Syllabus.

HELVERING, COMMISSIONER OF INTERNAL REVENUE, ET AL. *v.* DAVIS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

No. 910. Argued May 5, 1937.—Decided May 24, 1937.

1. The Court abstains from dismissing, *sua sponte,* as not properly within equity jurisdiction, a bill by a shareholder to restrain his corporation from making the tax payments and the deductions from wages required by Title VIII of the Social Security Act of August 14, 1935, the bill alleging that the exactions are void and that compliance will subject the corporation and its shareholders to irreparable damage. P. 639.

   The corporation acquiesced. The Collector and Commissioner of Internal Revenue intervened in the court below, defended on the merits, brought the case to this Court by certiorari, and here expressly waived a defense under R. S. § 3224 and any objection upon the ground of adequate legal remedy, and urged that the validity of the taxes be determined.
2. The scheme of "Federal Old-Age Benefits" set up by Title II of the Social Security Act does not contravene the limitations of the Tenth Amendment. P. 640.
3. Congress may spend money in aid of the "general welfare." P. 640.
4. In drawing the line between what is "general" welfare, and what is particular, the determination of Congress must be respected by the courts, unless it be plainly arbitrary. P. 640.
5. The concept of "general welfare" is not static but adapts itself to the crises and necessities of the times. P. 641.
6. The problem of security for the aged, like the general problem of unemployment, is national as well as local. Cf. *Steward Machine Co.* v. *Davis, ante* p. 548. P. 644.

   There is ground to believe that laws and resources of the separate States unaided, can not deal with this problem effectively. State governments are reluctant to place such heavy burdens upon their residents lest they incur economic disadvantages as compared with neighbors or competitors; and a system of old age pensions established in one State encourages immigration of needy persons from other States which have rejected such systems. P. 644.

7. When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the States. P. 645.
8. Title II of the Social Security Act provides for "Federal Old-Age Benefits" for persons who have attained the age of 65. It creates an "Old-Age Reserve Account" in the Treasury and authorizes future appropriations to provide for the required old-age payments, but in itself neither appropriates money nor brings any money into the Treasury. Title VIII imposes an "excise" tax on employers, to be paid "with respect to having individuals in their employ," measured on the wages, and an "income tax on employees," measured on their wages, to be collected by their employers by deduction from wages. These taxes are not applicable to certain kinds of employment, including agricultural labor, domestic service, service for the national or state governments, and service performed by persons who have attained the age of 65 years. *Held:*

(1) Title II being valid, there is no occasion to inquire whether Title VIII must fall if Title II were void. P. 645.

(2) The tax upon employers is a valid excise or duty upon the relation of employment. *Steward Machine Co.* v. *Davis, ante* p. 548. P. 645.

(3) The tax is not invalid as a result of its exemptions. *Steward Machine Co.* v. *Davis, ante,* p. 548. P. 646.

89 F. (2d) 393, reversed.

CERTIORARI, *post,* p. 674, to review the reversal of a decree of the District Court denying an injunction and dismissing the bill in a suit by Davis, a shareholder of the Edison Electric Illuminating Company of Boston, to enjoin the corporation from complying with tax requirements of Title VIII of the Social Security Act.

Assistant Attorney General Jackson and *Mr. Charles E. Wyzanski, Jr.,* with whom *Attorney General Cummings, Solicitor General Reed,* and *Messrs. Sewall Key, A. H. Feller, Arnold Raum, Thomas H. Eliot, Alanson Willcox,* and *Robert P. Bingham,* were on the brief, for petitioners.

Since the employer is merely a withholding agent with respect to the employee tax, neither corporation nor stockholder may ask for relief from it.

Both the employee tax (a special income tax, *United States* v. *Hudson,* 299 U. S. 498) and the employer tax (an excise) comply with the requirement of uniformity.

These are true taxes, their purpose being simply to raise revenue. No compliance with any scheme of federal regulation is involved. The proceeds are paid unrestricted into the Treasury as internal revenue collections, available for the general support of the Government. Although Congress may have anticipated that over a period of years the taxes would roughly offset the drain upon the Treasury to be occasioned by the wholly independent appropriations authorized under Title II, such rough budgetary equivalence is not sufficient to deprive Title VIII of its quality as a true taxing measure.

The Circuit Court of Appeals erred in undertaking to pass upon the validity of Title II. *Frothingham* v. *Mellon,* 262 U. S. 447. A taxpayer has no standing to question the propriety of any expenditures from the federal Treasury. That rule has been relaxed only where the tax avails are earmarked for a specific purpose.

The employee tax is a withholding at the source, the employer being a collecting agent or stakeholder. The withholding provisions themselves are not challenged, nor could they be successfully attacked. *Brushaber* v. *Union Pacific R. Co.,* 240 U. S. 1, 21; *Pierce Oil Corp.* v. *Hopkins,* 264 U. S. 137; *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S. 232, 239. The employer, as stakeholder, has no *locus standi* to challenge this tax. *United States* v. *American Exchange Co.,* 43 F. (2d) 829; *United States* v. *First Capital Bank,* 98 F. (2d) 116; *Miami Valley Fruit Co.* v. *United States,* 45 F. (2d) 303; *United States* v. *Erb,* 8 F. Supp. 947.

