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FE 002

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

JW

☐ O - OUTGOING
☐ H - INTERNAL
☐ I - INCOMING
Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Peter Thiem

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Notice of fraudulent ratification of the 16th amendment

ROUTE TO: / **ACTION** / **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CU HOLL	ORIGINATOR	85/05/09		C	85/05/10 PY
	Referral Note:				
CU AT 14	R	85/05/10	NAN	A	85/05/10 PY
	Referral Note:				
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet to be used as Enclosure
I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
A - Answered
B - Non-Special Referral
C - Completed
S - Suspended

FOR OUTGOING CORRESPONDENCE:
Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

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Send all routing updates to Central Reference (Room 75, OEOB).
Always return completed correspondence record to Central Files.
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5/81

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Prime Subject Code: FE 002-__ Secondary Subject Codes: __ ____-__ __ ____-__

__ ____-__ __ ____-__

__ ____-__ __ ____-__

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C __ __	_____	Time: _____	P- _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

CPn - Presidential Correspondence
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

CLn - First Lady's Correspondence
- n - 0 - Unknown
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

CBn - Presidential & First Lady's Correspondence
- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

- B - Box/package
- C - Copy
- D - Official document
- G - Message
- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

25K
L. Fielding

CERTIFIED MAIN NO. P669 381 315

FYI)

Peter Thiem
3932 Creekside Dr.
Nashville, TN. 37211

Office of the President
United States of America
1600 Pennsylvania Avenue
Washington, D.C. 20500

314312 CM

Dear Sir:

Enclosed herein you will find the following documents:

Encl.

1. NOTICE
2. AFFIDAVIT
3. INTRODUCTION TO DOCUMENTS
4. DOCUMENTS ASSERTING AND PROVING THE "FRAUDULENT" RATIFICATION OF THE 16th AMENDMENT
5. CERTIFICATE OF SERVICE

You are now informed that the alleged 16th Amendment was never and is not now a part of the United States Constitution because of the failure of the amendment to obtain the necessary and requiste number of states for ratification. Govern yourself according and may we all remember that no man is above the law.

Date: 4/11/85

Sincerely,

Peter Thiem

CERTIFIED MAIL NO. P669 381 315

Peter Thiem
3932 Creekside Dr.
Nashville, TN. 37211

To:
Office of the President
United States of America
1600 Pennsylvania Avenue
Washington, D.C. 20500

RE: NOTICE OF "FRAUDULENT" RATIFICATION OF THE 16TH AMENDMENT

This NOTICE is made with the understanding of the following information from our courts as the courts have stated it.

A person must immediately rescind any contract that has been entered into by fraud and/or false representation or the contract will remain in effect. The courts have said:

"...but the view we take of the question of waiver of the FRAUD by failure to exercise due diligence to rescind,...

"...If they propose to rescind, their duty was to assert that right promptly, unconditionally, and unevasively," otherwise the affirmation of the contract, not withstanding the fraud, would follow. Richardson v. Lowe, 149 Fed. Rep. 625, 627-8.

Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority..." Utah Power & Light Co. v. U.S., 243 US 389, 409; U.S. v. Stewart, 311 US 60, 70; The Floyd Acceptance, 7 Wall. 666; Federal Corp. Ins. Corp. v. Merrill, 332 US 380, 384.

"Where a party desires to rescind upon the grounds of mistake or FRAUD he must upon discovery of the facts, at once announce his purpose, and adhere to it. If he be silent,...he will be held to waive the objection, and will be conclusively bound by the contract, as if the mistake or FRAUD had not occurred. He is not permitted to play fast and loose. Delay and vacillation are fatal to the right which has been subsisted." Grymes v. Saunders, 93 US 55, 62. See also, Shappiro v. Goldberg, 192 US 23

Rescission of a contract on the ground of FRAUD is not a mental process undisclosed and unacted upon. It requires affirmitive action immediately on its discovery; some overt act and outward manifestation of the intention to clearly apprise the other party to the contract of the right asserted. Melton v. Smith, 65 Mo. 325; Walters v. Miller, 10 Iowa 427.

The duty of rescinding arises immediately upon acquiring knowledge of the substantial and material facts constituting the FRAUD. It is not requiste that the deFRAUDed party shall be acquainted with

all the evidence constituting the FRAUD before the duty to act by way of rescission arises. When he has evidence sufficient to reasonably actuate him to rescind the contract and on which he has once acted no subsequent discovery of cumulative evidence can operate to excuse the waiver of the FRAUD if one has in the meantime occurred or to revive a once lost right of rescission. The election to waive the FRAUD once diliberately made is irrevocable. Vacillation or speculation cannot be tolerated.
Campbell v. Flemming, 1 A. & E. 40; Fry On Specific Performance Of Contracts, (2nd Ed.) Sections 703 & 704; Bach v. Tuch, 26 N.E. 1019; Taylor v. Short, 17 S.W. 970.

"If the FRAUD be discovered while the contract is wholly executory, the party deFRAUDed has the option of going on with it or not, as he chooses. If he executes it, the loss happens from such VOLUNTARY execution, and he cannot recover for loss which he diliberately elected to incur."
Simon v. Goodyear Rubber Shoe Co., 105 Fed. Rep. 573, 579.

Dear Sir:

The purpose of this letter, and the attachments incorporated herein by this reference as though fully set forth, is to give you and your Department, Agents, Officers and/or Employees NOTICE of my ELECTION to revoke my signatures on any and all Documents and Things in your possession, custody and/or control; and to Rescind, Terminate, Extinguish, and render Null and Void for any purpose whatsoever, any Contract, quasi-Contract, Agreement, Implied Consent, and/or Power of Attorney which I may have entered into with and/or given to you, your Department and/or its predecessors, as those Contracts, quasi-Contracts, Agreements, Implied Consents and/or Powers of Attorney were obtained as the result of FRAUD AND DECEPTION! Such utilization of the instruments of FRAUD AND DECEPTION to obtain the foregoing relations make those relations voidable and termiable upon my discovery and election.

I understand that such an election of remedy requires a NOTICE of my election and the grounds therefore, which grounds are set forth hereunder, attached hereto, and incorporated herein as though fully set forth by this reference.

My name is Peter Thieu and my date of birth is 4/24/1944. As your records will reflect, during the years 1962 through the present, I have signed various and sundry forms which I was FRAUDULENTLY AND DECEPTIVELY (also COMPELLED BY COERSION) induced into believing that I must sign such forms. I was at times

COMPELLED BY COERSION (threat of loss of means to support my family) into signing some of the aforementioned forms. At no time, until the present by my own discovery, was I informed that FRAUD AND DECEPTION were being practiced upon me. Neither was I informed that the COERSION COMPELLED upon me was ILLEGAL AND UNLAWFUL. My grounds are set forth hereunder.

At various and sundry times during the years aforementioned I signed or may have signed 1040 Forms, 1040A Forms, W-4 Forms, and other types of forms which were and/or are purported to have been printed and/or distributed and/or 'required' by you, your Department, Officers, Agents, Employees and/or Extensions (commonly called Employers). I was never informed by you, your Department, Officers, Agents, Employees and/or Extensions (Employers, supra) that I was not then and am not now required/obligated to perform <u>any</u> tasks pursuant to an alleged individual income tax because of the alleged ratification of the alleged 16th Amendment.

Until my own discovery, I was never informed of the Fifth (5th) Article of the United States Constitution which states, to wit:

> The Congress, whenever two thirds of both Houses deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid for all intents and purposes, as Part of this Constitution, when <u>RATIFIED</u> by the Legislatures of three fourths of the several States, or by Conventions in three fourths therof, as the one or other Mode of Ratification may be proposed by Congress;...

Until my own discovery, I was never informed that the Congressional power to enact Title 26, United States Code, insofar as it relates to private individuals, is derived from the Sixteenth Amendment (Article XVI) to the United States Constitution.

Until my own discovery, I was never informed that the said Sixteenth Amendment to the United States Constitution was never and has never been ratified by the requiste number of state legislatures as required by Article V of the United States Constitution as above quoted.

Until my own discovery, I was never informed that the certificate dated February 25, 1913, wherein it is alleged that the Sixteenth Amendment of the U. S. Constitution was so ratified by the requiste number of states, which certificate was submitted by Philander Chase Knox, Secretary of State of the United States, is false, fraudulent, unlawful and void, and is legally insufficient to constitute an act of ratification of the alleged Sixteenth Amendment.

Until my own discovery, I was never informed that on July 12, 1909, pursuant to Article V of the U. S. Constitution, the Sixty-first (61st) Congress of the United States, during its first session begun on March 15, 1909, did propose and submit to the several states Senate Joint Resolution 40, which read as follows, to wit:

Joint Resolution
Proposing an amendment to the Constitution of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each house concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

> Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

J. G. Cannon
Speaker of the House of Representatives

J. S. Sherman
Vice-President of the United States and President of the Senate

Until my discovery, I was not informed that on July 27, 1909, the same Congress adopted Senate Conncurrent Resolution 6, which reads as follows, to wit:

Concurrent Resolution

Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed July twelfth, nineteen hundred and nine, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

Attest: Charles G. Bennett
Secretary of the Senate

A. McDowell
Clerk of the House of Representatives

Further, upon passage of both of the above set forth resolutions, President Taft delegated to his Secretary of State, Philander Chase Knox, the responsibility of sending certified copies of S. J. R. 40 to the various state governors. At such directions, Secretary Knox sent a "form" letter to the governors of the 48 states then in the Union, which letter read as follows, to wit:

Sir:

I have the honor to enclose a certified copy of a Resolution of Congress, entitled "Joint Resolution Proposing an amendment to the

Constitution of the United States," with the request that you cause the same to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State, as required by Section 205, Revised Statutes of the United States. (See overleaf.)

An acknowledgement of the receipt of this communication is requested.

I have the honor to be, Sir,

Your obedient servant,
P. C. Knox

Appended to this letter from Knox to the various state governors was a quotation of Section 205 of the Revised Statutes of the United States, which was the statute then in effect concerning constitutional amendments. That section read as follows, to wit:

> Sec. 205. Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

Therefore, certified copies of S. J. R. 40, which proposed the Sixteenth Amendment to the U. S. Constitution, had been sent to and received by ~~by~~ the governors of the various states some time in August of 1909. It was now time for the ratification process of the various state legislatures to began.

Until my discovery, I was not informed that between August, 1909, and February, 1913, the various states acted upon the alleged Sixteenth Amendment in the following manner:

1. Alabama--House Joint Resolution 7 was the resolution of the Alabama Legislature which is alleged to have adopted this amendment and approved on August 17, 1909. However, the Alabama Legislature omitted from its resolution the comma immediately after the word "incomes," and inserted a comma after the word "census."

2. Kentucky-- The defects in the Kentucky ratification process is fully set forth in the attachment hereto entitled "Kentucky-February 8th, 1910."

3. South Carolina-- On February 16, 1910, Resolution H. 1251 was considered and passed the South Carolina House. However, the printed journal of the House for this date shows that the word "lay" had been omitted and substituted by the word "levy." On February 18, 1910, the South Carolina Senate adopted this resolution. Act No. 608 of the 1910 Acts of South Carolina discloses that this resolution omitted the comma after the word "incomes."

