

# CHILD LABOR

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## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS

SECOND SESSION

ON

## H. J. RES. 327

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SIXTY-SEVENTH CONGRESS.

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## CHILD LABOR.

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SERIAL 30.

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Thursday, June 1, 1922.*

The committee met at 10 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. This is a hearing on a proposed constitutional amendment in regard to the employment of persons under 18 years of age.

### STATEMENT OF MR. SAMUEL GOMPERS, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR.

Mr. GOMPERS. Mr. Chairman and gentlemen of the committee, with a representative gathering of some of the most active men and women engaged in the work of trying to save child life by the abolition of child labor, we come before you this morning because of the very serious situation which confronts our people. On several occasions, particularly on two, we have been successful in prevailing upon the Congress of the United States to pass laws of a general character that we hoped would forever abolish child labor in the United States. On both occasions the Supreme Court of the United States decided that the child labor laws passed by Congress were unconstitutional.

We have had some success in eliminating child labor by legislation in various States of our country. There are, however, some States which have not yet enacted legislation affecting the child life or child labor in such States, and we know the competitive results which are involved in the labor of children when employed in any one particular district or State and forbidden in other States. We come before

you, not to impress upon your minds, or, through you, upon the minds of all the Members of Congress, the situation as to the economic competition involved in child labor being permitted in one series of States and forbidden in many others, but we appeal to you because of the humanitarian side of this subject.

If I can not speak in the name of the ladies and gentlemen with whom I am joined here this morning, I can speak for labor; I can speak for the men and women that toil as I express my own deep convictions that it is a crime against civilization and a blot upon our claim to progress and civilization, if the Government of our country, the most wonderfully developed country in industry and commerce, and standing as one of the greatest Nations on the face of the earth, permits the labor of the young for the purposes of profit and exploitation. I might say, too, that it is my judgment, as the result of many years of activity, thought, and study, that any industry which can not succeed in the United States unless the young and innocent children shall be employed in it, should not exist, and the sooner that industry is thrown out of the body politic and economic the better it will be for all of us.

Of course, it is not within my province, and particularly here, to indulge in any criticism of the decisions rendered by the highest court in our Republic, but may I be pardoned if I refer to the fact that the Government of the United States passed a law for the protection of the people employed in the match industry from a terrible disease contracted in that industry which ate away the bones of the men and women and children who worked in that industry. The Government there exercised its taxing power, utilizing it so that the phosphorus industry, in so far as it applied to matches and the making of matches, was abolished, and the Supreme Court of the United States held that act valid and constitutional. The Congress of the United States, for the purpose of protecting the dairy farmers of our country in their industry, imposed a tax upon oleomargarine, and the Supreme Court of the United States held that the Government was still within its power in enacting that law, and decided that that law was constitutional. In the case of child labor and child life, the Supreme Court held that the Congress went beyond its power in invoking the taxing power of the Government in endeavoring to prevent child labor.

Perhaps no one has, as yet, made reference to the Sixteenth amendment to the Constitution of the United States in its application to the thought and the subject under consideration. The Sixteenth amendment, commonly known as the income tax amendment, provides that the Congress shall have power to lay and collect taxes on incomes from whatever source derived, provide apportionment among the several States, and without regard to any offences or remuneration.

The tax upon products in which the labor of the children were employed was taxed by the Congress of the United States, and the Constitution in its Sixteenth amendment provides that the Congress shall have power to lay and collect taxes on incomes from whatever source derived. The tax upon the product of child labor is an income to the employer, to the corporation which employed the children.

I do not want you gentlemen to imagine that I set up my own judgment as against that of the Supreme Court of the United States as to that which is constitutional or unconstitutional. But I do believe that it is the duty of every citizen to freely examine and to express his judgment as to the narrow, the broad, or the general interpretation of constitutional law.

It was Lincoln who by the stroke of his pen set 3,000,000 slaves free; and it took a four years' bloody struggle to enforce that principle of human freedom for every inhabitant under the flag of our Republic. It was the decision of the Supreme Court of the United States in the Dred Scott case which made it possible for an escaped slave to be brought back to his original owner and master, and then came four years of war, with hundreds of thousands of men and women, the best blood of our country at the time, to decree that slavery in the United States or its possessions was abolished forever.

This work in which we have been and are engaged must go on. Here we are appearing before the Judiciary Committee of the House of Representatives, appealing for consideration in this our fight. There is not in all the world a civilized nation or a nation calling itself civilized, in our accepted understanding of that term, that has permitted the children of their country to be exploited to the whim and the greed and the profit and the avarice of those who live upon the blood of our children.

Perhaps I may be speaking under stress and feeling, because I have lived in the time when children were permitted to work in any of the industries, of any of the countries, no matter how tender were their years. I was a contemporary of those times and know and feel the great outrage committed against child life. Thanks to the great efforts that have been put forth, we have been enabled to impress upon the legislatures of many States to enact laws to protect children from the avarice and ignorance of parents

and the greed of employers, and the Congress of the United States has enacted these laws which our court has declared invalid.

This proposal, involving the principle of humanity and civilization, ought to engross the attention of the Congress of the United States at an early period in order to free us from this stain of sacrificing our children to Moloch. I hope we shall not appeal to you gentlemen in vain. I think I know the parliamentary situation which exists and that there are several important pieces of legislation which must receive your consideration, but I ask you, gentlemen, whether this is not one of paramount importance and demanding and commanding your early consideration.

We can not stop, the men and women of this country, stunned beyond expression by this new blow delivered against the effort to save child life. Let us have the favorable action of your committee that some proposal, definite and valid, shall be reported to the House, and that it may receive the early and favorable consideration of the House. Concurrent resolutions for constitutional amendments are pending in the Senate of the United States, and we hope that something definite and final shall be done before you shall adjourn this Congress.

We can not stop. Just like every demand made upon humanitarian and justifiable grounds, we can not stop; and those who are now with us in the living, even when you shall pass away, the demand for the safety of child life will be even more greatly persistent than it is now.

Mr. WALSH. How many States, Mr. Gompers, have passed laws prohibiting child labor?

Mr. GOMPERS. Forty.

Mr. WALSH. And are the laws enforced?

Mr. GOMPERS. Generally.

Mr. WALSH. And have efforts been made in the other eight States to secure the passage of similar laws?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. Are these laws quite uniform?

Mr. GOMPERS. They are not uniform, but approximately so.

Mr. WALSH. What particular source of child labor or work is it that you wish to have prohibited, or that you would have prohibited?

Mr. GOMPERS. My judgment as a present practical proposition; or as to what I believe should be done?

Mr. WALSH. What do you believe should be done?

Mr. GOMPERS. I should have the labor of children under 10 years of age employed for profit, abolished. As a practical proposition I should content myself with the prohibition of child labor under 14 years of age employed for profit, making some regulations as to minors under the age of 18 years.

Mr. WALSH. What do you mean by "employed for profit?"

Mr. GOMPERS. By others than their natural parents, or actual legal guardians.

Mr. WALSH. That would apply to all sorts of labor or tasks that they might be put to?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. They could not act during the summer vacation in a grocery store or work as a telegraph messenger?

Mr. GOMPERS. No, sir.

Mr. WALSH. Do you not think that certain kinds of work, under proper surroundings and regulations, may be helpful to the child?

Mr. GOMPERS. To some it may, but generally it is not.

Mr. WALSH. Would you contend, Mr. Gompers, that as a general proposition, the children should be brought up without being permitted to do any work except to go to school and then frolic during their vacation?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. You are familiar, of course, with the law in Massachusetts; that works well, does it not?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. And is enforced very strictly?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. Would you think that a national law, applying to all the 48 States, based upon the Massachusetts law, would be a good thing?

Mr. GOMPERS. Strict uniformity may not be practicable by reason of the different climatic conditions of the country. But the passage of the laws by the Federal Congress would apply the minimum, and the minimum, in my judgment, should be 14 years, that is, that the children below 14 years of age should be prohibited from being employed for profit by others than their natural parents or legal guardians.

Mr. CHANDLER. Mr. Gompers, are the laws of the 40 States in which child labor is protected in general satisfactory to you and to the American Federation of Labor?

Mr. GOMPERS. May I answer in my own way?

Mr. CHANDLER. Certainly; adopt your own way.

Mr. GOMPERS. Nothing is satisfactory.

Mr. CHANDLER. Would you mention a few instances?

Mr. GOMPERS. Nothing is satisfactory. We shall constantly move forward to bring more light into the life of the people, and particularly the child life of our country.

Mr. CHANDLER. Then, if a Federal law were passed or an amendment were added to the Constitution, still that would not be satisfactory under your attitude or definition—no law that could be passed would be satisfactory?

Mr. GOMPERS. For the time being.

