Rashonda Garner
Office of the Clerk
Supreme Court of the U.S.
Washington, DC 20543-0001

Dear Rashonda,

Regarding your October 11, 2024 return of my filing of a case against the State of Michigan. I am returning the filing to you again because I find your rationale for rejecting my filing is not consistent with the Constitution of the United States nor even with *Hans v. Louisiana*. I'm assuming you took an oath to support the Constitution (Art. VI Cl. 3), not the Supreme Court Justices, and, even if you did not, the Constitution is still the "supreme Law of the Land" (Art. VI Cl. 2 which you are required to obey as am I). If the Justices, your bosses/superiors are asking you to violate the Constitution they are acting outside their own oath and need not (and should not) be obeyed

> Art. VI Cl. 3 The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution …
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> Art. VI Cl. 2 This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land …

A study of Congress' Constitution Annotated: ArtIII.S2.C2.2 Supreme Court Original Jurisdiction (https://constitution.congress.gov/browse/essay/artIII-S2-C2-2/ALDE_00001220/) is a good place to start. It notes that in the Georgia v. Brailsford, 2 U.S. (2 Dall.) 402 (1792) https://scholar.google.com/scholar_case?case=4621632159989202714&q=Georgia+v.+Brailsford,+2+U.S.+(2+Dall.)+402+(1792) case the Supreme Court took action without any need to debate the Constitution Article III § 2:

> 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.

In that case Georgia, a State, was the Plaintiff while the Defendant was British and had won a suit in the Circuit court against a Defendant Spalding. Georgia tried to place themselves in the case in the Circuit court but were rebuffed on grounds that Georgia, i.e., a State as a party, could exclusively (the Circuit [and Iredell] misconstruing "original" as "exclusive") go to the Supreme Court, which Georgia then did in order to get an injunction which was granted so that the case could be properly tried with Georgia as a party. After hearing and debate Georgia lost on the

grounds the act it was using to support the Georgia claim resulted in sequestration, not confiscation.[1]

Then in the Chisholm v. Georgia Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 431–32 (1793) or (https://tile.loc.gov/storage-services/service/ll/usrep/usrep002/usrep002419/usrep002419.pdf) the State of Georgia pretended that the Constitution permitted them, as a Defendant State, not to be callable before the Supreme Court. But the Supreme Court, with two Justices that participated in the Constitutional Convention and two that had argued hard for ratification of the Constitution decided four to one that Georgia (whether plaintiff or defendant) was obligated to appear in court or perchance *lose by default*. The lone Justice (Iredell) that decided against falsely insisted that Congress needed to enact a law to support the Constitution's plain words[2] and that sovereignty precedent mandated that a State could not be "sued" due to its likeness to a King (who in England *could* be sued and/or Petitioned and who would pass such suits/Petitions to courts to "do right"[3]) and ignoring that "the people" were sovereign in the State of Georgia and could be, per the Constitution, collectively sued by other States, foreign governments, etc.[4]

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[1] See: https://tile.loc.gov/storage-services/service/ll/usrep/usrep002/usrep002402b/usrep002402b.pdf, https://tile.loc.gov/storage-services/service/ll/usrep/usrep002/usrep002415a/usrep002415a.pdf, and https://tile.loc.gov/storage-services/service/ll/usrep/usrep003/usrep003001/usrep003001.pdf

[2] Interestingly he actually quotes the law he proceeds to falsely announce does not exist:

> Sect. 13. "That the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens; ***and except also, between a State and citizens of other States, or aliens, in which latter case it shall have original, but not exclusive jurisdiction***. And shall have, exclusively, all jurisdiction of suits or proceedings against Ambassadors, or other public Ministers, or their domestics, or domestic servants, as a court of law can have or exercise consistently with the law of nations; and original, but not exclusive jurisdiction of all suits brought by Ambassadors, or other public Ministers, or in which a Consul, or Vice-Consul, shall be a party."
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> And: The 14th sect. of the judicial act, provides in the following words: "All the before mentioned Courts of the United States, shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law."

