HJR

30

STATE OF ALASKA

1995 LEGISLATIVE SESSION

NO. 1

Bill Version: CSSB 30

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FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: _____

Title: Amend US Constitution to limit Federal Courts — BRU: _____

Sponsor: Representative Vezey — Components: _____

Requestor: World Trade St/Fed Rel. _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 2000	FY 2001
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	-0-					
CAPITAL	-0-					
REVENUE	-0-					

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	-0-					
Federal Fund						
Other						
TOTAL	-0-					

POSITIONS:

Full-Time	-0-					
Part-Time						
Temporary						

Estimated FY 95 Impact: -0-

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: World Trade and State/Federal Relations Date: 3/20/95

Division: _____ Phone: _____

Approved By: Dr. Tamara L Barnes

Agency: Director, World Trade/Fed. Relations Date: 3/20/95

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The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

February 8, 1994

Mandates! Directives! That's all we seem to hear from our federal brethren in Washington, D.C. States have recognized the burden these mandates and directives have created at the state level. Unlike the feds the states can't print money to cover their debts. Patrick Henry put it this way, "(Y)our rich, smug, fine, fat, federal officers - the number of collectors of taxes and excises - will outnumber anything from the states. Who can cope with the excise man and the tax man?"

But when an order to levy taxes is mandated by a federal court, how are you to respond to such an order? How do states begin to question or even reject the orders of the federal courts when even the United States Supreme Court upholds as constitutional a lower federal court order to levy a direct tax increase upon the citizens of a city? How do you respond to what we believe is a violation of not only the Constitution of that state, but as we also believe the Constitution of the United States?

With this in mind Missouri State Senator Walt Mueller and I visited a federal judge in his office, and in the capacity of an elected state official and as a private citizen posed that very question. We were notified that such action was part of an ongoing case and as such, he would not discuss it. We were then directed to leave. This action by the judge was not unexpected, but it was felt that his orders needed to be questioned. We felt it was a legitimate question to pose inasmuch as the Constitution of the United States is quite clear in that the judiciary has never been granted the power to tax.

When a federal judge claims that he cannot discuss judicial directives which violate the constitution of a state with a member of the legislative branch of government, something is drastically wrong. So what does one do when the judiciary mandates direct taxes and Congress refuses to challenge the federal court's usurpation of Article I powers as they pertain to taxation? Our answer is to rein in the power that the judiciary has usurped by asking other states to join our call for an amendment to the Constitution that will put a stop to this judicial grab for power. Action must be taken now. We need your help and active support of this proposed amendment.

Sincerely,

John R. Stoeffler
Chairman, The Madison Forum

The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

March 1995

As each of you consider our request to join the growing number of states which are calling upon Congress to submit to the states an amendment to the United States Constitution that would limit the power of the federal judiciary to levy or increase taxes, we ask you to consider the implications of federal court intervention in state budgets should a balanced budget amendment become a reality. A number of individuals have.

Former United States Senator John C. Danforth stated in February of 1994, "A balanced-budget amendment would be a disaster if federal courts were able to increase taxes or cut spending."

United States Senator Paul Simon stated these same concerns as early as 1992 when he noted that the Supreme Court could issue a court order requiring Congress to bring the budget into balance. "I don't think that will happen in the immediate future. I'm not sure but that 30 or 40 years from now the court might not be in a position to order Congress to comply." Suppose the courts themselves did in fact become the agents of enforcement.

Judge Robert H. Bork did not feel that such an initiative is impossible. Judge Bork cited Missouri vs. Jenkins which affirmed the power of the court to oversee fiscal policy calling such actions "a dismal prospect."

United States Senator Robert Byrd shared his concern over the potential for federal court mischief in determining fiscal policy. "It would . . .bring the judicial branch into the equation, and to that extent our representative democracy would become less of a representative democracy."

Syndicated columnist James J. Kilpatrick stated his concern over the federal courts propensity to usurp Congress' power of the purse. "In recent years federal judges have not hesitated to order states and localities to raise taxes in order to carry out judicial decrees. Judges have turned themselves into school superintendents, prison wardens and state legislatures. Who or what would restrain them in the matter of declaring ways to achieve a balanced budget? My own distrust is massive."

