THE CONSTITUTION OF THE UNITED STATES

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PREAMBLE

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I, SECTION 5, SECOND CLAUSE

Each House may determine the Rules of its Proceedings[440]

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[440] *Rulemaking Power:* The power of a House to make its own rules is not impaired by previously enacted law. In adopting its rules, the House may incorporate by reference provisions of law constituting the Rules of the House at the end of the preceding Congress. It also may incorporate provisions of concurrent resolutions intended to remain applicable.

Ordinary rights and functions of the House under the Constitution are exercised in accordance with the rules, and under later decisions questions of constitutional privilege should also be considered in accordance with the rules. That House has recognized a law passed by an existing Congress with the concurrence of the House. In exercising its constitutional power to change its rules the House may confine itself within limitations.

Concurrent resolutions on the budget, as well as budget-related statutes, including rulemaking such as expedited consideration of legislation, often make reference to this power. For example, this text is from the Medicare Prescription Drug, Improvement, and Modernization Act of 2003:

"Section 803.—Procedures in the House of Representatives.

"(g) RULEMAKING POWER.—The provisions of this section are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the House of Representatives and, as such, shall be considered as part of the rules of that House and shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of that House to change the rules (so far as they relate to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House."

"SECTION 804.—PROCEDURES IN THE SENATE.

"(f) RULES OF THE SENATE.—This section is enacted by the Senate—

"(1) as an exercise of the rulemaking power of the Senate and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a bill described in this paragraph, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

ARTICLE I, SECTION 7, FIRST CLAUSE[441]

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.[442]

ARTICLE I, SECTION 8, FIRST CLAUSE [443]

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

"(2) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate."

[441] *Revenue Bills:* The insertion of this clause was another of the devices sanctioned by the Framers to preserve and enforce the separation of powers. It applies, in the context of the permissibility of Senate amendments to a House-passed bill, to all bills for collecting revenue—revenue decreasing as well as revenue increasing—rather than simply to just those bills that increase revenue.

[442] *Appropriations Act:* Article I extends to Appropriation Acts, which must also originate in the House of Representatives. Any bill providing for an appropriation of funds must begin its consideration in the House or it will be returned to the Senate without House consideration (this is a procedure commonly known a "blue slipping" legislation).

[443] *Kinds of Taxes Permitted:* By the terms of the Constitution, the power of Congress to levy taxes is subject to but one exception and two qualifications. Articles exported from any State may not be taxed at all. Direct taxes must be levied by the rule of apportionment and indirect taxes by the rule of uniformity. The Court has emphasized the sweeping character of this power by saying from it "reaches every subject," that it is "exhaustive" or that it "embraces every conceivable power of taxation." Despite these generalizations, the power has been at times substantially curtailed by judicial decision with respect to the subject matter of taxation, the manner in which taxes are imposed, and the objects for which they may be levied.

ARTICLE I, SECTION 8, SECOND CLAUSE[444]

To borrow Money on the credit of the United States;

ARTICLE I, SECTION 9, SEVENTH CLAUSE.[445]

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

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[444] *Purposes Served by the Grant:* This clause serves a two-fold purpose: it is the direct source of the most important powers that the Federal Government exercises in peacetime, and, except for the due process and equal protection clauses of the Fourteenth Amendment, it is the most important limitation imposed by the Constitution on the exercise of state power. The latter, restrictive operation of the clause was long the more important one from the point of view of the constitutional lawyer. Of the approximately 1400 cases that reached the Supreme Court under the clause prior to 1900, the overwhelming proportion stemmed from state legislation. The result was that the guiding lines in construction of the clause were initially laid down in the context of curbing state power rather than its operation as a source of national power. The consequence of this historical progression was that the word "commerce" came to dominate the clause while the word "regulate" remained in the background. The so-called "constitutional revolution" of the 1930s, however, brought the latter word to its present prominence.

[445] *Appropriations:* This clause is a limitation upon the power of the Executive Department and does not restrict Congress in appropriating moneys in the Treasury. When it directs a specific sum to be paid to a certain person, neither the Secretary of the Treasury nor any court has discretion to determine whether the person is entitled to receive it.

In making appropriations to pay claims arising out of the Civil War, Congress could, the Court held, lawfully provide that certain persons, i.e., those who had aided the Rebellion, should not be paid out of the funds made available by the general appropriation, but that such persons should seek relief from Congress.

The Court has also recognized that Congress has a wide discretion with regard to the extent to which it shall prescribe details of expenditures for which it appropriates funds and has approved the frequent practice of making general appropriations of large amounts to be allotted and expended as directed by designated government agencies.

Citing as an example that act of June 17, 1902, where all moneys received from the sale and disposal of public lands in a large number of States and territories were set aside as a special fund to be expended under the direction of the Secretary of the Interior upon such projects as he determined to be practicable and advisable for the reclamation of arid and semi-arid lands within those States and territories, the Court declared: "The constitutionality of this delegation of authority has never been seriously questioned."

AMENDMENT XVI[446]

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.[447]

[446] *History and Purpose of the Amendment:* The ratification of this Amendment was the direct consequence of the Court's decision in 1895 in *Pollock v. Farmers' Loan & Trust Company,* 157 U.S. 429 (1895), affirmed on rehearing, 158 U.S. 601 (1895), whereby the attempt of Congress the previous year to tax incomes uniformly throughout the United States was held by a divided court to be unconstitutional.

A tax on incomes derived from property, the Court declared, was a "direct tax" which Congress under the terms of Article I, Sec. 2 and Sec. 9, could impose only by the rule of apportionment according to population, although scarcely fifteen years prior the Justices had unanimously sustained the collection of a similar tax during the Civil War, the only other occasion preceding the Sixteenth Amendment in which Congress had ventured to utilize this method of raising revenue.

During the interim between the *Pollock* decision in 1895 and the ratification of the Sixteenth Amendment in 1913, the Court gave evidence of a greater awareness of the dangerous consequences to national solvency which that holding threatened, and partially circumvented the threat, either by taking refuge in redefinitions of "direct tax" or, and more especially, by emphasizing, virtually to the exclusion of the former, the history of excise taxation.

[447] *Ratification:* Passed by Congress July 2, 1909. Ratified February 3, 1913, Amendment XVI modified Article I, section 9, of the Constitution.