Policing the Power of States in the Emerging U.S. Financial Market: A Story of the Geiger-Jones Investing Company

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I. Legal Background

With the emergence of extensive cases of fraud in the field of speculative securities markets at the beginning of the 20th century, the state of Ohio passed an act "to regulate the sale of bonds, stocks and other securities and of real estate not located in Ohio and to prevent fraud in such sale." The law joined the rows of those already enacted all over the United States, known generally as Blue Sky laws. These laws aimed to protect people from buying fraudulent securities by means of imposing strict licensing rules over the distribution and sale of those financial instruments. For instance, Ohio's Blue Sky law, which was passed in 1913, prohibited individuals and corporations from distributing securities within the state without first receiving a license from the state Securities Commissioner. The process of acquiring the license included the payment of a fee and the disclosure of particular information about the activities of the company, including copies of all of its advertising. The term "securities", as defined by Ohio's Blue Sky law, included such financial instruments as stocks, stock certificates, bonds, debentures, and collateral trust certificates, among others.[1] Then, amendments made to the law in 1914 allowed for, *inter alia*, the regulation of bonds, stocks, and other securities not located in Ohio. Several classes of securities, however, were exempt from the license requirement, including Ohio public bonds, standard listed stocks, mortgages on Ohio real estate, and other financial instruments already under state regulation.[2] While aimed at protecting consumers from fraud, the law aroused much indignation from companies that had been working for decades, had established reputations, and now were required to pay extra, onerous fees every year.

The Geiger-Jones Company was one such enterprise. Since 1907, it had specialized in buying and selling the stocks and bonds of industrial cor-

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1: Gale U.S. Supreme Court Records, Hall v. Geiger-Jones Co. T*ranscript of Record and Supporting Pleadings* § 54, 7 (2011).

2: *Public Protected From Swindlers by New Blue Sky Law,* The Democratic Banner, 3 (August 12, 1913).

porations in Ohio. The company challenged the Blue Sky law before the District Court for the Southern District of Ohio. The company asserted that the Blue Sky law endowed the Securities Commissioner with impermissibly subjective and arbitrary power; deprived the company of its property without due process of law, in violation of the Fourteenth Amendment; and regulated interstate commerce, contravening the Commerce Clause. In response, the court first held that the law infringed upon the protections guaranteed by the Fourteenth Amendment.[3] Its opinion noted that the unbounded power given to the commissioner offered persons no protection from the "fatal inequality" that would arise if the commissioner enforced the law differently relative to different classes of corporations.[4] Then, more centrally, the court noted that the law imposed burdens upon interstate commerce that were "so direct, positive and substantial" that the Ohio Blue Sky law was void fully and immediately, since its constitutionally offensive features predominated throughout its body and were not severable.[5]

In reaching its conclusion, the court relied heavily on Supreme Court decisions that had been issued in 1910 and 1912. In those cases, the Court held unconstitutional state license requirements for foreign corporations engaging in purely interstate transactions within a state's borders.[6] Those opinions held that such laws imposed direct burdens on legitimate interstate commerce and thus infringed the Commerce Clause of the federal Constitution. Applying these precedents to the case of the Ohio Blue Sky law, the district court concluded that "the draftsman of the act here in question, unwittingly, no doubt, but with strange fatality, incorporated into it substantially all of the vices of the statutes considered in the above named cases, and added others equally, if not more, obnoxious."[7]

Such contention over the issue of the Commerce Clause and state licensing was not accidental. The Constitution of the United States grants every citizen of the United States a right to carry on interstate commerce,[8] and every infringement of the commerce clause is a violation of one's constitutional rights. Over the course of history, however, the meaning of interstate commercial activities and the scope of the privileges granted to citizens have evolved, taking on various forms. Specifically, the Constitution grants Con-

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3: Geiger-Jones Co. *Transcript of Record* at § 54, 37.

4: *Id.*

5: *Id.*

6: See *International Textbook Co. v. Pigg*, 217 U.S. 91 (1910) and *Buck Stove & Range Co. v. Vickers*, 226 U.S. 205 (1912).

7: Geiger-Jones Co. *Transcript of Record* at 38.

8: See *International Textbook,* 217 U.S. at 109-10.

gress the right "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."[9] The broad nature of the Clause's language, however, has constructed an arena for debate over the definition of interstate commercial activity and what is to constitute its instruments. Further controversy has evolved around the states' power to regulate matters of local concern that indirectly affect interstate commerce.

Questions regarding the distribution of federal and state power over interstate business activities were first noted in *Gibbons v. Ogden*.[10] There, the Supreme Court ruled that Congress maintained exclusive rights to regulate interstate navigation. The next category that followed navigation was trade between states. The Supreme Court secured the free flow of goods for sale in foreign states against protective legal measures of the states in a series of Commerce Clause decisions between 1875 and the 1890s. Among the landmark cases was *Welton v. Missouri*,[11] in which the Court ruled in favor of I. M. Singer & Company and declared Missouri's trade barriers unconstitutional, thus opening the state's borders for the company's market expansion.[12] By 1885, the Commerce Clause had also been used successfully to strike down state tax laws. Interstate companies thus received federal protection from unfair state protectionist policies when transporting and selling goods within a foreign state.[13] Next, in *Minnesota v. Barber,*[14] the Commerce Clause was expanded from prohibiting tax barriers to also allow for federal control of inspection laws. The Supreme Court granted to Congress, as opposed to the states, the authority to conduct pre-slaughter and post-mortem inspections of meat such that out-of-state companies might be protected against discrimination by biased and protectionist state authorities.[15]

By the late 1880s, the federal government was granted, pursuant to the Commerce Clause, regulatory powers that had traditionally fallen within the domain of the states. However, the licensing of enterprises and other ecnomic activities still remained in the powers of states. This unequal

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9: US Const. art. I, § 8, cl 3.

10: 22 U.S. 1 (1824).

11: 91 U.S. 275 (1876).

12: For the history of the cases see Charles W. McCurdy, *American Law and the Marketing Structure of the Large Corporation, 1875- 1890*, 38 J. Econ. Hist. 631, 636-41 (1978).

13: Charles W. McCurdy, *The Knight Sugar Decision of 1895 and the Modernization of American Corporation Law, 1869-1903*, 53 Bus. Hist. Rev. 304, 311 (1979).

14: 136 U.S. 313 (1890).

