

Committee Report

CONSENT CALENDAR

February 22, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Legislative Administration to which
was referred CACR 11,**

AN ACT relating to powers of the general court.

**Providing that the legislature have the power to submit
a binding referendum on whether to overturn a
decision of a state court that interprets a provision of
the state constitution. Having considered the same,
report the same with the following resolution:**

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Matthew Simon

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Legislative Administration
Bill Number:	CACR 11
Title:	relating to powers of the general court. Providing that the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution.
Date:	February 22, 2021
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This proposal to amend the State Constitution seeks to give the legislature the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the State Constitution. We find this proposal to be unnecessary and cumbersome as the General Court already has mechanisms in place to hold courts accountable. The language of the proposal is vague in its reference to both “state courts” and “constitutional interpretation”. This ambiguity leaves the amendment open to the broadest possible interpretation as well as interjecting the General Court into the middle of the judicial branch process. Furthermore, the CACR does nothing to ensure that proper interpretation of the constitution is adhered to, but rather shifts the ultimate role of interpretation to the General Court and to the general public--whose opinions may or may not be constitutional. If passed, there is nothing that prohibits any majority party from politicizing every court decision contrary to its political philosophy and agenda. The majority party could work to impassion the public along partisan rather than constitutional lines, they could use the powers granted in this amendment to overturn a constitutional court ruling, and ultimately threaten the balance of power between the legislative and judicial branches. This CACR, in effect, multiplies the dangers of a lack of constitutional checks and balances between the legislative and judicial branches—the very thing which it was intended to protect against. For these, and multiple other reasons, the majority of the committee requests the CACR 11 be found Inexpedient to Legislate.

Vote 15-0.

Rep. Matthew Simon
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Legislative Administration

CACR 11, relating to powers of the general court. Providing that the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution. **INEXPEDIENT TO LEGISLATE.**

Rep. Matthew Simon for Legislative Administration. This proposal to amend the State Constitution seeks to give the legislature the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the State Constitution. We find this proposal to be unnecessary and cumbersome as the General Court already has mechanisms in place to hold courts accountable. The language of the proposal is vague in its reference to both “state courts” and “constitutional interpretation”. This ambiguity leaves the amendment open to the broadest possible interpretation as well as interjecting the General Court into the middle of the judicial branch process. Furthermore, the CACR does nothing to ensure that proper interpretation of the constitution is adhered to, but rather shifts the ultimate role of interpretation to the General Court and to the general public--whose opinions may or may not be constitutional. If passed, there is nothing that prohibits any majority party from politicizing every court decision contrary to its political philosophy and agenda. The majority party could work to impassion the public along partisan rather than constitutional lines, they could use the powers granted in this amendment to overturn a constitutional court ruling, and ultimately threaten the balance of power between the legislative and judicial branches. This CACR, in effect, multiplies the dangers of a lack of constitutional checks and balances between the legislative and judicial branches—the very thing which it was intended to protect against. For these, and multiple other reasons, the majority of the committee requests the CACR 11 be found Inexpedient to Legislate. **Vote 15-0.**

Original: House Clerk

Cc: Committee Bill File

Committee Report

Committee: Legislative Administration

Bill Number: CACR 11

Bill Title: relative to the powers of the general court.

Date: 2-22-2021

Consent Calendar?

Yes

No

Committee Recommendation:

Ought To Pass

Ought To Pass w/Amendment Amendment Number: _____

Inexpedient To Legislate

Interim Study (available only in 2nd year of biennium)

Statement of Intent:

This bill seeks to give the legislature the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution. We find the proposed constitutional amendment unnecessary and cumbersome as the general court already has mechanisms in place to hold courts accountable. The CACR is vague in its reference to both “state courts” and “constitutional interpretation”. This ambiguity leaves the amendment open to the broadest possible interpretation as well as interjecting the general court into the middle of the judicial branch process. Furthermore, the CACR does nothing to ensure that proper interpretation of the constitution is adhered to, but rather shifts the ultimate role of interpretation to the general court and to the general public--whose opinions may or may not be constitutional. If passed, there is nothing that prohibits any majority party from politicizing every court decision contrary to its political philosophy and agenda. The majority party can work to impassion the public along partisan rather than constitutional lines, they can use the powers granted in this amendment to overturn constitutional court ruling, and ultimately threaten the balance of power between the legislative and judicial branches. This CACR, in effect, multiplies the dangers of a lack of constitutional checks and balances between the legislative and judicial branches—the very thing which it was intended to protect against. For these, and multiple other reasons, the majority of the committee requests the CACR 11 be voted Inexpedient to Legislate.

