

LEGISLATIVE COMMITTEE MINUTES

HCR3

Bill as
Introduced

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.

HCR 3 - AS INTRODUCED

13-0161
09/04

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

HCR 3 - AS INTRODUCED

-Page 2 -

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

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

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

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

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

22 Whereas, The United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct.
23 2408 (1992), that congress may not simply commandeer the legislative and regulatory processes of
24 the States:

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

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

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

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

HCR 3 - AS INTRODUCED

- Page 3 -

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

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

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

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

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

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

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

36 Whereas, the Constitution for the United States of America guarantees to every State in this
37 Union a Republican Form of Government, and shall protect each of them against Invasion; and on

HCR 3 - AS INTRODUCED

- Page 4 -

1 Application of the Legislature (of a State), or of the Executive (when the Legislature cannot be
2 convened) against domestic Violence.

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

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

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

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

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

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

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

Speakers

Hearing Minutes

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

PUBLIC HEARING ON HCR 3

BILL TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

DATE: February 14, 2013

LOB ROOM: 203 **Time Public Hearing Called to Order:** 3:00 p.m.

Time Adjourned: 3:30 p.m.

(please circle if present)

Committee Members: Reps. Theberge, C. Sweeney, Spainhower, Carey, McCloskey, Meneer, Palangas, Garrity, Massimilla, Timothy Smith, Baldasaro, Rideout, Notter, Christiansen, Todd Smith, Rollins, Priestly and Lundgren.

Bill 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

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Dan Itse back up information. HCR 3 to reaffirm our duty. Place oneself between issue and people. National ID through drivers license – NH filed against. The federal government cannot force upon the people laws which negate their power. Federalist Paper #28. Our job (the state government) is to step before the federal government where they overstep. Federalist Paper #35. States Rights vs. usurpation by federal government.

Massimilla – Why now?

Itse – It's consistent with long legislative crumudgery.

Theberge – Who are you guarding and why?

Because of all problems last year.

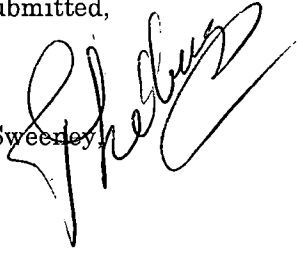
How do we coerce co-states?

Send letter to other states from committee.

Sweeney – Line 9 page 4. Delay in Katrina – Alabama School interpretation. Does president always have executive orders?

Respectfully submitted,

Rep. Cynthia Sweeney
Acting clerk

A handwritten signature in black ink, appearing to read 'Cynthia Sweeney', written over the typed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

PUBLIC HEARING ON HCR 3

BILL TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

DATE: Feb. 14 2013

LOB ROOM: 203 **Time Public Hearing Called to Order:**

Time Adjourned:

(please circle if present)

Committee Members: Reps. Theberge, C. Sweeney, Spainhower, Carey, McCloskey, Meneer, Palangas, Garrity, Massimilla, Timothy Smith, Baldasaro, Rideout, Nestor, Christiansen, Todd Smith, Rollins, Priestly and Lundgren.

Bill 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

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Feb 14, 2013

3:00

HCR3 -

DAN ITSE

BACK-UP INFO

HCR3 - To Reaffirm our DUTY
Place ourself between ISSUE and
People

National ID through DRIVERS
Lic. - NH Filed against

The FEDERAL Government cannot
force upon the people Laws which
negate their Power.

Federalist Paper #28

Our Job is to step before the Fed
the STATE Gov't

Gov't where they over step
Federalist Paper #35

States Rights vs USURPTION by
Fed Gov't

Masmillia - why now?

ITSE - It's consistent with my legislative
Chum & Co

Debarge - when are you sending and why?

Because of all Problems last year.

