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SPECIAL ASSESSMENTS AND THE ORIGINATION CLAUSE: A TAX ON CROOKS?

INTRODUCTION

Since 1984, the federal government has collected a small monetary assessment from all convicted defendants for each federal crime committed. This "special assessment on convicted persons" ranges from five to two hundred dollars depending on the seriousness of the crime and the status of the criminal.¹ Once collected by the sentencing court, the special assessments and any criminal fines² are deposited into the Crime Victims Fund, a separate account in the United States Treasury.³ The Attorney General distributes the funds annually to eligible state programs that compensate and assist crime victims.⁴

Recently, criminal defendants have attacked the constitutionality of the special assessment provision, Section 3013 of Title 18, under the origination clause of the Constitution.⁵ The origination clause requires that all bills for raising revenue originate in the House of Representatives, but permits the Senate to amend House-originated revenue bills.⁶ The Supreme Court has construed the term "raising revenue" narrowly so that many statutes that generate funds for specific government programs do not raise revenue under the origination clause.⁷ Nonetheless, if Section 3013 constitutes a revenue raising device, the legislation must have originated in the House rather than in the Senate to be constitutional.⁸

1. See 18 U.S.C. § 3013(a) (1988).

2. All criminal fines collected upon conviction are deposited into the Crime Victims Fund, with the exception of the following: fines imposed pursuant to the Endangered Species Act and the Lacey Act Amendments of 1981, fines collected for the railroad unemployment insurance account, the Postal Service Fund, the navigable waters revolving fund and certain fines for county public school funds. See 42 U.S.C. § 10601(b)(1) (Supp. V 1987).

3. See *id.* § 10601(a).

4. See *id.* § 10602-03.

5. U.S. Const. art. I, § 7, cl. 1; see, e.g., *United States v. King*, No. 891 F.2d 780, 781 (10th Cir. 1989) (Section 3013 constitutional); *United States v. Newman*, 889 F.2d 88, 91 (6th Cir. 1989) (same); *United States v. Herrada*, 887 F.2d 524, 527-28 (5th Cir.) (same), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Simpson*, 885 F.2d 36, 44 (3d Cir.) (same), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *United States v. Ashburn*, 884 F.2d 901, 903 (6th Cir. 1989) (same); *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.) (same), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); *United States v. Munoz-Flores*, 863 F.2d 654, 661 (9th Cir. 1988) (Section 3013 unconstitutional), *cert. granted*, 110 S. Ct. 48 (1989).

6. The origination clause of the Constitution mandates that "[a]ll Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. Const. art. I, § 7, cl. 1. To violate the origination clause, a statute must qualify as a revenue bill and originate in the Senate. See *Munoz-Flores*, 863 F.2d at 657. A Senate amendment of a House revenue bill withstands constitutional challenge if it is germane to the House bill. See *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911).

7. See *infra* notes 30-45 and accompanying text.

8. See *Munoz-Flores*, 863 F.2d at 657. Surprisingly courts first ask whether the bill at issue raises revenue. See, e.g., *United States v. Herrada*, 887 F.2d 524, 525 (5th Cir.),

The lower courts have disagreed about whether Section 3013 violates the origination clause. Although there is some dispute as to where Section 3013 originated,⁹ the controversy mainly focuses on whether the special assessment, which clearly raises money for the government, is the type of revenue measure covered by the origination clause. Some courts have asserted that although the collection of a special assessment raises money, the statute does not raise revenue within the meaning of the origination clause because its purpose is to help finance the Crime Victims Fund.¹⁰ Other courts have reasoned that Section 3013 does not implicate the origination clause because the special assessment is a penalty, not a tax.¹¹ The Ninth Circuit has held that the provision violates the Constitution because it is a revenue-raising device that did not originate in the House of Representatives and is not a germane Senate amendment to a House revenue bill.¹²

petition for cert. filed, No. 89-6282 (filed Dec. 15, 1989); *United States v. Simpson*, 885 F.2d 36, 40 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5483 (filed Sept. 2, 1989); *United States v. Munoz-Flores*, 863 F.2d 654, 657 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989). Thus they can avoid the more difficult question of where the legislation originated. The analysis in this Note follows the order of the courts that have decided the issue.

9. See *infra* notes 162-166 and accompanying text.

10. See *Herrada*, 887 F.2d at 527-28; *Simpson*, 885 F.2d at 44; *United States v. Conner*, 715 F. Supp. 1327, 1331-32 (W.D.N.C. 1989); *United States v. Valentine*, 715 F. Supp. 51, 53 (W.D.N.Y. 1989); *United States v. Madison*, 712 F. Supp. 1379, 1386 (W.D. Wis. 1989); *United States v. Michaels*, 706 F. Supp. 699, 702 (D. Minn. 1989); *United States v. McDonough*, 706 F. Supp. 692, 694-95 (D. Minn. 1989); see also *United States v. Ashburn*, 884 F.2d 901, 903-04 (6th Cir. 1989) (Section 3013 constitutional because revenue raised is incidental to special assessment's dual purpose of penalizing offender and financing Crime Victims Fund); *United States v. Vines*, 718 F. Supp. 895, 900 (S.D. Ala. 1989) (Section 3013 constitutional because primary purpose is to punish and assist crime victims); *United States v. Greene*, 709 F. Supp. 636, 639 (E.D. Pa. 1989) (no origination clause violation because Congress intended either to assist victims of crime or punish criminals).

11. See *Griffin*, 884 F.2d at 656; *United States v. Ramos*, 624 F. Supp. 970, 973 (S.D.N.Y. 1985); see also *United States v. King*, 891 F.2d 780, 783-84 (10th Cir. 1989) (Section 3013 constitutional because main purposes are supporting crime victims program and punishing offenders); *United States v. Ashburn*, 884 F.2d 901, 903-04 (6th Cir. 1989) (Section 3013 constitutional because revenue raised is incidental to special assessment's dual purpose of penalizing offender and financing Crime Victims Fund); *United States v. Vines*, 718 F. Supp. 895, 898 (S.D. Ala. 1989) (Section 3013 constitutional because passed to further non-revenue raising punitive purpose that incidentally created revenue); *United States v. Greene*, 709 F. Supp. 636, 638 (E.D. Pa. 1989) (certain factors "might suggest that the assessment is analogous to a criminal fine, and thus punitive in nature."); cf. *United States v. Davis*, 845 F.2d 94, 98 (5th Cir. 1988) (Section 3013 a punishment under Assimilative Crimes Act analysis); *United States v. King*, 824 F.2d 313, 315-16 (4th Cir. 1987) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Mayberry*, 774 F.2d 1018, 1021 (10th Cir. 1985) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988). But see *United States v. Dobbins*, 807 F.2d 130, 131 (8th Cir. 1986) (purpose to assist victims, not punish criminals), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Donaldson*, 797 F.2d 125, 127 (3d Cir. 1986) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

12. See *United States v. Munoz-Flores*, 863 F.2d 654, 661 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989). Since then, the Ninth Circuit has vacated imposition of the

This Note argues that Section 3013 is constitutional. Part I sets the framework for an origination clause analysis by reviewing the reasons for its inclusion in the Constitution and analyzing the Supreme Court's interpretation of the clause. Part II explores the purposes behind the creation of the Crime Victims Fund and the special assessment provision. Part III examines the controversy among the circuits and the rationales used by courts considering the issue. This Note concludes that Section 3013 is constitutional because its purpose is to finance the Crime Victims Fund and not to raise general federal revenue.

I. THE ORIGINATION CLAUSE

A. *The Framers*

The origination clause engendered much controversy at the 1787 Constitutional Convention.¹³ The framers of the Constitution vested the power of origination in the House of Representatives as part of the Great Compromise that ended the controversy over state suffrage.¹⁴ Through the Great Compromise, the framers agreed to allow equal representation in the Senate for all states regardless of size in exchange for proportional representation in the House.¹⁵

The origination clause reflected the belief of many delegates that the House should possess exclusive revenue-raising power. They believed such a restriction to be necessary because House members were "more immediately the representatives of the people, and it was a maxim that the people ought to hold the purse-strings."¹⁶ These delegates recommended that each House member represent 40,000 state inhabitants.¹⁷ This body, as the direct representative of the people, would have the power to originate all bills for raising or appropriating money.¹⁸ As a concession to the larger states, each state would exercise an equal vote in

special assessment by district courts. *See* *United States v. Moncini*, 882 F.2d 401, 406 (9th Cir. 1989); *United States v. Nolasco*, 881 F.2d 678, 680 (9th Cir. 1989); *Shah v. United States*, 878 F.2d 1156, 1163 (9th Cir.), *cert. denied*, 110 S. Ct. 195 (1989); *United States v. Montilla*, 870 F.2d 549, 553 (9th Cir. 1989).

The Eighth Circuit stated in dicta that it was "inclined to agree" with the Ninth Circuit's holding that the statute was unconstitutional, but could not decide the issue because the defendant had not preserved it for appellate review. *See* *United States v. Ehret*, 885 F.2d 441, 445-46 (8th Cir. 1989), *cert. denied*, 110 S. Ct. 879 (1990).

13. *See* Hoffer, *The Origination Clause and Tax Legislation*, 2 B.U.J. Tax L. 1, 2-11 (1984).

