

March 1, 2021

Dear Senator Warren:

Under your proposed wealth tax, an annual levy of 2% would be imposed on American households with a net worth between \$50 million and \$1 billion. This rate would increase to 3% on household wealth exceeding \$1 billion, or to 6% in the event that Medicare for All legislation was enacted. This new tax would be paid in addition to any other federal tax, and the wealth tax formula would not vary based on the taxpayer's income for that year.

In assessing your proposal, we have consulted both existing case law and the original understanding of the Congress and state legislatures which enacted the Income Tax Amendment in 1913. They make it clear that your initiative is constitutional. It falls within the powers of federal government to “lay and collect Taxes... for the common Defence and general Welfare of the United States.” Moreover, it does not qualify as a “Capitation, or other direct, Tax” which, according to the original Constitution, cannot not be imposed on a uniform basis throughout the country, but must be “apportioned among the states.”

Turning first to the case law, the key decision is *Knowlton v. Moore*, 178 U.S, 41 (1900), in which the Supreme Court dramatically narrowed the scope of its judgment, in *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895) striking down the income tax. While *Pollock* held that the income tax was a “direct” tax which required “apportionment,” *Knowlton* confronted an inheritance tax that directly hit the property itself. Like your proposal, this wealth tax was progressive, increasing the rate from .75% to 3% as inherited property increased in value from \$10,000 to \$1 million. Nevertheless, the Court unanimously held that the tax was “indirect.” With only one dissent, it upheld its progressive formula against the claim that its increasing tax on the rich was a violation of the requirement of national “uniformity” imposed by Article one.

Knowlton played a key role in the framing of the Sixteenth Amendment – as explained by Bruce Ackerman in the article, “Taxation and the Constitution,” 99 *Colum. L. Rev.* 1, 33-39 (1999). While *Pollock* had generated widespread popular opposition, it seemed sufficient to correct the Court's blunder with a narrow amendment focused on the income tax, since the Justices had already sharply cut back on their broad interpretation of “direct” taxation.

Given *Knowlton*'s role in framing the debate surrounding the passage of the Sixteenth Amendment, no thoughtful “originalist” can conclude that *Pollock*'s *dicta*, announcing a broad reading of the “direct” taxation clause, has survived the constitutional decision by the American People to repudiate *Pollock* in 1913.

It follows that your wealth tax proposal is plainly constitutional.

Sincerely yours,¹

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¹ Institutional affiliation is provided for identification purposes only and does not constitute institutional endorsement.