

HCR 6 – AS INTRODUCED

2009 SESSION

09-0274

09/01

HOUSE CONCURRENT RESOLUTION 6

A RESOLUTION affirming States' rights based on Jeffersonian principles.

SPONSORS: Rep. Itse, Rock 9; Rep. Ingbretson, Graf 5; Rep. Comerford, Rock 9; Sen. Denley, Dist 3

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This house concurrent resolution affirms States' rights based on Jeffersonian principles.

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STATE OF NEW HAMPSHIRE*In the Year of Our Lord Two Thousand Nine*

A RESOLUTION affirming States' rights based on Jeffersonian principles.

Whereas the Constitution of the State of New Hampshire, Part 1, Article 7 declares that the people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, pertaining thereto, which is not, or may not hereafter be, by them expressly delegated to the United States of America in congress assembled; and

Whereas the Constitution of the State of New Hampshire, Part 2, Article 1 declares that the people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign and independent body-politic, or State, by the name of The State of New Hampshire; and

Whereas the State of New Hampshire when ratifying the Constitution for the United States of America recommended as a change, "First That it be Explicitly declared that all Powers not expressly & particularly Delegated by the aforesaid are reserved to the several States to be, by them Exercised;" and

Whereas the other States that included recommendations, to wit Massachusetts, New York, North Carolina, Rhode Island and Virginia, included an identical or similar recommended change; and

Whereas these recommended changes were incorporated as the ninth amendment, the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people, and the tenth amendment, the powers not delegated to the United

States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people, to the Constitution for the United States of America; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the several States composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, -- delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party: that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress; and

That the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, and offences against the law of nations, slavery, and no other crimes whatsoever; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," therefore all acts of Congress which assume to create, define, or punish crimes, other than those so enumerated in the Constitution are altogether void, and of no force; and that the power to create, define, and punish such other crimes is reserved, and, of right, appertains solely and exclusively to the respective States, each within its own territory; and

That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people: that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed. And thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same. And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press:" thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press: insomuch, that whatever violated either, throws down the sanctuary which covers the others, and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That, therefore, all acts of Congress of the United States which do abridge the freedom of religion, freedom of speech, freedom of the press, are not law, but are altogether void, and of no force; and

That the construction applied by the General Government (as is evidenced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or in any department or officer thereof," goes to the destruction of all limits prescribed to their power by the Constitution: that words meant by the instrument to be subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument: that the proceedings of the General Government under color of these articles, will be a fit and necessary subject of revisal and correction; and

That a committee of conference and correspondence be appointed, which shall have as its charge to communicate the preceding resolutions to the Legislatures of the several States; to assure them that this State continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to those specified in their federal compact, to be friendly to the peace, happiness and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this State is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the General Government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non foederis*), to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them: that nevertheless, this State, from motives of regard and respect for its co-States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified: that if the acts before specified should stand, these conclusions would flow from them: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism -- free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. That this State does therefore call on its co-States for an expression of their sentiments on acts not authorized by the federal compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular. And that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own. That they will concur with this State in considering acts as so palpably against the Constitution as to amount to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise

over these States, of all powers whatsoever: that they will view this as seizing the rights of the States, and consolidating them in the hands of the General Government, with a power assumed to bind the States, not merely as the cases made federal, (*casus foederis*,) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: that this would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories; and

That the said committee be authorized to communicate by writing or personal conferences, at any times or places whatever, with any person or person who may be appointed by any one or more co-States to correspond or confer with them; and that they lay their proceedings before the next session of the General Court; and

That any Act by the Congress of the United States, Executive Order of the President of the United States of America or Judicial Order by the Judicatories of the United States of America which assumes a power not delegated to the government of United States of America by the Constitution for the United States of America and which serves to diminish the liberty of the any of the several States or their citizens shall constitute a nullification of the Constitution for the United States of America by the government of the United States of America. Acts which would cause such a nullification include, but are not limited to:

- I. Establishing martial law or a state of emergency within one of the States comprising the United States of America without the consent of the legislature of that State.
- II. Requiring involuntary servitude, or governmental service other than a draft during a declared war, or pursuant to, or as an alternative to, incarceration after due process of law.
- III. Requiring involuntary servitude or governmental service of persons under the age of 18 other than pursuant to, or as an alternative to, incarceration after due process of law.
- IV. Surrendering any power delegated or not delegated to any corporation or foreign government.
- V. Any act regarding religion; further limitations on freedom of political speech; or further limitations on freedom of the press.
- VI. Further infringements on the right to keep and bear arms including prohibitions of type or quantity of arms or ammunition; and

That should any such act of Congress become law or Executive Order or Judicial Order be put into force, all powers previously delegated to the United States of America by the Constitution for the United States shall revert to the several States individually. Any future government of the United States of America shall require ratification of three quarters of the States seeking to form a government of the United States of America and shall not be binding upon any State not seeking to form such a government; and

That copies of this resolution be transmitted by the house clerk to the President of the United States, each member of the United States Congress, and the presiding officers of each State's legislature.