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H. R. 3182

To limit the authority of Federal courts to fashion remedies that require local jurisdictions to assess, levy, or collect taxes or to implement spending measures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1998

Mr. MANZULLO introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To limit the authority of Federal courts to fashion remedies that require local jurisdictions to assess, levy, or collect taxes or to implement spending measures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Judicial Mandate and Remedy Clarification Act''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) a variety of effective and appropriate judicial remedies are available under existing law for the full redress of legal and constitutional violations, and the imposition, increase, levying, or assessment by the courts of taxes, or the courts' requiring the implementation of additional spending, is neither necessary nor appropriate for the full and effective exercise of remedies imposed by Federal courts with appropriate jurisdiction;

(2) the imposition, increase, levying, or assessment of taxes by judicial order—

(A) is not an appropriate exercise of the judicial power under the Constitution; and

(B) is incompatible with—

(i) the traditional principles of the laws and Government of the United States; and

(ii) the basic American principle that taxation without representation is tyranny (because Federal courts are not elected officials and therefore are not answerable to the popular will);

(3) when a Federal court issues an order that requires or results in the imposition, increase, levy-

ing, or assessment of any tax, or requires additional spending, the court—

(A) exceeds the proper boundaries of the limited jurisdiction and authority of Federal courts under the Constitution; and

(B) intrudes on the legislative and political functions of a republican form of government, as guaranteed to every State of the Union under section 4 of article IV of the United States Constitution;

(4) no court should enter an order or approve any settlement—

(A) remedying a legal or constitutional violation, by imposing, creating, increasing, levying, or assessing any tax; or

(B) that has the effect of imposing, creating, increasing, levying, or assessing any tax;

(5) a settlement agreement or order entered by a Federal court should be fashioned within the framework of the budgetary restraints of any affected State or political subdivision thereof;

(6) the Congress retains the authority under sections 1 and 2 of article III of the United States Constitution to limit and regulate the jurisdiction of the inferior Federal courts, and such authority in-

cludes the power to limit the remedial authority of such courts;

(7) notwithstanding paragraphs (1) through (6), the Congress acknowledges that in certain circumstances the Federal courts have abrogated constitutional authority with regard to judicially mandating a tax, levy, assessment, or additional spending measure in order to achieve a remedy, and—

(A) any such tax, levy, or assessment shall not be sustained; and

(B) in the case of any such spending measure the mandate must be overturned unless specific requirements are met;

(8) remedial injunctions formulated by the Federal courts, that require state or local government institutions to make improvements in the services they provide (otherwise known as ''structural injunctions''), in order to address a constitutional violation breach the principles of the separation of powers among the 3 branches of the Federal Government by circumventing the democratic decisionmaking process;

(9) the Constitution does not permit the Federal courts to exercise their remedial powers to en-

gage in the structural reform of local institutions and local governments;

(10) for a court-ordered remedy to be effective, it necessarily requires political and public support;

(11) if courts inject themselves into the political arena, they risk undermining their impartiality;

(12) the Federal Government's duty to remedy a constitutional violation does not permit the Federal judiciary to exceed its authority;

(13) as taxing is an independent power granted to the Congress by the Constitution, spending is not an independent power, but a qualification of that taxing power; and

(14) appropriating public money in response to a judicial order that provides a remedy to a constitutional violation is a political function and should be determined by elected officials.

SEC. 3. LIMITATION ON FEDERAL COURT REMEDIES.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1369. Limitation on Federal court remedies

''(a) LIMITATION ON COURT-IMPOSED TAXES.—No district court may enter any order or approve any settlement that requires any State, or political subdivision of

a State, to impose, increase, levy, or assess any tax for the purpose of enforcing any Federal or State common law, statutory, or constitutional right or law, or has the effect of imposing, increasing, levying, or assessing any such tax.

