

## Memorandum

**To: House Legislative Administration Committee**

**From: John Tobin**

**Re: CACR 11**

**Date: February 22, 2021**

Thank you for the opportunity to speak to you today about this bill. And thank you for your service to the people of our state in the midst of the pandemic.

I am a retired legal aid lawyer and former volunteer court mediator. I oppose this proposed constitutional amendment because it would disrupt and damage our constitutional system of checks and balances and separation of powers. It would also turn the Legislature into an appeals court, which would likely become burdensome and unmanageable.

Our federal and state constitutions created a system of government involving three separate branches of government: executive, legislative, and judicial. Each branch has a distinct role to play in preserving and enhancing our democracy and the rule of law. The three branches are independent and separate, but they must interact regularly and, as a result, tension between these three branches of government is inevitable, frequent, and healthy. Our country's founders created this system because, above all else, they feared that if one branch of the government became all-powerful and unrestrained, tyranny would follow.

Throughout our history, disagreements between and among the three branches of government have arisen, but none has led to the destruction of the balance among them. CACR 11, however, would give the Legislature the power to usurp the role of the judiciary. The role of the Legislature is to pass laws and set broad policy that govern daily life in our state and determine the funding and administrative structure of state agencies. The role of the courts, in contrast, is to adjudicate specific legal disputes between parties, including individuals, business organizations, and agencies of government.

The courts frequently interpret the New Hampshire Constitution in a variety of cases involving criminal law, zoning and land use, taxation, state agency

procedures, and many other issues. If CACR 11 were to be adopted, any party who is unhappy with a court ruling on a constitutional issue would be able to appeal to the Legislature, as if the Legislature was the ultimate appeals court.

So, a person who did not like a court's ruling in their criminal case, zoning dispute, tax case or other legal matter that included a constitutional issue could hire a lobbyist to try to persuade the Legislature to undo the court ruling. And if they convinced both Houses of the Legislature to go along, they could hire a public relations firm to help them win the referendum authorized by this amendment.

In all likelihood, only well-off individuals, large businesses or powerful government agencies would have the resources to pursue such a complex end-run around the court system. This would aggravate the imbalance between the wealthy and ordinary people that already exists in our justice system. The disruption and distraction that such cases would create for the Legislature's calendar would also impede your ability to do the work that the people of our state sent you here to do: make complicated and numerous policy and budgetary decisions. Finally, this process would drag out the original case for at least a year and possibly two, first for the legislative process to go forward and then for the referendum to be set up and conducted. A final outcome of the case, and justice for the other parties in the case, would be delayed while the unhappy litigant used this new process.

The Legislature already possesses the power and authority to respond to particular court rulings it does not like by using its legislative powers, instead of turning itself into an appeals court. If the Legislature is unhappy with a particular court decision's interpretation of a specific statute, the Legislature has a simple remedy: it can amend or repeal the statute. If the Legislature is unhappy with a court ruling on a constitutional question, it can propose an amendment to the Constitution.

For all of these reasons, I respectfully urge you to reject this proposal. Thank you.

John E. Tobin, Jr.

60 Stone Street  
Concord, NH 03301  
Email: [jtobinjr@comcast.net](mailto:jtobinjr@comcast.net)