

**SUPREME COURT OF THE UNITED
STATES. OCTOBER TERM, 1911, NO. 36.
PACIFIC STATES
TELEPHONE & TELEGRAPH COMPANY,
PLAINTIFF IN ERROR, VS. STATE OF
OREGON, DEFENDANT IN ERROR**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649417056

Supreme Court of the United States. October term, 1911, No. 36. Pacific States Telephone & Telegraph Company, Plaintiff in Error, vs. State of Oregon, Defendant in Error by Geo. Fred. Williams

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

GEO. FRED. WILLIAMS

**SUPREME COURT OF THE UNITED
STATES. OCTOBER TERM, 1911, NO. 36.
PACIFIC STATES
TELEPHONE & TELEGRAPH COMPANY,
PLAINTIFF IN ERROR, VS. STATE OF
OREGON, DEFENDANT IN ERROR**

a. m. compliment 29
Geo. Fred Williams
15 State St., Boston
i

POINT OF CONTENTION.

Oregon Constitution, Art. IV, SECTION 1.

“The legislative authority of the State shall be vested in a legislative assembly, consisting of a Senate and House of Representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly.”

Is a tax law invalid under the Constitution of the United States which is thus proposed and thus enacted by the people at the polls?

TABLE OF CONTENTS.

	PAGE
THE ISSUE: UNITED STATES CONSTITUTION, ARTICLE IV, SECTION 4.....	1, 2
I. THE SUBJECT MATTER OF CONTENTION.....	2-15
A. THE OREGON SYSTEM.....	2-6
1. The Precedent in Switzerland.....	3
2. Deliberation in Adoption.....	3, 4
3. Practicability Through Modern Ballot.....	4, 5
4. Exclusion of "Caprice" and "Mob Rule".....	5, 6
B. THE DEMAND FOR THE SYSTEM.....	7
1. Imperfect Political Conditions.....	7, 8
2. Failures of the Legislative System.....	8-10
C. THE EXTENSION OF THE SYSTEM.....	11-15
1. Constitutional Amendments Adopted.....	11, 12
2. Movements in other States.....	12, 13
3. National Movement.....	13-15
II. THE GUARANTY; ITS CHARACTER AND ENFORCEMENT.....	15-33
A. THE DEMAND FOR THE GUARANTY.....	15, 16
B. HISTORY OF THE GUARANTY CLAUSE.....	16, 17
C. WHAT IS THE GUARANTY?.....	17, 18
D. WHO ARE THE PARTIES TO THE GUARANTY?.....	18
E. WHO HAS THE POWER OF INITIATIVE?.....	19-21
1. A State must make the Demand.....	19, 20
2. A Citizen cannot demand Enforcement.....	20, 21
F. THE METHOD OF ENFORCEMENT.....	21-24
1. By Congress.....	21, 22
2. The Remedy is Positive.....	22, 23
3. Nullification of Existing Laws not the Remedy.....	23, 24
4. The Guaranty is of "Form" not of Practice.....	24
G. JURISDICTION OF THE COURTS.....	25-30
1. State Courts.....	25, 26
2. United States Courts.....	26-30
H. EFFECT OF JUDICIAL DECREES.....	30-33
1. Nullification of Initiated Laws.....	30, 31
2. Conflict with Congress.....	32, 33

	PAGE
III. THE BASIS OF CONSTRUCTION AND INTERPRETATION	33-62
A. THE GENERAL RULES	33-35
B. THE STANDARDS BY WHICH THE GUARANTY IS TO BE CONSTRUED	35-62
1. Present Public Opinion	35-38
2. Congressional Precedents	38-42
a. Admission of Oklahoma	39, 40
b. Admission of Arizona	40, 41
c. The Reapportionment Act	42
3. Opinions of the Courts	42, 43
4. Historic Democratic Forms	44-57
a. Teutonic Origin	45-47
b. Colonial Precedents	47-57
1. New Hampshire	48
2. Massachusetts Bay	48, 49
3. Plymouth Colony	49-51
4. Rhode Island	51-54
5. Connecticut	54, 55
6. The Townships	55-57
5. Extremes in Contemporaneous Opinion	57-60
6. Public Opinion in 1887	60, 61
7. Statements in Constitutional Convention	61, 62
IV. WHAT IS "REPUBLICAN FORM?"	62-85
A. NO FIXED STANDARD OF FORM	62-65
1. In the States	62, 63
2. Forms Variable and Elusive	63-65
B. "DEMOCRATIC" AND "REPUBLICAN" SYNONOMOUS	65-67
C. THE REPRESENTATIVE SYSTEM	67-74
1. A Necessity; not a Principle	67-69
2. Philosophy of Representative System	69-71
3. Power of Legislatures, delegated and limited	71-74
a. Delegated Power	71-73
b. Limited Power; instruction and recall	73, 74
D. "SOVEREIGNTY" THE ONLY TEST OF FORM	74-85
1. What is Sovereignty?	74, 75
2. Where is the Sovereignty?	75-78
a. In the People	75-77
b. Passage from State to People	77, 78
3. Direct Exercise by the People	78-85
a. States Entitled to Choose their Forms	78, 79
b. Sovereignty extends to Constitutions and Statutes	79-82
c. The Right of Direct Legislation	82, 83
d. Oregon is a Republic	84, 85

