

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY**

<b>WILLIAM J. BENSON,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. _____
	)	
<b>MIKE HUNTER,</b>	)	
	)	
<i>Defendant.</i>	)	

**COMPLAINT FOR DECLARATORY RELIEF**

**I. THE PARTIES AND SUMMARY OF THE CLAIMS.**

1. The Plaintiff, William J. Benson, is a citizen of the State of Illinois, residing in South Holland. Benson is the author of a book, *The Law That Never Was*, which describes in substantial detail the manner by which the various States of this American Union responded to Senate Joint Resolution No. 40, which was a proposed constitutional amendment offered in 1909 by the Sixty-first Congress of the United States that would authorize the United States Congress to impose a federal income tax. Benson asserts herein that the State of Oklahoma failed to legally ratify this proposed amendment to the Constitution of the United States, and he challenges as unconstitutional certain State and federal legislative acts.

2. The Defendant Mike Hunter is the duly elected Secretary of State for the State of Oklahoma. Defendant Hunter has possession of House Joint Resolution No. 5, adopted by the Second Legislature of the State of Oklahoma during extraordinary session, which was allegedly approved on March 14, 1910; see 1910 Oklahoma Session Laws 275. Benson contends via this suit that such House Joint Resolution No. 5 did not lawfully concur with Senate Joint Resolution No. 40 proposed by the Sixty-first Congress. For this reason, Oklahoma cannot be legally considered as a State which ratified the Sixteenth Amendment to the United States Constitution.

3. This suit is brought via 12 O.S. §1651 (OSCN 1999), which authorizes this court to “determine rights, status, or other legal relations” under “any statute” “whether or not other relief is or could be claimed”. Further, via Oklahoma Constitution Section II-3, “The people have the right peaceably to assemble for their own good, and to apply to those invested with the powers of government for redress of grievances by petition, address, or remonstrance.” Via this constitutional provision, Benson and others have a right to commence an action such as this to petition this Honorable Court for the relief requested; see *Gaylord Entertainment Company v. Thompson*, 1998 OK. 30, 958 P.2d 128, 143 n. 56 (Ok. 1998); *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523 (1961); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510, 92 S. Ct. 609, 612 (1972)(“Certainly, the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition”); *Bill Johnson's Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 741, 103 S. Ct. 2161 (1983)(“the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances”); *McDonald v. Smith*, 472 U.S. 479, 484, 105 S. Ct. 2787, 2791 (1985)(“For example, filing a complaint in court is a form of petitioning activity; but baseless litigation is not immunized by the First Amendment right to petition”); *United States v. Hylton*, 710 F.2d 1106 (5<sup>th</sup> Cir. 1983); and *White v. Lee*, 227 F.3d 1214 (9<sup>th</sup> Cir. 2000). This is especially so since Oklahoma law authorizes comparable actions to challenge ratification of amendments to the Oklahoma Constitution; see *State v. State Board of Equalization*, 107 Okl. 118, 230 P. 743 (1924); *Simpson v. Hill*, 128 Okl. 269, 263 P. 635 (1927); *Looney v. Leeper*, 145 Okl. 202, 292 P. 365 (1930); and *State v. State Election Board*, 181 Okl. 622, 75 P.2d 861 (1938).

## **II. FACTS REGARDING THE CLAIMS.**

4. On July 12, 1909, pursuant to Article V of the United States Constitution, the Sixty-first Congress of the United States, during its first session begun on March 15,

1909, did propose and submit Senate Joint Resolution No. 40 to the several States, which resolution read as follows, to-wit:

"Joint Resolution Proposing an amendment to the Constitution of the United States

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

“Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

“J. G. Cannon  
Speaker of the House of  
Representatives

“J. S. Sherman  
Vice-President of the United  
States and President of the  
Senate"

5. On July 27, 1909, the same Congress adopted Senate Concurrent Resolution No. 6, which read as follows, to-wit:

“CONCURRENT RESOLUTION

“Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the State legislatures to amend the Constitution of the United States, passed July twelfth, nineteen hundred and nine, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

