

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2272 Session of
1998

INTRODUCED BY GANNON, FARGO, E. Z. TAYLOR, WOGAN, WAUGH,
J. TAYLOR, SAYLOR, GEIST, WILT, SEMMEL, MICOZZIE, KENNEY,
TRELLO, BELFANTI, BATTISTO, TRUE, ARMSTRONG, MELIO AND
YOUNGBLOOD, FEBRUARY 25, 1998

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 25, 1998

A JOINT RESOLUTION

1 Proposing an amendment to the Constitution of the Commonwealth
2 of Pennsylvania, further providing for legislation to resolve
3 conflicts relating to acts of the General Assembly held
4 unconstitutional by the courts.

5 WHEREAS, It is the intent of the General Assembly to restore
6 the balance of powers between and among the branches of
7 government as established by the people in the Constitution of
8 Pennsylvania, to ensure that all political power is retained by
9 the people, to protect, maintain and secure individual rights
10 and the perpetuity of free government, to guarantee the right of
11 self-government and to establish a process for preserving the
12 independence of the executive, legislative and judicial
13 branches; and

14 WHEREAS, President Thomas Jefferson declared in 1807 that the
15 Constitution of the United States "intended that the three great
16 branches of government should be coordinate, and independent of
17 each other. As to acts, therefore, which are to be done by

1 either, it has given no control to another branch It did
2 not intend to give the judiciary that control I have
3 long wished for a proper occasion to have the gratuitous opinion
4 in Marbury v. Madison brought before the public, and denounced
5 as not law . . . the doctrines of that case were given
6 extrajudicially and against law . . ."; and

7 WHEREAS, The doctrine of judicial review established by the
8 United States Supreme Court in Marbury v. Madison provides that
9 the courts have the sole and final say in interpreting the
10 Constitution of the United States on behalf of all three
11 branches of government; and

12 WHEREAS, The doctrine of judicial review has been subject to
13 serious analysis and criticism by scholars, jurists and others
14 for almost 200 years; and

15 WHEREAS, The doctrine of judicial review assumes that the
16 judiciary has a superior right to conclusively decide the
17 constitutionality of laws enacted by the General Assembly and,
18 having no basis in the written Constitution, should not be
19 binding on the executive or legislative branches of government
20 acting within their express spheres of authority provided for in
21 the Constitution; and

22 WHEREAS, It is a fundamental principle that all political
23 power is inherent in the people and not in the institutions of
24 government, that the very purpose of a written constitution is
25 to establish fundamental and paramount law, that any act of the
26 executive, legislative or judicial branch of government
27 repugnant to the Constitution must be void and that nowhere is
28 it stated in the Constitution that the judiciary has the
29 ultimate right to say what is constitutional and to order the
30 other branches of government to concur with its determination as

1 a matter of constitutional law; and

2 WHEREAS, The courts in this Commonwealth have also adopted
3 the rule of law established in Marbury v. Madison; and

4 WHEREAS, According to Thomas Jefferson, for the judiciary to
5 "decide what laws are constitutional and what are not, not only
6 for themselves in their own sphere of action, but for the
7 legislative and executive also in their spheres, would make the
8 judiciary a despotic branch . . ." and would lead to tyranny by
9 government, the precise thing the people of this Commonwealth
10 intended to prevent by establishing a constitutional
11 representative government in order to secure the rights of life,
12 liberty and pursuit of happiness for each individual citizen;
13 and

14 WHEREAS, Because the judiciary has used the doctrine of
15 judicial review to override the self-expression of a free people
16 and to override duly enacted laws, even those of long standing
17 in both form and practice, the General Assembly is compelled to
18 reassert its constitutional prerogatives and restore the balance
19 of powers established in the fundamental and paramount law; and

20 WHEREAS, The respect, deference and accommodation given to
21 the opinions of the judiciary by the executive and legislative
22 branches are based on the intellectual integrity of the court's
23 reasoning in interpreting a statute, considering and conforming
24 to the plain meaning of the words contained in it, the intent of
25 the legislators who enacted the statute, the historical context
26 in which the legislation was passed and a reasonable application
27 of the law to the facts before the court; and

28 WHEREAS, Officials in the executive, legislative and judicial
29 branches are sworn to ultimately uphold the Constitution of
30 Pennsylvania, not the meaning given it by another branch; and

1 WHEREAS, If executive, legislative or judicial officials act
2 unconstitutionally, they are ultimately responsible to the
3 electorate and are held accountable exclusively and directly by
4 the people alone; therefore

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby resolves as follows:

7 Section 1. The following amendment to the Constitution of
8 Pennsylvania is proposed in accordance with Article XI:

9 That Article III be amended by adding sections to read:

10 § 13.1. Resolution of conflicts during session.

