

HJR

60



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FEB 14 1994

Ans'd.....

BILL SKAGGS

February 8, 1994

Honorable Ramona Barnes
Speaker of the House
State Capitol Building
Juneau, Alaska 99801

Dear Representative Barnes:

As you know, Missouri House and Senate passed a concurrent resolution petitioning Congress to propose ratification by the legislators of three-fourths of the state to restrict the Supreme Court or any inferior court of the United States to levy or increase taxes.

Not every state has begun their regular legislative session, but for those of us who have, it's a busy and exciting time.

Twenty-six states have responded to our call to propose a change in our federal constitution which reads:

"Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes."

Federal mandates under the Clean Air Act are just one example of an ongoing and growing squeeze being placed upon the states by the federal government. These mandates have caused fear, anger and resentment among our citizens and our commercial and industrial community. Mandates, dictated by Washington, are putting additional strains on an already tight state budget.

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To further compound this assault on state revenues the federal district court, with the blessing of the United States Supreme Court, continues to order property tax increases "ad infinitum" to correct what Supreme Court Justice Kennedy rightly referred to as an issue which is properly "part of a legitimate political debate over . . . spending priorities" and not a Constitutional command. In his dissenting opinion to this usurpation of legislative authority by the federal courts Justice Kennedy noted, "This . . . begins a process that over time could threaten the fundamental alteration of the form of government our Constitution embodies."

The Constitution does not allow, nor do we need, judicial intervention requiring tax increases as solutions to potentially serious problems.

You're busy, I know, but in order to be of help to all those working for passage of a concurrent resolution, we are asking you to send us an update of your progress. Just return the enclosed questionnaire at your earliest convenience.

Sincerely,


Bill Skaggs

BS:ya

Enclosure

Alaska State Legislature



While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Intern:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

Representative Al Vezey

SPONSOR STATEMENT

The purpose of HJR 60 is to petition the Congress of the United States to prepare and present to the legislatures of all the states an amendment to the Constitution of the United States which would prohibit the Supreme Court or any inferior court of the United States from ordering a state or political subdivision of a state to levy or increase taxes.

The resolution comes as a request from the office of Representative Bill Skaggs from the state of Missouri. This effort was brought about by a court case Missouri, whereby the Supreme court mandated the city of Kansas City to charge a tax to fund desegregation expenses ordered by the courts.

Presently there are ten states which have introduced a similar resolution.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
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FEB 17 1994

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 17, 1994

SUBJECT: Amendment to the United States Constitution (8-LS1764)
TO: Representative Al Vezey, Chair
House State Affairs Committee
FROM: Tamara Brandt Cook
Director *TBC*

Here is a draft resolution requesting the United States Congress to propose an amendment to the Constitution to prohibit federal courts from ordering states or political subdivisions to impose or increase taxes. Under Article V of the U.S. Constitution Congress may propose amendments. Additionally, upon application of the legislatures of two thirds of the states, Congress is required to call a convention for the purpose of considering amendments. This latter method has never been used and there is considerable debate about whether a convention may be limited to consideration of only a specific amendment or whether, having called a convention, any amendment may be considered. Because of this uncertainty, I have not in this draft included a request that a convention be called for the limited purpose of considering a specific amendment relating to court ordered taxation.

TBC:pl
94-136.plm

Enclosure

*Rec'd
2/24/94*

Legal Svc. Memo 2-17-94

1

The Case For A Constitutional Amendment To Limit The Power To Tax Which Has Been Assumed By The Federal Courts

By John R. Stoessler



I have read your *The Case For A Constitutional Amendment* and congratulate you on a job well done. It is extremely well documented and very forceful. I wish you well.

As you know, you are taking on a daunting task in trying to educate the people in this matter. The Court, without any authority, has literally taken over a substantial portion of social policy in the nation. It has done this by telling the people that "the Constitution requires it." Felix Frankfurter wrote to President Franklin Roosevelt, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course...it is they who speak and not the Constitution. And I verily believe that that is what the country needs most to understand."

