FEDERAL INCORPORATION

A DEBATE

UNIVERSITY OF CHICAGO

1905

Federal Incorporation

TWO DEBATES

The Constructive and Rebuttal Speeches of the representatives of

The University of Chicago *vs.* University of Michigan

AND

The University of Chicago

vs.

Northwestern University

In the Tenth Annual Contests of the Central Debating League,

JANUARY 17, 1908

QUESTION:

"Resolved, That all corporations engaged in Interstate Commerce should be required to take out a Federal Charter on such terms as Congress may by law prescribe—granting that such legislation would be constitutional."

Published by
THE DELTA SIGMA RHO
University of Chicago Chapter
1911

FOREWORD

Although these debates were held in 1908, it is believed that their publication now is timely. Federal Incorporation is one of President Taft's favorite policies. He recommended its adoption by Congress at the late session, and apparently intends to press it at the coming session. The sentiment in favor of Federal Incorporation has deepened of late, making the question a live one again. The basis of the contention has not shifted since the debates of 1908. Every argument made herein applies with full force today, although later happenings furnish more light by way of illustration.

This is the second in the series of University of Chicago debates to be brought out by the local Delta Sigma Rho. We can wish for it no better reception than that accorded our first debate on the Federal Graduated Income Tax.

CHARLES F. McELROY,
DEBATING COACH.

University of Chicago, November 1, 1911.

Chicago *vs.* Michigan

JANUARY 17, 1908

MANDEL HALL

UNIVERSITY OF CHICAGO

PROF. FLOYD R. MECHEM
Chairman

Judges:

R. D. Marshall, Justice Supreme Court of Wisconsin

John H. Gillette, Justice Supreme Court of Indiana

William H. Seaman, Justice
United States Circuit Court of Appeals
(Seventh Circuit)

Chicago Team:	*Michigan Team:*
John H. Liver	M. L. Burroughs
James Pinckney Pope	S. J. Wettrick
Thomas Harvey Sanderson	George Eves

Affirmative: Chicago
Negative: Michigan

DECISION—MICHIGAN WON

The Debate

FIRST AFFIRMATIVE, MR. LIVER, CHICAGO.

Mr. President, Honorable Judges, Ladies and Gentlemen—

The last twenty-five years have witnessed a remarkable increase in the number of our corporations, and a corresponding change in their character and business. The early corporations rarely did business outside their own states, but today nearly every corporation has its customers and stockholders, buys its supplies, and sells it products in every state of the union. In the words of Judge Dill, "Our corporations have overleaped the boundaries of the states, until their financial roots extend down into every commonwealth and municipality in this entire land." So true is this, that there has come a demand, voiced by such men as Professor Wilgus of the University of Michigan, and President Roosevelt, that our corporations be directly chartered and controlled by the national government. It is this proposition that we present tonight.

Our resolution provides that all corporations engaged in interstate commerce must obtain, from the national government, instead of from the states as at present, charters defining their powers and organization. The conditions upon which Congress will grant these charters will reflect the public policy of the entire nation on this subject. And in so far, of course, as the proposed national corporations engage in business confined to the separate states, they will remain subject to state regulation, because Congress cannot, under the constitution, concern itself with anything except their inter-state business.

The affirmative will uphold this proposition upon four grounds: *First,* that there are evils in our corporations at the present time, serious and national in their scope. *Second,* that these evils are inherent in the system of incorporation by the various states. *Third,* that for these evils, federal incorporation is the only logical and effective remedy. *Fourth,* that national incorporation would be a wise extension of national activity. In short, in contrast to a system of state control of national corporations, we propose a system of national control.

It is true, as doubtless will be contended by the negative, that some of our corporations are honest and law abiding. But in other corporations there are grave evils, which must be remedied, not for the sake of the public alone, but as much for the sake of the good corporations, which suffer by association. These evils may be roughly grouped under three heads, viz., *over-capitalization, interholding of stocks,* and *dishonesty in promotion and management.*

The first of these evils, over-capitalization, is illustrated by Charles E. Russell, in Everybody's Magazine for December, 1907. He states that in 1890 five tobacco companies with $400,000 of assets, less than half a million, were consolidated into a New Jersey corporation with a capital stock of twenty-five millions. Small competitors were absorbed and issue upon issue of stock followed arbitrarily from time to time, until in 1901, the total stock issued had reached the two hundred million mark. And in the present year, the total capitalization of this American Tobacco Company, including its subsidiary corporations, has reached the enormous figure of five hundred million, whereas a liberal estimate of the value of the actual assets of this corporation would be but a fraction of that amount.

Again, the American Chicle Company is capitalized at ten times the value of its assets, and these are but two of numerous instances that might be cited, indicative of the almost universal tendency toward over-capitalization and stock watering in this country today.

What are the consequences of this? First, the public, by the inducements of skillful promoters, is led to invest in the stocks of a corporation, expecting thereby to acquire a proportional share in its assets, whereas in fact, every dollar worth of assets is made to do service for many dollars worth of stock, and the inevitable result is one of two things: either the investors lose by the fall in the value of the stocks when the facts become known, or, if the corporation holds a monopoly, the consuming public is forced to pay prices sufficiently high to yield dividends upon a capitalization of several times the actual amount invested.

Both of these obvious evils of stock watering are illustrated by the case of the Metropolitan Railway in New York. It reveals how stock in the Metropolitan, floated by the influence of such men as Whitney and Ryan at 269 now goes begging at 35, the difference representing a loss to investors of $234 on every share of this stock. And moreover, largely because of this stock watering, the necessity of saving to stockholders even the little value which is left, compels the laborers in New York to pay five-cent fares today, when, had this water been kept out the Metropolitan could well afford to charge but three cent fares and still declare a handsome dividend upon its just capitalization.

The same is true of sugar. The late President Havemeyer testified before the Industrial Commission that while the capitalization of his trust was seventy million all its equipment could be duplicated at thirty million. Nevertheless it will not be denied that the price of sugar, which you and I and all of us have to pay, is fixed to yield dividends on the seventy-five and not upon the thirty million.

The second great evil is the holding corporation. By this we mean

a corporation organized for the sole purpose of holding shares of stock in other corporations. To illustrate, we will take a corporation capitalized at 100 million. Three men, who own 51 per cent of the stock, can organize a second corporation which dominates the policy of the first. Two of these men, who together own 26 million of the stock, a majority of the 51, can organize a third corporation within the other two, which dominates the policies of both, and one of these two men, who owns 14 million of the stock can organize still another corporation, which will control absolutely all the croporations in this series ending with the 100 million dollar corporation with which we started.

This is not a fiction, but the common practice by which monopolistic control is secured, and the evil of it is that it permits a man with a comparatively small amount of capital to dominate a large amount of wealth. Thus the secret of Harriman's control of railways lies in his astute organization of series upon series of holding corporations, such as the notorious Railway Securities Company, by which he is enabled to dominate an amuont of wealth many times greater than even a man with his vast resources could otherwise control.

This fact suggests the second abuse of holding companies, which is, that corporations held, instead of being administered in the interests of their stockholders, become mere tools for exploitation in the hands of the corporations holding. And this is why it is that a court of equity, here in Illinois, entertains the suit of Stuyvesant Fish to enjoin the voting of Illinois Central Stock held by the Railway Securities Company for the Union Pacific. Not because the court is concerned with the personal interests of Mr. Fish, but because the stockholders in the Illinois Central are entitled to have their property voted and administered in the interests of the Illinois Central, and not as a pawn in the game of the Union Pacific.

The third class of evils, which is broad enough, indeed, to cover a multitude of sins, is dishonesty in promotion and management. In the brief time allotted, we can hope to mention but a few of the commoner phases of this abuse. They consist of misrepresentations to the public, through false prospectuses and financial reports, and the misappropriation of corporate funds. By this we refer not to bold embezzlement, such as a real corporation magnate would deem stupid, but to such practices as the payment of dividends out of capital stock, diverting the proceeds of loans, and making secret profits out of corporation contracts. If the same board of directors controls a railroad, a construction company and a bank in which the deposits of all are kept, it can readily be seen, how, in making contracts between themselves as one corporation and themselves as another corporation, abuses can creep in. These abuses, are, unfortunately, familiar to all of us.

Such, then, are the evils of present day corporations,—Over-capitalization, Interholding of Shares, and Dishonesty in Promotion and Management, and inasmuch as the present system of corporate creation and control offers no relief, we of the affirmative submit that their seriousness can hardly be overestimated.

We come now to the essence of this whole discussion. What is it that permits and fosters these abuses? It is the system of incorporation by the various states. By this we do not mean to imply that no states have good incorporation laws, for some, like Massachusetts, have. But other states, conspicuously Delaware, West Virginia and New Jersey have loose codes, and naturally it is states like these that charter the majority of our corporations. The charters obtained, these corporations go to the good states and secure permission to do business as foreign corporations, which is uniformly granted, because to refuse domestication means a corresponding loss in the business of the state. Under this system it is not strange that we have corporations operating under charters which regulate but feebly, if at all, nor is it surprising that our promoters seek out the states which suit them best.

None of our states impose a limit upon capitalization and in only one state, little Massachusetts, is the promoter asked to publish the basis upon which he computes it. Thus if he wishes to fix the capital at 100 thousand when the assets of the corporation are worth but 30, plenty of states can be found which will permit it. And if he wishes to acquire control by means of a holding company, states can be found which will permit that, also. And if he wishes freedom from control, states there are which impose no duties beyond the payment of the fees. In fact so far have some states gone in liberalizing their laws for the purpose of attracting corporations, that charters can be had for the asking, where there is no franchise tax; no limit on capitalization; no amount of stock required to be subscribed; no examination of books; the office may be kept anywhere and business of any kind may be done anywhere!

Under the present system of state incorporation, we can entertain no hope for unified action on the part of the states, by which, alone, this situation could be relieved. The report of the American Bar Association for 1906 states flatly in reference to a uniform incorporation law that the voluntary co-operation and concerted action by the states is not to be expected. And if this were undertaken, so long as a single state or two held out, we should be in the same deplorable situation still.

Admittedly, then, we cannot look to the system of state incorporation for the removal of the evils which are inherent in it; this system of which Commissioner Garfield says that its diversity is such that in operation it amounts to anarchy. The inference is irrefutable, Ladies and

Gentlemen, that we must look to some other system for relief. And as my colleagues who follow me will show, that system is—*National Incorporation.*

FIRST NEGATIVE, MR. BURROUGHS, MICHIGAN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The preceding speaker has very vividly portrayed the evils that attend our present system of corporate control. But we are ont here to deny the corporate evils, nor are we here to defend present conditions. The affirmative's cause so far, then, has not availed them much, but is rather in our favor, for we are mindful of the evils and are just as anxious to remedy them as the gentlemen from Chicago. In fact the speaker has done for us what we lack the time to do,—namely, to discuss a matter of such common knowledge and seldom disputed—the existence of the corporate evils. We tell the gentlemen that we are in sympathy with any measure that will solve these evils. We agree that something should be done; but when they propose Federal Incorporation as *the* remedy for corporate evils, then we must part company.

Now the gentlemen have assured us that the issue in this debate is, Federal control over interstate commerce: but we cannot agree with them. The real issue is not that by any means. It is, clear-cut and distinct, shall the Federal Government control the corporations which are engaged in interstate commerce, and shall that control take the form of a compulsory Federal charter? The speaker told you that President Roosevelt advocates a Federal charter for interstate corporations. But he has misquoted President Roosevelt, because the President in his message merely suggested a Federal charter for the transportation companies alone, and particularly pointed out that what we need is, not an extension of Federal power or authority over any corporations, but more Federal activity in matters of corporate control.

But before continuing further in the discussion of this resolution, let us have a definite understanding as to its sweeping character. It is striking in three particulars: first, it calls for National Incorporation instead of State Corporation; second, it would compel every corporation doing interstate business, large and small, honest and dishonest, to surrender its State birthright and re-incorporate at Washington; third, it would make the corporations and the people accept any law that Congress might pass. The gentlemen must then establish the wisdom of these three radical measures.

They must give us reasonable assurance that Congress will pass a good law; that such a law will be adequately enforced, will remedy present evils, and not do more harm than good.

They must show the necessity of compelling the Battle Creek Organ company, which sells a few organs in Ohio and Illinois, to re-incorporate at Washington along with the United States Steel company, which does business the world over. They must establish the wisdom of subjecting small corporations to the same stringent rules and the same publicity by which we curb a billion-dollar trust. They must convince you that a corporation doing only 1% of its business outside of Illinois, should be regulated and controlled not by the State of Illinois but by the Federal Government.

The position of our opponents then is briefly this:

They see the trust evils and would fly to Congress for a National Compulsory Re-Incorporation Act.

We see these evils but do not believe in our opponents' cure.

We object to Federal Incorporation because it is revolutionary and would be fraught with disastrous results. In the first place, it would by one blow strike down the laws and regulations built by the combined efforts of our most eminent statesmen and jurists. Our statute books, our Federal and State Reports abound in legislation and doctrines which fix the dual status of corporations,—on the one hand to the State, on the other to the Nation. This aggregate of corporate law and regulation is not only of gradual growth, but it constitutes the exponent of more than one hundred years of careful and persistent effort to make more effective and more harmonious our system of corporate control. It places under the dominion of the State those matters of corporate concern which most vitally affect the State and with which the State is most competent to deal. But those corporate matters which more directly concern the Nation and which cannot be regulated by the State are given to the National Government. Both the State and the Nation play an important part in the government and control of corporations. But the plan of the affirmative would destroy this dual system of supervision. It would annihilate all co-operation of State and Federal control, and demolish all law and regulation based upon it. We fear the consequences of so radical a change.

In the next place this measure is revolutionary because it would result in an unjust impairment of the obligations of contract. Many corporations doing an interstate business now hold from the states creating them certain franchises and privileges, which derive special value from the fact that they are local in character. Now upon the assurance of protection which the Federal Government guarantees to such contract obligations, not only have the corporations acquired valuable property rights, but stockholders have made large investments on the faith of these privileges granted by the State. But as these franchises are local

only the State can grant them: hence under Federal Incorporation such rights must fail. Is it fair to the corporation or the stockholder that valuable rights should thus be unscrupulously taken away and forever destroyed?

Again, this measure would take away from the State its corporation taxes, and, as a result, not only would state revenues be diminished, but the burden of taxation would fall on those least able to bear it. This would work a three-fold injustice: it would deprive the State of benefits to which it is justly entitled; it would thrust upon the State the same responsibility of police protection but with less compensation for it; it would impose a heavier tax on the small property owner.

Each year the states realize more and more revenue from corporation taxes. The state of Pennsylvania supports her public schools by this tax alone. The state of New York pays almost her entire running expenses with it. Between the years of 1899 and 1902, her tax rate on personal property decreased from 2.49 to .13 mills on the dollar. Her corporation tax increased from a mere pittance in 1899 to more than $6,000,000 in 1902. Yet at one blow the gentlemen would sweep away this fruitful source of revenue and the right to levy it; for no state can levy a tax on a corporation of the United States. This precise point is held in *Railroad Co.* v. *Penniston,* in *Eastern* v. *Iowa* and in *Farmers and Mechanics Bank* v. *Deering.* In short this plan would deprive the states of nearly all but the general property tax which the best authorities concede to be inherently bad. The gentlemen would adopt a measure, unjust to every state, inequitable and unfair to every poor tax-payer. Do they seriously contend that a remedy fraught with such results is the best solution for the present evils?

We further object to this resolution because it is over-centralizing, both politically and industrially, and un-American in its tendencies.

The framers of our constitution thought it wise to leave to the States such powers as could be effectively exercised by them, and gave the Federal Government only such powers as were necessary to carry on its functions. The powers of the one were to constitute a check and balance upon the powers of the other. Yet our opponents ask that this balance be broken, that these important powers of creating, controlling, and legislating for corporations be taken from the states and placed under the exclusive control of the National sovereignty,—and what is worse—with no limitations as to how they shall be exercised. Have we reached a stage in our progress when such an enormous centralization of power is necessary? Why tear down our dual form of government and place 90% of the business of this country in the hands of a central power?

Can the gentlemen justify this under any theory of American political science or evolution? We believe with Lincoln that "the maintenance inviolate of the right of each state to control and regulate its domestic institutions is essential to that balance of power upon which the perfection and endurance of our political fabric depend."

But this measure not only tends towards political centralization but towards industrial centralization. The history of our commercial progress bears ample proof that most has been accomplished by the large corporations. Scarcely one of these is engaged in business exclusively local. And because of this, under the plan proposed, the State must surrender relations with all such corporations. No longer can it grant concessions to invite corporations within its borders. The growth of undeveloped sections, and the fostering of new industries in every state will be practically at the mercy of Congress. A state which heretofore has been able to invite capital and enterprise because of the inducements it could offer will be almost helpless to develop its resources or further its interests.

