

GOV. A. E. WILLSON ON THE INCOME TAX AMENDMENT

THE people of the United States should stop and think."

"Demagogues have their ear and are hurrying them along a dangerous road."

"There is a popular fallacy that with a Federal income tax it will be the Carnegies and Rockefellers and other multi-millionaires who will pay for running the Government."

"The poor man does not regard his wages or salary as 'an income.'"

"The Sixteenth or Income Tax Amendment to the United States Constitution, now before the State Legislatures for ratification, gives Congress the power to levy a tax on the profits of farms, factories, stores; on the earnings of all men and women in whatever work or calling, and on all other kinds of income."

"Under our present system of taxation it is the mass of the people who bear the burden, not the multi-millionaires. Under a Federal income tax the same condition would exist. Under the former income tax law Kentucky, then a poor State, paid over a million and a half of dollars a year."

"Give Congress the right to tax, and Congress will use it."

"Congress is greedy for money and extravagant in spending it. Why increase its opportunity for greed and extravagance?"

"This income tax amendment is the most serious encroachment on the State rights since the organization of our Government. The resolution of 1898 read like an intangible dream under that amendment."

"Congress will be enabled to destroy the power of every State, county, or municipality to borrow money necessary for public purposes."

"If we are willing to give the Federal Government the power to take this money from Kentucky when the Federal Government already has more than enough, why shall we not at once levy an income tax in Kentucky to pay our moderate deficit, and new appropriations? Justice, as well as charity, begins at home, and we ought to pay our debts and support our public institutions properly before we make lavish grants of new and extraordinary powers of taxation and millions more of money to the Federal Government."

These pithy expressions give the gist of a striking interview on the income tax amendment that the Hon. Augustus E. Willson, Governor of the State of Kentucky, gave last week to a representative of THE TIMES.

"As a form of taxation," said Gov. Willson, "I earnestly believe in taxing incomes. Practically all taxes are paid out of incomes, and the only just way of calculating a man's proportion of Government expenses is to take a proportionate part or slice out of his income. It is the oldest form of taxation—the title of the Scriptures—and the many efforts to improve on it in all the various taxing measures have been failures."

"At the present time our system of taxation is upon an unsatisfactory basis. The taxes levied by State, county, and municipality frequently overlap. I believe that ultimately there will be no double taxation. When we finally establish a sensible system each jurisdiction—State, county, and municipality—will levy its own particular form of taxes. I believe that the income tax will be an important and necessary part of these taxes levied by the State or county or municipality."

"At the present time the Constitution reserves to the Federal Government the right to levy custom duties and internal revenue taxes. It is now proposed in the present amendment to the United States Constitution to also give it the right to levy an income tax."

"At the present time the individual States have the power to levy income tax. The question now before the American people is this: Are they going to take this power away from their respective States and hand it over to the Federal Government? Of course, even with a Federal income tax the States would still have the legal right to levy a similar tax, but they would have an extra right, for no people would tolerate the imposition of a double income tax."

"The amendment, which is now before the State Legislatures for ratification—if three-fourths of the Legislatures ratify it, it will then become a part of the United States Constitution. Under Article XVII, 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."

"The true question to which the proposed amendment directs attention is plainly not whether or no a tax on incomes, citizens is a desirable kind of tax to levy, but whether, on the whole, we are willing to clothe the Federal Congress with power to lay such a tax on interest on notes, loans, and other securities, rents of lands, salaries, profits of farms, factories, stores, earnings of all men and women in whatever work or calling, and all other kinds of income. This is obviously a very different question from whether incomes should be taxed."

"Speaking for Kentucky—and I think it is true of other States in the Union—Kentucky needs money for its own State uses; but if a proposal were made to enact a State income tax it would in all probability raise a storm of protest. Yet the General Assembly of Kentucky has already authorized the Federal Government to levy this tax. I should say here that owing to a parliamentary technicality I do not believe this ratification is legal. However that may be, it indicates the sentiment of the legislative body in my State."

"As showing the general sentiment throughout the country, I might point out that the amendment has already been ratified by seven States—Illinois, Georgia, Alabama, Maryland, South Carolina, Oklahoma, and Mississippi. The latest platforms of both parties favor it in twelve States—Ohio, Maine, Iowa, New Hampshire, Indiana, Wisconsin, Montana, Kansas, Idaho, Nevada, North Dakota, and Colorado. The Republican platform in California and Utah and the Democratic platforms in Connecticut, Minnesota, Pennsylvania, Massachusetts, Nebraska, Rhode Island, Vermont, and Tennessee favor it. This measure seems to be part of a general and very commendable movement toward readjusting the burdens of taxation more fairly."

