a one-sided system that disproportionately disadvantages pro se litigants. In such a system, a court can shut a pro se litigant out of court for simply being inept at legal filing and struggling to grasp concepts hidden in case law in databases pro se litigants do not have access to.

41. Without intervention, states will continue implementing broad restrictions on court access without meaningful due process safeguards. This Court should grant certiorari to clarify the constitutional limits on these statutes and ensure that indigent and self-represented litigants are not arbitrarily barred from seeking judicial relief.

II. Retroactive Application of Litigation Restrictions Violates Due Process and This Court's Precedents

A. Vermont's Failure to Recognize Common Law Protections Against Retroactive Burdens Violates Due Process

42. Respondant had repeatedly litigated and was denied Sanctions against Petitioner prior to the 9/1/23 effective date of §1181-1185 (most recently denied Motion was 5/10/23), and the court allowed relitigation of the very same claims racking back indefinitely to relitigate long since resolved filings under new legal standards without requiring a Rule 60 Motion to justify vacating the prior judgment or any argument against preclusion.

43. The Vermont Supreme Court failed to recognize that Ex Post Facto principles are fundamental common law protections that extend beyond criminal law (10/25/24 Decision pg.9(A.P.0011)).

44. In *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), this Court emphasized that

new laws imposing substantive, rather than procedural, changes affecting rights and burdens of proof cannot be applied retroactively without violating due process. The Abusive Litigation Statute, enacted on 9/1/23 and applied retroactively to Petitioner, altered substantive rights by:

1. Eliminating previously available procedural safeguards such as safe harbor periods for sanctions;
2. Imposing a presumption against the accused litigant rather than requiring specific findings of abuse;
3. Expanding the definition of “abusive litigation” to include filings deemed “substantially similar,” thus creating a vague and overbroad restriction;
4. Allowing the relitigation of prior sanctions requests, despite the fact that they were either previously denied or could not have been raised under prior law.
5. Levying financial penalties without protection of Ability to Pay considerations that are ordinary under Family Court or Rule 11 actions

45. The SCOV claimed these were procedural, not substantive changes, thus retroactive application is not a due process violation(10/25/24 Decision Pg.8-12(A.P.0010-0014)

46. The court also claimed that Petitioner had fair notice because he could have been sanctioned, but that Respondent could NOT have litigated and is therefore not precluded from litigating under his cause of action. This circular logic cannot stand.

47. The court also claimed that issue preclusion did not apply even though her most recent Motion for Sanctions in March 2023 was denied because it only ““estops a party from relitigating those issues necessarily and essentially determined in prior litigation”(Pg.11(A.P.0013)) which again highlights the substantive nature of the changes. If a court denying sanctions on the merits is not determining the issue of whether the filings are vexatious or inappropriate, the SCOV cannot later claim that

Petitioner had fair notice because the standards defining the conduct had shifted so far that even on the identical issue, the bar defining the conduct had moved, not the facts of the case.

48. By allowing previously denied sanctions motions to be revived under the new statute, Vermont courts violated longstanding preclusion principles. Either the claims for sanctions were fully litigated before and should have preclusive effect, or they were not legally viable at the time and should not be permitted now under a statute carrying new penalties and burdens.

49. Courts have repeatedly held that retroactive applications of new legal restrictions must not impose new liabilities or increased burdens. See *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998) (holding that retroactive imposition of new financial burdens in civil proceedings can violate due process).

50. The Vermont Supreme Court ignored Final Orders that denied prior requests for sanctions and allowed them to be reopened without requiring a Rule 60 motion or demonstrating why preclusion should not apply (Final SCOV Decision, 10/25/24 Pg.9-11(A.P.0011-013); ORAL 12/4/23 Pg.8(A.P.0029)). Petitioner previously raised this issue in his appellate briefing (Appellate Brief Pg.11(A.P.0063), 17-18(A.P.0068-0070), 11/4/23 Motion for Sanctions Pg.5-8 and VT Appeal Printed Case P.C.0034-0037, 10/21/23 Motion to Dismiss Abusive Litigation Petition), arguing that prior rulings should be given preclusive effect and that retroactive application of the statute imposes new penalties without fair notice.

51. By mis-categorizing substantive changes as procedural changes, and by disregarding preclusion doctrines, the Vermont Supreme Court has expanded judicial authority beyond constitutionally permissible limits.

B. The Right to Collaterally Attack the Underlying RFA & Misuse of an Expunged Plea

52. Under principles outlined in Restatement § 28, Collateral Attack of the 2017 Relief From Abuse Order should have been permitted when that order was used to satisfy a prerequisite of the Abusive Litigation Statute, which was passed in 2023 and went in to effect on 9/1/23. An Order Restricting Abusive Litigation (ORAL) under §1181-1185 requires a finding of abuse to justify the heightened litigation restrictions imposed on Petitioner.