4. Illinois-- The Illinois Senate initiated action in this state by proposing Senate Joint Resolution No. 7 which passed the Senate on Feb. 9, 1910, and the House on March 1, 1910. However, S. J. R. No. 7 did not follow the language of the Congressional S. J. R. 40; further, the amendment was described as an amendment to the "Federal

Constitution." The amendment itself did not have the phase "census or enumeration," but had the phase "census of renumeration" instead.

5. Mississippi--Here the House proposed and the Senate concurred in House Joint Resolution No. 14, which was approved on March 11, 1910. However, this resolution, which omitted the body of S. J. R. 40, also omitted the word "The" at the beginning of the amendment, the comma after the word "incomes," the comma after the word "derived," and used the phase "census of enumeration" instead of the phrase "census or enumeration."

6. Oklahoma--House Joint Resolution No. 5 was approved on March 14, 1910. However, the last phase of the amendment containing the words "and without regard to any census or enumeration" was deleted and substituted with the phase "and from any census or enumeration."

7. Maryland-- The defects in the Maryland ratification process is fully set forth in the attachments hereto and entitled "Maryland-April 8th, 1910."

8. Georgia-- The defects in the Georgia ratification process is fully set forth in the attachments hereto and entitled "Georgia-August 3rd, 1910."

9. Texas-- The Texas resolution was proposed by the Senate and passed by the House, and S. J. R. 1, was approved on August 17, 1910. However, this resolution did not captilize the word "Congress," and omitted the comma after the word "States."

10. Ohio-- S. J. R. No. 6, which was adopted Jan. 19, 1911, did not capitalize either the word "Congress" or "States." It is also possible that Ohio may not have been admitted into the Union until 1953.

11. Idaho--S. J. R. No. 1, adopted on Jan. 20, 1911, did not capitalize the word "States," and used the phase "census of enumeration," instead of the phase "census or enumeration."

12. Oregon--S. J. R. No. 1, adopted Jan. 23, 1911, did not capitalize the word "States."

13. Washington--The defects in the Washington ratification process is fully set forth in the attachments hereto entitled "Washington-January 26, 1911."

14. California-- The defects in the California ratification process is fully set forth in the attachments hereto entitled "California-January 31st, 1911."

15. Montana- H. J. R. No. 2 was adopted on Jan. 31, 1911. There were ommissions of capitalizations in their resolution.

16. Indiana- S. J. R. No. 1 was adopted on Feb. 6, 1911. There were ommissions of capitalizations in their resolution.

17. Maine-- The defects in the Maine ratification process is fully set forth in the attachments hereto entitled "Maine-March 31st, 1911."

18. Missouri-- The defects in the Missouri ratification process is fully set forth in the attachments hereto entitled "Missouri-March 16th, 1911."

alleged Sixteenth Amendment.***

Until my discovery, I was not informed that Philander Chase Knox became the Secretary of State in March of 1909 under President Taft and that part of his duties involved the ratification of the Sixteenth Amendment. Serveral questions arose during Knox's tenure about the ratification process which cause several substantive departmental memoranda to be generated.

The first of the memoranda concerning the amendment and its ratificaton concerned the necessity of the President to approve the Congressional resolution proposing an amendment. This memorandum, dated July 15, 1909, (copy attached) concluded that such Presidential approval was unnecessary.

The next of the memoranda generated concerning the ratification of the Sixteenth Amendment involved the requirement of a state governor to approve a resolution of a legislature adopting an amendment. The report on this question, dated April 20, 1911, concluded that gubernatorial approval was unnecessary.

The question of Kentucky's ratification of the amendment was the subject of another departmental memorandum. Kentucky had allegedly adopted a resolution in Feb. 1910, H. R. 4, which ratified that amendment. Subsequent thereto, another resolution, H. R. 20, was proposed but rejected by the Kentucky Senate. Insofar as the State Department was concerned, the question presented by Kentucky involved the power of a state legislature to reject an amendment after having first ratified the same.

To resolve this question, the Department requested Kentucky officials to provide appropriate excerpts from the 1910 Senate and House Journals of Kentucky to the Department for review. This was provided and after analysis of such records of Kentucky, a report was prepared by the Office of the Solicitor of the State Department concerning the effect of the rejection of H. R. 20 insofar as it might have affected the purported Kentucky ratification of the amendment. The report, dated March 21, 1912 , concluded that once a state had adopted a amendment, it lacked power to later reject the same. No mention was made of the fact that the Kentucky Senate had conclusively voted against H. R. 4 when presented to that body.

By Feb. 1913, there appeared to the State Department that 36 states had adopted the Sixteenth Amendment. However, in review of the state resolutions provided to the Department, it was obvious that a great many of those resolutions were defective. To address this particular problem, the Chief of the Bureau of Rolls and Library of the State Department suggested that a report of the legality of these ratifications be made by the Solicitor of the State Department. The Chief succintly demonstrated the problem by stating as follows:

> "I wish to say, however, that with one or two exceptions the States have furnished a certified copy of their Resolutions ratifying the Amendment, but in many cases the Resolution of Congress proposing the Amendment has been incorrectly quoted."

(copy attached and dated Feb. 10, 1913)

In response to this departmental memorandum, the Solicitor of the State Department examined the materials, information and state

resolutions concerning the Sixteenth Amendment as were possessed by the State Department. In a memorandum, dated Feb. 15, 1913 (copy attached), the Solicitor stated as follows:

"The Department has received information from forty-two states with reference to the action taken by the legislatures of those states on the resolution of Congress proposing the 16th amendment to the Constitution. It appears from this information that four states (Connecticut, New Hampshire, Rhode Island, and Utah) have rejected the amendment. The remaining thirty-eight states have taken action purporting to ratify the amendment, the State of Arkansas being one of these states. Although the governor of Arkansas had previously notified the Department that the legislature of that state had refused to ratify the amendment, information was subsequently received indicating that the legislature had reconsidered this action and voted to ratify the proposed amendment.

In all cases in which the legislatures appear to have acted favorably upon the proposed amendment, either the Governor or some other state official has transmitted to the Department a certified copy of the resolution passed by the particular legislature, except in the case of Minnesota, in which case the secretary of the Governor merely informed the Department that the state legislature had ratified the proposed amendment and that the Governor had approved the ratification.

In the certified copies of the resolutions passed by the legislatures of the several states ratifying the proposed 16th amendment, it appears that only four of these resolutions (those submitted by Arizona, North Dakota, Tennessee, and New Mexica) have quoted absolutely accurately and correctly the 16th amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or wording. Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording. The following is a list of the states indicating the errors made:

see attached memorandum dated Feb. 15, 1913

"Furthermore, under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment."

This memorandum was followed by another dated Feb. 20, 1913 (copy attached), which made the recommendation that the Secretary of State should certify that the 16th Amendment had been duly and properly ratified and was therefore valid to all intents and purposes as a part of the U. S. Constitution.

By Feb. 20, 1913, Secretary of State Knox had before him several departmental memoranda concerning the alleged ratification of the 16th Amendment; further he had copies of the various state resolutions as well as other information and material related to the alleged ratification of this amendment. Knox knew, should have known, or had reason to know the following:

"It appears that only four of these resolutions (those submitted by Arizona, North Dakota, Tennessee and New Mexico) have quoted absolutely and correctly the 16th Amendment as proposed by Congress. The other thirty-three resolutions all contain errors either of punctuation, capitalization, or wording. Minnesota, it is to be remembered, did not transmit to the Department a copy of the resolution passed by the legislature of that state. The resolutions passed by twenty-two states contain errors only of capitalization or punctuation, or both, while those of eleven states contain errors in the wording."

Until my discovery, I was never informed that Secretary of State Knox did execute a FRAUDULENT certificate stating that the proposed 16th Amendment to the U. S. Constitution was valid for all intents and purposes as a part of the U. S. Constitution.

I have now therefore discovered that the alleged 16th Amendment is FALSE, FRAUDULENT and IS NO LAW. Therefore, this will serve as my ELECTION to RESCIND, TERMINATE, EXTINGUISH and render NULL and VOID any and all Documents and Things in your possession, control and/or custody.

Further, I am requiring of you, your Department, Officers, Agents, Employees and/or Extensions to remove and destroyed any and all Documents and Things in your possession, custody and/or control immediately. I am further requiring that any and all 'investigation' into my personal affairs be terminated and written correspondence forwarded to me within sixty days confirming the same.

Further, this NOTICE will serve as my WARNING to you, your Department, Officers, Agents, Employees and/or Entensions that any and all attempts by you to continue to steal by brute and malicious force my property will meet with the full force of the law.

Further, this NOTICE will serve as my WARNING to all Treasury Agents (revenue officers, special agents, etc.), U. S. Attorneys, Assistant U. S. Attorneys, Justice Department personel (any and all persons involved in the prosecution of alleged 'income tax' crimes), that any and all actions taken by you against me in any manner will be an operation outside of your alleged jurisdiction and will meet with the full force of the law.

Further, this NOTICE will serve as my WARNING to any and all Judges (Federal or Otherwise) that you are also without the alleged subject-matter jurisdiction to sit on an alleged 'income tax' crime charged against this private individual. Any such action on your part will be proceeded against as an act of usurpation and oppression.

Date:

Sincerely,

WITNESS

WITNESS

WITNESS

"...at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." Deut. 19:15

AFFIDAVIT

I, Peter Thiem, hereby declare and state under the pains and penalties of perjury that:

1. My name is Peter Thiem

2. I am a permanent resident of the State of Tennessee with residence at 3932 Creekside Dr., Nashville, TN. 37211.

3. I have read and studied the material concerning the alleged ratification of the Sixteenth Amendment and believe said ratification to be FALSE, FRAUDULENT, DECEPTIVE and operates as THE LAW THAT NEVER WAS.

4. I have, or presently am, RESCINDING, TERMINATING, EXTINGUISHING and rendering NULL and VOID for any purpose whatsoever any and all Documents and Things in the possession, control and/or custody of the Department of the Treasury by NOTICE and this AFFIDAVIT.

Done this 10th day of April, 1985. Peter Thiem

Signed and Sealed before me this 10th day of April, 1985.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

My Commission Expires October 24, 1988

INTRODUCTION TO DOCUMENTS

The documents herein are in support of the foregoing NOTICE and AFFIDAVIT and are in order as follows:

1. LETTER OF ATTORNEY ANDREW B. SPEIGEL TO WILLIAM J. BENSON
2. AFFIDAVIT OF WILLIAM J. BENSON
3. DEFECTS OF KENTUCKY RATIFICATION
4. DEFECTS OF MARYLAND RATIFICATION
5. DEFECTS OF GEORGIA RATIFICATION
6. DEFECTS OF WASHINGTON RATIFICATION
7. DEFECTS OF CALIFORNIA RATIFICATION
8. DEFECTS OF MAINE RATIFICATION
9. DEFECTS OF MISSOURI RATIFICATION
10. MEMORANDUM-JULY 15, 1909
11. MEMORANDUM-FEBRUARY 10, 1913
12. MEMORANDUM-FEBRUARY 15, 1913
13. MEMORANDUM-FEBRUARY 20, 1913
14. FRAUDULENT CERTIFICATE SUBMITTED BY PHILANDER CHASE KNOX

LAW OFFICES
ANDREW B. SPIEGEL
77 WEST WASHINGTON STREET
SUITE 707
CHICAGO, ILLINOIS 60602
312-782-8999

February 19, 1985

William J. Benson
1128 East 160th Place
South Holland, Illinois 60473

RE: "RATIFICATION" OF THE 16TH AMENDMENT

Dear Bill:

I have reviewed the documents which you have obtained on the "ratification" of the 16th Amendment. I put "ratification" in quotation marks because it is apparent, from those documents, that the 16th Amendment was never properly ratified and therefore has never been a part of our Constitution.

