



The Constitutional Avoidance Doctrine: The Constitutional-Doubt Canon (Part 3 of 3)

March 29, 2022

The Constitutional Avoidance Doctrine (see CRS Legal Sidebar LSB10719, *The Modes of Constitutional Analysis: The Constitutional Avoidance Doctrine (Part 9)*) is a set of rules the Supreme Court has developed to guide federal courts in disposing of cases that raise constitutional questions in order to minimize tensions that arise when an unelected federal judiciary sets aside laws enacted by Congress or state legislatures. Under the Constitutional Avoidance Doctrine, federal courts should interpret the Constitution only when it is a “[strict necessity](#).” In a concurring opinion in *Ashwander v. Tennessee Valley Authority*, Justice Louis Brandeis identified seven rules comprising the Constitutional Avoidance Doctrine: (1) the Rule Against Feigned or Collusive Lawsuits; (2) Ripeness; (3) Judicial Minimalism; (4) the Last Resort Rule; (5) Standing and Mootness; (6) Constitutional Estoppel; and (7) the Constitutional-Doubt Canon. Rules (1), (2), (5), and (6) inform whether a court can hear a case (i.e., whether it is justiciable), while Rules (3), (4), and (7) inform how a court should address constitutional questions in cases before it. This Legal Sidebar Post on the Constitutional-Doubt Canon is the third of three that look at this latter set of rules. Because the Constitutional Avoidance Doctrine informs how the Court is likely to resolve disputes involving the constitutionality of laws, understanding the Constitutional Avoidance Doctrine may assist Congress in its legislative activities.

Posited on the premise that Congress “[legislates in the light of constitutional limitations](#),” the Constitutional-Doubt Canon provides that federal courts should construe statutes so that they do not violate the Constitution. Describing the Constitutional-Doubt Canon, [Justice Brandeis](#) wrote in his *Ashwander* concurring opinion: “When the validity of an act . . . is drawn in question, and even if a serious doubt of constitutionality is raised . . . [the Court] will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” Consequently, if a statute is susceptible to two plausible interpretations, one of which violates the Constitution, the Constitutional-Doubt Canon instructs courts to choose the interpretation that is consistent with the Constitution. If the statute is not susceptible to a plausible constitutional interpretation, the Constitutional-Doubt Canon is inapplicable.

The Constitutional-Doubt Canon provides a way for the Court to avoid ruling on contentious constitutional questions. By choosing to interpret a statute to conform to the Constitution, the Court communicates to Congress, in effect, what the Court believes the Constitution requires. If Congress disagrees with how the Court has interpreted a statute, Congress can amend it. While this leaves open the possibility that the Court will have to revisit the constitutional question in the context of the revised

Congressional Research Service

<https://crsreports.congress.gov>

LSB10722

statute, the Constitutional-Doubt Canon has allowed the issue to be publicly vetted further. If Congress does not amend the statute, the Court's constitutionally compliant interpretation governs despite another interpretation having possibly been a more natural reading of the statute.

The Court has stressed that the Constitutional-Doubt Canon does not give courts leeway to interpret a statute in a manner that effectively rewrites the statute to conform to the Constitution. In *United States v. Locke*, the Court stated: “[w]e cannot press statutory construction ‘to the point of disingenuous evasion’ even to avoid a constitutional question.” Instead, applying conventional tools of statutory interpretation, the Court must find the statute to be subject to two valid interpretations. In *Jennings v. Rodriguez*, the Court stated: “The canon of constitutional avoidance ‘comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.’”

The Constitutional-Doubt Canon has been criticized as incentivizing the Court to interpret statutes in ways that appear to defy the statute's express language in order to avoid making a controversial constitutional ruling. For instance, in *United States v. Seeger* and *Welsh v. United States*, the Court was confronted with whether the conscientious objector provisions of Section 6(j) of the Universal Military Training and Service Act violated the Constitution's [Establishment and Free Exercise Clauses](#). Among other things, Section 6(j) specified “belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, *but does not include essentially political, sociological, or philosophical views or a merely personal moral code*” for conscientious-objector status.

Using the Constitutional-Doubt Canon, the Court avoided ruling on what the Establishment and Free Exercise Clauses mean by “religion,” allowing more time for public consensus to form on the issue. In *Seeger*, the draft board denied conscientious-objector status to Daniel Seeger because he did not meet the Section 6(j) requirement of having beliefs based on a Supreme Being. While Section 6(j) expressly precluded beliefs based on “philosophical views” or a “personal moral code,” the Court interpreted Section 6(j)'s “belief in a relation to a Supreme Being” requirement to cover Seeger's “sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption.” By finding the draft board misread Section 6(j), the Court avoided addressing the case's implications for the Establishment and Free Exercise Clauses. Hinting at how the Court might have resolved the case on constitutional grounds, the Court explained that “[t]his construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well-established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets.”

Because the Supreme Court's Section 6(j) interpretation provided draft boards limited guidance on how to distinguish persons with “essentially political, sociological, or philosophical views” who did not qualify for conscientious-objector status from those with “[a] sincere and meaningful belief” who did, the Court faced a near replica of *Seeger* six years later. In *Welsh*, Elliott Welsh challenged the draft board's denial of conscientious-objector status on the grounds that he did not have “[a] sincere and meaningful belief” to qualify under *Seeger*. Welsh, however, characterized his beliefs as not religious. Revisiting Section 6(j), the Court now construed it to cover an individual, like Welsh, who “deeply and sincerely holds beliefs that are *purely ethical or moral* in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time,” notwithstanding Section 6(j)'s express language that “essentially political, sociological, or philosophical views or a merely personal moral code” did not qualify for conscientious-objector status. In short, the *Seeger* and *Welsh* Courts interpreted Section 6(j)'s definition of religious belief to encompass theistic and non-theistic worldviews depending on “whether the beliefs professed by a registrant are sincerely held and whether they are, *in [the conscientious objector applicant's] own scheme of things*, religious.”

As *Seeger* and *Welsh* demonstrate, by using the Constitutional-Doubt Canon, courts may avoid deeming laws to be unconstitutional, while at the same time forestalling the need to rule on controversial constitutional issues and allowing more time for the political process to form a consensus. (Additional

background on this topic is in the *Constitution of the United States of America, Analysis and Interpretation* and CRS Report R43706, *The Doctrine of Constitutional Avoidance: A Legal Overview*.)

Author Information

Jeanne M. Dennis
Senior Advisor to the Director

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.