AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 7: The Republican Era – Federalism

Hans v. Louisiana, 134 U.S. 1 (1890)

Chisholm v. Georgia *(1793) was one of the first great constitutional cases decided by the U.S. Supreme Court. In* Chisholm*, the Court held that the federal judicial power extended over suits by private individuals from other states against a state. In response, the Eleventh Amendment was immediately passed and ratified; it declared that the judicial power "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."*

Nearly a hundred years later, the Court unanimously gave a definitive interpretation to the Eleventh Amendment, holding that federal suits against states by citizens of those same states were also excluded from the judicial power. At stake was whether the Court should focus on the specific language of the constitutional text or the broader structure of the constitutional design. The text of the Eleventh Amendment left open the possibility of same-state suits. The Supreme Court, however, concluded that the amendment simply ratified the prior understanding that states could not generally be subject to suit without their consent (Justice Harlan thought this broader point was implicit in the adoption of the Eleventh Amendment but was not true of the Constitution as drafted in 1787).

The case arose when Hans, a citizen of Louisiana and a bondholder of the state, filed suit in federal circuit court to collect on overdue interest payments. The Reconstruction-era bonds had been repudiated by the post-Reconstruction state constitution and government. Hans contended that the repudiation violated the contracts clause of the U.S. Constitution. The circuit court dismissed the suit on the grounds that the federal courts did not have jurisdiction over private suits against states, regardless of the subject matter. On appeal, the U.S. Supreme Court unanimously affirmed the lower court. The doctrine of state sovereign immunity was modified in various ways over time (allowing, for example, suits against local governments and suits against state government officials for constitutional violations), but Hans *remains central to Court decisions limiting the scope of federal authority over states.*

If Chisholm *was correctly decided before the passage of the Eleventh Amendment, can* Hans *also be correct? Is the departure from strict textualism in* Hans *justified? Does* Hans *reinforce the federal structure of the American constitutional system or subvert it? How might federal constitutional rights against the states be protected after* Hans*?*

JUSTICE BRADLEY delivered the opinion of the Court.

The question is presented, whether a State can be sued in a Circuit Court of the United States by one of its own citizens upon a suggestion that the case is one that arises under the Constitution or laws of the United States.

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That a State cannot be sued by a citizen of another State, or of a foreign state, on the mere ground that the case is one arising under the Constitution or laws of the United States, is clearly established by the decisions of this court in several recent cases. . . . This court held that the suits were virtually against

the States themselves and were consequently violative of the Eleventh Amendment of the Constitution, and could not be maintained. It was not denied that they presented cases arising under the Constitution; but, notwithstanding that, they were held to be prohibited by the amendment referred to.

In the present case the plaintiff in error contends that he, being a citizen of Louisiana, is not embarrassed by the obstacle of the Eleventh Amendment, inasmuch as that amendment only prohibits suits against a State which are brought by the citizens of another State, or by citizens or subjects of a foreign State. It is true, the amendment does so read: and if there were no other reason or ground for abating his suit, it might be maintainable; and then we should have this anomalous result, that in cases arising under the Constitution or laws of the United States, a State may be sued in the federal courts by its own citizens, though it cannot be sued for a like cause of action by the citizens of other States, or of a foreign state; and may be thus sued in the federal courts, although not allowing itself to be sued in its own courts. If this is the necessary consequence of the language of the Constitution and the law, the result is no less startling and unexpected than was the original decision of this court, that under the language of the Constitution and of the judiciary act of 1789, a State was liable to be sued by a citizen of another State, or of a foreign country. That decision was made in the case of *Chisholm v. Georgia* (1793), and created such a shock of surprise throughout the country that, at the first meeting of Congress thereafter, the Eleventh Amendment to the Constitution was almost unanimously proposed, and was in due course adopted by the legislatures of the States. This amendment, expressing the will of the ultimate sovereignty of the whole country, superior to all legislatures and all courts, actually reversed the decision of the Supreme Court. It did not in terms prohibit suits by individuals against the States, but declared that the Constitution should not be construed to import any power to authorize the bringing of such suits. . . . .

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Looking back from our present standpoint at the decision in *Chisholm v. Georgia*, we do not greatly wonder at the effect which it had upon the country. Any such power as that of authorizing the federal judiciary to entertain suits by individuals against the States, had been expressly disclaimed, and even resented, by the great defenders of the Constitution whilst it was on its trial before the American people. . . .

. . . . Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a State to sue their own state in the federal courts, whilst the idea of suits by citizens of other states, or of foreign states, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended to it a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States: can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face.

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The suability of a State without its consent was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted. . . .

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To avoid misapprehension it may be proper to add that, although the obligations of a State rest for their performance upon its honor and good faith, and cannot be made the subjects of judicial cognizance unless the State consents to be sued, or comes itself into court; yet where property or rights are enjoyed under a grant or contract made by a State, they cannot wantonly be invaded. Whilst the State cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts, may be judicially resisted; and any law impairing the obligation of contracts under which such property or rights are held is void and powerless to affect their enjoyment.

It is not necessary that we should enter upon an examination of the reason or expediency of the rule which exempts a sovereign State from prosecution in a court of justice at the suit of individuals. This is fully discussed by writers on public law. It is enough for us to declare its existence. The legislative

department of a State represents its polity and its will; and is called upon by the highest demands of natural and political law to preserve justice and judgment, and to hold inviolate the public obligations. Any departure from this rule, except for reasons most cogent, (of which the legislature, and not the courts, is the judge,) never fails in the end to incur the odium of the world, and to bring lasting injury upon the State itself. But to deprive the legislature of the power of judging what the honor and safety of the State may require, even at the expense of a temporary failure to discharge the public debts, would be attended with greater evils than such failure can cause.

The judgment of the Circuit Court is *affirmed*.

JUSTICE HARLAN, concurring.

I concur with the court in holding that a suit directly against a State by one of its own citizens is not one to which the judicial power of the United States extends, unless the State itself consents to be sued. Upon this ground alone I assent to the judgment. But I cannot give my assent to many things said in the opinion. The comments made upon the decision in *Chisholm v. Georgia* do not meet my approval. They are not necessary to the determination of the present case. Besides, I am of opinion that the decision in that case was based upon a sound interpretation of the Constitution as that instrument then was.