

1-1 By: Wentworth S.R. No. 373  
1-2 (In the Senate - Filed March 14, 2003; March 24, 2003, read  
1-3 first time and referred to Committee on State Affairs; May 9, 2003,  
1-4 reported favorably by the following vote: Yeas 6, Nays 0;  
1-5 May 9, 2003, sent to printer.)

1-6 SENATE RESOLUTION

1-7 WHEREAS, In 1990, the United States Supreme Court, in the  
1-8 case of Missouri, et al. v. Jenkins, et al. (495 U.S. 33), chose to  
1-9 disregard Article I, Section 8, of the United States Constitution,  
1-10 which reserves exclusively to the legislative branch of government  
1-11 the power to tax the citizenry; and

1-12 WHEREAS, In drafting that constitutional section and  
1-13 allocating the power of taxation, the Founding Fathers drew on the  
1-14 Petition of Right, an English law initiated by Sir Edward Coke, then  
1-15 approved by the British House of Commons and accepted by King  
1-16 Charles I on June 7, 1628, which states in pertinent part that  
1-17 "...no man hereafter [may] be compelled to make or yield  
1-18 any...tax...without common consent by Act of Parliament..."; and

1-19 WHEREAS, In 1787, the framers of the United States  
1-20 Constitution reiterated that time-tested principle of limited  
1-21 taxation, specifically vesting with the legislative branch the  
1-22 "...Power To lay and collect Taxes, Duties, Imposts and  
1-23 Excises..."; and

1-24 WHEREAS, Their intent is unambiguous, made clear by the  
1-25 analysis of James Madison, who observed in The Federalist No. 48  
1-26 that "...the legislative department alone has access to the pockets  
1-27 of the people..."; and

1-28 WHEREAS, The same view is expressed by Alexander Hamilton,  
1-29 who asked rhetorically in The Federalist No. 33, "[w]hat is the  
1-30 power of laying and collecting taxes but a legislative power...?,"  
1-31 and follows consistently in The Federalist No. 78, in which he  
1-32 argued that the judiciary should be the least dangerous branch of  
1-33 government inasmuch as judges would have "...no influence over  
1-34 either the sword or the purse..."; and

1-35 WHEREAS, Yet today, Hamilton's argument no longer rings true;  
1-36 through legal orders and the exercise of judicial threat and  
1-37 intimidation, federal courts have usurped the power of the  
1-38 legislative branch and have gone so far as to apply it even to  
1-39 nonfederal levels of government, mandating state and local  
1-40 requirements that have the direct, or indirect, effect of imposing  
1-41 judicial taxes on the states and their political subdivisions; and

1-42 WHEREAS, In so vesting itself by fiat with control of the  
1-43 public purse strings, the federal judiciary has contravened and  
1-44 overridden the constitutional separation of powers between the  
1-45 different branches and levels of government, threatening creation  
1-46 of a fiscal oligarchy un beholden to influence by the electorate;  
1-47 and

1-48 WHEREAS, The states and congress have too long ignored this  
1-49 self-proclamation and seizure of taxation powers, and it behooves  
1-50 all Americans to preserve their rights by the adoption of an  
1-51 amendment to the Constitution of the United States, re-establishing  
1-52 the fundamental link between taxation and representation; and

1-53 WHEREAS, Seeking to reverse the aforementioned Jenkins  
1-54 decision of 1990, lawmakers in 23 other states--and in two  
1-55 territories of the United States--beginning in 1993, have already  
1-56 adopted and transmitted to congress memorials requesting that  
1-57 congress propose an amendment to the United States Constitution,  
1-58 and those memorials have been entered in the Congressional Record  
1-59 as follows:

1-60 the Missouri General Assembly in 1993 (Senate Concurrent Resolution  
1-61 No. 9) designated as POM-175 in Volume 139 of the Congressional  
1-62 Record at page 14565;

1-63 the Colorado General Assembly in 1994 (Senate Joint Memorial No.  
1-64 94-2) designated as POM-569 in Volume 140 of the Congressional

