

Idaho—January 20th, 1911

Slightly less than two years after the passage of the Congressional Joint Resolution proposing the Sixteenth Amendment, both the Idaho House and the Idaho Senate voted in favor of Senate Joint Resolution No. 1 which, as introduced on the 9th of January, 1911, read as follows:

SENATE JOINT RESOLUTION NO. 1.

A JOINT RESOLUTION RATIFYING THE SIXTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

WHEREAS, both Houses of the Sixty-first Congress of the United States of America, at its first session, 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:

“A joint resolution proposing an amendment to the Constitution of the United States.

“Resolved By the Senate and the 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, namely, ‘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 of enumeration’.”

Therefore Be It Resolved By the Legislature of the State of Idaho:

SECTION 1. That the said proposed amendment to the Constitution of the United States of America be, and the same is hereby, ratified by the Senate and House of Representatives of the State of Idaho.

SEC. 2. That certified copies of this preamble and joint resolution be forwarded by the Governor of this State to the President of the United States, to the presiding officer of the United States Senate, and to the Speaker of the United States House of Representatives.

This resolution was read and referred to committee the same day. (SJ at 20) On the 11th, it was recommended to be printed and two days later, it was printed. (SJ at 26) On the 16th, S. J. R. No. 1 was reported out of committee and recommended to be passed. (SJ at 38) On the 17th, the Committee of the Whole recommended that a minor amendment be made and that the resolution be passed. (SJ at 45) The amendment was adopted and ordered printed. (SJ at 48) Left to stand was Mr. Poole's own personal amendment of the word “or”, in front of the word “enumeration”, to the word “of.” This was an impermissible violation of the duty which the Legislature of the State of Idaho 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.

Later that day, the author of S. J. R. No. 1 attempted to clear a legislative path for that resolution—

Senator Poole moved that all Rules of the Senate interfering with the immediate passage of Senate Joint Resolution No. 1, as amended, be suspended; that the portions of Section 15 of Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days, be dispensed with, *this being case of urgency*, and that Senate Joint Resolution No. 1, as amended, be read the first and second time by title and the third time at length, section by section, and be put upon its final passage. (SJ at 51) (emphasis added)

The Idaho State Senators should have recorded their reasons for suspending their Constitution in their consideration of the ratification of the Supreme Law of the land. It certainly could not have been lack of time—they still had over half of the regular session remaining with plenty of time for extra and extraordinary sessions, as well as the regular session the next year. It couldn't have been any sort of time limit. In those days, the

seven-year limit was not yet practiced, nor was there any limit mentioned in the Congressional Joint Resolution.

In any event, the roll was called and the vote was 22 in favor and none against. The question is "In favor of what?" Immediately after the recording of these Ayes and Nays on the motion to dispense with the rules for the consideration of S. J. R. No. 1, as amended, the following inappropriate declaration was made—

Whereupon, the President declared that Senate Joint Resolution No. 1, as amended, had passed. (SJ at 51)

In the afternoon session of that same day, the question was put before the Senate—

Shall Senate Joint Resolution No. 1 be passed?

The resulting roll call counted 20 Senators voting Yea and none voting Nay—

Whereupon the President declared that Senate Joint Resolution No. 1 had passed. (SJ at 52)

Even though the President of the Senate twice declared that Senate Joint Resolution No. 1 had passed, first, "as amended," and, then, as otherwise, Senate Joint Resolution No. 1 did not pass. In violation of Senator Poole's motion to read the resolution "the first and second time by title and the third time at length, section by section, and be put upon its final passage," the Idaho Senators did not have Senate Joint Resolution No. 1 read by title, nor did they have it read at length, nor did they have it read section by section. In his motion, Senator Poole refers to Article 3, Section 15 of the Idaho State Constitution. That section requires the following legislative procedure—

MANNER OF PASSING BILLS. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: provided, in case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills, they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

Senator Poole's motion may have dispensed with the provision requiring that a bill be read three times on three separate days, however, it did not dispense, nor could it have dispensed, with the requirement that all bills on final passage be read "at length, section by section," as recognized in Senator Poole's motion. In addition, according to the record of the journal, the Senators were well aware of the State Constitutional requirement of reading the bill at length, section by section just prior to a vote on final passage, since they had just voted upon a motion to do just that.