The corporation can complain only of the infringement of its own constitutional immunity. *Virginian Ry. Co.* v. *System Federation,* 300 U. S. 515. No employee is complaining. *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576. See *Erie R. Co.* v. *Williams,* 233 U. S. 685, 697; *Rail Coal Co.* v. *Ohio Industrial Comm'n,* 236 U. S. 338, 349; *Hawkins* v. *Bleakly,* 243 U. S. 210, 214. The standing of the stockholder cannot be any better than that of his corporation.

The power to appropriate for the general welfare granted by Art. I, § 8, cl. 1, is not limited by or to the other enumerated powers of Congress. *United States* v. *Butler,* 297 U. S. 1. Whether any particular expenditure is for the general welfare is a matter completely within the determination of Congress. *United States* v. *Teller,* 107 U. S. 64, 68. The decision of Congress is not reviewable by the courts if by any "reasonable possibility it is for the general welfare." *United States* v. *Butler,* 297 U. S. 1, 65.

The expenditures in the present case are clearly well within the limits of the power of Congress. The number of aged persons in this country is rapidly increasing; workers in urban industrialized civilization usually arrive at old age without adequate means for self-support, as is demonstrated not only by their earning powers during their working lifetime but by various studies which have been made of the extent of dependency of people over 65 years of age. Those who are able to call upon their children for support only aggravate the evil by depriving the younger members of the family of the resources which they need. Voluntary industrial pension plans cover but a few. Private charity is inadequate to cope with the problem. Even state old age benefit laws present grave administrative and financial problems.

Therefore, the expenditures contemplated by Title II are for the general welfare of the United States. More-

over, the form of the expenditures is soundly designed to promote general welfare. The statute excludes employed aged persons, thereby providing a simple and easily administered means test which is legally sufficient. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 230. The payments themselves are graduated both by wages and length of employment, so as to provide an incentive to work and at the same time roughly to relate benefits to past standards of living. The incidental lump sum payments under §§ 203 and 204 accord with the general purpose of the plan and also serve to simplify its administration. The exclusions from benefits are based upon sound administrative and economic reasons.

Since Titles II and VIII severally constitute valid exercises of Congressional power, they cannot be invalid when considered jointly. If it be said that the avails of the taxes are earmarked, that fact does not deprive the taxes of their quality as true taxes, even though the proceeds be earmarked for the payment of benefits to a particular group. If the payment of benefits under Title II is an expenditure for the general welfare, then a levy for the purpose of providing funds for such expenditure must be a tax within the meaning of the Constitution. To determine that the expenditures are for the general welfare is to determine that they are for the benefit of the taxpayers as well as for the benefit of the direct recipients of the expenditures. A tax does not cease to be one for the general welfare because the immediate application of the proceeds is to one group of the population. *Clark* v. *Poor,* 274 U. S. 554; *Gillum* v. *Johnson,* 62 P. (2d) 1037, 1044; *Beeland Wholesale Grocery Co.* v. *Kaufman* (Ala.), 174 So. 516. "The Constitutional power to levy taxes does not depend upon the enjoyment by the taxpayer of any special benefit from the use of the proceeds raised by taxation." *Nashville, C. & St. L.*

Ry. v. *Wallace,* 288 U. S. 249, 268; *Carley & Hamilton* v. *Snook,* 281 U. S. 66; *Knights* v. *Jackson,* 260 U. S. 12, 15.

Titles II and VIII do not, when considered together, constitute a regulatory scheme. The Act does not require retirement from employment and has no tendency to induce it. It does not constitute a plan for compulsory insurance within the accepted meaning of the term "insurance." Cf. *Lynch* v. *United States,* 292 U. S. 571, 576–577. Whether the plan of the Act may properly be designated as old-age insurance is immaterial since it involves only a valid exercise of the taxing power and valid expenditures for the general welfare without regulatory incidents. Cf. *McCulloch* v. *Maryland,* 4 Wheat. 315. There is no enforced addition to wages, and consequently the Act does not constitute a regulation of the wage relationship. The Tenth Amendment has no application, since Congress has only exercised its granted powers. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 330. The tax and expenditures are not forbidden to the Federal Government merely because the States themselves might legitimately lay similar taxes and make similar expenditures. *Hoke* v. *United States,* 227 U. S. 308, 322. *United States* v. *Butler,* 297 U. S. 1, and *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330, distinguished.

The taxes do not violate the Fifth Amendment. Not only are the various selections of employments for taxation well within the power of Congress (*Sonzinsky* v. *United States,* 300 U. S. 506), but they are of the type long sanctioned.

The provision limiting the amount of taxable wages to $3,000 is likewise valid. Congress has as full discretion in determining how far it will exercise the taxing power as it has in selecting the subjects for taxation. This provision will be found justified by precedent as well as by its reasonable tendency to avoid double taxation.

Title VIII is a valid exercise of the power "To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." Const., Art. I, § 8. The authority so conferred "is exhaustive and embraces every conceivable power of taxation." *Brushaber* v. *Union Pac. R. Co.,* 240 U. S. 1, 12.

Mr. Edward F. McClennen, with whom *Mr. Jacob J. Kaplan* was on the brief, for respondent.

1. The title of an Act and its whole content may be examined to see that Congress intended the imposition to be for a particular purpose, and not merely to produce general revenue for the United States. *Hill* v. *Wallace,* 259 U. S. 44; *Child Labor Tax Case,* 259 U. S. 20; *Carter* v. *Carter Coal Co.,* 298 U. S. 238 (semble); *United States* v. *Constantine,* 296 U. S. 287, 294 (semble); *Grosjean* v. *American Press Co.,* 297 U. S. 233; *Trusler* v. *Crooks,* 269 U. S. 475; and *United States* v. *Butler,* 297 U. S. 1.

