

STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2019-0507

John Burt & a
v.
Speaker of the House of Representative

RULE 7 APPEAL OF FINAL DECISION OF
MERRIMACK SUPERIOR COURT

REPLY BRIEF OF APPELLANTS,
JOHN BURT & a

By: Dan Hynes
Liberty Legal Services
212 Coolidge Ave
Manchester, NH 03102
(603) 583-4444
Bar #17708

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ARGUMENT

I. DEFENDANT'S POSITION IS INTERNALLY INCONSISTENT AND WOULD LEAD TO ARBITRARY RESULTS

By dismissing the complaint, the lower court adopted the bright line rule that it will not look at *any* legislative rule to determine if it is Constitutional. On one hand, defendant seeks to have that rationale adopted by this court: "When each branch of government exercises its constitutional rulemaking authority over its "inherent and internal affairs", such action is not reviewable by the other branch". Defendant's brief Pg 12.

The defendant then cites the same case advancing, "Any legislative act violating the constitution or infringing on its provisions must be void because the legislature, **when it steps beyond its bounds**, acts without authority." (emphasis in Defendant's brief). "

It is clear, *State v. LaFrance*, 124 N.H. 171, 177 (1983), and the other cases cited by both parties, support the position that the court will step in when a house rule is beyond the legislature's constitutional authority/ where the rule is unconstitutional.

The rationale for this is simple. If we followed the defendant's and lower court's bright line rule, the House could pass a rule banning women, etc. from voting, giving house speeches, testifying on bills, etc. Clearly said rule would be unconstitutional and a court would not only have the authority, but duty, to step in.

Defendant now seems to be acknowledging that the court would step in under such a scenario. "The Defendant does not foreclose the possibility that the case may arise where the legislature acts outside the scope of its constitutional authority or "steps beyond its bounds"; in that instance, the Defendant submits that it is properly within the purview of the Judiciary to exercise its constitutional authority." Defendant's brief Pg 13. As pointed out in plaintiff's brief, if a House Rule is unconstitutional, it is outside the authority provided to the legislature.

In order to promote this internally inconsistent position, Defendant is advancing an arbitrary framework of when the court can step in. "The Defendant believes that this case is an instance where it is appropriate to give due deference to a coequal branch of government which is "functioning within constitutional constraints" Defendant's brief Pg 12. Citations omitted. If that standard were adopted, judges would have no guidelines and could possibly use a political or other bias to decide which constitutional rights are worth protecting.

Defendant has advanced other reasons of why he believes the House rule in question is not unconstitutional and doesn't violate Art 2-a. This issue has yet to be addressed by the lower court as the court did not address the merits of the constitutional violation. Accordingly, it would be

premature to make a finding that the rule is constitutional when the issue has not been developed by plaintiffs.

As a threshold matter, a rule regulating firearms, on its face triggers “[Art.] 2-a. **[The Bearing of Arms.]** All persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.”. Whether the defendant can show an exception to the constitution is a question for another day.

CONCLUSION

Plaintiffs ask the court to remand with a bright line rule that courts have the authority to address any house rule which violates the constitution.

Plaintiffs waive oral argument

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Supreme Court Rule 16 (11) this brief contains approximately 542 words. I have relied on the word count of the computer program used to prepare this brief.

Respectfully Submitted,

/s/Dan Hynes_____

Dan Hynes
Liberty Legal Services
212 Coolidge Ave.
Manchester, NH 03102
(603) 583-4444
Bar #17708

CERTIFICATION

I hereby certify that a digital copy of the brief and exhibits have been provided to opposing counsel through the NH Supreme Court e-file system, at the time this document is e-filed.

/s/Dan Hynes_____

Dan Hynes
Liberty Legal Services
212 Coolidge Ave.
Manchester, NH 03102
(603) 583-4444
Bar #17708