"But the point to be made is that most of the people who favor this Federal income tax believe that under it it will be the Carnegies and Rockefellers and other multi-millionaires who pay for the running of the Government. The fellow out West thinks that the rich man in New York is the one who is going to pay this income tax; the man away from the rich centres thinks that the burden will fall exclusively upon the rich centres. Demagogues who have got the people's ear look upon this as a popular measure, and are crying it through the land. The poor man is the man in moderate circumstances

does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system. The States do not seem to realize that each of them will be levied upon if this new tax goes into effect."

"There is a general feeling that the charge of extravagance against the Federal Government is just, and that Congress spends more money than it ought to spend. If that is true, there can be no wisdom in putting within its grasp this large amount of revenue from a new source which it now has no right to use. It is clear that Congress has more than ample power for all its needs, and that the careful administration of the Government could be had for a great deal less money. The Post Office Department reduces its expenses by \$10,000,000 a year without impairment of the service seems some evidence of this. The many plans for retrenchment and for economical discharge of Federal duties strongly support this idea. The people undoubtedly remember Senator Aldrich's assertion that he could run the United States Government for \$300,000,000 less than it costs the people at present."

"Congress does not need this additional source of revenue. But give Congress the right to tax and Congress will use it. It has an organized appetite for money and is extravagant in spending it. There are hundreds of men in public life worthy with schemes to spend money and provide jobs for henchmen. One man is thinking of irrigation, another of a transcontinental road to San Francisco, another of an Appalachian reserve, another of a National park in the White Mountains. Every new chance to raise additional revenues is another opportunity to get one of these schemes through and bunches of jobs with them."

"Looking at the matter from the standpoint of the Commonwealth of Kentucky alone, the Federal Government is now collecting from the people of Kentucky more money to run the Federal Government than the State is collecting to run the State Government. If this amendment should be ratified it may put on Kentucky as much more. The State income is not sufficient to pay the expenses of the State Government as ordered by the General Assembly. It may be a close question whether this amendment will receive the approval of the Legislatures of three-fourths of the States. It may be that the approval of any one State will be the deciding vote. If this amendment is made part of the Constitution, and if Congress acts under it, it is not possible that the Federal Government will take from Kentucky people in each year, on taxes on incomes, several million dollars more, and if the General Assembly makes that grant of power it may also happen that it will be the vote which will result in citizens of Kentucky having to pay the Federal Government millions of dollars more of taxes on incomes every year. I have not calculated the amount, but merely use round figures for illustration."

"Kentucky needs now more than a million dollars a year additional taxes, and it has the power at present to levy an income tax which will pay the deficit and the new appropriations. If we are willing to give the Federal Government the power to take this money from Kentucky, when the Federal Government already has enough and more than enough, why shall we not at once levy an income tax in Kentucky to pay our deficit and our new appropriations? Will the State, which needs the money, have any greater difficulty in imposing this tax than will the Federal Government have, which does not need the money? Shall we vote to let the Federal Government take our income tax from Kentucky and refuse our own State Government, legislative, judicial, and executive, and the creditors of Kentucky the same tax when they need it? Justice, as well as charity, begins at home, and we ought to pay our debts and support our public institutions properly before we make lavish grants of new and extraordinary powers of taxation to the Federal Government. I trust that if the General Assembly is in the humor to have an income tax, it will use its power to impose that tax for the benefit of Kentucky, and not for the Federal Government."

