Exhibit 19

CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

SIXTY-FIRST CONGRESS, SECOND SESSION.

VOLUME XLV.

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GOVERNMENT PRINTING OFFICE.
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respondents, members of the Joint Committee on Printing of Congress, on or before the 7th day of February, 1910.

WRIGHT, *Justice.*

A true copy.
Test:
J. R. YOUNG, *Clerk,*
By H. BINGHAM, *Assistant Clerk,*

against three members of this body named in said rule, to wit: Senators REED SMOOT, JONATHAN BOURNE, Jr., and DUNCAN U. FLETCHER, and in causing the said rule to be served upon them, in the opinion of the Senate thereby unlawfully invaded the constitutional privileges and prerogatives of the Senate and of said Senators, and was without jurisdiction to grant said rule; and said Senators are directed to make no appearance in response thereto.

Mr. McCUMBER. Mr. President, as I intend to vote against the resolution, I desire in a very few words to give my reasons for so doing.

I find here upon our statute books a law passed by both Houses of Congress and signed by the President of the United States. That law constitutes certain persons a board to arbitrate upon the matter of letting contracts with respect to public printing. I can not understand that this board acts in any legislative capacity in passing or acting upon anything that is submitted in the shape of a bid. It is not carrying out a legislative function in any way. It exists only as a board for that particular purpose by virtue of the law under which it is created, and is not acting as a Senate committee or performing the functions of such a committee, which functions relate purely to the matter of enacting legislation and not to the matter of carrying that legislation into effect after it has become a law.

If I understand this law at all, it creates certain individual rights. The man or the company or the corporation which puts in a bid in conformity with the law is entitled to have certain things done by that committee or that board. He has a legal right, if he conforms to the requirements of the law, to compel the board to comply with the requirements incumbent upon it. If we admit that, and admit that there may be a question whether the individual or the corporation has complied with the law, then we must admit that there is some power to try that right, and the only power that I know of lies ultimately in the courts; or else we must say that there is one law upon our statute books which the courts can neither construe nor enforce; that there is one law which must depend entirely upon the Senate or upon the House for its efficacy as a law.

I can not believe that that is the legal status of the individual or the corporation which has complied with the requirements of the law we have passed.

Mr. SUTHERLAND. Mr. President——

Mr. McCUMBER. In one moment. Now, under what authority does this board act? Does it act under the authority of the Senate for the purpose of performing legislative functions, or does it act under the authority of a law that has been passed by Congress; and if it acts under the law, then is it not subject to every legal proceeding for the enforcement of that law?

Now I will listen to the Senator from Utah.

Mr. SUTHERLAND. The Senator from North Dakota suggested that under the action proposed by this committee we would have a situation where the courts would be powerless to interpret one law of Congress. I think when I suggest it to the Senator he will see that he can go still further. Under our form of government we have three departments—one charged with the duty of making laws, another with the duty of executing laws, and a third with the duty of interpreting the laws. We have a situation here where the same body makes the law, executes the law, and finally interprets it, performing all three functions.

Mr. McCUMBER. Without any right of appeal to anyone.

It seems to me that that leaves the case at least sufficiently doubtful, so that any Senator, without any resolution, acting upon his own initiative, can either appear or refuse to appear; and I would prefer to leave it to the individual Senator who has been summoned to appear before that court to appear or not, as he may desire. If he appears, he can plead specially to the jurisdiction, and can take an appeal if it is decided against him. If he does not appear and contempt proceedings are the final result of that nonappearance, he still would have the right to appeal and to try his case in the courts. And I for one am not in favor of the Senate, on such a doubtful case, at least as this seems to me to be, to take the initiative and say that the court shall not pass upon its own jurisdiction, either the court of first resort or the appellate court. For that reason I shall record my vote against the resolution.

The VICE-PRESIDENT. The question is on agreeing to the resolution submitted by the Senator from Wyoming.

The resolution was agreed to.

Mr. CLARK of Wyoming. I offer the resolution I send to the desk.

The VICE-PRESIDENT. The Senator from Wyoming offers a resolution, which the Secretary will state.

The Secretary read the resolution, as follows:

Senate resolution 178.

