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ACTS OF CONGRESS HELD UNCONSTITUTIONAL IN WHOLE OR IN PART BY THE SUPREME COURT OF THE UNITED STATES

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1. Act of Sept. 24, 1789 (1 Stat. 81, § 13, in part).

Provision that ". . . [the Supreme Court] shall have power to issue . . . writs of mandamus, in cases warranted by the principles and usages of law, to any . . . persons holding office, under authority of the United States" as applied to the issue of mandamus to the Secretary of State requiring him to deliver to plaintiff a commission (duly signed by the President) as justice of the peace in the District of Columbia held an attempt to enlarge the original jurisdiction of the Supreme Court, fixed by Article III, § 2.

Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803).

2. Act of Feb. 20, 1812 (2 Stat. 677).

Provisions establishing board of revision to annul titles conferred many years previously by governors of the Northwest Territory were held violative of the due process clause of the Fifth Amendment.

Reichart v. Felps, 73 U.S. (6 Wall.) 160 (1868).

3. Act of Mar. 6, 1820 (3 Stat. 548, § 8, proviso).

The Missouri Compromise, prohibiting slavery within the Louisiana Territory north of 36° 30' except Missouri, held not warranted as a regulation of Territory belonging to the United States under Article IV, § 3, clause 2 (and see Fifth Amendment).

Scott v. Sandford, 60 U.S. (19 How.) 393 (1857).

Concurring: Taney, C.J.

Concurring specially: Wayne, Nelson, Grier, Daniel, Campbell, Catron.

Dissenting: McLean, Curtis.

4. Act of Feb. 25, 1862 (12 Stat. 345, § 1); July 11, 1862 (12 Stat. 532, § 1); March 3, 1863 (12 Stat. 711, § 3), each in part only.

"Legal tender clauses," making noninterest-bearing United States notes legal tender in payment of "all debts, public and private," so far as applied to debts contracted before passage of the act, held not within express or implied powers of Congress under Article I, § 8, and inconsistent with Article I, § 10, and Fifth Amendment.

Hepburn v. Griswold, 75 U.S. (8 Wall.) 603 (1870); overruled in *Knox v. Lee (Legal Tender Cases)*, 79 U.S. (12 Wall.) 457 (1871).

Concurring: Chase, C.J., Nelson, Clifford, Grier, Field.

Dissenting: Miller, Swayne, Davis.

5. Act of May 20, 1862 (§ 35, 12 Stat. 394); Act of May 21, 1862 (12 Stat. 407); Act of June 25, 1864 (13 Stat. 187); Act of July 23, 1866 (14 Stat. 216); Revised Statutes Relating to the District of Columbia, Act of June 22, 1874, (§§ 281, 282, 294, 304, 18 Stat. pt. 2).

   Provisions of law requiring, or construed to require, racial separation in the schools of the District of Columbia, held to violate the equal protection component of the due process clause of the Fifth Amendment.

   Bolling v. Sharpe, 347 U.S. 497 (1954).

6. Act of Mar. 3, 1863 (12 Stat. 756, § 5).

   "So much of the fifth section . . . as provides for the removal of a judgment in a State court, and in which the cause was tried by a jury to the circuit court of the United States for a retrial on the facts and law, is not in pursuance of the Constitution, and is void" under the Seventh Amendment.

   The Justices v. Murray, 76 U.S. (9 Wall.) 274 (1870).

7. Act of Mar. 3, 1863 (12 Stat. 766, § 5).

   Provision for an appeal from the Court of Claims to the Supreme Court--there being, at the time, a further provision (§ 14) requiring an estimate by the Secretary of the Treasury before payment of final judgment, held to contravene the judicial finality intended by the Constitution, Article III.

   Gordon v. United States, 69 U.S. (2 Wall.) 561 (1865). (Case was dismissed without opinion; the grounds upon which this decision was made were stated in a posthumous opinion by Chief Justice Taney printed in the appendix to volume 117 U.S. 697.)

8. Act of June 30, 1864 (13 Stat. 311, § 13).

   Provision that "any prize cause now pending in any circuit court shall, on the application of all parties in interest . . . be transferred by that court to the Supreme Court. . .," as applied in a case where no action had been taken in the Circuit Court on the appeal from the district court, held to propose an appeal procedure not within Article III, § 2.

   The Alicia, 74 U.S. (7 Wall.) 571 (1869).

9. Act of Jan. 24, 1865 (13 Stat. 424).

   Requirement of a test oath (disavowing actions in hostility to the United States) before admission to appear as attorney in a federal court by virtue of any previous admission, held invalid as applied to an attorney who had been pardoned by the President for all offenses during the Rebellion--as ex post facto (Article I, § 9, clause 3) and an interference with the pardoning power (Article II, § 2, clause 1).

   Ex parte Garland, 71 U.S. (4 Wall.) 333 (1867).

Concurring: Field, Wayne, Grier, Nelson, Clifford.
Dissenting: Miller, Swayne, Davis, Chase, C.J.

10. Act of Mar. 2, 1867 (14 Stat. 484, § 29).

General prohibition on sale of naphtha, etc., for illuminating purposes, if inflammable at less temperature than 110° F., held invalid "except so far as the section named operates within the United States, but without the limits of any State," as being a mere police regulation.

United States v. Dewitt, 76 U.S. (9 Wall.) 41 (1870).

11. Act of May 31, 1870 (16 Stat. 140, §§ 3, 4).

Provisions penalizing (1) refusal of local election official to permit voting by persons offering to qualify under State laws, applicable to any citizens; and (2) hindering of any person from qualifying or voting, held invalid under Fifteenth Amendment.

United States v. Reese, 92 U.S. 214 (1876).
Concurring: Waite, C.J., Miller, Field, Bradley, Swayne, Davis, Strong.
Dissenting: Clifford, Hunt.

12. Act of July 12, 1870 (16 Stat. 235).

Provision making Presidential pardons inadmissible in evidence in Court of Claims, prohibiting their use by that court in deciding claims or appeals, and requiring dismissal of appeals by the Supreme Court in cases where proof of loyalty had been made otherwise than as prescribed by law, held an interference with judicial power under Article III, § 1, and with the pardoning power under Article II, § 2, clause 1.

United States v. Klein, 80 U.S. (13 Wall.) 128 (1872).
Concurring: Chase, C.J., Nelson, Swayne, Davis, Strong, Clifford, Field.
Dissenting: Miller, Bradley.

13. Act of Mar. 3, 1873 (ch. 258, § 2, 17 Stat. 599, recodified in 39 U.S.C. § 3001(e)(2)).

Comstock Act provision barring from the mails any unsolicited advertisement for contraceptives, as applied to circulars and flyers promoting prophylactics or containing information discussing the desirability and availability of prophylactics, violates the free speech clause of the First Amendment.

Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983).
Justices concurring: Marshall, White, Blackmun, Powell, Burger, C.J.
Justices concurring specially: Rehnquist, O'Connor, Stevens.

14. Act of June 22, 1874 (18 Stat. 1878, § 4).

Provision authorizing federal courts, in suits for forfeitures under revenue and custom laws, to require production of documents, with allegations expected to be proved therein to be taken as proved on

failure to produce such documents, was held violative of the search and seizure provision of the Fourth Amendment and the self-incrimination clause of the Fifth Amendment.

Boyd v. United States, 116 U.S. 616 (1886).
Concurring: Bradley, Field, Harlan, Woods, Matthews, Gray, Blatchford.
Concurring specially: Miller, Waite, C.J.

15. Revised Statutes 1977 (Act of May 31, 1870, 16 Stat. 144).

Provision that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens . . .," held invalid under the Thirteenth Amendment.

Hodges v. United States, 203 U.S. 1 (1906), overruled in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441-43 (1968).
Concurring: Brewer, Brown, Fuller, Peckham, McKenna, Holmes, Moody, White, C.J.
Dissenting: Harlan, Day.

16. Revised Statutes 4937-4947 (Act of July 8, 1870, 16 Stat. 210), and Act of August 14, 1876 (19 Stat. 141).

Original trademark law, applying to marks "for exclusive use within the United States," and a penal act designed solely for the protection of rights defined in the earlier measure, held not supportable by Article I, § 8, clause 8 (copyright clause), nor Article I, § 8, clause 3, by reason of its application to intrastate as well as interstate commerce.

Trade-Mark Cases, 100 U.S. 82 (1879).

17. Revised Statutes 5132, subdivision 9 (Act of Mar. 2, 1867, 14 Stat. 539).

Provision penalizing "any person respecting whom bankruptcy proceedings are commenced . . . who, within 3 months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtains on credit from any person any goods or chattels with intent to defraud . . . ," held a police regulation not within the bankruptcy power (Article I, § 4, clause 4).

United States v. Fox, 95 U.S. 670 (1878).

18. Revised Statutes 5507 (Act of May 31, 1870, 16 Stat. 141, 4).

Provision penalizing "every person who prevents, hinders, controls, or intimidates another from exercising . . . the right of suffrage, to whom that right is guaranteed by the Fifteenth Amendment to the Constitution of the United States, by means of bribery . . .," held not authorized by the Fifteenth Amendment.

James v. Bowman, 190 U.S. 127 (1903).
Concurring: Brewer, Fuller, Peckham, Holmes, Day, White, C.J.

Dissenting: Harlan, Brown.

19. Revised Statutes 5519 (Act of Apr. 20, 1871, 17 Stat. 13, § 2).

Section providing punishment in case "two or more persons in any State . . . conspire . . . for the purpose of depriving . . . any person . . . of the equal protection of the laws . . . or for the purpose of preventing or hindering the constituted authorities of any State . . . from giving or securing to all persons within such State . . . the equal protection of the laws . . .," held invalid as not being directed at state action proscribed by the Fourteenth Amendment.

United States v. Harris, 106 U.S. 629 (1883).
Concurring: Woods, Miller, Bradley, Gray, Field, Matthews, Blatchford, White, C.J.
Dissenting: Harlan.

20. Revised Statutes of the District of Columbia, § 1064 (Act of June 17, 1870, 16 Stat. 154,§ 3).

Provision that "prosecutions in the police court [of the District of Columbia] shall be by information under oath, without indictment by grand jury or trial by petit jury," as applied to punishment for conspiracy, held to contravene Article III, § 2, clause 3, requiring jury trial of all crimes.

Callan v. Wilson, 127 U.S. 540 (1888).

21. Act of Mar. 1, 1875 (18 Stat. 336, §§ 1, 2).

Provision "That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations . . . of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude"--subject to penalty, held not to be supported by the Thirteenth or Fourteenth Amendments.

Civil Rights Cases, 109 U.S. 3 (1883), as to operation within States.
Concurring: Bradley, Miller, Field, Woods, Matthews, Gray, Blatchford, Waite, C.J.
Dissenting: Harlan.

22. Act of Mar. 3, 1875 (18 Stat. 479, § 2).

Provision that "if the party [i.e., a person stealing property from the United States] has been convicted, then the judgment against him shall be conclusive evidence in the prosecution against [the] receiver that the property of the United States therein described has been embezzled, stolen, or purloined," held to contravene the Sixth Amendment.

Kirby v. United States, 174 U.S. 47 (1899).

Concurring: Harlan, Gray, Shiras, White, Peckham, Fuller, C.J.
Dissenting: Brown, McKenna.

23. Act of July 12, 1876 (19 Stat. 80, § 6, in part).

Provision that "postmasters of the first, second, and third classes . . . may be removed by the President by and with the advice and consent of the Senate," held to infringe the executive power under Article II, § 1, clause 1.

Myers v. United States, 272 U.S. 52 (1926).
Concurring: Taft, C.J., Van Devanter, Sutherland, Butler, Sanford, Stone.
Dissenting: Holmes, McReynolds, Brandeis.