Mr. CHANDLER. What I am trying to get at, Mr. Gompers, is whether you are asking for Federal legislation or a constitutional amendment to meet the decision of the Supreme Court and to cure a great economic evil in the country. You say that 40 States have laws now protecting child labor, leaving 8 States that have not. The question is whether we want to embark upon an enterprise here of amending the Constitution simply to meet the defects in the laws of 8 States of the Union. I want to know in that connection if these 40 States have laws satisfactory to you. Do they protect child labor in these 40 States generally?

Mr. GOMPERS. Yes, sir.

Mr. CHANDLER. You want an amendment to the Constitution of the United States because eight States are incorrigible. Can not they be cured by legitimate propaganda and be induced to pass laws better than trying to amend the Federal Constitution?

Mr. GOMPERS. May I say this—I have not said one word or expressed one thought upon the amendment of the Constitution, not up to this moment.

Mr. CHANDLER. I beg your pardon. You had spoken 10 minutes before I came in, and maybe my lateness in arriving did not permit me to hear some of your speech.

Mr. GOMPERS. I made no reference to an amendment to the Constitution up to this moment.

Mr. CHANDLER. You are speaking to this resolution, are you not?

Mr. GOMPERS. I am speaking on the subject of child labor and the methods to be employed for the purpose of abolishing child labor. I do hope to say a word or two later on the question of the constitutional amendment.

Mr. CHANDLER. Can you do it? Have you not in memory the eight States that have no child labor laws?

Mr. GOMPERS. No, sir; I can not state them offhand.

Mr. DOMINICK. You can look them up and insert them in the record, can you not?

Mr. GOMPERS. I should be very glad to do that.

May I say this? There are several resolutions which have been introduced in the House and in the Senate to amend the Constitution of the United States. I have in my own way, the way of a layman, studied them, and have had some conversation with men for whose judgment I have great respect. I am not sure, but I think the amendment offered by Mr. Fitzgerald, of the House, if it is favorably considered, runs short of any sort of a remedy. It provides for the regulation as follows, and I will ask to have the resolution read:

Mr. OYSTER (reading):

"Joint resolution proposing an amendment to the Constitution of the United States.

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

"ARTICLE --.

"The Congress shall have power to regulate throughout the United States the employment of persons under 18 years of age."

Mr. GOMPERS. To empower the Congress to regulate the employment of children in the several States, it seems to me, would possibly enact regulations which would minimize the standards already fixed in several of the States.

The CHAIRMAN. If you will pardon me, I would like to call your attention to the fact that Mr. Nolan, of California, has introduced a like amendment in which he provides that Congress shall have power to regulate or prohibit.

Mr. GOMPERS. Yes, sir. I have a copy of that joint resolution introduced by Mr. Nolan. May I have it read?

The CHAIRMAN. Certainly.

Mr. GOMPERS. Without the introductory part, simply the proposed amendment.

Mr. OYSTER (reading):

## "ARTICLE X.

## "STATE RIGHTS.

"SECTION 1. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people: *Provided, however,* That the Congress shall have power to regulate or prohibit throughout the United States the employment of children under 18 years of age."

Mr. GOMPERS. Of course, we know, although you may not be in position to take official cognizance of the fact, that Senator Johnson, of California, has introduced a joint resolution in the Senate, amending article 10 of the Constitution, with which Mr. Nolan's resolution is identical.

We are in a quandary, for instance, if the amendment of Mr. Fitzgerald should pass, even with an amendment, say, in addition to a regulation, a limitation and prohibition, that being the last amendment passed, and I assume ratified, whether the Supreme Court may hold that it being an amendment to the Constitution subsequent to Article X, that it modifies Article X to that degree, or whether it may hold that the States have the right and that any subsequent constitutional amendment adopted and ratified runs counter to Article X on State rights.

And whether the amendment of Article X on State rights with the qualifying provision as proposed by Senator Johnson and Mr. Nolan may not be the most effective manner for removing all doubt as to its validity and the manner in which the amendment was adopted.

The CHAIRMAN. Have you given any consideration to the question of whether under the language of the present decision there is room for believing that a valid statute may still be drawn under the taxing power? My impression is that there is quite a distinction between the cases that have been decided lately and the old cases in which a statute resting on the taxing power was held valid. Is there not some possibility that you may be able to frame a statute under which you could impose an income tax upon the products of a factory employing child labor?

Mr. GOMPERS. I have never given up in despair. I am in hopes that the Judiciary Committee of the House will take the initiative in devising some plan, some bill or some constitutional amendment, and I quite agree that if it can be avoided the Constitution should not be very much tampered with in securing amendment and securing through the Constitution what can be accomplished by legislation of the Congress.

Mr. CHANDLER. Mr. Gompers, just a minute. Is your speech directed to this joint resolution that is before the committee this morning, has it reference to it? Are you supporting this resolution?

Mr. GOMPERS. I am not supporting it.

The CHAIRMAN. We are considering all of these resolutions; or, rather, the general subject.

Mr. CHANDLER. They all have reference to a constitutional amendment, have they not?

The CHAIRMAN. I may not have pointed out when we opened the hearing that we would consider the subject of child labor rather than any particular bill.

Mr. WALSH. Mr. Gompers, if legislation was not considered feasible, would you prefer a constitutional amendment absolutely prohibiting the employment of child labor, employing the labor of children under 14 years of age, and conferring on Congress the right to regulate the employment of children between 14 and 18 years of age?

Mr. GOMPERS. May I say, sir,—and it is right apropos of your question—a few days ago a man deeply stirred by the decision of the Supreme Court of the United States, a very competent lawyer, came to me in my office and discussed the entire subject and stated that he had prepared a brief and a bill predicated upon the theory as set forth in his brief. I have gone over the bill and have had the advice of some men competent to judge, and they agree that though there may be a defect in the provisions of the bill—and I am sure that the defects could be pointed out a bit later, but it is a novel thought, a thought and a principle that I have never yet heard or read, applied to the subject under consideration, and I am going to ask whether you will permit the reading of this bill and if perchance it may have your consent that the brief be also read. It is not long; it is based upon the principle involved in the thirteenth amendment to the Constitution. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the parties shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

It is on the thirteenth amendment of the Constitution that the bill and the brief was predicated.

Mr. MICHENER. Mr. Gompers, who is the author of the bill and the thesis?

Mr. GOMPERS. May I ask that I be excused from answering that question?

Mr. MICHENER. If there is no particular reason why you should not give the name it might have some weight with us. If we had that same knowledge you have, it might have a bearing.

Mr. GOMPERS. I am not at liberty to give his name.

Mr. WALSH. Wouldn't he be willing to come before this committee if the committee sent for him?

Mr. GOMPERS. If I may be asked to be relieved from the confidential communication given to me, I should be very glad to advise him.

Mr. J. F. LASSON. I will give you entire authority. My name is Lasson.

Mr. GOMPERS. Mr. Lasson is the gentleman.

Mr. MICHENER. What is your full name and where is your residence?

Mr. LASSON. My name is James F. Lasson. I am an attorney in the employ of the Government, appearing and acting in this matter wholly without official connection purely in private capacity, and I live at 4313 Kansas Avenue, in this city.

Mr. GOMPERS. This is the bill.

Mr. OYSTER (reading):

"A bill to prohibit the involuntary servitude of children and to enforce the provisions of the thirteenth amendment to the Constitution of the United States.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled—

"SECTION 1. Every person under the age of 14 years shall be deemed incapable of entering into any contract for the performance of labor or personal service in or upon any factory, mine, industrial establishment, farm, or plantation, which labor or service is not directly for his or her natural parent or lawfully appointed guardian or custodian or upon the premises of a State or philanthropic institution established and maintained for the care or instruction of children. It shall not be lawful for any parent, guardian, or other person, lawfully or otherwise in charge of any child under the age of 14 years, to contract the labor or services of such child for hire to any other person or to any corporation or association, or to contract the labor or services of such child under 14 years of age as a workman, servant, employe, or apprentice, to be performed in or upon any factory, mine, industrial establishment, farm, plantation, or other place of employment outside of the home, shop, plantation, establishment, or place of business of such parent, guardian, or legal custodian, and outside any school, or place of instruction and training. It shall not be lawful for any person, corporation, or association of persons, other than the parent, guardian, or lawfully appointed custodian of any child under the age of 14 years to require or permit the performance of labor or personal service for hire by any such child, or to pay to such child, or to his or her parent, guardian, or custodian, or to any person, corporation, municipality or State any sum of money or thing of value as compensation for the labor or service of such child.

