

Arizona—April 9th, 1912

Article IV, Part 2, Section 12 of the Constitution of the State of Arizona of 1910 provided that—

Every bill shall be read by sections on three different days, unless in case of emergency, two-thirds of either House deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be dispensed with, and the vote on the final passage of any bill or joint resolution shall be taken by ayes and nays on roll call. Every measure when finally passed shall be presented to the Governor for his approval or disapproval.

Section 25 of the same Article gave only one example of an "emergency" and that was "periods of emergency resulting from disaster caused by enemy attack." Section 15 of the same Article required that—

A majority of all members elected to each House shall be necessary to pass any bill, and all bills so passed shall be signed by the presiding officer of each House in open session.

In the Journal of the Arizona Senate of April 3rd, 1912, a day on which there is no recorded enemy attack upon the State of Arizona, nor of any other "disaster," the following entry appears without any previous reference in that journal to the named Senate Joint Resolution—

Senate Joint Resolution No. 1 was read third time by Sections and upon roll call was passed by unanimous vote.

The Senate, not recognizing an existing emergency situation, had not dispensed with the provisions of Section 12. There was no required first reading, no required second reading, no setting forth of the roll call, nor was there any required signing of S. J. R. No. 1 in open session by the President of the Senate.

Document No. 240 of the United States Senate, 71st Congress (See Appendix), in agreement with the Arizona Journal, notes that there is "no record vote," and, unlike the vote in the Arizona House which is listed on Document No. 240 with the number of Yeas and Nays, the vote in the Arizona Senate in Senate Document No. 240 is listed merely as "Passed."

On March 19th of 1912, the following resolution was introduced in the Arizona House of Representatives by Rep. W. M. Whipple—

JOINT RESOLUTION (HOUSE RESOLUTION)

Of the Legislature of the State of Arizona, Ratifying and Approving the proposed amendment to the Constitution of the United States, relative to an

Income Tax.

WHEREAS, the Sixty-first Congress of the United States of America, at the First Session thereof, begun and held at the City of Washington, on Monday, the 15th day of March, 1909, proposed an amendment to the Constitution of the United States in words and figures as follows:

"ARTICLE XVI. Congress shall have the 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."

Now therefore, be it

RESOLVED, by the Legislature of the State of Arizona, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified.

2. That the Governor of this State be and he is hereby requested to forward to the Secretary of State at Washington, District of Columbia, and to our Senators and Representative in Congress, individual transcripts of this resolution duly authenticated and attested with the Seal of the State of Arizona. (HJ at 11)

There was an immediate attempt to adopt H. J. R. No. 1 and report it to the Senate (HJ at 11). That attempt, however, was stopped by a successful motion to reconsider such a course. (HJ at 11).

On the following day, the previous day's reading of H. J. R. No. 1 was noted and the resolution was referred to the Judiciary Committee. (HJ 18)

Later on the same day, the House had the second reading of H. J. R. No. 1. At that time, the House had not, like the Senate, recognized any "emergency" and, thus, had also not dispensed with the Constitutional provisions for the reading of bills and resolutions. H. J. R. No. 1 was then referred to the Committee on Printing. (HJ at 22)

On the 29th of March, with no intervening record in the journal, the following took place—

Your Committee on Enrolling and Engrossing begs leave to report that it has considered House Joint Resolution No. 1, by Mr. Whipple and respectfully recommend that it be placed on its 3rd reading as Enrolled and Engrossed and do pass.

W. M. WHIPPLE,
Chairman. (HJ at 46)

On the same day, Chairman Whipple's report was read as set forth above and, then, H. J. R. No. 1 was taken up for consideration in the following manner—

Moved and seconded that House Joint Resolution No. 1, be placed on its third reading and final passage. Carried.

The vote on the roll call was then fully recorded. The roll call showed a vote of 33 in the affirmative, none in the negative and two excused. (HJ at 68) It is not recorded whether H. J. R. No. 1 was subsequently signed by the Speaker of the House in open session.

The status of H. J. R. No. 1 became moot when S. J. R. No. 1 was submitted into the House on the 4th of April, but it was not submitted by virtue of a Senate communication. It was introduced with an inappropriate first reading—

Under First reading of Bills the following were submitted:
Senate Joint Resolution No. 1, by Mr. C. B. Wood, Ratifying the Sixteenth Amendment of the Constitution of the United States.

First reading of the Bill by title. (HJ at 116)

This first reading of S. J. R. No. 1 in the House, not under a declared emergency, was constitutionally insufficient because it was read only by title. Further, it is not certain whether that was the correct title because the title of S. J. R. No. 1 was never recorded in the Senate journal.

Later, the same day, the House declared an emergency.

