

STEVENS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 01–46

FEDERAL MARITIME COMMISSION, PETITIONER *v.*
SOUTH CAROLINA STATE PORTS
AUTHORITY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[May 28, 2002]

JUSTICE STEVENS, dissenting.

JUSTICE BREYER has explained why the Court’s recent sovereign immunity jurisprudence does not support today’s decision. I join his opinion without reservation, but add these words to emphasize the weakness of the two predicates for the majority’s holding. Those predicates are, first, the Court’s recent decision in *Alden v. Maine*, 527 U. S. 706 (1999), and second, the “preeminent” interest in according States the “dignity” that is their due. *Ante*, at 14.

JUSTICE SOUTER has already demonstrated that *Alden*’s creative “conception of state sovereign immunity . . . is true neither to history nor to the structure of the Constitution.” 527 U. S., at 814 (dissenting opinion). And I have previously explained that the “dignity” rationale is “‘embarrassingly insufficient,’” *Seminole Tribe of Fla. v. Florida*, 517 U. S. 44, 97 (1996) (dissenting opinion; citation omitted), in part because “Chief Justice Marshall early on laid to rest the view that the purpose of the Eleventh Amendment was to protect a State’s dignity,” *id.*, at 96–97 (citing *Cohens v. Virginia*, 6 Wheat. 264, 406–407 (1821)).

This latter point is reinforced by the legislative history of the Eleventh Amendment. It is familiar learning that

the Amendment was a response to this Court's decision in *Chisholm v. Georgia*, 2 Dall. 419 (1793). Less recognized, however, is that *Chisholm* necessarily decided two jurisdictional issues: that the Court had personal jurisdiction over the state defendant, and that it had subject-matter jurisdiction over the case.¹ The first proposed draft of a constitutional amendment responding to *Chisholm*—introduced in the House of Representatives in February, 1793, on the day after *Chisholm* was decided—would have overruled the first holding, but not the second.² That proposal was not adopted. Rather, a proposal introduced the following day in the Senate,³ which was “cast in terms that we associate with subject matter jurisdiction,”⁴ pro-

¹ See Nelson, *Sovereign Immunity as a Doctrine of Personal Jurisdiction*, 115 Harv. L. Rev. 1561, 1565–1566 (2002).

² The House proposal read: “[N]o state shall be liable to be made a party defendant, in any of the judicial courts, established, or which shall be established under the authority of the United States, at the suit of any person or persons, whether a citizen or citizens, or a foreigner or foreigners, or of any body politic or corporate, whether within or without the United States.” *Id.*, at 1602, and n. 211 (quoting Proceedings of the United States House of Representatives (Feb. 19, 1793), Gazette of the United States, Feb. 20, 1793, reprinted in 5 Documentary History of the Supreme Court of the United States, 1789–1800 pp. 605–606 (M. Marcus ed., 1994)) (internal quotation marks omitted).

³ The Senate proposal read: “The Judicial Power of the United States shall not extend to any Suits in Law or Equity commenced or prosecuted against any one of the United States by Citizens of another State or by Citizens or Subjects of any foreign State.” Nelson, *supra*, at 1603, and n. 212 (quoting Resolution in the United States Senate (Feb. 20, 1793), reprinted in 5 Documentary History of the Supreme Court, *supra*, at 607–608) (internal quotation marks omitted). The Senate version closely tracked the ultimate language of the Eleventh Amendment. See U. S. Const., Amdt. 11 (“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”).

⁴ Nelson, *supra*, at 1603.

STEVENS, J., dissenting

vided the basis for the present text of the Eleventh Amendment.

This legislative history suggests that the Eleventh Amendment is best understood as having overruled *Chisholm*'s subject-matter jurisdiction holding, thereby restricting the federal courts' diversity jurisdiction. However, the Amendment left intact *Chisholm*'s personal jurisdiction holding: that the Constitution does not immunize States from a federal court's process. If the paramount concern of the Eleventh Amendment's framers had been protecting the so-called "dignity" interest of the States, surely Congress would have endorsed the first proposed amendment granting the States immunity from process, rather than the later proposal that merely delineates the subject matter jurisdiction of courts. Moreover, as Chief Justice Marshall recognized, a subject-matter reading of the Amendment makes sense, considering the states' interest in avoiding their creditors. See *Cohens v. Virginia*, 6 Wheat., at 406–407.

The reasons why the majority in *Chisholm* concluded that the "dignity" interests underlying the sovereign immunity of English Monarchs had not been inherited by the original 13 States remain valid today. See, e.g., *Seminole Tribe of Fla.*, 517 U. S., at 95–97 (STEVENS, J., dissenting). By extending the untethered "dignity" rationale to the context of routine federal administrative proceedings, today's decision is even more anachronistic than *Alden*.