

Committee Report

CONSENT CALENDAR

February 2, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred
CACR 10,**

**AN ACT relative to powers of the legislature. Providing
that the legislature may overturn any decision of a state
court concerning the interpretation of a state law.**

**Having considered the same, report the same with the
following resolution: RESOLVED, that it is
INEXPEDIENT TO LEGISLATE.**

Rep. Charlotte DiLorenzo

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	CACR 10
Title:	relative to powers of the legislature. Providing that the legislature may overturn any decision of a state court concerning the interpretation of a state law.
Date:	February 2, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This constitutional amendment concurrent resolution provides that the General Court may overturn a decision of a state court that concerns the interpretation of a state law. Our founders purposely created a system of government comprised of three separate and independent branches: executive, legislative, and judicial, to provide checks and balances and separation of powers. This system is enshrined in our federal and state constitutions. The New Hampshire legislature does not have the power to overturn decisions of state courts. This proposed constitutional amendment would turn our legislature into a de jure appeals court, and it would upset the separation of powers of the three branches of government that we so cherish.

Vote 20-1.

Rep. Charlotte DiLorenzo
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

CACR 10, relative to powers of the legislature. Providing that the legislature may overturn any decision of a state court concerning the interpretation of a state law. **INEXPEDIENT TO LEGISLATE.**

Rep. Charlotte DiLorenzo for Judiciary. This constitutional amendment concurrent resolution provides that the General Court may overturn a decision of a state court that concerns the interpretation of a state law. Our founders purposely created a system of government comprised of three separate and independent branches: executive, legislative, and judicial, to provide checks and balances and separation of powers. This system is enshrined in our federal and state constitutions. The New Hampshire legislature does not have the power to overturn decisions of state courts. This proposed constitutional amendment would turn our legislature into a de jure appeals court, and it would upset the separation of powers of the three branches of government that we so cherish. **Vote 20-1.**

Voting Sheets

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report



2021 SESSION

Judiciary

Bill #: HB 248 Motion: Y111 AM #: _____ Exec Session Date: _____

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
CACR10 ITL			
Gordon, Edward M. Chairman	20		
McLean, Mark Vice Chairman	1		
Sylvia, Michael J.	2	1	
Wuelper, Kurt F. Clerk		1	
Alexander, Joe H.	3		
Rice, Kimberly A.	4		
Silber, Norman J.	5		
Greene, Bob J.	6	7	
Kelley, Diane E.	7		
Tausch, Lindsay	8		
Trottier, Douglas R.	9		
Smith, Marjorie K.	10		
Berch, Paul S.	11		
Horrigan, Timothy O.	12		
DiLorenzo, Charlotte I.	13		
Chase, Wendy	14		
Kenney, Cam E.	15		
Langley, Diane M.	16		151
McBeath, Rebecca Susan	17		
Paige, Mark	18		
Simpson, Alexis	19		

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/22/2021 10:07:24 AM
Roll Call Committee Registers
Report



2021 SESSION

Judiciary

Bill #: HB 248 Motion: Y111 AM #: _____ Exec Session Date: _____

TOTAL VOTE:		20		1	
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A handwritten signature in cursive script, likely belonging to a member of the House of Representatives.

Public Hearing

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON CACR 10

BILL TITLE:relative to powers of the legislature. Providing that the legislature may overturn any decision of a state court concerning the interpretation of a state law.

DATE:2/2/2021

LOB ROOM:Remote

Time Public Hearing Called to Order: 3:00 PM

Time Adjourned: 3:45 PM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Rice, Silber, Greene, D. Kelley, Tausch, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors:
Rep. Lewicke,

TESTIMONY

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

***Rep. Lewicke** Introduced the bill. Our constitution is littered with amendments overturning court rulings. Thomas Paine recognized that a legal system based on precedent would turn into what we have today. This CACR would allow any court decision to be appealed o the General Court, which would provide a mechanism for the General Court to be the final arbiter of its enactments. This is totally in step with government by the people. See Written

*John Tobin Retired lawyer Opposed This amendment would disrupt and damage the separation of Powers. It would turn he General Court into an appeals court. Anyone could appeal any case to the General Court. That would mean that anyone with the means to hire a lobbyist could pursue their case through a political process. The General Court is not set up to adjudicate disputes between citizens. This makes no sense in terms of the finality of legal decisions and, it would disrupt the Legislature. You have other alternatives to address improper decisions where there is some ambiguity or doubt. You retain the ability to change the law as these things arise and to establish what you think is the appropriate policy.

Q Horrigan-Would we not have to wait for the Supreme Court to rule? A Correct. It would essentially provide an 'end run' around the legal system, This would make the General Court a finder of fact, for which you are not well suited.

