

State of New Hampshire HOUSE RECORD

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Contains: Floor Amendments and a Proposed Resolution.

HOUSE CALENDAR WEDNESDAY, JULY 12 FLOOR AMENDMENTS

2000-4809h

Floor Amendment to HR 51

Proposed by Rep. Mirski

Amend the resolution by inserting the following:

ARTICLE OF IMPEACHMENT

That during the period from his appointment as an associate justice of the New Hampshire supreme court to the present, chief justice David A. Brock engaged in conduct which corrupted the supreme court's capacity to dispense impartial justice and to insure the right of every New Hampshire citizen to equal protection under the law. Chief justice Brock has done so by participating in a process whereby disqualified justices were permitted to receive draft opinions for cases before the court and to attend case conferences which enabled them to comment on and influence opinions from which they were recused and disqualified. Specifically, he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:

A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;

B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;

C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;

2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:

A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;

B) allowed the opinions and decisions to be published indicating that a certain justice or certain justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record.

That because of chief justice David A. Brock's failure to insure that the dispensation of impartial justice and equal protection under the law has been uniformly afforded to those who had cases before the New Hampshire supreme court, the New Hampshire house of representatives finds that chief justice David A. Brock has committed an impeachable offense warranting trial by the New Hampshire senate.

2000-4808h

Floor Amendment to HR 51

Proposed by Reps. Soltani and Jean

Amend the resolution by replacing all after the resolving clause with the following:

That the judiciary committee has found, that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether David A. Brock, chief justice of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the articles of impeachment below, each of which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

During the period beginning on or about March 1, 1987 and ending on or about November 5, 1987, chief justice Brock engaged in conduct that constituted the impeachable offenses of maladministration or malpractice in connection with the case of Home Gas Corp. v. Strafford Fuels, Inc. and Edward C. Dupont ("Home Gas"). Specifically, chief justice Brock engaged in the following improper conduct:

1. Chief justice Brock placed a telephone call to superior court judge Douglas Gray, who was presiding over the case. During that conversation the chief justice inquired about the status of the case and informed judge Gray that Mr. Dupont was a state senator.

2. Chief justice Brock failed to report said telephone call to his colleagues on the supreme court at the time the court had the appeal of "Home Gas" under consideration.

3. Chief justice Brock hindered an investigation undertaken by the justices of the supreme court into his interference in the "Home Gas" matter by falsely informing the said justices that he had not made a call to the said Douglas Gray and that the said Douglas Gray had called him.

4. On or about December, 1997, chief justice Brock maintained a pattern of obfuscation and coverup by refusing to honor the request of the house of representatives to deliver up materials which had been requested by the house which by definition included documents pertaining to the "Home Gas" matter and further undertook to resist an impending subpoena from the house requiring the said disclosure.

5. Chief justice Brock improperly participated in the deliberation and decision in the "Home Gas" matter after having intervened in the matter, thereby creating the appearance of partiality and impropriety.

6. Chief justice Brock failed, neglected and omitted to refer or report his own misconduct as well as the perceived misconduct committed by the said Douglas Gray, to the judicial conduct committee in a timely manner, thereby depriving the committee of jurisdiction to investigate, correct and punish any misconduct.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

ARTICLE II

On or about February 4, 2000, chief justice Brock engaged in conduct that constituted the impeachable offenses of maladministration or malpractice in connection with the case of Thayer v. Thayer, a divorce case in which W. Stephen Thayer, III, then a justice of the supreme court, was a party. Specifically, chief justice Brock engaged in the following improper conduct:

1. On February 4, 2000, chief justice Brock engaged in ex parte communications with justice Thayer and with the other justices, all of whom had been recused, in which he solicited their comments regarding superior court judges to be appointed to the supreme court panel that would hear the appeal of the trial court's judgment.

2. On February 4, 2000, chief justice Brock participated in an ex parte communication with justice Thayer in the hallway outside the court's conference room in which the chief justice discussed possible appointments to the supreme court panel that would hear the appeal of the trial court's judgment.