Resolved, That the Secretary of the Senate respectfully communicate to Mr. Justice Wright, justice of the supreme court of the District of Columbia, the views of the Senate upon the question of the jurisdiction of said court in the case of The Valley Paper Company (Incorporated), plaintiff, *v.* The Joint Committee on Printing of Congress, etc., in which a rule to show cause was made by said justice on the 2d day of February, A. D. 1910, as expressed in S. R. 173.

The resolution was considered by unanimous consent and agreed to.

MISSISSIPPI RIVER BRIDGE AT ST. LOUIS, MO.

Mr. CULLOM. I ask leave to call up the bill (H. R. 19399) to extend the time for the completion of bridge across the Mississippi River at St. Louis, Mo., by the St. Louis Electric Bridge Company.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

RANK OF CERTAIN ARMY OFFICERS.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives returning to the Senate in compliance with its request the bill (S. 579) to correct the lineal and relative rank of certain officers of the United States Army.

Mr. BRIGGS. I move that the votes by which the bill was ordered to be engrossed for a third reading, read the third time, and passed be reconsidered.

The motion was agreed to.

Mr. BRIGGS. I move that the bill be indefinitely postponed.

The motion was agreed to.

INCOME TAX.

Mr. BORAH. I ask consent to call up Senate resolution 175.

The VICE-PRESIDENT. Without objection, Senate resolution 175 will be laid before the Senate.

The Secretary read the resolution submitted by Mr. BORAH on the 8th instant, as follows:

Senate resolution 175.

Resolved, That the Committee on the Judiciary be, and is hereby, directed to report to the Senate as early as may be practicable whether, in the opinion of the committee, the proposed amendment to the Constitution of the United States, as submitted to the States for ratification at the special session, would, if adopted, authorize Congress to lay a tax upon incomes derived from state bonds and other municipal securities or would authorize Congress to tax the instrumentalities or means and property of the State or the salary of state officers.

Mr. BORAH. Mr. President, a few weeks ago one of our most distinguished and justly celebrated of public men, Governor Hughes, of New York, sent a message to the New York legislature recommending against the ratification of the proposed amendment to the Constitution providing for levying an income tax without apportionment. It has been assumed by the public press, since the message of the governor, that it would be impossible, in view of his declaration, to secure the enactment of the amendment. So firm a hold has the governor of New York upon the public mind and so high is the esteem in which he is held as a lawyer that it was regarded as in a nature conclusive against the amendment. After some considerable consideration of the matter it occurs to me that there are at least two sides to the controversy, and, in my own opinion, the grounds stated for the rejection are not such as should prevail against the amendment. The governor stated in his message as follows:

I am in favor of conferring upon the Federal Government the power to lay and collect an income tax without apportionment among the States according to population * * *. But the power to tax incomes should not be granted in such terms as to subject to federal taxation the incomes derived from bonds issued by the State itself or those issued by municipal governments organized under the State's authority * * *. You are called upon to deal with a specific proposal to amend the Constitution * * *. This proposal is that the Federal Government shall have the power to lay and collect taxes on incomes *"from whatever source derived."*

The contention of the governor being that if this proposed amendment should be adopted it would confer upon the Government the power to levy an income tax upon incomes derived from state and municipal bonds; and it would follow, although he does not so state, as a matter of logic and a matter of law, that it would confer the power to levy an income tax upon the salaries of state officers, executive, judicial, and legis-

lative. In other words, the position of the governor is that it would confer upon the National Government the power to tax the instrumentalities and means of state government, and for that reason he opposes it.

It is curious to observe, Mr. President, that this is precisely the same objection that was urged to the language contained in the taxing power of the National Constitution at the time of its submission to the thirteen States for ratification. It was contended upon the part of those who opposed its adoption that the language of the National Constitution was such as to enable the National Government to impose a tax upon the instrumentalities and means of state governments, to thereby embarrass the state governments, and in the end to practically destroy them as independent and separate sovereignties. The argument was based in those days upon the plenary power which was given to the National Government to tax, it being contended that the language conveyed power to tax all property of whatever kind or from whatever source derived, and that this would give the power to tax the instrumentalities and means of the State.

