“The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.”

Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581, 8 S.Ct. 631

Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411, 412 S., 37 S.Ct. 609; St.

Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469, 43 S.Ct. 178

U.S. Supreme Court

ASHWANDER v. TENNESSEE VALLEY AUTHORITY, 297 U.S. 288 (1936)

297 U.S. 288
ASHWANDER et al.
v.
TENNESSEE VALLEY AUTHORITY et al. (two cases).
Nos. 403, 404.
Argued and Submitted Dec. 19, 20, 1935.
Decided Feb. 17, 1936.

* Rehearing denied 297 U.S. 728, 56 S.Ct. 588. Mandate of Supreme Court conformed to 14 F.Supp. 11.
[Ashwander v. Tennessee Valley Authority 297 U.S. 288 (1936)]

[297 U.S. 288, 291] Messrs. Forney Johnston, of Birmingham, Ala., and James M. Beck, of Washington, D.C., for petitioners.

[297 U.S. 288, 307] Messrs. John Lord O'Brian and Stanley F. Reed, Sol. Gen., both of Washington, D.C., for respondent Tennessee Valley Authority.

[297 U.S. 288, 314] Mr. W. H. Mitchell, f Florence, Ala., for respondent City of Florence, Ala.

Messrs. Thomas W. Martin, Perry W. Turner, and William Logan Martin, all of Birmingham, Ala., for respondent Alabama Power Co.

Messrs. Courtland Palmer, of New York City, and John T. Stokely, of Birmingham, Ala., for respondent Chemical Bank & Trust Co. [297 U.S. 288, 315]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

On January 4, 1934, the Tennessee Valley Authority, an agency of the federal government,1 entered into a contract with the Alabama Power Company, providing (1) for the purchase by the Authority from the Power Company of certain transmission lines, substations, and auxiliary properties for $1,000,000; (2) for the purchase by the Authority from the Power Company of certain real property for $150,000; (3) for an interchange of hydroelectric energy, and, in addition, for the sale by the Authority to the Power Company of its 'surplus power,' on stated terms; and (4) for mutual restrictions as to the areas to be served in the sale of power. The contract was amended and supplemented in minor particulars on February 13 and May 24, 1934.2

The Alabama Power Company is a corporation organized under the laws of Alabama, and is engaged in the generation of electric energy and its distribution generally throughout that state; its lines reaching 66 counties. The transmission lines to be purchased by the Authority extend from Wilson Dam, at the Muscle Shoals plant owned by the United States on the Tennessee river in [297 U.S. 288, 316] northern Alabama, into seven counties in that state, within a radius of about 50 miles. These lines serve a population of approximately 190,000, including about 10,000 individual customers, or about one-tenth of the total number served directly by the Power Company. The real property to be acquired by the Authority (apart

from the transmission lines above mentioned and related properties) is adjacent to the area known as the 'Joe Wheeler dam site,' upon which the Authority is constructing the Wheeler Dam.

The contract of January 4, 1934, also provided for co-operation between the Alabama Power Company and the Electric Home & Farm Authority, Inc., a subsidiary of the Tennessee Valley Authority, to promote the sale of electrical appliances, and to that end the Power Company, on May 21, 1934, entered into an agency contract with the Electric Home & Farm Authority, Inc. It is not necessary to detail or discuss the proceedings in relation to that transaction, as it is understood that the latter corporation has been dissolved.

There was a further agreement on August 9, 1934, by which the Alabama Power Company gave an option to the Tennessee Valley Authority to acquire urban distribution systems which had been retained by the Power Company in municipalities within the area served by the transmission lines above mentioned. It appears that this option has not been exercised and that the agreement has been terminated.

Plaintiffs are holders of preferred stock of the Alabama Power Company. Conceiving the contract with the Tennessee Valley Authority to be injurious to the corporate interests and also invalid, because beyond the constitutional power of the federal government, they submitted their protest to the board of directors of the Power Company and demanded that steps should be taken to have the contract annulled. The board refused, and the [297 U.S. 288, 317] Commonwealth & Southern Corporation, the holder of all the common stock of the Power Company, declined to call a meeting of the stockholders to take action. As the protest was unavailing, plaintiffs brought this suit to have the invalidity of the contract determined and its performance enjoined. Going beyond that particular challenge, and setting forth the pronouncements, policies, and programs of the Authority, plaintiffs sought a decree restraining these activities as repugnant to the Constitution, and also asked a general declaratory decree with respect to the rights of the Authority in various relations.

The defendants, including the Authority and its directors, the Power Company and its mortgage trustee, and the municipalities within the described area, filed answers, and the case was heard upon evidence. The District Court made elaborate findings and entered a final decree annulling the contract of January 4, 1934, and enjoining the transfer of the transmission lines and auxiliary properties. 9 F.Supp. 965. The court also enjoined the defendant municipalities from making or performing any contracts with the Authority for the purchase of power and from accepting or expending any funds received from the Authority or the Public Works Administration for the purpose of constructing a public distribution system to distribute power which the Authority supplied. The court gave no consideration to plaintiffs' request for a general declaratory decree.

The Authority, its directors, and the city of Florence appealed from the decree and the case was severed as to the other defendants. Plaintiffs took a cross-appeal.

The Circuit Court of Appeals limited its discussion to the precise issue with respect to the effect and validity of the contract of January 4, 1934. The District Court had found that the electric energy required for the territory served by the transmission lines to be purchased [297 U.S. 288, 318] under that contract is available at Wilson Dam without the necessity for any interconnection with any other dam or power plant. The Circuit Court of Appeals accordingly considered the constitutional authority for the construction of Wilson Dam and for the disposition of the electric energy there created. In the view that the Wilson Dam had been constructed in the exercise of the war and commerce powers of the Congress and that the electric energy there available was the property of the United States and subject to its disposition, the Circuit Court of Appeals decided that the decree of the District Court was erroneous and should be reversed. The court also held that plaintiffs should take nothing by their cross-appeal. 78 F.(2d) 578. On plaintiffs' application we granted writs of certiorari. 296 U.S. 562 , 56 S.Ct. 145.

First. The Right of Plaintiffs to Bring this Suit. Plaintiffs sue in the right of the Alabama Power Company. They sought unsuccessfully to have that right asserted by the Power Company itself, and, upon showing their demand and its refusal, they complied with the applicable rule. 3 While their stock holdings are small, they have a real interest, and there is no question that the suit was brought in good faith. 4 If otherwise entitled, they should not be denied the relief which would be accorded to one who owned more shares.