15: McCurdy, *American Law and the Marketing Structure of the Large Corporation* at 647-48.

distribution of power between the federal government and the states can be explained, first, by the incremental nature of common law precedents and, second, by a Supreme Court opinion issued twenty-five years prior to the *Welton* decision. In 1852, the Court, in *Cooley v. Board of Wardens*,[16] narrowed its reading of the Commerce Clause to the context of each particular case:

> "When the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be exercised exclusively by Congress, it must be intended to refer to the subjects of that power, and to say they are of such a nature as to require exclusive legislation by Congress. Now the power to regulate commerce, embraces a vast field, containing not only many, but exceedingly various subjects, quite unlike in their nature; some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port; and some, like the subject now in question, as imperatively demanding that diversity, which alone can meet the local necessities of navigation."[17]

In *Cooley* the issue revolved around the constitutionality of a Pennsylvania law that required all ships entering or leaving Philadelphia to hire a local pilot. Otherwise, they had to pay a fee to benefit the Society for the Relief of Distressed and Decayed Pilots. On the grounds that the state maintained exclusive local rights to regulate pilots, the Court upheld the state law. As professors Martin Redish and Shane Nugent of Northwestern University argue, the Court reasoned that "the power to regulate commerce must be viewed in terms of the subject being regulated."[18] While some subjects were national in character and required a uniform federal rule, others required diverse regulations that only the states could provide.

The subject matter of commercial regulations, thus, became the cornerstone factor in courts' decisions on whether particular state attempts to regulate business activity violated the Commerce Clause. Soon, state regulation of the manufacturing activities of foreign companies within foreign state borders came into question. Charles McCurdy has observed that "when a corporation chartered in one state controlled productive apparatus–wheth-

16: 53 U.S. 299 (1852).

17: *Id.* at 319.

18: Martin Redish & Shane Nugent, *The Dormant Commerce Clause and the Constitutional Balance of Federalism*, 36 Duke Law Journal 569, 578 (1987).

er by purchase, lease, or exchange of stock with a domestic corporation– within another state, its property necessarily became part of the general mass of property in the State, subject as such to its taxing and regulatory jurisdiction."[19] When the war on state taxes and inspection laws discriminating against foreign business ended, a new war on state laws regulating manufacturing and mining activities began. The main question that stood in front of the courts was, again, whether such activities were of interstate importance, and, thus, fell under jurisdiction of Congress, or if they fell under the category of state policing powers. Despite Congress's attempt to curb state control over manufacturing by means of the Sherman Anti-Trust Act and its insistence on the inclusion of manufacturing within the ambit of the Commerce Clause, the Supreme Court proclaimed manufacturing of goods to be the sole prerogative of state authorities, even if those goods would subsequently be made available for interstate distribution. States were thus given legal power to prohibit foreign manufacturing corporations from exercising franchises within their borders. In the landmark case *United States v. E. C. Knight Co.*,[20] Chief Justice Melville Weston Fuller narrowly read the Commerce Clause and upheld state control over the chartering of corporations for the next forty years, until the end of the 1930s. Here, the Court cited *Coe v. Errol*,[21] which recognized that goods which had not yet been transported were liable for taxation at the place of their origin. On these grounds Fuller declared:

> "The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce."[22]

The antagonism between states and federal authorities over commercial issues only worsened by the end of the 19th century. In 1890, the Supreme Court rejected state regulation of activities that were technically within the competency of the federal government but had not yet been regulated. The *Leisy v. Hardin*[23] case examined arguments over transportation and distribution of liquor in a foreign state where the sale of any intoxicating liquors was

19: McCurdy, *Knight Sugar Decision of 1895,* at 314.
20: 156 U.S. 1 (1895).
21: 116 U.S. 517 (1886).
22: *E.C. Knight Co.,* 156 U.S. at 13.
23: 135 US 100 (1890).

prohibited. Since liquors were articles of commerce, Justice Fuller declared that they fell within Congress' domain. But if Congress left the industry unregulated, the states were not authorized to exercise control over the subject.[24] The *Leisy* Court took congressional silence as tantamount to a legislative determination that the field should be kept free of regulation entirely, including that of the states.[25] Justice Fuller declared "where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation ... the State can act until Congress interferes and supersedes its authority. But, "where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States ... Congress can alone act upon it."[26] The opinion further complicated the debate over the distribution of federal and state power to regulate economic activity. By the end of the nineteenth century, the scope for interpretation of which activities were of local concern and which possessed an interstate, national character had broadened significantly.

And so, at the turn of the century, the issue of state authority over interstate activities was nowhere close to being determinatively and finally resolved. Such ambiguity would inevitably set a framework for conflict regarding the regulation of the rising market for industrial securities.With accelerated merger movement, companies had started turning to preferred stock as a means to finance their growth. The transition from "inside" ownership to semipublic "outside" possession gave way for the expansion of the securities disposition industry.[27] With an increasing number of brokerage firms, the industry also attracted swindlers and dealers in highly speculative securities. The public, often amateur in questions of the securities market, became victims of dealers in fraudulent stock. In response to the rising numbers of such victims, the first Blue Sky law in American history was passed by Kansas in 1911.

The legislation immediately faced opposition on the grounds that it was unconstitutional because it regulated interstate commerce on a state level. At the beginning of the 20th century, judges were heatedly debating whether the interstate distribution of securities was an issue of interstate commerce and, thus, whether states could create laws regulating the industry in the

24: 135 U.S. 100 (1890).

25: *Leisy*, 135 U.S. at 109-10, which notes "so long as Congress does not pass any law to regulate it, or allowing the States so to do, it thereby indicates its will that such commerce shall be free and untrammeled."

26: *Id.* at 119.

27: Thomas Navin and Marian Sears, *The Rise of a Market for Industrial Securities, 1887-1902*, 29 Bus. Hist. Rev. 105 (1955).

absence of federal regulation. The following story of *Hall v. Geiger-Jones Co.* discusses the constitutionality of Ohio's Blue Sky law on the basis of its relation to the Commerce Clause and state policing powers. Although the district court first struck down the law on the basis of its direct burden on the Commerce Clause, the Supreme Court would take another trajectory and declare that the securities market, though having an interstate character, could be regulated by the states, so long as Congress passed no regulations of its own. As a result, the Court dismissed the legacy of Justice Fuller and the congressional silence doctrine. Noting that the Commerce Clause was complimentary rather than prohibitory, it proclaimed that, in the absence of federal legislation, state police powers were dominant in the regulation of the disposition of securities. State power over interstate commercial activities was once again expanded.

II. The Speculation Fever

Over the course of 20 years, the number of Americans owning financial stock increased from 4.4 million in 1900 to 14.4 million in 1922.[28] This constituted a rise from 5 percent of the population to about 12 percent, an increase of more than double. As a rapidly growing industry, financial markets required some legal framework for operation. Due to the growing attractiveness of the young industry, the disposition of securities became a tempting environment for fraudulent and high-risk activities. The public needed security against the growing amount of swindlers. In the end, the need for protection of the population led to state regulation of the field.