Nor are these the only dangers. Think of the amount of corruption such a condition might perpetrate. Before a member of Congress from Illinois could obtain the support of his associates for a measure beneficial to the people of this State, he might be compelled to pledge his vote for many measures detrimental to the people of other communities. And so with every member of our National Legislature. Our Congress would become a mere bartering establishment for the exchange of votes on corporate legislation. In fact, it is fairly probable that Congress would be thronged with demagogues and lobbyists, armed with every means possible to defeat popular legislation and secure the passage of laws favorable to special classes. Industrial centralization and its dangers are alone sufficient to defeat this resolution.

SECOND AFFIRMATIVE, MR. POPE, CHICAGO.

Mr. President, Honorable Judges, Ladies and Gentlemen—

The negative speaker who has just closed has made the argument that national incorporation would be an extremely radical measure because it would include many incorporations that are essentially local in character and, as they say, need no national regulation.

In the first place, it is necessary to include all interstate corporations in our measure for evils exist in interstate corporations of all sizes. The gentleman says that there are no evils in small interstate corporations. Let us see. About a year ago, a small interstate corporation, known as the Arizona Gold Mining Company, chartered in Arizona, unloaded

$42,000 of worthless stock upon the people of a small community near Randolph, Wisconsin. The cases of this kind are too numerous to mention. Again, the American Fisheries Company, according to Mr. Collier in his book on Trusts, a small interstate corporation chartered in Maine, was capitalized at $10,000,000 and failed in a short time for $190,000. These are but a few instances of the evils that are to be found in small interstate corporations, and show beyond question that all sizes of interstate corporations need effective regulation.

In the second place, the provisions of our measure will be such that no honest corporation will be injured, for the provisions will be made to correct abuses, and where no abuses exist there will be no disturbance.

Finally, the division of corporations along the line of interstate commerce is the only logical and reasonable division. We contend that as soon as a corporation begins to do interstate commerce it is to some extent national and should to that extent have national control. Of course, as we have indicated, the states will still have control over the intra-state business of the corporation. Therefore, if the business of the corporation is essentially local it will be regulated essentially by local authorities. Moreover, any measure that the gentleman of the negative may propose must include all interstate corporations, or they must draw a workable and reasonable dividing line.

In regard to the arguments that our plan would rob the states of an important source of revenue, that such a measure would be centralizing, that it would create a financial disturbance, we shall show in the presentation of our case that none of these objections are serious.

My colleague has shown that the present system of state regulation of corporations has given rise to three great classes of evils—overcapitalization, interholding of stocks, and dishonesty in promotion and management. Moreover he has indicated that these evils cannot be remedied by the states, except by the adoption of a common policy by forty-six separate sovereignties for which it is vain to hope. It is our purpose to show that these evils can be remedied by national incorporation.

There are but two practical methods of controlling corporations engaged in interstate commerce: (1) State incorporation supplemented by national regulation, and (2) National incorporation and national regulation.

The first method—that of state incorporation supplemented by national regulation— is the present system. Under this system Congress has power over interstate commerce, but the corporations are created and controlled by the individual states. This power over interstate commerce does not enable Congress to remedy the evils which we have set before

you tonight, because the evils are rooted in the very organization and charters of the corporations which are controlled entirely by the states, and so long as these matters are without the jurisdiction of Congress it can deal with the evils to which they give rise only by makeshifts and palliatives which are not and cannot be a permanent cure. On the other hand, there can be no hope for concentrated action and effective regulation by the separate states who find it to their selfish interests and desire, as they always will, to encourage incorporation by loose laws. In fact so long as one state like New Jersey or Delaware can defeat the good legislation of all the other states, by attracting corporations from states that have good laws, the existing evils will continue. In short, we are confronted with the situation that Congress cannot remedy these evils, and the states do not because they will not act in concert. It is from this situation that we seek relief through the only remaining alternative—National Incorporation.

So inevitable is this conclusion that we venture to predict that our friends from Michigan, although they will stop short of national incorporation, will advocate some extension of national control. When they reach that point we shall ask you to consider whether their measure will reach the heart of the corporation problem as national incorporation will reach it. We venture now to say that it cannot, because the evils which we have been discussing originate in the corporation charter and the control or lack of control is based upon it. It is the charter which regulates all the essential elements in the life of the corporation—the promotion, the organization, the capitalization, the increase and decrease in stock, time and place of stockholders' meetings, the election of officers and directors, the records of meetings and books of transfer, the balance sheet, the accounts, liability for torts, contracts, and crimes, the voting of stock, declaring of dividends, inspection of books, assignment of shares, the dissolution of the corporation, liabilities to creditors for false reports and mismanagement of funds, and all other matters that in any way relate to the creation and conduct of the corporation. Therefore, it is of vital concern to the public whether a corporation is organized under a good or bad charter.

The few states, like Massachusetts, which deal effectively with corporations do so by virtue of an intelligent supervision of the corporation charter. But as we have pointed out, concerted action by all the states is out of the question, and hence if the charters of the great mass of corporations engaged in interstate commerce are to be framed in a manner to subserve the rights of the public, the law controlling them must come from the National Government, from which source alone can unified

action be secured. This suggests the vital question in the debate: Are our interstate corporations to be chartered according to a Federal law, which will undoubtedly be better than the laws of the majority of the states, or are the charters of such corporations to be granted fortuitously and naturally, in the main, by the states with the loosest corporation laws; for New Jersey, Delaware, and West Virginia, which have laws that, according to Mr. Garfield, Commissioner of Corporations, are simply vicious, charter three-fourths of all the important industrial corporations.

Let us now assume that a national corporation law is adopted and examine it in its application to the evils which we have discussed. We cannot indicate exactly the legislation which Congress would enact, but we may state some of the possibilities of a national law.

First, as to dishonesty in promotion and management. We contend that these evils are fundamental in our corporation problem, and that all others are based upon them. To meet them Congress might prescribe by its charter that every corporation should be required to submit at stated intervals full reports of its assets, liabilities, earnings, and expenditures. These reports should be mailed to the stockholders, and a summary of such reports should be prepared by the government commissioner of corporations and published for distribution to investors at cost price in the same way that imperfect reports are now prepared and distributed by such private agencies as Dun's and Bradstreet's, and trade journals like the Chicago Economist. But the government need not rely implicitly upon the reports of the corporation. In case the government received a complaint or had reason to suspect that such reports were not true, it should employ expert inspectors to go behind the reports and determine whether they were true, whether dividends were honestly paid out of earnings or dishonestly out of capital stock or loans, whether corporation contracts were fair and secured an adequate return for the money laid out, or whether they were collusively made for the enrichment of individual members of the corporation who were interested on the side of the contractors.

If investigation should reveal abuses of such a nature, the law should provide for an impartial receivership until the conscientious management of the corporation in the interest of the stockholders could be secured. Moreover, heavy penalties by fine or imprisonment or both should be imposed. In addition, Congress could make any other conditions necessary to secure honest promotion and management of the corporation receiving a Federal charter. My colleague will indicate how Congress under a national incorporation law can check the abuses of overcapitalization and interholding of stocks.

Nothing less than a law providing for national incorporation under

proper conditions will solve the corporation problem. The states will not pass such a law, but public opinion of the country, which unquestionably favors effective regulation of corporations, if focused upon one national law-making body—Congress—will compel these reforms if the principle of national incorporation be accepted. We submit, therefore, that the question of national incorporation be answered emphatically in the affirmative.

SECOND NEGATIVE, MR. WETTRICK, MICHIGAN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The gentlemen of the affirmative have told you that as long as two or three states are allowed to create corporations that can do business in all the states under their lax laws, we cannot expect to change present conditions. But Congress can prohibit any corporation from doing an interstate business, if it wants to. If the corporations of New Jersey, for instance, are created under lax laws, why does not Congress shut them up in that state? If Congress should say to all the states, unless your corporation laws reach a certain standard we will not let your corporations engage in interstate business, the loose states would have to tighten up or the corporations would no longer go there. If they did, they could not engage in interstate commerce and only the state which created them would be injured.

They have dwelt at length upon the evil of overcapitalization. Now, we want them to tell us just what connection there is between overcapitalization and interstate commerce. And if they do show us a connection between them, then we want them to tell us what they will take as the basis of capitalization; will it be the net earnings or the gross earnings; the original cost or the cost of reproduction? And if they find a satisfactory basis of capitalization, then we want them to show us how a Federal charter will remedy the evil any more than general statutes without federal incorporation.

They call your attention to Arizona as an example of the worst kind of incorporation laws. We remind them that Arizona is a territory, and that its corporations are either created by Congress,, or by the legislature of Arizona by the consent of Congress. Congress may control the legislation of the territories. What they have given, then, as an example of the worst kind of incorporation law, is really a federal incorporation law.

We have shown you that a federal incorporation law is radical, revolutionary and overcentralizing. We wish to show further that it is impractical and unnecessary. We are not defending present conditions, as the gentlemen would have you believe. We recognize the evils that exist and are just as anxious to remedy them as they are. But we be-

lieve that this can be done by less sweeping measures, and without the wrongs and injustices that would be perpetrated by compulsory federal incorporation of all corporations, great and small, good and bad.

We are not opposed to federal regulation of interstate commerce, as they would imply, but we are opposed to federal incorporation. The fundamental principle of this Union is that there should be a division of power between the states and the Nation. The situation is this: here is the boundary line between two states; whatever passes over that line is interstate business and is subject to regulation by Congress. Whatever is done on either side of that line is state business, and is subject to regulation by the states, because it is their inherent right to regulate purely local and domestic affairs. The basis of the jurisdiction is the business done, not the character of those who do it. They would have this changed so as to make the corporations, instead of the business, the basis. To do so would bring under federal jurisdiction not only that part of the business done by corporations which is interstate, but also that which is intra-state. This would leave under the control of the states only the ten per cent of the business of the country not done by the corporations. Does this look like a reasonable and practical measure? We ask the gentlemen how they can justify a measure which practically abolishes our dual system of control over commerce. They must at least show that there are definite evils springing from incorporation which the states and the nation working in harmony cannot remedy, and which a federal charter will remedy, before we are ready to tear the corporations away from the states.

But federal incorporation would be worthless unless Congress should pass wise laws and make wise provisions for their enforcement. The gentlemen assume that this will be done. What assurance have we? We do not wish to impeach Congress. But it is well known that that body is controlled by corporate influence. The Senate is practically dominated by a few men who represent the corporate interests. If this measure is adopted, everything will be taken out of the hands of the states; then if Congress remains inactive, or passes bad corporation laws, we will be worse off than before. It took sixteen years to make the Anti-Trust laws reasonably effective, and during all that time the states were helpless, because Congress by exercising its power had precluded action by the states. Now, if Congress compels all corporations to take out a federal charter, the states will no longer have a right to regulate them, and then if Congress does nothing, the corporations will have no master. We believe that it is better for us to continue under a system of dual control than to give Congress exclusive power and to take chances on its action.

Let us assume, however, with the gentlemen, that Congress would pass

wise laws. Then we hold that this measure would be impractical, first, because it would be physically impossible to do the business. The magnitude of the task dooms it to failure. Think what it would mean to incorporate and regulate the thousands of corporations! The railroad business alone has swamped the Interstate Commerce Commission. Cases that involve decisions under the Interstate Commerce Act now have priority and yet the courts cannot take care of them. Suppose all cases arising in connection with interstate corporations were thrown upon the federal courts. They would be utterly incapable of handling the business even though they were increased ten fold and took two decades to decide, instead of one as they now require. New York state alone has been compelled to appoint two commissions to take care of work practically all of which would be brought under federal control by the adoption of this measure. If the federal cannot now do even a small part of the work, how can it do all, and how can it take care of the business as the country grows and develops?

This measure would be impractical in the second place, because it would be ineffective. We are told that if the charters are granted at Washington the corporate evils will be prevented. Let us consider that proposition. They declare, first, that overcapitalization will be prevented. Have they forgotten the Pacific Railroads, chartered by Congress and under its exclusive regulating power? They were the worst overcapitalized roads in the country. They tell us that the promoter of speculative undertakings is to be driven from the field. But the financial evils of promotion and speculation are due quite as much to the greed and selfishness of the investor, as to the promoter. Can any artificial law eliminate the gambling spirit from these men? We are told that rebates and discriminations exist. True, but can the granting of a federal charter compel a company to produce a contract in evidence that has never been written? These contracts are in secret. How will a charter enable the government to get at those secrets any more than it can today? Is it any easier to enforce the law under a federal charter, as the gentlemen assume, than it is under a general statute prohibiting these evils? If not, then the proposed law would be mere surplusage upon the statute books, and therefore, ineffective.

We are opposed to this measure for another reason. We believe that it is unnecessary because there is a more simple and effective method. This country is upon the threshold of great commercial and industrial development, and we are evolving a system of legal control that will be elastic and effective. The work is being accomplished by the slow but inevitable forces of local agitation which is educating both the legislator and the people whom he represents. One can hardly take up a news-

paper without noting that the efforts of the states are attended with conspicuous success. We deny the assertion, therefore, that there is such negligence on the part of the states that there is a fair basis for stripping them of practically all power, and that federal incorporation furnishes the only solution.

There is another objection to this measure. It would shift the center of moral obligation upon which the solution of this problem must ultimately rest, from the local conscience to Washington.

It would destroy the primary forces and processes by which all our reforms are obtained, for it is impossible to turn our local questions into federal questions and yet retain the vigor and efficiency of local interest. Only the more exacting and slower work of reaching the public conscience and educating the people can ever form a true basis for the solution of this problem. And it is this process of fundamental education—without which federal enactments themselves are impotent—that this measure, so questionable in its principles and so uncertain in its effects, would at this time weaken and destroy.

The gentlemen would centralize everything in the federal government. We plead for some system of dual control, under which Congress has the exclusive right to regulate the corporations insofar as they engage in interstate commerce, and the states to regulate what is purely local and domestic.

We repeat that it is not necessary to strip the states of all power in order to regulate interstate commerce and the corporations. This country is in a state of economic and industrial development, and we cannot afford, by mechanical means, to stampede evolution into revolution. Reform measures, supported by economic forces and a wholesome local sentiment, are tending toward an adequate solution. Let the federal commission co-operate with the state commissions, so that the work of the one will be reinforced and supplemented by the work of others who understand the local needs, and we shall have gone a long way toward a solution of the problem. Let Congress shake off its allegiance to the trusts, exercise its power, and by good legislation eliminate the inequalities in state requirements, thus bringing about the necessary uniformity without uprooting well-fixed and stable institutions, and we shall have solved the problem in the only rational way.

We believe with Justice Harlan, "that a National government for national affairs, and a State government for state affairs, is the foundation rock upon which our institutions rest." And that "any serious departure from that principle would bring disaster upon the American people and upon the American system of free government."

THIRD AFFIRMATIVE, MR. SANDERSON, CHICAGO.

Mr. President, Honorable Judges, Ladies and Gentlemen—

This measure will not take from the states the control of their local affairs as has been contended by the negative. If a corporation were chartered by the Federal government, a state could make it take out a state license, on any reasonable terms it wished to prescribe, before it could have the privilege of doing intra-state business. The corporation would then have to conform to all the terms of the license in the transaction of local business or virtually be excluded from the state. It is perfectly immaterial to Illinois so far as its control of the intra-state business of the corporation is concerned, whether the corporation is chartered by New Jersey or the Federal government.

Such a measure would leave with the states also all their just and equitable taxing powers. Under a national incorporation law the state could still tax all the tangible property of the corporations located within its borders, in exactly the same way that it now taxes the tangible property of the national banks. Furthermore, in the state license already referred to the state could put terms that would compel a corporation to pay any reasonable annual tax it might wish the privilege of doing business in that state.

One of the objections the negative has made to federal incorporation is that it would be physically impossible to carry out such a measure. This is not a valid objection. Incorporation under the Federal government would be a simple matter. All that would be necessary would be for the corporations to get their charters from the Nation instead of from the states. It would be merely a transfer of the authority to grant charters from the state to the nation.

As far as litigation is concerned, a national incorporation law would decrease the number of suits. At present each state has a different corporation law and a separate line of judicial decisions. This results in an endless conflict of corporation law involving a great amount of litigation. But under a uniform corporation law and a uniform line of judicial decisions our corporation law would be simplified, and litigation now caused by non-uniformity in our laws would be avoided. It is true, litigation in federal courts would be increased, but the sum total of litigation, in both federal and state courts, would be much less than at present.

