IN THE

Supreme Court of the United States

October Term, 1935.

No. 401

UNITED STATES OF AMERICA,
Petitioner,

v.

WILLIAM M. BUTLER, ET AL., RECEIVERS OF HOOSAC MILLS CORPORATION,
Respondent.

On Writ Of Certiorari To The United States Circuit Court Of Appeals For The First Circuit.

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE and BRIEF.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago.

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Comes now the undersigned, a member of the Bar of this Court, and hereby moves for leave to file herein the annexed brief as *amicus curiae* on behalf of the following named corporations: American Nut Co., Inc., General Candy Corp., Peanut Specialty Co., Fisher Nut Co., The

Warfield Co., Millard United Co., Nutrine Candy Co., Schutter-Johnson Candy Co., Williamson Candy Corporation and Purchasing Service Corporation.

There has been filed with the Clerk a letter from the Solicitor General and a letter from counsel for respondent, consenting to the filing of this brief.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago.

May It Please The Court:

No more basic or important questions than those presented in this case can come before this Court for answer, during the lifetime of its present members or at any other time.

QUESTIONS PRESENTED.

One of the questions presented in this case is whether the Congress has power under the guise of taxation to take property from the majority of the American people and in the same act which provides for its taking, provide for its transfer to a small minority of the American people.

If Congress has the power to take property from one class under the guise of taxation and in the same act transfer it to another class, it follows that the Federal Constitution presents no barrier to the execution of such schemes for the redistribution of wealth by means of taxation as were advocated by the late Huey Long.

There is also presented in this case the question of whether the taxing power granted in the Constitution by the people to the Congress is confined to raising money for the exercise of the powers conferred by the Constitution upon the Federal Government or whether it may be employed to regulate the purely local and intrastate acts of the people and thus nullify the *Tenth Amendment.*

Involved in this is the question whether the Congress has the power to make constitutional a law which would otherwise be a plain violation of the *Tenth Amendment* by merely imposing in it a tax to procure funds for its execution or to purchase with federal money results which it may not accomplish by direct legislation.

In answering this second question the Court will either on the one hand confine the exercise of the taxing power to the procurement of funds for the execution of the powers conferred by the Constitution on the central Government or on the other hand develop it into a monstrous many-tentacled octopus, capable of reaching into all the purely local affairs of the people (provided only it comes disguised as taxation) and irreparably breaking the bonds forged by the people in the *Tenth Amendment* for the preservation of their intrastate liberties, loose this destructive monster upon an already over-harassed, overburdened and over-governed people.

The case also presents the question of whether Congress may abdicate the discharge of the highly personal trust to make laws, delegated to it by the people in the Constitution by appointing a subagent for this purpose and after he has acted make his subagency good by passing a rubber stamp resolution of ratification.

THE ACT UNDER CONSIDERATION TRANSFERS PROPERTY WITHOUT COMPENSATION FROM THE OVERWHELMING MAJORITY OF THE AMERICAN PEOPLE AND BESTOWS IT UPON A SMALL MINORITY.

The original act which levied these taxes, in *Section 12 (b)* appropriated the taxes imposed

> "for the expansion of markets and removal of surplus agricultural products and the following purposes under *Art. 2* of this title: administrative expenses, rental and benefit payments and refunds on taxes".

Page 11 of the Government petition for the writ in this case states that up to June 30, 1935, $893,302,994.25 had been collected in processing tax and of this sum $727,195,627.83 had been expended up to May 31, 1935 for "rental and benefit payments to producers of basic agri-

cultural commodities, pursuant to contracts executed by reason of the provisions of the Act," and $64,196,026.27 had "been expended for the removal of surpluses".

The avowed purpose of the Act was to increase the income of farmers by bringing about an increase in the price of farm produce through limiting the production thereof. To accomplish this it was the design of the Act that no person might buy certain basic commodities except at a fixed minimum price.

Although this Act merely makes the Treasury Department a conduit through which the so-called taxes thereby imposed, pass from the processor to the farmer and hence the tax proceeds do not even in form become the general property of the Treasury to be used for the support of the Government, nevertheless, were it otherwise in form, it is elementary that in these matters the substance and not the form must govern.