The first wave of policing regulation came towards bucket shops. Due to the high price of brokerage services, the majority of the American population—the middle and the working classes—became *habitués* of bucket shops. The latter were "places where customers wagered small sums on the price movements of stock and commodities."[29] The nature of a bucket shop consisted of side speculation on the rise or fall of stock prices. In comparison to the actual brokerage, however, there was no transfer or delivery of the stock or commodities nominally dealt in. Despite the high risk and questionable nature of the bucket shop business, they became an alternative market for those wishing to become rich quickly and enticed many potential Stock Exchange customers. Soon enough, bucket shops outperformed

28: David Hochfelder, *'Where the Common People Could Speculate': The Ticker, Bucket Shops, and the Origins of Popular Participation in Financial Markets, 1880-1920*, 93 J. Amer. Hist. 335, 336 (2006).

29: *Id.* at 335.

the average daily volume of stock exchanges. The New York Times estimated in 1889 that the nation's bucket shops had the equivalent of one million shares in bets per day, dwarfing the 140,000 shares daily of the New York Stock Exchange.

Although bucket shops were rising in popularity among Americans, their highly risky nature left thousands of people broke. Books of raided bucket shops often showed a heavy preponderance of losses over winnings. In one example, Ridgeway Bowker, a sixty-year-old typesetter who had zero experience with the stock market, read *Guide to Investors* and started speculating at a bucket shop with $150 in his pocket. Although he first enjoyed successful stakes, he, after some time, ended up with $3,200 of debt and was forced to pay off his debt with a job that paid $60 a month.

The Chicago Board of Trade eventually opened a legal war on bucket shops, emphasizing the gambling nature of their business and their thoroughly demoralizing effect on industrial and mercantile life.[30] In 1905, it won a Supreme Court case prohibiting bucket shops from acquiring the Boards' stock quotations. In his majority opinion, Justice Oliver Wendell Holmes, siding with the Board, affirmed the distinction between speculation and gambling, noting that bucket shops were to be classified as enterprises of the latter as opposed to the former.[31] After the Panic of 1907, which was partially attributed to bucket shops' speculation, the states of New York, Illinois, and Missouri banned the bucket shop business.[32] In the next couple of years, other states would follow the example.

Elimination of bucket shops didn't fully protect the public from reckless speculation and loss of money in worthless securities. Based on a sample of estimates from a number of newspaper articles, in the 1910s securities fraud was removing at least $1 billion annually from the bank accounts of

30: *The Chicago Board of Trade, How It Helps the Farmer, Grain Dealer and Shipper*, Ticker, 2, 258 (Oct. 1908).

31: *Board of Trade of Chicago v. Christie Grain & Stock Co.,* 198 U.S. 236, 247-49 (1905).

32: William J. Quirk, *Too Big to Fail and Too Risky to Exist*, 81 Amer. Scholar 31 (2012).

ordinary Americans.[33] The *Chicago Daily Tribune* cautioned its readers in 1906 against the allure of getting rich quickly. The newspaper mentioned the story of Dr. Jacobs, who ventured a dozen of fraudulent enterprises including banks, "inducing the farmers to put up real money against his worthless securities."[34] After one of the business enterprises imploded, Jacobs moved to another to continue the swindling activity. Jacobs started the Chicago Loan and Trust Company, which offered various get rich quick schemes. "It was from a director's meeting of [the Chicago Wax Paper company] that Jacobs rode to the courtroom in an automobile and pleaded guilty to fraud in the Chicago Loan and Trust concern. Anyone who wanted to start an insurance business could find the necessary capital by paying money to Jacobs, who would furnish him with fake bonds and stocks and certificates of deposit indicating that vast sums had been deposited in the coffers of the Chicago Loan and Trust company."[35] Jacobs is but one example of many individuals who attempted to make a living by defrauding common Americans.

In response to the danger such swindlers posed, John Moody first published Moody's Manual of Industrial and Miscellaneous Securities in 1900, providing helpful information on stocks and bonds of financial institutions for the amateur public. In 1906, he described different deceitful schemes surrounding the displacement of securities in *The Washington Post*. He talked about advertising columns as one of the ways to defraud a naïve American and "steer" his investment into unsafe channels. By widespread advertising,

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33: A sample of fraud cost estimates can be seen with the following: *Why 'Blue Sky' Laws Are Needed*, Indianapolis Times (December 11, 1923); *Financial Crime Loss Is Three Billions Yearly*, New York Times, H5 (6 July 1924); *Debit 3 Billions a Year to Crooks*, Current Opinion, 510 (October 1, 1924); *War on the White Collar Bandits*, Literary Digest, 11-12 (March 6, 1926); *Getting Rich by Going Broke*, Literary Digest, 65-67 (April 27, 1929); E. Jerome Ellison & Frank W. Brock, *The Run for Your Money* 3-4 (1935), in Edward J. Balleisen, *Private Cops on the Fraud Beat: The Limits of American Business Self-Regulation, 1895-1932*, 83 Bus. Hist. Rev. 113, 118 (2009).

34: *Don't Try to Get Rich Too Fast: Twenty cases now on the criminal docket. Every day victims complain to the police. Credulous people always ready to be swindled. Money for stamps only capital needed. Forty million dollars taken in by a few schemers. How L.D. Abbot Company was managed. Borrowed money to pay first printing bill. Get rich quick men arrested during the year. Fake diamond company was one of many. Unique career of Perbohner: committed suicide. Dr. Jacobs is premier of promoters. Established trust company, which failed. One legitimate enterprise and a score of frauds,* Chicago Daily Tribune (September 23, 1906).

35: *Id.*

a gang of "mining swindlers" that were located in New York and operated in forty branch offices all across the United States and Canada, defrauded people into buying shares of their firm with a promise of high dividends. The first dividends were paid with no profits backing them up. The company, however, continued exchanging its worthless stock for stock in equally worthless companies. "It is reported that this firm has bilked something like 16,000 small investors in the United States and Canada, to the tune of several million dollars," cautioned Moody.[36] Apart from advertisers, sellers of securities were among the first to exploit the device of the mailing list. Those on the "sucker list," as *The New York Times* called it in 1909, would first receive a fancy advertisement in the mail soliciting them to invest with high commission. Deceived victims would then receive fraudulent stocks in an envelope, which allowed the swindling schemes to go unnoticed by the police.[37]

The first discussion of possible legislation to prevent stock fraud came out of the state of Kansas. During the period of 1910-1911, Kansas was not an exception to the prevalence of securities scams: fake investment advertising schemes swindled innocent citizens out of four to eight million dollars each year.[38] The state bank commissioner J. N. Dolley acknowledged the flood of securities fraud into Kansas. To protect the public from swindlers, Dolley proposed a state bureau to provide the public with information on the background of stock dealers. After doing background checks on the companies, the bureau notified any inquirers about the companies' financial standing. In the first week of the bureau's operation, it received a dozen letters of inquiry.[39] After the success of the bureau,, Dolley called for the passage of state legislation to stop fraudulent speculation. After successfully lobbying Kansas's legislature in 1911, Dolley succeeded in influencing the passage of the first Blue Sky law in the history of the United States. The law required firms selling securities in Kansas to acquire a license from the Bank Commissioner and to file regular reports of financial standing in order to be

36: John Moody, *'Get-Rich-Quick' Schemes: From 'The Art of Wall Street Invoking' Courtesy of the Moody Corporation*, The Washington Post, § Real Estate, Financial, & Want Advertisements (November 11, 1906).

