condition upon the States that osteopathic physicians and surgeons be denied participation in such a medical service. The same conclusion applies to title II. Title II of the act provides Federal assistance to States for aid to dependent children, and requires submission of State plans to the Administrator for approval, which State plans must contain provision for reasonable subsistence compatible with decency and health. As in title I, the provisions of title II may be construed to require that State plans so contemplated must include the provision of medical care. Now, if the Federal Emergency Relief Administrator is consistent, he will, as Administrator of the provisions of this title, impose limitations on the States which will deny to osteopathic physicians and surgeons participation in any medical services rendered in contemplation of provisions of this title.

Not only would such regulations deny Federal recognition; they would have the effect of establishing osteopathic exclusion by State law. That is not only a milestone in Federal regulation of the healing arts in the States, it is the exercise of an unfounded power to destroy them. This cannot be the intention of Congress and the American Osteopathic Association appeals to this committee for an expression to that effect.

The CHAIRMAN. At the request of Senator Gore, I desire to submit for the record a report by the special committee of the American Bar Association opposing the ratification of the proposed child-labor amendment to the Constitution of the United States; also remarks by William D. Guthrie, chairman of the special committee of the American Bar Association, before the judiciary committees of the senate and assembly of the New York State Legislature.

REPORT OF THE SPECIAL COMMITTEE OF THE AMERICAN BAR ASSOCIATION APPOINTED TO OPPOSE RATIFICATION OF THE PROPOSED CHILD LABOR AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Foreword by Scott M. Loftin, president of association.

Special committee of the American Bar Association : William D. Guthrie, chairman, 36 West Forty-fourth Street, New York City; Arthur L. Gilliom, Fletcher Trust Building, Indianapolis, Ind. ; Garrett W. McEnerney, Hobart Building, San Francisco, Calif. ; Harry P. Lawther, Tower Petroleum Building, Dallas, Tex. ; William Logan Martin, 600 North Eighteenth Street, Birmingham, Ala.

[Reprint of report published in Journal of American Ear, Association for January 1935]

THE FEDERAL CHILD LABOR AMENDMENT BY THE SPECIAL' COMMITTEE OF THE AMERICAN BAR ASSOCIATION

FOREWORD

This statement by the special committee of the association appointed to oppose the so-called " child labor amendment ", is worthy of the careful consideration of every member.

In the first place, it makes the position of the American Bar Association plain. The association is opposing the proposed amendment, but it is in no sense opposed to effectively protecting and regulating employment of children. On the contrary, the American Bar Association has continuously for several years been urging the adoption of a uniform chilcl-labor act containing such regulations as may reasonably be dealt with by uniform provisions. This act was drafted by the commissioners on uniform State laws, which is a part of the American Bar Association. But the association holds that this matter is peculiarly the business of the States; that the majority of them have already dealt efficiently with the problem ; that the others, with a few exceptions, have made advances in the right direction ; and that a State's solution of its problem which will take into consideration local conditions will unquestionably be more satisfactory and workable than a general uniform plan imposed by a central bureau.

Under the uniform act referred to, the administration and enforcement of the law for the protection of children are vested in the States, where they properly belong both from a constitutional and practical standpoint, and "not in any centralized Federal bureaucracy functioning in and from Washington."

Federal child-labor amendment is not what moderation, reasonableness, or restraint is now intended or professed or promised, but what was within the intention and meaning of its framers in June 1924, what was being pressed upon the attention of Congress at the time the amendment was being considered by its Members and the purport of the language finally employed. The rule had been long settled that, when the language of a constitutional provision is plain and unambiguous, it controls and determines its legal intent and effect, and that there is then no room for conjecture, or, stated in other words, that it must be held to mean and intend what it plainly says. It had further long been the settled rule that any general power expressly vested in Congress by the Constitution is complete in itself, that it " may be exercised to its utmost extent ", and does " not depend on the degree to which it may be exercised ", that it " acknowledges no limitations, other than are prescribed in the Constitution ", and that " if it may be exercised at all, it must be exercised at the will of those in whose hands it is placed.[6]

Reference to the Congressional Record will convincingly show the far-reaching intent and purpose of the framers of the proposed amendment, and will render quite indisputable that such intent and purpose were not at all as limited as is now professed by the advocates of ratification.

The proposed amendment has no title, and it does not contain the word " child " or the word " children." The word " children " was originally contained in the proposed amendment, and one might reasonably suppose that the term would be quite essential in any alleged child labor amendment. However, the framers were advised by counsel that the "term ' child ' had been held to mean persons" under 14 years of age. The word "persons" was, therefore, substituted because much broader and more comprehensive.

The word " prohibit " was not at first proposed, but was added undoubtedly in order to obviate an assumed limitation upon the meaning of the words " limit " and " regulate ", namely, that a limitation or regulation must be appropria te.[7] The proponents of the amendment were being advised by distinguished lawyers and professors of law, and, therefore, the particular. significance of any changes made, such as the addition of the word " prohibit", cannot be disregarded. These lawyers must have' been familiar with the decisions of the Supreme Court of the United States. They probably advised that, if it were intended to seek power, not only to "limit" and " regulate ", but to go further and absolutely " prohibit " the labor of persons under 18 years of age without qualification or limitation af any kind, the express power to " prohibit " ought to be added. They must have had in mind the settled doctrine that every word in the Constitution of the United States must be given effect, and that no word can be treated as unmeaning or mere surplusage, and hence that " prohibit ", so used, would imply and mean more than' " limit " or " regulate " (Cong. Rec. vol. 65, p. 7181).

It was originally intended to grant to Congress the power to limit and regulate " the employment of children ", following in this respect the two acts of Congress of 1916 and 1919 which had been declared unconstitutional and void by the Supreme Court (*supra*), both of which statutes had used the phrase generally to be found in State child labor statutes, that is, " employed or permitted to work." The Congressional Record shows that the promoters of the proposed amendment had the word "labor " substituted. because they were advised that the word " employment " might be construed to imply " hired for pay " within the currently accepted meaning that, when a person is said to be employed, it implies work or service for another and generally for pay. As, however, it was the intention of the framers of the proposed amendment to reach right into the home and home farm, where children, as the Chief of the Children's Bureau in the Labor Department testified, " often work with their pareuts without pay and hence are not on the pay roll ", they objected to the word " employment " as too restrictive. This was testified by Miss Abbott, the Chief of the Chilclren's Bureau of the Labor Department, as the Congressional Record shows. (See Senate Report on Child Labor Amendment, page 39.)

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[6] *Martin v. Hunter's Lessee*, 1 Wheat., *304, 326* ; *McCulloch v. Maryland, 4* Wheat., 316, *402, 423* ; *Darthmouth College* v. *Woodward, 4* Wheat., 418, 644 ; Gibbons **v. Ogden,** 9 Wheat., 1, 196 ; *Brown v. Maryland*, 12 Wheat., *419, 439* ; *Everard's Breweries v. Day,* 265 *u. s. 545,* 558. *See* also *Veazie Bank* v. *Fenno,* 8 Wall. 533 ; *The Lottery Case,* 188 U. S. 321 ; *McCray* v. *United States,* 195 U. S. 27 ; *Caminetti* v. **United** *States, 242* U. S. *470* ; *Wilson v. New, 243* U. S. 332.