[3] See Notre Dame Law School; NDLScholarship; Journal Articles Publications; 2022; A New Report of Entick v. Carrington (1765); Christian Burset, Notre Dame Law School; T. T. Arvind, York Law School (https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2435&context=law_faculty_scholarship)

[4] Interestingly this Justice was the same one that misconstrued "original" as "exclusive" in the *Brailsford* cases but in *Chisholm* Iredell clearly notes the opposite:

> For, besides what I noticed before as to an express reference to principles and usages of law as the guide of our proceeding, it is observable that in instances like this before the Court, this Court hath a ***concurrent jurisdiction only***; the present being one of those cases where by the judicial act this Court hath original but not exclusive jurisdiction.

To quote exactly the words of the Constitution that are relevant:

> Article III § 2, Cl. 1. ***The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,*** … to Controversies between two or more States;— between a State and Citizens of another State;— between Citizens of different States …
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> Article III, § 2, Cl. 2. ***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 fact that a case of a supposed debt to a State was filed in the Supreme Court raised some immediate backlash and Amendment XI was proposed then ratified in 1795. That amendment reads:

> Amendment XI. The Judicial power of the United States 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***, or by Citizens or Subjects of any Foreign State.

Observe clearly that the above amendment *does not remove the right of a citizen of a State to sue their own State*. The *Hans v. Louisiana* case you cited makes this clear itself:

> 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;'[5] and may be thus sued in the federal courts, although not allowing itself to be sued in its own courts.

But the Court is quite wrong if it be declaring that a citizen of a State may not sue their own State in federal court is an "anomalous result" as will be shown in extensive quotes from *Hans* below where the Court simply ignored clear statements contrary to the "precedent" believe to be created 100 years after the Constitution

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And now Iredell is on to something as will be shown subsequently by quotes from the Federalist Papers and from the *Hans* case itself. Unfortunately he wasn't convincingly clear on the point.

The Journal of American History, Vol. 54, No. 1 (June, 1967), pp. 19-29, Doyle Mathis https://www-jstor-org.proxy2.cl.msu.edu/stable/1900316 notes that the case was continued in the Georgia Legislature and eventually the Legislature authorized a payment in 1847. The article does not note whether it was finally paid or not.

[5] I have taken the liberty of adding apostrophes to delineate the "this anomalous result" from the Court's following correct statement of the law, i.e., a State can decline to be sued in its own courts but *cannot* decline to be sued in "federal courts" for a Constitutional violation. But supposing the "and may be thus sued in the federal courts…" was part of "the anomalous result," that would be blatant disregard for the two tier (State and Federal) governments of the Union intended to keep a Federal check on "supreme Law of the Land" violations by States.

and Amendment XI and when the Court's workload was increasing with the growth of the population of the country. But first a quote from Federalist No. 15 of exactly why the Framers made States suable in Federal courts:

> In addition to all this, there is, in the nature of sovereign power, an impatience of control, that disposes those who are invested with the exercise of it, to look with an evil eye upon all external attempts to restrain or direct its operations. ***From this spirit it happens, that in every political association which is formed upon the principle of uniting in a common interest a number of lesser sovereignties[6], there will be found a kind of eccentric tendency in the subordinate or inferior orbs, by the operation of which there will be a perpetual effort in each to fly off from the common centre. This tendency is not difficult to be accounted for. It has its origin in the love of power.*** Power controlled or abridged is almost always the rival and enemy of that power by which it is controlled or abridged. This simple proposition will teach us how little reason there is to expect, that the persons intrusted with the administration of the affairs of the particular members of a confederacy[7] will at all times be ready, with perfect good-humor, and an unbiased regard to the public weal, to execute the resolutions or decrees of the general authority. The reverse of this results from the constitution of human nature.

States, including their Executive, Legislative, and Judicial branches, not held in check by the "supreme Law of the Land" would soon enough have the United States back to an uncontrolled Confederacy where the citizens would have no federally protected rights whatsoever nor would the States suffer any control from the Union. Both States and the Supreme Court are "subordinate or inferior orbs" in regards to the above quote.

