

say thank you to all those who have worked so hard on behalf of our veterans. Certainly, Chloe Williams has made a positive impact, and we thank her for her commitment. I would urge my colleagues to stand and join me in special tribute to Chloe Williams and to those attending the 100th Anniversary of the Veterans of Foreign Wars. Best wishes to each of you now and in the future.

BAN JUDICIAL TAXATION

HON. DONALD A. MANZULLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 17, 1999

Mr. MANZULLO. Mr. Speaker, today I am introducing an amendment to the Constitution to ban the Judiciary at any level of government from levying or increasing taxes. Why? Because levying and increasing taxes is a function of the legislative branch of government. Consider, after all, the separation of powers doctrine. Most citizens of our great country have heard at one time or another about separation of powers. We were taught about it in our civics classes growing up. We learned about it in our history classes. We read about it in the Constitution. I, for one, believe that the Constitution is clear in its delineation of duties. I don't believe the Founding Fathers meant to leave much to interpretation. There really are no mincing of words. Please consider:

Article I. Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States, but all duties, Imposts and Excises shall be uniform throughout the United States.—United States Constitution

Article I. Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills.—United States Constitution

These words are succinct and explicit, and they spell out exactly how taxes are to be raised. If there is any question, consider the following quotations from other relevant sources:

"Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would then get the legislator. Were it joined to the executive power, the judge might behave with all of the violence of an oppressor."

"There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates, or, if the power of judging be not separated from the legislative and executive powers . . ."—James Madison, Federalist Number 47, quoting Montesquieu to defend the Constitution's separation of powers.

"[T]he judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution, whatever. It may truly be said to have neither Force nor Will, but merely judgement; and ultimately must depend upon the aid of the executive arm even for the efficacy of its judge-

ments."—Alexander Hamilton, Federalist Number 78

"The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body."—Alexander Hamilton, Federalist Number 78

If there is any phrase that sums up the reason for the existence of this republic, that phrase is "no taxation without representation." These are the words of Thomas Jefferson, who, when he wrote the Declaration of Independence, cited King George for three things: (1) the king refused to pass laws that would allow people the right to be represented in their own legislature; (2) he called together legislative bodies at unusual times so nothing could be done; and (3) he imposed taxes on the people without their consent!

Finally, James Madison asked the rhetorical question in Federalist number 33, "[w]hat is a power but the ability or faculty of doing a thing? What is the power of laying and collecting taxes but a legislative power?"

Why, then, 210 years after the ratification of our nation's Constitution do we have unelected judges—from the "least dangerous" branch—who are appointed for life, levying and raising taxes? Some people with whom I have spoken have asked me if judges can really do this. Well, they are doing it because they can. They can because Congress allows them to get away with it.

What is judicial taxation? It is the act whereby a federal court orders a state or political subdivision of a state to levy or increase taxes. In *Missouri vs. Jenkins* (110 Sup. Ct. 1661 (1990)), the Supreme Court held that a federal court had the power to order an increase in state and local taxes. Specifically, the 5 to 4 majority ruled that a federal district court has "abused its discretion" by directly imposing a local property tax increase to finance implementation of a school desegregation plan for the Kansas City, Missouri school district. BUT, the court stated that "[a] court order directing a local government body to levy its own taxes is plainly a judicial act within the power of a Federal court," and that the federal judiciary may also block enforcement of state law limitations on local tax efforts that interfere with the funding of constitutionally-based desegregation plans. This is an "indirect" tax. The dissenters in the *Jenkins* ruling criticized the direct versus indirect distinction as a "convenient formalism." However, the decision EXPANDED SIGNIFICANTLY THE POWER OF THE FEDERAL COURTS!

Those who oppose attempts to curb this power claim that the Kansas City case is the only case where a federal judge, Russell Clarke, ordered a tax increase to finance the building of a magnet school system to make it more appealing. Similarly, judicial taxation took place two decades ago when federal Judge Leonard Sand forced the elected representatives of Yonkers, New York to raise taxes on their constituents in order to finance the construction of public housing in middle-class neighborhoods. In New Hampshire, the state Supreme Court decreed that local schools must be funded with a statewide tax in order to equalize spending per pupil across the school districts.

In the congressional district I represent, Judge Michael P. Mahoney, the federal magistrate judge overseeing a desegregation case in Rockford, Illinois, concluded that the school district had authority under Illinois' Tort Immunity Act to issue bonds without referendum

and to levy taxes to fund the remedial programs. Pursuant to this finding, the school district issued bonds and levied taxes from 1991 through 1997 under the Tort Immunity Act. Although the Tort Fund is not subject to voter control and was originally intended to be used to pay damages to individuals in civil liability suits, the federal magistrate ordered its use. More recently, the federal magistrate again ordered each member of the school board under threat of contempt and jail to increase taxes. Following that threat in late 1997, the school board capitulated and approved the \$25 million tort levy for that year. After the vote, School Board Member David Strommer said, "It's a disgrace for an American public official to face this kind of pressure." Since 1989, the city of Rockford, with a population of 140,000 people, has paid \$183 million to comply with the court orders. That is a lot of money for such a small population, and that's for schools alone.