14. *See* C. Rossiter, 1787: The Grand Convention 186, 191-92 (1966); C. Warren, *The Making of the Constitution* 274-77, 664-71 (1928). For a more detailed discussion of the role of the origination clause at the Constitutional Convention see Hoffer, *supra* note 13, at 1-17; Medina, *The Origination Clause in the American Constitution: A Comparative Survey*, 23 Tulsa L.J. 165, 165-72 (1987); Comment, *TEFRA and the Origination Clause: Taking the Oath Seriously*, 35 Buffalo L. Rev. 633, 648-62 (1986).

15. *See* C. Rossiter, *supra* note 14, at 193.

16. 1 M. Farrand, *The Records of the Federal Convention of 1787*, at 233 (1966) (notes of James Madison).

17. *See id.* at 526.

18. *See id.* at 526; C. Warren, *supra* note 14, at 272.

the Senate, but the Senate would have no power to alter or amend money bills.¹⁹

Although the framers adopted the Great Compromise on July 16, 1787,²⁰ the origination clause language was later modified to reduce the House's exclusive power.²¹ The final version granted the House exclusive power to originate revenue-raising bills, both houses authority to appropriate money²² and the Senate power to amend House-originated revenue bills.²³

B. *Supreme Court Cases*

Ironically, the provision that provoked such debate and "had seriously threatened to break up the Convention" has not often been used to strike down statutes.²⁴ The Supreme Court has decided only five origination clause cases.²⁵ All these challenges failed, either because the bill at issue did not raise revenue²⁶ or because the provision was a permissible Senate amendment to a germane House-originated revenue bill.²⁷ Only two lower courts have nullified laws for origination clause violations.²⁸ The paucity of cases is largely due to the Supreme Court's narrow view of what types of bills raise revenue in the manner contemplated by the origi-

19. See C. Rossiter, *supra* note 14, at 187-88, 192; C. Warren, *supra* note 14, at 272.

20. See C. Warren, *supra* note 14, at 309.

21. See *id.* at 669-71.

On August 8, 1787, the framers expunged the origination clause from a draft of the Constitution despite protests that certain states had agreed to the Compromise on condition of its inclusion. See C. Warren, *supra* note 14, at 667-68. A proposed modification, on August 15, revived the clause but restricted its application to revenue bills and introduced the Senate's power to amend. See *id.* at 668 ("Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same . . . but the Senate may propose or concur with amendments as in other cases."). By September 5, the delegates had empowered the Senate to appropriate money by excluding appropriation language from a committee report on the House's exclusive origination power. See *id.* at 669 ("All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate . . ."). The delegates finally approved the origination clause on September 5, 1787 without debate. See *id.* at 670.

22. See U.S. Const. art. I, § 7, cl. 1.

23. See C. Warren, *supra* note 14, at 670.

24. *Id.*

25. *Rainey v. United States*, 232 U.S. 310 (1914); *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); *Millard v. Roberts*, 202 U.S. 429 (1906); *Twin City Bank v. Nebeker*, 167 U.S. 196 (1897); *United States v. Norton*, 91 U.S. 566 (1875).

26. See *Millard*, 202 U.S. at 437; *Twin City Bank*, 167 U.S. at 203-04; *Norton*, 91 U.S. at 568-69.

27. See *Rainey*, 232 U.S. at 317; *Flint*, 220 U.S. at 143.

28. See *United States v. Munoz-Flores*, 863 F.2d 654, 661 (9th Cir. 1988) (Section 3013 unconstitutional because should have originated in House), *cert. granted*, 110 S. Ct. 48 (1989); *Hubbard v. Lowe*, 226 F. 135, 141 (S.D.N.Y. 1915) (Cotton Futures Act impermissibly originated in Senate), *appeal dismissed*, 242 U.S. 654 (1916). The issue became moot in *Hubbard v. Lowe* when Congress passed the same bill again in proper order. See *United States v. Madison*, 712 F. Supp. 1379, 1380 (W.D. Wis. 1989).

nation clause.²⁹

In *United States v. Norton*,³⁰ the Supreme Court held that the act establishing a postal money order system was not a revenue law³¹ even though fees on the sale of money orders were deposited into the United States Treasury.³² Focusing on Congress' intent in enacting the provision, the Court reasoned that the term "revenue law" was restricted to laws "made for the direct and avowed purpose of creating revenue or public funds for the service of the government."³³

The Court noted that the application of the origination clause "ha[d] been confined to bills to levy taxes in the strict sense of the words, and ha[d] not been understood to extend to bills for other purposes which incidentally create revenue."³⁴ Neither the act's title—An Act To Establish a Postal Money-Order System³⁵—nor its legislative history indicated that Congress intended the Act to raise revenue.³⁶ Thus, because the Act's purpose was to establish a postal money order system, it was not a revenue law even though all money and fees from the sale of money orders were deposited into the United States Treasury.

29. See *Millard v. Roberts*, 202 U.S. 429, 436 (1906); *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897); *United States v. Norton*, 91 U.S. 566, 569 (1875); *infra* notes 30-45 and accompanying text.

30. 91 U.S. 566 (1875).

31. The Court used the definition of revenue under the origination clause to determine whether the act was a revenue law. See *id.* at 568-69.

32. *Norton*, a clerk in the New York money order office, was indicted for embezzling funds from his office in violation of the act to establish a postal money order system. See *id.* at 566-67. The case turned on the applicable statute of limitations. See *id.* at 567. The statute of limitations for crimes against the United States was two years; if the crime alleged arose under a revenue law, however, another statute extended the statute of limitations to five years. The Court concluded that the longer statute of limitations did not apply because the act to establish a postal money order system was not a revenue law. See *id.* at 567-68.

33. *Id.* at 569 (quoting Justice Story in *United States v. Mayo*, 26 F. Cas. 1230, 1231 (C.C.D. Mass. 1813) (No. 15,755)).

34. *United States v. Norton*, 91 U.S. 566, 569 (1875) (quoting 1 Story, On the Constitution § 880) (edition quoted no longer in print).

This language has been quoted in numerous cases construing the origination clause. See *Millard v. Roberts*, 202 U.S. 429, 436 (1906); *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1896); *United States v. Herrada*, 887 F.2d 524, 526 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Ashburn*, 884 F.2d 901, 902 (6th Cir. 1989); *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); *United States v. Vines*, 718 F. Supp. 895, 897 (S.D. Ala. 1989); *United States v. Conner*, 715 F. Supp. 1327, 1329-30 (W.D.N.C. 1989); *United States v. Valentine*, 715 F. Supp. 51, 52 (W.D.N.Y. 1989); *United States v. Michaels*, 706 F. Supp. 699, 700 (D. Minn. 1989); *United States v. McDonough*, 706 F. Supp. 692, 694 (D. Minn. 1989); *Mulroy v. Block*, 569 F. Supp. 256, 265 (N.D.N.Y. 1983), *aff'd*, 736 F.2d 56 (2d Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985); *Sperry Corp. v. United States*, 12 Cl. Ct. 736, 742 (1987), *rev'd on other grounds*, 853 F.2d 904 (Fed. Cir. 1988), *rev'd on other grounds*, 110 S. Ct. 387 (1989).

35. 13 Stat. 76 (1864).

36. See *Norton*, 91 U.S. at 567-68. The express objective of the act was "to promote public convenience, and to insure greater security in the transmission of money through the United States mails." *Id.*

*Twin City Bank v. Nebeker*³⁷ involved an origination clause challenge to the National Banking Act. To further the National Banking Act's goals, Congress imposed a tax on the average amount of circulating notes of banking associations. Justice Harlan, writing for the Court, refused to formulate a test or define revenue bills because "[w]hat bills belong to that class is a question of such magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject."³⁸ The majority opinion, however, emphasized the National Banking Act's main purpose of creating a national currency.³⁹ The Court noted that the tax provided a "means for effectually accomplishing" this purpose and that "[t]here was no purpose . . . to raise revenue to be applied in meeting the expenses or obligations of the Government" through the Act.⁴⁰ Despite Justice Harlan's disclaimer about general formulas, courts have focused upon this language and the *Norton* analysis to support an inquiry into Congress' purpose in enacting a statute.⁴¹

A few years later, in *Millard v. Roberts*,⁴² the Court upheld the constitutionality of acts that imposed property taxes in the District of Columbia to finance a railroad terminal and to support the elimination of railroad grade crossings.⁴³ The Court relied on *Twin City Bank* and, without adding to the analysis,⁴⁴ concluded that "[w]hatever taxes are imposed are but means to the purposes provided by the act."⁴⁵

The two most recent Supreme Court cases,⁴⁶ decided in 1911 and 1914, differ from *Norton*, *Twin City Bank* and *Millard*. The later decisions rest on findings that a particular act was a constitutional Senate amendment to a revenue bill that properly originated in the House. They do not explore the meaning of revenue bills under the origination clause.

The plaintiffs in *Flint v. Stone Tracy Co.* contended that a corporation tax law was unconstitutional because it did not originate in the House.⁴⁷ The Court held that the tax was constitutional because the Senate, in enacting the bill, had properly exercised its power to amend a House revenue bill.⁴⁸ Three years later, in *Rainey v. United States*,⁴⁹ the Court

37. 167 U.S. 196 (1897).

38. *Id.* at 202.

39. *Id.* at 203.

40. *Id.*

41. See *infra* notes 86-91 and accompanying text.

42. 202 U.S. 429 (1906).

43. See *id.* at 435-38.

44. The Court stated that "[i]n answer to the contention the case of *Twin City Bank v. Nebeker* . . . need only be cited." *Id.* at 436 (citation omitted).

45. *Id.* at 437.

