



## Does the District Court Have Jurisdiction in Case Against Arizona?

Apart from the question of whether there exists an enumerated power in Congress to legislate in matters of immigration policy, there is the question of the legality of the lawsuit filed by the Obama administration against the State of Arizona and Governor Jan Brewer. There is evidence that the suit is proscribed by the Constitution and accordingly should be dismissed upon appropriate motion of the defendants.



Article III, Section 2 of the U.S. Constitution reads in relevant part: “In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction.”

The first step in evaluating the potential constitutional restriction against the filing of the federal lawsuit against Arizona in district court is understanding the definition of “original jurisdiction.”

Original jurisdiction is the right of a particular court to hear a case for the first time as opposed to appellate jurisdiction in which that court only has the right to review a lower court’s decision.

In the matter of the Obama suit against Arizona, then, there is a two-pronged test as to whether Judge Susan Bolton and the U.S. District Court over which she presides has jurisdiction over the case. First, is Arizona a named defendant, and second, does that preclude any court other than the Supreme Court from issuing a ruling in the case?

The first relevant inquiry is identity of the parties to the lawsuit. Officially, the suit is styled *United States of America v. State of Arizona and Janice K. Brewer, Governor of the State of Arizona, in her official capacity*. The plaintiff is the government of the United States and the party being sued is Arizona and its Governor.

The naming of the state of Arizona as a co-defendant, in light of the plain language of Article III, Section 2, seems to remove the case and all matters appurtenant thereto from the jurisdiction of the lower courts. Judge Bolton’s ruling in the federal government’s motion for a preliminary injunction therefore would be of no legal force. For that matter, neither would any opinion of the Ninth Circuit Court of



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Appeals, assuming Arizona files a timely appeal of the decision handed down last week by Judge Bolton.

The second step in the analysis is to establish to which court the Constitution grants the jurisdiction over the case at bar. As stated above, the third article of the Constitution, wherein the powers of the judicial branch are set forth, clearly places suits against states within the original jurisdiction of the Supreme Court.

There is a sort of legislative history of the passage of the applicable clause of Article III. Writing as Publius, Alexander Hamilton (himself a delegate from New York to the Constitutional Convention of 1787) wrote specifically in *The Federalist Papers* on the topic of original jurisdiction in legal actions against states.

Let us now examine in what manner the judicial authority is to be distributed between the supreme and inferior courts of the Union. The Supreme Court is to be invested with original jurisdiction, only "in cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party." Public ministers of every class are the immediate representatives of their sovereigns. All questions in which they are concerned are so directly connected with the public peace, that as well for the preservation of this, as out of respect to the sovereignties they represent, it is both expedient and proper that such questions should be submitted in the first instance to the highest judicatory of the nation. Though consuls have not in strictness a diplomatic character, yet as they are the public agents of the nations to which they belong, the same observation is in a great measure applicable to them. In cases in which a state might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal.

A forthright parsing of Hamilton's remarks reveals the underlying political philosophy that animated the inclusion of that particular clause in the Constitution: Sovereignty must be respected in order to uphold the dignity of the party in question. In the first instance, Hamilton speaks of ambassadors sent to the United States as emissaries of their foreign governments. Second, he affords the same respect to consuls. Finally, with regard to the several states, Hamilton insists that to subject a state to the jurisdiction of anything other than the "highest judicatory of the nation" would be an insult to that state and a threat to public peace.

In summary, it appears that it was the intent of our Founding Fathers to safeguard the sovereignty of the states and likewise to uphold the dignity such sovereignty merits. In furtherance of this aim, they enacted Article III, Section 2 of the Constitution wherein the Supreme Court is awarded original jurisdiction for adjudicating in all matters in which a state is named as a party. Armed with this knowledge, the lawyers for the state of Arizona may well be within their rights to demand that the case filed against their clients by the Justice Department be removed to the Supreme Court and that the ruling handed down by Judge Bolton be summarily vacated for lack of jurisdiction.

Photo of Arizona Governor Jan Brewer: AP Images



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