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Kermit L. Hall

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James W. Ely, Jr. Joel B. Grossman

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Vanderbilt Law Review 26 (1973): 523–584. "Developments in the Law—Elections," note in *Harvard Law Review* 88 (1975): 1111–1339. Ward E. Y. Elliott, *The Rise of Guardian Democracy: The Supreme Court's Role in Voting Rights Disputes*, 1845–1969 (1975).

STANLEY INGBER

ELEVENTH AMENDMENT is one of only two constitutional amendments adopted explicitly to repudiate a Supreme Court decision—the other being the *Sixteenth Amendment (see REVERSALS OF COURT DECISIONS BY AMENDMENT). The Eleventh Amendment overturned *Chisholm* v. *Georgia* (1793), which upheld the right of a citizen of one state to sue another state in an original action in the Supreme Court, and which, it was feared, would allow financially ruinous suits against the states for payment of Revolutionary War debts.

Despite its brevity—a mere forty-three words—the Eleventh Amendment has been cited as authority for an elaborate and perplexing body of jurisdictional rules extending far beyond its actual language. It has been reconceptualized as a broad doctrine of *state sovereign immunity. The Eleventh Amendment by its terms denies federal courts the power to decide suits against states brought by two classes of plaintiffs: "Citizens of another State" and "Citizens or Subjects of any Foreign State." Although referring only to suits "in law or equity," the amendment was held in *Ex parte New York* (1921) to apply as well as to suits in *admiralty jurisdiction. In the landmark federal jurisdiction case *Hans* v. *Louisiana* (1890), the Court extended the reach of the amendment by holding that citizens could not sue their own states in federal court. In *Monaco* v. *Mississippi* (1943), the Court denied federal jurisdiction over suits against states brought by foreign sovereigns, and in **Seminole Tribe of Florida* v. *Florida* (1996), it held that the bar also applied to suits by *Native American tribes. In *Alden* v. *Maine* (1999), the Court ruled that Congress could not authorize private suits against states in state court, and in **Federal Maritime Commission* v. *South Carolina Ports Authority* (2002), it further barred proceedings against states before federal administrative agencies.

The Supreme Court in *Alden* v. *Maine* (1999) and other recent cases has referred to the doctrine of sovereign immunity as a broad principle deriving "not from the Eleventh Amendment but from the structure of the original Constitution itself" (p. 728) and to the phrase "Eleventh Amendment immunity" as "convenient shorthand" for a principle that "neither derives from nor is limited by the terms of the Eleventh Amendment" (p. 713). The most prominent dissenting view, both in these closely divided decisions and in the scholarly commentary, is that the Eleventh Amendment was intended only to reverse the holding in **Chisolm* v. *Georgia*, which permitted access to federal courts under Article III's grant of diversity jurisdiction for suits between "a State and Citizens of another state." Under this view, the Eleventh Amendment would not prevent *federal question suits against states.

Because restrictions on federal judicial power may threaten important national goals, the Eleventh Amendment and state sovereign immunity are subject to a number of significant exceptions. State immunity from suit does not extend to political subdivisions of states, such as counties and towns. Federal courts are open to suits against states brought by the United States or by other American states representing their own interests. States may waive the amendment and consent to suit—this despite the general rule that parties may not confer jurisdiction in court—so long as their waiver of immunity is explicit. Furthermore, Congress may abrogate sovereign immunity by virtue of its section 5 enforcement powers under the *Fourteenth Amendment. In the landmark case of **Seminole Tribe of Florida* v. *Florida* (1996), however, the Court held that Congress may not abrogate sovereign immunity under any other source of power (or, read more narrowly, under any source of power predating the Eleventh Amendment), overruling *Pennsylvania* v. *Union Gas Co.* (1989), which had permitted Congress to abrogate pursuant to the Commerce Clause. Congressional power to abrogate under section 5 of the Fourteenth Amendment is itself subject to significant judicial oversight. Expanding on its holding in *City of *Boerne* v. *Flores* (1997) that laws passed pursuant to the section 5 power must be narrowly tailored to addressing constitutional violations, the Court found that a series of laws—involving patent infringement, age discrimination, and discrimination against the disabled—exceeded the section 5 power of Congress and therefore could not be the basis for suits against state governmental entities.

A final important restriction on state immunity is the doctrine of *Ex parte *Young* (1908), which permits suit against state officers for unconstitutional acts, though this is in effect a suit against the state itself. However, suits against state officers in which the remedy for past wrongs would be paid for out of the state treasury are still barred under the amendment (*Edelman* v. *Jordan*, 1974), effectively limiting the *Ex Parte Young* action to injunctive suits.

The line of 5 to 4 decisions, beginning with *Seminole Tribe* in 1996, evidences an entrenched split between a majority that views sovereign immunity less as a protection for state treasuries than as a broad principle concerned with safeguarding the dignity of the states, and a minority that would construe the Eleventh Amendment far more narrowly.