Plaintiffs did not simply challenge the contract of January 4, 1934, as improvidently made-as an unwise exercise of the discretion vested in the board of directors. They challenged the contract both as injurious to the [297 U.S. 288, 319] interests of the interests of the corporation and as an illegal transaction-violating the fundamental law. In seeking to prevent the carrying out of the contract, the suit was directed, not only against the Power Company, but against the Authority and its directors upon the ground that the latter, under color of the statute, were acting beyond the powers which the Congress could validly confer. In such a case it is not necessary for stockholders-when their corporation refuses to take suitable measures for its protection-to show that the managing board or trustees have acted with fraudulent intent or under legal duress. To entitle the complainants to equitable relief, in the absence of an adequate legal remedy, it is enough for them to show the breach of trust or duty involved in the injurious and illegal action. Nor is it necessary to show that the transaction was ultra vires the corporation. The illegality may be found in the lack of lawful authority on the part of those with whom the corporation is attempting to deal. Thus, the breach of duty may consist in yielding, without appropriate resistance, to governmental demands which are without warrant of law or are in violation of constitutional restrictions. The right of stockholders to seek equitable relief has been recognized when the managing board or trustees of the corporation have refused to take legal measures to resist the collection of taxes or other exactions alleged to be unconstitutional (Dodge v. Woolsey, 18 How. 331, 339, 340, 345; Pollock v. Farmers' Loan & Trust Company, 157 U.S. 429, 433 , 553 S., 554, 15 S.Ct. 673; Brushaber v. Union Pacific R. Co., 240 U.S. 1, 10 , 36 S.Ct. 236, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713); or because of the failure to assert the rights and franchises of the corporation against an unwarranted interference through legislative or administrative action (Greenwood v. Union Freight R. Co., 105 U.S. 13, 15 , 16 S.; Cotting v. Kansas City Stock Yards Co., 183 U.S. 79, 114 , 22 S.Ct. 30). The remedy has been accorded to stockholders of public service corporations with respect to rates alleged to be con- [297 U.S. 288, 320] fiscatory. Smyth v. Ames, 169 U.S. 466, 469 , 517 S., 18 S.Ct. 418; Ex parte Young, 209 U.S. 123, 129 , 130 S., 143, 28 S.Ct. 441, 13 L.R.A.(N.S.) 932, 14 Ann.Cas. 764. The fact that the directors in the exercise of their judgment, either because they were disinclined to undertake a burdensome litigation or for other reasons which they regarded as substantial, resolved to comply with the legislative or administrative demands, has not been deemed an adequate ground for denying to the stockholders an opportunity to contest the validity of the governmental requirements to which the directors were submitting. See Dodge v. Woolsey, supra, 18 How. 331, at pages 340, 345; Greenwood v. Union Freight R. Co., supra, 105 U.S. 13 , at page 15; Pollock v. Farmers' Loan & Trust Company, supra, 157 U.S. 429 , at pages 433, 553, 554, 15 S.Ct. 673; Brushaber v. Union Pacific R. Co., supra, 240 U.S. 1 , at page 10, 36 S.Ct. 236, L.R.A. 1917D, 414, Ann.Cas. 1917B, 713.

In Smith v. Kansas City Title & Trust Company, 255 U.S. 180 , 41 S.Ct. 243, a shareholder of the Title Company sought to enjoin the directors from investing its funds in the bonds of federal land banks and joint-stock land banks upon the ground that the act of Congress authorizing the creation of these banks and the issue of bonds was unconstitutional, and hence that the bonds were not legal securities in which the corporate funds could lawfully be invested. The proposed investment was not large-only $10,000 in each of the classes of bonds described. Id., 255 U.S. 180 , at pages 195, 196, 41 S.Ct. 243. And it appeared that the directors of the Title Company maintained that the Federal Farm Loan Act (see 12 U.S.C.A. 641 et seq.) was constitutional and that the bonds were 'valid and desirable investments.' Id., 255 U.S. 180 , at page 201, 41 S.Ct. 243, 45. But neither the conceded fact as to the judgment of the directors nor the small amount to be invested-shown by the averments of the complaint- availed to defeat the jurisdiction of the court to decide the question as to the validity of the act and of the bonds which it authorized. The Court held that the validity of the act was directly drawn in question and that the shareholder was entitled to maintain the suit. The Court said: 'The general allegations as to the interest of the [297 U.S. 288, 321] shareholder, and his right to have an injunction to prevent the purchase of the alleged unconstitutional securities by misapplication of the funds of the corporation, gives jurisdiction under the principles settled in Pollock v. Farmers' Loan & Trust Co. and Brushaber v. Union Pacific R.R. Co., supra.' Id., 255 U.S. 180 , at pages 201, 202, 41 S.Ct. 243, 246. The Court then proceeded to examine the constitutional question and sustained the legislation under attack. A similar result was reached in Brushaber v. Union Pacific R. Co., supra. A close examination of these decisions leads inevitably to the conclusion that they should either be followed or be frankly overruled. We think that they should be followed, and that the opportunity to resort to equity, in the absence of an adequate legal remedy, in order

to prevent illegal transactions by those in control of corporate properties, should not be curtailed because of reluctance to decide constitutional questions.

We find no distinctions which would justify us in refusing to entertain the present controversy. It is urged that plaintiffs hold preferred shares, and that, for the present purpose, they are virtually in the position of bondholders. The rights of bondholders, in case of injury to their interests through unconstitutional demands upon, or transactions with, their corporate debtor, are not before us. Compare Reagan v. Farmers' Loan & Trust Co., 154 U.S. 362, 367 , 368 S., 14 S.Ct. 1047. Plaintiffs are not creditors but shareholders (with equal voting power share for share with the common stockholders, according to the findings), and thus they have a proprietary interest in the corporate enterprise which is subject to injury through breaches of trust or duty on the part of the directors who are not less the representatives of the plaintiffs because their shares have certain preferences. See Ball v. Rutland R. Co. (C.C.) 93 F. 513, 514, 515. It may be, as in this case, that the owner of all the common stock has participated in the transaction in question, and the owners of preferred [297 U.S. 288, 322] stock may be the only persons having a proprietary interest in the corporation who are in a position to protect its interests against what is asserted to be an illegal disposition of its property. 5 A court of equity should not shut its door against them.

It is said that here, instead of parting with money, as in the case of illegal or unconstitutional taxes or exactions, the Power Company is to receive a substantial consideration under the contract in suit. But the Power Company is to part with transmission lines which supply a large area, and plaintiffs allege that the consideration is inadequate and that the transaction entails a disruption of services and a loss of business and franchises. If, as plaintiffs contend, those purporting to act as a governmental agency had no constitutional authority to make the agreement, its execution would leave the Power Company with doubtful remedy, either against the governmental agency which might not be able, or against the government which might not be willing, to respond to a demand for the restoration of conditions as they now exist. In what circumstances and with what result such an effort at restoration might be made is unpredictable. If, as was decided in Smith v. Kansas City Title & Trust Company, supra, stockholders had the right to sue to test the validity of a proposed investment in the bonds of land banks, we can see no reason for denying to these p aintiffs a similar resort to equity in order to challenge, on the ground of unconstitutionality, a contract involving such a dislocation and misapplication of corporate property as are charged in the instant case.

The government urges that the Power Company is estopped to question the validity of the act creating the Tennessee Valley Authority, and hence that the stockholders, suing in the right of the corporation, cannot [297 U.S. 288, 323] maintain this suit. It is said that the Power Company, in 1925, installed its own transformers and connections at Wilson Dam, and has ever since purchased large quantities of electric energy there generated, and that the Power Company continued its purchases after the passage of the act of 1933 constituting the Authority. The principle is invoked that one who accepts the benefit of a statute cannot be heard to question its constitutionality. Great Falls Manufacturing Co. v. Attorney General, 124 U.S. 581 , 8 S.Ct. 631; Wall v. Parrot Silver & Copper Co., 244 U.S. 407 , 37 S.Ct. 609; St. Louis, etc., Co., v. George C. Prendergast Const. Co., 260 U.S. 469 , 43 S.Ct. 178. We think that the principle is not applicable here. The prior purchase of power in the circumstances disclosed may have a bearing upon the question before us, but it is by no means controlling. The contract in suit manifestly has a broader range, and we find nothing in the earlier transactions which preclude the contention that this contract goes beyond the constitutional power of the Authority. Reference is also made to a proceeding instituted by the Power Company to obtain the approval of the contract by the Alabama Public Service Commission and to the delay in the bringing of this suit. It was brought on October 8, 1934, following plaintiffs' demand upon the board of directors in the preceding August. Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities. We see no reason for concluding that the delay or the proceeding before the Commission caused any prejudice to either the Power Company or the Authority, so far as the subject-matter of the contract between them is concerned, or that there is any basis for the claim of estoppel.