How do we co-exist co-states

Sends letter to other states from
Committee

Sweeney

line 9 Page 4

Delay in Katrina - Alabama School integration

Does President always have EXECUTIVE ORDERS

Close 3:30

Testimony

 <p>Yale Law School LILLIAN GOLDMAN LAW LIBRARY <i>in memory of Sol Goldman</i></p>	<p>THE AVALON PROJECT <i>Documents in Law, History and Diplomacy</i></p>	
--	--	---

Avalon Home	Document Collections	Ancient 4000bce - 399	Medieval 400 - 1399	15 th Century 1400 - 1499	16 th Century 1500 - 1599	17 th Century 1600 - 1699	18 th Century 1700 - 1799	19 th Century 1800 - 1899	20 th Century 1900 - 1999	21 st Century 2000 -
-------------	----------------------	--------------------------	------------------------	---	---	---	---	---	---	------------------------------------

The Federalist Papers : No. 28

Previous Document	Contents	Next Document
-----------------------------------	--------------------------	-------------------------------

**The Same Subject Continued
(The Idea of Restraining the Legislative Authority in Regard to the Common Defense Considered)**

**For the Independent Journal.
HAMILTON**

To the People of the State of New York:

THAT there may happen cases in which the national government may be necessitated to resort to force, cannot be denied. Our own experience has corroborated the lessons taught by the examples of other nations; that emergencies of this sort will sometimes arise in all societies, however constituted; that seditions and insurrections are, unhappily, maladies as inseparable from the body politic as tumors and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government), has no place but in the reveries of those political doctors whose sagacity disdains the admonitions of experimental instruction.

Should such emergencies at any time happen under the national government, there could be no remedy but force. The means to be employed must be proportioned to the extent of the mischief. If it should be a slight commotion in a small part of a State, the militia of the residue would be adequate to its suppression; and the national presumption is that they would be ready to do their duty. An insurrection, whatever may be its immediate cause, eventually endangers all government. Regard to the public peace, if not to the rights of the Union, would engage the citizens to whom the contagion had not communicated itself to oppose the insurgents; and if the general government should be found in practice conducive to the prosperity and felicity of the people, it were irrational to believe that they would be disinclined to its support.

If, on the contrary, the insurrection should pervade a whole State, or a principal part of it, the employment of a different kind of force might become unavoidable. It appears that Massachusetts found it necessary to raise troops for repressing the disorders within that State; that Pennsylvania, from the mere apprehension of commotions among a part of her citizens, has thought proper to have recourse to the same measure. Suppose the State of New York had been inclined to re-establish her lost jurisdiction over the inhabitants of Vermont, could she have hoped for success in such an enterprise from the efforts of the militia alone? Would she not have been compelled to raise and to maintain a more regular force for the execution of her design? If it must then be admitted that the necessity of recurring to a force different from the militia, in cases of this extraordinary nature, is applicable to the State governments themselves, why should the possibility, that the national government might be under a like necessity, in similar extremities, be made an objection to its existence? Is it not surprising that men who declare an attachment to the Union in the abstract, should urge as an objection to the proposed Constitution what applies with tenfold weight to the plan for which they contend; and what, as far as it has any foundation in truth, is an inevitable consequence of civil society upon an enlarged scale? Who would not prefer that possibility to the unceasing agitations and frequent revolutions which are the continual scourges of petty republics?

Let us pursue this examination in another light. Suppose, in lieu of one general system, two, or three, or even four Confederacies were to be formed, would not the same difficulty oppose itself to the operations of either of these Confederacies? Would not each of them be exposed to the same casualties; and when these happened, be obliged to have recourse to the same expedients for upholding its authority which are objected to in a government for all the States? Would the militia, in this supposition, be more ready or more able to support the federal authority than in the case of a general union? All candid and intelligent men must, upon due consideration, acknowledge that the principle of the objection is equally applicable to either of the two cases; and that whether we have one government for all the States, or different governments for different parcels of them, or even if there should be an entire separation of the States, there might sometimes be a necessity to make use of a force constituted differently from the militia, to preserve the peace of the community and to maintain the just authority of the laws against those violent invasions of them which amount to insurrections and rebellions.

Independent of all other reasonings upon the subject, it is a full answer to those who require a more peremptory provision against military establishments in time of peace, to say that the whole power of the proposed government is to be in the hands of the representatives of the people. This is the essential, and, after all, only efficacious security for the rights and privileges of the people, which is attainable in civil society.¹

If the representatives of the people betray their constituents, there is then no resource left but in the exertion of that original right of self-defense which is paramount to all positive forms of government, and which against the usurpations of the national rulers, may be exerted with infinitely better prospect of success than against those of the rulers of an individual state. In a single state, if the persons intrusted with supreme power become usurpers, the different parcels, subdivisions, or districts of which it consists, having no distinct government in each, can take no regular measures for defense. The citizens must rush tumultuously to arms, without concert, without system, without resource; except in their courage and despair. The usurpers, clothed with the forms of legal authority, can too often crush the opposition in embryo. The smaller the extent of the territory, the more difficult will it be for the people to form a regular or systematic plan of opposition, and the more easy will it be to defeat their early efforts. Intelligence can be more speedily obtained of their preparations and movements, and the military force in the possession of the usurpers can be more rapidly directed against the part where the opposition has begun. In this situation there must be a peculiar coincidence of circumstances to insure success to the popular resistance.