37: *How the Mails Are Used to Catch the Unwary*, New York Times, § 5 (September 12, 1909).

38: Walter A. La Bar, *Kansas' 'Blue Sky' Law: It Is Designed to Keep 'Fake' Promotion Companies Outside the State*, New York Times (October 13, 1911).

39: *Dolley Investors Guide: Bank examiner gets many inquiries from Kansas. State overrun with stock selling sharks, who gold brick the innocent investors,* Iola Daily Register, 4 (April 11, 1910).

able to operate in the securities business within the state.[40] Shortly after its passage, the law prohibited 44 out of 500 companies to operate within the state of Kansas. After the first year of the law's operation, Dolley proudly announced that the law had saved the people of Kansas more money than it had taken to run the entire state government during that year.[41]

Dolley's legislation was a unique invention to protect the public from stock swindlers. For more than a year, Kansas was the only state to enact a Blue Sky law. However, in his article in *Bankers Home Magazine*, Dolley boasted that almost every state in the union had sent a request for a copy of the law, and that England, France, Germany and Canada were considering the enactment of a similar legislation.[42] Indeed, after Kansas, citizens of many other states started discussing the possibility of enacting Blue Sky laws. For instance, in response to urgent demand for a measure against stock fraud, Iowa created a committee to work on similar legislation.[43] California also offered "hearty endorsement" of such legislation.[44] In 1912, Arizona[45] and Vermont[46] adopted Blue Sky laws modeled after Kansas' example. Yet, Louisiana enacted a statute that year which differed from the Kansas law in at least one respect, as it did not ban securities from the state if they simply did not promise a fair return on the investment. Most of the states' Blue Sky laws, however, had one central motive in common. All of them required securities dealers to obtain a license from a state commissioner to be able to sell securities, bearing significant liabilities for false statements in connection with the traded stock.

Americans did not unanimously welcome Blue Sky laws, though. There was an opposition movement, mostly in states with a big financial market presence, like New York, Pennsylvania and Massachusetts, or those competing for corporate charters such as Maine, Delaware, Nevada and Maryland.[47] Much criticism of the legislation was based on the argument that the

40: *Kansas Beats Stock Swindling: The 'Blue Sky' Law That Has Regulated the Dealing in Securities*, Wall Street Journal (March 2, 1912).
41: Walter A. La Bar, *Kansas' 'Blue Sky' Law*, supra.
42: The article was quoted within *Id*.
43: *Blue Sky Law is Needed*, National Democrat (November 28, 1912).
44: *The Blue Sky Law*, Oakland Tribune (July 21, 1913)
45: Act of May 18, 1912, ch. 69, 1912 Ariz. Sess. Laws 338 (vesting enforcement powers in the state's corporation commission).
46: Act of Feb. 13, 1913, No. 170, 1912 Vt. Laws 196 (vesting enforcement powers in the state's bank commissioner).
47: See, generally, Jonathan Macey & Geoffrey Miller, Origin of the Blue Sky Laws, 70 Tex. L. Rev. 347 (1992).

laws were bounded within one state, allowing for no uniformity on a broader level. The Investment Bankers' Association called the Kansas Blue Sky law a "crazy-quilt cure-all impossible of operation." The association attacked the laws on the grounds that they went against any interest of the dealers in the securities business.[48] Many, however, acknowledged the necessity for some sort of legislation to protect investors from fraudulent securities. By 1915, twenty-seven states had introduced Blue Sky laws despite increasing opposition to the legislation and frequent challenges to these laws in the courts.[49]

III. The Blue Sky Law Controversy in Ohio

A Blue Sky law was eventually introduced in Ohio, a state with a big New York investment house presence, in 1913. As amended in 1915, it required dealers, both in-state and foreign, to acquire a license from the State Superintendent of Banks by means of disclosing to him certain information and undergoing a background check, along with providing copies of all advertising published in the media. The introductory section of the law stated:

> "Except as otherwise provided in this act, no dealer shall, within this state, dispose or offer to dispose of any stock, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all hereinafter termed "securities") evidencing title to or interest in property, issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit,) or by any taxing subdivision of any other state, territory, province or foreign government, without first being licensed so to do as hereinafter provided."[50]

The law then defined who was and who was not a 'dealer.' It also stated that applicants had to pay a preliminary fee of $10 and an annual fee of $50, with an additional $5 for every agent they employed. The superintendent, under the law, could revoke a license or refuse renewal for cause, which then could be reviewed in the court upon the dealer's complaint.

When the Ohio law was passed, the Superintendent of the Banking Department of Ohio was Harry T. Hall. Before enforcing Blue Sky legislation, he had already established a reputation of being a bitter enemy to bucket patrons. In 1916, he authorized raids and arrests of managers of twelve bucket

48: *Bankers to Fight Get-Rich-Quick Men,* New York Times, XX15 (April 26, 1914).
49: *Blue Sky Laws*, Wall Street Journal (November 29, 1915).
50: Ohio, Blue Sky Law, as amended, 1915.

shops. In the State Banking Department's estimation, each of the raided establishments "was doing enough business to net a daily profit of $3,000" by operating fraudulent security agencies.[51] After successfully shutting down the bucket shops, Hall concluded: "[A fatal] Blow has been struck that was needed to halt [a] conspiracy which reaches from [the] Atlantic to [the] Missouri River," adding that bucket shops would not operate in Ohio "as long as [he was] banking superintendent."[52] After ending the securities gambling business in Ohio, Hall proceeded to issue licenses for businesses willing to sell securities in the state.

The Attorney General Edward C. Turner helped Henry Hall revoke the licenses of swindling enterprises. A graduate of the Ohio State University School of Law, he first worked as a prosecutor in Franklin County, and became distinguished when he successfully compelled the county treasurer to collect delinquent taxes. "When he took office," reported the local Ohio newspaper *The Perrysburg Journal*, "the civil and criminal docket of his office was about 300 cases behind, but now it stands up to scratch."[53] Described as "a quiet looking little fellow, with the determined chin of a man who doesn't make much noise,"[54] Turner would soon make history by arguing, at the Supreme Court, Ohio's case for the legitimacy of Blue Sky laws.

