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Cook on Concord

On court decisions and coincidences

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It is funny sometimes how seemingly different and disconnected events can be tied together as themes in politics and life.

Recently, Doris "Granny D" Haddock celebrated her 100th birthday and shortly thereafter was given a lavish birthday party in the Executive Council chambers at the State House in Concord. Various public officials and advocates of campaign finance reform spoke glowingly of the indefatigable New Hampshirite who walked across the country to publicize campaign reform efforts.

A highlight of the speeches at the birthday party was the recent Supreme Court decision, *Citizens United v. Federal Election Commission*. In the 5-4 decision, the court struck down 100 years of precedent and decided that corporate funding of independent political broadcasts in candidate elections cannot be limited, because doing so would be a non-compliance with the First Amendment's freedom of speech rights.

A nonprofit corporation, *Citizens United*, brought the case after the group's film - critical of Hillary Clinton during the 2008 presidential campaign - was denied broadcast after being defined as a campaign ad.

The decision overturned a District of Columbia U.S. District Court decision that denied *Citizens'* motion for a preliminary injunction to stop the Federal Election Commission's determination. The 5-4 decision was deemed by many to be "legislation from the bench" by the conservative majority of Justices Roberts, Scalia, Alito and Thomas along with the swing vote of Justice Kennedy.

The minority, led by Justice John Paul Stevens, decried the decision as just plain wrong and, interestingly, former Justice Sandra Day O'Connor openly criticized the court. President Obama, in his State of the Union address, directly criticized the action of the court's majority in the presence of a number of justices - a departure from traditional decorum.

Already, the Congress is considering ways to address the decision.

Criticism of Supreme Court decisions is not new, and it probably has existed since *Marbury v. Madison*, the landmark case in which Justice John Marshall established the principle of "judicial review" that allows the highest court to review the actions of the other branches of government.

Nevertheless, judicial review survives and is not questioned.

In New Hampshire, at about the same time of the *Citizens United* decision,

the New Hampshire Supreme Court's 3-2 decision upheld Superior Court Judge Kathleen McGuire's invalidation of the state budget provision that took \$110 million in surplus from the Joint Underwriting Association fund that provides medical malpractice insurance.

This decision, rendered by Chief Justice Broderick and Justices Hicks and Conboy, was criticized in the dissent by Justices Duggan and Dalianis. Nevertheless, the decision will stand and the governor and Legislature will have to figure out how to remedy the issue created for the state budget.

The largest issue in Concord is the projected budget deficit, made worse by the JUA decision. Sen. Lou D'Allesandro, chief of the financial analysts in the State Senate, predicts a \$100 million deficit for this year. And others, including the Josiah Bartlett Center's president, Charlie Arlinghaus, estimate the deficit as high as \$250 million over the next 17 months. What to do?

Obviously, all departments of government will be asked to look at their spending. This fact has sparked an effort by Health and Human Services Commissioner Nicholas Toumpas to convene meetings around the state with many of the 8,000 providers with whom his department contracts to see if a more efficient and effective system of providing services to those entitled to state benefits can be formulated.

At one such meeting in Manchester recently, Toumpas described the amount of service provided to the Manchester region, the startling increase in the use of services such as Medicaid and food stamps since the recession began, the \$40 million plus problem he has in his budget this fiscal year, and asked for the help of the providers in an effort to redesign the system.

Meanwhile, Toumpas is faced with cutting current benefits, asking for higher co-payments, and somehow finding the money to close the gap in funding. The rest of the fiscal year will not be pretty to those receiving benefits or for the providers.