Letter to John R. Stoeffler
From The Honorable Robert T. Donnelly
Chief Justice of Missouri
1973 - 1975 1981 - 1982

wit, there shall be no taxation without representation. In a commentary I penned for the March 5, 1992 edition of the *St. Louis Post Dispatch*, entitled "When Judges Subvert The Constitution", I addressed the abuse of judicial power in the area of court ordered taxation. I pointed out then that, "The framers of the Constitution specifically limited the power to tax and vested such power to lay and collect taxes in the legislature...No exceptions to this view were ever expressed" 17. or, I hasten to add, implied. Earlier I quoted these words of Bishop Hoadly, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver." I would suggest to you that whoever controls the purse strings ultimately controls power, the ability of a government to function and the direction it shall go. Alexander Hamilton put it another way in Federalist 79 when he stated, "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." Of the three sources of political power to which I have referred, the power of the purse is the most critical for the power to tax is not only the power to build, but in the wrong hands it can be an instrument of destruction, and the power of total control.

When did the federal judiciary take upon itself the power tax? In November 1982, Missouri voters approved a referendum (Proposition C) which directed local school officials to reduce their operating levies by an amount equal to fifty percent of the revenues local school districts would receive under a one-cent increase in the state sales tax. 18. On July 5, 1983 the federal district court enjoined the voter approved roll back of real estate taxes. (*Liddell v Board of Educ.*, supra, 567F. Supp at 1056) and directed the Board of Education to use this money to fund the quality education programs necessary to restore the St. Louis schools to their AAA status. The U.S. Court of Appeals for the Eighth District sustained the district court's injunction of the roll back on what it termed "Equitable grounds". The court claimed that it had "**broad equitable powers to remedy...evils...(including) a narrowly defined power to order increases in local tax levies on real estate.**" 19. (emphasis mine) In a dissenting opinion Judge John R. Gibson noted that, "The Court need not and should not go this far. The taxing power of the states is primarily vested in their legislatures, deriving their authority from the people." 20. Judge Bowman concurred with Judge Gibson's opinion and stated, "I join in Judge John R. Gibson's well-reasoned dissent...and the singular inappropriateness in our Constitutional system of a federal court's ordering state and local taxing authorities to impose specific tax increases." 21. There are those who choose not to call this example a tax increase, but it

can be called nothing less when citizens are denied monies they voted for themselves. I was taught in school that taxation without representation as practiced in the late 1700s was wrong. The question is, if it was wrong then why is it right today? And, if it is wrong, where are our elected representatives to right this wrong? There is more.

In September of 1987 Judge Russell G. Clark of the District Court entered an order approving extensive Kansas City Missouri School District capital improvement projects and a far-reaching magnet schools plan. In order to fund this order Judge Clark ordered a surtax of 1.5% added to Missouri's State Income Tax for all persons and entities receiving income for work done, services rendered, and income received from activities within the KCMSD and further ordered the tax levy for the KCMSD to be raised from \$2.05 to \$4.00 per \$100 of assessed valuation. 22. On appeal the Eighth Circuit reversed the "Judicially imposed income tax surcharge, holding that **the trial court invaded the province of the legislature in ordering this surcharge,**(emphasis mine) and that the order (was) beyond the power of the district court as outlined in Specified Supreme Court and Eighth Circuit precedent". 23. On the other hand the Court of Appeals affirmed the District Court's \$1.95 levy increase in effect until the end of the 1991 - 92 fiscal year,... then authorized the Kansas City School Board to obtain from the trial court each year ad infinitum, and without voter approval, a "reasonable" levy (tax) increase over and above the \$1.95 levy (tax) to fund desegregation expenses ordered by the courts." 24. In 1988 The United States Supreme Court upheld the lower federal court's order imposing a property tax increase claiming that the order did, "satisfy equitable and **constitutional principles governing the District Court's power.**" 25. (emphasis mine)

In a dissenting opinion, however, Supreme Court Justice Kennedy stated that, "The premise of the Court's analysis is infirm." He continued , "The question is whether a district court possesses a power to tax under federal law, either directly or **through delegation.**" (emphasis mine) Justice Kennedy points out that, "The description of the judicial power nowhere includes the word 'tax' or anything that resembles it."; 26. but this constitutional fact did not deter the Supreme Court from upholding the lower court's order or "authorization" to increase property taxes in Kansas City, Missouri.