In 1915, the Geiger-Jones Company, specializing in buying and selling stocks and bonds of industrial corporations, applied to Hall for a license pursuant to the Blue Sky law. At the time, the company owned $1,655,200 in issued and outstanding stock. Its surplus approximated $285,000, and it had an established clientele of 11,000, residing both within and outside of the state of Ohio. The company was selling securities of twenty corporations organized under the laws of Ohio, other states, and foreign countries, amounting to $25,000,000 per share value. As later reported, none of the Geiger-Jones Company's 11,000 clients ever reported incurring any losses as a result of investing in the securities acquired through Geiger-Jones.[55] Overall, the company had established a respectable reputation in Ohio by the time it applied for license renewal.

However, Commissioner Hall rejected the Geiger-Jones Company's renewal request. After investigating the company's affairs, Hall concluded that Geiger-Jones was not fully complying with the provisions of the Blue

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51: *Ohio Bucket Shops Raided*, The Sun (February 5, 1916).

52: *Ohio Bucket Shop Prosecutions*, Wall Street Journal, 5 (February 5, 1916).

53: *Edward C. Turner*, Perrysburg Journal (October 29, 1914).

54: *Id.*

55: Geiger-Jones Co., *Transcript of Record* at § 54 pp, 2.

Sky law.[56] In a series of charges, the state official accused the company of wrongfully claiming an existing surplus of $265,000. In fact, Hall stated, an audit noted that no surplus existed at all. In response, the company filed a lawsuit against the Banking Superintendent and the Attorney General, claiming, first, that the Commissioner's decision rested upon incorrect facts and was in need of correction and, second, that the Blue Sky Law was an unconstitutional violation of the Commerce Clause.

Before the court decided the issue, however, it allowed other interested parties to consolidate their own challenges to the law with the challenge of Geiger-Jones. The first of these new parties was William Rose, who, as a citizen of the state of Ohio, had developed a prosperous business by buying and selling investment securities. Previously, the RiChard Auto Manufacturing Company, a newly organized West Virginia car manufacturer, needed to raise capital to produce and sell cars. For fundraising purposes, the auto manufacturing company issued stock, which Rose put on the market for sale. Subsequently, Rose became a secretary of the RiChard Auto Manufacturing Company. While Rose continued to sell securities of the auto company, the Attorney General conducted an investigation into the affairs of the enterprise and found no manufactured automobiles or automobile parts. On the assertion of fraud, a constable arrested Rose.[57] The jury of the court of Cuyahoga County found Rose guilty of unlawfully attempting to sell stocks, but Rose removed his case to the federal district court. Like Geiger-Jones, Rose claimed that the Blue Sky law under which he was arrested was unconstitutional. In court, he stated that the legislation deprived citizens of their property without due process of law, unconstitutionally delegated *ultra vires* power to the superintendent, and imposed a burden that practically amounted to a prohibition upon interstate commerce.[58] Since Rose's accusations were so similar to those of the Geiger-Jones company, the district court, in the interest of judicial efficiency, consolidated both cases.

A third party, Don Coultrap, also joined the case after making the same argument against the law's constitutionality. As a citizen of the state of Pennsylvania and a dealer within the Geiger-Jones Company, he had filed a parallel complaint against Hall. Coultrap held stock in several companies that were registered in Ohio and in Missouri. The dealer regularly traveled between the states of Ohio and Pennsylvania, trading stock in both states and often sending securities from one state to the other for sale by mail.[59]

56: *Ohio's 'Blue Sky' Law Held Invalid,* Detroit Free Press, 6 (February 11, 1916).

57: Geiger-Jones Co., *Transcript of Record* at § 61, 2.

58: *Id.* at 4.

59: *Id.* at § 47, 2-4.

He charged that the state officials' revocation of the license of his employer "will operate as a cancellation of his authority" and, consequently, "interrupt and destroy his business."[60]

Thus, the Court had to address the concerns of three different plaintiffs: an established but opaque business enterprise, a dealer convicted of the disposition of fraudulent securities, and a reputable dealer whose extensive network of clientele was at stake. With all three cases in mind, the Court issued one opinion on the constitutionality of the Blue Sky law. The judge mentioned that an application of the police power would be valid in these cases, but only if it *incidentally* affected interstate commerce. Citing previous court decisions in the states of West Virginia[61] and Iowa,[62] the court defined stocks and bonds as articles of legitimate interstate commerce. Consequently, sales and transmission of them between the states constituted interstate commerce.

After defining such basic terms, the court determined whether the provisions of the Ohio Blue Sky law directly burdened interstate commerce. In the process, the judge repeatedly mentioned the unlimited power of the commissioner, granted to him by the Blue Sky statute, to revoke the license if he had any reason to believe that the certificate holder's business was fraudulently conducted.[63] The unlimited power of state officials over this kind of business became the deciding factor in the judge's ruling. He called it "uncontrolled discretion", noting that the State Commissioner was "at liberty to hear, if he [chose], only evidence unfavorable to the investigated party."[64] The court also questioned the constitutionality of the law on the basis that it was not acceptable for a state legislature to require business owners to obtain a license as a condition of transacting a lawful business. According to its opinion, it was out of state jurisdiction to:

> "prescribe, as a condition of the right of a foreign corporation to engage in legitimate interstate transactions, that it should prepare a statement as required, as to its stock, authorized and paid up, and its par and market value, as to its assets, liabilities, officers, trustees, directors, managers, and stockholders, with a showing of stockholdings of each of the latter and the amount paid on his holdings,

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60: *Id.* at 32.
61: *Bracey v. Darst*, 218 Fed. 482 (N.D.W.V. 1914).
62: *Compton v. Allen,* 216 F. 537 (S.D. Iowa 1914).
63: Geiger-Jones Co.*, Transcript of Record* at § 54, 37-39.
64: *Id.* at 41.

> and the post office address of all of such above named persons."[65]

The state had too much regulatory power over the securities industry, in the court's opinion, and, hence, presented a threat to the free exercise of interstate commerce. In conclusion, the court added that the one-to-three week prohibition upon all business transactions while the enterprise was filing its application for license renewal constituted a fatal paralysis of commerce and further violated the constitutional provision.[66]

The court further tested the Act by its effect on citizens' right to pursue a lawful calling under the Equal Protection Clause of the Fourteenth Amendment. This test, in the judge's opinion, further proved the Blue Sky law to be in violation of the Constitution:

> "Legitimate commercial transactions, such as the disposal of securities of the kind above mentioned, cannot be regulated by legislative enactment. The act in question seeks to regulate private transactions, but the person, natural or artificial,[67] that sells securities based upon reasonable value, is entitled to the protection of the same safeguards as the man who sells clothing, dry goods, groceries, or hardware, or engages in any other private business that is not affected by a public interest."[68]

On these and the previous accounts of the Commerce Clause violations, the judge rejected any "supervisory and regulatory" power of the Blue Sky legislation. The state of Ohio had assumed too much policing power over the securities industry, and, according the court, had thus gone beyond its jurisdiction. As a result, the court declared the law unconstitutional. Yet the war over Blue Sky laws had surely not concluded.

