CHRISTOPHER T. SUNUNU
Governor

# STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

May 14, 2018

The Honorable Executive Council
State House
Concord, New Hampshire 03301

## REQUESTED ACTION

Request to adopt a resolution directing questions regarding House Bill 1264 to the New Hampshire Supreme Court.

## EXPLANATION

Pursuant to Part 2, Article 74 of the New Hampshire Constitution, I am requesting that the Executive Council adopt the attached resolution requesting that the Justices of the Supreme Court give their opinion and answer important questions of law regarding House Bill 1264.

Respectfully submitted,

Christopher T. Sununu
Governor

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# Resolution of the Governor and Executive Council

**May 16, 2018**

WHEREAS, Part 2, Article 41 of the New Hampshire Constitution provides, in pertinent part, that "The governor shall be responsible for the faithful execution of the laws" and that "He may, by appropriate court action or proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right, by any officer, department or agency of the state;" and

WHEREAS, Part 2, Article 60, provides, in pertinent part, that the duties of the Executive Council include "advising the governor in the executive part of government;" and

WHEREAS, Part 2, Article 74 of the New Hampshire Constitution provides, in pertinent part, that the "Governor and Council shall have authority to require the opinions of the justices of the Supreme Court upon important questions of law and upon solemn occasions;" and

WHEREAS, House Bill 1264 was passed by the New Hampshire House and Senate and is currently pending in the enrolled bills process, upon completion of which the bill will be placed before the Governor for his action; and

WHEREAS, House Bill 1264, if it becomes law, would amend the statutory definitions of the terms "resident" and "residence" in RSAs 21:6 and 21:6-a to remove the words "for the indefinite future" in each of the aforementioned definitions; and

WHEREAS, House Bill 1264, if it becomes law, would eliminate any substantive difference between a person who is domiciled in New Hampshire for voting purposes and a person who is a resident of New Hampshire, thus subjecting those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire; and

WHEREAS, legal requirements for residents of New Hampshire include, but are not limited to, the requirements to take actions required by RSAs 261:45 and 263:35 and to pay any fees or taxes associated therewith; and

WHEREAS, multiple individuals and organizations have communicated to the Governor their concerns that House Bill 1264 would, if it becomes law, on its face and as applied to students attending a postsecondary institution within the State of New Hampshire who currently claim New Hampshire as their domicile for voting purposes but who do not claim New Hampshire as their residence, violate the New Hampshire and United States Constitutions; and

WHEREAS, in light of the Governor's duty to enforce compliance with constitutional mandates, constitutional concerns regarding House Bill 1264 should be seriously considered as part of the Governor's pending decision regarding the appropriate action to take on House Bill 1264; and

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WHEREAS, the Governor and Executive Council believe that the heightened public interest in House Bill 1264 and the constitutional questions that flow from the meaning and effect of the language of House Bill 1264 render this a solemn occasion upon which the justices of the Supreme Court should be required to give their opinion on important questions of law pursuant to Part 2, Article 74 of the New Hampshire Constitution.

NOW, THEREFORE, BE IT RESOLVED by the Governor and Executive Council that the Justices of the Supreme Court be respectfully requested to give their opinion and answer the following important questions of law:

I. By subjecting those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSAs 261:45 and 263:35 and to pay any fees or taxes associated therewith, would House Bill 1264, on its face, violate any of the following provisions of the New Hampshire or United States Constitutions?

(a) The Equal Protection Clause of Part I, Article 2 of the New Hampshire Constitution.

(b) Part I, Article 11 of the New Hampshire Constitution.

(c) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

II. By subjecting those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSAs 261:45 and 263:35 and to pay any fees or taxes associated therewith, would House Bill 1264, as applied to students attending a postsecondary institution within the State of New Hampshire who currently claim New Hampshire as their domicile for voting purposes but who do not claim New Hampshire as their residence, violate any of the following provisions of the New Hampshire or United States Constitutions?

(a) The Equal Protection Clause of Part I, Article 2 of the New Hampshire Constitution.

(b) Part I, Article 11 of the New Hampshire Constitution.

(c) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

AND BE IT RESOLVED THAT the Secretary of State be directed to submit a copy of this resolution to the Clerk of the Supreme Court.

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