2. The imposition is not an "excise" within the meaning of that word as used in the only clause of the Constitution which empowers the Congress to levy taxes. See *Davis* v. *Boston & Maine R. R.,* 89 F. (2d) 368.

"Excise," in England and in the Colonies, for at least one hundred and forty years before it was used in the Constitution, meant an inland levy on selected tangible property, or upon the owners of it, because of the activity in which the property was moving, as in the manufacture, in intermediate sale, or in the ultimate sale commonly amounting to consumption. The antithesis was the direct tax upon property in general, certainly land, when taxed on a rate fixed by its static appraised capital value, possibly when measured by its annual unwrought return in rent, income, or products, and, debatably, upon personal property so appraised or judged. Both the direct tax and the excise were preëminently property

taxes,—one regardless of its activity or inactivity, and the other taking that activity into consideration. In 1766 Dr. Johnson defined "excise" as "a hateful tax levied upon commodities, and adjudged not by the common judges of property." Dict. (3d ed., 1766). He defined "commodity" as "interest, advantage, profit, convenience of time or place, wares, merchandise." *Id.* "Commodity" suggests, as the principal thought, merchandise. In 1776 Adam Smith in his "The Wealth of Nations" said, "The duties of excise are imposed chiefly upon goods of home produce destined for home consumption. They are imposed only upon a few sorts of goods of the most general use." In 1780 the Massachusetts constitution indicated direct taxes to be the normal source of revenue, but gave the legislature authority to impose "reasonable duties and excises, upon any produce, goods, wares, merchandise, and commodities, whatsoever." In 1788 the Constitutional Convention of New York urged an amendment to the Constitution "That the Congress do not impose any excise on any article (ardent spirits excepted) of the growth, production, or manufacture of the United States, or any of them." 1 Elliot's Debates 72; Luther Martin said "By the power to lay excises,—a power very odious in its nature, since it authorizes officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns,—the Congress may impose duties on every article of use or consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlightens our houses, or the hearths necessary for our warmth and comfort." Cf. Chancellor Livingston in the New York Convention, 2 *id.* 341; Nicholas in the Virginia Convention, 3 *id.* 243; also 5 *id.* 40; Hamilton, Federalist, No. 21, p. 182; Ellsworth, Connecticut Convention, 2 Elliot 192; Writings of Gallatin, p. 73.

See also: Hist. of England, 5 Hume, ed. 1861, p. 269; Clarendon, the Hist. of Rebellion in England, Vol. II, p. 453; 1 Blackstone Comm. 308; and Ency. Brit. Third ed. 1797; British Excise Act, March 28, 1643; January, 1644. The tax laid by the Revenue Act of 1777 (17 Geo. III, c. 39) of one shilling per annum for every male servant of the kinds described was a luxury tax like the window tax.

Excises in New York before 1788: See "The Colonial Laws of New York from the Year 1644 to the Revolution, Transmitted to the Legislature by the Commissioners of Statutory Revision, Pursuant to Chapter 125 of the Laws of 1891," Vol. I, pp. 248, 789; Vol. IV, *id.* 1, 105; Laws of New York, 1775 to 1788, Vol. I, pp. 109, 660. In Pennsylvania: IX Stat. at L. 1776–1799, p. 55. In Massachusetts: 1646, Plymouth Colony Law, 1836, p. 85; June 24, 1692, Acts and Resolves of the Province of Massachusetts Bay, Vol. 1, c. 5, p. 32; I. *Id.* 57, 272, 391, 475, 527, 662, 738; II. *Id.* 203, 849; III. *Id.* 495, 568, 750; IV. *Id.* 219; Acts of Nov. 1, 1781, c. 17, I. Laws of Mass. 60; 1782, 1783; I. *Id.* 62, 78, 85; Laws and Resolves of 1782, c. 33, p. 92.

Historically, an excise was in character an inland duty or impost on a tangible commodity in manufacture or in sale either in the course of trade or for consumption. It was not "cut out" of the activity, but out of the goods.

It is inconceivable that the people of the thirteen States could have understood that the word "excise" included an imposition on the state of being of exercising the universal natural right to employ, for wages, other men who consented to that employment, in a manner not injurious to the public good.

Supporters of this tax have urged that it is a tax upon privilege. There is no privilege. The state of being on which the imposition is made is not derived from gov-

ernment or from public authority in any manner. Privilege contrasts with common natural opportunity. Contrast the privilege to do business without liability for debts, as in corporate form. Any dictionary of the common meanings will show that "privilege" as used in this context means something not of common right.

Undoubtedly properties of modern times—as, for example, automobiles—never thought of in 1788, may come within the meaning of the word "excise" in 1788. But, if the state of being, of having individuals in a man's employ,—a thing of character which existed in 1788,—did not then come within the meaning of the word, it is not there now.

An attempted Act may be clearly without the powers of the Congress, and a particular litigant nevertheless may have no right to invoke the judgment of this Court. *Massachusetts* v. *Mellon,* 262 U. S. 447; *Florida* v. *Mellon,* 273 U. S. 12. Consequently, the fact that the validity of appropriation of the money of the United States in questionable ways has not been questioned before this Court, carries no implication that the appropriations were lawful, or approved by the people.