46. See *Rainey v. United States*, 232 U.S. 310 (1914); *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).

47. See *Flint*, 220 U.S. at 142.

48. See *id.* at 143. The legislative history revealed that the House had introduced a general revenue bill that imposed an inheritance tax. The Senate then permissibly substituted the corporation tax for the inheritance tax. See *id.* The substitution did not violate

upheld a tariff act imposing an excise tax upon the use of foreign-built pleasure yachts.⁵⁰ Wary of questioning "an enrolled and duly authenticated Act of Congress," the Court declined to divine whether the Senate amendment was related to the purpose of the House bill and adopted the holding of the lower court.⁵¹

The Supreme Court has not decided an origination clause challenge since 1914.⁵² Lower courts have followed the Supreme Court's lead and

the origination clause because the "amendment was germane to the subject-matter" of a revenue bill that had properly originated in the House. *Id.*

The *Flint* decision has recently been the basis for denying numerous constitutional challenges to the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). See *Texas Ass'n of Concerned Taxpayers, Inc. v. United States*, 772 F.2d 163, 168 (5th Cir.), *cert. denied*, 476 U.S. 1151 (1985); *Armstrong v. United States*, 759 F.2d 1378, 1382 (9th Cir. 1985); *Wardell v. United States*, 757 F.2d 203, 204 (8th Cir. 1985); *Heitman v. United States*, 753 F.2d 33, 35 (6th Cir. 1984) (per curiam); *Rowe v. United States*, 583 F. Supp. 1516, 1519 (D. Del.), *aff'd mem.*, 749 F.2d 27 (3d Cir. 1984); *Kloes v. United States*, 578 F. Supp. 270, 272 (W.D. Wis. 1984); Pub. L. No. 97-248, 96 Stat. 324 (1982). These courts relied on *Flint* to hold that TEFRA is a permissible amendment to a House revenue bill because it is germane to the subject matter of the bill even though it increases rather than decreases revenue.

49. 232 U.S. 310 (1914).

50. See *id.* at 315, 317.

51. See *id.* at 317.

Both *Flint* and *Rainey* expressly left open the issue of whether the judiciary may examine the origination of an act once both houses of Congress have passed the act. See *id.*; *Flint v. Stone Tracy Co.*, 220 U.S. 107, 143 (1911).

Most circuit courts have held that the origination clause does not implicate the political question doctrine that renders certain matters inappropriate for judicial review. See *United States v. Herrada*, 887 F.2d 524, 525 n.1 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Simpson*, 885 F.2d 36, 38-39 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *United States v. Munoz-Flores*, 863 F.2d 654, 656 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989). Others have not discussed the issue. See, e.g., *United States v. Griffin*, 884 F.2d 655 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); *United States v. Ashburn*, 884 F.2d 901 (6th Cir. 1989); *United States v. Conner*, 715 F. Supp. 1327 (W.D.N.C. 1989). One district court suggested that the legislature, not the courts, should resolve questions about the origination of bills. See *United States v. Madison*, 712 F. Supp. 1379, 1383 (W.D. Wis. 1989) (origination clause challenge to Section 3013 raises nonjusticiable political question); see also *United States v. Madison*, 712 F. Supp. 1379, 1380 (W.D. Wis. 1989) (if question were open would hold nonjusticiable).

The Fifth Circuit did hold that an origination clause challenge to TEFRA presented a nonjusticiable political question. See *Texas Ass'n*, 772 F.2d at 167. But see *Armstrong v. United States*, 759 F.2d 1378, 1381-82 (9th Cir. 1985) (challenge to TEFRA justiciable). However, that Circuit later distinguished the special assessment challenge from its *Texas Association* decision. See *Herrada*, 887 F.2d at 525 n.1. The court reasoned that because Congress had debated whether the TEFRA bill violated the origination clause, judicial inquiry might express a lack of respect due to the legislature. In the present challenge, Congress had not considered whether Section 3013 adhered to the origination clause so courts could properly review the issue. See *id.*

A full discussion of the political question doctrine is beyond the scope of this Note.

52. The Supreme Court denied certiorari on two recent origination clause challenges. See *Texas Ass'n of Concerned Taxpayers v. United States*, 772 F.2d 163 (5th Cir. 1985), *cert. denied*, 476 U.S. 1151 (1986); *Mulroy v. Block*, 569 F. Supp. 256 (N.D.N.Y. 1983), *aff'd*, 736 F.2d 56 (2d Cir. 1984), *cert. denied*, 469 U.S. 1159 (1985). The Court will soon

have found very few violations of the origination clause.⁵³

II. THE VICTIMS OF CRIME ASSISTANCE ACT OF 1984

A. Legislative History

After a "decade long bipartisan effort of the Senate Committee on the Judiciary,"⁵⁴ Congress passed the Comprehensive Crime Control Act of 1984,⁵⁵ an extensive scheme to improve federal criminal laws and procedures.⁵⁶ In response to growing concern for crime victims, Congress included the Victims of Crime Assistance Act of 1984 (the "Victims Assistance Act") as Chapter XIV of the larger Crime Control Act.⁵⁷

Through the Victims Assistance Act, the Committee on the Judiciary intended to "provide limited Federal funding to the States, with minimal bureaucratic 'strings attached,' for direct compensation and service programs to assist victims of crime [and] . . . to improve Federal efforts which assist crime victims."⁵⁸ The Act was a response to the inadequacy of existing victim compensation and assistance efforts,⁵⁹ the need to encourage "welcome" participation of witnesses and the sentiment that the

hear the present issue in *United States v. Munoz-Flores*, 863 F.2d 654 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

53. *See, e.g.*, *Sperry Corp. v. United States*, 12 Cl. Ct. 736, 743 (1987) (Iran Claims Act did not violate origination clause because revenue raised was incidental to act's purpose of expediting settlement of claims against Iran and reducing cost of maintaining Tribunal), *rev'd on other grounds*, 853 F.2d 904 (Fed. Cir. 1988), *rev'd on other grounds*, 110 S. Ct. 387 (1989); *Mulroy*, 569 F. Supp. at 265 (deduction from milk sale price did not raise revenue but was means of regulating milk production under commerce clause); *State ex rel. Tindal v. Block*, 717 F.2d 874, 887 (4th Cir. 1983) (milk deduction to reduce overproduction found constitutional because primary purpose was regulation), *cert. denied*, 465 U.S. 1080 (1984). *But see Munoz-Flores*, 863 F.2d at 656 (imposition of special assessments on convicted persons violates origination clause); *Hubbard v. Lowe*, 226 F. 135, 139 (S.D.N.Y. 1915) (Cotton Futures Act unconstitutional because it originated in Senate).

One district court expressed disdain for the Supreme Court's narrow construction of the term revenue. While acknowledging the statute's constitutionality under Supreme Court precedent, the court asserted that holding the special assessment unconstitutional would more properly reflect the intent of the framers of the Constitution. *See United States v. Vines*, 718 F. Supp. 895, 899 (S.D. Ala. 1989).

54. S. Rep. No. 225, 98th Cong., 2d Sess. 4, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3184.

55. Pub. L. No. 98-473, 98 Stat. 1976 (1984).

56. *See* S. Rep. No. 225, *supra* note 54. The Comprehensive Crime Control Act made major changes in numerous criminal areas, including bail, sentencing, forfeiture, insanity defenses and drug penalties.

57. Pub. L. No. 98-473, Title II, Chapter XIV, 98 Stat. 1976, 2170-78 (1984); *see* S. Rep. No. 497, 98th Cong., 2d Sess. 4, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3607, 3607 [hereinafter *Senate Report*].

The Victims Assistance Act was approved "at a time when violent crime—and a widespread perception that the courts are too lenient on offenders—made victims more vocal in asserting their rights." Richburg, *Justice Department Molds Program Aimed at Helping Crime Victims*, Wash. Post, March 14, 1985, at A17, col. 4.

58. Senate Report, *supra* note 57, at 3607.

59. Although many states had victim assistance and victim compensation programs,

federal government should share the responsibility of assisting crime victims rather than place the entire financial burden on the states.⁶⁰

To realize these goals, the Victims Assistance Act established a separate account in the United States Treasury, called the Crime Victims Fund (the "Fund").⁶¹ The Fund grants to eligible state crime victim compensation programs⁶² amounts equal to 35 percent of the program's disbursements for the previous year, excluding property damage awards.⁶³ It also grants each state \$100,000 for the financial support of eligible crime victim assistance programs.⁶⁴ Congress hoped that the Victims Assistance Act would minimize conditions on federal aid.⁶⁵

Congress placed much of the burden of financing the Fund upon convicted criminals because these "wrongdoers" were responsible for the victims' suffering.⁶⁶ The sources of deposits include criminal fines, special assessments, forfeited appearance bonds and public donations.⁶⁷

The bill originally did not provide for special assessments or donations.⁶⁸ The prospect of expenditures to assist crime victims, however, worried members of the Committee on the Judiciary and prompted them to consider supplementary sources for the Fund.⁶⁹ Responding to this concern, the Committee amended the bill by raising the maximum for criminal fines and improving fine collection procedures.⁷⁰ In addition, the Committee authorized the imposition of special assessment fees

they were underfunded—"plagued by a backlog of cases, a shortage of funds and a lack of publicity." Richburg, *supra* note 57, at col. 4.

Advocates of federal assistance argued that federal funds would allow states to implement much needed improvements, such as increases in the maximum allowance, removal of minimal damage requirements and coverage of property loss. *See Senate Report, supra* note 57, at 3609.