Q Silber: Am I correct that this addresses both interpretation of law and interpretation of the constitution? A yes Q If we are not happy with a Supreme Court on a Constitutional issue, who is the final arbiter? A in Our system, the Supreme Court but, you retain the power to propose a Constitutional Amendment,



House Remote Testify

Judiciary Committee Testify List for Bill CACR10 on 2021-02-02

Support: 2 Oppose: 32 Neutral: 0 Total to Testify: 1

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Tobin, John	jtobinjr@comcast.net	A Member of the Public	Myself	Oppose	Yes (2m)	No	2/2/2021 1:37 PM
Hannon, Joe	joehannon4nh@gmail.com	A Member of the Public	GONH	Oppose	No	No	2/2/2021 2:02 PM
Tentarelli, Liz	LWV@kenliz.net	A Member of the Public	Myself	Oppose	No	No	1/28/2021 3:13 PM
Saul, Albert	amsaul54@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/29/2021 1:04 PM
Fordey, Nicole	nikkif610@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/30/2021 8:08 PM
Campbell, Alexander	ac83090@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/31/2021 3:38 PM
Garen, June	jzanesgaren@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/31/2021 8:25 PM
Damon, Claudia	cordsdamon@gmail.com	A Member of the Public	Myself	Oppose	No	No	1/31/2021 8:32 PM
Snyder, Kristina	khsnyder22@yahoo.com	A Member of the Public	Myself	Oppose	No	No	1/31/2021 10:32 PM
Spencer, Louise	kentstusa@aol.com	A Member of the Public	Myself	Oppose	No	No	1/31/2021 10:47 PM
Podlipny, Ann	apodlipny57@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/1/2021 6:25 AM
Spielman, Kathy	jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/1/2021 8:05 AM
Spielman, James	jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/1/2021 8:07 AM
McLynch, Jeff	jmclynch@fairfundingnh.org	A Lobbyist	NH School Funding Fairness Project	Oppose	No	No	2/1/2021 8:26 AM
Corell, Elizabeth	Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 8:35 AM
Hruska, Jeanne	Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Oppose	No	No	2/1/2021 9:23 AM
Torpey, Jeanne	jtorp51@comcast.net	A Member of the Public	Myself	Oppose	No	No	2/1/2021 10:31 AM
Mattlage, Linda	l.mattlage@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 12:35 PM
Anderson, Keryn	kerynlanderson@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 12:55 PM

Frew, Jerry	jerry@nhsaa.org	A Lobbyist	NHSAA	Oppose	No	No	2/1/2021 1:24 PM
Gilman, Representative Julie	julie.gilman@leg.state.nh.us	An Elected Official	Town Of Exeter	Oppose	No	No	2/1/2021 2:21 PM
Frost, Sherry	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Oppose	No	No	2/1/2021 2:33 PM
Carter, Lilian	lcarter0914@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 3:29 PM
Hinebauch, Melissa	melhinebauch@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 3:42 PM
Hampton, Doris	dandmhamp38@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 4:01 PM
Pierog, Jake	pierogjake@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 8:14 PM
See, Alvin	absee@4Liberty.net	A Member of the Public	Myself	Support	No	No	2/1/2021 9:12 PM
Rathbun, Eric	ericrathbun@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/1/2021 11:23 PM
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/2/2021 7:11 AM
Rettew, Annie	abrettew@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/2/2021 8:11 AM
Ellermann, Maureen	ellermannf@aol.com	A Member of the Public	Myself	Oppose	No	No	2/2/2021 8:21 AM
Brennan, Nancy	burningnan14@gmail.com	A Member of the Public	Myself	Oppose	No	No	2/2/2021 10:19 AM
Thomas, Nicholas	nicholas.w.thomas@uconn.edu	A Member of the Public	Myself	Support	No	No	2/2/2021 2:50 PM
Stapleton, Walter	waltstapleton@comcast.net	An Elected Official	Myself	Oppose	No	No	2/2/2021 12:59 PM

Testimony

Honorable Judiciary Committee,
Please support CACR10.

The purpose of the judiciary is to interpret the laws as they apply to particular cases. Implicit in this relationship is the notion that the legislature can override the decisions of the judiciary. If the legislature disagrees with the judiciary's interpretation of the law, then they may pass their own clarifications. In my opinion, CACR10 does not really change the law; it merely clarifies and makes explicit how the system is designed to work.

Sincerely,

Nicholas Thomas
67 Brook St
Manchester, NH 03104

Memorandum

To: House Judiciary Committee

From: John Tobin

Re: CACR 10

Date: February 2, 2021

Thank you for the opportunity to speak to you today about this bill. And thank you for your service to the people of our state in the midst of the pandemic and on the day of a winter storm.