3. Chief justice Brock failed, neglected, and omitted to report his misconduct nor that of the other justices, as enumerated in subparagraphs 1 and 2 above, to the judicial conduct committee having jurisdiction to supervise and sanction misconduct of the justices, nor to the New Hampshire house of representatives having jurisdiction to initiate articles of impeachment or bills of address against judges or justices who shall disobey, or violate the law or give cause requiring their removal from office.

4. During the discussion of Feld's Case, disqualified justices Sherman Horton and Steven Thayer commented on the merits of the case then and there pending before the court while the said David Brock was presiding over the conference, and further the said David Brock failed and neglected to report the said conduct to the parties or their counsel; nor to the judicial conduct committee having supervisory authority to sanction judges and justices for misconduct, nor reported the same to the New Hampshire house of representatives having authority to initiate articles of impeachment or bills of address against justices who shall give cause to be removed from office.

5. Subsequent to the acts described in subparagraph 4 above, the said David Brock had a conversation with justice William Johnson, then of the New Hampshire supreme court; during which conversation justice William Johnson expressed his dismay and concern that justices Sherman Horton and Steven Thayer had interfered in the Feld's Case. The said David Brock did affirmatively dissuade and discourage justice William Johnson from reporting the misconduct to the proper authorities while prevailing upon him that the secrecy of the conference room at the New Hampshire supreme court superceded the public's and the supervisory authorities' right to know the misconduct which may have occurred within the said conference room; David Brock having successfully advanced this argument to prevent the disclosure of misconduct of other justices and that of himself for having presided over such a conference, without any basis or support in law and in direct contravention of his duties and obligations under the New Hampshire constitution, laws and rules governing the conduct of judges.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

ARTICLE III

Chief justice David A. Brock did knowingly testify falsely under oath to the house judiciary committee, with the intention of hindering the HR 50 investigation, with respect to the following material matters:

1. On May 19, 2000, he testified that he did not know whether or not a March 3, 2000 letter from his attorney had been sent to the attorney general's office.
2. On May 19, 2000, he testified that he did not have certain documents relating to the "Home Gas" investigation when in fact he did have those documents and had reviewed them within a few days before giving testimony.
3. On May 19, 2000, and on June 23, 2000, he testified that on February 4 he did not have a conversation in the hallway outside the supreme court conference room with justice Thayer.
4. On May 19, 2000, and on June 23, 2000, he testified that he did not make a telephone call to superior court judge Douglas Gray concerning the Home Gas case.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

ARTICLE IV

Chief justice David Brock did commit malpractice, maladministration of office, and did behave corruptly whereby he, individually or in concert with others engaged in a pattern of conduct, through action or inaction, which ultimately undermined the confidence in the New Hampshire judiciary whereby he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:
 - A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;
 - B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;
 - C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;
2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:
 - A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;
 - B) allowed the opinions and decisions to be published indicating that certain justice or justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record;
3. Sat and participated in at least two cases involving attorneys with whom he had an overt conflict of interest, without disclosing the said conflict to the parties;
4. With the intent to dissuade another justice of the supreme court from carrying out his lawful obligations, he told the said justice that the secrecy of the judges conferences or deliberations superseded the public's and the enforcement authorities' right to be informed of misconduct by the said judge or judges and having done so with no basis or support in New Hampshire law.

That chief justice David A. Brock has committed an impeachable offense warranting trial by the senate.

2000-4806h

Floor Amendment to HR 51
Proposed by Rep. Mirski

Amend the resolution by replacing the introductory paragraph after the resolving clause with the following:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether David A. Brock, chief justice of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the articles of impeachment below, each of which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

2000-4814h

Floor Amendment to HR 51

Proposed by Rep. Hager

Amend the resolution by replacing the title of the resolution with the following:

A RESOLUTION censuring supreme court chief justice David A. Brock.

