No. 53, Original

In the Supreme Court of the United States

OCTOBER TERM, 1971

STATE OF ALABAMA, PLAINTIFF

v.

JOHN B. CONNALLY, SECRETARY OF THE TREASURY, AND JOHNNIE M. WALTERS (SUCCESSOR TO RANDOLPH W. THROWER), COMMISSIONER OF INTERNAL REVENUE

ON MOTION FOR LEAVE TO FILE COMPLAINT

BRIEF FOR THE DEFENDANTS IN OPPOSITION

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JURISDICTION

Alabama's motion for leave to file a complaint against the Secretary of the Treasury and the Commissioner of Internal Revenue seeks to invoke the original jurisdiction of this Court for the purpose of enjoining the defendants in their official capacities from assessing and collecting federal income taxes from the citizens of the State of Alabama, or, in the alternative, from recognizing the exemption of religious foundations and other similar organizations from the federal tax on income. This Court's jurisdiction is invoked under Article III, Section 2,

of the Constitution, which confers original jurisdiction in a case "in which a State shall be Party" and 28 U.S.C. 1251. For the reasons stated below, the United States submits (1) that Alabama lacks standing to invoke the original jurisdiction of this Court in this case, *infra*, pp. 7–12, (2) that the relief sought by Alabama is barred by valid statute, *infra*, pp. 12–15, and (3) that the administration of the Internal Revenue Code is committed to the Secretary of the Treasury and the Commissioner of Internal Revenue and is subject to review only by taxpayers litigating their own tax liabilities, *infra*, pp. 15–19.

QUESTIONS PRESENTED

1. Whether Alabama, as *parens patriae* of its citizens, may challenge actions of the federal government.

2. Whether this suit is barred by the statutory prohibitions against suits brought to enjoin the assessment and collection of federal taxes or suits seeking declaratory judgments with respect to federal taxes.

3. Whether the commitment of the administration of the Internal Revenue Code to the Secretary of the Treasury and the Commissioner of Internal Revenue by law precludes an attempt by a plaintiff which is not a taxpayer litigating its own tax liability from seeking review of the constitutionality of the provisions of the Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States:

ARTICLE III

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

* * * * *

28 U.S.C.:

§ 1251. *Original jurisdiction.*

* * * * *

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(b) The Supreme Court shall have original but not exclusive jurisdiction of:

* * * * *

(2) All controversies between the United States and a State;

* * * * *

§ 2201. *Creation of remedy.*

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) [As amended by Sec. 101(j)(3), Tax Reform Act of 1969, P.L. 91–172, 83 Stat. 487, 526] *Exemption From Taxation.*—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

* * * * *

(c) *List of Exempt Organizations.*—The following organizations are referred to in subsection (a):

* * * * *

(3) Corporations, and any community chest, fund, or foundation, organized and

operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

* * * * *

SEC. 7421. [as amended by Sec. 110(c), Federal Tax Lien Act of 1966, P.L. 89–719, 80 Stat. 1125, 1144] PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax.*—Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

* * * * *

STATEMENT

The State of Alabama seeks leave to file its complaint to enjoin the Secretary of the Treasury and the Commissioner of Internal Revenue from assessing and collecting federal income taxes from the citizens of the State of Alabama or, alternatively, to

enjoin them from exempting income of religious institutions, foundations, organizations, and similar associations, whether located within or without the State of Alabama, from the federal tax on income, pursuant to the provisions of Section 501(c) of the Internal Revenue Code of 1954.

It is alleged in the complaint that the imposition of the federal income tax on and its collection from individuals, estates and trusts and corporations, considered in relation to the exemption from federal income taxation accorded to religious institutions, foundations, organizations and similar associations, whether located within or without the State of Alabama, under the provisions of Section 501(c) of the Internal Revenue Code of 1954, forces the taxable entities to pay a "disproportionate share of such federal income tax" (Compl. IV); that the exemption from income taxation provided for by Section 501(c) effects such an arbitrary, unjustifiable and discriminatory classification of persons for federal income tax purposes as to constitute the assessment and collection of federal income taxes from the taxable entities amounting to a confiscation of property in violation of the Fifth Amendment (Compl. V); and that, to the extent that Section 501(c) exempts religious organizations from taxation, it constitutes a subsidy to and establishment of religion in contravention of the First Amendment (Compl. XI). The actions of the defendants in assessing and collecting income taxes from the citizens of the State of Alabama and their actions in exempting the income of religious institu-

tions from that tax, it is alleged, have caused and continue to cause irreparable injury to the citizens of the State of Alabama for which they have no adequate remedy at law (Compl. VII and XIII).