The gentleman referred to the Pacific Railroad as an example of federal incorporation. I merely want to call your attention to the fact that the Pacific Railroad was chartered more than forty years ago, when there was no demand for government regulation or supervision of corporations, and that this corporation, therefore, is not a criterion of what the federal government would do now in chartering corporations.

My first colleague has shown that there are pronounced evils in our present system of corporate organization; and that these evils are inherent in state incorporation. My second colleague has shown that national incorporation would be the only effective remedy for these evils, for it is the only remedy that gives to Congress control of the charter, the all-important thing in regulating corporations. He has shown also how Congress, by controlling the charter, could deal effectively with the evils of dishonest promotion and management, the very heart of our corporation problem, from which spring practically all other corporation evils; for if we could enforce honest promotion and honest management into the corporations, the public would have little to fear.

I shall explain the effectiveness of this measure a little further, by showing how it would reduce to a minimum the evils growing out of interholding and overcapitalization. First as to interholding. As most states do not now permit interholding, Congress might prohibit it outright by forbidding the corporations to hold or allow their stock to be held, in any other corporation, thus restoring the control of the corporations to their stockholders. But if it be considered inadvisable to abolish it altogether, Congress might permit it but refuse the stock the right to vote. If it be said that this would deprive the stock of a part of its value, it can be answered that if this value consists in controlling with but a small investment other corporations to the detriment of these corporations and against the consent of their stockholders, then such value should be taken away. If investment without the voting power be considered unsafe, a reasonable time might be allowed for the transfer of this stock for other forms of securities.

Finally, as to overcapitalization or watered stock. What are the causes of watered stock? In the first place it must be conceded that dishonesty in promotion and management give rise to watered stock of all kinds, and that any measure that would check dishonesty in promotion and management—and my colleague has shown that Congress by controlling the charter could check it—would go far to reduce the evils of overcapitalization.

In the second place the evils of watered stock are due to secrecy. At present promoters are allowed to work in the dark in fixing capitalization, being limited only to the amount of stock they can advantageously sell; for in most states they are required to make no reports whatsoever showing the items on which the capitalization of a corporation is based, being permitted to fix it in any way and on anything they may elect. No wonder the investing public who have no means of getting accurate information are easily deceived. But if Congress had control of the charters it might deal with overcapitalization by provisions similar to those now

in force in two or three of our best state laws, which are in substance these:

All incorporators on applying for a charter are required to make public sworn statements concerning the exact nature and value of each item, describing it in detail, upon which capitalization is based; and to make public also full information concerning all matters that would influence the purchase of stock. And if fraud is found in any of these statements, heavy penalties might be imposed, the same as are now imposed in case of fraud in our national banking system.

The effect of such legislation would be far-reaching. The fact that promoters, in place of fixing capitalization in an arbitrary way without reference to assets, would be compelled to subscribe their names under oath to a detailed statement showing the exact basis of their estimates, to be filed for public record, would have a powerful influence in restraining the issue of watered stock, and preventing capricious and reckless action.

Having shown the effectiveness of this measure we shall now indicate how national incorporation would be a wise extension of federal activity. First, because it would place the chartering power in the hands of Congress where it logically and naturally belongs. For instance, the United States Steel Corporation now does business in every state in the entire country and its products penetrate the markets of the world. Yet it is chartered by a single state. Our large railway systems now form great belts across our continent doing business from ocean to ocean. And still they are chartered by single states. Inasmuch as those corporations affect the entire nation, what right has any one state to charter them and to extend to them business privileges? Furthermore, certain states by offering lax corporation laws for the purpose of getting the incorporation fees and franchise taxes, have attracted vast numbers of corporations from all parts of the country to get their charters from them, irrespective of where these corporations do their principal business.

For example, according to Moody's table on corporations, New Jersey, on account of its lax laws, now charters two-thirds of all the important industrial corporations of the entire country, which control, exclusive of railway property, about two-thirds of our entire wealth connected with interstate corporations—although the great bulk of these corporations do little or no business within the state of New Jersey. Now, what right has little New Jersey, with only two per cent of our population, to charter and extend business privileges to two-thirds of all important industrial corporations of the entire country, especially when most of these corporations do practically no business within the state of origin? What right has little New Jersey, with only 1.3% of our nation's wealth, to collect handsome franchise taxes on this vast propor-

tion of our nation's wealth, especially when most of this wealth is connected with corporations that do their business entirely in other states? We hold that these are rights which should be centralized, not in 2% of the people, but in all of the people through Congress.

In the second place this measure would be a wise extension of federal activity because it would do away with the bidding of the states against each other for the incorporation fees and franchise taxes, the greatest inducement for lax corporation laws. Our opponents say that these taxes should by all means be left with the states. But we hold that, not only should the states have no right to such taxes on our great interstate corporations, but that this source of revenue is one of the fundamental causes of our loose corporation laws. It is for this revenue that the states bid against each other for business—the state offering to an unscrupulous promoter of a corporation the greatest opportunities for stock manipulation and dishonest management, is the one that gets the job of granting the charter, which brings to the chartering state these special privileges of taxation. Some states have even gone so far in their greed for this revenue as to offer a corporation almost any kind of a charter it wants, providing it will agree to do its business entirely in other states. For instance, some time ago Pennsylvania chartered the New York and California Vineyard Company, authorizing it to do business everywhere in the United States, except in Pennsylvania, upon condition that it pay to Pennsylvania large incorporation fees. In 1902 New York proposed a bill to sell telephone and telegraph charters which should be free from restrictions ordinarily thrown about such companies by the New York law, if they would agree to do business entirely outside the state. Just recently Connecticut chartered a large banking corporation authorizing it to do almost any kind of business in almost any way it pleased, in every state in the Union except Connecticut. The only condition was that it pay to Connecticut a handsome annual franchise tax.

Now, here are corporations so bad that those states would not allow them to do business within their own borders, yet they chartered them and sent them out to perpetrate their evils broadcast throughout the country, for the sole and selfish purpose of getting these taxes. And, therefore, the sooner this method of raising revenue is taken from the states the better. Yet the gentlemen from Michigan say that these taxes should be left with the states; they need them. Ladies and Gentlemen, do you suppose that the framers of the Constitution, when they gave to Congress power over interstate commerce, ever intended that it should stand idly by and allow this sort of practice to continue? Certainly not. We, therefore, hold that the time has come when it should step in and

put a stop to such a disgraceful policy, by compelling all corporations engaged in interstate commerce to take out charters from the federal government.

In conclusion let me state the vital issue of this entire debate. Are our interstate corporations to be longer chartered in the way we have shown, or are they to be chartered by the federal government? According to Moody's Manual on Corporations, New Jersey, West Virginia, and Delaware, on account of their lax laws, now charter three-fourths of all important industrial corporations of the entire country. Commissioner Garfield of the Bureau of Corporations says, the corporation laws of these three states are so lax as to be vicious in their workings. We, therefore, come face to face with this proposition: Are our interstate corporations to be chartered for the most part by the states offering the laxest laws, or are they to be chartered according to a uniform law of the federal government, which will contain the best provisions of our state laws, with additional federal features? Public sentiment unquestionably favors effective regulation of corporations. Center it in Congress and you will get an adequate and effective law.

THIRD NEGATIVE, MR. EVES, MICHIGAN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The affirmative have spent two-and-a-half speeches telling us of the present corporate evils; we admit them and remind you that we are not here to defend present conditions. And then they spent half a speech arguing for Federal Incorporation. But they did not tell us why we must have federal incorporation or how it would remedy the evils any more effectively than they might be remedied by National statutes.

We pointed out to the gentlemen that a charter system would rob the state of its revenue; they answered that this was what they want to do, take away the revenue that comes from state incorporation and thus stop the states from bidding for corporate business and then in the next breath he says that we will have Congress let the states still tax the corporations. Now what does he intend to do? If he means the latter we might remind him that the case of McCullouch vs. Maryland held, that a state could not tax a federal agent or franchise. This case has never been overruled and therefore it follows that a state would be robbed of its revenue by their measure.

Again, they talk of overcapitalization, but they have not shown that a federal charter would remedy it. He says that it forces the poor shop girls of New York to pay an unjust trolley fare; we remind him that overcapitalization has nothing to do with the price of street car rides, because that is fixed by the law of monopoly. Street car companies

charge as much as the traffic will bear regardless of the capitalization. He says that overcapitalization makes us pay an exorbitant price for sugar. That is a monopoly price fixed so as to bring in the greatest return. Therefore, in these cases there is no connection between overcapitalization and interstate commerce.

They talk of interholding of shares, but in the late report of the Industrial Commission of 1906 it says, at the present time the federal government has sufficient power to do away with interholding of shares; therefore, there is no need for federal incorporation to remedy this evil.

The gentlemen have based their whole case on the assumption that a federal incorporation law if passed would be a model law. Yet it is entirely possible that this might not be the case. Have they forgotten that a large portion of the men who would pass their measure are, if not the controlling factors, at least the champions of these corporations? Do they forget Bailey and the Standard Oil, Platt and the Express Companies, Foraker, Aldrich, Depew and sixty or seventy per cent of the rest of them, who have similar corporate interests? They talked of overcapitalization. How will a federal charter help this abuse? The Pacific Railroads which operated under a federal charter, Dean Huffcutt declared to be the worst overcapitalized roads in the country. Why didn't they tell you about the incorporation law of the District of Columbia? That is a law passed by Congress and dealing with the same subject called for in this resolution. The only difference is the one is for the District of Columbia and the other is for the Nation. Here is an analogous case. Why did they not tell you about it? For the simple reason that the incorporation law of the District of Columbia is a poorer law than was ever passed by any state. On this point Professor Smalley says, "The District of Columbia has became a breeding place for corporate pests." And Connington in his "Corporate Organization" declares that no state in the Union is turning loose upon the investing public such an utterly irresponsible swarm of visionary, inflated and fraudulent corporations as is the District of Columbia. It is the old story of the small boy and the pie. If he can't eat a little piece he can't get a big one. And if Congress cannot pass a decent corporation law for the District of Columbia it won't pass a good one for the Nation. Yet the gentlemen argue that we should have a similar law for all the states and thus make the whole nation a breeding place for corporate pests.

But for the sake of argument grant that such a law would be all that the affirmative have assumed, even then we are opposed to it for the reasons which my colleagues have given. But we are not here simply to tear down, we are as anxious for a remedy as the affirmative. We admit with them that there are corporate evils and that these evils should be

remedied. We agree with them that we need more efficient federal control over interstate business. But we are not willing to take a blind jump in the dark and say that every corporation must take out a federal charter. We would remedy corporate evils as my colleague has suggested, by means of machinery already in existence. And, if necessary, we would strengthen that machinery by means of a federal license.

Now by a federal license we mean this:

First, the state shall continue to grant the charter and create the corporation, but before the corporation thus created can engage in interstate business it must take its charter before a federal commission where if it is found not too liberal a federal license will be granted.

By this system is preserved that principle of duality upon which our whole system of government is built. The state is sovereign in its field and exercises that sovereignty by creating the corporation. The national government is sovereign in its field and exercises that sovereignty by requiring the agents engaged in that field to take out a federal license. Here we have the corporation operating in two distinct and separate fields with a sovereign power in each. The gentlemen say that this dual control would be ineffective and give rise to conflict. That by it a corporation could operate under a charter permitting and a license forbidding. This need not be the case and under the system we advocate could not be. Because if the state charter permits anything that the national license prohibits the license will not be granted. In a word the provisions of the state charter must fall within the prescribed prohibitions of the federal license before that license will be granted.

Thus there can be no conflict between these two sovereigns.

They tell you that the loose states will never tighten up but this provision would at least have a wholesome effect upon them because no corporation will accept from any state a charter so liberal as to prevent it from getting a federal license. It will tend to tighten up the loose states and to bring about uniformity along the general lines in which we want uniformity, and at the same time permits elasticity in detail which cannot be secured under a federal charter such as the gentlemen advocate. They say that federal control can only be secured by federal charter because it alone strikes at the life of the corporation. Now let us see about that. In the second place, under the license system, if at any time the corporation abuses its privilege or works harm to society the federal government may fine the corporation, imprison its officers or revoke the license and thus deprive the corporation of its right to engage in interstate business. By this power to punish the corporation, the government has absolute and efficient control over the agents of interstate commerce. It can demand of the corporation reports, statistics, publicity or whatever

else it deems necessary for the welfare of society. Here, gentlemen, we have as efficient control over interstate commerce as a federal corporation law could possibly give. But mark you, the sovereignty of the state is not impaired because the state still creates the corporation. The federal government simply regulates the corporation when it operates in the field of interstate commerce and it does this by means of a constitutional right that the national government has always possessed. By a federal license is thus secured what all agree is necessary—national control over business national in its dealing. And it is secured without the attending evils that necessarily come from federal incorporation.

In the third place, we would have this license compulsory only upon corporations doing an interstate business above a certain amount, such as Congress may deem wise to fix. By this provision we would not work injustice to the small corporations that do 99% of their business within the state that creates them. We would not force them to go to the expense of taking out a national charter, of filing national reports, and if they have a case at law to go to the enormous expense of fighting it through to the Supreme Court of the United States. In short, we would not subject the small honest corporations to the same rules and regulations that we would the United States Steel or the Standard Oil Company.

By exempting these small corporations the federal government would not be swamped by the control of all corporations as this measure demands. For instance, a corporation has its place of business within ten miles of a state boundary line. Obviously it will do business in both states. But it need not, necessarily, be national in its dealings or its effect. The whole scope of its influence may be within a radius of fifty miles. Now, we claim it is folly to burden the national government with such corporations. The plan which the affirmative advocate does this but the license system does not burden the central government with such concerns. It leaves local business to local control where it rightly belongs and thus saves the energy of the national government for national evils committed by the large corporations, national in their dealings.

In this debate the negative has shown: that federal incorporation is radical, revolutionary and overcentralizing. That it robs the state of a sovereign right and deprives it of an important source of its revenue. It brings about political and industrial centralization and destroys the balance of power between the state and the nation. It works injustice to the small corporation and swamps the government with the control of local matters. We have shown further that corporate evils are of recent origin and are tending to be solved by economic forces; that federal incorpora-

tion is unnecessary because the present machinery in force, strengthened if necessary by a federal license system, is amply sufficient to meet present needs. Therefore, because corporate evils can be solved by less drastic and more practical measures we plead for the defeat of the resolution.

The Rebuttal

First Negative, Mr. Burroughs, Michigan.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

Now, we have repeatedly asked the gentlemen to show us the connection between the present evils and the method by which they propose to cure them. We think that an answer to this question is vital. So we ask them again wherein the chartering by the Federal government will remedy present conditions? We desire to ask them further, how far would the national corporations be subject to the State police power? Have the gentlemen forgot that the right to charter a corporation is the right to give it life; the right to legislate for it; the right to control it; the right to tax it; or the right to determine on what terms that corporation shall do business? And if such a power is to exist in the Federal Government, it can override any State legislation or regulations. We ask them again how far these corporations would be subject to state taxing laws? Have they also forgotten that the power to tax is the power to destroy? Hence, if the Federal government can charter a corporation in one state, and that state can charter it for its state business and tax it there, then you have two independent and supreme sovereignties, each with an absolute and unlimited destroying power, operating on the same corporation. Will the gentlemen explain the working of those results? Again, we ask our opponents how far would the state retain absolute power to restrict the operation and conduct of a nationally chartered interstate corporation within its borders? Is any interstate corporation to become a State-immuned pest, or an uncontrollable and ungovernable monster amenable only to the Federal authority? We can give many immunity baths, but we cannot allow them for such purposes.

The gentlemen have said that federal activity in the form of a federal charter would not be an extension of federal power. But we remind you that President Roosevelt in his message particularly advises that we should not have an extension of federal power or further federal authority; and we contend that the right to create, control, and legislate for corporations is a vast extension of federal power and authority over interstate corporations.

Our opponents ask, what right has little New Jersey to create corporations which do almost all of their business in other states? Now, we have shown you that neither New Jersey—nor any other state—has the right to create a corporation to do business in another state. Congress by virtue of its authority to regulate interstate commerce has absolute

power to confine the operations of a corporation created by New Jersey within that state. New Jersey's corporations cannot do business elsewhere if Congress says no. If Congress, then, would only exercise its existing powers, this evil would be removed, and the gentlemen's anxiety and solicitude would be relieved.

The gentlemen have said that we need further centralization. Yes, perhaps further centralization in national affairs. But we do not need nor are the people asking for national centralization or Federalism in things that are purely local.