53. The 2017 Relief From Abuse Order was used to justify the order(although the court ALSO impermissibly used an expunged no contest plea to lesser charges of disturbing the peace to claim he had pled to "essentially the same" conduct), and without that order Respondent could not have sought the abusive litigation order, making the ability to challenge these prior determinations essential to due process.

54. The Vermont courts improperly barred Petitioner from collaterally attacking a prior RFA order, despite the fact that the legal context, available evidence, and stakes had drastically changed.

55. Courts have long held that due process requires a meaningful opportunity to challenge prior determinations when new legal consequences arise. By misapplying issue preclusion, Vermont violated fundamental fairness principles and due process safeguards.

56. The trial court relied on an expunged no-contest plea to Disturbing the Peace, treating it as equivalent to an assault conviction, despite the fact that, under Vermont law, an expunged offense must be treated as though it never occurred. See 13 V.S.A. § 7606(c) ("Upon entry of an expungement order, the order shall be legally effective immediately, and the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense."). The SCOV ignored this statutory requirement and affirmed litigation restrictions based on a void legal premise (Final SCOV Decision, 10/25/24(A.P.0003)).

Collateral Attack Was Justified Under Established Precedent

57. Courts have recognized that prior rulings may be challenged when the stakes, legal incentives, or available evidence have changed.

1. Different Stakes – The original RFA was a temporary order, carrying no litigation restrictions or punitive consequences. Now, that same RFA is being used as the foundation for a new actions resulting in;
 - A. Sweeping court-access restrictions
 - B. Steep financial penalties without the protection of Ability to Pay protection otherwise available in Family Court or Rule 11 actions
 - C. Loss of previously available protections such as a Safe Harbor Period for sanctions.
 - D. Lower standards for defining "abusive litigation"
 - E. A presumption of Abusive Litigation in favor of Respondent
 - F. Filings may be dismissed With Prejudice without reaching the merits
 - G. Cumbersome pre-filing process creating need for additional paperwork and filing for every action
 - H. Valid filings may be dismissed collaterally "with prejudice" and without reaching the merits if the court dislikes any filing.
2. Previous Disabilities and obstacles to Litigate No longer exist– At the time of the initial RFA, Petitioner faced compelled election between Fifth Amendment rights and fully contesting the allegations. He could not afford to fund a robust defense, nor was he prepared to fend off parallel allegations in 3 separate court cases triggered by Respondant. Now, those constraints no longer exist, justifying re-examination of the underlying facts due to the higher consequences of the finding of abuse.

3. New Evidence – Additional evidence uncovered in the Criminal Investigation (but too late for use in the RFA or a Rule 60 Motion within 1 year), including phone records, testimony, and location data, significantly changes the factual and legal context, and can prove the Respondent knowingly lied under oath to obtain the RFA and justify criminal charges against Petitioner.

4. Temporary Orders Are Not Preclusive -

"Temporary restraining order relief ordinarily is not given preclusive effect." *Leslie v. Laprade*, 726 A.2d 1228, 1229, 1999 D.C. App. LEXIS 51, *1 (D.C. March 11, 1999)

"Declining to accord the effect of finality to preliminary decisions, such as on preliminary injunctions or other temporary orders, is consistent with the observation of the United States Supreme Court that such orders are often issued with "haste" and are "customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *University of Texas v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981). "Indep. Party of CT- State Cent. v. Merrill, 330 Conn. 681, 716, 200 A.3d 1118, 1143, 2019 Conn. LEXIS 36, *51 (Conn. February 19, 2019)

58. Citing principles in the Restatement § 28, Courts have consistently ruled that issue preclusion does not apply when a prior determination is being used in a fundamentally different legal context, with dramatically increased consequences:

1. *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1312 (Fed. Cir. 2019) (declining to apply issue preclusion where "the amount in controversy in the first action was so small in relation to the amount in controversy in the second that preclusion would be plainly unfair").
2. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330 (1979) (recognizing that lack of incentive to litigate in the first action may preclude issue preclusion in a subsequent case).

3. Shovelin v. Cent. N.M. Elec. Coop., Inc., 115 N.M. 293, 299-300 (1993) (finding preclusion unfair when the stakes in the prior proceeding were minor compared to the later litigation).
4. B & B Hardware, Inc. v. Hargis Indus., Inc., 135 S. Ct. 1293, 1309 (2015) (issue preclusion should not apply where a party lacked an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action).

59. The Vermont courts' misuse of issue preclusion contradicts this Court's due process jurisprudence by applying prior factual determinations from a drastically different legal context without affording Petitioner a meaningful opportunity for review before applying far greater consequences.

Conclusion of Section II

60. The Vermont Supreme Court's retroactive application of litigation restrictions, reliance on an expunged charge, and misuse of issue preclusion violate due process. This Court should grant certiorari to clarify that collateral attack is warranted when prior findings are revived in a new legal context, particularly when the legal consequences, incentives, and available evidence have substantially changed.