It is only in the last twenty years that inland taxes of the United States have become so burdensome that it has been worth the extensive effort of many people to prevent unlawful appropriations.

A person in terms obliged by an attempted invalid Act to pay money to go into the Treasury of the United States, has a right to a decision. *United States* v. *Butler,* 297 U. S. 1.

An imposition on a particular class of tangible property, in manufacture, use, gift, bequest, or sale, may be sustained as an excise if it meets the other constitutional requirements, including that the end is to provide revenue for the general welfare of the Federal Government and that the selection is not capricious or violative

of the rule of uniformity. *Magnano* v. *Hamilton,* 292 U. S. 40; *Bromley* v. *McCaughn,* 280 U. S. 124; *N. Y. Trust Co.* v. *Eisner,* 256 U. S. 345; *Billings* v. *United States,* 232 U. S. 261; *McCray* v. *United States,* 195 U. S. 27; *Thomas* v. *United States,* 192 U. S. 363; *Cornell* v. *Coyne,* 192 U. S. 418; *Spreckels Sugar Co.* v. *McClain,* 192 U. S. 397; *Patton* v. *Brady,* 184 U. S. 608; *Treat* v. *White,* 181 U. S. 264; *Knowlton* v. *Moore,* 178 U. S. 41, 84; *Nicol* v. *Ames,* 173 U. S. 609; *Springer* v. *United States,* 102 U. S. 586; *Railroad Co.* v. *Collector,* 100 U. S. 595; *Scholey* v. *Rew,* 23 Wall. 331; *Veazie Bank* v. *Fenno,* 8 Wall. 533; *Pacific Ins. Co.* v. *Soule,* 7 Wall. 433; *License Cases,* 5 Wall. 462; *Hylton* v. *United States,* 3 Dall. 171. Important documents, and paper, particularly commercial paper, are tangible and valuable because of that fact. *Patton* v. *Brady,* 184 U. S. 608, 617; *Cook* v. *Pennsylvania,* 97 U. S. 566. In at least one case this Court has held that a franchise is a sufficiently palpable kind of property to permit an excise in respect of it, *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 155, 162; but it has never held that the natural, harmless, state of being, or natural, harmless conduct privileged or unprivileged, is subject to excise.

See: Opinions of the Justices, 282 Mass. 219; 266 Mass. 592, 595; 196 Mass. 624.

Property may not be taken by government from one for another, even for public advantage or welfare, without just compensation, *Louisville Bank* v. *Radford,* 295 U. S. 555, 601, 602; *United States* v. *Butler,* 297 U. S. 1; *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330; and it makes no difference that it is done under the guise of a tax or is the product of a tax, *Loan Association* v. *Topeka,* 20 Wall. 655; *Calder* v. *Bull,* 3 Dall. 386; *Miles Planting Co.* v. *Carlisle,* 5 App. D. C. 138, 146.

Even if a tax is levied expressly for the purpose of obtaining general revenue, when it appears, "in the light

of its history and of its present setting," that it is for a purpose which the Constitution does not permit the law-making body to accomplish, the tax is invalid. *Grosjean* v. *American Press Co., Inc.*, 297 U. S. 233, 250. Distinguishing *Spreckels Sugar Ref. Co.* v. *McClain*, 192 U. S. 397.

3. In testing the validity of the levy attempted in §§ 804 and 802, an unchanging decision must be made for all purposes, as to whether the levy is for general revenue only or is for old age benefits such as are described in Title II. The levy should not be deemed to be for such benefits at one stage of argument in order to meet the charge of capriciousness, and for general revenue at another stage in order to meet the charge of absence of federal purpose.

4. Whether for general revenue or not, the attempted levy is so capricious and so lacking in uniformity as not to be in character a tax. If the purpose is general revenue, there is no basis in reason for selecting certain faultless employers to bear the entire burden and thereby relieve wealth generally from taxation to furnish the revenue. If the purpose is old-age benefits, there is no more reason for shifting the burden of a tax on wealth to the shoulders of possibly poor employers who are not the cause of the old age. There is no attempt to cover all in the same class. If men over sixty-five years of age ought to have an annuity or old-age benefit, it should be on account of that fact, not because of the type of employment in which they have been engaged, and if employers ought to pay an excise for the state of being of having employees, they ought to pay it when they have that state of being. It is the known fact that imposition upon non-agricultural labor is equivalent to confining the imposition to certain States to the approximately complete exclusion of other States. It is capricious to deny the "over-sixty-five" benefits to farm laborers, and to relieve their employers from an imposition placed on other employers.

Only 56%, or less, of the gainful workers in the United States are potentially to be benefited. The employers of only this 56%, (or less), are subjected to the imposition.

The employers of the 56% bear not only the burden of caring by so much for the aged among the 56%, but also the burden of their share of taxes to meet the public expense for poor relief and assistance to the remaining 44%, and of the unprovided for balance of the 56%.

Senate Report No. 628, (74th Congress, 1st Sess. 1935) indicates that when the impositions under Titles VIII and IX are in full sway, so that 9% on the pay rolls must be paid, the imposition is equivalent to a general sales tax of 3%. As the tax is on employers in trade as well as in industry, (except in the case of imported merchandise sold), they are taxed twice. The employers in the production and trade in domestic industry in this way pay two taxes inevitably; and where the products pass through both wholesale and retail trade, three taxes. What passes from wholesale trade into the hands of the manufacturers, as the raw material of those manufacturers, calls for another payment. It is beyond the possibility of accurate mathematical statement. In many cases the levy cannot be passed on without the destruction of the trade; and if not passed on, the employer inevitably meets financial ruin when subjected to such a huge tax.