I am a retired legal aid lawyer and former volunteer court mediator. Since retiring, I have been active in a multi-year grass-roots effort to encourage reform of our state's school funding system and in particular to address the grossly uneven and disproportionate property tax burden that harms homeowners, businesses, and the economies of many local communities.

I oppose this proposed constitutional amendment because it would disrupt and damage our constitutional system of checks and balances and separation of powers. It would also turn the Legislature into an appeals court, which would likely become burdensome and unmanageable.

Both our federal and state constitutions created a system of government involving three separate branches of government: executive, legislative, and judicial. Each branch has a distinct role to play in preserving and enhancing our democracy and the rule of law. The three branches are independent and separate, but they must interact regularly and, as a result, tension between these three branches of government is inevitable, frequent, and healthy. Our country's founders created this system because, above all else, they feared that if one branch of the government became all-powerful and unrestrained, tyranny would follow.

Throughout our history, disagreements between and among the three branches of government have arisen, but none has provoked a reaction that led to the destruction of the balance among them. CACR 10, however, would give the Legislature the power to completely usurp the role of the judiciary. The role of the Legislature is to pass laws and set policy that govern daily life in our state and

determine the funding and administrative structure of state agencies. The role of the courts, in contrast, is to adjudicate specific legal disputes between parties, including individuals, business organizations, and agencies of government.

If CACR 10 were to be adopted, any party who is unhappy with the outcome of a court case would be able to appeal to the Legislature, as if the Legislature was the ultimate appeals court. So, a person who did not like the regular court's ruling in their divorce, business dispute, or boundary case, could hire a lobbyist and try to persuade the Legislature to undo the court ruling. In all likelihood, only well-off individuals, large businesses or powerful government agencies would have the resources to pursue such an end-run around the court system. This would aggravate the imbalance between the wealthy and ordinary people that already exists in our justice system. And the disruption and distraction that such cases would create for the Legislature's calendar would impede your ability to do the work that the people of our state sent you here to do: make complicated and numerous policy and budgetary decisions.

The Legislature already possesses the power and authority to respond to particular court rulings it does not like by using its legislative powers, instead of turning itself into an appeals court. If the Legislature is unhappy with a particular court decision's interpretation of a specific statute, the Legislature has a simple remedy: it can amend or repeal the statute. If the Legislature is unhappy with a court ruling on a constitutional question, it can propose an amendment to the Constitution.

For all of these reasons, I respectfully urge you to reject this proposal.

Thank you.

John E. Tobin, Jr.

60 Stone Street

Concord, NH 03301

Telephone: 603-58-0735

Email: jtobinjr@comcast.net

My testimony on CACR10:

Over the past hundred or so years there has been a revolution in this state and federation. It hasn't been the sort of revolution that involves pitchforks and guns. It's more like a revolution of "boiled frogs".

When our constitutions were enacted in 1784 and 1789, we changed the world by creating constitutional republics responsible to the people of the states. However, we kept one relic of the British government: the legal system. Since it was perceived to be fair and honest, there seemed to be little reason to change.

The fatal flaw in our constitution is that we allowed the courts to overturn constitution and statute by setting precedents. As a result our constitution is littered with amendments overturning wrong precedents. Here in the legislature we frequently see bills the only purpose of which it to restore a previous, plainly written statute.

When the courts found that they could make law by setting precedents, we started down a slippery slope. In many cases the courts were encouraged by parties who were unable to get what they wanted from elected government. Presently it has become common for people to make end runs around elected government by persuading the courts to become activists for them.

It is appropriate in a case like this to return to the philosophers who established our constitutional government. Thomas Paine in *The Rights of Man* points out that: "Government by precedent, without any regard to the principle of the precedent, is one of the vilest systems that can be set up. In numerous instances, the precedent ought to operate as a warning, and not as an example, and requires to be shunned instead of imitated; but instead of this, precedents are taken in the lump, and put at once for constitution and for law."

We're here today to talk about a provision that addresses the relationship between statutory law and precedents established by courts. A "for instance" may be better than another form of explanation.

A few years ago we passed a statute to make alimony uniform throughout the state. (Previously it had been at the discretion of the courts.) Presently a lower court might diverge from the statute. One party might then appeal to the state supreme court. If the supreme court fails to act, the lower court has then set a precedent which effectively replaces the statute. A party affected by the precedent has no further ability to appeal.

This CACR, if approved by the people, would allow an appeal of a precedent concerning a statute to be appealed to the General Court. The General Court by a simple majority of both houses could effectively remand the decision back to the courts, in effect saying: "You got it wrong. The statute means what it says." This would be a much better solution than to essentially reiterate the law in a new statute, which would have to be signed by the governor.