[7] United States Constitution, article I, sec. VIII, subdivision 18, as construed in *McCulloch v. Maryland, 4* Wheat. 316, 413.

The word "employment" was, therefore, discarded, and the broader term "labor"' substituted. This substitution was thus made in order to cover beyond possible question the work of children and youths for their parents in the home and on the home farm. The Chief of the Children's Bureau further testified that the general authority they were seeking would include "power to regulate labor upon the farms and in agriculture", and she added emphatically "just as much regulatory power as to farming as mines or any other work or occupation", and "would make no exception at all." (See Report of House Hearings, page 36.)

The minority report of the Judiciary Committee of the House presented on March 29, 1924, by its chairman, Mr. Graham, of Pennsylvania, a distinguished lawyer, stated as follows with regard to the then understanding of the intent and purport of the proposed amendment: [8]

"It is possible to pass a law prohibiting the labor of all minors under 18 years of age. If so, the States would have no jurisdiction whatever left upon that subject. The New England farmer's boy could not pick blueberries on the hills; the city schoolboy could not sell papers after school; the country boy, white or black, could not work in the cotton, wheat, or hay fields of the South or West; the college student even, if under 18, could not work to pay his way through college.

"It will not do to say that Congress would not pass such a drastic law. Perhaps it might not. We should not forget, however, that the sixteenth-the income tax-amendment was adopted upon the supposedly unanswerable ground that without it the Nation in case of war or other public emergency would be without adequate means of raising revenue. Yet it was hardly ratified before Congress levied an income tax, and at a time when the country was at peace with the whole world. Almost before the eighteenth amendment took effect the extreme Volstead law was enacted, which is so extreme that in the opinion of many thoughtful citizens its severity is responsible for the unsatisfactory enforcement of prohibition."

Representative Ramseyer of Iowa, who voted for the amendment, among other explanations in the House on April 26, 1924, stated as follows: [9]

"Mark right here, too, it does not say the 'employment' of persons under 18 years of age, but the 'labor of persons under 18 years of age' * * * A boy who is sent by his father to milk the cows, labors. Under the proposed amendment Congress will have power to regulate the labor of a boy under the direction of his father as well as the employment of the same boy when he works for a neighbor or stranger. * * * Congress will have the power to 'limit, regulate, and prohibit' the labor of girls under 18 years of age in the home and of boys under 18 years of age on the farms. Gentlemen admit that the effect of the proposed amendment is just as I stated it."

And Representative Crisp, of Georgia, then said: [10]

"This amendment does not limit or confine the power of Congress to legislate with respect to the work of persons under 18 in mines, factories, sweatshops, and other places injurious to moral or physical welfare, but it goes further-it is as wide open as the heavens-and provides authority to say they cannot work in the fielcls, stores, or in other wholesome and healthful occupations. Aye it goes even further; it confers upon Congress the power to say that a girl under 18 cannot assist her own mother in doing the housework, cooking, or dish-washing in her own home, and that a son of like age cannot help his father to work on a farm."

In the Senate on May 31, 1924, Senator King of Utah said: [11]

"Of course, it is obvious that under the guise of the amendment they will in time take charge of children the same as the Bolsheviks are doing in Russia, and control not only their labor and their education, but after a time determine whether they shall receive religious instruction or not, the same as the Bolsheviks do in Russia.. It is a scheme to destroy the State, our form of Government, and to introduce the worst forms of communism into American institutioiis. * * *"

These quotations are but a few of the many similar items of evidence to be found in the Congressional Record and committee reports as to the understanding of Congress in 1924, and presumably the intent and purport of the proposed amendment.

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[8] Report no. 395, pt. 2, p. 8.
[9] Congressional Record, vol. 65, p. 7290.
[10] Congressional Record, vol. 65, p. 7174.
[11] Congressional Record, vol. 65, p. 10007.

Yet, 10 years afterward, the Secretary of Labor, Miss Perkins, and the Secretary of Agriculture, Mr. Wallace, are publicly asserting the direct contrary as to what Congress understood and intended in 1924. Thus, in an article by the Secretary of Labor published in the New York Times on January 28, 1934, she quoted with approval and gave currency to the following plainly erroneous statement :

" The amendment gives Congress power only over the labor of children for hire, and nothing else. It would not give Congress power to send inspectors any place except where work for hire was being carried on, and therefore Congress would have absolutely no power to send inspectors into families, schools, or churches any more than it has now."

And equally erroneous, if not equally misleading, was the following statement made by the Secretary of Agriculture and also given wide publicity :

" Coming from an agricultural State, I am familiar with the attempts of opponents of the amendment to arouse farmers against it on the ground that farm boys and girls would no longer be permitted to help with' the chores and that the parents' authority over their children would be seriously impaired. Of course, this is nonsense and every fair-minded person who knows anything at all about the proposed amendment knows that it is nonsense. The amendment is directed at protecting children from industrialized and commercialized employment which endangers their health and interferes with their schooling. Farm chores done outside of school hours and suited to the age and physical capacity of the youngsters certainly do not come under the heading of industrilized and commercialized employment."

It is quite true that children so engaged do not come uncler the heading of industrialized and commercialized employment, but the Secretary apparently was entirely ignorant of the fact that the proposed child-labor amendment was not at all intended to be limited to " industrialized and commercialized employment ", and that no such heading or limitation or qualification is expressed therein or can be implied therefrom.

The sincerity and good faith of these two members of the Cabinet and of the other advocates of ratification who are making similar statements need not be chalanged because it is assumed that they must, of course, be unaware of the understanding and intention of Congress in 1.924 and of the settled rules of constitutional interpretation. It must, however, be a source of regret that they have not seen fit to consult the Congressional Record before undertaking publicly to discuss the purpose, intent, and meaning of an amendment to the Constitution of the Unitecl States proposed by Congress. Had they done so, it is reasonable and proper to believe that they would in candor probably be convinced that the intention and understanding in 1924 of the Congress that proposed the amendment were not at all as limited as they are now representing. They are, it. is true, liberal in professions and assurances of moderation, restraint, and reasonableness, and of absence of any present purpose or intent to urge Congress to exercise all the legislative power that the amendment would vest in it. But, how can anyone give assurances as to what Congress will or will not do? The Secretary of Labor has declared that she thinks " it is inconceivable that Congress should ever pass such legislation, for no one wants to prohibit all work for children uncler 18." That being so, why is she urging that such a power be granted to Congress when no one wants ever to have it exercised and when no State legislature has ever exercised it? Criticizing this statenient of Miss Perkins, the Hartford Daily Courant, in a leading editorial published April 24, 1934, justly said :

" If nobody wants to do that, then the amendment should have been so drawn as to make it impossible. Experience has abundantly proved that sooner or later every legislative body avails itself of every last vestige of power that it possesses. It may start out moderately enough, but there are always those who think the pace too slow and insist on going farther and faster. They organize themselves undesome high-sounding title that gives the impression they are working for noble, humanitarian ends, and often succeed in exerting sufficient pressure upon the law-making body to gain ulterior objectives."

