

5 **IN THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK**

John Vidurek, Gerard Aprea, et al
Plaintiffs

10 - Against -

Governor A. Cuomo, N.Y.S. Senate, and N.Y.S. Assembly
Defendants

15 ~ **WRIT MANDAMUS** ~

TO: UNITED STATES SUPREME COURT
1 FIRST STREET NE; WASHINGTON DC 20543

20 **FROM:** UNIFIED UNITED STATES COMMON LAW GRAND JURY¹
SURETIES OF THE PEACE²
P.O. BOX 59; VALHALLA, NEW YORK 10595

25 DATED MAY 22, 2018

¹ **The UUSCLGJ** is comprised of fifty Grand Jurys each unified amongst the counties within their respective States. All fifty States have unified nationally as an assembly of about Seven Thousands of People in the name of We the People to suppress, through our Courts of Justice, subverts both foreign and domestic acting under color of law within our governments. States were unified by re-constituting all 3,133 United States counties.; AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY:

² **SURETIES OF THE PEACE:** If anyone has been dispossessed without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him; and if a dispute arise over this, then let it be decided by the five and twenty jurors of whom mention is made below in the clause for securing the peace. Moreover, for all those possessions, from which anyone has, without the lawful judgment of his peers, been disseized or removed by our government, we will immediately grant full justice therein. Magna Carta Paragraph 52.

30

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF NEW YORK**

• 445 Broadway; Albany, NY 12207-2936 •

John Vidurek, Gerard Aprea, et al
Plaintiffs

- Against -

Governor A. Cuomo, New York State Senate
 and New York State Assembly
Defendants

Jurisdiction: Court of Record, under
 the rules of Common Law³

Magistrate: Christian F. Hummel
 Case NO: 1:18-cv-392

**WRIT MANDAMUS
U.S. SUPREME COURT**

35 U.S. Constitution Article III Section 1⁴ establishes that the federal district courts are subordinate to the United States Supreme Court. The purpose of this Writ is to move the United States Supreme Court to deliver a Writ Mandamus upon Magistrate Christian F. Hummel and Judge Mae A. D’Agostino, herein after magistrates, in the above named court. Commanding said magistrates to honor their oaths and obey the Law of the Land.

40 The Unified United States Common Law Grand Jury entered the above said case by Brief as Amicus Curiae⁵ on behalf of the plaintiffs by request and because plaintiffs are

³ "A Court of Record is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial." - Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

⁴ **Article III Section 1:** The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior...

⁵ **Amicus Curiae:** Lat. (law) an adviser to the court on some matter of law who is not a party to the case; usually someone who wants to influence the outcome of a lawsuit involving matters of wide public interest. A friend of the court. A bystander who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or

being denied a court of record according to the course of the common law⁶ as provided for under 28 U.S. Code § 132⁷, thereby denying plaintiffs due process.

On April 2, 2018 plaintiffs filed an Action⁸ at Law⁹, not a Complaint¹⁰. Plaintiffs chose
45 not to prosecute in equity, but at Law¹¹. Plaintiffs declared “this is an Action concerning unalienable rights and not civil rights”. The court’s cover sheet that was required to be filled out to access the court and the summons filled-out by the clerk provided only for civil cases. In order for plaintiffs to maintain their jurisdiction plaintiffs added “440(a) Unalienable Rights” as the Nature of Suit, see cover sheet attached.

mistaken. - Fort Worth & D. C. Ry. Co. v. Greathouse, Tex.Civ.App., 41 S.W.2d 418, 422; or upon a matter of which the court may take judicial cognizance. The Claveresk, C.C.A.N.Y., 264 F. 276, 279; In re Perry, 83 Ind. App. 456, 148 N.E. 163, 165. Implies friendly intervention of counsel to remind court of legal matter which has escaped its notice, and regarding which it appears to be in danger of going wrong. Blanchard v. Boston & M. R., 86 N.H. 263, 167 A. 158, 160. Also a person who has no right to appear in a suit but is allowed to introduce argument, authority, or evidence to protect his interests. Ladue v. Goodhead, 181 Misc. 807, 44 N.Y.S.2d 783, 787.

⁶ **16Am Jur 2d., Sec. 114:** "As to the construction, with reference to Common Law, an important canon of construction is that constitutions must be construed to reference to the Common Law." The Common Law, so permitted destruction of the abatement of nuisances by summary proceedings and it was never supposed that a constitutional provision was intended to interfere with this established principle. Although there is no common law of the United States in a sense of a national customary law as distinguished from the common law of England, adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood."