Committee Vote: 15-0

Respectfully submitted: Rep. Matthew Simon

Voting Sheets

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

EXECUTIVE SESSION on CACR 11

BILL TITLE: relating to powers of the general court. Providing that the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution.

DATE: February 22, 2021

LOB ROOM: 303 Hybrid

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Simon

Seconded by Rep. T. Smith

Vote: 15-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Vanessa Sheehan, Clerk

HOUSE COMMITTEE ON Legislative Admin.

EXECUTIVE SESSION ON HB CACR 11

BILL TITLE: Power of the General Court

DATE: 2/22/21

LOB ROOM: 303

MOTION: (Please check one box)

- OTP ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Simon Seconded by Rep. Smith Vote: _____

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR? Yes No

Minority Report? Yes No If yes, author, Rep.: _____ Motion: _____

Respectfully submitted, Rep. Sheehan, Clerk



2021 SESSION

Legislative Administration

 Bill #: CACR 11 Motion: ITL AM #: _____ Exec Session Date: 2/22/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hill, Gregory G. Chairman	15		
Greene, Bob J. Vice Chairman	1		
McKinney, Betsy	2		
Packard, Sherman A.	3		
Osborne, Jason M.	4		
Rouillard, Claire A.	5		
Sheehan, Vanessa L. Clerk	6		
Simon, Matthew J.	7		
Wall, Janet G.	8		
Ley, Douglas A.	9		
Smith, Timothy J.	10		
Frost, Sherry A.	11		
Nutting-Wong, Allison R.	12		
Richards, Beth S.	13		
Espitia, Manny	14		
TOTAL VOTE:	15	0	

Hearing Minutes

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

PUBLIC HEARING ON CACR 11

BILL TITLE: relating to powers of the general court. Providing that the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution.

DATE: February 22, 2021

LOB ROOM: 303 Hybrid **Time Public Hearing Called to Order:** 11:42 a.m.

Time Adjourned: 11:53 a.m.

Committee Members: Reps. Hill, Greene, Sheehan, McKinney, Packard, Osborne, Rouillard, Simon, Wall, Ley, T. Smith, Frost, Nutting-Wong, Richards and Espitia

Bill Sponsors:
Rep. Lewicke

TESTIMONY

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

1. *Rep Lewicke

- No duty or allegiance to the courts.

2. *John Tobin - Oppose

- Retired lawyer.
- Separation of power problem.
- There is competition between branches of government.
- The courts apply the Constitution.
- The Legislature would turn into an appeals court.
- The Legislature has power to address the court on issues they don't like.

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

PUBLIC HEARING on Bill # CACR 11
BILL TITLE: power of the general court
DATE: 2/22/21

ROOM: 303

Time Public Hearing Called to Order: 11:42am

Time Adjourned: 11:53am

(please circle if present)

Committee Members: Reps. Hill, Greene, Sheehan, McKinney, Packard, Osborne, Rouillard, Simon, Wall, Ley, T. Smith, Frost, Nutting-Wong, Richards and Espitia

TESTIMONY

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

① Rep. Lewicke *

No duty or ~~allegiance~~ ^{allegiance} to the courts.

② John Tobin * oppose

Retired lawyer. Separation of power problem.

There is competition between branches of government.

The courts apply the Constitution.

The legislature would turn into an appeals court.

The legislature has power to address the court on issues that don't like.