65: *Id.* at 38.

66: *Id.* at 39.

67: Chartered companies were recognized as artificial beings under law, whose size and market power ought to be regulated because they owed their very existence to a government grant. Nineteenth-century jurists and legislators viewed the corporation as "an artificial being, invisible, intangible, and existing only in contemplation of law." *Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819). Moreover, the New York Court of Appeals, in *People v. Ballard*, 134 N.Y. 269, 274 (1892), noted: "A corporation is purely artificial, having no natural or inherent power, but only such as its charter confers. … A corporation cannot cease to exist of its own will. Its life continues until either the charter period has expired, or the court has decreed a dissolution."

68: Geiger-Jones Co., *Transcript of Record* at § 47, 40.

IV. Hall Goes to the Supreme Court

On February 15, 1916, *The Wall Street Journal* celebrated the district court's opinion and declared it to be the sane view on the rights of persons and the rights of property. The *Journal's* article noted that, since "the price of wheat is not to be maintained in the world market by local legislation," neither is a state to control the market of financial securities.[69] After the court held that regulation of the disposition of securities was out of the scope of state power, the white collars cheered. The Superintendent of Banks and Banking Harry Hall, however, could not allow the investment companies that he asserted were deceiving their clients to go unpunished, and thus, he filed an appeal directly to the Supreme Court.

Since all three cases were heard together in the District Court of Ohio and were disposed of in one opinion, Hall submitted them all together to the Supreme Court. In the filed appeal, Hall pointed out that all three companies had a negative business repute and that it was within the state's policing authority to protect its citizens from becoming victims of fraud.[70] While sticking to the same principles as they had offered in the previous hearings, the appellees conceded that the prevention of fraud was generally within the power of the state but that this power could specifically be constrained whenever it contravened the freedom of interstate commerce. Citing *International Textbook Co. v. Pigg*[71] and *Buck Stove & Range Co. v. Vickers*,[72] attorneys for the appellees claimed:

> "When an order comes from another State to a dealer in Ohio for stocks and bonds, the sale occurs at his place of business, and this sale is one of the ingredients of the transaction, which is interstate commerce. The act regulates and conditions the right to effect such sale. Thus it appears that the very first element of interstate commerce is prohibited unless permitted by the State. Also, if the dealer is prohibited from selling, the result is to prohibit him from importing securities for sale. The act, therefore, forbids all traffic in articles of interstate commerce so long as sales are to be effected in Ohio."[73]

69: *Exodus of the Radical*, Wall Street Journal (February 15, 1916).

70: *Hall, Superintendent of Banks and Banking of the State of Ohio v. Geiger-Jones Company, et al.*, Brief of Appellant at 539 (1916).

71: *International Textbook Co.,* 217 U. S. at 91.

72: *Buck Stove,* 226 U. S. at 205.

73: *Geiger-Jones* at 547.

In parallel with *Hall v. Geiger-Jones Co.*, the Supreme Court was hearing cases concerning the constitutionality of Blue Sky laws in the states of South Dakota and Michigan. The laws in all three states were essentially the same. All three forbade the sale of certain classes of securities within the states until a commissioner issued a permissive license. Similarly, all three lower court decisions held the state laws unconstitutional. Samuel Spring later observed: "It was felt that this accord in the views of the lower Federal Courts indicated an affirmance of these decisions by the Supreme Court and this episode as to our blue sky laws seemed ended.[74]

In the meantime, other states were waiting for the Supreme Court decision with great unrest. In some of them, previously enacted laws were at stake; in others, there was the possibility of new protective measures. Among those desperately counting on the Supreme Court's rulings were dozens of Oklahomans who had fallen victim to sham oil securities. At the time, the Oklahoma oil boom made the state a favorable ground for the growing market of financial instruments. People recklessly invested in oil securities, believing in the endless abundance of underground oil. The industry subsequently attracted a number of swindlers, who traded oil securities of "no sounder basis than a pumped-out oil well."[75] "That State," reported *The St. Louis Post*, "it is complained, is being overrun by cheated investors and that the home interests are unable to do anything about it until the investor, carrying his stock as proof that he has been swindled, arrives."[76] After Oklahomans finally recovered from the speculation fever, they were looking forward to enacting an analogue of the Blue Sky law to protect citizens from falling victim to further swindling. The future of Oklahomans' security from stock fraud now rested in the hands of the Supreme Court.

The opinion authored by Justice McKenna offered victory to Hall, Turner, and hundreds of deceived depositors. To begin, the opinion returned to the question of whether the policing powers of states offered an independence basis upon which to justify the laws. Justice McKenna started by calling those powers "the least limitable of the exercises of government."[77] In the enactment of Blue Sky laws, McKenna saw a single important end—the public's protection from losing money in securities scams. In response to the previous indication of the arbitrary power of the commissioner, the Justice noted that as far as the commissioner could "prevent deception and

74: Montgomery Rollins & Samuel Spring, *Blue Sky Laws, With a Discussion of the Decision of the Courts Concerning Blue Sky Laws,* 12 (1919).

75: *Where a 'Blue Sky' Law is Needed*, St. Louis Post, 2 (January 28, 1917).

76: *Id.*

77: *Geiger-Jones Co*., 242 US 539, 547 (1917).

save credulity and ignorance from imposition," his authority was recognized to be without question.[78] McKenna, contrary to the lower court, considered the state policing abilities to be of the utmost importance. To end any accusations against the commissioner's policing powers on the grounds of their supposedly discriminatory nature, the Justice cited *Central Lumber Co. v. South Dakota*:[79]

> "[A state] may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. . . . If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the 14th Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law."[80]

Accepting the need for policing authority over the sale of securities was an easy task. Justice McKenna now had to prove to skeptics the insignificance of Blue Sky laws' burden on interstate commerce. Federal courts had previously proclaimed Blue Sky laws to be in violation of the Commerce Clause because they allegedly granted too much regulatory power to a state. Only the district court in Michigan had suggested that the Commerce Clause merely restricted the states from regulating and interfering with, specifically, the transportation component of interstate commerce. Other courts, meanwhile, envisioned much more broadly the constraining influence of the Commerce Clause.[81] In *William R. Compton Co. v. Allen*,[82] for example, a judge took a narrow approach in defining what constituted "inspection."[83] Consequently, as Clarence Laylin observed, "the duty of the State official charged with the administration of the particular 'Blue Sky' law before the court was held not to fall within the definition of the term, and the conclusion that the requirements of the law constituted therefore a direct burden on interstate commerce was immediately reached."[84] In *Bracey*

78: *Id*. at 551.
79: 226 U. S. 157 (1912).
80: *Id*. at 160-61 (citations omitted).
81: See Clarence D. Laylin, *The Ohio 'Blue Sky' Cases*, 15 Mich. L. Rev. 369, 379 (1916).
82: *Compton*, 216 Fed. at 537.
83: *Id.* at 548-49.
84: Laylin, *Ohio 'Blue Sky' Cases* at 379.

v. Darst,[85] the United States District Court for the Northern District of West Virginia peremptorily recognized stocks, bonds, debentures and other securities as articles of interstate commerce.[86]

The Investment Bankers' Association of America, through former Attorney General Wickersham, had tried to attack the Blue Sky statutes on the grounds that they, as instruments of interstate commerce, could be subject only to national supervision. Justice McKenna had another opinion. While admitting the supremacy of the federal power over interstate trading activity, he noted that apart from prohibiting state legislation, Congress by its inaction might have allowed such legislation. This consideration went against the previous Supreme Court decision of Justice Fuller in *Leisy v. Hardin.* Instead of curbing state powers on the premises of congressional silence, Justice McKenna used the latter to expand state authority over interstate trade in securities.