If the proposed amendment be ratified, there will have be an enormous increase in the personnel of the Labor and Agricultural Departments, the former having in 1933 [12] a personnel of 5,330, and the latter in 1934 having a personnel of 40,857. As ex-Governor New York well said in The New Outlook for March 1934 in opposing ratification of the child-labor amendment : " it conceivable that Federal control can be esercisecl otherwise than a of inspectors, investigators, sleuths, bloodhounds, and

[12] Figures for 1934 were refused on ground that they had not yet been officially published.

statisticians trawling about in trains, automobiles, and on horseback, stopping at hotels, and bedeviling the work of (State) labor departments? "

It was urged upon the New York Legislature in April 1934 by some of the advocates of ratification, " that the diversity of State legislation (i. e. as to child labor) had resulted in inequitable conditions and unfair competition for industry." All concern as to safeguarding the health, morals, or welfare of children for the time being became apparently quite secondary, and the admission made that the Constitution of the United States was being sought to be radically amended in order to equalize labor conditions and competition of all persons under 18 years of age throughout the entire United States. Obviously, the very same reasoning, if sound, would support an amendment providing that the labor of adults should likewise be " limited, regulated, and prohibited " by Congress in order to set aside State legislation which it was conceived " has resulted in inequitable conditions and unfair competition." The attitude of the American Federation of Labor is shown by the appeal recently issued by President Green urging the labor organizations to support ratification. (See also H. Doc. No. 551 (1928), pp. 135–136, and the American Federationist, for Sept. 1934, at pp. 949-958.)

THE DEFINITION AND SCOPE OF THE WORD " LABOR "

Notwithstanding the broad intent and purpose of the framers of the child labor amendment as clearly and convincingly disclosed in the Congressional Record, it is nevertheless now being urged by advocates of ratification that the " power to limit, regulate, and prohibit the labor of persons under 18 years of age ", as expressed in the proposed amendment, would not and could not sensibly or reasonably be construed to vest in Congress any power over " the work of children for their parents at household tasks or in assisting on the farm " ; and it is further being argued that as no State has ever attempted to control such home work " this alone is a complete answer to the charge that Congress would attempt regulation of that kind." [13] In other words, the argument is now being advanced that because no State has ever deemed it necessary or advisable to exercise the power to prohibit the labor of persons under 18 years of age in the home or on the home farm, therefore we can safely and wisely grant to Congress the power to do so, on the assumption -that it will never be exercised, notwithstanding the indisputable insistence in 1924 that that very power should be conferred. In support of this proposition, which entirely disregards the avowed understanding, intent, and purpose of the framers of the amendment and the intention of Congress in 1924, the argument is that the worcl " labor " in the amendment must receive a " sensible construction " and not one which will lead to an " absurd consequence," in the face of the indisputable fact that what is now urged to be " nonsense " and an " absurd consequence " and not a " sensible construction " was the avowed and deliberate purpose and insistence of the framers of the amendment and of those pressing the amendment on Congress in 1924, as the Congressional Record clearly shows.

The decisions in *Holy Trinity Church v. United States (143* U. S. 457), and *Maxwell* v. *Dow* (176 U. S. 581, 602), are, for example, being cited in support of the contention that the word " labor " will be held to have such a limited and restricted meaning as is now suggested. A study of these two cases, particularly in the light of subsequent decisions, will show that they do not support the proposition that the force and effect of an amendment of the Constitution of the United States in plain and unambiguous language can be limited by any such theories as are now advanced. Indeed, the very case they cite of *Maxwell* v. *Dow* (176 U. S. 581), sufficiently refutes the contention of the advocates of ratification. Thus, speaking of a constitutional amendment, the court then said (at p. 602) :

" The safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption mav have arisen, and then to construe it, if there be therein any doubtful expressions, in a way so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted. This rule could not, of course, be so used as to limit the force and effect of an amendment in a manner which the plain and unambiguous language used therein would not justify or permit."

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[13] November number A. B. A. Journal at p. 731.

And even in the *Holy Trinity Church case*, which is principally relied on, the opinion clearly shows (at p. 463) that if the labor of rectors or ministers or rabbis had been " pressed upon the attention of the legislative body " and there was evidence of an intention or purpose to exclude them, a different conclusion would necessarily have been reached " without regard to the consequences." This is quite evident from the later cases, such, e. g., as *Treat* v. *White* (181 U. S. *264, 267) ; Commissioner Of 'Immigration v. Gottlieb (265* U. S. 310, 313), and *Crooks* v. *Harrelson* (282 U. S. 5.5, 60). See also the more recent opinion of the Circuit Court of Appeals, Eighth Circuit, in *Echols* v. *Commissioner of Internal Revenue* (61 Fed. (2d) 191, 194), which concludes with the remark : " Why should a court say that Congress intended something different from what the plain meaning of the words shows its intention to be, " " and current use is generally limited, it follows that the word " labor " must be held to have been used with a like limited meaning, so as not to include or " " the Or " " " ", made reports. The decisive fact, moreover, is that there is not the slightest evidence, whether from the context or otherwise, that Congress used the word " labor " in any limited or restrictive intent or sense, but that the contrary is

Furthermore, not only was it understood and " pressed " upon Congress that the amendment would and should confer power over the " labor o'f persons under 18 years of age" in the home and' on the home farm, as we have seen above, but the following qualifications or limitations of the scope of the amendment were opposed and rejected (68 Cong. 7292–7293),

(1) " Provided that no law shall control the labor of any child in the house or business or on the premises connected therewith of the parent or parents."

(2) " But no law enacted under this article shall affect in any way the labor or

(3) " SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under 16 years of age, but not the labor of such persons in the homes and on the farms where they reside." [14]

It is further urged that the proposed child-labor amendment is different in form from the eighteenth amendment ; but this difference seems only to intensify its objectionable character. The amendment now proposed would constitute an unlimited grant of power in general terms, whilst the eighteenth amendment was expressly limited to the prohibition of " intoxicating liquors for beverage purposes ", and purported to grant to Congress only a concurrent power of enforcement of the prohibition. Nevertheless, these plain limitations upon the grant of power to Congress were in fact practically nullified by Congress and all limitations disregarded by it, and the Supreme Court could not give any relief or exercise any restraint because, as it stated in one of the cases brought before it for relief, " * * * this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground " (*Everard's Breweries* v. *Day (265* U. S. 545, 559). *(See* also *Lambert v. Yellowley,* 291 Fed. 640, 644; 272 U. S. 581, 604.)

The plea that we can safely and unconcernedly transfer to Congress the unlimited " power to limit, regulate, and prohibit the labor of persons under eighteen years of age ", grant it absolute control over the labor of children and youths in all the families of the United States, and place our trust and only reliance in the reasonableness and self-restraint of the present or future Congresses, or of the bureaucrats to whom the broadest powers and discretion as to enforcement might be delegated, ought surely to be sufficiently refuted by the example of the Volstead Act and its amendments, which fixed upon all the States a reign of oppression and inquisitorial bureaucracy, and which ex-Governor Smith, of New York, characterized in The New Outlook for October 1933 and March 1934, respectively, as follows :

" It does not seem possible that the same States which are relieving us of the curse of the eighteenth amendment will now impose another constitutional curse upon us under the guise of abolishing child labor."