"SEC. 2. Every contract with any child under the age of 16 years and over the age of 14 years for the performance of labor or personal services in or upon any factory, mine, industrial establishment, farm or plantation not the property of leasehold of the parent or lawfully appointed guardian or custodian of such child; and every contract made by any parent, guardian, or other custodian of such child whereby such child shall be required to labor or perform personal services for hire in or upon any factory, mine, industrial establishment, farm or plantation of another, and whereby such child shall be required to labor or perform service for another person or for any association or corporation for a time longer than 8 hours in any calendar day or at any time after 7 p. m., and before 6 a. m., shall be deemed to be an impressment into involuntary servitude and shall be void. The making of such contract and the requirement by any parent, guardian, or lawful custodian or by any corporation, or manager, superintendent, or foreman thereof, or by any other person that such child perform labor or service thereunder and payment and receipt of payment for such labor or service are hereby prohibited.

"SEC. 3. Every parent, guardian or custodian of any child under the age of 16 years, and every manager, superintendent, or foreman of any corporation and every other person knowingly and willfully violating the provisions of this act shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine not exceeding \$500 or by imprisonment not exceeding 30 days or both and each day on which any child shall be required or permitted to labor or render services for hire contrary to the provisions of this act shall be deemed to constitute a separate offense."

Mr. GOMPERS. May I submit the brief upon which that bill is based?

Mr. MICHENER. This brief was prepared by Mr. Lasson, as I understand it?

Mr. GOMPERS. Yes, sir.

Mr. OYSTER (reading):

## "CONSTITUTIONALITY OF CHILD LABOR LAWS.

"In *Bailey v. Drexel Furniture Co.*, --- U. S. ---, decided May 15, 1922, the Supreme Court holds void the child labor tax law (Title XII, act of February 24, 1919, 40 Stat. 1138). The law lays an excise tax on factories employing child labor with the evident intent of prohibiting such labor save under specified conditions. It is manifestly designed to found upon the power to lay taxes, an exercise of authority which had been held unconstitutional under the commerce power of Congress. (*Hammer v. Dagenhart*, 247 U. S. 251.) Both statutes evidence the belief on the part of Congress that it is without any express power to deal directly with the evils of child labor. Neither Congress nor the Supreme Court has given any consideration to the power of Congress under the thirteenth amendment of the Constitution to prohibit involuntary servitude."

Mr. GOMPERS. It has been suggested by a friend that possibly if we file the brief for incorporation in the hearing that the same purpose will be served and it will be saving time. I commend the brief to your very serious consideration.

Mr. CHANDLER. How long will it take to read the brief?

Mr. OYSTER. It is nine pages.

Mr. CHANDLER. I think it should go into the record so we may have it for reference.

The CHAIRMAN. Let it go into the record.

(The remainder of the brief referred to is here printed in full, as follows:)

"Child labor is a species of involuntary servitude. The children whose labor is an evil, destructive of their own health and of the economic standards of every community in the United States, are in some manner compelled to perform their grinding tasks. There is held over them either the fear of corporal punishment or the withdrawal of that support which the parent or State owes the child. It is a sanction independent of and extraneous to the contract or parent or child with the establishment in which the work is required.

"Doubtless the thirteenth amendment was not addressed to the evils which may arise in the home when parenthood forgets its obligations. But these children are not working in their homes or directly for their parents. They are farmed out in the service of great factories or worse establishments. The law everywhere denies them the capacity to make their own contracts. They are legally and actually incompetent to insist upon the terms and conditions which make contracts fair to themselves. They are peculiarly helpless in their dealings with an employer, even were they free. But they are not free to make or to avoid the contracts. Whatever be its conditions they must submit. There are few of the incidents, which united to keep the colored race in slavery and the Mexican Indian in peonage, that are not present to keep these children in servitude when an unnatural parent or inert State so wills. It is ridiculous to suppose that the children, working in the places sought to be reached by these laws, can labor or not, as they please. They are driven to toil.

"Neither do the children receive the meager compensation which they earn. It goes to the parent or guardian as an incentive to him to force a labor which, however injurious, is unlikely to kill its victim before the legal right to it ceases. It is this legal right which is set up in *Hammer v. Dagenhart* (247 U. S. 251) and in the *Atherton Mills v. Johnston*, --- U. S. ---, decided May 15, 1922, as the basis for the father's right to maintain suit to have an act of Congress held void. In so far as these children are concerned, theirs is an involuntary servitude. It is as vicious a wrong against them as African slavery or any form of peonage. The means taken to enforce their labor are no better than those forbidden by the court in *Bailey v. Alabama* (20 U. S. 20) and *United States v. Reynolds* (235 U. S. 113).

"The State statutes which regulate the relations of parent and child, guardian and ward, or employer and apprentice can be on no higher footing than any other exercise of State power, when coming into conflict with the Constitution and laws of the United States. Those State statutes, providing punishment for crime and payment of debts by labor, were in the exercise of admitted if not exclusive powers of the State; but when, as in the *Bailey* and *Reynolds* cases, they are so administered as to result in the enslavement of any individual they give way before the prohibitions of the Federal statute. Why should the power of the State to regulate the relations of the young to those who must support or employ them be permitted to interfere with a like power of Congress to prohibit such involuntary labor of children as may result in worse evils?"

"These children are within the description of persons protected by the amendment. 'It reaches every race and every individual,' conceded the Supreme Court in *Hodges v. United States* (203 U. S. 1).

"The thirteenth amendment empowers Congress to appropriate legislation to enforce its prohibition. This is not, like the fourteenth amendment, a prohibition of action

by a State. It is a direct delegation of affirmative power to Congress to deal with all the evils of involuntary servitude. It does not call for action 'corrective' of the legislation of the States, as the court limited Congress in *United States v. Reese* (92 U. S. 214); *United States v. Cruikshank* (92 U. S. 542); and the Civil Rights cases (100 U. S. 3), under the fourteenth amendment. In the thirteenth amendment it is a power to act 'ex directo.'

"It is a far stretch of the legislative faculty to suppose that appropriate legislation to control an evil so easily reached directly consists in the elaborate discriminations in regulations of commerce and taxation proposed in the two laws which have been held void. It is not surprising that the court overlooks a direct power which Congress itself misconceives.

"In order to reach the evils of involuntary servitude, however, it is necessary that legitimate contracts and legislation for the benefit of the child be distinguished from contracts and laws designed or drawn to permit his exploitation. The power to do this is a necessary incident to the power to prohibit the involuntary servitude. It is already exercised in section 1090 of the Revised Statutes, wherein the laws of the States concerning collection of debts and the contracts imposing voluntary or involuntary labor as penance in liquidation of a debt or obligations, are declared null and void. Whatever obligation the child owes its parent or the State can equally be protected from satisfaction by compulsory labor.

"In like manner (35 Stat. 1141) Congress prevents the impressment of seamen or others into involuntary service and, though perhaps under a different power, regulates the contracts which may be made (Rev. Stat. 4509; 4510, *passim.*) and the manner of the discharge therefrom. These are incidents of voluntary contracts, regulated in order to prevent them being made oppressive. A full power to prevent involuntary servitude ought to be as good as an admiralty jurisdiction to regulate the incidents of contracts by which labor is compelled or the laborer imposed upon.

"This power to define involuntary servitude, especially of individuals legally and actually incapable of acting for themselves, ought to be as good as the power to define intoxicating liquors, which Congress has likewise power to prohibit. Under the eighteenth amendment Congress, in order to prohibit sale and transportation of intoxicating liquors, prohibits possession thereof and prohibits possession and sale of liquors not actually intoxicating. (*Jacob Rupert v. Caffey*, 251 U. S. 264.)

"The power to prohibit is thus a power to define. Power of the same nature is exercised in the narcotics act (38 Stat. 785) upheld in *United States v. Doremus* (219 Stat. 86). An exercise of power over the contracts made with or for infants bear a reasonable relation to the power to prevent their enslavement and ought on principle to be upheld, if exercised directly, under the thirteenth amendment.

"Since the particular evil to be reached is the involuntary servitude of children in factories, mines, etc., it can be reached without disturbing the ordinary relations of parent and child, guardian and ward, or of the State and its schools or reformatories (*Booth v. People*, 37 N. E. Ill. 780). In order to show more definitely my ideas of the constitutional and legislative principles involved, I have somewhat hastily drafted a bill which may form the basis of study. It is designed to reach only the cases wherein the labor of the child is farmed out for the profit of his parent or other custodian, or where advantage is taken of his helplessness. It may require modification to reach all the cases needing attention, or to introduce exceptions for which I have not seen the need. It is the introduction of exceptions framed into an elaborate code of regulations, which leads the act and the judicial mind astray from the primary object in mind and induces doubt of constitutionality. The more simple the measure and the more direct its relation to the great purpose of preventing the enslavement of children in order to give a profit to an unnatural parent or an economic advantage to a heartless corporation, the more likely the measure to stand the scrutiny of the courts.

"Such a measure as this could be enforced without the building up of an expensive bureau in any of the departments. It would not lead to any large attempts at evasion and the few simple cases which would probably arise would be open to prosecution until the statute of limitation would run. Such a statute would be almost self-executory, because of the scale on which violation must occur in order to make it pay and because of the certainty of complaint from adult laborers working side by side with the children or displaced by them.