The gentlemen speak of interholding of shares. Professor Wilgus, whom they have quoted as being in favor of federal incorporation, has said again and again that a legitimate amount of interholding is not only desirable but necessary to the best management and success of corporate enterprises. The evil comes from its abuse. And when the interholding of shares is abused, or becomes illegitimate, there is sufficient power under the Hepburn Bill to prevent it. Hence this is simply another case of Congress failing to exercise an existing power.

The gentlemen tell you that there will be but a small decrease in state revenues. We have shown you that the decrease in many states would be large. They tell you that the tangible property of the corporations will still be subject to state taxation. Now we told you that also, but told you at the same time that the best authorities conceded such a tax inherently bad. Now as to the deficiency in state revenues—who will make it up? Will it be the corporation who can pay the tax and scarcely miss it; or will it be the general property owner, of whose yearly income the tax would constitute an appreciable part? Let the latter answer as to that.

For these reasons: because this measure is radical and revolutionary; because it would strike down the laws of more than one hundred years' growth; because it would unjustly impair the obligation of contracts; because it would deprive the states of revenues to which they are justly and inherently entitled; and because this measure is overcentralizing, both politically and industrially, and is fraught with dangers which would not only threaten our industrial and commercial progress, but with dangers which would shake the very stability of the American Government, we ask that the resolution be defeated.

First Affirmative, Mr. Pope, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The gentleman who has just preceded me has spent a great deal of time in attempting to show that under the proposed measure the states would be robbed of an important source of revenue; viz., the incorporation fees and franchise taxes. This is not a serious objection to our

measure for, as we have already shown, the states will still have all their equitable taxing powers. The states will be able to tax all the tangible property in their borders. Furthermore, if it be for the welfare of the states, Congress may delegate to them the power to levy and assess taxes upon the shares or capital stock of the corporations having a federal charter, in the same way that national banks are now taxed by the several states. This can be legally done. *Van Allen* vs. *Assessors,* 3 Wallace 573, is the first of a long line of decisions on this point. As to the incorporation fees we contend, as my colleague has shown you, that the states are not entitled to them. These incorporation fees constitute one of the main causes for the states to bid against each other for the job of granting charters. Loose laws are enacted to attract corporations so as to satisfy the selfish interests of these states. As to taxes, therefore, our plan will furnish a more just and equitable system than the present one.

Our opponents have said that national incorporation would be extremely centralizing. Such men as President Roosevelt and Mr. Wilgus say that there would be no centralizing. It must be admitted that there would be no transfer of power under the incorporation plan, because the power to incorporate was vested in Congress by the Constitution. Congress is simply asked to exercise the power which the framers of the Constitution saw fit to give to the National Government. But if we admit that the power to grant charters, when exercised by Congress, is extreme centralization, would it not be better for this power to be exercised by the National Government than to permit it to be exercised by a few states, as is being done under present conditions? Three states—Delaware, West Virginia, and New Jersey—now charter three-fourths of all the important industrial corporations of this country. Now if incorporation means centralization, should we not have centralization in the national government which represents all the people, rather than in a few states which have laws that, according to Mr. Garfield, Commissioner of Corporations, are simply vicious?

Our opponents have asked us how, under the proposed measure, Congress can deal effectively with the interholding of stocks. We merely repeat one provision of our case. Congress may forbid interholding outright by demanding, as a condition precedent to the granting of the charter, that no corporation hold shares in or permit its shares to be held by any other corporation. It may be noted here that the measure proposed by the negative includes no provision for correcting this abuse, and any remedy which ignores it must be far from adequate.

Now, let us examine the remedy proposed by the negative. It is obvious that our opponents have found a scheme just as nearly like our plan of national incorporation as could be found and yet have an argu-

able difference. What is the difference between national incorporation and the national license plan which they have submitted? National Incorporation means a control of the charter, which governs the essential elements of the life of the corporation. As before indicated, it regulates the organization, management, capitalization, the methods of voting stock, of declaring dividends, of assigning shares, of inspecting books, etc. To be effective, Congress, under a national license, must control these elements of the corporation. It is apparent on the very face of it that Congress is taking from the states the powers incidental to a charter—taking the very things that the states wish to retain, and the identical powers that our opponents have so vigorously contended during this debate should be left with the states. Moreover, it is clear that our opponents are seeking to do the very thing that we propose to do. They will do it in an indirect way; we propose to do it directly by controlling the charter of the corporation.

The fundamental difference between the two systems is this: the license system will leave the power of incorporation with the states where it now exists, with all the possibilities of evil that flow from it. The negative have not shown that the states will not continue their bidding for revenues, which is the root of all corporation evils. On the other hand, national incorporation will grapple with the very heart of the corporation problem by controlling the corporation's charter, out of which the evils arise. We leave you to choose the system that will be more effective.

The negative have stated that under their plan certain interstate corporations would be required to take out federal licenses and that others would not. Now they must tell us what corporations would be required to take out licenses. They must answer this question, or their plan must be condemned as impracticable.

Second Negative, Mr. Wettrick, Michigan.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The gentlemen have told you that a license is as near like a charter as it can be. If licenses are as near like charters as they can be, why do such men as Wilgus and Ex-Commissioner of Corporations Garfield spend so much of their time distinguishing between them? They have these authorities with them. Let them quote from these men to the effect that they are the same thing, if they can do so. They have quoted Garfield as saying that the diversity of state laws amounts to anarchy. Let us see what he says about federal incorporation and federal license, which they say are the same thing. Here is what Garfield says in his report of 1904:

> "I object to federal incorporation, first, because of the drastic nature of the change; second, because of the obvious reduction of state revenue; third, because of the tremendous change toward centralization."

And then he says:

> "I urge Congress to adopt a federal license, first, because it secures stability and uniformity; second, because it preserves the states' right of taxation; and third, because it nationalizes national business"—

exactly what the gentlemen have been contending for this evening. No, we are not embracing federal incorporation when we advocate a federal license. We don't want any more centralization than is necessary. If a license will do, we don't want a charter. A charter takes everything out of the hands of the states. A license preserves duality of control. Under it, if Congress acts, well and good; if not, the states can continue to do their best. Remember this, that while we have no assurance that Congress will act under the license any more than under the charter, the license has this important advantage; it does not tie the hands of the states; if Congress does nothing the states can still do their best.

The gentlemen ask us how this scheme is going to work. We have shown you how it is going to work. As for the details, if we may expect anything from that Congress to which they would give all power, we can let it attend to them.

They say that there would be no loss in state revenue; that Congress could give the states the right to tax the franchises of the corporations. But the United States Supreme Court has held, in the case of *McCullough* vs. *Maryland*, that a state cannot tax the franchise of a federal cororation. Furthermore, what is the use of taking these matters away from the states, if you are going to give them back again?

They ask us whether it is right that little New Jersey should create corporations and then send them out to break the laws of other states. Certainly it is not, but we have already shown you that Congress can prohibit any corporation from engaging in interstate business by shutting it up in the state whose laws are objectionable, if it wants to. Congress can prevent centralization in New Jersey, which the gentlemen say is worse than centralization at Washington, without taking from the states the power of creating the corporations.

Why does not Congress exercise the power which it has? Is not this inactivity of Congress the primary cause of existing conditions and the only excuse for this measure? They say we must have more effective control over interstate commerce. We agree with them, but we say, let Congress exercise the power which it now has, which by their own show-

ing is complete over interstate commerce, before we take such a radical and revolutionary step—before we adopt a measure which while extremely overcentralizing, would involve the federal government in what Justice Story described as "a condition of miserable servitude—a condition of legal administration for which the past furnishes no guide and the future offers no security."

They say it would not take away from the states the control of the domestic business done by corporations, because the states might compel them to take out a license. A state compel a federal corporation to take out a license? Let us remind you again that a state can do nothing with a federal corporation. The exercise of the power of Congress over interstate commerce absolutely precludes action on the part of the states. A state could not, therefore, compel such a corporation to take out a license.

We have repeatedly asked the gentlemen to show us the connection between the evils which they enumerate and the charter which they propose. They have not done it. Between these two there is a great gulf which they have bridged over with a lot of unwarranted assumptions, but they have not shown us how or why a federal charter is going to cure these evils. Gentlemen, there is no magic in federal incorporation. They say that all corporate evils will be cured, if we only get a charter at Washington. If we want to cure overcapitalization, get a charter at Washington. If we want to cure rebates, get a charter at Washington. If two or three men want to form a corporation here in Chicago and sell a dozen wheel-barrows over in Michigan, get a charter at Washington. I suppose if President Angell and John D. Rockefeller should want to grow hair on their heads, the gentlemen would tell them to get a charter at Washington.

Second Affirmative, Mr. Liver, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The negative speakers have offered a series of untenable objections to our plan. When they suggest a federal license, they must abandon most of the objections to a federal charter, because these objections are fully as valid against one as against the other.

They say, apply the license to some, but not to all interstate commerce corporations, and refuse to draw a line of demarkation. Again we ask that they draw this dividing line.

They fear for state taxation. It is fair to assume that one of the terms to be prescribed by Congress as a condition to the granting of the federal charters, would permit national corporations to be taxed similarly to the way in which our national banks are now permitted to be taxed

by the states. The only change so far as taxation is concerned would be along the line of uniformity, much to be desired.

They fear for local business, which we have shown you would remain under state supervision. In fact the states would find the task of regulating local business infinitely easier, if the objects of their control were created under a fair and uniform national law, instead of by the laws of other and laxer states, as at present.

Surely it can be no argument against our plan to say that it will make dishonest corporations feel the stronger arm of the law. On the contrary, we have long since reached the point where such corporations should be brought to time by the political sentiment of the entire country, speaking through Congress.

They urge that Congress would pass no better law than most of the states now have. A national law would inevitably be better, for Congress has a hundred years of state experience to guide it, and in addition would be free from the ulterior motive by which laxity in the state law has been brought about, viz., the desire for corporation fees. Assuming that New Jersey's representatives in Congress would contend for laxity in the national law, which is very doubtful, they could exert only their share of influence in any event, while today, corporations created by that state affect the whole country.

Our opponents pin their faith to a federal license as the most desirable remedy for evils we have shown a federal charter would prevent or overcome. Having admitted the evils and brought forward a license, it is incumbent on the negative to show wherein a license is preferable, remedially, to a charter. Their saying so will not suffice. This vital issue overshadows all others in this debate, which has now become a comparison between two remedies offered. The very instant our friends from Michigan admitted the evils and suggested a license to cure them, the burden of proof in this discussion shifted to the negative, who must therefore show a preponderance of reasoning in favor of a federal license as against a federal charter. By way of adding to that burden, let us further compare the two remedies.

First, as to precedents. We have been shown no precedent for a license, while a federal charter has been granted to railroads, the Panama Canal, and to thousands of National Banks, the conduct and control of which are such that it was not to be expected that the analogy would be relished by our opponents.

Second, a license is questionable, constitutionally, whereas a charter is concededly so, by hypothesis under our question.

Third, under the license plan, corporations will remain subject to the absurdities and inequalities of state taxation, which a federal charter will fairly unify.

Fourth, the license plan waits for the evils inherent in the state system to attain full size, then by indirection seeks to grapple with them as best it can, whereas incorporation, upon the firm basis of a national law, can prevent these same evils from materializing at all.

Which, then seems preferable, remedially, a license or a charter? We leave for you to decide which is the more logical and effective scheme.

Seemingly we are agreed that there are serious corporation evils, which should be curbed by some sort of legislative remedy. To further accentuate the difference between our masure, the charter, and that of our opponents, the license, I want to ask the next speaker on the negative two vital questions. First, how will their measure, viz., this unprecedented federal license, reach back of the state charters and cure the evils of dishonest promotion, admittedly one of the worst of our abuses? And second, how can the gentlemen of the negative give us an assurance that we can ever remedy our corporation evils so long as the charters, the all-important things, continue to be granted by the states, a few of which, by the laxity of their laws, can still defeat and annul the good legislation of all the other states? Throughout this entire discussion, the gentlemen of the negative have studiously avoided these vital points, and now in all the fairness of debate, we call upon the next speaker of the negative to tell us in detail what he thinks the answers to these questions ought to be. What has he to offer by way of clarification?

Third Negative, Mr. Eves, Michigan.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The gentlemen seem pretty well convinced that a federal incorporation law would not do, they have ceased to argue for or to defend it; they have become interested in a federal license and want us to tell them about it. We explained all about that once and we haven't time to repeat it.

They ask us to draw the line above which corporations would have to have a license and below which it would not be compulsory. My colleague has already pointed out to the gentleman that that is a matter of detail to be left to Congress; we are only concerned here with the principle. But if they insist upon our naming the amount we will say a hundred or a hundred and fifty thousand dollars. There it is. I don't know whether it will work or not. But if it won't we can change it till we find one that will work.

They declare that the state would not be robbed of its revenue because it could still tax the tangible property. True, but the state would be robbed of the revenue from the franchise. If the corporation gets its

charter from Washington no state can tax the franchise that charter gives, and thus the states would be robbed of their revenues.

The last speaker told you that there were no precedents in this country for federal license. True, but how about the precedents for the charter system? There are just two: the incorporation law for the District of Columbia, which all authorities acknowledge to be a poorer law than any state ever passed; and the Union Pacific Railroad, which proved an abominable failure.

They say that their measure would not bring about centralization. Now, let us see about that—it is merely a question of mathematics. At present the state creates the corporation; under their plan the state would be deprived of this power and the Nation would create the corporation. Thus is decreased the sovereign right of the state and increased the sovereign right of the Nation. And to that extent you have lessened the power of one and increased the power of the other, and this is centralization. Such would not be the case under a license system, because the federal government does not invade the sovereign field of the state; it simply bcomes active in the field of interstate business where the states never had any sovereignty.

They tell us that federal incorporation is in accord with our system of government. We remind them that three attempts were made in the Constitutional Convention to give to Congress the right to create corporations and that every attempt failed. They were willing to give to Congress the right to control the corporation in interstate business, but not the right to grant the charter.

Now the issue in this debate, in spite of any attempts to divert it, remains clear cut and distinct. It is not whether or not there are existing evils; we admit that there are evils. Neither is it in regard to whether we should have more efficient federal control over interstate business or not. We acknowledge we should have. But it is: must we have a federal charter to secure that control or may it be secured in some other way? The affirmative argue that federal incorporation is the only way to secure federal control; but the negative has shown that absolute and efficient control may be secured either by means of national statutes or a federal license system. They say that dual control would be ineffective; we remind them that dual control has worked eminently well over the individual person and they have given us no reason why it would not work equally well over the artificial person, the corporation. They declare that a federal charter is practical; let the Pacific Railroad and the District of Columbia answer.

The negative has shown that federal incorporation is radical and revolutionary: while the license is conservative and evolutionary. By a

federal charter the state would be robbed of a sovereign right and of a legitimate source of revenue; by the license system the state still creates the corporation and collects the tax. They would bring about political and industrial centralization; we would avoid both of these evils. They would destroy the balance of power; we would keep it unimpaired. They would work injustice to the small corporations; we would protect and encourage them. They would impair the obligation of contracts; we would keep it sacred. They would swamp the government with the control of local affairs; we would save the energy of the national government to remedy national evils.

Gentlemen, because federal incorporation is drastic and subversive of the whole system of American government, because it brings more evils than it attempts to remedy, and because there are less revolutionary and more practical remedies, we plead for the defeat of the resolution.

Third Affirmative, Mr. Sanderson, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

We agree with the gentlemen of the negative when they say that there are corporation evils and that some remedy is necessary. We, therefore, want the remedy that will best meet these evils. And right here I want to call your attention to the fact that my last colleague asked the final negative speaker these two vital questions: first, how will a federal license reach dishonest promotion, one of our worst evils and already perpetrated before a federal license could touch the corporation? Second, how are corporate evils ever going to be remedied when the charters, the most vital things in controlling corporations, are granted for the most part by a few states which, by offering lax corporation laws, can defeat the good intentions and good legislation of all the other states? The last negative speaker did not answer these two questions because he could not. These weaknesses are inherent in the negative case.

The negative say that the District of Columbia law is not a good law. Let me compare it with the New Jersey law.

Here is the District of Columbia law:

> Ten per cent of the stock must be subscribed before the charter is granted.
>
> Ten per cent of the stock must be paid in before the commencement of business.
>
> Full annual reports to government officials required.
>
> Limits placed on a corporation's indebtedness.
>
> Interholding forbidden.

Now, here is the New Jersey law:

No form of charter required to be approved by state officials.

No limit on the amount of indebtedness a corporation may incur.

Stockholders cannot remove directors.