For relief, plaintiff requests that the defendants be enjoined from assessing and collecting federal income taxes from the citizens of the State of Alabama (Compl. VIII) and, alternatively, that they be enjoined from applying the statutory exemption from the federal income tax to the income of religious institutions and similar organizations throughout the United States (Compl. XIV).

ARGUMENT

I

THIS SUIT IS NOT WITHIN THE ORIGINAL JURISDICTION OF THIS COURT BECAUSE ALABAMA HAS NO SOVEREIGN INTEREST IN THE MATTERS ALLEGED AND MAY NOT AS *PARENS PATRIAE* CHALLENGE ACTIONS OF THE FEDERAL GOVERNMENT

The State of Alabama seeks to file the proposed complaint to "prevent * * * any unlawful confiscation of the private property of its citizens * * *" (Compl. VI) and to "protect * * * its citizens against the subsidizing and establishment of religion by law made by Congress" (Compl. XII). Alabama thus seeks as *parens patriae* of its citizens to challenge the actions of the federal government. Such a suit is not within the original jurisdiction of this Court. *Massachusetts* v. *Mellon,* 262 U.S. 447, 485; *Florida* v. *Mellon,* 273 U.S. 12, 18; *South Carolina* v. *Katzenbach,* 383 U.S. 301, 324; *Massachusetts* v. *Laird,* 400 U.S.

886. See also *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 446–447.

Article III, Section 2 of the Constitution confers original jurisdiction on this Court "In all Cases * * * in which a State shall be Party." However, mindful of the grave problems inhering in judicial interference with a sovereign's acts, the Court has repeatedly observed that such jurisdiction must be assumed sparingly. *Louisiana* v. *Texas*, 176 U.S. 1, 15; *Missouri* v. *Illinois*, 200 U.S. 496, 520–521; *Alabama* v. *Arizona*, 291 U.S. 286, 291. Similarly this Court has consistently declined to entertain cases sought to be brought within its original jurisdiction merely because a state "elects to make itself * * * a party plaintiff." *Oklahoma* v. *Atchison, T. & Santa Fe Ry.*, 220 U.S. 277, 289. The Court has insisted on "strict adherence to the governing principle that a State must show a direct interest of its own and not merely seek recovery for the benefit of individuals who are the real parties in interest." *Oklahoma* v. *Cook*, 304 U.S. 387, 396. See also *Kansas* v. *United States*, 204 U.S. 331; *Massachusetts* v. *Missouri*, 308 U.S. 1, 17. Cf. *New Hampshire* v. *Louisiana*; *New York* v. *Louisiana*, 108 U.S. 76.

In an original action between two states, or a state and a citizen of another state, two kinds of "direct interest" have been recognized. A state may maintain such an action to protect its sovereign interests (*e.g.*, *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 726) or to vindicate the interests of its citizens as a whole, as *parens patriae* (e.g., *Georgia* v. *Pennsylvania R. Co.*, *supra*; *Georgia* v. *Tennessee Copper Co.*, 206 U.S.

230). Thus, acting as *parens patriae* for their citizens, states have been permitted to maintain actions against other states, or citizens of other states, to protect the health and comfort of their inhabitants (*Missouri* v. *Illinois,* 180 U.S. 208; *Kansas* v. *Colorado,* 185 U.S. 125; *Georgia* v. *Tennessee Copper Co., supra; Pennsylvania* v. *West Virginia,* 262 U.S. 553; *North Dakota* v. *Minnesota,* 263 U.S. 365), and even to protect the economic well-being of their citizens (*Georgia* v. *Pennsylvania R. Co., supra*).