We think that plaintiffs have made a sufficient showing to entitle them to bring suit and that a constitutional question is property presented and should be decided. [the court is telling you that the time is ripe for telling you and the people that post Ag. Admin. Assistance Act of 1933 and The Social Security Act of 1935 that the people subject to benefits no longer have access to the constitution or a law remedy] [297 U.S. 288, 324] Second. The Scope of the Issue. We agree with the Circuit Court of Appeals that the

question to be determined is limited to the validity of the contract of January 4, 1934. The pronouncements, policies, and program of the Tennessee Valley Authority and its directors, their motives and desires, did not give rise to a justiciable controversy save as they had fruition in action of a definite and concrete character constituting an actual or threatened interference with the rights of the persons complaining. The judicial power does not extend to the determination of abstract questions. Muskrat v. United States, 219 U.S. 346, 361 , 31 S.Ct. 250; Liberty Warehouse Company v. Grannis, 273 U.S. 70, 74 , 47 S.Ct. 282; Willing v. Chicago Auditorium Ass'n, 277 U.S. 274, 289 , 48 S.Ct. 507; Nashville, Chattanooga & St. Louis R. Co. v. Wallace, 288 U.S. 249, 262 , 264 S., 53 S.Ct. 345, 87 A.L. R. 1191. It was for this reason that the Court dismissed the bill of the state of New Jersey which sought to obtain a judicial declaration that in certain features the Federal Water Power Act6 exceeded the authority of the Congress and encroached upon that of the state. New Jersey v. Sargent, 269 U.S. 328 , 46 S.Ct. 122. For the same reason, the state of New York, in her suit against the state of Illinois, failed in her effort to obtain a decision of abstract questions as to the possible effect of the diversion of water from Lake Michigan upon hypothetical water power developments in the indefinite future. New York v. Illinois, 274 U S. 488, 47 S.Ct. 661. At the last term the Court held, in dismissing the bill of the United States against the state of West Virginia, that general allegations that the state challenged the claim of the United States that the rivers in question were navigable, and asserted a right superior to that of the United States to license their use for power production, raised an issue 'too vague and ill-defined to admit of judicial determination.' United States v. State of West Virginia, 295 U.S. 463, 474 , 55 S.Ct. 789. Claims based merely upon 'assumed potential invasions' [297 U.S. 288, 325] of rights are not enough to warrant judicial intervention. Arizona v. California, 283 U.S. 423, 462 , 51 S.Ct. 522

The Act of June 14, 1934,7 providing for declaratory judgments, does not attempt to change the essential requisites for the exercise of judicial power. By its terms, it applies to 'cases of actual controversy,' a phrase which must be taken to connote a controversy of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts. See Nashville, Chattanooga & St. Louis R. Co. v. Wallace, supra. While plaintiffs, as stockholders, might insist that the board of directors should take appropriate legal measures to extricate the corporation from particular transactions and agreements alleged to be invalid, plaintiffs had no right to demand that the directors should start a litigation to obtain a general declaration of the unconstitutionality of the Tennessee Valley Authority Act in all its bearings or a decision of abstract questions as to the right of the Authority and of the Alabama Power Company in possible contingencies.

Examining the present record, we find no ground for a demand by plaintiffs except as it related to the contracts [Remember this: Contracts, Contracts, Contracts….ALL law moves by Contract and all crimes since 1939 have been commercial crimes.] between the authority and the Alabama Power Company. And as the contract of May 21, 1934, with the Electric Home & Farm Authority, Inc., and that of August 9, 1934, for an option to the Authority to acquire urban distribution systems, are understood to be inoperative (56 S.Ct. 469), the only remaining questions that plaintiffs are entitled to raise concern the contract of January 4, 1934, providing for the purchase of transmission lines and the disposition of power.

There is a further limitation upon our inquiry. As it appears that the transmission lines in question run from the Wilson Dam and that the electric energy generated at that dam is more than sufficient to supply all the re- [297 U.S. 288, 326] quirements of the contract, the questions that are properly before us relate to the constitutional authority for the construction of the Wilson Dam and for the disposition, as provided in the contract, of the electric energy there generated.

Third. The Constitutional Authority for the Construction of the Wilson Dam. The Congress may not, 'under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government.' Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, 423; Linder v. United States, 268 U.S. 5, 15 , 17 S., 45 S. Ct. 446, 39 A.L.R. 229. The government's argument recognizes this essential limitation. The government's contention is that the Wilson Dam was constructed, and the power plant connected with it was installed, in the exercise by the Congress of its war and commerce powers (Const. art. 1, 8, cls. 3, 11); that is, for the purposes of national defense and the improvement of navigation.

Wilson Dam is described as a concrete monolith one hundred feet high and almost a mile long, containing two locks for navigation and eight installed generators. Construction was begun in 1917 and completed in

1926. Authority for its construction is found in section 124 of the National Defense Act of June 3, 1916.8 It authorized the President to cause an investigation to be made in order to determine 'the best, cheapest, and most available means for the production of nitrates and other products for munitions of war'; to designate for the exclusive use of the United States 'such site or sites, upon any navigable or non-navigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this Act (section)'; and 'to construct, maintain, and operate' on any such site 'dams, locks, improvements to navigation, power houses, and other plants and equipment or other [297 U.S. 288, 327] means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.' The President was authorized to lease or acquire by condemnation or otherwise such lands as might be necessary, and there was further provision that 'the products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.' Id.

We may take judicial notice of the international situation at the time the act of 1916 was passed, and it cannot be successfully disputed that the Wilson Dam and its auxiliary plants, including the hydroelectric power plant, are, and were intended to be, adapted to the purposes of national defense. 9 While the District Court found that there is no intention to use the nitrate plants or the hydroelectric units installed at Wilson Dam for the production [297 U.S. 288, 328] of war materials in time of peace, 'the maintenance of said properties in operating condition and the assurance of an abundant supply of electric energy in the event of war, constitute national defense assets.' This finding has ample support.

The act of 1916 also had in view 'improvements to navigation.' Commerce includes navigation. 'All America understands, and has uniformly understood,' said Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 190, 'the word 'commerce,' to comprehend navigation.' The power to regulate interstate commerce embraces the power to keep the navigable rivers of the United States free from obstructions to navigation and to remove such obstructions when they exist. 'For these purposes,' said the Court in Gilman v. Philadelphia, 3 Wall. 713, 725, 'Congress possesses all the powers which existed in the States before the adoption of the national Constitution, and which have always existed in the Parliament in England.' See, also, Philadelphia Company v. Stimson, 223 U.S. 605, 634 , 32 S.Ct. 340.