“Attest: Charles G. Bennett  
Secretary of the Senate

“A. McDowell  
Clerk of the House of

## Representatives”

6. Upon the passage of both of the above set forth resolutions, President Taft delegated to his Secretary of State, Philander Chase Knox, the responsibility of sending certified copies of Senate Joint Resolution No. 40 to the various State Governors. At such directions, Secretary Knox sent a "form" letter to the Governors of the 48 States then in the Union, which letter read as follows, to-wit:

"Sir:

“I have the honor to enclose a certified copy of a Resolution of Congress, entitled 'Joint Resolution Proposing an Amendment to the Constitution of the United States,' with the request that you cause the same to be submitted to the Legislature of your State for such action as may be had, and that a certified copy of such action be communicated to the Secretary of State, as required by Section 205, Revised Statutes of the United States. (See overleaf.)

“An acknowledgment of the receipt of this communication is requested.

“I have the honor to be, Sir,

“Your obedient servant,  
P. C. Knox”

7. Appended to this letter from Knox to the various State Governors was a quotation of Section 205 of the Revised Statutes of the United States, which was the statute then in effect concerning constitutional amendments. That section read as follows:

"Sec. 205. Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

8. Oklahoma Governor Haskell received the above communication from United States Secretary of State Knox and on February 10, 1910, transmitted the same to the Oklahoma legislature for its action:<sup>1</sup>

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<sup>1</sup> See 1910 House Journal 234-235.

“STATE OF OKLAHOMA  
EXECUTIVE DEPARTMENT.  
GUTHRIE.

February 10, 1910.

“TO THE HONORABLE LEGISLATURE, STATE OF  
OKLAHOMA, IN EXTRAORDINARY SESSION:  
ELEVENTH MESSAGE.

“I submit to you for your consideration, approval or rejection, an amendment to the Constitution of the United States, relating to the income tax. A copy of the communication from the Secretary of State of the United States is herewith attached.

“After careful consideration of this subject I find it possible of the accomplishment of much good, as well as capable of undesirable results, and in approving this amendment the people of the States must do so with their eyes open, realizing that it vests the Congress of the United States with power for evil as well as good results, depending upon the will of Congress from time to time.

“It is therefore a question upon which you must be the judges of the creation of such additional legislative power in the Congress of the United States.

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“Respectfully submitted,  
C.N. HASKELL, Governor.

SIXTY-FIRST CONGRESS OF THE UNITED STATES OF  
AMERICA AT THE FIRST SESSION

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

JOINT RESOLUTION.

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution:

“Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

J.C. CANNON,  
Speaker of the House of Representatives.  
J.S. SHERMAN,  
Vice-President of the United States, and  
President of the Senate.

Attest:  
A. McDOWELL,  
Clerk of the House of Representatives.  
CHARLES G. BENNETT,  
Secretary.  
By HENRY H. GILFRY,  
Chief Clerk.

9. On February 21, 1910, the state resolution regarding this amendment, House Joint Resolution No. 5, was introduced into the Oklahoma House and read for the first time:<sup>2</sup>

“House Joint Resolution No. 5, by Messrs. Wortman and Terral, relating to ratifying a proposed amendment to the Constitution of the United States providing for the laying and collecting of taxes on incomes.”

10. On February 23, 1910, this resolution was sent to the Committee on Criminal Jurisprudence:<sup>3</sup>

“House Joint Resolution No. 5, by Messrs. Wortman and Terral, to Committee on Criminal Jurisprudence.”

11. On February 25, 1910, this resolution was favorably reported out of committee:<sup>4</sup>

“MR. SPEAKER:

“We your Committee on Criminal Jurisprudence, to whom was referred House Joint Resolution No. 5, by Wortman and Terral, entitled: A Resolution ratifying a proposed amendment to the Constitution of the United States providing for the

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<sup>2</sup> See 1910 House Journal 325.