House Remote Testify

Legislative Administration Committee Testify List for Bill CACR11 on 2021-02-22

Support: 134 Oppose: 1 Neutral: 2 Total to Testify: 6

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Bates, David	dbates3@yahoo.com	A Member of the Public	Myself	Oppose	No	2/13/2021 11:28 AM
Fenner-Lukaitis, Elizabeth	glukaitis@mcttelecom.com	A Member of the Public	Myself	Oppose	No	2/13/2021 1:42 PM
Abruzzese, Cathleen	Catabruzzo@comcast.net	A Member of the Public	Myself	Oppose	No	2/13/2021 6:02 PM
Johnson, Sara	nhchicagocubfan@gmail.com	A Member of the Public	Myself	Oppose	No	2/14/2021 5:40 AM
Wells, Lee	leewells.locustfarm@gmail.com	A Member of the Public	Myself	Oppose	No	2/14/2021 12:30 PM
Thompson, Laura	nicnmom@hotmail.com	A Member of the Public	Myself	Oppose	No	2/14/2021 12:33 PM
McLaughlin, Barbara	brbmclaughlin42@gmail.com	A Member of the Public	Myself	Oppose	No	2/15/2021 10:26 PM
Chase, Susan	srfchase@gmail.com	A Member of the Public	Myself	Oppose	No	2/16/2021 9:07 AM
Blagden, Timothy	tsblagden@gmail.com	A Member of the Public	Myself	Oppose	No	2/16/2021 10:57 PM
Warren, Joan	Warner, NH joanbcwarren@gmail.com	A Member of the Public	Myself	Oppose	No	2/18/2021 11:06 AM
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Oppose	No	2/19/2021 12:42 PM
Tentarelli, Liz	Newbury, NH LWV@kenliz.net	A Member of the Public	Myself	Oppose	No	2/19/2021 6:20 PM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 2:37 PM
Bruce, Susan	Concord, NH susanb.red@mac.com	A Member of the Public	Myself	Oppose	No	2/21/2021 2:11 PM
Mooney, Bridget	Wilton, NH bridget@moonchick.com	A Member of the Public	Myself	Oppose	No	2/21/2021 11:33 PM
Babladelis, Ashley	Concord, NH ash.hatch@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:07 PM

Blanchard, Sandra	Loudon, NH sandyblanchard3@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:07 PM
Spencer, Louise	Concord, NH lpskentstreet@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:21 PM
Torpey, Jeanne	Concord, NH jtorp51@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 8:25 PM
Freeman-Woolpert, Julia	Concord, NH juliafw@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 8:26 PM
Spencer, Rob	Concord, NH kentstusa@aol.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:31 PM
Willing, Maura	Concord, NH Maura.Willing@Comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 8:41 PM
See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	2/21/2021 8:45 PM
Corell, Elizabeth	Concord, NH Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Support	No	2/21/2021 8:48 PM
Damon, Claudia	Concord, NH cordsdamon@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 8:56 PM
McNamee, Brigid	Concord, NH brigidmcnamee@yahoo.com	A Member of the Public	Myself	Oppose	No	2/21/2021 9:07 PM
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 9:10 PM
Vincent, Laura	Loudon, NH lvlauravincen5@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 9:13 PM
Dargie, Paul	MILFORD, NH pauldargie@gmail.com	An Elected Official	Myself	Oppose	No	2/21/2021 9:33 PM
Falk, Cheri	Wilton, NH Falk.cj@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 9:35 PM
Clark, Martha	Canterbury, NH mctraveler1@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 9:49 PM
Perencevich, Ruth	Concord, NH rperence@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 10:03 PM
Hinebauch, Mel	Concord, NH melhinebauch@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:03 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:15 PM

Taylor, Gale	Concord, NH galeforcefacilitators@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:23 PM
Lamphier, Regan	Nashua, NH ReganBurkeLamphier@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:24 PM
Jakubowski, Deborah	Loudon, NH Dendeb146@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:41 PM
King, Walter	Dover, NH genedocwk@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 10:48 PM
Casino, Joanne	Concord, NH joannecasino@comcast.net	A Member of the Public	Myself	Oppose	No	2/21/2021 10:50 PM
jakubowski, dennis	Loudon, NH dendeb146@gmail.com	A Member of the Public	Myself	Oppose	No	2/21/2021 10:54 PM
Aronson, Laura	MANCHESTER, NH laura@mlans.net	A Member of the Public	Myself	Oppose	No	2/22/2021 1:50 AM
Cotter-Cranston, Linda	Mason, NH lcc@onemain.com	A Member of the Public	Myself	Oppose	No	2/22/2021 1:10 AM
Neville, Betsey	Concord, NH betsey2003@tds.net	A Member of the Public	Myself	Oppose	No	2/22/2021 6:10 AM
blakeney, gordon	Concord, NH rbplease@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 6:11 AM
Spielman, Kathy	Durham, NH jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 6:22 AM
Spielman, James	Durham, NH jspielman@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 6:23 AM
Podlipny, Ann	Chester, NH apodlipny57@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 6:32 AM
Zaenglein, Barbara	Amherst, NH bzaenglein@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:03 AM
Zaenglein, Eric	Amherst, NH henley11@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 7:03 AM
Ciatto, Susan	Mont Vernon, NH susan.ciatto@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:19 AM
hatch, sally	Concord, NH sallyhatch@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 7:37 AM
Platt, Elizabeth-Anne	CONCORD, NH lizanneplatt09@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:38 AM