Whatever may be said as to form, it cannot be denied that in substance the Act under consideration transferred the money collected in so-called taxes from the processors and consumers to the farmers for the avowed purpose of increasing the income of the farmers.*

It is stated by the Government on page 180 of its brief that the census of 1930 showed the total farm population of the country to be 30,445,350. This is of course a minor-

* The analogy attempted to be drawn in the brief of the American Farm Bureau between the Act under consideration and the Tariff Acts patently fails because the Tariff Acts do not provide for the payment of the customs duties to manufacturers, but instead provide for the payment of them into the Treasury where they are used for the support of the Army and Navy and for the execution of all the powers conferred upon the Federal Government by the Constitution. We are here assailing the direct tranfer of money by mean of taxation from one class to another and are not concerned with the debatable realm of the incidental, indirect or speculative effects of general laws.

ity of the nation's people, yet only a very small portion of this minority has secured benefits from the Act under consideration. It appears on page 210 of the Government's brief that the Government was at no time able to secure as many as a million votes on the question of whether this program should be continued. It is a fair assumption that substantially all the beneficiaries of this legislation voted and the surprising thing is that a noticeable number voted against its continuance.**

THE ATTEMPT OF THE CONGRESS TO TAKE PROPERTY FROM THE OVERWHELMING MAJORITY OF THE AMERICAN PEOPLE WITHOUT COMPENSATION AND IN THE SAME ACT TRANSFER IT TO A SMALL MINORITY IN CONSIDERATION OF SUPPRESSING THE PURELY INTRASTATE PRODUCTION OF COMMODITIES, VIOLATES THE FIFTH AMENDMENT TO THE CONSTITUTION.

That the people by the *Fifth Amendment* limited all the powers they had granted the central Government in the Constitution and that this includes the taxing power, is now thoroughly settled. *Heiner v. Donnan, 285 U. S. 312, 326; Nichols v. Coolidge, 274 U. S. 531, 542; Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 602.**

That the Congress has not the power to take property from one citizen without compensation and give it to another has been consistently recognized by this Court since it first began to sit. In *Calder v. Bull, 3 Dallas 386, 1 U.*

** A poll now being conducted by the Literary Digest shows that a majority of those voting are opposed to the continuance of the so-called "New Deal" policies.

* The war power is as essential to the national life as the taxing power, but the decision holding the Fifth Amendment a limitation upon the war power **(Ex Parte Milligan, 4 Wall. 2, 121, 127)** has been universally and uniformly acclaimed as one of the great expositions of the liberties of the people.

S. 172, 174 (decided in 1798),** Mr. Justice Chase, who had been a signer of the Declaration of Independence and a member of the Maryland Convention called to ratify the Federal Constitution and who had participated in its development and adoption, said:

> "There are acts which the federal, or state, Legislature cannot do, without exceeding their authority. There are certain vital principles in our free Republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it is founded. A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act, which, when done, was in violation of no existing law; a law that destroys, or impairs, the lawful private contracts of citizens; a law that makes a man a judge in his own cause; *or a law that takes property from A. and gives it to B.* It is against all reason and justice, for a people to entrust a Legislature with such powers; and, therefore, it cannot be presumed that they have done it." (Italics ours.)

In *Osborn v. Nicholson, 13 Wall. 654, 80 U. S. 654,* the Court said at page *662:*

> "The proposition, if carried out in this case, would, in effect, *take away one man's property and give it to another.* And the deprivation would be 'without

** At that time this Court consisted of six members and two of the other members, Justices Patterson and Wilson had been distinguished members of the Constitutional Convention.

due process of law'. This is forbidden by the fundamental principles of the social compact, and is beyond the sphere of the legislative authority both of the States and the Nation. *(Taylor v. Porter, 4 Hill, 146; Wynehamer v. The People, 13 N. Y. 394; Wilkinson v. Leland, 2 Pet. 658.* What would be the effect of an amendment of the National Constitution reaching so far—if such a thing should occur—it is not necessary to consider, as no such question is presented in the case before us."

