# The Trial of The Lawsuit Against The State of Arizona: Must Supreme Court Judges Obey The Constitution?

By **Publius Huldah**

In **my last paper**, I showed that ***Our Constitution*** requires that the federal government's lawsuit against Arizona and Gov. Brewer be tried in the supreme Court; and that federal district court judge Susan Bolton has ***no constitutional*** authority to preside over the trial.

But some lawyers responded that the case is properly before Judge Bolton because ***Congress & the supreme Court*** have said that cases where a State is a Party may be tried in federal district court.

Thus we come to The Pivotal Question of Our Time: Will we restore the **Rule of Law**, which prevails when people in the federal government obey The Constitution? Or will we side with those who seek to expand the Rule of Men, where people holding **Power** do whatever they want?

1. The Federalist Papers were written during 1787-88 by Alexander Hamilton, James Madison, and John Jay, to explain the proposed Constitution to The People and to induce them to ratify it. Thus, The Federalist is the most authoritative commentary on the genuine meaning of Our Constitution. And at a meeting of the **Board of Visitors of the University of Virginia** on March 4, 1825 at which Thomas Jefferson and James Madison were present, the following resolution selecting the texts for the Law school, was passed:

> ...on the distinctive principles of the government of our own state, and of that of the US. the best guides are to be found in 1. the Declaration of Independance, as the fundamental act of union of these states. 2**. the book known by the title of `The Federalist', being an authority to which appeal is habitually made by all, and rarely declined or denied by any as evidence of the general opinion of those who framed, and of those who accepted the Constitution of the US. on questions as to it's genuine meaning**.... (page 83) [emphasis added]

So! Thomas Jefferson, Author of the Declaration of Independence, and James Madison, Father of The Constitution, acknowledged the high authoritative status of The Federalist Papers. They saw The Constitution as having a fixed meaning which one could learn by consulting The Federalist!

2. But supreme Court judges soon refused to submit to The Constitution as explained by The Federalist

Papers. In 1907, former Chief Justice **Charles Evans Hughes** said, "...the Constitution is what the judges say it is...". Judges thus rejected the objective standard provided by The Federalist, and substituted their own subjective interpretations. Law schools embraced this subversion: Instead of teaching The Constitution as a set of fixed principles explained by The Federalist, they taught supreme Court opinions which say Congress may do whatever it pleases. They also taught that supreme Court judges have unbridled authority to say what the Constitution means. Law schools thus produced generations of constitutionally illiterate lawyers & judges who have been indoctrinated with the monstrous Lie that Our Constitution means *whatever* judges on the supreme Court say! And because these lawyers failed in their sacred duty ***to think***, and uncritically accepted what they were told, Our Country is on the brink of destruction.

**Roger Pilon** of the Cato Institute understands this pivotal issue. He said:

> Is it unconstitutional for Congress to mandate that individuals buy health insurance or be taxed if they don't? Absolutely – if we lived under the Constitution. But we don't. Today we live under something called "constitutional law" – an accumulation of 220 years of Supreme Court opinions – and that "law" reflects the Constitution only occasionally.

Now you see how we came to this sorry state where lawyers insist on a view of Art. III, §2 which is, to the eye of reason, contrary to The Constitution: ***They don't obey The Constitution – they obey the supreme Court,*** as they were conditioned in law school to do.

3. Let us review Art. III, §2:

Clause 1 lists the categories of cases federal judges are permitted to hear.

Now look at clause 2: The FIRST SENTENCE lists ***two*** of the categories set forth in clause 1 (cases affecting "Ambassadors, other public Ministers and Consuls" & "those in which a State shall be Party") and says that in ***ALL*** such cases, the supreme Court ***SHALL*** have original [trial] jurisdiction.

The SECOND SENTENCE says that in all the other cases set forth in clause 1, "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 Constitution is clear! So is The Federalist. In **No. 81**, Hamilton sums it up:

> We have seen that the original jurisdiction of the Supreme Court would be confined to two

> classes of causes, and those of a nature rarely to occur. In all other cases of federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than an appellate jurisdiction, "with such EXCEPTIONS and under such REGULATIONS as the Congress shall make." (15th para) [emphasis in original]

See also, as to the supreme Court's original jurisdiction, No. 81 (13th para).

As to the "exceptions & regulations" respecting the supreme Court's *appellate* jurisdiction, see No. 81 (last 6 paras): the exceptions & regulations merely address *the mode* of doing appeals.

I explained the original intent of the "exceptions clause" in **a previous paper**. But the most eloquent explanation of this whole issue is that given by **Dr. Alan Keyes** in his recent article at World Net Daily, and in his linked article on his website.