"(b) LIMITATION ON COURT-IMPOSED SPENDING.—(1) No district court may enter any order or approve any settlement that requires any State, or political subdivision of a State, to implement a spending measure for the purpose of enforcing any Federal or State common law, statutory, or constitutional right or law, unless the court finds by clear and convincing evidence, that—

"(A)(i) there are no other means available to remedy the violation of rights or laws; and

"(ii) the proposed spending measure is narrowly tailored to remedy the violation at issue;

"(B) the spending measure will not contribute to or exacerbate the violation intended to be remedied;

"(C) the proposed spending measure will not result in a loss of revenue for the political subdivision in which the spending measure is to be implemented;

"(D) the proposed spending measure will not result in the loss or depreciation of property values of the taxpayers who are affected;

"(E) the proposed spending measure will not conflict with the applicable laws of the State or political subdivisions concerned; and

"(F) plans submitted by State and local authorities will not effectively redress the violation at issue.

"(2) A finding under paragraph (1) shall be subject to immediate interlocutory de novo review.

"(3)(A) Notwithstanding any law or rule of procedure, any aggrieved corporation, unincorporated association, or other person residing or present in the State or political subdivision in which a spending measure is implemented in accordance with paragraph (1), and any other entity located within that State or political subdivision, shall have the right to intervene in any proceeding concerning the implementation of the spending measure.

"(B) A person or entity that intervenes pursuant to subparagraph (A) shall have the right to—

"(i) present evidence and appear before the court to present oral and written testimony; and

"(ii) appeal any finding required to be made by this section, or any other related action taken to impose a spending measure that is the subject of the intervention.

"(4) For purposes of this section, the term 'spending measure' means a law or other measure requiring the expenditure of funds for a particular purpose in addition to funds already available for that purpose.

"(c) TERMINATION OF ORDERS AND SETTLEMENTS.—Notwithstanding any law or rule of procedure, any order described in subsection (b)(1) that is entered by a district court, and any settlement described in subsection (b)(1) that is approved by a district court, shall automatically terminate on the date that is 1 year after the later of—

"(1) the date on which the spending measure imposed by court order is first implemented;

"(2) the date of the enactment of this section; or

"(3) an earlier date, if the court determines that the violation of rights or laws has been cured to the extent practicable.

Any new such order or settlement relating to the same issue is subject to all the requirements of this section.

"(d) STATE PREEMPTION.—This section shall not be construed to preempt any law of a State or political subdivision thereof that imposes limitations on, or otherwise restricts the imposition or implementation of, a tax, levy, assessment, or appropriation that is imposed or imple-

mented in response to a court order or settlement described in subsection (b)(1).

"(e) NOTICE TO STATES AND POLITICAL SUBDIVISIONS.—The court shall provide written notice to a State or political subdivision thereof subject to an order or settlement referred to in subsection (b)(1) with respect to any finding required to be made by the court under that subsection. Such notice shall be provided before the beginning of the next fiscal year of that State or political subdivision occurring after the order is issued or settlement approved.

"(f) PRESUMPTION.—There shall be a presumption that a spending measure required by a Federal court is not a narrowly tailored means of remedying violations of Federal or State rights or laws.

"(g) TECHNICAL CLARIFICATION.—For purposes of this section—

"(1) the District of Columbia shall be considered to be a State; and

"(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

"(h) EFFECT OF SUPREME COURT DECISION.—Should the Supreme Court find that the imposition of a tax, levy, or assessment by, or a spending measure re-

quired by, a Federal judge is illegal or unconstitutional, nothing contained in this section shall be construed to otherwise make legal, validate, or approve of such a tax, levy, assessment, or spending measure.''.

(b) CONFORMING AMENDMENT.—The table of contents for chapter 85 of title 28, United States Code, is amended by adding after the item relating to section 1368 the following new item:

''1369. Limitation on Federal court remedies.''.

(c) STATUTORY CONSTRUCTION.—Nothing contained in this Act or the amendments made by this Act shall be construed to make legal, validate, or approve the imposition of a tax, levy, or assessment by a Federal court or a spending measure required by a Federal court.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall apply with respect to any action or other proceeding in any Federal court that is pending on, or commenced on or after, the date of the enactment of this Act, and the 1-year limitation set forth in subsection (b) of section 1369 of title 28, United States Code, as added by section 3 of this Act, shall apply to any court order described in subsection (b)(1) of such section, that is in effect on the date of the enactment of this Act.

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