III. The Punitive Nature of Pre-Filing Restrictions Requires Heightened Due Process Protections

A. Standards of Evidence

61. The severe nature of high fines or pre-filing restrictions may trigger due process concerns akin to criminal sanctions. SCOTUS has ruled that punitive sanctions require heightened procedural protections. See *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994). Pre-filing restrictions function as a quasi-criminal penalty, and should require clear and convincing evidence before imposition.

62. Given the pre-adjudicative nature of such actions, the burden must be higher in any case. If the Plaintiff need only meet the 51% certainty standard (in any case where risk is distributed evenly), then the bar to prevail in establishing a reasonable likelihood of their action prevailing must be substantially lower than 51%. Inversely, that means the burden is substantially higher on the Defendant to prove more than just a single filing or argument that is poorly crafted or lacks merit, and the certainty that there is not only ineptitude on the part of the pro se litigant, but ill intent must be proven by Clear and Convincing Evidence.

63. The definition of Abusive Litigation also cannot be so narrow that a single error The Vermont Court's interpretation of Abusive Litigation cannot stand. If any filing Substantially Similar to another filing is Abusive, then it blocks all Motions to Enforce, Clarify, Reconsider, or Modify among other routine court actions.

B. Overbroad Definitions

64. The definition must also not be so tight that any filing with a single argument disfavored by the court results in the entire case or filing being dismissed "with prejudice" without reaching the merits or denying the ability of a pro se litigant to file anything unless it reaches a level of perfection (from the eyes of the court) that no argument could be called in to question. Pro Se litigants are entitled to some level of deference, which must include the ability to be imperfect without facing severe penalties including blocked access to court which severely impacts a series of Constitutional Rights.

65. The Vermont court's sweeping accusation of too many filings looks only at one side of the litigation and does not consider how the Respondent's actions spurred legal action, and essentially tallies the rate of success as a means of identifying Abusive Litigation.

66. Presuming that an average rate of success would be 50% (and even lower in appeals or Motions to Reconsider), a Pro Se litigant should be expected to perform substantially

lower. Moreover, a litigant should be entitled to advocate for a reasonable change of Court Made Law or that existing law violates Federal Law(both of which should be allowed, and ARE allowed within the definitions of §1181)

67. Such advocacy is extraordinarily difficult even for a licensed attorney, and less likely to succeed if advanced by a pro se litigant.

68. When considering deeper flaws that escape Federal Review(such as Family Court or State Law), a litigant faces even higher risks that the status quo really can't be disturbed by attorneys unless they have no clients relying on the existing precedent.

69. For example, Petitioner previously argued that a party in Family Court should not be free to act as private prosecutor and sever the rights of the other parent(for up to 5 years is in Knutsen v Cegalis VT 2016-2017) and prevail on the fruits of their misconduct rather than the merits of their legal case. He argued that a divorced/separated parent and their child should have as much protection from wrongful disturbance of parent child contact as any married or single parent would have.

70. That leads to the inevitable conclusions that the quasi criminal accusations of severe harm or abuse must

1. Be prosecuted by the state rather than a private party who benefits from the ex parte actions
2. Standards for disturbing contact for severe risk/harm must not differ based upon identity of the accuser or marital status of the accused
3. Clear and Convincing Evidence remains the standard for disturbing Parental Contact for anything more than a short term pre-hearing emergency.

71. Advocacy like that can't be advanced by any attorney that has or may accept a client where they have or may argue that the other parent should have contact reduced or suspended due to risks to the child.

72. A pro se litigant should be free to make such arguments without being sanctioned by the court. Failing to persuade the court that parental rights deserve greater protection according to SCOTUS precedent does not make a litigant “abusive” even if they lose in multiple independent actions. Filing a Motion to Reconsider properly citing fact or law overlooked should not be considered abusive simply because the court disagrees and such motions have a low rate of success.

73. Abusive Litigation statutes should not be interpreted to create unfair burdens for pro se litigants struggling to represent themselves in a complex legal situations where a high degree of error can be expected.

74. Nor should such litigation have a chilling effect that threatens litigants with unaffordable attorney fees where the court has interpreted the law to exclude a calculation of ability to pay from the assessment of fees(excepting it from case law on Family Court or Rule 11 sanction actions seeking attorney fees, both of which require an ability to pay assessment).

C. Failure to Provide Equal Protection of the Law

75. The Vermont courts applied an inconsistent and arbitrary standard when determining what constitutes abusive litigation.

76. This is particularly problematic in a jurisdiction where a custodial parent can prevail on the fruits of their misconduct rather than the merits of their legal case, however, that may lead to remand for the prevailing party to pay the loser’s attorney fees as a consolation prize in lieu of a fair hearing.