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[14] In the University of Pennsylvania Law Review 'for November 1934, Ira Jewell Williams, of the Philndephia bar, among other interesting statements, says : " Protests received scant and impatient attention, as the writer can personaly certify, from appearances before the Judiciary Committee of the House."

" We are told that Congress will never do anything extreme or undesirable under this amendment. That is just what the Wheelers and Cannons told us about the eighteenth amendment."

SOME OTHER ARGUMENTS IN SUPPORT OF RATIFICATION

It is further represented by advocates of ratification that the operation of the acts of Congress of 1916 and 1919 " indicates the comparative simplicity and inexpensiveness of enforcing a Federal child-labor law ", and the assertion is made that these acts " gave general satisfaction while in force." [15] As matter of fact, however, as it ought readily to be recalled, these acts of Congress were not economically or generally or efficiently administered, and the attempts to enforce them caused wide-spread dissatisfaction and resentment.

The act of Congress of September 1, 1916, known as the first " Federal Child Labor Act ", by its terms did not become effective until September 1, 1917, and before that date and on August 9, 1917, it had been challenged in the courts on the ground that it was unconstitutional, as it had been challenged on that ground in both Houses of Congress before enactment. It was declared unconstitutional and void by the District Court of the United States for the Western District of North Carolina on August 31, 1917 ; in other words, before it ever became effective, and this decision was affirmed by the Supreme Court of the United States on June 3, 1918 (*Hammer v. Dagenhart*, 247 U. S. 251). The attempted enforcement of the act by the Children's Bureau in the Department of Labor is plainly irrelevant and negligible, and far from indicating or tending to prove economy, efficiency, or general satisfaction. Indeed, the Children's Bureau of the Labor Department apologetically declared in a public report that its work under the act of 1916 " was hardly under way before the law was declared unconstitutional."

The second Federal Child Labor Act was embodied in the Revenue Act of February 24, 1919. It likewise from the beginning was generally recognized to be of very doubtful valiclity, and it also had been challenged in both Houses of Congress as unconstitutional. Litigation was promptly instituted to test its validity, and it was declared unconstitutional and void on December 10, 1921, in *Drexel Furniture Co.* v. *Bailey* (276 Fed. 452), affirmed by the Supreme Court on May 15, 1922 (*Child Labor Tax Case*, 259 U. S. 20). Even the very limited operation by the Internal Revenue Department of this invalid, unpopular, and oppressive child-labor tax. law pending litigation as to its validity involved a cost to the taxpayers of $307,703.

It is then urged that it is unreasonable, or as some phase it, is nonsense, another absurdity, an absurd consequence, to apprehend that Congress would ever exercise the-power to prohibit all labor of persons under 18 years of age because no State has ever gone that far. It is, of course, true that no State in all our history has ever gone so far. Then, why was it deemed necessary to amend the Constitution of the United States so as to give to Congress a power so drastic and far-reaching and possibly so oppressive and inquisitorial that no State had ever exercised it, or found or deemed it necessary or proper to exercise it, and which it is now asserted no one desires to have exercised? Why were not adopted the reasonable and desirable limitations urged on Congress in 1924, as above quoted?

Finally, in refutation of the Secretary of Labor's assertion that " no one wants to prohibit all work of children under IS ", reference may be made to a bill pending in the House of Representatives, introduced on January 3, 1934 (H. R. 6184), by Representative Robert R. Rich, of Pennsylvania, in anticipation of what he believed would be the early ratification of the Child Labor Amendment and in order to make it immediately effective when it was ratified.

The bill so introduced in Congress on January 3, 1934, in anticipation of the assumed early ratification of the child-labor amendment, proposes to prohibit the employment of any person under IS years of age except only children of 14 and under 18 during a school-vacation period, and then only if a certificate be issued to them by the superintendent of schools. Far-reaching inquisitorial and prying powers would be thereby rested in the Secretary of Labor and her officers and employees. Employers would be terrorized and coerced by being made criminally liable to fine and imprisonment for any violation of the act, or for any refusal to make any requested statement, or to permit examinations of their records. The Secretary of Labor would be

[15] Journal, Nov. 1934, p. 731.

given unlimited power to make " rules and regulations " and to appoint and fix the compensation of " such officers and employees as are necessary to carry out the provisions of this act ", and her duty would be to report annually " an account of investigations, determinations, civil actions, criminal prosecutions, and expenditures under this act ", and " there is authorized to be appropriated such sums as may be necessary for the purposes of this act,"

CONCLUSION

In conclusion, it may be affirmed that the Federal child-labor amendment proposed by Congress to the State legislatures on June 2, 1924, is no longer pending for ratification by the State legislatures, in view of the lapse of more than 10 years and 6 months since it was proposed by Congress and of the opinion of the Supreme Court of the United States in the case of *Dillon* v. *Gloss* (256 U. S. 368, 374). It is further affirmed that the vital and far-reaching question confronting the State legislatures on the merits, and their grave duty and responsibility, are to consider and determine whether or not they would be justified in ratifying an amendment which would grant such a new, unlimited, and far-reaching power to Congress in curtailment and impairment of the present sovereignty and legislative powers of the States and their right to local self-government, a power which would reach into every home and menace every family, which might interfere with the sacred authority, control, and duty of parents, and which would practically be exercisable by Congress only through an innumerable bureaucracy centered in and directed from Washington. As we have seen above, it would constitute a power that " may be exercised to its utmost extent and at the will of those in whose hands it' is placed ", and it could readily be abused and become oppressive, inquisitorial, and demoralizing in its effect, and subject every household in every State to the prying and constant interference of Federal investigators, detectives, truant officers, and snoopers.[16] The authority and rights of parents are now safeguarded alike against State or Federal denial (*Meyer* v. *Nebraska*, 262 U. S. 390, 399; *Pierce v. Society of Sisters*, *268* U. *S. 510, 535 ; Farrington v. Tokushige*, *273* U. S. 284, 299). If the proposed unprecedentedly broad power be granted to Congress " to limit, regulate, and prohibit the labor of persons under 18 years of age " throughout the United States, who can assure or reasonably assume that such power would never be objectionably or oppressively exercised, or that any such legislation would be unconstitutional? The language of Chief Justice Marshall in *McCulloch* v. *Maryland* (4 Wheat. 316, 402, 423) should ever be borne in mind, viz :

" It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and plain usurpation, to which the Constitution gave no countenance. * * * But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."

Applying this long recognized principle to the Volstead Act under the eighteenth amendment in the case of *Everard's Breweries v. Day*, *supra (265* U. S. 545, 559), the court unanimously declared:

" It is likewise well settled that where the means adopted by' Congress are not prohibited and are calculated to effect the object entrusted to it, this Court may not inquire into the degree of their necessity; as this would be to pass the line which circumscribes the judicial department and to tread upon legislative ground. *McCulloch* v. *Maryland*, *supra* (p. 423) ; *Legal Tender Case, supra* (p. *450) ; Fong Yzte Ting v. United States*, *supra* (p. 713). Nor may it inquire as to the wisdom of the legislation. *Legal Tender Case, supra* (p. 450) ; *McCray* v. *United States* (195 U. S. 27, 54) ; *Hamilton v. Kentucky Distilleries* Co. (251 U. S. 146, 141) ."

