


4-1-1937

## Acts of Congress Declared Unconstitutional by the Supreme Court

anon

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### Recommended Citation

anon, State Bar Journal, *Acts of Congress Declared Unconstitutional by the Supreme Court*, 12 Wash. L. Rev. & St. B.J. 165 (1937).  
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as members of bar associations, have been vigorous in their opposition to the suggestion that members of the Federal Courts be hand-picked. The voices in opposition have spoken, necessarily, as individuals and not in behalf of associations. Without detailed knowledge from the members of the Association, the officers have not felt free to be the spokesmen of the Association. The ban is now lifted. Anyone who now speaks can say that, personally and as an officer of the Association, he will do everything in his power to see that the legislation does not become law.

It will be strange if this legislation is accepted. Strange, because to pass this law would run counter to all ideals of proper judicial conduct, counter to our feelings for one hundred and fifty years that we do not believe that Congress is all-powerful, and counter to the feeling that, while we must have government in order to have civilization, still the powers that have not been heretofore granted by the people remain with them until by amendment they choose to change the fundamental law.

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## Acts of Congress Declared Unconstitutional By the Supreme Court

With the spotlight of public attention centered upon the Supreme Court controversy, it is of interest to the bar to be apprised of the number and nature of the decisions of the Court declaring Acts of Congress unconstitutional. The following list has therefore been compiled, with the cooperation of the West Publishing Company. The list includes decisions down to the end of the year 1936.

1803

*Marbury v. Madison*, 1 Cranch, 137.

Declared unconstitutional provisions of Act Sept. 24, 1789, as attempting to give to the Supreme Court original jurisdiction in other cases than those prescribed in the Constitution.

1857

*Dred Scott v. Sandford*, 19 How. 393.

Declared unconstitutional the "Missouri Compromise", Act March 6, 1820, on the ground that an act which prohibited a citizen from owning certain property in territory north of a certain line and granted the right to others was not warranted by the Constitution.

1865

*Gordon v. United States*, 2 Wall. 561.

Declared unconstitutional provisions of Act March 3, 1863, granting appeals from the Court of Claims to the Supreme Court.

1867

*Ex parte Garland*, 4 Wall. 333.

Declared unconstitutional provisions of Act Jan. 24, 1865, prescribing a test oath that the opponent had never voluntarily borne arms against the United States as a qualification for admission to practice before the Supreme Court; the reason being that such act was a bill of attainder.

1868

*Reichert v. Felps*, 6 Wall. 160.

Declared unconstitutional provisions of Act Feb. 20, 1812, authorizing a board of revision to pass on titles already confirmed by other agents of the government.

1869

*The Alicia v. United States*, 7 Wall 571.

Declared unconstitutional provisions of Act June 30, 1864, purporting to give jurisdiction to the Su-

preme Court of prize cases appealed from the District to the Circuit Court by a prior act, and not disposed of by the Circuit Courts.

1870

*Hepburn v. Griswold*, 8 Wall. 603.

Declared unconstitutional the Legal Tender Acts of 1862-63, in so far as they made United States notes a legal tender in payment of debts contracted before the passage of the act.

1870

*United States v. De Witt*, 9 Wall. 41.

Declared unconstitutional provisions of Act March 2, 1867, which prohibited the sale of petroleum below a certain standard; the court holding that the act was unconstitutional, in that it prohibited trade within the limits of a state.

1870

*Justices of Supreme Court v. United States ex rel. Murray*, 9 Wall. 274.

Declared unconstitutional Act March 3, 1863, providing for the removal of a judgment in a state court in a case tried by a jury to the Circuit Court of the United States for a retrial, as a violation of the Seventh Amendment to the Constitution.

1871

*Buffington v. Day*, 11 Wall. 113.

Declared unconstitutional that portion of the Income Tax Laws of 1864, 1865, 1866, and 1867 which imposed a tax upon the salary of judicial officers of a state.

1872

*United States v. Klein*, 13 Wall. 128.

Declared unconstitutional a provision of the Appropriation Act of 1870 (Act July 12, 1870) which annulled the effect of the President's pardon on one who participated in the Rebellion.

1873

*United States v. Baltimore & O. Ry. Co.*, 17 Wall. 322.

Declared unconstitutional provisions of the Revenue Acts of 1864 and 1866 which laid a tax on interest on bonds issued by the city of Baltimore, on the ground that the federal government had no right to levy tax on the instrumentalities of the state.

1876

*United States v. Reese*, 92 U. S. 214.