When Mr. Hamilton came to answer that argument in his Federalist articles he did not recede from the proposition that full power had been given to the Federal Government to tax. He stated that the power of the Federal Government to tax was without limit, unqualified, plenary, and that it should be so; that it was intended to be so; and that that was the only reasonable construction which could be placed upon it. He gave his reasons in the following statement, quoting from the thirty-first number of the Federalist:

> A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care and to the complete execution of the trusts for which it is responsible; free from every other control but a regard to the public good and to the sense of the people.
>
> As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualties and dangers to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the Nation and the resources of the community.
>
> As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies.
>
> As theory and practice conspire to prove that the power of procuring revenue is unavailing when exercised over the States in their collective capacities, the Federal Government must of necessity be invested with an unqualified power of taxation in the ordinary modes.

I am not going to assume that the effect of this tax would be any other than that which Governor Hughes suggests. For the purpose of the remarks I propose to make to-day I shall assume that it would have the effect for which it is contended without discussing that question.

The amendment which has been submitted reads as follows:

> 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.

The words upon which the governor lays stress are "from whatever source derived," he believing them to include incomes from the sources I have suggested.

I submit for the consideration of the Senate, first, that this amendment, if adopted, will add nothing to the power of the National Government to lay and collect taxes in the way of power; that the power of the National Government at the present time, as I have said, is full, complete, unlimited, and unfettered, save as to exports from the States, which has nothing to do with the argument here.

It is true that there are two rules with reference to the manner in which the Congress shall exercise the power—that of uniformity and that of apportionment—but as to the power itself, putting aside for the moment the manner of its exercise, I submit that the power is at the present time vested in Congress without any limitation, unfettered in every sense of the term.

Secondly, I invite the attention of the Senate to the proposition that the words "from whatever source derived" add nothing to the force or strength of the amendment itself. When the Constitution says that the Congress shall have power to lay and collect taxes, it conveys all the power that it would convey if it said "shall have power to lay and collect taxes upon property from whatever source derived." If we should have said in this amendment that Congress shall have power to lay and collect taxes upon incomes without apportionment, it would necessarily, in constitutional parlance, include all incomes of whatever nature or from whatever source derived.

I reason from this basis: We find in the Constitution at the present time this power that Congress shall have power to lay and collect taxes, and the court has held that it includes taxes upon all kinds of property and from whatever source it may be derived. Therefore the adding of the words "from whatever source derived" does not amplify the power conferred or make it mean any other than it would mean if the words had been entirely omitted from the amendment.

Third, the amendment did not deal, does not purport to deal, and was not intended to deal with the question of power. It intended to deal, and does deal, alone with the manner of exercising that power which is already complete, that which is already without any limit. The sole obstacle to be removed by those who sought to change the Constitution was that of apportionment. No one has ever contended that it was not within the power of Congress to lay a tax upon incomes. That power has belonged to Congress from its organization, under the original taxing power of Congress. Whether apportioned or unapportioned was a matter of discussion, and concerning which courts and lawyers differed; but the power to impose an income tax upon all property, "from whatever source derived," was never doubted, so far as I know, by either court or lawyers in this country.

As a basis, therefore, of my argument to-day, I desire to show that the power of Congress to tax is at the present time unlimited, and has been so construed; that, so far as express provisions of the Constitution are concerned, there is no reason why we could not impose a tax upon state bonds and municipal bonds or upon the salaries of state officers at the present time. If the governor were asked why we do not impose a tax upon state bonds at the present time, to what provision of the Constitution would he direct our attention? If the governor were asked what limitation is there upon the taxing power of Congress, to what provision of the Constitution or language therein would he direct our attention?

If the governor were asked upon what principle the Supreme Court has held that you can not tax the instrumentalities of the State, to what principle would he direct our attention? If he were asked what change is being made by this amendment in that principle upon which the court has held that you can not tax the income from state bonds, what change could he possibly suggest?

In other words, Mr. President, the principles upon which the Supreme Court has held that notwithstanding the completeness of the taxing power now in Congress you can not tax the instrumentalities of a State are principles which are imbedded in, interwoven with, and a part of the texture of the whole instrument, are in no sense changed by this amendment, nor could they be by any words which are contained in it.

