SUITS AGAINST STATES

ELEVENTH AMENDMENT

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATE SOVEREIGN IMMUNITY

Purpose and Early Interpretation

Though Eleventh Amendment jurisprudence can appear esoteric and abstruse and the decisions under it inconsistent, the Amendment remains a vital element of federal jurisdiction that "go[es] to the very heart of [the] federal system and affect[s] the allocation of power between the United States and the several states."[1] The limit on state accountability in federal courts embodied through the Amendment might seem a discrete, straightforward adjustment of our federal structure precipitated by early case law, but discerning the implications of this embodiment continues to occasion heated dispute.

In accepting a suit against a state by a citizen of another state in 1793,[2] the Supreme Court provoked such anger in Georgia and such anxiety in other states that, at the first meeting of Congress following the decision, the Eleventh Amendment was proposed by an overwhelming vote of both Houses and ratified with, what was for that day, "vehement speed."[3] *Chisholm* had been brought under that part of the jurisdictional provision of Article III that authorized cognizance of "controversies . . . between a State and Citizens of another State." At the time of the ratification debates, opponents of the proposed Constitution had objected to the subjection of a state to suits in federal courts and had been met with conflicting responses—on the one hand, an admission that the accusation was true and that it was entirely proper so to provide, and, on the other hand, that the accusation was false and the clause applied only when

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[1] C. Wright, The Law of Federal Courts § 48 at 286 (4th ed. 1983).

[2] Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793).

[3] The phrase is Justice Frankfurter's, from Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 708 (1949) (dissenting), a federal sovereign immunity case. The amendment was proposed on March 4, 1794, when it passed the House; ratification occurred on February 7, 1795, when the twelfth state acted, there then being fifteen states in the Union.