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## **Maine—March 31st, 1911**

On January 5th, 1911, the Governor's address before the Legislature of the State of Maine included a short comment on taxation—

### **EQUALIZE TAXATION.**

Our present system of taxation presents many unnecessary inequalities and works much injustice. To equalize, so far as may be, the tax burden, is a serious work to which you should dedicate your best effort. The work of tax reform should go on in this State until every vestige of special privilege disappears from our tax laws. (HJ at 35)

On the 11th of January, Governor Bert M. Fernald transmitted the certified copy of the Congressional Joint Resolution proposing the Sixteenth Amendment to the President of the Senate in a communication dated January 4th, 1911—

I have the honor to transmit herewith a communication received at this Department from the Secretary of State of the United States, under date of July 29, 1909, enclosing a certified copy of a Resolution to Congress, entitled "Joint Resolution proposing an amendment to the Constitution of the United States," the text of which Resolution is as follows, to wit:

Resolved by the Senate and House of Representatives of the United States of America in Congress (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.'

(Signed)

BERT M. FERNALD. (LR at 31)

On motion of the Senate, Governor Fernald's communication with the accompanying Congressional resolution was referred to the Committee on Taxation and sent down for concurrence. (LR at 31)

The next day, the Senate transmitted the Governor's communication to the House of Representatives. The Governor's communication, prior to the conversion of the accompanying certified copy Congressional Joint Resolution to a resolution of the Maine Legislature, was printed. (LR at 36) Each Maine legislator thus had a complete and verified copy of the Congressional Joint Resolution for his individual use.

On February 2nd, a ratification resolution was introduced in the House—

Mr. HERSEY of Houlton—Mr. Speaker, I wish to introduce this resolve,

Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes; and I move a suspension of the rules and that this resolve take its two readings at the present time and be passed to be engrossed.

Mr. PATTANGALL of Waterville—Mr. Speaker, the matter that is taken up in the resolve proposed by the gentleman from Houlton is now before the Taxation Committee and a hearing has been ordered by that committee for next week in order that people throughout the State who desire to do so may be heard on that question; and I presume it would be well perhaps to await that hearing before the committee. I therefore move that this resolve lie on the table pending a hearing before the taxation committee and a report by that committee.

Mr. HERSEY—Mr. Speaker, I was not aware that there was any such hearing before the committee; if there is I will withdraw my motion and move a reference of this resolve to the committee on taxation.

The motion was agreed to. (LR at 151)

In the Senate, on the 8th of February, a communication was received from the House which announced, without prior record of such House action, that a resolution had been passed in the House relative to a federal constitutional amendment—

Joint resolution of the 75th Legislature of the State of Maine, making application to the Congress of the United States to call a convention for proposing an amendment to the constitution of the United States, came from the House, by that branch read and passed.

On motion by Mr. Staples of Knox, the resolution was tabled for printing. (LR at 177)

In the House on the 22nd, a communication was received from the Senate which announced, without prior record of such Senate action, that a resolution had been passed in the Senate relative to a federal constitutional amendment.

Resolution of the 75th Legislature of the State of Maine making application to the Congress of the United States to call a convention for proposing an amendment to the constitution of the United States.

This resolution received a passage in the House, and comes from the Senate with Senate Amendment A adopted.

The House receded from its former action in the passage of the resolution. Senate Amendment A was adopted and the resolution received a passage as amended in concurrence. (LR at 320)

On March 14th, the following motion was brought—

On motion of Mr. Davies of Yarmouth,

Ordered, that the committee on taxation is hereby directed to lay before this House on Wednesday, March 15, its report on the resolution proposing an amendment to the Federal Constitution authorizing Congress to impose a tax on incomes.

On motion of Mr. Pattangall of Waterville the order was tabled and assigned for Thursday. (LR at 575)

One week later, on the 21st, the Committee on Taxation had finished their deliberations on all the matters before them and issued this report—

A majority of the committee on taxation on resolution in favor of an amendment to the Constitution of the United States so as to grant to the Federal

government the power to levy a tax on incomes, reported a Bill for the taxation of income by the State and recommended that the Legislature pass such a Bill, but "it is the sense of the committee should the committee's Bill fail of passage the original resolve should pass." Minority report, ought not to pass.

On motion of Mr. Mace of Great Pond the report was tabled and assigned for consideration tomorrow. (LR at 697)

While in the Committee on Taxation, the resolution on the proposed Sixteenth Amendment had become a bill for a State income tax. Later that day—

On motion of Mr. Pattangall, House Order relating to tax on incomes, was taken from the table, and on further motion by Mr. Pattangall the order was indefinitely postponed. (LR at 701)

In other words, the order to have the Committee on Taxation report upon the resolution in ratification of the proposed Sixteenth Amendment "was indefinitely postponed."

The following day, the reports of the Committee on Taxation were taken from the table and then put back on the table for printing with consideration delayed until the last day of the week. (LR at 746)

Meanwhile, in the Senate, on the 28th of March, a week after the House had the above, an attempt was made to introduce a Sixteenth Amendment resolution. The following took place—

• • •

Mr. Osborn of Somerset asked unanimous consent to present the following resolve: "Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes."

Mr. MILLIKEN of Aroostook: Mr. President: If I understand the situation correctly, a resolve embodying the same subject matter has been introduced and heard by a committee, reported from the committee and is now under consideration in the House of Representatives, and will arrive here in due season, if it is not lost or referred to the next Legislature. Under these circumstances it seems to me it would be improper to consider this resolve at this time.

Mr. OSBORN: Mr. President: I would not ask that it be heard today, but lest it should be lost or not heard from, I do not wish to go home without voting upon it, as both political parties pledged themselves in this matter. I am willing to have it lie on the table until tomorrow.

Mr. MILLIKEN: Mr. President: I feel as the senator has said, and ask that it be received and laid on the table.

Mr. KELLOGG of Penobscot: Mr. President: I object to the consideration of this measure today. I may not be right, but I think a measure of that kind either requires unanimous consent or a two-thirds vote of the Senate before it can be received, and I object to its being received by the Senate.

Mr. MILLIKEN: Mr. President: As I said a moment ago, as a precautionary measure, I hope the senator will be allowed to lay this on the table, but it seems to me that if the senator from Penobscot objects he is entirely within his rights, and that only unanimous consent, or two-thirds vote, can it be received, and it could not be laid on the table until it was received.

The PRESIDENT: The Chair rules that only by unanimous consent can this matter be received.

Mr. OSBORN: Mr. President, all right, if they do not wish to receive such a resolution I am satisfied.

Upon putting the motion of Mr. Kellogg of Penobscot, and the Chair ruled that the resolve could not be received. (LR at 910)

In other words, in order to bring any resolution before the Senate which had not been reported out of committee required "unanimous consent," i. e., the entire Senate, to allow consideration of such a resolution.

In the House, on the 28th, the reports of the Committee on Taxation were taken from the table for consideration, and a motion was made to accept the majority report, the recommendation for a State income tax bill. (LR at 931) An inquiry was made to the Speaker about the status of the reports from committee and the Speaker gave his answer—

The SPEAKER: The Chair understands that this committee referred back to this House a substitute bill for the resolve relating to the taxation of incomes. If that should fail of a passage, they still desire action upon the federal bill. Both matters are before the House for consideration. (LR at 932)

At that point, a lengthy debate ensued, a member of the Committee on Taxation speaking first—

Mr. Mace of Great Pond: Mr. Speaker, I wish to offer an amendment to House Bill, No. 755. It appears to me that the people of the State of Maine, the plain common people, are clamoring for some peace from the burden of taxation, and the committee on taxation, after considering the matter of a federal income tax and a State income tax for 10 long weeks, beg to submit to the members of this House some of the reasons why they were influenced in recommending for your consideration the substitution of House Bill, No. 755, a State income tax. It is common belief, and as I believe the common wish, of every member of this House, and the unanimous wish, that some form of an income tax should be passed or adopted, that the plain people of the State of Maine are looking to us for relief from some of the burdens of taxation which are bearing too heavily upon them; and it is an accepted fact that the people understand, or believe they understand, that if we pass or adopt this amendment for a federal income tax, it will become the panacea for all the evils of taxation that the burdens of taxation will be lifted from the poor throughout the length and breadth of this State and placed upon the incomes of the rich, but I believe, Mr. Speaker and gentlemen, that this is an erroneous belief. If we surrender to the national government our inherent rights and those rights are grated into the Constitution of the United States, we can never hope to recover them again for the benefit of our citizens within the length and breadth of this State of ours. We shall be represented in the next Congress of the United States by fewer congressmen, or at least by a less percentage. The trend of population has been in the past and is now toward the great central West. And by surrendering the rights to the government of the United States to take from her citizens their hard earnings and place them in the treasury of the United States, what right can we expect that our proportional part shall ever be received into the State of Maine? Congressmen from the middle West through their votes will prevail in our great Congress. For ten weeks we considered a bill, or two bills, that would have an effect upon lessening the burdens of taxation of our own citizens . . . .

Some men claim that it is our party platform, in the platforms of both political parties in this great State of Maine . . . . I believe it is not only our right but is our bounden duty, if we believe that any other bill would be better for those people, the plain people, the people who toil upon the farms and who work in the shops, that if any bill that we could substitute to lessen or relieve them from the burdens



of taxation imposed upon them by the federal government, burdens of taxation imposed upon them by an extravagant administration of State affairs, that it is not only our right but it is our duty to do so, and that we must so report according to the dictates of our own consciences . . . I hope that the members of this House will adopt Bill No. 755 for a State income tax. (emphasis added)

The next legislator to speak had undoubtedly kept every single one of his campaign pledges—

Mr. HERSEY: Mr. Speaker, I was elected to the Seventy-Fifth Legislature of Maine on a party platform which had the following plank, "We favor the ratification by the next Legislature of the amendment to the federal constitution as proposed by Congress relative to an income tax," and if I did not favor standing upon that plank . . . I am not dealing in good faith with my political party, and if the gentlemen from Great Pond or those of his political faith in this Legislature can come to this Legislature at this hour and repudiate this plank . . . then they . . . are unfaithful and have repudiated their campaign promises. Not only that but should such a measure go through this Legislature it should meet with the veto of your Governor, for in his message he said, "The people have been promised that we will approve the proposed amendment to the national constitution authorizing the levying of an income tax. That promise should be kept." And I say, if the Governor should not veto the action of this House in repudiating the campaign promises, then he repudiates his message which he says comes from the people of Maine.

