

## BILL ANALYSIS

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S.R. 373  
By: Wentworth  
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### 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 on 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 that time-tested principle of limited taxation, specifically vesting with the legislative branch the "...Power To lay and collect Taxes, Duties, Imposts and Excises..." Their intent is unambiguous, 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 even to nonfederal levels of government, mandating state and local requirements that have the direct, or indirect, effect of imposing judicial taxes on 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 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 fundamental link between taxation and representation.

Seeking to reverse the aforementioned Jenkins decision of 1990, lawmakers in 23 other states--and in two territories of the United 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 as follows:

the Missouri General Assembly in 1993 (Senate Concurrent Resolution No. 9) designated as POM-175 in Volume 139 of the Congressional Record at page 14565;  
the Colorado General Assembly in 1994 (Senate Joint Memorial No. 94-2) designated as POM-569

in Volume 140 of the Congressional Record at page 15070;  
the New York Senate in 1994 (Senate No. 3352) designated as POM-578 in Volume 140 of the Congressional Record at page 15073;  
the Tennessee General Assembly in 1994 (Senate Joint Resolution No. 372) designated as POM-580 in Volume 140 of the Congressional Record at page 15074;  
the Arizona Legislature in 1995 (Senate Concurrent Resolution No. 1014) designated as POM-523 in Volume 142 of the Congressional Record at pages 6586 and 6587;  
the Louisiana Legislature in 1995 (Senate Concurrent Resolution No. 11) designated as POM-525 in Volume 142 of the Congressional Record at page 6587;  
the Massachusetts Senate in 1995 (unnumbered resolution) designated as POM-625 in Volume 142 of the Congressional Record at pages 14940 and 14941 and designated as POM-638 at page 15486;  
the Nevada Legislature in 1995 (Senate Joint Resolution No. 2) designated as POM-287 in Volume 141 of the Congressional Record at page 22422;  
the Alaska Legislature in both 1996 and 1998 (House Joint Resolution No. 30 in 1996) designated as POM-622 in Volume 142 of the Congressional Record at pages 14939 and 14940; (House Joint Resolution No. 57 in 1998) designated as POM-515 in Volume 144 of the Congressional Record at page S9042;  
the Michigan Legislature in 1996 (Senate Concurrent Resolution No. 278) designated as POM-444 in Volume 144 of the Congressional Record at page S5515;  
the South Dakota Legislature in 1996 (House Concurrent Resolution No. 1010) designated as POM-526 in Volume 142 of the Congressional Record at page 6587;  
the Delaware General Assembly in 1997 (House Concurrent Resolution No. 6) designated as POM-120 in Volume 143 of the Congressional Record at page S5252;  
the Alabama Legislature in 1998 (House Joint Resolution No. 261) designated as POM-416 in Volume 144 of the Congressional Record at page S9405;  
the Oklahoma Legislature in 1998 (Senate Concurrent Resolution No. 50) designated as POM-479 in Volume 144 of the Congressional Record at pages S6404 and S6405;  
the Illinois Senate in 1999 (Senate Resolution No. 216) designated as POM-449 in Volume 146 of the Congressional Record at page S1814 and designated as POM-512 at page S3611;  
the Utah Legislature in 1999 (House Joint Resolution No. 5) designated as POM-285 in Volume 145 of the Congressional Record at page S9945;  
the Kansas Legislature in 2000 (House Concurrent Resolution No. 5059) designated as POM-527 in Volume 146 of the Congressional Record at page S4378;  
the New Hampshire General Court in 2000 (House Concurrent Resolution No. 27) designated as POM-531 in Volume 146 of the Congressional Record at page S6469;  
the Pennsylvania General Assembly in 2000 (Senate Resolution No. 47) designated as POM-642 in Volume 146 of the Congressional Record at pages S11788 and S11789;  
the South Carolina General Assembly in 2000 (House Concurrent Resolution No. 4434) designated as POM-641 in Volume 146 of the Congressional Record at page S11575;  
the West Virginia Legislature in 2000 (House Concurrent Resolution No. 5) designated as POM-442 in Volume 146 of the Congressional Record at page S1669;  
the House of Representatives of the Commonwealth of the Northern Mariana Islands--a territory of the United States--in 2000 (House Resolution No. 12-109) designated as Memorial No. 1 in Volume 147 of the Congressional Record at page H111; as well as the Senate of the Commonwealth of the Northern Mariana Islands, likewise in 2000, (Senate Resolution No. 12-33) designated as POM-46 in Volume 147 of the Congressional Record at page S4244;  
the North Dakota Legislative Assembly in 2001 (House Concurrent Resolution No. 3031) designated as POM-7 in Volume 147 of the Congressional Record at pages S3704 and S3705;  
the Legislature of the United States Territory of Guam in 2001 (Resolution No. 6) designated as POM-357 in Volume 148 of the Congressional Record at page S10570; and  
the Wyoming Legislature in 2002 (Senate Joint Resolution No. SJ003, later styled Enrolled Joint Resolution No. 2) designated as POM-250 in Volume 148 of the Congressional Record at pages S5630 and S5631.

## **PURPOSE**

S.R. 373 submits the following resolutions:

That the Senate of the 78th Legislature of the State of Texas, Regular Session, 2003, hereby memorialize 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.

That the congress be respectfully requested to entertain the following suggested text for such an amendment:

"ARTICLE \_\_\_\_\_

"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."

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