

PROPOSING A TAX LIMITATION
AMENDMENT TO THE CONSTITU-
TION OF THE UNITED STATES

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 12, 2002

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise to oppose H.J. Res. 96, Tax Limitation Constitutional Amendment. There are three key points that are relevant to this constitutional amendment:

This Constitutional Amendment states that any bill changing the internal revenue laws will require approval by two-thirds of the Members of both the House and Senate.

A Constitutional Amendment must pass both houses of Congress by a 2/3 vote before it is passed onto the states for ratification.

Adoption of the 16th amendment in 1913 first allowed direct taxation of the American people by the federal government.

The underlying legislation of H.J. Res. 96, is an attempt to help the most well to do Americans through a constitutional amendment that limits the ability of Congress to raise taxes and cut deficits. It is no secret that this legislation is designed to disproportionately help the richest people in this country.

H.J. Res. 96 could make it difficult to maintain a balanced budget or to develop a responsible plan to restore Medicare or Social Security to long-term solvency. H.J. Res. 96 is a resolution proposing an amendment to the Constitution of the United States of America with respect to tax limitations, that would require any bill, resolution, or other legislative measure changing the internal revenue laws require for final adoption in each House the concurrence of two-thirds of the Members of that House voting and present, unless the bill is determined at the time of adoption, in a reasonable manner prescribed by law, not to increase the internal revenue by more than a de minimis amount.

By requiring a two-thirds supermajority to adopt certain legislation, H.J. Res. 96 diminishes the vote of every Member of the House and Senate, denying the seminal concept of "one person one vote". This fundamental democratic principle insures that a small minority may not prevent passage of important legislation. This legislation presents a real danger to future balanced budgets and Medicare and Social Security.

Under H.J. Res. 96, it would be incredibly difficult obtaining the requisite two-thirds supermajority required to pass important, fiscally responsible deficit-reducing packages. And at a time in our history when the Baby Boomers are now retiring, H.J. Res. 96 could make it more difficult to increase Medicare premiums for those most able to pay their fair share of the bill, and could make it difficult balancing both Medicare and Social Security payroll taxes in the long term.

H.J. Res. 96 would make it nearly impossible to plug tax loopholes and eliminate corporate tax welfare, or even to increase tax enforcement against foreign corporations. H.J. Res. 96 would also make it nearly impossible to balance the budget, or develop a responsible plan to restore Medicare or Social Security to long-term financial solvency.

I am deeply troubled by the concept of divesting a Member of the full import of his or

her vote. As Professor Samuel Thompson, one of this Nation's leading tax law authorities, observed at a 1997 House Judiciary Subcommittee hearing on the same proposal: "the core problem with this proposed Constitutional amendment is that it would give special interest groups the upper hand in the tax legislative process."

By requiring a supermajority to do something as basic as getting the money to run government, H.J. Res. 96 diminishes the power of a member's vote. It is a diminution. It is a disparagement. It is inappropriate, and the fact that this particular amendment has failed seven times in a row suggests that Congress knows it.

H.J. Res. 96 will also make it nearly impossible to eliminate tax loopholes, thereby locking in the current tax system at the time of ratification. The core problem with this proposed constitutional amendment is that it would give special interest groups the upper hand in the tax legislative process. Once a group of taxpayers receives either a planned or unplanned tax benefit with a simple majority vote of both Houses of Congress, the group will then be able to preserve the tax benefit with just a 34 percent vote of one House of Congress.

In addition, H.J. Res. 96 would make it inordinately difficult to make foreign corporations pay their fair share of taxes on income earned in this country. Congress would even be limited from changing the law to increase penalties against foreign multinationals that avoid U.S. taxes by claiming that profits earned in the U.S. were realized in offshore tax havens. Estimates of the costs of such tax dodges are also significant. An Internal Revenue Service study estimated that foreign corporations cheated on their tax returns to the tune of \$30 billion per year.

Another definitional problem arises from the fact that it is unclear how and when the so-called "de minimis" increase is to be measured, particularly in the context of a roughly \$2 trillion annual budget. What if a bill resulted in increased revenues in years 1 and 2, but lower revenues thereafter? It is also unclear when the revenue impact is to be assessed, based on estimates prior to the bill's effective date, or subsequent determinations calculated many years out. Further, if a tax bill was retroactively found to be unconstitutional, the tax refund issues could present insurmountable logistical and budget problems.

I hope that my colleagues take seriously the path H.J. Res. 96 would lead us down were it to be adopted as is, therefore, I urge my colleagues to oppose H.J. Res. 96.

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TION OF THE UNITED STATES

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 12, 2002

Mr. UDALL of Colorado. Mr. Speaker, already this year is nearly half gone. But more than half our year's work remains undone—including consideration of the President's proposal to establish a new Department of Homeland Security. If we are to complete the year's

work on time, we need to put every day to good use. But that's not what we are doing today.

Instead, today the House is again considering a proposed constitutional amendment that was debated, and that failed of approval, just last year. I think that is a waste of time, especially since the proposal does not deserve to pass.

I'm not a lawyer, but it's clear that the language of the proposal is an invitation to litigation—in other words, to getting the courts involved even further in the law-making process. To say that Congress can define when a constitutional requirement would apply, provided that the Congressional decision is "reasonable," is to ask for lawsuits challenging whatever definition might be adopted. Aren't there enough lawsuits already over the tax laws? Do we need to invite more?

But more important than the technical aspects of this proposal, I think it is bad because it moves away from the basic principle of democracy—majority rule.

Under this proposal, there would be another category of bills that would require a two-thirds vote of both the House and the Senate.

That's bad enough as it applies here in the House, but consider what that means in the Senate. There, if any 34 Senators are opposed to something that take a two-thirds vote, it cannot be passed. And, of course, each state has the same representation regardless of population.

Consider what that means if the Senators in opposition are those from the 17 States with the fewest residents.

Looking at the results of the most recent census, the total population of the 17 least-populous states is about 21 million people.

That's a respectable number, but remember that the population of the country is more than 280 million.

So, what this resolution would do would be to give Senators representing about 7 percent of the American people the power to block some kinds of legislation—even if that legislation has sweeping support in the rest of the country, even if it had passed the House by an overwhelming margin, and even if it was responding to an urgent national need.

Right now, that kind of supermajority is needed under the constitution to ratify treaties, propose Constitutional amendments, and to do a few other things.

But this resolution does not deal with things of that kind. It deals only with certain tax bills—bills that under the constitution have to originate here, in the House. Those are the bills that would be covered by this increase in the power of Senators who could represent such a very small minority of the American people.

Why would we want to do that? Are the proponents of this constitutional amendment so afraid of majority rule? Why else would they be so eager to reduce the stature of this body, the House of Representatives, as compared with our colleagues in the Senate?

Remember, that's what this is all about—"internal revenue," however that term might be defined by Congress or by the courts. When Congress debates taxes, it is deciding what funds are to be raised under Congress's Constitutional authority to "pay the debts and provide for the common defense and general welfare of the United States." Those are serious and important decisions, to be sure, but