Now, Mr. Speaker, I waited in this House some time that there might be such a resolution put before this Legislature, because I understood at that time that it was the policy of certain politicians in this Legislature not to endorse the income tax amendment, to repudiate their party platform, and I did not wish them to do it . . . On Feb. 2, I introduced this resolution. The gentleman from Waterville said that this matter was pending then before the taxation committee, and I referred it to that taxation committee. What did they do? They came to the Legislature with this report, with Document No. 755, a long document, a long bill, complicated and intricate, in the last hours of the Legislature, wanting to substitute that of which the people of Maine have said nothing, of which in party convention they have taken no action, which they have not called for, which has come in here because certain men in the State of Maine came into the lobby of this Legislature and wanted a State income tax substituted for a national one; and you asked this Legislature, without any request from your political party, without any request from the people, in the last hours of the Legislature to enact a law which I have not had time to examine, which has not been discussed in this State, not discussed in the press to any extent, which we haven't time to know whether we want it or not

. . . Now, Mr. Speaker, why was this put before us? For over fifty years, yes, seventy-five years, this Nation labored under th (sic) idea that we had a right, to tax incomes in the Nation. We believed it and we acted accordingly, but it was an emergency matter only called out by war, never used on any other occasion, never contemplated to be used only in great occasions when the nation was in peril and it was called into being after seventy-five years by the late Spanish-American war. It was put up to the Supreme Court of the United States and the supreme court said that Congress had no right without an amendment to the national constitution to tax incomes incase (sic) of war, and therefore, Mr. Speaker, we have had presented to us through Congress an amendment to the Constitution of the United States giving Congress the right to levy an income tax in case of great emergencies and in case of war, and for another seventy-five years if we enact that

law and allow Congress to amend the Constitution of the United States we may never have occasion to use it. But there may be the time in this nation, **in times of great stress and peril**, when we may have occasion to tax incomes, and then we can use it; and that ought to pass. Your Governor said "The State still possesses the right to tax incomes if it desires to do so and as far as the nation is concerned we are simply affirming the existence of a power which it was supposed to have until very recently." Your Governor said that passing this resolve, giving our nation the authority to tax incomes, will not hinder this State from taxing incomes if they so desire. He said you ought to pass this. I believe he is right. You ought to pass this resolution. You ought not to entangle it with any other; and after you have passed it if this Democratic Legislature and the Republican minority think that they ought, without consulting their people, to enact the income tax law in the closing hours of this Legislature, that is all right. You did one part of your duty, you have kept your platform pledges. If you have gone beyond it that is your responsibility, but keep the pledge you made to the people of this State in the first instance; and I move you, Mr. Speaker, that this resolution presented by me on the second day of February, be substituted for this bill of the committee. (emphasis added)

The House adjourned for lunch. (LR at 934) After the recess, the debate continued, Mr. Hersey attempting to correct himself.

Mr. HERSEY said: Mr. Speaker, I want to add a word to what I said this morning . . . . (T)he supreme court . . . simply decided that you could not tax incomes without a constitutional amendment.... (LR at 935)

After Mr. Hersey had added much more to what he had said in the morning session, the only member of the Committee on Taxation to vote in favor of the resolution on the federal tax amendment spoke—

Mr. PLUMMER: Mr. Speaker, . . . it appears to be taken for granted that we are to adopt some form of an income tax . . .

We have at the present time as you know nationally a tariff. We have tariff taxes and internal revenue taxes. The tariff taxes bear hardly on the poor. Generally speaking, they are apportioned to the amount of sugar a man eats or the kind and quality and amount of clothing that he wears or the jewelry that he wears. Then we have internal revenue taxes which bear on different individuals somewhat in proportion to the liquor that they drink or the tobacco that they use . . . (LR at 936)

. . . an income tax . . . is so much better than the tariff that there is no comparison between them. **The tariff falls hardest on the poor, on the man with a large family who is working hard day after day to get along.** And in any tariff which has ever been framed the burden of taxation falls harder on the cheaper grades of goods. An income tax, of course, to a certain extent, or to a large extent, falls at least on those who are better able to bear it. And there is another reason urged in favor of this, that **a national income tax will have a tendency to reduce large fortunes, that it will take away from them a large part of what is called the unearned increment.** As men seem to learn very little except by experience, I think it is necessary for them to pass through this stage and find out that a national income tax or any income tax can have but mighty little effect in that direction, but they must go through this before they will be willing to look deeper.

. . . it is better that (the tax) should go from the pockets of those who are able to pay than it is to take it from the pockets of the poor as there is no question but

what the tariff and internal revenue does. Another argument against (the income tax) is that Congress will waste it, that instead of reducing their taxes to correspond with this increased revenue it will increase its expenditures sufficiently to take it all up . . . .

. . . When the State goes into the pocket of the private individual and takes any part of the production of wealth, the State is stealing, it don't (sic) make any difference what you may call it; and if the State, instead of taking what does belong to it, this common wealth of the country, the value of these lands and water power and forests and shore rights and those things, if instead of having that to pay its communal expenses, if instead of taking that it gives them to some men it merely makes paupers or beggars of them. It is said that our forefathers have given away these lands and that consequently we have no right to them. Our forefathers only gave their right. They could not give away our right. The right to the use of these lands is an inherent right. We have it because we are here and not because we had it from our fathers. If they saw fit to give away their rights we have no objection but they would not give away our rights. They had neither the right nor the power to do so. I wish merely to say, Mr. Speaker, that in favoring the adoption of the income tax we relieve to some extent the shoulders of the poor from the burdens of taxation . . . . (LR at 936-939) (emphasis added)

Mr. Plummer apparently felt that the citizens of this nation should amend the Supreme Law of the land in order to find out that the amendment wouldn't do what they wanted it to do and that is apparently the reason Mr. Plummer was in favor of the national income tax.

The question was then reiterated by the Speaker—

The SPEAKER: The question before the House is on the motion of the gentleman from Houlton, Mr. Hersey, to substitute for the report of the committee, House Resolve No. 91, Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on incomes.

Mr. DAVIES: . . . I interpret that the income tax would be beneficial. Its benefits might be divided into two distinct classes. First, it would bring about a more equal distribution of wealth. I doubt very much if anybody would deny that. And secondly, it would reduce the tax on consumption . . . . In substance (sic), the gentleman from Lisbon said that the tax was inquisitorial. Taxation itself pries into the private affairs of the individual, excepting the indirect tax which I believe was described by John Stuart Mill as being the tax that plucked the goose without making him cry out. The direct tax is not that kind of tax . . .

. . . we are the only great nation, Mr. Speaker, at the present time of great resources that finds ourselves in the position of being unable to lay a tax upon incomes . . .

. . . We must remember this, that there is not a laboring man today who does not through that method pay five or ten, yes, up to 15 per cent, at least of all the money that he earns for the support of the federal government, and the man of large accumulations, if you cannot get at him through the agency of the income tax there is absolutely no way to reach him. And that is the purpose for which the Congress of the United States has submitted to the various Legislatures a resolution asking for its adoption in each State that it may have the power to lay a tax on incomes. (LR at 940) (emphasis added)

Mr. PATTANGALL of Waterville: . . . the poor laborer contributes more to the cost of government than does the richest woman in the United States . . . in spite of the decision of the supreme court in the year 1905, today Congress may levy an income tax provided it observes certain limitations placed upon the



levying of that tax by the national constitution. Under these limits Congress can act. Beyond it is it safe to say that Congress ought to go?

It was said by the gentleman from Houlton, in the course of his remarks that this was desired by Congress to use in case of emergency. Was there any emergency in the year 1904? There was no war, and yet the tariff law of 1904 contained the income tax, which the supreme court of the United States declared to be unconstitutional. In the year 1908 when we imposed the corporation tax was there any emergency? We had gotten through the panic of 1907. The revenues of the government were paying the bills. In 1908 there was no war, and yet an income tax was proposed and would have gone through excepting that in place of it was substituted a corporation income tax and the provision that the State might enlarge the powers of Congress in this respect.

Any man who has studied passing events, any man who has read the records of Congress knows that just as soon as a sufficient number of states give the right to the national government to do it, an income tax will be passed . . . It is not an emergency measure and is not so intended. It is intended to meet what its advocates believe to be a demand to remedy what they believe to be bad conditions. They advocate it as sound in times of peace, and not merely as an emergency measure. The condition is such that in those states where incomes are smaller, the newly settled states feel that by passing an income tax they can derive from the older settled portions of the country a larger amount of money to be placed in the national treasury, not to reduce the other taxes but to place other public improvements . . . within their reach . . .

Now, Mr. Speaker, the gentleman from Yarmouth suggests that a tax upon incomes would relieve the tax upon consumption, and my mind travels far in the direction that his is going. If I were sure of that, if I had any evidence of it, if it (sic) fact the evidence was not to the contrary, I should feel (sic) like voting for both a State income tax . . . and ratifying an amendment to the national constitution in order that Congress might substitute an income tax for the tariff. But the gentleman from Yarmouth meets this question frankly and sincerely, and he knows that today we have a national income tax, an income tax upon corporations . . . The gentleman knows that though that income tax passed Congress, it passed it as a part of the Payne-Aldrich tariff bill, a law which did not seek to reduce the tax upon consumption but rather increase it. Such a tax will not replace the tariff but added to the proceeds of the tariff will bring a larger sum, and larger still, into the United States treasury to be spent for the purposes beneficial doubtless of the whole country, but not so beneficial as I believe to the State of Maine as though we collected it ourselves and spent it ourselves . . .

. . . President Taft went so far as to say in his campaign, good lawyer that he is, that they needed no amendment to the United States Constitution to levy an income tax if the law was properly drawn, and he said it over and over again. If that is true, and it would ill become me to question the word of so learned a jurist as President Taft, then the United States has the power now to levy upon incomes a tax if the law is properly drawn, not in the language of the proposed amendment but under such conditions and limitations as President Taft during his campaign thought proper. It has been said the Governor Hughes had endorsed the income tax. He has. And yet it was Governor Hughes' sole personal influence that prevented the New York Legislature from ratifying the offered amendment to the Constitution of the United States . . .

