

## Memorandum on Remonstrance In New Hampshire

What is a remonstrance? A remonstrance is defined as follows:

**REMONSTRANCE.** *Expostulation: showing of reasons against something proposed; a representation made to a court or legislative body wherein certain persons unite in urging that a contemplated measure be not adopted or passed. (Blacks Law, 4<sup>th</sup> Ed.)*

The right to Remonstrate is a protected right in the Constitution of New Hampshire, Part I, Bill of Rights, Article XXXII:

*The people have a right in an Orderly and peaceable manner, to assemble and consult upon the common good, give instructions to their representatives; and to request of the legislative body, by way of **petition** or **remonstrance**, redress of the wrongs done them, and of the grievances they suffer.*

The act of remonstrating by the people of New Hampshire has been used to protest the unconstitutional acts of the legislative body—including proposed petitions or other acts of the legislature. The General Court has a Constitutional duty to assemble for redress of grievances:

*The Legislature shall assemble for the redress of public grievances and for making such laws as the public good may require.*

*June 2, 1784*

*Amended 1792 generally rewording sentence and omitting "for correcting, strengthening and confirming the laws. (Article XXXI)*

The Remonstrance is a Constitutional Right exercised to protest any encroachment on the rights of the people or any usurpations of power by design or

inattention by our lawmakers. The Remonstrance is an instrument—a protective tool—and is to be used as a remedy to protest any government actions that are repugnant or contrary to the Constitution of New Hampshire or the Constitution for the United States of America.

In New Hampshire, the people—not the government—possess absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one as well as from the other. Hence, in New Hampshire the great and essential rights of the people are secured against legislative as well as executive ambition. They are secured, not by laws paramount to prerogative, but by constitutions paramount to laws.

The first act of remonstrating in New Hampshire, as it appears in the State archives, is dated May 24, 1742. The archives have found 51 Remonstrances up until 1825.

After the people of New Hampshire ratified a Constitution, the first Remonstrance filed with the new State Legislature is in the archives, dated February 8, 1786:

*TUESDAY, February 7, 1786. The hon. Senate and House being again met in committee of the whole, His Excellency the President in the chair, again took under consideration the resolve of Congress, of the 27th of September, Took under consideration a remonstrance and petition of a [considerable] number of the inhabitants of this State, relative to the want of a circulating medium of trade. —Repeal of Navigation act, &c, and after some debate thereon, postponed the further consideration thereof until tomorrow morning: — the committee then adjourned 'till to-morrow morning, and the Speaker resumed the chair. (NH Senate and House Journals)*

The third Remonstrance on file, dated February 20, 1794, is remarkable in the fact that it was submitted by the State of New Hampshire to Senate and House of Representatives of the United States in Congress assembled as “The Remonstrance of the Legislature of the State of the State of New Hampshire.” This was a State Remonstrance of a United States Congressional act of a retrospective law.

The most famous Remonstrance was authored by James Madison in 1785 to protest Patrick Henry’s petition. In June of 1785, James Madison famously remonstrated in his *Memorial and Remonstrance* to protest the petition that Patrick Henry had proposed to the General Assembly of the Commonwealth of Virginia on December 3rd, 1784—a bill “establishing a provision for Teachers of Religion,” as it was reported to the General Assembly of Virginia. Madison’s Remonstrance was presented to the legislative body, and the petition was defeated.

James Madison’s *Memorial and Remonstrance* of 1785 and the aforesaid Remonstrances are not petition’s; as such, the word “petition” is not used in the body of the documents. They are Remonstrances (a protest) against unconstitutional acts. Article XXXII of the N.H. Constitution establishes two different actions by two different words to describe two different rights and two different processes:

*to request of the legislative body, by way of **petition** or **remonstrance**, redress of the wrongs done them, and of the grievances they suffer.*

Both actions have two different definitions and two different uses:

- a. The *petition*: Fundamentally, a petition is a request of the Legislature to do something: address a wrong or repair an injury by the State or one of its political

subdivisions or to request the General Court to perform a legislative act constitutionally delegated to the General Court by the Constitution.

b. A *remonstrance* may be used to remonstrate (protest) a legislative act or to remonstrate a proposed legislative act. The two words “Petition” and “Remonstrance” are not synonymous. A Remonstrance was commonly used to oppose a Petition—the opposite of a Petition. A Petition is a request for a legislative act. A Remonstrance is a request for the repeal of a legislative act. What they have in common is that they are both memorials and are defined as follows:

*A written statement of facts presented to a sovereign, a legislative body, etc., as the ground of, or expressed in the form of, a petition or remonstrance.*

When a convention of the two houses was to be formed by a requirement of the Constitution, the previous rules of the General Court provided the cause of action for the legislative body to act pursuant to its Constitutional duties.

The speaker shall designate to which of the standing committees all memorials, petitions, accounts, or other matters shall be referred, unless otherwise ordered by the house. As the Constitution requires the legislature to assemble, the Speaker shall call for a committee of the whole.

