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2017 SESSION

17-0472

09/05

HOUSE CONCURRENT RESOLUTION **9**

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. Hoell, Merr. 23; Rep. Hansen, Hills. 22; Rep. Burt, Hills. 39; Rep. Marple, Merr. 24; Rep. Seaworth, Merr. 20; 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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

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
13 body-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
25 others retained by the people." and the Tenth Amendment, "The powers not delegated to the
26 United States by the Constitution, nor prohibited by it to the States, are reserved to the States
27 respectively, or to the people." to the Constitution for the United States of America:

28 Therefore, the several States composing the United States of America, are not united on the
29 principle of unlimited submission to their General Government; but that, by a compact under the
30 style and title of a Constitution for the United States of America, and of amendments thereto, they
31 constituted a General Government for special purposes, delegated to that government certain

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1 definite powers, reserving, each State to itself, all remaining powers for their own self-government;
2 and

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

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

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

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

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

24 Whereas, the United States Supreme Court has ruled in *New York v. United States*, 112 S. Ct.
25 2408 (1992), that congress may not simply commandeer the legislative and regulatory processes of
26 the States:

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

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

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

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

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

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

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

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

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

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

27 Whereas, the government created by this compact was not made the exclusive or final judge of
28 the extent of the powers delegated to itself, since that would have made its discretion, and not the
29 Constitution, the measure of its powers; but that, as in all other cases of compact among powers
30 having no common judge, each party has an equal right to judge for itself, as well of infractions as of
31 the mode and measure of redress:

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

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1 the Constitution for the United States of America; and

2 Whereas, the Constitution for the United States of America guarantees to every State in this
3 Union a Republican Form of Government, and shall protect each of them against Invasion; and on
4 Application of the Legislature (of a State), or of the Executive (when the Legislature cannot be
5 convened) against domestic Violence; and

6 Whereas, the Constitution for the United States of America Article I, Section 9 limits the power
7 of Congress to suspend habeas corpus to cases of rebellion or invasion; and

8 Whereas, the Constitution for the United States delegates no power to declare martial law
9 except as is inherent in a declaration of war.

10 Therefore; there exists a class of Acts by the Congress of the United States, Executive Orders of
11 the President of the United States of America or Judicial Orders by the Judicatories of the
12 United States of America that constitute a direct challenge to the Constitution for the United States
13 of America by the government of the United States including, but not limited to:

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

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

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

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

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

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1 State has a natural right in cases not within the compact, (*casus non foederis*), to nullify of their
2 own authority all assumptions of power by others within their limits: that without this right, they
3 would be under the dominion, absolute and unlimited, of whosoever might exercise this right of
4 judgment for them; and

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