

Sec. 2—Judicial Power and Jurisdiction Cl. 2—Original and Appellate Jurisdiction

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.

THE ORIGINAL JURISDICTION OF THE SUPREME COURT

From the beginning, the Supreme Court has assumed that its original jurisdiction flows directly from the Constitution and is therefore self-executing without further action by Congress.¹¹⁵³ In *Chisholm v. Georgia*,¹¹⁵⁴ the Court entertained an action of assumpsit against Georgia by a citizen of another state. Congress in § 3 of the Judiciary Act of 1789¹¹⁵⁵ purported to invest the Court with original jurisdiction in suits between a state and citizens of another state, but it did not authorize actions of assumpsit in such cases nor did it prescribe forms of process for the exercise of original jurisdiction. Over the dissent of Justice Iredell, the Court, in opinions by Chief Justice Jay and Justices Blair, Wilson, and Cushing, sustained its jurisdiction and its power to provide forms of process and rules of procedure in the absence of congressional enactments. The backlash of state sovereignty sentiment resulted in the proposal and ratification of the Eleventh Amendment, which did not, however, affect the direct flow of original jurisdiction to the Court, although those cases to which states were parties were now limited to states as party plaintiffs, to two or more states disputing, or to United States suits against states.¹¹⁵⁶

By 1861, Chief Justice Taney could confidently enunciate, after review of the precedents, that in all cases where original jurisdiction is given by the Constitution, the Supreme Court has authority “to exercise it without further act of Congress to regulate its powers or confer jurisdiction, and that the court may regulate and mould the process it uses in such manner as in its judgment will best promote the purposes of justice.”¹¹⁵⁷

Although Chief Justice Marshall apparently assumed the Court had exclusive jurisdiction of cases within its original jurisdiction,¹¹⁵⁸ Congress from 1789 on gave the inferior federal courts con-

¹¹⁵³ But, in § 13 of the Judiciary Act of 1789, 1 Stat. 80, Congress did so purport to convey the jurisdiction and the statutory conveyance exists today. 28 U.S.C. § 1251. It does not, however, exhaust the listing of the Constitution.

¹¹⁵⁴ 2 U.S. (2 Dall.) 419 (1793). In an earlier case, the point of jurisdiction was not raised. *Georgia v. Brailsford*, 2 U.S. (2 Dall.) 402 (1792).

¹¹⁵⁵ 1 Stat. 80.

¹¹⁵⁶ On the Eleventh Amendment, see *infra*.

¹¹⁵⁷ *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 98 (1861).

¹¹⁵⁸ *Marbury v. Madison*, 5 U.S. (1 Cr.) 137, 174 (1803).