Moved and Seconded that an emergency exists and that the reading of Senate Joint Resolution No. 1, Senate Bill No. 5, Senate Bill No. 10, and Senate Bill No. 30, first reading, by number and title only was authorized by a two-thirds vote of all the members elected to the House, declaring that an emergency exists and that it was expedient that Section 12, Article IV, of the Constitution relating to the reading of Bills by sections on first reading be dispensed with. Carried. (HJ at 117) (emphasis added)

Subsequent to the foregoing action of the 4th of April, S. J. R. No. 1 officially arrived in the House later that day—

The following communications were received from the Senate:

“Mr. Speaker: I am directed by the Senate to inform the House that it has passed Senate Joint Resolution No. 1.

**“J. M. McCOLLUM,
Secretary of Senate.” (HJ at 117)**

“To the Speaker of the House of Representatives.

“Sir: I have the honor to inform you that the Senate today passed the accompanying Senate Joint Resolution No. 1.

“Respectfully,

**“M. G. CUNNIFF,
“President of Senate.” (HJ at 118)
(emphasis added)**

The second reading of S. J. R. No. 1, which was the first after the official communication from the Senate, was then had—

Senate Joint Resolution No. 1, by Mr. C. B. Wood, Ratifying the Sixteenth Amendment of the Constitution of the United States.

Second reading of the Bill by title and referred to the Judiciary Committee. (HJ at 120)

Finally, on that same day, S. J. R. No. 1 was—

... read third time by sections and the roll call, postponed until Monday April 8, 1912. (HJ at 131)

When the roll call vote on S. J. R. No. 1 was taken, the resolution was again—

... read third time in full, placed on final passage, and passed by the following vote . . .

33 in the affirmative, 1 absent and 1 excused. The House roll call vote was duly recorded in the Journal. S. J. R. No. 1 was then signed by the Speaker of the House and conveyed to the Senate. (HJ at 134)

Under the provisions of the last clause of S. J. R. No. 1, as well as the Congressional Concurrent Resolution, certified copies of S. J. R. No. 1 were to be sent to the Secretary

of State of the United States. An unsigned copy of S. J. R. No. 1 was transmitted to the Secretary of State along with a signed certificate from the Secretary of State of Arizona. The copy of S. J. R. No. 1 sent to Washington, D. C. read as follows—

S. J. R. I.

A JOINT RESOLUTION

Of the Legislature of the State of Arizona ratifying the Sixteenth Amendment to the Constitution of the United States.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Whereas, both Houses of the Sixty-first Congress of the United States of America at its first session, begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine, by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, 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 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.

THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF THE STATE OF ARIZONA:

That the said proposed amendment to the Constitution of the United States be, and the same is hereby approved and ratified by the Legislature of the State of Arizona;

AND, FURTHER BE IT RESOLVED, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State of the United States of America at Washington, to the President of the United States Senate, and to the Speaker of the House of Representatives of the National Congress.

April 3, 1912.

M. G. Cunniff

President of the Senate.

Sam B. Bradner

Speaker of the House of Representatives.

Approved April 9, 1912.

Geo. W. P. Hunt

Governor of Arizona.

In this version of S. J. R. No. 1, it might appear that the Arizona Legislature made virtually no changes to either the preamble or the proposed amendment proper, but the Solicitor of the Department of State made the comment, apparently because the copy of S. J. R. No. 1 received by the Department of State is unclear, that he wasn't sure whether April the 9th was the date that S. J. R. No. 1 was "passed by legislature" or the date "signed by Governor." April 3rd, 1912 is the date indicated on the copy at the Depart-

ment of State as the date on which the President of the Senate and the Speaker of the House of the Arizona legislature signed S. J. R. No. 1. It can easily be seen by the House journal that April 4th, 1912 is the correct date of the signing of S. J. R. No. 1 by the Speaker. In fact, April 4th is the date on which S. J. R. No. 1 was first read in the House and then was received belatedly from the Senate. No wonder the House members declared an emergency. Only having received S. J. R. No. 1 from the Senate on the 4th, they were supposed to have already passed S. J. R. No. 1 on the 3rd, since the Speaker's signing of S. J. R. No. 1 is indicated for that day. There is no record in the Senate journal of the signing of S. J. R. No. 1 by the President of the Senate, although the Governor is recorded on the above document as having signed S. J. R. No. 1 on April 9th. In the *SESSION LAWS OF ARIZONA FIRST AND SPECIAL SESSION. 1912.* S. J. R. No. 1 is recorded as having been approved into law on April 8th.