If gainful workers ought to have an annuity after age sixty-five, so should all other persons. There is no reason for favoring those who have been able to get and perform work, to the exclusion of those who have not. The number of workers potentially to benefit and preferentially treated is less than 22% of the population.

Capricious selection of class of property, class of persons, or rate gradation, converts an attempted excise into a nonuniform confiscation, without tax character. *Grosjean* v. *American Press Co.,* 297 U. S. 233, 251;

Colgate v. *Harvey,* 296 U. S. 404, 422, 424; *Concordia Fire Ins. Co.* v. *Illinois,* 292 U. S. 535; *Stebbins* v. *Riley,* 268 U. S. 137; *Louisville Gas Co.* v. *Coleman,* 277 U. S. 32; *Schlesinger* v. *Wisconsin,* 270 U. S. 230; *Bromley* v. *McCaughn,* 280 U. S. 124, 139; *Mayflower Farms* v. *Ten Eyck,* 297 U. S. 266, 272 (semble) of a regulation; *In re Opinion of the Justices,* 85 N. H. 562, (semble). Cf. *Brushaber* v. *Union Pacific R. Co.,* 240 U. S. 1, 24.

5. To provide old age benefits such as are described in Title II is not a purpose for which the Congress has power to tax. Such a purpose is not for the common defense, or to pay the debts of, or to provide for the general welfare of, the Government.

Apart from taxes to pay the debts and provide for the common defense of the Government, no tax by Congress is authorized unless it is to provide for the general welfare of the Government of the United States. The limits upon the taxing power are not set by "welfare" only, but by the limits upon the kind of welfare for which the tax may be levied. It must be the limited kind of welfare which is "general," and it must be the limited kind of welfare which is "of the United States." In this limitation, "of the United States" evidently is used in the sense of Government of the United States. It is not to be supposed that a constitution would grant to Congress a power to tax to provide revenue for the general welfare of the territory of the United States when that Congress had been given no power to legislate for the general welfare of that territory. The words "general" and "of the United States" are words of restriction upon the kind of welfare to provide revenue for which Congress may levy a tax. They stand opposite to the restrictions of "State" or "local" in defining the welfare for which a State may levy a tax.

As far as it may be done by legislation, the control of the relation between employer and employee, the rate

of wages, the withholding of wages to build reserves, the insurance against accidents, the making of reserves for the employee when he no longer, or not for a time, can earn wages, is for the legislature of the State.

The support of men and women who have come to be sixty-five years old in the respective States, or who cannot get employment, is no more for the general welfare of the Government of the United States than is the keeping of the citizenry of the United States from becoming drug addicts, and thereby likely to be unable to earn a living or to fight for the United States, or to vote intelligently for a President or Senators and Representatives. Cf. *Linder* v. *United States,* 268 U. S. 5, 17; *United States* v. *Doremus,* 249 U. S. 86, 95; *United States* v. *Jin Fuey Moy,* 241 U. S. 394, 401. Local commercial activities and employment relations completed wholly within a State, howsoever common they may be in every State, are not a part of the general welfare of the Government of the United States. *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495; *United States* v. *Butler,* 297 U. S. 1; *Railroad Retirement Board* v. *Alton R. Co.,* 295 U. S. 330 (*a fortiori*); *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; *Hammer* v. *Dagenhart,* 247 U. S. 251. Cf. remarks of Hughes, C. J., in *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 317.

The State where this local employment occurs may deem it wiser to regulate the relation in a different way, to provide a smaller annuity with a smaller compulsory contribution, or none at all. The same thing cannot be done by Congress and by the state legislature. If it is a subject for legislative regulation at all, the Tenth Amendment says that it is to be regulated by the state legislature, and not by Congress. Cf. *Chamberlin* v. *Andrews,* 299 U. S. 515; *Collector* v. *Day,* 11 Wall. 113.

Impositions for old-age benefits do not differ in this respect from those for unemployment benefits. The par-

ticular limit to "general welfare," as to which Hamilton and Madison differed, and Monroe vacillated, is not involved. None of them suggested that any such regulations of employment obligations and relations within a State come within this phrase. None of them, it seems, would have supported a power in Congress to compel employers and employees in purely local employment to contribute to a fund for old-age annuities for others. Cf. veto messages of Presidents Jackson, May 27, 1830, 2 Richardson, 483, 492, 639; Buchanan, February 24, 1859, 5 *Id.* 547; Cleveland in 1887, 8 *Id.* 557.

6. In fact and in law, in the sections 804 and 802 under consideration, this is not a taxing statute, but an unconstitutional attempt to regulate the wage relation within the several States. *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379; *Attorney-General for Canada* v. *Attorney General for Ontario,* [1937] A. C. 355, affirming [1936] Can. S. C. R. 427.

Mr. Justice Cardozo delivered the opinion of the Court.

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U. S. C., c. 7, (Supp.)) is challenged once again.

In *Steward Machine Co.* v. *Davis,* decided this day, *ante,* p. 548, we have upheld the validity of Title IX of the act, imposing an excise upon employers of eight or more. In this case Titles VIII and II are the subject of attack. Title VIII lays another excise upon employers in addition to the one imposed by Title IX (though with different exemptions). It lays a special income tax upon employees to be deducted from their wages and paid by the employers. Title II provides for the payment of Old Age Benefits, and supplies the motive and occasion, in the view of the assailants of the statute, for

the levy of the taxes imposed by Title VIII. The plan of the two titles will now be summarized more fully.