Next I will note that the Court in *Hans* affirmed a federal Circuit Court ruling merely that "this court is without jurisdiction *ratione personae,*" i.e., merely on "by reason of the person" or "because of the nature or position of the relevant person" without actually stating what that might be or what law supported it. Louisiana's ask merely throws up the assertions of "[p]laintiff cannot sue the state without its permission; the constitution and laws do not give this honorable court [a federal circuit court] jurisdiction of a suit against the state." The "permission" assertion is certainly correct within a State court but (as discussed below and the Federalist No. 15 quote above shows) not necessarily as to a federal court, and "the constitution and laws" portion is clearly false from the plain words of the Constitution, from the intent of the Framers for a supreme Union Judiciary to enforce "the supreme Law of the Land," and from Justice Marshall's clear reasoning in *Cohens* v. *Virginia,* 6 Wheat. 264, 410 (1821). In joining the Union a State gave up sovereignty with regard to at least federal issues presented in the Supreme Court of the United

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[6] I.e., States.

[7] I.e., States.

States. But, the Circuit court in *Hans* could be correct either on the grounds that Louisiana could refuse being sued in a federal ***Circuit*** Court (though not the Supreme Court with "original Jurisdiction") or it could be that the ***Louisiana law was not a contract and thus not a Constitutional issue*** (the latter was the *Hans* decision).

Hans started with:

> 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.

And *Hans* ended with:

> 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***.

So, first the question was to a suit in a FEDERAL CIRCUIT court, not the U.S. Supreme Court, and second the Louisiana Legislature's decision for the State of Louisiana to (at least temporarily) abate its financial obligations was a State's sovereign right (though those words are not used) and therefore the issue was not a Constitutional one suitable for the U.S. Supreme Court.

Now an extraordinarily long quote from *Hans* with bold italic emphasis of the key statements that negate the Court's current *Hans* (mis)interpretation:

> But, on the succeeding day, the court delivered a unanimous opinion, "that the amendment being constitutionally adopted, there could not be exercised any jurisdiction, in any case, past or future, in which ***a State was sued by the citizens of another State***, or by citizens or subjects of any foreign state."
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> This view of the force and meaning of the amendment is important. It shows that, on this question of the suability of the States by individuals, the highest authority of this country was in accord rather with the minority than with the majority of the court in the decision of the case of *Chisholm* v. *Georgia;* and this fact lends additional interest to the able opinion of Mr.

Justice Iredell on that occasion[8]. The other justices were more swayed by a close observance of the letter of the Constitution, without regard to former experience and usage; and because the letter said that the judicial power shall extend to controversies "between a State and citizens of another State;" and "between a State and foreign states, citizens or subjects," they felt constrained to see in this language a power to enable the individual citizens of one State, or of a foreign state, to sue another State of the Union in the federal courts. Justice Iredell, on the contrary, contended that it was not the intention to create new and unheard of remedies[9], by subjecting sovereign States to actions at the suit of individuals, (which he conclusively showed was never done before,[10]) but only, by proper legislation[11], to invest the federal courts with jurisdiction to hear and determine controversies and cases, between the parties designated, that were properly susceptible of litigation in courts.

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[12], and even resented, by the great defenders of the Constitution whilst it was on its trial before the American people[13]. As some of their utterances are directly pertinent to the question now under consideration, we deem it proper to quote them.

The eighty-first number of the Federalist, written by Hamilton, has the following profound remarks[14]:

"It has been suggested that an ***assignment of the public securities of one State to the citizens of another, would enable them to prosecute that State in the federal courts*** for the amount of those securities; a

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[8] Well, no, it only shows that the current Court accepted the 11th amendment, not that they now agreed that the Court was wrong in *Chisholm* v. *Georgia.*

[9] Iredell did *not* suggest the Constitution created "new and unheard of remedies." He, in fact followed Blackstone in noting that one did not label one's case against the King as a suit but as a Petition, i.e., with a less aggressive name.

[10] Actually Iredell didn't conclusively show any such thing and it was clear that the Framers knew they were ridding themselves of a King and to some extent governments that could not be held accountable.

[11] First, "proper legislation," is in no way relevant to the Amendment XI and second, it was clearly not relevant in *Chisholm* v. *Georgia* as 4 other Justices clearly showed and stated though at the time the limitations of the concurrence business was clearly not understood.

[12] This is so clearly a false statement it needs no argument other than the clear Constitutional words.