24. Act of Aug. 11, 1888 (25 Stat. 411).

Directive, in a provision for the purchase or condemnation of a certain lock and dam in the Monongahela River, that ". . . in estimating the sum to be paid by the United States, the franchise of said corporation to collect tolls shall not be considered or estimated . . .," held to contravene the Fifth Amendment.

Monongahela Navigation Co. v. United States, 148 U.S. 312 (1893).

25. Act of May 5, 1892 (27 Stat. 25, § 4).

Provision of a Chinese exclusion act, that Chinese persons "convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period not exceeding 1 year and thereafter removed from the United States . . . " (such conviction and judgment being had before a justice, judge, or commissioner upon a summary hearing), held to contravene the Fifth and Sixth Amendments.

Wong Wing v. United States, 163 U.S. 228 (1896).
Concurring: Shiras, Harlan, Gray, Brown, White, Peckham, Fuller, C.J.
Concurring in part and dissenting in part: Field.

26. Joint Resolution of August 4, 1894 (28 Stat. 1018, No. 41).

Provision authorizing the Secretary of the Interior to approve a second lease of certain land by an Indian chief in Minnesota (granted to lessor's ancestor by art. 9 of a treaty with the Chippewa Indians), held an interference with judicial interpretation of treaties under Article III, § 2, clause 1 (and repugnant to the Fifth Amendment).

Jones v. Meehan, 175 U.S. 1 (1899).

27. Act of Aug. 27, 1894 (28 Stat. 553-60, §§ 27-37).

Income tax provisions of the tariff act of 1894. "The tax imposed by §§ 27 and 37, inclusive . . . so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned according to representation [Article I, § 2, clause 3],

all those sections, constituting one entire scheme of taxation, are necessarily invalid" (158 U.S. 601, 637).

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895), and rehearing, 158 U.S. 601 (1895).
Concurring: Fuller, C.J., Gray, Brewer, Brown, Shiras, Jackson.
Concurring specially: Field..
Dissenting: White, Harlan.

28. Act of Jan. 30, 1897, (29 Stat. 506).

Prohibition on sale of liquor ". . . to any Indian to whom allotment of land has been made while the title to the same shall be held in trust by the Government. . .," held a police regulation infringing state powers, and not warranted by the commerce clause, Article I, § 8, clause 3.

Matter of Heff, 197 U.S. 488 (1905), overruled in *United States v. Nice*, 241 U.S. 591 (1916).
Concurring: Brewer, Brown, White, Peckham, McKenna, Holmes, Day, Fuller, C.J.
Dissenting: Harlan.

29. Act of June 1, 1898 (30 Stat. 428).

Section 10, penalizing "any employer subject to the provisions of this act" who should "threaten any employee with loss of employment . . . because of his membership in . . . a labor corporation, association, or organization" (the act being applicable "to any common carrier . . . engaged in the transportation of passengers or property . . . from one State . . . to another State . . .," etc.), held an infringement of the Fifth Amendment and not supported by the commerce clause.

Adair v. United States, 208 U.S. 161 (1908).
Concurring: Harlan, Brewer, White, Peckham, Day, Fuller, C.J.
Dissenting: McKenna, Holmes.

30. Act of June 13, 1898 (30 Stat. 448, 459).

Stamp tax on foreign bills of lading, held a tax on exports in violation of Article I, § 9.

Fairbank v. United States, 181 U.S. 283 (1901).
Concurring: Brewer, Brown, Shiras, Peckham, Fuller, C.J.
Dissenting: Harlan, Gray, White, McKenna.

31. Same (30 Stat. 448, 460).

Tax on charter parties, as applied to shipments exclusively from ports in United States to foreign ports, held a tax on exports in violation of Article I, § 9.

United States v. Hvoslef, 237 U.S. 1 (1915).

32. Same (30 Stat. 448, 461).

Stamp tax on policies of marine insurance on exports, held a tax on exports in violation of Article I, § 9.

Thames & Mersey Marine Ins. Co. v. United States, 237 U.S. 19 (1915).

33. Act of June 6, 1900 (31 Stat. 359, § 171).

Section of the Alaska Code providing for a six-person jury in trials for misdemeanors, held repugnant to the Sixth Amendment, requiring "jury" trial of crimes.

Rassmussen v. United States, 197 U.S. 516 (1905).
Concurring: White, Brewer, Peckham, McKenna, Holmes, Day, Fuller, C.J.
Concurring specially: Harlan, Brown.

34. Act of Mar. 3, 1901 (31 Stat. 1341, § 935).

Section of the District of Columbia Code granting the same right of appeal, in criminal cases, to the United States or the District of Columbia as to the defendant, but providing that a verdict was not to be set aside for error found in rulings during trial, held an attempt to take an advisory opinion, contrary to Article III, § 2.

United States v. Evans, 213 U.S. 297 (1909).

35. Act of June 11, 1906 (34 Stat. 232).

Act providing that "every common carrier engaged in trade or commerce in the District of Columbia . . . or between the several States . . . shall be liable to any of its employees . . . for all damages which may result from the negligence of any of its officers . . . or by reason of any defect . . . due to its negligence in its cars, engines . . . roadbed," etc., held not supportable under Article I, § 8, clause 3 because it extended to intrastate as well as interstate commercial activities.

The Employers' Liability Cases, 207 U.S. 463 (1908). (The act was upheld as to the District of Columbia in *Hyde v. Southern Ry.*, 31 App. D.C. 466 (1908); and as to the Territories, in *El Paso & N.E. Ry. v. Gutierrez*, 215 U.S. 87 (1909).)
Concurring: White, Day.
Concurring specially: Peckham, Brewer, Fuller, C.J.
Dissenting: Moody, Harlan, McKenna, Holmes.

36. Act of June 16, 1906 (34 Stat. 269, § 2).

Provision of Oklahoma Enabling Act restricting relocation of the State capital prior to 1913, held not supportable by Article IV, § 3, authorizing admission of new States.

Coyle v. Smith, 221 U.S. 559 (1911).
Concurring: Lurton, White, Harlan, Day, Hughes, Van Devanter, Lamar.
Dissenting: McKenna, Holmes.

37. Act of Feb. 20, 1907 (34 Stat. 889, § 3).

Provision in the Immigration Act of 1907 penalizing "whoever . . . shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution . . . any alien woman or girl, within 3 years after she shall have entered the United States,"

held an exercise of police power not within the control of Congress over immigration (whether drawn from the commerce clause or based on inherent sovereignty).

Keller v. United States, 213 U.S. 138 (1909).
Concurring: Brewer, White, Peckham, McKenna, Day, Fuller, C.J.
Dissenting: Holmes, Harlan, Moody.

38. Act of Mar. 1, 1907 (34 Stat. 1028).

Provisions authorizing certain Indians "to institute their suits in the Court of Claims to determine the validity of any acts of Congress passed since . . . 1902, insofar as said acts . . . attempt to increase or extend the restrictions upon alienation . . . of allotments of lands of Cherokee citizens . . .," and giving a right of appeal to the Supreme Court, held an attempt to enlarge the judicial power restricted by Article III, § 2, to cases and controversies.

Muskrat v. United States, 219 U.S. 346 (1911).

39. Act of May 27, 1908 (35 Stat. 313, § 4).

Provision making locally taxable "all land [of Indians of the Five Civilized Tribes] from which restrictions have been or shall be removed," held a violation of the Fifth Amendment, in view of the Atoka Agreement, embodied in the Curtis Act of June 28, 1898, providing tax-exemption for allotted lands while title in original allottee, not exceeding 21 years.

Choate v. Trapp, 224 U.S. 665 (1912).

40. Act of Feb. 9, 1909, § 2, 35 Stat. 614, as amended.

Provision of Narcotic Drugs Import and Export Act creating a presumption that possessor of cocaine knew of its illegal importation into the United States held, in light of the fact that more cocaine is produced domestically than is brought into the country and in absence of any showing that defendant could have known his cocaine was imported, if it was, inapplicable to support conviction from mere possession of cocaine.

Turner v. United States, 396 U.S. 398 (1970).
Concurring specially: Black, Douglas.

41. Act of Aug. 19, 1911 (37 Stat. 28).

A proviso in § 8 of the Federal Corrupt Practices Act fixing a maximum authorized expenditure by a candidate for Senator "in any campaign for his nomination and election," as applied to a primary election, held not supported by Article I, § 4, giving Congress power to regulate the manner of holding elections for Senators and Representatives.

Newberry v. United States, 256 U.S. 232 (1921), overruled in *United States v. Classic*, 313 U.S. 299 (1941).

Concurring: McReynolds, McKenna, Holmes, Day, Van Devanter.
Concurring specially: Pitney, Brandeis, Clarke.
Dissenting: White (concurring in part), C.J.

42. Act of June 18, 1912 (37 Stat. 136, § 8).

Part of § 8 giving Juvenile Court of the District of Columbia (proceeding upon information) concurrent jurisdiction of desertion cases (which were, by law, punishable by fine or imprisonment in the workhouse at hard labor for 1 year), held invalid under the Fifth Amendment, which gives right to presentment by a grand jury in case of infamous crimes.

United States v. Moreland, 258 U.S. 433 (1922).
Concurring: McKenna, Day, Van Devanter, Pitney, McReynolds.
Dissenting: Brandeis, Holmes, Taft, C.J.

43. Act of Mar. 4, 1913 (37 Stat. 988, part of par. 64).

Provision of the District of Columbia Public Utility Commission Act authorizing appeal to the United States Supreme Court from decrees of the District of Columbia Court Appeals modifying valuation decisions of the Utilities Commission, held an attempt to extend the appellate jurisdiction of the Supreme Court to cases not strictly judicial within the meaning of Article III, § 2.

Keller v. Potomac Elec. Co., 261 U.S. 428 (1923).

44. Act of Sept. 1, 1916 (39 Stat. 675).

The original Child Labor Law, providing "that no producer . . . shall ship . . . in interstate commerce . . . any article or commodity the product of any mill . . . in which within 30 days prior to the removal of such product therefrom children under the age of 14 years have been employed or permitted to work more than 8 hours in any day or more than 6 days in any week . . .," held not within the commerce power of Congress.

Hammer v. Dagenhart, 247 U.S. 251 (1918).
Concurring: Day, Van Devanter, Pitney, McReynolds, White, C.J.
Dissenting: Holmes, McKenna, Brandeis, Clarke.

45. Act of Sept. 8, 1916 (39 Stat. 757, § 2(a), in part).

Provision of the income tax law of 1916, that a "stock dividend shall be considered income, to the amount of its cash value," held invalid (in spite of the Sixteenth Amendment) as an attempt to tax something not actually income, without regard to apportionment under Article I, § 2, clause 3.

Eisner v. Macomber, 252 U.S. 189 (1920).
Concurring: Pitney, McKenna, Van Devanter, McReynolds, White, C.J.
Dissenting: Holmes, Day, Brandeis, Clarke.

46. Act of Oct. 6, 1917 (40 Stat. 395).

The amendment of §§ 24 and 256 of the Judicial Code (which prescribe jurisdiction of district courts) "saving . . . to claimants the rights and remedies under the workmen's compensation law of any State," held an attempt to transfer federal legislative powers to the States--the Constitution, by Article III, § 2, and Article I, § 8, having adopted rules of general maritime law.

Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920).
Concurring: McReynolds, McKenna, Day, Van Devanter, White, C.J.
Dissenting: Holmes, Pitney, Brandeis, Clarke.

47. Act of Sept. 19, 1918 (40 Stat. 960).

That part of the Minimum Wage Law of the District of Columbia which authorized the Wage Board "to ascertain and declare . . . (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals . . .," held to interfere with freedom of contract under the Fifth Amendment.