The documents you have obtained establish that a fraud of massive proportions was perpetrated on the people of this country in 1913 by Secretary of State Philander C. Knox and his staff. The documents establish that Knox and the Solicitor - his lawyer - knew the states HAD NOT ratified the amendment as proposed by Congress.

The fraud arises when they certified that the amendment had been ratified, instead of sending it back to each state for proper ratification. The "presumption" indulged in by the Solicitor in his report is simply preposterous in view of the documentation sent to him from the various states.

The absence of the Sixteenth Amendment means that the federal government can only collect an income tax within the guidelines set forth by the Supreme Court in POLLOCK v. FARMERS' LOAN & TRUST CO., 157 U.S. 429 (1895).

Its absence also means that the sections of the Internal Revenue Code relating to income tax are null and void, since they are based upon the 16th Amendment.

The enormity of the problem this situation presents to the federal government is obvious. The courts will have difficulty accepting these facts and throwing out the income tax as we know it. The courts, which are supposed to be the staunch guardians of our Constitutional rights vis-a-vis the government will be hard-pressed to live up to that role.

This is especially true in the event that individual judges and prosecutors persist in enforcing a law that never really was a law, but which has been assumed to be a law for over seventy years. To the extent such individuals persist, they may well become co-conspirators in the fraud which was perpetrated on the American people in 1913.

I hope this answers your query and that the truth will set us all free. You deserve alot of credit for the task you have undertaken. I want to thank you for being so dedicated to liberty.

Sincerely,

Andrew B. Spiegel

ANDREW B. SPIEGEL

ABS/af

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

WILLIAM J. BENSON being first duly sworn on oath deposes and states as follows:

1. Affiant obtained documents concerning the ratification of the Sixteenth Amendment from the United States Archives in Washington, D.C. during the period between January of 1984 and December of 1984.

2. The documents contained in these two volumes are true, accurate and correct copies of the documents Affiant obtained from said Archives.

3. Affiant knows and is familiar with the facts concerning the reproduction of these documents and makes this Affidavit from his own personal knowledge.

FURTHER AFFIANT SAYETH NOT.

William J. Benson
WILLIAM J. BENSON

SIGNED AND SEALED before
me this 1st day of March, 1985.

Deborah D. Lucey
NOTARY PUBLIC

Kentucky—February 8th, 1910

On January 13th, 1910, a resolution was introduced in the Kentucky House of Representatives by Congressman O. Houston Brooks, of the Committee on Federal and State Constitutional Amendments, entitled, "H. Res. 4. Resolution ratifying the Sixteenth Amendment to the Constitution of the United States." H. Res. 4 read as follows—

> Whereas, the Congress of the United States on July ___, 19___, adopted a joint resolution, proposing an amendment to the Constitution of the United States, as follows:
>
> "Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the Constitution."
>
> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration. And the foregoing proposed amendment having been laid before the Legislature of the State of Kentucky for consideration and action.
>
> Now therefore, be it resolved by the General Assembly of the Commonwealth of Kentucky, that the foregoing amendment to the Constitution of the United States be, and the same is hereby ratified to all intents and purposes, as a part of the Constitution of the United States.
>
> 2. That the Governor of this State is hereby requested to forward to the President of the United States an authentic copy of the foregoing joint resolution.

H. Res. 4 was reported out of committee by Mr. Brooks on the 26th of January and came up for a vote that same day. (HJ at 227) The House journal shows that it passed the House on a roll call of 69 in the affirmative and 7 in the negative. A message was then sent to the Kentucky Senate announcing that the House had adopted H. Res. 4. (SJ at 314) According to the Senate journal, the "rules were suspended and the Senate took up [the] resolution for consideration." Having considered H. Res. 4, the Senate concurred and, on January 31st, the House received a message from the Senate announcing their concurrence. (HJ at 287)

The joint resolution was then sent on to the Governor, Augustus E. Willson, so that he might forward an authentic copy of that resolution to the President.

From the preceding entries in the journals it might have appeared that the Legislature of the State of Kentucky had ratified the proposed Sixteenth Amendment. Upon closer inspection, however, it can be seen that they did not.

In an extract of the Kentucky House journal sent to Philander Knox, the Secretary of

State of the United States, along with the official journals of both the Senate and the House (see letter of Assistant Secretary of State dated December 13th, 1911), it is recorded that after H. Res. 4 had been sent through the legislative process an error was discovered.

> It being suggested and appearing that in engrossing said resolution the words "on incomes" had been omitted, the said resolution was correctly engrossed and was on the 8th day of February, 1910, certified, reported and delivered to the Senate in form, words and figures as adopted by the House of Representatives on the 26th day of January 1910, as set out on pages one and two of this certificate and as appears from the Journal and records on file in the office of the Clerk of the House of Representatives." (emphasis added) (extracts)

The wording of the proposed amendment as it was introduced in the House read as follows—

> Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census, or enumeration. (HJ at 227)

In this version, the comma following the word "incomes" was deleted and a comma was inserted following the word "census." The version received by the Senate from the House and on which voted their concurrence on January 27th read as follows—

> ARTICLE XVI. The Congress shall have power to lay and collect taxes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. (SJ at 314)

In this version, the phrase "on incomes" and the comma inserted after the word "census" were deleted in engrossing H. Res. 4 in the version that the Senate received.

There were only 30 words in the official Congressional Joint Resolution, yet, on February 2nd, Mr. Fulton of the House Committee on Enrollments found H. Res. 4 correctly enrolled with 30 words (HJ at 324) while Mr. Tichenor of the Senate Committee on Enrollments found H. Res. 4 correctly enrolled with only 28 words. (SJ at 435) In a comparison of both versions of H. Res. 4 as recorded in the respective journals, eleven discrepancies are to be found. Nevertheless, the presiding officers of both houses went through the signing ceremonies on February 2nd—

> Thereupon all other business was suspended, the said resolution was read at length and compared in open House and thereupon the Speaker in open session and in the presence of the House affixed his signature thereto.
>
> Ordered that the Enrolling Clerk to deliver the same to the Senate. (HJ at 324)
>
> Said Resolution having been signed by the Speaker of the House of Representatives, the President of the Senate affixed his signature thereto, and it was delivered to the Committee to be returned to the House of Representatives. (SJ at 435)
>
> After a time the Enrolling Clerk delivered the original and enrolled resolution duly signed by the President of the Senate into the possession of the Chief Clerk of this House.
>
> Ordered that the Chief Clerk of this House deliver said enrolled resolution to the Governor.
>
> After a time the Clerk reported that he had discharged that duty. (HJ at 324)

Here we see that the Kentucky legislators intended to give their Governor the opportunity to approve or disapprove H. Res. 4.

Evidently, however, someone in the Kentucky legislature recognized that H. Res. 4 had

not been passed in exactly the same form in both houses, and, that, therefore, H. Res. 4 would need to be passed again. The House journal shows that, in the House, reliance was made on the previous count of yeas and nays, H. Res. 4 merely being re-engrossed and transmitted a second time to the Senate. (SJ at 486, extracts)

Once again, the Senate suspended its rules and took up the resolution for consideration. Having considered H. Res. 4, the Senate journal claims that the Senate concurred again, this time on February 8th—

> And the question being taken upon the concurring in the adoption of said Resolution, it was decided in the affirmative. (SJ at 486)

On February 9th, the House received a message from the Senate announcing their concurrence. (SJ at 435, HJ at 382)

The joint resolution was then going to be sent on to the Governor again, so that he might forward an authentic copy of that resolution to the President.

From the preceding entries in the journals it might have appeared that the Legislature of the State of Kentucky had, once again, ratified the proposed Sixteenth Amendment. Upon closer inspection, however, it can be seen that, once again, they did not.

The version of H. Res. 4 received this time by the Senate read as follows—

> WHEREAS, the Congress of the United States on July, __, 1909, adopted a joint resolution, proposing an amendment to the Constitution of the United States, as follows:
>
> Resolved, by the Senate and House of Representatives of the U. S. A., in Congress assembled, two-thirds of each House concurring therein, that, the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes, as a part of the constitution:
>
> "Article XVI. The Congress shall have power to lay and collect taxes on incomes from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration." And the foregoing proposed amendment having been laid before the Legislature of the State of Kentucky for consideration and action:
>
> Now Therefore, be it resolved by the General Assembly of the Commonwealth of Kentucky: That the foregoing amendment to the Constitution of the United States be, and the same is hereby ratified to all intents and purposes as a part of the constitution of the United States.
>
> 2. That the Governor of this State is thereby requested to forward to the President of the United States an authentic copy of the foregoing Joint Resolution. (SJ at at 486)

This time there were 13 discrepancies between the version of H. Res. 4 originally introduced in the House and the H. Res. 4 transmitted to the Senate after having been re-engrossed. The most serious error was the changing of the word "source" to "sources." In other words, the two houses of the Kentucky legislature were still in disagreement as to the wording of H. Res. 4.

In the vote taken on February 8th, the recorded roll call count of the votes in the Senate reveals that 22 Senators voted in the negative and 9 Senators voted in the affirmative. (SJ at 487) (See Appendix) The version of the Senate journal sent in extract to Philander Knox shows that the vote was "Yeas 27, nays." However, Knox, having also received a copy of the official published journals showing the vote of yeas, 9, nays, 22, at the very least,

should have sent a telegram to someone in the Kentucky administration asking for a verification. He did not, choosing to believe the unofficial extract instead of the official published journals.

On February 10th, H. Res. 4 was, once again, found correctly enrolled in the House of Representatives of the Kentucky Legislature and the signing ceremony was had, once again—

> Whereupon all other business was suspended, said resolution was read at length and compared in open House, and was found to be correctly enrolled, Thereupon the Speaker of the House of Representatives in open session in the presence of the House affixed his signature thereto.
>
> Ordering that the Enrolling Clerk deliver same to Senate. (HJ at 423)

The corresponding signing in the Senate did not take place until the 11th—

> Said resolution was then read at length and compared in the Senate and found to be correctly enrolled. Whereupon the President, in open session of the Senate, affixed his signature thereto and it was delivered to the Committee to be returned to the House of Representatives.
>
> After a short time Mr. Gus Brown reported that the Committee had performed that duty. (SJ at 602)

Both the House and Senate violated Section 56 of the Kentucky State Constitution—

> No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session; and before such officer shall have affixed his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that he will sign the same to the end that it may become a law. The bill shall then be read at length and compared; and, if correctly enrolled, he shall, in presence of the House in open session, and before any other business is entertained, affix his signature, which fact shall be noted in the journal, and the bill immediately sent to the other House. When it reaches the other House, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceeding shall thereupon be observed in every respect as in the House in which it was first signed. And thereupon the clerk of the latter House shall immediately present the same to the Governor for his signature and approval.
>
> (footnote) Sec. 56. The signatures of the presiding officers and of the Governor not conclusive as to the proper passage of a bill. (Norman, Auditor, v. Ky. Board of Managers, 14 Ky. L. R., 529.)

In neither house did the presiding officer make the necessary declaration that the bill was about to be read and signed. In the Senate, all other business was not suspended. In addition, either the House did not send H. Res. 4 immediately to the Senate after the signing, or the Senate did not immediately take up H. Res. 4 for signing upon its receipt from the House. The two signings are a day apart.