On the 20th of January, S. J. R. No. 1 was properly engrossed, (SJ at 53) and was then transmitted to the House for its concurrence.

The following message was received from the Senate . . .

I have the honor to transmit herewith Senate Joint Resolution No. 1 . . . which has passed the Senate. (HJ at 80)

The House then proceeded to handle S. J. R. No. 1 on an urgent basis as it was procedurally supposed to be done, and all in one day. There was still no apparent urgent need to pass S. J. R. No. 1—

The following Senate Joint Resolution was read the first time in full.

S. J. R. NO. 1, BY POOLE.

Galloway moved that all rules of the House interfering with the immediate passage of this bill be suspended; that the portions of Section 15 of Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days, be dispensed with, this being a case of urgency, and that Senate Joint Resolution No. 1 be read the first and second time by title and the third time at length, section by section, and be put on its final passage.

Seconded by Jenson.

The question being, "Shall the rules be suspended?" the roll was called with the following result:

* * *

Total number of votes, 55. Ayes, 55. Nays, 0. Absent not voting, 4.

And so the rules were suspended and S. J. R. No. 1 was read first and second time by title and third time at length, and put upon its final passage.

The question being "Shall the resolution pass?" the roll was called with the following result:

* * *

Total number of votes, 55. Ayes, 55. Nays, 0. Absent not voting, 4.

And so Senate Joint Resolution No. 1 passed and was ordered transmitted to the Senate. (HJ at 81)(emphasis added)

The Senate received the transmittal and S. J. R. No. 1 was then referred to the Committee on Enrolled Bills. (SJ at 58) On the 23rd, S. J. R. No. 1 was signed by both the President of the Senate and Speaker of the House, and it was then transmitted to the Secretary of State. (SJ at 80) The Idaho Legislature, thus, bypassed the Governor in violation of Article IV, Section 10 of the State Constitution which provided that—

Every bill passed by the legislature shall, before it becomes a law, be presented to the governor.

The Solicitor's memorandum, previously referenced, also indicated that the resolution, as received by the Department of State in Washington, D. C., was not signed by the Governor.

The Secretary of State of the State of Idaho, Wilfred L. Gifford, then partially obeyed his Legislature's legislative will as expressed in Section 2 of S. J. R. No. 1. It was the expressed intent of the Idaho Legislature that Mr. Gifford transmit certified copies of S. J. R. No. 1 to the United States Senate, the United States House of Representatives and the President of the United States. According to the National Archives, Mr. Gifford only sent a copy to the United States Senate and that copy was not signed. Since it is a doctrine of law that what is expressed excludes that which is not expressed, it apparently was never the intent of the Idaho State Legislature to transmit a certified copy of the resolution to the Secretary of State of the United States, a violation of Section 205 of the Revised Statutes of 1878, a copy of which statute was transmitted in the packet sent by Knox to the Governors to be transmitted to their respective Legislatures—

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 copy which Mr. Gifford transmitted to the United States Senate eventually did find its way into the hands of the Secretary of State of the United States; nevertheless, that was not the legislative intent of the Legislature of the State of Idaho.

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

1. Failure to concur in United States Senate Joint Resolution No. 40 as passed by Congress in that S. J. R. No. 1 contained the following changes:

a. the preamble was modified:

i. the word "by" was changed to "By";

ii. the word "assembled" was changed to "Assembled";

iii. the phrase "two-thirds of each House concurring therein" was changed to "Two-thirds of Each House Concurring Therein";

iv. the third instance of the word "States" was changed to a common noun;

v. the colon following the second instance of the word "Constitution" was changed to a comma;

vi. the word "namely" followed by a comma was added to the end of the preamble;

vii. the designation "Article XVI." was appended to the preamble by virtue of the ending comma;

b. the designation "Article XVI." was removed from the proposed amendment by virtue of the comma added to the end of the preamble;

c. the preposition "of", relating the word "enumeration" to the word "census", replaced the conjunctive word "or" and was then left in when the Senate made another amendment to the resolution;

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 and by legislative intent per Section 2 of S. J. R. No. 1;

3. Violation of Article III, Section 15 of the Idaho State Constitution in the failure to read S. J. R. No. 1 at length, section by section, just prior to the vote on final passage in the Senate;

4. Violation of Article VI, Section 10 of the Idaho State Constitution in the failure to present S. J. R. No. 1 to the Governor.