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Dave Bordewyk, Ann Volin
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"The Supreme Court's First Big Decision on State Powers"

David Adler

In February 1793, in *Chisholm v. Georgia*, the U.S. Supreme Court, fully mindful of the evolving political and legal tensions surrounding the nature of the nation-state relationship, rendered its first important decision on the scope of state authority.

Chisholm, a citizen of South Carolina, sued the State of Georgia for failure to pay him for goods delivered to the state. In short, Chisholm was trying to collect a debt. But the "great cause" in this suit, as Justice James Iredell characterized it, presented the critical issue of whether a state could be sued in federal court by citizens of another state. Georgia invoked "sovereign immunity" and denied the premise that the Court had jurisdiction to hear the case.

Edmund Randolph, the Attorney General of the United States and a delegate to the Constitutional Convention, argued the case on behalf of Chisholm. It was common at that point in our history for the attorney general to represent private clients to compensate for the low salary of the office. Randolph argued that the Court had jurisdiction to hear the case by virtue of Article III of the Constitution, which extended the judicial power to cases and controversies "between a State and citizens of another State."

More than one Antifederalist had noticed the phrase in Article III and suspected that it might be used to subvert state sovereignty. Did that clause, in fact, mean that a citizen of one state could sue another state in federal court? The language certainly suggested it, but some of the Constitution's defenders sought to soothe the fear and denied that states might be hauled into federal court under this provision, for the sovereign is not subject to suit.

Randolph was in a good position to know the meaning of the clause. In the Convention, he was a key member of the Committee of Detail, which drafted most of Article III. He was joined on the committee by James Wilson who, appointed to the original Supreme Court by President George Washington, wrote the major opinion in *Chisholm*.

Justice Wilson, second in importance to James Madison as an architect of the Constitution and nicknamed the "professor" because of his deep learning and knowledge of our legal system, appealed to nationalist principles in upholding the Court's jurisdiction to hear the case.

Wilson began with the principle that the people of the United States form a nation, making ridiculous the "haughty notions of state independence, state sovereignty and state supremacy." He wrote: "As to the purposes of the Union, therefore, Georgia is not a sovereign state." Wilson's opinion in *Chisholm* remains a powerful justification of both the Court's decision and the United States as nation and not merely a league of sovereign states.

Wilson's repudiation of the claim of state immunity was grounded in language as strong as that later used by Justice John Marshall. Sovereignty, he stated, is not to be found in the states, but in the people. The Constitution was created by the "People of the United

States," who did not surrender any sovereign power to the states.

A state, he wrote, is a "body of free persons united together for their common benefit." Wilson declared that if a free individual is amenable to the courts, the same should be true of the state. If a dishonest state willfully refuses to perform a contract, should it be permitted "to insult justice" by being permitted to declare, "I am a sovereign state?"

Justice Wilson concluded that that the American people had established a nation for national purposes. They never intended to exempt states from national jurisdiction. Instead, they expressly provided in Article III, in clear language and "with precise accuracy" that the judicial power extends to "controversies between a state and citizens of another state."

Chisholm's victory—the ability to sue a state to recover a debt—was a victory for many citizens at the time since states had been playing fast and loose in fiscal matters for years. But the doctrine placed states in jeopardy since, if enforced, it might expose them to harassment by a swarm of creditors.

The Supreme Court had very clearly acknowledged that they were being asked to make their first great question about the nature of the union; they directly stated, as Justice Wilson declared, "for purposes of the Union, Georgia is not a sovereign state." The answer certainly was correct, if the union was to have meaning, but 1793 probably was too soon to state it so boldly.

A storm of controversy, formed by all sides, engulfed the Court and its decision. A constitutional amendment—the 11th Amendment—denying that states were

suable in federal courts was proposed and ratified in 1798.

The Court's ruling in Chisholm opened a window into the dilemma that the judiciary faces when it renders an opinion which, while firmly grounded in the text of the Constitution and the aims of its drafters, faces enormous resistance across the nation. It may be said that the Court fulfilled its duty to say what the law is, leaving to the citizenry the opportunity to exercise its right to amend the Constitution to reflect new and changing circumstances.