Governor Willson was sent H. Res. 4 after the signing on the 11th of February. That same day, he sent the House the following greeting—

> House of Representatives of the Commonwealth of Kentucky.
>
> I am directed by the Governor of the Commonwealth of Kentucky to inform your Honorable Body that he returns **without approval** H. Res. 4., having made the following remarks thereon "This resolution was adopted **without jurisdiction** of the joint resolution of the Congress of the United States which had not [been]

transmitted to and was not before the General Assembly, and in this resolution the words "on incomes" were left out of the resolution of the Congress and if transmitted in this form would be void and would subject the Commonwealth to unpleasant comment and for these reasons and because a later resolution correcting the ommission (sic) is reported to have passed both Houses, this resolution is returned to the House of Representatives without my approval. February 11th, 1910. (emphasis added) (extract)

The Governor, thus, had vetoed the measure for two reasons—one, the Senate and House had passed upon two different engrossments, and, two, the Legislature did not have jurisdiction of the official copy of the Congressional Joint Resolution. The procedural and jurisdictional problems mentioned by the Governor, were the objections with which he returned the resolution as disapproved under the provisions of Section 88 of the Kentucky State Constitution—

> Every bill which shall have passed the two Houses shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter the objections in full upon its journals, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which it shall likewise be considered, and if approved by a majority of all the members elected to that House, it shall be a law . . ." (emphasis added)

In their first attempt to ratify, the words "on incomes" had been left off of the engrossment and, therefore, the Senate voted upon a nullity which would have, according to the Governor, subjected the State of Kentucky to an embarrassing amount of "unpleasant comment." Their second attempt was no better, in terms of the mismatched versions of H. Res. 4 which the Senate and the House had supposedly passed (and the Senate had actually rejected) and in terms of the constitutionally defective process through both houses, but, as the Governor had pointed out, and to which he objected, due to a lack of jurisdiction, none of it counted. The Legislature had the choice of reconsidering the legislation, but—

> The House members decided to put off reconsideration.
> Mr. Klair moved that the consideration of said communication be postponed until 11 o'clock, Tuesday next, the 15th instant.
> Said motion was agreed to.

(What the members of the House probably didn't know was that Kentucky's certified copy of the official Congressional Joint Resolution was likely the source of some "unpleasant comment" in Washington, D. C. at the Department of State.

The Governor's staff in moving to new headquarters "misplaced" the first official, certified copy of the Joint Resolution. On February 8th, 1910, the Governor sent a telegram to Knox, requesting another copy which was promptly sent out by mail.

Later the next week, on February 16th, the real certified copy of the Joint Resolution of Congress made its first and only appearance on the floor of the Kentucky House, in its first and only transmittal by the Governor.

> MESSAGE OF AUGUSTUS E. WILLSON, GOVERNOR OF KENTUCKY, TO THE GENERAL ASSEMBLY OF KENTUCKY.
> Transmitting the Income Tax Amendment to the Constitution of the United

States, proposed by Joint Resolution of the Sixty-first Congress of the United States of America at the first session begun, and held at the city of Washington, on Monday, the fifteenth day of March one thousand nine hundred and nine. (HJ at 497)

Gentlemen:

I transmit herewith to the General Assembly the Joint Resolution of the Sixty-first Congress of the United States, at its first session, begun and held at the city of Washington, the 15th day of March, one thousand nine hundred and nine, entitled, "Joint Resolution proposing an amendment to the Constitution of the United States, which is as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." (HJ at 498)

Also the official notice and letter of the Secretary of State of the United States, dated July 26, 1909, transmitting said record of said resolution of the Congress of the United States to the Governor of the State of Kentucky, with the request that I cause the same to be transmitted to the Legislature of Kentucky for such action as may be had, and that a certified copy of such action, be communicated to the Secretary of State as required by Section 205 Revised Statutes of the United States, copy of which was attached to said notice and letter of the Secretary of State, and a copy of which is herewith transmitted. The original official letter of the Secretary of State of the United States is in the office of the Secretary of State of Kentucky, but may be considered as before the Legislature of Kentucky, and the original, will, whenever it is desired, be presented in each House and delivered into its custody and may be considered now as in the custody of each House **for the purpose of its proper consideration and the decision of the Legislature.** (emphasis added) (HJ at 498)

Which was read at length and referred to the Committee on Federal and State Constitutional Amendments. (HJ at 502)

H. Res. 4, in conjunction with the Governor's objections to the first two attempted passages of that resolution, came up for reconsideration twice, once on February 16th and again on February 18th. (HJ at 514 and 544) Reconsideration was postponed until February 23rd.

On February 23rd, Mr. Brooks offered another resolution, entitled, "H. Res. 20. Resolution ratifying the Sixteenth Amendment to the Constitution of the United States." (HJ at 566) The House Journal shows that it passed the House, 79 in the affirmative and 3 in the negative. (HJ at 566) A message was sent to the Kentucky Senate on February 24th announcing the House adoption. (SJ at 826) The Senate refused to take up the resolution for consideration. On March 15th, the Senate, again, refused to take up the resolution for consideration. (SJ at 1703)

So, H. Res. 20 died, no further action being taken.

Apparently, Governor Willson believed that the Kentucky legislature had already passed H. Res. 4, because in his address to the Legislature on February 24th, 1910, he made the following remarks about income tax, some of them, one would hope, with tongue in cheek—

> . . . The Federal Government, which has already the power under which it collects from Kentucky for the Federal Government millions of dollars more every year than the State collects for its government, does not need more . . . Too many people jump at the thought, that income taxes take some of the burden off of the many and put it on the notorious rich, none of whom live where we do and none of whom are our neighbors. But the income of all these multimillionairs (sic) will pay only a small part of a National income tax. It will take one or two millions a year out of our people and we give the power as lightly as on offers a cigar. All it needed was for some man, whose thinking did not equal his voice, to clamor for it and everybody jumped to make the greatest State's right State in the Union, case what is probably the deciding vote for the greatest grant of power to the Federal Government over the States since the Constitution was first adopted.
>
> . . . we are on a National income tax "joy-ride" for the Federal Government whether it needs it or not, and no matter what we pay already. Let us seize on this best chance of all to pay our debts and raise everybody's salary but those forbidden by the Constitution. (HJ at 619)

The Solicitor of the Department of State apparently believed that the State of Kentucky had ratified because the extracts of the journal of the Kentucky Senate sent to Knox contained an entry claiming the vote on H. Res. 4 on the 8th of February was 27 in the affirmative and 2 in the negative. The official published journal, which was also sent to Knox, and from which the extract was taken, reveals a vote of 9 in the affirmative and 22 in the negative. The official published version must, of course, rule in this instance. Yet there was never a question on the part of Knox or his Solicitor. There was, thus, no certified copy of any resolution validly passed by the Kentucky Legislature transmitted to Washington.

The question remains as to why the Governor believed that the amendment had been ratified in the face of a journal which showed otherwise? And, in spite of his rejection of H. Res. 4 which never again came to his desk after his rejection? Was the Governor perhaps shown the same kind of bogus figures which were sent to Knox in the extracts of the journals for a subsequent vote or, perhaps, was he shown a memo which said that the resolution had passed when it hadn't, much like Senate journal at 487?

Finally, Section 181 of the Kentucky State Constitution provides that—

> The General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect taxes.

H. Res. 4, had it been validly passed, would have been in violation of this section—this provision contains absolutely no allowance for the State Legislature to confer the kind of taxing authority which H. Res. 4 comprehended.

The purported ratification of the proposed Sixteenth Amendment on the 8th and 9th of February by the State of Kentucky was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress—H. Res. 4, as recorded on January 26th in the House and February 8th in the Senate, contains the following changes from the original Congressional Joint Resolution—

a. the comma was deleted between the word "incomes" and the word "from"

b. the Senate version has the word "source" changed to "sources"

c. neither version has a correct preamble

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. Failure of the Legislature to have jurisdiction of the certified copy of the Congressional Joint Resolution as indicated by Governor Willson until after February 16th

4. Violations of the Kentucky State Constitution—

a. neither the Speaker nor the President made the proper constitutional declaration, before affixing their signatures to H. Res. 4, on February 8th or 9th in violation of Section 56

b. either the House failed to deliver the copy of H. Res. 4 signed by the Speaker immediately thereafter to the Senate, or the President failed to immediately suspend all other business upon receipt of H. Res. 4 on the 9th of February in violation of Section 56

c. the House violated Section 46 in its passage of H. Res. 4 on the 26th of January 26th by failing to read H. Res. 4 at length on three different days without dispensing with that provision by a majority of all the members elected to that House

d. the Legislature was not permitted under Section 181 to confer the authority which H. Res. 4 comprehended

5. H. Res. 4 was disapproved by Governor Willson on February 11th, the House having intended to present the resolution to the Governor for such approval by introducing the amendment resolution as a joint resolution and by the fact of their having presented that resolution to him for such approval, and the Kentucky legislature was never again able to get H. Res. 4, nor its successor, H. Res. 20, passed through both houses.

6. H. Res. 4 was reejected by the Senate and fraudulently represented by both the State of Kentucky and by Philander Knox as having been ratified.

Maryland—April 8th, 1910

Austin L. Crothers, Governor of the State of Maryland, delivered his address to the January Session of the Legislature of Maryland of 1910. In his remarks, he included this comment on the proposed Sixteenth Amendment—

> INCOME TAX.
>
> I approve and endorse the principle of an Income Tax. It is a policy supported by the Democratic party and rests upon sound considerations of political economy and right. As indicated hereafter, however, I am of the opinion that this policy should be adopted as a State policy and a reasonable tax upon incomes and upon direct inheritances should be laid by the State government. The Federal government, exercising powers which have been challenged by many distinguished American citizens from the days of Thomas Jefferson to present time, has laid prohibitive tariff duties at rates so high as to seriously impair the Federal revenues. I cannot but regard the proposal upon the part of the Federal government to raise additional revenues by means of a Federal Income Tax, as an expedient upon its part to enable it to maintain its present unjust and extortionate tariff system. In the maintenance of that iniquity I am unwilling to unite. The great masses of the American people, including the people of Maryland, are demanding relief from the oppression of the present Federal tariff, and steps should be taken to enforce a revision of existing tariff rates downward rather than to enable them to be maintained and perpetuated. (emphasis in original)
>
> Moreover, the power of imposing taxes upon inheritances and incomes is clearly reserved to the States and within the scope of State authority. In my judgment, it should be exercised by the States and not delegated to the General Government. And in addition to this, considerations of revenue and economy upon the part of this State, especially in view of the works of internal improvement upon which they have embarked, certainly justify the retention by the State itself of this important source of revenue. (SJ at 36)

In Governor Crothers' opinion, the power of taxation sought by federal legislators through the proposed amendment was properly the province of the States alone and should be left that way. Nevertheless, the Governor performed his duty. The Governor's certified copy of the Congressional Joint Resolution was transmitted to the House, on January 26th, and to the Senate, on January 27th. In the House, it was read and referred to the Committee on Judiciary. (HJ at 108) In the Senate, it was read and referred to the Committee on Federal Relations. (SJ at 189)

On March 7th, the following resolution was introduced in the House—

> House Joint Resolution, No. __, ratifying an amendment to the Constitution of the United States of America.
>
> Which was read the first time and referred to the Committee on Judiciary. (HJ

at 551)

On the 15th, H. J. R. No. 2 was favorably reported out of committee and read in full—

The Chair laid before the House the Special Order of the day,
Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which favorable report by the majority of the Judiciary Committee was adopted by yeas and nays as follows:—

AFFIRMATIVE.