[13] This is false as will be shown from the very quotes that the Court uses and as should be obvious from the quote of Iredell in Footnote 4.

[14] The subsequent footnote 17 will show how badly out of context the *Hans* author took the remarks.

suggestion which the following considerations prove to be without foundation:

"It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent.* This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union. ***Unless, therefore, there is a surrender of this immunity in the plan of the convention***[15], it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of state sovereignty were discussed in considering the article of taxation, and need not be repeated here. *A recurrence to the principles*[16] *there established will satisfy us, that there is no color to pretend that the state governments would, by the adoption of that plan, be divested of the privilege of* ***paying their own debts in their own way, free from every constraint but that which flows from the obligations of good faith***. The contracts between a nation and individuals are only binding on the conscience of the sovereign, and have no pretension to a compulsive force. They confer no right of action independent of the sovereign will. ***To what purpose would it be to authorize suits against States for the debts they owe?*** How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State; ***and to ascribe to the federal courts by mere implication, and in destruction of a pre-existing right of the state governments, a power which would involve such a consequence, would be altogether forced and unwarrantable.***"[17]

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[15] There was, to the Constitutional "supreme Law of the Land" and Supreme Court "original Jurisdiction" for Constitutional issues.

[16] Essentially concurrent jurisdiction unless expressly removed by the Constitution:

> Federalist No. 33: The inference from the whole is, that the individual States would, under the proposed Constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports. It will be shown in the next paper that this CONCURRENT JURISDICTION in the article of taxation was the only admissible substitute for an entire subordination, in respect to this branch of power, of the State authority to that of the Union.

[17] But, if the Court had included the prior paragraphs then continued their quote from Federalist No. 81 they would have seen that the above quote was a digression specific to a State's "securities" to "citizens of another [State]" (i.e., obligations):

> Preceding ¶¶: ***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

The obnoxious clause to which Hamilton's argument was directed, and which was the ground of the objections which he so forcibly met, was that which declared that "the judicial power shall extend to all ... controversies between a State and citizens of another State, ... and between a State and foreign states, citizens or subjects." It was argued by the opponents of the Constitution that this clause would authorize jurisdiction to be given to the federal courts to entertain suits against a State brought by the citizens of another State, or of a foreign state. ***Adhering to the mere letter, it might be so; and so, in fact, the Supreme Court held in Chisholm v. Georgia;*** but looking at the subject as Hamilton did[18], and as Mr. Justice Iredell did, in the light of history and experience and the established order of things, the views of the latter were clearly right, as the people of the United States in their sovereign capacity subsequently decided.[19]

But Hamilton was not alone in protesting against the construction put upon the Constitution by its opponents. In the Virginia convention the same objections were raised by George Mason and Patrick Henry, and were met by Madison and Marshall as follows. Madison said: "Its jurisdiction [the federal jurisdiction] in controversies between a State and citizens of another State is much objected to, and perhaps without reason. It is not in the power of individuals to call any State into court. The only operation it can have is that, if a State should wish to bring a suit against a citizen, it must be

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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.*** [In essence a State could refuse (or accept, its choice) summons to a federal Circuit Court but not refuse summons to the U.S. Supreme Court.]

Though it may rather be a digression from the immediate subject of this paper, I shall take occasion to mention here a supposition which has excited some alarm upon very mistaken grounds. It has been suggested that an ***assignment of the public securities of one State to the citizens of another***, would enable them to prosecute that State in the federal courts for the amount of those securities; a suggestion which the following considerations prove to be without foundation.

Following ¶¶: Let us resume the train of our observations. 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."

I.e., States are normally expected to be suable (or Petitionable) within themselves and when that proves to not be the case or there is a Constitutional or Federal Law issue then direct to the Supreme Court is available (but Federal Circuit Court works too if a State accepts the call).

[18] No, see above. Particularly see footnote 17.