"If there is a line of demarcation between the powers of Congress the exclusive powers of the States, which it is the duty of the Supreme Court to guard, it is just as essential to preserve the national power as the State power. The fact that our country has been able to endure and prosper for near a century and a half may be due to the elasticity of the national powers which has enabled Congress to extend its care over

the Nation as fast as the national necessity demanded. The inconvenience which results from the construction put upon the Constitution by the court presents an argument for a contrary construction, if any language therein contained will legitimately bear it. *Hoke v. U. S.*, 227 U. S. 308; *U. S. Am. Tobacco Co.*, 221 U. S. 173; *Knowlton & Moore* 178, U. S. 41, 88.

"The inconvenience to which attention may be directed is something more than the mere effect of child labor upon its helpless immediate victims. Since there is remedy for their situation in the power of the State in which they live we may pass that feature of the case. In passing, however, though involving a different class of individuals, which led to the adoption of the thirteenth amendment.

"What is now to be considered is something besides the effect upon the individuals whom State laws could protect. The evil to be considered is the economic effect upon distant States. The growth of the factory system, which makes child labor feasible on such a scale as to make it an evil, is of comparatively recent times. It is far more modern than the general rules of law which by statute or common law have governed the rights of children. The law has not everywhere kept pace with their need for protection.

"This situation is accentuated by the growth of modern transportation systems and even of the constitutional system under which the several States are joined. Even the Constitution is more modern than the law which gives the parent authority over his child, title to his wages, and power over his contracts. Yet the right of the parent had its limits in law. The States ever had full power to make this law, save as they may have given it up in the Constitution. By the thirteenth amendment any inroad upon it by the National Congress for the purposes of suppressing slavery and involuntary servitude is fully authorized.

"Before the Constitution was adopted Massachusetts not only had the right to prohibit child labor; she had the right to protect her industries from the effects of child labor in North Carolina. The right to protect her own children from excessive labor she retained, concurrently if not exclusively. Her individual power to protect the adult labor within her borders from competition with the child labor of North Carolina, she gave up. This is established by a line of cases too familiar to need citation. Did the States give up this individual power without lodging in the general Government the power to protect them? The court in *Hammer v. Dagenhart* (247 U. S., 251) says they did. In other cases (*Hoke v. U. S.*, 227 U. S., 308) the court holds that the lack of power in the State is an argument for the existence of the power in Congress. The *Dagenhart* case sounds a limitation upon the express power of Congress to regulate commerce 'among the several States.'

"This limitation, in those original arguments in which it is supposed to be established, is implied from the enumeration of particular power. It was never before used to limit an express power. 'Commerce among the several States' was treated by the Constitution as a unit. It was to be carried on with an identical medium of exchange, Congress being given full control of the money of the country. Congress likewise had full control over the weights and measures, Congress was given power to control the monopoly to be given by patents; to prescribe the common rule for citizenship; to protect the citizens of each State in exercise of rights in every other; and to regulate bankruptcies. After this was done the States were prohibited (Art. 1, Sec. 10) from burdening the 'commerce among the several States' by any duties or imports save as necessary in execution of their inspection laws; 'and all such laws shall be subject to the revision and control of the Congress.' It is not the duties and imports which were to be subject to control of Congress, but all the inspection laws of the States. All these features were designed to enable Congress to maintain such uniformity as in its wisdom it should think necessary in all the subjects of commerce among the several States.

"The act of September 1, 1916 (39 Stat. 675), held void in *Hammer v. Dagenhart* (247 U. S. 251), was an inspection law designed to create an uniformity in certain subjects of 'commerce among the several States.' It 'aims to standardize,' said the court, in order to hold it void. In the power to control, patents, weights, and measures, money, bankruptcy, the rights of citizens of other States, in this power over inspection laws, and finally in the power to prohibit involuntary servitude, Congress has power to invade the police powers of the States as those are being exercised over the means of production and over the preparation of articles for 'commerce among the several States.' Here are the indications that Massachusetts in giving up power to protect herself was lodging the power in Congress. A more careful analysis of the case of *Hammer v. Dagenhart* leads to the conclusion that Congress should give the court an opportunity to reconsider it."

Mr. HENNEY. Are you in favor of this bill, just read, instead of the constitutional amendment?

Mr. GOMPERS. I am not in a position to definitely say. The fact of the matter is that it is my part to submit any information upon the subject of prevention of child labor, and we count upon the sympathetic cooperation of the members of the Judiciary Committee.

Mr. HERSEY. If the committee should find that your bill will not in their opinion be constitutional, would you then favor the constitutional amendment being reported? That is, if the committee finds in their opinion the bill just read by you is, in their opinion, unconstitutional and would not meet the objections of the Supreme Court, would you then favor a constitutional amendment being reported?

Mr. GOMPERS. I can not definitely answer. The chairman, Mr. Volstead, has said that there is still prevailing, in the opinion of some Members of Congress and other men of legal learning, a way of using the taxing power of the Congress to enact a child labor law, and if that can be done, or if any law can accomplish the desired purpose, so far as I am concerned, and so far as I have authority to speak for the organized men and women of labor, we would prefer legislation rather than constitutional amendment.

Mr. HERSEY. I thought I made my question plain. If the committee do not agree with you on that, of course there will be no bill reported unless they report a constitutional amendment. Now, are you in favor of a constitutional amendment in that case?

Mr. GOMPERS. In the eventuality that there is no other legislation?

Mr. HERSEY. If we do not find this proposed bill is satisfactory.

Mr. GOMPERS. That is, if your committee fail to find any way by which you can secure the desired results by any enactment of Congress, why, I believe some constitutional amendment should be adopted.

Mr. CHANDLER. Then, Mr. Gompers, going back to your suggestion that 40 States have practically satisfactory child labor laws, you want a constitutional amendment to fill up the defect of the lack of the 8 States coming in?

Mr. GOMPERS. There are also a number of States whose status for the protection of child labor are considerably lower than those which were provided, for instance, in the Federal child labor law.

Mr. WALSH. Have you in mind, also, Mr. Gompers, that the employment of children of tender years is a source of competition against adults in other sections of the country?

Mr. GOMPERS. The manufacturers in the States where there are protective child labor laws say so.

Mr. WALSH. You have not any doubt of it, have you?

Mr. GOMPERS. Probably their word would stand as good as mine.

Mr. WALSH. You are just as familiar with conditions as they are, are you not?

Mr. GOMPERS. I think so.

Mr. WALSH. Well, in your judgment, does it not result in competition and in unfair competition against the workman in similar lines of industry in States where child labor is prohibited?

Mr. GOMPERS. Yes, sir.

Mr. WALSH. Would it not, in your judgment, be better to have a comprehensive constitutional amendment which would be so drastic as not to be subject of litigation, than to have another bill passed which might also run counter to some provisions of the Constitution?

Mr. GOMPERS. I think that the Constitution should not be changed wherever legislation can accomplish the same purpose.

I ask, Mr. Chairman and gentlemen of the committee, that at some future meetings I may have the opportunity to present further observations on the subject. All I ask for myself and those of the organized labor movement I have the honor to represent is that we may have the privilege of cooperating with you and of serving you, if we can, in furtherance of reaching a proper piece of legislation, whether by an enactment or by constitutional amendment, so long as we can serve in the achievement of this one great purpose.

Mr. WALSH. Will you have opportunity to study further the bill presented by Mr. Lason and express your judgment at some future meeting of the committee as to whether you feel that would meet the situation?

Mr. GOMPERS. I should be very glad to try. The fact is that for a month from next Monday I shall be engaged in conventions of the American Federation of Labor and its departments, and I doubt that I shall be able to give very much thought to the details of these bills or resolutions and point out where they can be improved.

Mr. WALSH. You have some officer or committee that might study that measure and be prepared to submit an opinion?

Mr. GOMPERS. I think they will be very busy, too.

Mr. WALSH. They will?

Mr. GOMPERS. Yes, sir. When Congress is not in session, the Government managed to get along, probably a little haphazard, but it does get along. I presume the American Federation of Labor is in about the same condition during the times when the officials of the American Federation of Labor are not in session. But I do say that so far as time and opportunity permit, the general subject on the legislative features of the facts of the Lason bill will be given the best thought of which I am capable.

Mr. WALSH. Then the substance of your views this morning, Mr. Gompers, and I intend no reflection on what you have stated, is that this is one of the most important problems now confronting the American people, and while constitutional amendments have been proposed and legislation has been proposed, you leave it to the committee to determine which method will accomplish the desired results. You feel, however, if it can be done by legislation it should be enacted, and if not, some kind of a constitutional amendment should be made to cover it?