In *Citizens Savings and Loan Association v. Topeka, 20 Wall. 655, 87 U. S. 655, 663,* this Court said:

"There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should not longer be his, but should henceforth be the property of B. *Whiting v. Fond du Lac, 25 Wis. 188; Cooley, Const. Lim., 129, 175, 487; Dill. Mun. Cor., sec. 587.*

Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. * * * This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised.

To lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid

private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

Nor is it taxation. 'A tax,' says Webster's Dictionary, 'is a rate or sum of money assessed on the person or property of a citizen by government for the use of the nation or State.' 'Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes.' *Cooley, Const. Lim., 479.*

Coulter, J., in *Northern Liberties v. St. John's Church, 13 Pa. St. 104,* says, very forcibly, 'I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in all its machinery and operations—that they are imposed for a public purpose.' See, also, *Pray v. Northern Liberties, 31 Pa. St. 69; Matter of Mayor of N. Y., 11 Johns., 77; Camden v. Allen, 2 Dutch., 398; Sharpless v. Mayor, supra; Hanson v. Vernon, 27 Ia. 47; Whiting v. Fond du Lac (supra).*

We have established, we think, beyond cavil, that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not.

It is undoubtedly the duty of the Legislature which imposes or authorizes municipalities to impose a tax, to see that it is not to be used for purposes of private interest instead of a public use, and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed, falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to

the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation.

But in the case before us, in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn-keeper, the banker, the builder, the steamboat owner are equally promoters of the public good, and equally deserving the aid of the citizens by forced contributions. No line can be drawn in favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two thirds of the business men of the city or town.

A reference to one or two cases adjudicated by courts of the highest character will be sufficient, if any authority were needed, to sustain us in this proposition." * (Italics ours.)

The existence of such limitations upon the power of taxation was admitted in argument by Attorney General Olney in the *Pollock case (157 U. S. 507)* and by the Assistant Attorney General, Mr. Whitney, who conceded that a purported exercise of the taxing power might in reality be an exercise of the power of eminent domain and require just compensation (p. 474), and Mr. Justice Field in his opinion said at page 599:

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* The due process clause of the Fifth Amendment means the same thing as the due process clause of the Fourteenth Amendment. **Heiner v. Donnan, 285 U. S. 312, 326.**

> "As stated by counsel: 'There is no such thing in the theory of our national government as unlimited power of taxation in Congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without which society could not exist, and which are respected by every government. The right of taxation is subject to these limitations.' *Citizens Sav. L. Asso. of Cleveland v. Topeka, 87 U. S. 20 Wall. 655,* and *Parkersburg v. Brown, 106 U. S. 487.*
>
> *The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a tax.*" (Italics ours.)

The so-called tax in the case at bar utterly fails to meet this test because instead of being levied for the support of the Government and the execution of the powers conferred by the Constitution upon the central Government it is levied solely for the purpose of increasing the income of farmers and as a means to that end the money raised by the tax is paid to them in order to suppress production and thus limit the supply of necessities of life and thereby increase the price all of us pay for these necessities. Indeed if people other than farmers were to band together to accomplish such ends by such means, they would be indictable for conspiracy in restraint of trade under the laws of most of the states.

For cases to the same effect, see *Parkersburg v. Brown, 106 U. S. 407, 500; Cole v. Lagrange, 113 U. S. 1, 6,* and *Ochoa v. Hernandez y Morales, 230 U. S. 139, 161.* In all of those cases it was argued that the tax laid and collected for the benefit of private business interests would eventually result in benefit to the entire community and

in promoting the general welfare of the community but that contention was rejected by this Court. It has also been rejected by State Courts in cases of which *Lowell v. Boston, 111 Mass. 454, 461,* is typical.