A message shall be sent from the House of Representatives to the Senate to give notice as to when the house will meet the Senate in convention. As soon thereafter as the convenience of the Senate will permit, they will attend in the House. The speaker of the House shall be chairman of the convention and shall state the reasons for forming the convention. When the House and Senate are thus formed in convention, the rules adopted as the rules of the House shall be considered the rules of the convention, so far

as they may be deemed applicable, and the convention shall accordingly be governed thereby.

New Hampshire's founding fathers and those who believed in those fundamental principles of government held their oaths of allegiance sacred and believed that the repeal of any unjust or unconstitutional act of government was of the greatest importance and, therefore, be brought before the entire legislative body so as they may judge for the benefit and welfare of this State.

This Constitutional legislative duty is critical to the rights of a free people to exercise all their rights including and not limited to the following Articles in the Bill of Rights:

Part I, Bill of Rights, Article VIII:

***All power residing originally in, and being derived from the people, all the magistrates and officers of government, are their substitutes and agents, and at all times accountable to them.***

Part I, Bill of Rights, Article XXXVIII:

***A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government; the people ought, therefore, to have a particular regard to all those principles in the choice of their officers and representatives : And they have a right to require of their law-givers and magistrates, an exact and constant observance of them in the formation and execution of the laws necessary for the good administration of government.***

To correct any alterations or amendments to our Constitution, the founding fathers left a very wise instruction in the law. I submit that resorting to the original rules would restore the Constitutional obligations of the General Court.

*To the end that there may be no failure of justice, or danger to the State, by the alterations and amendments made in the Constitution, the General Court is hereby fully authorized and directed to fix the time when the alterations and amendments shall take effect, and make the necessary arrangements accordingly. (Part II, Form of Government, [Art.] 98, September 5, 1792)*

In order to bring the General Court back into Constitutional compliance, it would be wise to consider restoring the old rules that were in harmony with the Constitution of NH. There are more than 212 years (1784-1996) of usage and custom by the NH legislature operating in compliance of the said Constitution. The following are the old rules, in order, as they once functioned for redress of grievance by way of petition or remonstrance. The rules of the House and rules of the Senate have always provided due process for a petition, as follows:

#### Rules of the House

*51. The speaker shall call for petitions from members of the House. The petitions having been presented, disposed of, reports, first from the standing and then from the select committees, shall be called for and disposed of. And the above business shall be done in no other part of the day, except by permission of the House.*

*52. The unfinished business in which the House was engaged at the last proceeding adjournment, if called for by any member, shall have the preference over all other business except the general order of the day; and no motion, or any other business except the general order of the day, shall be received without special leave of the House until the former is disposed of.*

6. The speaker shall designate to which of the standing committees all memorials, petitions, accounts, or other matters shall be referred, unless otherwise ordered by the house.

For the most part, House committees were tasked by House rules to hear the petitions relevant to the committee's oversight, or a special committee could be formed if no committee had jurisdiction to hear the substance of the petitioner.

20. No petition shall be received by the house unless it be presented by a member thereof, and upon motion made for that purpose; nor until the substance of said petition be concisely minuted, and the name of the member, and the town he represents, recorded upon the back thereof; and it shall be the duty of the speaker, whenever any motion relative to a petition is to be stated to the house, to state, in the first place, the substance of the petition as minuted on the back thereof.

21. After a motion is stated by the speaker, it shall be in possession of the house, but may be withdrawn at any time before an amendment.

#### Rules of the Senate

15. Before any petition or memorial addressed to the Senate shall be received and read, a brief statement of the contents therefore shall be made by the member introducing the same.

For a Remonstrance to repeal a law, the procedural due process of the past had been to present said remonstrance to the legislature assembled as a body of the whole and organized under the Joint Rules of the Senate and House.

1. When a convention of the two houses is to be formed, whether by a requirement of the constitution, or by a vote or resolve of the two houses, a message shall be sent from the house of representatives to the senate, giving notice when the house will meet the senate in convention. As soon thereafter as the convenience of the senate will permit, they will

attend in the house. The speaker of the house shall be chairman of the convention, and shall state the reasons for forming the convention. When the house and senate are thus formed in convention, the rules adopted as the rules of the house shall be considered the rules of the convention, so far as they may be deemed applicable, and the convention shall accordingly be governed thereby.

8. Every bill or joint resolution , repealing or modifying any act or statute , shall refer to the same by the chapter , title , and section of the general laws , if contained therein , otherwise by its title and the session of the legislature when the same was passed , and shall also be expressed in words clearly , so that it shall not be necessary to refer to any other act or statute to ascertain the meaning thereof ; and it shall be the duty of the presiding officer of each branch of the legislature to require all such bills and resolutions to be made in conformity therewith , before putting any vote thereon , except to commit or amend.

Daniel Richard  
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