All of these examples run counter to the intentions of the Founding Fathers. Our nation cannot allow its liberties to slip by the wayside. We have judges raising taxes. We have a regulatory body, the FCC, imposing a telephone tax. We have a Congress that doesn't believe this is a problem. Of these, it is Congress that is directly accountable to the people.

So, what I have done legislatively to address judicial taxation? During the last Congress, I was able to insert a provision into the Judicial Reform Act. The provision was straight forward and was designed to severely limit the imposition of judicially imposed taxation. It would have applied to any order or settlement that directly or indirectly required a State, or political subdivision of a State, to increase taxes.

My efforts to bar the federal judiciary from directly or indirectly raising taxes were defeated by a gutting amendment. However, in a sense we succeeded because this may have been one of the few times and possibly the only time in the history of our republic where the issue of Congress ceding taxing authority to the courts has ever been debated. Putting a halt to judicial taxation is NOT about desegregation, prison overcrowding, environmental law enforcement, housing, or what have you. It is all about abiding by the fundamental tenants of our Constitution.

This Congress, I am focusing on a two-pronged approach. It is not going to be easy, but given the options, I believe that we have very few alternatives. I have introduced a joint resolution to amend the Constitution which reads simply, "Neither the Supreme court, nor any inferior court of the United States, nor the court of any State in its application of laws under this Constitution or any Federal law, shall have the power to instruct or order a State or political subdivision thereof, or an official of such State or political subdivision, to levy or increase taxes."

The second approach, and this is very important, is through the states proposing a constitutional amendment. Currently, states cannot propose amendments to the Constitution without first the calling of a constitutional convention. However, there is a proposal—H.J. Res. 29—which was introduced by Virginia Representative TOM BLILEY that would allow for a mechanism by which the states could propose amendments to the Constitution without calling for a constitutional convention. I am a cosponsor of this resolution.

Right now, as I understand it, 15 states have passed either a Resolution or a Memorial calling upon Congress to send to the

states for ratification of an amendment to the U.S. Constitution banning federal judges of inferior courts or the Supreme Court from having the power to levy or increase taxes. Those states include Alabama, Alaska, Arizona, Colorado, Delaware, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New York, Oklahoma, South Dakota, Tennessee and Utah. As it stands, there are no teeth in those resolutions because there is no mechanism. H.J. Res. 29 would provide that mechanism. We should all be working to pass that amendment, as well.

Levying taxes should remain a prerogative of the legislative branch. Thus, I will continue my efforts to stop judicial taxation.

HONORING THE 25TH ANNIVERSARY OF THE UNITED SENIOR CITIZENS CENTER OF SUNSET PARK

HON. NYDIA M. VELÁZQUEZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 17, 1999

Ms. VELÁZQUEZ. Mr. Speaker, I rise today in honor of the United Senior Center of Sunset Park as they celebrate 25 years of service to the elderly citizens throughout the Sunset Park area of Brooklyn. The organization provides fellowship and lends a helping hand whenever, wherever and to whomever it is needed.

First started in 1974, the center, then located at 56th and 6th Avenues, quickly became a vital part of the communities it served. As it grew, the need for their services was so great that they soon had to relocate to larger space at their current location of 53rd and 3rd Avenues where they have been for twenty years.

As the center expanded it began to address the diverse cultural needs of the communities they serve. They began by offering services in Spanish and, soon after that, added staff and programs in Chinese. These enhancements made the United Senior Center in Sunset Park more responsive and a more integral part of the rich cultural fabric of Brooklyn.

The diverse groups of seniors in Sunset Park can take advantage of the United Senior Centers many recreational programs, including tai-chi, bingo, arts and crafts, and swimming. Additionally, the center also offers important English as a Second Language courses to help individuals improve their day-to-day lives. There are citizenship programs, and nutrition-education seminars, as well as a variety of programs designed to assist seniors regarding senior's rights and entitlement benefits.

The dedicated staff and leadership of the United Senior Center of Sunset Park has done an exemplary job of helping seniors in our communities. Through their efforts they help an estimated 36,000 people a year.

I urge my colleagues to join me in congratulating the leaders and staff of the United Senior Center of Sunset Park on their 25th anniversary. The center is an integral part of our diverse culture in Brooklyn, and I wish them continued success for the next 25 years and beyond.

BOND PRICE COMPETITION
IMPROVEMENT ACT OF 1999

SPEECH OF

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, June 14, 1999

Mr. DINGELL. Mr. Speaker, as Ranking Member of the Committee on Commerce, as well as one of the original sponsors and a Floor-Manager of H.R. 1400, the Bond Price Competition Improvement Act of 1999, I rise to clarify a matter involving the legislative history of this legislation. My remarks are an extension of remarks that I made during House consideration of H.R. 1400 (June 14, 1999, CONGRESSIONAL RECORD at H4137).

