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Extract from Christopher Brooks' Chisholm to Alden: James Wilson's Artificial Person in American Supreme Court History citing Tillman's A Textualist Defense

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Chisholm to Alden: James Wilson's "Artificial Person" in American Constitutional History, 1793-1999

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As Bailyn explains, Wilson’s friend and colleague on the Chisholm Court, Justice James Iredell, condemned the “beautiful theory” of divided sovereignty as “narrow and pedantic, calculated to sacrifice to a point of speculation the happiness of millions.” Instead, Iredell developed a counter argument to the applicability of divisible sovereignty. The “great solecism of imperium imperio,” wrote Iredell, wherein the “several distinct and independent legislatures each engaged within a separate scale and employed about different objects,” was “not at all applicable” in America’s case. Like most leaders of the founding era—or any era, for that matter—Iredell was a product of his day. Much like Blackstone, Iredell saw the sovereignty in the legislature, he transposed the British experience and Americanized it. As we now know, Wilson argued that sovereignty was divisible and was not entirely necessary in America’s case because the people remained the sovereigns at all times. Wilson provided for a distinctly contra-English, American


13 As Seth Tillman notes, in the founding period, “Sovereignty was recognized as vested in the people.” Seth Barrett Tillman, “A Textualist Defense of Article 1, Section 7, Clause 3: Why