. . . It is said that you can tax incomes by both the national and State law. That is true. You can as a matter of theory and law, but as a practical matter none of us would vote to do it. Such a tax would impose too great a hardship unless the national tax was extremely small and the State tax extremely small . . . I claim that though the national government had the power for 50 years and exercised it

twice to tax incomes, national government neved (sic) had the power which this amendment seeks to confer upon it, the power to tax incomes without limitation. (LR at 944) (emphasis added)

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Mr. PATTANGALL: . . .

. . . I never expect to rise to a height where I will have income enough to be touched by any tax anybody will ever propose . . . (LR at 948) (emphasis added)

Mr. AUSTIN of Phillips: . . .

. . . I fully believe that as long as this government was amalgamated into a government of states and into a federal government, simply from the reason that the states themselves as a federation would not stand for direct taxation of the federal government and taxation by the State at the same time—I believe for that very reason, the states being amalgamated into one union, was the reason they would not stand for the two systems of taxation and is the very reason why we should keep this system of taxation out of the constitution. (LR at 949)

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Mr. CHASE of York: . . . I believe (the proposed Sixteenth Amendment) is granting a most tremendous power to the United States government in addition to what they have now. I think the government of the United States has power enough at the present time . . . . The proposed amendment gives to Congress the right to assess and collect taxes on all kinds of incomes, from whatever source they may be acquired. There is no doubt in my mind but what Congress will use that power when they need it. (LR at 949)

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The SPEAKER: The question before the House is on the motion of the gentleman from Houlton, Mr. Hersey, who moves that Resolve ratifying the proposed amendment to the Constitution of the United States giving Congress power to lay and collect taxes on income, be substituted for the report of the committee. Those voting yes will vote in favor of the motion to give Congress the power to levy and collect taxes; those voting no, will vote against the proposition. The Clerk will call the roll.

YEA . . . 53.

NAY . . . 82.

ABSENT . . . 14.

So the motion was lost. (LR at 950)

The additional result of the foregoing vote was that the resolution on the ratification of the proposed Sixteenth Amendment, if it was to be properly before the House would have to be introduced by unanimous consent.

On March 30th, in the Senate, another debate took place—

Mr. OSBORN of Somerset: . . . (LR at 1016)

. . . Now it is a well known fact that the question in regard to an income tax meant a Federal income tax assessed by the national government for state purposes . . . . a distinguished statesman, who is now the President of the United States, took the ground in his campaign speeches in several of the Western States, where it was well known that the idea of a Federal income tax was popular, that the Constitution ought to grant the right to the national government to levy a tax upon income and that a bill might be drawn that would not be thrown out of court. Yet when that matter was under discussion in Congress, the President, for reasons of his own, I know not what, appeared to change his mind—the constitutionality of the matter was a matter of such grave doubt that

it should be referred to the people. (LR at 1017) . . . If **men of large incomes** in this nation are taxed for a part of the nation's support they will become interested in power of appropriations . . . . We are of course familiar with the vast increase in the national expenditures in recent years, and those expenditures have borne heavily upon the **average citizen** throughout the length and breadth of the land . . . . if you increase the expenditures of your government and increase the burden upon the average citizen, you will make it more difficult for him to meet the difficulties of every day life. And there rests the proposition of the advance in the cost of living. It is due to the advance in the cost of government more than to any other cause . . . . Now Mr. President, I move you that a resolve that I have here in regard to this matter of an income tax be substituted for that bill as reported, if in order.

The question being upon the acceptance of the report of the committee, the Senator from Somerset moved to nonconcur with the action of the House, and substitute the Resolve **presented by himself.** (emphasis added)

Mr. NOYES of Somerset: Mr. President: As a member of the Taxation committee, we took this matter up very thoroughly from time to time. I will admit that it was a very hard question to get at, and they felt that they rather favored a state income tax, but to get it fairly before the Legislature the Resolve introduced was to favor a state income tax, and if that was not reported favorably on by the Legislature, then we asked them to report favorably on the national income tax, and left it to the Legislature. One of the hard things that the committee found in regard to the national tax was that there was no proportional part that would come back to the State (at 1018) . . . .

Mr. IRVING of Aroostook: . . . when we (the taxation committee) did begin to investigate, and the more we did dig into the working of the Bill, the change came about, that we didn't want to do it. We repudiated the idea of allowing the Federal Congress—allowing Congress to come into our State and assess our incomes and have the money go into the national treasury . . .

Now **the national resolve, or the 16th amendment to the federal constitution, it seems to me is sweeping,** and perhaps not all of the members of the Senate have read or comprehended just what the amendment is or how it reads. It reads like this: "Congress shall have power to levy and collect taxes on incomes from whatever source derived without apportionment among the several states and without regard to any census or enumeration." You can see by the reading of that that we give them absolute power to do what they will—from any source whatever to tax incomes under the provisions of that amendment. Now, do we want to give Congress that power to tax incomes from whatever source derived? Would it be a wise thing to do? It has been urged by our people, and I think urged quite frequently, that Congress is extravagant, that they do expend large sums of money . . . (LR at 1019) (emphasis added)

. . . You can see that nine of the 10 men (on the taxation committee) favor an income tax and were opposed to a federal income tax. And that report was caused by the fact that we did inquire into the merits and the demerits of the case, and a change of heart was brought about in the case of those nine men, because **at first every man of them was in favor of the Federal income tax . . . .** if we vote to ratify the 16th Amendment to the Federal Constitution and allow the Federal government to assess a tax on our income, we never can change it. If we once allow them the privilege, we are forever prohibited and cannot change it, if we allow them to incorporate it into the Constitution of the United States . . . . (LR at 1020) (emphasis added)

Although nine of the ten members of the Committee on Taxation, based upon weeks of study, were "opposed to a federal income tax," Senator Osborn re-asserted his

platform pledge argument. (LR at 1020) After a response, Senator Osborn continued.

Mr. OSBORN: . . . The simple question is which will affect the people the most, to pay a part of this money out of a tax on large incomes or to pay all of it by a tax upon the necessities of life of the average man. And I hope we shall not get led away on that proposition.

Mr. BOYNTON: May I ask—the question before the House, as I understand it, is upon the bill, resolve—the order which he made, introduced by the senator from Somerset, Senator Osgood (sic). Will the Senate cause that to be read that we may know what it is.

The PRESIDENT: The resolve is Resolve ratifying a proposed amendment to the Constitution of the United States giving Congress power to levy an income tax on the states.

Mr. BOYNTON, of Lincoln: Mr. President: I think we have all, or it has been our duty at least to have studied this question and know exactly how we want to vote and what we want to do. Now to bring this matter before the Senate properly I will move the indefinite postponement of the resolve offered by the senator from Somerset, and later will move to concur with the House in acceptance of the majority vote, and upon that motion I would ask the yeas and nays, upon the indefinite postponement of the resolve of the senator from Somerset. (LR at 1021) (emphasis added)

Mr. MILLIKEN, of Aroostook: . . .

. . . on the 28th day of March . . . the Democratic House of Representatives repudiated that pledge made to the people of Maine.

. . . Yesterday the ratification of the income tax amendment was defeated . . . (LR at 1022)

Senator Milliken was admitting on the record that the "income tax amendment" had died in the Maine House. Procedurally, it would require a unanimous consent to be introduced at that point. Senator Osborn confirmed—

Mr. OSBORN: Mr. President: To make myself clear, I want to say this: I understand that my resolution cannot be received **except by unanimous consent**. Now I have no doubt but what there are some gentlemen here who will object to it and get it out of here, and we should not get any vote here if we adopted this State income tax. Now that is my position. I want to express myself on this matter by vote, that is all. (LR at 1023) (emphasis added)

• • •

Mr. BOYNTON: Unless the Senator from Somerset wishes to withdraw his resolution I would now ask that the question be put and that the yeas and nays be ordered on its indefinite postponement.

Mr. GOWELL, of York: Mr. President: Do I understand that the resolve offered by the senator from Somerset is an endorsement of the national income tax pure and simple?

The PRESIDENT: It is.

Mr. IRVING: Mr. President: In case we vote to indefinitely postpone this resolution of the senator from Somerset, we still have a chance to act on the federal income tax on the report of the committee. The question being on the indefinite postponement of the resolve offered by Mr. Osborn of Somerset, ratifying the proposed amendment to the Constitution of the United States and authorizing Congress to impose a tax on incomes in the states, the yeas and nays were ordered and the secretary called the roll. Those voting yea were . . . 18. Those voting nay were . . . 9.

So the resolve was indefinitely postponed.



Mr. BOYNTON: Mr. President: I now move that we concur with the House in the acceptance of the majority report.

The PRESIDENT: The senator from Lincoln moves that the Senate concur in the action of the House in adopting the majority report of the committee.

Mr. MILLIKEN: Mr. President, may I understand the situation. If we adopt now the majority report and pass the bill in concurrence with the House, this is the only income tax bill that we are offered by the House. If the House adheres to its present action and the bill goes through this will be the only bill that we can accept. If the House should afterward turn this bill down, we can then have an opportunity to vote on the federal income tax bill. With that understanding I vote that this bill be adopted.

In other words, the House would have to reject the State income tax bill **before** the Senate could vote on the proposed Sixteenth Amendment. The discussion continued, but on the wrong bill.

The PRESIDENT: The senator from Lincoln moves that the Senate now concur in the action of the House in adopting the majority report of the committee on taxation.

Mr. MULLEN: I don't think I am anywheres near through on this proposition. I would like to inquire just what bill the House presents to vote on. Is it 764?

The PRESIDENT: 764.

• • •

Mr. MULLEN: Mr. President, I want to call attention to line 6 in Section 5, and I would like to ask the Senate members of the committee if this Bill as drawn is the proper Bill and if it is right as they understand it . . . .

Mr. IRVING: Mr. President: I would say to the Senator that this is a new draft as amended in the House. This is not the regular Bill that came from the Taxation committee.

Mr. MULLEN: Mr. President: For the benefit of the Senators and myself too, to make myself clear, I have heard it rumored in the corridors and all around that there is a joker in this. I don't know whether it is sincere or whether it is not . . . but I want to know that we are getting the law when I vote on it, and I am not a lawyer, so I will ask the question, Mr. President and Senators, at this time, and this Bill as printed here certainly does not mean anything at all.

