

105TH CONGRESS  
2D SESSION

# 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

---

## 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.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Judicial Mandate and  
5       Remedy Clarification Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds that—

1           (1) a variety of effective and appropriate judi-  
2           cial remedies are available under existing law for the  
3           full redress of legal and constitutional violations, and  
4           the imposition, increase, levying, or assessment by  
5           the courts of taxes, or the courts' requiring the im-  
6           plementation of additional spending, is neither nec-  
7           essary nor appropriate for the full and effective exer-  
8           cise of remedies imposed by Federal courts with ap-  
9           propriate jurisdiction;

10          (2) the imposition, increase, levying, or assess-  
11          ment of taxes by judicial order—

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

14                (B) is incompatible with—

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

18                   (ii) the basic American principle that  
19                   taxation without representation is tyranny  
20                   (because Federal courts are not elected of-  
21                   ficials and therefore are not answerable to  
22                   the popular will);

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

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

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

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

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

13 (A) remedying a legal or constitutional vio-  
14 lation, by imposing, creating, increasing, levy-  
15 ing, or assessing any tax; or

16 (B) that has the effect of imposing, creat-  
17 ing, increasing, levying, or assessing any tax;

18 (5) a settlement agreement or order entered by  
19 a Federal court should be fashioned within the  
20 framework of the budgetary restraints of any af-  
21 fected State or political subdivision thereof;

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

1 includes the power to limit the remedial authority of  
2 such courts;

3 (7) notwithstanding paragraphs (1) through  
4 (6), the Congress acknowledges that in certain cir-  
5 cumstances the Federal courts have abrogated con-  
6 stitutional authority with regard to judicially man-  
7 dating a tax, levy, assessment, or additional spend-  
8 ing measure in order to achieve a remedy, and—

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

11 (B) in the case of any such spending meas-  
12 ure the mandate must be overturned unless spe-  
13 cific requirements are met;

14 (8) remedial injunctions formulated by the Fed-  
15 eral courts, that require state or local government  
16 institutions to make improvements in the services  
17 they provide (otherwise known as “structural injunc-  
18 tions”), in order to address a constitutional violation  
19 breach the principles of the separation of powers  
20 among the 3 branches of the Federal Government by  
21 circumventing the democratic decisionmaking proc-  
22 ess;

23 (9) the Constitution does not permit the Fed-  
24 eral courts to exercise their remedial powers to en-

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

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

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

7            (12) the Federal Government’s duty to remedy  
8        a constitutional violation does not permit the Fed-  
9        eral judiciary to exceed its authority;

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

14          (14) appropriating public money in response to  
15        a judicial order that provides a remedy to a constitu-  
16        tional violation is a political function and should be  
17        determined by elected officials.

18 **SEC. 3. LIMITATION ON FEDERAL COURT REMEDIES.**

19        (a) IN GENERAL.—Chapter 85 of title 28, United  
20        States Code, is amended by adding at the end the follow-  
21        ing new section:

22 **“§ 1369. Limitation on Federal court remedies**

23        “(a) LIMITATION ON COURT-IMPOSED TAXES.—No  
24        district court may enter any order or approve any settle-  
25        ment that requires any State, or political subdivision of

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

6 “(b) LIMITATION ON COURT-IMPOSED SPENDING.—

7 (1) No district court may enter any order or approve any  
8 settlement that requires any State, or political subdivision  
9 of a State, to implement a spending measure for the pur-  
10 pose of enforcing any Federal or State common law, statu-  
11 tory, or constitutional right or law, unless the court finds  
12 by clear and convincing evidence, that—

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

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

17 “(B) the spending measure will not contribute  
18 to or exacerbate the violation intended to be rem-  
19 edied;

20 “(C) the proposed spending measure will not re-  
21 sult in a loss of revenue for the political subdivision  
22 in which the spending measure is to be implemented;

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

1           “(E) the proposed spending measure will not  
2           conflict with the applicable laws of the State or po-  
3           litical subdivisions concerned; and

4           “(F) plans submitted by State and local au-  
5           thorities will not effectively redress the violation at  
6           issue.

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

9           “(3)(A) Notwithstanding any law or rule of proce-  
10          dure, any aggrieved corporation, unincorporated associa-  
11          tion, or other person residing or present in the State or  
12          political subdivision in which a spending measure is imple-  
13          mented in accordance with paragraph (1), and any other  
14          entity located within that State or political subdivision,  
15          shall have the right to intervene in any proceeding con-  
16          cerning the implementation of the spending measure.

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

19               “(i) present evidence and appear before the  
20               court to present oral and written testimony; and

21               “(ii) appeal any finding required to be made by  
22               this section, or any other related action taken to im-  
23               pose a spending measure that is the subject of the  
24               intervention.

1       “(4) For purposes of this section, the term ‘spending  
2 measure’ means a law or other measure requiring the ex-  
3 penditure of funds for a particular purpose in addition to  
4 funds already available for that purpose.

5       “(c) TERMINATION OF ORDERS AND SETTLE-  
6 MENTS.—Notwithstanding any law or rule of procedure,  
7 any order described in subsection (b)(1) that is entered  
8 by a district court, and any settlement described in sub-  
9 section (b)(1) that is approved by a district court, shall  
10 automatically terminate on the date that is 1 year after  
11 the later of—

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

14               “(2) the date of the enactment of this section;  
15 or

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

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

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



1 mented in response to a court order or settlement de-  
2 scribed in subsection (b)(1).

3 “(e) NOTICE TO STATES AND POLITICAL SUBDIVI-  
4 SIONS.—The court shall provide written notice to a State  
5 or political subdivision thereof subject to an order or set-  
6 tlement referred to in subsection (b)(1) with respect to  
7 any finding required to be made by the court under that  
8 subsection. Such notice shall be provided before the begin-  
9 ning of the next fiscal year of that State or political sub-  
10 division occurring after the order is issued or settlement  
11 approved.

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

16 “(g) TECHNICAL CLARIFICATION.—For purposes of  
17 this section—

18 “(1) the District of Columbia shall be consid-  
19 ered to be a State; and

20 “(2) any Act of Congress applicable exclusively  
21 to the District of Columbia shall be considered to be  
22 a statute of the District of Columbia.

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

1 quired by, a Federal judge is illegal or unconstitutional,  
2 nothing contained in this section shall be construed to oth-  
3 erwise make legal, validate, or approve of such a tax, levy,  
4 assessment, or spending measure.”.

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

“1369. Limitation on Federal court remedies.”.

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

14 **SEC. 4. EFFECTIVE DATE.**

15 This Act and the amendments made by this Act shall  
16 apply with respect to any action or other proceeding in  
17 any Federal court that is pending on, or commenced on  
18 or after, the date of the enactment of this Act, and the  
19 1-year limitation set forth in subsection (b) of section  
20 1369 of title 28, United States Code, as added by section  
21 3 of this Act, shall apply to any court order described in  
22 subsection (b)(1) of such section, that is in effect on the  
23 date of the enactment of this Act.

○