



State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

*Merrill v. Sherburne
1818*

REDRESS OF GRIEVANCES ANALYSIS AS OF 2015

By Charles G. Douglas, III
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OVERVIEW:

This is an overview of the law and Constitution on the subject of redress petitions to the legislature.

Part First, Article 31 of the Constitution of the State of New Hampshire states:

31st. The legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.

Part First, Article 32 of the Constitution of the State of New Hampshire states:

32nd. The people have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrongs done them, and of the grievances they suffer.

Article 31 and Article 32 both were part the New Hampshire Constitution of 1784. Article 31 was amended in 1793. Article 32 remains unchanged.

HISTORY:

From New Hampshire's provincial period, through early statehood and into the nineteenth century, the State's legislature (or "General Court") spent a great deal of its time considering and acting upon petitions from its citizens. A review of the New Hampshire House and Senate Journals and all extant legislative records from 1770 to 1810 reveals that it was

common in the early period of this State's history for citizens to petition and instruct their representatives in the General Court. According to the archives approximately 18,000 petitions preserved in original manuscript form at the New Hampshire State Archives from the period of approximately 1680 to 1864. See examples from 1817 to 1864 attached hereto.

During this period there were few standing committees in the legislature or bureaucratic agencies in the executive branch to directly address the needs or grievances of individuals or groups of citizens, so much of the legislation introduced and enacted was in response to petitions. Some petitions were from individual citizens and some were submitted by groups of citizens, including citizens gathered at town meetings. Many requested the formation of corporations or appointment of justices of the peace – now handled by standing laws and the office of the Secretary of State. Some petitions requested an address of an individual grievance, such as requests for money they felt the state owed them, while others concerned general public policy issues, such as requests for roads, a bridge or ferry across a waterway, paper money, or means of curtailing law suits.

It was also a common practice for litigants in civil cases to petition the legislature seeking new trials, or stays, appeals or reversals of decisions in the courts. Until the practice was ruled unconstitutional by the New Hampshire Supreme Court in the case of *Merrill v. Sherburne* in 1818, the state's laws were replete with examples of involvement by the legislature in individual court cases.

The legislative process relative to petitions is apparent from the House and Senate Journals: a petition would be submitted and read (often by the clerks) in the House and the Senate. The body that first heard the petition would vote on whether or not to form a committee to consider it and would usually invite the other body to join the committee. Sometimes the

petitioner, petitionee, and other relevant persons would be invited or ordered “to be heard” before the General Court at a future date. After consideration of the petition, the committee would report back a recommendation as to whether a bill should be drafted in response. If such a recommendation were made, a bill would be introduced and voted upon. If passed, the bill would then be sent to the other legislative body for consideration and possible enactment.

Although provision for petitions to the legislature remained in the statutes until 1925 (and the constitutional articles, of course, still remain), the collection of petitions to the General Court at the State Archives dwindles dramatically by the late 1840’s. There appears to be no single reason why. One can only assume that changes in the legislative process and the establishment of a larger bureaucratic structure in the executive branch provided a better means to address the needs and grievances of individuals and groups of citizens. These evolving institutional changes led to the demise of the practice of citizens petitioning their representatives for the next century and a half.

The practical limits of the right to petition for redress were briefly addressed in Sousa v. State, 115 N.H. 340 (1975). The Supreme Court noted that the remedy of petitioning the legislature existed for persons injured by the negligence of state employees, but that it was costly and time consuming. The court suggested the creation of a state board of claims to hear such cases, which was done in 1977 by the legislature.

Of course, Merrill changed the landscape 200 years ago to eliminate legislative involvement in court cases on a per case basis. The following quotes from Merrill in 1 N.H. 299 are instructive:

“Merrill then made a motion for new trial, which after a full hearing, was refused, and at November term, 1814, final judgment was rendered, that the decree of the court of probate be

reversed and said instrument disallowed. Merrill then petitioned the legislature for another trial; and they, at their June session, A.D. 1817, passed an act, granting the plaintiff, as administratrix of Merrill, at that time deceased, liberty to re-enter said cause in the Superior Court, and there have it retired like common cases of review.” Id.

“Perhaps, also it is inseparable from the structure of the legislative and judicial departments, that jealousies should arise between them as to exercise of their respective powers. For they were intended, in some degree, to be mutual checks.” Id. 200.