Mr. OSBORN: Mr. President: I request that before we have a vote upon that measure, that it be read in the final draft, and I should also like to ask the opinion, as to the legality of it of some of our lawyers here.

Mr. MAYO: Mr. President: I am on that taxation committee and I notice on page 3 of this law, lines 19 and 20, something that I had never seen before and that is the exception—except salaries of the United States Judge and Judges of the Supreme and Superior Courts of the State. It might have been there, but I didn't notice it.

The PRESIDENT: That has been put in by amendment of the House.

• • •

The question being on the motion of the senator from Lincoln, that the Senate concur with the House in the acceptance of the majority report of the committee on taxation on this Resolve.

The secretary called the roll. Those voting yea were . . . 17. Those voting nay were . . . 9.

So the majority report of the committee was accepted in concurrence.

The resolve was given its first reading.

Mr. GOWELL of York: Mr. President: Pending second reading, I move that



the resolve be tabled. If I am correctly informed there should be some amendments offered if it is to become a law.

The motion was agreed to. (LR at 1024) (emphasis added)

Thus, the Senate voted in concurrence with the House to accept the majority report recommending a State income tax, effectively blocking further consideration of the ratification resolution in the Senate except by unanimous consent or until after the House disavowed its own action in the State income tax bill. Later that day, House Bill 764 was taken from the table by motion. (LR at 1039)

Mr. STAPLES of Knox: Mr. President: . . . **The object of a national income tax would be to reach those men of great fortune that we cannot reach in any other way . . .** (LR at 1040) (emphasis added)

Upon motion of Senator Staples, House Bill 764 was indefinitely postponed—

Those voting yea were . . . 16. Those voting nay were . . . 9.  
So the bill was indefinitely postponed. (LR at 1042)

At this point, the House resolution on the proposed Sixteenth Amendment was brought up for consideration after the Senate had accepted the majority report which recommended a State income tax.

Mr. MILLIKEN: Mr. President: Is there not a national income tax law mixed up with this committee?

The PRESIDENT: Yes. The Chair now rules that the Senate may consider that part of the report that applies to the national income tax.

Mr. MILLIKEN: Mr. President: I move that the resolve giving Congress power to lay and collect a tax on incomes be adopted . . .

Under suspension of the rules, the resolve received its two readings and was passed to be engrossed. (LR at 1042)

Since Senate rule 29 states that "No rule shall be dispensed with, except by the consent of two-thirds of the members present," the Senate, failing to properly suspend the rules, also violated Senate Rule 18—

All bills and resolves in the second reading shall be committed to the committee on bills in the second reading, to be by them examined, corrected, and so reported to the senate.

Later that day, the 30th, the Senate took up for consideration a House resolution which had not yet passed the House—

House document 91. Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes, came from the House amended by the adoption of House amendment A, "That the Secretary of State be directed to notify the Secretary of State of the United States of the passage of this resolve."

The amendment was adopted in concurrence. (LR at 1045)

The foregoing was a Senate vote upon House amendment A which also had not yet been considered by the House. This particular House bill was in the same position procedurally as Senator Osborn's resolution had been—it required unanimous consent to be introduced. Nevertheless, the Senate took up House Bill No. 91.

On motion by Mr. MILLIKEN of Aroostook, "Resolve ratifying the proposed

amendment to the Constitution of the United States, giving Congress power to pay and collect taxes on incomes," (House Document No. 91), was adopted, in accordance with the provisions of the majority report.

On further motion by the same Senator, the resolve was read twice under suspension of the rules, and passed to be engrossed.

Sent down for concurrence. (SJ at 697) (emphasis added)

The foregoing Senate action was a passage of House Document No. 91 to a final draft.

The House then received the following communication from the Senate, also on the 30th—

Bill taxing incomes of the State, came from the Senate, that branch noncurring (sic), with the action of the House and passing the federal income tax bill. (LR at 1070)

According to Senate rule 8, there is no such response to the presentation of legislation from the House for concurrence by the Senate as "noncurring."

This message, however, caused the House, on the 30th, to take up House Bill No. 91 without it actually having originated in the House by a successful vote upon a report out of committee or upon a substitute—

The SPEAKER: The question is on House Bill 91, Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes. Is it the pleasure of the House that this resolve receive a passage?

It was agreed to.

The resolve then received its first reading.

Mr. Davies offered Amendment A, that the secretary of State be directed to notify the secretary of state at Washington, D. C., of the action of this Legislature. The amendment was adopted.

The resolve then received its second reading as amended and was passed to be engrossed in concurrence. (LR at 1071)

This order of events shows that the Senate adopted the Amendment A of Mr. Davies prior to its ever having been offered in, and then adopted by, the House, as shown by this entry in the Legislative Record. The Senate journal then shows the following action taking place later on the 30th—

"Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to pay and collect taxes on incomes," (House Document No. 91), which was passed to be engrossed by the Senate earlier in the day, came from the House passed to be engrossed, as amended by House amendment "A."

On motion by Mr. MILLIKEN of Aroostook, the vote was reconsidered whereby the bill was passed to be engrossed, House amendment "A" adopted in concurrence, and the bill was read twice under suspension of the rules, and passed to be engrossed as amended in concurrence. (SJ at 698) (emphasis added)

House Amendment A apparently was re-adopted in the proper sequence at this point, House Bill No. 91 being engrossed exactly as it had been previously on the 30th in the Senate, including the change of the title from "Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes" to "Resolve ratifying the proposed amendment to the Constitution of

the United States, giving Congress power to pay and collect taxes on incomes."

In the passage in the House of House Bill 91, House Rule No. 3 was violated—

The clerk shall keep a journal of what is done by the house; . . . note the answers of members, when the house orders or when a question is taken by yeas and nays . . .

This violation is confirmed by the House journal which shows the purported final tally but not the yeas and nays on roll call—

Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes,

Came up for final passage,

This Resolve required a two-thirds vote for final passage. A division of the House was had, and 101 voted for the final passage of the Resolve and none against the same. Hence the Resolve was finally passed. (HJ at 902) (emphasis added)

The Senate journal then shows that on the 31st the final passage of the following resolution took place without a vote—

"Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes";

Which bills were passed to be enacted, and the resolves were finally passed, in concurrence, and having been signed by the President, were by the Secretary presented to the Governor for his approval. (SJ at 707)

At no time was any vote recorded upon House Bill No. 91 in the Senate, as is confirmed by Senate Document No. 240 of the 71st Congress, (see Appendix) as well as by the Senate journal.

The resolution as purportedly passed and transmitted to Washington, D. C. read as follows:

#### STATE OF MAINE.

Resolve ratifying the proposed amendment to the Constitution of the United States, giving Congress power to lay and collect taxes on incomes.

Resolved, that whereas the Congress of the United States has proposed an amendment to the Constitution of the United States which provides that "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 whereas it requires the ratification of three-fourths of all the states to make the proposed amendment a part of the constitution,

Therefore, resolved, that the legislature of Maine ratifies and adopts the proposed amendment to the federal constitution. That the secretary of state be notified the secretary of state at Washington, D. C., of the action of the legislature.

Though they had a certified copy of the Congressional Joint Resolution in their possession, having been printed after its transmission by Governor Fernald, the legislators of Maine made the following changes to the official Congressional Joint Resolution—

1. the original preamble was discarded
2. the designation "Article XVI." was deleted
3. all commas were deleted
4. the word "States" was changed to a common noun

All such changes were in violation of the duty which the Maine 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 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.

In addition, the copy of this resolution which was received by Washington was signed only by the Secretary of State of Maine.

The Legislature of the State of Maine 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 House Bill No. 91 contained the following changes to the official Congressional Joint Resolution—

- a. the original preamble was discarded
- b. the designation "Article XVI." was deleted

- c. all commas were deleted
- d. the word "States" was changed to a common noun
- 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 to re-submit House Bill No. 91 after its rejection by both House and Senate in favor of the majority report, i. e., consideration of No. 91 in both houses without the required unanimous consent
- 4. Failure to record the votes on passage of House Bill No. 91 in both the House and the Senate
- 5. Failure to vote on House Bill No. 91 in the Senate



## Missouri—March 16th, 1911

The Governor of Missouri received a certified copy of the Congressional Joint Resolution on September 3rd, 1909. In sending Philander Knox, the Secretary of State of the United States, an acknowledgement, the Governor stated that he would submit that copy to the Missouri Legislature at the 1911 session. There is, however, no apparent record of that certified copy being transmitted as such.

On February 15th, 1911, Senator McAllister introduced Senate Joint and Concurrent Resolution No. 8, entitled—

A joint and concurrent resolution of the House and Senate ratifying the proposed amendment to the Constitution of the United States submitted by the Sixty-first Congress; Which was read first time and 400 copies ordered printed. (SJ at 262)

That resolution read as follows—

WHEREAS, the Congress of the United States, at the session thereof begun and holden in the city of Washington on Monday, the fifteenth day of March A.D. nineteen hundred and nine, did propose in the manner and form provided in the Constitution, as an amendment to the Constitution of the United States the following:

ARTICLE XVI. The congress shall have power to levy and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration, and did submit the same to the legislatures of the several states for ratification;

Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further,

Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington. (archives)

In the last paragraph, the word "given" had been scratched out, and the word "transmitted" substituted. A deliberate change. In the body of Article XVI, the word "lay" was scratched out, and the word "levy" substituted. Also, a deliberate change. This was in addition to the discarding of the preamble, changing the word "Congress" and the word "States" to common nouns and to the appending of the phrase "and did submit the same to the legislatures of the several states for for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the

same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" by virtue of the comma inserted after the word "enumeration".

These deliberate changes were a violation of the duty which the Missouri 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 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. C. R. No. 8, proposing an amended Sixteenth Amendment, made its way through the Senate in uneventful fashion. On the 21st of February, No. 8 was "taken up, read second time and referred to Committee on Ways and Means." (SJ at 367) On the 22nd, it was reported out of the Committee on Ways and Means, which recommended that the resolution pass. On the 27th, the resolution "was taken up, and on motion of Senator Humphrey, ordered engrossed and printed." (SJ at 443) On March 3rd, it was found to be correctly engrossed. (SJ at 544) And, finally, on March 7th, No. 8 "(w)as taken up, and on motion of Senator McAllister, put upon its third reading, and passed . . ." The vote

in the Senate was 30 in favor and none against. (SJ at 606)

The President declared the bill passed.

