

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2003-_____

In Re: New Hampshire Bar Association (Legislative Deunification)

PETITION FOR DECLARATORY RELIEF

The New Hampshire Bar Association, by this petition for original jurisdiction, seeks declaratory relief as to the constitutionality of Laws 2003, Chapter 250 (House Bill 175), relating to legislative deunification of the Bar, as follows:

1. The New Hampshire Bar Association was unified by decisions of this Court in 1968, on a temporary basis:

We hold that the determination of whether the administration of justice in New Hampshire will best be served by the compulsory enrollment of all the members of the Bar of this state into one unit to which the members must pay dues necessary to its efficient operation is an integral part of the inherent power of this court to regulate the practice of law and to supervise those engaged therein in New Hampshire. Lawyers being thus uniquely related to, and subject to supervision and regulation by the judiciary, we hold that this court has jurisdiction to decide the issue of the unification of the Bar of this state presented by the petition before us. *In Re Unification of the New Hampshire Bar*, 109 N.H. 260, 264 (1968).

and in 1972, on a continuing basis:

We conclude that the association has prospered and grown in stature under unification, and that unification should now be continued without limitation of time, under the court's continuing jurisdiction. *In Re Unified New Hampshire Bar*, 112 N.H. 204, 207 (1972).

2. Laws 2003, Chapter 250, effective July 1, 2003, provides as follows:

State Bar Association

311:7-g State Bar Association Membership; Vote Required.

I. The supreme court, pursuant to its power to regulate the practice of law under this chapter and its continuing supervisory authority over attorneys practicing before courts of this state, may

assess fees for the purpose of regulating the practice of law and for maintaining a professional conduct committee.

II. The supreme court may require all persons engaged in the practice of law in this state to be members of the New Hampshire Bar Association; provided that the members of the Bar Association have approved the requirement pursuant to paragraph III.

III. The board of governors of the New Hampshire Bar Association shall place on the ballot with the election of officers of the association, the following question: "Shall membership in the New Hampshire Bar Association be required for all attorneys licensed to practice in this state?" An affirmative vote of a majority of those voting on the question, shall allow for the requirement by the supreme court under paragraph II. Approval by the membership under this paragraph shall be valid for a 5-year period beginning on the date of the affirmative vote.

311:7-h Bar Association Legislative Activities.

I. The New Hampshire Bar Association, if membership is mandatory for attorneys under RSA 311:7-g, shall be prohibited from using any part of dues paid by its members for the purpose of lobbying or influencing the general court on any matter, except as provided in paragraph III.

II. If membership in the New Hampshire Bar Association is mandatory for attorneys under RSA 311:7-g, no person shall be permitted to engage in legislative activities on behalf of the New Hampshire Bar Association for the purpose of lobbying or influencing the general court on any matter, except as provided in paragraph III.

III. The Bar Association may use a part of dues paid by its members, and may engage a person to lobby or influence the legislature on its behalf provided the Association:

(a) Limits its activities before the general court to those matters which are directly related to the regulation of the legal profession and improving the quality of legal services available to the people of the state. The scope of such permissible activities shall be narrowly defined; and

(b) Has determined that substantial unanimity exists within the bar as a whole in agreement with the position taken on a matter.

IV. Nothing in the section shall prevent officers and members of the Bar Association from appearing before the general court to express their views as individuals, as members of voluntary associations, or as representatives of clients.

V. Any member of the New Hampshire Bar Association, if membership is mandatory for attorneys under RSA 311:7-g, may refuse to pay that portion of the Bar Association dues that are used for lobbying or influencing the legislature or other political matters.

311:7-i Severability. If any provision of this subdivision or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provisions or application, and to this end the provisions of this subdivision are severable.

3. The New Hampshire Bar Association questions the constitutionality of this legislation, both federal and state, on, *inter alia*, the following grounds:
 - a. The mandated deunification and dues rebate violate the inherent power of this Court to regulate the Bar, as well as the specific provisions of the New Hampshire Constitution in Part II, Articles 72-a and 73-a;
 - b. The lobbying restrictions violate the United States Constitution, Amendment I, and the New Hampshire Constitution, Part I, Article 22; and
 - c. The mandated referendum improperly interferes in the affairs and charter of a private organization, in violation of the contract clause of the United States Constitution, Article 1, Section 10.
4. The New Hampshire Bar Association requests that this Court review these issues, and declare the legislation unconstitutional, on one or more of these asserted grounds.
5. The New Hampshire Bar Association respectfully suggests that appropriate Orders of Notice be issued to the Office of Attorney General, the Office of the Governor, the Speaker of the House, and the President of the Senate, as well as such other notice of these

proceedings as may be appropriate, followed by a schedule for submission of memoranda and such oral argument as the Court may deem appropriate.

6. The undersigned hereby certifies that a copy of this petition has been forwarded to Peter W. Heed, Attorney General.

Respectfully submitted,

NEW HAMPSHIRE BAR ASSOCIATION

By Its President:

Dated: July 31, 2003

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