Amend the resolution by replacing all after the title with the following:

Whereas, David A. Brock, having taken the oath prescribed by the New Hampshire constitution, faithfully to execute the responsibilities and duties of chief justice of the supreme court of New Hampshire assumed a duty to lead by establishing, maintaining, and enforcing, and to himself observing high standards of conduct and ethics so that the integrity and independence of the judiciary would be preserved. Notwithstanding the foregoing, and after careful consideration of all matters before it, the house concludes that David A. Brock has, on several occasions, made mistakes and errors of judgement, the effect of which has been to diminish public confidence in the judiciary and to lessen esteem for the institution of the supreme court of the state of New Hampshire. In specific, chief justice Brock engaged in the following conduct:

- 1) In 1987, in response to a request of the then president of the New Hampshire senate, chief justice Brock made telephone calls to a superior court judge and clerk of court inquiring about the procedural status of a case to which the then majority leader of the senate was a party. These inquiries, which the supreme court concluded in 1989 were not unethical, could nonetheless have created an unwarranted impression that the supreme court or its chief justice had an interest in the case and therefore were inappropriate;
- 2) Chief justice Brock failed to recognize that the supreme court's longstanding practice of permitting disqualified justices to receive and comment on draft written opinions in cases from which they were disqualified could have created an atmosphere which enabled abuse, such as occurred in connection with the Feld matter on April 23, 1999;
- 3) When consulted by an associate justice of the supreme court, who was at the time considering reporting the conduct of another associate justice to the judicial conduct committee relating to the abortive April 23, 1999 case conference on the Feld matter, chief justice Brock advised that justice that, in his opinion and with respect to that event, the confidentiality of the judicial conference room outweighed the obligation to make a report of the conduct;
- 4) On February 4, 2000 chief justice Brock inadvertently "invited" an associate justice, who was a party to an appeal then pending before substitute judges of the supreme court (appointed and to be appointed pursuant to New Hampshire RSA 490:3), to comment on the appointment of a particular justice to the replacement court;
- 5) On February 4, 2000 chief justice Brock asked an associate justice (who was disqualified from participating in the decision of an appeal of another associate justice who was a party to a matter before the court) to comment on the qualifications of a judge who had been appointed to the substitute appellate court; now, therefore, be it

Resolved by the House of Representatives:

That David A. Brock, the chief justice of the supreme court of the state of New Hampshire, by his actions and failure to act, has brought upon himself and is fully deserving of the rebuke and censure of the house of representatives; and

That he is hereby censured for his acts and failure to act.

AMENDED ANALYSIS

This resolution censures supreme court chief justice David A. Brock.

2000-4813h

Floor Amendment to HB 1500-FN

Proposed by Rep. Dyer

Amend the bill by replacing all after the enacting clause with the following:

- 1 Judicial Compensation and Benefits for Supreme Court Chief Justice Brock. If supreme court chief justice David Brock voluntarily resigns from the court, he shall be entitled to receive the retirement compensation and benefits under RSA 490:2 beginning upon the date he would have begun receiving such compensation and benefits if he had served as a supreme court justice until he was 65 years of age.
- 2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill allows chief justice David Brock to receive judicial retirement compensation and benefits even if he resigns prior to reaching 65 years of age.

2000-4807h

Floor Amendment to HB 1500-FN

Proposed by Rep. Peterson

- Amend the title of the bill by replacing it with the following:
- AN ACT relative to judicial retirement compensation and benefits.
- Amend the bill by replacing all after the enacting clause with the following:

