The Original Jurisdiction of the Supreme Court

Clause 2. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have original Jurisdiction. In all 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. (1082) In Chisholm v. Georgia,1083 the Court entertained an action of assumpsit against Georgia by a citizen of another State. Congress in § 3 of the Judiciary Act of 1789 (1084) 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.1085

1082 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.

1083 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).

1084 1 Stat. 80.

1085 On the Eleventh Amendment, see infra.

By 1861, Chief Justice Taney could confidently enunciate, after review of the precedents, that in all cases where original jusrisdiction 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.” 1086

Although Chief Justice Marshall apparently assumed the Court had exclusive jurisdiction of cases within its original jurisdiction,1087 Congress from 1789 on gave the inferior federal courts concurrent jurisdiction in some classes of such cases.1088 Sustained in the early years on

circuit,1089 this concurrent jurisdiction was finally approved by the Court itself.1090 The Court has also relied on the first Congress' interpretation of the meaning of Article III in declining original jurisdiction of an action by a State to enforce a judgment for a precuniary penalty awarded by one of its own courts.1091 Noting that § 13 of the Judiciary Act had referred to "controversies of a civil nature," Justice Gray declared that it "was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning."1092

1086 Kentucky v. Dennison, 65 U.S. (24 How.) 66, 98 (1861).

1087 Marbury v. Madison, 5 U.S. (1 Cr.) 137, 174 (1803).

1088 In § 3 of the 1789 Act. The present division is in 28 U.S.C. § 1251.

1089 United States v. Ravara, 2 U.S. (2 Dall.) 297 (C.C.Pa. 1793).

1090 Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657 (1838); Bors v. Preston, 111 U.S. 252 (1884); Ames v. Kansas ex rel. Johnston, 111 U.S. 449 (1884). Such suits could be brought and maintained in state courts as well, the parties willing. Plaquemines Tropical Fruit Co. v. Henderson, 170 U.S. 511 (1898); Ohio ex rel. Poporici v. Alger, 280 U.S. 379 (1930).

1091 Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888).

1092 127 U.S. at 297. See also the dictum in Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 398-99 (1821); Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 431-32 (1793).

However, another clause of § 13 of the Judiciary Act of 1789 was not accorded the same presumption by Chief Justice Marshall, who, interpreting it as giving the Court power to issue a writ of mandamus on an original proceeding, declared that as Congress could not restrict the original jurisdiction neither could it enlarge it and pronounced the clause void.1093 While the Chief Justice's interpretation of the meaning of the clause may be questioned, no one has questioned the constitutional principle thereby proclaimed. Although the rule deprives Congress of power to expand or contract the jurisdiction, it allows a considerable latitude of interpretation to the Court itself. In some cases, as in Missouri v. Holland,1094 the Court has manifested a tendency toward a liberal construction of its original jurisdiction, but the more usual view is that "our original jurisdiction should be invoked sparingly."1095 Original jurisdiction "is limited and manifestly to be sparingly exercised, and should not be expanded by construction."1096 Exercise of its original jurisdiction is not obligatory on the Court but discretionary, to be determined on a case-by-case basis on grounds of practical necessity.1097 It is to be honored "only in appropriate cases. And the question of what is appropriate concerns of course the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our

increasing duties with the appellate docket will not suffer."1098 But where claims are of sufficient "seriousness and dignity," in which resolution by the judiciary is of substantial concern, the Court will hear them.1099

1093 Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803). The Chief Justice declared that "a negative or exclusive sense" had to be given to the affirmative enunciation of the cases to which original jurisdiction extends. Id. at 174. This exclusive interpretation has been since followed. Ex parte Bollman, 8 U.S. (4 Cr.) 75 (1807); New Jersey v. New York, 30 U.S. (5 Pet.) 284 (1831); Ex parte Barry, 43 U.S. (2 How.) 65 (1844); Ex parte Vallandigham, 68 U.S. (1 Wall.) 243, 252 (1864); Ex parte Yerger, 75 U.S. (8 Wall.) 85, 98 (1869). In the curious case of Ex parte Levitt, 302 U.S. 633 (1937), the Court was asked to unseat Justice Black on the ground that his appointment violated Article I. § 6, cl.2. Although it rejected petitioner's application, the Court did not point out that it was being asked to assume original jurisdiction in violation of Marbury v. Madison.

1094 252 U.S. 416 (1920). See also South Carolina v. Katzenbach, 383 U.S. 301 (1966), and Oregon v. Mitchell, 400 U.S. 112 (1970).

1095 Utah v. United States, 394 U.S. 89, 95 (1968).

1096 California v. Southern Pacific Co., 157 U.S. 229, 261 (1895). Indeed, the use of the word "sparingly" in this context is all but ubiquitous. E.g., Wyoming v. Oklahoma, 502 U.S. 437, 450 (1992); Maryland v. Louisiana, 451 U.S. 725, 739 (1981); United States v. Nevada, 412 U.S. 534, 538 (1973).

1097 Texas v. New Mexico, 462 U.S. 554, 570 (1983).

1098 Illinois v. City of Milwaukee, 406 U.S. 91, 93-94 (1972). In this case, and in Washington v. General Motors Corp., 406 U.S. 109 (1972), and Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493 (1971), the Court declined to permit adjudication of environmental pollution cases manifestly within its original jurisdiction because the nature of the cases required the resolution of complex, novel, and technical factual questions not suitable for resolution at the Court's level as a matter of initial decision, but which could be brought in the lower federal courts. Not all such cases, however, were barred. Vermont v. New York, 406 U.S. 186 (1972) (granting leave to file complaint). In other instances, notably involving "political questions," cf. Massachusetts v. Mellon, 262 U.S. 447 (1923), the Court has simply refused permission for parties to file bills of complaint without hearing them on the issue or producing an opinion. E.g., Massachusetts v. Laird, 400 U.S. 886 (1970) (constitutionality of United States action in Indochina); Delaware v. New York, 385 U.S. 895 (1966) (constitutionality of electoral college under one-man, one-vote rule).

1099 Wyoming v. Oklahoma, 502 U.S. 437, 451 (1982). The principles are the same whether the Court's jurisdiction is exclusive or concurrent. Texas v. New Mexico, 462 U.S. 554 (1983);

California v. West Virginia, 454 U.S. 1027 (1981); Arizona v. New Mexico, 425 U.S. 794 (1976).

When does the US Supreme Court have original jurisdiction?

According to Article III, Section 2 of the Constitution, the US Supreme Court has original jurisdiction over cases:

-affecting ambassadors and other public ministers and consuls

-disputes between the states (original and exclusive jurisdiction, see 28 U.S.C. § 1251)

Currently, the US Supreme Court only exercises original jurisdiction in disputes between the states. According to 28 USC § 1251, the Court has concurrent original jurisdiction with the US District Courts over cases involving ambassadors. Congress has assigned original jurisdiction over these cases to the US District Courts; however, the Supreme Court retains the constitutional ability to hear such cases under original jurisdiction

In all other cases the Supreme Court has appellate jurisdiction.

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