60. *See Senate Report, supra* note 57, at 3610.

61. *See* 42 U.S.C. § 10601(a) (Supp. V 1987).

The purpose of the Fund is to help finance state crime victim compensation programs and to enhance federal and state victim assistance programs. *See Senate Report, supra* note 57, at 3610.

62. An eligible crime victim compensation program reimburses crime victims or their survivors for medical expenses, lost wages and funeral expenses resulting from compensable crime. *See* 42 U.S.C. § 10602(b)(1) (Supp. V 1987).

63. *See id.* at § 10602(a)(1).

64. *See id.* at § 10603(a)(3)(A). Victim assistance programs are more service-oriented than compensatory in nature; they include crisis intervention services, programs to assist victims acting as witnesses in criminal justice proceedings and programs to aid victims in securing compensation benefits. *See Senate Report, supra* note 57, at 3616-17.

Congress was particularly concerned with funding programs designed to assist victims of sexual assault, spousal abuse and child abuse. *See* 42 U.S.C. 10603(a)(2)(A) (Supp. V 1987).

65. *See Senate Report, supra* note 57, at 3615.

66. *See id.* at 3611. The Fund, however, does not preclude public donations. The *Senate Report* states: "Money for the Fund would come exclusively from convicted criminals or public donations." *Id.* (emphasis added).

67. *See* 42 U.S.C. § 10601(b) (Supp. V 1987).

68. *See Senate Report, supra* note 57, at 3611.

69. *See id.*

70. *See Senate Report, supra* note 57, at 3611, 3620-25.

through Title II of the Victims Assistance Act⁷¹ and permitted public donations through Title III.⁷²

B. *Special Assessment Fees*

The imposition of the "penalty" assessment or the "special"⁷³ assessment under Section 3013 is the only source of deposits to the Fund challenged by defendants under the origination clause.⁷⁴ The Senate introduced and passed Section 3013 as part of the Victims Assistance Act, but the House did not pass the bill.⁷⁵ The Senate later added the Victims Assistance Act, including Section 3013, to a continuing appropriation resolution introduced by the House.⁷⁶ The entire bill became law on October 12, 1984.⁷⁷

In the statute's original form, the fee assessed on individual defendants was \$25 for each misdemeanor conviction and \$50 for each felony conviction. Defendants other than individuals, such as partnerships or corporations, had to pay \$100 for each misdemeanor conviction and \$200 for each felony conviction.⁷⁸ In both the original and current versions of the statute, this mandatory special assessment on all convicted persons is collected by the sentencing court "in the manner that fines are collected in criminal cases."⁷⁹

Unfortunately, Section 3013 does not indicate that the money collected will be deposited into the Fund to accomplish the goals of the Victims Assistance Act. The statute defines an offense for the purposes of the section, specifies the amount to be assessed, the manner of collection and the duration of the obligation to pay,⁸⁰ but does not indicate the destination of the funds collected. If the Senate passed Section 3013 without a specific purpose in mind, it is likely the statute would violate the origina-

71. *See id.* at 3619.

72. *See id.* at 3620.

73. Although Section 3013 labels the mandatory fee collected from convicted persons a "special assessment," both the legislative history and the statute establishing the Crime Victims Fund describe the assessment as a penalty assessment. *Compare* 18 U.S.C. § 3013 (1988) ("special assessment on convicted persons") *with* 42 U.S.C. § 10601(b)(2) (Supp. V 1987) ("penalty assessments collected under section 3013 of title 18"); *Senate Report, supra* note 57, at 3619 ("penalty assessment fees to be imposed by the Federal courts upon defendants convicted of offenses.").

74. *See supra* notes 9-12 and accompanying text.

75. *See infra* notes 155-157 and accompanying text.

76. *See infra* notes 158-160 and accompanying text.

77. *See* Pub. L. No. 98-473, 98 Stat. 1976 (1984).

78. *See* 18 U.S.C. § 3013(a) (Supp. V 1987), *amended by* 18 U.S.C. § 3013(a) (1988). The 1988 amendment adjusts the amount imposed according to the degree of the misdemeanor committed. Individual misdemeanants must now pay \$5 for a class C misdemeanor, \$10 for a class B misdemeanor and \$25 for a class A misdemeanor. Defendants other than individuals are assessed \$25, \$50 and \$125, respectively. *See* 18 U.S.C. § 3013(a) (1988).

79. *Id.* at § 3013(b).

80. *See* 18 U.S.C. § 3013 (1988).

tion clause because the revenue raised would have no logical purpose other than meeting the expenses and obligations of the government.

The section of the legislative history that refers only to special assessments is sparse.⁸¹ Within this section, challengers of Section 3013 have seized upon a declaration that the special assessment will constitute "new income" for the government as an indication that the Senate sought to raise revenue through the statute.⁸² An examination of the legislative history of the Victims Assistance Act⁸³ reveals two other problem areas: an annual limit on the amount of deposits into the Fund⁸⁴ and a sunset provision that terminates deposits into the Fund after a specified date.⁸⁵

III. DOES SECTION 3013 VIOLATE THE ORIGINATION CLAUSE?

A. Purpose Analysis

Because the origination clause applies only to revenue-raising bills, the first question is whether the special assessment provision raises revenue.⁸⁶ The proper inquiry is whether Congress enacted Section 3013 to meet the general expenses and obligations of the government, or whether it passed the bill for non-revenue purposes which incidentally raise revenue.⁸⁷ If Section 3013 was not enacted for the "direct and avowed purpose of creating revenue," but was passed "for other purposes which may incidentally create revenue,"⁸⁸ the statute does not fall within the purview of the origination clause and the inquiry ends.⁸⁹

Supreme Court case law indicates that as long as the ultimate purpose of a government program is not to raise income for the government, "acts which establish government programs and also impose taxes or fees

81. While the legislative history of the Victims Assistance Act spans twenty pages, the *Senate Report* devotes only one paragraph exclusively to the imposition of special assessments. See *Senate Report*, *supra* note 57, at 3619-20.

82. See *infra* notes 102-104 and accompanying text.

83. Courts agree that the legislative history of the special assessment must be viewed in conjunction with the overall history of the Victims Assistance Act. See *United States v. Herrada*, 887 F.2d 524, 527 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Conner*, 715 F. Supp. 1327, 1331 (W.D.N.C. 1989); *United States v. Greene*, 709 F. Supp. 636, 638 (E.D. Pa. 1989); *United States v. McDonough*, 706 F. Supp. 692, 694-95 (D. Minn. 1989); *United States v. Michaels*, 706 F. Supp. 699, 701-02 (D. Minn. 1989).

84. See *infra* notes 112-114 and accompanying text.

85. See *infra* notes 122-125 and accompanying text.

86. "The analysis of an origination clause issue is straightforward and tracks the language of the clause. First, we must gauge whether the statute falls within the class of revenue raising bills covered by the clause." *United States v. Munoz-Flores*, 863 F.2d 654, 657 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

87. See *United States v. Conner*, 715 F. Supp. 1327, 1330 (W.D.N.C. 1989).

88. *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897); *accord United States v. Norton*, 91 U.S. 566, 569 (1875).

89. *United States v. Norton*, 91 U.S. 566, 569 (1875) (quoting *United States v. Mayo*, 26 F. Cas. 1230, 1231 (C.C.D. Mass. 1813) (No. 15,755)); see, e.g., *United States v. Conner*, 715 F. Supp. 1327, 1330 (W.D.N.C. 1989) (direct, stated purpose); *United States v. McDonough*, 706 F. Supp. 692, 694 (D. Minn. 1989) (same).

to defray the costs of those programs do not raise revenue within the meaning of the Origination Clause.⁹⁰ Even if a bill levies a tax, it is not deemed a revenue raising bill if the taxing provision furthers a non-revenue raising objective of the bill.⁹¹

Although a statute's explicit language is most important in determining its constitutionality,⁹² the language of Section 3013 gives little guidance about the purpose of the special assessment.⁹³ The statute does not specify the purpose of the funds, nor does it indicate that the funds will be deposited into the Crime Victims Fund.⁹⁴ However, Section 10601, the statute that created the Crime Victims Fund, refers to money collected under Section 3013.⁹⁵ Section 10601 states that deposits into the Fund include "penalty assessments collected under section 3013 of

90. *United States v. Simpson*, 885 F.2d 36, 41 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *see, e.g., United States v. Herrada*, 887 F.2d 524, 528 (5th Cir.) (Supreme Court cases "instruct us to consider the overarching purpose of an Act" in origination clause analysis), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Munoz-Flores*, 863 F.2d 654, 658 (9th Cir. 1988) (Supreme Court precedents "mandate an inquiry into the purposes of the special assessment legislation"), *cert. granted*, 110 S. Ct. 48 (1989); *United States v. Vines*, 718 F. Supp. 895, 897 (S.D. Ala. 1989) (determinative constitutional question is "exactly what Congress' intended purposes were in enacting the special assessment provision"); *Conner*, 715 F. Supp. at 1330 (courts "must consider Congress' purpose in enacting the special assessment provision"); *United States v. Valentine*, 715 F. Supp. 51, 52 (W.D.N.Y. 1989) (necessary to examine Section 3013's aim).

91. *See Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897); *Conner*, 715 F. Supp. at 1330; *United States v. Greene*, 709 F. Supp. 636, 637 (E.D. Pa. 1989).

92. *See Edwards v. Aguillard*, 482 U.S. 578, 594-95 (1987); *Burlington Northern R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987).