The obstacles to usurpation and the facilities of resistance increase with the increased extent of the state, provided the citizens understand their rights and are disposed to defend them. The natural strength of the people in a large community, in proportion to the artificial strength of the government, is greater than in a small, and of course more competent to a struggle with the attempts of the government to establish a tyranny. But in a confederacy the people, without exaggeration, may be said to be entirely the masters of their own fate. Power being almost always the rival of power, the general government will at all times stand ready to check the usurpations of the state governments, and these will have the same disposition towards the general government. The people, by throwing themselves into either scale, will infallibly make it preponderate. If their rights are invaded by either, they can make use of the other as the instrument of redress. How wise will it be in them by cherishing the union to preserve to themselves an advantage which can never be too highly prized!

It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretenses so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty.

The great extent of the country is a further security. We have already experienced its utility against the attacks of a foreign power. And it would have precisely the same effect against the enterprises of ambitious rulers in the national councils. If the federal army should be able to quell the resistance of one State, the distant States would have it in their power to make head with fresh forces. The advantages obtained in one place must be abandoned to subdue the opposition in others; and the moment the part which had been reduced to submission was left to itself, its efforts would be renewed, and its resistance revive.

We should recollect that the extent of the military force must, at all events, be regulated by the resources of the country. For a long time to come, it will not be possible to maintain a large army; and as the means of doing this increase, the population and natural strength of the community will proportionably increase. When will the time arrive that the federal government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their State governments, to take measures for their own defense, with all the celerity, regularity, and system of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning.

PUBLIUS.

1 Its full efficacy will be examined hereafter.

Previous Document	Contents	Next Document
-----------------------------------	--------------------------	-------------------------------

Avalon Home	Document Collections	Ancient 4000bce - 399	Medieval 400 - 1399	15th Century 1400 - 1499	16th Century 1500 - 1599	17th Century 1600 - 1699	18th Century 1700 - 1799	19th Century 1800 - 1899	20th Century 1900 - 1999	21st Century 2000 -
-----------------------------	--------------------------------------	---------------------------------------	-------------------------------------	---	---	---	---	---	---	--

© 2008 Lillian Goldman Law Library
127 Wall Street, New Haven, CT 06511.

[Avalon Statement of Purpose](#)

[Contact Us](#)

[Yale Law Library](#)

[University Library](#)

[Yale Law School](#)

[Search Morris](#)

[Search Orbis](#)

 <p>Yale Law School LILLIAN GOLDMAN LAW LIBRARY <i>in memory of Sel Goldman</i></p>	<p>THE AVALON PROJECT <i>Documents in Law, History and Diplomacy</i></p>	
--	--	---

Avalon Home	Document Collections	Ancient 4000bce - 399	Medieval 400 - 1399	15th Century 1400 - 1499	16th Century 1500 - 1599	17th Century 1600 - 1699	18th Century 1700 - 1799	19th Century 1800 - 1899	20th Century 1900 - 1999	21st Century 2000 -
-----------------------------	--------------------------------------	---	---	---	---	---	---	---	---	--

The Federalist Papers : No. 33

Previous Document	Contents	Next Document
-----------------------------------	--------------------------	-------------------------------

**The Same Subject Continued
Concerning the General Power of Taxation
From the Daily Advertiser.
January 3, 1788.
HAMILTON**

To the People of the State of New York:

THE residue of the argument against the provisions of the Constitution in respect to taxation is ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan under consideration authorizes the national legislature "to make all laws which shall be NECESSARY and PROPER for carrying into execution THE POWERS by that Constitution vested in the government of the United States, or in any department or officer thereof"; and the second clause of the sixth article declares, "that the Constitution and the laws of the United States made IN PURSUANCE THEREOF, and the treaties made by their authority shall be the SUPREME LAW of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

These two clauses have been the source of much virulent invective and petulant declamation against the proposed Constitution. They have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet, strange as it may appear, after all this clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers. This is so clear a proposition, that moderation itself can scarcely listen to the railings which have been so copiously vented against this part of the plan, without emotions that disturb its equanimity.