Declared unconstitutional provisions of Act May 13, 1870, providing for the punishment of all who

refused to receive and count the votes of citizens having all of the qualifications of voters, because of their race, color, or previous condition of servitude.

1878

*United States v. Fox*, 95 U. S. 670.

Declared unconstitutional provisions of Act May 31, 1870, that one against whom bankruptcy proceedings are commenced, who within three months prior thereto obtained goods with the intent to defraud, shall be punished by imprisonment.

1879

*United States v. Steffens*, 100 U. S. 82 (Trade-Mark Cases).

Declared unconstitutional provisions of Act July 8, 1870, and Act August 14, 1876, relating to trademarks, on the ground that this matter was not delegated to Congress.

1883

*United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601.

Declared unconstitutional provisions of Act April 20, 1861, providing for the punishment of persons conspiring to deprive any other person of the equal protection of the law, on the ground that no warrant can be found in the Constitution for its enactment.

1883

*United States v. Stanley*, 109 U. S. 3, 3 S. Ct. 18.

Declared unconstitutional the first and second sections of Civil Rights Act March 1, 1875, punishing those who denied equal accommodations at inns, theaters, trains, etc., because of previous condition of servitude, as not being authorized by the Thirteenth or Fourteenth Amendments, which only prohibit the states from passing such laws.

1886

*Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524.

Declared unconstitutional provisions of Act June 22, 1874, which authorized a United States court in revenue cases to require the defendant or claimant to produce in court his private books and papers, as being repugnant to the Fourth and Fifth Amendments.

1887

*Baldwin v. Franks*, 120 U. S. 678, 7 S. Ct. 656.

Followed *United States v. Harris*, *supra*.

1888

*Callan v. Wilson*, 127 U. S. 540, 8 S. Ct. 1301.

Declared unconstitutional section 1064, R. S. D. C., in so far as they deny the right to a jury trial to one charged with a criminal offense. This decision established the right to trial by jury in police court cases in the District.

1892

*Counselman v. Hitchcock*, 142 U. S. 547, 12 S. Ct. 195.

Declared unconstitutional Rev. St. § 860, Interstate Commerce Act, as limiting the provisions of the Constitution, which declare that a person shall not be compelled in any criminal case to be a witness against himself.

1893

*Monongahela Navigation Co. v. United States*, 148 U. S. 312, 13 S. Ct. 622.

Declared unconstitutional the provisions of Act Aug. 11, 1888, for stipulating that in estimating the sum to be paid by the United States for a lot and dam, the franchise of the corporation to take tolls shall not be considered or estimated. The court holds that what is just compensation for private property taken for public use is a judicial and not a legislative question.

1895

*Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 15 S. Ct. 673.

Declared unconstitutional the Income Tax Act of 1894 as a direct tax.

1896

*Wong Wing v. United States*, 163 U. S. 228, 16 S. Ct. 977.

Declared unconstitutional that portion of Act May 5, 1892 (Chinese Exclusion Act), which provided that one adjudged to be not lawfully entitled to remain in the United States shall be imprisoned at hard labor and thereafter removed from the United States.

1899

*Kirby v. United States*, 174 U. S. 47, 19 S. Ct. 574.

Declared unconstitutional so much of Act March 3, 1875, as provided that the judgment of conviction against the principal in the crime of embezzlement or larceny of property of the United States shall be evidence, in the prosecution against a receiver thereof, that

the property was embezzled or stolen, on the ground that it was in violation of the Sixth Amendment, providing that an accused shall be confronted with the witnesses against him.

1899

*Jones v. Meehan*, 175 U. S. 1, 20 S. Ct. 1.

Held invalid Joint Resolution of August 4, 1894, purporting to construe Indian Treaty and title to real estate acquired thereunder.

1901

*Fairbank v. United States*, 181 U. S. 283, 21 S. Ct. 648.

Declared unconstitutional the provision of Internal Revenue Act June 13, 1898, providing for stamp tax on foreign bills of lading, on the ground that the tax was in effect a tax on the articles included in the bill of lading, and therefore a tax on exports prohibited by article 1, section 9, of the Constitution.

1903

*James v. Bowman*, 190 U. S. 127, 23 S. Ct. 678.

Declared unconstitutional provisions of Act May 31, 1870, providing for punishment of individuals who, by means of bribery, prevent persons to whom the right of suffrage is granted by the Fifteenth Amendment, from exercising that right, on the ground that the provisions of the amendment apply to abridgments of the right by the United States, or by any state, and not to acts of individuals.

1905

*In re Heff*, 197 U. S. 488, 25 S. Ct. 506.