Adkins v. Children's Hospital, 261 U.S. 525 (1923), overruled in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).
Concurring: Sutherland, McKenna, Van Devanter, McReynolds, Butler.
Dissenting: Taft, C.J., Sanford, Holmes.

48. Act of Feb. 24, 1919 (40 Stat. 1065, § 213, in part).

That part of § 213 of the of Revenue Act of 1919 which provided that ". . . for the purposes of the title . . . the term 'gross income' . . . includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of . . . judges of the Supreme and inferior courts of the United States . . . the compensation received as such) . . ." as applied to a judge in office when the act was passed, held a violation of the guaranty of judges' salaries, in Article III, § 1.

Evans v. Gore, 253 U.S. 245 (1920). *Miles v. Graham*, 268 U.S. 501 (1925), held it invalid as applied to a judge taking office subsequent to the date of the act. Both cases were overruled by *O'Malley v. Woodrough*, 307 U.S. 277 (1939).
Concurring: Van Devanter, McKenna, Day, Pitney, McReynolds, Clarke, White, C.J.
Dissenting: Holmes, Brandeis.

49. Act of Feb. 24, 1919 (40 Stat. 1097, § 402(c)).

That part of the estate tax law providing that the "gross estate" of a decedent should include value of all property "to the extent of any interest therein of which the decedent has at any time made a transfer or with respect to which he had at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment

at or after his death (whether such transfer or trust is made or created before or after the passage of this act), except in case of a *bona fide* sale . . . "as applied to a transfer of property made prior to the act and intended to take effect in possession or enjoyment at death of grantor, but not in fact testamentary or designed to evade taxation, held confiscatory, contrary to Fifth Amendment.

Nichols v. Coolidge, 274 U.S. 531 (1927).
Concurring: McReynolds, Van Devanter, Sutherland, Butler, Taft, C.J.
Concurring specially (only in the result): Holmes, Brandeis, Sanford, Stone.

50. Act of Feb. 24, 1919, title XII (40 Stat. 1138, entire title).

The Child Labor Tax Act, providing that "every person . . . operating . . . any . . . factory . . . in which children under the age of 14 years have been employed or permitted to work . . . shall pay . . . in addition to all other taxes imposed by law, an excise tax equivalent to 10 percent of the entire net profits received . . . for such year from the sale . . . of the product of such . . . factory . . .," held beyond the taxing power under Article I, § 8, clause 1, and an infringement of state authority.

Bailey v. Drexel Furniture Co. (Child Labor Tax Case), 259 U.S. 20 (1922).
Concurring: Taft, C.J., McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis.
Dissenting: Clarke.

51. Act of Oct. 22, 1919 (41 Stat. 298, § 2), amending Act of Aug. 10, 1917 (40 Stat. 277,§ 4).

(a) § 4 of the Lever Act, providing in part "that it is hereby made unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries . . ." and fixing a penalty, held invalid to support an indictment for charging an unreasonable price on sale--as not setting up an ascertainable standard of guilt within the requirement of the Sixth Amendment.

United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921).
Concurring: White, C.J., McKenna, Holmes, Van Devanter, McReynolds, Clarke.
Concurring specially: Pitney, Brandeis.

(b) That provision of § 4 making it unlawful "to conspire, combine, agree, or arrange with any other person to . . . exact excessive prices for any necessaries" and fixing a penalty, held invalid to support an indictment, on the reasoning of the *Cohen Grocery* case.

Weeds, Inc. v. United States, 255 U.S. 109 (1921).
Concurring: White, C.J., McKenna, Holmes, Van Devanter, McReynolds, Clarke.
Concurring specially: Pitney, Brandeis.

52. Act of Aug. 24, 1921 (42 Stat. 187, Future Trading Act).

(a) § 4 (and interwoven regulations) providing a "tax of 20 cents a bushel on every bushel involved therein, upon each contract of sale of grain for future delivery, except . . . where such contracts are made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a 'contract market' . . .," held not within the taxing power under Article I, § 8.

Hill v. Wallace, 259 U.S. 44 (1922).

(b) § 3, providing "That in addition to the taxes now imposed by law there is hereby levied a tax amounting to 20 cents per bushel on each bushel involved therein, whether the actual commodity is intended to be delivered or only nominally referred to, upon each . . . option for a contract either of purchase or sale of grain . . .," held invalid on the same reasoning.

Trusler v. Crooks, 269 U.S. 475 (1926).

53. Act of Nov. 23, 1921 (42 Stat. 261, 245, in part).

Provision of Revenue Act of 1921 abating the deduction (4 percent of mean reserves) allowed from taxable income of life insurance companies in general by the amount of interest on their tax-exempts, and so according no relative advantage to the owners of the tax-exempt securities, held to destroy a guaranteed exemption.

National Life Ins. Co. v. United States, 277 U.S. 508 (1928).
Concurring: McReynolds, Van Devanter, Sutherland, Butler, Sanford, Taft, C.J.
Dissenting: Brandeis, Holmes, Stone.

54. Act of June 10, 1922 (42 Stat. 634).

A second attempt to amend §§ 24 and 256 of the Judicial Code, relating to jurisdiction of district courts, by saving "to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State . . ." held invalid on authority of *Knickerbocker Ice Co. v. Stewart*.

Washington v. Dawson & Co., 264 U.S. 219 (1924).
Concurring: McReynolds, McKenna, Holmes, Van Devanter, Sutherland, Butler, Sanford, Taft, C.J.
Dissenting: Brandeis.

55. Act of June 2, 1924 (43 Stat. 313).

The gift tax provisions of the Revenue Act of 1924, applicable to gifts made during the calendar year, were held invalid under the Fifth Amendment insofar as they applied to gifts made before passage of the act.

Untermyer v. Anderson, 276 U.S. 440 (1928).

Concurring: McReynolds, Sanford, Van Devanter, Sutherland, Butler, Taft, C.J.
Dissenting: Holmes, Brandeis, Stone.

56. Act of Feb. 26, 1926 (44 Stat. 70, § 302, in part).

Stipulation creating a conclusive presumption that gifts made within two years prior to the death of the donor were made in contemplation of death of donor and requiring the value thereof to be included in computing the death transfer tax on decedent's estate was held to effect an invalid deprivation of property without due process.

Heiner v. Donnan, 285 U.S. 312 (1932).
Concurring: Sutherland, Van Devanter, McReynolds, Butler, Roberts, Hughes, C.J.
Dissenting: Stone, Brandeis.

57. Act of Feb. 26, 1926 (44 Stat. 95, § 701).

Provision imposing a special excise tax of $1,000 on liquor dealers operating in States where such business is illegal, was held a penalty, without constitutional support following repeal of the Eighteenth Amendment.

United States v. Constantine, 296 U.S. 287 (1935).
Concurring: Roberts, Van Devanter, McReynolds, Sutherland, Butler, Hughes, C.J.
Dissenting: Cardozo, Brandeis, Stone.

58. Act of Mar. 20, 1933 (48 Stat. 11, § 17, in part).

Clause in the Economy Act of 1933 providing ". . . all laws granting or pertaining to yearly renewable term war risk insurance are hereby repealed," held invalid to abrogate an outstanding contract of insurance, which is a vested right protected by the Fifth Amendment.

Lynch v. United States, 292 U.S. 571 (1934).

59. Act of May 12, 1933 (48 Stat. 31).

Agricultural Adjustment Act providing for processing taxes on agricultural commodities and benefit payments therefore to farmers, held not within the taxing power under Article I, § 8, clause 1.

United States v. Butler, 297 U.S. 1 (1936).
Concurring: Roberts, Van Devanter, McReynolds, Sutherland, Butler, Hughes, C.J.
Dissenting: Stone, Brandeis, Cardozo.

60. Joint Resolution of June 5, 1933 (48 Stat. 113, § 1).

Abrogation of gold clause in Government obligations, held a repudiation of the pledge implicit in the power to borrow money (Article I, § 8, clause 2), and within the prohibition of the Fourteenth Amendment, against questioning the validity of the public debt. (The majority of the Court, however, held plaintiff not entitled to recover under the circumstances.)

Perry v. United States, 294 U.S. 330 (1935).
Concurring: Hughes, C.J., Brandeis, Roberts, Cardozo.
Concurring specially: Stone.
Dissenting: McReynolds, Van Devanter, Sutherland, Butler.

61. Act of June 16, 1933 (48 Stat. 195, the National Industrial Recovery Act).

(a) Title I, except § 9. Provisions relating to codes of fair competition, authorized to be approved by the President in his discretion "to effectuate the policy" of the act, held invalid as a delegation of legislative power (Article I, § 1) and not within the commerce power (Article I, § 8, clause 3).

Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).
Concurring: Hughes, C.J., Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Roberts.
Concurring specially: Cardozo, Stone.

(b) § 9(c). Clause of the oil regulation section authorizing the President "to prohibit the transportation in interstate . . . commerce of petroleum . . . produced or withdrawn from storage in excess of the amount permitted . . . by any State law . . ." and prescribing a penalty for violation of orders issued thereunder, held invalid as a delegation of legislative power.

Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).
Concurring: Hughes, C.J., Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts.
Dissenting: Cardozo.

62. Act of June 16, 1933 (48 Stat. 307, § 13).

Temporary reduction of 15 percent in retired pay of judges, retired from service but subject to performance of judicial duties under the Act of Mar. 1, 1929 (45 Stat. 1422), was held a violation of the guaranty of judges' salaries in Article III, § 1.

Booth v. United States, 291 U.S. 339 (1934).

63. Act of Apr. 27, 1934 (48 Stat. 646 § 6), amending § 5(i) of Home Owners' Loan Act of 1933.

Provision for conversion of state building and loan associations into federal associations, upon vote of 51 percent of the votes cast at a meeting of stockholders called to consider such action, held an encroachment on reserved powers of State.

Hopkins Savings Ass'n v. Cleary, 296 U.S. 315 (1935).

64. Act of May 24, 1934 (48 Stat. 798).

Provision for readjustment of municipal indebtedness, though "adequately related" to the bankruptcy power, was held invalid as an interference with state sovereignty.

Ashton v. Cameron County Dist., 298 U.S. 513 (1936).
Concurring: McReynolds, Van Devanter, Sutherland, Butler, Roberts.
Dissenting: Cardozo, Brandeis, Stone, Hughes, C.J.

65. Act of June 19, 1934, ch. 652, 48 Stat. 1088, § 316, 18 U.S.C. § 1304.

Section 316 of the Communications Act of 1934, which prohibits radio and television broadcasters from carrying advertisements for privately operated casino gambling regardless of the station's or casino's location, violates the First Amendment's protections for commercial speech as applied to prohibit advertising of private casino gambling broadcast by stations located within a state where such gambling is illegal.

Greater New Orleans Broadcasting Ass'n v. United States, 527 U.S. 173 (1999).
Justices concurring: Stevens, O'Connor, Scalia, Kennedy, Souter, Ginsburg, Breyer, Rehnquist, C.J.
Justices concurring especially: Thomas.

66. Act of June 27, 1934 (48 Stat. 1283).

The Railroad Retirement Act, establishing a detailed compulsory retirement system for employees of carriers subject to the Interstate Commerce Act, held, not a regulation of commerce within the meaning of Article I, § 8, clause 3, and violative of the due process clause (Fifth Amendment).

Railroad Retirement Bd. v. Alton Ry., 295 U.S. 330 (1935).
Concurring: Roberts, Van Devanter, McReynolds, Sutherland, Butler.
Dissenting: Hughes, C.J., Brandeis, Stone, Cardozo.