In the very recent case of *Nebbia v. New York* (291 U. S. 502), the Court reaffirmed the above doctrine in the following emphatic language (p. 537) :

" With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and un-

[16] See, e. g., as to possible extremes and tyrannies of bureaucracies The New Disposition, by Lord Hewart, Lord Chief Justice of England, cited by James M. Beck, in his Our Wonderland of Bureaucracy ; and The Federal Octopus in 1933, by Sterling E. Edmunds, of the St. Louis bar.

authorized to deal. The course of decision in this Court exhibits a firm adherence to these principles."

It is, therefore, submitted that, if the proposed Federal child-labor amendment were every duly ratified, and Congress thereupon enacted a statute prohibiting the labor of persons under 18 years of age, whether in the home, on the home farm, or otherwise, such a statute would be constitutional and valid, and would be due process of law under the fifth amendment, in view of the evidence as to the broad intent of the framers of the amendment contained in the Congressional Record, of the grounds pressed upon Congress in 1924, and of the express and clearly plain and unambiguous grant of power not only to limit and regulate, but to prohibit such labor.

THE PROPOSED CHILD-LABOR AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

[Joint hearing on the question of ratification before the judiciary committees of the senate and assembly of the Legislature of the State of New Pork, in the senate chamber at Albany, on Wednesday, Jan. 23, 1935]

(Remarks by William D. Guthrie, chairman special committee of the American Bar Association, appointed to present to the legislatures of the several States the views of the association in opposition to ratification)

Gentlemen of the judiciary committees of the senate and assembly, the American Bar Association at its annual meeting in 1933 adopted a 'resolution in which it declared that " the proposed child-labor amendment to the Constitution of the United States should be actively opposed as an unwarranted invasion by the Federal Government of a field in which the rights of the individual States and of the family are and should remain paramount " ; and at the annual meeting in 1934 it adopted a further resolution directing that a special committee of its members be appointed by the President to present to the legislatures of the several States the views of the association in opposition to ratification. A committee of five members was thereupon appointed, and I was named its New York representative and its chairman. It is as the spokesman of that committee of the American Bar Association that I am now appearing before you.

After thorough study of all the pertinent questions of constitutional history, law, and practice arising under the proposed amendment, this special committee made its report, which was published in the January number of the Journal of the American Bar Association, and copies thereof have been sent to all the members of the legislature of this state and otherwise widely distributed. I urge its candid consideration and reading and the study of the authorities it cites.

The concurrent resolution before you presents the exceptionally, if not unyrecedently, important question whether or not this proposed amendment to the Constitution of the United States should be now ratified by the legislature of the State of New York notwithstanding the lapse of more than IO years and 7 months since its proposal by Congress on June 2, 1924, and its rejection 10 years ago by both branches of the legislature in 13 States within 9 months after its proposal by Congress and in 34 States by one or both branches within 11 months, and notwithstancling the fundamental change which it would bring about in our Federal system and in our heretofore recognized and cherished political principles of State rights, home rule, and local self-government.

The proposed amendment in our judgment is the most far-reaching amendment that has ever been proposed by Congress insofar as the personal rights, liberties, and privileges of our people are concerned. When it was emphatically and overwhelmingly rejected 10 years ago, this view was generally appreciated, and public opinion was then fully nclvisecl as to its true scope, intent, and purpose.

Although the wording of the proposed amendment may be familiar to you all, it will, nevertheless, be as well to recall it again at this point in order to emphasize once more its exact language, which unfortunately is constantly being disregarded or misrepresented by advocates of ratification. It has no title, and the word " child " is not mentioned therein. Indeed, it is a misnomer to call it a child-labor amendment at all, when it was intended to operate and would

operate mostly with regard to the millions of persons throughout the United States who are over 14 and under 18 years of age and who are conceded to be no longer children but youths, whether male or female. The language is as follows :

" SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

" SEC. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

This language is certainly plain and unambiguous, and, to repeat, the terms " child " and " child labor " are not mentioned therein, obviously because it was to include and cover persons over 14 and under IS who, it is well established, are not legally speaking children, Thus it, is the " labor " of all persons under 18 years of age that is to be limited, regulated, and prohibited, without any limitation or qualification whatever, and not " labor for hire " or " child labor " as those terms are generally understood and employed in the phraseology of statutes, but clearly and indisputably labor of every nature and kind. If you will consult any English dictionary, or any law dictionary, or Corpus Juris, you will find quite conclusively that the word " labor " means physical or mental work, physical or mental toil, physical or mental exertion of any kind, and whether for pay or without pay.

You are, therefore, now called upon to determine whether the New York Legislature will vote to ratify this proposed amendment to the Constitution of the United States, and thereby transfer from the State to the Congress and from home rule and local self-government here to the Government at Washington and its bureaucracies, the far-reaching and vitally important "power to limit, regulate, and prohibit the labor of persons under eighteen years of age " residing in our State, and thereby authorize the suspension of the operation of any, and it may be all, of our excellent and beneficent child labor State laws as may be necessary to give effect to legislation enacted by Congress. In other words, the proposition before you and your present duty and responsibility involve vitally the future welfare and practical control of all the children and youths of this State under 18 years of age, that is to say, of about 5,000,000 of our inhabitants, of whom about 750,000 are over 14 and under 18 years of age; in other words, who are 15, 16, and 17 years of age. The subject is so important, the consequences would be so momentous, and the problems it would create so complex, that I cannot possibly deal with them adequately even in the liberal time you are courteously according to me. Hence, we must rely in great measure upon your perusal, study, and due consideration of the printed matter we have submitted.

The question that arises at the threshold of the argument is whether or not, after a delay of nearly 11 years and its overwhelming rejection meanwhile by public opinion and forty-odd State legislatures, this proposed amendnient is, nevertheless. now still pending for ratification. You have heard read today the opinion of former Chief Judge Hiscock of the New York of Appeals that it is not Still pending for ratification. In the case of *Dillon v. Gloss, 256* U. S. 368, decided in May 3.921, which decision has never since been questioned or limited in any way whatever, the Supreme Court of the United States declared that an amendment to the Constitution of the United States must be ratified within a reasonable time. The special committee's report discusses this point at length, quotes fully from the decision of the Supreme Court, and expresses the opinion that more than a reasonable time has elapsed since June 2, 1924, and since the rejection of the amendment by 34 States as early as February 1925.

The special committee further points out in its report that, in view of this long interval and these prior rejections, the preferable course in 1933 and 1934 would have been to apply to Congress, to the end that, if Congress should then still " deem it necessary ", as expressly required by article V of the Constitution of the United States, the amendment might be " a second time proposed by Congress." This was pointed out *by* the Supreme Court in *Dillon* v. *Gloss*, to be manifestly " the better conclusion." Had this course been followed, the amendment could have been modified in its language so as to make it conform to the more reasonable and very limited extent and purpose now being professed or represented by its advocates and propagandists as its true purpose and intent, and so as not to transfer to Congress such sweeping and all-inclusive power as the proposed amendment now clearly provides.

