

**STATE DOCUMENTS ON  
FEDERAL RELATIONS: THE  
STATES AND THE UNITED  
STATES; NUMBER III**

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State documents on Federal relations: the States and the United States; Number III by Herman V. Ames

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**HERMAN V. AMES**

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STATE DOCUMENTS

ON

# FEDERAL RELATIONS:

THE STATES AND THE UNITED STATES.

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NUMBER III.

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THE RESERVED RIGHTS OF THE STATES AND  
THE JURISDICTION OF FEDERAL COURTS,  
1819-1882.

EDITED WITH NOTES BY  
HERMAN V. AMES, Ph.D.

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NUMBER III.

42. Resolutions of Pennsylvania Against the Bank.

March 29, 1819.

The charter of the first Bank of the United States expired in 1811. All efforts to renew the same, or to create another bank, failed until April 10, 1816, when the act establishing the Bank of the United States of America was approved. (*U. S. Stat. at Large*, III, 266-277.) Hostility to a national bank soon reappeared, especially during the financial crisis of 1818-19. An unsuccessful effort was made in Congress to repeal its charter, and in several of the States the Legislatures determined to tax the branches of the Bank out of the State. (McMaster, III, 386-389; IV, 496, 497.) The action of Maryland led to the test case of *McCulloch v. Maryland* in 1819 (4 *Wheaton*, 316), in which the Supreme Court sustained the constitutionality of the Bank and its exemption from State taxation. In Pennsylvania, within which State the central office of the Bank was located, the Legislature again showed its hostility to a national bank<sup>1</sup> by adopting the resolution given below by a vote of 81 yeas to 4 nays in the House, and 14 yeas to 7 nays in the Senate.

References: Text, *Pamphlet Laws of Pennsylvania*, 1819, 289; also in *Laws of Pennsylvania*, VII, 673 (*Phila.*, 1822); *Annals of Congress*, 16 *Cong.*, 1 *sess.*, 70, 102. The Legislative proceedings are given in *Journal of the House of Rep. of Penna.*, 1818-19, 200, 201, 341, 691, 692; *Journal of the Senate of Penna.*, 1818-19, 525. General references on the Act of 1816 and opposition to the Bank: Adams, VIII, 250, 251, 257-260; IX, 106,

<sup>1</sup> For action in 1811 see ante, pp. 52-54.

111, 116-118, 131; Hildreth, VI, 589-591, 650-654; McMaster, IV, 309-314, 495-508; Schouler, II, 447-449; III, 112-119; Von Holst, I, 387, 388. For additional references cf. MacDonald, *Documents*, 207; Channing and Hart's *Guide*, 356.

"That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness," are the fundamental principles of republicanism.

To prevent the peace, safety and happiness of the people from being endangered, political orthodoxy teaches that they ought never to delegate a power which they can exercise with convenience themselves.

In proportion as the capital of a monied institution is increased, its branches extended and its direction removed from the body of the people, so also will be increased its power and inclination to do evil and to tyrannize; therefore,

*Resolved*, That the following amendment be proposed to the Constitution of the United States, viz.: Congress shall make no law to erect or incorporate any bank or other monied institution, except within the District of Columbia, and every bank or other monied institution which shall be established by the authority of Congress shall, together with its branches and offices of discount and deposit, be confined to the District of Columbia.

*Resolved*, That our Senators and Representatives in Congress be requested to use their exertions to procure the adoption of the foregoing amendment.

*Resolved*, That the Governor be requested to transmit copies of the foregoing preamble, proposed amendment and resolutions to each of our Senators and Representatives in Congress, and also to transmit like copies to the executives of the several States, with a request that they lay the same before the Legislatures thereof, soliciting their co-operation in procuring the adoption of the foregoing amendment.

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### Replies of the States.

The invitation of the Legislature of Pennsylvania to the other States to cooperate with it in securing the adoption of the proposed amendment to the



Federal Constitution contained in the above resolutions brought out many replies during the years 1819-1823. The amendment was approved of by the Legislatures of Tennessee, Ohio, Indiana and Illinois, but disapproved of by those of at least nine other States. (Ames, *Proposed Amendments*, 256, 336, 339.) The replies of South Carolina and New York follow. That of the former is of especial interest in view of the strict construction attitude taken by this State a few years later, while that of the latter is a fair statement of the reason that led to the creation of the second Bank of the United States. Other notable replies were those from Massachusetts and Georgia. The Legislature of Massachusetts maintained the utility and importance of the Bank, declaring "that a bank limited in its operations to the District of Columbia would be wholly inadequate to the exigencies of the national government." (Resolutions of Jan. 31, 1820. *Resolves of Mass.*, 1819-24, 119, 120. Report of indorsement, Jan. 17, 1823, *Ibid.*, 571, 572.) The resolutions of the General Assembly of Georgia declared that it was "not expedient to deny absolutely" the power of Congress to establish a bank, "although impressed with the belief that the original grant of such power should be accompanied with a resolution requiring the assent of each and every State to the location of the said bank or any branches thereof within the limits of such State." (From copy in *Journal of House of Rep. of Penna.*, 1822-23, 646, 647.)

