

HCR 3 – AS INTRODUCED

2013 SESSION

13-0161
09/04

HOUSE CONCURRENT RESOLUTION **3**

A RESOLUTION affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

SPONSORS: Rep. Itse, Rock 10; Rep. Comerford, Rock 33; Rep. Baldasaro, Rock 5; Rep. Kappler, Rock 3; Rep. Warden, Hills 39; Rep. Lambert, Hills 44; Rep. Jones, Straf 24; Rep. Hoell, Merr 23; Sen. Cataldo, Dist 6; Sen. Reagan, Dist 17

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This house concurrent resolution affirms States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

A RESOLUTION affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

1 Whereas, the intent of this resolution is to support the States in preserving and enforcing the
2 Constitution of the United States of America pursuant to Part 1, Article 7 of the constitution of the
3 State of New Hampshire and the Tenth Amendment of the Constitution of the United States of
4 America; and

5 Whereas, the Constitution of the State of New Hampshire, Part 1, Article 7 declares that the
6 people of this State have the sole and exclusive right of governing themselves as a free, sovereign,
7 and independent State; and do, and forever hereafter shall, exercise and enjoy every power,
8 jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly
9 delegated to the United States of America in Congress assembled; and

10 Whereas, the Constitution of the State of New Hampshire, Part 2, Article 1 declares that the
11 people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly
12 and mutually agree with each other, to form themselves into a free, sovereign and independent body-
13 politic, or State, by the name of The State of New Hampshire; and

14 Whereas, each State acceded to the compact titled The Constitution for the United States of
15 America as a State, and is an integral party, its co-States forming, as to itself, the other party; and

16 Whereas, the State of New Hampshire when ratifying the Constitution for the United States of
17 America recommended as a change, "First That it be Explicitly declared that all Powers not
18 expressly & particularly Delegated by the aforesaid are reserved to the several States to be, by them
19 Exercised;" and

20 Whereas, the other States that included recommendations, to wit Massachusetts, New York,
21 North Carolina, Rhode Island, and Virginia, included an identical or similar recommended change;
22 and

23 Whereas, these recommended changes were incorporated as the Ninth Amendment, "The
24 enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others
25 retained by the people.", and the Tenth Amendment, "The powers not delegated to the United States
26 by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to
27 the people.", to the Constitution for the United States of America. Therefore, the several States
28 composing the United States of America, are not united on the principle of unlimited submission to
29 their General Government; but that, by a compact under the style and title of a Constitution for the
30 United States of America, and of amendments thereto, they constituted a General Government for
31 special purposes, delegated to that government certain definite powers, reserving, each State to
32 itself, all remaining powers for their own self-government; and

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Whereas, the construction applied by the General Government (as is evidenced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power “to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,” and “to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof,” goes to the destruction of all limits prescribed to their power by the Constitution:

I. Therefore, words meant by the instrument to be subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument; and

II. Therefore, whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; and

Whereas, the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, offenses against the law of nations, and slavery, and no other crimes whatsoever:

Therefore, all acts of Congress, the orders of the Executive or orders of the Judiciary of the United States of America which assume to create, define, or punish crimes, other than those so enumerated in the Constitution are altogether void, and of no force; and that the power to create, define, and punish such other crimes is reserved, and, of right, appertains solely and exclusively to the respective States, each within its own territory; and

Whereas, The United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct. 2408 (1992), that congress may not simply commandeer the legislative and regulatory processes of the States:

Therefore, all compulsory federal legislation that directs States to comply under threat of civil or criminal penalties or sanctions or that requires States to pass legislation or lose federal funding are prohibited; and

Whereas, The Constitution for the United States of America, Article II, Section 2, Clause 2 gives Congress the authority to authorize inferior officers of the government of the United States of America not enumerated in the Constitution by law and for them to be appointed by the manner prescribed by law enacted by the Congress, and that the Constitution gives no such authority to the President:

Therefore, no officer not authorized by the Constitution or by law or exercising a power not authorized by the Constitution, nor their subordinates shall have any authority in, or over the sovereign State of New Hampshire, nor any inhabitant or resident thereof, nor any franchises created under the authority thereof when within the borders of the State of New Hampshire, and

Whereas, the Constitution for the United States of America Article I, Section 1 delegates all

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1 legislative power to the Congress; and

2 Whereas, the Constitution for the United States of America Article II delegates no legislative
3 power to the Executive branch whatsoever. Therefore, any Executive Order that pretends the power
4 to create statutes controlling the States, their inhabitants or their residents is unauthoritative, void
5 and of no force; and

