

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

The 1934 Act provided that “[i]n cases of actual controversy” federal courts could “declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed. . . .”⁵²² Upholding the Act, the Court wrote: “The Declaratory Judgment Act of 1934, in its limitation to ‘cases of actual controversy,’ manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense. The word ‘actual’ is one of emphasis rather than of definition. Thus the operation of the Declaratory Judgment Act is procedural only. In providing remedies and defining procedure in relation to cases and controversies in the constitutional sense the Congress is acting within its delegated power over the jurisdiction of the federal courts which the Congress is authorized to establish.”⁵²³ Finding that the case presented a definite and concrete controversy, the Court held that a declaration should have been issued.⁵²⁴

The Court has insisted that “the requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit.”⁵²⁵ As Justice Douglas wrote: “The difference between an abstract question and a ‘controversy’ contemplated by the Declaratory Judgment Act is necessarily one of degree, and it would be difficult, if it would be possible, to fashion a precise test for determining in every case whether there is such a controversy. Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”⁵²⁶ It remains, therefore, for the courts to determine in each case the degree of controversy necessary to establish a case for purposes of jurisdiction. Even then, however, the Court is under no compulsion to exercise its jurisdiction.⁵²⁷ Use of declaratory judgments to settle disputes and identify rights in many private areas, like insurance and patents in particular but extending into all areas of civil litigation, except taxes,⁵²⁸ is common. The Court

⁵²² 48 Stat. 955. The language remains quite similar. 28 U.S.C. § 2201.

⁵²³ *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239–240 (1937).

⁵²⁴ 300 U.S. at 242–44.

⁵²⁵ *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461 (1945).

⁵²⁶ *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

⁵²⁷ *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 494 (1942); *Public Service Comm’n v. Wycoff Co.*, 344 U.S. 237, 243 (1952); *Public Affairs Associates v. Rickover*, 369 U.S. 111, 112 (1962). *See also* *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995).

⁵²⁸ An exception “with respect to Federal taxes” was added in 1935. 49 Stat. 1027. The Tax Injunction Act of 1937, 50 Stat. 738, U.S.C. § 1341, prohibited federal injunctive relief directed at state taxes but said nothing about declaratory relief. It was held to apply, however, in *California v. Grace Brethren Church*, 457 U.S. 393