

5 FACTS ABOUT CACR8 – Right to Self-Govern

REACH OUT TO THE M&CG AND REPEAT THE ***FACTS!



MISCONCEPTION #1) It is important that you realize what these amendments do to our Constitution. What makes our State different from home rule States such as Massachusetts is not the absence of this language. It is one word, supreme. The Constitution of the State of New Hampshire, Part 2, Article 2 designates the Senate and House of Representatives as the Supreme Legislative Power of the State.

*****FACT:** The Supreme Power of the State is the people. Part I, Article 1 declares that government “originates from the people.” Through the Constitution, the people of New Hampshire have established the Senate and the House as the state’s legislative authority. CACR8, if adopted by the people, would amend their Constitution to give the people of New Hampshire the power to adopt certain local laws – ones which recognize expanded civil and political rights – beyond the authority of the State to override them. Such is the rightful power of the people – to re-arrange the powers held by different layers of government, even if that re-arrangement removes certain preemptive power away from State government (Part 1, Article 10). It is the people’s rightful power because they are the supreme authority in New Hampshire.

MISCONCEPTION #2) Massachusetts lacks the word supreme. The difference in means that in New Hampshire the towns can do only that which the Legislature permits, while in Massachusetts the towns can do whatever the Legislature specifically prohibits. The supremacy of the State Legislature was done for uniformity of laws, so that a person traveling from town to town could not accidentally find themselves a criminal. The exchange was a large Legislature to ensure that every town would be represented in the making of those laws.

New Hampshire is a State divided into political subdivisions. Massachusetts is an aggregate of political subdivisions. In States like Massachusetts, the issues regarding artificial and natural persons are no less muddled than in ours. The amendment you see before you would make New Hampshire an aggregate of city States.

*****FACT:** The people of the State of New Hampshire are the source of all governing authority for the State, as recognized by Part I, Article I of the Constitution. The people of the state live in political subdivisions. The people of the State have the supreme power to decide the scope of municipal lawmaking within those subdivisions. CACR8 is about the power of the people to exercise their supreme authority to change the organization of government within the State. While the current state legislature may not agree with that division of duties, in the end, it is the people of New Hampshire which hold the right to change their own Constitution in ways that they see fit (Part 1, Article 10).

MISCONCEPTION #3) The State Legislature would lack even the prohibitive power that the Legislature of Massachusetts enjoys. The chaos it could create is bounded only by constitutionally recognized rights.

*****FACT:** This is factually incorrect. CACR8, if adopted, would allow people, within their own communities, to adopt a narrow set of laws that would be protected against State override. That narrow set of laws would include only those laws which (1) “protect health, safety, and welfare”, by (2) “recognizing or establishing rights”. Those local laws would only supersede the State’s ability to override if those laws do not (1) drop below those rights guaranteed by state and federal constitutions, AND (2) if they do not “weaken” existing protections in state law. Thus, those local laws are constrained not just by existing constitutional rights, as incorrectly asserted by former Rep. Dan Itse, but also by state and federal statutes that currently provide legal protections.

MISCONCEPTION #4) The phraseology “the people of New Hampshire have an inherent and inalienable right of local, community self-government in each county, municipality, city, and town to enact local laws that protect health, safety, and welfare” is so broad the State would not have the power to prohibit local law that did not infringe on enumerated right.

*****FACT:** Again, this is factually incorrect – the local laws envisioned by CACR8 are invalid if they constrict existing state and federal constitutional rights; OR if they attempt to weaken state and federal statutory protections. If the State disagreed with certain local laws, the State could still preempt those local laws in two ways – either (1) by adopting state laws that provide for more expansive statutory protections than those provided by the local laws, or (2) by recognizing more expansive rights.

MISCONCEPTION #5) A town could for instance legalize prostitution. Or, establish a militia independent of the State. The range of activity is bounded only by imagination. They could void all State environmental laws.

*****FACT:** A town could not legalize prostitution or establish an independent militia. As an example, a reviewing Court could only uphold a local “right to prostitute” law if it satisfied the burden of showing that such a law was necessary to “protect health, safety, and welfare.” Such a local law would also have to show how existing state and federal criminal laws, which make prostitution a crime, are somehow not existing “protections” that would nullify the local law. Simply put, the local law could not meet that burden of proof. In fact, the standards of CACR8 would work the other way – creating the authority to outlaw prostitution if the State proceeded to legalize it.

“Voiding of all environmental laws” is factually inaccurate as well, as CACR8 would allow the passage of only a narrow set of local laws – ones that expand civil and political rights at the local level, AND ones that increase legal protections above the “floor” provided by existing state and federal laws. Therefore, CACR8 does not provide any power to nullify environmental laws; just the opposite, it creates the authority to raise the standards of those environmental laws above state levels, within local law.