Declared unconstitutional provisions of Act Jan. 30, 1897, relating to sale of liquor within a state to an Indian to whom an allotment of land had been made and the privileges of citizenship extended, as an improper exercise of the power to regulate commerce "with the Indian tribes."

1905

*Rasmussen v. United States*, 197 U. S. 516, 25 S. Ct. 514.

Declared unconstitutional provisions of Act June 6, 1900, providing that, in trials for misdemeanors in Alaska, six jurors should constitute a legal jury, on the ground that it was repugnant to the Sixth Amendment.

1906

*Hodges v. United States*, 203 U. S. 1, 27 S. Ct. 6.

Declared unconstitutional provision of Act (R. S. §§ 1977, 5508) making it an offense against the United States for private individuals to compel negro citizens, by intimidation and force, to desist from performing their contracts of employment, as beyond the scope of the Thirteenth Amendment.

1908

*Howard v. Illinois Central Railroad Co.*, 207 U. S. 463, 28 S. Ct. 141.

Declared unconstitutional provisions of Employers' Liability Act June 11, 1906, extending its effect to all employes of agencies engaged in interstate commerce, on the ground that it regulated intrastate as well as interstate commerce in such a way that the provisions could not be separated.

1908

*Adair v. United States*, 208 U. S. 161, 28 S. Ct. 277.

Declared unconstitutional provisions of Act June 1, 1898, making it a criminal offense against the United States for an agent or officer of an interstate carrier to discharge an employe because of his membership in a labor organization, as an invasion of the right of personal liberty and of property, as guaranteed by the Fifth Amendment.

1909

*Keller v. United States*, 213 U. S. 138, 29 S. Ct. 470.

Declared unconstitutional provisions of Act Feb. 20, 1907, prescribing criminal punishment for the keeping, maintaining, supporting, or harboring of alien women for the purpose of prostitution, as beyond the powers delegated to Congress by the states.

1909

*United States v. Evans*, 213 U. S. 297, 29 S. Ct. 507.

Declared unconstitutional provisions of District of Columbia Code, § 935, providing that in criminal prosecution the United States or the District shall have the same right of appeal as is given to defendant with the further proviso that, if on appeal error should be found, a verdict in favor of the defendant should not be set aside. The court holds that this presents only a moot question, the decision

of which is not a judicial function. 1911

*Muskrat v. United States*, 219 U. S. 346, 31 S. Ct. 250.

Declared unconstitutional provisions of Act March 1, 1907, attempting to confer jurisdiction upon the Court of Claims, and by appeal upon the Supreme Court, of suits against the United States to be brought by Cherokee Indians to determine the validity of certain acts of Congress.

1911

*Coyle v. Smith*, 221 U. S. 559, 31 S. Ct. 688.

Declared unconstitutional provisions of Act June 16, 1916, admitting Oklahoma to the Union, which provided that the state capital should not be changed from Guthrie prior to 1913, on the ground that, although accepted by an irrevocable ordinance, it ceased to be a valid limitation upon the power of the state after its admission.

1912

*Choate v. Trapp*, 224 U. S. 665, 32 S. Ct. 565.

Held invalid taxation of certain Indian lands under Act of May 27, 1908.

1913

*Butts v. Merchants' & Miners' Transp. Co.*, 230 U. S. 126, 33 S. Ct. 964.

Declared unconstitutional provisions of Civil Rights Act March 1, 1875, denying the validity of their application to only the District of Columbia and places within the jurisdiction of the United States, as the sea, as not within the intent of Congress.

1915

*United States v. Hvoslef*, 237 U. S. 1, 35 S. Ct. 459.

Declared unconstitutional provisions of Revenue Act June 13, 1898, for stamp tax on charter parties for carriage from state ports to foreign ports, as a violation of the Constitution (article 1, § 9), providing that no tax shall be laid on articles exported from any state.

1915

*Thames & Mersey Marine Ins. Co. v. United States*, 237 U. S. 19, 35 S. Ct. 496.

Declared unconstitutional provisions of Revenue Act June 13, 1898, imposing a stamp tax upon policies insuring cargoes against marine risks, as being in substance a tax

upon exports contrary to Const., art. 1, § 9.

1918

*Hammer v. Dagenhart*, 247 U. S. 251, 38 S. Ct. 529.

Declared unconstitutional the first Child Labor Act, Sept. 1, 1916, as an invalid attempt by Congress, acting under its power to regulate commerce, to control to the practical exclusion of the states, all manufacture of articles intended for interstate shipment.

1920

*Eisner v. Macomber*, 252 U. S. 189, 40 S. Ct. 189.

