

# Claremont decisions share a common thread with Dred Scott

Peter J. Hansen

ANOTHER VIEW

IT IS NOW MORE THAN four years since taxation and school funding were thrown into turmoil in New Hampshire by the state Supreme Court's Claremont decisions. We don't seem to be anywhere near finding a new equilibrium.

That's not entirely a bad thing. This is one of those cases where the defense of liberty has required a bit of turmoil. The state House of Representatives belatedly took a defiant stance when it passed House Concurrent Resolution 14 this past January. HCR 14 asserts legislative control over school funding and states that the Supreme Court erred in its two Claremont decisions.

While HCR 14 has certainly not solved the state's problems, it was a bold and unusual step. Throughout the country in recent years, state courts have been overturning long-standing statutes, especially regarding school funding. While many courts have presented strained and tendentious readings of state constitutions, however, most state legislatures have accepted their decisions.

Many people feel it's irresponsible to question the courts. This was not the view of our greatest President, however, or of our Founding Fathers.

During his fifth debate with Stephen Douglas in 1858, Abraham Lincoln declared: "Jefferson said that judges are as honest as other men, and not more so. And he said, substantially, that whenever a free people should give up in absolute submission to any department of government, retaining for themselves no appeal from it, their liberties were gone."

To accept the Claremont decisions without resistance is to accept that there are virtually no limits on the power of the judiciary. Moreover, it is in some subtle way to accept that New Hampshire's citizens and elected representatives are like children who must be guided on really important issues by mature and wise judges.

Lincoln did not merely disagree with the Dred Scott decision; he believed it the duty of responsible citizens to oppose the court, in a lawful manner. "We do not propose that when Dred Scott has been decided to be a slave by the court we, as a mob, will decide him to be free, but we nevertheless do oppose that decision as a political rule, which shall be binding on the voter to vote for nobody who thinks it wrong, which shall be binding on the members of Congress or the President to favor no measure that does not actually concur with the principles of that decision. We propose so resisting it as to have it reversed if we can, and a new judicial rule established in its place."

Supreme Court that the people of New Hampshire disagree with the Claremont decisions, which may eventually have a salutary effect, though it hasn't yet.

HCR 14 also presents state legislators with a useful tool when they confront future judicial nominees. While it is inappropriate for judicial nominees to state their opinion on particular cases they may be called upon to decide, there is no reason why they shouldn't state their opinion on acts of the Legislature. Legisla-

Like wise, we must not allow the Claremont decisions to be politically or intellectually binding on us as citizens. We must take all available steps to establish a new judicial rule. We must obey the law, but we must do what we can to ensure that in the future the court also obeys the law.

By passing HCR 14, the House has taken an important step in what promises to be a long struggle. It has stated where it stands, which is crucial in any battle for public opinion. It has shown the

tors should ask future judicial nominees what they think of HCR 14, and any nominee who refuses to express an opinion should be rejected.

Determined yet prudent resistance to the Claremont decisions may eventually bring us a new Supreme Court with more respect for our state Constitution, our elected representatives and the people of New Hampshire.

— Peter Hansen is president of Hansen Capital Management in Alstead.