The reason why this obviously' preferable, reasonable; fair, and common-sense course was not pursued undoubtedly was that it was considered unlikely that

Congress would be willing to propose even a modified and restricted amendment in view of the emphatic and overwhelming disapproval and rejection of the amendment in 1925. It may be that it had learned this lesson as to the public opinion of the country. Resource was, therefore, had to the plan of attempting to resurrect-that is the very term used by the Supreme Court-to resurrect this dead amendment, and endeavor to reverse, circumvent, and overthrow the prior public opinion, judgment, and action of 40 State legislatures.

Thereupon, in 1933, unexpectedly and certainly before it was publicly disclosed or generally known that any such over-smart scheme was on foot, votes of ratification were obtained from 16 State legislatures. However, as soon as the opposition realized what was being done and the bodies that defeated the amendment 10 years ago could be reorganized, there were no further ratifications, but, on the contrary, rejections in every case where the amendment came to a vote in any legislature or committee thereof. There were no ratifications, but many rejections, in 1934.

The American Bar Association has long been opposed and is now emphatically opposed to any injurious labor by young children, or their working for hire in mines, factories, mills, or other objectionable and injurious occupations. It has prepared and has been urging a uniform State law to regulate the subject. All the States, however, have their own distinct child-labor laws, adequately enforced in most of the States, and most of them have heretofore wisely preferred to retain power with respect to this branch of home rule and local self-government and the protection of their own children. The association is convinced that the regulation of child labor is now, as it has been for many years, a matter of vital importance, but that such regulation is within the domain of the States as essentially a matter of home rule and local self-government, and that child-labor laws should be enforced and administered by local resident officers, known locally, acquainted with local conditions, subject to local control, and accountable and responsible as such to the State, and not to bureaucrats in Washington. The association is now actively opposing the ratification of the proposed amendment solely because, to repeat the language of its resolution adopted at its annual meeting in 1933, it is convinced that it would constitute, if ratified, " an unwarranted invasion by the Federal Government of a field in which the rights of the individual States and the family are and should remain paramount."

Let us now analyze the language of this proposed amendment. It would not only authorize Congress to limit and regulate the labor of our children and youths but to prohibit any such labor. It would patently confer upon Congress a power that could reach into every home where there were boys and girls under IS, and it would be a power of investigation and supervision that would clearly authorize invasion of the privacy of the home by Federal inspectors, investigators, or, to use the current and true term, " snoopers." It would unnvoidably tend to undermine and impair the authority, control, and duty of parents. It would, in the language of Chief Justice Marshall, be a constitutional power that could " be exercised to its utmost extent and at the will of those in whose hands it is placecl." This effect of a constitutional provision has been the settled rule of constitutional law for more than a century, and it is challenged now solely by the advocates and propagandists of ratification of this amenclment, who are advancing the extreme and plainly untenable proposition that although Congress would be granted the express power to prohibit, in addition to the power to limit and regulate, nevertheless, under some novel and heretofore unimagined and unknown construction of the due-process-of-law clause contained in the fifth amendment or of the clause reserving to the States or to the people the powers not delegated to the United States contained in the tenth amendment, Congress could only prohibit to a reasonable and limited extent, and that the Supreme Court would have power to curb Congress in this regard. You are in fact and effect being told that an act of Congress prohibiting " the labor of persons under eighteen years of age ", in the identical words of this amendment and its express grant of very power, would not be due process of law, and that it would, forsooth, be void on the ground. that it was an attempt to exercise a power not delegated to the United States. And this, too, in the teeth of the fact, to repeat, that Congress would be expressly and unqualifiedly empowered by the amendment, not only to limit and regulate but to " prohibit the labor of persons under eighteen years of age."

The framers of the proposed amendment would accept no limitation whatsoever upon the power they were seeking. They substituted the word " labor " for the word " employment" because, as they told Congress, the word employ-

ment might be held to imply " hired for pay " ; and they wanted, as the Con-, gressional Record proves, to reach the children and youths who work or do chores in the home or on the home farm without pay. The Congressional Record demonstrates that every reasonable and provident limitation moved in 1924 was intransigently rejected. Several amendments were proposed and rejected which would have expressly excluded any power in Congress over persons doing work or chores in the home or on the home farm. The fanatical representatives of the Labor Department, however, woulcl allow no qualification or limitation whatever, and declared that they " would make no exception at all." A substitute was moved but rejected which would have confined the power of Congress to labor in mines, quarries, mills, canneries, workshops, factories, or manufacturing establishments of persons under 18 years of age and of women, but this likewise was rejected. In a word, the Labor Department would accept no limitation whatever upon its desired, all-inclusive, and far-reaching power and attendant political patronage.

The newspapers have advised us that the New York League of Women Voters has issued a public statement, preliminary to their appearing on this hearing, in which they challenge the construction that Congress would have power to limit, regulate, or prohibit labor in or about the home or home farm. They assert in this statement, and perhaps will now repeat before you, that the term " child labor " has an absolute technical meaning, and they inform or aclmonish you that " the courts interpret laws according to the meaning the words carry in current usage." " Child labor ", they proceed to tell you, " means the work of employed children " ; and they declare that " it does not mean and never has meant the work of children in or about their home or in school." I venture to assert quite categorically and positively that there is no precedent or authority or decision anywhere that defines " child labor " as " the labor of persons under eighteen years of age ", although there has long been a current usage to use the term " child labor " in referring generically to the labor of children under 14 in mines, mills, factories, etc.

These ladies completely overlooked the fact that the amendment does not contain any such term as " child labor " and does not even mention the word " chilcl " at all, whether in title or body. This, of course, would have been readily obvious to them if they had only taken the pains to read the very brief two sentences of this proposed constitutional amendment to the Constitution of the Unitecl States concerning which they were about to memorialize, aclmonish, and instruct the New York Legislature. They assert that " child labor means the work of employed children." Here, again, had they only taken the pains to examine the Congressional Record, or even the published report of the special committee of the American Bar Association, they would have been advised of the fact that the amendment as first submitted to Congress contained the word " employment ", but that the word " labor " was substituted by advice of counsel because the word "employment " might be construed to imply " hired for pay ", and full jurisdiction was wanted over the work of children working in or about the home without pay.

This is but another striking example of the innumerable and regrettable instances of ignorance and inaccuracy of language and of the great difficulty of rationally discussing and opposing this amendment when its advocates depart from and misrepresent its actual language. Of course, everybody wants to protect children under 14, and the word " chilcl " and the phrase " child labor " appeal strongly to the sympathy and emotions of all of us. But few even of the intelligentsia and the academicians who rush into print and seek to instruct the legislatures will take the pains even to read the two simple, plain, and unambiguous sentences of the amendment itself, and few, if indeed any of them, will take the trouble to consult the Congressional Record in order to ascertain the purpose actually understood and intended by Congress, and that, too, even when they are passing judgment and venturing. to instruct legislatures and public opinion upon the intent and scope of an amendment to the Constitution of the United States.