⁷ **28 U.S. Code § 132:** Creation and composition of district courts (a) There shall be in each judicial district a district court which shall be a court of record⁷ known as the United States District Court for the district. Courts of record proceed under the jurisdiction of common law.

⁸ An action is simply the right to enforce one's demands in a court of law. See Pollock, Expansion of C. L. 92.

⁹ Article III JUDICIAL POWER Section 2.

¹⁰ **COMPLAINANT:** In practice: One who applies to the courts for legal redress; one who exhibits a bill of complaint. This is the proper designation of one suing in equity, though "plaintiff" is often, used in equity proceedings as well as at law. Benefit Ass'n v. Robinson, 147 Ill. 138, 35 N.E. 168.

¹¹ **AT LAW:** [Bouvier's] This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.

50 Additionally, the clerk insisted on the statutory payment of \$400 and refused to file the case without payment. Civil courts' proceed nisi prius,¹² thereby under statutory construction,¹³ a jurisdiction foreign to our Constitution.

After filing the case, plaintiffs demanded that the record be corrected to reflect the proper jurisdiction, that being a court of record; and that the \$400 be returned. Plaintiffs
55 informed the magistrates to take judicial notice of U.S. Constitution Article VI clause 2¹⁴ and American Jurisprudence Constitutional Law §326¹⁵ that provide for Free Justice and remedy for all injuries, where justice shall be administered to all without delay or denial and without sale or prejudice. Whereas, the U.S. Supreme Court has said that
60 filing fees are for fictions and subjects:

“Plaintiff should not be charged fees, or costs for the lawful and constitutional right to petition this court in this matter in which he is entitled to relief, as it

¹² **NISI PRIUS:** Where courts bearing this name exist in the United States, they are instituted by statutory provision. "Nisi prius" is a Latin term (Black's 5th) "Prius" means "first." "Nisi" means "unless." A "nisi prius" procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi procedure is a procedure to which a person has failed to object. A "nisi prius court" is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first.

¹³ **STATUTORY CONSTRUCTION:** "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of the words and the rules of grammar" - United States v. Goldenberg, 168 U.S. 95.

¹⁴ **U.S. Constitution Article VI clause 2:** This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

¹⁵ American Jurisprudence Constitutional Law §326: "Free Justice and Open Courts; Remedy for All Injuries.- In most of the state Constitutions there are provisions, varying slightly in terms, which stipulate that justice shall be administered to all without delay or denial, without sale or prejudice, and that the courts shall always be open to all alike. These provisions are based largely upon the Magna Charta, chap. 40, which provides; "We will sell to no man. We will not deny to any man either justice or right." The chief purpose of the Magna Charta provision was to prohibit the King from selling justice by imposing fees on litigants through his courts and to deal a death blow to the attendant venal and disgraceful practices of a corrupt judiciary in demanding oppressive gratuities for giving or withholding decisions in pending causes. It has been appropriately said that in a free government the doors of litigation are already wide open and must constantly remain so. The extent of the constitutional provision has been regarded as broader than the original confines of Magna Charta, and such constitutional provision has been held to prohibit the selling of justice not merely by magistrates but by the State itself."

appears that the filing fee rule was originally implemented for fictions and subjects of the State and should not be applied to the Plaintiff who is a natural individual and entitled to relief.” - Hale v. Henkel, 201 U.S. 43.

65 And, *"Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States from the most remote states or territories, is entitled to free access not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every state in the Union.” - Crandell v. Nevada, 6 Wall 35.*

70 The Rules of Civil Procedure were adopted by the Supreme Court on December 20, 1937, Congress inserted prominently AUTHORITY FOR PROMULGATION OF RULES TITLE 28, UNITED STATES CODE § 2072. “Rules of procedure and evidence; power to prescribe (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United
75 States district courts (including proceedings before magistrate judges thereof) and courts of appeals. (b) **Such rules shall not abridge, enlarge or modify any substantive right.** All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.” Emphases added and the Supreme Court agreed:

80 *"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." - Miranda v. Arizona, 384 U.S. 436, 491.*

Wherefore, we move the United States Supreme Court to perform their Constitutional duty and order Magistrates Christian F. Hummel and Mae A. D'Agostino in the above
85 said inferior court to correct the record as stated by the plaintiffs and provide for the opening of a Court of Record to proceed according to the Common Law.

Dated: May 22, 2018

90 SEAL



Grand Jury Foreman
Amicus Curiae, Sureties' of the Peace

95 Attachments: Civil coversheet (1 page)
Order dated 4-26-18 Document #15 (4 pages)
Amicus Curiae dated 18-05-18 (18 pages)
Show Cause dated 18-05-21 (15pages)