

SUPREME COURT OF NEW HAMPSHIRE

In re New Hampshire Bar Ass'n

151 N.H. 112 (2004) · Decided June 14, 2004

SUMMARY

The New Hampshire Supreme Court held that RSA 311:7-g, which required a referendum on mandatory membership in the New Hampshire Bar Association, violated Part I, Article 37 of the New Hampshire Constitution by encroaching on the judiciary’s inherent authority to regulate the practice of law and unify the Bar. The court concluded that RSA 311:7-h, governing the Association’s legislative activities, was dependent on the invalid provision and therefore had no legal effect. The court did not reach the separate free-speech challenges to RSA 311:7-h.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                              |
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| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Nadeau, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Galway, J.                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | June 14, 2004                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The New Hampshire Bar Association invoked the Supreme Court of New Hampshire's original jurisdiction to challenge the constitutionality of Laws 2003, chapter 250, codified at RSA 311:7-g to :7-i. The court ordered that a referendum required by the statute be conducted but that the ballots be retained under seal and not counted pending resolution of the constitutional challenge. |
| STANDARD OF REVIEW    | The court applied de novo constitutional review, beginning with the presumption that legislative enactments are constitutional and invalidating the challenged statute because it clearly conflicted with Part I, Article 37 of the New Hampshire Constitution.                                                                                                                              |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of New Hampshire.                                                                                                                                                                                                                                                                                                                        |
| PARTIES               | New Hampshire Bar Association v. State of New Hampshire                                                                                                                                                                                                                                                                                                                                      |

TOPICS

- separation of powers
- constitutional law
- federalism
- civil procedure

## PRACTICE AREAS

constitutional law

legal profession regulation

judicial administration

## QUESTIONS PRESENTED

1. Whether RSA 311:7-g, which required a referendum on compulsory membership in the New Hampshire Bar Association and permitted de-unification based on the vote, violated the separation-of-powers provision of Part I, Article 37 of the New Hampshire Constitution.
2. Whether RSA 311:7-h, which restricted the New Hampshire Bar Association's legislative activities when membership was mandatory under RSA 311:7-g, was independently unconstitutional.
3. Whether the judicial branch possesses inherent constitutional authority to regulate the practice of law and determine whether the State Bar should remain unified.

## HOLDINGS

1. RSA 311:7-g is unconstitutional because it impermissibly encroaches on the judiciary's inherent authority to regulate the practice of law and determine whether the New Hampshire Bar should be unified, in violation of Part I, Article 37 of the New Hampshire Constitution.
2. The court did not decide whether RSA 311:7-h violated federal or state free-speech protections; because RSA 311:7-h operated only if mandatory membership existed under RSA 311:7-g, and RSA 311:7-g was unconstitutional, RSA 311:7-h was without legal effect.

## KEY QUOTATIONS

*“When the actions of one branch of government defeat or materially impair the inherent functions of another branch, such actions are not constitutionally acceptable.”* (151 N.H. at 116)

*“We conclude that the judicial branch has full authority to regulate the practice of law, which includes the right to decide whether unification is of assistance in the exercise of that authority.”* (151 N.H. at 118)

*“The means by which the judicial branch chooses to organize the Bar, which it is charged with supervising, cannot be restricted by the other branches of government.”* (151 N.H. at 119)

*“We reaffirm a well-established principle — that the inherent authority to regulate the practice of law lies with the judicial branch of government and includes the power to create a unified Bar.”* (151 N.H. at 121)

## FACTUAL BACKGROUND

The New Hampshire Supreme Court unified the State Bar in 1968 and ordered permanent unification in 1972, requiring lawyers to belong to the Association and pay dues as a condition of practicing law. In 2003, the legislature enacted RSA 311:7-g, requiring a membership referendum that could authorize or prevent compulsory Bar membership, and RSA 311:7-h, restricting the Association's legislative activities if membership remained mandatory. The Association conducted the referendum but retained the ballots under seal while the court considered whether the legislation impermissibly intruded on the judiciary's authority to regulate the legal profession.

## PROCEDURAL HISTORY

The New Hampshire Bar Association filed an original-jurisdiction proceeding challenging RSA 311:7-g and RSA 311:7-h. The Supreme Court accepted jurisdiction, directed the Association to conduct the statutory referendum while preserving the ballots under seal, held RSA 311:7-g unconstitutional, and concluded that RSA 311:7-h was dependent on RSA 311:7-g and therefore without legal effect.

## DISPOSITION

other

## CASES CITED

- In re Unification of the New Hampshire Bar, 109 N.H. 260 (1968)
- In re Unified New Hampshire Bar, 112 N.H. 204 (1972)
- Petition of N.H. Bar Ass'n, 110 N.H. 356 (1970)
- Petition of Tocci, 137 N.H. 131 (1993)
- Petition of Chapman, 128 N.H. 24 (1986)
- Ricker's Petition, 66 N.H. 207 (1890)
- Petition of Governor and Executive Council, 151 N.H. 1 (2004)
- Opinion of the Justices, 113 N.H. 287 (1973)
- Hynes v. Hale, 146 N.H. 533 (2001)
- McKay v. N.H. Compensation Appeals Bd., 143 N.H. 722 (1999)
- Petition of Mone, 143 N.H. 128 (1998)
- State v. Lindsey, 632 N.W.2d 652 (Minn. 2001)
- In re Rosenkrantz, 59 P.3d 174 (Cal. 2002), cert. denied, 538 U.S. 980 (2003)
- Washington State Bar Ass'n v. State, 890 P.2d 1047 (Wash. 1995)
- Integration of Bar Case, 11 N.W.2d 604 (Wis. 1943)
- In re Integration of State Bar of Oklahoma, 95 P.2d 113 (Okla. 1939)
- Petition of Tennessee Bar Ass'n, 532 S.W.2d 224 (Tenn. 1975)
- Bryant's Case, 24 N.H. 149 (1851)
- Wallace v. Wallace, 166 S.E.2d 718 (Ga. 1969)
- First Justice of Bristol v. Clerk-Magistrate, 780 N.E.2d 908 (Mass. 2003)
- Case v. Lazben Financial Co., 121 Cal. Rptr. 2d 405 (Ct. App. 2002)
- Sams v. Olah, 169 S.E.2d 790 (Ga. 1969)
- Rousseau v. Eshleman, 128 N.H. 564 (1986)
- Petition of Governor and Executive Council, 151 N.H. 1, 4 (2004)