93. *See Herrada*, 887 F.2d at 526; *United States v. Munoz-Flores*, 863 F.2d 654, 658 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989); *United States v. Conner*, 715 F. Supp. 1327, 1330 (W.D.N.C. 1989); *United States v. Michaels*, 706 F. Supp. 699, 701 (D. Minn. 1989). The provision for collection in the same manner as for a criminal fine might "suggest that the assessment is analogous to a criminal fine, and thus is punitive," or it "may be interpreted as a purely procedural requirement." *Munoz-Flores*, 863 F.2d at 658.

The statute as originally enacted read:

- (a) The court shall assess on any person convicted of an offense against the United States—
 - (1) in the case of a misdemeanor—
 - (A) the amount of \$25 if the defendant is an individual; and
 - (B) the amount of \$100 if the defendant is a person other than an individual; and
 - (2) in the case of a felony—
 - (A) the amount of \$50 if the defendant is an individual; and
 - (B) the amount of \$200 if the defendant is a person other than an individual.
- (b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

18 U.S.C. § 3013 (Supp. V 1987), *amended by* 18 U.S.C. § 3013 (1988).

94. *See supra* note 93. One court noted that "the language fails to limit or even to describe the use of the collected funds" and concluded that "[t]his lack of restriction suggests that the revenue raising aspect of the bill is not subsidiary to any enunciated function." *Munoz-Flores*, 863 F.2d at 658.

95. *See* 42 U.S.C. § 10601(b)(2) (Supp. V 1987).

title 18" of the United States Code.⁹⁶

The legislative history⁹⁷ demonstrates that Congress, by imposing the special assessment, intended to defray the costs of the Crime Victims Fund in furtherance of the Victims Assistance Act's overall purpose.⁹⁸ Courts have agreed that if Congress had clearly confined Section 3013 to the purpose of supporting the crime victims program, the provision would not implicate the origination clause.⁹⁹ Yet several factors have prevented universal acceptance of the statute's constitutionality: the single reference in the legislative history to the special assessment constituting "new income" for the government; a cap on annual deposits into the Fund; and a sunset provision terminating deposits into the Fund after a certain date.¹⁰⁰ Despite arguments that these factors indicate a congressional purpose to raise revenue, further analysis establishes that Congress did not impose these limitations to raise revenue to meet the general expenses and obligations of the government.¹⁰¹

96. *Id.*

97. Because Section 3013 fails to reveal its purpose on its face, courts must examine legislative history to determine congressional intent. *See* *Edwards v. Aguillard*, 482 U.S. 578, 594-95 (1987); *Burlington Northern R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987); *United States v. Herrada*, 887 F.2d 524, 526-27 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Conner*, 715 F. Supp. 1327, 1330-31 (W.D.N.C. 1989).

98. *See supra* notes 57-72 and accompanying text. "[T]he statute is only a subsidiary element of a multi-faceted plan designed to improve the administration of the criminal justice system and aid the victims of crime." *United States v. Madison*, 712 F. Supp. 1379, 1385 (W.D. Wis. 1989). As part of this comprehensive scheme, the special assessment shares the Victims Assistance Act's overall purpose of financing the crime victims program. *See Conner*, 715 F. Supp. at 1331; *United States v. Greene*, 709 F. Supp. 636, 638 (E.D. Pa. 1989); *United States v. Michaels*, 706 F. Supp. 699, 701-02 (D. Minn. 1989). "The purpose of the Act was not the prohibited purpose of raising revenue 'to be applied in meeting the expenses or obligations of the government.'" *United States v. Herrada*, 887 F.2d at 527 (quoting *Twin City Bank v. Nebeker*, 167 U.S. 196, 203 (1897)).

99. The Ninth Circuit, declaring the special assessment unconstitutional, conceded that its legislative history demonstrated that the special assessment was "in part" intended to defray the costs of the crime victims program. *See United States v. Munoz-Flores*, 863 F.2d 654, 658 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989). It acknowledged that even if the goal of supporting a victim assistance program were attainable only by raising revenue, the statute might have passed constitutional muster "[h]ad the proceeds been clearly confined to this purpose." *Id.*

100. One circuit court of appeals that upheld the constitutionality of the statute admitted that the cap on deposits and sunset provisions "are two limitations in the statute which arguably cut against the conclusion" that it reached. *United States v. Simpson*, 885 F.2d 36, 43 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989). The court added, however, that "[w]hile these provisions merit further discussion, we do not believe they convert the Act into a revenue raising measure." *Id.*

101. Congress intended to use the special assessment to support the program to aid crime victims. *See id.*; *United States v. Conner*, 715 F. Supp. 1327, 1331 (W.D.N.C. 1989). *But see Munoz-Flores*, 863 F.2d at 659 (failure to restrict use of collected funds indicates intent to raise general federal revenue).

1. New Income

Section 3013's legislative history suggests that funds collected by the special assessment "will constitute new income for the Federal government."¹⁰² Arguably, this assertion manifests congressional intent to raise revenue for the government's general use through the special assessment.¹⁰³ Absent any other indication of a non-revenue raising purpose, Congress' action would violate the origination clause.¹⁰⁴

However, the sentence preceding the "new income" statement in the legislative history reveals that Congress intended to use the special assessment for the permissible purpose of defraying the costs of the government program.¹⁰⁵ The Senate report reads in full:

The purpose of imposing nominal assessment fees is to generate needed income to offset the cost of the new programs authorized under [the Victims Assistance Act]. Although substantial amounts will not result, these additional amounts will be helpful in financing the program and will constitute new income for the Federal government.¹⁰⁶

In addition, the sections in the legislative history discussing public donations and increases in maximum fines state that Congress passed Section 3013 to offset the costs of the victims assistance program.¹⁰⁷ The statement that the special assessment would constitute new income was included to allay the legislature's concerns regarding the cost of the victims assistance program;¹⁰⁸ the language does not indicate congressional intent to raise revenue for the general use of the government.¹⁰⁹

Furthermore, deposits attributed to the special assessment represent only a small portion of the Fund's total deposits that include criminal

102. *Senate Report, supra* note 57, at 3620.

103. *Munoz-Flores*, 863 F.2d at 659; *United States v. Vines*, 718 F. Supp. 895, 898-99 (S.D. Ala. 1989). *But see Simpson*, 885 F.2d at 44 (finding this interpretation strained).

104. *See supra* notes 86-91 and accompanying text.

105. *See United States v. Simpson*, 885 F.2d 36, 44 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *United States v. Conner*, 715 F. Supp. 1327, 1331 (W.D.N.C. 1989).

106. *Senate Report, supra* note 57, at 3619-20.

107. Like the amendment imposing special assessments, the provision for permitting public donations declared that it was added "in an effort to raise revenue to help finance the program." *Senate Report, supra* note 57, at 3620. The section that both increases maximum fines for federal criminal offenses and improves fine collection procedures stated that "[a]s with penalty assessments and public donations, this Title is intended to increase revenue to offset the costs of the program." *Id.*

108. Congress enacted Section 3013, increased criminal fines and permitted public donations in response to congressional concern about increasing expenditures to support the victims assistance program. *See United States v. Ashburn*, 884 F.2d 901, 904 (6th Cir. 1989); *supra* notes 69-72 and accompanying text.

"A significant feature of the proposed Victims of Crime Assistance Act was that it would not materially increase the federal budget deficit; . . . [the Fund] was not to be created or maintained primarily through the appropriation of federal funds." *United States v. Michaels*, 706 F. Supp. 699, 701 (D. Minn. 1989).

109. *See United States v. Simpson*, 885 F.2d 36, 44 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989); *United States v. Conner*, 715 F. Supp. 1327, 1331 (W.D.N.C. 1989); *Michaels*, 706 F. Supp. at 702.

finances and public donations.¹¹⁰ As one court pointed out, "Because the special assessment was expected to generate only a small fraction of the amount necessary to fund the project, it seems unlikely that the drafters hoped that the assessments would both fund the project *and* raise additional revenue for the government."¹¹¹

2. Cap on Deposits

Another source of concern is a \$100 million limit on annual deposits into the Fund.¹¹² Any money collected in excess of the \$100 million cap is deposited into the general fund of the United States Treasury.¹¹³ At first glance, the ceiling sum appears problematic because it could generate money for the government's general use. Critics of the statute argue that this refusal to place an ultimate limitation on the use of the funds demonstrates that the primary purpose of the special assessment is to raise revenue for the government's general use.¹¹⁴

The purpose of the ceiling sum, however, is not to siphon money raised by special assessments into the United States Treasury. The Committee on the Judiciary believed that the cap was a way to control the size of the crime victims program under the Victims Assistance Act.¹¹⁵ Although Congress' reasons for requiring this control are unclear, it acted to ensure that as much of the Fund as possible went to crime victims. The Committee selected the cap as the least restrictive method of control¹¹⁶ concluding that "deposits to the Fund ought to be used for victims

110. In fiscal year 1987, for example, special assessments constituted only 4 percent of total deposits into the Fund. See *Victims of Crime Act of 1984: A Report to Congress by the Attorney General, United States Department of Justice, Office of Justice Programs, Office of Victims of Crime, April 1988, at 12.* Federal courts assessed \$8.6 million that year but collected only about \$1.9 million. In fiscal year 1988, the courts assessed \$3.9 million, of which \$146,000 was collected. See *National Criminal Justice Association, Justice Bulletin, Vol. 8, No. 12, at 6 (Dec. 1988).*

111. *Simpson*, 885 F.2d at 44 (emphasis in original).