Ellermann, Maureen	CONCORD, NH ellermannf@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:39 AM
Rettew, Annie	CONCORD, NH abrettew@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:39 AM
Jachim, Nancy	Newport, NH nancyjachim@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:40 AM
Petrucelli, Maxine	Webster, NH maxinepet@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:49 AM
Petrucelli, Charles	Webster, NH chasmaxpet@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:50 AM
Brunelle, Leigh	Manchester, NH lbrunelle@me.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:57 AM
Roy, Leo B	Manchester, NH lbroy25@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 7:57 AM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	2/22/2021 8:05 AM
Hamilton, Melanie	Northwood, NH mhamilton5908@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 8:43 AM
Schmidt, Jan	NH, NH tesha4@gmail.com	An Elected Official	Myself	Oppose	No	2/22/2021 8:35 AM
Gilman, Rep. Julie	Exeter, NH julie.gilman@leg.state.nh.us	An Elected Official	Town of Exeter	Oppose	No	2/22/2021 8:57 AM
Carter, Lilian	Deering, NH lcarter0914@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:44 AM
Clark, Denise	Milford, NH denise.m.clark03055@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:54 AM
Benson, Linda	Hollis, NH lebenson@charter.net	A Member of the Public	Myself	Oppose	No	2/22/2021 10:19 AM
Keeler, Margaret	New London, NH peg5keeler@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 10:27 AM
Tobin, John	Concord, NH jtobinjr@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 10:31 AM
Koch, Helmut	Concord, NH helmut.koch.2001@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 10:33 AM
Pugh, Barbara	Amherst, NH barbara.pugh@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 10:44 AM

Straiton, Marie	Pembroke, NH m.straiton@comcast.net	A Member of the Public	Myself	Oppose	No	2/22/2021 10:49 AM
Waterman, Raymond	Merrimack, NH prwaterman@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 10:59 AM
Waterman, Patricia	Merrimack, NH prwaterman@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 11:08 AM
Jones, Andrew	Pembroke, NH arj11718@yahoo.com	A Member of the Public	Myself	Oppose	No	2/22/2021 11:23 AM
Gaudet, Fawn	Rumney, NH fawngaudet@yahoo.com	A Member of the Public	Myself	Oppose	No	2/22/2021 12:46 PM
Koch, Laurie	Concord, NH kochlj@aol.com	A Member of the Public	Myself	Oppose	No	2/22/2021 1:39 PM
Frey, Gina	Amherst, NH ginagfrey@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 2:27 PM
Helrich, Robin	Hopkinton, NH Rrhelrich@gmail.com	A Member of the Public	Myself	Oppose	No	2/22/2021 9:55 PM

Testimony

Archived: Wednesday, April 14, 2021 2:23:18 PM

From: [Greg Hill](#)

Sent: Sunday, February 21, 2021 1:28:45 PM

To: ~[House Legislative Administration](#)

Subject: Testimony CACR 11

Importance: Normal

I received this from Honorable Paul Mirski who asked that I relay the testimony to the committee.....

Representative Hill,

Any kind of referendum government is a bad thing because pure democracy doesn't care at all about individual rights. All pure democracy (referendum government) cares about is serving the will of the mob at a given moment in time.

If passed, this measure would further allow the legislature, elected to make hard decisions, to avoid responsibility and instead, to just pass the decision-making buck to citizen's downstream who will, no doubt, be less informed than members of the legislature on the question at hand. It's the House and Senate's job to confront bad judicial decision-making and representatives, serving in those two chambers, ought to get on with repairing bad judicial decisions when they confront them rather than seeking a means of avoiding that responsibility which is, when boiled down, is what this is all about.

Please make my thoughts on CACR-11 known and please defeat this bad idea.

Hon. Paul Mirski

POB [190, ENFIELD CENTER, NH 03749](#) / [603-632-5555](#)

Sent from my iPhone

Archived: Wednesday, April 14, 2021 2:20:48 PM

From: [John Tobin](#)

Sent: Monday, February 22, 2021 10:39:51 AM

To: ~House Legislative Administration

Subject: CACR 11

Importance: Normal

Attachments:

[Testimony of John Tobin in opposition to CACR 11 - Feb 22 2021.docx](#) 

Dear Committee Members,

Attached is my written testimony in opposition to this proposed constitutional amendment. I hope to be able to testify briefly at the hearing this morning.

Thank you for your consideration of this testimony and for your service to our state.

