

**ASSEMBLY CONCURRENT
RESOLUTION No. 118**

**STATE OF NEW JERSEY
213th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Sussex, Hunterdon and Morris)

Assemblyman GARY R. CHIUSANO

District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Proposes constitutional amendment authorizing Legislature to invalidate certain court decisions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



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1 A CONCURRENT RESOLUTION proposing a constitutional
2 amendment authorizing the Legislature to invalidate certain court
3 decisions.
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5 BE IT RESOLVED by the General Assembly of the State of New
6 Jersey (the Senate concurring):
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8 1. The following proposed amendment to the Constitution of the
9 State of New Jersey is hereby agreed to:
10

11 PROPOSED AMENDMENT
12

13 Amend Article VI by adding a new section IX as follows:
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15 1. a. As the people possess the exclusive authority to ordain or
16 amend constitutions, all courts shall interpret this Constitution in a
17 manner consistent with the intention of the people when ordaining
18 or amending the same. Any court which declares an act of
19 government contrary to the provisions of the Constitution shall do
20 so in writing, setting forth in specific detail the section violated and
21 the history of the provision which supports the decision. No court
22 shall expand a constitutional provision beyond, nor constrict a
23 constitutional provision below, the scope actually intended by the
24 people. Furthermore, as the power of the purse is solely that of the
25 Legislature, no court shall issue any decision, whether under this
26 Constitution or otherwise, which shall have the effect of compelling
27 the State or any of its subdivisions to expend any money, or
28 restraining the expenditure thereof, without the express consent of
29 the Legislature.

30 b. The Legislature may review any decision to determine if the
31 decision violates the provisions of subsection a. of this
32 constitutional amendment or is otherwise inconsistent with the
33 intent of the Legislature. The Legislature may invalidate the
34 decision, in whole or in part, by a vote of a two-thirds majority of
35 the authorized membership of each House in favor of a concurrent
36 resolution providing for invalidation.
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38 2. When this proposed amendment to the Constitution is finally
39 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
40 shall be submitted to the people at the next general election
41 occurring more than three months after the final agreement and
42 shall be published at least once in at least one newspaper of each
43 county designated by the President of the Senate, the Speaker of the
44 General Assembly and the Secretary of State, not less than three
45 months prior to the general election.

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- 1 3. This proposed amendment to the Constitution shall be
2 submitted to the people at that election in the following manner and
3 form:
- 4 There shall be printed on each official ballot to be used at the
5 general election, the following:
- 6 a. In every municipality in which voting machines are not used,
7 a legend which shall immediately precede the question, as follows:
8 If you favor the proposition printed below make a cross (X), plus
9 (+), or check (✓) in the square opposite the word "Yes." If you are
10 opposed thereto make a cross (X), plus (+) or check (✓) in the
11 square opposite the word "No."
- 12 b. In every municipality the following question:

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		<p>A CONSTITUTIONAL AMENDMENT AUTHORIZING THE LEGISLATURE TO INVALIDATE ANY COURT DECISION WHICH VIOLATES THE PROVISIONS OF THIS CONSTITUTIONAL AMENDMENT OR IS OTHERWISE INCONSISTENT WITH THE INTENT OF THE LEGISLATURE.</p>
	<p>YES</p>	<p>Shall the amendment to Article VI of the New Jersey Constitution, which authorizes invalidation of any court decision in which it is determined by the Legislature that the decision violates the provisions of this constitutional amendment or is otherwise inconsistent with the intent of the Legislature, be approved?</p>
	<p>NO</p>	<p>INTERPRETIVE STATEMENT</p> <p>This constitutional amendment limits the authority of the court when the court issues a decision which is inconsistent with the intention of the people or the decision has the effect of compelling the State, or any of its subdivisions, to expend any money or restrain the expenditure thereof, without the express consent of the Legislature.</p> <p>This proposed constitutional amendment would authorize the Legislature, by a two-thirds majority vote of each House, to invalidate, in whole or in part, any decision made by the courts in which the Legislature determines that the court has violated the provisions of this constitutional amendment or is otherwise inconsistent with the intent of the Legislature.</p> <p>This constitutional amendment provides that, upon such a determination by the Legislature, the Legislature may invalidate the decision, in whole or in part, by a vote of a two-thirds majority of the authorized membership of each House in favor of a concurrent resolution providing for invalidation.</p>

STATEMENT

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For many years, courts in general, and the New Jersey Courts in particular, have assumed the authority to impose policy determinations upon an unwilling populace under the guise of "interpreting" the Constitution. Too often, these determinations, on matters such as land use and school funding, lack even a hint of true constitutional authority.

The right of the people to avail themselves of their elected officials is the most basic feature of a republican form of government. When an unelected judiciary usurps the policymaking power of the Legislative branch, this right is significantly diminished. The people, in establishing and amending the Constitution, did not intend to disenfranchise themselves. This amendment seeks to ensure their right of participation.

This constitutional amendment provides that the Court shall, when considering constitutional challenges to actions by government, interpret the provisions of the constitution consistently with the intention of the people adopting them. The proposed amendment makes it clear that it is the people, not the courts, who establish the appropriate scope of constitutional provisions. Judges are not, simply by virtue of the office they hold, endowed with the authority to second guess the people, to "fill gaps" that the people might have left, to establish new rights, or to circumscribe old ones. To the extent that a particular provision of the Constitution may not be sufficient for modern circumstances, it is for the people, not the courts, to address that change.

In the school funding cases, the courts have commandeered the uniquely legislative authority to determine what to spend and where to spend it. The people have never delegated this authority to an unelected judiciary. This amendment ensures that the courts are deprived of any jurisdiction to limit the authority of the Legislature to spend as it sees fit. At the same time, it preserves the ability of the court to act in such cases as the Legislature permits it to act, such as in tort claims cases, etc.

This constitutional amendment provides that if the Legislature determines that any decision violates the provisions of this constitutional amendment or is otherwise inconsistent with the intent of the Legislature, the Legislature may invalidate the decision, in whole or in part, by a vote of a two-thirds majority of the authorized membership of each House in favor of a concurrent resolution providing for invalidation.