The Tennessee river is a navigable stream, although there are obstructions at various points because of shoals, reefs, and rapids. The improvement of navigation on this river has been a matter of national concern for over a century. Recommendation that provision be made for [297 U.S. 288, 329] navigation around Muscle Shoals was made by the Secretary of War, John C. Calhoun, in his report transmitted to the Congress by President Monroe in 1824,10 and, from 1852, the Congress has repeatedly authorized projects to develop navigation on that and other portions of the river, both by open channel improvements and by canalization. 11 The Wilson Dam project, adopted in 1918, gave a nine-foot slack water development, for fifteen miles above Florence, over the Muscle Shoals rapids, and, as the District Court found, 'flooded out the them existing canal and locks which were inadequate.' The District Court also found that a 'high dam of this type was the only feasible means of eliminating this most serious obstruction to navigation.' By the act of 1930, after a protracted study by the Corps of Engineers of the United States Army, the Congress adopted a project for a permanent improvement of the main stream 'for a navigable depth of nine feet.' 12

While, in its present condition, the Tennessee river is not adequately improved for commercial navigation, and traffic is small, we are not at liberty to conclude either that the river is not susceptible of development as an important waterway, or that Congress has not undertaken [297 U.S. 288, 330] that development, or that the construction of the Wilson Dam was not an appropriate means to accomplish a legitimate end.

The Wilson Dam and its power plant must be taken to have been constructed in the exercise of the constitutional functions of the federal government.

Fourth. The Constitutional Authority to Dispose of Electric Energy Generated at the Wilson Dam. The government acquired full title to the dam site, with all riparian rights. The power of falling water was an inevitable incident of the construction of the dam. That water power came into the exclusive control of the federal government. The mechanical energy was convertible into electric energy, and the water power, the right to convert it into electric energy, and the electric energy thus produced constitute property

belonging to the United States. See Green Bay & M. Canal Company v. Patten Paper Company, 172 U.S. 58, 80 , 19 S.Ct. 97, 101; United States v. Chandler-Dunbar Water Power Company, 229 U.S. 53, 72 , 73 S., 33 S.Ct. 667; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 170 , 52 S.Ct. 548.

Authority to dispose of property constitutionally acquired by the United States is expressly granted to the Congress by section 3 of article 4 of the Constitution. This section provides:

'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.'

To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable. And the Ninth Amendment (which petitioners also invoke), in insuring the maintenance of the rights retained by the people, does not withdraw the rights which are expressly granted to the [297 U.S. 288, 331] federal government. The question is as to the scope of the grant and whether there are inherent limitations which render invalid the disposition of property with which we are now concerned.

The occasion for the grant was the obvious necessity of making provision for the government of the vast territory acquired by the United States. The power to govern and to dispose of that territory was deemed to be indispensable to the purposes of the cessions made by the States. And yet it was a matter of grave concern because of the fear that 'the sale and disposal' might become 'a source of such immense revenue to the national government as to make it independent of and formidable to the people.' Story on the Constitution, 1325, 1326. The grant was made in broad terms, and the power of regulation and disposition was not confined to territory, but extended to 'other property belonging to the United States,' so that the power may be applied, as Story says, 'to the due regulation of all other personal and real property rightfully belonging to the United States.' And so, he adds, 'it has been constantly understood and acted upon.' Id.

This power of disposal was early construed to embrace leases, thus enabling the government to derive profit through royalties. The question arose with respect to a government lease of lead mines on public lands, under the Act of March 3, 1807 (2 Stat. 448). The contention was advanced that 'disposal is not letting or leasing'; that Congress had no power 'to give or authorize leases' and 'to obtain profits from the working of the mines.' The Court overruled the contention, saying: 'The disposal must be left to the discretion of Congress. And there can be no apprehensions of any encroachments upon State rights, by the creation of a numerous tenantry within their borders, as has been so strenuously urged in the argument.' United States v. Gratiot, 14 Pet. 526, 533, 538. The policy, early [297 U.S. 288, 332] adopted and steadily pursued, of segregating mineral lands from other public lands and providing for leases, pointed to the recognition both of the full power of disposal and of the necessity of suitably adapting the methods of disposal to different sorts of property. The policy received particular emphasis following the discovery of gold in California in 1848. 13 For example, an act of 1866, dealing with grants to Nevada, declared that 'in all cases lands valuable for mines of gold, silver, quicksilver, or copper shall be reserved from sale.' 14 And Congress from the outset adopted a similar practice in reserving salt springs. Morton v. Nebraska, 21 Wall. 660, 667; Montello Salt Company v. Utah, 221 U.S. 452 , 31 S.Ct. 706, Ann.Cas.1912D, 633. It was in the light of this historic policy that the Court held that the school grant to Utah by the Enabling Act of 189415 was not intended to embrace land known to be valuable for coal. United States v. Sweet, 245 U.S. 563, 572 , 38 S.Ct. 193. See, also, as to the reservation and leases of oil lands, Pan American Petroleum & Transport Co. v. United States, 273 U.S. 456, 487 , 47 S.Ct. 416.

But, when Congress thus reserved mineral lands for special disposal, can it be doubted that Congress could have provided for mining directly by its own agents, instead of giving that right to lessees on the payment of royalties? 16 Upon what ground could it be said that the government could not mine its own gold, silver, coal, lead, or phosphates in the public domain and dispose of them as property belonging to the United States? That it could dis- [297 U.S. 288, 333] pose of its land but not of what the land contained? It would seem to be clear that under the same power of disposition which enabled the government to lease and obtain profit from sales by its lessees it could mine and obtain profit from its own sales.

The question is whether a more limited power of disposal should be applied to the water power, convertible into electric energy, and to the electric energy thus produced at the Wilson Dam constructed

by the government in the exercise of its constitutional functions. If so, it must be by reason either of (1) the nature of the particular property or (2) the character of the 'surplus' disposed of, or (3) the manner of disposition.

(1) That the water power and the electric energy generated at the dam are susceptible of disposition as property belonging to the United States is well established. In the case of Green Bay & M. Canal Company v. Patten Paper Company, supra, the question was 'whether the water power incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox river' was 'subject to control and appropriation by the United States, owning and operating those public works, or by the state of Wisconsin, within whose limits Fox river lies.' Id., 172 U.S. 58 , at pages 68, 69, 19 S.Ct. 97, 101. It appeared that, under the authority of the Congress, the United States had acquired, by purchase from a Canal Company, title to its improvement works, lands and water powers, on the Fox river, and that the United States had consented to the retention by the Canal Company of the water powers with appurtenances. We held that the 'substantial meaning of the transaction was that the United States granted to the Canal Company the right to continue in the possession and enjoyment of the water powers and the lots appurtenant thereto, subject to the rights and control of the United States as owning and operating the public works'; and that the method by which the arrangement was [297 U.S. 288, 334] effected was 'as efficacious as if the entire property had been conveyed to the United States by one deed, and the reserved properties had been reconveyed to the Canal Company by another.' Id., 172 U.S. 58 , at page 80, 19 S.Ct. 97, 105. We thought it clear that the Canal Company was 'possessed of whatever rights to the use of this incidental water power that could be validly granted by the United States.' Id., 172 U.S. 58 , at page 69, 19 S.Ct. 97, 101. And in this view it was decided that, so far as the 'water powers and appurtenant lots are regarded as property,' the title of the Canal Company could not be controverted, and that it was 'equally plain that the mode and extent of the use and enjoyment of such property by the Canal Company' fell within the sole control of the United States. See Kaukauna Water-Power Company v. Green Bay & M. Canal Company, 142 U.S. 254 , 12 S.Ct. 173, 178; Green Bay & M. Canal Company v. Patten Paper Company, 173 U.S. 179 , 19 S.Ct. 316.