67. Act of June 28, 1934 (48 Stat. 1289, ch. 869).

The Frazier-Lemke Act, adding subsection (s) to § 75 of the Bankruptcy Act, designed to preserve to mortgagors the ownership and enjoyment of their farm property and providing specifically, in paragraph 7, that a bankrupt left in possession has the option at any time within 5 years of buying at the appraised value--subject meanwhile to no monetary obligation other than payment of reasonable rental, held a violation of property rights, under the Fifth Amendment.

Louisville Bank v. Radford, 295 U.S. 555 (1935).

68. Act of Aug. 24, 1935 (48 Stat. 750).

Amendments of Agricultural Adjustment Act held not within the taxing power, the amendments not having cured the defects of the original act held unconstitutional in *United States v. Butler*, 297 U.S. 1 (1936).

Rickert Rice Mills v. Fontenot, 297 U.S. 110 (1936).

69. Act of Aug. 29, 1935, ch. 814 § 5(e), 49 Stat. 982, 27 U.S.C. § 205(e).

The prohibition in section 5(e)(2) of the Federal Alcohol Administration Act of 1935 on the display of alcohol content on beer labels

is inconsistent with the protections afforded to commercial speech by the First Amendment. The government's interest in curbing strength wars among brewers is substantial, but, given the "overall irrationality" of the regulatory scheme, the labeling prohibition does not directly and materially advance that interest.

Rubin v. Coors Brewing Co., 514 U.S. 476 (1995).
Justices concurring: Thomas, O'Connor, Scalia, Kennedy, Souter, Ginsburg, Breyer, Rehnquist, C.J.
Justice concurring specially: Stevens.

70. Act of Aug. 30, 1935 (49 Stat. 991).

Bituminous Coal Conservation Act of 1935, held to impose, not a tax within Article I, § 8, but a penalty not sustained by the commerce clause (Article I, § 8, clause 3).

Carter v. Carter Coal Co., 298 U.S. 238 (1936).
Concurring: Sutherland, Van Devanter, McReynolds, Butler, Roberts.
Concurring specially: Hughes, C.J.
Concurring in part and dissenting in part: Cardozo, Brandeis, Stone.

71. Act of Feb. 15, 1938, ch. 29, 52 Stat. 30.

District of Columbia Code § 22-1115, prohibiting the display of any sign within 500 feet of a foreign embassy if the sign tends to bring the foreign government into "public odium" or "public disrepute," violates the First Amendment.

Boos v. Barry, 485 U.S. 312 (1988).
Justices concurring: O'Connor, Brennan, Marshall, Stevens, Scalia.
Justices dissenting: Rehnquist, C.J., White, Blackmun.

72. Act of June 25, 1938 (52 Stat. 1040).

Federal Food, Drug, and Cosmetic Act of 1938, § 301(f), prohibiting the refusal to permit entry or inspection of premises by federal officers held void for vagueness and as violative of the due process clause of the Fifth Amendment.

United States v. Cardiff, 344 U.S. 174 (1952).
Concurring: Douglas, Black, Reed, Frankfurter, Jackson, Clark, Minton, Vinson, C.J.
Dissenting: Burton.

73. Act of June 30, 1938 (52 Stat. 1251).

Federal Firearms Act, § 2(f), establishing a presumption of guilt based on a prior conviction and present possession of a firearm, held to violate the test of due process under the Fifth Amendment.

Tot v. United States, 319 U.S. 463 (1943).
Concurring: Roberts, Reed, Frankfurter, Jackson, Rutledge, Stone, C.J.
Concurring specially: Black, Douglas.

74. Act of Aug. 10, 1939 (§ 201(d), 53 Stat. 1362, as amended, 42 U.S.C. § 402(g)).

Provision of Social Security Act that grants survivors' benefits based on the earnings of a deceased husband and father covered by the Act to his widow and to the couple's children in her care but that grants benefits based on the earnings of a covered deceased wife and mother only to the minor children and not to the widower held violative of the right to equal protection secured by the Fifth Amendment's due process clause, since it unjustifiably discriminates against female wage earners required to pay social security taxes by affording them less protection for their survivors than is provided for male wage earners.

Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

75. Act of Oct. 14, 1940 (54 Stat. 1169 § 401(g)); as amended by Act of January 20, 1944 (58 Stat. 4, § 1).

Provision of Aliens and Nationality Code (8 U.S.C. § 1481(a)(8)), derived from the Nationality Act of 1940, as amended, that citizenship shall be lost upon conviction by court martial and dishonorable discharge for deserting the armed services in time of war, held invalid as imposing a cruel and unusual punishment barred by the Eighth Amendment and not authorized by the war powers conferred by Article I, § 8, clauses 11 to 14.

Trop v. Dulles, 356 U.S. 86 (1958).
Concurring: Warren, C.J., Whittaker.
Concurring specially: Black, Douglas, Brennan.
Dissenting: Frankfurter, Burton, Clark, Harlan.

76. Act of Nov. 15, 1943 (57 Stat. 450).

Urgent Deficiency Appropriation Act of 1943, § 304, providing that no salary should be paid to certain named federal employees out of moneys appropriated, held to violate Article I, § 9, clause 3, forbidding enactment of bill of attainder or ex post facto law.

United States v. Lovett, 328 U.S. 303 (1946).
Concurring: Black, Douglas, Murphy, Rutledge, Burton, Stone, C.J.
Concurring specially: Frankfurter, Reed.

77. Act of Sept. 27, 1944 (58 Stat. 746, § 401(J)); and Act of June 27, 1952 (66 Stat. 163, 267-268, § 349(a)(10)).

§ 401(J) of Immigration and Nationality Act of 1940, added in 1944, and § 49(a)(10) of the Immigration and Nationality Act of 1952 depriving one of citizenship, without the procedural safeguards guaranteed by the Fifth and Sixth Amendments, for the offense of leaving or remaining outside the country, in time of war or national emergency, to evade military service held invalid.

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963).

Concurring: Goldberg, Black, Douglas, Warren, C.J.
Concurring specially: Brennan.
Dissenting: Harlan, Clark, Stewart, White.

78. Act of July 31, 1946 (ch. 707, § 7, 60 Stat. 719).

District court decision holding invalid under First and Fifth Amendments statute prohibiting parades or assemblages on United States Capitol grounds is summarily affirmed.

Chief of Capitol Police v. Jeanette Rankin Brigade, 409 U.S. 972 (1972).

79. Act of June 25, 1948 (62 Stat. 760).

Provision of Lindberg Kidnapping Act which provided for the imposition of the death penalty only if recommended by the jury held unconstitutional inasmuch as it penalized the assertion of a defendant's Sixth Amendment right to jury trial.

United States v. Jackson, 390 U.S. 570 (1968).
Concurring: Stewart, Douglas, Harlan, Brennan, Fortas, Warren, C.J.
Dissenting: White, Black.

80. Act of Aug. 18, 1949 (63 Stat. 617, 40 U.S.C. § 13k).

Provision, insofar as it applies to the public sidewalks surrounding the Supreme Court building, which bars the display of any flag, banner, or device designed to bring into public notice any party, organization, or movement, held violative of the free speech clause of the First Amendment.

United States v. Grace, 461 U.S. 171 (1983).
Concurring: White, Brennan, Blackmun, Powell, Rehnquist, O'Connor, Burger, C.J.
Concurring in part and dissenting in part: Marshall, Stevens.

81. Act of May 5, 1950 (64 Stat. 107).

Article 3(a) of the Uniform Code of Military Justice, subjecting civilian ex-servicemen to court martial for crime committed while in military service, held to violate Article III, § 2, and the Fifth and Sixth Amendments.

Toth v. Quarles, 350 U.S. 11 (1955).
Concurring: Black, Frankfurter, Douglas, Clark, Harlan, Warren, C.J.
Dissenting: Reed, Burton, Minton.

82. Act of May 5, 1950 (64 Stat. 107).

Insofar as Article 2(11) of the Uniform Code of Military Justice subjects civilian dependents accompanying members of the armed forces overseas in time of peace to trial, in capital cases, by court martial, it is violative of Article III, § 2, and the Fifth and Sixth Amendments.

Reid v. Covert, 354 U.S. 1 (1957).
Concurring: Black, Douglas, Warren, C.J.

Concurring specifically: Frankfurter, Harlan.
Dissenting: Clark, Burton.

Insofar as the aforementioned provision is invoked in time of peace for the trial of noncapital offenses committed on land bases overseas by employees of the armed forces who have not been inducted or who have not voluntarily enlised therein, it is violative of the Sixth Amendment. *McElroy v. United States ex rel. Guagliardo*, 361 U.S. 281 (1960).

Concurring: Clark, Black, Douglas, Brennan, Warren, C.J.
Dissenting: Harlan, Frankfurter.
Concurring in Part and dissenting in Part: Whittaker, Stewart.

Insofar as the aforementioned provision is invoked in time of peace for the trial of noncapital offenses committed by civilian dependents accompanying members of the armed forces overseas, it is violative of Article III, § 2, and the Fifth and Sixth Amendments. *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234 (1960).

Concurring: Clark, Black, Douglas, Brennan, Warren, C.J.
Dissenting: Harlan, Frankfurter.
Concurring in part and dissenting in part: Whittaker, Stewart.

Insofar as the aforementioned provision is invoked in time of peace for the trial of a capital offense committed by a civilian employee of the armed forces overseas, it is violative of Article III, § 2, and the Fifth and Sixth Amendments. *Grisham v. Hagan*, 361 U.S. 278 (1960).

Concurring: Clark, Black, Douglas, Brennan, Warren, C.J.
Dissenting: Harlan, Frankfurter.
Concurring in part and dissenting in part: Whittaker, Stewart.

83. Act of Aug. 16, 1950 (64 Stat. 451, as amended).

Statutory scheme authorizing the Postmaster General to close the mails to distributors of obscene materials held unconstitutional in the absence of procedural provisions to assure prompt judicial determination that protected materials were not being restrained.

Blount v. Rizzi, 400 U.S. 410 (1971).

84. Act of Aug. 28, 1950 (§ 202(c)(1)(D), 64 Stat. 483, 42 U.S.C. § 402(c)(1)(C)).

District court decision holding invalid as a violation of the equal protection component of the Fifth Amendment's due process clause a Social Security provision entitling a husband to insurance benefits through his wife's benefits, provided he received at least one-half of his support from her at the time she became entitled, but requiring no such showing of support for the wife to qualify for benefits through her husband, is summarily affirmed.

Califano v. Silbowitz, 430 U.S. 934 (1977).

85. Act of Aug. 28, 1950 (§ 202(f)(1)(E), 64 Stat. 485, 42 U.S.C. § 402(f)(1)(D)).

Social Security Act provision awarding survivor's benefits based on earnings of a deceased wife to widower only if he was receiving at least half of his support from her at the time of her death, whereas widow receives benefits regardless of dependency, held violative of equal protection element of Fifth Amendment's due process clause because of its impermissible sex classification.

Califano v. Goldfarb, 430 U.S. 199 (1977).
Concurring: Brennan, White, Marshall, Powell.
Concurring specially: Stevens.
Dissenting: Rehnquist, Stewart, Blackmun, Burger, C.J.

86. Act of Sept. 23, 1950 (Title I, § 5, 64 Stat. 992).

Provision of Subversive Activities Control Act making it unlawful for member of Communist front organization to work in a defense plant held to be an overbroad infringement of the right of association protected by the First Amendment.

United States v. Robel, 389 U.S. 258 (1967).
Concurring: Warren, C.J., Black, Douglas, Stewart, Fortas.
Concurring specially: Brennan.
Dissenting: White, Harlan.

