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ROLL NUMBER

DESCRIPTION

3031

2001 HOUSE FINANCE AND TAXATION

HCR 3031

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3031

House Finance and Taxation Committee

Conference Committee

Hearing Date February 12, 2001

Tape Number	Side A	Side B	Meter #
1	x		158

Committee Clerk Signature *Janice Stein*

Minutes:

REP. AL CARLSON, CHAIRMAN Opened the hearing.

REP. FRANK WALD, DIST. 37, DICKINSON, Introduced the bill as the prime sponsor.

This is a resolution asking Congress to submit to the states an amendment to the Constitution to prohibit the United States Supreme Court or any other court ordering a state or political subdivision to levy or increase taxes. The first Whereas, is a restatement of the tenth amendment which says that all power not specifically delegated to the United States government, shall be reserved to the states and to its people. He went on to recite what James Madison and Alexander Hamilton said, relating to the legislative and judiciary work of the states. He named the states which have adopted this resolution. He stated it is a national movement.

REP. WINRICH Can you site any specific examples of court decisions that have levied taxes in North Dakota?

REP. WALD Not to my knowledge, we got awfully close with the equity issue. That could have been an example where the courts would have said, you will raise your taxes in certain school districts to address the equity issue. That is our job, not the courts.

Rep. Wald left a handout with information of examples where courts have been involved nationwide.

REP. WINRICH The other side of this coin is, the constitution, typically, gives certain rights to the citizens in North Dakota, and one of the rights, is free public education, which must be supported with public funds, if the state is not fulfilling that constitutional obligation, then is it not the responsibility of the courts to interpret the constitution and say they are not filling that obligation?

REP. WALD, No, I would say that if things get so bad that the general public should throw all of us out of office and get a new legislative office to address that situation.

REP. WINRICH But it is the responsibility of the courts to interpret the constitution.

REP. WALD To interpret, but not to make law.

REP. CARLSON Gave an example of a Supreme Court decision in 1990, in that case, Missouri vs. Jenkins, the court declared the federal judges have a constitutionally based authority in power, to levy or increase taxes. This was a school board case, which turned to the courts in an effort to force an imposition of the taxes. The contention was, the people didn't want to tax themselves in this very issue, and when they lost, the people went to the courts and wanted the courts to tax.

With no further testimony, the hearing was closed.

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House Finance and Taxation Committee

Bill/Resolution Number HCR 3031

Hearing Date February 12, 2001

COMMITTEE ACTION 2-12-01, TAPE #1, SIDE B, METER #1885

REP. CLARK Made a motion for a **DO PASS**

REP. RENNERFELDT Second the motion. **MOTION CARRIED**

14 YES 1 NO 0 ABSENT

REP. GROSZ Was given the floor assignment.

Date: 2-12-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3031

House FINANCE & TAXATION Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Clark Seconded By Rep. Rennerfeldt

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY		✓
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 14 No 1

Absent 0

Floor Assignment Rep. Grosz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 2001 12:25 p.m.

Module No: HR-25-3042
Carrier: Grosz
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3031: Finance and Taxation Committee (Rep. Carlson, Chairman) recommends DO PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3031 was placed on the Eleventh order on the calendar.

2001 SENATE FINANCE AND TAXATION

HCR 3031

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3031

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 3/13/01

Tape Number	Side A	Side B	Meter #
1	x		6.5-15.5
	x		36.5-44.2
Committee Clerk Signature <i>Joyelle C. King</i>			

Minutes:

Senator Urlacher: Opened the hearing on HCR 3031, making application to Congress to submit to the states an amendment to the Constitution of the US to prohibit the US Supreme Court and any Federal court from ordering a state or political subdivision to levy or increase taxes.

Senator Christmann was absent from the hearing.

Representative Frank Wald: Co-sponsored the resolution, testified in support. Quotes founding fathers about the role of each section of government. As of January 1st, 21 states have passed this same legislation.

Senator Kroeplin: Has this ever happened in ND?

Representative Frank Wald: Not specifically, it's preventative.

Senator Urlacher: Has there been a specific area that they've imposed?

