TYRANNY IN AMERICA
THE 16TH AMENDMENT BILL BENSON LITIGATION

The Declaration of Independence lists, among others grounds for breaking away from English rule, the "abolishing [of] our most valuable Laws and altering fundamentally the Forms of our Governments." Such conduct on the part of King George was deemed so contrary to "the separate and equal station to which the Laws of Nature and of Nature's God" entitled them, our Founding Fathers resorted to a long, bloody war, pledging their lives, their fortunes and their sacred honor. We all know the outcome of that great struggle for freedom. The birth of a new Republic and a written constitution designed to ensure that previous abuses of power were never again to be instituted in the United States of America.

The concept behind the new government was simple and easy to understand. As late as 1965, the concept was recognized by the United States Supreme Court:

> The Constitution divides the National Government into three branches-Legislative, Executive and Judicial. This separation of powers' was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny. For if governmental power is fractionalized, if a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will. James Madison wrote:
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> > The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. The Federalist, No. 47, pp. 373-374 (Hamilton ed. 1880).
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> *United States v. Brown*, 381 U.S. 437, 442-43 (1965).

The 16th Amendment, Bill Benson litigation proves, however, mere words on a piece of paper are wholly insufficient to preserve freedom. Once again in our history, our most valuable laws, the First and Fifth Amendments, are being abolished, and our fundamental form of government is being altered.

Shortly after the United States Constitution, when the revolution and its causes were still fresh in the minds of those in government, one of the most famous cases in our relatively short history was handed down by the Supreme Court. That case was *Marbury v. Madison*, 5 U.S. 137 (1803). The Supreme Court there stated the duty of the courts as follows:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed as pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions-a written constitution-would of itself be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution.

Could it be the intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that “no tax or duty shall be laid on articles exported from any state.”Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the

judges to close their eyes on the constitution, and only see the law.
The constitution declares that "no bill of attainder or ex post facto law shall be passed."

If, however, such a bill should be passed and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument, as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support?

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words, "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution, and laws of the United States."

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him?

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and

> strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

Simple truth, simply stated, resonates in your heart. One always knows the truth simply because it is true!

Here are some other simple truths:

- The United States Constitution makes a distinction between direct taxes and indirect taxes, and requires direct taxes to be apportioned and indirect taxes to be uniform. Art. I, § 2, Cl. 3; Art. I, § 8, Cl. 1; and Art. I, § 9, Cl 4.

- The United States Constitution requires constitutional amendments to be ratified by the legislatures of three-fourths of the several states before becoming a part of the Constitution. Art. V.

In 1894 Congress passed the 1894 Income Tax Act, 28 Stat. 509, ch. 349. Section 27 of that act read:

> There shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States.

The constitutionality of this section was challenged on the ground that the act passed by Congress was a direct tax that wasn't apportioned. The argument went before the United States Supreme Court in the case of *Pollock v. Farmers' Loan & Trust Company.* It was reported twice; once at 157 U.S. 429 (1895) and again at 158 U.S. 601 (1895). The majority of the Supreme Court held Section 27 imposed a direct tax and that because the tax was not apportioned, it violated the taxing provisions of the Constitution. The minority thought a tax on income was as excise that didn't require apportionment.

In 1909, President Taft called a special session of Congress. He asked Congress, to overcome the *Pollock* decision, to pass a proposed constitutional amendment. Congress obliged, and proposed the 16th Amendment, which reads as follows:

> 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 proposed amendment was sent to the governors of the forty-eight several states, who submitted the proposed amendment to each states' legislative body. The various legislatures acted on the proposed amendment, and certificates of ratification of forty-two states[1] were thereafter sent by the governors to then Secretary of State Philander Knox. The states of Connecticut, New Hampshire, Rhode Island and Utah rejected the proposed amendment.

Secretary of State Knox noticed that the vast majority of the certificates of ratification he received contained language different from the language of the amendment proposed by Congress. He thus asked the Office of the Solicitor of the United States to give him a legal opinion as to whether the proposed amendment could be certified by Knox as having been ratified.[2]

On February 15, 1913, the Solicitor sent a Memorandum to Knox. The Memorandum contained this language:

- In no case has any legislature signified in any way its deliberate intention to change the wording of the proposed amendment. The errors appear in most cases to have been merely typographical and incident to an attempt to make an accurate quotation.

- Furthermore, under the provisions of the Constitution a legislature is not authorized to alter in any way the amendment proposed by Congress, the function of the legislature consisting merely in the right to approve or disapprove the proposed amendment.

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

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1. The states of Florida, West Virginia, Virginia, Vermont, Massachusetts and Pennsylvania did not submit certificates of ratification.

2. At this time, Congress had passed Section 205 of the Revised Statutes which read:

   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 part of the Constitution of the United States.

legislature.

Secretary of State Knox then officially certified the 16th Amendment had been ratified, and was now a part of the United States Constitution.

