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2023 SESSION

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08/10

HOUSE CONCURRENT RESOLUTION **3**

A RESOLUTION relative to affirming states' power over the federal constitution.

SPONSORS: Rep. Gerhard, Merr. 25

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This resolution affirms states' power over the federal constitution.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

A RESOLUTION relative to affirming states' power over the federal constitution.

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

6 Whereas, the constitution of the state of New Hampshire, Part 2, Article 1 declares that the
7 people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly
8 and mutually agree with each other, to form themselves into a free, sovereign and independent body-
9 politic, or state, by the name of the state of New Hampshire; and

10 Whereas, each state acceded to the compact titled the Constitution for the United States of
11 America as a state, and is an integral party, its co-states forming, as to itself, the other party: and

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

16 Whereas, the other states that included recommendations, to wit Massachusetts, New York,
17 North Carolina, Rhode Island, and Virginia, included an identical or similar recommended change;
18 and

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

29 Whereas, the construction applied by the general government (as is evidenced by sundry of their
30 proceedings) to those parts of the Constitution of the United States which delegate to Congress a
31 power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the
32 common defense and general welfare of the United States," and "to make all laws which shall be

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1 necessary and proper for carrying into execution the powers vested by the Constitution in the
2 government of the United States, or in any department or officer thereof,” goes to the destruction of
3 all limits prescribed to their power by the Constitution; and

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

7 Whereas, whensoever the general government assumes undelegated powers, its acts are
8 unauthoritative, void, and of no force; and

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

13 Whereas, therefore all acts of Congress, the orders of the executive or orders of the judiciary of
14 the United States of America which assume to create, define, or punish crimes, other than those so
15 enumerated in the Constitution are altogether void, and of no force; and that the power to create,
16 define, and punish such other crimes is reserved, and, of right, appertains solely and exclusively to
17 the respective States, each within its own territory; and

18 Whereas, The United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct.
19 2408 (1992), that congress may not simply commandeer the legislative and regulatory processes of
20 the States; and

21 Whereas, all compulsory federal legislation that directs states to comply under threat of civil or
22 criminal penalties or sanctions or that requires states to pass legislation or lose federal funding are
23 prohibited; and

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

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

33 Whereas, the Constitution for the United States of America Article I, Section 1 delegates all
34 legislative power to the Congress, and

35 Whereas, the Constitution for the United States of America Article II delegates no legislative
36 power to the executive branch whatsoever. Therefore, any executive Order that pretends the power

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1 to create statutes controlling the States, their inhabitants or their residents is unauthoritative, void
2 and of no force, and

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

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

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

14 Whereas, treaties are ratified by the President and the Senate (representing the States) only,
15 but the Constitution and its amendments were ratified by the States directly (representing the
16 people), no treaty can be lawfully construed to restrict or amend the Constitution. Therefore, any
17 treaty which pretends to delegate any powers not delegated to Congress in Article I, Section 8 of the
18 Constitution is altogether void, and of no force; and any order of the executive or order of the
19 judiciary which is construed to restrict or amend existing law, or any act of Congress, order of the
20 executive or order of the judiciary which is construed to restrict or amend the Constitution for the
21 United States of America based upon compliance with any treaty are altogether void, and of no force;
22 and

23 Whereas, the government created by this compact was not made the exclusive or final judge of
24 the extent of the powers delegated to itself, since that would have made its discretion, and not the
25 Constitution, the measure of its powers; but that, as in all other cases of compact among powers
26 having no common judge, each party has an equal right to judge for itself, as well of infractions as of
27 the mode and measure of redress. Therefore, the legislatures and legislators of the several states
28 have the right and duty to consider the constitutionality of any legislative act or order promulgated
29 by the government of the United States of America; and to protect their governments, inhabitants,
30 and residents and instruments created under their authority by prohibiting, and if necessary
31 punishing the enforcement any Acts by the Congress of the United States of America, Executive
32 Order of the President of the United States of America or Judicial Order by the judicatories of the
33 United States of America which assumes a power not delegated to the government of United States
34 of America by the Constitution for the United States of America; and

35 Whereas, the Constitution for the United States of America guarantees to every State in this
36 Union a republican form of government, and shall protect each of them against invasion; and on
37 application of the legislature (of a state), or of the executive (when the legislature cannot be

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1 convened) against domestic violence. Therefore; there exists a class of acts by the Congress of the
2 United States, executive orders of the President of the United States of America or judicial orders by
3 the judicatories of the United States of America that constitutes a direct challenge to the
4 Constitution for the United States of America by the government of the United States including, but
5 not limited to:

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

8 II. Establishing martial law or a state of emergency within one of the states comprising the
9 United States of America without the consent of the legislature of that state or authority derived
10 from that body.

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

13 Resolved by the house of representatives, with the senate concurring:

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

34 That copies of this resolution be transmitted by the house clerk to the President of the United
35 States, each member of the United States Congress, and the presiding officers of each state's
36 legislature.