In an original action between a State and the United States, however, a state may sue to protect its sovereign interests (*e.g., South Carolina* v. *Katzenbach, supra; California* v. *Latimer,* 305 U.S. 255; *Ohio* v. *Helvering,* 292 U.S. 360; *Wisconsin* v. *Lane,* 245 U.S. 427) but it may *not* maintain an original action as *parens patriae* to challenge the actions of the federal government. *Massachusetts* v. *Mellon, supra; Florida* v. *Mellon, supra; South Carolina* v. *Katzenbach, supra; Massachusetts* v. *Laird, supra.* This limitation is based on the principle that the federal government itself—and not any state—is "the ultimate *parens patriae* of every American citizen." *South Carolina* v. *Katzenbach, supra,* 383 U.S. at 324.[1]

[1] *South Carolina* v. *Katzenbach* illustrates the distinction between a suit brought by a state to vindicate its sovereign interest and a suit as *parens patriae.* This Court permitted South Carolina to challenge, in the Court's original jurisdiction, a federal law which had the effect of suspending or invalidating important provisions of the state's voting laws which, it was conceded, were otherwise valid. But South Carolina also sought to assert as a basis for its suit that the federal law violated the

Thus, in *Florida* v. *Mellon*, *supra*, this Court denied a petition to file an original action to enjoin the collection in Florida of federal estate taxes imposed by the Revenue Act of 1926. The Court stated (273 U.S. at 18):

> Plainly, there is no substance in the contention that the state has sustained, or is immediately in danger of sustaining, any *direct* injury as the result of the enforcement of the act in question. See *In re Ayers*, 123 U.S. 443, 496; *Massachusetts* v. *Mellon*, 262 U.S. 447, 488.
>
> Nor can the suit be maintained by the State because of any injury to its citizens. They are also citizens of the United States and subject to its laws. In respect of their relations with the federal government "it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status." *Massachusetts* v. *Mellon*, *supra*, pp. 485–486.

In the present case, Alabama does not allege that Section 501 of the Internal Revenue Code of 1954 infringes any sovereign interest of the State. Compare *Georgia* v. *Pennsylvania R. Co.*, *supra*, 324 U.S. at 450; *Florida* v. *Mellon*, *supra*, 273 U.S. at 17–18; *Georgia* v. *Tennessee Copper Co.*, *supra*, 206 U.S. at 237. Rather

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principle of separation of powers, by conferring judicial functions on the Attorney General. The Court held that this claim was not related to South Carolina's own sovereign interests but, rather, was asserted as *parens patriae*, and that the State had no "standing as the parent of its citizens to invoke" claims against the federal government, 383 U.S. at 324.

Alabama claims it "is directly interested in preventing any unlawful confiscation of the private property of its citizens * * *" and "in protect[ing] its citizens against the subsidizing and establishment of religion by law made by Congress" (Compl. VI and XII). Alabama is thus acting as *parens patriae* in an effort to protect its citizens against alleged unlawful action by the federal government. Since a State lacks standing to raise such a claim, the jurisdiction of this Court is not properly invoked.

Neither *Kentucky* v. *Dennison*, 24 How. 66, nor *Alabama* v. *United States*, 373 U.S. 545, cited by plaintiff, is applicable to the present case in which Alabama attempts to assume the status of *parens patriae*. The first was a suit between two States involving sovereign interests.[2] In the second, a state's motion for leave to file a complaint was *denied* because certain preparatory measures for the use of federal troops to suppress violence in Birmingham was deemed no basis for the granting of relief against the United States and its Secretary of Defense.

Flast v. *Cohen*, 392 U.S. 83, also relied on by plaintiff, upheld a taxpayer's standing to challenge the constitutionality under the First Amendment's establishment clause of a federal spending program. However, Alabama is not a taxpayer, and no spending program is challenged in its complaint.[3]

[2] The Governor of Ohio was sued in his official capacity, and mandamus to deliver a fugitive from Kentucky was denied.

[3] In any event, the contention that tax exemptions such as those challenged here constitute a subsidy to religious institutions in violation of the First Amendment has been rejected in

It follows that Alabama lacks the requisite standing to maintain the instant suit, and leave to file the complaint should, accordingly, be denied.[4]

II

THE RELIEF REQUESTED IS BARRED BY STATUTE

To the extent that the complaint seeks injunctive relief against the assessment and collection of a fed-

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Walz v. *Tax Commission*, 397 U.S. 664. Plaintiff's reliance (Br., p. 4 n. 1) on *Green* v. *Connally, et al.*, No. 1355–69, 28 A.F.T.R. 2d 71–5164 (D. D.C., decided June 30, 1971) as a decision holding Section 501 of the Internal Revenue Code of 1954 unconstitutional is misplaced. At the time of the decision in that case, the Commissioner had already interpreted Section 501 as denying exemptions to private educational institutions practicing racial discrimination. The decision did the same, as a matter of statutory interpretation. The order entered in that case thus had the effect of reinforcing existing administrative practice.