<sup>3</sup> See 1910 House Journal 340.

<sup>4</sup> See 1910 House Journal 392.

levying and collecting of incomes beg leave to report that we have had the same under consideration and herewith return the same with the recommendation that it do pass.

TERRAL, Chairman.”

12. On March 3, 1910, the Committee of the Whole House favorably reported that House Joint Resolution No. 5 should pass:<sup>5</sup>

“On motion of Mr. Lovelace, the House resolved itself into Committee of the Whole to consider House Bills on the Calendar, with Mr. Johnson presiding.

“Mr. Speaker pro tem resumed the chair.

“The following report was read and adopted:

“MR. SPEAKER:

“The Committee of the Whole House, to whom was referred House Bill No. 59, by Mr. Earle; .... House Joint Resolution No. 5, by Messrs. Wortman and Terral; ... report that we have considered same, and recommend .... that House Joint Resolution No. 5 do pass; ....

“JOHNSON, Chairman.

“On motion by Mr. Tillotson, all bills recommended favorably by the two Committees of the Whole House were ordered engrossed, and placed on third reading and final passage.”

13. On March 4, 1910, House Joint Resolution No. 5 was reported engrossed:<sup>6</sup>

“MR. SPEAKER:

“We, your Committee on Engrossment, beg leave to report that we have carefully compared House Joint Resolution No. 5 with the original draft and find said engrossment to be correct and in proper form.

“Respectfully submitted,

“BURNETTE, Vice Chairman.”

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<sup>5</sup> See 1910 House Journal 456-457.

<sup>6</sup> See 1910 House Journal 462.

14. On March 4, 1910, this resolution was read the last time and subjected to a vote:<sup>7</sup>

“Engrossed copy of House Joint Resolution No. 5 was read third time.

“By unanimous consent, the name of Senator Graham was added as one of the authors of the resolution.

“The vote recurring on the adoption of House Joint Resolution No. 5 resulted as follows:

Ayes: .... Total – 89.

Nayes: ... Total – 2

Absent: ... Total – 17.

“Mr. Speaker declared House Joint Resolution No. 5, having received the constitutional majority, had duly passed, and signed same in open session.”

15. On March 4, 1910, the Oklahoma Senate received this resolution:<sup>8</sup>

“A message was received from the House transmitting House Joint Resolution No. 5, by Messrs. Wortman and Terral of the House and Graham of the Senate, which was read the first time.

“HOUSE JOINT RESOLUTION NO. 5 – BY MESSRS. WORTMAN AND TERRAL OF THE HOUSE AND GRAHAM OF THE SENATE.

“A Resolution ratifying a proposed amendment to the Constitution of the United States, providing for the levying and collecting of taxes on incomes.”

16. On March 5, 1910, this resolution was read in the Senate a second time:<sup>9</sup>

“The following bills were read the second time and referred to the following committees:

“House Joint Resolution No. 5, by Messrs. Wortman and Terral of the House and Graham of the Senate, to Committee on Legal Advisory.”

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<sup>7</sup> See 1910 House Journal 465-466.

<sup>8</sup> See 1910 Senate Journal 397.

<sup>9</sup> See 1910 Senate Journal 404.



17. On March 9, 1910, the Senate's Legal Advisory Committee reported that the resolution, as amended, should be adopted:<sup>10</sup>

“Senator Thomas reported on behalf of the Committee on Legal Advisory as follows:

“MR. PRESIDENT:

“We, your Committee on Legal Advisory, to whom was referred House Joint Resolution No. 5, beg leave to report back to the Senate that the same do pass as herein amended, that an amended copy is hereto attached.

“J. ELMER THOMAS, Chairman.

“Report received and resolution placed on the calendar under head of general orders.”

18. But shortly thereafter, the above action was re-considered:<sup>11</sup>

“Senator Thomas asked unanimous consent to withdraw the report of the Committee on Legal Advisory on House Joint Resolution No. 5.