Mr. GOMPERS. Of course I submit that the matter should receive the best consideration of the committee. I do not hold myself in pledge to support any bill that the committee may formulate. I still hold my right to dissent or to support.

Mr. WALSH. Of course the committee does not impose any involuntary servitude upon anybody that comes before it.

Mr. GOMPERS. But this is voluntary servitude.

Mr. HERSEY. You say you reserve your right to dissent. We appreciate that anybody has a right to dissent from the action of a committee, even though they may have appeared before the committee in favor of legislation.

Mr. GOMPERS. Yes, sir.

Mr. HERSEY. The Lason bill was prepared by an attorney in whom you have some confidence?

Mr. GOMPERS. Yes, sir.

Mr. HERSEY. It has never been presented to either House?

Mr. GOMPERS. Never.

Mr. HERSEY. Do you intend to present it to either House?

Mr. GOMPERS. I think it ought to be presented. It is assumed, of course, that we are committed to any bill introduced at our request or which we have submitted or sponsored. First, I have not the authority—

Mr. HERSEY (interposing). You know we are very near—at least we hope so—to an adjournment or recess of this present session of Congress. We may not get back until December to do any new work. Do you expect us to wait until Mr. Lason submits the bill which has been referred to to a committee and have a hearing and to hear from you and pass this legislation during this session being held now?

Mr. GOMPERS. That is a matter which must rest with you gentlemen. It is for you to decide whether the matter is of sufficient importance to receive any special consideration. I am laying before you, the best I can, the urgent need for Federal legislation.

Mr. HERSEY. Do you expect your attorney, in whom you have confidence, to formulate a bill, and introduce it in this committee, and you stand behind it as the representative of the Federation of Labor, or do you expect this committee to formulate a bill and pass it?

Mr. GOMPERS. And pass it? That is another thing. I do hope and expect that the committee will give the subject its best consideration and will formulate a bill and give those who are associated with us, sincerely engaged in the effort to abolish child labor, an opportunity to express judgment on the bill before you report it.

Mr. HERSEY. Yes; but we want some light from you and your organization.

Mr. GOMPERS. And we are willing to give it.

Mr. HERSEY. It must be upon some matter of legislation, not in a general way. We all understand the general principles. I think we all agree upon the evil to be removed and which we are anxious to have removed. If you can give us any help, that is what we want. But if you do not appear for any bill or for any resolution, but simply come in here and advocate general principles, it does not help the committee, does it? We want you to stand for something.

Mr. CHANDLER. That is the reason I asked you the question, Mr. Gompers, whether you stand for this particular bill. I feel that the committee ought to know what specific bill you advocate in the name of the American Federation of Labor.

Mr. GOMPERS. Any measure passed by the Congress effectively abolishing child labor.

Mr. HERSEY. Congress has tried to do that twice now.

Mr. CHANDLER. I will ask you in that connection. We have an antilynching bill. One of the arguments put forth when the constitutional aspect was suggested that if the States will not do anything that the Federal Government ought to be empowered to do it. Is the great reason for you asking for Federal legislation that you do not believe that the States are doing or can be induced to sufficiently protect child labor

in America? Would you prepare a Federal law even if you know all the States had the child labor laws on their statute books?

Mr. GOMPERS. No, sir.

Mr. CHANDLER. Does the American Federation of Labor prefer Federal jurisdiction and administration in the protection of the various phases of labor to the State courts and State constitutions?

Mr. GOMPERS. It is preferably generally.

Mr. CHANDLER. Why?

Mr. GOMPERS. The States—

Mr. CHANDLER (interposing). Oh, you prefer the States?

Mr. GOMPERS. Yes, sir.

Mr. CHANDLER. Then, again referring to the 48 States, it seemed to me, you stated that the standards in some States were not high, but you have admitted that all but 3 States in the Union have practically satisfactory laws. Now, are we to have Federal legislation or a constitutional amendment because 8 States are derelict in duty? I should like, when you come before us again, if you will not do it now, to tell us about that point. You have said that 40 out of 48 have already enacted fairly satisfactory laws?

Mr. GOMPERS. Yes, sir.

Mr. CHANDLER. And you still want the amendment because the eight States will not come through?

Mr. GOMPERS. Because if there be one State in the Union that disregards the child life of her people, I should go to the fullest length in legislative or constitutional action in order to save the children of that State.

Mr. CHANDLER. You have a powerful organization, the most powerful labor organization, I understand, in the world. Can you not bring pressure to bear on the legislatures of those eight States and secure relief? Would it not be the easier route as well as the better route to do that than to try the process of Federal amendment, since the average time required to obtain a Federal amendment is estimated to be 30 years?

Mr. GOMPERS. That is the experimental amendment passed by this committee—

Mr. CHANDLER (interposing). What amendment are you referring to?

Mr. GOMPERS. Well, the eighteenth, for instance.

[Laughter.]

Mr. CHANDLER. The 18th amendment has been a subject of discussion in American life for more than half a century.

Mr. GOMPERS. Yes, but the constitutional amendment did not take more than two years.

Mr. CHANDLER. It took all that time to prepare the way.

Mr. GOMPERS. In fact, a hundred years has been consumed in the fight for child labor.

Mr. CHANDLER. That is true. We got through a popular election for senators, and yet the first resolution was introduced in 1876, and after that nearly every Congress had before it popular elections of Senators, and yet when it did take a lunge it went through in two or three years.

Mr. GOMPERS. An income tax amendment did not take many years.

Mr. CHANDLER. It took 11 years after the Supreme Court made a decision.

Mr. GOMPERS. That is 11 years in the scale of time?

Mr. CHANDLER. If you can get those eight States to pass laws in 11 years why not go through that route?

Mr. GOMPERS. As a rule, these States are not industrial States.

Mr. CHANDLER. You said you had not them in mind. Can you mention two or three of the eight?

Mr. GOMPERS. If I may be excused, I would rather not undertake it.

Mr. FORTER. You were uncertain a while ago, as was also one member of the committee that this was an extra session. This is the regular session of Congress.

Mr. GOMPERS. Yes.

Mr. FORTER. I take it your position is that it is not the duty of the American Federation of Labor to determine the policy for this committee, but that you are here to furnish what light you can on the problems, and that if we want to stay in session one week or six weeks it is up to us rather than the American Federation of Labor.

Mr. GOMPERS. That is my feeling on the matter. When the Supreme Court decided that the last Federal act against child labor was unconstitutional there arose a spirit of indignation and resentment of which I know something; and by authority of the executive council I invited a number of these ladies and gentlemen here, coming from several points of the country, men and women who have stood for something and stand for something real in the American life and humanitarian efforts, and they

responded. I did not want to have any mass meeting. We come here. We had not a chance of meeting more than 15 minutes this morning, and simply decided to come here without order, without regulation, without understanding--simply that we come here and by our presence and by the remarks which we might submit, leave the matter in your hands, or at least in so far as this consideration and preparation are concerned, and we offer our services to be helpful as best we can.

We may not be able to draft a constitutional amendment effective and perfective, based upon the spirit of freedom and democracy; we may not be able to prepare a bill to deal effectively with the subject that will stand test of the Supreme Court of the United States. There has been a bill formulated which was read, prepared by Mr. Lason, which seemed to me to be a new theory, a new thought--the application of the thirteenth amendment to this prohibition of involuntary servitude, and to hold that the child under 14 years is incompetent to make a contract, and that a parent has no right to make a contract for children below 14 years, upon the ground that it is involuntary and coming under the provisions of article 13.

I may say this, gentlemen of the committee, that I understand that there is some limit to the time that you have at your disposal here this morning. I assure you that I had no idea of occupying more than about 15 minutes of your time, so I have really trespassed upon the time of other members of this conference who are here to present their ideas to you. If I may, I should like to have Mr. Lovejoy address the committee.

**STATEMENT OF MR. OREN R. LOVEJOY, GENERAL SECRETARY OF THE NATIONAL CHILD LABOR COMMITTEE, NEW YORK CITY.**

Mr. LOVEJOY. Mr. Chairman and gentlemen of the committee, I feel some hesitation in appearing before the committee, first, because the National Child Labor Committee, which I represent, has no specific measure which we wish at the present time to submit ourselves before your committee. I accepted the invitation by the instruction of my board of directors when it was received two or three days ago from Mr. Gompers, because it looked as though, from public press reports and otherwise, some action would be taken, and the committee desired that certain facts as to our position should be placed before your committee, so that our attitude might be understood, and if you will bear with me for two or three minutes there are just one or two things in explanation that I would like to state.

In general, I may say that the committee is in favor of whatever Federal action is necessary to correct the abuse of child labor which can not be corrected through locally initiated activities and educational propaganda.

Mr. MONTAGUE. You mean "can not be" or "which has not been"?

Mr. LOVEJOY. Can not.

Mr. GRAHAM. Why it can not be?

Mr. LOVEJOY. May I explain?