In 1984 Bill Benson took it upon himself to visit the Capitols of all forty-eight states where he obtained certified copies of the legislative journals pertaining to the alleged ratification of the 16th Amendment. He also traveled to the National Archives in Washington, D.C. where he obtained a certified copy of the Solicitor's Memorandum of February 15, 1913. He published his findings in a two-volume book entitled "The Law That Never Was."[3]

The legislative journals Bill obtained conclusively show that the states of Oklahoma, Missouri and Washington intentionally amended the language proposed by Congress, thereby committing an act that the Solicitor of the United States recognized was in violation of the United States Constitution. Bill also discovered that numerous other states voted to ratify language different from that proposed by Congress, that there is no record of some houses of the states' legislatures voting at all, that the Senate's vote in Kentucy, nine to ratify and twenty-two not to ratify was incorrectly reported at twenty-two to ratify and nine not to ratify, and that numerous states violated their constitutionally required procedures during the ratification process.

These issues soon came to the attention of the courts. Each court to consider the issue held it lacks the judicial authority to hear the issue. *See United States v. Thomas*, 788 F.2d 1250 (7th Cir. 1986); *United States v. Foster*, 789 F.2d 457 (7th Cir. 1986); *United States v. Ferguson*, 793 F.2d 828 (7th Cir. 1986); *Miller v. United States*, 868 F.2d 236 (7th Cir. 1988); *Lysiak v. C.I.R.*, 816 F;2d 311 (7th Cir. 1987); *United States v. Sitka*, 845 F.2d 43 (2nd. Cir. 1988), *United States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); and *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991.)

The reason for the courts' conclusion that it lacks authority to hear the issue is the Enrolled Bill Rule announced by the United States Supreme Court in three cases: *Field v. Clark*, 143 U.S. 649 (1892); *Laser V. Gannett*, 258 U.S. 130 (1922); and *Coleman V. Miller*, 307 U.S. 433 (1939). Each of those courts held that certification by the Secretary of State under Revised Statute 205 creates a conclusive presumption of ratification which is beyond review by the courts, and therefore the issue is a political question, not a judicial question.

It took our federal judiciary only eighty-nine years, from *Marbury v. Madison* to *Field v. Clark* to move from law to tyranny. Article V requires actual ratification of a proposed constitutional amendment by the several states; the Enrolled Bill Rule allows ratification by presumption of one man.

The tyranny was too much for Bill Benson. He put together the Reliance Defense Package and encouraged people, through his website and his speaking engagements, to obtain his material, study it, and if they thought it true, to exercise their First Amendment right to petition the government for redress. This proved too much for the federal government.

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3. The books are available on Bill Benson's web site: http://www.thelawthatneverwas.com

On November 16, 2004, the government sued Bill Benson to obtain an injunction to prohibit him from falsely telling people that the 16th Amendment was not in fact ratified, and to obtain the names and addresses of those who obtained his information. The government argued that under the Enrolled Bill Rule, the 16th Amendment was conclusively presumed ratified, and therefore his statements were false as a matter of law. In response, Bill submitted the facts showing the proposed amendment was passed by the false presumption of Secretary of State Knox and that less than three-fourths of the several states voted for ratification. Bill argued that Revised Statute 205, as applied under the facts he adduced, was an unconstitutional legislative act which had the effect of amending Article V of the Constitution. He argued that the various courts that previously heard the issue never had before them the truth that several states had intentionally modified the language proposed by Congress. Bill also argued that the cases of *Field v. Clark*, *Leser v. Garnett* and *Coleman v. Miller* could not be the law if it allowed amendment of the Constitution by presumption. Bill argued that if the question were a political one, then his speech on the subject was political speech, and protected by the First Amendment. And finally, Bill argued that the refusal of the Court to allow Bill to present the facts to prove his statements were true violated due process of law.

The court struck all of Bill's facts from the record as irrelevant, and failed to address any of his other questions. On January 10, 2008, the court granted the government's requested injunction. As of now, then, the government may prosecute you for lying and prevent you from presenting a defense. As of now, speaking about a political question is against the law. As of now, there is no due process of law. As of now, there is no First Amendment right to speak or to petition the government for redress of grievance. As of now, the words of the Supreme Court in *Marbury v. Madison* are like the words of the United States Constitution; mere words that have no meaning.

The only bright spot is that we convinced the court that the names and addresses sought by the government were protected. We did this by having three people, John Doe I, John Doe II and Jane Roe, file a motion to intervene and file a motion for a protective order to protect their names from being disclosed. The strategy worked. The government's attorney advised us, however, they intend to appeal the decision in order to obtain the names and addresses.

All of the relevant pleadings in the Bill Benson case may be viewed on my website: http://jeffdickstein.com. Bill is eighty-one years old, in poor health, and without funds. I have been representing him for free and I have been living on donations. We need your help to continue the attack on tyranny. So long as we continue to fight, there is hope. Donations may be made from my website through PayPal, or mailed to, and made payable to, me. My mailing address is also on my website.

Whether you agree with Bill Benson or not, this litigation is not about one of us being right or wrong. This litigation is about preserving YOUR freedom from ever increasing government tyranny. It is about your right to even have an opinion and express it without fear of government retaliation. Our country is in serious distress, as we now have East German like checkpoints at our airports, and wholesale government disrespect of, and contempt for, our Constitution.

Ben Franklin said during another time of intolerable governmental action: "We must all hang together or, most assuredly, we shall all hang separately." Please support this litigation and make a donation to support those who have taken a front line position to defend liberty for all of us.