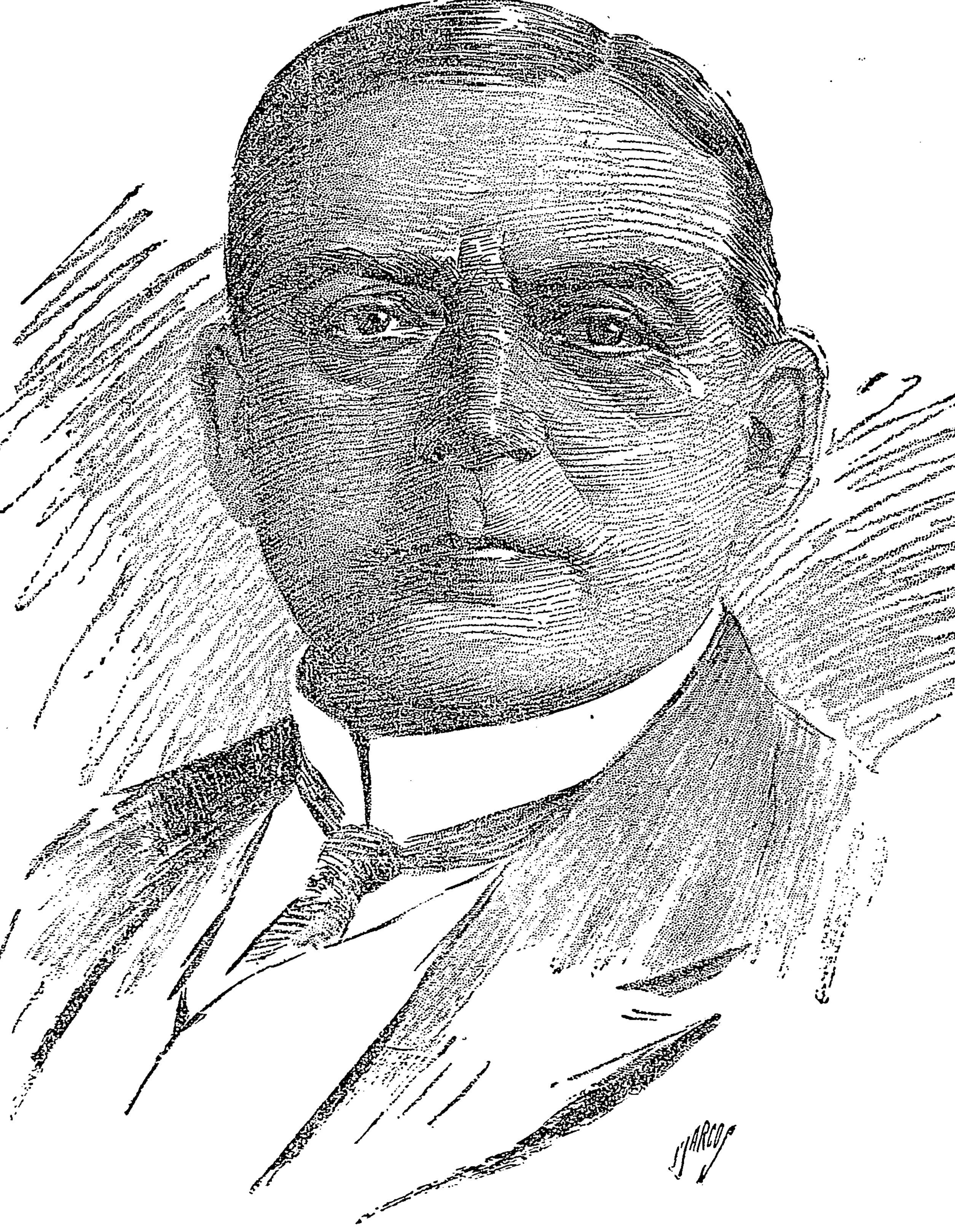
"Is there apprehension that a State income tax would cause a storm of protest? If there is, how much greater will be the protest and distress of our people to learn, by and by, that without discussion, or thought, or care we have given the Federal Government a new power, not intended in the first Constitution, to collect a United States income tax and use it for National purposes? Shall we object to raising a million dollars for education, good roads, penitentiaries, increased salaries, protection of public health, conservation policies, and other matters of concern to our people, and then give away millions a year to the Federal Government, from which we shall have no benefit comparable to what we could have from the other?"

"I have said that the general Government has more than ample revenue for all its needs. But of course there might be an occasion such as a war or other great emergency when it would need a vastly greater revenue. My own first impression, for this reason, was favorable to the ratification of the proposed Sixteenth Amendment as one strengthening the hands of the general Government in case of war or other emergency. But on further consideration I saw the vast possibilities of latent mischief in this measure. If we want to prepare the Government for immediate action in raising funds in time of need, let us so state it in the proposed amendment. But if this amendment as now framed is adopted, no one who knows the ways of Congress will doubt that then it will proceed promptly to enact an income tax bill without war or other emergency as the occasion, with the result that the Federal Government will proceed to collect from the people of each State millions of dollars on incomes."