Such power to allocate or reallocate funds by an unaccountable judiciary denies elected officials the necessary tools to properly and responsibly represent and provide for those who have freely elected them. An unelected and unaccountable judiciary, sitting miles from the people affected,

has no true interest in them, only subjective goals cloaked in robes of Trojan Horse legalese. As Justice Kennedy notes in his dissenting opinion, "Perhaps it is good educational policy to provide a school district with the items included in the KCMSD capital improvement plan...(B)ut these items are part of legitimate political debate over educational and spending priorities, not the Constitution's command of racial equity." 27.

This decision "authorizing" a tax increase represents "the first in which a lower federal court has in fact upheld taxation to fund a remedial decree". 28. As Justice Kennedy noted, "...rules of taxation that override state political strictures not themselves subject to any constitutional infirmity raise serious question of federal authority." This decision, "a first" according to Justice Kennedy, sets a *stare decisis*, or precedent, which will at some time in the future affect all states, and the fact that Congress remains silent on this issue lends credibility to the claim by the courts that they do in fact have the power to tax. In his book, *The Tempting of America*, Judge Robert Bork spelled out his view of the responsibilities of the legislative vis-a-vis the judicial branch of government. He wrote, "Where the law stops, the legislator may move on to create more; but where the law stops, the judge must stop." 29. Here let me add that the only change a court may make is to change the period at the end of the law to an exclamation point!

In a column of October 18, 1993 columnist Charley Reese made this observation about government, " (T)he men who signed the Declaration of Independence and who wrote the Constitution recognized 'hat government--any government--was the potential enemy of individual freedom. They held high the value of governments with limited powers and limited jurisdiction, bound tightly by constitutions, which they viewed as contracts between the people and their governments. (emphasis mine) Today", he continues, "there is virtually zilch talk about freedom or principles of good government. It's all about social and economic issues." 30. Again Justice Kennedy, "This assertion of judicial power is one of the most sensitive of policy areas, that involving taxation, (it) begins a process that over time could threaten fundamental alteration of the form of government our *Constitution embodies*." 31. (emphasis mine) In his farewell remarks to the new nation President George Washington warned, "Let there be no change by usurpation; for through this, in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed". James Madison also noted, "I believe there are more instances of the abridgment of freedom of the people by gradual and silent encroachments of those in power,

than by violent and sudden usurpations." 32. In a recent commentary columnist Thomas Sowell wrote, "History shows many great nations and civilizations declining and falling, but we may be the first to destroy ourselves from within." 33.

In 1982 Judge Robert T. Donnelly addressed the Missouri General Assembly. In his remarks he stated, "History tells us that the Framers (of the Constitution), in establishing a federal government, were influenced by the teachings of Locke, Rousseau, and others, and by the social concept they espoused. This concept would recognize a continuing right in the people to call their agents, even the United States Supreme Court, to account. It would assure that the people, and not an agency of government, will determine the direction of their lives. If, in fact, the United States Supreme Court is exercising powers without the consent of the governed - the people - then the rights it purports to secure in their name are counterfeit - its benevolence a fraud." 34.

Again let me pose the question. Where were our elected officials while all this was taking place? Where are they today? Do they even have an opinion? In May of 1992 I traveled to Washington and visited with a number of members of Congress, among them Congressman Henry Hyde (R-IL). In his office I discussed my concern; his response, "While I'm sympathetic to your concern, on this issue frankly Congress just doesn't give a damn." Today we have a Congress that won't balance the budget, a Congress in which many members were unable or unwilling to balance their own personal checkbooks until their irresponsible and culpable behavior was exposed and a Congress which has shown a willingness to turn over to an un-elected judiciary the most sacred of trusts, the authority to tax. So who is to rein in the judiciary if not the legislative branch of government? The people? Think again!

