

114TH CONGRESS
1ST SESSION

H. RES. 392

Expressing the sense of the House of Representatives that the enactment of the Patient Protection and Affordable Care Act of 2009, Public Law 111–148, violated article I, section 7 of the United States Constitution because it was a bill for raising revenue that did not originate in the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. FRANKS of Arizona (for himself, Mr. DUNCAN of South Carolina, Mr. PITTENGER, Mr. GOSAR, Mr. OLSON, Mr. GARRETT, Mr. BROOKS of Alabama, Mr. SALMON, Mr. GOHMERT, Mr. KING of Iowa, Mrs. BLACKBURN, Mr. ROKITA, Mr. JORDAN, and Mr. NEWHOUSE) submitted the following resolution; which was referred to the Committee on Ways and Means

RESOLUTION

Expressing the sense of the House of Representatives that the enactment of the Patient Protection and Affordable Care Act of 2009, Public Law 111–148, violated article I, section 7 of the United States Constitution because it was a bill for raising revenue that did not originate in the House of Representatives.

Whereas article I, section 7 of the United States Constitution provides that “[a]ll Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills”;

Whereas this constitutional requirement that revenue-raising bills originate in the House of Representatives applies whenever an “act . . . by any of its provisions” has a “purpose . . . to raise revenue to be applied in meeting the expenses or obligations of the government”, but not when the raising of revenue is “incidental” and there is “no [such] purpose”;

Whereas the constitutional allowance for Senate-initiated revenue-raising amendments applies when an “amendment [is] germane to the subject-matter of [a House revenue-raising bill] and not beyond the power of the Senate to propose”;

Whereas the Patient Protection and Affordable Care Act of 2009 was introduced in the United States Senate on November 19, 2009, by its sponsors as the “Senate health care bill” through Senate Amendment No. 2786, a proposed amendment in the nature of a substitute to H.R. 3590, which had passed the House of Representatives by a vote of 416–0 as the “Service Members Home Ownership Tax Act of 2009” on October 8, 2009;

Whereas the Senate passed Senate Amendment No. 2786 on November 21, 2009, by a party-line vote of 60–39, thereby striking the entire six-page House bill after its enacting clause and inserting in its place the 2,000-plus page Patient Protection and Affordable Care Act of 2009;

Whereas the sponsors of the Patient Protection and Affordable Care Act of 2009 not only contemplated the possibility of substantial excess revenues, but also explicitly announced on introducing Senate Amendment No. 2786 that “[t]his bill will cut the deficit by \$130 billion”;

Whereas section 1563 of the Patient Protection and Affordable Care Act of 2009 specifically finds that “this Act will reduce the Federal deficit between 2010 and 2019” and “this Act will continue to reduce budget deficits after 2019”;

Whereas title IX of the Senate-initiated Patient Protection and Affordable Care Act of 2009 contains 17 numbered “Revenue Provisions” to generate tax revenue to the general account in the United States Treasury;

Whereas title IX of the substitute bill inserted into H.R. 3590 by Senate Amendment No. 2786 unquestionably raises revenue within the meaning of article I, section 7 of the United States Constitution, including without limitation an excise tax on medical devices that has no conceivable purpose other than the raising of revenue to support the operation of the Federal Government, regardless of how the Federal courts resolve the question of whether the “shared responsibility payment” added by section 1501(b) of the Patient Protection and Affordable Care Act of 2009 raises revenue within the meaning of article I, section 7 of the United States Constitution;

Whereas, as it passed the House of Representatives on October 8, 2009, H.R. 3590 consisted of six sections, namely—

(1) the bill’s short title (section 1);

(2) 3 sections (sections 2 through 4) that eliminated certain tax streams as applied to military, intelligence, and foreign service personnel;

(3) a section (section 5) that increased by \$21 the penalty for failing to file returns for partnerships and S corporations under sections 6698(b)(1) and 6699(b)(1) of the Internal Revenue Code of 1986; and

(4) a section (section 6) that shifted 0.5 percent of certain corporations' estimated tax payments from the 4th calendar quarter to the 3rd calendar quarter, with an equal and offsetting reduction to 4th quarter payments;

Whereas, regardless of how the Federal courts resolve the question of whether the phrase "raising revenue" under article I, section 7 of the United States Constitution means "increasing revenue" or merely "levying revenue", the House and Senate since 1872 have interpreted provisions, such as sections 2 through 4 of H.R. 3590 as passed by the House on October 8, 2009, that eliminate revenue streams as not raising revenue within the meaning of article I, section 7 of the United States Constitution;

Whereas section 5 of H.R. 3590 as it passed the House on October 8, 2009, would have increased penalties as a regulatory measure to encourage timely filing of returns, with no revenue-raising purpose and no more than incidental revenue;

Whereas section 6 of H.R. 3590 as it passed the House on October 8, 2009, would have merely accomplished a 3-month temporal shift in estimated tax payments, without altering the total amount of such estimated tax payments; and

Whereas nothing in the Senate-initiated Patient Protection and Affordable Care Act of 2009 was germane to the subject matter of H.R. 3590 as it passed the House on October 8, 2009: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 resentatives that—

1 (1) as passed by the House on October 8, 2009,
2 H.R. 3590, the Service Members Home Ownership
3 Tax Act of 2009, was not a “Bill for raising rev-
4 enue” within the meaning of article I, section 7 of
5 the United States Constitution;

6 (2) as passed by the Senate on December 24,
7 2009, H.R. 3590, the Patient Protection and Af-
8 fordable Care Act of 2009, was a “Bill for raising
9 revenue” within the meaning of article I, section 7
10 of the United States Constitution; and

11 (3) the Senate-initiated Patient Protection and
12 Affordable Care Act of 2009 that the Senate passed
13 on December 24, 2009, the House passed on March
14 21, 2010, and the President signed on March 23,
15 2010, was not within the power of the Senate to
16 “propose or concur with Amendments as on other
17 Bills” within the meaning of article I, section 7,
18 clause 2 of the United States Constitution.

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