Promoters are required to make no report of the items on which capitalization is based.

Interholding of every form is allowed.

That comparison shows distinctly the laxness of the New Jersey law as compared with the District of Columbia law. And yet, as we have repeatedly shown to you, a large per cent of our control over corporations is centralized in the single state of New Jersey, notorious for its liberality in the granting of corporate charters. We would put this centralization of power over corporate industries in the hands of all the people through the medium of Congress.

Neither would our measure burden corporations by the impairment of the obligation of contracts, as the gentlemen of the negative have contended. Look into the provisions of the measure we have proposed. Overcapitalization would be checked; interholding would be curtailed; and publicity would be enforced. How would such provisions as these burden any honest corporations? Certainly Congress would not put any provisions into an incorporation law that would burden our corporations by impairing the obligation of contracts.

Furthermore, a federal license would have to apply to all interstate corporations or none, the same as our measure, if you put it into operation. The negative say you might draw the line on corporations with a capitalization of say fifty, or one hundred thousand dollars. But on the face of it such a line would be a purely arbitrary division with no justice in it whatever. Now, let me point out, Ladies and Gentlemen, how the negative have stepped into a serious inconsistency. They seem to imagine that Congress will pass a model license law that will remedy all the evils, and yet they have spent a great deal of their time in trying to show that Congress would not pass a good incorporation law. I cannot understand their reasoning. A federal license would be ineffective and besides would result in a serious conflict between the provisions of the license and those of the state charters. Suppose a corporation were incorporated in Illinois under a charter requiring a certain method of management, and suppose that a federal license is put into operation requiring a different form of management. What is the corporation going to do? It will then be doing business under a charter requiring and a license forbidding certain things. Will it be declared illegal and deprived

of its life? Will it be compelled to seek about for a state in which to incorporate whose corporation law does not conflict with the federal license? Or will the license override the charter and compel the state to amend its laws or to grant to the corporation a new charter? These points have never been adjudicated and no one can predict the outcome. If the license does override the state laws and compels Illinois to amend its laws or grant new charters which will conform to the federal license, then the charters will not comply with the wishes of Illinois at all, but will be dictated by the federal license. And if the federal government is going to dictate the charters indirectly, why not do it directly and simplify matters?

We are contrasting two systems here tonight, neither of which is perfect, that we might see which has more merit. Let us examine them a little further. It is surely apparent that the license system will not effectively deal with these evils, for it does not touch the charters which are the all-important thing in the controlling of corporations. Furthermore, the license system will still allow the states to bid against each other for the corporation fees and franchise taxes; and so long as this is permitted there will always be found some states with lax corporation laws; and so long as a few states have lax laws, corporations from all parts of the country will go to these states to get their charters, and then protected by the loose charter issued by the state of origin, they will go into other states to transact their business, just as they are now doing, and we will have obtained no relief from existing abuses. But federal incorporation, as we have shown, would enable Congress to deal effectively with all corporate evils.

We now come, Ladies and Gentlemen, to the crux of this entire debate. We have shown that the charters are the all-important thing in controlling corporations, and three-fourths of our important industrial corporations are now incorporated under the lax laws of New Jersey, West Virginia and Delaware. The whole debate then resolves itself into this: are our interstate corporations to continue to be chartered by the states offering the laxest laws, as will be the natural result under any system based upon state incorporation, or are they to be chartered by the strong arm of the federal government, whose law, to reflect the public sentiment of this country, would provide for effective regulation? Upon this issue, Honorable Judges, we rest our case.

Northwestern *vs.* Chicago

JANUARY 17, 1908

NORTHWESTERN UNIVERSITY

Judges:

Mr. Butterfield, District Attorney, Wisconsin

Justice Magruder, Justice, Supreme Court, Illinois

George E. Mason, Attorney, Chicago

Northwestern Team:

E. C. Arnold

S. H. Gilbert

J. D. Evans

Chicago Team:

Eugene J. Marshall

Paul Maurice O'Donnell

Harold Glenn Moulton

Affirmative: Northwestern

Negative: Chicago

DECISION—CHICAGO WON

The Debate

FIRST AFFIRMATIVE, MR. ARNOLD, NORTHWESTERN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

Stated in its simplest form, our question tonight is,—can *all* the people better express their ideas concerning the control of interstate corporations, through 46 separate state governments; or will it be more effective to have one sovereign power, to which the states have delegated their control?

We are well aware in opening this debate tonight, that those who oppose the Federal government chartering interstate corporations urge that such a plan would be an innovation in our industrial methods. But you will readily recognize that this objection has done fatal service in by-gone years. In a contingency similar to the present, during our earlier history, when growing conditions demanded a more secure financial policy, the same destructive argument prevented the adoption of the National Bank, thus crippling this country with a disreputable system of "wild cat" banking for 75 years.

The reason that our corporations are chartered by the states today is that originally commerce was comprehended only within state boundaries; there was no interstate commerce. But today our interstate corporations have grown into gigantic, national systems.

The pre-requisite of all legislation is its necessity. When we recall the recent amazing centralization of wealth, its accompanying practices, we are forced to realize that modern industry has passed the stage of mere academic discussion, making imperative a change of control for interstate corporations commensurate with the present necessity. Such a plan Federal Incorporation would be. It would be keeping pace with industrial progress. It would recognize interstate corporations as a national power. It would provide a control coextensive with their operations.

That there is an imperative demand for a change from the present system, the affirmative will maintain upon this simple, fundamental proposition, namely—that the present method of controlling corporations engaged in interstate commerce is inherently inadequate, and presents no hope for relief.

The first indictment against the present control is, that it is absolutely incapable of effective regulation. We now have the situation of a great national force such as our interstate corporations are, left to the control of an individual state with its limited powers. State legislatures

are more easily controlled than the National Congress. This helplessness of the State to protect the interests of the public is for two reasons:—first, because all the states, except the chartering state, are constitutionally prohibited from excluding, or controlling the internal affairs of any interstate corporation. The second reason is, that the present system permits the corporation to evade the law. Witness the Southern Pacific Railroad. Chartered in Kentucky, yet it does not own an inch of property and has never done a penny's worth of business in that state, the sole object of securing its charter there being to use its technical citizenship under Kentucky's court decisions to escape the jurisdiction of the courts and evade the legislation of the states where it carries on its business. Or, take the best known illustration of today—the Standard Oil Company. Why isn't it controlled as a majority of the people have desired for years? Simply because the states are absolutely powerless to interfere. There is the Standard Oil Company of New Jersey, Indiana, Ohio, The Waters Pierce Company of Missouri, and so in a number of the states—all these organizations subsidiary to the Standard Oil Company. And when one of these companies is evicted from a state, one chartered in another state comes in and carries on the same old business by the very methods before employed. All of these subsidiary companies are a part of, and play directly into the hands of the Standard Oil Company. By thus permitting the interholding of stocks and by subsidiary organizations, any corporation may now violate all the laws of business and morality in dealing with interstate commerce, while the people are powerless to prevent this evasion of law. We are therefore compelled to ask the negative to explain how any system so constructed as to permit the unscrupulous to evade the law with impunity, can ever efficiently conserve the interests of the public in its relation with interstate commerce.

The present system is further inadequate because there is now no central authority which the people can hold responsible for the enforcement of the laws. If a violation is brought to the attention of the state authorities, they frequently shift the responsibility to the Federal government; and, if a complaint be entered to the Federal authority, it reciprocates by referring the question back to the state governments. Because of its uncertainty of control, the effect of one is counteracted by the inertia of the other. And, furthermore, it permits acute friction between the state and the nation which in many cases has proven quite serious. With the National government in control over interstate commerce; with 46 states separately chartering corporations; with each of these 46 states enacting separate statutes affecting such corporations; with each of these 46 legislatures having ideas of legislation differing all the

way from putting felon's stripes upon anyone selling trust-made products as did Texas, to the liberal policy employed by New Jersey of granting charters upon most any terms the corporations may dictate; with these laws after being enacted, administered by 46 different state executives of diverse ideas and political faith; and then 46 separate state supreme courts construing those statutes, scarcely any two of whose opinions would agree upon identical facts; and then the distinction between the jurisdiction of the state and national government being uncertain and ambiguous—consider these facts, and then is not the affirmative fully justified in arguing that the present control over interstate corporations is uncertain, chaotic, and positively inadequate?

Not only is there this conflict, but the states both war among themselves and bid for incorporation fees and taxes by enacting loose and non-restrictive laws. If you will turn to section 101 of New Jersey's corporation laws, you will find that it discriminates against the corporation of any state that does not admit New Jersey corporations upon the same basis as those of other states. By similar retaliatory laws and competing inefficient legislation, intended to attract large corporation fees, the states grant a maximum of privilege with the minimum of responsibilty. When by granting a "roving charter" as West Virginia does, which permits a corporation to take its books outside the state and allows the stockholders to meet anywhere on earth; when by making a specialty of chartering "tramp corporations" as does New Jersey; when by neglecting to provide for publicity of which a majority of the states are guilty, is it any wonder that the present control over interstate corporations has been rendered practically nugatory?

Again, the present system is inadequate because it permits legislation to be circumscribed by geographical lines, dwarfed by local ideas and prejudices, formulated as a political issue in behalf of a political party. "In commerce as well as politics, state governments will represent state ideas," said Judge Amidon before the American Bar Association. A misguided, over-zealous statesman may now railroad a bill, disguised as a political measure, through the legislature of South Dakota or Arizona, which in reality vitally affects the interests of a stockholder or corporation in New Jersey or New York. Because it is not a national issue but only discussed locally, its import is not discovered until too late to prevent its passage. We find the anomalous situation of a New Jersey court adjudicating the rights of citizens of Illinois. By thus localizing legislation, the good of the whole people is made subservient to the dictates of the few.

Therefore, because of the magnitude of the corporations' power; because of the absence of central control, which permits conflict, state

jealousy, and the placing of legislation upon the auction block to the highest corporate bidder; and because legislation may be localized in the interests of the few, we submit that the states are incapable and hence inadequate to control interstate corporations.

Our second indictment is that this inadequacy is essentially a part of the present system and hence inheres in it. We challenge the negative to dispute the inherency of the present system for two reasons:—first, because the power of the state to safeguard the people's interests by inspecting the internal management of interstate corporations is denied by the Federal Constitution, and therefore no amount of legislation can reach this defect. The state's authority to regulate is limited to a certain local, physical area; interstate commerce is unlimited and national. In the second place the state jealousies, the bidding for incorporation fees, the enacting of a repugnant and miscellaneous aggregation of statutes, and the conflict between the state and national governments, are but the natural result of a diverse system of control. We submit it is axiomatic that these defects can never be remedied except by a uniform system of control of all corporations engaged in interstate commerce. Now, it is very obvious that uniformity is absolutely impossible and beyond the power of the most poetic imagination to comprehend, under the present system. The diverse ideas of the 46 states, differing commercial interests, political rivalry between the North and the South, the East and West sections of the United States, reduces such a proposition to an absurdity. In other words these weaknesses are a part of the bone and sinew of the present system itself, and therefore inherent.

Our third indictment is that the present control has been productive of positive and flagrant evils. So infamously notorious are these, and so well known have been their effect upon our industrial life that a mere mention of them, without comment as to their disastrous result, will suffice. These evils as enumerated by Secretary Garfield are: secrecy and dishonesty in promotion, overcapitalization, discrimination and the giving of rebates, secrecy in corporate administration, misleading and dishonest financial statements, and permitting the interholding of stock by rival corporations. The inevitable effect of these evils, of which the present system is the parent, has been to shake the confidence of the people in corporations, and create instability both in the corporations and the popular mind.

Now let us briefly summarize the affirmative argument thus far:

In the first place the present system for the control of interstate corporations is incapable of effective regulation; second, these weaknesses are inherent in the present system, both because of constitutional prohibitions to remedy them, and uniformity, without which better control

can never be secured, is impossible; third, the result of the present system has been to foster positive and flagrant evils.

For these reasons we submit for your judgment, the fundamental proposition stated at the beginning of this argument—that the present method of controlling corporations engaged in interstate commerce is inherently inadequate.

FIRST NEGATIVE, MR. MARSHALL, CHICAGO.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

It is a well-known fact that whenever the people are confronted with a serious evil there is always a tendency among reformers to seek relief in radical measures. We concede that there are some evils in the present system of corporate management because the corporation problem is a new, complex and enormous one, but whenever a proposition is made to change by one arbitrary act the political and industrial institutions that have taken generations to develop, it is well to examine closely into the facts to see if such a drastic measure is really necessary. According to Mr. Stimson, testifying before the Industrial Commission, the proposition so eloquently presented by my opponent means that "over 90 per cent of the business of the country shall be taken out of the control of the states and placed in the hands of the national government." Let us see if the evils of which our opponents have spoken justify this tremendous change. With reference to the present system of dealing with corporations, we will show you during the course of the debate, that it is not quite as hopeless as our opponent has tried to make it appear.

It is estimated that there are at least 500,000 corporations engaged in interstate commerce. Illinois has chartered 65,000 corporations, Pennsylvania 60,000, Tennessee 12,000, Maine 15,000, and the Secretary of the State for Maine, has stated that over 80 per cent of the corporations in his state are engaged in interstate commerce. These corporations vary in size and character from the huge billion dollar steel corporation to the ordinary manufacturing corporation in every city and town. According to Moody, in his "Truth about the Trusts," about 300 of these corporations are recognized as great corporations and national in character. Just at this point of the debate I want to call your attention to the fact that the evils of which my opponent has just spoken are characteristic of only a comparatively few large corporations. As President Roosevelt has repeatedly pointed out, it is the great corporations, national in character, that need national control. Take for example the corporations in your own town or city. They are not national in character and scope,

they do not ship goods to every state and territory, they are not characterized by excessive overcapitalization, complicated system of interholding, and dishonesty of promotion and management, such as my opponent has so eloquently described. The vast majority of corporations are honest and make every attempt to conform to state corporation laws, and when it is urged by our opponents that in order to reach the evils found in a comparatively few national corporations, that the federal government should require every corporation engaged in interstate commerce to take out a federal charter, they are arguing that the federal government should assume control of hundreds of thousands of local corporations that do not need federal control.

The burden that rests upon our opponents in this debate is a tremendous one. They must not only show that every corporation engaged in interstate commerce should take out a federal charter but that their particular system of national incorporation will cure the evils of which they have spoken, that it will do so without inflicting any serious injury to industry, and that their proposed national incorporation bill would in all probability be passed by Congress. On the other hand, the position of the negative is simple and plain and eminently conservative. We oppose this proposition for three reasons: first, because it is radical and impracticable; second, because it is inexpedient; third, because such a drastic measure is not necessary. I shall discuss the practicability of the proposition of the affirmative.

For the past fifty years the states have been developing a system of local control for local corporations and, in so doing, they have accomplished a tremendous amount of good and at the same time preserved the great democratic principle of local self-government. As for corporations that are essentially national in character, such as the trusts, of which my opponent has just spoken, we readily concede that some federal legislation, in addition to what we now have, may be desirable; but as for industries that are distinctly local in character, such as the saw-mills of Michigan, the creameries of Wisconsin, the mines of Colorado, and the factories of New York, we believe that the people of the United States are regulating these local industries satisfactorily. Yet all the work that the states have done along this line for the past fifty years and at the same time the great democratic principle of local self-government, our opponents propose to change completely and immediately. Because, mark you, they are not arguing that corporations national in extent should be regulated by the national government, but that all corporations that transact any interstate commerce should be so incorporated.

Let us see what corporations if any this proposition does not include. In the Addyston Pipe Case, Mr. Justice Field decided that interstate

commerce included all transportation, transit, traffic and intercourse between the inhabitants of different states as well as all contracts, agreements and sales in relation thereto,—in brief, every kind of commercial intercourse between the inhabitants of different states. Therefore, the proposition of my opponent must include every industrial establishment in the country; all transportation, telephone and telegraph companies, all manufacturing and producing companies whether engaged in agriculture, mining, stockraising or fisheries, if they ship their products outside of the state. So all-inclusive is this measure that not only the street railways of the city of Chicago that purchase their supplies in Gary, Indiana, but also the Northwestern University that buys its supplies outside the state of Illinois, would be a corporation engaged in interstate commerce and would have to be chartered by the federal government. If this be true, it means that the state charter of every industrial establishment in the country will be destroyed because if the state corporation charter is not destroyed but is permitted to remain insofar as it does not conflict with the federal charter, then you will have this cumbersome management; here is the same body of men, engaged in the same business, operating under two different charters, one state and the other federal, with different systems of capitalization, different systems of interholding, of liability of directors, of keeping accounts and doing business; a situation that will cause endless conflict between state and federal authorities over the control of local corporations and will result in increasing attempts on the part of the corporations to evade corporation laws by shifting their business back and forth between the state and federal entities or corporations. Moreover, Professor Wilgus, whom my opponents have quoted, maintains that if their measure were introduced, it would seriously interfere with the power of the states to tax corporations, a power that gives to New York for example, over $5,000,000 annually in legitimate corporation taxes.