Former United States Senator Tom Eagleton stated in a commentary which appeared in the St. Louis Post Dispatch on February 2, 1994 "The proposed (balanced budget amendment) means either too much or too little -- take your pick. Only the

area of mandated taxation which we believe will inevitably become a widespread reality.

Let us at the state level show the leadership needed by calling upon the Congress to submit to the states for consideration an amendment that would limit the power of the federal courts from levying or increasing taxes. It is the right thing to do. The time to act is now!

Sincerely,

Walter H. Mueller, Jr.
Missouri State Senator
REPUBLICAN

Bill Skaggs
Missouri State Representative
DEMOCRAT

Enclosures

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

By John R. Stoeffler

Alexander Bickel in his book *The Least Dangerous Branch* makes the following observation regarding those who embrace what he calls the utility of benevolent illusions and the justification for creating them. Such individuals, he wrote, believe that, " The people of a democracy must be mercifully soothed when they find themselves ruled, to whatever extent, by the nine (justices) of the Supreme Court. (They) know what the people imagine. (The people) imagine that they rule themselves, and they imagine Marbury v. Madison. To the extent that this is not so, some explanation perhaps may be found or even made up. It would be no sin. It has been done before.

"But", Mr. Bickel notes, "this is very dangerous. What is even more ominous, (is) the illusion (thus created) may engulf its maker and breed, as it has occasionally done, (a) free-ranging "activist" government by the judiciary. Such government is incompatible on principle with democratic institutions." *1.*

The United States Supreme Court and other federal courts do in fact pose a threat to representative government. All too often their rulings and decrees are attempts at judicial illusion; and all too often they succeed. Rulings and decrees from the courts today seem more often to reflect the social, economic and moral views of what the editorial board of the *St. Louis Post Dispatch* and the American Civil Liberties Union believe America should be than the unequivocal and uncompromising guidelines for a democratic republic which were clearly spelled out by the founding fathers in the United States Constitution. Such rulings and decrees only enhance the political power of the courts while diminishing those of the people through their duly elected representatives in the legislative branch of government.

As I see it there are three sources of power which control government; these are the power to legislate, the power of the sword and the

power of the purse. These are **political powers.** In any democratically elected government these political powers must remain in the hands of that branch closest to the people, the legislative branch of government, if representative government is to survive.

In addressing the Missouri General Assembly in 1982 Robert T. Donnelly, then Chief Justice stated, "I profoundly respect the United States Supreme Court as an institution. However, even the United States Supreme Court should not be permitted to wield power it was never given. The greed for power has surfaced from time-to-time in all civilizations. The uniqueness of our present concern is that the disease has cropped out among the judges, where one would least expect it." *2.* This power grab, if left unchallenged, can only lead to a substantial lessening of those ties which bind our republican form of government, and the potential for the establishment of a judicial oligarchy which, despite any assurances to the contrary, will be anything but benign.

I stated earlier that there are three sources of **political** power which I believe control government; and while the subject of my talk deals with the power to tax which the federal courts have seized and what action needs to be done to address it, I feel it is also necessary to discuss ways in which the judiciary has reached into those two other areas of legislative power to support my contention that a pattern of judicial activism and usurpation is not only alive, but a real and growing threat to representative government.

First let me discuss the usurpation of legislative power by the federal judiciary.

In 1717 Bishop Hoadly stated, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver, to all intents and purposes, and not the person who first wrote them." *3.* Today, the federal judiciary has taken upon itself the power to legislate by interpretation. Justice Holmes noted this in his 1930 dissent in *Baldwin v. Missouri*, he stated, "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States...I cannot believe that the Amendment was intended to give us carte blanche to embody our economic and moral beliefs in its prohibitions." *4.* He could have been echoing the thoughts of Alexander Hamilton in *Federalist 78* when he wrote, "It can be of no weight to say that the courts, on the pretense of repugnancy, may substitute their own pleasure to the constitutional intent of the legislature." Courts today, however, make no pretense concerning their