“In denying a mother’s request for attorney’s fees after she unsuccessfully sought to modify custody, the trial court erroneously focused on whether the mother had “prevailed” at the best-interest hearing. The father had blatantly and repeatedly violated the trial court’s orders to the child’s detriment, prompting the mother’s motion”

*Knutsen v. Cegalis, 2017 VT 62, P1, 205 Vt. 144, 145, 172 A.3d 180, 181, 2017 Vt. LEXIS 141, *1 (Vt. July 7, 2017)(Emphasis Added)*

77. Sometimes the losing party is fully in the right, however, that is not necessarily reflected in the outcome and penalizing a party for failing to prevail in a weighted system of this kind only compounds the injustice.

78. The remand in Knutsen also leads to temptation not to hand up messy decisions with factors split between favoring both parties, thus making the decision ripe for remand to award attorney fees to the losing party

79. The 8/17/18 Divorce Order noted that Ms. Knapp filed at least seven post-judgment motions and at least 4 false criminal complaints seeking to block the normalization of parent-child contact, despite clear orders and a mediation agreement requiring it.

80. The court reaffirmed the Order to Normalize Contact after hearings on 8/1/17 and 2/25/18, but her ex-parte action blocked contact for 9 months and caused the court to consider her the “primary caregiver” and transferred the burden to Petitioner to prove it was harmful for the child to stay with her rather than for her to prove it was just or in the child’s interest to constrain his parental rights or visitation. In other words, she could prevail on the fruits rather than the merits of the ex-parte action(a practice well established in Vermont Case Law such as Knutsen v. Cegalis VT 2016-2017)

81. The court expressly declined to fault her for these repeated, unsuccessful motions, stating that her subjective belief in her filings was sufficient to excuse their impact.
(8/17/18 Divorce Order at 8-9, 20)

82. In contrast, Petitioner has been retroactively sanctioned under a new statute, which punishes filings that are deemed “substantially similar” to past filings—even when they raise new legal arguments or seek enforcement of existing court orders. Unlike Ms. Knapp, whose motions were unsuccessful but excused, and even favored her despite lacking merit, Petitioner has been sanctioned for filings that were procedurally proper, legally meritorious, and in some cases, successful. (See Order 10/5/23, granting Motion to Enforce/Correct the Record, the same violation that was the subject of the Motion for

Contempt scheduled for the 11/14/23 Hearing along with the Abusive Litigation Motion).

83. The disparate treatment of these two litigants demonstrates the arbitrary and unconstitutional application of Vermont's Abusive Litigation statute, violating fundamental due process and equal protection principles. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)(holding that laws must be applied evenhandedly and cannot single out disfavored groups for disparate treatment).

D. Petitioner Was Denied a Meaningful Opportunity to Be Heard Due to Lack of Specific Pleading and Inadequate Hearing Time

84. Fundamental due process requires that litigants receive fair notice of the claims against them and sufficient opportunity to prepare a defense. The Vermont courts, however, failed to provide adequate specificity in pleading and then denied Petitioner the necessary time to respond to vague and overbroad accusations.

1. Lack of Specific Pleading Violates Due Process

85. The Vermont Supreme Court upheld the litigation restriction despite the fact that Respondent failed to identify any specific filings as abusive in her Motion for an Order Restricting Abusive Litigation(10/2/23 Motion(A.P.0039). Instead, she broadly referenced six years of family court litigation without establishing how any specific filing met the statutory standard for abuse

86. This failure to provide specificity violated due process in several ways:

1. Petitioner was deprived of fair notice of which filings he needed to defend, contrary to established pleading requirements.
2. The trial court improperly dismissed all pending filings with prejudice, even though none had been identified as abusive under the statutory definitions .
3. The SCOV's decision directly contradicts *Mathews v. Eldridge*, 424 U.S. 319 (1976), which requires procedural safeguards proportionate to the private

interest at stake .

2. Inadequate Hearing Time Rendered Defense Impossible

87. The SCOV erroneously held that Petitioner failed to raise the issue of inadequate time at trial . However, Petitioner explicitly raised this issue in multiple filings:

88. Petitioner's 10/27/23 Motion to Continue and Clarify(Pg.4(A.P.0058) laid out specific concerns about time constraints, procedural fairness, and the inability to meaningfully defend against vague allegations (Brief Pg. 10 L.37(A.P.0062), Pg. 28 L.160(A.P.0072)) .

89. Transcript evidence contradicts the SCOV's assertion—the trial transcript shows that Petitioner objected to the inadequate time in order to fully respond and lay the basis for the broad allegations and was denied(Tr. Pg.38, Tr. 60, cited in Brief Pg. 11 L.44(A.P.0063))

90. The trial court allocated only one hour of time split between multiple filings to address 118 filings spanning six years, and his Pending Motion for Contempt, an impossible burden that violated due process by effectively precluding Petitioner from defending himself .