Again, and more pitiably, we have the case of the official spokesman of the National Child Labor Committee and its principal professional propagandist. He is a Mr. Dinwiclclie; and he is constantly issuing equally inaccurate and misleading chilcl-labor literature. For example, in an article by him published this month in the Journal of the American Association of University Women, he makes the statement that " the amendment confers no power upon Congress to regulate the work children do about the home or farm for their parents." As a matter of fact, Mr. Dinwiddie ought to be familiar by this time with the

proceedings in Congress published in the Congressional Record of 1924 ; his atention has been repeatedly called thereto, and he must know that it there conclusively appears that the word " labor " was substituted for the word " employment " because it was the deliberate and avowed intention to reach right into the home and home farm, where as the chief of the Children's Bureau in the Labor Department testified, " children often work with their parents without pay and hence are not on the pay roll." He knows, or ought to know, that she testified unqualifiedly upon this point, that " we (that is the Labor Department officials) feel that the word (that is, the word ' employment ') is a dangerous word to use", and that it was therefore changed to " labor." He ought by this time also to know that the record further shows that she testified that the power over children the Labor Department was then seeking and reaching for would include "power to regulate labor upon the farms and in agriculture ", and that she then addecl emphatically, if not intransigently, that they " would make no exception at all." Yet, he continues day after day to misrepresent the amendment, and the self-styled National Committee permits him to continue his misleading methods.

So, similarly, in an article written by the Secretary of Labor, Miss Perkins, in support of ratification, published the day before yesterday in **The** Forum, the Secretary cites a number of organizations that are supporting the amendment ; but I venture to suggest quite confidently that probably their members have no more idea or knowledge of the wording and purport of the amendment itself than is disclosed in the plea of the League of Women Voters, or by Miss Perkins, or by Mr. Dinwiclclie. Likewise, and even more regrettable and deplorable, this ignorance is probably true also of many of the distinguished citizens, lawyers, clergymen, labor or social-welfare leaders and the professional propagandists of the National Child Labor Committee, whose names are being paraded before you as sponsors of the amendment. It. has long seemed to me truly discouraging that no pains are being taken by educated Americans, men and women, to acquaint themselves with the history and true meaning and intent of' this proposed amendment to the Constitution of the United States, but that they are willing blindly and ignorantly to sponsor its ratification simply because they heartily and emotional& sympathize with all movements purporting to be for the protection of little children, without reflecting upon or inquiring as to the effect otherwise of any particular proposal or measure.

I notice that Mayor La Guardia is present at this hearing; and, as he was a Member of Congress in 1924, he can probably give us first-hand and reliable information as to whether or not I am correct in what I am stating as to the proceedings in the Hbnse and the true scope, intent, and purpose of this amendment.

As he can readily recall and confirm, a number of amendments to or substitutes for the proposed chilcl-labor amendment, in curtailment of the broad and all-inclusive language then before Congress, were moved in House and Senate, but that all were rejectecl. I shall quote only two of them, but they will serve to indicate the tenor of most of them.

Thus, for example, a motion was made that the following proviso or limitation be addecl to the amendment :

" *Provided*, That no law shall control the labor of any child in the house or business or on the premises connected therewith of the parent or parents."

This was rejected, and I am infornied, and Mayor La Guardia can tell **you** whether or not the information be correct, that he was present when this motion was made and rejected. I am assuming that he voted against it.

There was likewise moved the following equally reasonable and provident proviso :

" But no law enacted under this article shall affect in any way the labor of any child or children on the farni of the parent or parents."

I am also informed, and Mayor La Guardia will correct me if I am **in** error, that he was present when this proviso was moved, and I am assuming that he voted against it. He will tell us whether he did and, if so, why.

The record further shows that he was present on March 29, 1924, when the chairman of the Judiciary Committee of the **House,** Mr. Graham, of Pennsylvania, a distinguished lawyer, presented the dissenting report of the minority of the committee, which report stated, with regard to the then understanding of Congressmen as to the scope, the intent, and the purpose of the proposed amendment, as follows :

" It is possible to pass a law prohibiting the labor of all minors under 18 years of age. If so, the States would have no jurisdiction whatever left upon. that subject. The New England farmer's boy could not pick blueberries on the hills ; the city schoolboy could not sell papers after school; the country boy, white or black, could not work in the cotton, wheat, or hay fields of the South or West ; the college student even, if under 18, could not work to pay his way through college.

" It would not do to say that Congress would not pass such a drastic law. Perhaps it might not. We should not forget, however, that the sixteenth (income tax) amendment was adopted upon the supposedly unanswerable ground that without it the Nation in case of war or other public emergency would be without adequate means of raising revenue. Yet it was hardly ratified before Congress levied an income tax, and at a time when the country was at peace with the whole world. Almost before the eighteenth amendment took effect the extreme Volstead Law was enacted, which is so extreme that in the opinion of many thoughtful citizens its severity is responsible for the unsatisfactory enforcement of prohibition."

I am further informed that Congressman LaGuardia in no way challenged this statement as to the true construction of the proposed amendment, but acquiesced in it. I am also informed that on April 26, 1924, Congressman LaGuardia was present when Representative Ramseyer, of Iowa, who, by the way, voted in favor of the amendment, stated as follows :

" Mark right here, too, it does not say the ' employment ' of persons under 18 years of age, but the ' labor' of persons under 18 years of age. * * * A boy who is sent by his father to milk the cows, labors. Under the proposed amendment Congress will have power to regulate the labor of a boy under the direction of his father as well as the employment of the same boy when he works for a neighbor or stranger. * * * Congress will have the power to ' limit, regulate, and prohibit ' the labor of girls under 18 years of age in the home and of boys under 18 years of age on the farms. Gentlemen admit that the effect of the proposed amendment is just as I stated it."

So far as I can ascertain, and so far as the record shows, Congressman LaGuardia did not challenge the correctness of this statement.

The record likewise shows that Representative Crisp, of Georgia, on the same date, and I am informed in the presence of Congressman LaGuardia, stated, likewise unchallenged, as follows :

" This amendment does not limit or confine the power of Congress to legislate with respect to the work of persons under 18 in mines, factories, sweatshops, and other places injurious to moral or physical welfare, but it goes further—it is as wide open as the heavens-and provides authority to say they cannot work in the fields, stores, or in other wholesome and healthful occupations. Aye, it goes even further; it confers upon Congress the power to say that a girl under 18 cannot assist her own mother in doing the housework, cooking, or dish washing in her own home, and that a son of like age cannot help his father to work on a farm."

This gentlemen, is the story as contained in the official Congressional Record; it surely speaks for itself and convincingly as to the true scope, intent, and purpose of the proposed amendment and the then understanding and intention of Congress. Perhaps Mayor LaGuardia will now explain if all this accords with or warrants the contrary assertions and representations being made by many who are now the advocates and propagandists of ratification.

There is another and even more important aspect of the Secretary of Labor's article in The Forum to which I particularly desire. to call your attention and to analyze. In speaking of the amendment she states that the American Federation of Labor has always been one of its principal sponsors, and she emphasizes also the support of the labor groups. These statements are, of course, well known to be quite true, and they are ominous. As matter of fact, the principal sponsors and the most active, openly and behind the scenes, have long been the American Federation of Labor and the labor unions, It is in fact a part of their legislative program.

This calls for a consideration and an explanation of the real attitude of organized labor and an inquiry as to their underlying motive and purpose, not always professed. As matter of fact their purpose is not altruistic but in aid of their program and campaign to prevent competition by minors with adult labor, and to exclude all under 18 from employment in jobs that adult labor might fill. Bills are pending in Congress with this object in view in addition

to the Rich bill discussed in the report of the special committee of the American Bar Association.