The title was read and agreed to.

Senator McAllister moved that the vote by which the bill passed be reconsidered.

Senator Welch moved that the motion lie on the table.

The latter motion prevailed.

No. 8 went on to consideration by the House. On March 8th, it was announced as having passed the Senate and recommended to pass the House. (HJ at 857) It was also read for the first time. On the 10th, "Senate joint and concurrent resolution No. 8 was read second time and referred to Committee on Ways and Means." (HJ at 953) On March 14th, the House Committee on Ways and Means recommended that the resolution pass. (HJ at 1029) On the 16th, a motion to substitute House Joint and Concurrent Resolution No. 16 for Senate Joint and Concurrent Resolution No. 8 was passed. The resolution, as amended, was read the third time and was passed by a vote of 113 in favor, 9 against, 26 absent. Then the title to S. J. C. R. No. 8 was read and agreed to. Representative Hull made a motion that the vote by which S. J. C. R. No. 8 had passed be reconsidered, and that that motion lie on the table, which motion carried. (HJ at 1117)

On March 17th, Senate Joint and Concurrent Resolution No. 8 was presented in the Senate with the amendment to title from the House (SJ at 843, 846), however, the amendment was not set forth in full, nor was any vote recorded as having been taken upon the resolution as amended in violation of Article IV, Section 32 of the Missouri State Constitution of 1875 which provides—

No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; . . .

On the 20th of March, No. 8, along with other bills, was "taken up, and the President announced that the same had passed both branches of the General Assembly; that all other business would be suspended; that the bills be read at length, and that unless objection be made he would sign the same, to the end that they become laws, and directed the Secretary, and no objection being made, the presiding officer, in the presence of the Senate, in open session, and no business intervening, affixed his signature thereto." (SJ at 1035)

Later that day, the same procedure was followed in the House—

All other business was suspended, Senate joint and concurrent resolution No. 8 . . . (others) were read at length, and, no objections being made, the Speaker, in open session, in the presence of the House, affixed his signature thereto, as provided by the Constitution. (HJ at 1383)

The title of the certified copy of S. J. C. R. No. 8 received at Washington reads—

A joint and concurrent resolution of the house and senate ratifying the proposed amendment to the Constitution of the United States, submitted by the sixty-first Congress:

Note that the words "house," "senate" and "sixty-first" are all changed to common

nouns from the original Senate title, confirming that the Senate resolution had been amended in the House.

The copy of S. J. C. R. No. 8 transmitted to Washington, D. C. was in proper order as to the signatures by both presiding officers, however, the Governor's signature is absent as is any record in the journals of presentation to the Governor. This was a violation of Article V, Section 14 of the Missouri State Constitution which required that—

Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this Constitution, shall be presented to the Governor, and before the same shall take effect, shall be proceed upon in the same manner as in the case of a bill . . .

Finally, S. J. C. R. No. 8 was passed in violation of Article X, Section 1 of the State Constitution which provided that—

The taxing power may be exercised by the General Assembly for **State** purposes, and by counties and other municipal corporation, under authority granted to them by the General Assembly, for **county and other corporate** purposes. (emphasis added)

Obviously, S. J. C. R. No. 8 granted a taxing power completely outside of the jurisdiction of the General Assembly of the State of Missouri and of the State itself.

The ratification of the State of Missouri was, thus, defective for the following reasons—

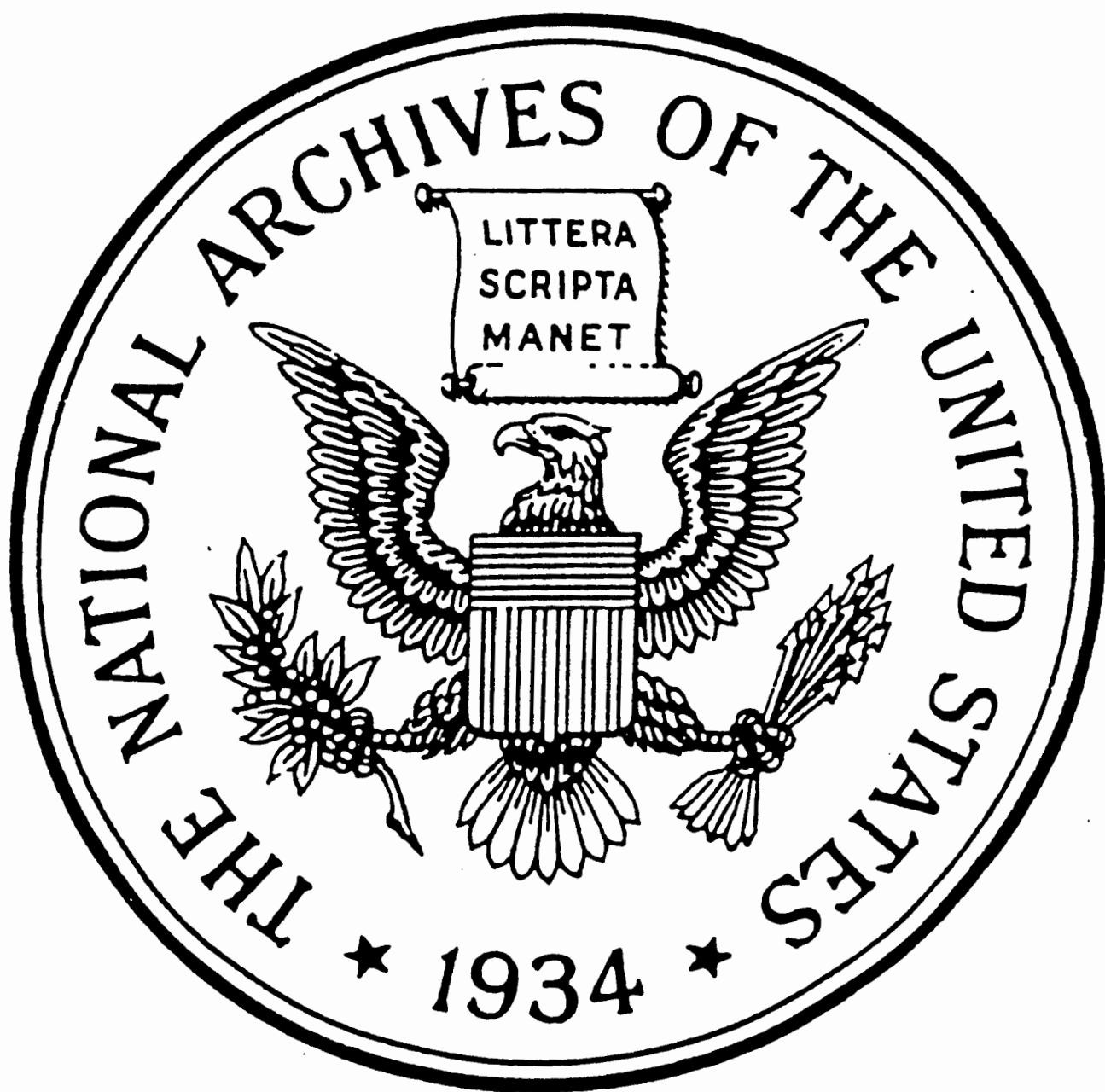
1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. C. R. No. 8 contains the following deliberate changes—

- a. the official preamble was discarded.
- b. the word "lay" was changed to "levy"
- c. the word "Congress" was changed to a common noun
- d. the word "States" was changed to a common noun
- e. the phrase "and did submit the same to the legislatures of the several states for ratification; Therefore, be it resolved, by the Senate and the House of Representatives, that the legislature of the state of Missouri does hereby ratify and assent to said amendment to the end that the same may become valid to all intents and purposes as a part of the Constitution of the United States; and be it further, Resolved, that a duly attested copy of this resolution, together with proper evidence of its adoption be transmitted by the President of the Senate and the Speaker of the house to the Secretary of State at Washington" was appended to S. J. C. R. No. 8 by virtue of the comma inserted after the word "enumeration"

2. S. J. C. R. No. 8 was amended as to title in its final form in violation of Article IV, Section 32 of the Missouri State Constitution

3. Though the certified copy of S. J. C. R. No. 8, as transmitted to Washington, D. C., was proper by appearances, the failure of the Legislature to submit the resolution to the Governor violated Article V, Section 14 of the Missouri State Constitution

4. Violation of Article X, Section 1 of the State Constitution in granting taxing powers which the Legislature had not the authority to grant.





MEMORANDUM CONCERNING THE QUESTION OF APPROVAL OR  
DISAPPROVAL BY THE PRESIDENT



July 15, 1909.

In connection with the Resolution of Congress proposing an amendment to the Constitution permitting the levying of an income tax, the following is brought to my attention by Mr. McMeir. The Resolution adopted by two-thirds of each House of the present Congress is in the form of a Joint Resolution, ordinarily requiring the approval of the President. In the case of *Hollingsworth vs. the State of Virginia* (3 Dallas, 378) the Supreme Court unanimously held that the President "has nothing to do with the proposition or adoption of amendments to the Constitution." In 1803 a motion in the Senate to submit a proposed amendment to the President for approval was rejected by a vote of seven to twenty-three, although in 1861 President Buchanan signed, without calling forth protest or objection, the proposed amendment prohibiting Congress from interfering with slavery in the states. The Thirteenth Amendment after having been passed by Congress was inadvertently submitted to the President, who signed it and notified Congress to that effect; whereupon the Senate passed a resolution "that such approval was unnecessary to give effect to the action of Congress in proposing said amendment . . . and shall not consti-

-2-

tute a precedent for the future."

It appears that the amendments which have been adopted have, with one exception, been proposed by concurrent resolution as distinguished from joint resolution.

Inasmuch as the question of whether the President may or may not desire to approve the resolution of Congress in regard to the income tax <sup>may be material,</sup> it may be of interest to know something of the previous practice.