3. The Court's Justification for Denying Relief Was Factually Incorrect

91. The SCOV stated:

"Defendant does not identify any other evidence or arguments that he would have presented if granted more time." (SCOV Final Decision, 10/25/24, Pg. 15(A.P.0017)) .

92. This is demonstrably false. Petitioner's Reply Brief detailed the need for time to lay the basis for the broad sweeping allegation, pp. 10–12, 28 and Tr.38, 59-61) and the Motion to Continue and Clarify(A.P.0055-58) detailed the evidence he needed to present, including:

1. Proof that Respondent's Motion was vague and failed to identify specific filings.
2. Testimony and exhibits disproving the alleged pattern of "abusive" filings.
3. Evidence showing that the court had previously denied sanctions for the same filings now deemed abusive, contradicting the SCOV's retroactive justification.
4. And if the allegation was not narrowed, he potentially needed to justify every filing in 6 years of family court.

93. By failing to address this clear procedural error, the SCOV effectively ratified a process where a litigant could be sanctioned without meaningful opportunity to respond. This conflicts with *Fuentes v. Shevin*, 407 U.S. 67 (1972), which holds that procedural due process requires a meaningful hearing before deprivations occur.

4. The SCOV's Decision Conflicts with Established Precedents on Due Process

94. This Court has long held that fundamental fairness requires both specificity in pleading and a meaningful opportunity to be heard. See:

1. *Goldberg v. Kelly*, 397 U.S. 254 (1970) (requiring that hearings provide a fair opportunity to contest allegations).
2. *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (holding that due process requires notice and a meaningful opportunity to rebut government claims before deprivation of rights).
3. *United States v. James Daniel Good Real Property*, 510 U.S. 43 (1993) (due process requires pre-deprivation notice and an opportunity to challenge the claim in a meaningful way).

95. Here, the Vermont courts failed both prongs of due process analysis:

1. Lack of Specificity: The Motion for an Order Restricting Abusive Litigation did not meet minimal due process requirements by identifying which filings were abusive and how they met the statutory definition.
2. Lack of Adequate Time to Respond: The court allocated only 30 minutes to defend against allegations spanning six years, an arbitrary and unreasonable restriction.

96. The Vermont Supreme Court's decision creates a dangerous precedent for court access and procedural fairness. If allowed to stand, it will permit state courts to impose sweeping litigation restrictions without clear pleading, specific findings, or adequate hearing time.

IV. The Vermont Supreme Court's Decision Conflicts with This Court's Precedents on Due Process and Court Access

97. The Vermont Supreme Court upheld litigation restrictions that were imposed without specific findings, heightened procedural safeguards, or clear evidentiary standards. This conflicts with this Court's precedents requiring fair procedures before restricting access to courts and ensuring that procedural burdens do not disproportionately impact pro se litigants.

A. The "Substantially Similar" Standard Allows Courts to Restrict Any Filing Without Specific Findings

98. The trial court relied on a rebuttable presumption under 15 V.S.A. § 1183, which established a presumption of abusive filing in Respondents favor. It shifted the burden onto Petitioner to prove that his filings were not abusive, rather than requiring the opposing party to establish abuse by clear and convincing evidence.

99. Moreover, the Vermont courts did not require either specific pleading of WHICH of the filings would be litigated as abusive and how the statutory definitions were met. The

SCOV did not require detailed findings to identify abusive litigation but instead allowed descriptions of hearing procedure in § 1183(1-2) to substitute for definitions of Abusive Litigation under § 1181(C-D), waiving the requirement of finding unwarranted legal arguments, factual claims, or relitigation, and substituting a far lower standard of "substantially similar" filings.(12/4/23 Order Pg.11(A.P.0032-0033)

100. This low standard could(and did) encompass all motions to reconsider, clarify, enforce, or modify—essentially any routine motion.

101. The Vermont Supreme Court failed to require any meaningful standards, and although it declined to state the Standard of Review for evidence specifically, the standard has long been to "exclude all modifying evidence" and hold that any finding supported by any evidence is "not erroneous". A farcical review of that nature simply eliminates standards of evidence by holding that the findings are reviewable, but no standard of evidence needs to be applied reasonably.

102. The presumption that the court's findings meet Due Process Standards is not rebuttable if any evidence supports them. While Vermont could waive review, it can't waive the standard, and the distinction matters. The SOV mischaracterized Petitioner's filings as abusive without applying the statutory definition of abuse or requiring specific findings(SCOV Decision 10/25/24(A.P.0003)).

103. The decision allows courts to restrict future litigation based on a vague and overbroad standard that lacks the necessary safeguards against arbitrary enforcement.

B. The Bar for Restrictions Was Unconscionably Low

104. The burden-shifting framework combined with the overbroad definition and preponderance of the evidence standard created a situation where courts could presume abuse without considering the merits of any filing. Even in civil contexts, fundamental rights restrictions require clear and convincing evidence when fundamental rights, such as court access, are at stake. See Santosky v. Kramer, 455 U.S. 745, 756 (1982)

(requiring heightened evidentiary standards when fundamental rights are at risk).

