

Inside Oklahoma's 16th Amendment lawsuit
Geoff Metcalf interviews attorney Larry Becraft on ratification challenge.
<http://www.geoffmetcalf.com/QA/22063.html>

Once a criminal investigator for the Illinois Department of Revenue, Benson undertook a year-long research project that took him to all 48 contiguous states. His efforts resulted ultimately in the publication of "The Law that Never Was," which contends that the 16th Amendment was never legally ratified.

By Geoff Metcalf

Question: For those readers who may not be up to speed, please explain what the Wallace Institute did in January regarding the 16th Amendment issue?

Answer: About two years ago, there was a series of seminars held in Washington, D.C., by a fellow by the name of Bob Schulz. He has an organization called We the People. They are the folks who have been running the ads in USA Today. Bob Schulz started conducting some First Amendment protests in downtown Washington, D.C., at the National Press Club. The government would not come out and address our concerns regarding the ratification of the 16th Amendment.

So, we've taken it to the next step, and on Jan. 19, we filed a lawsuit in Oklahoma City in state court. We're challenging the ratification of the 16th Amendment -- the federal income tax amendment -- by the state of Oklahoma. There are some complicated legal issues involved in this, and I hope we can cover some of those.

Q: If we can do it in English, sure. But before we get into the detail stuff, you filed this Jan. 19, and the state had 30 days to respond. What happened?

A: The state asked for a continuance on filing an answer.

Q: Is that good or bad?

A: It's good. It means they are considering the issue. We have an issue in this particular case that has never been raised in the United States, and if we prevail, it will resolve a lot of constitutional problems specifically related to ratification of amendments to the United States Constitution.

Q: I've interviewed Bill Benson on various occasions, and I've written about him in WorldNetDaily. Bill has done a superb job of confirming your position. As an academic exercise, he has proven the 16th Amendment was never properly ratified. That much is done, but so what? I need you to explain the ramifications and underpinnings of this issue.

A: The United States Constitution has two specific taxing powers. They are mutually exclusive categories. Congress can impose "direct" taxes. However, to do that Congress is required to apportion direct taxes. Apportionment is kind of a simple concept to understand. For example --

and this a merely hypothetical -- let's presume a state has 10 percent of the population of the United States. As a consequence, it would have 10 percent of the representatives in Congress. So, if Congress were to decide to impose a direct tax, that state would pay 10 percent of that direct tax.

Apportionment, then, is directly tied into the percentage representation that any given state has in Congress. Now, to impose a direct tax, to make it apportioned, is real difficult. That explains the reason why there haven't been a handful of direct taxes that have been imposed at the federal level.

The other type of tax that can be imposed is called "indirect." Those are excises and duties, for example, and are real easy to impose at the federal level. All they need to be is uniform.

Q: Give us an example of uniformity.

A: An example of uniformity is the gas tax. Included in the price there is a uniform tax nationwide. I don't know what it is, but it's sitting there on the pump. Let's presume it's 35 cents. The reason that tax is imposed and it's uniform across the country is this requirement of uniformity in the United States Constitution. Those are the taxing powers of Congress.

In 1894, the question arose regarding the constitutionality of the 1894 income tax. The court held in that particular case that income from real and personal property constituted property -- the income from property is property. And the only way that Congress can tax income from real or personal property is by means of an apportioned tax. Since the 1894 act was not apportioned, the court held it unconstitutional. That is the reason why in 1909 there was this effort made by the United States Congress to propose the 16th Amendment to the Constitution. It was allegedly ratified and on Feb. 25, 1913, Philander Knox, the secretary of state, proclaimed ratification of the 16th amendment.

Q: So what does the amendment do?

A: The amendment allows Congress to impose a tax on income, which the Supreme Court of the United States had held to be "property." There's a 1959 case called *Simms vs. United States*, and the Supreme Court said in that case that income is property.

Q: John Locke said the same thing a long time ago.

A: Yes he did. The only way income could be taxed at the federal level without the amendment would be by means of this very difficult apportioned tax. The 16th Amendment eliminates that requirement, so it is, in fact, important. There's a bunch of people out there who think otherwise and believe the 16th Amendment confers no new powers of taxation.

Q: Yeah, the *Brusbacher vs. Union Pacific* case.

A: That's the case from the United States Supreme Court that says the 16th Amendment declares

that an income tax is an excise tax. But the people that believe that type of argument -- that the 16th Amendment means nothing -- their whole case is built upon the 16th Amendment.

Q: How so?