In United States v. Chandler-Dunbar Water Power Company, 229 U.S. 53 , 33 S.Ct. 667, the United States had condemned land in Michigan, lying between the St. Marys river and the ship canal strip of the government, in order to improve navigation. The riparian owner, under revocable permits from the Secretary of War, had placed in the rapids 'the necessary dams, dykes, and forebays for the purpose of controlling the current and using its power for commercial purposes.' Id., 229 U.S. 53 , at page 68, 33 S.Ct. 667, 674. The Act of March 3, 1909,17 authorizing the improvement, had revoked the permit. We said that the government 'had dominion over the water power of the rapids and falls' and could not be required to pay 'any hypothetical additional value to a riparian owner who had no right to appropriate the current to his own commercial use.' Id., 229 U.S. 53 , at page 76, 33 S.Ct. 667, 677. The act of 1909 also authorized the Secretary of War to lease 'any excess of water power which results from the conservation of the flow of the river, and the works which the government may con- [297 U.S. 288, 335] struct.' 'If the primary purpose is legitimate,' said the Court, 'we can see no sound objection to leasing any excess of power over the needs of the government. The practice is not unusual in respect to similar public works constructed by state governments.' Id., 229 U.S. 53 , at page 73, 33 S.Ct. 667, 676. Reference was made to the case of Kaukauna Water-Power Company v. Green Bay & M. Canal Company, supra, where the Court had observed in relation to a Wisconsin statute of 1848, which had reserved to the state the water power created by the dam over the Fox river: 'As there is no need of the surplus running to waste, there was nothing objectionable in permitting the state to let out the use of it to private parties, and thus reimburse itself for the expenses of the improvement.' In International Paper Company v. United States, 282 U.S. 399 , 51 S.Ct. 176, the government made a war-time requisition of electrical power, and was held bound to make compensation to a lessee who thereby had lost the use of the water to which he was entitled. The Court brushed aside attempted 'distinctions between the taking of power and the taking of water rights,' saying that the government intended 'to take and did take the use of all the water power' and had exercised its power of eminent domain to that end. Id., 282 U.S. 399 , at pages 407, 408, 51 S.Ct. 176, 177.

(2) The argument is stressed that, assuming that electric energy generated at the dam belongs to the United States, the Congress has authority to dispose of this energy only to the extent that it is a surplus necessarily created in the course of making munitions of war or operating the works for navigation

purposes; that is, that the remainder of the available energy must be lost or go to waste. We find nothing in the Constitution which imposes such a limitation. It is not to be deduced from the mere fact that the electric energy is only potentially available until the generators are operated. The government has no less right to the energy thus available by letting the water course over its turbines than it has [297 U.S. 288, 336] to use the appropriate processes to reduce to possession other property within its control, as, for example, oil which it may recover from a pool beneath its lands, and which is reduced to possession by boring oil wells and otherwise might escape its grasp. See Ohio Oil Company v. Indiana, 177 U.S. 190, 208 , 20 S.Ct. 576. And it would hardly be contended that, when the government reserves coal on its lands, it can mine the coal and dispose of it only for the purpose of heating public buildings or for other governmental operations. Or, if the government owns a silver mine, that it can obtain the silver only for the purpose of storage or coinage. Or that, when the government extracts the oil it has reserved, it has no constitutional power to sell it. Our decisions recognize no such restriction. United States v. Gratiot, supra; Kansas v. Colorado, 206 U.S. 46, 88 , 89 S., 27 S.Ct. 655; Light v. United States, 220 U.S. 523, 536 , 537 S., 31 S.Ct. 485; Ruddy v. Rossi, 248 U.S. 104, 106 , 39 S.Ct. 46, 8 A.L.R. 843. The United States owns the coal, or the silver, or the lead, or the oil, it obtains from its lands, and it lies in the discretion of the Congress, acting in the public interest, to determine of how much of the property it shall dispose.

We think that the same principle is applicable to electric energy. The argument pressed upon us leads to absurd consequences in the denial, despite the broad terms of the constitutional provision, of a power of disposal which the public interest may imperatively require. Suppose, for example, that in the erection of a dam for the improvement of navigation, it became necessary to destroy a dam and power plant which had previously been erected by a private corporation engaged in the generation and distribution of energy which supplied the needs of neighboring communities and business enterprises. Would any one say that, because the United States had built its own dam and plant in the exercise of its constitutional functions, and had complete ownership and dominion over both, no power could be supplied to the communities and enterprises dependent on it, not because of [297 U.S. 288, 337] any unwillingness of the Congress to supply it, or of any overriding governmental need, but because there was no constitutional authority to furnish the supply? Or that, with abundant power available, which must otherwise be wasted, the supply to the communities and enterprises whose very life may be at stake must be limited to the slender amount of surplus unavoidably involved in the operation of the navigation works, because the Constitution does not permit any more energy to be generated and distributed? In the case of the Green Bay & M. Canal Company, above cited, where the government works supplanted those of the Canal Company, the Court found no difficulty in sustaining the government's authority to grant to the Canal Company the water powers which it had previously enjoyed, subject, of course, to the dominant control of the government. And in the case of United States v. Chandler-Dunbar Water Power Company, supra, the statutory provision (35 Stat. 822, 12) to which the Court referred was 'that any excess of water in the St. Marys River at Sault Sainte Marie over and above the amount now or hereafter required for the uses of navigation shall be leased for power purposes by the Secretary of War upon such terms and conditions as shall be best calculated in his judgment to insure the development thereof.' It was to the leasing, under this provision, of 'any excess of power over the needs of the government,' that the Court saw no valid objection. Id., 229 U.S. 53 , at page 73, 33 S. Ct. 667, 676.

The decisions which petitioners cite give no support to their contention. Pollard v. Hagan, 3 How. 212, Shively v. Bowlby, 152 U.S. 1 , 14 S.Ct. 548, and Port of Seattle v. Oregon & Washington Railway Co., 255 U.S. 56 , 41 S.Ct. 237, dealt with the title of the States to tidelands and the soil under navigable waters within their borders. See Borax Consolidated v. Los Angeles, 296 U.S. 10, 15 , 56 S.Ct. 23. Those cases did not concern the dominant authority of the federal government in the interest of navigation to erect dams and avail itself of the incidental water power. We emphasized the dominant character of that authority in the case of [297 U.S. 288, 338] the Green Bay & M. Canal Company v. Patten Paper Co., supra, 172 U.S. 58 , at page 80, 19 S.Ct. 97, 105, by this statement: 'At what points in the dam and canal the water for power may be withdrawn, and the quantity which can be treated as surplus with due regard to navigation, must be determined by the authority which owns and c ntrols that navigation. In such matters there can be no divided empire.' The case of Wisconsin v. Illinois, 278 U.S. 367 , 49 S.Ct. 163, related to the diversion by the state of Illinois of water from Lake Michigan through the drainage canal at Chicago, and the questions now before us with respect to the disposition of surplus energy created at a dam erected by the federal government in the performance of its constitutional functions were in no way involved.

(3) We come then to the question as to the validity of the method which has been adopted in disposing of the surplus energy generated at the Wilson Dam. The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. See Kansas v. Colorado, supra. In this instance, the method of disposal embraces the sale of surplus energy by the Tennessee Valley Authority to the Alabama Power Company, the interchange of energy between the Authority and the Power Company, and the purchase by the Authority from the Power Company of certain transmission lines.