105. Instead of applying a high evidentiary standard, the Vermont Supreme Court upheld litigation restrictions based on an abuse of discretion standard that did not consider the merits of the filings.(while the decision didn't overtly state the standard of review of facts, the SCOV has always held that findings are not erroneous if any evidence supports them(see Newton Wells v. Spera, 2023 VT 18 and Mullin v. Phelps, 162 Vt. 250, 260, 647 A.2d 714, 720 (1994))This conflicts with precedent requiring heightened due process protections, particularly where the rights at stake are more important than money and the burden should not be shared equally between the parties.

106. Furthermore, the trial court explicitly declined to consider Petitioner's ability to pay when awarding attorney's fees, treating the fee award as a punitive measure rather than a compensatory one. (See Order Denying Motion to Reconsider Attorney's Fees, 2/23/24 Pg. 1(A.P.0054)).

107. This is inconsistent with long-standing practice in family court and Rule 11 sanctions cases, where courts must consider financial circumstances before imposing fees.

*"In contrast to criminal sanctions, civil sanctions aim to compel compliance rather than to punish those in contempt. A court must therefore consider a child support debtor's ability to pay before imposing a civil sanction. Vermont courts have also required courts to consider ability to comply before ordering sanctions that are less restrictive than incarceration. A court must therefore administer Vt. Stat. Ann. tit. 15, § 798(c)'s license suspension provisions consistent with Vermont's other civil sanctions, recognizing ability to comply as a prerequisite to enforcement." Lambert v. Beede, 2003 VT 75, 1, 175 Vt. 610, 610, 830 A.2d 133, 134, 2003 Vt. LEXIS 158, *1 (Vt. July 23, 2003)*

108. By excepting cases under the Abusive Litigation statute from standard fee assessment rules, Vermont created a system where pro se litigants face disproportionately severe financial risks without the procedural safeguards afforded to represented parties. This results in a de facto restriction on access to the courts, violating due process protections.

109. In some cases, the SCOV did double damage both by misrepresenting a motion as inappropriate while also refusing to acknowledge the key argument raised below, thus claiming it was waived on appeal.

Examples of Meritorious Filings Misrepresented by the Court:

1. **10/27/23 Motion to Continue and Clarify** – The 10/25/24 SCOV Decision erroneously claims the Motion to Continue and Clarify (10/27/23)(A.P.0055-0059) “essentially sought legal advice despite the court's previous admonitions that it could not give him such advice”(10/25/24 Decision Pg. 13) and further claims he “defendant did not object to [the scheduled hearing length], and therefore did not preserve his right to challenge it on appeal”(Pg.15).

A. That motion actually requests more hearing time, citing less than 1 month notice of the date, inadequate time scheduled and uncertainty as to what was allegedly abusive, unresolved pretrial motions, and not enough time to establish a defense to the broad allegations.

“The Motion for Contempt should have at least 2 hours of hearing time, probably 4 hours.

The Motion for and Order Restricting Abusive Litigation should be either joined with the Motion for Relief from Judgement Hearing or the Relief Hearing should happen first, since vacating it would eliminate the basis for Plaintiff's Motion....Defendant expects the need for 2 days of hearing based upon prior experience and the obstructionist tactics of Plaintiff and Counsel” and requested the court. ”Grant a continuance consistent with the request above”(10/27/23 Motion Pg.1 and 8-9)

B. The request for hearing time was reiterated at trial and both objections were cited in Petitioner's brief(Brief Pg. 9-11(A.P.0060-63), 28, citing Tr.60-61(A.P.0072)), but given the court's mischaracterization of the motion in

question, it appears to be a willful disregard rather than simply overlooking an argument.

C. The SCOV further claimed Petitioner did not say what he would do with extra time, however, that was addressed numerous times, in the Motion to Continue, Brief argued he needed time to respond to the vague accusations(Brief Pg. 11(A.P.0062)), to “lay the groundwork for specifically what is allegedly abusive, not just vaguely alluding to some unspecified argument within a filing”(Reply Brief Pg.7), and argued the merits of filings throughout both briefs, particularly the Reply Brief illustrating both parties usage of filings and how Petitioner has a right to equal treatment and not to be a pro se litigant being held to a higher standard of filing than opposing counsel, and that he learned by example in court(Reply Brief Pg.13-17)

2. **5/5/22 Motion to Reconsider Denial of Continuance** – This motion was mischaracterized as "This court denied that motion, noting that Mr. Dasler's motion was facially improper because he made the same legal arguments and asserted the same facts. Entry on Motion Motion filed on 5/5/2022."(12/4/23 Order Pg. 5)

A. Reconsideration here was reasonable, and prompted by opposing counsel's objection to continuance in which he misled the court about the deposition being for a separate “Federal Case” just after having agreed to reschedule it for THIS case. The court, relying upon his objection, promptly denied continuance.