Mr. GRAHAM. Legislatures have plenary power and they can correct anything if you apply to them and they pass a law. If you go into another State where there is less development and they fail to pass a law, that is owing to the state of mind of the people in that State, that is all, and it needs education and encouragement.

No one differs with you on the question of protecting child labor; that is conceded. But the question in my mind is, How far we shall go with this proposed amendment to the Constitution and shatter the whole fabric of our system of government as it has been transmitted to us, trenching upon State rights here and expanding them there? It is not a question altogether of our advocacy of child labor, but it is a question of what legislation is fittest as the remedy for this without doing harm to the general fabric of our system of government.

Mr. LOVEJOY. May I say that the National Child Labor Committee has always regretted what we regard as the undue emphasis placed on the value of Federal action as compared with State and local activities. The time element, however, is involved, and when I said "can not," I had in mind the reasonable probability that within certain years effective action would be taken. We must remember that a generation of children after it has once passed out of that age period can not be helped by any theoretical plans that might be worked out in ten or twenty-five years from now.

I merely mention that in passing as indicating that there might be a reasonable line drawn between centralized activity and local activity.

There are one or two facts that I would like to place before the committee, and may I explain, as I attempted to at the beginning, that we are not here advocating any specific measure or action at all, if some locally initiated plan is found feasible,

practical, and prompt. But the first fact is this: That both of the Federal child labor laws we have had during the past seven years, with a brief interval between them, have had a very limited application. According to the best estimate that we can make from census reports they applied to approximately 15 per cent of the children listed by the census as engaged in gainful occupations. It was a mistake on the part of the general public to suppose that the Federal child labor law had cured the evil or could do so, because it referred to children engaged only in certain kinds of occupation.

And we hope that if it seems necessary to the Congress to pass any other kind of child labor law, whether an act or an amendment to the Constitution, some way would be found to bring protection to other groups of working children; for example, children engaged in street trades, and in sweating tenement home industries, and in domestic service, and in the large concentrated fields of agricultural activity, where the largest number of child laborers in this country are now engaged, and some of them under the most unfavorable conditions. That is the first fact that we would like to emphasize. The second—

Mr. HENNEY (interposing). Where are children engaged in agricultural pursuits principally?

Mr. LOVEJOY. I should prefer to speak of the type of agriculture rather than the place, although I have no hesitation in giving details. I would say in the cotton fields, onion fields, asparagus beds, and sugar-beet fields, and the larger type of agricultural industries. Those are the chief problems.

Mr. SUMMERS. How would you deal with that? Have you some method in mind?

Mr. LOVEJOY. I am not prepared at the moment, Mr. Chairman, to suggest any specific remedy for that; I am merely suggesting that the committee should have in mind these types of occupation if Federal legislation is to be favored.

Senator WALSH. What are the unfavorable conditions attached to that class?

Mr. LOVEJOY. Long hours, excessively hard work, injurious to the health; for example, the Children's Bureau recently issued a report on child labor in the sugar-beet fields of Colorado, and bad sanitary living conditions in the living quarters, and perhaps most important of all the interruption of education, where it is found that many of these children get to school only three or four months during the entire year on account of the long agricultural season.

Mr. DOMINICK. Is it not a fact that in a good many of the agricultural sections the school is held during such times of the year as to accommodate the children who labor in the fields?

Mr. LOVEJOY. In some sections they have summer schools, when it is so hot that the children sleep all during the school day.

Mr. DOMINICK. Sleep where?

Mr. LOVEJOY. In the schoolroom; and the teacher goes to sleep, too, because of the depressing heat.

Mr. DOMINICK. What section of the country are they in?

Mr. LOVEJOY. I am just speaking generally, in recollection of my experience as a country schoolboy in a country school.

Mr. DOMINICK. Some of us from those sections would like to have the particulars, if you complain of them, not so many generalities. I do not like to hear a general indictment against certain sections unless you can bring some specific facts.

Just along that line, I would like to have an expression from your study of investigations wherein it has been found to be injurious to the child to pick cotton out in the open.

Mr. LOVEJOY. I would not make a general sweeping statement that it is injurious for children to pick cotton out in the open. But it is where work is conducted for long hours and under rush conditions, and where there is interference of school, and under those conditions I would say it is injurious.

Mr. DOMINICK. It is pretty generally understood that children in the agricultural sections can not be worked on an eight-hour basis.

Mr. CHANDLER. Are you a lawyer?

Mr. LOVEJOY. I am not.

Mr. CHANDLER. Have you studied in any way the decision of the Supreme Court with reference to these child-labor cases and reference to constitutionality?

Mr. LOVEJOY. I have, as well as a layman can.

Mr. CHANDLER. Have you studied this bill?

Mr. LOVEJOY. I have not; I never knew anything about it until I heard it read here.

Mr. CHANDLER. Can you not venture any suggestions as to whether it would meet the constitutional requirements?

Mr. LOVEJOY. I should prefer not to attempt that.

Mr. CHANDLER. Is it not a fact that the Supreme Court has rendered a decision which makes it practically impossible to have Federal legislation that would be constitutional? Is it not impossible, probably? If that is a fact, why should we consider this bill and drive the Supreme Court on, so to speak? Why not consider the matter of effecting the reform through the legislatures of the States or go at once to a Federal amendment? I ought to be more familiar than I am, but from what I am told by other members of the committee who have studied the question, it would be impossible to pass any legislation which the Supreme Court would hold constitutional; that is, any Federal legislation. If that is the situation, it is a question whether the time of the committee should be taken up considering Federal legislation.

Mr. FOSTER. We are considering a constitutional amendment along with Federal legislation.

Mr. LOVEJOY. May I offer a bit of information on this point, which perhaps will not directly answer the question, but it presents my view. It is the second point I wanted to bring before the committee, and that is a recognition of the fact that progress is being made every year through State legislation. I should like to present to the committee a comparison. Mr. Gompers has spoken in a general way of there having been 40 States with legislation on child labor and 8 States not having it. I understand that he made that only as a broad statement. As a matter of fact, every State in the Union has some kind of a child-labor law, and I should not know quite where to draw the line between the 40 that were placed on one side and the 8 on the other. But this is an important fact to remember, that seven years ago, just on the eve of the enactment of the first Federal law, there were 12 States that had not established a 14-year minimum age limit; at present there are only 3.

Mr. FOSTER. Which are they?

Mr. LOVEJOY. As I remember, Utah, Arizona, and Mississippi, only one of them being to any extent an industrial State.

Mr. HERSEY. The age of consent is 14, is it?

Mr. LOVEJOY. No; the minimum age limit for child employment. And Wyoming, I am reminded. Then there were only 23 States that had the 8-hour day for children under 14. Now there are 33. That is, there has been a gain of 10 States in that list during the seven years. Then only 34 States forbade night work under 16; now 42 forbid night work under 16. Then only 14 protected children under 10 in mines and forests. At the present time there are 30 that give this protection, and in that 30 are included practically all of the leading States engaged in mining and quarrying. We believe that a large part of this progress has been made under the pressure of this Federal standard. That will be the testimony of a great many State labor officials, that they have been aided in the administration of their law by the fact that there was a Federal law, that helped create an atmosphere in the direction of those higher standards.

Mr. SUMNERS. Are you sure as to which is the cause and which is the effect?

Mr. LOVEJOY. I am only suggesting that I have heard this statement made by labor officials. We heard it from a number of them at Harrisburg.

Mr. LOVEJOY. I think the gentlemen are assuming all the time that I am arguing for a Federal child labor law, which at the present moment I am not doing.

Mr. SUMNERS. In order that you may address yourself to my difficulty, and I believe it is the difficulty of the average man here, let us assume, for I believe it is a fact, that the members of this committee perhaps without exception recognize that child labor in the sense in which you criticize it ought not to be permitted. But it is a serious question with the average national legislator as to how long we can continue to operate this Government from the top down. That the preservation of the rights of the States, as we used to consider it in the South, is perhaps not of importance, but that it may be important to preserve the capacity of the State to govern, which can be done only by the exercise of governmental power. The responsibility of the citizen is greater there, and if we are to continue to enforce our laws we must have a virile militant public opinion in the communities behind them, which can neither be created nor preserved without the fact of local responsibility and that it is possible that we sometimes lose an opportunity to build such an opinion and such a purpose, because just before we get ready for State legislation when we have about reached that point under the pressure of an aroused public opinion, we become impatient and turn away from the State to the National Government and have the enactment here rather than have the people in the States do what they and their legislatures are competent to do. I believe I have laid before you the difficulty which my colleagues on this committee, who are honest with reference to

the discharge of their official duties, confront when they come to matters of this sort. If you could help us there it would be real help because that is the starting point. There is no use discussing, to my mind, the question of child labor and its abuses. We first come to the proposition of general governmental policy and our duty to the whole people in this particular matter.