- 1 New Paragraph; Resignation From Supreme Court; Judicial Retirement Compensation and Benefits. Amend RSA 490:2 by inserting after paragraph V the following new paragraph:
 - V-a. For purposes of this section, if (i) a justice voluntarily resigns after having served for at least 20 years; (ii) such justice is not otherwise entitled to rights and benefits under paragraphs II, III, and IV of this section; and (iii) such justice agrees to serve in the capacity of judicial referee in accordance with RSA 493-A following such voluntary resignation without a discontinuation of service, then such justice may serve in the capacity as a judicial referee in accordance with RSA 493-A for a period not to exceed 5 years, and the years of service in such capacity shall be deemed to be years of service as a justice of the supreme court for the purposes of entitlement to such rights and benefits for himself or herself and those related to him or her in the manner described in paragraphs II, III, and IV, as compensation for services rendered and which may be rendered in such capacity.
- 2 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill permits a supreme court justice who voluntarily resigns after 20 years of judicial service and who is not eligible for

judicial retirement compensation and benefits to qualify for such benefits by serving as a judicial referee for the number of years necessary to obtain judicial retirement compensation and benefits.

2000-4811h

Floor Amendment to HR 52

Proposed by Rep. Mirski

Amend the title of the resolution by replacing it with the following:

A RESOLUTION recommending impeachment of supreme court justice Sherman D. Horton, Jr.

Amend the resolution by replacing all after the title with the following:

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist...to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the house adopt the following resolution relative to justice Sherman D. Horton, Jr.; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether justice Sherman D. Horton, Jr., of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the article of impeachment below, which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

That during the period from his appointment as an associate justice of the New Hampshire supreme court to the present, justice Sherman D. Horton, Jr. engaged in conduct which corrupted the supreme court's capacity to dispense impartial justice and to insure the right of every New Hampshire citizen to equal protection under the law. Justice Horton has done so by participating in a process whereby disqualified justices were permitted to receive draft opinions for cases before the court and to attend case conferences which enabled them to comment on and influence opinions from which they were recused and disqualified. Specifically, he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:

A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;

B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;

C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;

2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:

A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;

B) allowed the opinions and decisions to be published indicating that a certain justice or certain justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record.

That because of justice Sherman D. Horton, Jr.'s failure to insure that the dispensation of impartial justice and equal protection under the law has been uniformly afforded to those who had cases before the New Hampshire supreme court, the New Hampshire house of representatives finds that justice Sherman D. Horton, Jr. has committed an impeachable offense warranting trial by the New Hampshire senate.

AMENDED ANALYSIS

This house resolution recommends that one article of impeachment be brought against justice Sherman D. Horton, Jr., of the New Hampshire supreme court.

2000-4810h

Floor Amendment to HR 53

Proposed by Rep. Mirski

Amend the title of the resolution by replacing it with the following:

A RESOLUTION recommending impeachment of supreme court justice John T. Broderick, Jr.

Amend the resolution by replacing all after the title with the following:

Whereas, the New Hampshire house of representatives has directed its judiciary committee "to investigate whether grounds exist ... to impeach chief justice David A. Brock and/or any other justice of the New Hampshire supreme court"; and

Whereas, the house judiciary committee has conducted such investigation, and it hereby moves that the house adopt the following resolution relative to justice John T. Broderick, Jr.; now, therefore, be it

Resolved by the House of Representatives:

That the judiciary committee has found that the house, acting under Part II, Article 17 of the New Hampshire constitution, has cause to request the senate to exercise its powers under Part II, Article 38 of the New Hampshire constitution to conduct a full and impartial trial to determine whether justice John T. Broderick, Jr., of the supreme court of New Hampshire, should be convicted and removed from office if the senate concludes that he has committed any or all of the acts enumerated in the article of impeachment below, which the house has determined, if proved, constitutes an impeachable offense as set forth in Part II, Article 38 of the New Hampshire constitution:

ARTICLE I

That during the period from his appointment as an associate justice of the New Hampshire supreme court to the present, Justice John T. Broderick, Jr. engaged in conduct which corrupted the supreme court's capacity to dispense impartial justice and to insure the right of every New Hampshire citizen to equal protection under the law. Justice Broderick has done so by participating in a process whereby disqualified justices were permitted to receive draft opinions for cases before the court and to attend case conferences which enabled them to comment on and influence opinions from which they were recused and disqualified. Specifically, he committed one or more of the following acts:

1. Engaged in a pattern of acts, and allowed the continued existence of an implicit secret policy at the supreme court whereby the justices did or were allowed to do one or more of the following:
 - A) recused, disqualified or non-participating judges were allowed to comment, or provide input, orally or in writing, on matters from which they were disqualified, recused or in which they purportedly did not participate;
 - B) recused, disqualified or non-participating judges were provided with draft copies of decisions of cases from which they were

disqualified, recused or in which they purportedly did not participate, before the ordinary citizens were allowed to do the same;

C) recused, disqualified or non-participating judges were allowed to attend conferences where cases from which they were disqualified or in which they did not participate were discussed and decided;

2. As the administrative head of the New Hampshire supreme court, he permitted a secret policy whereby he individually or in concert with other justices did one or more of the following acts:

A) allowed the opinions and decisions of the court to be published as per curiam opinions and falsely purported that a particular disqualified justice had not sat nor participated in the said opinions, where in fact the said justice had participated in the said decision and had, on occasion, in fact authored the said decision;

B) allowed the opinions and decisions to be published indicating that a certain justice or certain justices had not participated in the progress of the case where in fact they had, thereby misinforming, and misleading the people of the state and the litigants in the matter and creating a false historical record.

That because of justice John T. Broderick, Jr. failure to insure that the dispensation of impartial justice and equal protection under the law has been uniformly afforded to those who had cases before the New Hampshire supreme court, the New Hampshire house of representatives finds that justice John T. Broderick, Jr. has committed an impeachable offense warranting trial by the New Hampshire senate.

AMENDED ANALYSIS

This house resolution recommends that one article of impeachment be brought against justice John T. Broderick, Jr., of the New Hampshire supreme court.

2000 SESSION

00-2845

10/01

HOUSE RESOLUTION **54**

A RESOLUTION condemning the practice of the New Hampshire supreme court on participation by recused and disqualified justices.

SPONSORS: Rep. Hager, Merr 18; Rep. Simon, Hills 40

COMMITTEE:

ANALYSIS

This house resolution condemns the practice of the New Hampshire supreme court on participation by recused and disqualified justices.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

A RESOLUTION condemning the practice of the New Hampshire supreme court on participation by recused and disqualified justices.

Whereas, according to testimony before the house judiciary committee in its proceedings pursuant to HR 50, the New Hampshire supreme court had a long-standing practice from at least as early as 1978 until on or about April 1, 2000, on

participation by recused and disqualified justices, which practice predated the appointment of any current justice; and

Whereas, during the period 1978 to 2000 in which the practice, or recusal policy, was in effect in the New Hampshire supreme court, the following justices served: Edward J. Lampron, William A. Grimes, John W. King, Maurice P. Bois, Charles G. Douglas, David A. Brock, William F. Batchelder, David H. Souter, William R. Johnson, W. Stephen Thayer III, Sherman D Horton, Jr., and John T. Broderick, Jr.; and

Whereas, this participation included comments on and/or editing of court opinions in those cases from which the justice was recused or disqualified; and

Whereas, this practice may have involved comments and/or editing which affected the substance and/or result of decisions rendered by the court; and

Whereas, this practice, incrementally and corrosively set the stage for the historic and tragic court conference which occurred on February 4, 2000 and which has stained the reputation of the court; and

Whereas, the administration of justice in this state has been damaged by this recusal policy and its consequences; now therefore be it

Resolved by the House of Representatives:

That the house of representatives finds that the justices of the New Hampshire supreme court took an oath to support, obey, and defend the constitution of the state of New Hampshire, and that they are bound to uphold the integrity of the judiciary and to avoid impropriety or the appearance of impropriety, and that their actions undermined the public confidence in the integrity and impartiality of the judiciary and betrayed the trust of the people of the state of New Hampshire; and

That this house condemns, in the strongest possible terms, any practice of participation by any judicial officer in any ongoing case from which that officer has been, or should have been, recused or disqualified.