A: Because without the 16th Amendment, Congress wouldn't have the power to impose an income tax.

Q: I've been talking to Bill Benson about this for over 10 years. I actually waded through "The Law That Never Was." It is clear the 16th Amendment was not properly ratified. Why doesn't the government just do something to mitigate their previous "whoops"? They have the capacity to fix it and still continue to tax us with sort of a do-over, don't they?

A: They do. That's within their power. But let me tell you what happened when Bill completed his project back in 1985. A congressman, Marty Russo, lived two doors down from Bill Benson. Bill had worked hard to elect him to Congress. When this research was completed and Bill had this new issue lying on the table, he went down and spoke to Marty.

"Marty, what are you going to do about all this?" And he said, "Bill, this is a problem for the courts. I just can't do anything about it." That's what a lawyer said who was in Congress. We have been to the courts. We have raised the question of fraud involved in the ratification of the 16th Amendment, and the courts have come along and said, "It's a political question," and they cannot address it. The 16th Amendment issue that is raised in the lawsuit out in Oklahoma addresses that very problem.

Q: You have filed in Oklahoma. You also intend to file in California and Kentucky as well, right?

A: Those are the plans.

Q: What does the schedule look like?

A: I'd like to see what's going to happen in Oklahoma first. We have problems in those other two states. The government alleges that the second state to ratify the 16th Amendment was the state of Kentucky. If you want to see an example of fraud, you can see it with Kentucky. The government says that on Feb. 8, 1910, Kentucky ratified the 16th Amendment. Kentucky has a constitution that requires when the legislature meets a journal be kept and typed up at the end of the session. Anyone can go down to a law library or any library (particularly in Kentucky) and can pull those legislative journals. You can turn to the Senate volume for 1910, Feb. 8, and see the vote that occurred on that date. There were nine votes in favor of the 16th Amendment and 22 against it. The 16th Amendment was not ratified on the day that the government says it was ratified.

Q: Was it ratified at some subsequent date and they made a clerical error?

A: Let me tell you how it was proclaimed as having been ratified. The documentation that Washington received from Kentucky proclaiming it had been ratified had been falsified. The clerks of both houses got together and they typed up what the journals allegedly revealed about how the 16th Amendment was ratified by Kentucky. Now the clerk for the Senate, what he did was he typed that on Feb. 6 the Senate met and voted something like 22-10 in favor of the 16th Amendment. The problem is that Feb. 6, 1910, is a day that the Senate in Kentucky did not meet. In fact, it was a Sunday. Nothing happened on the day that the clerk of the Senate said was the day that they ratified the 16th Amendment. In fact, when you look at the actual journals themselves, it shows that the Kentucky Senate voted against it. Therefore, you have fraud in that one particular state, the state of Kentucky.

Q: What about California?

A: California is a little bit different. The problem with California revolves around the legal principle known as concurrence.

Q: What is concurrence?

A: When two legislative bodies get together, they've got to pass the exact same bill. There has been litigation on this point of whether or not two different bodies can get close in reference to a bill.

Q: That's why they have conference committees.

A: Yes. Everybody that is involved in the legislative process knows that both houses have to agree on the same bill. There has been litigation on that point. The cases flatly say that both houses of the legislature must agree upon the precise wording of an amendment or an ordinary bill. Now in reference to ratification of the 16th Amendment, there was a report that was generated by the legal counsel for the secretary of state back in 1913 and the legal counsel acknowledged that a state -- when it ratifies an amendment -- must absolutely correctly quote the 16th Amendment. Yet the documentation that you get from the national archives in Washington, D.C., shows that they sat there and acknowledged all these mistakes.

Q: What about Minnesota?

A: Some type of an official notice must be sent from a state to the secretary of state at that time. Today, it's the National Archives -- back then, official notice had to go to the secretary of state. Minnesota sent nothing. How can we sit here today and say that that constitutes ratification?

Q: Benson does a very good job of documenting clearly that the 16th Amendment was not properly ratified. But the question we keep coming back to is: What impact does it have on us today, and what can we do about fixing the problem?

A: The amendment is clearly the basis for the imposition of the tax. It allows this direct tax, known as the income tax, which couldn't constitutionally be imposed in the absence of

apportionment. It allows an income tax to be imposed as if it were an excise tax. So the 16th Amendment is critically important. Here is the rub -- and this is a major constitutional problem that the American people must confront. I think that anybody digging back into the historical records with any given amendment ought to be able to examine those documents and say, "Yeah! The people of that generation -- the people of that era -- clearly all agreed that the United States Constitution must be amended."