John Tobin

60 Stone Street

Concord, NH 03301

Telephone: 603-568-0735

Email: jtobinjr@comcast.net

Sent from [Mail](#) for Windows 10

Archived: Wednesday, April 14, 2021 2:20:48 PM

From: [Greg Hill](#)

Sent: Sunday, February 21, 2021 1:28:45 PM

To: ~House Legislative Administration

Subject: Testimony CACR 11

Importance: Normal

I received this from Honorable Paul Mirski who asked that I relay the testimony to the committee.....

Representative Hill,

Any kind of referendum government is a bad thing because pure democracy doesn't care at all about individual rights. All pure democracy (referendum government) cares about is serving the will of the mob at a given moment in time.

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Please make my thoughts on CACR-11 known and please defeat this bad idea.

Hon. Paul Mirski

POB [190, ENFIELD CENTER, NH 03749](#) / [603-632-5555](#)

Sent from my iPhone

Archived: Wednesday, April 14, 2021 2:19:38 PM

From: [john lewicke](#)

Sent: Monday, February 22, 2021 11:06:30 AM

To: [~House Legislative Administration](#)

Subject: Testimony on CACR11

Importance: Normal

Attachments: [CACR_11_intro.doc](#) ;



Mr. Chairman, and members of the committee,

Some members of the committee are lawyers, and have more trust for the courts than those of us who come from different backgrounds. I ask all of you to listen with an open mind and consider the clear language of the people's constitution. That is the supreme law we've been given, and have sworn an oath to. As legislators, we have no duty or allegiance to decisions of courts.

I come from an engineering background. In my business, if you have to fix something repeatedly, it's an indication there is a flaw in the design. Something is broken in a system where we keep passing constitutional amendments to restore what we already had.

To begin, I'll read Article 7 of our constitution:

[Art.] 7. [State Sovereignty.] The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

June 2, 1784

Over recent decades, we've had to amend our constitution numerous times. Rather than changing the constitution, most of these recent amendments simply restored what had been the status quo before a decision of the courts. These include taxpayer standing, the right to privacy, articles 2a, 2b, etcetera.

There is an inherent conflict between an activist judiciary and state sovereignty as defined in Article 7. A fickle judiciary that welcomed taxpayer standing in Claremont, and then denied it when taxpayers sued over a city's tax cap is not the kind of enduring and predictable institution that should govern New Hampshire's citizens.

Although the courts claim to be using precedent as the basis for their decisions, the reality is that they pick and choose their precedents. In the present state of the world, it is unrealistic to expect the courts not to be politicized.

Presently the people and their representatives have two ways of dealing with courts when they go astray in constitutional matters: "amendment" and "impeachment". What I'm proposing in CACR11 is a less laborious method for the people to restore the constitution in cases where the courts have made a wrong decision on a constitutional matter.

Article 7 cited above is the plain English of our constitution. Words that aren't found in our constitution are: "precedent", "stare decisis", and "co-equal". These are legal constructs created by courts. They may be useful to the courts, but they are clearly inferior to the people's constitution. When they are used by the courts to subvert the plain language of the constitution, they are anathema.

From Wikipedia:

"One of the most important roles of precedent is to resolve ambiguities in other legal texts, such as constitutions, statutes, and regulations. The process involves, first and foremost, **consultation of the plain language of the text**, as enlightened by the legislative history of enactment, subsequent precedent, and experience with various interpretations of similar texts."

It is said that precedents make the law predictable and knowable to lay people. However, the converse is often true. If the courts are free to pick and choose among precedents, and to ignore pieces of the constitution and statutes that don't suit their whim, then their use of precedents to justify their position is essentially an overturning of the constitution and elected government.

The courts' attics full of precedents aren't limited to those created by New Hampshire courts. In deciding Claremont, the court looked to our neighbor to the south to find a precedent that suited their whim. By that standard, when any court anywhere creates a precedent, then any other court may use the invented precedent to overturn their state's constitution.

When our constitutions were first enacted in 1784 and 1789, they were the philosophy of freedom and self government put into words. To quote Thomas Paine (one of the philosophers): precedent law is "one of the vilest systems that can be set up". Here we are 237 years later, and our constitution has been supplanted by precedent law. The people's representatives have become inferior to unelected judges.

I ask the committee to vote "ought to pass" on this CACR, and to take one step toward restoring self-government and the people's constitution. I ask the members of the committee to work with me toward this end. Although it may not happen this year or this session, it is a goal we need to achieve to return to self-government.