112. The cap on deposits will be \$125 million through 1991. See 42 U.S.C.A. § 10601(c)(1)(B) (West Supp. 1989).

113. See *id.*

114. See *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989). *But see United States v. Michaels*, 706 F. Supp. 699, 702 (D. Minn. 1989) (cap does not indicate Section 3013 had purpose other than financing fund); *United States v. McDonough*, 706 F. Supp. 692, 695 (D. Minn. 1989) (defendant's reliance on cap as indicative of revenue raising purpose is not controlling).

115. See *Senate Report, supra* note 57, at 3615-16.

116. Instead of placing a ceiling sum on deposits, an earlier draft of the bill limited deposits into the Fund by requiring a percentage to be reverted into the Treasury's general fund. See *id.* at 3611. Although criminal defendants challenging Section 3013 could have seized upon this earlier draft as evidence of congressional intent to raise revenue for the government's general use, there is no indication that any have done so. A plausible explanation is that by substituting the ceiling sum for the percentage system, Congress manifested an intent to aid crime victims. In order to increase the amount available to aid crime victims, Congress substituted a limit on deposits for the complex percentage system. See *id.* "The Committee [on the Judiciary] believed a more equitable and fiscally responsible approach was to allow the entire Fund to be used for victims services, but to place a ceiling of \$100 million on the Fund." *Id.* That figure was deemed appropriate in

and that a more appropriate control on expenditures would be to place a maximum on the amount that would be deposited in the Fund."¹¹⁷

Since its enactment, the cap on deposits has been raised to increase aid to crime victims.¹¹⁸ In addition, Congress amended Section 3013 so that if deposits exceed the ceiling sum, less of the excess would go into the United States Treasury's general fund.¹¹⁹ Moreover, of particular relevance to the origination clause purpose inquiry, Congress did not anticipate that deposits would reach, much less exceed, the cap.¹²⁰ Because Congress did not expect deposits to exceed the cap, it could not have intended to raise revenue for the government's general use.¹²¹

comparison with two other crime assistance programs that also imposed caps on the dollar amount that could be collected to support the acts. *See id.*

The bill, as introduced, also required the state to return funds to which it was entitled but that it had not expended to the Treasury's general fund. *See id.* at 3615. After much criticism, the provision was modified to give the director of each state's compensation program the option of expending the funds for victim assistance or returning the funds to the Crime Victims Fund for redistribution in the next fiscal year. *See id.*

117. *Id.* at 3616.

118. The ceiling sum was increased to \$110 million for fiscal years 1986 to 1988, to \$125 million through 1991 and then to \$150 million through 1994. *See* 42 U.S.C.A. § 10601(c)(1)(B) (West Supp. 1989) (amending 42 U.S.C. § 10601(c)(1) (Supp. V 1987)).

119. In 1988, Congress amended the statute to provide that the first \$2.2 million in excess of the ceiling sum would be used to cover administrative costs of the judiciary to collect criminal fines. 42 U.S.C.A. § 10601(c)(1)(A) (West Supp. 1989).

120. *See* *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); *United States v. Michaels*, 706 F. Supp. 699, 702 (D. Minn. 1989); *Senate Report*, *supra* note 57, at 3627.

A Congressional Budget Office report stated that according to the Administration criminal fines would generate between \$45 and \$75 million in deposits into the Fund in 1984 under current law. *See Senate Report*, *supra* note 57, at 3627. Increasing the estimate to account for across-the-board fine increases, special assessments and public donations, the Committee on the Judiciary concluded that "deposits into the fund could conceivably range up to the \$100 million ceiling imposed by the bill." *See id.* The Congressional Budget Office report shows that Congress did not pass the Victims Assistance Act "for the purpose of filling government's general-fund coffers." *United States v. Simpson*, 885 F.2d 36, 43 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989).

121. Subsequent history has proven Congress correct. In the Fund's first four years, total revenue collected from criminal fines, special assessments and public donations did not exceed the ceiling sum. In fiscal year 1985, \$68,312,955 was deposited into the Fund, well below the \$100 million ceiling sum. *See* *Victims of Crime Act of 1984: A Report to Congress by the Attorney General, United States Department of Justice, Office of Justice Programs, Office for Victims of Crime*, April 1988, at 11 (on file at *Fordham Law Review*) [hereinafter *Attorney General's Report*]. Congress increased the cap to \$110 million for fiscal years 1986 through 1988. *See* 42 U.S.C.A. § 10601(c)(1). Deposits for those years totaled \$62,506,345, \$77,446,383 and \$93,559,361, respectively. *See Attorney General's Report*, *supra*, at 11; Table from *United States Department of Justice, Office of Justice Programs, Office for Victims of Crime* (Jan. 8, 1990) (on file at *Fordham Law Review*) [hereinafter *Dep't of Justice Table*].

In fiscal year 1989, money collected exceeded the cap by approximately \$8.5 million. Although Congress raised the ceiling sum to \$125 million, potential deposits into the Fund totaled approximately \$133.5 million. *See Dep't of Justice Table*, *supra*. After deducting \$2.2 million of excess funds to cover administrative judicial costs, only approximately \$6.3 million remained for deposit into the United States Treasury's general fund. *See* 42 U.S.C.A. § 10601(c)(1)(A) (West Supp. 1989).

3. Sunset Provision

Congress also imposed a "sunset" date after which no deposits could be made into the Fund.¹²² At that time, unless the legislature reevaluated the program and extended the sunset date, any unobligated¹²³ deposits to the Fund would revert to the United States Treasury's general fund.¹²⁴ Because Section 3013 does not provide a corresponding termination date for the collection of special assessments, it is conceivable that courts could continue to collect special assessments and instead of channeling them into the discontinued Fund, could deposit them into the Treasury.¹²⁵

Although it is unclear whether Congress intended to discontinue the collection of special assessments after the sunset date,¹²⁶ there is little indication that Congress intended to use the sunset provision as a plan to help raise revenue for the general use of the government.¹²⁷ The purpose of the sunset provision was to require Congress to "reevaluate the program and make any necessary improvements."¹²⁸ That courts could continue to collect special assessments after the sunset date and deposit them into the United States Treasury's general fund is an incidental result of that date, not its principal function.¹²⁹ Subsequent amendments extending the sunset date evidence that "the purpose of the original Act's sunset provision was to force Congress' hand, not to raise revenue."¹³⁰

In sum, neither the language of the statute nor its legislative history

122. Originally the statute provided that "[n]o deposits shall be made in the Fund after September 30, 1988." 42 U.S.C. § 10601(c)(2) (Supp. V 1987), *amended by* 42 U.S.C.A. § 10601(c)(2) (West Supp. 1989). The statute as amended terminates deposits into the Fund after September 30, 1994. *See* 42 U.S.C.A. § 10601(c)(2) (West Supp. 1989).

123. Unobligated funds are monies that have been appropriated but remain uncommitted at the end of a fiscal period. *See Webster's Third International Dictionary* 2505 (1986).

124. *See Senate Report, supra* note 57, at 3619.

125. Although there is no sunset date on the collection of criminal fines, such fines are not challenged under the origination clause.

126. Congress could easily clarify this confusion by amending Section 3013 to impose a corresponding sunset termination date on the collection of special assessments.

127. *See United States v. Simpson*, 885 F.2d 36, 44 (3d Cir.), *petition for cert. filed*, No. 89-5727 (filed Oct. 2, 1989).

128. *Senate Report, supra* note 57, at 3619; *see also United States v. Simpson*, 885 F.2d at 44 (sunset provision intended to "force congressional reconsideration of the victim assistance program after several years of operation by cutting its funding").

129. *See Simpson*, 885 F.2d at 44.

130. *Id.* In 1988, Congress extended the original cut-off date of September 30, 1988 to September 30, 1994. *See* 42 U.S.C. § 10601(c)(2), *amended by* 42 U.S.C.A. § 10601(c)(2) (West Supp. 1989). Because the amendment was delayed a few weeks beyond the original sunset date, some funds that would have been deposited into the temporarily terminated Fund were placed in the general account of the United States Treasury. However, the legislature provided for their transfer into the Fund once it reexamined the program and extended the deadline on deposits. *See Simpson*, 885 F.2d at 44.

The *Simpson* court emphasized that the amendments were relevant only to demonstrate legislative intent and that it was "not suggesting that subsequent acts by Congress can cure an Act's violation of the Origination Clause." *Id.*

reveals a revenue-raising purpose. The special assessment to subsidize the Crime Victims Fund is comparable to the tax to fund a postal money order system in *Norton*, the tax to support the national currency in *Twin City Bank* and the tax to fund the building of railroad terminals in the District of Columbia in *Millard*.¹³¹ Although the mandatory assessment on all persons convicted of a crime raises revenue in the ordinary meaning of the word, it does not raise revenue for purposes of the origination clause because the assessment's primary purpose is to assist crime victims.¹³²

B. Punishment Analysis

Several courts have reasoned that Section 3013 is constitutional because it is punitive.¹³³ Some courts conclude that the special assessment is a punishment rather than a tax, without analyzing whether the bill fits the Supreme Court's narrow conception of raising revenue.¹³⁴ Other courts properly use the punishment characterization to bolster their conclusion that Congress lacked a revenue raising intent when it passed the punitive measure.¹³⁵ The Ninth Circuit correctly realized that the characterization of the special assessment as a punishment is not dispositive for an origination clause challenge.¹³⁶ Section 3013 may be both a punitive measure and a revenue measure.¹³⁷ Determining that the special assessment is punitive is relevant only to demonstrate that Congress lacked the intent to raise revenue;¹³⁸ even if the assessment is a tax, it does not

131. See *United States v. King*, 891 F.2d 780, 783 (10th Cir. 1989); *United States v. Herrada*, 887 F.2d 524, 527 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989); *United States v. Greene*, 709 F. Supp. 636, 639 (E.D. Pa. 1989); *United States v. McDonough*, 706 F. Supp. 692, 694 (D. Minn. 1989).

