SENATE . . . . No. 608

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT,
STATE HOUSE, BOSTON, May 13, 1952.

To the Honorable Senate and House of Representatives:

I send you this unprecedented special message in what I would like to believe is an abundance of caution.

Unfortunately, there appears to be imminent a failure on your part to carry out a plain mandate which the people have placed in the Constitution of the Commonwealth.

Under ordinary circumstances, it might be considered presumptuous of a Governor to remind the legislative branch of government of a duty for the discharge of which the time has not yet expired.

The circumstances of this case are not ordinary and since delay might prove fatal to a measure now pending before you, I must risk seeming indelicate by reminding you of your sworn obligation and thus being faithful to my own.

I refer to House No. 319 of 1950 as adopted in the joint session of June 14, 1950, and the provisions of Article LXXXI of the Amendments to the Constitution.

The former, House No. 319 of 1950 is pending before you and is entitled "Proposal for a Legislative Amendment to the Constitution of the Commonwealth to permit the levying of a Graduated Income Tax by the General Court." That proposal "as changed, and agreed to" was voted for by a majority of all the members elected to the 1949–1950 Legislature in a joint session held on June 14, 1950.

The latter, the eighty-first article, is the most recent

amendment to our Constitution. It was adopted by the General Court during the sessions of the years 1948 and 1949, and was approved and ratified by the people on the 7th day of November, 1950. It changed the provisions of the forty-eighth Article of Amendment to the Constitution in several important respects. Among the changes is one prescribing the last day on which proposals for constitutional amendment must be acted upon in joint session of the two houses of the General Court. That date has now been advanced to the second Wednesday in May. Formerly, it was the second Wednesday of June.

Contrary to some ill-advised or possibly ill-intentioned editorial opinion which has misrepresented the measure, *House No. 319 of 1950* (as changed and agreed to in the joint session of both legislative houses on June 14, 1950) *is not a proposal for a new or additional tax.* If adopted by the people it would merely remove an existing limitation on the power of the legislature to frame income tax laws.

Under Article XLIV of the Amendments to the Constitution, as that article has been interpreted by the Supreme Judicial Court, the Legislature is now obliged to tax the earned income of both rich and poor at the same rates. (See: Opinion of the Justices at page 583 and following in Volume 266 of the Massachusetts Reports.)

The pending measure proposes to change that situation by permitting the Legislature to levy income taxes in accordance with ability to pay. It has been criticized both in principle and in detail.

However, whatever weight any objections to House 319 of 1950 may have, they constitute at most, reasons for voting against it. They do not furnish an excuse for evading legislative action on the measure by failing to hold a joint convention of both houses of the General Court for the purpose of considering the proposal conformably to the provisions of the Constitution.

I said before the circumstances of this case are not ordinary. There appears to be grave danger that owing

to the understandable inadvertence of the many and the calculated design of one or two members of the Senate of the Commonwealth, an important provision of our Constitution may be nullified.

The early legislative history of the proposed constitutional amendment embodied in House 319 of 1950 is clear. Its recent history is wrapped in obscurity.

In my Inaugural Message to the Legislature which sat in the sessions of 1949 and 1950, I recommended "that steps be taken at once to amend the Constitution so that you may enact a graduated income tax. Under present limitations, those who can afford to pay a larger share toward the cost of government contribute no greater proportion of their income than the income tax payer in the most moderate circumstances. This should be changed." (Senate 1, January 6, 1949, Page 30).

By January 1950, at least four proposals for a constitutional amendment to permit levying of a graduated income tax were introduced into the Legislature. In March of 1950, after mature deliberation, the joint committee on Constitutional Law made in each branch of the General Court a report of its recommendation that House 319 ought to pass. Then or later, it recommended that the other proposals with the same purpose, ought not to pass.

On June 12, 1950, the House passed an Order that a joint session be held on June 14 at 1:00 P.M. "for the purpose of considering the Proposal to permit the levying of a graduated income tax by the General Court (see House No. 319)".