John Lewicke (Hillsborough 26, Brookline and Mason)

Memorandum

To: House Legislative Administration Committee

From: John Tobin

Re: CACR 11

Date: February 22, 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.

I am a retired legal aid lawyer and former volunteer court mediator. 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.

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 led to the destruction of the balance among them. CACR 11, however, would give the Legislature the power to usurp the role of the judiciary. The role of the Legislature is to pass laws and set broad 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.

The courts frequently interpret the New Hampshire Constitution in a variety of cases involving criminal law, zoning and land use, taxation, state agency

procedures, and many other issues. If CACR 11 were to be adopted, any party who is unhappy with a court ruling on a constitutional issue would be able to appeal to the Legislature, as if the Legislature was the ultimate appeals court.

So, a person who did not like a court's ruling in their criminal case, zoning dispute, tax case or other legal matter that included a constitutional issue could hire a lobbyist to try to persuade the Legislature to undo the court ruling. And if they convinced both Houses of the Legislature to go along, they could hire a public relations firm to help them win the referendum authorized by this amendment.

In all likelihood, only well-off individuals, large businesses or powerful government agencies would have the resources to pursue such a complex end-run around the court system. This would aggravate the imbalance between the wealthy and ordinary people that already exists in our justice system. The disruption and distraction that such cases would create for the Legislature's calendar would also 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. Finally, this process would drag out the original case for at least a year and possibly two, first for the legislative process to go forward and then for the referendum to be set up and conducted. A final outcome of the case, and justice for the other parties in the case, would be delayed while the unhappy litigant used this new process.

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

Bill as
Introduced

CA CR 11 - AS INTRODUCED

2021 SESSION

21-0688

06/08

CONSTITUTIONAL AMENDMENT

CONCURRENT RESOLUTION **11**

RELATING TO: powers of the general court..

PROVIDING THAT: the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution.

SPONSORS: Rep. Lewicke, Hills. 26

COMMITTEE: Legislative Administration

ANALYSIS

This constitutional amendment concurrent resolution gives the legislature the authority to present a ballot question to the people on whether a decision of a court that interprets the New Hampshire constitution should be overturned.

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

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: powers of the general court.

PROVIDING THAT: the legislature have the power to submit a binding referendum on whether to overturn a decision of a state court that interprets a provision of the state constitution.

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

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

2 [Art.] 4. [Power of General Court to Establish Courts.] The General Court (except as otherwise
3 provided by Article 72 a of Part 2) shall forever have full power and authority to erect and constitute
4 judicatories and courts of record, or other courts, to beholden, in the name of the State, for the
5 hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, action,
6 causes, matters and things whatsoever arising or happening within this State, or between or
7 concerning persons inhabiting or residing, or brought, within the same, whether the same be
8 criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real,
9 personal or mixed, and for the awarding and issuing execution thereon. To which courts and
10 judicatories, are hereby given and granted, full power and authority, from time to time, to
11 administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or
12 depending before them. ***The General Court may by simple majority submit to the people a
13 ballot question of whether to overturn a decision of a state court that interprets a provision
14 of this constitution.***

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

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

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

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

23 [Art.] 4. [Power of General Court to Establish Courts.] The General Court (except as otherwise
24 provided by Article 72 a of Part 2) shall forever have full power and authority to erect and constitute
25 judicatories and courts of record, or other courts, to beholden, in the name of the State, for the
26 hearing, trying, and determining, all manner of crimes, offenses, pleas, processes, complaints, action,

CACR 11 - AS INTRODUCED

- Page 2 -

1 causes, matters and things whatsoever arising or happening within this State, or between or
2 concerning persons inhabiting or residing, or brought, within the same, whether the same be
3 criminal or civil, or whether the crimes be capital, or not capital, and whether the said pleas be real,
4 personal or mixed, and for the awarding and issuing execution thereon. To which courts and
5 judicatories, are hereby given and granted, full power and authority, from time to time, to
6 administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or
7 depending before them. The General Court may by simple majority submit to the people a ballot
8 question of whether to overturn a decision of a state court that interprets a provision of this
9 constitution.

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

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

19 VII. Voters' Guide.

20 AT THE PRESENT TIME, a decision of a state court that interprets a provision of
21 the New Hampshire constitution establishes a precedent that guides courts in making future
22 decisions.

23 IF THE AMENDMENT IS ADOPTED, the legislature would have the power to
24 submit a ballot question to the people asking whether a particular interpretation by a court should
25 be overruled so that a precedent would not be established.