

BILL ANALYSIS

Senate Research Center
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S.R. 286
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As Filed

DIGEST

In 1990, the United States Supreme Court, in the case of Missouri, et al. v. Jenkins, et.al. (495 U.S. 33) chose to disregard Article I, Section 8, of the United States Constitution, which reserves exclusively to the legislative branch of government the power to tax the citizenry. In drafting that constitutional section and allocating the power of taxation, the founding fathers drew upon the Petition of Right, an English law initiated by Sir Edward Coke, then approved by the British House of Commons and accepted by King Charles I on June 7, 1628, which states in pertinent part that “...no man hereafter [may] be compelled to make or yield any...tax...without common consent by Act of Parliament....”

In 1787, the framers of the United States Constitution reiterated this principle of limited taxation, specifically vesting with the legislative branch the “...Power To lay and collect Taxes, Duties, Imposts and Excises....” Their intent is made clear by the analysis of James Madison, who observed in The Federalist No. 48 that “...the legislative department alone has access to the pockets of the people...” The same view is expressed by Alexander Hamilton, who asked rhetorically in The Federalist No. 33, “[w]hat is the power of laying and collecting taxes but a legislative power...?” and follows consistently in The Federalist No. 78, in which he argued that the judiciary should be the least dangerous branch of government inasmuch as judges would have “...no influence over either the sword or the purse....”

Yet today, Hamilton’s argument no longer rings true. Through legal orders and the exercise of judicial threat and intimidation, federal courts have usurped the power of the legislative branch and have gone so far as to apply it to non-federal levels of government, mandating state and local requirements that have the direct, or indirect, effect of imposing judicial taxes upon the states and their political subdivisions. In so vesting itself by fiat with control of the public purse strings, the federal judiciary has contravened and overridden the constitutional separation of powers between the different branches and levels of government, threatening creation of a fiscal oligarchy un beholden to influence by the electorate.

The states and Congress have too long ignored this self-proclamation and seizure of taxation powers, and it behooves all Americans to preserve their rights by the adoption of an amendment to the Constitution of the United States, re-establishing the link between taxation and representation. Seeking to reverse the aforementioned Jenkins decision of 1990, lawmakers in 21 other states, beginning in 1993, have already adopted and transmitted to Congress memorials requesting that Congress propose an amendment to the United States Constitution, and those memorials have been entered in the Congressional Record.

PURPOSE

As proposed, S.R. 286 submits the following resolutions:

Provides that the 77th Texas Legislature memorializes the United States Congress to propose and submit to the states for ratification an amendment to the United States Constitution to prohibit all federal courts from ordering or instructing any state or political subdivision thereof, or an official of any state or political subdivision, to levy or increase taxes. Provides that Congress also be respectfully requested to entertain certain suggested text for such an amendment. Provides that the secretary of the Texas Senate forward official copies of this

resolution to certain stated parties, with the request that this resolution be entered officially in the Congressional Record as a memorial to the United States Congress to propose for ratification a federal constitutional amendment to prohibit judicially-imposed taxes.