B. Petitioner filed the Motion to Reconsider including opposing counsel's emails in which he agreed to the reschedule, further illustrating bad faith as he misled the court to obstruct the continuance after the prior agreement.

- C. Petitioner had moved to continue the 5/12/22 hearing after non-party witness requested the deposition be rescheduled. Petitioner had limited scope counsel handling the deposition, and all parties agreed to reschedule. The witness took every opportunity to obstruct the subpoena, filing at least 5 motions including multiple Motions to Reconsider (All reconsideration denied) delaying the deposition for nearly a year at that point. The subpoena attempts started 6 months before the trial was even scheduled.
- D. Petitioner properly used Rule 59 to inform the court that opposing counsel had misrepresented the deposition to obstruct the continuance, and the Motion presented opposing counsel's emails to illustrate the agreement and that he knew it was, in fact, for this case.
- E. The court refused to consider emails proving that Loftus knowingly misrepresented the facts, depriving Petitioner of the opportunity to correct the record. The ORAL misrepresented the Motion to Reconsider and the justification.

3. **Trend of misrepresentation** – As with the above filings, the lower court and SCOV misrepresented the filings, arguments, and legal landscape to justify the ORAL. Petitioner's advocacy included

- A. 2020 Motion to Modify and Enforce – Prompted by Respondant entering into an agreement with a therapist Dalene Washburn to conduct medical appointments for the child and obstruct "Equal access" to which Petitioner is entitled, other enforcement issues included failure to allow visitation on the court ordered schedule, and other concerns that warranted modification such as secretly placing a GPS tracker on the child hidden in a watch.
- 1. Ultimately the court concluded that Respondant was not responsible for the obstruction of access, nor that she was in violation when she

conducted medical appointments in secret for 6 years in spite of the “equal access” and obligation to provide a “meaningful opportunity to have input” in medical decisions.

2. Petitioner’s 11/4/22 Motion to reconsider presented;
 1. Factual error in misapprehending testimony about make up visitation(11/4/22 Motion Pg. 7)
 2. Loss of hearing time due to procedural defects and non-party counsel being permitted to object repeatedly in violation of court rules and taking ½ of Petitioner’s examination time as a result(warranting his request for more hearing time, which was denied on 9/30/22)
 3. Cited that the §668a Statutory requirement of makeup time was disregarded by the court’s finding that the The court stated that the reasons for missed visitation were “not critical” in spite of the fact that time was not made up and relied instead on her finding that the withheld visitation was not bad faith.
 4. The list of errors was long, and Petitioner properly pointed to factual and legal error rooted in the written record, statute, and precedent.
3. Jurisdiction over the Appeal of the 9/30/22 Order was denied due to the lower court granting an extension of time to file a Rule 59 Motion(10/17/22 Order Granting Extension)
 1. The SCOV held that the lower court lacked authority to grant such an extension and retroactively reclassified the Motion as a Rule 60 Motion that did not toll the deadline to appeal set by court rules.
(1/19/23 SCOV Order 22-AP-331)

2. Petitioner argued that an order beyond the court's authority must be voided to issue one within the court's authority, which would necessarily restore timeliness as the deadline would be within 14 days of an order granting permission.
3. The SCOV called his reliance on the court's deadline a "tactical error" ill advised in retrospect and refused relief.(2/6/23 Order 22-AP-331)
4. It further refused to recognize the SCOTUS definition of Claims Processing Rules in cases like Hamer, which clarify that only the legislature can grant or deprive jurisdiction and by definition court rules are flexible as the court retains power over enforcement of its own rules and the ability to grant equitable tolling or other equitable relief or correct court errors.(10/13/23 Decision 22-AP-331)
5. Consequently, appellate review was lost due to lower court error.

4. **Motion for Relief from Judgment (Collateral Attack on 2017 RFA)** – The court framed Petitioner's collateral attack as vexatious, despite the fact that the order in question was issued before the new statute was enacted and was being revived under new law. Petitioner's motion was based on new evidence, a new reason to litigate, and resolution of a criminal charge that had since been expunged, which eliminated prior Fifth Amendment concerns. See Motion for Relief from Judgment, 10/22/23, and 11/14/23 Tr.Pg.8

- A. As argued thoroughly under the collateral attack portion of this Petition, there is a solid basis to argue for this collateral attack.
- B. On limited consultation with legal counsel, he was advised that the court may either address it as a Rule 60 issue or a Collateral Attack within the proceedings, and as a formality, it is best to file it both ways to avoid loss

of opportunity.

- C. In the 10/25/24 Decision, the court refused to acknowledge the Collateral Attack within the proceedings themselves
- D. The SCOV also called the Rule 60 Motion Order a Final Order rather than interlocutory even though it was clearly under the umbrella of pending litigation and did not resolve all issues. It should have been interlocutory and appealable under the Final Order.
- E. Even if it were not, Notice of Appeal were filed within the applicable extension period and equitable tolling should have applied due to the reasonable expectation that these would be handled as part of the same final order.

