

**SENATE CONCURRENT
RESOLUTION No. 121**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 6, 2020

Sponsored by:

Senator NILSA I. CRUZ-PEREZ

District 5 (Camden and Gloucester)

SYNOPSIS

Post-ratifies Amendment XI to U.S. Constitution barring federal court lawsuits against states by private parties in most circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** post-ratifying Amendment XI to the
2 Constitution of the United States.

3
4 **WHEREAS**, In 1794, the Third Congress referred to the states, without
5 restriction upon the time to be available for its consideration, an
6 amendment to the Constitution of the United States which reads as
7 follows:

8
9 **AMENDMENT XI**

10
11 “The Judicial power of the United States shall not be construed
12 to extend to any suit in law or equity, commenced or prosecuted
13 against one of the United States by Citizens of another State, or
14 by Citizens or Subjects of any Foreign State”; and

15 **WHEREAS**, Amendment XI officially became part of the Constitution
16 of the United States on February 7, 1795, when the State of North
17 Carolina furnished the amendment’s pivotal 12th ratification, there
18 being at the time 15 states in the United States; and

19 **WHEREAS**, At the time Amendment XI officially became part of the
20 Constitution of the United States, the State of New Jersey did not
21 take action on the amendment; and

22 **WHEREAS**, It is common for state legislatures to continue to act upon
23 amendments to the Constitution of the United States well after
24 those amendments have already received a sufficient number of
25 ratifications in order to become enshrined in our Constitution; and

26 **WHEREAS**, Amendment XI stands as a bulwark of sovereign
27 immunity, barring federal court lawsuits against states by private
28 parties that attempt to impose civil liabilities payable from public
29 funds, unless a state has consented to the suit or the protective cloak
30 of the amendment has been waived by the state or stripped away by
31 Congress; now, therefore,

32
33 **BE IT RESOLVED** *by the Senate of the State of New Jersey (the*
34 *General Assembly concurring):*

35
36 1. The Legislature of the State of New Jersey, on behalf of the
37 State of New Jersey, does hereby post-ratify Amendment XI to the
38 Constitution of the United States, which was passed by the Third
39 Congress and ratified by the legislatures of three-fourths of the
40 several states in 1795, and which is reproduced in the preamble to
41 this concurrent resolution.

42
43 2. The Secretary of State of the State of New Jersey is directed
44 to notify the Archivist of the United States of the action taken by
45 the Legislature of the State of New Jersey with respect to this
46 amendment.

STATEMENT

This concurrent resolution post-ratifies Amendment XI to the Constitution of the United States. Amendment XI bars federal court lawsuits against the states by private parties that attempt to impose civil liabilities payable from public funds, unless a state has consented to the suit or the protective cloak of the amendment has been waived by the state or stripped away by Congress pursuant to the powers granted to it by the Fourteenth Amendment.

New Jersey was the first state to ratify the first 10 amendments to the Constitution, known as the Bill of Rights. In 1794, the Third Congress passed Amendment XI, which officially became part of the Constitution of the United States on February 7, 1795, when the State of North Carolina furnished the amendment's pivotal 12th ratification, there being at the time 15 states in the United States. The State of New Jersey did not take action on the amendment. In all, New Jersey has ratified 26 of the 27 amendments to the Constitution. New Jersey has never ratified Amendment XI.

Since its ratification in 1788, the Constitution of the United States has been amended 27 times. In five instances, New Jersey ratified amendments after they were approved by the requisite number of states. These amendments include Amendment XIII (abolition of slavery), Amendment XV (right to vote), Amendment XVI (federal income tax), Amendment XVIII (prohibition of alcohol), and Amendment XXVII (regulation of congressional salaries). It is common for state legislatures to continue to act upon amendments to the Constitution of the United States well after ratification. For example, Massachusetts, Georgia, and Connecticut did not ratify the Bill of Rights until 1939. This concurrent resolution would post-ratify Amendment XI to the Constitution of the United States on behalf of the State of New Jersey.