10.7.6. >

Feb 10/13

Wm. L. Smith  
S. L. Smith

Chief Clerk

*Wm. L. Smith*

Respectfully referred to the  
Secretary with the recommendation  
that the matter be submitted to the  
Collector for a report as to whether  
the restrictions are in proper  
form and the preparation of the  
necessary announcement be made by  
the Secretary of State under Section  
205 of the Revised Statutes.

February 10, 1913.

WILLIAM L. SMITH

CHIEF CLERK

DEPARTMENT OF STATE

WASHINGTON

DEPARTMENT OF STATE  
WASHINGTON

CHIEF CLERK  
FEB 10 1913  
DEPT. OF STATE

MEMORANDUM FOR THE CHIEF CLERK.

February 10, 1913.

My dear Mr. McNeir:

I am advising you that thirty-six States have officially notified the Department of their ratification of the proposed Income Tax Amendment to the Constitution of the United States in order that the Secretary may be advised of the fact for the purpose of taking such action as he may desire in pursuance with Section 205 of the Revised Statutes.

Attached hereto you will find a list of the thirty-six States as well as copies of the Joint Resolution of Congress proposing the Amendment, and the Department's letter of July 26, 1909, submitting the Amendment to the States for their action thereon.

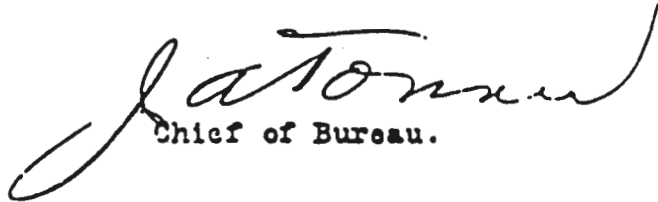
While the original papers relating to the Constitution of the United States are filed in the Bureau of Rolls and Library, it is presumed that a report on the legality of the Ratifications in question is a matter which the Secretary would probably refer to the Solicitor of the Department.

I wish to say, however, that with one or two exceptions the States have furnished a certified copy of their



their Resolution ratifying the Amendment, but in many cases the Resolution of Congress proposing the Amendment has been incorrectly quoted.

In addition to the thirty-six States, the States of Wyoming and New Mexico have notified the Department by telegraph of their Ratification, and it is probable that certificates of their action will be received in a few days.

  
Chief of Bureau.

STATES which have notified the Secretary of State of  
their action on the Proposed Income Tax Amend-  
ment to the Constitution of the United  
States.

RATIFICATIONS

ALABAMA	August 17, 1909
ARKANSAS	April 22, 1911
ARIZONA	April 9, 1912
CALIFORNIA	January 31, 1911
* COLORADO	February 20, 1911
* GEORGIA	August 3, 1910
IDAHO	January 20, 1911
ILLINOIS	March 1, 1910
INDIANA	February 6, 1911
IOWA	February 27, 1911
KANSAS	March 6, 1911
KENTUCKY	February 8, 1910
LOUISIANA	July 1, 1912
MAINE	March 31, 1911
MARYLAND	April 8, 1910
MICHIGAN	February 23, 1911
MINNESOTA	June 12, 1912
MISSISSIPPI	March 11, 1910
MISSOURI	March 16, 1911
MONTANA	January 31, 1911
* NEBRASKA	February 11, 1911
* NEVADA	February 8, 1911
NEW YORK	July 12, 1911
NORTH CAROLINA	February 11, 1911
NORTH DAKOTA	February 21, 1911
OHIO	January 19, 1911
OKLAHOMA	March 14, 1910
OREGON	January 23, 1911
SOUTH CAROLINA	February 23, 1910
SOUTH DAKOTA	February 3, 1912
TENNESSEE	April 11, 1911
TEXAS	August 17, 1910
WASHINGTON	January 26, 1911
WISCONSIN	May 26, 1911
* Delaware	Feb 3 1911
* New Jersey	Feb 5 1911

REJECTIONS

CONNECTICUT	September 27, 1911
NEW HAMPSHIRE	March 2, 1911 (Senate)
RHODE ISLAND	April 29, 1910
UTAH	March 9, 1911 (House)



DEPARTMENT OF STATE  
OFFICE OF THE SOLICITOR

MEMORANDUM

CHIEF CLERK  
FEB 27 1913  
DEPT. OF STATE

February 15, 1913.

Ratification of the 16th Amendment to the Constitution  
of the United States.

The Secretary has referred to the Solicitor's Office for determination the question whether the notices of ratifications by the several states of the proposed 16th amendment to the Constitution are in proper form, and if they are found to be in proper form, it is requested that this office prepare the necessary announcement to be made by the Secretary of State under Section 205 of the Revised Statutes.

The 61st Congress of the United States, at the first session thereof, passed the following resolution which was deposited in the Department of State July 31, 1909:

"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."

On July 27, 1909, the following concurrent resolution was passed by Congress:

"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

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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."

On July 26, <sup>1909</sup>1907, being the day before the above resolution was passed, the Secretary of State sent to the Governors of the several States certified copies of the joint resolution of Congress proposing the 16th amendment to the Constitution with the following letter of transmission:

"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.) [Note: Reference here is to R. S. Sec. 205 which is quoted infra.]

"An acknowledgment of the receipt of this communication is requested."

Section 205 of the Revised Statutes provides:

"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."

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,

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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.

The following list shows the order in which the amendment was ratified by the legislatures of the various states, the date given being the date upon which the resolution was passed by the legislature, or if this information does not appear on the certified copy of the resolution on file in the Department, the date indicated is that upon which the resolution of the state legislature was approved by the Governor:

Alabama	August 17, 1909.	"Approved". Doesn't appear whether Governor signed.
Kentucky	February 8 or 9, 1910	Date passed by legislature. Not signed by Governor; Legislature acted on resolution of Congress before it was transmitted to it by Governor.
South Carolina	February 19, 1910.	Date passed by legislature. Signed by Governor.
Illinois	March 1, 1910.	Date passed by legislature. Not signed by Governor.

Mississippi	March 7, 1910.	Date passed by legislature. Signed by Governor.
Oklahoma	March 14, 1910.	Date signed by Governor.
Maryland	April 8, 1910.	"Approved". Not signed by Governor.
Georgia	August 3, 1910.	"Approved". Doesn't appear whether Governor signed.
Texas	August 17, 1910.	Date signed by Governor.
Ohio	January 19, 1911.	"Adopted". Doesn't appear whether signed by Governor, - likely not.
Idaho	January 20, 1911.	Date passed by legislature. Not signed by Governor.
Oregon	January 23, 1911.	Date passed by legislature. Not signed by Governor.
Washington	January 26, 1911.	Date passed by legislature. Not signed by Governor. Governor signed.
California	January 31, 1911.	Date passed by legislature. Doesn't appear
Montana	January 31, 1911.	Date signed by Governor.
Indiana	February 6, 1911.	Date signed by Governor.
Nevada	February 8, 1911.	"Approved". Doesn't appear whether signed by Governor.
North Carolina	February 11, 1911.	Date passed by legislature. Not signed by Governor.
Nebraska	February 11, 1911.	Date signed by Governor.
Kansas	February 18, 1911.	Date passed by legislature. Signed by Governor.
Colorado	February 20, 1911.	Date signed by Governor.
North Dakota	February 21, 1911.	Date signed by Governor.
Michigan	February 23, 1911.	Date passed by legislature. Not signed by the Governor but it is attested by the Governor.
Iowa	February 27, 1911.	Date signed by Governor.
Missouri	March 16, 1911.	Date passed by legislature. Doesn't appear whether signed by Governor.
Maine	March 31, 1911.	Date passed by legislature. Signed by Governor.
Tennessee	April 7, 1911.	Date passed by legislature. Signed by Governor.
Arkansas	April 22, 1911.	Date passed by legislature. Governor vetoed June 1, 1912. March 28, 1911. Governor informed Secretary of State legislature had failed to pass resolu- tion. So first rejected and sub- sequently ratified.
Wisconsin	May 26, 1911.	Date received by Secretary of State of Wisconsin. Not signed by Governor.
New York	July 12, 1911.	Date passed by legislature. Not signed by Governor.
South Dakota	February 3, 1912.	Date filed by State Secretary of State. Not signed by Governor. No date of adoption given.
Arizona	April 9, 1912.	Not clear whether date passed by legislature or signed by Governor.



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Minnesota	June 11, 1912.	Date passed by legislature. Signed by Governor. Secretary of Governor merely informs Department and no resolution of legislature enclosed.
Louisiana	July 1, 1912.	Date passed by legislature. Signed by Governor.
Delaware	February 3, 1913.	Date passed by legislature. Not signed by Governor.
Wyoming	February 3, 1913.	Doesn't appear whether date passed by legislature or signed by Governor. Signed by Governor.
New Jersey	February 5, 1913.	Date signed by Governor.
New Mexico	February 5, 1913.	Date signed by Governor.

Ratification by Arkansas. Power of the Governor to veto.

It will be observed from the above record that the Governor of the State of Arkansas vetoed the resolution passed by the legislature of that State. It is submitted, however, that this does not in any way invalidate the action of the legislature or nullify the effect of the resolution, as it is believed that the approval of the Governor is not necessary and that he has not the power of veto in such cases. (See Solicitor's memorandum on this subject dated April 20, 1911.)

Power of a State to Ratify after having once Rejected the Proposed Amendment.

It will also be observed that Arkansas ratified the proposed 16th Amendment after having previously rejected it. It would appear that the Legislature of a State may act adversely any number of times and it still has the right to act favorably and the ratification is as valid as if it had never acted adversely on the question. New Jersey ratified the 13th Amendment after having rejected it. In the case of the 14th Amendment, four States acted similarly (North Carolina, South Carolina, Georgia, Virginia).

In all these cases the states which had taken action ratifying the various amendments before the Secretary's announcement was made were

included by the Secretary of State in the list of states ratifying.

In the case of the 14th Amendment, all the states mentioned above except Virginia, which state ratified the amendment after the Secretary's announcement was made, were included in the declaration of the Secretary of State. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Kentucky's Ratification.