132. See *United States v. Vines*, 718 F. Supp. 895, 899 n.6 (S.D. Ala. 1989); *United States v. Conner*, 715 F. Supp. 1327, 1330 (W.D.N.C. 1989).

133. See *supra* note 11 and accompanying text.

134. See *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); *United States v. Ramos*, 624 F. Supp. 970, 973 (S.D.N.Y. 1985).

135. See, e.g., *United States v. King*, 891 F.2d 780, 783-84 (10th Cir. 1989) (statute's main purpose is to support crime victims program and to punish offenders); *United States v. Ashburn*, 884 F.2d 901, 903 (6th Cir. 1989) (statute's twin goals are punishment and victim compensation); *Vines*, 718 F. Supp. at 898 (statute's punitive purpose intended to further non-revenue raising purpose).

136. See *United States v. Munoz-Flores*, 863 F.2d 654, 659 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

137. See, e.g., *United States v. Smith*, 818 F.2d 687, 690 (9th Cir. 1987) (although Section 3013 was undeniably intended to raise revenue, a "punitive measure designed to raise revenue is still a punitive measure").

In fact, although the Ninth Circuit held that the special assessment was a punishment for purposes of the seventh amendment in *Smith*, it later distinguished *Smith* to hold that Congress enacted the statute to raise revenue in violation of the origination clause. Compare *Smith*, 818 F.2d at 690 (seventh amendment does not require jury trial to impose assessment because it is punitive measure) with *Munoz-Flores*, 863 F.2d at 657 (origination clause requires that Section 3013 originate in House because it is revenue raising measure).

138. "We note, however, that for purposes of determining whether the special assess-

raise revenue if it furthers a non-revenue raising purpose.¹³⁹

Even though a punitive purpose, to the extent it exists, supports this Note's position, precise analysis demands a concession that the better view is that Congress passed Section 3013 to finance the crime victims program. Factors indicative of a punitive purpose are the special assessment's similarity to a criminal fine¹⁴⁰ and its imposition during sentencing as a direct consequence of conviction.¹⁴¹ Reference in the legislative history to "penalty assessment fines," "penalty assessment fees" and "penalties," rather than to special assessments, lends credence to the position that Congress intended Section 3013 to punish or penalize criminal defendants.¹⁴²

Aside from referring to the special assessment as a penalty assessment,

ment statute is subject to the provisions of the origination clause, it matters not whether its primary purpose was to assist victims or [sic] crime or to punish criminals." *United States v. Greene*, 709 F. Supp. 636, 639 (E.D. Pa. 1989); *see also United States v. Conner*, 715 F. Supp. 1327, 1330 (W.D.N.C. 1989) (lists penalty arguments as "worthy of mention" within its evaluation of congressional intent without examining whether provision was a punishment).

139. *See, e.g., Millard v. Roberts*, 202 U.S. 429, 436-37 (1906) (taxing provision furthered bill's purpose of constructing railway station); *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897) (taxing provision furthered purpose of providing national currency).

In its final version, the framers restricted the origination clause to bills for raising revenue but allowed the Senate to introduce bills to appropriate money. *See supra* note 21.

140. The assessment is collected upon conviction in the same manner as a criminal fine. *See United States v. King*, 891 F.2d 780, 782 (10th Cir. 1989); *United States v. Ashburn*, 884 F.2d 901, 903 (6th Cir. 1989); *United States v. Griffin*, 884 F.2d 655, 656 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989); 18 U.S.C. § 3013(b); *see also United States v. Davis*, 845 F.2d 94, 99 (5th Cir. 1988) (analysis under Assimilative Crimes Act); *United States v. King*, 824 F.2d 313 (4th Cir. 1987) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Mayberry*, 774 F.2d 1018, 1021 (10th Cir. 1985) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

As with fines and other penalties, the amount assessed increases with the gravity of the offense. *See King*, 891 F.2d at 782; *Ashburn*, 884 F.2d at 903; *Griffin*, 884 F.2d at 656; *United States v. Ramos*, 624 F. Supp. 970, 973 (S.D.N.Y. 1985).

Furthermore, in order to increase deposits available to support the Fund, Congress imposed the special assessment at the same time that it increased the maximum of authorized fines and improved fine collection methods. *See Senate Report, supra* note 57, at 3620.

141. *See Griffin*, 884 F.2d at 656; *Mayberry*, 774 F.2d at 1021; *Ramos*, 624 F. Supp. at 973. Because special assessments are mandatory, a sentence lacking the assessment is not a legal sentence. *See Griffin*, 884 F.2d at 656; *United States v. Pagan*, 785 F.2d 378, 380 (2d Cir.), *cert. denied*, 479 U.S. 1017 (1986). Moreover, the Supreme Court, in *Ray v. United States*, 481 U.S. 736 (1987), used the special assessment as a basis to hold that a defendant was not serving concurrent sentences because a special assessment of \$50 was imposed on each of his three convictions. *See id.* at 736-37.

The fact that special assessments are ultimately deposited into the Fund does not decrease their punitive effect on convicted persons and does not transform the penalty into a revenue raising measure. *See Griffin*, 884 F.2d at 656; *Ramos*, 624 F. Supp. at 973. Any revenue raised is incidental to the punishment. *See Ramos*, 624 F. Supp. at 973.

142. *See Senate Report, supra* note 57, at 3619; *see, e.g., King*, 891 F.2d at 782; *Ashburn*, 884 F.2d at 903; *Griffin*, 884 F.2d at 656; *United States v. King*, 824 F.2d 313, 316 (4th Cir. 1987), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Mayberry*, 774 F.2d 1018, 1021 (10th Cir. 1985), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

however, the legislative history "does not mention punishment as a purpose of the special assessment."¹⁴³ The codified version of the statute does not contain the word "penalty," suggesting that Congress may not have considered the assessment to be a penalty.¹⁴⁴ In addition, although the special assessment is collected in the same manner as a criminal fine, it differs from a fine because it does not vary in amount according to the specific nature of the offense committed.¹⁴⁵ Thus, the assessment may be interpreted as a constitutional "tax on crooks and not a program of penalties."¹⁴⁶

To support classifying the special assessment as a penalty, some opinions rely on several courts of appeals that have held that the purpose of Section 3013 is penal and not revenue-raising for the purposes of the Assimilative Crimes Act.¹⁴⁷ Other circuits, in construing the application

143. *United States v. Munoz-Flores*, 863 F.2d 654, 659 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

144. *See id.*

145. *See United States v. Donaldson*, 797 F.2d 125, 127 (3d Cir. 1986), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

The amount assessed under Section 3013, as enacted, depended only upon whether the crime was a felony or a misdemeanor. The statute assessed \$25 upon individual misdemeanants and \$50 upon individual felons. *See* 18 U.S.C. § 3013(a) (Supp. V 1987), *amended by* 18 U.S.C. § 3013(a) (1988). Criminal fines, however, increased according to the degree of the felony or the degree of the misdemeanor.

The 1988 amendment weakens this argument. Section 3013 now increases the amount assessed according to the degree of the misdemeanor. There remains no gradation for felonies. *See* 18 U.S.C. § 3013(a) (1988).

146. *United States v. Hagen*, 711 F. Supp. 879, 881 (S.D. Tex. 1989) (effectively overruled by *United States v. Herrada*, 887 F.2d 524 (5th Cir.), *petition for cert. filed*, No. 89-6282 (filed Dec. 15, 1989)).

Congress has the power to define a class upon which it imposes a tax. *See Munoz-Flores*, 863 F.2d at 659. In this case, the legislature may have decided to levy a tax on the class of convicted persons, without a punitive purpose in mind. *See id.*

"The defendant's conviction happens to be the requisite event for the imposition of the tax, as the importation of goods is the event of imposition of custom duties; however, that does not make it part of the sentence." *Hagen*, 711 F. Supp. at 881.

147. *See United States v. Davis*, 845 F.2d 94, 97-100 (5th Cir. 1988) (federal special assessment constitutes punishment and cannot be imposed upon a person convicted of an assimilative crime unless state law provides comparable punishment); *United States v. King*, 824 F.2d 313, 315-16 (4th Cir. 1987) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Mayberry*, 774 F.2d 1018, 1020-21 (10th Cir. 1985) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

The purpose of the Assimilative Crimes Act is to conform the punishment of persons convicted of state crimes on a federal enclave to that of the surrounding state. *See United States v. Sharpnack*, 355 U.S. 286, 292-93 (1958); *King*, 824 F.2d at 315; *Mayberry*, 774 F.2d at 1020. *Mayberry* and *King* held that the special assessment violated the purpose of the Assimilative Crimes Act by placing on defendants an additional burden that had no state law counterpart. *See King*, 824 F.2d at 316, 318; *Mayberry*, 774 F.2d at 1021-22.

