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State Sovereign Immunity, as Recognized and Extended through the Eleventh Amendment of the Constitution of the United States, Bars Administrative Commissions from Adjudicating Private Complaints against a State Agency That Has Not Consented to Being Subject to Such Proceedings: *Federal Maritime Commission v. South Carolina State Ports Authority et al.*

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State Sovereign Immunity, as Recognized and Extended Through the Eleventh Amendment of the Constitution of the United States, Bars Administrative Commissions From Adjudicating Private Complaints Against a State Agency That Has Not Consented to Being Subject to Such Proceedings: *Federal Maritime Commission v. South Carolina State Ports Authority et al.*

CONSTITUTIONAL LAW — ELEVENTH AMENDMENT – STATE SOVEREIGN IMMUNITY – ADMINISTRATIVE PROCEEDINGS – The Supreme Court of the United States held that state sovereign immunity, as understood and extended through the Eleventh Amendment of the Constitution of the United States, bars the Federal Maritime Commission, and similar administrative bodies, from adjudicating private complaints against state agencies without their consent.

Federal Maritime Commission v. South Carolina State Ports Authority et al., 535 U.S. 743 (2002)

South Carolina Maritime Services, Inc. ("Maritime Services") operates a cruise ship called the *M/V Tropic Sea*.[1] On five separate occasions, Maritime Services asked the South Carolina State Ports Authority ("SCSPA") for permission to berth the *M/V* cruise ship at the SCSPA's port facilities in Charleston, South Carolina.[2] The SCSPA continually denied Maritime Services' requests, contending that it had an established policy of denying berthing space to vessels whose primary purpose was to carry on gambling activities.[3]

Pursuant to 46 U.S.C. app. § 1710(a), Maritime Services filed a complaint with the Federal Maritime Commission ("FMC") alleg-

1. Fed. Mar. Comm'n v. S.C. Ports Auth. et al., 535 U.S. 743 (2002).

2. *Fed. Mar. Comm'n*, 535 U.S. at 747. Maritime Services intended to offer cruises on the *M/V Tropic Sea* that would depart from the Port of Charleston. *Id.* Some of these trips would travel in international waters while others would remain in United States territory, and all of these trips would permit passengers to participate in gambling activities on board. *Id.*

3. *Id.* Berth is defined as a place where a ship lies when at anchor or at a wharf. WEBSTER'S NEW COLLEGIATE DICTIONARY 145 (9th ed. 1986).

ing that the SCSPA's refusal to provide berthing space to the *M/V Tropic Sea* violated the Shipping Act.[4] Maritime Service's complaint alleged that the SCSPA had implemented its antigambling policy in a discriminatory fashion.[5] Maritime services complained that the SCSPA had "unduly and unreasonably preferred" Carnival Cruise Lines over Maritime Services in violation of 46 U.S.C. app. § 1709(d)(4) and further, that the SCSPA unreasonably refused to do business with Maritime Services in violation of § 1709(b)(10).[6] Finally, Maritime Services alleged that the SCSPA's violations had inflicted a "loss of profits, loss of earnings, loss of sales, and loss of business opportunities."[7]

To remedy the aforementioned injuries, Maritime Services prayed that the FMC take three actions.[8] First, Maritime Services asked the FMC to seek a preliminary injunction in the United States District Court for the District of South Carolina to prevent the SCSPA from continuing to discriminate in its berthing practices.[9] Second, Maritime Services asked the FMC to direct the SCSPA to pay reparations, interest, and attorneys' fees related to the complaint.[10] Finally, Maritime Services requested that the FMC issue an order commanding the SCSPA to cease and desist from violating the Shipping Act and award Maritime Services any other relief the FMC deemed "just and proper."[11]

Pursuant to the FMC Rules of Practice and Procedure, Maritime Services' complaint was referred to an administrative law judge

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4. *Id.* at 748. 46 U.S.C. app. § 1710(a) (2003) provides that "any person may file with the Commission a sworn complaint alleging a violation of this chapter...and may seek reparation for any injury caused to the complainant by that violation." 46 U.S.C. app. § 1710(a) (2003). The Shipping Act of 1984 forbids, among other things, marine terminal operators from discriminating against terminal users. The Act gives the FMC full authority to enforce the statute. *Fed. Mar. Comm'n*, 535 U.S. at 748.

5. *Id.* Maritime Services specifically pointed out that the SCSPA's was acting in a "discriminatory" manner by allowing two Carnival Cruise Line vessels to berth in Charleston even though Carnival offered gambling on both of the aforementioned ships. *Id.*

6. *Id.* 46 U.S.C. app. § 1709(d)(4) (2003) provides that "no marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person." 46 U.S.C. app. § 1709(d)(4) (2003). § 1709(b)(10) blocks a common carrier from "unreasonably refus[ing] to deal or negotiate." 46 U.S.C. app. § 1709(b)(10) (2003).

7. *Fed. Mar. Comm'n*, 535 U.S. at 748.

8. *Id.*

9. *Id.* A preliminary injunction is defined as a temporary injunction issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case. BLACK'S LAW DICTIONARY, 629 (Abridged 7th ed. 2000).

10. *Fed. Mar. Comm'n*, 535 U.S. at 748-49.

11. *Id.* at 749.