• • •

Total-88.

NEGATIVE.

• • •

(Total-2.)

(HJ at 740)

On the 21st of March, H. J. R. No. 2 came up for its third reading, which was in full, and was also taken up for a vote on final passage—

BILLS-THIRD READING.

Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United

States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

• • •

Total-83.

NEGATIVE.

• • •

Total-1.

Said resolution was then sent to the Senate. (HJ at 955)

H. J. R. No. 2 was introduced into the Senate on March 24th, being read in full—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of threefourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by

three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Endorsed: "Read the third time and passed by yeas and nays."

Which was read the first time and referred to the Committee on Federal Relations. (SJ at 1087)

On the 30th, H. J. R. No. 2 was reported out of committee, and was read in full—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and .

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Unfavorable report by Senators Coady, Moore and Beasman.

Minority report by Senators Campbell and Mathias.

Whereupon,

Mr. Campbell moved,

That the resolution be substituted for the unfavorable report.

And that the consideration of that motion be made the order of the day for March 30, 1910, at 8 o'clock P. M.

Which motion prevailed. (SJ at 1461)

The journal shows that a motion to substitute H. J. R. No. 2 for the unfavorable report "prevailed" on the 30th of March, however, on the 31st of March, H. J. R. No. 2 was read in full again upon being taken up for another vote on the motion for substitution—

The President laid before the Senate the special order:
Being,

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

The question being on the motion of Mr. Campbell to substitute the Resolution for the unfavorable report of the Committee.

Which motion prevailed by yeas and nays as follows:

AFFIRMATIVE.

• • •

Total-15.

NEGATIVE.

• • •

Total-11.

And Resolution read the second time. (SJ at 1575)

On the 4th of April, H. J. R. No. 2 was read in full for the fourth time upon being taken up for a vote on final passage—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legisla-

ture of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

• • •

Total-16.

NEGATIVE.

• • •

Total-9.

Said resolution was then returned to the House of Delegates. (SJ at 2096)

The Constitution of the State of Maryland provides that the majority in any vote must be calculated according to the whole number of the members elected to each house (see Article III, Section 28). The number of Senators elected to the 1910 Session of the Legislature of Maryland was 27. The vote in the Senate on H. J. R. No. 2 was deficient in that only 59% of all the Senators elected voted in the affirmative. This figure is even below that required for a vote on a State Constitutional amendment in Maryland (Article XIV, Section 1).

On April 4th, H. J. R. No. 2 was read in full for the seventh time in the Maryland Legislature, upon its return from the Senate—

HOUSE JOINT RESOLUTION NO. 2.

Of the House of Delegates and the Senate of Maryland, ratifying the amendment to the Constitution of the United States of America proposed by Congress to the Legislature of the several States.

Whereas, It is provided by the fifth Article of the Constitution of the United States of America that Congress whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of said Constitution when ratified by the Legislature of three fourths of the several States or by conventions in three-fourths thereof as the one or the other mode of ratification may be proposed by the Congress; and

Whereas, By the sixty-first Congress of the United States of America at the first session thereof begun and held at the city of Washington, on Monday, the fifteenth day of March, in the year one thousand nine hundred and nine, it was

resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures shall be valid to all intents and purposes as a part of said Constitution, namely:

Article 16. The Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States, without regard to any census or enumeration.

Be it Resolved by the General Assembly of Maryland, That the aforesaid amendment be and the same is hereby ratified and confirmed.

Endorsed: "Read the third time and passed by yeas and nays." (HJ at 2349)

It is not recorded in either journal whether H. J. R. No. 2 was ever engrossed for either of the third readings in the House or the Senate. Such a failure would have been a violation of Article III, Section 27 of the Maryland State Constitution which provided that—

> . . . no bill shall be read a third time until it shall have been actually engrossed for a third reading.

On June 22nd, 1910, N. Winslow Williams, the Secretary of State of Maryland, sent a letter of transmittal to Philander Knox which stated—

> I have the honor to transmit herewith certified copy of Joint Resolution No. 8, of the General Assembly of Maryland, passed at its January Session 1910, relating to and ratifying an amendment to the Constitution of the United States, in the matter of the taxation of incomes.

Enclosed with that letter was a copy of Joint Resolution No. 8, which was not signed except by the Clerk of the Court of Appeals of Maryland. That resolution read—

Joint Resolution
January Session 1910.
Chapter 8.
A Joint Resolution

Of the House of Delegates and Senate of Maryland ratifying an amendment to the Constitution of the United States of America proposed by Congress to the legislatures of the Several States.

Whereas, it is provided by the fifth Article of the Constitution of the United States of America, that Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the said Constitution, or on the application of the Legislatures of two-thirds of the several States shall call a Convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of the said Constitution when ratified by the Legislatures of three fourths of the several States or by Conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by the Congress; and whereas, by the sixty-first Congress of the United States of America at the first session thereof, begun and held at the City of Washington on Monday the fifteenth day of March, in the year one thousand nine hundred and nine, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled two-thirds of each House concurring therein, that the following Article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of the said Legislatures shall be valid to all intents and

purposes, as a part of the said Constitution, namely;

Article 16. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Be it resolved by the General Assembly of Maryland, that the aforesaid amendment be and the same is hereby ratified and confirmed.

Approved; Apr 8-1910
Adam Peeples
Speaker of the House of Delegates.
A. P. Gorman, Jr.,
President of the Senate.
STATE OF MARYLAND, Sct,:

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify, that the foregoing is a full and true copy of A Joint Resolution of the General Assembly of Maryland of which it purports to be a copy, as taken from the Original Joint Resolution belonging to and deposited in the Offcie of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals, this 21st. day of June, 1910.

(Seal)
(Signed)
Clerk Court of Appeals of Maryland.

The preceding text is also that recorded in the publication of the Maryland session laws, under the classification of Public General Laws. Joint Resolution No. 8 contained the following changes from the official Congressional Joint Resolution—

1. the preamble was modified
2. the Roman numeral "XVI" was changed to "16"
3. the comma following the word "incomes" was deleted

Such changes are not permitted in the ratification of an amendment. Joint Resolution No. 8 was in violation of the duty of the Maryland Legislature to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill **in the precise form in which it passed the House.** The preparation of such a

copy is the function of the enrolling clerk. (at 34) (emphasis added)

When the bill has been agreed to in *identical form* by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment exactly as agreed to, and ***all punctuation must be in accord with the action taken***. (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

Of equal significance was the fact that Joint Resolution No. 8 was not the same resolution as House Joint Resolution No. 2 which had been read seven times in exactly the same way in the Maryland journals and which is the only ratification resolution upon which the House and Senate voted as recorded in those journals. The following discrepancies are evident in Joint Resolution No. 8 compared to any of the full readings of House Joint Resolution No. 2, all fully set forth in the journals—

1. the word "the" before the first instance of the word "Senate" was deleted
2. the word "the" preceding the first instance of the word "amendment" was changed to the word "an"
3. the first instance of the word "Legislature" was changed to "legislature"
4. the first instance of the word "several" was changed to "Several"
5. the word "It" following the first instance of the word "Whereas" was changed to "it"
6. a comma is inserted following the second instance of the word "America"
7. a comma is inserted following the second instance of the word "Congress"
8. the word "convention" is changed to a proper noun
9. a comma is inserted following the word "case"
10. the word "the" was inserted before the phrase "said Constitution"
11. the second instance of the word "Legislature" was changed to "Legislatures"
12. the word "conventions" was changed to "Conventions"
13. a comma was inserted following the first instance of the word "thereof"
14. the word "the" preceding the word "mode" was deleted
15. the second and third paragraphs are joined into one
16. the second instance of the word "Whereas" was changed to "whereas"
17. the word "By" following the second instance of the word "Whereas" was changed to "by"
18. the word "session" was changed to a proper noun
19. a comma was inserted following the second instance of the word "thereof"
20. the word "city" was changed to a proper noun
21. the comma following the word "Washington" was deleted
22. the comma following the word "Monday" was deleted
23. the word "concurring" was changed to "concuring"
24. the word "the" was inserted preceding the phrase "said Legislatures"

25. the word "the" preceding the phrase "power to lay" was deleted

26. a comma was inserted following the word "derived"

27. the word "and" was inserted preceding the phrase "without regard to any census or enumeration."

28. the word "Resolved" was changed to "resolved"

29. the word "That" preceding the phrase "the aforesaid amendment" was changed to "that"

The memorandum of the Solicitor referenced above does not mention the changes listed in the foregoing numbers 25 to 27 because House Joint Resolution No. 2 was obviously amended to Joint Resolution No. 8 and No. 8 did not contain those changes. The Solicitor's memorandum only mentions an "(e)rror of punctuation." Had the Solicitor had a copy of House Joint Resolution No. 2 as set forth exactly the same way in the journals seven separate times, the ratification of Maryland would have received mention for two additional changes to the proposed amendment proper, namely, numbers 25 and 27, number 26 already having been covered under a punctuation "error."

Perhaps because the Governor made it clear in his message to the Legislature that he did not approve of the proposed amendment, H. J. R. No. 2, though classified as a bill in the journals, was never presented to the Governor following its passage in the Legislature as required under Article II, Section 17 and Article III, Section 30 of the Maryland State Constitution which provided that—

> Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented to the Governor, who, if he approves it, shall sign the same in the presence of the presiding officers and chief clerks of the Senate and House of Delegates. Every law shall be recorded in the office of the Court Appeals, and in due time be printed, published and certified under the Great Seal, to the several courts, in the same manner as has been heretofore usual in this State.

H. J. R. No. 2 was never sealed with the Great Seal, Joint Resolution No. 8 having taken its place on the way to "the office of the Court Appeals," and pubication in Maryland's session laws.

The ratification of the proposed Sixteenth Amendment of the State of Maryland was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that the true text of H. J. R. No. 2, which was the only resolution to pass the Maryland Legislature, contained the following changes to the official Congressional Joint Resolution—

a. the preamble was modified

b. the Roman numeral "XVI" was changed to "16"

c. the word "the" was inserted preceding the word "power"

d. the comma following the word "incomes" was deleted

e. the comma following the word "derived" was deleted

f. the word "and" preceding the phrase "without regard" was deleted

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 in that Joint Resolution No. 8 was not signed,

but more significantly was not even the same resolution as that which passed the Maryland Legislature

3. Violation of Article III, Section 27 of the Maryland State Constitution in the failure of either house to engross H. J. R. No. 2 for its third reading

4. Violation of Article II, Section 17 and Article III, Section 30 of the Maryland State Constitution in that H. J. R. No. 2 was not presented to the Governor for his approval.

5. Violation of Article III, Section 30 of the Maryland State Constitution in that H. J. R. No. 2 was not printed, published and certified under the Great Seal, to the several courts.

Georgia—August 3rd, 1910

On the 29th of July, 1909, Governor Joseph M. Brown of the State of Georgia sent the following communication to the General Assembly of the State of Georgia—

> I have the honor to transmit to you for such consideration as your wisdom may direct a copy of a Resolution of Congress entitled: "Joint Resolution Proposing an Amendment to the Constitution of the United States," the same being certified as correct by Honorable P. C. Knox, Secretary of State.

