

HR 29 - AS INTRODUCED

2026 SESSION

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09/08

HOUSE RESOLUTION

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A RESOLUTION requesting an opinion of the justices on the scope of part II, article 4 of the New Hampshire constitution, as well as other related articles.

SPONSORS: Rep. McFarlane, Graf. 18; Rep. Sellers, Graf. 10; Rep. Ulery, Hills. 13; Rep. Wherry, Hills. 13; Rep. Mary Murphy, Hills. 27; Rep. Moffett, Merr. 4

COMMITTEE: Judiciary

ANALYSIS

This resolution requests an opinion of the justices of the supreme court on the scope of certain constitutional articles.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

A RESOLUTION requesting an opinion of the justices on the scope of part II, article 4 of the New Hampshire constitution, as well as other related articles.

1 Whereas, part II, article 4 vests the general court with plenary authority, while carving out from
2 such authority only “as otherwise provided by article 72-a of part II”; and

3 Whereas, part II, article 72-a, adopted in 1966, vests the judicial power of the state in the
4 supreme court, a trial court of general jurisdiction known as the superior court, and such lower
5 courts as the legislature may establish; and

6 Whereas, part II, article 73-a, adopted in 1978, further provides that the chief justice of the
7 supreme court shall be the administrative head of all the courts and that appropriations for the
8 judicial branch shall be made separately from all others; and

9 Whereas, questions have arisen concerning the proper scope of articles 4, 72-a, and 73-a, the
10 separation of powers, and the continuing vitality of the people’s right to petition for redress of
11 grievances under part I, article 32; now, therefore, be it

12 Resolved by the House of Representatives:

13 That the Justices of the Supreme Court be respectfully requested to give their opinion on the
14 following important questions of law:

15 1. Whether the exception in part II, article 4 (“except as otherwise provided by article 72-a”) limits only the legislature’s authority to exercise the judicial power of deciding cases and
16 controversies, or whether it also restricts the legislature’s power over matters of court
17 administration, appropriations, or structure.

18 2. Whether part II, article 72-a, which vests the judicial power in the courts, should be read as
19 restricting only the adjudicatory function of the judiciary, leaving questions of court organization,
20 staffing, budgeting, and rulemaking to the legislature under article 4, except as otherwise provided
21 by article 73-a.

22 3. Whether, given that part II, article 4 is expressly carved back only by article 72-a, the
23 legislature retains its plenary lawmaking power in all matters not falling strictly within the exercise
24 of “judicial power” as that term is traditionally understood.

25 4. Whether the judicial power vested by article 72-a includes the authority to make rules of
26 evidence, procedure, and practice having the force of law, or whether such matters are legislative in
27 nature under article 4.

28 5. Whether article 72-a should be construed to prevent the legislature from enacting laws
29 governing matters such as the jurisdiction of lower courts, the qualifications of judges, or the fees
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1 and costs in judicial proceedings, or whether those remain within the scope of the legislature's power
2 under article 4.

3 6. Whether, if the legislature may not enact laws that affect the "judicial power" under article
4 72-a, it nevertheless retains the constitutional authority to enact laws that affect the
5 "administration of the courts" where such authority is not expressly excepted in article 4.

6 7. Whether, under part I, article 32 (right to petition for redress of grievances), the general court
7 retains authority to establish temporary tribunals or commissions, not vested with the judicial power
8 under article 72-a, for the purpose of hearing and resolving individual petitions for redress.

9 8. Whether the establishment by the general court of special or temporary courts, commissions,
10 or panels to hear petitions for redress of grievances would constitute an exercise of "judicial power"
11 within the meaning of article 72-a, or whether such bodies exercise legislative or quasi-legislative
12 functions consistent with article 4.

13 9. Whether the general court may constitutionally provide, by statute or resolve, for individual
14 cases of relief or remedy on petition, where such relief does not reopen or overturn a final judgment
15 of a court exercising the judicial power under article 72-a.

16 10. Whether the historical practice in New Hampshire of the legislature hearing and granting
17 petitions for relief in matters such as taxation, property disputes, and family law remains
18 constitutionally permissible under article 4, except to the extent that such petitions would require
19 the legislature to exercise the judicial power vested in the courts by article 72-a.

20 11. Whether the ballot question presented to the people in 1966, to wit, "Are you in favor of
21 protecting the supreme court and the superior court from possible political interference by
22 establishing them as constitutional courts?" sufficiently summarized the scope and effect of article
23 72-a as it has since been interpreted by the judiciary, including the limitations upon the legislative
24 power of the general court as reflected in the preceding questions; or whether such ballot language, if
25 materially incomplete or misleading, should constrain the construction now given to article 72-a.

26 Resolved further, that the clerk of the house of representatives transmit this resolution and
27 request respectfully to the justices of the supreme court of New Hampshire.