

ASSEMBLY CONCURRENT RESOLUTION No. 119

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Assemblymen CARROLL, TALARICO, Gregg, Bucco,
Kavanaugh, Rooney, Azzolina, Assemblywomen Crecco, J. Smith,
Assemblymen Garrett, Felice and DiGaetano

- 1 A CONCURRENT RESOLUTION proposing to amend paragraph 1 of Article
2 VI, Section I, of the Constitution of the State of New Jersey.
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4 WHEREAS, The New Jersey Constitution, unlike the United States
5 Constitution, explicitly provides for a separation of powers among the three
6 branches of State government; and
7 WHEREAS, The separation of powers provision sets forth a general principle
8 guiding our tripartite system of government in order to maintain the balance
9 between the three branches of government, to preserve their respective
10 independence and integrity and to prevent the concentration of unchecked
11 power in the hands of any one branch; and
12 WHEREAS, The framers of the United States Constitution and the creators of
13 the system of divided government powers were equally guided by the
14 revolutionary watchwords of their recently won freedom that taxation
15 without representation is tyranny; and
16 WHEREAS, It is a fundamental American political maxim that the power to tax,
17 and to spend the proceeds accrued from taxation, is the exclusive
18 responsibility of the elected representatives of the people which can not be
19 usurped by members of a separate and nonelected branch; and
20 WHEREAS, While the framers of the constitutional system of balanced powers
21 were cognizant of the role of an independent judiciary in that system, of
22 ascertaining the meaning of the constitution as the fundamental law and of
23 interpreting the laws as enacted by the legislative branch, they were also of
24 the conviction that the judiciary was the "least dangerous" of the three
25 branches since it would possess "no influence over either the sword or the
26 purse;" and
27 WHEREAS, The credibility of the judicial branch in the eyes of the people, from
28 whom all governmental powers are derived, is based on the claim of that
29 branch that its decisions are based on the carefully limited rules of
30 fact-gathering that apply in the cases before it and the logical and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 well-reasoned application of objective and permanent standards that
2 recognize the fundamental limits upon judicial power; and

3 **WHEREAS**, In exercising its province and duty to rule in cases before it on the
4 meaning of the provisions of the Constitution of this State, the judicial
5 branch, while espousing a recognition of the constitutional limits on
6 judicially imposed remedies involving the power to tax and spend, has
7 steadily and increasingly resorted to remedies that order increases in the
8 expenditure of public funds and approach a judicial redistribution of
9 diminishing public fiscal resources; and

10 **WHEREAS**, The people have the ultimate authority and obligation, through the
11 power to amend the State Constitution, to challenge the usurpation by the
12 judicial branch of legislative and executive branch powers when the courts
13 increasingly mandate through litigation remedies the imposition of taxes,
14 increased expenditures of public funds or the redistribution of duly enacted
15 State spending priorities; now, therefore,

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17 **BE IT RESOLVED** by the General Assembly of the State of New Jersey
18 (the Senate concurring):

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20 1. The following proposed amendment to the Constitution of the State of
21 New Jersey is agreed to:

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PROPOSED AMENDMENT

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25 Amend Article VI, Section I, paragraph 1 to read as follows:

26 1. The judicial power shall be vested in a Supreme Court, a Superior
27 Court, and other courts of limited jurisdiction. The other courts and their
28 jurisdiction may from time to time be established, altered or abolished by law.

29 The judicial power shall not extend to any cause in which the remedy
30 sought or imposed shall compel the State, or any political subdivision thereof,
31 directly or indirectly, to raise taxes, spend money, or refrain from same, unless
32 specifically authorized by the Legislature. (cf: Article VI, Section I,
33 paragraph 1; effective December 7, 1978)

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35 2. When this proposed amendment to the Constitution is finally agreed to
36 pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted
37 to the people at the next general election occurring more than three months
38 after the final agreement and shall be published at least once in at least one
39 newspaper of each county designated by the President of the Senate, the
40 Speaker of the General Assembly and the Secretary of State, not less than
41 three months prior to the general election.