It is settled that the provisions in the Constitution for the protection of life, liberty and property are to be largely and liberally construed in favor of the citizen. *(Fairbank v. United States, 181 U. S. 283, 289.)* It must be remembered that at the time the Constitution was adopted the principal grievance from which the Colonies had recently suffered and the primary cause of the Revolution lay in the abuse by the Crown of the power of taxation. These abuses were fresh in the mind of the people and they thought they were safeguarding against them by the *Fifth Amendment.* Some of the consequences which may follow the failure to hold that the *Fifth Amendment* prohibits the transfer of property from one class of the American people to another under the guise of taxation is illustrated by the example given at page 15 of this brief.

THE SPIRIT OF THE CONSTITUTION CONFINES THE TAXING POWER TO THE RAISING OF MONEY FOR THE EXERCISE OF THE POWERS CONFERRED BY THE PEOPLE IN THE CONSTITUTION UPON THE FEDERAL GOVERNMENT.

When determining the nature and extent of the powers conferred by the people in the Constitution upon the Federal Government, it is indispensable to keep in view the objects for which these powers were granted. The language of each grant of power must be construed with reference to the general purpose of the instrument.

The powers which the people desired the Federal Government to exercise they expressly conferred upon it in

the Constitution and inasmuch as money was necessary for the exercise of these powers they conferred the taxing power upon the central Government. This power was intended only to provide money for the exercise of the other powers conferred upon the central Government and was not intended to be a broad, all-embracing power under the guise of which anything might be done. Otherwise the provision of the *Tenth Amendment* that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, or reserved to the states respectively, or to the people" would be completely nullified. In one of the most exhaustive and well-reasoned opinions dealing with the question now before the Court, *John A. Gebelein, Inc. v. Milbourne, 12 F. Supp. 105,* which we submit may be most helpful to the Court in deciding this case, the Court made the following observation at page *114:*

> "But before this new principle of permissible taxation is established it is well to contemplate the possible logical developments of the doctrine. Under it, it would be legally possible, if not politically probable, to impose a similar tax on agricultural products for the direct benefit of processors, on the felling of timber for the aid of saw mills, on the raising of sugar cane or beets for the aid of sugar refineries, and indeed on any class engaged in one branch of a whole industry for the benefit of another class in the whole process of getting the products of nature or of the factory to the ultimate consumer. *The final result would be to place the regulation of all industry in the United States under the practically complete control of Congress under the taxing power."* (Italics ours).

Manifestly if the Act under consideration provided purely for the regulation of intrastate production among farmers and the suppression of that production it would not be authorized by any power granted in the Constitu-

tion. Merely annexing to it a tax to raise funds to insure that intrastate production will be limited, is an attempt to reach beyond the powers granted in the Constitution and grasp a power not granted in that instrument and support it by means of the taxing power. To permit this to be done would be to destroy the *Tenth Amendment* and to erect the taxing power into a Frankenstein which would permit Congress to exercise any power it chose. Indeed, to do so would not only be to destroy the *Tenth Amendment* but to destroy the Constitution itself. That this cannot be done this Court has already decided. *(Child Labor Tax case, 259 U. S. 20; Hill v. Wallace, 259 U. S. 44.)*

To sustain such a power by such specious reasoning as the argument advanced by the Government that Congress has power to lay a tax for any purpose and no citizen has a right to question the appropriation of tax money will ultimately result in the destruction of the Constitution and the centralization of all power in the Federal Government.*

To prevent the unconstitutional and illegal predatory pillage from one class of hundreds of millions of dollars in the future and its transfer to another, it is submitted that this Court should now declare and decide that the exercise of the taxing power granted in the Constitution is limited to supplying funds for the exercise of the other powers thereby granted to the Federal Government.

If the law now under consideration is sustained, there is nothing in the Federal Constitution to prevent the 56%

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* The Social Security Act undertakes in some instances to lay a "tax" of $81.90 a year on a business employing a $25.00 a week stenographer for the purpose of providing old age pensions. This is merely indicative of the kind of legislation which may be expected to sprout from the "Brain Trust" theory. However much all of us are in favor of such humane legislation we can find warrant for it neither in the letter nor in the spirit of the Constitution.

of the people who according to the 1930 census live in cities, from banding together and imposing a tax upon the farmers and providing for the distribution of this tax to themselves in consideration of "voluntarily" entering into contracts with the Government to remain idle, thereby limiting the supply of personal service and labor and increasing the price of that commodity on account of the scarcity thus produced.*