Declared unconstitutional provisions of Revenue Act Sept. 8, 1916, providing that stock dividends shall be considered income; Congress having no power, within the Sixteenth Amendment, to define income, but simply to tax it without regard to apportionment according to the population.

1920

*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 S. Ct. 438.

Declared unconstitutional provisions of Act Oct. 6, 1917, which extended to claimants the rights and remedies under the Workmen's Compensation Law of any state, as authorizing and sanctioning action by the states in prescribing and enforcing rights, obligations, liabilities, and remedies designed to provide compensation for injuries to employes engaged in maritime work, and therefore beyond the power of Congress, which cannot delegate to the states the power given it by Const. art. 3, § 2, to legislate concerning rights and liabilities within the maritime jurisdiction.

1920

*Evans v. Gore*, 253 U. S. 245, 40 S. Ct. 550.

Declared unconstitutional a provision of Act Feb. 24, 1919, so far as it imposes a tax upon the income of judges of the courts of the United States, including their salaries, as a violation of Const. art. 3, § 1, providing that the compensation of judges shall not be diminished during their term of office.

1921

*United States v. L. Cohen Grocery Co.*, 255 U. S. 81, 41 S. Ct. 298.

Declared unconstitutional a pro-

vision of Act Oct. 22, 1919, making it unlawful to make any unjust or unreasonable charge in dealing in necessities, because it fixes no ascertainable standard of guilt, and does not adequately inform those accused of the nature and cause of the accusation against them, as required by the Fifth and Sixth Amendments.

1921

*Weeds, Inc. v. United States*, 255 U. S. 109, 41 S. Ct. 306.

Followed *United States v. Cohen Grocery Co.*, *supra*.

1921

*Newberry v. United States*, 256 U. S. 232, 41 S. Ct. 469.

Declared unconstitutional provisions of Corrupt Practices Act June 25, 1910, so far as it applies to party primaries or conventions.

1922

*United States v. Moreland*, 258 U. S. 433, 42 S. Ct. 368.

Declared unconstitutional a provision of Act March 23, 1906, which permitted punishment for an infamous crime to be imposed after prosecutions instituted by information, and not by indictment, as a violation of the Fifth Amendment.

1922

*Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 42 S. Ct. 449.

Declared unconstitutional provisions of second Child Labor Act, Act Feb. 24, 1919, on the ground that it was manifestly not a tax law, as it purported to be, but was intended to regulate the employment of children, which is a matter reserved to the states under the Tenth Amendment.

1922

*Hill v. Wallace*, 259 U. S. 44, 42 S. Ct. 453.

Declared unconstitutional provisions of the Futures Trading Act August 24, 1921, as beyond the powers conferred upon Congress by the commerce clause of the Constitution.

1923

*Adkins v. Children's Hospital of the District of Columbia*, 261 U. S. 525, 43 S. Ct. 394.

Declared unconstitutional Minimum Wage Act Sept. 19, 1918, as an arbitrary interference with freedom of contract, in violation of the Fifth Amendment.

1923

*Keller v. Potomac Electric Power Co.*, 261 U. S. 428, 43 S. Ct. 445.

Declared a portion of the Public Utility Act for the District of Columbia, Act March 4, 1913, 37 Stat. 974, invalid as conferring legislative or administrative power on Supreme Court.

1923

*Spalding & Bros. v. Edwards*, 262 U. S. 66, 43 S. Ct. 485.

Held tax statute of October 3, 1917, unconstitutional so far as applicable to exports.

1924

*Washington v. W. C. Dawson & Co.*, 264 U. S. 219, 44 S. Ct. 302.

Held unconstitutional Act of June 10, 1922, extending Workmen's Compensation laws of states to injuries in admiralty jurisdiction.

1926

*Truster v. Crooks*, 269 U. S. 475, 46 S. Ct. 165.

Declared the Future Trading Act of Aug. 24, 1921, unconstitutional as imposing a penalty instead of tax.

1926

*Myers v. U. S.*, 272 U. S. 52, 47 S. Ct. 21.

Declared Act July 12, 1876, requiring consent of Senate to removal by President of postmasters of certain classes, invalid under Const. art. 2, under which President has sole power of removal.

1927

*Nichols v. Coolidge*, 274 U. S. 531, 47 S. Ct. 710.

Held invalid a section of State Tax Act of Feb. 14, 1919.

1928

*Untermeyer v. Anderson*, 276 U. S. 440, 48 S. Ct. 353.

Declared Revenue Act June 2, 1924 § 319, in so far as it imposes tax on gift made while act was pending invalid as denying due process of law.

