Justice Brandeis concurring in Ashwander v.TVA 297 U.S. 288(1936)

"Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it." Blair v. United States, 250 U.S. 273, 279....

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary, 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. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it."

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."

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional [\*\*\*100] question, the other a question of statutory construction or general law, the Court will decide only the latter

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

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.

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.