
HOUSE JOINT MEMORIAL 4002

State of Washington

58th Legislature

2003 Regular Session

By Representative Nixon

Prefiled 1/3/2003. Read first time 01/13/2003. Referred to
Committee on Judiciary.

1 TO THE HONORABLE MEMBERS OF THE SUPREME COURT OF THE STATE OF
2 WASHINGTON:

3 We, your Memorialists, the Senate and House of Representatives of
4 the State of Washington, in legislative session assembled, respectfully
5 represent and petition as follows:

6 WHEREAS, The courts have held that certain criminal defendants are
7 entitled to legal counsel at public expense; and

8 WHEREAS, The courts have held that criminal defendants are entitled
9 to effective assistance of counsel; and

10 WHEREAS, Pro bono assistance for criminal defendants has been an
11 honorable legal tradition pursued by members of the Bar for centuries;
12 and

13 WHEREAS, The issue of how much compensation a defense lawyer
14 receives is not a meaningful or adequate basis for determining whether
15 or not a criminal defendant has received effective assistance of
16 counsel; and

17 WHEREAS, In Federalist No. 58, James Madison wrote, "The House of
18 Representatives cannot only refuse, but they alone can propose, the
19 supplies requisite for the support of government. They, in a word,
20 hold the purse, that powerful instrument by which we behold ... an

1 infant and humble representation of the people gradually enlarging the
2 sphere of its activity and importance, and finally reducing, as far as
3 it seems to have wished, all the overgrown prerogatives of the other
4 branches of the government. This power over the purse may, in fact, be
5 regarded as the most complete and effectual weapon with which any
6 constitution can arm the immediate representatives of the people, for
7 obtaining a redress of every grievance, and for carrying into effect
8 every just and salutary measure."; and

9 WHEREAS, In Federalist No. 78, Alexander Hamilton wrote, "We
10 proceed now to an examination of the judiciary department of the
11 proposed government. ... Whoever attentively considers the different
12 departments of power must perceive, that, in a government in which they
13 are separated from each other, the judiciary, from the nature of its
14 functions, will always be the least dangerous to the political rights
15 of the Constitution; because it will be least in a capacity to annoy or
16 injure them. The Executive not only dispenses the honors, but holds
17 the sword of the community. The legislature not only commands the
18 purse, but prescribes the rules by which the duties and rights of every
19 citizen are to be regulated. The judiciary, on the contrary, has no
20 influence over either the sword or the purse; no direction either of
21 the strength or of the wealth of the society; and can take no active
22 resolution whatever. It may truly be said to have neither force nor
23 will, but merely judgment; and must ultimately depend upon the aid of
24 the executive arm even for the efficacy of its judgments. This simple
25 view of the matter suggests several important consequences. It proves
26 incontestably, that the judiciary is beyond comparison the weakest of
27 the three departments of power; that it can never attack with success
28 either of the other two; and that all possible care is requisite to
29 enable it to defend itself against their attacks."; and

30 WHEREAS, The judicial branch is imposing huge costs on taxpayers
31 and the legislative and executive branches, two branches coordinate and
32 coequal with the judiciary, by assuming authority for determining the
33 level of funding to be used for criminal defense assistance and then
34 ordering those funds be appropriated from a coordinate and coequal
35 branch of government; and

36 WHEREAS, The taxpayers of the state of Washington demand and
37 deserve that the hard-earned dollars they pay in taxes are spent

1 efficiently and effectively and that the constitutionally established
2 balance of powers is honored; and

3 WHEREAS, The Legislature believes that no person should be denied
4 the right to effective legal counsel in cases where their life,
5 liberty, or property are at stake and leaves the determination of
6 competency of counsel to the Judiciary; and

7 WHEREAS, The Legislature expresses its determination to retain its
8 constitutional and statutory powers and functions of determining what
9 degree of appropriations are reasonable and necessary for the support
10 of county government and its institutions, including criminal defense
11 assistance;

12 NOW, THEREFORE, Your Memorialists respectfully pray that the
13 Legislature recognize and respect the constitutional prerogative and
14 duty of the Judiciary to ensure criminal defendants receive what it
15 deems effective assistance of counsel and request the Judiciary to
16 recognize and respect the constitutional prerogative and duty of the
17 Legislature to appropriate what funds it deems necessary for criminal
18 defense assistance.

19 BE IT RESOLVED, That copies of this Memorial be immediately
20 transmitted to the Honorable Members of the Supreme Court of the state
21 of Washington.

--- END ---