Then, indeed, will the way be open for class warfare** and for the realization of the pessimistic prediction of MacCaulay based on the premise that "your Constitution is all sail and no anchor". In this case we sound the alarm and call upon the Court to cast the anchor and save the Ship of State while there is still time by confining the taxing power to the raising of money for the purpose of performing only the acts which the Federal Government is authorized by the Constitution to do. If the argument of the Government prevails, money may be raised by taxation and expended for any purpose whatsoever, including wholly unconstitutional purposes; and results which the Federal Government could not accomplish by direct legislation it may just as effectively accomplish through buying them with Federal money and thus render the constitutional restrictions on the power of the Federal Government a dead letter.

In *Gibbons v. Ogden, 9 Wheat. 1,* Chief Justice Marshall said at page *199:*

> "Congress is not empowered to tax for those purposes which are within the exclusive province of the States".

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* Reference is made to the remarks of John Stuart Mill on the "tyranny of the majority" in his essay on "Liberty".

** The taxation of one class, the people, for the benefit of the nobility and clergy brought about the French Revolution and Reign of Terror.

It is within the knowledge of this Court that Federal money has in recent years been prolifically expended for purposes not within the scope of the powers conferred by the Constitution upon the Federal Government. To decide at this time that the taxing power is confined solely to raising money for the execution of the powers conferred by the Constitution upon the Federal Government will check the accumulation of billions of dollars of debt and the saddling of it upon future generations, increase the Federal credit, stabilize its currency and afford life, liberty and property some measure of that protection against the reckless acts of temporary administrations which the Constitution was intended to secure.

It is hardly possible to overemphasize that the limitations of the Federal Constitution may be circumvented and nullified if the Federal Government by the expenditure of Federal money can accomplish the results of acts prohibited to it and reserved by the Constitution to the States alone or to the people.

THE LEGISLATION UNDER CONSIDERATION VIOLATES THE CONSTITUTIONAL PRINCIPLE OF THE SEPARATION OF POWERS.

Montesquieu in 1748 published in his book "The Spirit Of The Laws" in which he pointed out history taught the lesson that whenever the legislative, executive and judicial powers were united and not separated the ultimate result had been tyranny. This book, which the Encyclopedia Britannica states was the greatest French book of the 18th Century, had a great influence with the Members of the Constitutional Convention and they therein provided for the separation of powers and considered this provision necessary to insure the liberties of the people.

The debates in the Constitutional Convention show that the framers of the Constitution regarded this as the cornerstone upon which the Constitution was built and as the Keysone of the Arch of Liberty thereby sought to be preserved. It is obvious that if one of the three great and separate departments of the Government can delegate its powers to another, the result will be a merger of these powers in one of them and unless this ultimately ends in tyranny history will fail to repeat itself. This Court has demonstrated that it appreciates the consequences of the philosophy of Government which produced the Act under consideration and that it will be vigilant to preserve the separation of powers. *(Schechter Corp. v. United States, 295 U. S. 495.)*

As ably shown in *John A. Gebelein, Inc. v. Milbourne, 12 F. Supp. 105,* at page *116,* Congress delegated to the Executive Department "(1) *what* to tax;* (2) *when* to tax; (3) *how long* to tax, and (4) *at what rate* to tax".

Because the taxing power is granted to Congress alone, it cannot delegate it to the Executive Department and on this ground alone the Act is invalid.** The attempt to ratify this illegal grant is ineffectual because Congress could not authorize it in the first place. If once the ratification theory contended for by the Government is established, Congress may delegate all law making to the Executive and convene for a week or a day and pass a general resolution ratifying and confirming whatever he has done. This was never contemplated by the framers of the Constitution.

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* On some commodities made taxable by the Act the Secretary has imposed a tax. On others he has not. He has also imposed a tax on what he considers competing commodities.