"Here is another point which cannot be too thoroughly considered by the American people: This income tax amendment is the most serious encroachment on the State rights since the organization of our Government. Congress will be enabled to destroy the power of every State, county, or municipality to borrow money necessary for public purposes."

"The Supreme Court held the former income tax law void as against the salary of State officers on the ground that it might impair the powers of the State Government. The present proposed amendment of the Constitution, which overrides all State rights, corrects that omission and makes such a law valid. The amendment in the plain meaning of the words gives the Federal Government an enormous new taxing power, not merely in case of war, but for all time, on the income of everybody in each State, and in the words 'from whatever source derived' supplies the power which was lacking before this amendment, to tax the incomes of State officers and of State, county, and municipal bonds for Governmental purposes."

"Most Serious Encroachment on State Rights Since Organization of Our Government," Says Kentucky's Chief Executive.



Gov. Augustus E. Willson of Kentucky.

"Evidently, if this tax is levied by Congress, and we cannot doubt that it would be levied, Congress will be enabled to destroy the power of every State, county, or municipality to borrow money; at any rate their power would be so impaired that they could not borrow at low market rates and there would be added to the interest on all such public securities some part of the income tax."

"No platform or party resolutions for income taxes have, so far as I can learn, given any thought to the plain fact that this amendment of the Constitution of the Union subordinates to Federal control that great attribute of the sovereignty of the State, the unimpairable power to borrow money. Many platforms favor taxes on incomes, but I do not think that any platform, unless very lately, has either favored this particularly amendment or considered the real question at issue, which was not the question of taxing incomes, but of taking away from the States and giving to the Federal Government the power to do it."

"The Attorney General of the United

States now holds that the corporation income tax applies to income from Government bonds, if it governs interest on Government bonds, it certainly would include income on State, county, and municipal bonds."

"Who shall say to Kentucky, or to any other State, that it shall no longer have the power to tax incomes or to issue bonds free from taxes? Does any member of any General Assembly, who has the power to say it, wish it? Why should our States surrender to the Federal sovereignty this essential attribute of State sovereignty?"

"This amendment has only started on its way. I see no difficulty in starting another amendment in its place, properly restricted, giving Congress power to lay an income tax in case of serious emergency and leaving out the words 'from whatever source derived.'"

"It is true that many well-informed people believe that the power, if given, would not be exercised, but can we imagine the great men who framed the Constitution of the United States inviting

ratification of that Constitution upon the ground that any powers which might be objectionable would not probably be exercised or would not be taken literally? The true question is, whether this grant of enormous power to the Federal Congress, the greatest grant since the original Constitution, should be accorded to the United States or not, and that is the only question."

"Senator Root, notwithstanding his earnest support of a strong National Government, said recently in a public address:

"The framework of our Government aimed to preserve at once the strength and protection of a great national power and the blessing and the freedom and the personal independence of separate States. It aimed to do that by preserving in the Constitution the sovereign powers of the separate States."

"Mr. Justice Brewer of the Supreme Court, is reported as having said, not long since, in Milwaukee in a public address: 'The power to tax, as John Marshall said, is the power to destroy. If once

you give the power to the Nation to tax all the incomes, you give them the power to tax the States, not out of their existence, but out of their vitality.'

"The proposed amendment seems to have been framed with a view to avoid the decision of the Supreme Court in the case of Pollock vs. Farmers Loan & Trust Company, in which the court held that a tax on rents was a direct tax and must, therefore, be levied in accordance with the principle of apportionment."

"The present amendment has been drawn so broadly that its adoption clearly involves much more, and is a grant to impose on the people of Kentucky a Federal income tax unrestricted by the present requirement of apportionment. What other constitutional safeguard have we against possible Federal encroachment upon the sovereignty of the States than that which requires that direct taxes shall be apportioned among the States, and what will remain of these safeguards if we adopt this amendment?"

"Before considering these safeguards, it will be well to recall that no one acknowledges more thoroughly than Hamilton in 'The Justice of the reasoning which requires that the individual States shall possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants.' He maintained that, excepting only the duties on imports and exports, they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense. He added that an attempt on the part of the National Government to abridge them in the exercise of it would be a violent assumption of power, unwarranted by any article or clause of the Constitution." [Federalist, XXXI.]