Perhaps the real problem lies in the multitude of changes which were made between S. J. R. No. 1 as passed by the Legislature and the version sent to Washington, which showed the following changes from the former version—

1. the comma after the first instance of the word "Arizona" was deleted;
2. the word "Ratifying" was changed to the word "ratifying";
3. the phrase "and approving" was deleted;
4. the word "proposed" was changed to the word "Sixteenth";
5. the word "amendment" was capitalized;
6. the comma following the first instance of the word "States" was changed to a period;
7. the phrase "relative to an Income Tax" was deleted;
8. the enacting clause "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:" was added following the title;
9. the word "WHEREAS" was changed to "Whereas";
10. the phrase "both Houses of" was inserted after the word "Whereas";
11. the comma following the first instance of the word "America" was deleted;
12. the phrase "at the First Session thereof" was changed to "at its first session";
13. the comma following the word "Washington" was deleted;
14. the phrase "the 15th day of March, 1909" was changed to "the fifteenth day of March, one thousand nine hundred and nine";
15. the phrase "proposed an amendment to the Constitution of the United States in words and figures as follows": was changed to "by a Constitutional majority of two-thirds thereof, made the following proposition to amend the Constitution of the United States of America in the following words, 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:"

16. the word "the" in the proposed amendment was deleted;
17. the comma following the word "incomes" was restored;
18. the comma following the word "derived" was restored;
19. the comma following the word "States" was restored;

20. the phrase "Now therefore, be it" was deleted;

21. the paragraph "RESOLVED, by the Legislature of the State of Arizona, That the foregoing resolution, being the Sixteenth Amendment to the Constitution of the United States, be, and the same is hereby, approved and ratified." was replaced by "THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF THE STATE OF ARIZONA: That the said proposed amendment to the Constitution of the United States be, and the same is hereby approved and ratified by the Legislature of the State of Arizona;" ;

22. the paragraph "2. That the Governor of this State be and he is hereby requested to forward to the Secretary of State at Washington, District of Columbia, and to our Senators and Representative in Congress, individual transcripts of this resolution duly authenticated and attested with the Seal of the State of Arizona." was replaced with "AND, FURTHER BE IT RESOLVED, That certified copies of this joint resolution be forwarded by the Governor of this State to the Secretary of State of the United States of America at Washington, to the President of the United States Senate, and to the Speaker of the House of Representatives of the National Congress."

The reality of this situation is that there is absolutely no way that this latter version of S. J. R. No. 1 ever passed the Legislature of the State of Arizona. What was apparently done here is that someone decided to send the original Congressional Joint Resolution to Knox in place of the version which actually passed the Legislature. Had they actually passed what was sent, the Arizona State Legislature certainly would have earned the comment in the Solicitor's memorandum of February 15th, 1913 which says that Arizona committed "No errors." The comment that they did earn was very far from that.

The State of Arizona apparently cannot verify whether or not S. J. R. No. 1 was correctly certified because it has no supporting documents. The originals cannot be located. The copy of S. J. R. No. 1 is false on its face, as is amply proven by the journals.

The version of S. J. R. No. 1 actually passed by the Arizona State Legislature contained the following changes to the official Congressional Joint Resolution—

1. the preamble has been discarded in favor of one composed by the Arizona legislators;
2. the word "The" was deleted;
3. the word "the" was inserted before the word "power";
4. all commas were deleted.

This version of S. J. R. No. 1 was in violation of the duty which the Arizona 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.

Willet, 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.

Constitutionally, S. J. R. No. 1 is further defective because, as a law of the State of Arizona, it must have conformed to Article IX, Section 9 of the Arizona State Constitution which provides that—

Every law which imposes, continues, or revives a tax shall distinctly state the tax and the objects for which it shall be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

Obviously, the rate of tax is not distinctly stated in S. J. R. No. 1 and it is, thus, impossible to avoid having to refer to another law to fix the tax under S. J. R. No. 1.

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

1. Falsification of the certified copy of the ratification action;
2. Failure by the Senate to read S. J. R. No. 1 either the first time, or the second time, by sections as required by Article IV, Part 2, Section 12 of the Constitution of the State of Arizona;
3. Failure by the presiding officer of the Senate to sign S. J. R. No. 1 in open session as required by Article IV, Part 2, Section 15 of the Constitution of the State of Arizona;
4. Failure of S. J. R. No. 1 to meet the criteria of Article IX, Section 9 of the Constitution of the State of Arizona requiring any law imposing a tax in Arizona to have the tax fixed such that there is no need to reference any other law;
5. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 as actually passed contained the following changes:
 - a. the official preamble was discarded;
 - b. the word "The" was deleted;
 - c. the word "the" was inserted before the word "power";
 - d. all commas were deleted;
6. 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;

Furthermore, it was under highly questionable circumstances that the Arizona House declared an "emergency" in order to suspend legislative provisions of the Arizona State Constitution.