** So held in **F. G. Vogt & Sons v. Rothensies, 11 F. Supp. 225.**

The argument on page 110 of the Government's brief wherein it is said of the Treasury officials "it may be that their determination that the tax should be assessed at the rate it was and on the products it was, resulted from the exercise by the Secretary of Agriculture of improperly delegated legislative authority," but that this does not matter because Congress has ratified his act proceeds upon a fallacious premise. It assumes that Congress is the principal, whereas Congress itself is merely the agent of the people. The principal is the people. It is fundamental that an agent may not delegate his authority and inasmuch as he may not do so he cannot accomplish the same thing by so-called "ratification" for the reason that he has no right to authorize the Act in the first place. One may only ratify that which can properly be delegated in the first instance.

The cases cited by the Government deal with conquered *territory* (the Philippine Islands) to which the governmental powers reserved by the Constitution to the *States* have no application. *(Dorr v. United States, 195 U. S. 138.)*

COMMENTS ON THE GOVERNMENT'S BRIEF.

The case of *Graham & Foster v. Goodcell, 282 U. S. 409,* cited and relied upon at page 115 of the Government's brief, was a case in which this Court sustained *Section 611 of the Revenue Act of 1928,* which denied to taxpayers a recovery of tax otherwise owing but collected after the statute of limitations had expired in cases where taxpayers had delayed the collection beyond the statutory period by their own act in filing a claim in abatement. Although *Section 611* did not mention a claim for credit, yet there is no substantial difference between the two claims and this Court in the later case of *Stearns Co. v. United States, 291 U. S. 54,* held that in cases where tax-

payers delayed collection beyond the statutory period by filing a claim for credit, the Government had the common law and equitable defense of estoppel and the taxpayer could not recover. From this it follows that *Section 611* upheld by the Court in the *Goodcell case* was superfluous in that it only gave the Government a defense which the Government would have had without it and deprived taxpayers of no right.

Pages 179 to 226 of the Government's brief are devoted to showing how bad conditions were among farmers when this legislation was enacted and how greatly they have improved up to the present time.* However, it does not follow from the fact that conditions were bad and that they have improved that improvement has been due to this legislation or that there would not have been a greater improvement had this legislation never been enacted.

During the argument of the *NRA case* in this Court the Attorney General argued that chaos would follow a holding that it was unconstitutional and a few days after the decision holding it unconstitutional was rendered the President in his "horse and buggy" statement predicted price slashing, wage cutting practices and nationwide labor disputes. None of these things happened. Instead what happened was that business, convinced that this Court would stand unswervingly by its oath and protect it against unconstitutional, socialistic encroachments, went ahead with renewed vigor and an immediate improvement in conditions was the result and they have continued to improve up to this date.

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* The President in his speech at Atlanta on November 29th last, claimed that the improvement was due to this legislation, the purpose of which he frankly made apparent, was to control and limit production within the States and thereby increase prices.

Moreover, even if legislation is concededly beneficial during a period of economic emergency, it is more important that the liberties of the people which the Constitution seeks to preserve be protected than that the people enjoy some temporary comfort, just as it was more important that thousands should have died to protect and preserve the Constitution than that they should have lived and the Constitution be destroyed. Otherwise future generations would live under despotism and tyranny.

To the argument that the framers of the Constitution could not foresee all future conditions which might arise in a complex civilization and hence the Constitution should be elastically expanded, the obvious answer is that the framers realized their inability to foresee the future and provided for it in the Constitution itself through the provision for its amendment. If the Constitution is to be amended, this should be done in the manner therein provided and not by executive or legislative usurpation. The facility with which it may be amended when the people desire to do so is demonstrated by the recent repeal of the prohibition amendment.*

All of which is respectfully submitted.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago, Illinois,
Amicus Curiae.

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* Andrew Jackson, in his message of May 27, 1830, vetoing a bill to authorize the subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road Co., said:

> "If it be the wish of the people that the construction of roads and canals should be conducted by the Federal Government, it is not only highly expedient, but indispensably necessary that a previous amendment to the Constitution delegating the necessary power and defining and restricting its exercise with reference to the sovereignty of the States should be made." (Messages and Papers of the President, Vol. II, p. 491.)