87. Act of Sept. 23, 1950 (64 Stat. 993, § 6).

Subversive Activities Control Act of 1950, § 6, providing that any member of a Communist organization, which has registered or has been ordered to register, commits a crime if he attempts to obtain or use a passport, held violative of due process under the Fifth Amendment.

Aptheker v. Secretary of State, 378 U.S. 500 (1964).
Concurring: Goldberg, Brennan, Stewart, Warren, C.J.
Concurring specially: Black, Douglas.
Dissenting: Clark, Harlan, White.

88. Act of Sept. 28, 1950 (Title I, §§ 7, 8, 64 Stat. 993).

Provisions of Subversive Activities Control Act of 1950 requiring in lieu of registration by the Communist Party registration by Party members may not be applied to compel registration by, or to prosecute for refusal to register, alleged members who have asserted their privilege against self-incrimination, inasmuch as registration would expose such persons to criminal prosecution under other laws.

Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965).

89. Act of Oct. 30, 1951 § 5(f)(ii), 65 Stat. 683, 45 U.S.C. § 231a(c)(3)(ii)).

Provision of Railroad Retirement Act similar to section voided in *Goldfarb* (no. 85, supra).

Railroad Retirement Bd. v. Kalina, 431 U.S. 909 (1977).

90. Act of June 27, 1952 (Title III, 349, 66 Stat. 267).

Provision of Immigration and Nationality Act of 1952 providing for revocation of United States citizenship of one who votes in a foreign election held unconstitutional under § 1 of the Fourteenth Amendment.

Afroyim v. Rusk, 387 U.S. 253 (1967).
Concurring: Black, Douglas, Brennan, Fortas, Warren, C.J.
Dissenting: Harlan, Clark, Stewart, White.

91. Act of June 27, 1952 (66 Stat. 163, 269, § 352(a)(1)).

§ 352(a)(1) of the Immigration and Nationality Act of 1952, depriving a naturalized person of citizenship for "having a continuous residence for three years" in state of his birth or prior nationality, held violative of the due process clause of the Fifth Amendment.

Schneider v. Rusk, 377 U.S. 163 (1964).
Concurring: Douglas, Black, Stewart, Goldberg, Warren, C.J.
Dissenting: Clark, Harlan, White.

92. Act of June 27, 1952 (ch. 477, § 244(e)(2), 66 Stat. 214, 8 U.S.C. § 1254 (c)(2).

Provision of the immigration law that permits either House of Congress to veto the decision of the Attorney General to suspend the deportation of certain aliens violates the bicameralism and presentation requirements of lawmaking imposed upon Congress by Article I, §§ 1 and 7.

INS v. Chadha, 462 U.S. 919 (1983).
Justices concurring: Burger, C.J., Brennan, Marshall, Blackmun, Stevens.
Justice concurring specially: Powell.
Justices dissenting: Rehnquist, White.

93. Act of Aug. 16, 1954 (68A Stat. 525, Int. Rev. Code of 1954, §§ 4401-4423).

Provisions of tax laws requiring gamblers to pay occupational and excise taxes may not be used over an assertion of one's privilege against self-incrimination either to compel extensive reporting of activities, leaving the registrant subject to prosecution under the laws of all the States with the possible exception of Nevada, or to prosecute for failure to register and report, because the scheme abridged the Fifth Amendment privilege.

Marchetti v. United States, 390 U.S. 39 (1968), and *Grosso v. United States*, 390 U.S. 62 (1968).
Concurring: Harlan, Black, Douglas, White, Fortas.
Concurring specially: Brennan, Stewart.
Dissenting: Warren., C.J.

94. Act of Aug. 16, 1954 (68A Stat. 560, Marijuana Tax Act, §§ 4741, 4744, 4751, 4753).

Provisions of tax laws requiring possessors of marijuana to register and to pay a transfer tax may not be used over an assertion of the privilege against self-incrimination to compel registration or to prosecute for failure to register.

Leary v. United States, 395 U.S. 6 (1969).
Concurring specially: Warren, C.J., Stewart.

95. Act of Aug. 16, 1954 (68A Stat. 728, Int. Rev. Code of 1954, §§ 5841, 5851).

Provisions of tax laws requiring the possessor of certain firearms, which it is made illegal to receive or to possess, to register with the Treasury Department may not be used over an assertion of the privilege against self-incrimination to prosecute one for failure to register or for possession of an unregistered firearm since the statutory scheme abridges the Fifth Amendment privilege.

Haynes v. United States, 390 U.S. 85 (1968).
Concurring: Harlan, Black, Douglas, Brennan, Stewart, White, Fortas.
Dissenting: Warren, C.J.

96. Act of Aug. 16, 1954 (68A Stat. 867, Int. Rev. Code of 1954, § 7302).

Provision of tax laws providing for forfeiture of property used in violating internal revenue laws may not be constitutionally used in face of invocation of privilege against self-incrimination to condemn money in possession of gambler who had failed to comply with the registration and reporting scheme held void in *Marchetti v. United States*, 390 U.S. 39 (1968).

United States v. United States Coin & Currency, 401 U.S. 715 (1971).
Concurring: Harlan, Black, Douglas, Brennan, Marshall.
Dissenting: White, Stewart, Blackmun, Burger, C.J.

97. Act of Aug. 16, 1954, ch. 736, 68A Stat. 521, 26 U.S.C. § 4371(1).

A federal tax on insurance premiums paid to foreign insurers not subject to the federal income tax violates the Export Clause, Art. I, § 9, cl. 5, as applied to casualty insurance for losses incurred during the shipment of goods from locations within the United States to purchasers abroad.

United States v. IBM Corp., 517 U.S. 843 (1996).
Justices concurring: Thomas, O'Connor, Scalia, Souter, Breyer,, and Rehnquist, C.J.
Justices dissenting: Kennedy, Ginsburg.

98. Act of July 18, 1956 (§ 106, Stat. 570).

Provision of Narcotic Drugs Import and Export Act creating a presumption that possessor of marijuana knew of its illegal importation into the United States held, in absence of showing that all mari-

juana in United States was of foreign origin and that domestic users could know that their marijuana was more likely than not of foreign origin, unconstitutional under the due process clause of the Fifth Amendment.

Leary v. United States, 395 U.S. 6 (1969).
Concurring specially: Black.

99. Act of Aug. 10, 1956 (70A Stat. 65, Uniform Code of Military Justice, Articles 80, 130, 134).

Servicemen may not be charged under the Act and tried in military courts because of the commission of non-service connected crimes committed off-post and off-duty which are subject to civilian court jurisdiction where the guarantees of the Bill of Rights are applicable.

O'Callahan v. Parker, 395 U.S. 258 (1969), overruled in *Solorio v. United States*, 483 U.S. 435 (1987).
Concurring: Douglas, Black, Brennan, Fortas, Marshall, Warren, C.J.
Dissenting: Harlan, Stewart, White.

100. Act of Aug. 10, 1956 (70A Stat. 35, § 772(f)).

Proviso of statute permitting the wearing of United States military apparel in theatrical productions only if the portrayal does not tend to discredit the armed forces imposes an unconstitutional restraint upon First Amendment freedoms and precludes a prosecution under 18 U.S.C. § 702 for unauthorized wearing of uniform in a street skit disrespectful of the military.

Schacht v. United States, 398 U.S. 58 (1970).

101. Act of Sept. 2, 1958 (§ 5601(b)(1), 72 Stat. 1399).

Provision of Internal Revenue Code creating a presumption that one's presence at the site of an unregistered still shall be sufficient for conviction under a statute punishing possession, custody, or control of an unregistered still unless defendant otherwise explained his presence at the site to the jury held unconstitutional because the presumption is not a legitimate, rational, or reasonable inference that defendant was engaged in one of the specialized functions proscribed by the statute.

United States v. Romano, 382 U.S. 136 (1965).

102. Act of Sept. 2, 1958 (Pub. L. 85-921, § 1, 72 Stat. 1771, 18 U.S.C. § 504(1)).

Exemptions from ban on photographic reproduction of currency "for philatelic, numismatic, educational, historical, or newsworthy purposes" violates the First Amendment because it discriminates on the basis of the content of a publication.

Regan v. Time, Inc., 468 U.S. 641 (1984).
Justices concurring: White, Brennan, Blackmun, Marshall, Powell, Rehnquist, O'Connor, Burger, C.J.

Justice dissenting: Stevens.

103. Act of Sept. 2, 1958 (§ 1(25)(B), 72 Stat. 1446), and Act of September 7, 1962 (§ 401, 76 Stat. 469).

Federal statutes providing that spouses of female members of the Armed Forces must be dependent in fact in order to qualify for certain dependent's benefits, whereas spouses of male members are statutorily deemed dependent and automatically qualified for allowances, whatever their actual status, held an invalid sex classification under the equal protection principles of the Fifth Amendment's due process clause.

Frontiero v. Richardson, 411 U.S. 677 (1973).
Concurring: Brennan, Douglas, White, Marshall.
Concurring specially: Powell, Blackmun, Burger, C.J., Stewart.
Dissenting: Rehnquist..

104. Act of Sept. 14, 1959 (§ 504, 73 Stat. 536).

Provision of Labor-Management Reporting and Disclosure Act of 1959 making it a crime for a member of the Communist Party to serve as an officer or, with the exception of clerical or custodial positions, as an employee of a labor union held to be a bill of attainder and unconstitutional.

United States v. Brown, 381 U.S. 437 (1965).
Concurring: Warren, C.J., Black, Douglas, Brennan, Goldberg.
Dissenting: White, Clark, Harlan, Stewart.

105. Act of Oct. 11, 1962 (§ 305, 76 Stat. 840).

Provision of Postal Services and Federal Employees Salary Act of 1962 authorizing Post Office Department to detain material determined to be "communist political propaganda" and to forward it to the addressee only if he requested it after notification by the Department, the material to be destroyed otherwise, held to impose on the addressee an affirmative obligation which amounted to an abridgment of First Amendment rights.

Lamont v. Postmaster General, 381 U.S. 301 (1965).

106. Act of Oct. 15, 1962 (76 Stat. 914).

Provision of District of Columbia laws requiring that a person to be eligible to receive welfare assistance must have resided in the District for at least one year impermissibly classified persons on the basis of an assertion of the right to travel interstate and therefore held to violate the due process clause of the Fifth Amendment.

Shapiro v. Thompson, 394 U.S. 618 (1969).
Concurring: Brennan, Douglas, Stewart, White, Fortas, Marshall.
Dissenting: Warren, C.J., Black, Harlan.

107. Act of Dec. 16, 1963 (77 Stat. 378, 20 U.S.C. § 754).

Provision of Higher Education Facilities Act of 1963 which in effect removed restriction against religious use of facilities constructed with federal funds after 20 years held to violate the establishment clause of the First Amendment inasmuch as the property will still be of considerable value at the end of the period and removal of the restriction would constitute a substantial governmental contribution to religion.

Tilton v. Richardson, 403 U.S. 672 (1971).

108. Act of July 30, 1965 (§ 339, 79 Stat. 409).

Section of Social Security Act qualifying certain illegitimate children for disability insurance benefits by presuming dependence but disqualifying other illegitimate children, regardless of dependency, if the disabled wage earner parent did not contribute to the child's support before the onset of the disability or if the child did not live with the parent before the onset of disability, held to deny latter class of children equal protection as guaranteed by the due process clause of the Fifth Amendment.

Jiminez v. Weinberger, 417 U.S. 628 (1974).
Concurring: Burger, C.J., Douglas, Brennan, Stewart, White, Marshall, Blackmun, Powell.
Dissenting: Rehnquist.