[4] Moreover, though the named defendants in this suit are the Secretary of the Treasury and the Commissioner of Internal Revenue, this seems to be peculiarly a case where the real defendant is the United States, which may not be sued without its consent. *United States* v. *Shaw*, 309 U.S. 495. There is no suggestion that the defendant officers have exercised any discretion, or performed any act which involved their judgment. The thrust of the suit is solely directed against statutes which have been duly passed by Congress and signed by the President. It is not the defendant officers who are alleged to be doing anything wrong. The wrong, if any, stems only from the authentic spokesmen for the United States, at the highest level.

It is recognized, of course, that suits in this area have been maintained, see *Larson* v. *Domestic and Foreign Corporation*, 337 U.S. 682, and that this is a field in which "the subject is not free from ~~casualty~~." *Larson* v. *Domestic and Foreign Corporation*, *supra*, at 708 (Frankfurter, J., dissenting.)

casuistry

It would seem that there should be some substance to the rule that the United States cannot be sued without its consent. If a

eral tax, it is barred by Section 7421(a) of the Internal Revenue Code of 1954, *supra*, p. 5; to the extent that the complaint seeks a judgment declaring Section 501(c) unconstitutional, it is barred by 28 U.S.C. 2201, *supra*, p. 4.

A. PROHIBITION OF SECTION 7421 (a), INTERNAL REVENUE CODE OF 1954

Section 7421, by its terms, bars any "suit for the purpose of restraining the assessment or collection of any tax * * *." While a judicial gloss on the statute has permitted equitable relief where there is no adequate remedy at law and the government's assessment is wholly without basis (*e.g., Miller* v. *Standard Nut Margarine Co.*, 284 U.S. 498), this exception is inapplicable here because the taxpayers Alabama seeks to represent do have adequate legal remedies and the government has acted reasonably and in good faith. *Enochs* v. *Williams Packing Co.*, 370 U.S. 1.

The citizens of the State of Alabama are afforded adequate legal relief by statute. Individually they may litigate the correctness of their respective income tax liabilities in either the United States Tax Court, a federal district court, or the United States Court of Claims. See Sections 6213(a), 7422, Internal Revenue Code of 1954; 28 U.S.C. 1346(a)(1), 1491; *Flora* v. *United States*, 362 U.S. 145. In appropriate cases they may raise constitutional questions, including alleged

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suit can always be maintained against officers, then there is no substance to the rule. The present case is peculiarly one where acts of the sovereign are brought into question. It should not be maintainable without the sovereign's consent. *Louisiana* v. *McAddo*, 234 U.S. 627; *High* v. *Gordon*, 373 U.S. 57.

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violations of the First and Fifth Amendments. See, *e.g.*, *Cammarano* v. *United States*, 358 U.S. 498. And, as previously noted (*supra*, n. 3), the exemptions granted pursuant to Section 501 of the Internal Revenue Code are not without a basis in law. See *Walz* v. *Tax Commission, supra.*

B. PROHIBITION OF 28 U.S.C. 2201

Actions "with respect to Federal taxes" are explicitly exempted from the jurisdiction conferred by the Declaratory Judgments Act (see *Flora* v. *United States, supra*, 362 U.S. at 164–165).[5] In terms the

[5] The original Declaratory Judgments Act, c. 512, 48 Stat. 955, when enacted in 1934 did not contain the phrase "except with respect to Federal taxes". Its enactment was quickly followed by attempts in several district courts to obtain declaratory judgments with respect to federal taxes. See, *e.g.*, *Penn* v. *Glenn*, 10 F. Supp. 483 (W.D. Ky.), appeal dismissed *per curiam*, 84 F. 2d 1001 (C.A. 6); *F. G. Vogt & Sons, Inc.* v. *Rothensies*, 11 F. Supp. 225 (E.D. Pa.). Congress responded immediately in Section 405 of the Revenue Act of 1935, c. 829, 49 Stat. 1014, 1027, which amended the Act to add, as it now provides, "except with respect to Federal taxes". The report of the Senate Finance Committee (S. Rep. No. 1240, 74th Cong., 1st Sess., p. 11 (1939–1 Cum. Bull. (Part 2) 657)) explained the reason for the amendment as follows:

> Your committee has added an amendment making it clear that the Federal Declaratory Judgments Act of June 14, 1934, has no application to Federal taxes. The application of the Declaratory Judgments Act to taxes would constitute a radical departure from the long-continued policy of Congress (as expressed in Rev. Stat. 3224 and other provisions) with respect to the determination, assessment and collection of Federal taxes. Your committee believes that the orderly and prompt determiation and collection of Federal taxes should not be interfered with by a procedure designed to facilitate the settlement of private controversies, and that existing procedure both

complaint seeks a decree "enjoining and restraining [defendants] from proceeding to assess against or collect from the citizens of the State of Alabama [federal] taxes" (Compl. VIII) and asks that they "be restrained and enjoined from exempting the income of religious institutions, foundations, organizations, and similar associations * * * from the federal tax * * * (Compl. XIV). As a basis for this relief Alabama alleges that Section 501 is unconstitutional, and, in order to grant the relief requested, the Court would necessarily have to declare that Section unconstitutional. Otherwise, the actions of defendants, admittedly taken pursuant to the scope of their authority as federal officers (Compl. II–IV; IX–X), are legally unassailable acts of the United States. *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682. The true thrust of plaintiff's requested relief is that this court enter an injunction in the nature of mandamus in order to effectuate a judgment declaring Section 501 unconstitutional (see *Singleton* v. *Mathis*, 284 F. 2d 616, 619 (C.A. 8)). Such relief is expressly barred by statute.[6] 28 U.S.C. 2201, 2202; *Singleton* v. *Mathis, supra.*

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in the Board of Tax Appeals and the courts affords ample remedies for the correction of tax errors.

[6] The order in *Green* v. *Connally*, *supra*, n. 3, which was both injunctive and declaratory, was entered without reference to these limitations on the court's jurisdiction. However, as noted, *supra*, n. 3, the order had the effect of reinforcing the existing administrative practice of denying tax exemptions to racially segregated private schools; it wrought no change in the tax laws. To the extent that the opinion gives support for judicial noncompliance with the limitations on jurisdiction here discussed, we submit that it is in error.

III

THE ADMINISTRATION OF THE INTERNAL REVENUE CODE IS COMMITTED TO THE SECRETARY OF THE TREASURY AND THE COMMISSIONER OF INTERNAL REVENUE, AND IS SUBJECT TO REVIEW ONLY AT THE INSTANCE OF TAXPAYERS LITIGATING THEIR OWN TAX LIABILITIES

In the administration of the revenue of the United States, the orderly conduct of which this Court has long recognized to be vital to the nation, *Nichols* v. *United States*, 7 Wall. 122, 126–130; *Cheatham* v. *United States*, 92 U.S. 85, 88–89, the statutory scheme provides for every taxpayer an adequate but carefully circumscribed procedure for judicial review if he disagrees with the Treasury's determination of his own tax liability. But other than the prescribed routes for refund actions in the district courts and in the Court of Claims, and for review of deficiencies in the Tax Court, the Internal Revenue Code comprehensively commits authority and responsibility for its enforcement and administration to the Secretary of the Treasury and the Commissioner of Internal Revenue (Sections 7801 and 7802, Internal Revenue Code of 1954), as they have been committed since the Act of September 2, 1789, c. 12, Sec. 2, 1 Stat. 65, created the Office of Secretary of the Treasury and provided that, among other things, it should be his duty "to superintend the collection of the revenues." The provisions of Section 7421, *supra*, prohibiting injunctions and the terms of the Declaratory Judgments Act, *supra*, excepting actions "with respect to Federal taxes" also indicate the narrow channels within which litigation with respect to federal taxes is confined.