Today the American people are under the illusion that they are being constitutionally governed, without even understanding what that means. Sure, they and members of Congress will tell you that they have read the Constitution, but without knowledge of prior intent they will never understand its true meaning. "Government", writes columnist Walter Williams, "is about coercion. Limiting government is the single most important instrument for guaranteeing liberty. We're working on the third generation which has had little in the way of education about what our Constitution means and why it was written. Thus, they fall easy prey to charlatans, quacks and hustlers." 35.

In 1982 Judge Donnelly attempted to persuade the General Assembly to petition Congress to rein in the federal judiciary. His admonishment to do so fell upon deaf ears; but as time passes we all see things in a different light.

2

In 1993 the Missouri General Assembly passed a resolution calling upon Congress to submit to the states an amendment to the Constitution which would curb the taxing powers of the judiciary. It reads, "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes."

36. Credit for the success in passing this resolution is due primarily to the tireless and persistent efforts of State Senator Walt Mueller (R-Kirkwood) and those of Representative Bill Skaggs (D-Kansas City).

Gordon Crovitz, writing in *The Wall Street Journal* noted, "No legal principal carves illegitimate rulings in stone." 37. If this be true, as I believe it to be, then no unconstitutional ruling, opinion or declaration can be wrapped in robes of declared constitutional legitimacy and become the law of the land unless the misinformed, uninformed or those who know better do not act to stop it. Inasmuch as Congress chooses to ignore the unconstitutional actions of the Court, I believe it is now up to the state legislatures to call the Supreme Court of The United States to account by calling for an amendment to the United States Constitution which will rein in the federal judiciary's usurpation of the taxing powers which belong to the people alone through their elected representatives.

In November of 1993 Senator Mueller asked me to chair a group we call The Madison Forum. In that capacity Senator Mueller, Representative Skaggs and I have contacted the majority and minority leaders in both the upper and lower chambers of every state legislature seeking support for passage in their state of a resolution identical to the one which was passed by the Missouri General Assembly in 1993. But the passing of this resolution in Missouri is just a first step on what will be a long and arduous journey. When the legislatures of thirty three additional states pass this resolution it will assume the form of a petition to Congress. Congress will then be forced to submit to the states for consideration an amendment to the United States Constitution which will curb the power to tax which the judiciary has assumed.

It has been said that Benjamin Franklin, coming out of the constitutional convention, was approached by a woman who asked him, "What kind of government have you given us?" His reply, "A Republic, madam, if you can keep it."

Senator Mueller, Representative Skaggs and I and others who feel as we do will continue to work to see that the federal judiciary and the Supreme

Court are brought to account for their unconstitutional actions. It is our intention to insure that this government will remain the Republic to which Benjamin Frankiin referred. A Republic for which thousands have given their last great measure of personal sacrifice. A Republic in which those inseparable twins, liberty and freedom will not, like sand, slip through our fingers.

We intend to share with others these self evident truths which the founding fathers embraced knowing full well this is the only way to insure that this Republic will remain a government of the people, by the people and for the people. So help us God.

END

John R. Stoeffler - Chairman
The Madison Forum
847 Labonne Parkway
Manchester, MO 63021

FOOTNOTES

1. Alexander M. Bickel, The Least Dangerous Branch, Yale University Press (2nd Edition), Pg 92 - 93
2. Chief Justice Robert T. Donnelly, The State of The Judiciary in Missouri, 1982 Journal of The Senate, pg 82
3. Robert Bork quoting Bishop Hoadly in The Tempting of America. The Free Press, pg 176
4. Baldwin v Missouri. 281 U.S. 586.595 (1930) (J. Holmes dissenting opinion)
5. Cited in The Tempting of America. Robert H. Bork, The Free Press, pg 151
6. Congressman Robert K. Dornan and Csaba Vedlik, Jr., Judicial Supremacy: The Supreme Court On Trial, Nordland Series In Contemporary American Social Problems, 1980, pg 85
7. Cooper v Aaron. (358 U.S. 1) 78 S. Ct. 1401, pg 1410
8. Cited in Haines, Judicial Supremacy, pg 333, and Corwin, Court Over Constitution, pg 71
9. Joseph Sobran writing in The Conservative Chronicle, 11-11-92, pg 17