What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but NECESSARY and PROPER laws?

This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws NECESSARY and PROPER for the execution of that power; and what does the unfortunate and culminated provision in question do more than declare the same truth, to wit, that the national legislature, to whom the power of laying and collecting taxes had been previously given, might, in the execution of that power, pass all laws NECESSARY and PROPER to carry it into effect? I have applied these observations thus particularly to the power of taxation, because it is the immediate subject under consideration, and because it is the most important of the authorities proposed to be conferred upon the Union. But the same process will lead to the same result, in relation to all other powers declared in the Constitution. And it is EXPRESSLY to execute these powers that the sweeping clause, as it has been affectedly called, authorizes the national legislature to pass all NECESSARY and PROPER laws. If there is any thing exceptionable, it must be sought for in the specific powers upon which this general declaration is predicated. The declaration itself, though it may be chargeable with tautology or redundancy, is at least perfectly harmless.

But SUSPICION may ask, Why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against all cavilling refinements in those who might hereafter feel a disposition to curtail and evade the legitimate authorities of the Union. The Convention probably foresaw, what it has been a principal aim of these papers to inculcate, that the danger which most threatens our political welfare is that the State governments will finally sap the foundations of the Union; and might therefore think it necessary, in so cardinal a point, to leave nothing to construction. Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare.

But it may be again asked, Who is to judge of the NECESSITY and PROPRIETY of the laws to be passed for executing the powers of the Union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers as upon the declaratory clause; and I answer, in the second place, that the national government, like every other, must judge, in the first instance, of the proper exercise of its powers, and its constituents in the last. If the federal government should overpass the just bounds of its authority and make a tyrannical use of its powers, the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify. The propriety of a law, in a constitutional light, must always be determined by the nature of the powers upon which it is founded. Suppose, by some forced constructions of its authority (which, indeed, cannot easily be imagined), the Federal legislature should attempt to vary the law of descent in any State, would it not be evident that, in making such an attempt, it had exceeded its jurisdiction, and infringed upon that of the State? Suppose, again, that upon the pretense of an interference with its revenues, it should undertake to abrogate a landtax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in respect to this species of tax, which its Constitution

plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths.

(But it is said that the laws of the Union are to be the SUPREME LAW of the land. But what inference can be drawn from this, or what would they amount to, if they were not to be supreme? It is evident they would amount to nothing. A LAW, by the very meaning of the term, includes supremacy. It is a rule which those to whom it is prescribed are bound to observe. This results from every political association. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted to it by its constitution, must necessarily be supreme over those societies, and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a government, which is only another word for POLITICAL POWER AND SUPREMACY. But it will not follow from this doctrine that acts of the large society which are NOT PURSUANT to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it EXPRESSLY confines this supremacy to laws made PURSUANT TO THE CONSTITUTION; which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.)

Though a law, therefore, laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State, (unless upon imports and exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. As far as an improper accumulation of taxes on the same object might tend to render the collection difficult or precarious, this would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an injudicious exercise of power by one or the other, in a manner equally disadvantageous to both. It is to be hoped and presumed, however, that mutual interest would dictate a concert in this respect which would avoid any material inconvenience. The inference from the whole is, that the individual States would, under the proposed Constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper that this CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an entire subordination, in respect to this branch of power, of the State authority to that of the Union.

PUBLIUS.

Previous Document	Contents	Next Document
-----------------------------------	--------------------------	-------------------------------

Avalon Home	Document Collections	Ancient 4000bce - 399	Medieval 400 - 1399	15th Century 1400 - 1499	16th Century 1500 - 1599	17th Century 1600 - 1699	18th Century 1700 - 1799	19th Century 1800 - 1899	20th Century 1900 - 1999	21st Century 2000 -
-----------------------------	--------------------------------------	---------------------------------------	-------------------------------------	---	---	---	---	---	---	--

© 2008 Lillian Goldman Law Library
127 Wall Street, New Haven, CT 06511.

