

HCR 11 - AS INTRODUCED

2025 SESSION

25-0832

07/05

HOUSE CONCURRENT RESOLUTION **11**

A RESOLUTION declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches.

SPONSORS: Rep. Hill, Merr. 2; Rep. Ammon, Hills. 42; Rep. Cordelli, Carr. 7; Rep. Harvey-Bolia, Belk. 3; Rep. Kofalt, Hills. 32; Rep. C. McGuire, Merr. 27; Rep. Sweeney, Rock. 25; Rep. Turcotte, Straf. 4; Rep. T. Walsh, Merr. 10

COMMITTEE: Judiciary

ANALYSIS

This house concurrent resolution declares the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

A RESOLUTION declaring the directives of the judicial branch in the Claremont cases that the legislative and executive branches define an "adequate education," adopt "standards of accountability," and "guarantee adequate funding" of a public education are not binding on the legislative and executive branches.

1 Whereas, under part 1, article 37 of the constitution of the state of New Hampshire, the 3
2 essential powers of the government of this state, the legislative, the executive and the judicial, are to
3 be kept as separate from and independent of each other as the nature of a free government will
4 admit; and

5 Whereas, only by a consistent and strict adherence to a separation of the powers of the 3
6 branches of the government can the rights of the people set forth in part 2 of the constitution be
7 preserved, and the form of government set forth in part 2 be maintained; and

8 Whereas, the language of part 1, article 37 applies with equal force to the judicial as to the
9 legislative and executive branches; and

10 Whereas, were part 1, article 37 to apply with less force to the judicial than to the legislative and
11 executive branches, the legislative and executive branches would be inferior to, subordinate to, and
12 dependent upon the judicial branch, and our system of government would be oligarchical and not
13 republican; and

14 Whereas, it is the duty of the executive and legislative branches, pursuant to the oaths taken by
15 their members under part 2, article 84, no less than it is of the judicial branch, pursuant to the oaths
16 taken by its members, not to contravene any portion of the constitution, and to be vigilant for and to
17 oppose any contravention by another branch; and

18 Whereas, upon the occurrence of a palpable attempt on the part of the judicial branch to exercise
19 any authority inconsistent with the judicial function, it is the right and duty of the legislative and
20 executive branches to intervene to the extent deemed by them necessary, within the scope of their
21 enumerated powers, to oppose and defeat such exercise, thereby to safeguard the fundamental
22 principle of our form of government that each of its 3 branches should be confined to its
23 constitutional limits; and

24 Whereas, in its decisions in the Claremont school funding cases, the judicial branch
25 unambiguously directed the legislative and executive branches to pass laws "implementing" an
26 "adequate education" based upon "seven criteria articulated by the Supreme Court of Kentucky," and
27 to pass laws establishing "standards of accountability," and unambiguously stated that it reserved
28 for itself the ultimate authority to determine the sufficiency of these laws; and

29 Whereas, for the judiciary to rule that the constitution of New Hampshire requires the
30 legislature and executive branches to enact into law a certain definition of an "adequate education"

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1 or a definition of an "adequate education" based upon or incorporating certain criteria or parameters,
2 or to enact into law any definition of an "adequate education" at all, adds legislative and executive
3 powers to those of the judicial and unconstitutionally involves the judicial branch in the core policy-
4 making functions of the legislative and executive branches; and

5 Whereas, for the judiciary to rule that the constitution of New Hampshire requires the
6 legislature and executive branches to enact into law "standards of accountability," adds legislative
7 and executive powers to those of the judicial and unconstitutionally involves the judicial branch in
8 the core policy-making functions of the legislative and executive branches; and

9 Whereas, in its decisions in the Claremont school funding cases, the judicial branch
10 unambiguously directed the legislative and executive branches to fund public education and
11 unambiguously directed the legislative and executive branches how to do so; and

12 Whereas, for the judiciary to rule that the constitution of New Hampshire requires the
13 legislature and executive branches to enact into law a certain system for funding public education or
14 a system for funding public education based upon or incorporating certain criteria or parameters, or
15 that the legislative and executive branches are required to enact into law any system at all for
16 funding public education, adds legislative and executive powers to those of the judicial and
17 unconstitutionally involves the judicial branch in the core policy-making functions of the legislative
18 and executive branches; and

19 Whereas, at no time over the course of the 2 centuries of New Hampshire's statehood prior to the
20 Claremont decisions did the judicial branch ever assert any authority to control, direct, or shape the
21 educational policies to be pursued by the legislative and executive branches in terms of "adequacy"
22 or any other qualitative measure; and

23 Whereas, at all times over the course of the 2 centuries of New Hampshire's statehood prior to
24 the Claremont decisions, the judicial branch confined its review of statutory enactments and
25 administrative actions respecting education to the constitutionality of the challenged statute or
26 action and never considered the "adequacy" or any other qualitative measure of the statute or action;
27 and

28 Whereas, for the legislative and executive branches to treat as binding upon them any ruling by
29 the judicial branch directing them to enact definitions agreeable to the judicial branch of "adequate
30 education," or "systems of accountability" or to enact a particular system for funding public
31 education, would attenuate the republican form of government established by part 2 of the New
32 Hampshire constitution, and be subversive of representative government; and

33 Whereas, the scope of part 2, article 83 is not limited to cherishing the interest of public schools
34 alone, but expressly encompasses as well cherishing the interest of literature, the sciences, and all
35 seminaries; and further expressly states there to be a duty to "encourage," "countenance" and
36 "inculcate" many other pursuits and virtues as well; and

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1 Whereas, by its very terms, and in accordance with its original understanding, part 2, article 83
2 applies equally to the many matters therein enumerated, and the historical record is clear that it
3 was left to the legislative branch to decide which of these matters, if any, would be funded from the
4 public purse and, consistent with the fundamental principle of the separation of powers, these
5 legislative decisions were not subjected to judicial review; and

6 Whereas, acceptance by the legislative and executive branches of the judiciary's directives in the
7 Claremont decisions would not merely be to surrender to the judiciary a portion of the legislative and
8 executive power to set educational policy, but to set a precedent by which the judiciary may justify
9 the exercise of legislative and executive policymaking powers over any number of other matters; and

10 Whereas, the Claremont directives that the legislative and executive branches must enact a
11 certain definition of an "adequate education," and "systems of accountability" and a certain system of
12 funding public education constitute a palpable exercise by the judicial branch of powers not granted
13 to it by the constitution of New Hampshire, and the legislative and executive branches have the
14 right and are duty bound to prevent the exercise of such powers in order to maintain within their
15 respective limits the three branches of the government of this state; and

16 Whereas, the judicial branch is not constitutionally empowered to direct the legislative and
17 executive branches to define an "adequate education;" and

18 Whereas, the judicial branch is not constitutionally empowered to direct the legislative and
19 executive branches to adopt "standards of accountability;" and

20 Whereas, the judicial branch is not constitutionally empowered to direct the legislative and
21 executive branches to "guarantee adequate funding" of public education; now, therefore, be it

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

23 That the legislature, having fully considered the foregoing enumeration of constitutional
24 principles and having fully considered the foregoing enumeration of deficiencies inherent to the
25 Claremont rulings, finds that the directives of the judicial branch in the Claremont cases that the
26 legislative and executive branches define an "adequate education," adopt "standards of
27 accountability," and "guarantee adequate funding" of a public education are not binding on the
28 legislative and executive branches.