**The Issue: United States Constitution,
Article IV, § 4.**

The real issue raised by the assignment of errors is to be found in the eighteenth thereof, claiming an invasion of appellant's rights under U. S. Constitution, Art. IV, § 4, as follows:

"Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion: and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."

(Exact form as engrossed;—Farrand, Records of the Federal convention, Vol. II, p. 662.)

The other claims under Art. I, §§ 2, 3, 4, 8, 10; Art. IV, § 3; Art. V, relate to the requirements of the U. S. Constitution for legislative action in the States. It may be conceded that these requirements would impose upon the States the duty to maintain legislatures for national purposes, and the short answer to the appellant's claims in this regard is that such a legislature is maintained in Oregon in due form and with full powers to conform to the requirements of the U. S. Constitution.

The claims under the Article of Amendment XIV are not to be considered, because the State of Oregon has promulgated the tax law of which appellants complain, every citizen of Oregon is subject to laws so enacted, and there was due process and equal protection accorded to the appellant pursuant to the Constitution of Oregon. That constitution and

the form of law-making it provides are not subject to revision by this court unless jurisdiction is taken under above Art. IV, § 4.

The Supreme Court of Oregon has determined that there is no infraction of the Constitutions of Oregon and the United States.

"The courts of the U. S. adopt and follow the decisions of the State Courts on questions which concern merely the constitution and laws of the State."

Luther *v.* Borden, 7 How. 1.

Duncan *v.* McCall, 139 U. S. 449.

Taylor *v.* Beckham, 178 U. S. 578.

"The people of the States created, the people of the States can only change, its Constitution. Upon this power there is no other limitation but that imposed by the Constitution of the United States; that it must be of the Republican form."

Chisholm *v.* Georgia, 2 Dall. 448.

I. The Subject-Matter of Contention.

A. THE OREGON SYSTEM.

"The legislative power of the State shall be vested in a legislative assembly—but the people reserve to themselves power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly."

"The first power is the initiative" based upon a petition by eight per cent of the legal voters.

"The second power is the referendum" based upon a petition by five per cent of the legal voters.

Such is the plan at issue, adopted by Oregon in 1902.

1. THE PRECEDENT IN SWITZERLAND.

It was not an experiment. Some of the Swiss Cantons had legislated in mass meetings from days of antiquity. After the republic was formed in 1848 by union of the Cantons, all the vices to which free governments are subject rent the politics of the republic. Political bosses, legislative corruption, corporate influences, partisan violence and intrigue were the rule in political life.

In 1874 the referendum was adopted in national affairs, and in 1891 the initiative was added. Experience justified these measures in the Cantons and republic. The evils abated, popular verdicts were found to be considerate and wise, party virulence was allayed, experienced legislators were retained in office, corruption ceased. The system became fixed in the confidence and affections of the people, until it was unshakable. This republic is the best governed country on earth.

Hon. N. Droz, ex-President of Switzerland, said of it: "Under the influence of the referendum a profound change has come over the spirit of Parliament and people. The net result has been a great tranquilizing of public life."

Prof. Charles Borgeaud of the University of Geneva, wrote "The Referendum has won its case. Unquestionably it has proved a boon to Switzerland and has no more enemies of any following in the generation of to-day."

The only Canton in which the political boss and corrupt influences remained dominant was and is Freiburg, where direct legislation did not exist and could not be secured under the tyrannical and venal rule of a political dictator.

South Dakota adopted this system in 1898. Such was the experience which warranted Oregon in adopting this system.

2. DELIBERATION IN ADOPTION.

The passage of the constitutional amendment for direct legislation in Oregon was not the result of caprice. It had