11 If the Supreme Court, Superior Court or Commonwealth Court
12 determines that a legislative act or any part of an act violates
13 this Constitution when the General Assembly is in regular or
14 special session, the following procedure shall apply:

15 1. Upon determining that it considers a legislative act to
16 be in conflict with this Constitution, the court shall declare
17 its opinion that it considers the act to be void and
18 unenforceable.

19 2. The opinion of the court that an act of the General
20 Assembly is unconstitutional shall be the law of the case before
21 the court unless and until overruled by a higher court and shall
22 extend no further than the facts of the case. The judicial
23 branch shall be the proper branch of government to determine
24 when and how to apply a rule laid down in a particular case in a
25 subsequent case involving identical or substantially similar
26 facts.

27 3. The General Assembly may vote by a constitutional
28 majority to expressly affirm the constitutionality of the
29 legislative act and to expressly reject the determination of the
30 court.

1 4. A vote to affirm the constitutionality of the legislative
2 act shall be taken upon the written demand of one-sixth of the
3 members of the Senate or the House of Representatives, and the
4 names of the members voting for and against the affirmation must
5 be entered on the journal of each house.

6 5. The question before each house shall be read as follows:

7 The General Assembly determines, declares and affirms
8 that (the act designated by act number and public law
9 number as indicated in the Laws of Pennsylvania,
10 whether codified or uncoded) as enacted is
11 constitutional, the opinion of the judiciary
12 notwithstanding.

13 6. The question must be placed so that a yea vote shall
14 affirm the constitutionality of the legislative act and a nay
15 vote shall affirm the opinion of the judiciary.

16 7. Upon a positive vote by the Senate and the House of
17 Representatives to affirm the constitutionality of the
18 legislative act, the legislative determination shall be
19 effective immediately, and the legislative act under
20 consideration shall be binding on all persons affected by it
21 from the effective date of the act, notwithstanding the opinion
22 of the judiciary, but the decision of the case remains binding
23 on the parties to it.

24 § 13.2. Nonsession resolution of conflicts.

25 If the Supreme Court, Superior Court or Commonwealth Court
26 determines that a legislative act or any part of an act violates
27 this Constitution when the General Assembly is not in regular or
28 special session, the following shall apply:

29 1. The General Assembly may express its sentiment to affirm
30 the constitutionality of the legislative act by a vote of a

1 majority of the members of each house.

2 2. A vote to express the legislative sentiment to affirm the
3 constitutionality of the legislative act shall be taken upon the
4 written demand of one-sixth of the members of the Senate or the
5 House of Representatives, and the names of the members voting
6 for and against the affirmation or not voting shall be made
7 available to the public.

8 3. The question before each member shall be stated as set
9 forth in section 13.1(5) (relating to resolution of conflicts
10 during session) and must be submitted to each member
11 individually in written form.

12 4. The form shall be signed by each member voting yea or nay
13 and returned to the President pro tempore of the Senate or the
14 Speaker of the House of Representatives no later than 30 days
15 from the date of the demand.

16 5. If there is a positive vote by members of both the Senate
17 and the House of Representatives to express the legislative
18 sentiment to affirm the constitutionality of the legislative
19 act, the General Assembly shall vote on whether to affirm the
20 constitutionality of the legislative act as the first order of
21 business after the next legislative session is convened.

22 Section 2. (a) Upon the first passage by the General
23 Assembly of this proposed constitutional amendment, the
24 Secretary of the Commonwealth shall proceed immediately to
25 comply with the advertising requirements of section 1 of Article
26 XI of the Constitution of Pennsylvania and shall transmit the
27 required advertisements to two newspapers in every county in
28 which such newspapers are published in sufficient time after
29 passage of this proposed constitutional amendment.

30 (b) Upon the second passage by the General Assembly of this

1 proposed constitutional amendment, the Secretary of the
2 Commonwealth shall proceed immediately to comply with the
3 advertising requirements of section 1 of Article XI of the
4 Constitution of Pennsylvania and shall transmit the required
5 advertisements to two newspapers in every county in which such
6 newspapers are published in sufficient time after passage of
7 this proposed constitutional amendment. The Secretary of the
8 Commonwealth shall submit this proposed constitutional amendment
9 to the qualified electors of this Commonwealth at the first
10 primary, general or municipal election occurring at least three
11 months after the proposed constitutional amendment is passed by
12 the General Assembly which meets the requirements of and is in
13 conformance with section 1 of Article XI of the Constitution of
14 Pennsylvania.