Title VIII, as we have said, lays two different types of tax, an "income tax on employees," and "an excise tax on employers." The income tax on employees is measured by wages paid during the calendar year. § 801. The excise tax on the employer is to be paid "with respect to having individuals in his employ," and, like the tax on employees, is measured by wages. § 804. Neither tax is applicable to certain types of employment, such as agricultural labor, domestic service, service for the national or state governments, and service performed by persons who have attained the age of 65 years. § 811 (b). The two taxes are at the same rate. §§ 801, 804. For the years 1937 to 1939, inclusive, the rate for each tax is fixed at one per cent. Thereafter the rate increases ½ of 1 per cent every three years, until after December 31, 1948, the rate for each tax reaches 3 per cent. *Ibid.* In the computation of wages all remuneration is to be included except so much as is in excess of $3,000 during the calendar year affected. § 811 (a). The income tax on employees is to be collected by the employer, who is to deduct the amount from the wages "as and when paid." § 802 (a). He is indemnified against claims and demands of any person by reason of such payment. *Ibid.* The proceeds of both taxes are to be paid into the Treasury like internal-revenue taxes generally, and are not earmarked in any way. § 807 (a). There are penalties for non-payment. § 807 (c).

Title II has the caption "Federal Old-Age Benefits." The benefits are of two types, first, monthly pensions, and second, lump sum payments, the payments of the second class being relatively few and unimportant.

The first section of this title creates an account in the United States Treasury to be known as the "Old-Age

Reserve Account." § 201. No present appropriation, however, is made to that account. All that the statute does is to authorize appropriations annually thereafter, beginning with the fiscal year which ends June 30, 1937. How large they shall be is not known in advance. The "amount sufficient as an annual premium" to provide for the required payments is "to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually." § 201 (a). Not a dollar goes into the Account by force of the challenged act alone, unaided by acts to follow.

Section 202 and later sections prescribe the form of benefits. The principal type is a monthly pension payable to a person after he has attained the age of 65. This benefit is available only to one who has worked for at least one day in each of at least five separate years since December 31, 1936, who has earned at least $2,000 since that date, and who is not then receiving wages "with respect to regular employment." §§ 202 (a), (d), 210 (c). The benefits are not to begin before January 1, 1942. § 202 (a). In no event are they to exceed $85 a month. § 202 (b). They are to be measured (subject to that limit) by a percentage of the wages, the percentage decreasing at stated intervals as the wages become higher. § 202 (a). In addition to the monthly benefits, provision is made in certain contingencies for "lump sum payments" of secondary importance. A summary by the Government of the four situations calling for such payments is printed in the margin.[1]

[1](1) If through an administrative error or delay a person who is receiving a monthly pension dies before he receives the correct amount, the amount which should have been paid to him is paid in a lump sum to his estate [§ 203 (c)].

This suit is brought by a shareholder of the Edison Electric Illuminating Company of Boston, a Massachusetts corporation, to restrain the corporation from making the payments and deductions called for by the act, which is stated to be void under the Constitution of the United States. The bill tells us that the corporation has decided to obey the statute, that it has reached this decision in the face of the complainant's protests, and that it will make the payments and deductions unless restrained by a decree. The expected consequences are indicated substantially as follows: The deductions from the wages of the employees will produce unrest among them, and will be followed, it is predicted, by demands that wages be increased. If the exactions shall ultimately be held void, the company will have parted with moneys which as a practical matter it will be impossible to recover. Nothing is said in the bill about the promise of indemnity. The prediction is made also that serious consequences will en-

(2) If a person who has earned wages in each of at least five separate years since December 31, 1936, and who has earned in that period more than $2,000, dies *after* attaining the age of 65, but before he has received in monthly pensions an amount equal to 3½ percent of the "wages" paid to him between January 1, 1937, and the time he reaches 65, then there is paid in a lump sum to his estate the difference between said 3½ percent and the total amount paid to him during his life as monthly pensions [§ 203 (b)].

(3) If a person who has earned wages since December 31, 1936, dies *before* attaining the age of 65, then there is paid to his estate 3½ percent of the "wages" paid to him between January 1, 1937, and his death [§ 203 (a)].

(4) If a person has, since December 31, 1936, earned wages in employment covered by Title II, but has attained the age of 65 either without working for at least one day in each of 5 separate years since 1936, or without earning at least $2,000 between January 1, 1937, and the time he attains 65, then there is paid to him [or to his estate, § 204 (b)], a lump sum equal to 3½ percent of the "wages" paid to him between January 1, 1937, and the time he attained 65 [§ 204 (a)].

sue if there is a submission to the excise. The corporation and its shareholders will suffer irreparable loss, and many thousands of dollars will be subtracted from the value of the shares. The prayer is for an injunction and for a declaration that the act is void.