The Supreme Court of the United States, in Pacific Company *v.* Soule (7 Wall., 433), said:

> The taxing power is given in the most comprehensive terms. The only limitations imposed are that direct taxes, including the capitation tax, shall be apportioned; that duties, imposts, and excises shall be uniform, and no duty shall be imposed upon articles exported from any State. With these exceptions—

That is, uniformity and apportionment and exports from States—

> *the exercise of the power is in all respects unfettered.*

It will be conceded that the question of exports is not involved in this controversy, and can not be. Then, if we apportion an income tax at this time, under what prohibition or limitation of the Constitution are we inhibited from laying it upon state bonds? I ask that question so as to disclose more fully as I proceed that the reasoning is based upon principles which are not affected by this amendment, and which can not possibly be so, because of the language employed.

Again, the Supreme Court said, in Veazie *v.* Fenno (8 Wall.):

> Nothing is clearer from the discussions in the convention and the discussions which preceded final ratification by the necessary number of States than the purpose to give this power (to levy taxes) to Congress as to the taxation of everything except exports in its fullest extent. * * * More comprehensive words could not have been used. * * * The words used certainly describe the whole power, and it was the intention of the convention that the whole power should be conferred.

In Mr. Pomeroy's work on the Constitution, volume 1, page 188, he says:

> Because the Nation is thus paramount its taxing power is supreme; it may be applied to all subjects; it may be exerted upon all individuals, and upon every species of property.

That is the announcement by a constitutional writer of the principle which has been embedded in the decisions of the Supreme Court of the United States from the time the great Chief Justice Marshall first took hold of the taxing clause and construed it. Yea more, it has been a part and parcel of the accepted jurisprudence of this country since Alexander Hamilton

interpreted the Constitution in the articles known as the "Federalist."

I ask, if to-day under the present taxing clause of the Constitution we can tax all property of whatever species, from whatever source derived, what inhibition is there against our taxing every state bond of the State of New York, and the municipal bonds of New York, at the present time, so far as the provision of the Constitution is concerned? Certainly no one will contend that the present taxing clause is not full enough to cover all property, of whatever kind and from whatever source derived. It has always been so construed. If it were to be construed alone, it would undoubtedly be sufficient to enable us to tax state bonds. But it can not be construed standing alone; neither could this amendment. The rules of construction which control this present unlimited taxing clause would control in the same way and for precisely the same reasons the proposed amendment.

In the late case of Nichol *v.* Ames (173 U. S., 515) the Supreme Court said:

It (Congress) has power from that instrument (the Constitution) to lay and collect taxes, duties, imposts, and excises in order to pay the debts and provide for the common defense and general welfare, and the only constitutional restraint upon the power is that all duties, imposts, and excises shall be uniform throughout the United States, and that no capitation or other direct tax shall be laid unless in proportion to the census or enumeration directed to be taken, and no tax or duty can be laid on articles exported from any State. Thus guarded, the whole power of taxation rests with Congress.

Again, in Bank *v.* Billings (4 Pet., 514) Chief Justice Marshall said:

The power of legislation and, consequently, of taxation operates on all persons and property belonging to the body politic.

Mr. Hamilton, in his Report on Manufactures, said:

The National Legislature has express authority to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare, with no other qualifications than that all duties, imposts, and excises shall be uniform throughout the United States; that no capitation or other direct tax shall be laid unless in proportion to numbers ascertained by a census or enumeration taken on the principle prescribed in the Constitution; and that no tax or duty shall be laid on articles exported from any State. These three qualifications excepted, the power to raise money is *plenary* and *indefinite*.

Thus the whole power of taxation rests with Congress. When you exclude exports from States and conform to the rule of uniformity and of apportionment, there is no limitation upon the taxing power of the National Government as it exists at the present time. I submit that it would be difficult to find language which would convey more than the full and complete power which is now conferred by the Constitution.

I say, therefore, that already Congress is given absolute power; and if the reasoning of the distinguished governor were correct, the language being full and complete, conveying all power, we could tax state bonds and municipal securities and state salaries at the present time.

But there is another controlling reason why we can not do so, which reason is omitted in the message and which is not affected by this amendment in any manner. The first time the question arose as to power of one sovereignty to tax the means or instrumentalities of another sovereignty was in the case of McCulloch *v.* Maryland. In that case, as all lawyers well remember, there was an attempt on the part of the State of Maryland to tax the stock of the United States Bank. The United States Bank having been organized as an instrumentality of the National Government to carry out certain functions of granted power, it was held that it was not a taxable article. In that case Chief Justice Marshall considered this question and gave us the basis upon which has been built the entire structure of law which prevents one nationality from taxing the instrumentalities and means of another.