As to the mere sale of surplus energy, nothing need be added to what we have said as to the constitutional authority to dispose. The government could lease or sell and fix the terms. Sales of surplus energy to the Power Company by the Authority continued a practice begun by the government several years before. The contemplated [297 U.S. 288, 339] interchange of energy is a form of disposition, and presents no questions which are essentially different from those that are pertinent to sales.

The transmission lines which the Authority undertakes to purchase from the Power Company lead from the Wilson Dam to a large area within about fifty miles of the dam. These lines provide the means of distributing the electric energy, generated at the dam, to a large population. They furnish a method of reaching a market. The alternative method is to sell the surplus energy at the dam, and the market there appears to be limited to one purchaser, the Alabama Power Company, and its affiliated interests. We know of no constitutional ground upon which the federal government can be denied the right to seek a wider market. We suppose that in the early days of mining in the West, if the government had undertaken to operate a silver mine on its domain, it could have acquired the mules or horses and equipment to carry its silver to market. And the transmission lines for electric energy are but a facility for conveying to market that particular sort of property, and the acquisition of these lines raises no different constitutional question, unless in some way there is an invasion of the rights reserved to the state or to the people. We find no basis for concluding that the limited undertaking with the Alabama Power Company amounts to such an invasion. Certainly, the Alabama Power Company has no constitutional right to insist that it shall be the sole purchaser of the energy generated at the Wilson Dam; that the energy shall be sold to it or go to waste.

We limit our decision to the case before us, as we have defined it. The argument is earnestly presented that the government by virtue of its ownership of the dam and power plant could not establish a steel mill and make and sell steel products, or a factory to manufacture clothing or shoes for the public, and thus attempt to make its [297 U.S. 288, 340] ownership of energy, generated at its dam, a means of carrying on competitive commercial enterprises, and thus drawing to the federal government the conduct and management of business having no relation to the purposes for which the federal government was established. The picture is eloquently dr wn, but we deem it to be irrelevant to the issue here. The government is not using the water power at the Wilson Dam to establish any industry or business. It is not using the energy generated at the dam to manufacture commodities of any sort for the public. The government is disposing of the energy itself which simply is the mechanical energy, incidental to falling water at the dam, converted into the electric energy which is susceptible of transmission. The question here is simply as to the acquisition of the transmission lines as a facility for the disposal of that energy. And the government rightly conceded at the bar, in substance, that it was without constitutional authority to acquire or dispose of such energy except as it comes into being in the operation of works constructed in the exercise of some power delegated to the United States. As we have said, these transmission lines lead directly from the dam, which has been lawfully constructed, and the question of the constitutional right of the government to acquire or operate local or urban distribution systems is not involved. We express no opinion as to the validity of such an effort, as to the status of any other dam or power development in the Tennessee Valley, whether connected with or apart from the Wilson Dam, or as to the validity of the Tennessee Valley Authority Act or of the claims made in the pronouncements and program of the Authority apart from the questions we have discussed in relation to the particular provisions of the contract of January 4, 1934, affecting the Alabama Power Company.

The decree of the Circuit Court of Appeals is affirmed.

Affirmed. [297 U.S. 288, 341]

Mr. Justice BRANDEIS (concurring).

'Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.' Blair v. United States, 250 U.S. 273, 279 , 39 S. Ct. 468, 470.

I do not disagree with the conclusion on the constitutional question announced by the CHIEF JUSTICE; but, in my opinion, the judgment of the Circuit Court of Appeals should be affirmed without passing upon it. The government has insisted throughout the litigation that the plaintiffs have no standing to challenge the validity of the legislation. This objection to the maintenance of the suit is not overcome by presenting the claim in the form of a bill in equity and complying with formal prerequisites required by Equity Rule 27 (28 U.S.C.A. following section 723). The obstacle is not procedural. It inheres in the substantive law, in well- settled rules of equity, and in the practice in cases involving the constitutionality of legislation. [Is the petitioner a law giver people, or a contracted person who must submit to the law? Always, always, always: status, standing, and capacity.] Upon the findings made by the District Court, it should have dismissed the bill.

From these it appears: The Alabama Power Company, a corporation of that state with transmission lines located there, has outstanding large issues of bonds, preferred stock, and common stock. Its officers agreed, with the approval of the board of directors, to sell to the Tennessee Valley Authority a part of these lines and incidental property. The management thought that the transaction was in the interest of the company. It acted in the exercise of its business judgment with the utmost good faith. 1 [297 U.S. 288, 342] There was no showing of fraud, oppression, or gross negligence. There was no showing of legal duress. There was no showing that the management believed that to sell to the Tennessee Valley Authority was in excess of the company's corporate powers, or that it was illegal because entered into for a forbidden purpose.

Nor is there any basis in law for the assertion that the contract was ultra vires the company. Under the law of Alabama, a public utility corporation may ordinarily sell a part of its transmission lines and incidental property to another such corporation if the approval of the Public Service Commission is obtained. The contract provided for securing such approval. Moreover, before the motion to dissolve the restraining order was denied, and before the hearing on the merits was concluded, the Legislature, by Act No. 1, approved January 24, 1935 (Gen.Acts Ala.1935, p. 1) and effective immediately, provided that a utility of the state may sell all or any of its property to the Tennessee Valley Authority without the approval of the Public Service Commission or of any other state agency.

First. The substantive law. The plaintiffs who object own about 1/340 of the preferred stock. They claimed at the hearing to represent about 1/9 of the preferred stock; that is, less than 1/45 in amount of all the securities outstanding. Their rights are not enlarged because the Tennessee Valley Authority entered into the transaction pursuant to [297 U.S. 288, 343] an act of Congress. The fact that the bill calls for an enquiry into the legality of the transaction does not overcome the obstacle that ordinarily stockholders have no standing to interfere with the management. Mere belief that corporate action, taken or contemplated, is illegal gives the stockholder no greater right to interfere than is possessed by any other citizen. Stockholders are not guardians of the public. The function of guarding the public against acts deemed illegal rests with the public officials.

Within recognized limits, stockholders may invoke the judicial remedy to enjoin acts of the management which threaten their property interest [allodial title to land and improvements; which is not title company equity use rental of land by paying taxes to a county tax collector] . But they cannot secure the aid of a court to correct what appear to them to be mistakes of judgment on the part of the officers. [These Comments are mine, Lewis, family of Mohr: Contracts, Contracts, Contracts!!! Always remember the applications you voluntarily submit are binding contracts and they are totally voluntary. Now, “this state” “THE STATE OF TEXAS” is defined in the Texas Penal Code at Article 1.04(d) as being “the land, water, and ***air*** above “the state of Texas,” { note that the king of the air is Satan } however, according to the Texas Secretary of State, “THE STATE OF TEXAS” is not known in law because it is a private religious charitable welfare trust not registered with the Secretary of State of Texas and it is a subsidiary of the