“[A] marked difference exists between the employments of judicial and legislative tribunals. The former decide upon the legality of claims and conduct; the latter make rules, upon which, in connexion with the constitution, those decisions should be founded. It is the province of judicial power also, to decide private disputes ‘between or concerning persons,’ but of legislative power to regulate publick concerns and to ‘make laws’ for the benefit and welfare of the state.” Id. 204.

As to the 31st article of the bill of rights it merely provides, that:

The legislature shall assemble for the redress of the public grievances and for making such laws as the publick good may require.

“Yet ‘the grievance’ attempted to be redressed by the act under consideration [herein] was not a publick one; and if it were, the obvious meaning of the article is, that such grievances should be redressed by ‘laws,’ and not by proceedings, which are in their nature, judgments.”

Merrill at p. 206-7.

The 37th article declares that in the government of this state:

The three essential powers thereof, to wit, the legislative, executive and judicial, ought to be kept as separate from, and independent of each other as the nature of a free government will admit....

The Merrill court analysis continued into historical precepts:

“There is no liberty, if the power of judging be not separated from the legislative and executive powers. (16) *Montesquieu*, B. 11, Ch. 6. In other words that the union of these two powers is tyranny, (17) 7 *Johnson* 508, or, as Mr. Madison observes, may just be pronounced the very definition of tyranny, (18) *Federalist*, No. 47; or in the language of Mr. Jefferson, ‘is precisely the definition of despotik government.’ (19) *Notes on Virginia* 195.” Id. 209.

“Not a single constitution therefore, exists in the whole union, which does not adopt this principle of separation as part of its basis.” Id. 209.

“That clause, which confers upon the ‘general court’ the authority ‘to make laws,’ provides at the same time, that they must not be ‘repugnant or contrary to the constitution....’” Id. 210.

“But the judiciary would in every respect cease to be a check on the legislature, if the legislature could at pleasure revise or alter any of the judgments of the judiciary. The legislature too would thus become the court of last resort, ‘the superior court,’ or ‘supreme judicial’ tribunal of the state; and those expressions so often applied to this court in the constitution, would become gross mis-nomers....” Id.

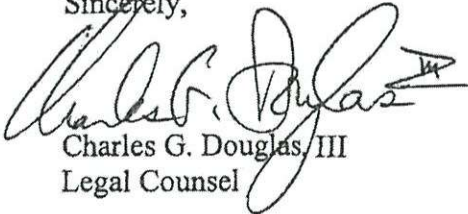
“In this country it is not the legislature, who are supreme; but the people; and there is no position, which depends on clearer principles, than that of every act of a delegated authority contrary to the tenor of the commission, under which it is exercised is void.” Id. 216.

Thus, in the passage of the act granting a new trial to the plaintiff, the constitution was violated concluded the Merrill decision.

The last few years of petitions primarily involve litigated divorce cases where one party has lost and seeks “redress” by the legislature. Such an exercise is an unconstitutional attempt to end run judicial decisions as if Merrill didn’t exist. The House is not a court and has no power to change a court ruling. Unless Merrill is overturned by constitutional amendment the clerk should take no action on the pending petitions which all derive from court cases. If a proposal is made to change a law for all of the people it would be done by the customary procedure of amending the statutes.