[19] Actually it was the State governments, not the people so the State governments interest in reducing suits against itself and out of any control of itself should be a clue as to why such an unwise amendment was so readily passed.

brought before the federal court[20]. This will give satisfaction to individuals, as it will prevent citizens on whom a State may have a claim being dissatisfied with the state courts... . It appears to me that this [clause] can have no operation but this — ***to give a citizen a right to be heard in the federal courts; and if a State should condescend to be a party, this court may take cognizance of it[21]***." 3 Elliott's Debates, 2d ed. 533. Marshall, in answer to the same objection, said: "With respect to disputes between a State and the citizens of another State, its jurisdiction has been decried with unusual vehemence. I hope that no gentleman will think that a State will be called at the bar of the federal court... . It is not rational to suppose that the sovereign power should be ***dragged[22]*** before a court. The intent is to enable States to recover claims of individuals residing in other States... . But, say they, 'there will be partiality in it if a State cannot be defendant — if an individual cannot proceed to obtain judgment against a State, though he may be sued by a State. It is necessary to be so, and cannot be avoided.'[23] ***I see a difficulty in making a State defendant which does not prevent its being plaintiff.***" Ib. 555.

It seems to us that these views of those great advocates and defenders of the Constitution were most sensible and just; and they apply equally to the present case as to that then under discussion. The letter is appealed to now, as it was then, as a ground for sustaining a suit brought by an individual against a State. The reason against it is as strong in this case as it was in that. It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of. 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?[24] ***Suppose that Congress, when proposing the Eleventh***

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[20] This sentence clearly is not true and, as far as I can see, is not even remotely the way things are done. The bolded material later in the quote clearly only gives a State a right to not show up when sued, the Supreme Court still "hears" the case and reaches a decision.

[21] "it" being the State which otherwise would not be heard but could be decided for or against based solely on the facts and arguments of the filer – at least at the Supreme Court level.

[22] But they can appear voluntarily and as *Chisholm* clearly showed, if they opt out it does not mean the suit does not proceed. In the end, should the State be decided against it is only the State's desire for "peace and harmony" (per Madison's notes at the Convention) or desire not to appear morally repugnant or lacking conscience to "the People" that will gain the State's compliance.

[23] I've added the apostrophes to clearly delineate what "say they" and I believe the bolded italic portion, which is prone to errors not uncommon in spoken language or rapid note taking, was intended to means essentially what is good for the goose is good for the gander or If a State can be a Plaintiff it can be a Defendant." When thinking on one's feet the latest statement is most likely to be close to the actual intended meaning of the discourse.

[24] Yes, we can. And the next two sentences clearly state that States would ***NOT*** block their citizens from exercising their rights before an honest government in their own states that adhere to the Constitution. Anything less and the Constitution is not the "supreme Law of the Land."

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.

Apologies for that extremely long quote and my necessary footnotes to explain the issues. Further in the case this very clear statement is made:

> "It may be accepted as a point of departure unquestioned," said Mr. Justice Miller, in *Cunningham v. Macon & Brunswick Railroad*, 109 U.S. 446, 451, "that neither a State nor the United States can be sued as defendant in any court in this country without their consent, ***except in the limited class of cases in which a State may be made a party in the Supreme Court of the United States by virtue of the original jurisdiction conferred on this court by the Constitution.***"

Again, what more do you need to see to know that your cite of *Hans* does NOT preclude Supreme Court review of cases against a State by a citizen of the State. Further we can look to the plain words of Federalist No. 80:

> Still less need be said in regard to the third point. Controversies between the nation and its members or citizens, can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum.
>
> The reasonableness of the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial, speaks for itself. No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias.

It should be noted that in every instance in the Constitution the Supreme Court was aimed toward Justice, not narrow, clever word interpretations. I again refer you to Federalist No. 15 (Hamilton) quoted above regarding States vs Union and how that quote catches even the Supreme Court as an “orb” trying to gather power to itself. As we see in your *Hans* the Supreme Court is grabbing unConstitutional power to decline its Constitutionally assigned “original Jurisdiction.” The Supreme Court in 1925 even unconstitutionally finagled Congress into letting the Supreme Court to deny certiorari even when a writ of error was applicable but it is very clear that Congress itself has absolutely no right to unilaterally alter the Constitution.

I could go on but I suspect you have solid legal training and can fully understand the position laid out above and understand your own obligation to the Constitution, not to any pontification of the Supreme Court or any of its members.

Thanks in advance for passing this on to the Supreme Court for full and appropriate review.

Sincerely,

/s/ *James E. White*

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