I would personally appreciate, and I believe I express the opinion and attitude of my colleagues on this committee, if you would address yourself direct to that as the first question, because if we can not get by that we can not proceed to a consideration of the details of the bill.

Mr. LOVEJOY. Might I say on behalf of the committee I represent that we especially hope that whatever action is taken by this committee, whatever public agitation has resulted from the action of the Supreme Court, will not turn the mind of the public away from the fact that the major part of this evil must be corrected through State laws and local ordinances, and it has been to those points that the Nation Child Labor Committee has devoted the chief part of its attention and its emphasis. Our only interest, aside from the incidental one I mentioned, in Federal legislation, is in the belief that there may result from the slow action of some of the more backward States immediate injury to the present generation of children that could be obviated by Federal action. The committee—I think I speak advisedly—prefers local initiative in arousing the public interest in each locality rather than what the gentleman has called Government from the top, and further than that I can only say that the committee has, as soon as this Supreme Court decision was rendered, appointed a sub-committee with prominent lawyers on the committee, to make a thorough study of the whole subject and prepare a report to submit to this House Judiciary Committee, if in the judgment of that committee we had anything definite to offer. I am here to-day simply to explain that we have not asked for a hearing—our committee—at this present time, but have come at the invitation of Mr. Gompers to state our views on the situation as it stands to-day, and our desire if we have anything valuable to offer later, to offer an indorsement of one of these bills, or some other, perhaps, that may be more direct, and then we should be glad if the committee will grant us a hearing.

The CHAIRMAN. No doubt we shall have further hearings. The committee will determine that. Personally, I have got to leave the committee at this time, as the committee has the call in the House to-day and I am needed there.

#### STATEMENT OF MRS. FLORENCE KELLEY, REPRESENTING THE CONSUMERS' LEAGUE.

Mr. HERSEY. Before going into the matter of the evil, we all appreciate the evil of child labor. We all feel that way. The committee do not have to be convinced upon the evil. We want the remedy, if you have it.

Mr. FOSTER. Mr. Gompers understands that the Judiciary Committee has a call in the House to-day at 12 o'clock. Many of us will feel compelled to leave here and want you and your friends to know that ordinarily we would not leave, but to-day there is a call in the House of this committee?

Mr. MONTAGUE. Legislation reported by this committee is up for consideration. Therefore, it is the duty of the committee to be in attendance upon its own work.

Mr. CHANDLER. Do you live in Washington?

Mrs. KELLEY. In New York.

Mr. CHANDLER. Are you employed here in connection with labor?

Mrs. KELLEY. No, sir; I am general secretary of the National Consumers' League.

Mr. CHANDLER. The reason I was asking was to see if you could defer your statement, if you did live here.

Mrs. KELLEY. I do not live here and I have to attend these meetings. I have no intention of delivering an oration. It will be 40 years on the 20th of this month since I wrote and afterwards published a thesis as a graduating student at the University of Cornell in New York State on "The Law and the Child," and since that time I have been continuously studying trying to improve conditions of the children in the States of this country through State legislatures, and for the last 23 years the National Consumers' League, which I have the honor to serve, as its secretary, has been cooperating with the National Child Labor Committee and the Federal Children's Bureau in efforts to add to the improvements in the legislature of the States more comprehensive legislation by Congress. We have suffered chagrin, which we share with all who are interested in the future of this Republic, in our failure to achieve any Federal law which has met with the approval of the Supreme Court of the United States, and I am certain that my organization shares the present conviction of Mr. Lovejoy that it is not possible for the States to give to the children that uniform

protection of the laws which the ordinary reader of the Constitution believes until otherwise instructed that the Constitution guarantees to the minor citizens as well as to the adult citizens of our nation.

The reason that my organization has worked through the time that Federal legislation was under discussion in favor of Federal legislation is that we bore witness to the continual failure of the States, with all the improvements that Mr. Lovejoy correctly reports, to give to the children anything approaching uniform advantages in the different parts of the country; and we do not recognize the right of any State to leave its children unprotected from overwork and subject to the ignorance that accompanies too early work and overwork—overwork either in the sense of working at tasks which are beyond their strength or which consume so much of their time that they have no adequate opportunity to develop their intelligence. I have heard it said by intelligent foreigners in this country who have visited different States and have had contact with the most intelligent people in the States in the different parts of the States, that we appeared to have three grades of children in our Republic, the children who are permitted to work hours that are not allowed to the children in the advanced European countries, in those States in which children, since after the repeal of the first Federal law and in the brief interval before the enactment of the second Federal law, were called back immediately from the work which they had done before, that 9 months' enforced holiday that they enjoyed, to 10 hours a day in some States and 11 hours a day, exceptionally, in some States. Then the second class of children in the Northeastern and Middle States who had work in industry and in agriculture, under conditions that are injurious to them, but not so injurious as the uncontrolled conditions and in States in which no two, though adjacent, offered children the uniform protection of the laws.

We can not claim that for New York, Massachusetts, Ohio, New Jersey, Pennsylvania, the greatest adjacent States of the Union. They give their children equal protection of the laws in the matter of child labor and education much less than some of the whole 40. I have heard foreign travelers who are studying our conditions with reference to modifying conditions of their own countries at home say that the children who appeared to be treated as the children of the first class and entitled to the most protected or most enlightened conditions are those of the Pacific Northwest, beginning in California and going north—California, Oregon, Washington, Montana, Idaho, that region in which laws that forbid work under the age of 16 years in more occupations than for other States are to be found, and frequently compulsory education running up to 16.

I have made similar observations. I have visited every State in this country. I have been astounded at the variety which the State laws permit in the experience of native-born American future voters in this country, boys and girls, and I am convinced that there is nothing but Federal legislation which can effectively modify these injustices and inequalities, and I am convinced out of the twofold experiences that we have had that we should be childish and fatuous to attempt again by the method of Federal legislation, or, again, by the method of improved State legislation, to give to our children the privileges this country promised to all of them.

Mr. HERSEY. It has been some time since you wrote your essay against child labor?

Mrs. KELLEY. Yes, sir; I have studied the subject ever since.

Mr. HERSEY. At the time you wrote that essay, of course, there were no laws protecting children.

Mrs. KELLEY. I beg your pardon; yes, sir; there were in Massachusetts, Pennsylvania, New York, and Ohio; there were laws restricting both age and hours of the children.

Mr. HERSEY. How many States had child-labor laws then?

Mrs. KELLEY. Those four.

Mr. HERSEY. Have they been changed beneficially since that, some of them?

Mrs. KELLEY. Yes. In the course of 40 years we have made some progress.

Mr. HERSEY. During that 40 years you have appeared with your organization before legislatures of the several States?

Mrs. KELLEY. Yes, sir; and we have been appalled at the slowness of the progress.

Mr. HERSEY. But you have made great progress in having 40 States have child-labor laws to-day.

Mrs. KELLEY. But the laws are so largely shams, because there is no equality in enforcement.

Mr. HERSEY. But they keep bettering all the time.

Mrs. KELLEY. On paper.

Mr. HERSEY. You mean by legislation?

Mrs. KELLEY. I mean legislative laws on paper. I mean the enforcement of the laws, when they are not Federal laws, is of 48 divergent varieties.

Mr. HERSEY. But the Federal law would not enforce those of the State.

Mrs. KELLEY. No; but the courts are far more uniform in their administration of justice. There is far greater respect, I am sure you will agree with me on that. There is far greater respect for the Federal courts than for the courts of many of our States.

Mr. HERSEY. You might in many States; but they are not all that way, I think. I think the States respect their own courts as much as they do the Federal courts.

Mrs. KELLEY. That is not our observation with regard to the children.

Mr. CHANDLER. I think the lady is right.

Mr. HERSEY. What remedy have you before this committee for the evil of child labor in the 48 States?

Mrs. KELLEY. I look forward with ardent hope to a Federal amendment authorizing Congress to legislate.

Mr. HERSEY. You favor State laws?

Mrs. KELLEY. Yes; I do, and I should be very glad if they could be enforced.

Mr. HERSEY. Do you favor the Lason bill, or anything of that kind?

Mrs. KELLEY. We should be designated morons. A moron is a person who learns nothing from experience.

Mr. HERSEY. Do you want the committee to pass a national law?

Mrs. KELLEY. I am willing to do my best in answering these multifold questions. I said I hoped that we might have a Federal amendment authorizing legislation by Congress because of our failure to get uniform protection of the laws through 40 years of effort with the States, and now the discouragement of two annulments of Federal laws, without an amendment.

That is my position, and I feel quite confident that I could come back here with a formal vote of my organization. We are a national organization, and if called they would meet on short notice. It is not 30 days since I became aware of the adverse decision concerning the second Federal law.

Mr. HERSEY. Would you rather the committee should pass another law of Congress without the constitutional amendment and put it up to the Supreme Court, or would you rather we should pass or submit an amendment to the Constitution?