On the following day the Senate adopted the House order in concurrence.

June 14, 1950, under Article XLVIII of the Amendments to the Constitution, prior to its amendment by Article LXXXI, was then the last day for holding such a joint session. On the then final day, the 1949–1950 Legislature acted conformably to the Constitution and "a majority of all the members elected having voted in the affirmative", . . . "the proposal, as changed", was

"agreed to" and "was referred to the next General Court". (See Journal of the Senate 1950, P. 1148 and following.)

You are the next General Court to whom the proposal was referred.

Under the eighty-first Article of Amendment to the Constitution "if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside;" (Article LXXXI Section I).

On January 14, 1952, I find that the House passed an order that the proposal embodied in House 319 of 1950, be taken from the files. This was sent to the Senate for concurrence. (Journal of the House, P. 242 of 1952).

On Wednesday, April 2, 1952, the House passed an order calling for "a joint session of the two houses, conformably to the provisions of Article XLVIII of the Amendments to the Constitution, for the purpose of considering . . . (House, No. 319 of the year 1950) which Proposal was agreed to in joint session of the two houses of the preceding General Court." This was sent to the Senate for concurrence. (Journal of the House, P. 951 of 1952.)

On Thursday, April 3, 1952, the House adopted an order fixing Wednesday, April 16, at two o'clock P.M. as the date and time for such joint session. This was sent to the Senate for concurrence. (Journal of the House, P. 969 of 1952.)

On Wednesday, May 7, 1952, the order passed by the House (but with the date of the joint session amended to read May 14th instead of April 16) came on for a vote in the Senate on the question of such concurrence.

The House Order was rejected.

The mandate of the people as expressed in the forty-eighth and the eighty-first amendments to the Constitution is clear. I quote from Section I of the latter.

"If the two houses fail to agree upon a time for holding any joint session hereby required . . . the governor shall call such joint session . . .". The majority vote cast in the Senate on May 7, 1952 is a vote to nullify the Constitution of the Commonwealth.

Fears of such legislative "smothering" of proposals to amend the Constitution were expressed in the Constitutional Convention of 1917–1918. Some of the members of that convention, derided such fears as "unthinkable" (See Vol. II of the Debates-Initiative and Referendum).

Nullification is not in accordance with the traditions of the Commonwealth that sent Daniel Webster to the Senate of the United States.

Unfortunately, the leadership of the majority in the Senate has taken a different view of the subject and expressed itself to the press as intending by legislative maneuvering and parliamentary device, "to block consideration of the graduated income tax this year." (See Christian Science Monitor, Sat. Feb. 2, 1952 and Tues. April 8, 1952).

This is not an issue of whether or not a graduated income tax is sound or wise. It is simply an issue of whether or not a majority in one legislative house can defy the will of the people by nullifying a provision of the Constitution.

The Constitution plainly says that such a proposal as that contained in House 319 of 1950, as changed and approved in 1950, shall be laid before a joint session of the two houses not later than Wednesday May 14, 1952. If the two houses fail to agree upon a time for holding any joint session hereby required, the governor shall call it.

Therefore, conformably to the provisions of Article XLVIII as amended by Article LXXXI of the Amendments of the Constitution, I hereby call a joint session of the two houses of the General Court to be held on Wednesday May 14, 1952 at one o'clock P.M. for the purpose of considering the Proposal for a legislative amendment to the Constitution of the Commonwealth to permit the levying of a graduated income tax by the General Court (See House No. 319 of 1950) which Proposal was agreed

to, a majority of all the members elected having voted in the affirmative, and, as changed, and agreed to, was referred to the next General Court, in the Joint Session of the Two Houses to consider a Specific Legislative Amendment to the Constitution, held on June 14, 1950. (Journal of the Senate, 1950, P. 1148 and foll.; Journal of the House, 1950, P. 1514 and foll.)

PAUL A. DEVER,
Governor.