109. Act of Sept. 3, 1966 (§ 102(b), 80 Stat. 831), and Act of Apr. 8, 1974 (§§ 6(a)(1) amending § 3(d) of Act, 6(a)(2) amending 3 (e)(2)(C), 6(a)(5) amending § 3(s)(5), and 6(a)(6) amending § 3(x)).

Those sections of the Fair Labor Standards Act extending wage and hour coverage to the employees of state and local governments held invalid because Congress lacks the authority under the commerce clause to regulate employee activities in areas of traditional governmental functions of the States.

National League of Cities v. Usery, 426 U.S. 833 (1976) (subsequently overruled).
Concurring: Rehnquist, Stewart, Blackmun, Powell, Burger, C.J.
Dissenting: Brennan, White, Marshall; Stevens.

110. Act of Nov. 7, 1967 (Pub. L. 90-129, § 201(8), 81 Stat. 368), as amended by Act of Aug. 13, 1981 (Pub. L. 97-35, § 1229, 95 Stat. 730, 47 U.S.C. § 399).

Communications Act provision banning noncommercial educational stations receiving grants from the Corporation for Public Broadcasting from engaging in editorializing violates the First Amendment.

FCC v. League of Women Voters, 468 U.S. 364 (1984).
Justices concurring: Brennan, Marshall, Blackmun, Powell, O'Connor.

Justices dissenting: White, Rehnquist, Stevens, Burger, C.J.

111. Act of Jan. 2, 1968 (§ 163(a)(2), 81 Stat. 872).

District court decisions holding unconstitutional under Fifth Amendment's due process clause section of Social Security Act that reduced, perhaps to zero, benefits coming to illegitimate children upon death of parent in order to satisfy the maximum payment due the wife and legitimate children are summarily affirmed.

Richardson v. Davis, 409 U.S. 1069 (1972).

112. Act of Jan. 2, 1968 (§ 203, 81 Stat. 882).

Provision of Social Security Act extending benefits to families whose dependent children have been deprived of parental support because of the unemployment of the father but not giving benefits when the mother becomes unemployed held to impermissibly classify on the basis of sex and violate the Fifth Amendment's due process clause.

Califano v. Westcott, 443 U.S. 76 (1979).

113. Act of June 19, 1968 (Pub. L. 90-351, § 701(a)), 82 Stat. 210, 18 U.S.C. § 3501.

A section of the Omnibus Crime Control and Safe Streets Act of 1968 purporting to reinstate the voluntariness principle that had governed the constitutionality of custodial interrogations prior to the Court's decision in *Miranda v. Arizona*, 384 U.S. 486 (1966), is an invalid attempt by Congress to redefine a constitutional protection defined by the Court. The warnings to suspects required by *Miranda* are constitution-based rules. While the *Miranda* Court invited a legislative rule that would be "at least as effective" in protecting a suspect's right to remain silent, section 3501 is not an adequate substitute.

Dickerson v. United States, 530 U.S. 428 (2000).
Justices concurring: Rehnquist, C.J., Stevens, O'Connor, Kennedy, Souter, and Ginsburg.
Justices dissenting: Scalia, Thomas.

114. Act of June 19, 1968 (Pub. L. No. 90-351, § 802), 82 Stat. 213, 18 U.S.C. § 2511(c), as amended by the Act of Oct. 21, 1986 (Pub. L. No. 99-508, § 101(c)(1)(A)), 100 Stat. 1851.

A federal prohibition on disclosure of the contents of an illegally intercepted electronic communication violates the First Amendment as applied to a talk show host and a community activist who had played no part in the illegal interception, and who had lawfully obtained tapes of the illegally intercepted cellular phone conversation. The subject matter of the disclosed conversation, involving a threat of violence in a labor dispute, was "a matter of public concern." Although the disclosure prohibition well serves the government's "im-

portant" interest in protecting private communication, in this case "privacy concerns give way when balanced against the interest in publishing matters of public importance."

Bartnicki v. Vopper, 532 U.S. 514 (2001).
Justices concurring: Stevens, O'Connor, Kennedy, Souter, Ginsburg, Breyer.
Justices dissenting: Rehnquist, C.J., Scalia, Thomas.

115. Act of June 22, 1970 (ch. III, 84 Stat. 318).

Provision of Voting Rights Act Amendments of 1970 which set a minimum voting age qualification of 18 in state and local elections held to be unconstitutional because beyond the powers of Congress to legislate.

Oregon v. Mitchell, 400 U.S. 112 (1970).
Concurring: Harlan, Stewart, Blackmun, Burger, C.J.
Concurring specially: Black.
Dissenting: Douglas, Brennan, White, Marshall.

116. Act of Dec. 29, 1970 (§ 8(a), 84 Stat. 1598, 29 U.S.C. § 637(a)).

Provision of Occupational Safety and Health Act authorizing inspections of covered work places in industry without warrants held to violate Fourth Amendment.

Marshall v. Barlow's Inc., 436 U.S. 307 (1978).
Concurring: White, Stewart, Marshall, Powell, Burger, C.J.
Dissenting: Stevens, Blackmun, Rehnquist.

117. Act of Jan. 11, 1971, (§ 2, 84 Stat. 2048).

Provision of Food Stamp Act disqualifying from participation in program any household containing an individual unrelated by birth, marriage, or adoption to any other member of the household violates the due process clause of the Fifth Amendment.

Department of Agriculture v. Moreno, 413 U.S. 528 (1973).
Concurring: Brennan, Douglas, Stewart, White, Marshall, Blackmun, Powell.
Dissenting: Rehnquist, Burger, C.J.

118. Act of Jan. 11, 1971 (§ 4, 84 Stat. 2049).

Provision of Food Stamp Act disqualifying from participation in program any household containing a person 18 years or older who had been claimed as a dependent child for income tax purposes in the present or preceding tax year by a taxpayer not a member of the household violates the due process clause of the Fifth Amendment.

Department of Agriculture v. Murry, 413 U.S. 508 (1973).
Concurring: Douglas, Brennan, Stewart, White, Marshall.
Dissenting: Blackmun, Rehnquist, Powell, Burger, C.J.

119. Act of Dec. 10, 1971 (Pub. L. 92-178, § 801, 85 Stat. 570, 26 U.S.C § 9012(f)).

Provision of Presidential Election Campaign Fund Act limiting to $1,000 the amount that independent committees may expend to fur-

ther the election of a presidential candidate financing his campaign with public funds is an impermissible limitation of freedom of speech and association protected by the First Amendment.

FEC v. National Conservative Political Action Comm., 470 U.S. 480 (1985).
Justices concurring: Rehnquist, Brennan, Blackmun, Powell, O'Connor, Stevens, Burger, C.J.
Justices dissenting: White, Marshall.

120. Federal Election Campaign Act of Feb. 7, 1972 (86 Stat. 3), as amended by the Federal Campaign Act Amendments of 1974 (88 Stat. 1263), adding or amending 18 U.S.C. §§ 608(a), 608(e), and 2 U.S.C. § 437c.

Provisions of election law that forbid a candidate or the members of his immediate family from expending personal funds in excess of specified amounts, that limit to $1,000 the independent expenditures of any person relative to an identified candidate, and that forbid expenditures by candidates for federal office in excess of specified amounts violate the First Amendment speech guarantees; provisions of the law creating a commission to oversee enforcement of the Act are an invalid infringement of constitutional separation of powers in that they devolve responsibilities upon a commission four of whose six members are appointed by Congress and all six of whom are confirmed by the House of Representatives as well as by the Senate, not in compliance with the appointments clause.

Buckley v. Valeo, 424 U.S. 1 (1976).
Concurring: Brennan, Stewart, Blackmun, Powell, Rehnquist, Burger, C.J.
Dissenting (expenditure provisions only): White.
Dissenting (candidate's personal funds only): Marshall.

121. Act of Apr. 8, 1974, Pub. L. 93-259, §§ 6(a)(6), 6(d)(1), 29 U.S.C. §§ 203(x), 216(b).

Fair Labor Standards Amendments of 1974 subjecting non-consenting states to suits for damages brought by employees in state courts violates the principle of sovereign immunity implicit in the constitutional scheme. Congress lacks power under Article I to subject non-consenting states to suits for damages in state courts.

Alden v. Maine, 527 U.S. 706 (1999).
Justices concurring: Kennedy, O'Connor, Scalia, Thomas, Rehnquist, C.J.
Justices dissenting: Souter, Stevens, Ginsburg, Breyer.

122. Act of Apr. 8, 1974 (Pub. L. No. 93-259, §§ 6(d)(1), 28(a)(2)), 88 Stat. 61, 74;29 U.S.C. §§ 216(b), 630(b).

The Fair Labor Standards Act Amendments of 1974, amending the Age Discrimination in Employment Act to subject states to damages actions in federal courts, exceeds congressional power under section 5 of the Fourteenth Amendment. Age is not a suspect classification under the Equal Protection Clause, and the ADEA is "so out of

proportion to a remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior."

Kimel v. Florida Bd. of Regents, 528 U.S. 62 (2000).
Justices concurring: O'Connor, Scalia, Kennedy, Thomas, Rehnquist, C.J.
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

123. Act of May 11, 1976 (Pub. L. 94-283, § 112(2)), 90 Stat. 489; 2 U.S.C. § 441a(d)(3).

The Party Expenditure Provision of the Federal Election Campaign Act, which limits expenditures by a political party "in connection with the general election campaign of a [congressional] candidate," violates the First Amendment when applied to expenditures that a political party makes independently, without coordination with the candidate.

Colorado Republican Campaign Comm. v. FEC, 518 U.S. 604 (1996).
Justices concurring: Breyer, O'Connor, Souter.
Justices concurring in part and dissenting in part: Kennedy, Scalia, Thomas,, and Rehnquist, C.J.
Justices dissenting: Stevens, Ginsburg.

124. Act of May 11, 1976, Pub. L. 92-225, § 316, 90 Stat. 490, 2 U.S.C. § 441b.

Provision of Federal Election Campaign Act requiring that independent corporate campaign expenditures be financed by voluntary contributions to a separate segregated fund violates the First Amendment as applied to a corporation organized to promote political ideas, having no stockholders, and not serving as a front for a business corporation or union.

FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986).
Justices concurring: Brennan, Marshall, Powell, Scalia.
Justice concurring specially: O'Connor.
Justices dissenting: Rehnquist, C.J., White, Blackmun, Stevens.

125. Act of Oct. 1, 1976 (title II, 90 Stat. 1446); Act of Oct. 12, 1979 (101(c), 93 Stat. 657)).

Provisions of appropriations laws rolling back automatic pay increases for federal officers and employees is unconstitutional as to Article III judges because, the increases having gone into effect, they violate the security of compensation clause of Article III, § 1.

United States v. Will, 449 U.S. 200 (1980).

126. Act of Oct. 19, 1976 (Pub. L. 94-553, § 101(c)), 17 U.S.C. § 504(c).

Section 504(c) of the Copyright Act, which authorizes a copyright owner to recover statutory damages, in lieu of actual damages, "in a sum of not less than $500 or more than $20,000 as the court considers just," does not grant the right to a jury trial on the amount of statu-

tory damages. The Seventh Amendment, however, requires a jury determination of the amount of statutory damages.

Feltner v. Columbia Pictures Television, 523 U.S. 340 (1998).

127. Act of Nov. 6, 1978 (§ 241(a), 92 Stat. 2668, 28 U.S.C. § 1471)

Assignment to judges who do not have tenure and guarantee of compensation protections afforded Article III judges of jurisdiction over all proceedings arising under or in the bankruptcy act and over all cases relating to proceedings under the bankruptcy act is invalid, inasmuch as judges without Article III protection may not receive at least some of this jurisdiction.

Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).
Concurring: Brennan, Marshall, Blackmun, Stevens.
Concurring specially: Rehnquist, O'Connor.
Dissenting: White, Powell, Burger, C.J.