April 28, 2015

Sincerely,



Charles G. Douglas, III
Legal Counsel

- repair of the unit's gun carriage
- 6/19/1817 Nathan Aldrich asks that his name be changed to Nathan Briggs
- 6/20/1817(1) Adjutant General Benjamin Butler wants a map from the Secretary of State's office for use in his office
- 6/20/1817(2) James Thom of Londonderry is recommended for appointment as judge advocate for the 3rd militia brigade
- 6/20/1817(3) Committee report on petition of Uriah Wilcox and David Hale
- 6/21/1817 Stephen Goodhue et al. recommend Josiah Tenney to be the judge advocate for the 6th brigade of militia
- 6/21/1817 Two officers of the 10th militia regiment want their names added to earlier petition for promotion of officers
- 6/23/1817 Lt. Col. Moses Gerrish, Jr., 21st militia regiment, seeks removal (decommissioning) of cavalry Capt. Bimsley Perkins
- 6/24/1817 Jacob Clarke, Jr., et al. seek restoration to command of Capt. Bimsley Perkins in 21st militia regiment
- 6/25/1817 James Wallace of Milford seeks new trial in case of assumpsit brought v. Charles H. Atherton, Hillsborough Court
- 6/25/1817 John Dearborn et al. ask incorporation as the First Baptist Society in Hampton
- 6/26/1817 Two officers of 10th militia regiment question the legislative process
- 6/27/1817(1) Ebenezer Eastman of the 10th militia favors promotion of other officers
- 6/27/1817(2+3) Strafford County citizens want one term of superior court to be held at Meredith Bridge
- 7/9/1817 Citizens of Sandwich, NH, recommend Dr. Lott Cooke for nomination to be a justice of the peace[JP]
- 9/9/1817 Citizens of Adams, NH, recommend Anthony Vincent for nomination to be a justice of the peace[JP]; Timothy Dame died
- 9/13/1817 Gilmanton men of 10th militia regt. recommend that Maj. Ebenezer Eastman be promoted to colonel to command the regiment
- 10/4/1817 Citizens of Canaan, NH, seek reappointment of Timothy Tilton to remain a justice of the peace[JP]
- 10/7/1817 Croydon, NH, selectmen recommd that Maj. Abijah Powers be nominated to be a justice of the peace[JP]
- 10/15/1817 Dr. Peter Green advises that state prisoner Moses Bickford is in declining health
- 10/15/1817 State prisoner Moses Bickford cites his failing health, seeks remittance from "the residue" of his punishment
- 10/20/1817 Brentwood, NH, citizens recommend that Thomas Graves be appointed a coroner
- 6/14/1818 Dartmouth University trustees ask "pecuniary aid" necessitated by legal adversarial conditions
- 1819 Dartmouth College trustees, per Mills Olcott, ask for a committee to compute damages & authority for gov. to pay
- 6/8/1819 Dartmouth University trustees express readiness to display evidence of their current campus situation

- [1820] Trustees of the Presbyterian Church of the USA seek an act to protect their right to inherited land in NH
- 5/22/1820 Dartmouth College students object to act compelling them to do military service
- June 1820(1) Dartmouth medical professors ask to sell surplus property so to purchase books
- June 1820(2) Dartmouth College trustees seek indemnification for losses incurred by judiciary proceedings
- 6/12/1820 Dartmouth students Charles M. Emerson et al. seek incorporation of their Literary Society of Social Friends
- 6/20/1820 Dr. Alexander Ramsay seeks legislative support for his teaching of anatomy and physiology
- 11/24/1820 Hanover citizens seek incorporation of The Hanover Aqueduct Association
- 6/13/1822 Dartmouth College students ask exemption from military duty while in school
- 6/7/1823 Professor Nathaniel H. Carter seeks compensation due for teaching 2 years at Dartmouth University
- 6/15/1823 James Dean seeks compensation for fulfilling his appointment at Dartmouth University
- [1824] Eliza R. Woodward seek reimbursement due to her late husband William from Dartmouth College/University
- [1825] President Bennet Tyler & trustees of Dartmouth College ask appropriation of funds for the institution
- [1826] Nathaniel H. Carter reapplies for wages due for teaching languages at Dartmouth College
- 5/22/1827 Members of the "United Fraternity" society at Dartmouth College seek incorporation
- 6/9/1832
- [1833] William Hall et al. of Hanover ask repeal of certain laws bearing on religion
- 5/14/1833 Hanover citizens seek law regulating voting by Dartmouth students
- 6/22/1833 Dartmouth students respond to Hanover petition of 5/14/1833 re student voting
- 2/10/1835 Citizens of Roxbury recommend Gideon Newcomb be nominated to be a justice of the peace[JP]

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June 1837 Memorial of Dartmouth students opposing acts to
license alcohol, gaming, and vices

1839 Memorial of Dartmouth students re exemption from military
service and taxation, and re place of voting

6/17/1839 Dartmouth students remonstrate against bill proposing
to prevent students of literary institutions from voting

10/10/1864 Non-coms & privates of 9th co. of Heavy Artillery
want to remain an independent military co. [mss in Box ?]