“Request granted.

“Senator Thomas reported on behalf of the committee of Legal Advisory as follows:

“MR. PRESIDENT:

“We, your Legal Advisory committee, to whom was referred House Joint Senate Resolution No. 5 by Wortman of Rogers, Terral of Kiowa, and Graham of the Senate, beg leave to report back to the Senate that said resolution do pass as amended.

“First: Amend the title to read as follows:

“A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY- FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCHH [sic], ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATE [sic] AND DESIGNATED AS ARTICLE SIXTEEN.

“Following the enacting clause, amend the first paragraph to read as follows:

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<sup>10</sup> See 1910 Senate Journal 458.

<sup>11</sup> See 1910 Senate Journal 463-465.

“WHEREAS, The sixty-first congress of the United States of America at its first session begun and held at the city of Washington on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the constitution of the United States, in words and figures as follows: to wit:

“Amend the second paragraph to read as follows:

“Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein), that the following article is proposed as an amendment to the constitution of the United States, which when ratified by the legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution.

“Amend the third paragraph by inserting after the word ‘derived’ the following: ‘without apportionment among the several states.’

“Amend the last paragraph so as to read as follows: ‘Now, therefore BE IT RESOLVED by the House of Representatives and the Senate of the State of Oklahoma, in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the constitution of the United States of America is hereby ratified.

“J. ELMER THOMAS, Chairman.

“On motion of Senator Thomas the report was adopted.

“House Joint Resolution No. 5 as amended by the Senate was read as follows:

“House Joint Resolution No. 5 by Messrs. Wortman of Rogers, Terral of Kiowa, and Graham of the Senate.

“A RESOLUTION RATIFYING AN AMENDMENT PROPOSED BY THE SIXTY- FIRST CONGRESS OF THE UNITED STATES OF AMERICA, ON THE FIFTEENTH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND NINE, TO THE CONSTITUTION OF THE UNITED STATES AND DESIGNATED AS ARTICLE SIXTEEN.

“BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE STATE OF OKLAHOMA:

“WHEREAS, The sixty-first Congress of the United States of America at its first session begun and held at the city of Washington on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an

amendment to the constitution of the United States, in words and figures as follows, to wit:

“RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled (two-thirds of each house concurring therein) that the following article is proposed as an amendment to the constitution of the United States, which, when ratified by the Legislatures of three-fourths of the several states, shall be valid to all intents and purposes as a part of the constitution:

“Article 16. The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

“Now, therefore, BE IT RESOLVED, by the House of Representatives and the Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States of America is hereby ratified.

‘The question being shall the resolution pass as amended by the Senate, the roll was called, the vote resulting as follows:

Yeas: .... Total 37.

Nayes: None.

Absent: ... Total – 6.

“The resolution having received a majority vote of all the members elected to and constituting the Senate, the President declared same passed, as amended, by the Senate.

“The engrossed copy of the House Joint Resolution No. 5 as amended by the Senate was signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.”

19. On March 10, 1910, the House received notice that the Senate had adopted, with amendments, House Joint Resolution No. 5:<sup>12</sup>

“SPEAKER OF THE HOUSE OF REPRESENTATIVES:

“Sir. I have the honor to inform you and through you the House of Representatives of the passage by the Senate of the following: House Joint Resolution 5, by Messrs. Wortman and Terral, as amended by the Senate and which are herewith transmitted to your Honorable body for consideration, with the Senate

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<sup>12</sup> See 1910 House Journal 541-542.

amendments.

FINLEY, Secretary.”

Thereafter, the House voted upon the amended resolution:

“Senate Amendments to House Joint Resolution No. 5, by Messrs. Wortman, Terral et al were read.

“Mr. Terral moved that the House agree to Senate amendments. Roll call had thereon resulted as follows:

Ayes: .... Total– 91.

Nayes: None.

Absent:.... Total – 17.

“Mr. Speaker declared that motion carried.”