It is to be noted that the Kentucky legislature passed a resolution ratifying the proposed 16th Amendment before a copy of the resolution of Congress was transmitted to that body by the Governor and that when the Governor received the certified copy of the Joint Resolution of Congress from the Secretary of State and transmitted it to the legislature, the latter refused to act on it. Inasmuch as there is no statute or other law or Congressional action which might properly be regarded as preventing the legislature's acting upon the Resolution of Congress proposing an amendment to the Constitution until a copy of the Resolution has been sent by the Secretary of State to the Governor and until the latter officer has transmitted the same to the legislature, it is believed that the legislature of Kentucky has validly ratified the proposed 16th Amendment. (See Solicitor's memorandum on the subject of Kentucky's ratification of the 16th Amendment, dated March 21, 1912.)

Errors in Resolutions of State Legislatures in quoting the Proposed  
16th Amendment.

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 Mexico) 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:

Alabama	Error of punctuation.
Kentucky	Errors of punctuation and capitalization.
South Carolina	Error of capitalization.
Illinois	Error of capitalization; "renumeration" instead of "enumeration".
Mississippi	"The" omitted before "Congress"; errors of punctuation and capitalization; "of" instead of "or" before "enumeration".
Oklahoma	Error of capitalization; "from" used instead of "without regard to" before "any".
Maryland	Error of punctuation.
Georgia	"Levy" used instead of "lay"; errors of punctuation; "sources" instead of "source"; "income" instead of "incomes".
Texas	Error of punctuation.
Ohio	Error of capitalization.
Idaho	Error of capitalization; "of" instead of "or" before "enumeration".
Oregon	Error of capitalization.
Washington	Errors of capitalization and punctuation; "income" instead of "incomes".
California	"The" omitted before "Congress"; "any" before "census", and "or" before "enumeration" omitted; errors of punctuation and capitalization.
Montana	Errors of capitalization.
Indiana	Error of capitalization.
Nevada	Errors of punctuation and capitalization.
North Carolina	Errors of punctuation and capitalization.
Nebraska	Error of capitalization.
Kansas	Error of capitalization.
Colorado	Error of punctuation.
North Dakota	No errors.
Michigan	Error of capitalization.
Iowa	Error of capitalization.
Missouri	Error of capitalization; "levy" instead of "lay".
Maine	Errors of punctuation and capitalization.
Tennessee	No errors.

Arkansas	"The" before "Congress" omitted; "the" before "power" inserted; errors of punctuation and capitalization.
Wisconsin	Errors of capitalization.
New York	Errors of punctuation and capitalization.
South Dakota	"The" before "Congress" omitted; errors of punctuation and capitalization.
Arizona	No errors.
Minnesota	Resolution of the State Legislature not filed with the Department.
Louisiana	Error of punctuation.
Delaware	"Article XVI" omitted; errors of punctuation.
Wyoming	Errors of punctuation and capitalization.
New Jersey	Error of capitalization.
New Mexico	No errors.

A careful examination of the resolutions of the various states on file in the Department, ratifying the 15th amendment to the Constitution, shows that there are many errors of punctuation and capitalization and some, although no substantial, errors of wording, in quoting the article proposed by Congress as shown in the following list:

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## "Article IV.

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

New Jersey	Capital letters omitted.
Minnesota	Several errors of capitalization and punctuation.
Georgia	The word "or" is written in after the word "race" but marked out with pencil.
Ohio	Errors of punctuation.
Kansas	Errors of capitalization. Section 2. Wording entirely wrong as follows: "The Congress, by appropriate legislation may enforce the provisions of this article." Kansas ratified as above, February 1869, but in January, 1870, appears to have ratified again, copying the amendment correctly.
Rhode Island	The word "rights" is used instead of the word "right", and there are errors of capitalization. These errors appear in one copy filed in the Department, but there is a second copy which is entirely correct.
Mississippi	Errors of punctuation.
Missouri	Errors of capitalization.
Vermont	Errors of capitalization.
Florida	Errors of capitalization and punctuation.
Connecticut	Errors of punctuation, commas omitted.
Indiana	The word "the" is inserted before the word "citizens".
New York	The word "the" is inserted before the word "citizens".
Pennsylvania	Errors of punctuation, commas omitted.
South Carolina	Errors of punctuation, commas omitted.
Wisconsin	Capital letters omitted and the word "the" inserted.
Michigan	Errors of capitalization and punctuation.
Illinois	Errors of punctuation, commas omitted.
Louisiana	The word "by" is omitted before the word "any", in the original, but is inserted in pencil. Errors of capitalization.
West Virginia	Errors of capitalization.
Nevada	Errors of capitalization.
North Carolina	Error of punctuation; comma inserted after the word "state".

In the resolutions of the state legislatures on file in the Depart-

ment, ratifying the 14th amendment to the Constitution, there are many errors of punctuation, capitalization, and wording, some of the errors in wording being substantial errors, as will appear from the following list:

"Article XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

"Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall



assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Connecticut	Errors of punctuation and capitalization; "and" for "any" after "pay", Section 4.
New Hampshire	Errors of punctuation and capitalization; "the" for "a" after "of" and before "State", Section 2; "of" inserted between "but" and "all", Section 4.
Tennessee	Errors of punctuation and capitalization.
New Jersey	Errors of punctuation and capitalization.
Oregon	Errors of punctuation and capitalization.
Vermont	Errors of punctuation and capitalization; "that" for "the", Section 5.
New York	Errors of punctuation and capitalization; "or" for "and" between "executive" and "judicial", Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Ohio	Errors of punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3.
Illinois	Errors of punctuation and capitalization.
West Virginia	Errors of punctuation and capitalization; "for" for "of" between "elector" and "President", Section 3; "rebellion or" inserted between "in" and "insurrection"; "or bounties" omitted after "pensions", Section 4.
Kansas	Errors of punctuation and capitalization.
Maine	Errors of punctuation and capitalization.
Nevada	Errors of punctuation and capitalization; "being" inserted between "and" and "citizens", Section 2; "or" instead of "and" between "obligations" and "claims", Section 4. "The" omitted before "Congress", Section 5.
Missouri	Errors of punctuation and capitalization.
Indiana	Errors of punctuation and capitalization; "or" for "nor" between "States" and "any", Section 4; "claims" for "claim" between "any" and "for", Section 4.
Minnesota	Errors of punctuation and capitalization.
Rhode Island	Errors of punctuation and capitalization; "or" for "and" between "executive" and "judicial", Section 2; "to" for "or" between "assume" and "pay", Section 4.

Wisconsin	<p>Errors of punctuation and capitalization: "numbers" for "number" between "jurisdiction" and "counting", Section 2; "whenever" for "when" between "but" and "the", Section 2; "the choice of" omitted between "for" and "electors", Section 2; "of" for "for" between "electors" and "President", Section 2; "of the United States" omitted between "Vice President" and "Representative", Section 2; "or for United States" inserted before "Representatives", Section 2; "the" omitted before "Executive", Section 2; "or" for "and" between "Executive" and "Judicial", Section 2; "of a state" omitted after "judicial officers", Section 2; "to" for "in" between "reduced" and "the", Section 2.</p> <p>Section 2 is erroneously quoted: "Representatives shall be apportioned among the several states according to their respective number counting the whole number of persons in each state, excluding Indians not taxed. But whenever the right to vote at any election for electors of President and Vice President, or for United States Representatives in Congress, Executive or Judicial Officers or the members of the Legislature thereof, is denied to any of the male inhabitants of such state being twenty one years of age and citizens of the United States or in any way abridged except for participation in rebellion or other crimes the basis of representation therein shall be reduced to the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."</p> <p>"or" for "and" between "President" and "Vice-President", Section 3; "or as an officer of the United States" omitted between "Congress" and "or", Section 3; "vote of two thirds" changed to "a two thirds vote"; "the" inserted between "for" and "payment"; "the" inserted after "suppressing", Section 4; "that" for "the", Section 5.</p>
Pennsylvania	<p>Errors in punctuation and capitalization: "laws" for "law" where the word first appears in Section 1; "law" for "laws", last word, Section 1; "or" for "nor" between "States" and "any" where the word first appears in Section 4.</p>
Michigan	<p>Errors in punctuation; "or" for "and" between "President" and "Vice President", Section 3.</p>
Massachusetts	<p>Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted between "representation" and "shall", Section 2; "such" for "male" before</p>

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"citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3.

Nebraska	Errors of punctuation and capitalization; "any" inserted before "electors", Section 2; "or" for "and" between "President" and "Vice President", Section 3.
Iowa	Errors in punctuation and capitalization; "abridge" for "abridged" after "way", Section 2.
Arkansas	Errors in punctuation and capitalization; "or" for "and" between "President" and "Vice President", Section 3; "or under any State" omitted after "United States", Section 3.
	In a second copy of the resolution, the proposed amendment is copied correctly so far as the wording is concerned, but there are errors of punctuation and capitalization. In Section 2 there is a period after "numbers" and "counting" is commenced with a capital letter.
Florida	Errors in punctuation and capitalization; "First" is substituted for "Article 1"; "Second" for "Article 2"; "Third" for "Article 3"; "Fourth" for "Article 4"; "Fifth" for "Article 5"; "of" omitted before "the State" in first sentence, Section 1; "or" for "and" between "President" and "Vice President", Section 3; "and" for "or" between "aid" and "comfort", Section 3.
North Carolina	Errors in punctuation and capitalization; "the" omitted before "Executive", Section 2; "and" for "or" between "aid" and "comfort", Section 3.
Louisiana	Errors in punctuation and capitalization; "be as" for "bear" after "shall", Section 2.
South Carolina	Errors in punctuation and capitalization; "the members of" omitted before "the Legislature", Section 2; "therein" omitted after "representation", Section 2; "such" for "male" before "citizens" where the latter word last appears in Section 2; "or" for "and" between "President" and "Vice President", Section 3; "the" inserted before "payment", Section 4.
Alabama	Errors in punctuation and capitalization; "Legislatures" for "Legislature", Section 2.
Georgia	Errors in punctuation and capitalization; "Section 1st" for "Section 1"; "Section 2d" for "Section 2"; "Section 3d" for "Section 3"; "Section 4th" for "Section 4"; "Section 5th" for "Section 5"; "the" inserted before "citizens" where the latter word last appears in Section 1, but crossed out by pencil; "rendered" for "reduced", Section 2.

but crossed through with pencil and "reduced" inserted in pencil; "and" for "or" between "aid" and "comfort", Section 3.