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Senate Finance and Taxation Committee
Bill/Resolution Number 3031
Hearing Date 3/13/01

Representative Frank Wald: There was a case in Missouri, and there are other jurisdictions where the courts have said you should increase taxes for whatever purposes. One in ND could have been the ARC lawsuit, the Grafton situation, about 20 years ago.

Representative Lonny Winrich: Testified in opposition. Written testimony attached.

Senator Urlacher: In the MO case, couldn't the legislation have appropriated funds without the courts directing a levy?

Representative Lonny Winrich: In that case, the court found that both the state and the Kansas City School District were jointly responsible for the segregated school system. I believe the court it ordered the state to pay 75% of the cost of desegregation and ordered the school district to pay 25%. The school said that it could not afford that, so at the point the court stepped in and ordered the tax to be increased.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held later that day. Meter number 36.5-44.2.

Bill was explained to Senator Christmann.

Senator Stenehjem: I don't think it's the court's business to tell any jurisdiction that they need to levy any kind of tax. They have the right to tell them they have to desegregate, but it's not the courts business how they come up with the financial security to do that.

Senator Christmann: Gives example in that happened in Ohio.

COMMITTEE ACTION:

Motion made by Senator Stenehjem for a DO PASS, Seconded by Senator Christmann.

Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Christmann.

Date: 3/13/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2031

Senate Finance and Taxation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken NO PASS

Motion Made By Stenehjem Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Christmann

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 13, 2001 1:06 p.m.

Module No: SR-43-5481
Carrier: Christmann
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3031: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3031 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HCR 3031

Testimony of Representative Lonny Winrich In Opposition to HCR 3031

Chairman Urlacher and members of the Senate Finance and Tax Committee, I am Representative Lonny Winrich from District 18 in Grand Forks and I appear before you this morning in opposition to HCR3031.

cherish the rights and freedoms that we enjoy as citizens of this great nation. The constitution guarantees those rights to the citizens not to the government and sometimes our citizens need to be protected from actions or the inaction of the government. I believe that our continued enjoyment of those rights depends on the broad authority of the courts to interpret the constitution and to enforce its provisions. This resolution seeks to overturn that authority and would undermine our constitutional freedoms.

HCR3031 calls upon Congress to introduce a constitutional amendment that would explicitly prohibit courts from ordering a political jurisdiction to levy or increase taxes. In the abstract that is a reasonable thing to do. Certainly the power to tax belongs to the legislative branch of government. We expect elected representatives, not judges, to determine appropriate levels of taxation and to answer for their actions to the electorate. What HCR3031 calls for seems only logical until you look at the motivation for the bill.

HCR3031 is motivated primarily by the case of Missouri v. Jenkins which was decided in 1984 when the U.S. 8th Circuit Court of Appeals ordered that the property tax levy of the Kansas City, Missouri School District be increased. In Missouri v. Jenkins, the court found, as a finding of fact, that the KCMSD had operated a segregated school system and ordered a remedy. The Court ordered the school district to desegregate its schools and further ordered the district to levy a tax to pay for desegregation. Keep in mind that Missouri v. Jenkins was decided in 1984 and Brown v. Board of Education was decided in 1954. Thirty years after the Supreme Court declared that segregated schools were inherently unequal and unconstitutional, Kansas City had a segregated school system; for thirty years this school district flagrantly violated the constitutional rights of its citizens to equal protection under the law; for thirty years this school district flaunted its defiance of the same constitution that you and I took an oath to uphold and defend. Finally the court said "enough!" In essence what it said to the Kansas City School District is that you must abide by the laws of our nation and you must assume the financial responsibility of doing so. In that sense, the court's action is no more onerous than a municipal traffic court ordering a motorist to replace a defective headlight and to pay the cost of doing so. Furthermore, we must recognize that the court acted in response to an outrageous and interminable violation of constitutional rights. I believe the court acted appropriately.

Mr. Chairman and members of the committee, there is no crisis here. The sky is not falling. There are no recent comparable cases. The courts of our nation are not routinely levying taxes or otherwise usurping the powers of the legislature. But in cases of egregious violations of the rights of citizens, I believe the courts do and should continue to have the authority to act to remedy the situation. If you believe, as I do, that our court system stands as an important guardian of our constitutional rights, I urge you to give a DO NOT PASS recommendation to HCR3031