Mrs. KELLEY. No, sir: I would be glad to say that in recent years we have come to believe that the moron is a person who is incapable of learning by experience. We have tried twice with the advice of the wisest lawyers whom we could summon to our aid, of whom more than one is now a member of the Supreme Court of the United States. We have tried twice to frame laws that the Supreme Court would uphold, and having failed twice, I think we would enlist ourselves among the morons if we spent another 40 years experimenting in the field of Federal legislation.

I am very grateful to you gentlemen for the opportunity to state our views.

#### STATEMENT OF MRS. JEANNE MARION DOANE, OCEANSIDE, LONG ISLAND, N. Y.

Mr. MONTAGUE. Whom do you represent?

Mrs. DOANE. Myself and children and child laborers of the country. I represent no organization, but I was, for a period of two years in my extreme youth, a child laborer myself. So I have had the keenest interest in this subject, due to my own experience.

I have a suggestion to make, Mr. Chairman. There was an act passed, section 7313 of the Revised Statutes, which provides that newspapers shall publish twice each year the names of their officers, stockholders, and other data of a similar character, managing editor, publisher, business managers, etc. I do not know what was back of such a law being passed, and I do not know whether or not that act has ever been upheld and come before the highest tribunal, but I assume if it has that the act was upheld, for I have investigated and find that the newspapers still are compelled to do so. Now, the constructive idea which links this up with child labor, which I ask you to let me put before you, is that sometime you gentlemen try to formulate a law by which these child-labor employers, corporations employing child labor throughout the land, shall be compelled to publish a list of their officers, stockholders, and, if possible, the dividends they pay, so that may become public property.

The suggestion has been made here that it might be possible to effect a good child labor reform on the thirteenth amendment. Now, surely, if the act could pass the Houses of Congress which compels newspapers to publish those details concerning their organization—I do not know the reason, but we might assume it may have been there were frauds in advertisements or bait held out to the gullible, presumably adult public, and that adult public should be protected, and therefore, this act was passed which compelled those newspapers to do that—now, if the child who here

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by this ingenuous suggestion of Mr. Lawson is supposed to be an involuntary slave, if we are to look upon the child as an involuntary slave, and that child is exploited, surely the whole public has a right to know who are the individuals deriving benefit from their exploitation.

Now, I realize after reading the opinion of Mr. Taft handed down the other day, that it will be practically impossible, as Mrs. Kelley also suggested, to so frame the language of an act as to be able to pass through that high court. I do not wish to have it understood that I am casting the least disrespect upon this decision. Of course, I am in no position at all to have any opposition to it and do not wish to express it, but it would seem to me that if we bear in mind those things that run right through the language of Mr. Taft's decision, namely, that we exercise care in the framing of such a law as I have suggested, it might pass muster. In the oleomargarine case and the poisoned matches case, to which reference has been made, which were upheld in the highest court, it appears as though the language of those was more neatly framed, and so they passed. Now, I have had too little time and my brain ached when I tried myself to see if I could draw it up, but I pass my suggestion to you that it might be drawn up.

(The proposed bill was later submitted by Mrs. Sloane, and is here printed in the record, in full, as follows:)

### "AN ACT TO FACILITATE THE COLLECTION OF INCOME TAXES AND TO PREVENT THE EVASION OF SAME.

"It shall be the duty of the president or treasurer or other responsible official of every corporation operating any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States where more than 50 persons are regularly employed to publish at least once in each calendar year in any daily newspaper or paper of largest circulation in the county in which such mill, cannery, workshop, factory, or manufacturing establishment is situated, a statement embracing the following facts:

"The names and post-office addresses of the officials of such corporation; the names and post-office addresses of each stockholder in such corporation; the names of known bondholders, mortgagees or other security holders of such corporation; the number of persons regularly employed, classified as follows: The number above the age of 21 years and their average weekly wage; the number between the ages of 18 and 21 years and their average weekly wage; the number between the ages of 16 and 18 years and their average weekly wage; the number between the ages of 14 and 16 years and their average weekly wage, and the number employed below the age of 14 years and their average weekly wage. It shall not be necessary to include in such statement the names of persons owning less than 1 per cent of the total amount of stock, bonds, mortgages, or other securities.

"It is further provided that the above requirements shall apply to any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States when owned by any individual or partnership, in which case the proportionate interest of the several partners shall be set forth, and the requirements as to the statements of ages and average weekly wages of persons employed shall be carried out exactly as in the case of a corporation.

"It is further provided that such statement shall be sworn to by a responsible officer of the corporation or individual or member of a partnership, and a copy of such sworn statement shall be filed with the collector of internal revenue in the district where the said mill, cannery, workshop, factory, or manufacturing establishment is situated.

"It is further provided that failure to advertise such sworn statement and file an attested copy of same with the collector of internal revenue shall be punishable by a fine of not less than \$1,000 nor more than \$5,000, or imprisonment for not less than one year nor more than five years.

"The United States attorney of each district is directed and empowered to prosecute such responsible officer of a corporation, individual or member of partnership individually, on complaint of said district attorney.

"This act shall take effect within 60 days."

Mr. GOMPERS. I want to make the request that all the ladies and gentlemen who are here in a capacity as representatives in favor of child labor legislation may have the privilege of having their names and organizations taken by the clerk.

Mr. HERSEY. If you will hand them in they will be put in the record.

(Mr. Gompers submitted the following list of persons, referred to in his statement, to be printed:)

## CHILD LABOR.

- Mrs. Lida Hafford, director of headquarters General Federation of Women's Clubs.  
Mrs. Florence V. Watkins, National Congress of Mothers and Parent-Teachers Association.  
Miss Anna Neary; Miss M. Lindsay, National Women's Trade Union League.  
Miss A. M. Nicholson, director Service Bureau, National Council of Catholic Women.  
Mrs. Frederick Schoff, Mrs. Swigart, National Council of Women.  
Mrs. Samuel McClintock, National Board of the Young Women's Christian Association.  
Mrs. Raymond Morgan, American Association of University Women.  
Mr. Owen R. Lovejoy, secretary National Child Labor Committee.  
Miss Grace Abbott, chief Children's Bureau, Department of Labor.  
Mr. Walter N. Reddick, president International Brotherhood of Bookbinders.  
Mr. Felix J. Blair, secretary International Brotherhood of Bookbinders.  
Mr. Thomas F. Flaherty, secretary National Federation of Post Office Clerks.  
Mr. C. L. Rosemund, president International Federation of Technical Engineers and Draftmen's Unions.  
Mr. James P. Noonan, president International Brotherhood of Electrical Workers of America.  
Mr. Jackson H. Ralston, counsel for American Federation of Labor.  
Mr. George A. Gruff, secretary National Marine Engineers' Beneficial Association of the United States of America.  
Mr. C. S. Spear, National Federation of Federal Employees.  
Mr. Fred W. Baer, president International Association of Fire Fighters.  
Mr. Frank Morrison, secretary American Federation of Labor.  
Mr. James O'Connell, president metal trades department American Federation of Labor.  
Mr. John J. Manning, secretary union label trades department, American Federation of Labor.  
Mr. James Lord, president mining department, American Federation of Labor.  
Miss Mary Anderson, director Women's Bureau, Department of Labor.  
Dr. E. O. Watson, Federal Council of Churches of Christ in America.  
B. M. Watson, the Public Education and Child Labor Association of Pennsylvania.  
Rev. Dr. John A. Ryan, Catholic University.  
Samuel Gompers, president American Federation of Labor.  
Dr. John A. Lapp, director, and Linna E. Bresette, social action department, National Catholic Welfare Council.  
Mr. William C. Roberts, Mr. Edgar Wallace, Mr. Edward F. McGrady, legislative committee, American Federation of Labor.  
Mr. Chester M. Wright, director American Federation of Labor, information and publicity service.  
Mr. James Egan, editor Weekly News Letter, American Federation of Labor.  
Mr. Julian Pierce, research department, American Federation of Labor.  
Mr. Oliver Hoyem, American Federation of Labor information and publicity service.  
Mr. John Sullivan, president New York Central Labor Union.  
Samuel McCune Lindsay, child labor committee.  
Rabbi Stephen S. Wise.  
Mr. James Forrester, Brotherhood of Railway Clerks.  
Harriet Taylor Upton, National League of Women Voters.  
Mrs. Florence Kelly, National Consumers' League.  
Miss Maud Wood Park, National League of Women Voters.  
Miss Madeline H. Apple, Children's Bureau of Massachusetts.  
Mr. Charles Frazier, Washington Central Labor Union.  
Miss Haviland H. Lund, Institute of Government.  
There was also present Mr. J. J. Forrester, representing the railway and express clerks and station employees.  
(Thereupon the committee adjourned to meet again at the call of the chairman.)