See also CONSTITUTIONAL AMENDMENTS; JUDICIAL POWER AND JURISDICTION.

John V. Orth, *The Judicial Power of the United States: The Eleventh Amendment in American History* (1987). "Federalism after Alden," Symposium, *Rutgers Law Review* 31 (2000): 631 [to 831]. "State Sovereign Immunity and the Eleventh Amendment," Symposium, *Notre Dame Law Review* 75 (2000): 817–1182.

JOHN V. ORTH; REVISED BY SUSAN A. BANDES

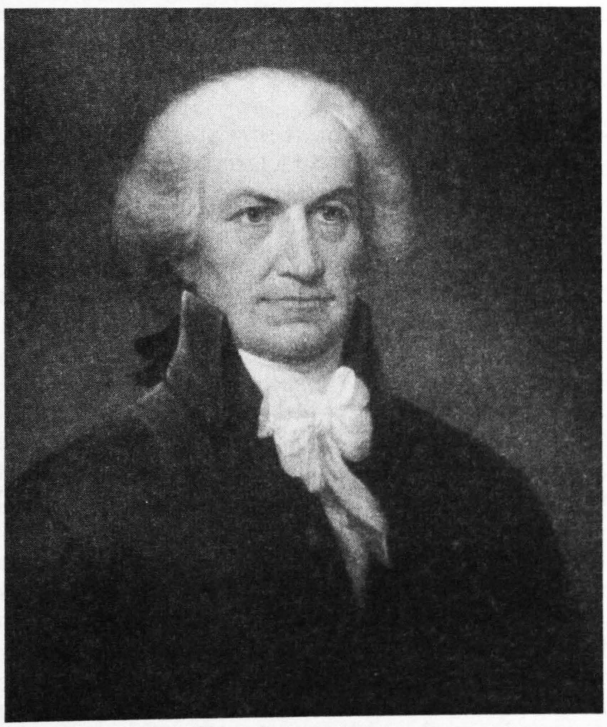
ELFBRANDT v. RUSSELL, 384 U. S. 11 (1966), argued 24 Feb. 1966, decided 18 Apr. 1966 by vote of 5 to 4; Douglas for the Court, White, Clark, Harlan, and Stewart in dissent. The issue in this case was the constitutionality of a loyalty oath for Arizona state employees. A legislative gloss interpreting the oath made it a violation knowingly to be a member of the Communist party or any other organization having as its purpose the violent overthrow of the state government. A violation would subject the employee to discharge and to prosecution for perjury. A school teacher contended that she did not understand the gloss since the statute provided no opportunity for a hearing. The state supreme court upheld the statute. On *certiorari, the U.S. Supreme Court remanded the case for consideration in light of *Baggett* v. *Bullitt* (1964). Again the state supreme court upheld the statute, and certiorari was again granted.

The legislative gloss, the Court said, could be interpreted to condemn a member of an organization that had both legal and illegal purposes even though that person did not subscribe to the illegal purposes. This, the Court concluded, interfered with the freedom of association guaranteed by the *First and *Fourteenth Amendments. Persons who do not share an organization's unlawful purposes and do not participate in its unlawful activities pose no threat as citizens or as public employees. Previously, in *Wieman* v. *Updegraff* (1952) and *Garner* v. *Board of Public Works* (1951), the Court had held that loyalty oath statutes may punish only employees who know of the unlawful purpose of the organization; in *Elfbrandt*, the Court added that the employee must have a specific intent to further this purpose.

See also ASSEMBLY AND ASSOCIATION, CITIZENSHIP, FREEDOM OF.

MILTON R. KONVITZ

ELLSWORTH, OLIVER (b. Windsor, Conn., 29 Apr. 1745; d. Windsor, 26 Nov. 1807; interred Old Cemetery, Windsor), chief justice, 1796–1800. Oliver Ellsworth came from a prominent and well-connected Connecticut family, the son of Captain David Ellsworth and Jemima Leavitt. Although he started college at Yale, he completed his education at Princeton, graduating in 1766. He first studied for the ministry but turned to the law and was admitted to the bar in 1771. He quickly gained a reputation for being one of the most able lawyers in New England and soon was prosperous in his own right. He married Abigail Wolcott in 1771. Entering politics, he strongly supported the movement for independence and in the years immediately following 1776 he held a variety of local offices, serving in the Continental Congress between 1776 and 1783. In this capacity he was a member of the *court of appeals, which reviewed the decisions of state admiralty courts, and he helped to overrule a Pennsylvania decision in the case of Gideon Olmstead and the British sloop *Active* that led eventually to the important case of *United States* v. *Peters* (1809). In 1785 he became a judge of the Connecticut Supreme Court.



Oliver Ellsworth

Ellsworth vigorously supported the movement to create a stronger central government in the federal convention in 1787. In this capacity, he helped to engineer an agreement between the large and small states that has become known as the Great Compromise. It arranged for a two-house national legislature with proportional representation in the lower house according to population and for each state to have two senators in the upper house.