"UNITED STATES OF AMERICA" welfare trust operated by British Esquires priests of a religious cult headquartered in the middle temple Bar of the Temple of the Knights templar inside the ancient walled "City" of London inside London, and defined at Title 28 USC 3002 (15) which "means" a corporation, which is a private welfare trust functioning as the de facto government. Therefore, because you are a holder of a social security number, a.k.a. "ward of this STATE", and a registered voter, a.k.a. "stockholder", you all have given up your privileges and immunities and the right of redress and remedy in a court of law such as a constitutional county court of record, Texas Constitution Article 5, Section 15, and you all requested benefits and protection, i.e.: ssn and your 911 residence address for fire and pirate protection, from the charitable welfare trust officers and commercial agents and policy and custom enforcement officers, a.k.a.: POLICE (policy and custom enforcement agents). Now do you understand why the judges and District Attorneys are immune from prosecution for anything that they do? You cannot bring in a law remedy for any violations your elected officers, managers, and guardians commit while they are giving their best effort to provide for the common welfare of the socialist wards. You all agreed by membership in the charitable trust (ssn and voter registration card) that you would abide by all of the statute, i.e.: corporate regulations, see Webster's unabridged, of the trust even when the Texas Constitution expresses in Art. 1. Sec 29 that "the people are excepted from the powers of the government" because you cannot get to an Art 1, Sec 29 law remedy after having voluntarily contracted for benefits from the trust and asked the officers of the trust to protect you and provide a safety net for you such as free public schools, police protection, ssi, and unemployment compensation. Of course all this lacks full disclosure and the trust officers have a presumption that you understand what you did because in violation of Title 12, USC Sec 411 and 412 you have escaped out of a national bank with federal reserve notes in your pocket thereby becoming a debt transmittal unit in commerce who is presumed to know the law. Heck of a deal isn't it? Just remember, all holders of a social security number and a voter registration card have the same status as an emancipated slave protected by the 14th amendment, {see also clause 4 of the 14th amendment which is really where is expressed the authority for compelling all wards to pay income tax}, and believe me when I tell you, you can never be a land owning sovereign enjoying the privilege of a law remedy when you encumber yourself with the Social Security and Voter Registration contracts and buy fictional property descriptions having a 911 address on purchase paper closed at a title company owned by a British Esquire.] Courts may not interfere with the management of the corporation, unless there is bad faith, disregard of the relative rights of its members, or other action seriously threatening their property rights. This rule applies whether the mistake is due to error of fact or of law, or merely to bad business judgment. It applies, among other things, where the mistake alleged is the refusal to assert a seemingly clear cause of action, or the compromise of it. United Copper Securities Co. v. Amalgamated Copper Co., 244 U.S. 261, 263, 264 S., 37 S.Ct. 509. If a stockholder could compel the officers to enforce every legal right, courts, instead of chosen officers, would be the arbiters of the corporation's fate. [Now you know why the judges and D-A's are very swift to point out to you that the constitution and rules allegedly enforcing the law upon the judges and esquire officers of the court DO NOT APPLY TO THEM, see above immunity from mistakes of fact or law. You contracted away your right to object to the management of the trust by the administrators, managers, and guardians.]

In Hawes v. Oakland, 104 U.S. 450 , 462, a common stockholder sought to enjoin the Contra Costa Water-Works Company from permitting the city of Oakland to take without compensation water in excess of that to which it was legally entitled. This Court, in affirming dismissal of the bill, said: 'It may be the exercise of the highest wisdom, to let the City use the water in the manner complained of. The directors are better able to act [297 U.S. 288, 344] understandingly on this subject than a stockholder residing in New York. The great body of the stockholders residing in Oakland or other places in California, may take this view of it and be content to abide by the action of their directors. If this be so, is a bitter litigation with the City to be conducted by one stockholder for the Corporation and all other stockholders, because the amount of his dividends is diminished '

In Corbus v. Alaska Treadwell Gold Mining Co., 187 U.S. 455, 463 , 23 S.Ct. 157, 160, a suit by the common stockholder to enjoin payment of an Alaska license tax alleged to be illegal, the Court said: 'The directors represent all the stockholders, and are presumed to act honestly and according to their best judgment for the interests of all. Their judgment as to any matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its

best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs.' 2 [This is why the wards are provided the administrative remedy contained in Title 42 USC sec 1988, 1987, 1985, 1983. and why 99 per cent of all complaints are dismissed immediately. Only the most abhorrent crimes committed against the wards are reviewed for adjustment of the public policy. But taking your rented fictional property description and giving it to a shopping center developer for increasing the tax revenues for the good of the other socialist residents in the welfare trust is perfectly all right because you are only paying rent taxes on the equity use of the surface of the property and you do not and are not able to own the allodial title to the land. Remember that the definition of socialism is "from each according to his ability to give and to each according to his need", Does the Kelo v. New London case seem a little more clear to you now?]

Second. The equity practice. Even where property rights of stockholders are alleged to be violated by the management, stockholders seeking an injunction must [297 U.S. 288, 345] bear the burden of showing danger of irreparable injury, as do others who seek that equitable relief. In the case at bar the burden of making such proof was a peculiarly heavy one. The plaintiffs, being preferred stockholders, have but a limited interest in the enterprise, resembling, in this respect, that of a bondholder in contradistinction to that of a common stockholder. Acts may be innocuous to the preferred which conceivably might injure common stockholders. There was no finding that the property interests of the plaintiffs were imperiled by the transaction in question; and the record is barren of evidence on which any such finding could have been made.

Third. The practice in constitutional cases. The fact that it would be convenient for the parties and the public to have promptly decided whether the legislation assailed is valid, cannot justify a departure from these settled rules of corporate law and established principles of equity practice. On the contrary, the fact that such is the nature of the enquiry proposed should deepen the reluctance of courts to entertain the stockholder's suit. 'It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility.' 1 Cooley, Constitutional Limitations (8th Ed.), p. 332.

The Court has frequently called attention to the 'great gravity and delicacy' of its function in passing upon the validity of an act of Congress;3 and has restricted exercise of this function by rigid insistence that the jurisdiction of federal courts is limited to actual cases and controversies; and that they have no power to give advisory [297 U.S. 288, 346] opinions. 4 On this ground it has in recent years ordered the dismissal of several suits challenging the constitutionality of important acts of Congress. In Texas v. Interstate Commerce Commission, 258 U.S. 158, 162, 42 S.Ct. 261, the validity of titles 3 and 4 of the Transportation Act of 1920 (41 Stat. 456). In New Jersey v. Sargent, 269 U.S. 328, 46 S.Ct. 122, the validity of parts of the Federal Water Power Act (41 Stat. 1063). In Arizona v. California, 283 U.S. 423, 51 S.Ct. 522, the validity of the Boulder Canyon Project Act (43 U.S.C.A. 617 et seq.). Compare United States v. West Virginia, 295 U.S. 46 , 55 S.Ct. 789, involving the Federal Water Power Act and Liberty Warehouse Co. v. Grannis, 273 U.S. 70 , 47 S.Ct. 282, where this Court affirmed the dismissal of a suit to test the validity of a Kentucky statute concerning the sale of tobacco; also, Massachusetts State Grange v. Benton, 272 U.S. 525 , 47 S.Ct. 189.

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

1. The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. [Are not family squabbles with your fellow wards, even with your big brother, the policy and custom enforcer, actually friendly suits that can be decided administratively?] It never was the thought that, by means of a friendly suit, a party

beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.' Chicago & Grand Trunk Ry. Co. v. Wellman, 143 U.S. 339, 345 , 12 S.Ct. 400, 402. Compare Lord v. Veazie, 8 How. 251; Atherton Mills v. Johnston, 259 U.S. 13, 15 , 42 S.Ct. 422. [Remember that all Acts and Statute published by the Secretary of State of Texas begin on one of the first few Title pages of the volume with the announcement: "In the Name of THE STATE OF TEXAS by the Authority of the State of Texas." You voluntarily removed yourself from "the State of Texas" and you have no right to ask "the State of Texas" to change anything with which you do not agree that is within the welfare trust known as "this state" "THE STATE OF TEXAS." It is like volunteering to be a resident of the nut house in Wichita Falls, Texas and then demanding from the chief administrator of the nut house that you want to change the rules to which you have agreed to abide. You cannot. You agreed to abide by the rules. Your driver license, another contract to voluntarily comply with the commercial operators rules, is issued by "this state" THE STATE OF TEXAS welfare trust because all the other socialist have a right to know that you meet minimum standards of competency. So, you want to exceed the posted speed limit and get caught, then pay the ***TAX*** and do not whine about it.]