[illegible] economic views and continue to claim the sole constitutional right to interpret the constitution in order to achieve such views and objectives. Alexander Bickel's observations led him to write that the judiciary sees itself as having an intellect and judgment superior to elected officials. Elected officials, he claimed, are viewed as, "(S)pokesmen for the expedient short-run solutions while judges (have) a greater capacity to deal with principles of long run importance. Courts," he continued, "have certain capacities for dealing with matters of principle that legislatures and executives do not possess. Judges have, or should have, the leisure, the training and the insulation to follow the ways of the scholar in pursuing the ends of government." *5.* To support their claim to a constitutional right to make law they refer back to John Marshall's often cited opinion in the case of *Marbury v. Madison*, however they neglect the fact that by John Marshall's own admission his "assertions of judicial supremacy were mere *orbiter dicta*, i.e. private expressions of opinion that did not form a part of the decision, the *ratio descidendi*, of the case." *6.* More recently the United States Supreme Court, in the 1958 case of *Cooper v. Aaron*, declared its decisions to be, "(T)he supreme law of the land...and of binding effect upon (all) the States." *7.* Such self-serving declarations bring to mind these words of Abraham Lincoln from his first inaugural address, "If the policy of the government upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court...the people will have ceased to be their own ruler, having to that extent practically resigned their government into the hands of that eminent tribunal." *8.*

"The Constitution", writes Joseph Sobran, " was meant to assure us that every act of the federal government would be clearly traceable to a general heading: coining money, declaring war, providing postal service and a few other broad yet well-defined powers. It didn't leave much room for discretionary authority." *9.* Today, however, the courts make law by judicial decree. Said Benjamin Cardozo in his book, *The Nature of The Judicial Process*, "I take judge made law as one of the existing realities of life." *10.* Judicial opinions then become the law of the land with no legislative input or stamp of approval from those who should be the guardians of our republic...the Congress of The United States. Shouldn't we expect the Congress to step in and invoke their power to reign in the federal judiciary's appellate powers as spelled out under Article III? I think we should. But, based on the record, if we plan on counting on those procrastinating and pontificating Pontious Pilates of politics to stand up for us, we had better

think again. Consider this observation by Federal Judge Arthur Stanley, Jr., "I've been called on to do things that I felt properly should have fallen within the legislative field. I have a sneaking impression that Congress deliberately creates situations to avoid making decisions itself." *11.*

At this point let me suggest to those who may be thinking that the solution to Congress' inaction is to elect a particular brand of politician or party to office. I wish it were that simple. Sure, we can change parties in the White House or in the United States Congress but political victories are meaningless if an activist Court will nullify any law it deems to be "unconstitutional" with arguments which, however ingenious, have no relation to the Constitution.

To many, the most blatant example of ongoing legislative activism by the federal judiciary is the ever increasing use by the courts of the Fourteenth Amendment to excise the Bill of Rights. It was the 1925 case of *Gitlow v. The People Of New York* which, for many, stands as the landmark case in which the Supreme Court accomplished this. The Court stated, "(W)e...assume that freedom of speech and of the press--which are protected by the First Amendment from abridgment by Congress--are among the fundamental "liberties" protected by the Fourteenth Amendment". *12.* You may recall that the Bill of Rights as written was to apply to the federal government not the states. This is because the founding fathers had a deep and abiding fear of a strong central government. Although this may have been the founding fathers' intent it has not inhibited the federal judiciary today as they continue, through subjective rulings and decrees, to amend the United States Constitution whenever they deem it necessary to conform to their own economic or moral view of what they believe America should be.

One of the more notorious examples of judicial legislating is the Court's insistence that the First Amendment's wording grants to the court the authority to declare that the term "separation of church and state" is a constitutional imperative. Using this logic the Courts have removed any vestige of God from the classroom. You may agree with this or you may not, but it is not the right of any court to use the Fourteenth Amendment to temporarily set aside any part of the Bill of Rights in pursuit of a pragmatic philosophical objective. The founding fathers provided a method for change, it is called the amendment process, a part of the Constitution the judiciary ignores when it suits their purpose. And while all this is taking place, members of Congress, who have sworn to protect and defend the Constitution from all enemies foreign and domestic, sit upon their collective hands

claiming that it is not their place to challenge the courts, inasmuch as they view them as the ultimate arbiters of Constitutional intent. Oh, really? They would do well to harken to the words of President Andrew Jackson, one known to not mince words when it came to the Court. On July 10, 1832 he stated, "Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. The (judiciary's) authority must not (be) permitted to control the Congress or the Executive when acting in their legislative capacities, **but to have only such influence as the force of their reasoning may deserve."** *13.* (emphasis mine)

As to the power of the sword. Article I, Section 8 of the Constitution grants to Congress alone the authority, or power "to raise and support armies'; 'to provide and maintain a Navy'; and 'To make Rules for the Government and Regulation of the land and naval forces.'" In *Federalist 78* Alexander Hamilton addressed colonists' concerns over a strong federal judiciary. "The judiciary", he proclaimed, " has no influence over either the sword or the purse". That was the intent of the Founding Fathers, but today, whatever the courts want is a constitutional imperative while everything they choose to oppose is unconstitutional.