On August 3rd, the following resolution was read for the first time in the Georgia Senate, by Senator Gordy—

> A resolution. Resolved, That Congress shall have power to levy and collect taxes on incomes from whatever source desired without apportionment among the several States.
>
> Resolved further, That said amendment be and the same is hereby ratified by the General Assembly of Georgia. (SJ at 621)

Although the Governor had transmitted the official version of the Congressional Joint Resolution only five days previous., Senator Gordy added the word "Resolved" and an accompanying comma to the beginning of the proposed wording of the amendment, changed the first instance of "The" to "That," the word "lay" to "levy," and the word "derived" to "desired," and completely omitted the entire phrase "and without regard to any census or enumeration." The Congressional preamble and the designation "Article XVI." were discarded as well. This resolution was then referred to the Committee on General Judiciary.

Immediately following Gordy's effort, Senator Jackson introduced another version, even more inaccurate—

> A resolution authorizing Congress to levy and collect income tax from whatever source desire without apportionment among the several States. (SJ at 621)

The next day, Senator Perry indicated that he thought that Senator Jackson's resolution should be removed from consideration by committee—

> Mr. Perry gave notice that at the proper time he would move to reconsider the action of the Senate in referring the Jackson resolution relative to tax on incomes to the General Judiciary Committee. (SJ at 623)

The next week, on the 11th, Messrs. Jackson and Gordy brought up and read for the third time a resolution reading simply "A resolution to ratify the 16th amendment to the

Constitution of the United States." (SJ at 972) Senator Burwell's motion to table the resolution prevailed by a vote of 18 to 17.

• • •

Nearly a year passed before Senator Jackson made another attempt, in the next regular session, to get the proposed Sixteenth Amendment ratified in Georgia. On July 6th, 1910—

> The following special order was taken up, which is as follows:
> By Mr. Jackson—
> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 260)

There is no indication of referral to committee, of printing, or of any reading in the Senate journal for 1910 of this resolution. The ending phrase—"among the several States of the Union"—is imaginative but not Congressional. Furthermore, the word "The" was still replaced by "That," "lay" was still replaced by "levy," all of the commas were still missing and the entire ending phrase "without regard to census or enumeration" was still missing. A successful motion for adjournment ended this day's business before consideration of Mr. Jackson's resolution.

On Thursday the 7th, Senator Jackson again tried to have the same resolution taken up and this time Senator Longley moved to table the resolution, but the motion was lost. Senator Irwin moved that the Senate adjourn, and that motion was lost. But they adjourned until Friday anyway. (SJ at 265)

The Senate journal shows that the day after Thursday, July 7th, 1910 was Thursday, July 7th, 1910, but it apparently is actually referencing the Senate's business as of Friday, July 8th, 1910. On the next day, Senator Jackson brought up the same resolution—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several States of the Union. (SJ at 271)

Once again, consideration was postponed—this time until Monday, the 11th. (SJ at 271) That Monday, Senator Jackson introduced another version of his resolution—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State. (SJ at 281)

Whether or not Senator Jackson was attempting to exempt Georgia specifically in his reference to "the State" in this resolution is not clear.

Also unclear is how, and/or whether, Senator Jackson's resolution came to be designated Senate Resolution No. 23, which is entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." That resolution, as entitled in the archival copy, never appeared in the journal, was never claimed in the journal as having been printed, was never claimed as having been referred to committee in the journal and was not read more than once during the regular session of 1910 according to the accounting included with this document in the archival record. (archival copy of SR No. 23) The archival copy of S. R. No. 23 shows a "38" stamped on

one edge of the legislative history, however, "23" is its hand-written designation and is consistent with the other hand-written text on the document. From the archives, S. R. 23 (38) reads as follows—

> Whereas, The Congress of the United States, has under the fifth article of the Constitution of the United States proposed an amendment to said Constitution, as article 16, in the words following, to wit:
>
> The Congress shall have power to levy and collect taxes on income from whatever sources derived without apportionment among the several States, and without regard to any census or enumeration, which amendment was approved on the day of July 1909.
>
> Therefore, Be it resolved by the Senate, and the House of Representatives of the State of Georgia, in General Assembly met, That the said amendment of the Constitution of the United States, be and the same is hereby ratified and adopted.
>
> BE IT FURTHER RESOLVED, That a certified copy of the foregoing preamble and resolution be forwarded by his Excellency, the Governor to the President of the United States, and also to the Secretary of State of the United States.

The above is approximately the same text received in Washington, D. C. as "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZED, RATIFIED. No. 38. A Resolution." (sic) The archival copy of S. R. No. 23 (38) records the following—

In Senate,
Read 1st Time. Aug 3, 1909.
Read 2nd Time. July 11, 1910.
and adopted, Ayes 23, Nays 18.

(signed)
"Secretary of Senate.

In House.
Read 1st Time. July 13, 1910.
Read 2nd Time. July 26, 1910.
and adopted, Ayes 129, Nays 32.

(signed)
Clerk House of Representatives.

The first recorded reading of this version of S. R. No. 23 is on August 3rd, 1909 in the previous session of the Legislature. Neither of the resolutions related to the proposed Sixteenth Amendment introduced on that day were entitled, "A Resolution. Proposing to ratify an amendment to the Constitution of the United States." The resolution entitled, "A Resolution to ratify the 16th Amendment to the Constitution of the United States," introduced on August 3rd, 1909 by Senator Gordy and substituted for by Senator Burwell was designated S. R. No. 23. That resolution, however, was tabled and not taken up again. (archival copy) A resolution, designated S. R. No. 23, with a similar title as that which was transmitted to Washington, "A Resolution proposing to ratify an amendment to Consti. (sic) U. S.," was adopted only by the Senate according to the archival copy of that resolution.

The preceding legislative history is, thus, fraudulent in several ways—one, a universal doctrine of legislation is that proposed bills and resolutions from previous sessions must be reintroduced and any previous action must be repeated and may not be relied upon for the current session; two, the archival documents show that the S. R. No. 23 of

the 1909 session of the Gerogia Legislature was not taken up again, so that the legislative history shown above for S. R. No. 23 cannot be accurate, nor could the legislators have mistaken its inaccuracy; three, the archival documents show that the S. R. No. 23 adopted in the 1910 session on July 11th, 1910 was adopted only by the Senate.

Regardless of the source of "No. 38," it was an improperly composed resolution compared to the official Congressional Joint Resolution, which contained the following text—

> **Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),** That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
>
> "ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Besides the absence of the proper preamble in S. R. No. 23, the word "levy" was still substituted for the word "lay," the commas binding "from whatever source derived" were missing, and the word "source" was made plural while the word "incomes" was made singular, and the phrase—"which amendment was approved on the day of July 1909" was appended on the end but within the quotation marks delineating the proposed amendment, all of which were violations of the legislative duty which the Legislature of the State of Georgia had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determiniation of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. The standard of compliance with which the states are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since**

> it must reflect ***precisely*** the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare meticulously the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment exactly as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must concur precisely and exactly with Congress in a proposed Constitutional amendment.

It is not clear, however, upon what the Georgia Senate voted. The following took place upon Mr. Jackson's introduction of the last in his series of different resolutions, on the 11th of July—

> A Resolution. **Resolved**, That Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment to the State.
>
> Mr. Burwell moved the previous question on this resolution; the motion prevailed, and the main question ordered.

The problem with Senator Burwell's motion was that there was no previous question on this new resolution. It was a legislative nonsequitur. Nevertheless, a vote was taken and the result was "Ayes, 22; Nays, 18."—

> The President voted aye, making 23.
>
> The resolution having recieved the requisite Constitutional majority, was passed. (SJ at 281)

Two other problems are evident in this vote. First, the President of the Georgia Senate is not allowed to vote unless there is a tie. (Rules of the Senate, Rule 2) The vote was, therefore, 22 to 18, not 23 to 18. Either way, a Constitutional majority for the ratification of amendments to the Constitution in Georgia required a two-thirds majority. Senate Resolution No. 23 received only 56.1% in the latter instance, 55% in the former.

Second, S. R. No. 23 (38) was never read more than twice at any time in violation of Article 3, Section 7 of the Georgia State Constitution which provided for a reading of bills on three separate days.

The Georgia House of Representatives entertained their own resolution on July 6, 1910, reading it for the second time (the first in this series is unrecorded)—

> The following resolution which was made the special order for this time was read the **second** time and put upon its passage, to-wit:
>
> By Mr. Slade of Muscogee—
>
> A resolution providing for the ratification by the State of Georgia of the proposed amendment to Article 16 of the United States Constitution. (HJ at 301)

The intent of the above resolution apparently was to amend Article 16. Nothing was done on this resolution, however, and two days later, Representative Slade introduced another resolution which proposed merely to ratify a proposed amendment—

> The following resolution which was brought over as unfinished business was again taken up for passage, to-wit:
>
> By Mr. Slade of Muscogee—
>
> A resolution providing for the ratification by the State of Georgia of the proposed amendment to the Constitution of the United States, known as Article

16, so as to provide for a tax on incomes. (HJ at 341)

The House adjourned before consideration of this resolution. On the 12th of July, the Senate sent the following message to the House—

> The Senate has adopted by a requisite Constitutional majority the following resolution of the Senate, to-wit:
> A resolution proposing to ratify an amendment to the Constitution of the United States providing for the levy and collection of an income tax. (HJ at 381)

The resolution transmitted to the House came with a completely different title than any which had been introduced in the Senate. That title, however, was similar to that which appears in the archives on the bogus S. R. No. 23 (38).

One member of the House, Representative P. T. McCutchen, was so anxious that he wanted to vote in absentia by telegram. The Speaker of the House decided that allowing such a thing would be unwise and might result in difficulties in maintaining a quorum in the Legislature. Mr. Slade then introduced a resolution entitled—

> A resolution providing for the ratification of an amendment to the United States Constitution providing for an income tax.

Exactly what happened next in the Georgia House is somewhat questionable—

> Mr. Edwards, of Walton, moved that the previous question be ordered at 10:30 o'clock this morning.
> Mr. Fullbright, of Burke, moved as a substitute that the previous question be ordered at 11:30 a.m., which was adopted.
> The motion of Mr. Edwards was then adopted by substitute.
> Mr. Johnson, of Bartow, asked the unanimous consent of the House to be recorded as voting aye on the passage of the above resolution when the same should come to a vote as at that time he would be compelled to be absent from the hall, which was granted.
> By unanimous consent the time for the call of the previous question was extended for the purpose of allowing Mr. Ellis, of Bibb, to conclude his remarks.
> The previous question was then called.
> The original resolution was read the third time.
> The substitute offered by Mr. Alexander, of De Kalb was read and adopted.
> On passage of the resolution by substitute Mr. Hall, of Bibb, called for the ayes and nays which call was sustained . . . (HJ at 381)

The roll call showed a vote of 125 in favor to 44 against. It is not clear what was approved 125 to 44. It was not S. R. No. 23 (38) or anything else from the Senate. Even had it been the resolution from the Senate, it would not have mattered because a substitute was adopted instead. The "previous question," however, did not consist of consideration of the Senate resolution.

Two weeks later, Rep. Jackson took the following action—

> The following special orders were read the third time and put upon their passage, to-wit:
> By Mr. Jackson, of 21st District—
> A resolution proposing to ratify an amendment to the Constitution of the United States, relative to an income tax.
> Mr. Vinson, of Baldwin, proposed a substitute which was lost.