- 2-1 Record at page 15070;
- 2-2 the New York Senate in 1994 (Senate No. 3352) designated as POM-578
- 2-3 in Volume 140 of the Congressional Record at page 15073;
- 2-4 the Tennessee General Assembly in 1994 (Senate Joint Resolution No.
- 2-5 372) designated as POM-580 in Volume 140 of the Congressional
- 2-6 Record at page 15074;
- 2-7 the Arizona Legislature in 1995 (Senate Concurrent Resolution No.
- 2-8 1014) designated as POM-523 in Volume 142 of the Congressional
- 2-9 Record at pages 6586 and 6587;
- 2-10 the Louisiana Legislature in 1995 (Senate Concurrent Resolution No.
- 2-11 11) designated as POM-525 in Volume 142 of the Congressional Record
- 2-12 at page 6587;
- 2-13 the Massachusetts Senate in 1995 (unnumbered resolution)
- 2-14 designated as POM-625 in Volume 142 of the Congressional Record at
- 2-15 pages 14940 and 14941 and designated as POM-638 at page 15486;
- 2-16 the Nevada Legislature in 1995 (Senate Joint Resolution No. 2)
- 2-17 designated as POM-287 in Volume 141 of the Congressional Record at
- 2-18 page 22422;
- 2-19 the Alaska Legislature in both 1996 and 1998 (House Joint
- 2-20 Resolution No. 30 in 1996) designated as POM-622 in Volume 142 of
- 2-21 the Congressional Record at pages 14939 and 14940; (House Joint
- 2-22 Resolution No. 57 in 1998) designated as POM-515 in Volume 144 of
- 2-23 the Congressional Record at page S9042;
- 2-24 the Michigan Legislature in 1996 (Senate Concurrent Resolution No.
- 2-25 278) designated as POM-444 in Volume 144 of the Congressional
- 2-26 Record at page S5515;
- 2-27 the South Dakota Legislature in 1996 (House Concurrent Resolution
- 2-28 No. 1010) designated as POM-526 in Volume 142 of the Congressional
- 2-29 Record at page 6587;
- 2-30 the Delaware General Assembly in 1997 (House Concurrent Resolution
- 2-31 No. 6) designated as POM-120 in Volume 143 of the Congressional
- 2-32 Record at page S5252;
- 2-33 the Alabama Legislature in 1998 (House Joint Resolution No. 261)
- 2-34 designated as POM-416 in Volume 144 of the Congressional Record at
- 2-35 page S9405;
- 2-36 the Oklahoma Legislature in 1998 (Senate Concurrent Resolution No.
- 2-37 50) designated as POM-479 in Volume 144 of the Congressional Record
- 2-38 at pages S6404 and S6405;
- 2-39 the Illinois Senate in 1999 (Senate Resolution No. 216) designated
- 2-40 as POM-449 in Volume 146 of the Congressional Record at page S1814
- 2-41 and designated as POM-512 at page S3611;
- 2-42 the Utah Legislature in 1999 (House Joint Resolution No. 5)
- 2-43 designated as POM-285 in Volume 145 of the Congressional Record at
- 2-44 page S9945;
- 2-45 the Kansas Legislature in 2000 (House Concurrent Resolution No.
- 2-46 5059) designated as POM-527 in Volume 146 of the Congressional
- 2-47 Record at page S4378;
- 2-48 the New Hampshire General Court in 2000 (House Concurrent
- 2-49 Resolution No. 27) designated as POM-531 in Volume 146 of the
- 2-50 Congressional Record at page S6469;
- 2-51 the Pennsylvania General Assembly in 2000 (Senate Resolution No.
- 2-52 47) designated as POM-642 in Volume 146 of the Congressional Record
- 2-53 at pages S11788 and S11789;
- 2-54 the South Carolina General Assembly in 2000 (House Concurrent
- 2-55 Resolution No. 4434) designated as POM-641 in Volume 146 of the
- 2-56 Congressional Record at page S11575;
- 2-57 the West Virginia Legislature in 2000 (House Concurrent Resolution
- 2-58 No. 5) designated as POM-442 in Volume 146 of the Congressional
- 2-59 Record at page S1669;
- 2-60 the House of Representatives of the Commonwealth of the Northern
- 2-61 Mariana Islands--a territory of the United States--in 2000 (House
- 2-62 Resolution No. 12-109) designated as Memorial No. 1 in Volume 147 of
- 2-63 the Congressional Record at page H111; as well as the Senate of the
- 2-64 Commonwealth of the Northern Mariana Islands, likewise in 2000,
- 2-65 (Senate Resolution No. 12-33) designated as POM-46 in Volume 147 of
- 2-66 the Congressional Record at page S4244;
- 2-67 the North Dakota Legislative Assembly in 2001 (House Concurrent
- 2-68 Resolution No. 3031) designated as POM-7 in Volume 147 of the
- 2-69 Congressional Record at pages S3704 and S3705;

3-1 the Legislature of the United States Territory of Guam in 2001  
3-2 (Resolution No. 6) designated as POM-357 in Volume 148 of the  
3-3 Congressional Record at page S10570; and  
3-4 the Wyoming Legislature in 2002 (Senate Joint Resolution No. SJ003,  
3-5 later styled Enrolled Joint Resolution No. 2) designated as POM-250  
3-6 in Volume 148 of the Congressional Record at pages S5630 and S5631;  
3-7 now, therefore, be it

3-8       RESOLVED, That the Senate of the 78th Legislature of the  
3-9 State of Texas, Regular Session, 2003, hereby memorialize the  
3-10 United States Congress to propose and submit to the states for  
3-11 ratification an amendment to the United States Constitution to  
3-12 prohibit all federal courts from ordering or instructing any state  
3-13 or political subdivision thereof, or an official of any state or  
3-14 political subdivision, to levy or increase taxes; and, be it  
3-15 further

3-16       RESOLVED, That the congress be respectfully requested to  
3-17 entertain the following suggested text for such an amendment:

3-18                       "ARTICLE \_\_\_\_\_  
3-19       "Neither the Supreme Court nor any inferior court of  
3-20 the United States shall have the power to instruct or  
3-21 order a state or political subdivision thereof, or an  
3-22 official of such state or political subdivision, to  
3-23 levy or increase taxes"; and, be it further

3-24       RESOLVED, That the secretary of the Texas Senate forward  
3-25 official copies of this resolution to the vice president of the  
3-26 United States, to the speaker of the United States House of  
3-27 Representatives, and to all members of the Texas delegation to the  
3-28 congress, with the request that this resolution be entered  
3-29 officially in the Congressional Record as a memorial to the  
3-30 Congress of the United States of America to propose for  
3-31 ratification a federal constitutional amendment to prohibit  
3-32 judicially imposed taxes.

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