The supreme Court once knew that Congress could not reduce its original jurisdiction! In **Marbury v. Madison** (1803), the supreme Court discussed Art. III, §2, clause 2:

> ...If Congress remains at liberty to give this court appellate jurisdiction where the Constitution has declared their jurisdiction shall be original, and original jurisdiction where the Constitution has declared it shall be appellate, the distribution of jurisdiction made in the Constitution, is form without substance...(p 174)

> ...When an instrument organizing fundamentally a judicial system divides it into one Supreme and so many inferior courts as the Legislature may ordain and establish, then enumerates its powers, **and proceeds so far to distribute them as to define the jurisdiction of the Supreme Court by declaring the cases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction, the plain import of the words seems to be that, in one class of cases, its jurisdiction is original, and not appellate; in the other, it is appellate, and not original**... [emphasis added] (p 175)

Marbury v. Madison got it right – THAT is what the Constitution & The Federalist Papers actually say! But today, supreme court jurisprudence has "evolved" to embrace a view which contradicts The Constitution, The Federalist Papers, and Marbury v. Madison!

4. So! In a recent article at **World Net Daily**, Bob Unruh quoted constitutional lawyers Herb Titus and John Eidsmoe to the effect that the "exceptions & regulations" language in the SECOND SENTENCE of clause 2 (which defines the supreme Court's *appellate* jurisdiction), permits Congress to reduce the

supreme Court's *original* jurisdiction granted in the FIRST SENTENCE of clause 2!

Why do lawyers say this? Because Congress at **28 USC § 1251** et seq., & the supreme Court (e.g., **Case v. Bowles (1946)** at page 97) said so; and they go by what the supreme Court ***last said***, not by the Constitution! Lawyers are trained to obey the supreme Court – they do not actually believe that the supreme Court is *subject to* The Constitution. Like Charles Evans Hughes, they see the supreme Court as *above* The Constitution!

5. Mr. Titus is also quoted as saying, "Could you imagine every case that involves a state as a party being before the Supreme Court? The court would be so loaded with those kinds of cases." **Mark Levin** (audio rewind for 08/03 at 69) said there was a "200 year history", "states are sued all the time", "every time a state is sued it goes to the supreme court?", and that only lawyers "who have no idea of what the history is" would say that only the supreme Court has jurisdiction to conduct the trial of the case against Arizona!

I do not wish to pillory good men. But really, gentlemen! THINK! In addition to failing to consider **the actual text of Art. III, §2, clause 2**; you have failed to consider two obvious points:

**ONE**: As Art. III, §2, clause 1 shows on its face, the judicial Power of the United States extends only to cases of "federal" or "national" cognizance. Hamilton explains each category of case in **Federalist No. 80**, and shows why each is a proper object of the federal courts. ***Read it,*** and you will see that the judicial Power does not extend to matters of internal concern to States. Furthermore, in **Federalist No. 83** (8th para), Hamilton said:

> ...the judicial authority of the federal judicatures is declared by the Constitution to comprehend certain cases particularly specified. **The expression of those cases marks the precise limits, beyond which the federal courts cannot extend their jurisdiction**, because the objects of their cognizance being enumerated, the specification would be nugatory if it did not exclude all ideas of more extensive authority. [emphasis added]

Yes! The powers of the federal courts are enumerated! Federal courts are not supposed to hear any case which does not fall within the categories listed at Art. III, §2, clause 1. If the supreme Court would stay within its enumerated powers, its case load would be greatly reduced. Read No. 80 carefully, and much will become clear – to open minds.

**TWO**: **Congress' powers are also enumerated!** Congress has constitutional authority over international commerce and war. Domestically, it has authority to establish an uniform commercial system (bankruptcy laws, a monetary system, weights & measures, patents & copyrights, a limited power

over interstate commerce, and mail delivery.) It has authority to establish an uniform Rule of Naturalization. The Amendments granted Congress powers to protect former slaves, voting rights, and lay income taxes. That's about it!

This is why Hamilton was able to say in Federalist No. 81 (15th para),

> ...the original jurisdiction of the Supreme Court would be confined to two classes of causes, ***and those of a nature rarely to occur***. [emphasis added]

Congress' law making power is so limited by The Constitution that it has authority to make only a few laws affecting States such that litigation involving a State would arise!

But most of the laws made by Congress for over 100 years are unconstitutional as outside the scope of the legislative powers granted to Congress. And since the judicial Power of the federal courts includes all Cases arising under "the Laws of the United States", the federal courts are clogged with cases arising out of unconstitutional federal laws!

Requiring the supreme Court to obey the Constitution [*that's* a novel idea!] and conduct the trials of ***cases of federal cognizance*** *where a State is Party*, would be a check on the powers of Congress. If the supreme Court's trial docket were clogged with cases arising out of unconstitutional federal laws, perhaps it would do its duty & declare the laws unconstitutional!

6. To Herb Titus, John Eidsmoe, Mark Levin, and all the attorneys who contacted me citing the US Code and more recent supreme Court decisions which purport to say the supreme Court is not required to exercise original jurisdiction in ALL cases of federal cognizance in which a State is a Party: -

Take another look! If we are to restore our Constitutional Republic with its federal form of government, we all must reconsider and reexamine everything we think we "know" about The Constitution. Because most of what we think we know, just ain't so. PH

August 16, 2010; revised August 23, 2010.

**August 16, 2010** - Posted by **Publius Huldah** | **Arizona Lawsuit**, **Article III Courts**, **Article III, Sec. 2**, **Marbury v. Madison**, **Original and appellate jurisdiction**