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43 3. This proposed amendment to the Constitution shall be submitted to the

1 people at that election in the following manner and form:

2 There shall be printed on each official ballot to be used at the general
3 election, the following:

4 a. In every municipality in which voting machines are not used, a legend
5 which shall immediately precede the question, as follows:

6 If you favor the proposition printed below make a cross (X), plus (+), or
7 check (T) in the square opposite the word "Yes." If you are opposed thereto
8 make a cross (X), plus (+) or check (T) in the square opposite the word
9 "No."

10 b. In every municipality the following question:

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<p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>YES</p>	<p style="text-align: center;">LIMITS JUDICIAL POWER BY PROHIBITING COURT ORDERS AGAINST THE STATE TO RAISE TAXES OR EXPEND FUNDS</p> <p>Do you approve of the amendment to paragraph 1 of Article VI, Section I of the State Constitution, agreed to by the Legislature, providing that the power of the judiciary shall not extend to any cause in which the remedy sought or imposed shall compel the State, or any political subdivision thereof, directly or indirectly to raise taxes, spend money, or refrain from the same, unless specifically authorized by the Legislature?</p>
<p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p>	<p>NO</p>	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>The purpose of this proposed constitutional amendment is to prohibit the power of the judiciary from extending to any cause in which the remedy sought or imposed would compel the State, or any political subdivision thereof, directly or indirectly, to raise taxes, spend money, or refrain from the same, unless specifically authorized by the Legislature.</p>

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STATEMENT

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39 This proposed amendment would provide that the power of the judiciary
40 shall not extend to any cause in which the remedy sought or imposed shall
41 compel the State, or any political subdivision thereof, directly or indirectly to
42 raise taxes, spend money, or refrain from the same, unless specifically

1 authorized by the Legislature.

2 Under the doctrine of the separation of powers, which is explicitly set forth
3 in the State Constitution, the separate powers of the judicial, legislative and
4 executive powers are balanced in order to preserve their respective
5 independence and integrity and to prevent the concentration of unchecked
6 power in the hands of any one branch. Freedom from taxation except upon
7 enactment by the elected representatives of the people, and the separation of
8 the power of the purse from the power of judicial review, are two of the
9 hallmarks of the system of divided governmental powers that the framers of the
10 United States Constitution and the State Constitution struggled to establish.

11 However, the conviction of the framers that the judiciary was the "least
12 dangerous" of the three branches since it would possess "no influence over
13 either the sword or the purse" has not worn well under the exercise of judicial
14 power in New Jersey. In exercising its power in cases involving the provisions
15 of the State Constitution, the judiciary has steadily and increasingly resorted
16 to remedies that order increases in the expenditure of public funds and
17 constitute a judicial redistribution of diminishing State fiscal resources. One
18 notable case is the recent decision of *Abbott v. Burke* (M-622-96)(Decided
19 May 14, 1997) where the New Jersey Supreme Court interpreted sections of
20 the State Constitution to compel the expenditure of public funds, the imposition
21 of taxes or the like.

22 Such judicial law-making seriously usurps exclusive powers of the
23 legislative and executive branches involving the raising of taxes and the
24 expenditure of public funds. When our courts increasingly mandate through
25 litigation remedies the imposition of taxes, increased expenditures of public
26 funds or the redistribution of duly enacted State spending priorities, it is
27 appropriate to reestablish the appropriate balance of powers through a
28 constitutional amendment that restricts this extreme application of judicial
29 relief.

30 It is the intent of the sponsor that this proposed amendment to the
31 Constitution would clarify that the judiciary does not possess the authority to
32 lay or collect taxes or to spend money. The power of the purse is exclusively
33 legislative and decisions by the Legislature on spending are not subject to
34 judicial review.

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39 Proposes constitutional amendment limiting judicial power to issue orders
40 containing certain remedies against the State.