128. Act of Nov. 9, 1978 (Pub. L. 95-621, § 202(c)(1), 92 Stat. 3372, 15 U.S.C. § 3342(c)(1).

Decision of Court of Appeals holding unconstitutional provision giving either House of Congress power to veto rules of Federal Energy Regulatory Commission on certain natural gas pricing matters is summarily affirmed on the authority of *INS v. Chadha*.

Process Gas Consumers Group v. Consumer Energy Council, 463 U.S. 1216 (1983).

129. Act of May 28, 1980 (Pub. L. 96-252, § 21(a)), 94 Stat. 393, 15 U.S.C. § 57a-1(a).

Decision of Court of Appeals holding unconstitutional provision of FTC Improvements Act giving Congress power by concurrent resolution to veto final rules of the FTC is summarily affirmed on the basis of *INS v. Chadha*.

United States Senate v. FTC, 463 U.S. 1216 (1983).

130. Act of May 30, 1980 (94 Stat. 399, 45 U.S.C. § 1001 et seq.) as amended by the Act of Oct. 14, 1980 (94 Stat. 1959).

Acts of Congress applying to bankruptcy reorganization of one railroad and guaranteeing employee benefits is repugnant to the requirement of Article I, § 8, cl. 4, that bankruptcy legislation be "uniform."

Railroad Labor Executives Ass'n v. Gibbons, 455 U.S. 457 (1982).

131. Act of Jan. 12, 1983 (Pub. L. 97-459, § 207), 96 Stat. 2519, 25 U.S.C. § 2206.

Section of Indian Land Consolidation Act providing for escheat to tribe of fractionated interests in land representing less than 2% of a tract's total acreage violates the Fifth Amendment's takings clause by completely abrogating rights of intestacy and devise.

Hodel v. Irving, 481 U.S. 704 (1987).
Justices concurring: O'Connor, Brennan, Marshall, Blackmun, Powell, Scalia, Rehnquist, C.J.
Justices concurring specially: Stevens, White..

132. Act of Apr. 20, 1983, 97 Stat. 69 (Pub. L. No. 98-21 § 101(b)(1) (amending 26 U.S.C. § 3121(b)(5)).

The 1983 extension of the Social Security tax to then-sitting judges violates the Compensation Clause of Article III, § 1. The Clause "does not prevent Congress from imposing a non-discriminatory tax laid generally upon judges and other citizens . . . , but it does prohibit taxation that singles out judges for specially unfavorable treatment." The 1983 Social Security law gave 96% of federal employees "total freedom" of choice about whether to participate in the system, and structured the system in such a way that "virtually all"" of the remaining 4% of employees – except the judges – could opt to retain existing coverage. By requiring then-sitting judges to join the Social Security System and pay Social Security taxes, the 1983 law discriminated against judges in violation of the Compensation Clause.

United States v. Hatter, 532 U.S. 557 (2001).
Justices concurring: Breyer, Kennedy, Souter, Ginsburg, Scalia, Thomas, Rehnquist, C.J..

133. Act of Oct. 30, 1984, (Pub. L. 98-608, § 1(4)), 98 Stat. 3173, 25 U.S.C. § 2206.

Section 207 of the Indian Land Consolidation Act, as amended in 1984, effects an unconstitutional taking of property without compensation by restricting a property owner's right to pass on property to his heirs. The amended section, like an earlier version held unconstitutional in *Hodel v. Irving* (1987), provides that certain small interests in Indian land will escheat to the tribe upon death of the owner. None of the changes made in 1984 cures the constitutional defect.

Babbitt v. Youpee, 519 U.S. 234 (1997).
Justices concurring: Ginsburg, O'Connor, Scalia, Kennedy, Souter, Thomas, Breyer,and Rehnquist, C.J.
Justices dissenting: Stevens.

134. Act of Jan. 15, 1985, (Pub. L. 99-240, § 5(d)(2)(C)), 99 Stat. 1842, 42 U.S.C. §2021e(d)(2)(C).

"Take-title" incentives contained in the Low-Level Radioactive Waste Policy Amendments Act of 1985, designed to encourage states to cooperate in the federal regulatory scheme, offend principles of federalism embodied in the Tenth Amendment. These incentives, which require that non-participating states take title to waste or become liable for generators' damages, cross the line distinguishing encouragement from coercion. Congress may not simply commandeer the legis-

lative and regulatory processes of the states, nor may it force a transfer from generators to state governments. A required choice between two unconstitutionally coercive regulatory techniques is also impermissible.

New York v. United States, 505 U.S. 144 (1992).
Justices concurring: O'Connor, Scalia, Kennedy, Souter, Thomas, Rehnquist, C.J.
Justices dissenting: White, Blackmun, Stevens.

135. Act of Dec. 12, 1985 (Pub. L. 99-177, § 251), 99 Stat. 1063, 2 U.S.C. § 901.

That portion of the Balanced Budget and Emergency Deficit Control Act which authorizes the Comptroller General to determine the amount of spending reductions which must be accomplished each year to reach congressional targets and which authorizes him to report a figure to the President which the President must implement violates the constitutional separation of powers inasmuch as the Comptroller General is subject to congressional control (removal) and cannot be given a role in the execution of the laws.

Bowsher v. Synar, 478 U.S. 714 (1986).
Justices concurring: Burger, C.J., Brennan, Powell, Rehnquist, O'Connor.
Justices concurring specially: Stevens, Marshall.
Justices dissenting: White, Blackmun.

136. Act of Oct. 30, 1986 (Pub. L. 99-591, title VI, § 6007(f)), 100 Stat. 3341, 49 U.S.C. App.§ 2456(f).

The Metropolitan Washington Airports Act of 1986, which transferred operating control of two Washington, D.C., area airports from the Federal Government to a regional airports authority, violates separation of powers principles by conditioning that transfer on the establishment of a Board of Review, composed of Members of Congress and having veto authority over actions of the airports authority's board of directors.

Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252 (1991)
Justices concurring: Stevens, Blackmun, O'Connor, Scalia, Kennedy, Souter.
Justices dissenting: White, Marshall, Rehnquist, C.J.

137. Act of Nov. 17, 1986 (Pub. L. 99-662, title IV, § 1402(a)), 26 U.S.C. §§ 4461, 4462.

The Harbor Maintenance Tax (HMT) violates the Export Clause of the Constitution, Art. I, § 9, cl. 5 to the extent that the tax applies to goods loaded for export at United States ports. The HMT, which requires shippers to pay a uniform charge of 0.125% of cargo value on commercial cargo shipped through the Nation's ports, is an impermissible tax rather than a permissible user fee. The value of export cargo does not correspond reliably with federal harbor services used

by exporters, and the tax does not, therefore, represent compensation for services rendered.

United States v. United States Shoe Corp., 523 U.S. 360 (1998).

138. Act of Apr. 28, 1988 (Pub. L. 100-297 § 6101), 102 Stat. 424, 47 U.S.C. § 223(b)(1).

Amendment to Communications Act of 1934 imposing an outright ban on "indecent" but not obscene messages violates the First Amendment, since it has not been shown to be narrowly tailored to further the governmental interest in protecting minors from hearing such messages.

Sable Communications of California v. FCC, 492 U.S. 115 (1989).

139. Act of Oct. 17, 1988 (Pub. L. 100-497, § 11(d)(7)), 102 Stat. 2472, 25 U.S.C. § 2710(d)(7).

A provision of the Indian Gaming Regulatory Act authorizing an Indian tribe to sue a State in federal court to compel performance of a duty to negotiate in good faith toward the formation of a compact violates the Eleventh Amendment. In exercise of its powers under Article I, Congress may not abrogate States' Eleventh Amendment immunity from suit in federal court. *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989), is overruled.

Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996).
Justices concurring: Rehnquist, C.J., O'Connor, Scalia, Kennedy, Thomas.
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

140. Act of Oct. 28, 1989 (Pub. L. 101-131), 103 Stat. 777, 18 U.S.C. § 700.

The Flag Protection Act of 1989, criminalizing burning and certain other forms of destruction of the United States flag, violates the First Amendment. Most of the prohibited acts involve disrespectful treatment of the flag, and evidence a purpose to suppress expression out of concern for its likely communicative impact.

United States v. Eichman, 496 U.S. 310 (1990).
Justices concurring: Brennan, Marshall, Blackmun, Scalia, Kennedy.
Justices dissenting: Stevens, White, O'Connor, Rehnquist, C.J.

141. Act of Nov. 30, 1989 (Pub. L. 101-194, § 601), 103 Stat. 1760, 5 U.S.C. app. § 501.

Section 501(b) of the Ethics in Government Act, as amended in 1989 to prohibit Members of Congress and federal employees from accepting honoraria, violates the First Amendment as applied to Executive Branch employees below grade GS-16. The ban is limited to expressive activity and does not include other outside income, and the "speculative benefits" of the ban do not justify its "crudely crafted burden" on expression.

United States v. National Treasury Employees Union, 513 U.S. 454 (1995).

Justices concurring: Stevens, Kennedy, Souter, Ginsburg, Breyer.
Justice concurring in part and dissenting in part: O'Connor.
Justices dissenting: Rehnquist, C.J., Scalia, Thomas.

142. Act of July 26, 1990 (Pub. L. No. 101-336, Title I), 104 Stat. 330, 42 U.S.C. §§ 12111-12117.

Title I of the Americans with Disabilities Act of 1990 (ADA), exceeds congressional power to enforce the Fourteenth Amendment, and violates the Eleventh Amendment, by subjecting states to suits brought by state employees in federal courts to collect money damages for the state's failure to make reasonable accommodations for qualified individuals with disabilities. Rational basis review applies, and consequently states "are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards such individuals are rational." The legislative record of the ADA fails to show that Congress identified a pattern of irrational state employment discrimination against the disabled. Moreover, even if a pattern of discrimination by states had been found, the ADA's remedies would run afoul of the "congruence and proportionality" limitation on Congress's exercise of enforcement power.

Board of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001).
Justices concurring: Rehnquist, C.J., O'Connor, Scalia, Kennedy, Thomas.
Justices dissenting: Breyer, Stevens, Souter, Ginsburg.

143. Act of Nov. 28, 1990 (Pub. L. No. 101-624, Title XIX, Subtitle B), 104 Stat. 3854, 7 U.S.C. §§ 6101 et seq.

The Mushroom Promotion, Research, and Consumer Information Act violates the First Amendment by imposing mandatory assessments on mushroom handlers for the purpose of funding generic advertising to promote mushroom sales. The mushroom program differs "in a most fundamental respect" from the compelled assessment on fruit growers upheld in *Glickman v. Wileman Brothers & Elliott* (1997). There the mandated assessments were "ancillary to a more comprehensive program restricting marketing autonomy," while here there is "no broader regulatory system in place." The mushroom program contains no marketing orders that regulate how mushrooms may be produced and sold, no exemption from the antitrust laws, and nothing else that forces mushroom producers to associate as a group to make cooperative decisions. But for the assessment for advertising, the mushroom growing business is unregulated.

United States v. United Foods, Inc., 533 U.S. 405 (2001).
Justices concurring: Kennedy, Stevens, Scalia, Souter, Thomas, Rehnquist, C.J..
Justices dissenting: Breyer, Ginsburg, O'Connor..

144. Act of Nov. 29, 1990 (Pub. L. 101-647, § 1702), 104 Stat. 4844, 18 U.S.C. § 922q.

The Gun Free School Zones Act of 1990, which makes it a criminal offense to knowingly possess a firearm within a school zone, exceeds congressional power under the Commerce Clause. It is "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise." Possession of a gun at or near a school "is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."

