***Ashwander Doctrine***

The “***Ashwander Doctrine”*** of the supreme Court of the united States was set forth in the case of ***Ashwander v TVA 297 US 288,341***. Basically Justice Brandeis’ concurring opinion consolidated some internal ‘rules’ gleanded from earlier cases related to status & standing to invoke the ***judicial*** power of the united States and be heard in the Court.

Interestingly this case was decided in 1933, right at the onset of the “Roosevelt Regency” and shortly after the re-codification of Federal law with regard to procedures to access the supreme Court (see also ***Cohens v Virginia 6 Wheaton (19 US) 264***, perhaps the most important decision ever made by the Court).

Until this time, approximately 1928, a litigant had a ***RIGHT*** to have his case heard in the Court if any issues of the constitutionality of a statute were drawn into question in a proceeding in a ***State*** Court. This was done by ***Writ of Error*** which, to the best of my understanding was a common law remedy distinguishable from a Writ of Certiorari which was (and is) used by ***artificial corporate entities*** to get their case to the supreme Court (but ***NOT*** to invoke the judicial power of the united States, which they cannot do).

With this rough background the following are the “***Ashwander***” rules of the Court which are ***VERY*** important to know and understand, for this is a key way to distinguish decisions of the supreme Court that could, if not objected to, be applied to you courtesy of the fiction of law that “you are ***by conduct a “person***””, language fully understood by the IRS as this is what they have to prove in a tax case (in an Article I legislative tribunal):

1. “The Court will not pass upon the constitutionality of legislation in a friendly, non-adversarial proceeding, declining because to decide such questions ‘is legitimate only in the last resort’ and as a necessity in the determination of real, earnest, and vital controversy between individuals” (also known as “***Article III*** averseness” --ed).

2. “The Court will not anticipate a question of constitutional law ***in the advance of the necessity of deciding it***. It is not the habit of the Court to decide questions of a constitutional nature unless ***absolutely necessary*** to a decision of a case.”.

3. “The Court will not formulate a rule of constitutional law broader than is required by ***the precise facts to which it is to be applied***” (in other words, any decision in a case brought by a corporation, or a 14th ***war*** “amendment” citizen, will almost certainly ***NOT*** be applicable to a lawful de jure free white State Citizen (privileges vs. ***RIGHTS*** !), but it seems that ***YOU*** do have to prove ***WHO*** you are (sound familiar ?)

4. “The Court will not pass upon a constitutional question although properly presented by the record ***if there is also present some other ground ( application for a social (in)security account ??? -- ed) upon which the case may be disposed of***.”

(this is the essence of evil as there are no apparent limits or written definitions here -- this is why I have rescissioned my application for a social (in)security account and renounced any alleged 14th ***war*** “amendment” citizenship so that oblique references, ***fictions of law***, and “***implied***” consent cannot be used against me !)

5. “The Court will not pass upon the validity of a statute upon the complaint of one ***who fails to show that he is injured by its operation***.”

When you see the “court” deny relief due to “failure to state a claim upon which relief can be granted”, it is this provision of “***Ashwander***” they are using, and I believe that the only claim which can prove an injury is that of being a lawful de jure free white State Citizen.

6. “The Court will not pass upon the constitutionality of a statute at the instance of one ***who has availed himself of its benefits (social (in)security benefits ?? -- ed)***.

Here great danger lurks for those who ***openly*** invoke the UCC, among other things, such as a 1099 OID, and this may be why your friend has been in jail for nine months -- I believe that just acting as a creditor and a free man is sufficient to get the job done, if your documents otherwise state the claim.

7. “When the validity of an act of the Congress is drawn in question, and even if a ***serious doubt of constitutionality*** is raised, it is a ***cardinal principle*** that this Court will first ascertain whether a construction of the statute is fairly possible by which ***the question may be avoided***.”

This is the biggest bugaboo in these “rules”, as I believe that once the issue of status & standing has been resolved, there should be no such presumption, even if only a rebuttable one, that any act of Congress ***is*** constitutional, for as ***Article VI, Section 2*** states:

“***This*** Constitution, and the laws of the united States ***which shall be made in pursuance thereof***; ... shall be the supreme law of the land and the judges in every State ***shall be bound thereby***, anything in the Constitution or laws of any State to the contrary notwithstanding.

This contradiction raises a controversial question of law which I believe has never been decided, namely ***WHO*** is the final authority on the constitutionality of an act of Congress ??

I lean towards the idea of Robert Young Hayne and John C. Calhoun of South Carolina that the Several States possessed this authority, at least in certain instances (known as State nullification), but more importantly for us, I believe that our ***fundamental*** right to a trial by jury, even in civil cases, is our ***real*** remedy (see e,g, ***Brailsford v Georgia 2 Dallas 402)***, for if juries will ***NOT*** enforce a law then it becomes a dead letter (see e.g. “***Essay on Trial by Jury***” (1840) by Lysander Spooner, and “***The Ordeal of Edward Bushell***” (1985) by Godfrey Lehman) ! This is why I am prepared to file over ***550*** jury instructions in any civil or “criminal” case when put to the test.

Well worth noting are the words of Alexander Hamilton, never known as being sympathizer to the cause of State’s rights, in ***Federalist Papers No. 33***:

“If a number political societies enter into a larger political society, the laws which the latter may enact pursuant to the powers entrusted to it by its constitution must necessarily be supreme over those societies and the individuals of whom they are composed. It would otherwise be a mere treaty, dependent upon the good faith of the parties, and not a government, which is the only other word for political power and supremacy. But it will  ***not*** follow from this doctrine that acts of the larger society, which are ***not*** pursuant to its constitutional powers, but which are ***invasions*** of the residuary authorities of smaller societies, will become the supreme law of the land. ***These will be merely acts of usurpation and will deserve to be treated as such.***

Could old Alex have been lying here in order to gain support for the ratification of the Constitution ??

Other provocative pronouncements from powerful and respected sources, ***Thomas Jefferson*** and ***James Madison***, arising in the context of the establishment of the First Bank of the United States provide potent legal arguments for us:

“If the American people ever allow banks to control the issuance of their currency, first by inflation and then by deflation, the ***banks and corporations that will grow up around them will deprive the people of all property, until their children wake up homeless on the continent their fathers conquered***. The issuing power of money should be taken from the banks and restored to Congress and the people to whom it belongs. I sincerely believe before the banking institutions having the issuing power of money, ***are more dangerous to liberty than standing armies***.”

***and***

“The essential arguments of the two men (against the Bank -- ed) were very similar, and Madison’s came first. Whether Jefferson got more from him than he did from Jefferson is a matter of sheer conjecture, but ***Madison*** made two points which his friend could not make with the same authority.

As he remembered -- and he had kept the ***fullest*** records -- the power to grant charters of incorporation had been rejected by the Federal Convention. Also, recalling the objections which had been raised to the Constitution, ***and the explanations that had been given in the State conventions ratifying it***, he predicted that many people would say ***that the adoption of the Constitution (14th war “amendment” ?? -- ed) had been brought about by one set of arguments, while the government was being conducted under another interpretation***. In other words, Hamilton was turning the government into something that neither the people generally, nor Madison himself, ***had expected it to become***.

***Jefferson and the Rights of Man*** ppg 340-341

By Dumas Malone

© wh@281676