"Are we ready, under the guise of amending the Constitution, so as to permit the taxing of rents, free from the requirement of apportionment, to change fundamentally from 'the framework of our Government,' which, as Mr. Root says, was 'aimed to preserve the personal independence of the States?'"

"If there be one power which it is more necessary for the States to retain unimpaired than any other, if they are to preserve their personal independence, it is the power to borrow money. Under the Constitution, as it has stood to the present day, that power is unimpaired."

"And here we may well remember the oft-quoted decision of Chief Justice Marshall that 'the power to tax involves the power to destroy,' and it seems to me a very serious question whether we shall give or refuse to give to the Federal Government the 'power to levy and collect taxes on incomes from whatever source derived.'

"Does the title to this amendment indicate its purpose, any more than that a platform declaration in favor of taxing incomes endorses this particular amendment? Could it not be justly called an amendment to give to Congress the power to tax not only all private incomes, but also all the instrumentalities of municipal, county, and State Governments? And if it does do this, can any one who believes in upholding the power of the States just as earnestly as we uphold the power of the Federal Government, consider it with favor?"

"If this amendment shall be adopted and become a part of the constitutional and fundamental law of the land, who can say with any certitude that the Supreme Court will hold that when the people voted to clothe the Congress with power to tax incomes from whatever source derived, 'the amendment did not really mean 'from whatever source derived,' but that it intended to exclude such sources as had been held, before the amendment, to be exempt from Federal taxation? Who can guarantee that if Congress has the power to tax all incomes, it will not exercise that power, not only on incomes usually taxed, but on all incomes, great or small?"

"Congress has already sought to tax salaries of State officers and the incomes derived from municipal bonds. It is now expressly confer, in terms, the power to do so, do we not at least give the chance for, if not invite, its exercise? Can we be sure that it will not be persistently argued that this amendment was added for the purpose of giving the power, which the Supreme Court refused, under the Constitution before this amendment was offered, and that this was one of the purposes of changing the foundation law of the Government?"

"I reiterate that in my opinion the Government ought to have the power to lay an income tax for war purposes or other great emergencies, and this need could be satisfied by preparing an amendment to give that power in such contingencies only; but, even then, unless the instrumentalities of State, county, and municipal Governments should be excluded, that power might destroy those Governments to save the National Government."

"Again, while this amendment in express terms, excludes the restriction of apportionment, it does not require, but, it may be argued, destroys, by implication if not directly, the further requirement of uniformity, for uniformity is demanded by the Constitution only in the case of duties, imposts, and excises, but the tax which this amendment gives power to lay is denominated in terms and is in fact a 'tax' and not a 'duty, impost, or excise.' Thus it presents the anomaly of a Federal power of taxation absolutely unrestricted and entirely opposed to the present principle of the Constitution which requires that, in every instance, a Federal tax shall be controlled either by the rule of apportionment or by the rule of uniformity."

"Associate Justice of the Supreme Court Charles E. Hughes, when Governor of New York, presented some objections to this amendment, and I wrote to him before there was any suggestion of his appointment to the Supreme Court, arguing against his view before I had formed my opinion on the amendment. His answer was so strong that I take pleasure in quoting from it freely. He wrote:

"I am much interested in your observations regarding the proposed income tax amendment. I am heartily in favor of giving to the Federal Government all necessary power, and particularly of giving it power to lay an income tax without apportionment. But I am also impressed with the importance of maintaining our State Governments with their essential efficiency unimpaired. . . . The action I have taken was the only action, according to my point of view, which I could conscientiously take as a State Governor."

"Of course I know that 'the words 'from whatever source derived' will ultimately mean whatever the Supreme Court decides them to mean. It is possible that the court may hold that the words do not mean 'from whatever source,' but only from some sources. But certainly the words of the proposed amendment permit, if they do not require, the court to hold that they mean precisely what they say. I do not see why, in making this grant of power, we should be compelled

to speculate upon what the decision of the court may finally be upon a matter of such importance. Probably the Justices who decided previous cases bearing upon the power to lay an income tax did not anticipate that such a decision would ever be rendered as was reached in the Pollock case—very likely some of the Justices who sat in the Pollock case were surprised that the court should change what so many had believed to be an established doctrine of constitutional interpretation."