1928

*National Life Ins. Co. v. United States*, 277 U. S. 508, 48 S. Ct. 591.

Held section of Revenue Act of November 23, 1921, unconstitutional in so far as it taxed state and municipal bonds.

1931

*Indian Motorcycle Co. v. United States*, 283 U. S. 570, 51 S. Ct. 601.

Declared unconstitutional provisions of Act of June 2, 1924, as taxing sales to municipalities.

1932

*Burnett v. Coronado Oil & Gas*, 285 U. S. 393, 52 S. Ct. 443.

Declared Act of October 3, 1917, unconstitutional in so far as the same taxed income from lands leased from the State of Oklahoma.

1932

*Heiner v. Donnan*, 285 U. S. 312, 52 S. Ct. 358.

Held unconstitutional Act of February 26, 1926, creating conclusive presumption that gifts within two years of death were made in contemplation of death.

1934

*Lynch v. United States*, 292 U. S. 571, 54 S. Ct. 840.

Held Economy Act of March 20, 1933, unconstitutional in so far as it deprived holders of war risk insurance of vested contractual rights.

1934

*Booth v. United States*, 291 U. S. 339, 54 S. Ct. 379.

Declared unconstitutional portion of Independent Officers Appropriation Act of June 16, 1923, reducing retired pay of Federal judges.

1935

*Panama Refining Co. v. Ryan*, 293 U. S. 388, 55 S. Ct. 241.

Declared sections of N.R.A. authorizing President to prohibit transportation in interstate commerce of surplus oil, an unconstitutional delegation of legislative power.

1935

*Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330, 55 S. Ct. 758.

Declared Railroad Retirement Act invalid as not a reasonable regulation of interstate commerce.

1935

*Schechter Poultry Corporation v. U. S.*, 295 U. S. 495, 55 S. Ct. 837.

Declared National Recovery Act invalid as delegation of legislative power to President, and as going beyond power to regulate interstate commerce.

1935

*Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 55 S. Ct. 854.

Declared Frazier-Lemke Farm Mortgage Act (Bankruptcy Act § 75(s), 11 U. S. C. A. § 203(s)), invalid as depriving mortgagees of property rights without compensation.

1935

*Hopkins Federal Savings & Loan Association v. Cleary*, 296 U. S. 315, 56 S. Ct. 235.

Declared unconstitutional portion of Home Owners' Loan Act of June 13, 1933, permitting conversion of state savings and loan association to Federal associations.

1935

*United States v. Constantine*, 296 U. S. 287, 56 S. Ct. 223.

Declared unconstitutional tax levied by Federal Government as a penalty for violation of state law under Act of February 26, 1926.

1936

*United States v. Butler*, 297 U. S. 1, 56 S. Ct. 312.

Declared unconstitutional provi-

sions of A.A.A. as beyond the delegated powers of Congress and limiting the general welfare clause to the power to tax and not the power to legislate generally.

1936

*Carter v. Carter Coal Co.*, 298 U. S. 238, 56 S. Ct. 855.

Declared Bituminous Coal Conservation Act unconstitutional as to labor provisions which only indirectly affect interstate commerce.

1936

*Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U. S. 513, 56 S. Ct. 892.

Denied power of Federal Government to bring municipal corporations within the purview of the Bankruptcy Act as amended May 24, 1934.

**SUCCESSFUL APPLICANTS, JANUARY,  
1937 BAR EXAMINATION**



Andersen, Wilfred  
 Armstrong, Ralph Joseph  
 Barber, Ralph Shaw  
 Canfield, Edgar Henry  
 Clarke, Owen  
 Cook, Marvin Elsadore  
 Corliss, Clinton Clay  
 Doherty, Howard V.  
 Donahue, James Moore  
 Etter, Roland Max  
 Evans, Vaughn Eugene  
 Gilby, Ralph R.  
 Hale, Frank, Jr.  
 Hannan, Robert Allen  
 Johnson, Edwin R.  
 Kimball, Thomas Russell  
 Lea, Stephen

Leland, Donald Eldridge  
 Marken, Donald H.  
 McCabe, James V.  
 Moseley, George Odell  
 Mullin, Dean  
 Olson, Richard T.  
 Oros, Walter Michael  
 Osborn, Don William  
 Perham, Benjamin A., Jr.  
 Phillips, Gladys Wilber  
 Reaugh, Daniel M.  
 Solberg, Erling D.  
 Staadecker, Samuel, Jr.  
 Tenney, Robert Innis  
 Todd, Charles Hunt  
 Walsh, John Charles