In a second copy of the resolution on file in the Department "the" is not inserted before "citizens" as above indicated; there is no error in the word "reduced" in this second copy, Section 2, nor in the word "or" between "aid" and "comfort". In a third copy of the resolution filed in the Department, the sections are correctly indicated.

Virginia

Errors in punctuation and capitalization; "and" for "or" between "aid" and "comfort", Section 3; "and" for "or" between "insurrection" and "rebellion", Section 4; "or" for "and" between "obligations" and "claims", Section 4.

Mississippi

Errors in punctuation and capitalization; "way" omitted before "abridged" but inserted in blue pencil, Section 2; "orimes" for "orime", Section 2; "for" instead of "of" after "elector", Section 3, but inserted in blue pencil; "to" instead of "shall" before "have engaged", Section 3, but inserted in blue pencil; "jeld" omitted before "illegal", Section 4, but inserted in blue pencil.

Texas

Errors in punctuation and capitalization; "or under any State" omitted, Section 3.

At the time the 14th Amendment was adopted, there were thirty-seven states in the Union, therefore twenty-eight were necessary to make up the required three-fourths necessary to ratify an amendment to the Constitution. The first thirty states above mentioned were all included in the declaration of the Secretary of State announcing the adoption of the 14th amendment. The three latter states were not included in that declaration.

It will be observed that there were many substantial errors of wording in the resolutions of the state legislatures upon which the Secretary of State acted in issuing his declaration announcing the adoption and the ratification by the states of the 14th amendment to the Constitution. As, by announcing the ratification of the 14th amendment the Executive Branch of the Government ruled that these errors were immaterial to the adoption of the amendment, and further as this amendment has been repeatedly before the

courts, and has been by them enforced, it is clear that the procedure in ratifying that amendment constitutes on this point a precedent which may be properly followed in proclaiming the adoption of the present amendment,-- that is to say, that the Secretary of State may disregard the errors contained in the certified copies of the resolutions of legislatures acting affirmatively on the proposed amendment.

It should, moreover, be observed that it seems clearly to have been the intention of the legislature in each and every case to accept and ratify the 16th amendment as proposed by Congress. Again, the incorporation of the terms of the proposed amendment in the ratifying resolution seems in every case merely to have been by way of recitation. In no case has any legislature signified in any way its deliberate intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

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. It, therefore, seems a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. Moreover, it could not be presumed that by a mere change of wording probably inadvertent, the legislature had intended to reject the

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amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. For these reasons it is believed that the Secretary of State should in the present instance include in his declaration announcing the adoption of the 16th amendment to the Constitution the States referred to notwithstanding it appears that errors exist in the certified copies of Resolutions passed by the Legislatures of those States ratifying such amendment.

The Department has not received a copy of the Resolution passed by the State of Minnesota, but the Secretary of the Governor of that State has officially notified the Department that the Legislature of the State has ratified the proposed 16th amendment. It is believed that this meets fully the requirement with reference to the receipt of "official notice" contained in Section 205 Revised Statutes, and that Minnesota should be numbered with the States ratifying the aforesaid amendment.

It is recommended, therefore, that the Secretary issue his declaration announcing the adoption of the 16th amendment to the Constitution.

PDR/JBB/JHP.

O.K. JBB

JHP





DEPARTMENT OF STATE  
OFFICE OF THE SOLICITOR  
MEMORANDUM

CHIEF CLERK  
FEB 25 1913  
DEPT. OF STATE

February 20, 1913.

The Secretary:

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 of the forty-two States have taken action purporting to ratify the amendment. However, certain irregularities exist in the action of several of these States to which your attention should be called before you announce the adoption of the 16th amendment.

1. The Legislature of Arkansas first acted adversely upon the proposed amendment, but subsequently passed a resolution ratifying the same. In the case of the 14th amendment, three States acted similarly and they were all three included in the declaration of the Secretary of State announcing the adoption of that amendment. For this reason and for the further reasons pointed out in the attached memorandum dated March 21, 1912, it is believed that the previous rejection by the Legislature of Arkansas should not prevent the inclusion of that State in the list of States ratifying the 16th amendment.

2. The Governor of the State of Arkansas attempted to veto the resolution passed by the Legislature of that State ratifying the proposed 16th amendment.

As is quite fully developed in the memorandum of April 20th, attached herewith, the Constitution provides that an amendment to the Constitution shall be ratified by the Legislatures of the States not by the law making body of the states. The latter might include participation by the Governors, whereas the former seems by implication clearly to exclude them. Indeed, it has been the uniform custom since the beginning of our government to regard the gubernatorial approval of legislative action in the matter of ratifying amendments as wholly unnecessary to the validity of the action of the legislatures. If the approval of the Governor is unnecessary to validate an affirmative action of the legislature it must be because the Governor has legally no concern with the performance by the legislature of this constitutional function; and if this be a sound deduction, then it must be that an attempted veto by the Governor of legislative action would likewise be of no effect whatever.

It is submitted that the above conclusion is sound in law and that, therefore, this action on the part of the Governor of Arkansas does not nullify the action of that State and that Arkansas should be included in the list of states ratifying the 16th Amendment.

3. The Kentucky Legislature passed a resolution ratifying the proposed 16th amendment before a copy of the resolution of Congress was transmitted to the Legislature by the Governor of the State. Moreover, when later the Governor received the certified copy of the Joint Resolution of Congress from the Secretary of State of the United States and transmitted the same to the Legislature, the latter body refused to take any further action in the matter. However, since there is no statute or law or Congressional action which might properly be regarded as requiring that

Legislatures should not act upon the Resolution of Congress proposing an amendment to the Constitution until a copy of the Resolution has been sent by the Secretary of State to the Governor and by him received and transmitted to the Legislature, and inasmuch as all the positive and specific requirements of the law governing the matter are met when the legislature acts upon the amendment, without regard to the questions of how the fact that an amendment had been proffered or how a knowledge of its terms had reached the legislature (see attached memorandum of March 21, 1912), it is believed that the Legislature of Kentucky has validly ratified the proposed 16th amendment.

4. In the certified copies of Resolutions on file in the Department passed by the Legislatures of the various States ratifying the proposed 16th amendment, it appears that in only four of these Resolutions has the 16th amendment as proposed by Congress been accurately and precisely quoted. The other thirty-three copies of Resolutions all contain errors either of punctuation, capitalization, or wording. The copies of Resolutions passed by twenty-two States contain errors of capitalization or punctuation, or both; copies of eleven others contain errors in wording, some of them substantial as will be seen from the attached memorandum of February 13, 1913, page 7.

On this point it should, however, be noted that a careful examination of the copies of Resolutions of the State Legislatures filed in the Department ratifying the 14th amendment to the Constitution shows in those Resolutions even more errors than those existing in the copies of Resolutions ratifying the proposed 16th amendment, and the errors themselves are equally serious. As, by announcing the ratification of the 14th amendment the

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Executive Branch of the Government ruled that these errors were immaterial to the adoption of the amendment, and further as this amendment has been repeatedly before the courts, and has been by them enforced, it is clear that, the procedure in ratifying that amendment constitutes on this point a precedent which may be properly followed in proclaiming the adoption of the present amendment, - that is to say, that the Secretary of State may disregard the errors contained in the certified copies of the resolutions of legislatures acting affirmatively on the proposed amendment.

It should, moreover, be observed that it seems clearly to have been the intention of the legislature in each and every case to accept and ratify the 16th amendment as proposed by Congress. Again, the incorporation of the terms of the proposed amendment in the ratifying resolution seems in every case merely to have been by way of recitation. In no case has any legislature signifi<sup>ed</sup> in any way its deliberate intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

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. It, therefore, seems a necessary presumption, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something that it had the power to do, namely, where its action has been affirmative, to ratify the amendment proposed by Congress. Moreover, it could not be presumed that by a mere charge

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of wording probably inadvertent, the legislature had intended to reject the amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. For these reasons (and see attached memorandum of February 15, 1913), it is believed that the Secretary of State should in the present instance include in his declaration announcing the adoption of the 16th amendment to the Constitution the States referred to, notwithstanding it appears that errors exist in the certified copies of Resolutions passed by the Legislatures of those States ratifying such amendment.

5. The Department has not received a copy of the Resolution passed by the State of Minnesota, but the Secretary of the Governor of that State has officially notified the Department that the Legislature of the State has ratified the proposed 16th amendment. It is believed that this meets fully the requirement with reference to the receipt of "official notice" contained in Section 205 Revised Statutes, which provides,

"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."

and that Minnesota should be numbered with the States ratifying the aforesaid amendment.

6. It is recommended, therefore, that the Secretary issue his declaration announcing the adoption of the 16th amendment to the Constitution and to this end a draft declaration is herewith attached.

PIR/JEB/JEP.

*J. K. G. [Signature]*

*[Signature]*

FEB 27 1913  
DEPT. OF STATE

PHILANDER C. KNOX,

Secretary of State of the United States of America.

To all to Whom these Presents may come, Greeting:

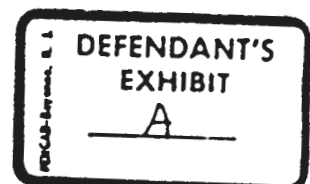
Know Ye that, the Congress of the United States  
at the first Session, sixty-first Congress, in the  
year one thousand nine hundred and nine, passed a  
Resolution in the words and figures following: to wit--

"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."

And, further, that it appears from official documents on file in this Department that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Alabama, Kentucky, South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming, in all thirty-six.

And, further, that the States whose Legislatures have so ratified the said proposed Amendment, constitute three-fourths of the whole number of States in the United States.

And, further, that it appears from official documents on file in this Department that the Legislatures of New Jersey and New Mexico have passed Resolutions

ratifying the said proposed Amendment.

Now therefore, be it known that I, Philander C. Knox, Secretary of State of the United States, by virtue and in pursuance of Section 205 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-fifth

day of February in the year of

our Lord one thousand nine

hundred and thirteen, and

of the Independence of the

United States of America the

one hundred and thirty-seventh.

*Philander C. Knox*

CERTIFICATE OF SERVICE

I, Peter Thiem, hereby declare and state that each party hereunder addressed has been served a copy of the foregoing by United States Mail, Certified, Return Receipt Requested, on this the 11th day of April, 1985.

Peter Thiem

PARTIES SERVED

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