Recently the federal judiciary has begun to take upon itself the responsibility for our nation's defense readiness. While nowhere under Article III will one find such power granted to the courts this has not deterred them for even a millisecond. Having taken unto themselves the power to legislate by decree they have now begun a quest to acquire the political power of the sword to achieve subjective goals.

In an Associated Press report of Tuesday, October 19, 1993 it was noted that the Supreme Court agreed to decide whether states and communities hard hit by cuts in defense spending may challenge military base closings in court. The justices indicated that they would review a federal appeals court ruling which let local officials and union members try to overturn the government's decision to close the Philadelphia Naval Shipyard. Lawsuits, the report continued, over individual base closings would upset the process Congress adopted for making such **politically difficult decisions**. While the loss of jobs is a tragedy it is not the responsibility of the courts to interfere with political decisions made by Congress as they carry out the responsibilities delegated to them under Article I, Section 8 of the Constitution. The responsibility for our nation's defense rests with the legislative branch of government alone, and nowhere in the Constitution is

Congress authorized in any manner to delegate this power, in any form, to the judicial branch of government; yet Congress gives its blessing to the judiciary to act on its behalf by an implied silent assent.

Another example. The courts are challenging the right of the military to set rules and regulations by restricting homosexuals from serving in the armed forces of the United States.

On January 28, 1993 United States District Judge Terry J. Hatter, Jr., in the case of *Meinhold v. United States*, otherwise known as the "Gay Sailor's Case", held that the military's policy of excluding homosexuals was "unconstitutional" claiming that it violated equal protection laws, but his remarks indicated that it was he who was ignoring not only the Constitution but factual testimony as well. For example, in paragraph 5 of his opinion Judge Hatter stated, "In determining whether the policy is rationally related, the Court cannot merely defer to the "military judgment" as the rationale for the policy--the Court must consider the factual basis underlying the "military judgment." *14.* Still, when facts were presented Judge Hatter ignored them. Judge Hatter also chose to ignore a 1953 Supreme Court opinion in the case of *Orloff v. Willoughby*. In the Court's opinion the justices noted that, "(J)udges are not given the task of running the Army." *15.* Judge Hatter also chose to ignore the more recent 1983 Supreme Court case of *Chappel v Wallace*. Here the Supreme Court noted that, "The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches." *16.* But that was then, and this is now. Congress should make it clear to the judiciary that they have trespassed into Article I powers and that they are directed to remove themselves forthwith. Unfortunately the silence from Capitol Hill is deafening.

In a letter to me Congressman Jim Talent, R-MO stated, "This decision, *Meinhold v United States*, is only one of many in a growing trend by the U.S. court system to extend its power well beyond the intentions of the framers of our Constitution." My question to Congressman Talent, and all members of a laissez faire Congress is, "You have recognized the challenge. You have articulated the challenge. When will you exercise your constitutional responsibilities and address this challenge?"

Today the Supreme Court of the United States and various inferior courts throughout the land have invaded another political area which belongs to the people alone. I refer to the principle espoused by the early colonists, to

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

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 conunand 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 that 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.

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 Franklin referred. A Republic for which thousands have given their last great measure of personal sacrifice. A Republic in which the 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
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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

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

Alaska State Legislature

House of Representatives

Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

SPONSOR STATEMENT

The purpose of HJR-30 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. This amendment 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 in 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.

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MEMORANDUM March 7, 1995

SUBJECT: Amendment to the United States Constitution (HJR 30)

TO: Representative Al Vezey
House Majority Leader

FROM: Tamara Brandt Cook
Director

HJR 30 requests 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 resolution included a request that a convention be called for the limited purpose of considering a specific amendment relating to court ordered taxation.

TBC:glc
95-197.glc

Enclosure