Prior to floor consideration of H.R. 1400, both the bill and the committee report had been processed on a fully cooperative, bipartisan basis that respected the rights of the majority and minority members of the Commerce Committee. For that, I commend the gentleman from Virginia (Mr. BLILEY), distinguished chairman of the Committee on Commerce.

During House consideration of H.R. 1400 on Monday of this week (June 14, 1999, CONGRESSIONAL RECORD at H4132-4137, 4139-4140), I became aware of the intention of the Majority to insert in the RECORD as an extension of Chairman BLILEY's remarks "legislative history" submitted by the Bond Market Association (BMA).

When I questioned proceeding in this manner, I was assured by Mr. BLILEY that the material was "not a part of the legislative history at the moment" and that the minority would be given an opportunity to peruse and approve the BMA remarks before they became legislative history (June 14, 1999, CONGRESSIONAL RECORD at H4136). However, I was informed by the gentleman from Virginia in a subsequent phone call that he had misspoken: the material had been inserted in the RECORD without the Minority's review and approval.

I have the following comments on that material which is printed on pages H4134-4135 of the CONGRESSIONAL RECORD for June 14, 1999, immediately following the statement that Chairman BLILEY actually delivered to the House:

The Bond Market Association's representatives, who played a constructive role in the development of the legislation, have explained that they wanted to address several concerns raised by their lawyers with the Committee report. They felt that it was inaccurate and painted too bleak a picture of the state of bond market transparency. I have no particular quarrel with their goal. I have a large quarrel, as I stated on June 14, with the process. Furthermore, the BMA document itself contains inaccurate statements.

Because the Majority did not include in the main body of the Committee report the findings of the SEC's review of price transparency in the markets for debt securities in the U.S., I included a summary thereof in my additional views (House Report No. 106-149 at 12). BMA admits that my summary is correct. The BMA summary that appears in the RECORD, however, is not correct (H 4134, carry-over paragraph, top 2nd column). For example, contrary to the BMA document's assertion, the entire U.S. Treasury market was not found to

be "highly transparent." The markets for "benchmark" U.S. Treasury bonds were found to be "highly transparent," while other Treasury and Federal agency bonds were found to provide a "very good" level of pricing information. While the differences that give rise to a "highly transparent" versus a "very good" rating may escape the untrained and uninitiated, the BMA document's failure to accurately reflect the SEC's conclusions begs the question whether this was sloppy draftsmanship or a deliberate attempt to mislead. The text of the SEC report's summary of findings appears at the end of these remarks. The entire report is printed in the September 29, 1998 hearing record, Serial No. 105-130, at pages 7-18.

The March 1998 Treasury-SEC-Federal Reserve Joint Study of The Regulatory System For Government Securities did report on private sector efforts to improve the timely public dissemination and availability of information concerning government securities transactions and quotes. Its conclusion at page 18 was that "[t]here have been significant advances in transparency for government securities transactions over the past several years, primarily originating from commercial vendors" (H4134, paragraph 1, 2nd column).

Contrary to the impression given by the BMA's document, Nasdaq's Fixed Income Pricing System (FIPS) has done little to make the high yield market more transparent. Specifically, FIPS does not make public any actual transaction reports for high yield bonds, although it is true that such transactions are reported to the NASD, mostly at the end of the day. FIPS publishes quotations, which are generally considered too inaccurate to be useful, for just 50 selected bonds, and also publishes transaction summaries giving the high price, low price, and aggregate volume for all registered high yield bonds (H4134, bottom 2nd column, top 3rd column).

The BMA document notes testimony claiming vast differences in the level of price transparency between liquid and illiquid equities. However, NASD Bulletin Board stocks are subject to real time last sale reporting, as are many listed equities and listed options which are, in fact, highly illiquid (H4134, paragraph 1, 3rd column).

There are nothing like 300,000 to 400,000 corporate bonds, as that term is commonly understood. The SEC has advised us that there are approximately 30,000 to 40,000. The estimate of 300,000 to 400,000 in the BMA document probably includes mortgage-backed securities guaranteed by GNMA which are issued by private corporations but are "exempt" securities and not ordinarily understood to be corporate bonds. The BMA document gives a completely wrong impression of the characteristics of the market (H4134, paragraph 2, 3rd column).

The close relationship that exists among some corporate bonds (but which falls well short of the "fungibility" claimed by the BMA document) is one of the reasons that transaction reporting can be valuable, since the price of one bond may be important information about the value of many others (H4135, carry-over paragraph, top 1st column).

The BMA document is correct that the Finance Subcommittee did hear testimony expressing the concerns of some market participants about possible liquidity effects of the immediate disclosure of price and volume information for some transactions. However, SEC