The basic principle is 'the laws belong to the legislature'. They don't belong to the courts.

This CACR would restore to our state the concept that the people should govern themselves through their constitutional, elected government. It would end government by appointed courts in statutory matters.

There is an inherent conflict between self-government and law by precedent. That is a fatal flaw which needs to be addressed in the people's constitution.

All of us here, whether we call our government a republic or a democracy and regardless of what party label we wear, believe in a government of the people by the people's elected representatives. I encourage you to send this CACR to the full legislature with a recommendation of "ought to pass" from the people's elected representatives.

Honorable John Lewicke, representing Hillsborough District 26

Mr. Chairman and members of Judiciary,

I am under no illusions concerning the fate of this CACR. However, I believe we have a "meta" issue and flaw in our constitution which needs to be resolved. The conflict is exemplified in Articles 2a, 2b, etc. Each of these were needed to restore the status quo ante to what had been the case since the New Hampshire republic was established under the present constitution in 1784. Each of these required a constitutional amendment to revert after the supreme court essentially amended the constitution by precedent. We also see statutes interpreted to mean the reverse of the clear intent of the legislature.

The meta issue is whether self government is compatible with a court system that can overrule the constitution and the statutes by setting precedent. Thomas Paine in *The Rights of Man* points out that government by precedent is a form of hereditary monarchy whereby the dead may rule the living. I think it's appropriate to bring up one of the philosophers who were at the heart of forming our federation because philosophy lies at the root of our form of self-government.

On the second, I'll try to discuss this briefly. My hope is we can begin to think about how to resolve the meta issues. Failing to do so may lead to us the end of "A republic, if you can keep it." (Franklin)

Sincerely,

John Lewicke (Hillsborough 26)

Bill as
Introduced

CACR 10 - AS INTRODUCED

2021 SESSION

21-0689
06/04

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **10**

RELATING TO: powers of the legislature.

PROVIDING THAT: the legislature may overturn any decision of a state court concerning the interpretation of a state law..

SPONSORS: Rep. Lewicke, Hills. 26

COMMITTEE: Judiciary

ANALYSIS

This constitutional amendment concurrent resolution provides that the general court may overturn a decision of a state court that concerns the interpretation of a state law.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type

21-0689
06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

CONCURRENT RESOLUTION PROPOSING CONSITUTIONAL AMENDMENT

RELATING TO: powers of the legislature.

PROVIDING THAT: the legislature may overturn any decision of a state court concerning the interpretation of a state law.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

I. That article 4 of the second part of the constitution be amended to read as follows:

[Art.] 4. [Power of General Court to Establish Courts.] The General Court (except as otherwise provided by Article 72 a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to beholden, in the name of the State, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, action, causes, matters and things whatsoever arising or happening within this State, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of

truth in any matter in controversy, or depending before them. ***The General Court shall have the power to overturn any decision of a State Court concerning the interpretation of State statute by a simple majority vote of both houses of the Legislature.***

II. That the above amendment proposed to the constitution be submitted to the qualified voters of the state at the state general election to be held in November, 2022.

III. That the selectmen of all towns, cities, wards and places in the state are directed to insert in their warrants for the said 2022 election an article to the following effect: To decide whether the amendments of the constitution proposed by the 2021 session of the general court shall be approved.

IV. That the wording of the question put to the qualified voters shall be:

“Are you in favor of amending article 4 of the second part of the constitution to read as follows:

[Art.] 4. [Power of General Court to Establish Courts.] The General Court (except as otherwise provided by Article 72 a of Part 2) shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to beholden, in the name of the State, for the hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, action, causes, matters and things whatsoever arising or happening within this State, or between or concerning persons inhabiting or residing, or brought, within the same, whether the same be criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real, personal or mixed, and for the awarding and issuing execution thereon. To which courts and judicatories, are hereby given and granted, full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them. The General Court shall have the power to overturn any decision of a State Court concerning the interpretation of State statute by a simple majority vote of both houses of the Legislature.”

V. That the secretary of state shall print the question to be submitted on a separate ballot or on the same ballot with other constitutional questions. The ballot containing the question shall include 2 squares next to the question allowing the voter to vote “Yes” or “No.” If no cross is made in either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall be the same as the regular official ballot except that the words “Questions Relating to Constitutional Amendments proposed by the 2021 General Court” shall be printed in bold type at the top of the ballot.

VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption.

VII. Voters' Guide.

AT THE PRESENT TIME, Decisions of state courts that interpret state statutes are final and set the precedent for future determinations.

IF THE AMENDMENT IS ADOPTED, the legislature would have the authority, by simple majority vote, to overturn a decision of the court that interprets a state statute, thereby setting a new precedent.