#### 43. Extract from the Reply of South Carolina.

December 12, 1821.

\* \* \* Your committee are unanimously of opinion that as Congress is constitutionally vested with the right to incorporate a bank, it would be unwise and impolitic to restrict its operations within such narrow limits as the District of Columbia. They apprehend no danger from the exercise of the powers which the people of the United States have confided to Congress, but believe that in the exercise of these powers that body will render them subservient to the great purposes of our national compact. Your committee therefore beg leave to recommend to this House the following resolution :

*Resolved*, That the Legislature of the State of South Carolina do not concur in the amendment of the Constitution proposed by Pennsylvania in the following words. [Here follow the text of the amendment and a resolution for the transmission of their reply to the other States.]

[*Acts and Resolutions of the General Assembly of South Carolina*, 1821, 69, 70. (Columbia, 1822.)]

## 44. Extract from the Reply of New York.

April 18, 1823.

\* \* \* \* \*

The committee are aware of the advantages a national bank, with its branches established in the several States, under the laws of the Union, beyond the reach of the local authorities, may enjoy, to the injury of the State bank; nor have they disregarded the influence that may be exercised by such a powerful monied institution extending over the widespread union above the power and in no manner subject to the direction of the State governments, which seem to have alarmed (and in some measure to have influenced the proceedings of) the General Assembly of Pennsylvania. But when they take into consideration the extreme embarrassment of the National government during and immediately subsequent to the late war in its fiscal concerns, from which a national bank, with its branches spread over the Union, might have relieved it; the necessity that government was then under, of receiving its taxes and duties, in the depreciated paper of State banks, in no way subject to its control, and which had generally suspended specie payment, to the great loss of the National treasury, and the attending necessity of the government of opening accounts with, and making deposits in, from ninety to one hundred of these local institutions, the committee can not resist the conclusion that the dignity, the welfare, the prosperity and the permanency of that government (which is our pride and our admiration) forbid the adoption of the proposed amendment; and although it may be wished that the power now exercised by Congress in establishing a national bank, with branches in the several States, had been used with some limitation, subjecting them to such taxation in the respective States as the local banks were or might be subjected to, yet the committee unanimously have come to the conclusion that it would be unwise and impolitic to adopt the proposed amendment. [Here follow resolutions of non-concurrence and for transmission of the resolutions. Adopted without division in both Houses.]

[*House Journal of New York*, 1823, 826, 827, 937, 966; *Senate Journal*, 1823, 351, 361.]

45. Extracts from the Report and Resolutions of Ohio  
Relative to the Bank and the Powers of  
the Federal Judiciary.

January 3, 1821.

The hostility to the Bank also showed itself in Ohio. The General Assembly of that State, February 8, 1819, enacted a law placing a tax of \$50,000 on each branch of the Bank of the United States that should be found within the State on and after the following 15th of September, and making express provision for enforcing the collection of the tax. (*Acts of Ohio*, XVII, 190-199.) This was done with the avowed purpose of compelling the Bank to cease doing business within the State. Notwithstanding the decision in the case of *McCulloch v. Maryland* (4 *Wheaton*, 316), rendered March 7, 1819, Osborn, the Auditor of the State of Ohio, determined to collect the tax from the two branches of the Bank, which had paid no attention to the act of the State. Disregarding the injunction issued by the Circuit Court of the United States, the Auditor's agents, acting under State warrants, forcibly seized the amount of the tax, \$100,000, from the branch of the Bank at Chillicothe. The Bank thereupon instituted both civil and criminal suits against the parties in these proceedings. While one of the suits was still pending the General Assembly of Ohio assembled in December, 1820. It at once came to the support of the Auditor and his agents. A joint committee of both Houses presented on December 12 an exhaustive state rights argument, prepared by Charles Hammond, in defence of the position of the State in this controversy. This report and resolutions, extracts from which follow, were adopted with amendments by the House of Representatives December 28, 1820, and by the Senate January 3, 1821, after that body had receded from several amendments, the most important of which was one intended to make less stringent the recommendation relative to the withdrawal from the Bank of all privileges before the courts. The vote of the House of Representatives on the several resolutions is given in brackets after each of the resolves. The report and resolutions were communicated to both branches of Congress early in February, 1821, and after some objection were ordered printed. (*Annals of Congress*, 16 *Cong.*, 2 *sess.*, 257, 361, 1029.) The Ohio Legislature also followed out the recommendation of the report, and on January 29, 1821, passed *An Act to withdraw from the Bank of the United States the protection of the laws of this State in Certain Cases.* (*Acts of Ohio*, XIX, 108-110.) Attempts made in the session of 1821-22 to secure the repeal of the law levying the tax were defeated. (*Niles' Register*, XXI, 303, 342, 343.) Subsequently the Circuit Court gave a decision against Osborn, and March 19, 1824, the Supreme Court, in the case of *Osborn et al. v. the Bank of the United States* (9 *Wheaton*, 738), affirmed the decision in all its material points, and the restitution of the funds seized was finally effected.

References: The text of the Report and Resolutions is given in Senate Docu-