In order to justify this tremendous political change it certainly is incumbent upon our opponents to show that business will not be seriously injured thereby; but the truth of the matter is, this proposition would demoralize our entire industrial situation. Our business interests are so large and at the same time so delicately adjusted, that a word from James J. Hill, in 1907, about Northern Securities stock, precipitated a national panic while the failure of Augustus Heinze was felt in every town and hamlet in the land; and yet it is almost impossible to conceive of a more radical innovation in business than this measure contemplates. According to every recognized authority of federal incorporation, this measure means that every corporation engaged in interstate commerce must be rechartered and examined by the federal government. Here is the practical situation

that confronts us. Here are 500,000 corporations of all sizes and character! Do our opponents intend to regulate those now in existence or those which shall come into existence in the future? If they do not intend to regulate those now in existence, then they will leave unregulated that vast number of corporations which the first speaker said were defrauding and oppressing the people. If they do intend to try to regulate the corporations now in existence, then here is the practical question I want to put to you as business men. Is it physically possible for any body of men to take every corporation engaged in interstate commerce, examine into the details of its business, eliminate all of the evils of which my opponent has spoken and then send those corporations out into the world, honest in their organization and operation? Is it physically possible to do so?

Take the evil of overcapitalization, which every recognized authority of federal incorporation says should be eliminated in the chartering of corporations. These corporations are in existence, their stock is upon the market and in the hands of the people, while the evils that flow from overcapitalization have been done. In rechartering these corporations by the federal government, new stock must be issued. I ask my opponents to tell how they intend to call in the stock now upon the market, readjust and reapportion its value, make it conform to one arbitrary standard and then redistribute it back among the people as stock in a Federal corporation?

Is it physically possible to accomplish such a task without precipitating a national panic? Add to this fact the other evils of which our opponents have spoken and which they expect to eliminate in the re-chartering of the corporations, and it will be evident on the surface of things, that the proposition of the affirmative is so impracticable it could never be introduced without deranging our entire industrial and political system.

My opponent has cited the National Banking system to prove that their measure is practicable. Think of it, Honorable Judges, taking the National Banking system as a precedent! The National Banking system involves 5,000 banks, this proposition involves 500,000 corporations; the former is a voluntary system of incorporation; the latter is compulsory; the former deals with one kind of a monetary institution, a bank, the latter deals with all corporations of all sizes and character. Under the National Banking system, if any abuses creep in, the government appoints a receiver for the bank and tries to keep it on its feet; under national incorporation, if any corporation violates the laws, its corporate existence is destroyed. Take these two systems, place them side by side, compare them in any detail, show me in any respect where an analogy exists, then and not until then should our opponents argue that because the federal

government permits 5,000 banks to incorporate, it is practicable for her to compel 500,000 corporations to take out national charters.

SECOND AFFIRMATIVE, MR. GILBERT, NORTHWESTERN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The first affirmative speaker has shown that the present method of controlling interstate corporations is inherently inadequate, and has given rise to positive and flagrant abuses. It is my purpose to show that the state chartering and state regulation of interstate corporations offers no hope for a correction of these positive abuses to the public. We have seen how the present laws have led to the promiscuous granting of state charters to interstate corporations, and to insufficient regulation by such chartering states giving rise to these abuses. It then devolves upon each state to protect itself from these evils which the chartering state makes no pretense at regulating. But no state has the power to protect its citizens by controlling the offending corporation which has taken out a charter in a foreign state. A state has no jurisdiction whatever over the internal affairs of a foreign corporation, of its organization or management, of its dissolution or the winding up of its business. These things which are most vital to corporate regulation are left entirely to the chartering state.

The negative may say that the state has ample power over the foreign corporation since it can exclude from doing business within its borders and so may subject it to such regulation as it chooses as a prerequisite to doing business. But a state cannot exclude transportation corporations nor the interstate commerce activities of an industrial corporation. It is true the state has the power to exclude an industrial corporation from manufacturing within its borders, or from prosecuting its business, so long as the restrictions do not interfere with interstate commerce. But to restrict industry is not a practical means of protection from its abuses. States are inviting corporate industry as necessary to develop their resources, and to stop those industries already established from pursuing their labors would destroy the industrial prosperity of any state. Business is too vital to existence and prosperity to be excluded, although attended by serious evils. A prerequisite to corporate regulation is that it must not restrict industry, but control its activities while fostering its development. The exclusion of business destroys prosperity. Practically speaking, the individual state has not the power to protect its citizens from unsound interstate corporations.

The sole recourse of this situation under the present conditions is to patch up the inability of the states with federal laws. But federal laws can never afford a remedy for the defects in state control simply because they are not coextensive with the evils sought to be remedied. Federal

laws, like state laws regulating foreign corporations, leave those questions relating to organization, internal control and regulation; rights, duties and liabilities of officers; issue, payment, and transfer of stock; declaring and paying of dividends; power to hold stocks of rival corporations; entirely to the chartering state,—and it is from insufficient regulation in these respects that the chief abuses arise.

The federal laws which we have are very difficult to enforce. They wait till the abuses are in existence and then attempt to destroy them by lawsuits. The system which fosters the abuses, namely, unsound organization of, and insufficient management by the chartering states, remains unchecked, and we find that federal laws are constantly defeated by evasion under these state laws. So the Northern Securities Company case, an exceptional victory under the Sherman Act, was practically defeated. "The several railroads that made up the Securities Company are managed now almost precisely as they were before the order of dissolution was entered."

Other federal laws attempting to prohibit rebates and unfair discrimination are equally difficult to administer. They would be much more effective if the government had a firm hand upon the internal affairs of these corporations. To regulate their formation, in President Roosevelt's opinion, offers one of the most efficient methods of regulating their activities. As Commissioner Garfield forcibly observes, "The imposition of severe penalties will not end industrial evils. We must find and remove their cause, leaving only the extreme or exceptional cases to be dealt with by criminal statutes." The great difficulty of securing evidence to convict under present laws is well known. Besides it is not feasible to carry on more than a limited number of lawsuits, so that this attempted regulation of corporations by means of lawsuits imposes upon the courts an impossible burden. "Such a law to be really effective must of course be administered by an executive body, and not merely by means of lawsuits." According to President Roosevelt, "the design should be to prevent the abuses instead of waiting until they are in existence, and then attempting to destroy them by civil or criminal proceedings." So we see that federal laws are not co-extensive with the evils sought to be remedied; they do not control the organization nor the management without which there can be no effective regulation; and those laws prohibiting rebates and unfair discrimination are very difficult to enforce because of the opportunities for evasion under the state laws and because of the burden placed upon the courts by their "lawsuit" methods. Thus, the public is compelled to submit to a system of corporate chartering under which neither the states nor the federal government are able to regulate the corporate life.

Not only is the public left unprotected from abuses at the hands of interstate corporations, but the honest industries are themselves handicapped by competition with unscrupulous and uncontrolled industry and by being subjected to the mandates of two masters. As Judge Amidon observes, "The state laws in force discriminating against foreign corporations are both more vicious in character and more varied in form than those of the earlier period."

But, it is said, corporation law is new and the tendency of the various states is to provide good corporation laws. But if there be any hope of securing efficient corporate regulation under the present system, it must be by effecting a soundness and uniformity in 46 state laws regulating interstate corporations, and I submit that there is absolutely no hope of getting 46 independent states to provide sound corporation laws.

In the first place the revenue from charter fees is a constant inducement to each state to offer liberal laws. This fee is usually a per cent charged upon the capitalization, and many states set no limit to the amount at which a corporation may capitalize except its ability to pay the franchise fee. This revenue is "a strong and positive motive leading the state legislatures toward lax and improper corporation laws."

"And, even if all the states were actuated by most correct motives, nevertheless it is obviously impossible that 46 different jurisdictions should agree on anything like a uniform system in so important a matter as corporation law." Local politics defeat it; the diverse characteristics of the legislative bodies defeat it; local prejudices defeat it. These differences are inevitably recorded in the enacted law. But, not only are there 46 different legislatures with all the variations of human intelligence and politicians, but there are 46 varying supreme courts to interpret the laws, and 46 independent executives to administer the law after enacted and interpreted.

But we are not left to speculate upon this situation. The commissioners on uniform state laws, aided by the American Bar Association, and other influential means, labored ten years with the state legislatures for a uniform Negotiable Instruments Act. As a result thirty states passed the act; all but two of these states modified it; the supreme courts of the different states have put different interpretations upon the same clauses of this act. Again, the commissioners on Uniform State Laws report for 1905, "To attempt to draw an incorporation law that would be likely to receive the legislative sanction of all the states is a task from which your committee shrink." The report for 1907 corroborates this when it tersely states, "Voluntary co-operation of the states seems to be unattainable."

So from experience, as well as from reason, we are warranted in saying that even if there were no positive inducement to each state to grant loose corporation laws, yet, politics, local prejudices and diverse public sentiment reflected in the state legislatures, would defeat any attempt at uniformity.

We have then shown, first, that the promiscuous granting of state charters to interstate corporations has given rise to positive and flagrant abuses; second, that the individual state has not the power to correct the abuses of corporations chartered by other states because a state has no jurisdiction over the internal affairs of a foreign corporation, and the power to exclude interstate corporations is not a practical defence; third, federal laws cannot supply the deficiency in state regulation since they do not reach the organization nor management of the corporation which is essential to effective regulation, and those federal laws which we have are largely defeated by evasion under the state laws, and by the great burden imposed upon the courts by their "lawsuit" methods; and finally, we have seen that there is absolutely no hope of securing wise and uniform laws from 46 different states. It is folly to continue a system inherently inadequate to correct the abuses; inadequate to free honest industry from present hindrances; inadequate to give us financial safety and industrial prosperity; and which leaves us subject to unsettled values, destroyed credit and unchecked speculation.

SECOND NEGATIVE, MR. O'DONNELL, CHICAGO.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

My colleague has pointed out the far-reaching consequences which would follow the adoption of the measure of the affirmative. He has shown that it would necessitate a complete change in our political and industrial institutions. He has shown further that any reform which contemplates the complete reorganization of all corporations in order to eliminate the evils in a few is so impracticable that it could never be put into operation.

It devolves upon me to show further that this measure is called for in nowise and is inexpedient. I intend to support this proposition on three grounds. First, there is absolutely no reason for requiring small local corporations to charter under a national incorporation law. Second, as to the large corporations the balance of expediency and policy is for allowing them to be chartered by the states as at present. Third, there is no reason to suppose that the corporation law which Congress will pass will be in any way better than the corporation laws of the states today.

The comprehensiveness of the affirmative measure has already been pointed out by my colleague. It includes every corporation in this country which buys any portion of its supplies or sells any portion of its product across state lines. It is difficult to conceive of any corporation which does not engage to some extent in interstate commerce. By far the largest number of corporations engaged in interstate commerce are local to some one state. There are about 500,000 of these as against three or four hundred which are not local to any one state but do business in a number of states. Most of these local corporations are chartered by the state where they carry on their main business; they affect in their operations the citizens of that state and the problems they present are local to that state. These corporations the affirmative wish the national government to charter and wish the states to be deprived of the power to charter.

The affirmative base their plea for national incorporation on three grounds, first, that the laws of our states are bad and vicious; second, that evils exist in those corporations; and third, that these evils are of national scope and concern.

I contest each of these grounds. First, the corporation laws of our states are sound. They are as satisfactory as any other branch of our law which is of recent development. The affirmative have not dared to impeach the laws of all of our states, nor of most of our states, but only those of three or four states. These small corporations are chartered by the state in which they do their principal business; they are scattered throughout all the states and only a few are chartered by the laws of the states the affirmative impeach. There may be minor defects in our corporation laws, but those are being remedied as they become apparent by the application of the law in the courts. Furthermore, the laws of the states compare more than favorably with the corporation laws Congress has passed for the District of Columbia and with the charters granted to the Pacific Railroad.

The main evils which the affirmative lay at the door of all corporations are not to be found in these small local corporations. Our common knowledge makes this clear. The reasons for the non-existence of these evils are equally apparent.

Let us take up the three principal abuses related by the affirmative. First, excessive capitalization. The reasons why this is not practiced by organizers of small corporations are these: The only market such a concern has for its stock is local to the place it operates. The investors are local business men who know the trade conditions under which the concern must operate, who know the value of its tangible assets, who are in a position to make a sound estimate of the value of the business. These men deal on equal terms with the organizers and would refuse to buy

stock if the total issue were in excess of the real value of the concern. Nor is there any incentive to issue excessive amounts of stock to cover monopoly profits because these small concerns operate in the face of competition and have no monopoly profits to conceal. Second, interholding of stock is not practiced by these corporations for two obvious reasons; first, most of these small corporations are chartered under state laws which do not permit interholding; second, even those which might obtain that power from the state are not in a position to exercise it because they lack the financial resources necessary.

Third, dishonesty in management does not flourish here, and again for two obvious reasons: First, the state laws hold the directors and officers to a strict liability as agents and trustees for the stockholders; second, the stockholders take an active interest in the affairs of the corporation, know personally the officers and directors whom they elect, are quick to discover any dishonesty or inefficiency. When any dishonesty occurs they have a speedy and effective remedy through the courts and by the removal of the offending party from office.

Evils of which the affirmative complain exist, if at all, only to a slight extent in these small corporations. But even if any evils should arise, the case is not one which warrants national intervention. It might as well be argued that because evils exist under city charters that, therefore, Congress should charter our cities and the states be deprived of the right to charter them. These evils, if they ever exist, are of concern to the state and not to the nation. From the states, moreover, we can expect a speedier and more effective remedy for local abuses than we can from the national government.

We challenge the affirmative to show a single reason why these small corporations which comprise 99% of the corporations engaged in interstate commerce, should be chartered by the national government and why the states should be deprived of the right to charter them. As the large corporations whose resources and operations are not confined chiefly to any one state but extend into many, as to these we contend that the balance of expediency and policy is for leaving them to be chartered by the states as at present.

Let us take up in order the evils named, and the policies and laws of the states out of which the affirmative contend they grow. These are overcapitalization, interholding of stock, and dishonesty in management.

Congress cannot deal with capitalization on any other basis than the states have found feasible. The only way overcapitalization can be prevented is by limiting the assets which may be capitalized to the tangible assets—to assets of certain value. But to do this would be to prohibit every sort of business which was in any way speculative in its nature. It

would prohibit the development of mineral resources, the building of railroads into sparsely settled communities, the introduction of untried improvements into manufacture. Had the states followed this policy our western railroads, mines, and irrigated farm lands would be the dreams of dreamers and not the realities of today. The affirmative dare not contend that Congress would follow such a policy. But if you allow intangible assets, the good will of the business and the future earnings to be capitalized, who can best appraise their value? The states, Canada and England have come to one uniform conclusion. It is best to leave this to the business interested in the concern. Congress cannot adopt with any show of reason a different conclusion.

Furthermore, to reduce the capitalization of corporations already organized would be to deprive thousands of stockholders of vested property interests. Do the affirmative contend that Congress by one legislative act can do this?

As to interholding and combinations affected by means of it we need only say that there is an undoubted and apparently irresistible economic force and tendency in that direction. It is extremely doubtful if any legislation can prevent the workings of this economic law, if it be desirable. The most legislation can do is to direct the form combination shall take. If interholding be undesirable, Congress can by a direct statute do away with it as effectively as by an incorporation law and with less far-reaching consequences.

The affirmative have laid much stress on dishonesty in corporate management. They hold forth the alluring promise that Congress can pass a law which will make all men honest. But they must be more specific than this. What policy is Congress going to pursue other than that which the states have adopted? The states hold the officers and directors liable as agents and trustees of the stockholders. The stockholders as owners of the business determine what powers their directors shall have and what limitations they will place on the exercise of that power. The whole efficiency of the corporate form of business is based on the delegation of powers by the many to the few, by the stockholders to the directors. What those powers should be and what checks should be placed on its exercise, the states have left to the owners of the business. Do the affirmative contend Congress will adopt a different policy? Do they contend that Congress will dictate to private citizens how they shall manage their business?