Additionally, argued McKenna, since the provisions of Blue Sky laws applied to the disposition of securities within the state, there was no interference with their transportation. The regulation only applied when the instruments of interstate commerce moved inside the state borders. Hence, there was no burden on the actual interstate activity.[87] McKenna summed up the reasoning for the law's constitutionality as a result of its jurisdiction over trading activity only within state borders:

> "There is the exaction only that he who disposes of them [securities] there shall be licensed to do so, and this only that they may not appear in false character and impose an appearance of a value which they may possess,— and this certainly is only an indirect burden upon them as objects of interstate commerce, if they may be regarded as such. It is a police regulation strictly, not affecting them until there is an attempt to make disposition of them within the state."[88]

By virtue of prioritizing the importance of state policing powers over the freedom from state regulation of interstate commerce, the Supreme Court proclaimed Blue Sky laws constitutional. Justice McKenna, admitting to the interstate nature of trade in securities, concluded that the safety of Americans from financial fraud was of the higher importance. As a result, states,

85: *Darst*, 218 Fed. at 482.
86: *Id.* at 495.
87: *Geiger-Jones Co.,* 242 U.S. at 558.
88: *Id.*

in the absence of federal legislation, fully accepted their expanded power over the securities industry. Yet, inconsistency in Blue Sky laws across states would soon burden their goal of protecting Americans from securities fraud.

V. Public Debate in the Aftermath of *Geiger-Jones*

The *Hall* decision evoked both positive reactions and criticism. Bankers, stock salesmen, and corporations accused the Supreme Court of imposing economic and legal burdens on lawful business. In his 1926 study, Forrest Bee Ashby estimated that, while having little effect on speculative securities, Blue Sky laws imposed undue burden and additional costs on low-risk securities.[89] The Investment Bankers' Association adopted a similar opinion. While admitting that legislation was needed to stop the 'fly-by-night' dealers, the Association denounced Blue Sky laws as a sub-optimal solution to the problem. It pointed out that the enacted legislation added cost to standard securities and drove many legitimate enterprises out of business just because a particular state official thought their price was too high or their terms unfair.[90] Justice McKenna, however, in his comment regarding Michigan's Blue Sky law provided a response for such accusations:

> "The statutes burden honest business, it is true, but burden it only that, under its forms, dishonest business may not be done. Expense may thereby be caused, and inconvenience, but to arrest the power of the state by such consideration would make it impotent to discharge its functions. It costs something to be governed."[91]

Another discussion of Blue Sky laws evolved around their possible loopholes. By signing a contract of securities disposal in one state, a dealer could deliver the securities to the customer in any other state by mail. Right after the *Hall* decision was issued, the *Banking Law Journal* admitted that the case left unsettled dealers' liabilities, who traded securities across the country by mail, telephone, or newspaper advertising, without having a state license

89: See, generally, Forrest Bee Ashby, *The Economic Effect of Blue Sky Laws (1926).*

90: See *Bankers to Fight Get-Rich-Quick Men*, supra, and *Blue-Sky Legislation So Far of Little Value: Investment Bankers Favor Laws That Will Prevent Offering Fraudulent and Misrepresented Securities*, Wall Street Journal (October 29, 1919).

91: *'Blue Sky Law' Upheld: Supreme Court Sustains State Statutes,* Washington Post, 8 (January 23, 1917).

authorizing the disposal.[92] Jonathan R. Macey and Miller Geoffrey made the same observation decades later in their article in the *Texas Law Review*.[93] Since Justice McKenna pointed out that transportation was the key to interstate commerce, sale of a security to another state by mail fell only into the competency of the federal government:

> "By the same token, promotion of a security by interstate mail or telephone calls could not be regulated by the Blue Sky laws. And, although McKenna's opinion did not speak to this issue directly, it also seemed clear, given First Amendment considerations, that states would incur a substantial risk of invalidation if they attempted to regulate the promotion of securities by means of newspapers or other media-at least as long as the advertisement in question proposed a transaction to take place outside of the state's borders."[94]

The state laws were powerful within their geographical limits, but with the advancement of technology they became helpless in policing fraud over their borders. A decade after the *Hall* decision, people were far more bearish regarding Blue Sky legislation's capability to protect investors from losing money in increasingly complex, speculative, and nationalized securities. To combat new forms of fraudulent securities, states, granted exclusive powers to regulate the securities industry, began enacting novel Blue Sky provisions that diverged from those of other states. This lack of uniformity, in the end, would hamstring the states' ability to enforce the laws' originally intended policing functions. The issue therefore demanded a solution from the federal government.

92: *The Blue Sky Law Decisions: Constitutionality of Blue Sky Laws of Ohio, South Dakota, and Michigan Upheld by United States Supreme Court,* 34 Banking L. J. 159, 162-65 (1917).

93: Macey & Miller, *Origin of the Blue Sky Laws* at 347.

94: *Id.* at 388.

VI. The Legacy of *Geiger-Jones*

While upsetting dealers all across the Union, the *Hall* decision served as relief for thousands of deceived investors across the United States. Blue Sky legislation became firmly established in the United States following the decision. By 1919, thirty-eight states had enacted Blue Sky laws.[95] Despite its loss of the case, the Geiger-Jones Company reacquired its license. A new State Banking Superintendent re-conducted the investigation into the company. The inquiry concluded, "the solvency, good business repute, legitimacy and legality of the Geiger-Jones Co. [were] proved beyond the shadow of doubt."[96] This news was a relief for 16,000 Ohio workmen, whose employers traded their stock through the Geiger-Jones Company. The report also stated that the company had never received a customer complaint or lost a dollar of their investors' money.[97] And, after the case, Henry Hall received a promotion, after which he was appointed vice-president of the Merchant's National Bank.[98]

Not every state was as enthusiastic about the new status of Blue Sky laws as Ohio and Michigan. The Government of New York, a state with the highest presence of financial services businesses, disapproved of enacting anything like Blue Sky legislation. A commission, appointed by Governor Smith to investigate a possibility of restrictive legislation in the state, criticized the practice of state licensing, as well as the imposition of civil and criminal liabilities for misrepresentation in advertising. Upon the end of its investigation, the commission summed up its proposals in the following manner: "What is needed is a flexible, virile fraud hunting state machinery, driven not by statute, but by human intelligence and human activity."[99]

Delaware and New York did not hurry to exercise their police powers over the disposition of securities. By allowing disposal of financial instruments without acquiring a license, the states planned on attracting capital and business inside their borders. In fact, the *Atlanta Constitution* reported, the state of Georgia started losing its companies to the unregulated state of

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95: Frederic Haskin, *Congress May Pass Federal Blue-Sky Bill: Agitation to Curb Fakers,* Indianapolis Star, 4 (December 10, 1919).