10. Benjamin N. Cardozo, The Nature of The Judicial Process, (New Haven: Yale University Press, 1921) pg 10

11. Judge Arthur Stanley Jr., Quoted in The Kansas City Star, 3-1-92, pg B-2

12. Gitlow v The People of New York, (268 U.S. 652) 45 S. Ct., pg 630

13. Cited in Haines, Judicial Supremacy, pg 333, and Edwin S. Corwin, Court Over Constitution pg 71

14. Judge Hatter Citing Pruitt v Chaney, 963 F 2d at 1166 - 67

15. Orloff v Willoughby, (345 U.S. 83) 73 S. Ct., pg 540

16. Chappel v Wallace, (462 U.S. 296) 103 S. Ct., pg 2366

17. John R. Stoeffler, When Judges Subvert The Constitution, St. Louis Post Dispatch, Commentary Page. 3-5-92

18. Mo. Rev. Stat. 164.013 (Supp. 1983)

19. 731 Federal Reporter 2d Series, pg 1320

20. *ibid*, pg 1332

21. *ibid*, pg 1333

22. Brief for Amici Curie, State of Missouri v Kalima Jenkins, Court No. 88-1150, June 1989

23. *ibid*

24. *ibid*

25. Missouri v Jenkins, 110 S. Ct. 1651 (1990)

26. *ibid*

27. *ibid*

28. *ibid*

29. Robert H. Bork, The Tempting Of America, The Free Press, pg 151

30. Charley Reese writing in The Conservative Chronicle, 11-3-93, pg 18
31. Missouri v Jenkins, 110 S. Ct. 1651, 1990
32. David Robertson, Debates And Other Proceedings Of The Convention Of Virginia, Richmond, 1805, pg 87
33. Thomas Sowell writing in The Conservative Chronicle, 12-15-93, pg 21
34. Chief Justice Robert T. Donnelly, The State of The Judiciary In Missouri, 1982 Journal of The Senate, pg 81
35. Walter Williams writing in The Conservative Chronicle, 12-8-93, pg 15
36. House Substitute for Senate Concurrent Resolution NO. 9, Journal of the House, 5-5-93, pg 1846 and House Substitute for Senate Concurrent Resolution No. 9, Final vote 5-10-93, (passed 118 "ayes" to 30 "noes") pg 2091
37. Grodon Crovitz writing in The Wall Street Journal, 7-10-91, pg A-11

FISCAL NOTE

BILL NO.

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____
Title: Amendment to the U.S. Constitution:
RE: To Limit Federal Courts
Spncsor: State Affairs
Requestor: _____

Department Affected: Office of the Governor
BRU: Division of Elections
Component: Operations
COMPONENT SERIAL NO. 21

EXPENDITURES/REVENUES:

| OPERATING | FY 95 | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 |
|---------------|-------|-------|-------|-------|-------|-------|
| PERSONAL | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS. | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

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| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
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| REVENUE | | | | | | |
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FUNDING:

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|-----------------|---|---|---|---|---|---|
| 1002 Federal | 0 | 0 | 0 | 0 | 0 | 0 |
| 1003 GF Match | 0 | 0 | 0 | 0 | 0 | 0 |
| 1004 GF | 0 | 0 | 0 | 0 | 0 | 0 |
| 1005 GF/Program | 0 | 0 | 0 | 0 | 0 | 0 |
| 1006 GF/MHTIA | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPOPARY | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year (FY94) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by Joseph L. Swanson, Director
Division: Division of Elections

Phone: 465-4611
Date: 3/7/94

Approved by Commissioner: John B. Coghill, Lieutenant Governor
Agency: Office of the Governor

Date: 3/7/94

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