I'm not going to get into the substance of the 14th Amendment because there would be people making political charges against me and accusing me of being against the 14th Amendment. I'm not going to do that. I'm going to talk about the events surrounding the ratification of the 14th Amendment. When you go back and take a look at that, the whole process of the alleged ratification of the 14th Amendment is absolutely horrible.

Those are the events of the Civil War when Congress saw that the 14th Amendment was not going to be ratified. By force, it threw out all the legislatures in all the southern states, put their cronies in and allegedly ratified the 14th Amendment. When people take a look at that history, a lot of people can be appalled. How can that be? Here's the problem that we're facing.

You're a big supporter of the Second Amendment. In fact, you've taken a lot of time to try to push through a California constitutional amendment.

Q: Yeah, and we'll be back and do it again.

A: Since you have that interest in the Second Amendment, do you know that there were only two senators present in November 1993 when the Senate allegedly approved the Brady Bill?

Q: Sadly, I did not know that.

A: Yes. I didn't know the exact facts of that until Devvy Kidd told me about it. She kept the New York Times article about that. But that's absolutely true, and I've taken a look at the Congressional Record for that date and that indeed happened. There were but two senators who "assembled" with Al Gore there, and they acted on behalf of the Senate and allegedly agreed to the Brady Bill. And because of that, it "allegedly" became a law.

Q: Wait a minute. What about the supposed need for a quorum?

A: The reason that can happen is because of a case called *Field vs. Clark* decided by the U.S. Supreme Court back in about 1880. In that particular case, the Supreme Court was faced with a question somebody was litigating -- it was a tax law that was at issue -- and somebody came along and said: Gee, we looked at the Congressional Record for the time, and we see that this precise bill that's the law, this house over here didn't approve it. And they could show by means of the journal that it appeared that a certain part of the bill had not been approved by both houses and, therefore, the whole thing should be void. The United States Supreme Court said that's of no importance.

Q: Back on point -- how long is this process going to go on?

A: Till we get some answers to our questions. Let me explain the nature of the lawsuit. We're facing this proclamation by Philander Knox. He was the secretary of state back in 1913. He had the documents from a number of states in front of him. He said, "I examined these documents and I proclaim that 38 states have ratified this amendment."

Q: How does someone in the executive branch, the secretary of state, proclaim ratification of an amendment to the United States Constitution?

A: That was done because Congress had passed a law years before called "Revised Statute Section 205" that said when it appears to the secretary of state that an amendment has been ratified, he shall "proclaim" its ratification.

Q: When it appears? Is that actual, for-real language?

A: I will read to you Section 205. It says, "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 propagate 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."

Q: So how does the Supreme Court of the United States interpret this specific law?

A: In a case called Lazer against Garnet, there was a question raised regarding whether or not certain states had ratified the 16th Amendment, and the Supreme Court said, based upon Section 205 and based upon that case of Field vs. Clark, when the secretary of state proclaims that an amendment has been ratified, that is conclusive upon the courts. Nobody can look into the matter. That's what was said in 1920.

Q: Obviously, it must be my myopia, but I was under the impression that the three branches of government were distinct and unique and that one couldn't tell the other what to do?

A: In this particular situation, the Congress of the United States, by passing "Revised Section 205," delegates to the secretary of state the authority to proclaim ratification of an amendment. The Supreme Court of the United States -- a couple of years after the 16th Amendment went into effect -- said, gee, that proclamation is conclusive upon the courts. Nobody can examine it even when you have evidence of fraud being present in the ratification process like Kentucky.

I can pinpoint the specific individuals that engaged in fraud, at least two of them -- Philander Knox and the clerk of the Senate in Kentucky in 1910. Those two parties were involved in fraud! They proclaimed a fact to exist which did not exist -- the ratification by Kentucky. Yet when you have evidence of fraud regarding ratification of an amendment to the United States Constitution, because of Lazer against Garnet, you can't go behind that. Well, the Oklahoma case says: yes,

you can.

Q: Why do you presume to say "Yes, you can"?

A: The reason is this: Starting about in the mid '20s, there was a new legal principle being developed in the courts that dealt with statutes similar to Section 205, statutes that created conclusive presumptions. A conclusive presumption is a situation or statute in which the facts can be totally contrary, but the facts are irrelevant. The United States Supreme Court, in a case called *Heiner against Donut* in 1926, said that conclusive presumptions or statutes that create conclusive presumptions are unconstitutional. That's exactly what we've got with Section 205. We are challenging the constitutionality of this statute. This may be opening up Pandora's box.

