

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BOND v. UNITED STATES**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

No. 09–1227. Argued February 22, 2011—Decided June 16, 2011

When petitioner Bond discovered that her close friend was pregnant by Bond’s husband, she began harassing the woman. The woman suffered a minor burn after Bond put caustic substances on objects the woman was likely to touch. Bond was indicted for violating 18 U. S. C. §229, which forbids knowing possession or use, for nonpeaceful purposes, of a chemical that “can cause death, temporary incapacitation or permanent harm to humans,” §§229(a); 229F(1); (7); (8), and which is part of a federal Act implementing a chemical weapons treaty ratified by the United States. The District Court denied Bond’s motion to dismiss the §229 charges on the ground that the statute exceeded Congress’ constitutional authority to enact. She entered a conditional guilty plea, reserving the right to appeal the ruling on the statute’s validity. She did just that, renewing her Tenth Amendment claim. The Third Circuit, however, accepted the Government’s position that she lacked standing. The Government has since changed its view on Bond’s standing.

Held: Bond has standing to challenge the federal statute on grounds that the measure interferes with the powers reserved to States. Pp. 3–14.

(a) The Third Circuit relied on a single sentence in *Tennessee Elec. Power Co. v. TVA*, 306 U. S. 118. Pp. 3–8.

(1) The Court has disapproved of *Tennessee Electric* as authoritative for purposes of Article III’s case-or-controversy requirement. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U. S. 150, 152–154. Here, Article III’s standing requirement had no bearing on Bond’s capacity to assert defenses in the District Court. And Article III’s prerequisites are met with regard to her standing to appeal. Pp. 3–5.

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(2) *Tennessee Electric* is also irrelevant with respect to prudential standing rules. There, the Court declined to reach the merits where private power companies sought to enjoin the federally chartered Tennessee Valley Authority (TVA) from producing and selling electric power, claiming that the statute creating the TVA exceeded the National Government's powers in violation of the Tenth Amendment. In doing so, the Court repeatedly stated that the problem with the power companies' suit was a lack of "standing" or a "cause of action," treating those concepts as interchangeable. *E.g.*, 306 U. S., at 139. The question whether a plaintiff states a claim for relief typically "goes to the merits" of a case, however, not to the dispute's justiciability, *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 92, and conflation of the two concepts can cause confusion. This happened with *Tennessee Electric's* Tenth Amendment discussion. The statement on which the Third Circuit relied here, see 306 U. S., at 144, should be read to refer to the absence of a cause of action for injury caused by economic competition. To the extent the statement might instead be read to suggest a private party does not have standing to raise a Tenth Amendment issue, it is inconsistent with this Court's later precedents and should be deemed neither controlling nor instructive on the issue of standing as that term is now defined and applied. Pp. 5–8.

(b) *Amicus*, appointed to defend the judgment, contends that for Bond to argue the National Government has interfered with state sovereignty in violation of the Tenth Amendment is to assert only a State's legal rights and interests. But in arguing that the Government has acted in excess of the authority that federalism defines, Bond seeks to vindicate her own constitutional interests. Pp. 8–14.

(1) Federalism has more than one dynamic. In allocating powers between the States and National Government, federalism "secures to citizens the liberties that derive from the diffusion of sovereign power," *New York v. United States*, 505 U. S. 144, 181. It enables States to enact positive law in response to the initiative of those who seek a voice in shaping the destiny of their own times, and it protects the liberty of all persons within a State by ensuring that law enacted in excess of delegated governmental power cannot direct or control their actions. See *Gregory v. Ashcroft*, 501 U. S. 452, 458. Federalism's limitations are not therefore a matter of rights belonging only to the States. In a proper case, a litigant may challenge a law as enacted in contravention of federalism, just as injured individuals may challenge actions that transgress, *e.g.*, separation-of-powers limitations, see, *e.g.*, *INS v. Chadha*, 462 U. S. 919. The claim need not depend on the vicarious assertion of a State's constitutional interests, even if those interests are also implicated. Pp. 8–12.

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(2) The Government errs in contending that Bond should be permitted to assert only that Congress could not enact the challenged statute under its enumerated powers but that standing should be denied if she argues that the statute interferes with state sovereignty. Here, Bond asserts that the public policy of the Pennsylvania, enacted in its capacity as sovereign, has been displaced by that of the National Government. The law to which she is subject, the prosecution she seeks to counter, and the punishment she must face might not have come about had the matter been left for Pennsylvania to decide. There is no support for the Government's proposed distinction between different federalism arguments for purposes of prudential standing rules. The principles of limited national powers and state sovereignty are intertwined. Impermissible interference with state sovereignty is not within the National Government's enumerated powers, and action exceeding the National Government's enumerated powers undermines the States' sovereign interests. Individuals seeking to challenge such measures are subject to Article III and prudential standing rules applicable to all litigants and claims, but here, where the litigant is a party to an otherwise justiciable case or controversy, she is not forbidden to object that her injury results from disregard of the federal structure of the Government. Pp. 12–14.

(c) The Court expresses no view on the merits of Bond's challenge to the statute's validity. P. 14.

581 F. 3d 128, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court. GINSBURG, J., filed a concurring opinion, in which BREYER, J., joined.