The Internal Revenue Code not only provides generally that administration and enforcement shall be committed to the authority of the Secretary and the Commissioner. It spells out the scope of that authority by a series of specific grants, each of which has a significant institutional history.[7] Section 6201 gives to the Secretary or his delegate the vital authority "to make the inquiries, determinations and assessments of all taxes * * * imposed by this title."[8] To make it clear that this responsibility is not to be shared, Section 7401 provides that "No civil action for the collection or recovery of taxes * * * shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced."[9] Cf. *Sullivan* v. *United States*, 348 U.S. 170. The Code also gives these officials comprehensive responsibility and authority to credit or refund taxes erroneously collected (Section 6402), to compromise civil or criminal cases arising under the internal revenue laws (Section 7122), to enter into final and conclusive (in the ab-

[7] See *The Work and Jurisdiction of the Bureau of Internal Revenue* (Govt. Printing Office, 1948).

[8] This provision intended to concentrate in the Office of the Commissioner the responsibility and authority for enforcement and administration, originated in Section 2 of the Act of December 24, 1872, c. 13, 17 Stat. 402. It was recommended in Commissioner Douglass' Report of the Commissioner of Internal Revenue for the Fiscal Year ended June 30, 1872, p. 414.

[9] This provision originated in Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 98, 111. The addition of the Attorney General in Section 3740 of the 1939 Code reflected the provisions of Sec. 5 of Executive Order No. 6166 of June 10, 1933, vesting in the Department of Justice the conduct of tax litigation other than in the Board of Tax Appeals.

sence of fraud, malfeasance or misrepresentation) closing agreements with respect to tax liability for past or prospective transactions (Section 7121), and to abate excessive, erroneous or illegal assessments (Section 6404). It further provides (Section 6406) that, where there is no fraud or mistake in mathematical calculation, the findings of fact and decision on the merits of the Secretary or his delegate in allowing claims for refund shall not be subject to review by any other administrative or accounting officer of the United States. A series of decisions in this Court and the Court of Claims long ago settled that the factual and legal bases of the Commissioner's action in making refunds is not subject to re-examination in judicial proceedings. *United States* v. *Kaufman,* 96 U.S. 567; *United States* v. *Savings Bank,* 104 U.S. 728; *United States* v. *Louisville,* 169 U.S. 249; *Woolner* v. *United States,* 13 Ct. Cl. 355; *Sybrandt* v. *United States,* 19 Ct. Cl. 461. In addition, Section 7805(a) gives general authority for the prescription of Regulations, supplemented in numerous instances by more specific authority for Regulations (*e.g.,* Sections 167 (b) and (d), 1502) or determinations (*e.g.,* Sections 166(a)(2) and (c), 367(a), 482), with the added authority (Section 7805(b)) for prescribing the extent to which a ruling or regulation shall be applied without retroactive affect.

This Court recognized the scope of the Treasury's administrative responsibility and authority in *Louisiana* v. *McAdoo,* 234 U.S. 627, where the State, itself

a producer of sugar in state institutions, sought an order requiring the Secretary of the Treasury to demand and collect higher duties on Cuban sugar than the Treasury was collecting under its construction of the relevant statutes. This Court dismissed the action, pointing out that to permit others to displace the authority and responsibility committed to the Secretary would "disturb the whole revenue system of the Government" (234 U.S. at 632).

In analogous situations in other agencies, the Court has also held that administrative responsibility for enforcement is not subject to review. *Federal Trade Commission* v. *Klesner,* 280 U.S. 19; *Amalgamated Workers* v. *Edison Co.,* 309 U.S. 261; *Panama Canal Co.* v. *Grace Line, Inc.,* 356 U.S. 309. See also *United States* v. *Correll,* 389 U.S. 299, 306–307; *Bingler* v. *Johnson,* 394 U.S. 741, 750–751.

CONCLUSION

The State of Alabama has failed to demonstrate standing to invoke this Court's original jurisdiction in this matter. It has shown no injury to its own sovereign interest, nor can it represent its citizens, as *parens patriae,* in challenging the acts of federal officials pursuant to the Internal Revenue Code. Additionally, the administration of the Internal Revenue Code—with the exception of carefully structured and channelled forms of judicial review—is committed to the Secretary of the Treasury and the Commissioner of Internal Revenue; general advisory review,

such as the complaint seeks, is barred by statute. Accordingly, plaintiff's motion for leave to file the complaint should be denied.

Respectfully submitted.

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