A vote was then taken on the named resolution and the result was Ayes—129, Nays—32. (HJ at 734) Which resolution was voted upon in this instance? This resolution was on its third reading. The archival copy of S. R. No. 23 (38) claims that S. R. No. 23 (38) was only on its second reading on this date. This resolution, thus, could not have been S. R. No. 23 (38).

Although the House never actually took a vote upon S. R. No. 23 (38), the purported history on S. R. No. 23 (38) falsely records two readings, which is not even the Constitutionally required three readings on separate days.

Federal statutes required that each State which ratified an amendment to the Constitution of the United States transmit a certified copy of the resolution of ratification to the Secretary of State of the United States. Joseph M. Brown, the Governor of Georgia did not transmit, and, indeed, could not have validly transmitted Senate Resolution No. 23 to Philander Knox, the Secretary of State of the United States. Brown transmitted an unsigned copy of a document entitled "INCOME TAX, AMENDMENT TO CONSTITUTION UNITED STATES AUTHORIZING,RATIFIED. No. 38. A Resolution," which was not sent until February 18, 1911, seven months after its supposed passage in the Georgia Legislature.

The State of Georgia did not ratify the proposed Sixteenth Amendment, in that the following fatal violations occurred during its course through the Georgia Legislature-

1. The Georgia Senate did not, in fact, pass S. R. No. 23 nor S. R. No. 23 (38), however, the latter fails in any event to concur in United States Senate Joint Resolution No. 40 as passed by Congress in the following respects—

a. the preamble was modified from the original

b. the word "levy" was substituted for the word "lay"

c. the commas binding "from whatever source derived" were missing

d. the word "source" was changed to "sources"

e. the word "incomes" wash changed to "income"

f. the phrase—"which amendment was approved on the day of July 1909" was appended on the end and within the quotation marks delineating Georgia's proposed amendment

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878

3. The resolution indicated as passed in the Senate was only read once during its proper session, was not read more than twice, in any case, in violation of Article 3, Section 7 of the Georgia State Constitution

4. The Senate did not pass their resolution with the required two-thirds majority.

5. The resolution which the Georgia House received from the Senate was not the same one which the Georgia Senate passed.

6. The Georgia House ratified a resolution which suffered from different, but similar, problems in wording deficiencies as did the Senate's version.

7. S. R. No. 23 (38) was indicated as having been read only twice in violation of Article 3, Section 7 of the Georgia State Constitution

8. The original S. R. No. 23 was tabled and not taken up again

9. The S. R. No. 23 adopted by the Senate was not adopted by the House

10. S. R. No. 23 (38) is pieced together from the actions taken on several different

resolutions

Perhaps with a certain amount of embarrassment over the fiasco perpetrated in the legislative sessions of 1909 and 1910, the process was stated all over again on July 2nd, 1912, but never finished.

> The following communication was received from the Governor:
>
> • • •
>
> I have the honor to herewith to transmit to you for your consideration the accompanying copy of a joint resolution of the Congress of the United States submitting to the Legislatures of of the States a proposed amendment to the Constitution of the United States, the same being transmitted as certified to this office by the Honorable the Secretary of State of the United States and as now of file in the Executive Department.
>
> Respectfully submitted,
> Joseph M. Brown,
> Governor.
>
> The communication was read and referred to the Constitutional Amendments Committee. (HJ 165)

This transmittal letter is not the transmittal letter of July 29th, 1909. Nothing further was ever done with this letter. The Journal Index contains no other reference to consideration or vote on the proposed Sixteenth Amendment for the 1912 session.

Washington—January 26th, 1911

On August 21st, 1909, the Governor of Washington sent a letter to Philander Knox, Secretary of State of the United States, acknowledging receipt of the certified copy of United States Senate Joint Resolution No. 40 and stating that it was transmitted to the legislature which was then in session.

On January 11th, 1911, the proposed Sixteenth Amendment had still not been ratified by the Washington State Legislature. The following resolution was introduced into that session—

SENATE JOINT RESOLUTION NO. 1

By Senator Bryan:

Be it resolved, By the Senate and the House of Representatives of the legislature of the State of Washington, That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified as follows, to-wit: "Article XVI. The congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." (SJ at 52)

S. J. R. No. 1 was taken up immediately with the following result—

> Senator Bryan moved that the rules be suspended, the resolution read the second time, ordered printed and made a special order for 2 o'clock p. m., Wednesday, January 18, 1911.
>
> Senator Falconer moved as a substitute that the resolution be read the second time, ordered printed and referred to the committee on revenue and taxation, when appointed. The substitute motion carried. (SJ at 52)

Apparently Senator Bryan wished to have the rules suspended in order to bypass committee consideration, however, under Senator Falconer's substitute motion, the rules were not suspended, and S. J. R. No. 1 went to committee.

On the 18th, S. J. R. No. 1 was reported for consideration on general file—

> We, your committee on public revenues and taxation, to whom was referred Senate joint resolution No. 1, "relating to an amendment to the constitution of the United States, have had under consideration, and we respectfully report the same back to the Senate with the recommendation that it be placed on general file.
>
> The report was adopted. (SJ at 126)

On the 23rd of January, S. J. R. No. 1 was taken up and amended—

> The secretary read Senate joint resolution No. 1, relative to the levying of a tax

on incomes by the United States.

On motion of Senator Bryan the resolution was amended by striking the comma after the word "States" in line 4 of the resolution and by striking the letter "s" from the word "incomes" in line 8.

On motion of Senator Falconer, the further consideration of Senate joint resolution No. 1 was made a special order for 2 o'clock in the afternoon of Wednesday, January 25th. (SJ at 155)

Further action on S. J. R. No. 1 did not take place until th 26th, at which time Senator Bryan's amendments were voted upon and the vote on final passage of the resolution taken—

Senate joint resolution No. 1, by Senator Bryan, "Relating to the ratification of amendment giving congress power to levy an income tax," was read third time.

The previous question on final passage of the bill was moved by Senators Falconer, Brown, Landon and Ruth.

The motion for the previous question carried.

The secretary called the roll and Senate joint resolution No. 1 passed the Senate by the following vote:

Those voting aye were: . . . -32.

Those voting nay were: . . . -5.

Absent or not voting were: . . . -5.

On motion of Senator Bryan, the rules were suspended and Senate joint resolution No. 1 was ordered immediately transmitted to the House. (SJ at 229)

Thus, the Washington Senate voted, first, to amend the wording of the proposed amendment, and, second, to pass the resolution as amended. Later that same day, the following message was transmitted to the House

The Senate has passed . . .

. . . Senate joint resolution No. 1, relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax;

• • •

And the same are herewith transmitted. (HJ at 154)

S. J. R. No. 1 was, shortly thereafter, read the first time in the House—

Senate joint resolution No. 1, by Senator Bryan, relating to the ratification of federal amendments to the constitution relative to income tax.

Referred to committee on revenue and taxation. (HJ at 158)

That same day, the following occurred—

On motion of Mr. Todd, the rules were suspended, Senate joint resolution No. 1 was taken from the committee on revenue and taxation, was substituted for House concurrent resolution No. 3, and considered under second reading.

Senate joint resolution No. 1 was read the second time in full by sections.

On motion of Mr. Todd, the rules were suspended, the second reading considered the third, the resolution placed on final passage, and passed the House by the following vote: Yeas, 80: nays, 1; absent or not voting, 15.

Those voting yea were: . . . -80.

Those voting nay were: . . . -1.

Those absent or not voting were: . . . -15.

On motion of Mr. Todd, House concurrent resolution No. 3 was indefinitely postponed. (HJ at 160)

S. J. R. No. 1 was then transmitted back to the Senate—

. . . Senate joint resolution No. 1, by Senator Bryan, "Relating to ratification of amendment providing for an income tax.
And the same are herewith transmitted. (SJ at 252)

On February 1st, the following took place in the Senate—

Your committee on enrolled bills, to whom was referred . . .
. . . Senate joint resolution No. 1, "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income ;
—have compared same with the original or engrossed bills and joint resolution, respectively, and find them correctly enrolled.

Since S. J. R. No. 1 was compared for purposes of enrollment along with several other bills, it is somewhat difficult to tell whether S. J. R. No. 1 was compared to the original draft of S. J. R. No. 1 or with the final draft of S. J. R. No. 1. In any event, Senator Bryan, compared that draft with the resolution as enrolled and found that it had been properly enrolled. Shortly thereafter, S. J. R. No. 1 was signed—

The president signed Senate joint resolution No. 1. (SJ at 278)

That same day, a message was sent to the House with the following information—

The president has signed . . .

• • •

. . . enrolled Senate joint resolution No. 1, "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income. (HJ at 221)

The Speaker of the House then signed S. J. R. No. 1, also. (HJ at 221)
The next day, the Senate received a message informing them that the Speaker had signed S. J. R. No. 1—

The speaker has signed . . .

• • •

. . . Senate joint resolution No. 1, "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc. (SJ at 289)

There is no record of presentation of S. J. R. No. 1 to the Governor. Under Article III, Section 12 of the Washington State Constitution which required such legislation to be presented to the Governor, this was a violation.

The first letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated February 25th, 1911, but was unsigned by the Governor. It was accompanied by a certificate from the Secretary of State of the State of Washington, signed and dated February 24th, 1911 and by a copy of S. J. R. No. 1 signed by the Speaker of the House and by the President of the Senate but not by the Governor.

The second letter of transmittal of S. J. R. No. 1 on the Governor's stationery was dated March 7th, 1911, and signed, but with a different signature than the original

acknowledgement. That letter was accompanied by another certificate, dated March 1st, from the Secretary of State, signed with a different signature than that on the previous certificate and with the signature of the Assistant Secretary of State. The copy of S. J. R. No. 1 in this transmittal was unsigned.

The signed copy of S. J. R. No. 1 read as follows—

> SENATE JOINT RESOLUTION NO. 1.
>
> BE IT RESOLVED by the Senate and the House of Representatives of the Legislature of the State of Washington:
>
> That the following amendment to the constitution of the United States, submitted to the several states by congress, pursuant to article five (5) of said constitution be and the same is hereby ratified, as follows towit (sic): "Article XVI. The congress shall have power to lay and collect taxes on income, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration."

The unsigned copy contained one discrepancy from the signed copy—the word "article" was changed to "articles." The signed copy contained the following changes from the official Congressional Joint Resolution

1. the preamble was replaced by a preamble composed entirely by the Washington legislature
2. the word "Congress" was changed to "congress"
3. the word "incomes" was changed to "income"
4. the word "States" was changed to "states"
5. the comma following the word "States" was deleted

All such changes were a violation of the duty of the Washington State Legislature to concur only in the exact wording as proposed in United States Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-120, of the 97TH CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which the comparable exactitude in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate

amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.

The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments, either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed amendment to the Supreme Law of the land.

S. J. R. No. 1 is recorded in full in the journals only once and that prior to its having been amended on February 1st. Every other apparent reading is by title only. The following represent all the different titles which were read for S. J. R. No. 1—

1. "relating to an amendment to the constitution of the United States"
2. "relative to the levying of a tax on incomes by the United States"
3. "Relating to the ratification of amendment giving congress power to levy an income tax"
4. "relating to the ratification of the proposed amendment to the constitution of the United States, providing for an income tax"
5. "relating to the ratification of federal amendments to the constitution relative to income tax"
6. "Relating to ratification of amendment providing for an income tax"
7. "Relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income"
8. "relating to an amendment of article XVI of the constitution of the United States in regard to taxes on income"
9. "Relating to the amendment to the constitution of the United States, submitted to the several states by congress, etc."

