

HOUSE RESOLUTION NO. 4

Memorializing the Congress of the United States to propose for ratification an amendment to the Constitution of the United States to prohibit federal courts from ordering or instructing any state or local unit of government to levy or increase taxes.

Agreed to by the House of Delegates, January 23, 2004

WHEREAS, on April, 18, 1990, by a narrow vote of 5 to 4, the Supreme Court of the United States, in the case of Missouri v. Jenkins (495 U.S. 33), chose to ignore Article I, Section 8, of the Constitution of the United States, which reserves exclusively to the legislative branch of government the authority to tax the citizenry; and

WHEREAS, this ruling has set a disastrous example of allowing federal judges to order or instruct a state, or a political subdivision thereof, or an official of a state or political subdivision, to levy or increase taxes — overturning more than 200 years of judicial non-intrusion into the political thicket of prescribing the level of taxation to be foisted upon Americans; and

WHEREAS, in blistering dissenting remarks, Associate Justice Anthony Kennedy joined by Chief Justice William Rehnquist and Associate Justices Sandra Day O'Connor and Antonin Scalia pointed out that the Missouri v. Jenkins decision transgresses the basic principles which define the role of judges by endorsing "...an expansion of power in the Federal Judiciary beyond all precedent. Today's casual embrace of taxation imposed by the unelected, life-tenured Federal Judiciary disregards fundamental precepts for the democratic control of public institutions"; and

WHEREAS, Thomas Jefferson, that great native son of Virginia, forewarned of the threat that out-of-control federal courts would pose when he proclaimed, in an 1820 letter to Thomas Ritchie, that "A judiciary independent...of the will of the nation is a solecism...", and in colorful language he went on to describe the judicial branch as "...a subtle corps of sappers and miners constantly working under ground to undermine the foundations of our confederated fabric. They are construing our constitution from a co-ordination of a general and special government to a general and supreme one alone. This will lay all things at their feet...", and in an 1821 letter to Judge Spencer Roane, Jefferson pointedly asserted that "The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting with noiseless foot and unalarming advance, gaining ground step by step and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them"; and

WHEREAS, in *The Federalist No. 78*, Alexander Hamilton cautioned that "The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body"; and

WHEREAS, the prevailing line of reasoning among those of us in the "Old Dominion" on the subject of taxation — without representation — finds situs as early as December 18, 1764, when what was then called Virginia's House of Burgesses remonstrated to the British House of Commons that "...it is essential to...liberty that...imposing taxes on the people ought not to be made without the consent of representatives chosen by themselves; who, at the same time that they are acquainted with the circumstances of their constituents, sustain a proportion of the burden laid on them"; and

WHEREAS, in his 1748 epic work, *The Spirit of the Laws*, the renowned political analyst Charles de Secondat Baron de Montesquieu prophesied that "...there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator"; and

WHEREAS, James Madison, that noble Virginian — and later fourth President of the United States — opined in *The Federalist No. 47* that "...the preservation of liberty requires that the three great departments of powers [executive, judicial and legislative] should be separate and distinct"; and

WHEREAS, lawmakers in the 24 states of Alabama, Alaska, Arizona, Colorado, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia and Wyoming, as well as in the two United States territories of Guam and the Commonwealth of the Northern Mariana Islands, have petitioned the Congress of the United States to propose for ratification an amendment to the Constitution of the United States to reverse the calamitous and ill-conceived 1990 holding in Missouri v. Jenkins; and

WHEREAS, Alexander Hamilton, in *The Federalist No. 85*, predicted that there indeed would be times when Americans would come to "...rely on the disposition of the state legislatures to erect barriers against the encroachments of the national authority"; now, therefore, be it

RESOLVED by the House of Delegates, That the Congress of the United States be urged to propose

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for ratification an amendment to the Constitution of the United States to prohibit federal courts from ordering or instructing any state or local unit of government to levy or increase taxes, the amendment to read as follows:

"Amendment XXVIII

"Section 1. Neither the Supreme Court nor any inferior court of the United States — nor the court of any state, or political subdivision thereof, in its application of this Constitution or in its application of any law enacted by the Congress — shall have the power to instruct or order a state or political subdivision, or an official of such state or political subdivision, to levy or increase taxes.

"Section 2. For purposes of this Amendment, the word 'state' shall be understood to additionally include the District constituting the Seat of government of the United States, as well as any commonwealth, territory, or possession of the United States."; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the House of Delegates of Virginia in this matter.