United States v. Lopez, 514 U.S. 549 (1995).
Justices concurring: Rehnquist, C.J., O'Connor, Scalia, Kennedy, Thomas.
Justices dissenting: Stevens, Souter, Breyer, Ginsburg.

145. Act of Dec. 19, 1991 (Pub. L. 102-242 § 476), 105 Stat. 2387, 15 U.S.C. § 78aa-1.

Section 27A(b) of the Securities Exchange Act of 1934, as added in 1991, requiring reinstatement of any section 10(b) actions that were dismissed as time barred subsequent to a 1991 Supreme Court decision, violates the Constitution's separation of powers to the extent that it requires federal courts to reopen final judgments in private civil actions. The provision violates a fundamental principle of Article III that the federal judicial power comprehends the power to render dispositive judgments.

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995).
Justices concurring: Scalia, O'Connor, Kennedy, Souter, Thomas, Rehnquist, C.J.
Justice concurring specially: Breyer..
Justices dissenting: Stevens, Ginsburg.

146. Act of Oct. 5, 1992 (Pub. L. 102-385, §§ 10(b) and 10(c)), 106 Stat. 1487, 1503; 47 U.S.C. § 532(j) and § 531 note, respectively.

Section 10(b) of the Cable Television Consumer Protection and Competition Act of 1992, which requires cable operators to segregate and block indecent programming on leased access channels if they do not prohibit it, violates the First Amendment. Section 10(c) of the Act, which permits a cable operator to prevent transmission of "sexually explicit" programming on public access channels, also violates the First Amendment.

Denver Area Educ. Tel. Consortium v. FCC, 518 U.S. 727 (1996).
Justices concurring: Breyer, Stevens, O'Connor (§ 10(b) only), Kennedy, Souter, Ginsburg.
Justices dissenting: Thomas, Scalia, O'Connor (§ 10(c) only), Rehnquist, C.J.

147. Act of Oct. 24, 1992, Title XIX, 106 Stat. 3037 (Pub. L. 102-486), 26 U.S.C. §§ 9701-9722.

The Coal Industry Retiree Health Benefit Act of 1992 is unconstitutional as applied to the petitioner Eastern Enterprises. Pursuant to

the Act, the Social Security Commissioner imposed liability on Eastern for funding health care benefits of retirees from the coal industry who had worked for Eastern prior to 1966. Eastern had transferred its coal-related business to a subsidiary in 1965. Four Justices viewed the imposition of liability on Eastern as a violation of the Takings Clause, and one Justice viewed it as a violation of substantive due process.

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998).
Justices concurring: O'Connor, Scalia, Thomas, Rehnquist, C.J.
Justices concurring specially: Kennedy.
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

148. Act of Oct. 27, 1992, Pub. L. 102-542, 15 U.S.C. § 1122.

The Trademark Remedy Clarification Act, which provided that states shall not be immune from suit under the Trademark Act of 1946 (Lanham Act) "under the eleventh amendment . . . or under any other doctrine of sovereign immunity," did not validly abrogate state sovereign immunity. Congress lacks power to do so in exercise of Article I powers, and the TRCA cannot be justified as an exercise of power under section 5 of the Fourteenth Amendment. The right to be free from a business competitor's false advertising is not a "property right" protected by the Due Process Clause.

College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999).
Justices concurring: Scalia, O'Connor, Kennedy, Thomas, Rehnquist, C.J.
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

149. Act of Oct. 28, 1992, 106 Stat. 4230, Pub. L. 102-560, 29 U.S.C. § 296.

The Patent and Plant Variety Remedy Clarification Act, which amended the patent laws to expressly abrogate states' sovereign immunity from patent infringemenet suits is invalid. Congress lacks power to abrogate state immunity in exercise of Article I powers, and the Patent Remedy Clarification Act cannot be justified as an exercise of power under section 5 of the Fourteenth Amendment. Section 5 power is remedial, yet the legislative record reveals no identified pattern of patent infringement by states and the Act's provisions are "out of proportion to a supposed remedial or preventive object."

Florida Prepaid Postsecondary Edu. Expense Bd. v. College Savings Bank, 527 U.S. 627 (1999).
Justices concurring: Rehnquist, C.J., O'Connor, Scalia, Kennedy, Thomas.
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

150. Act of Nov. 16, 1993 (Pub. L. 103-141), 107 Stat. 1488, 42 U.S.C. §§ 2000bb to 2000bb-4.

The Religious Freedom Restoration Act, which directed use of the compelling interest test to determine the validity of laws of general applicability that substantially burden the free exercise of religion,

exceeds congressional power under section 5 of the Fourteenth Amendment. Congress' power under Section 5 to "enforce" the Fourteenth Amendment by "appropriate legislation" does not extend to defining the substance of the Amendment's restrictions. This RFRA appears to do. RFRA "is so far out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior."

City of Boerne v. Flores, 521 U.S. 507 (1997).
Justices concurring: Kennedy, Stevens, Thomas, Ginsburg, Rehnquist, C.J..
Justices dissenting: O'Connor, Breyer, Souter.

151. Act of Nov. 30, 1993 (Pub. L. 103-159), 107 Stat. 1536.

Interim provisions of the Brady Handgun Violence Prevention Act that require state and local law enforcement officers to conduct background checks on prospective handgun purchasers are inconsistent with the Constitution's allocation of power between Federal and State governments. In *New York v. United States*, 505 U.S. 144 (1992), the Court held that Congress may not compel states to enact or enforce a federal regulatory program, and "Congress cannot circumvent that prohibition by conscripting the State's officers directly."

Printz v. United States, 521 U.S. 898 (1997).
Justices concurring: Scalia, O'Connor, Kennedy, Thomas, Rehnquist, C.J..
Justices dissenting: Stevens, Souter, Ginsburg, Breyer.

152. Act of Sept. 13, 1994 (Pub. L. 103-322, § 40302), 108 Stat. 1941, 42 U.S.C. § 13981.

A provision of the Violence Against Women Act that creates a federal civil remedy for victims of gender-motivated violence exceeds congressional power under the Commerce Clause and under section 5 of the Fourteenth Amendment. The commerce power does not authorize Congress to regulate "noneconomic violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." The Fourteenth Amendment prohibits only state action, and affords no protection against purely private conduct. Section 13981, however, is not aimed at the conduct of state officials, but is aimed at private conduct.

United States v. Morrison, 529 U.S. 598 (2000).
Justices concurring: Rehnquist, C.J., O'Connor, Scalia, Kennedy, Thomas.
Justices dissenting: Souter, Breyer, Stevens, Ginsburg.

153. Act of Feb. 8, 1996, 110 Stat. 56, 133-34 (Pub. L. 104-104, title V, § 502), 47 U.S.C. §§ 223(a), 223(d).

Two provisions of the Communications Decency Act of 1996 -- one that prohibits knowing transmission on the Internet of obscene or indecent messages to any recipient under 18 years of age, and the other that prohibits the knowing sending or displaying of patently offensive

messages in a manner that is available to anyone under 18 years of age -- violate the First Amendment.

Reno v. ACLU, 521 U.S. 844 (1997).
Justices concurring: Stevens, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer.
Justices concurring in part and dissenting in part: O'Connor, Rehnquist, C.J..

154. Act of Feb. 8, 1996 (Pub. L. 104-104, § 505), 110 Stat. 136, 47 U.S.C. § 561.

Section 505 of the Telecommunications Act of 1996, which required cable TV operators that offer channels primarily devoted to sexually oriented programming to prevent signal bleed either by fully scrambling those channels or by limiting their transmission to designated hours when children are less likely to be watching, violates the First Amendment. The provision is content-based, and therefore can only be upheld if narrowly tailored to promote a compelling governmental interest. The measure is not narrowly tailored, since the Government did not establish that the less restrictive alternative found in section 504 of the Act -- that of scrambling a channel at a subscriber's request -- would be ineffective.

United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000).
Justices concurring: Kennedy, Stevens, Souter, Thomas, Ginsburg.
Justices dissenting: Scalia, Breyer, O'Connor, Scalia, Rehnquist, C.J..

155. Act of Apr. 9, 1996, 110 Stat. 1200 (Pub. L. 104-130), 2 U.S.C. §§ 691 et seq.

The Line Item Veto Act, which gives the President the authority to "cancel in whole" three types of provisions that have been signed into law, violates the Presentment Clause of Article I, section 7. In effect, the law grants to the President "the unilateral power to change the text of duly enacted statutes." This Line Item Veto Act authority differs in important respects from the President's constitutional authority to "return" (veto) legislation: the statutory cancellation occurs after rather than before a bill becomes law, and can apply to a part of a bill as well as the entire bill.

Clinton v. City of New York, 524 U.S. 417 (1998).
Justices concurring: Stevens, Kennedy, Souter, Thomas, Ginsburg, Rehnquist, C.J..
Justices dissenting: Scalia, O'Connor, Breyer.

156. Act of Apr. 26, 1996 (Pub. L. No. 104-134 § 504(a)(16)), 110 Stat. 1321-55.

A restriction in the appropriations act for the Legal Services Corporation that prohibits funding for any organization that participates in litigation that challenges a federal or state welfare law constitutes viewpoint discrimination in violation of the First Amendment. More-

over, the restrictions on LSC advocacy "distort [the] usual functioning" of the judiciary, and are "inconsistent with accepted separation-of-powers principles." "An informed, independent judiciary presumes an informed, independent bar," yet the restriction "prohibits speech and expression on which courts must depend for the proper exercise of judicial power."

Legal Services Corp. v. Valazquez, 531 U.S. 533 (2001).
Justices concurring: Kennedy, Stevens, Souter, Ginsburg, Breyer.
Justices dissenting: Scalia, O'Connor, Thomas, Rehnquist, C.J..

157. Act of Sep. 30, 1996 (Pub. L. No. 104-208, § 121), 110 Stat. 3009-26, 18 U.S.C. §§ 2252, 2256.

Two sections of the Child Pornography Prevention Act of 1996 that extend the federal prohibition against child pornography to sexually explicit images that appear to depict minors but that were produced without using any real children violate the First Amendment. These provisions cover any visual image that "appears to be" of a minor engaging in sexually explicit conduct, and any image promoted or presented in a way that "conveys the impression" that it depicts a minor engaging in sexually explicit conduct. The rationale for excepting child pornography from First Amendment coverage is to protect children who are abused and exploited in the production process, yet the Act's prohibitions extend to "virtual" pornography that does not involve children in the production process.

Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).
Justices concurring: Kennedy, Stevens, Souter, Ginsburg, and Breyer..
Justice concurring specially: Thomas..
Justices dissenting: Chief Justice Rehnquist, and Scalia..

158. Act of Nov. 21, 1997 (Pub. L. 105-115, § 127), 111 Stat. 2328, 21 U.S.C. § 353a.

Section 127 of the Food and Drug Administration Modernization Act of 1997, which adds section 503A of the Federal Food, Drug, and Cosmetic Act to exempt "compounded drugs" from the regular FDA approval process if providers comply with several restrictions, including that they refrain from advertising or promoting the compounded drugs, violates the First Amendment. The advertising restriction does not meet the *Central Hudson* test for acceptable governmental regulation of commercial speech. The government failed to demonstrate that the advertising restriction is "not more extensive than is necessary" to serve its interest in preventing the drug compounding exemption from becoming a loophole by which large-scale drug manufacturing can avoid the FDA drug approval process. There are several non-speech means by which the government might achieve its objective.

Thompson v. Western States Medical Center, 535 U.S. 357 (2002).

Justices concurring: O'Connor, Scalia, Kennedy, Souter, Breyer..
Justices dissenting: Breyer, Stevens, Ginsburg, and Chief Justice Rehnquist..