The corporation appeared and answered without raising any issue of fact. Later the United States Commissioner of Internal Revenue and the United States Collector for the District of Massachusetts, petitioners in this court, were allowed to intervene. They moved to strike so much of the bill as has relation to the tax on employees, taking the ground that the employer, not being subject to tax under those provisions, may not challenge their validity, and that the complainant shareholder, whose rights are no greater than those of his corporation, has even less standing to be heard on such a question. The intervening defendants also filed an answer which restated the point raised in the motion to strike, and maintained the validity of Title VIII in all its parts. The District Court held that the tax upon employees was not properly at issue, and that the tax upon employers was constitutional. It thereupon denied the prayer for an injunction, and dismissed the bill. On appeal to the Circuit Court of Appeals for the First Circuit, the decree was reversed, one judge dissenting. 89 F. (2d) 393. The court held that Title II was void as an invasion of powers reserved by the Tenth Amendment to the states or to the people, and that Title II in collapsing carried Title VIII along with it. As an additional reason for invalidating the tax upon employers, the court held that it was not an excise as excises were understood when the Constitution was adopted. Cf. *Davis* v. *Boston & Maine R. Co.*, 89 F. (2d) 368, decided the same day.

A petition for certiorari followed. It was filed by the intervening defendants, the Commissioner and the Collector, and brought two questions, and two only, to our

notice. We were asked to determine: (1) "whether the tax imposed upon employers by § 804 of the Social Security Act is within the power of Congress under the Constitution," and (2) "whether the validity of the tax imposed upon employees by § 801 of the Social Security Act is properly in issue in this case, and if it is, whether that tax is within the power of Congress under the Constitution." The defendant corporation gave notice to the Clerk that it joined in the petition, but it has taken no part in any subsequent proceedings. A writ of certiorari issued.

First. Questions as to the remedy invoked by the complainant confront us at the outset.

Was the conduct of the company in resolving to pay the taxes a legitimate exercise of the discretion of the directors? Has petitioner a standing to challenge that resolve in the absence of an adequate showing of irreparable injury? Does the acquiescence of the company in the equitable remedy affect the answer to those questions? Though power may still be ours to take such objections for ourselves, is acquiescence effective to rid us of the duty? Is duty modified still further by the attitude of the Government, its waiver of a defense under § 3224 of the Revised Statutes, its waiver of a defense that the legal remedy is adequate, its earnest request that we determine whether the law shall stand or fall? The writer of this opinion believes that the remedy is ill conceived, that in a controversy such as this a court must refuse to give equitable relief when a cause of action in equity is neither pleaded nor proved, and that the suit for an injunction should be dismissed upon that ground. He thinks this course should be followed in adherence to the general rule that constitutional questions are not to be determined in the absence of strict necessity. In that view he is supported by MR. JUSTICE BRANDEIS, MR. JUSTICE STONE and MR. JUSTICE ROBERTS. However, a majority of the

court have reached a different conclusion. They find in this case extraordinary features making it fitting in their judgment to determine whether the benefits and the taxes are valid or invalid. They distinguish *Norman* v. *Consolidated Gas Co.*, 89 F. (2d) 619, recently decided by the Court of Appeals for the Second Circuit, on the ground that in that case, the remedy was challenged by the company and the Government at every stage of the proceeding, thus withdrawing from the court any marginal discretion. The ruling of the majority removes from the case the preliminary objection as to the nature of the remedy which we took of our own motion at the beginning of the argument. Under the compulsion of that ruling, the merits are now here.

Second. The scheme of benefits created by the provisions of Title II is not in contravention of the limitations of the Tenth Amendment.

Congress may spend money in aid of the "general welfare." Constitution, Art. I, section 8; *United States* v. *Butler*, 297 U. S. 1, 65; *Steward Machine Co.* v. *Davis*, *supra*. There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. *United States* v. *Butler*, *supra*. The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law.

"When such a contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress." *United States* v. *Butler, supra,* p. 67. Cf. *Cincinnati Soap Co.* v. *United States, ante,* p. 308; *United States* v. *Realty Co.,* 163 U. S. 427, 440; *Head Money Cases,* 112 U. S. 580, 595. Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times.

The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from State to State, the hinterland now settled that in pioneer days gave an avenue of escape. *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, 442. Spreading from State to State, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the Nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co., supra,* has set the doubt at rest. But the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.

Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory

groups.[2] Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance.[3] A great mass of evidence was brought together supporting the policy which finds expression in the act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing proportionately as well as absolutely. What is even more important the number of such persons unable to take care of themselves is growing at a threatening pace. More and more our population is becoming urban and industrial instead of rural and agricultural.[4] The evidence is impressive that among industrial workers the younger men and women are preferred over the older.[5] In times of retrenchment the older are commonly the first to go, and even if retained, their wages are likely to be lowered. The plight of men and women at so low an age as 40 is hard, almost hopeless, when they are driven to seek for reëmployment. Statistics are in the brief. A few illustrations will be chosen from many there collected. In 1930, out of 224 American factories investigated, 71, or almost one third, had fixed maximum hiring age limits; in 4 plants the limit was under 40; in 41 it was under 46. In the other 153 plants there were no fixed limits, but in practice few were hired if they were over 50 years of age.[6] With the loss of savings inevitable in periods of idleness,

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[2] Report to the President of the Committee on Economic Security, 1935.

[3] Hearings before the House Committee on Ways and Means on H. R. 4120, 74th Congress, 1st session; Hearings before the Senate Committee on Finance on S. 1130, 74th Congress, 1st Session.

[4] See Report of the Committee on Recent Social Trends, 1932, vol. 1, pp. 8, 502; Thompson and Whelpton, Population Trends in the United States, pp. 18, 19.

[5] See the authorities collected at pp. 54–62 of the Government's brief.