2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' [297 U.S. 288, 347] Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, 113 U.S. 33, 39 , 5 S.Ct. 352, 355;5 Abrams v. Van Schaick, 293 U.S. 188 , 55 S.Ct. 135; Wilshire Oil Co. v. United States, 295 U.S. 100 , 55 S.Ct. 673. 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' Burton v. United States, 196 U.S. 283, 295 , 25 S. Ct. 243, 245.

3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' Liverpool, N.Y. & Phila. Steamship Co. v. Emigration Commissioners, supra. Compare Hammond v. Schappi Bus Line, Inc., 275 U.S. 164 , 169-172, 48 S.Ct. 66.

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Siler v. Louisville & Nashville R. Co., 213 U.S. 175, 191 , 29 S.Ct. 451; Light v. United States, 220 U.S. 523, 538 , 31 S.Ct. 485. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground. Berea College v. Kentucky, 211 U.S. 45, 53 , 29 S.Ct. 33.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. 6 Tyler v. Judges, etc., 179 U. [297 U.S. 288, 348] S. 405, 21 S.Ct. 206; Hendrick v. Maryland, 235 U.S. 610, 621 , 35 S.Ct. 140. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. [the Agriculture Administration Assistance Act of 1933, which was the actual beginning of communist NAZIsm in this country, and the Social Security Act of 1935 both express within the Acts that when one voluntarily subjects himself to benefits, i.e.: completes the application, he is deemed a employee of the government. An employee cannot complain about his manager or guardian.] Columbus & Greenville Ry. Co. v. Miller, 283 U.S. 96, 99 , 100 S., 51 S.Ct. 392. In Fairchild v. Hughes, 258 U.S. 126 , 42 S.Ct. 274, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In Massachusetts v. Mellon, 262 U.S. 447 , 43 S.Ct. 597, the challenge of the federal Maternity Act was not entertained although made by the commonwealth on behalf of all its citizens.

6**. <u>The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits</u>. 7 <u>Great Falls Mfg. Co. v. Attorney General, 124 U.S. 581 , 8 S.Ct. 631; Wall v. Parrot Silver & Copper Co., 244 U.S. 407, 411 , 412 S., 37 S.Ct. 609; St. Louis Malleable Casting Co. v. Prendergast Construction Co., 260 U.S. 469 , 43 S.Ct. 178.</u> [There you have it: Expressed in the most plain terms possible. If you voluntarily apply for a social security number, you will be deemed an employee of the government and a ward of the charitable socialist welfare trust administered by British Esquire priests of a satanic religious cult and you voluntarily give up your right to a law remedy as well as all of your God-given privileges and immunities and**

voluntarily accept the "rights" of the public policy of the charitable socialist welfare trust guaranteed to an emancipated slave and a United States person through the 14th amendment, and as a voluntary member of the 14th amendment socialist welfare trust and subject to benefits, through clause 4 of the 14th amendment, you must pay whatever tax the administrator guardians send to you.]

7. 'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'[i.e.: is the claimant a voluntary member of the trust known as The United States? Yes? Then the claim is frivolous and the petition is 12b6'ed into the crapper.] Crowell v. Benson, 285 U.S. 22, 62, 52 S.Ct. 285, 296.8 [297 U.S. 288, 349] Fourth. I am aware that, on several occasions, this Court passed upon important constitutional questions which were presented in stockholders' suits bearing a superficial resemblance to that now before us. But in none of those cases was the question presented under circumstances similar to those at bar. [post Ag Admin Assistance Act of 1933 and Social Security Act of 1935 which plunged the country into voluntary communism. Real cool how the British Esquires use weasel words to never give up the truth.] In none, were the plaintiffs preferred stockholders. In some, the Court dealt largely with questions of federal jurisdiction and collusion. In most, the propriety of considering the constitutional question was not challenged by any party. In most, the statute challenged imposed a burden upon the corporation and penalties for fail re to discharge it; whereas the Tennessee Valley Authority Act (16 U.S.C.A. 831 et seq.) imposed no obligation upon the Alabama Power Company, and under the contract it received a valuable consideration. Among other things, the Authority agreed not to sell outside the area covered by the contract, and thus preserved the corporation against possible serious competition. The effect of this agreement was equivalent to a compromise of a doubtful cause of action. Certainly, the alleged invalidity of the Tennessee Valley Authority Act was not a matter so clear as to make compromise illegitimate. These circumstances present features differentiating the case at bar from all the cases in which stockholders have been held entitled to have this Court pass upon the constitutionality of a statute which the directors had refused to challenge. The cases commonly cited are these: 9

Dodge v. Woolsey, 18 How. 331, 341-346, was a suit brought by a common stockholder to enjoin a breach of trust by the directors which, if submitted to, would seriously injure the plaintiff. The Court crew clearly the distinction between 'an error of judgment' and a breach [297 U.S. 288, 350] of duty; declared that it could not interfere if there was only an error of judgment; held that on the facts the threatened action of the directors would be a breach of trust; and pointed to the serious injury necessarily resulting therefrom to the plaintiff. 10 …

This is the finest case about explaining what out grandfathers and fathers volunteered us for in 1933 and 1935, and of course, they did not have any full disclosure either. The social security number is the key to unlocking the chains that bind us inside the Matrix. Do not ever think that the British Esquires are absent the Acts of Congress and the statutory case opinion for making all that they do completely legal. The only unethical thing that they do is that they do not disclose to us that they are not required to follow statute and the Texas Rules of Civil Procedure and the Texas Code of Criminal Procedure, with the most obvious violations being the violations of TRCP Rules 15, 93, 99, 114, and 176 and TCCrP Articles 1.23 and 1,27 requiring all writs and process to issue in the name of "the State of Texas." A cursory examination of all paper issued by any branch of the de facto government will indicate that everything is issued in the name of the charitable welfare trust known as "this state" "THE STATE OF TEXAS" in the CIA administered federal territory "TX". The use of deceptively similar names is prohibited by the Texas Administrative Code 79.33 through 79.54 and the rule of the public policy is that absent an objection grants approval to the use of the prohibited venue and name. A man is what he allows himself to be. In the case of a voluntary

applicant for a social security number, a man reduces himself to the status of a ward of this STATE and enjoys the same public policy rights and obligations as a 14th amendment emancipated slave who is not a man, but a United States commercial person. What do you want to be: A man or woman who has accrued the privileges and immunities of citizenship in Texas, a sovereign, see **Kemper v State**, 138 S. W. 1025, p 1043, and therefore enjoy the privilege of redress and remedy of trial by jury of sovereign peers; or do you choose to remain an emancipated slave and submit your squabbles to an advisory panel of ignorant wards of this STATE who are welfare socialists members of the social security charitable trust? I was speaking with a girl from Romania the other day who has been here about 4 years and already figured out at her young age of 25 that she has come to a place that operates under a national socialist communist democracy just like she left behind in Romania except for what she term the situation here as "communism with a smile, and I prefer the smile." I found her observation both poignant and very astute for one so young. L -o-

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