20. The resolution was later signed the same day:<sup>13</sup>

“Enrolled copies of .... House Joint Resolution No. 5 were signed by the Speaker in open session, after being read at length.”

21. After the House considered and adopted the amended resolution, it was transmitted back to the Senate for signing:<sup>14</sup>

“A message was received from the House transmitting the enrolled copy of House Joint Resolution No. 5, signed by the Speaker.

“The enrolled copy of House Joint Resolution No. 5 was read the fourth time at length, the title agreed to and signed by President Pro Tempore, Mr. Graham, same was ordered transmitted to the House.”

22. Later that same day, the House received the following message from the Senate:<sup>15</sup>

“SPEAKER OF THE HOUSE OF REPRESENTATIVES:

“Sir. I have the honor to inform you and through you the House of Representatives of the signing by the President pro tempore of the Senate of the following:

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<sup>13</sup> See 1910 House Journal 547.

<sup>14</sup> See 1910 Senate Journal 480.

<sup>15</sup> See House Journal 548.

Enrolled House Joint Resolution 5, which is herewith transmitted to your Honorable body.

“FINLEY, Secretary.”

23. House Joint Resolution No. 5 read as follows, to-wit:<sup>16</sup>

#### HOUSE JOINT RESOLUTION NO. 5

A Resolution ratifying an amendment proposed by the Sixty-first Congress of the United States of America, on the Fifteenth day of March, one thousand nine hundred and nine, to the Constitution of the United States and designated as article sixteen.

Be It Resolved by the House of Representatives and the Senate of the State of Oklahoma:

WHEREAS the Sixty-first Congress of the United States of America at its first session begun and held at the City of Washington, on Monday the fifteenth day of March, one thousand nine hundred and nine, by joint resolution proposed an amendment to the Constitution of the United States, in words and figures as follows to-wit:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled (two-third of each house concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the Legislatures, of three fourths of the several states, shall be valid to all intents and purposes as a part of the Constitution:

“Article 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.”

Now Therefore, Be It Resolved by the House of Representatives and Senate of the State of Oklahoma in extraordinary session assembled, such subject having been recommended by the Governor for consideration, that said proposed amendment to the Constitution of the United States of America is hereby ratified.

Approved March 14, 1910.

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<sup>16</sup> See 1910 Oklahoma Session Laws 275-276.

24. The amendment proposed by the Sixty-first Congress of the United States read as follows:

“Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

25. The amendment allegedly ratified by the Second Legislature of the State of Oklahoma read as follows:

“Article 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.”

26. When a State ratifies an amendment to the United States Constitution, it must exactly concur with the amendment proposed by the Congress of the United States and that State may not alter or amend it.

27. House Joint Resolution No. 5 adopted by the Second Legislature of the State of Oklahoma in 1910 was not a valid ratification of Senate Joint Resolution No. 40 offered by the Congress of the United States.

### **III. CLAIMS FOR RELIEF.**

Wherefore, the premises considered, Benson demands that the Defendant Mike Hunter be made a party to this action, that he be served with process and required to plead and answer hereto; and that upon final hearing in this cause, this Honorable Court adjudge and declare as follows:

A. That House Joint Resolution No. 5 was and is invalid, unlawful and did not constitute a ratification of Senate Joint Resolution No. 40; and

B. That United States Revised Statutes §205 quoted above, having been construed as creating a conclusive presumption, is unconstitutional as violative of the due process clause of the Fifth Amendment to the United States Constitution. See *Vlandis v. Kline*, 412 U.S. 441, 93 S.Ct. 2230 (1973).

C. That Defendant Hunter be required to inform the Congress of the United States

that House Joint Resolution No. 5 adopted by the Second Legislature of the State of Oklahoma failed to ratify the Sixteenth Amendment to the Constitution of the United States.

Benson also requests such other, further and different relief to which he may be legally and equitably entitled.

Respectfully submitted this the 18<sup>th</sup> day of January, 2000.

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