It is incumbent on both sides in this debate to give their opinion as to what terms Congress may prescribe, what provisions Congress may insert in its incorporation law should the measure of the affirmative be adopted. Would the national incorporation law be better than that of the states? The position of the negative on this point is clear. The corpor-

ation law that Congress will pass will in nowise better the laws of the various states. There are numerous reasons for this statement. The men who will frame the national law will come from the various states; they will be elected by the same voters who elect the state legislators who frame our state corporation laws; they will be familiar with the corporation laws of the states; they will likely follow the provisions of these laws rather than embark in uncertain theories. Furthermore, the public opinion which will mold the congressional law is the same public opinion which is today molding and forming the laws of the states. Considering these conditions, is it reasonable to suppose that the corporation law Congress will pass will be any different or better than the laws the states now have?

I have shown that the measure of the affirmative is uncalled for and inexpedient for three reasons. First, there is absolutely no reason for compelling the small local corporations to take out a federal charter. I challenge the speaker on the affirmative who follows me to show you one single reason for national incorporation of local corporations. Second, the balance of expediency and policy is for having the large corporations chartered by the states as they are at present. And third, there is no reason to believe that the law which Congress will pass will be in any wise better than the present state laws. And if the affirmative cannot answer these arguments their case must fall.

THIRD AFFIRMATIVE, MR. EVANS, NORTHWESTERN.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The negative contend that under federal incorporation a large number of corporations doing a very small business which would come under interstate commerce, and a very large amount of local business, would be required to take out a federal charter. Now, the Supreme court has decided what constitutes interstate commerce; but they have not decided what constitutes being engaged in interstate commerce. And we contend that this would be decided along practical rather than theoretical lines; that only those corporations doing a considerable amount of interstate commerce would be declared to be engaged in interstate commerce. Furthermore, even if it should be decided as our opponents contend, they have failed to show wherein it would work hardship to any sound corporation to be required to take out a federal charter.

It is true, as maintained by the negative, that under federal incorporation a large per cent of these companies would be chartered by the national government. But because the corporations are chartered by the federal government, is no reason why their property and civil rights

should be controlled by Congress. Our question says: "On such terms as Congress may by law prescribe." Therefore, we contend that the negative have no right to assume what any provision of this law would be, unless they can show that such provision is absolutely essential to an effective law. We have shown that the manner of promotion, structure and management of corporations are the things that need to be dealt with. It is necessary to vest in Congress only the power of determining the general character of these corporations, and of regulating those which the states can not properly control. Local control is not necessary to contract the evils which we have mentioned. It is only reasonable to suppose that this law would be in harmony with our dual form of government, leaving the control of local matters to the states and giving to the federal government the determination of those things essentially national in scope and influence. We challenge the negative to show what property and civil control would necessarily be lost to the states.

The negative contend that no better law could be hoped for from Congress than we now secure from the states. The highest statesmanship in this country, however poor that may be, is unquestionably to be found in the national Congress. There, are to be found a broader view of national questions and a better desire to legislate in the interests of the whole country, rather than the interests of some locality. But we do not base our contention for federal corporation upon the superior honesty or ability of Congress. It is simply a question of how the people can best express their will. We have shown that because of state rivalry, local prejudice, lack of responsibility and diverse political beliefs, it is impossible to hope for good laws from the states. Congress, on the other hand, representing the whole people without these conflicting interests could pass a good law. But whether it would or not is none of our business for the purpose of this debate.

It is my purpose to prove that an efficient and practical remedy for the evils of the present system may be effected through Federal Incorporation. By the statement of the question we must confine ourselves to showing the general practicability of this plan as a means of correcting corporate abuses.

I shall present four main points: First, the evils may be cured through federal incorporation. These evils are secrecy in promotion and management, overcapitalization, payment of unearned dividends, lack of official responsibility, interholding of stock by rival corporations, and minority control by means of the holding company. Federal incorporation will remove the conflict of authority, confusion and consequent litigation of the present system, which prevents the correction of those evils.

We now have 46 sets of continually changing corporation laws, made by independent legislatures, interpreted by independent courts and administered by independent executives. Then the federal government attempts to mend matters by the passing of more laws. Because of the confusion and conflict of authority which result, it is impossible to have laws properly adjudicated and enforced. Federal incorporation will necessarily bring about a definite fixing of authority and responsibility, which will result in justice to both the corporation and the public. The government would deal directly with its own corporate creatures. This must be better than the present cumbersome methods of control. The present conflict of authority, confusion and consequent litigation would be removed so that corporate evils will be placed in direct line for remedial legislation. There would be one power co-extensive with the corporation, fully capable of meeting the situation and entirely responsible for that situation. Sentiment for reform would not be forced to expend itself in useless vituperation of all corporate bodies, but could be crystallized into a statute covering the whole matter.

Requirements governing the methods of promotion, structure and management of corporations could be embodied directly in all charters. Reports, showing the financial condition and business methods of a corporation could be easily secured.

Proper responsibility of officials could be definitely fixed; holding companies and the interholding of shares by rival corporations definitely prohibited. Continued disregard of these requirements could be met by the loss of corporate existence.

We do not contend that all corporate evils could be immediately cured by this law, but do claim that the situation would be brought to a place where effective action might be taken. These matters of national concern should be met by a national power, able to deal with the entire situation in the interests of the entire country. Present evils may be cured through federal incorporation.

The great interstate corporations are essentially national in their activities and influences. Their form and management have a vital relation to the industrial welfare of the country. Any evils connected with corporate life must affect people living within the influence of its business world.

We have shown that the present system is essentially unjust. It allows the government of one state to determine vital matters for corporations whose existence affects the welfare of the whole country. It renders ineffectual the good laws of some states by placing their citizens under the influence industrially of unsound corporations chartered by other states. As opposed to this federal incorporation is essentially just. First, it is just to the states. It protects them from the influence of corporations in

the determination of whose form and management they have no voice. It gives them their proper share in the control of all corporations.

Second, it is just to the people. It places the control of a matter affecting all the people in the hands of that power which best represents the will of all the people. Third, it is just to the corporations. The rights of the corporations and the rights of the people do not conflict. The protection of the people does not necessitate the imposition of harmful restrictions upon corporate activity. It is absurd to assume that federal chartering would work harm to any sound corporation.

Furthermore, under this plan, corporations would be absolutely sure of their own rights and responsibilities, which is denied them under the present system. Federal incorporation is just to all concerned.

Federal incorporation is in harmony with our dual form of government. Under our system of government, the federal government was formed for the purpose of securing the united action of all the states on matters essentially national in scope and influence. The control of purely local affairs is left to the states. The only place where such action may be hoped for is in Congress. Such control does no violence to the principle of local state government. We most emphatically protest against the assumption of the negative, that federal incorporation must bring 90 per cent of the property and civil rights of this country under the control of the national government. Such a course is neither necessary to secure an effective law, nor is it advocated by those favoring federal incorporation.

Under the present system, a state has control over the manufacturing and producing business of a foreign corporation within its borders. Under federal incorporation, there need be no transfer of this local power from the states to the national government, but simply an exercising by Congress of a power which the states by the very nature of the situation cannot exercise. Only those matters of national influence, such as we have mentioned, need be placed under federal control. We would simply invest in the federal government the power of determining the general character of interstate commerce corporations, which power is now exercised by each state over corporations whose existence affects all the states. It is more just that the characters of all the great corporations be determined by the national government than that each state exercise this power over a few of them. Such control is both necessary and desirable. The great corporations are a vital part of our industrial life, but they are dangerous unless they are controlled. The national government must exercise power commensurate with the forces to be dealt with. Gigantic industrial combinations necessitate a powerful authority to control them. Such power in the government is a necessary safeguard for our centralized industrial life. Federal incorporation is in harmony with our dual form of government.

Federal incorporation would be simple and easy to administer. The simplicity of the proposed law, and the ease with which it may be enforced are large factors in determining its worth. Commissioner Garfield says: "Federal incorporation is clean-cut in theory, brings the whole control under one head and reduces friction to a minimum. No complex machinery of the government would be required to operate such a law. It could be administered by the bureau of corporations and adjudicated by the present system of courts. The form and internal management prescribed for corporations could be definitely stated in all charters, which would be issued only upon satisfactory evidence that all the requirements of the federal law had been complied with. No corporations objectionable in form would be brought into existence. The government would have to deal only with its own corporate creatures. This would greatly simplify the work of administration. Federal incorporation would strike at the very root of corporate evils by regulating the creation of corporations and prescribing the conditions of continued existence."

It would be distinctly superior to the present system under which the federal government attempts to correct evils. In the power to revoke charters through judicial proceedings, the plan of federal incorporation offers simple and effective means for its enforcement. No corporation will so persistently violate the law as to risk losing its charter. Federal incorporation is simple and easy to administer.

Neither plan can be free from a dual system of regulation; but while the charter plan minimizes those difficulties, the other plan increases them. For one government to try to regulate commerce while 46 different states undertake to regulate the corporations that carry on that commerce, will eventually result in failure.

In proof of our contention that the present system of corporate control is inherently inadequate we have shown that it has given rise to flagrant and positive evils in the manner of promotion, structure and management of the great corporations. That the states cannot remedy these evils for the following reasons: First, the rivalry between the states to secure charter fees, and the local prejudices, lack of responsibility and diverse political interests of the states preclude the hope of uniformity from 46 independent legislatures. Second, the power of a state to exclude the local activities of a corporation affords no real protection because it turns away desirable industry, and because the exclusion of this local desirable industry does not free the state from the unsound industrial situation, caused by the evils of corporate life.

We have shown that under the present system the federal government cannot remedy these evils because it has no voice in determining the man-

ner of promotion, structure or internal management of the corporations, and that is where the evils are to be found.

And finally, we have shown that an efficient and practical remedy for these evils may be effected through federal incorporation. That the present system cannot cure these evils but that they may be cured through the proposed plan. That it is just to all concerned. That it is in harmony with our dual form of government, and that it is simple and easy to administer.

THIRD NEGATIVE, MR. MOULTON, CHICAGO.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The affirmative have strong convictions that Congress would pass an excellent incorporation law. They point out that state legislatures have many conflicting interests, that they are easily bribed, etc., but they have unlimited faith in Congress, and believe it is a body which acts always without discord, in perfect harmony. Now, let us see what would probably be the attitude of Congress. We know at once that the solid south, still clinging firmly to the idea of state's rights would be unalterably opposed to the measure. Then these eastern states, which the gentlemen say are greedy for corporation fees, would not, if they are greedy, be inclined to give over all their corporation fees and taxes to the federal government. The conservative Senate, many of whose members are unfortunately allied with corporations would hardly be disposed to pass a restrictive corporation law. Why, the Littlefield bill—far less drastic than the measure which the affirmative propose, was never allowed to be read in the Senate. In the face of these conditions there is little reason to believe that a law such as Congress might pass would be any better than those of the states.

The gentlemen still insist that the local control will remain with the states. We quoted the authority of Mr. Stimson that practically 90 per cent of the business of this country would be taken over by the federal government; and Professor Wilgus, the one great advocate of federal incorporation, admits that it is true. The affirmative hold that this would not include all the corporations that we have enumerated, but only those which do mainly interstate commerce—those *engaged* in interstate commerce, which they say is a matter for the Supreme Court to decide. They say that the Supreme Court has decided what constitutes interstate commerce, but have yet to decide what being *engaged* in interstate commerce means. This is a mere evasion. If interstate commerce means selling or buying goods between states, then it follows that a corporation that buys

or sells between states is engaged in interstate commerce. There is no difficulty about that.

Now, what have they said about correcting the evils of corporations? They have merely enumerated five or six abuses, and made the statement that Congress will put a stop to them. My colleague pointed out that you cannot check the evils of overcapitalization of these corporations now in existence, and that federal incorporation is unnecessary to remedy these other practices. This is a practicable question, and we ask the gentlemen to show us how those evils are to be corrected by federal incorporation.

In our negative case thus far we have shown that this proposition calls for a tremendous change in our industrial and political system—a change so sweeping as unquestionably to bring detrimental results. We have shown in the second place that all corporations should not be included because the great majority need no federal regulation. We have shown in the third place that the measure cannot check the abuses of overcapitalization; that federal incorporation is not necessary to forbid interholding and punish dishonest practices. And, finally, we have pointed out that there is no reason to believe that Congress will pass such a law as the affirmative advocate or a law any better than those of the various states. Upon these four distinct grounds we have based our attack, and contend that for each and every one of these reasons the proposition should fall. By no rules of debate can it be held incumbent upon the negative to contend anything further.

But we should not have done justice to this occasion if we did not accept the opportunity to correct some of the impressions given by the affirmative as to the utter inadequacy of the present system and the futility of proceeding along present lines. They have painted the dual system as hopeless and that conditions are going from bad to worse. This we deny and shall produce the evidence to support our denial. We are frank to admit that many abuses exist. With the phenomenal industrial development of the past 20 years it was inevitable that evils should creep in. Legislation could not keep pace with industry. But we contend that now the tide has turned and government control is proving effective.

First, let us consider the situation in the states. The affirmative has admitted that the corporation laws of many of the states are good, and the summary of legislation given in the New York State Library Bulletin shows that the states are continually revising their corporation laws for the better.

But more pronounced than this has been the development of state commissions. Fourteen different states have advisory corporation commissions with power to examine corporation affairs to see if they are con-

forming to the charter provisions; with power to institute investigations on their own motion, and to make annual reports and suggestions to the various state legislatures. Seventeen other states have mandatory commissions with power to fix rates, charges, etc., of which the Public Service Commission of New York is an example. There has been no other political development of recent years so remarkable as the growth and power of state commissions. That they are effective no one can deny who has read the newspapers of late. No less than fourteen states have passed 2c passenger rates and many have reduced freight rates. There are suits against the Standard Oil company now pending in fourteen states; and twenty-six states have laws restricting monopoly. So much for the activity of the states. Now, what is the federal government doing?

I need only to call to your mind what the Interstate Commerce Commission has done since it has the power to fix railroad rates. Rebates and discrimination have largely disappeared; many freight rates have been lowered by the Commission and a still larger number voluntarily by the roads themselves before the Commission got the chance. An effective pure food law has been passed, the Powder Trust and the Paper Trust have been prosecuted, the Standard Oil Company has been fined $29,000,000, and even now the federal government is prosecuting wild cat mining schemes in Colorado and compelling the Tobacco Trust in New York to render an account for its actions.

The Bureau of Corporations in four years has investigated over 1,500 industrial corporations, and as Roosevelt says, "turned on the light of publicity." Where got the gentlemen their information as to corporate abuses? Government investigations furnished them the facts. What has made this discussion so prevalent throughout the country? Simply this, that state and federal investigations have disclosed the abuses and commanded public attention.

The present line of activity then is clear—more publicity, stricter enforcement of the laws we now have, and new laws as experience directs. It may be contended that publicity in itself is only a partial remedy, but a close analysis of the evils pointed out by the affirmative reveals that overcapitalization, interholding, etc., are not primarily evils in themselves, but the evils have flown from them. It is deception of the public, concealment of profits—secrecy in nearly every case. Publicity is remedying and will continue to remedy these evils which have been done in the dark.

We recognize that everything cannot be done in a day. We have had an industrial evolution and a legislative evolution is needed to meet the new conditions. That legislative evolution is already far advanced. There have been many who fear that it is proceeding too rapidly and are calling for a halt. Be those fears well grounded or not, there is no one

who can deny that great advancement has been made, that a new political era has been ushered in.

Ladies and gentlemen, we commend for your favorable consideration this sane, conservative, American method of reform, rather than the proposition advanced by the affirmative, a proposition which should fall for four reasons: First, because it is so radical that it could never be introduced without unsettling business and producing a panic; second, because it includes hundreds of thousands of corporations needing no federal regulation whatsoever, also diverting thereby the attention of the federal government from these really great national problems, which it is now solving; third, because it will not accomplish what the gentlemen claim for it; it cannot correct the evils of these corporations now in existence, evils for the most part already perpetrated; and finally, because there is no assurance that a law such as Congress would pass would be any better than those of the states. With the negative case complete we submit the question.

The Rebuttal

First Negative, Mr. O'Donnell, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The affirmative began this debate with great innuendos against the present system and millennium promises for national incorporation. They first charged all corporations engaged in interstate commerce with serious evils and power for the committing of evils. The negative refuted this absolutely as to 99 per cent of these corporations and showed that as to the elimination of evils which do exist in certain corporations, there is more probability of quick and effective remedy under the present system than under the system whch the affirmative proposes.

The affirmative have advanced in favor of their measure, that it will give us a uniform law and that under the present system the good laws of some of the states are evaded by some of the corporations. In answer to these arguments I will state the negative position.