In apparent support and aid of this program of organized labor, that is, to prohibit the competition of minors with adults, and to transfer the present jobs of all minors to adults, and perhaps in anticipation of the introduction of the bills I have mentioned, the Department of Labor in October 1933 issued and distributed among Members of Congress and others, an educational pamphlet entitled "Child Labor--Facts and Figures." I have a copy of this pamphlet here before me if you desire to peruse it,

In this official Government publication, it is stated that the country could easily spare the labor of all persons under IS years of age. I shall quote two or three sentences from page 20 of this official document, which reads as follows :

"Minors of 16 and 17 play a somewhat larger but still insignificant role in modern economic life. Like the younger group they are relatively more important in agriculture than in other pursuits. * * *

"It is apparent, therefore, that the portion of the population under IS years of age could easily be spared from the Nation's productive forces, if it appeared socially desirable for them to engage in other activities or for the jobs to be held by. adults."

In the State of New York there are today, as I estimate, more than 750,000 minors who are 15, 16, and 17 years of age, and probably at least nine-tenths of these minors-who are certainly no longer children-are either supporting themselves or helping to support their families, or helping at home or on the home farm, as some of us had to do in our youth. There are many millions of such minors, 15, 16, and 17 years of age, in other States who are today likewise engaged in labor in order to help themselves and their families. Such labor, whether at home or on the home farm, or elsewhere, has always and justly been regarded as one of the great sources, if not the greatest source, of character upbuilding and implanting of a sense of duty and responsibility, as well as the source of our sturdy manhood and womanhood.

But what is to become of these minors, 15, 16, and 17 years of age, now working and helping to support their families, whether at home or elsewhere, to repeat the euphemism and the lulling anaesthetic phrase of the Labor Department, "if it appeared socially desirable for them to engage in other activities or for the jobs to be held by adults" ? What are the other activities in mind? What other than to become unemployed, and frequently dependent upon charity, public or private, with all the demoralization and the undermining and sapping of character that idleness invariably brings about? Of course, the pay of the adults who are to take these jobs would have to be fixed or coerced by the unions themselves, and "the prevailing rate" laid down by them, and an enormous additional burden imposed upon our industry by the usual methods, and thereby further retard recovery.

The Labor Department since its foundation has been dominated by organized labor. In 22 years it has cost the taxpayers of the country over $264.000,000 to run this Department, and I am convinced that it has been run mainly in the interest and for the benefit of organized labor. At the present time, as never before, the domination of the American Federation .of Labor and the labor unions is in evidence everywhere in Washington and patently in the Labor Department. For example, now filling the important office of First Assistant Secretary of Labor is Edward Francis McGrady, at one time legislative agent and lobbyist at Washington for the Federation and recently one of its vice presidents. The Labor Department now has a bureaucracy or paid staff of over 5,000, and many of them, it is fair to assume, are ever anxious and ready to serve and promote the interests of the Federation and the labor unions. This amendment would call for many thousand more-and thus so much additional political patronage. Can there be any doubt that if this amendment should ever be ratified, organized labor, with the aid of the Labor Department, will try to make it appear to Congress that it has become "socially desirable" to prohibit the labor of all minors under 18 years and for their "jobs to be held by adults" at wages fixed or imposed by the unions? Is not that the real purpose and the real policy of organized labor? Many of these American minors would then be turned adrift into the corrupting morass of idleness and dependence on public or private charity, and the Labor Department would then probably again certify to Congress its opinion that the interests of these millions of American minors were "insignificant" and their exclusion from labor "socially desirable !"

In the same article in The Forum by the Secretary of Labor, published as I have already said the day before yesterday, perhaps in view of this hearing, she further tells the public' that " penalties for violation of child-labor laws fall on the employers of children, not on their parents "; that " only places where children are, to use the census language, ' gainfully employed '-in other words, working for pay-come within the scope of a child-labor law ", and that " all Federal legislation, of course, is subject to review by the Supreme Court." As: matter of fact, as the Attorney General or any competent lawyer could readily have advised her had she only taken the trouble to ascertain the law. Congress could, if this amendment were ever ratified, impose on anyone, including parents, penalties of fine or imprisonment or both; the amendment, as we have seen, would reach, and was intended to reach, children and minors not " gainfully employed ", who work or labor at home or on the home farm without pay, and' the Supreme Court could not grant any relief from the operation of a statutory prohibition expressly authorized by the language of the amendment no matter how ill advised or oppressive it might be, such for example, as a statutory prohibition of labor by any person under 18 years of age !

Another important and sound objection to the proposed amendment for your consideration is that the real " power to limit, regulate, and prohibit the labor of persons uncler 18 years of age", would in all probability be exercised not by Congress, but by the bureaucracy of the Labor Department. Congress wouldl undoubtedly find it impracticable to prescribe specific limitations, regulations, or prohibitions applicable to all kinds of labor. The differences. are infinite. It would inevitably be found or claimed to be necessary to prescribe a standard in general humanitarian phrases, such as prohibiting labor of persons under IS years of age that tended to injure their health or morals or impair their education or future welfare, and then delegate to the Secretary of Labor or other bureaucrat the power to determine what kind or class or hours of labor woulcl be injurious or prejudicial. Such a statute could further provide that the decisions of these officials or bureaucrats should be conclusive on the facts and not subject to review in the courts on the facts so found. You will readily recall that, in the recent " hot-oil " decision by the Supreme Court, the statute was declared to be an unconstitutional delegation of legislative authority, only because no standard had been therein fixed by Congress to guide in its administration. The Supreme Court has upheld the constitutionality of such delegations of authority, or of so-called " administrative discretion ", to executive officers, departments, or commissions? empowering them to make findings, decisions, orders, rules, or regulations on the facts as ascertained by them, and although these findings or decisions, or whatever they may be labeled, would have the effect of laws, they would not be subject to review or redress in the courts on the facts. But they would, nevertheless, be enforcible criminally by fine or imprisonment or both.

Finally, it ought not to be necessary to say to you as legislators that the question before you is not whether the present Congress or the present Federal Administration can be trusted to be conservative, reasonable, and sympathetic in the exercise of this new grant of unlimited power, but solely what could be done now or in the future under the plain and unambiguous language of the proposed amendment. No greater fallacy could be advanced than that we can rely on what we personally believe to be the benevolent or conservative and good intentions or professions of the present administration and its present Secretary of Labor. The only sound test and criterion in considering this amendment to the Constitution of the United States must be, what could be clone uncler its plain and unambiguous terms ; not merely what is now likely or promised to us uncler and by the existing Federal administration and Congress, but at any time in the future. No one knows who are going to be in power in Washington even 3 years hence, and certainly not 10 or 20 years from now. Surely, the protection of the future welfare of our children is much too vitally important a duty to be dealt with by you on the notion that because you believe that well-intentioned, sympathetic, sentimental, or unselfish men and women happen at this moment to be in power in Washington, they will always. be there, and that their successors, will be reasonably, unselfishly, and benevolently inclined or self-restrained in the exercise of their unlimited power.

The CHAIRMAN. The committee will go into executive session. That closes the public hearings.

(Whereupon, at the hour of 10:35 a. m., the public hearing before the committee was closed.)