96: *License Awarded to Geiger-Jones Co.: the Protracted Hearing of Canton*, Labor Journal, 2 (May 11, 1917).

97: *Id*.

98: *Merchants National Bank,* Wall Street Journal, 8 (March 1, 1917).

99: *'Gold Brick' Securities,* New York Tribune, A1 (December 28, 1919).

Delaware after the former implemented a Blue Sky law.[100] Feeling disadvantaged, many states with such laws exempted a myriad of securities from their Blue Sky laws in order to attract business and investment once more. In the 1920s, business lobbyists got state authorities to exempt from their Blue Sky laws any security listed on a stock exchange; the securities of public utilities and other regulated industries; the securities of companies with a recent history of profits; and local, state, and federal bonds.[101]

However, the heterogeneity of Blue Sky laws across the United States gave swindlers another chance to fool trusting citizens. Since some states like Delaware and New York didn't enact any policing legislation, companies, registered in those states, could operate there without any license. Swindlers would reside in those sates and make deals over mail or telegraph without facing legal prosecution. This is how the *Atlanta Constitution* described the new generation of scams:

> "Living in Georgia he [a purchaser of the wildcat stock] might get a judgment by going to Delaware. But there would be no property in either state to make that judgment worth anything. He would have to go to some third state, where the supposed property was located before he could find any asset in any case, and, said Secretary of State McLendon, in seven cases out of ten he would then find that there was no property of any value anywhere."[102]

The newspaper compared Delaware to New Jersey, which at the end of the 19th century acquired the reputation of "the rotten corporation state." New Jersey allowed any kind of manufacturing business on its grounds until the public revolted. Meanwhile, Delaware welcomed all kinds of securities dealers, including prospective swindlers. By means of mail and wires, crooks were also operating out of the state of New York. In 1929 the President of the National Association of Securities Commissioners, Jesse Craig, reported that he had "received answers from thirty states, praising the operation of their laws, but complaining in many instances that 'boiler shop' operators in New York, Chicago, and other large cities had been vitiating there performances by campaigns arrived through the mail, by telegraph and tele-

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100: *Seek Legislative Action To Curb Incorporation Scandals In Delaware*, Atlanta Constitution, 11 (November 23, 1919).

101: Dan Ernst, *Blue Sky Laws and the Progressive Regime*, Legal History Blog (2009), available at http://legalhistoryblog.blogspot.com/2009/05/blue-sky-laws-and-progressive-regime.html.

102: *Seek Legislative Action,* supra.

phone."[103] Craig further stated:

> "New York is an especially bad center for such operators and more that 100 of them operate from the Wall Street district along according to estimates furnished by persons who have looked into the matter. The trouble is that there is no law in New York State requiring them to register and, even though they are traced and located, it is often impossible to prosecute and drive them out."[104]

Within a decade after the Supreme Court ruled that states could exercise their extensive police powers to protect citizens from scams of securities swindlers, it became obvious that states alone were helpless in front of a bigger – nation-wide – threat. Extradition of offenders was difficult under Blue Sky laws, and states without such legislation were especially reluctant to do so. In 1919, at their convention in St. Louis, the Investment Bankers' Association of America proposed a federal Blue Sky law. However, it was difficult for states to come to a consensus over unified Blue Sky legislation. As the *San Francisco Chronicle* noted, the provisions of such a law "must be so drawn as to prevent the flotation and sale of fraudulent or misrepresented securities on the one hand and at the same time not impose a hardship upon legitimate business which would make it impossible for the honest investment banker to conduct his business."[105] What was a protective measure against swindlers for one state became an undesirable restraint of business for another. States would continue to reluctantly discuss a possibility for Federal Blue Sky law up until it would be too late – the Great Depression would put everything in its place. With the introduction of the Securities and Exchange Commission following that economic collapse, a short period of almost unlimited state power to regulate the securities industry would be over.

103: Edward Pendray, *War Planned on Stock Frauds: Security Commissioners Find Traffic*, New York Herald Tribune, B7 (February 10, 1929).

104: *Id.*

105: *Steels Show Gains, Republic Iron Shares Honors with General Motors*, San Francisco Chronicle, 18 (October 29, 1919).

VII. Conclusion

Owing to a 1917 Supreme Court decision, states were able to exercise extensive regulatory powers within the securities industry. The emergence of new investment opportunities in the field of financial securities increased the influx of both investors and opportunistic swindlers into the industry in the 1900s. The rising number of victims of fraudulent investments indicated a necessity for a state legislation that would protect innocent citizens from notorious securities dealers. A series of Blue Sky Laws, first enacted in Kansas, and then spreading to thirty-eight states by 1919, was designed with that policing purpose in mind. The laws, however, instituted additional costs for honest dealers to exercise their business. In the state of Ohio, one investment enterprise, the Geiger-Jones Company, one of its dealers Don C. Coultrap, and a trader in industrial securities of questionable content, William Rose, all filed lawsuits to challenge the constitutionality of the Ohio Blue Sky law on the ground of the direct and impermissible burden it placed upon interstate commerce. Despite the law's initial invalidation by the district court, Justice McKenna, writing for the Supreme Court, noted its constitutionality. Justice McKenna saw congressional silence regarding regulation of the securities industry as a complimentary rather than prohibitory concept. Based on this interpretation, he dismissed the allegation that state policing authority over the disposal of securities directly burdened interstate commerce. Instead, McKenna extended state regulation to the national financial market. The *Hall v. Geiger-Jones Co.* decision signified another attempt to empower states in regulating interstate business activity before the major switch to federal regulation following the Great Depression.

Indeed, the scattered Blue Sky laws would prove to be useless in protecting American citizens from reckless and thoughtless investments. The ruinous experience of the Wall Street crash of 1929, later attributed to the enormous amount of misrepresented securities, led the federal government to finally adopt a national solution to the regulation of the securities industry. With the establishment of the Securities and Exchange Commission in 1934, the power to regulate the national trade of financial instruments would once and for all transfer into the hands of the federal government.