Congress overturned *Mayberry* and *King* by adding to Section 3013 a subsection which provides that: "For the purposes of this section, an offense under section 13 of this title is an offense against the United States." 18 U.S.C. § 3013(d) (1988). The legislative history indicates that Congress intended to clarify the confusion by mandating the imposition of the special assessment upon all defendants convicted of federal offenses, including those convicted under the Assimilative Crimes Act. *See* H.R. Rep. No. 390, 100th Cong., 1st Sess. 3, *reprinted in* 1987 U.S. Code Cong. & Admin. News 2137, 2140 ("Because the

of the rule of lenity¹⁴⁸ to Section 3013, have found no congressional intent to punish criminals through the assessment.¹⁴⁹ Nonetheless, neither the decisions under the Assimilative Crimes Act nor those construing the application of the rule of lenity to the special assessment statute provide guidance for an origination clause challenge.¹⁵⁰ As the Ninth Circuit observed, "These courts, in evaluating the purpose of Section 3013 in light of challenges that did not involve the origination clause, unsurprisingly failed to perform the purpose analysis mandated by the origination clause."¹⁵¹

C. Origination of Section 3013

Upon concluding that a bill in fact does raise revenue, the second part of an origination clause analysis is whether the bill originated in the Senate.¹⁵² Because courts prefer to avoid review of the legislative process whenever possible¹⁵³ and because the history of this particular bill is so complex, most courts have not delved into Section 3013's procedural past after determining that the bill did not raise revenue under the origination clause.¹⁵⁴

On May 1, 1984, Senator Heinz proposed the collection of a "penalty assessment" from convicted persons, as part of the proposed Victims Assistance Act.¹⁵⁵ Although the Senate passed the bill on May 10, 1984,¹⁵⁶ the House of Representatives did not pass the bill.¹⁵⁷

Committee sees no reason to distinguish, for purposes of special assessments, convictions under the Assimilative Crimes Act from convictions under other provisions of Federal law, new section 3013(d) overturns those decisions."). This does not alter the courts' conclusion that the special assessment is a punishment.

148. The rule of lenity provides that "penal statutes should be strictly construed against the government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed." 3 N. Singer, Sutherland Statutory Construction § 59.03, at 11 (4th ed. 1986) (citation omitted).

149. See *United States v. Dobbins*, 807 F.2d 130, 131 (8th Cir. 1986) (rule of lenity not applicable to special assessments because statute's purpose was to aid crime victims, not punish criminals), *superseded by statute*, 18 U.S.C. § 3013(d) (1988); *United States v. Donaldson*, 797 F.2d 125, 127 (3d Cir. 1986) (same), *superseded by statute*, 18 U.S.C. § 3013(d) (1988).

These decisions allow judges to impose a special assessment upon each guilty count. Although the statute is ambiguous in this regard, courts are not required by the rule of lenity to interpret its ambiguous terms in favor of the defendant. See *Dobbins*, 807 F.2d at 131; *Donaldson*, 797 F.2d at 127.

150. See *United States v. Munoz-Flores*, 863 F.2d 654, 659-60 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

151. *Id.* at 660.

152. See *id.* at 657.

153. See *Field v. Clark*, 143 U.S. 649, 672-74 (1892); *United States v. Griffin*, 884 F.2d 655, 655-56 (2d Cir.), *petition for cert. filed*, No. 89-5493 (filed Sept. 2, 1989).

154. See *Griffin*, 884 F.2d at 656.

155. See *The Victims of Crime Assistance Act of 1984: Hearings on S.2423 Before the Senate Comm. on the Judiciary, 98th Cong., 2d Sess.* 21 (1984).

156. See *Senate Report, supra* note 57, at 3609.

157. See *United States v. Munoz-Flores*, 863 F.2d 654, 660 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989).

The House subsequently passed a continuing appropriations resolution, H.J. Res. 648, containing the Comprehensive Crime Control Act of 1984 as Title II.¹⁵⁸ The resolution did not then include Chapter XIV, the Victims Assistance Act of 1984.¹⁵⁹ When the Senate considered H.J. Res. 648, it amended the resolution and added eight more chapters, including Chapter XIV, which contained the special assessment.¹⁶⁰ This modified version of H.J. Res. 648 became law on October 12, 1984.¹⁶¹

Because the Senate proposed the addition of the special assessment provision to the continuing appropriations resolution, the Ninth Circuit concluded that Section 3013 impermissibly originated in the Senate.¹⁶² The origination of the statute, however, is not so clear-cut. Congressman Rodino had introduced a penalty assessment as part of the Victims of Crime Act of 1983, a House-originated bill that did not become law.¹⁶³ The final version of the Comprehensive Crime Control Act of 1984 was

158. See A. Partridge, *The Crime Control and Fine Enforcement Acts of 1984: A Synopsis 1* (Federal Judicial Center 1985).

159. See *id.*

160. See A. Partridge, *supra* note 158, at 1; see also Joint Explanatory Statement of the Comm. of Conference, reported in 1984 U.S. Code Cong. & Admin. News 3710, 3713-14 (Senate adds eight new chapters to House bill and establishes crime victims fund). Senator Thurmond introduced the amendment that provided for a special assessment on convicted persons. See Thurmond Amendment No. 7043, 98th Cong., 2d Sess., 130 Cong. Rec. S13,520, S13,544 (daily ed. Oct. 4, 1984).

161. Pub. L. No. 98-473, 98 Stat. 1976 (1984); see *United States v. Munoz-Flores*, 863 F.2d 654, 661 (9th Cir. 1988), *cert. granted*, 110 S. Ct. 48 (1989); *Senate Report, supra* note 57, at 3182.

162. See *Munoz-Flores*, 863 F.2d at 661 ("The special assessment provision was introduced in the Senate Judiciary Committee, it was first passed by the Senate and was only adopted by the House on later repassage of H.J.Res. 648."). But see *United States v. Clark*, 711 F. Supp. 736, 739 (S.D.N.Y. 1989) (Senate passed exact copy of bill that House originated).

The *Munoz-Flores* court correctly concluded that because the House's original version of the continuing appropriations resolution did not concern raising revenue for the Crime Victims Fund, the amendment did not fall within the Senate's power to amend House revenue bills. See *Munoz-Flores*, 863 F.2d at 661; see generally *supra* notes 46-51 and accompanying text (discussing Supreme Court precedent of germane amendments to House revenue bills).

163. See 130 Cong. Rec. 31681 (1984). Congressman Rodino remarked that "[I]ast year, together with some 50 colleagues, I introduced H.R. 3498, the Victims of Crime Act of 1983, which calls for Federal aid for State crime victim compensation programs and for programs that offer services and assistance to crime victims." *Id.*

The Rodino proposal reads, in relevant part:

Special Court Assessment Amendment

Sec. 402. (a) Chapter 201 of title 18 of the United States Code is amended by adding at the end the following:

Sec. 3013. Special assessment on convicted persons.

(a) The court shall assess on any person convicted of an offense against the United States-

- (1) the amount of \$50 in the case of a felony; and
- (2) the amount of \$25 in the case of a misdemeanor.

(b) Such amount so assessed may be collected in the manner in which fines are collected in criminal cases.

the result of negotiations between Congressman Rodino and the Senate Committee on the Judiciary.¹⁶⁴ As a result, one court concluded that “because [the Senate’s] amendment was legislation that had previously been introduced in . . . the House, there was no violation of the requirements of the Origination Clause.”¹⁶⁵ However, lack of judicial precedent setting forth guidelines to determine what constitutes origination of a bill under the origination clause makes it difficult to evaluate the effect of the Rodino proposal.¹⁶⁶

On balance, it appears likely that the bill originated in the Senate. Nonetheless, because Section 3013 does not raise revenue, the resolution of the origination issue does not affect the bill’s constitutionality.

CONCLUSION

The Supreme Court has construed the term “raising revenue” narrowly so that only bills enacted for the direct purpose of providing funds for the government’s general use must originate in the House of Representatives. Congress imposed the special assessment on all convicted persons as part of a program intended to provide relief to crime victims. Section 3013 is constitutional because Congress passed the special assessment for the non-revenue raising purpose of defraying the costs of this victim assistance program.

Marie T. Farrelly

United States v. Madison, 712 F. Supp. 1379, 1381-82 n.2 (W.D. Wis. 1989) (citing H.R. 3498, 98th Cong. 1st Session (June 30, 1983)).

164. Congressman Rodino commented:

The other body early last August passed a modified version of the administration bill, and shortly after that I began negotiations with the administration and the leadership of the other body’s Judiciary Committee. Those negotiations successfully resolved the differences among the three bills—H.R. 3498, the administration bill, and the bill passed by the other body. I introduced the compromise that we worked out—H.R. 6403—which was also included in the crime package amendments to H.R. 5690 that were approved by the House on Tuesday, October 2. The other body attached the compromise to the continuing resolution, and the House’s conferees agreed to accept the language.

130 Cong. Rec. 31681 (1984) (statement of Cong. Rodino); see United States v. Clark, 711 F. Supp. 736, 740 (S.D.N.Y. 1989).

165. *Clark*, 711 F. Supp. at 740.

166. See United States v. Madison, 712 F. Supp. 1379, 1383 (W.D. Wis. 1989). The district court noted that:

Deciding this question requires resort to many different sources of legislative information, which in itself raises questions: whether it is proper for a court to look behind the designation of a bill as a House or Senate-originated bill, and if so, what kinds of reference materials may be consulted to determine the actual origination of a particular act or statute, and what standards govern the determination that Congress acted properly or not.

Id. at 1382.