By virtue of the fact that 7. and 8. represent the only title that was ever repeated, along with the purposeful amendment by motion to the wording of the amendment, this attests to the desire of the Washington State Legislature to amend the proposed Sixteenth Amendment, not to ratify it in its original state.

Finally, S. J. R. No. 1 was passed in violation of Article VII, Section 2 of the Washington State Constitution, which states that—

> The Legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property: . . .

The Legislature of the State of Washington could not "prescribe such regulations by general law" for any tax which would issue as a result of their ratification of the proposed Sixteenth Amendment.

The purported ratification of the proposed Sixteenth Amendment by the Legislature of the State of Washington was defective for the following reasons—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by

Congress in that S. J. R. No. 1 contained the following changes from the official Congressional Joint Resolution—

a. the preamble was replaced by a preamble composed entirely by the Washington Legislature

b. the word "Congress" was changed to a common noun

c. the word "incomes" was changed to "income"

d. the word "States" was changed to a common noun

e. the comma following the word "States" was deleted

2. Violation of Article III, Section 12 of the Washington State Constitution requiring the presentation of S. J. R. No. 1 to the Governor for approval

3. Violation of Article VII, Section 2 of the Washington State Constitution in that passing on S. J. R. No. 1 would make it impossible for the State Legislature to carry out the particular provisions of that section

In addition, there are some apparent discrepancies in the transmission of the certified documents to Washington, D. C. in that the documents do not bear signatures, for both the Governor and the Secretary of State, which match previous signatures.

California—January 31st, 1911

With the perception that the State of California was facing severe financial difficulties, State Senator Burnett offered the following resolution, entitled "CASE OF URGENCY RESOLUTION," on January 5, 1911—

> **Resolved**, That Senate Bill No. 20 presents a case of urgency, as that term is used in Section 15 of Article IV of the Constitution, and the provision of that section requiring that the bill shall be read on three several days in each House is hereby dispensed with, and it is ordered that said bill be read the first, second, and third times, and placed upon its passage.

Senator Burnett's resolution to suspend the State Constitutional provisions for the passage of legislation passed by a margin of 31 to 0. The entire California Senate, having voted in favor of this resolution, unanimously believed that this was an urgent situation. Senate Bill No. 20 provided—

> An Act to make an appropriation for the contingent expenses of the Senate for the session of the thirty-ninth Legislature of the State of California during the sixty-second fiscal year.

Whether or not those "contingent expenses" should have been considered an "urgency" under the State Constitution is a question which shall not be debated here, although it's difficult to imagine what kind of contingencies could have caused such an urgent situation. Much more significant is that the California State legislators demonstrated that they knew what their State Constitutional rules were and what was necessary to bypass those rules—an urgent situation and a two-thirds vote in agreement of the urgency of a situation.

Article IV, Section 15 of the California State Constitution requires the following in the passage of bills—

1. Each bill must be printed, along with its amendments, for the legislators, prior to final passage.
2. Each bill must be read in each house on three separate days, unless an urgent situation exists, in which case, this particular rule may be suspended on two-thirds vote.
3. Each bill must be read at length on the final passage.
4. The vote on each bill must be by Yeas and Nays and those results must be entered upon the Journal.
5. Passage requires a majority of votes in each house.

In addition, procedural rules must be followed to ensure an orderly legislative process. Here is a simplified version of California's procedures in Senator Burnett's day—

1. The resolution is introduced in the originating house by a first reading and referred to an appropriate committee for a recommendation.

2. The resolution generally is printed at either step 1 or step 2 as a courtesy to the members of the house, and as a convenience to the members of the committee.

3. The resolution is reported out of committee with a recommendation to affirm as introduced, or to amend.

4. The resolution is read a second time and ordered to be engrossed, or if an amendment is approved, the resolution is corrected, reprinted, and, then, ordered to be engrossed.

5. The resolution must then be reported as having been engrossed correctly.

6. The resolution is then put to a vote, and if passed, ordered to the other house for consideration.

7. In the other house, the resolution is ordered enrolled and must be reported as having been correctly enrolled.

8. If the other house concurs, the resolution is ordered sent to the Governor and filed with the Secretary of State.

On January 5, 1911, California State Senator Sanford introduced Senate Joint Resolution No. 2—

> Ratifying and approving the proposed amendment to the Constitution of the United States relative to income tax.

As introduced and subsequently printed S. J. R. No. 2 read—

> WHEREAS, The Sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March.QOPO (sic), proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> ARTICLE)XVI. Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states, and without regard to census enumeration.
>
> NOW, THEREFORE BE IT RESOLVED BY THE SENATE OF THE STATE OF CALIFORNIA, AND THE ASSEMBLY, JOINTLY,
>
> That the foregoing resolution, being the sixteenth amendment to the Constitution of the United States, be, and the same is hereby approved and ratified.

It does not appear from the Senate Journal how Senator Sanford composed his version of the sixteenth amendment, i.e., there is no record of the transmittal of the certified copy of the Congressional Joint Resolution from Secretary of State Philander Knox. The official version of the Congressional Joint Resolution reads—

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:
>
> ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

S. J. R. No. 2 amended the original by deleting the very first word in the official

version, "The," and the word "or" was deleted as well. In this truncated version, both commas bordering the phrase "from whatever source derived" were deleted, too. The word "States" was changed to a common noun.

Nevertheless, Sanford's version of S. J. R. No. 2 was referred to the Committee on Federal Relations which recommended amending what Sanford had introduced.

On the 20th, the resolution was reported out of committee and read for the first time.

> During the reading of the joint resolution, the following amendments were submitted by committee:
>
> On page 1, line 3, strike out the letters in capitals "Q. O. P. O," and insert in lieu thereof "1909."
>
> On page 1, line 10, strike out the semicolon and insert in lieu thereof a period; strike out all of the remainder of line 10 after said semicolon and of lines 11, 12, 13, and 14, and insert in lieu thereof the following:
>
> "Now, therefore, be it
>
> **Resolved by the Senate and Assembly, jointly,** That the Legislature of the State of California hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the eighty-sixth amendment to the Constitution of the United States and said proposed constitutional amendment is hereby approved and ratified.

Both amendments to the "eighty-sixth amendment to the Constitution of the United States" were adopted and were then ordered to be printed and engrossed. All the changes in the proposed amendment made by the California Legislature were in violation of the duty which the California Legislature had to concur only in the exact wording as proposed in United States Senate Joint Resolution No. 40. According to the Solicitor of the Department of State in his memorandum of February 15th, 1913, responding to a request for a determination of whether or not the notices of ratification of the proposed Sixteenth Amendment from the several States were proper—

> . . . under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment. (emphasis added)

This is the only proper mode of ratification. This standard of compliance to which the States are held is also illustrated in DOCUMENT NO. 97-1220, of the 97th CONGRESS, 1st Session, entitled *How Our Laws Are Made* written by Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, in which bills must be concurred under federal legislative rules is detailed—

> . . . Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is extremely important that the Senate receive a copy of the bill in **the precise form in which it passed the House.** The preparation of such a copy is the function of the enrolling clerk. (at 34) (emphasis added)
>
> **When the bill has been agreed to in *identical form* by both bodies**—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> **The preparation of the enrolled bill is a painstaking and important task since it must reflect *precisely* the effect of all amendments,** either by way of deletion, substitution, or addition, agreed to by both bodies. The enrolling clerk . . . must

> prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each (amendment) must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (at 45) (emphasis added)

In like manner, as stated by the Solicitor, the States must exactly and precisely concur with Congress in a proposed Constitutional amendment.

On the 23rd of January, the Senate came up with their finalized version of S. J. R. No. 2—

> Ratifying and approving the proposed amendment to the Constitution of the United States relative to income Tax.
>
> WHEREAS, The sixty-first Congress of the United States of America, at the first session begun and held in the city of Washington, on Monday the 15th day of March, 1909, proposed an amendment to the Constitution of the United States, in words and figures as follows:
>
> ARTICLE XVI.
>
> Congress shall have power to lay and collect taxes on income from whatever source derived without apportionment among the several states, and without regard to census enumeration; now, therefore, be it
>
> **Resolved by the Senate and Assembly, jointly,** That the Legislature of the State of California, hereby approves and ratifies the foregoing proposed amendment to the Federal Constitution, the same being the sixteenth amendment to the Constitution of the United States, and said proposed constitutional amendment is hereby approved and ratified.

The resolution was then read for only the second time, a fact confirmed by the record in the State Archives, taken up for a vote and adopted by a margin of 33 to 0 and was then ordered transmitted to the Assembly.

On January 31st, the Assembly Journal shows that the House took up Senate Joint Resolution No. 2, whereupon the resolution was read for the third time, adopted, and ordered transmitted to the Senate, however, it cannot be reported what the vote was, because it isn't in the journal. Each house of the California Legislature in its "passage" of S. J. R. No. 2 violated Article 4, Section 15 of the California State Constitution—

> . . . Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in the case of urgency, two thirds of the house where such bill may be pending shall, by vote of yeas and nays, dispense with this provision . . . . on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal . . .

On July 27th, 1911, the Secretary of State of California, Frank C. Jordan, sent the following letter to Knox—

> I am enclosing herewith Senate Joint Resolution No. 2, Chapter 8, in re Ratifying and Approving the proposed amendment to the Constitution of the United States relative to Income Tax, as passed by the last session of the legislature. Assembly Daily Journal of January 31, and Senate Daily Journal of January 23, are marked indicating the action of both Houses in this matter.
>
> Same is forwarded to you by this office at the request of Walter V. Bowns, of the Ethic Association . . . it appearing from a communication just received from him that through some oversight the resolution has not reached your Depart-

ment as coming from the Secretary of the Senate, and the Clerk of the Assembly of the last session of the legislature.

Knox responded by sending a letter back to Jordan dated August 3rd, 1911 acknowledging receipt of Jordan's letter and requesting "a certified copy of the Resolution under the seal of the State, **which is *necessary* in order to carry out the provisions of Section 205 of the Revised Statutes of the United States.**" Apparently Jordan hadn't bothered to transmit a certified copy of S. J. R. No. 2 to Knox.

On February 3rd, 1912, Jordan finally got around to answering Knox's letter and sent a copy of S. J. R. No. 2 to Knox, however, the copy sent to Knox was neither under the great seal nor certified as requested.

California, thus, committed the following violations in their purported ratification of the proposed Sixteenth Amendment—

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 2 changed the official Congressional Joint Resolution in the following ways—

a. the first word, "The," was deleted

b. the word "or" was deleted

c. both commas bordering the phrase "from whatever source derived" were deleted

d. the word "States" was changed to a common noun

e. the ending period was changed to a semicolon, thereby appending the entire enacting clause of S. J. R. No. 2 onto the wording of the proposed amendment

f. the original preamble was completely modified

2. Failure to follow the guidelines for the return of a certified copy of the ratification action as contained in Congressional Concurrent Resolution No. 6 and as required by Section 205 of the Revised Statutes of 1878 as shown by Knox's letter.

3. Lack of jurisdiction of the certified copy of the Congressional version transmitted from the Governor.

4. Failure to read the resolution three times on different days in the Senate in violation of the provisions of Artiicle 4, Section 15 of the California State Constitution

5. Failure to record the Yeas and Nays in the Assembly vote in violation of Article 4, Section 15 of the California State Constitution