6 Whereas, the Constitution for the United States of America, Article VI, Section 2 declares “This
7 Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all
8 Treaties made, or which shall be made, under the Authority of the United States, shall be the
9 supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the
10 Constitution or Laws of any State to the Contrary notwithstanding.”; and

11 Whereas, treaties are ratified by the Senate which being a House of Congress has its jurisdiction
12 limited to the powers enumerated in Article I, Section 8 of the Constitution; and

13 Whereas, treaties are ratified by the President and the Senate (representing the States) only, but
14 laws are ratified by the House of Representatives (representing the people) and the Senate
15 (representing the States) and the President, no treaty can be lawfully construed to restrict or amend
16 existing law; and

17 Whereas, treaties are ratified by the President and the Senate (representing the States) only, but
18 the Constitution and its amendments were ratified by the States directly (representing the people),
19 no treaty can be lawfully construed to restrict or amend the Constitution:

20 Therefore, any treaty which pretends to delegate any powers not delegated to Congress in Article
21 I, Section 8 of the Constitution is altogether void, and of no force; and any order of the Executive or
22 order of the Judiciary which is construed to restrict or amend existing law, or any act of Congress,
23 order of the Executive or order of the Judiciary which is construed to restrict or amend the
24 Constitution for the United States of America based upon compliance with any treaty are altogether
25 void, and of no force; and

26 Whereas, the government created by this compact was not made the exclusive or final judge of
27 the extent of the powers delegated to itself, since that would have made its discretion, and not the
28 Constitution, the measure of its powers; but that, as in all other cases of compact among powers
29 having no common judge, each party has an equal right to judge for itself, as well of infractions as of
30 the mode and measure of redress:

31 Therefore, the Legislatures and Legislators of the several States have the right and duty to
32 consider the constitutionality of any legislative act or order promulgated by the government of the
33 United States of America; and to protect their governments, inhabitants, and residents and
34 instruments created under their authority by prohibiting, and if necessary punishing the
35 enforcement any Acts by the Congress of the United States of America, Executive Order of the
36 President of the United States of America or Judicial Order by the Judicatories of the United States
37 of America which assumes a power not delegated to the government of United States of America by

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1 the Constitution for the United States of America; and

2 Whereas, the Constitution for the United States of America guarantees to every State in this
3 Union a Republican Form of Government, and shall protect each of them against Invasion; and on
4 Application of the Legislature (of a State), or of the Executive (when the Legislature cannot be
5 convened) against domestic Violence.

6 Therefore; there exists a class of Acts by the Congress of the United States, Executive Orders of
7 the President of the United States of America or Judicial Orders by the Judicatories of the
8 United States of America that constitutes a direct challenge to the Constitution for the United States
9 of America by the government of the United States including, but not limited to:

10 I. Requiring involuntary servitude or governmental service other than pursuant to, or as an
11 alternative to, incarceration after due process of law.

12 II. Establishing martial law or a state of emergency within one of the States comprising the
13 United States of America without the consent of the legislature of that State or authority derived
14 from that body.

15 III. Surrendering any power delegated or not delegated to any incorporation or foreign
16 government; now, therefore, be it

17 Resolved by the House of Representatives, the Senate concurring:

18 That the New Hampshire house of representatives urges its co-States to charge to one if its
19 committees with the duty communicating the preceedings of its Legislature in regard to the
20 government of the United States of America to the corresponding committees of Legislatures of the
21 several States; to assure them that this State continues in the same esteem of their friendship and
22 union which it has manifested from that moment at which a common danger first suggested a
23 common union: that it considers union, for specified national purposes, and particularly to those
24 specified in their federal compact, to be friendly to the peace, happiness, and prosperity of all the
25 States: that faithful to that compact, according to the plain intent and meaning in which it was
26 understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it
27 does also believe, that to take from the States all the powers of self-government and transfer them to
28 a general and consolidated government, without regard to the special delegations and reservations
29 solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States; and
30 that therefore this State is determined, as it doubts not its co-States are, to submit to undelegated,
31 and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of
32 the delegated powers, the members of the General Government, being chosen by the people, a change
33 by the people would be the constitutional remedy; but, where powers are assumed which have not
34 been delegated, a nullification of the act is the rightful remedy: that every State has a natural right
35 in cases not within the compact, (*casus non foederis*), to nullify of their own authority all
36 assumptions of power by others within their limits: that without this right, they would be under the
37 dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them; and

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1 That copies of this resolution be transmitted by the House Clerk to the President of the
2 United States, the presiding members of the United States Congress, and each member of the
3 New Hampshire congressional delegation.