[6] Hiring and Separation Methods in American Industry, 35 Monthly Labor Review, pp. 1005, 1009.

the fate of workers over 65, when thrown out of work, is little less than desperate. A recent study of the Social Security Board informs us that "one-fifth of the aged in the United States were receiving old-age assistance, emergency relief, institutional care, employment under the works program, or some other form of aid from public or private funds; two-fifths to one-half were dependent on friends and relatives, one-eighth had some income from earnings; and possibly one-sixth had some savings or property. Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support." [7] We summarize in the margin the results of other studies by state and national commissions.[8] They point the same way.

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[7] Economic Insecurity in Old Age (Social Security Board, 1937), p. 15.

[8] The Senate Committee estimated, when investigating the present act, that over one half of the people in the United States over 65 years of age are dependent upon others for support. Senate Report, No. 628, 74th Congress, 1st Session, p. 4. A similar estimate was made in the Report to the President of the Committee on Economic Security, 1935, p. 24.

A Report of the Pennsylvania Commission on Old Age Pensions made in 1919 (p. 108) after a study of 16,281 persons and interviews with more than 3,500 persons 65 years and over showed two fifths with no income but wages and one fourth supported by children; 1.5 per cent had savings and 11.8 per cent had property.

A report on old age pensions by the Massachusetts Commission on Pensions (Senate No. 5, 1925, pp. 41, 52) showed that in 1924 two thirds of those above 65 had, alone or with a spouse, less than $5,000 of property, and one fourth had none. Two thirds of those with less than $5,000 and income of less than $1,000 were dependent in whole or in part on others for support.

A report of the New York State Commission made in 1930 (Legis. Doc. No. 67, 1930, p. 39) showed a condition of total dependency as to 58 per cent of those 65 and over, and 62 per cent of those 70 and over.

The national Government has found in connection with grants to states for old age assistance under another title of the Social Security

The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged. This is brought out with a wealth of illustration in recent studies of the problem.[9] Apart from the failure of resources, states and local governments are at times reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors. We have seen this in our study of the problem of unemployment compensation. *Steward Machine Co.* v. *Davis, supra.* A system of old age pensions has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all.

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom. Counsel for respondent has recalled to us the virtues of self-reliance and frugality. There is a possibility, he says, that aid from a paternal government

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Act (Title I) that in February, 1937, 38.8 per cent of all persons over 65 in Colorado received public assistance; in Oklahoma the percentage was 44.1, and in Texas 37.5. In 10 states out of 40 with plans approved by the Social Security Board more than 25 per cent of those over 65 could meet the residence requirements and qualify under a means test and were actually receiving public aid. Economic Insecurity in Old Age, *supra,* p. 15.

[9] Economic Insecurity in Old Age, *supra,* chap. VI, p. 184.

may sap those sturdy virtues and breed a race of weaklings. If Massachusetts so believes and shapes her laws in that conviction, must her breed of sons be changed, he asks, because some other philosophy of government finds favor in the halls of Congress? But the answer is not doubtful. One might ask with equal reason whether the system of protective tariffs is to be set aside at will in one state or another whenever local policy prefers the rule of *laissez faire*. The issue is a closed one. It was fought out long ago.[10] When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield. Constitution, Art. VI, Par. 2.

Third. Title II being valid, there is no occasion to inquire whether Title VIII would have to fall if Title II were set at naught.

The argument for the respondent is that the provisions of the two titles dovetail in such a way as to justify the conclusion that Congress would have been unwilling to pass one without the other. The argument for petitioners is that the tax moneys are not earmarked, and that Congress is at liberty to spend them as it will. The usual separability clause is embodied in the act. § 1103.

We find it unnecessary to make a choice between the arguments, and so leave the question open.

Fourth. The tax upon employers is a valid excise or duty upon the relation of employment.

As to this we need not add to our opinion in *Steward Machine Co.* v. *Davis, supra,* where we considered a like question in respect of Title IX.

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[10] IV Channing, History of the United States, p. 404 (South Carolina Nullification); 8 Adams, History of the United States (New England Nullification and the Hartford Convention).

Fifth. The tax is not invalid as a result of its exemptions.

Here again the opinion in *Steward Machine Co.* v. *Davis, supra,* says all that need be said.

Sixth. The decree of the Court of Appeals should be reversed and that of the District Court affirmed.

Reversed.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BUTLER are of opinion that the provisions of the act here challenged are repugnant to the Tenth Amendment, and that the decree of the Circuit Court of Appeals should be affirmed.

GREAT LAKES TRANSIT CORP. *v.* INTERSTATE STEAMSHIP CO. ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 716. Argued April 28, 29, 1937.—Decided June 1, 1937.

1. Where a common carrier by water, by its bills of lading and tariffs, waives the exemptions of the Harter Act and accepts liability as insurer of cargo against marine perils, it is entitled to insure itself against that liability. P. 651.
2. Where a carrier, by agreement with shippers, assumes liability as insurer of cargo against marine perils, the liability is not diminished by a further stipulation that the carrier will obtain marine insurance from others. P. 652.
3. Policies of insurance issued to a steamship company, naming it as the assured, contemplated that the assured, as common carrier, would take upon itself full liability to cargo owners for damage and loss due to perils of the sea, and expressly agreed to indemnify the assured against that liability. *Held:*

   (1) That ambiguities, if any, raised by other clauses, must be resolved so as still to give effect to this dominant purpose to insure the carrier. P. 652.