C. Satellite litigation in other jurisdictions pre-judged by Vermont Court

Stalking Complaints

NH

110. The Vermont courts improperly treated a denied New Hampshire restraining order as if it supported litigation restrictions in Vermont. However, the NH court explicitly dismissed the case without a decision on the merits, citing jurisdictional concerns due to Vermont's ongoing custody proceedings. See Final Decree, Grafton Superior Court, NH, 2019).

111. Deferred to Vermont under the Uniform Child Custody Act means:

112. There was no actual adjudication of the abuse allegations;

1. The Vermont courts improperly treated a non-merits dismissal as if it supported continued litigation restrictions
2. The decision conflicts with the principles of issue preclusion, which require a

final judgment on the merits.

3. By relying on a non-merits dismissal in another jurisdiction, Vermont has improperly expanded the scope of litigation restrictions without allowing meaningful review.

VT Relief from Stalking

113. Petitioner filed a Relief from Abuse complaint in Vermont in 2023 based upon new conduct including the most recent incident where Respondent sewed a GPS tracker into the lining of the child's jacket to track Petitioner secretly during visitation with the child. Vermont's definition of stalking includes "any means" which undoubtedly should include secret tracking devices hidden on the child. The child(7 at the time) would be with Petitioner at all times during visitation, so he would be tracked at all times.

114. There is no rational way to claim this is a relitigation, particularly where the only Stalking complaint considered was dismissed in deference to Vermont Courts, and was not re-filed until 4 years later based upon new events.\

Federal Civil Suits

115. Petitioner filed a civil suit against a medical provider who was blocking his access to the child's medical records in violation of Custody Orders.

116. As a non-party to a family court case, his only recourse is to sue her directly. Respondent filed an Emergency Motion in Family Court seeking an injunction to block the suit.

117. After a hearing, the Family Court denied the request and did not find a conflict either with the Custody Orders or the court's jurisdiction.(11/5/21 Order) That suit was dismissed erroneously on Abstention Grounds on Aug 2023, and was still pending in Federal Circuit Court at the time of the 12/4/23 Order and had not been adjudicated on the merits.

118. Consequently, Petitioner was penalized for a pending lawsuit in another jurisdiction that had not been resolved on the merits, which violates his Due Process Rights.

119. From the mischaracterizations of these filings, it may become apparent to this court that where the SCOV holds that no finding is erroneous if any evidence supports it (see Newton Wells), but legal conclusions are open for scrutiny, it becomes tempting for a court to simply craft a set of facts that innoculates a legal conclusion from scrutiny rather than present a reasonable factfinding and struggle to determine how to resolve messy divorce issues.

120. This habit is well illustrated by the Judicial Fact Discretion Study (2008) which holds that in vulnerable cases the court's judicial preferences become more helpful in predicting outcome than the facts of the case because of manipulation of factfinding in such cases.

121. Vulnerable cases were defined as 1. Heavy in fact 2. with Broad Discretion in law 3. Vulnerable to bias. Just like almost all Family Court cases. By definition these are vulnerable cases and pro se litigants can be severely and systematically harmed by this abuse that goes completely unchecked by the SCOV standards.

Conclusion

122. This Court should grant certiorari to clarify that litigation restrictions must be:

1. Based on specific findings;
2. Supported by clear and convincing evidence;
3. Not impose punitive burdens that functionally deny access to the courts.

123. Vermont's decision departs from this Court's established precedents and, if left uncorrected, will set a dangerous precedent for state courts to arbitrarily block pro se

litigants from access to judicial relief.

Conclusion

124. The Vermont Supreme Court's decision imposes unconstitutional litigation restrictions through retroactive application of law, burden shifting, lack of specificity in pleading, and denial of meaningful judicial review. It mischaracterizes filings, disregards preclusion principles, and departs from fundamental due process protections long recognized by this Court.

125. By allowing states to restrict pro se litigants' access to courts without heightened procedural safeguards, the ruling threatens access to justice and creates a dangerous precedent for due process violations nationwide.

126. This case presents an ideal vehicle for resolving these constitutional questions, ensuring that courts do not impose litigation restrictions without clear evidentiary standards and due process protections. The Supreme Court's intervention is necessary to prevent further judicial overreach and to reaffirm the fundamental right of access to the courts.

127. The lower court proceedings should be voided for failure to meet minimum Due Process Standards

128. 15 V.S.A §1181-1185 must be struck down as Unconstitutional for the foregoing reasons.

129. For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of certiorari.

CERTIFICATE OF COMPLIANCE

**I, Timothy Dasler certify that this brief contains fewer than 8,856 words counted
with Open Office**

3/18/25
Date

Signature