[Avalon Statement of Purpose](#)

[Contact Us](#)

[Yale Law Library](#)

[University Library](#)

[Yale Law School](#)

[Search Morris](#)

[Search Orbis](#)

Voting Sheets

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HCR3 reconvened

BILL TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

DATE: February 28, 2013

LOB ROOM: 203

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Baldasaro

Seconded by Rep. Notter

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Tim Smith

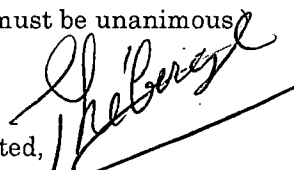
Seconded by Rep. McCloskey

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous)

Statement of Intent: Refer to Committee Report

Respectfully submitted, 

Rep. Jane E. Beaulieu, Clerk

C. Sweeney

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HCR 3 reconvened

BILL TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

DATE:

LOB ROOM: 203

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Baldassarò*

Seconded by Rep. *NOTICER*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Tim Smith*

Seconded by Rep. *Mcloskey*

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

~~Rep. Dale Spainhower, Clerk~~

CP Sweeney

HOUSE COMMITTEE ON STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

EXECUTIVE SESSION on HCR 3

BILL TITLE: affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

DATE:

LOB ROOM: 203

Amendments:

~~Sponsor: Rep.~~

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

*Recessed until
Thursday, Feb.
28th @ 9:00 a.m.*

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dale Spainhower, Clerk

Spainhower



2013 SESSION

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

Bill #: HCR 3 Title: affirming States' powers based on Constitution of U.S. & NH

PH Date: 2, 22, 12 Constitution of NH Exec Session Date: 2, 28, 12

Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Theberge, Robert L, Chairman		X
Sweeney, Cynthia P, V Chairman		X
Garrity, Patrick F Skurstedt STEVE		X
Spainhower, Dale S, Clerk		
Palangas, Eric		
Carey, Lorrie J		
Massimilla, Linda		X
McCloskey, David		X
Menear, H. Robert		X
Smith, Timothy J		X
Baldasaro, Alfred P,	X	
Priestley, Anne K	X	
Christiansen, Lars T	X	
Smith, Todd P	X	
Lundgren, David C	X	
Notter, Jeanine M	X	
Rideout, Leon H		X
Rollins, Skip	X	
TOTAL VOTE:	7	8



2013 SESSION

STATE-FEDERAL RELATIONS AND VETERANS AFFAIRS

Bill #: HCR 3 Title: Affirming States Power

PH Date: 2/12/12 Exec Session Date: 2/28/12

Motion: ~~OTB~~ JTL Amendment #: _____

MEMBER

YEAS

NAYS

Theberge, Robert L, Chairman	X	
Sweeney, Cynthia P, V Chairman	X	
Garrity, Patrick F <u>SHURTLEFF - STRUC</u>	X	
Spainhower, Dale S, Clerk		
Palangas, Eric		
Carey, Lorrie J		
Massimilla, Linda	X	
McCloskey, David	X	
Menear, H. Robert	X	
Smith, Timothy J	X	
Baldasaro, Alfred P,		X
Priestley, Anne K		X
Christiansen, Lars T		X
Smith, Todd P		X
Lundgren, David C		X
Notter, Jeanine M		X
Rideout, Leon H		X
Rollins, Skip		X
TOTAL VOTE:	<u>7</u>	<u>8</u>

Committee Report

HCR 3 affirming States' powers based on the Constitution for the United States and the Constitution of New Hampshire.

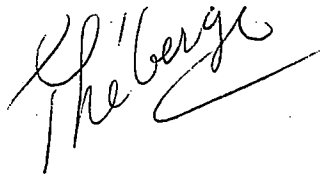
Without Recommendation

Representative Cynthia Sweeney in opposition to the bill. This legislation blurs the lines between State and Federal Authority. As such it brings into question what State rights are with regard to Federal legislation. It is well documented, in the U.S. Constitution, the rights of the individual states and that of the Federal government without pushing boundaries. For these reasons a substantial number of the committee wishes to render this bill Inexpedient to Legislate (ITL):

Rep. Cynthia Sweeney

Representative Lars Christiansen in favor of the bill. The only jurisdiction the federal government has is in interstate commerce. Any dealing with the Fed is in equity law to receive federal funds which binds you to the contract, and the federal auditors enforce the contract.

Rep. Lars Christiansen

A handwritten signature in cursive script, appearing to read "Lars Christiansen", written over a horizontal line.