"Whatever may be the present implied restrictions upon the power of Congress with regard to taxing in effect the instrumentalities of State government, by constitutional amendment, and we are not dealing with a statute, but with an amendment containing a grant of power in words which might be taken to indicate an intention to nullify all previous restrictions."

"If it is desired to safeguard the rights of the States and protect them with regard to their own securities and those of their municipalities, it is a very simple matter to frame an amendment which will be unambiguous words as certainly at the best raise a very serious question. There is no reason that I know of, if Congress really desires only the power that it should have, which would prevent the presenting of an amendment in appropriate language. We do not know what the coming years may bring forth, on the part of the attitude of the Supreme Court may be or may continue to be; but we do know the natural meaning of words, and appreciating the supreme importance of an amendment to the Federal Constitution, we ought to be able to express ourselves without doubt in respect to a matter of fundamental concern to the States."

"The conflict in the views of critics is both amusing and significant. Some insist that it is so clear that Congress ought not to have the power to tax the securities of the States that no amendment should grant such a power, and that the doctrine as to the amendment of State instrumentalities is so well established that the comprehensive words of the present amendment would not be taken to have the scope of their literal meaning. Others, however, are equally insistent that State and municipal securities should not have immunity from the proposed taxation, and that not only does the proposed amendment include them, but that this inclusion is a positive recommendation."

"The debate when the Wilson-Gorman bill was before the Senate, and the effort was made to exclude State securities from its purview, is illuminating as to the intention to include them. From what I can gather, there is a good deal of confusion with regard to the subject, and a considerable body of opinion that they should be included in an income tax act. In the face of the language of the amendment, knowing what a constitutional amendment really is, as a new grant of power, it seems to me that those who believe that State securities should be exempt from the Federal taxing power should oppose the amendment; and that the amendment should not be supported on the theory that it will not be ultimately construed to confer the power, or if conferred, that the power to reach State securities will not be exercised."

"But I have not the time to go into the question at length. Great as my esteem for the present Justices of the court, the question is not what they or some other now think might or should be the limitation by construction of the proposed power, nor what you or I, if sitting on that court would decide upon this question of construction; but whether State officers should favor the ratification of an amendment in this form. It certainly rests within the power of Congress to assert, and of the Supreme Court at some future day to hold, that incomes that are derived from State and municipal securities are subject to Federal taxation."

"This proposed amendment is the first and only one expressly increasing the tax powers of the Federal Government beyond those powers originally granted to it in explicit terms by the Constitution, and therefore we ought to subject it to careful and thorough discussion because it is far easier to prevent a serious mistake by defeating it than to correct it by a subsequent constitutional amendment."

"Three questions are involved:

"1. Shall the States surrender and give to the Federal Government this additional power to tax incomes, or should they reserve this power to themselves?"

"2. Whether the amendment is proper with its present phrasing? I have shown, I believe, that it should leave out the words 'from whatever source derived' or except salaries of State officers and interest on State, county, and municipal bonds for public purposes."

"3. Would it not be better to modify the amendment so that it could only be in force in time of war or National peril, without granting the power to the Federal Congress to impose the tax in time of peace? If there is any place in literature where words should be carefully chosen and earnestly scrutinized it is in the amendment of the Constitution of the United States. In expounding this Constitution 'every word must have its due force and appropriate meaning, for it is evidence of the whole instrument that no word was unnecessarily used or needlessly added.' Because of changes of residence of the wealthiest citizens from one State to another and seeking refuge in the lack, at present, of uniformity of the laws in the different States, the Federal Government, covering all of the States, would have the ability to collect the income tax, but not the right, and the States would have the right but not the ability."

"To cover the two points, an amendment has been suggested in place of the proposed amendment, which provides, in substance, that Congress shall have power to lay and collect taxes on incomes from whatever source derived, excepting the incomes from State securities without apportionment among the several States and without regard to any census or enumeration. These taxes, except in times of National peril, to be distributed among the several States for their use and support according to the amount collected from each."

"The only argument in favor of this, so far as it provides for the income tax to be distributed among the States, is that the collection of revenues by the United States is done very much more thoroughly and at very much less expense than it is by State officers."

"As Governor of Kentucky I have felt that it was my duty to the people not to have this extraordinary grant of Federal power over the States, one not contemplated by the founders of our Government, made in the name of the people of Kentucky, without at least enough discussion to cause the matter to be thought over by the people and to bring out from them something to show their wishes."