Q: There are several people who are afraid that's where this is going. We've heard questions about the 13th Amendment, the 14th Amendment, the 17th amendment, and the questions surround the entire ratification process. Is it all a can of worms? I told Bill Benson 10 years ago, "You have proven the 16th Amendment was never properly ratified. Period. End of text. I'll give you that."

However, the reality check is that it continues to function. The government continues to grind people up and spit them out. Given the facts that are outlined and presented in "The Law That Never Was," I have never understood why Congress just doesn't say, "Hey, ya know what, guys? Because of some procedural technicalities, we need to have a 'do-over.'" And if it were presented to Congress today, it would pass in a New York second.

A: I don't like what's going on in this country, and I suspect you don't. In light of the conditions of this country, the American people need certain tools to bring about change. If Congress isn't going to respond to the will of the people and if the people themselves are reaching a conclusion that is borne out by the facts that Congress is, in fact, unrepresentative of the people and beholden to special interests, then the people have got to do something.

Q: You and Devvy with the Wallace Institute are focused right now, at this moment in history, on the 16th Amendment. But you and I both know that your group and others are looking into improper ratification of other things.

A: Yes, and this is one of the tools that would be beneficial for the American people. The 17th Amendment is what allows us to elect the Senate the way we do today.

Q: Hold on. I don't want to muddy the waters with the 17th Amendment. We'll save that for another day. Let's stay on the 16th Amendment question. You've filed in Oklahoma. You will file in California and Kentucky. Conventional wisdom would suggest that the states can sandbag and stall and obfuscate this ad naseum until you, Devvy and I are all dead and buried.

A: I don't doubt that that's the case. And that's the reason why the support of the American people is so crucial. First, the American people have to understand what we're doing and how this is important in the overall scheme of things.

Q: Regarding my refrain about Congress having a 'do-over,' wasn't there a seven-year cap on the 16th Amendment? And if they didn't meet that, we'd have to start all over again.

A: That's correct.

Q: Beyond the routine obfuscation the process can and does include, and all the legal hoops you have to jump through, you've got a few significant challenges here. One is procedural in that the states you sue can and probably will stall for as long as they can. Then whoever loses will no doubt appeal and you move along that judicial ladder until eventually, 'maybe' the Supremes get it on their desks. At the same time you are fighting that battle, you also have people within the same alleged community who, for either philosophic or ego reasons, are engaging you in a whizzing match. A bunch of probably well-intended folks have different attacks on the same problem. Who is Otto Skinner?

A: He's a fellow that has an argument based on the 16th Amendment, although he wants to deny it. He has this theory based on that Supreme Court case you mentioned earlier, Brusbacker against Union Pacific. True, the United States Supreme Court said in that case the 16th Amendment makes the federal income tax an excise tax. Therefore, all it needs to be is uniform throughout the country, and the system would say that it is uniform. Otto Skinner wants to build an argument based on the 16th Amendment that there is a definition of excise tax in a case called Flynn against Stone Tracy. His camp says the income tax doesn't apply to many. The problem with the excise tax argument is later decisions of the Supreme Court that redefine the definition of excise tax, and it kind of shoots him in the foot.

Q: We hear from all kinds of folks wanting to know what they can do to help with these lawsuits and all the stuff the Wallace Institute is doing.

A: If people want to help they just have to go online to devvy.com on the Internet and just click on the Wallace Institute.

Q: Procedurally, are you going to wait for some kind of resolution to your Oklahoma lawsuit before you file in California and Kentucky?

A: No. We're prepared to go in those states. We've got the documentation. We've got the legal argument. The question becomes one of legal strategy and when you make your move. I'd like to see what Oklahoma is going to say in the way of a response to this argument. I know they're going to come back and say this is a political question and you can't examine it. That will probably be the major issue in the case and it will go up on appeal pretty quick.

Q: But how do you break the circle? The courts say it's political. Congress says it's a question for the courts. How often do you have to seesaw back and forth before someone somehow breaks the circle and compels someone -- anyone -- to make a decision?

A: We're breaking the circle now. We have this legal argument that conclusive presumptions are unconstitutional. The Supreme Court of the United States has never faced this issue. They said

Section 205 created a conclusive presumption, and they did that back in 1920. Six years later, they said statutes that create conclusive presumptions violate the Fifth Amendment's due process clause. This issue has never been before a court.