In the first place, it was admitted by the Chief Justice that there was no provision of the Constitution which controlled the subject-matter. It was stated by the Chief Justice that there was neither any limitation nor grant of power which prevented the States from taxing the instrumentalities of the National Government, and he stated in his decision that, therefore, the taxing power of the National Government being complete, the inhibition had to be found somewhere other than that of the taxing clause itself. He said, in McCulloch *v.* Maryland (4 Wheat.):

There is no express provision (of the Constitution) for the case, but the claim—

That is, the exemption from taxation—

has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture as to be incapable of being separated from it without rending it into shreds.

Upon what principle, stated a little more fully, but never more comprehensively, did the Chief Justice argue that you could not tax the instrumentalities of Government? Upon the theory that the Constitution as a whole created two separate and distinct sovereignties independent of each other in their specific and reserved powers, and that however full the grant of power of taxation might be in the Constitution, there must always be subtracted from that power the right of the different sovereignties to perform their functions as such. In other words, said the Chief Justice, to construe it otherwise would be to rend the whole fabric into shreds.

It was not, therefore, because of the fact that the taxing clause of the Constitution had any limitations either express or implied in its language, it was not because the language failed to convey all the power of the National Government to tax, but because of the universal rule that every component part of the Constitution must be construed in the light of every other part of it; and that it all must be construed as a whole in the light of the designs and purposes and objects to be accomplished when the instrument was written. Those designs and purposes were to create a national government in its own sphere, independent and separate and distinct from the state governments, and to create the state sovereignties, which in their reserved powers are separate, distinct, and independent of the National Government.

There is one thing that we overlook in arguing this question, and it seems to me to be the vice of the distinguished governor's argument. It is that the state governments, in their separate and independent sovereignties, in their reserved powers, are just as much beyond the jurisdiction and control of the National Government as the National Government in its sovereignty is beyond the control and jurisdiction of the state governments.

In a later case, in Railroad Company *v.* Peniston (18 Wall., 31), the Supreme Court said:

The States are, and they must ever be, coexistent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the State or prevent their efficient exercise.

Again, the court in United States *v.* Railway Company (17 Wall., 327) said:

The right of the States to administer their own affairs, through their legislative, executive, and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government.

I call attention also to the following citations and authorities, all bearing out the same line of reasoning:

The taxing power of the United States is subject to an implied restraint arising from the existence of the powers in the State which are obviously intended to be beyond the control of the General Government. (Hare on the Constitution, vol. 1, p. 265.)

This clause with reference to taxation is without any express restriction except that already referred to and explained—uniformity and apportionment and exports in the State. Despite this, it has been decided that the United States can not tax the salary of a state officer or a state municipal corporation or process of state courts or a railroad owned by a State. This decision rests upon the strong ground that the power of Congress—even under this full grant as contained in the language of the Constitution—to pass a tax law is restricted to a law which is necessary and proper to carry its taxing power into effect, and as taxation of a state franchise by the Federal Government is an infringement upon the reserve power and autonomy of the State, and as the power to tax without limitation is the power to destroy, execution by the United States of a power which involves the total destruction of state functions was not only not proper, but radically improper. (Tucker.)

The revenue act of 1898 (United States *v.* Owen, 100 Fed. Rep., 70) provided that a stamp tax of 50 cents should be imposed upon "all bonds of any description except such as may be required in legal proceedings not otherwise provided for in this section." It was held that a tax could not be required upon a saloon keeper's bond required by the statutes of the State, notwithstanding this law. The court said:

These cases establish the principle that the great law of self-preservation, the inherent attribute of sovereignty, exempts any and all means and instrumentalities of state government from federal taxation.

Rules of Construction, from Mr. Story:

1. The first and fundamental rule in the interpretation of all instruments is to construe them according to the sense of the instrument and the intention of the parties.

2. There may be obscurity as to the meaning from the doubtful character of the words used, from other clauses in the same instrument, or from inaccuracy or repugnancy between the words and the apparent intention derived from the whole structure of the instrument or its avowed object.

3. In construing the Constitution of the United States, we are in the first instance to consider what are its nature and object, its scope and design as apparent from the structure of the instrument viewed as a whole and also viewed in its component parts.