

**From the LPNH Newsletter of June 1999**  
**The Claremont Postmortem**

P. Gardner Goldsmith

I would like to publicly thank Ken Blevens and Danielle Donovan for their encouragement and contributions to a recent meeting organized at the Amherst Library by the New Hampshire Center for Constitutional Studies.

On May 25, approximately 40 people turned out in the egalitarian utopia of Amherst to hear a discussion of the central issues of the NH Supreme Court's two Claremont decisions. As most, if not all, "Libertarian Lines" readers know, the rulings of the court in both "Claremont One" -- which fabricated a supposed "right" to a state tax-funded education -- and "Claremont Two" -- which established that property taxes used to fund education in each town were disproportionate and thus unconstitutional -- represent two of the most pernicious corruptions of constitutional jurisprudence in the state's history.

The discussion began with a short introduction by me, including a brief overview of the court rulings. We then turned to Rep. David Corbin (Stratham), Rep. Paul Mirski (Enfield) and attorney Ed Mosca for a more detailed, and very enlightening discussion of what's at stake. Besides completely inventing a "right" to a tax-funded education through a bizarre interpretation of Section Two, Article 83 -- one that can be objectively determined to be nonexistent -- the court also disregarded the strictures of Section One, Article Six. Section One, the Rights section, states that it shall be the province of all "parishes" (the archaic term for towns) to be able to contract with their own teachers and school employees. The ruling of the court trespasses on this clear delineation of rights by establishing state funding of education. No matter what the leftist politicians say, there can be no doubt that town sovereignty has been struck a fatal blow.

Additionally, the court broke Section Two, Article 78, which states that no person over the age of 70 shall sit as a judge. The court sat a man named Batchelder, who was 73, to fill a temporary vacancy on the bench. Both David Corbin and Ed Moska described how the actions of the court run completely contrary to not only those constitutional provisions mentioned above, but also contrary to the entire concept of the separation of powers in government. By ruling that the state had to produce a new funding system by the end of the next fiscal year, the court was reaching far beyond its bounds as an appellate body. Additionally, the state constitution vests the legislature with the ultimate authority, not the court.

David, Paul, Sen. Mary Brown (Chichester), and Ken then described their efforts to restrain the actions of the court. David outlined his amendment to repudiate the court, and threaten them with impeachment should they try to enforce their ruling. Mary noted the reality that there is not a right to a state funded education, and her efforts to get enough support in the Senate to stave off a complete state take-over of education. Paul went into a very valuable explanation of his efforts to "Address" Justice Brock for his illegal actions, and remove him from the court. His efforts required a great deal of research as to the process of "Address", and are currently in motion in the legislature.

Ken clearly described the essence and value of the "zero" adequacy idea, which would not require a direct repudiation of the court, and would still have given the towns the power to determine their own tax rates. Setting the state educational adequacy level

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at zero would allow each town to determine its own level of adequacy, conforming to Section One, Article Six.

The next section of the meeting concentrated on giving numerous reps and senators the opportunity to describe their perspectives on the issue, and the final bill to come out of the legislature. Senator Sheila Roberge (Bedford-Amherst) expressed her frustration over the lack of support in the Senate -- which was targeted by the Democrats for control in the last election. Rep. Peter Bergin (Amherst) who had previously expressed no discomfort with the ruling other than the tax problems it represented, stuck to his overall stance that the legislature had to work within the barriers set up by the court. Rep. Rob Rowe (Amherst) expressed the same sentiment, and was the target of some pointed criticism from members of the audience. Rep. Gary Daniels (Milford) explained that, while he had voted for every amendment and bill that would have repudiated the court, he was forced to vote for the final bill when he discovered that the teachers throughout the state would soon be collecting unemployment, which would have cost the state millions a week. Disagreement over the stricture that towns couldn't send out their tax bills due to a statement by the NH attorney general, and to the concept that towns could not fund their schools through their municipal budgets was expressed by a number of people in attendance.

We all realize that it will take a great deal of time and effort to turn around the philosophy of redistribution that has permeated the population, the legislature and the court. Contempt for those who have promulgated this philosophy, and set legal precedent for it, must drive those who remember and embrace the principles of individual liberty to act, over the long haul, to oppose them. Meetings like this will have to be scheduled more often. Besides educating the people in attendance, they receive press attention, which can build interest in the libertarian argument.

PRESS RELEASE of September 10, 1998

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