AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Judicial Power and Constitutional Authority/Constitutional Litigation

**Frothingham v. Mellon, 262 U.S. 447 (1923)**

The 1921 federal Maternity Act authorized a cooperative arrangement with the states by which the federal government would provide money and support to those states that joined the federal program to protect the health of mothers and infants. The state of Massachusetts filed an original suit on behalf of itself and its citizens in the U.S. Supreme Court to block the implementation of the statute. Frothingham filed suit as a federal taxpayer in federal court in the District of Columbia to prevent any federal expenditures under the law. Her suit was dismissed on jurisdictional grounds, and she appealed. Both suits sought to enjoin Secretary of the Treasury Carnegie Mellon from spending federal funds under the act, and both argued that the Maternity Act involved the federal government in policies that were within the exclusive province of the states. The Court heard both cases together.

The Court never reached the substantive constitutional question in these cases. Instead, the unanimous Court dismissed both cases on the grounds that neither the state nor the taxpayer had standing, on those bases alone, to initiate a federal case. In dismissing the cases, the Court explained this standard and how the question of proper standing helped distinguish a court from a legislature. Legislatures could respond to grievances that were common to the people as a whole. Courts existed to resolve claims of individual injury, even when the plaintiffs were raising constitutional objections to a federal law. The power of judicial review was simply a part of the judicial obligation to resolve cases. The courts did not have a general commission to correct constitutional errors or adjust the political relationship between the federal government and the states. Why would the courts decline to accept these types of suits? Are these suits significantly different from other types of suits that the courts did resolve?

JUSTICE SUTHERLAND delivered the opinion of the Court.

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It is asserted that those appropriations are for purposes not national, but local to the States, and together with numerous similar appropriations constitute an effective means of inducing the States to yield a portion of their sovereign rights. It is further alleged that the burden of the appropriations provided by this act and similar legislation falls unequally upon the several States, and rests largely upon the industrial States, such as Massachusetts, that the act is a usurpation of power not granted to Congress by the Constitution—an attempted exercise of the power of local self-government reserved to the States by the Tenth Amendment . . . and that, although the State has not accepted the act, its constitutional rights are infringed by the passage thereof and the imposition upon the State of an illegal and unconstitutional option either to yield to the Federal Government a part of its reserved rights or lose the share which it would otherwise be entitled to receive of the moneys appropriated. . . .

We have reached the conclusion that the cases must be disposed of for want of jurisdiction without considering the merits of the constitutional questions.

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. . . Under Article III, sec. 2 of the Constitution, the judicial power of this Court extends “to controversies . . . between a State and citizens of another State” and the Court has original jurisdiction “in all cases . . . in which a State shall be party.” The effect of this is not to confer jurisdiction upon the Court merely because a State is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant. . . .

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. . . [In the case before us] plaintiff alleges . . . that she is a taxpayer of the United States, and her contention, though not clear, seems to be that the effect of the appropriations complained of will be to increase the burden of future taxation and thereby take her property, without due process of law. The right of a taxpayer to enjoin the execution of a federal appropriation act, on the ground that it is invalid and will result in taxation for illegal purposes, has never been passed upon by this Court. . . .

. . . If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. . . .

. . . We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. . . . The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely than he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented the court enjoins, in effect, not the execution of a statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional, and this we are asked to prevent. To do so would be not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and co-equal department, an authority which plainly we do not possess.

[Dismissed.]