We contend that the uniformity which the affirmative laud is not only unnecessary but undesirable. The laws which meet the needs of business in Massachusetts would fail utterly to meet the requirements of business conditions in Arizona. The law which would be just and desirable in Pennsylvania would strangle business in Montana. If a uniform law was best fitted to meet the varied conditions throughout the country we would see more uniformity among the state laws than we do today. The diversity in the state laws shows the response of the states to the diverse business conditions. Where conditions are the same in all the states we find the provisions, which are framed to meet these particular conditions, very much the same. New York might with perfect justice require carriers to capitalize at the cost of duplication, because their traffic is certain, but such a requirement in Idaho would be prohibitive to the railroad business. When the affirmative urge as a decisive reason for federal incorporation that it will bring about uniformity, we reply that if it is to do this it is an added objection to their measure.

The affirmative have conceded that the laws of most of our states are good and they have argued that these laws have been evaded. They urge upon us that the corporations go to the states with the laxest laws and take out their charters, and that because of this one state may enable the corporations to evade the laws of all the other states. This is not true to the extent that the affirmative have contended. But the impression that the affirmative wish to leave by this argument is that under their system

no evasion is possible. This is absolutely unsound. The incorporation law of Congress can be evaded just as easily and by practically the same means as the laws of any particular state are evaded. Suppose the United States Steel company should be compelled to take out a charter under a federal incorporation law strict enough to accomplish the ends the affirmative seek. Part of this company's business is the manufacture of steel, part the selling of the product. A holding corporation could own and regulate all the manufacturing plants and an entirely distinct corporation be organized to ship and sell its products. The latter corporation would be subject to the federal law, but the former would not be since the process of manufacturing is not interstate commerce. There are a number of ways that this could be done. The corporation could sell F. O. B. and buy C. O. D. and thus cease to be engaged in interstate commerce. I do not wish to be understood as advancing against the affirmative measure the argument that it could be evaded, but I do wish you to understand that their measure in this respect stands on no better, if on as good a basis, as the present system.

First Affirmative, Mr. Gilbert, Northwestern.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The negative say that the introduction of a federal charter would cause an industrial revolution, that conditions must change in the twinkling of an eye. The question makes no reference to the time which should be taken to effect the change. No reason has been given why there need be any interruption or cessation of business. The mere transfer of the charter from the state to the federal government would cause no revolution, as is well illustrated by the continual changing of state banks to national banks. But perhaps the negative, when they speak of industrial revolution, have in mind the great change which some corporations would undergo in being transferred from the lax and liberal regulation of the states to the more efficient control of the federal government. If so we should hail the revolution which would bring financial safety and greater industrial prosperity.

The gentlemen fear centralization. We deny that the federal charter would increase centralization. As President Roosevelt puts it, "It is merely looking facts in the face, and recognizing that centralization in business has already come and cannot be avoided or undone." That it means an extension of federal activity, we admit, but it is a necessary and legitimate extension. The negative have quoted Mr. Stimson to the effect that 90 per cent of the civil and property rights would be transferred from

state to federal control, but they have failed to meet the challenge of the affirmative to show wherein a federal charter would cause such a transfer. They quote Prof. Wilgus as supporting the views of Stimson, but Prof. Wilgus in Vol. II. of the Michigan Law Review (p. 393) says that this fear is imaginary.

Every corporation, says the negative, which transacts any interstate commerce would be compelled to take out a federal charter. The courts have, up to the present time, only decided, in specific cases, with all the facts before them, that such and such an act was or was not interstate commerce. The negative are assuming the function of the Supreme Court when they say that every corporation doing an interstate business is *engaged in interstate commerce.* We submit that a more practical view would be that a corporation, a considerable part of whose business is interstate commerce, would be held to be engaged in interstate commerce. Such an interpretation of the question would include but a very few of the smaller corporations.

The federal charter would not, as the negative claim, deprive the states of their revenue. The taxation of property situated within the state would be left to the state as it is at present. This is true in the taxation of the national banks. As for charter fees they are at present mostly received by a few states, which is not, to say the least, ideal taxation. Those charter fees would go to defray the expenses of the government Bureau. However, the federal charter would offer a means of remedying the present chaotic condition of corporate taxation by the states.

The negative tell us that the problem is a new one, and that the states, through the public utilities laws, state commissions and legislative libraries are tending toward a correction of the present evils. True, these show a local awakening to local needs, show an aroused public sentiment, a movement to educate the people—but this does not secure efficient regulation of interstate corporations; it does not vindicate the present system. The negative have failed to show one instance where uniformity of state laws has been secured. We demand something more than libraries, commissions and tendencies.

Congress, we are told, would not be likely to improve the present corporation laws, in providing for the issuing of federal charters. But the gentlemen claim that we now have good federal laws, and they hope for further good federal legislation. Is it not then inconsistent for them to distrust that same body in regard to the passing of a good incorporation law? The practical question, we believe is: Whether the public will concerning a matter which affects the people of all the states, can better be expressed through 46 diverse and independent state legislatures,

or through one central authority, created by, and responsible to all the people.

Second Negative, Mr. Marshall, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The gentleman who has just spoken, as well as his colleagues, have told you that New Jersey, Delaware and West Virginia charter corporations to operate in other states, that the bad laws of a few states can nullify the good laws of all the remaining states, and that it is impossible to secure uniformity of action among 46 against interstate corporations. We contend that every state has adequate power to regulate any foreign corporation doing business within its borders, and that uniformity of action among any number of states is absolutely unnecessary. Take, for example, any corporation chartered in New Jersey, that wants to do business in Illinois. As far as business that crosses the state line is concerned, that is interstate commerce and cannot be interfered with by the state of Illinois; but as regards the transacting of business within the state such as buying, selling, storing, contracting or distributing, that is purely domestic business and the state of Illinois can lay down any terms upon which a foreign corporation desires to come into the state and engage in any of that domestic business. If there is a single corporation chartered by the state of New Jersey, and if it possesses any of the evils of which my opponents have spoken, the state of Illinois can regulate those evils if that corporation wants to do business within the state. If it is overcapitalized, Illinois can put a tax on its capitalization; if it practices interholding, Illinois can prohibit that; if it is secret and dishonest, Illinois can compel publicity. Now, my worthy opponents, you have charged New Jersey with flooding this country with dishonest corporations. Here are the three great evils of which you have spoken. If this is the ground upon which you rest your attack against the negative, if mental weakness is the negative case, then I challenge you to show me a single state that does not have adequate power to regualte any foreign corporation doing business within its borders.

The inconsistency in your case is apparent to all. The first speaker spent one-third of his time showing you how dishonest and corrupt interstate corporations are; then the third speaker told you that a large number of foreign corporations are doing business in this state and that the people of Illinois want them to remain here because they promote industry and carry on 25% of our business. What I would like to know is, are the corporations chartered in New Jersey as bad

as the first speaker said they were or are the people of Illinois as foolish as the third speaker tried to make them appear?

In conclusion let me impress those points upon you. I pointed out to you in my opening speech that this proposition would include hundreds of thousands of corporations that do not need federal control; that it would change our entire political system, do away with the great democratic principle of local self-government and establish a bureaucracy; that it would demoralize our entire financial and industrial institutions; and our opponents have failed to meet these arguments. I showed you that this measure was so impracticable it could never be introduced and when our opponents cited the National Banking system as a precedent, we refuted their contention so completely that the National Banking system has entirely disappeared from this debate. I asked our opponents to show how they could take 500,000 corporations of all sizes and character and examine and recharter them. I put that question to you as business men (well, I'll include the women too) and our opponents have not attempted to answer the argument. And if for no other reason than the mere impracticability of this measure we hold that it should not stand.

Second Affirmative, Mr. Evans, Northwestern.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The negative say that local control will be taken from the states. Nothing of the kind. The federal government will lay down general provisions in the charter and leave all the local control to the states, just as now, as the gentlemen say, Illinois regulates the business of a New Jersey corporation, which that corporation transacts in this state.

The negative have contended that the states are better able to create corporations suited to local needs. If that is the case, how do they account for the fact that 60% of our corporations are chartered in the state of New Jersey? These vital matters pertaining to corporate existence do not need to be changed with the locality. Besides, these are national matters, and should be decided in the interests of the whole country, rather than in the interest of some one state.

The negative claims that an industrial revolution would be brought about by the change from a state to a national charter. That is not the case. It would not be necessary for any sound corporation to be dissolved or even to suspend business for a day. Officers could make application for the federal charter. Matters of structure and management could be changed to meet the new requirements, and after the

date set for the enforcement of the new law, the old corporation changed to meet the new conditions could continue to do business without interruption. The change would be no more drastic than that of the banks, from state to federal charters. When the national incorporation of banks was first instituted, thousands of state banks changed to the national charter from the state charter without interruption or loss of business.

It is true that a state may exclude the local business of a foreign corporation, but a state cannot exclude transportation corporations, nor the interstate commerce business of industrial corporations. So long as two or three states will permit one of the big industrial corporations to do business within their borders, they can carry on their interstate commerce over the whole country regardless of the state law. We would call your attention to the fact that local industry of a corporation may be very desirable, while there are evils in the form and management of the corporation. Excluding this local business does not protect a state from the unsound industrial conditions caused by corporate evils. If a state excludes the local business of a foreign corporation, that local business is merely transferred to another state and the corporate evils are not cured. The state loses the desirable industry, while the evils remain. States are inviting business and not excluding it.

We object to a system that would cripple business in the attempt to cure corporate evils. It would be better for the national government to create corporations of such a form and management that no state would desire to exclude them.

We would call your attention to the fact that the negative plan of securing concerted action of all the states on matters of national importance, by means of the conference and convention method, was given a thorough trial under the articles of confederation and failed absolutely. Both the negative and the affirmative agree that this is a matter of national importance. The character of a great corporation affects not only the people of the chartering state, but likewise all people living within the influence of the business world.

It is contrary to our principles of government that one state which has no control over the interstate commerce of a corporation, and controls but a small part of its local business should create the corporation. It is in harmony with our dual form of government that the federal government, which controls all the interstate business of a corporation and which represents all the states wherein that corporation does local business, should create the corporation. Why should the determination of a national matter be parceled out among the states? Why should Congress control this national matter in that

way any more than it would control other national matters through state action? Congress is the only place in this country where a national sentiment can be formed and crystallized into a law. Therefore, we contend that this matter of national concern should be controlled by Congress.

Third Negative, Mr. Moulton, Chicago.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

My immediate predecessor has just contended that local control will remain with the states; that Congress will outline only general features in the charter and leave all the rest to the states. And to prove this he says that Illinois regulates all new Jersey corporations doing business in this state, conceding thereby the fundamental contention of this debate,—that any state can protect itself against a bad corporation from another state. The gentlemen have given up their objection to the present system. We hardly hoped for so frank an admission.

They state, furthermore, that it is not incumbent upon them to show what Congress will do. They contend that all they have to do is to show that the measure is practicable, and now I submit that they have not advanced one single point which is a practical suggestion. They have merely enumerated the evils of the present system, and said that Congress would check them. If this is a practical suggestion, we ask the gentlemen to give us some practicable suggestions.

They have spent considerable time repeating that New Jersey charters 60% of all the corporations of the country, and collects revenue therefrom which belongs to other states. According to Mr. Frost, who has compiled the corporation laws of all the states, New Jersey has the highest tax rate for corporations of any state in the union except one. Yet statistics furnished by Professor Rigley of Harvard show that New Jersey collects annually only one and one half millions, whereas New York receives almost five millions—three times as much. Even Massachusetts with its excellent corporation law, collects almost as much as New Jersey, and Pennsylvania is not far behind. In the face of these facts the statement that New Jersey regulates and controls three-fourths of all the corporations of the country, does not hold.

There have been several points since the beginning of this debate which the affirmative have studiously avoided or failed absolutely to answer. We ask the gentlemen to show us what are the evils in these local corporations—these saw-mills, these creameries, these factories, that demand federal regulation; we ask them to show us that local con-

trol has failed; that democracy has failed and that bureaucracy is the only remaining alternative. We ask the gentlemen to show us how they propose to correct the abuses of overcapitalization of these corporations now in existence; how federal incorporation is to check rebates and discrimination, etc. We ask them to justify this tremendous change, rendering industry unstable. These points they have failed to answer and now in the fairness of debate, I lay this burden upon the last speaker of the affirmative—to meet us upon these grounds.

Bringing this affirmative case down to its finality—what are its salient points—its impregnable arguments? You know that every case is supposed to have some impregnable arguments. These two it seems to me they have deemed irrefutable: (1) the measure would give us a uniform law; (2) it would prevent the few states from nullifying the good laws of all the rest. Has the negative answered these propositions? We believe we have. We have shown that a uniform law for a country of such vast diversity as ours is undesirable. Every variety of industrial conditions prevails, and a law suitable to manufacturing in New England would not meet the requirements of our agricultural and western states.

As to their second great argument we have shown that New Jersey and those few states with the lax laws are not regulating the business of the entire country or even 60% of it. We have shown, furthermore, that every state can protect itself against foreign corporations, and the gentlemen have admitted that Illinois can regulate the business of a New Jersey corporation done in this state.

Those were the issues of this debate and we believe we have answered those arguments. The negative then have shown that the proposition of the affirmative is impracticable, inexpedient and unnecessary.

Third Affirmative, Mr. Arnold, Northwestern.

Mr. Chairman, Honorable Judges, Ladies and Gentlemen—

The last negative speaker has attempted by innuendo to leave the impression that we have failed to show that federal incorporation would correct the abuses of the present system. As the affirmative have repeatedly said, this plan would prevent the abuses by controlling the internal management and organization of interstate corporations. Our opponents complain that we have not been specific enough in reference to bad laws passed by the states. In 1906 New Jersey passed a law for the creation of railroads to transact business only outside of that state.

While this would be unconstitutional in a number of states, yet it shows that a few states with lax laws have a corner on the chartering of corporations.

They tell us that we cannot impeach the laws of all the states, since but a few have loose incorporation laws; and yet the laxest of those states is New Jersey, and with an area less than Cook County and a population less than Chicago, that state charters 60% of the corporations, proving that the large corporations flock to these lax states and will so long as one has inefficient laws.

The negative have told you that federal incorporation would be revolutionary. We have demanded of them to show what property or local rights would necessarily be taken to the federal government under our system that would not under the plan they advocate, and you have surely observed their silence upon that question. It is not a question whether or not Congress will pass a federal incorporation law, as our opponents desire you to think; that is not what we are here to discuss. It is not whether Congress will pass such a law, but it is a question whether such a plan enacted by Congress would not be more expedient than the present system.

The affirmative have repeatedly asked the negative, since they support the present system, to show how either the states or the federal government can remedy the present evils in interstate corporations, and this they have stubbornly evaded.

Now let us review the affirmative argument in its entirety. At the very beginning of this debate, we submitted as a basis for our argument this proposition: That the present method of controlling corporations engaged in interstate commerce is inherently inadequate and presents no hope for future relief. To support this, we established that the present system is absolutely incapable; that the weaknesses are inherent; that it has fostered positive evils; that there can be no hope for future relief under the present system, since the national Constitution prohibits the state from touching the internal management and organization of interstate corporations; and the federal government cannot reach the defects without killing the business and paralyzing industry; that there is now a positive motive inducing inefficient laws. We conclude with what progressive statesmen, President Roosevelt, Secretary Garfield, and Mr. Bryan have long recognized: that a change from the present control of interstate corporations has been made necessary by the unparalleled centralization of modern industry; that methods of colonial days have been vitiated by growing conditions of the 20th century.

Our second fundamental proposition was that federal incorporation would be a positive and practical remedy and unattended by evils

of a serious consequence. To establish this we demonstrated that federal incorporation would be easily administered; that it would make possible the correction of the present abuses; that it would be just to all; and in harmony with our dual system of government. Remember under the present control we have 46 jurisdictions frequently acting in opposition to one another. Federal incorporation would provide one uniform jurisdiction. The present system is rendered impotent because of restrictions of the national Constitution. Federal incorporation would be efficient because it would be co-extensive with the thing to be controlled,—the National government would both create and control. Complexity, uncertainty and chaos; simplicity, certainty and order—which shall it be? Shall we control a national power with a local, limited authority; or with a national force, adequate in power, co-extensive with the thing to be controlled? The affirmative favor recognizing the industrial progress and centralization of the past thirty-five years and conforming to it with adequate control, instead of trying to bend down conditions of the 20th century to fit a plan established in the 18th century. Upon these grounds the affirmative rests its case convinced that it would be more expedient that "all corporations engaged in interstate commerce should be required to take out a federal charter on such provisions as Congress may by law prescribe."

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