



# State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

February 9<sup>th</sup>, 2026

To: Judiciary Committee

Dear Chairman Lynn,

***In re. HR28, requesting an opinion of the justices clarifying the scope of the state's constitutional obligations concerning education***

*Note: This testimony represents my views and, most importantly, the views and interests of the constituents I serve in the towns of Alexandria, Bridgewater, Bristol, Canaan, Dorchester, Enfield, Grafton, Groton, Hebron and Orange. My testimony is not made on behalf of any private employer nor should it be construed to represent the views of any of my employers.*

This resolution does not tell the court what the law is. It asks the court to tell the legislature, and by extension the people of New Hampshire, what our Constitution actually means.

Part II, Article 74 of the New Hampshire Constitution expressly authorizes the General Court to request the opinions of the Justices on important questions of law. This authority exists for a reason. It is not a procedural convenience, and it is not a challenge to judicial independence. It is a constitutional mechanism designed to prevent uncertainty, institutional conflict, and legislative error before they occur. HR 28 invokes Article 74 precisely as intended: to obtain authoritative guidance where constitutional text, voter-approved amendments, historical practice, and modern doctrine are in tension.

The subject matter of HR 28, that of education, taxation, and the respective roles of the legislature and the judiciary, is certainly neither abstract nor academic. This session, the General Court is actively considering multiple measures that turn on the scope of the state's constitutional obligations with respect to education, including questions of funding, adequacy, and the permissible reach of judicial remedies. In that context, uncertainty about the meaning of Part II, Article 83 and its interaction with the legislature's exclusive authority over taxation and appropriations directly affects how this body legislates today.

That uncertainty is not theoretical. Recent review of the constitutional text itself has underscored that even foundational provisions, including Part II, Article 83, have not always been faithfully reproduced or consistently understood over time.

Where constitutional meaning turns on text approved by the voters, clarity about that text and its legal consequences is essential.

Part II, Article 83 contains sweeping and aspirational language concerning the importance of education and the duty of legislators and magistrates to “cherish” literature, sciences, and public schools. At the same time, it contains an express limitation on the use of money raised by taxation. Over time, decisions of the New Hampshire Supreme Court have interpreted this provision as imposing an enforceable duty upon the state to define, fund, and ensure a constitutionally adequate education, including through compelled appropriations.

HR 28 asks whether that interpretation is compelled by the Constitution’s text, structure, and historical understanding, or whether it reflects a judicial construction that has moved beyond what the voters were asked to approve.

As legislators sworn to support the Constitution, we cannot responsibly legislate without clarity on foundational questions such as whether the duty to “cherish” education is aspirational or judicially enforceable; whether the Constitution authorizes the judiciary to require the legislature to raise or appropriate funds for education; whether there exists a judicially manageable standard of educational “adequacy”, or whether such determinations are inherently political judgments entrusted to the General Court; and, whether the Constitution permits the raising or apportionment of taxes for the use of schools at all, absent an explicit grant of taxing authority approved by the people.

These are constitutional questions with immediate legislative consequences, not policy preferences.

HR 28 does not reopen cases. It does not dictate outcomes. It does not instruct the Court to abandon precedent. Advisory opinions are not judgments, do not operate with the same force of stare decisis, and are properly informed by the breadth of historical materials and original public understanding that may not have been squarely presented in prior litigation. Article 74 exists so that constitutional meaning may be clarified when necessary, not treated as settled simply because uncertainty has persisted long enough to become familiar.

Declining to request an advisory opinion does not preserve separation of powers. It undermines it. Separation of powers depends on each branch understanding the limits of its own authority. If the legislature legislates too timidly in the face of constitutional uncertainty, it abdicates its role. If it legislates too aggressively, it invites institutional conflict. Asking the Justices for guidance is the constitutionally proper, respectful, and conservative way to proceed.

An Ought to Pass recommendation on HR 28 signals that this committee, and this House, take their oath seriously. It affirms respect for the Constitution, respect for the voters who adopted it, and respect for the Court as the proper body to clarify constitutional meaning when asked in the manner the Constitution itself prescribes.

For these reasons, I respectfully ask the committee to recommend House Resolution 28 Ought to Pass.

Yours sincerely,

Rep. Donald McFarlane  
Grafton 18