

STORAGE NAME: h0777.jud

DATE: March 5, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HM 777

RELATING TO: Taxes/Increases by Federal Courts

SPONSOR(S): Rep. Sanderson

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) FINANCE & TAXATION
 - (3) RULES & CALENDAR
 - (4)
 - (5)
-

I. SUMMARY:

House Memorial 777 asks Congress to submit to the states an amendment to the United States Constitution which would prohibit federal courts from ordering state and local tax increases. The Memorial also proposes that each state legislature pass similar resolutions. The Memorial directs the Secretary of State to transmit copies of the Memorial to particular federal and state officials.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1990, in the case of *Missouri v. Jenkins*, the United States Supreme Court affirmed a lower court's decision which held that federal judges have the power to order an increase in state and local taxes. This ruling may negate every tax limitation provision in state laws and state constitutions. It could be used to raise state and local taxes to fund any unfunded federal mandate which the federal courts find in the Constitution of the United States or properly passed by Congress under Article I of the Constitution.

The *Missouri* case arose out of a civil rights case attempting to cure public school segregation. Classical remedies did not appear sufficient, in part because the Missouri-Kansas border affected the reach of the direct rule of the case. Interdistrict busing was not an adequate option because the Kansas schools were not proper defendants in the case. Local tax increases were ordered, outside the state constitutional authorization therefor, in order to attract suburban students to well funded Kansas City magnet schools. (The approach actually did not significantly alter the racial balance of Kansas City schools and as a result several hundred families of a racial minority have since solicited the court having jurisdiction for a redirection of the desegregation funds to authorize scholarships to facilitate majority to minority transfers to private schools in the region.)

The case stands as strong precedent for court ordered relief any time a limitation on taxation can be shown to interfere with correcting major institutional infringements on civil rights. Such cases include cases affecting prisons, institutions for treatment of disabilities, as well as all levels of publicly funded educational institutions. Federal courts could arguably order tax increases to fund special education, gender equity, or even the cost of capital crime defenses if deemed necessary to advance the civil rights of appropriate claimants.

B. EFFECT OF PROPOSED CHANGES:

The Memorial would not make any changes unless the Congress did act and the requisite number of states did ratify the proposed amendment. If approved, the amendment would limit the power of federal courts by prohibiting orders to levy taxes originating with the judiciary. It would not limit the powers of such courts to order expenditures required by federal law, or to financially punish jurisdictions or their authorities when lawful court orders are disobeyed. It would however restore the state legislative distribution of taxing powers, permitting the traditional state political processes to manage the funding of governmental responsibilities.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

If approved by Congress and ratified by the requisite number of the United States, the proposed federal constitutional amendment would eliminate the presently asserted authority of federal courts to order tax increases at the state and local level.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No agency or program is eliminated or reduced.

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

If approved by Congress and ratified by the requisite number of the United States, local and state tax increases would not be a remedy available to federal courts, so it can be assumed that taxes in some jurisdiction would be lower because of the proposed amendment.

- d. Does the bill reduce total fees, both rates and revenues?

The proposed amendment does not address fees.

- e. Does the bill authorize any fee or tax increase by any local government?

No. The amendment would protect local governments from federal court orders to increase taxes.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

The bill does not affect any entitlement to any government service or subsidy.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill does not impact the liberties of individuals or private organizations.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

The bill does not create or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The proposed amendment would limit the judicial Power of the United States as presently constituted under Article III of the Constitution of the United States, and strengthen the guarantee to every state of a republican form of government found in Section 4, Article IV of the U.S. Constitution.

E. SECTION-BY-SECTION ANALYSIS:

A section-by-section would not contribute to understanding of the legislation.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

The impact of the proposed amendment is not susceptible to calculation. It most likely would be negligible.

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

The impact of the proposed amendment is not susceptible to calculation. It most likely would be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

By precluding federal judicial taxation, the private sector could return to the assumption that all increases in taxes would originate with the legislative branch. The representative nature of American taxation provides significant protection to economic liberties of the private sector.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The impact of the proposed amendment is not susceptible to calculation. It most likely would be negligible.

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IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The limitations of Article VII, Section 18 of the Florida Constitution do not apply to this bill memorializing Congress.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

Although there may be alternatives to the proposed amendment, the federal judicial excess addressed affects state sovereignty in such a significant way, that the proposed amendment does appear to be a solution commensurate with the problem.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Don Rubottom

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