("ALJ").[12] The SCSPA then filed an answer, maintaining that it had adhered to its antigambling policy in a nondiscriminatory manner.[13] In addition, the SCSPA filed a motion to dismiss in which it asserted that the SCSPA, as an arm of the state of South Carolina, was "entitled to Eleventh Amendment immunity" from Maritime Services' suit.[14]

The ALJ agreed with the SCSPA's arguments, and concluded that recent decisions of the Supreme Court of the United States, regarding the Eleventh Amendment and State sovereign immunity from private suits, require that the complaint be dismissed.[15] The ALJ did note, however, that the FMC could still act to investigate Maritime Services' allegations in an independent investigation.[16] Maritime Services did not appeal the ALJ's dismissal of its complaint, but the FMC independently decided to review the ALJ's ruling to consider whether state sovereign immunity from private suits extended to proceedings before the FMC.[17]

The SCSPA filed a petition for review of the FMC's reversal of the ALJ's ruling, and the United States Court of Appeals for the Fourth Circuit reversed.[18] After carefully reviewing the "precise nature" of the procedures employed by the FMC for resolving complaints, such as the one filed by Maritime Services, the court of appeals concluded that the administrative proceedings were "an adjudication" specifically precluded by sovereign immunity.[19] Upon the court of appeals' reversal of the FMC ruling, the FMC

12. *Id.* This practice is authorized by 46 C.F.R. § 502.223 (2003). *Id.*

13. *Id.*

14. *Id.* The SCSPA rested it argument on the notion that this portion of the Constitution prohibits any statute that would authorize the FMC to sue the State of South Carolina for damages and injunctive relief. *Id.*

15. *Fed. Mar. Comm'n,* 535 U.S. at 749. The ALJ based his decision primarily on the holding in *Seminole Tribe of Fla. v. Florida,* 517 U.S. 44 (1996), in which the Supreme Court held that Congress, pursuant to its Article I powers, could not abrogate state sovereign immunity by mere statute. *Id.* at 44.

16. *Fed. Mar. Comm'n,* 535 U.S. at 750.

17. *Id.* Ultimately, the FMC concluded that the ALJ's determination was in error, and as such, the FMC reversed the ALJ's decision dismissing Maritime Services' complaint. *Id.*

18. *Id.* The Court of Appeals primarily relied on the Constitution's prohibition of suits between private parties and unconsenting states and ultimately concluded that an administrative agency is bound by this prohibition just as a state or federal court would be. South Carolina State Ports Authority et al. v Federal Maritime Commission, 243 F.3d 165, 173 (4th Cir. 2001).

19. *Fed. Mar. Comm'n,* 535 U.S. at 750-51. In making this determination, the Court of Appeals noted the SCSPA's status as an "arm of the State of South Carolina." *Id.*

petitioned the Supreme Court of the United States for *certiorari*, which was granted.[20]

The primary issue, which the Supreme Court of the United States ultimately addressed in this appeal, focused on "whether the sovereign immunity enjoyed by States as part of the Constitutional framework applies to [administrative] adjudications [such as those] conducted by the FMC."[21] The Supreme Court ultimately answered this question in the affirmative, holding that the "interest in protecting States' dignity and the strong similarities between FMC proceedings and civil litigation...state sovereign immunity bars the FMC from adjudicating complaints filed by a private party against a nonconsenting state."[22] Practically speaking, this holding effectively bars an administrative agency like the FMC from bringing a "private suit" against a state agency like the SCSPA.[23]

The Court began its analysis by examining the history behind the dual sovereignty of the federal and state branches of government.[24] Justice Thomas, writing for the majority, traced the constitutional underpinnings of the notion of state sovereign immunity from the Constitutional Convention until the ratification of the Eleventh Amendment.[25] Justice Thomas ultimately concluded that the Eleventh Amendment was not a definition of the scope of state sovereign immunity, but rather, it was but one example of the early endorsement of state sovereign immunity against private suits.[26]

The next part of the majority's analysis of this issue focused in on the case at bar: whether State sovereign immunity applied to adjudications such as those conducted by the FMC.[27] At this point, Justice Thomas noted that the Supreme Court has historically

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20. *Id.* at 751. The Supreme Court of the United States granted FMC's petition for *certiorari* at 534 U.S. 971 (2001). *Id.*

21. *Id.* at 753. The Supreme Court is primarily focusing on the Eleventh Amendment. *Id.*

22. *Id.* at 760. Justice Thomas delivered the [majority] opinion of the Court, in which Chief Justice Rehnquist and Justices O'Connor, Scalia, and Kenndy joined. *Id.* at 747.

23. *Id.* at 760-61.

24. *Fed. Mar. Comm'n,* 535 U.S. at 751.

25. *Id.* at 751-52. Justice Thomas made a point to stress that constitutional framers, such as Alexander Hamilton, stressed the importance of state sovereignty. *Id.*

26. *Id.* at 753. *See also* Gregory v. Ashcroft, 501 U.S. 452 (1991); Blatchford v. Native Village of Noatak, 501 U.S. 775 (1991).

27. *Fed. Mar. Comm'n,* 535 U.S. at 753. The United States government argued that that the Court of Appeals erred because the Eleventh Amendment only referred to restraints on "judicial power," and *inter alia*, the FMC was not a judiciary body, but rather only an administrative arm of the Executive branch. *Id.*

extended State Sovereign immunity to various other types of proceedings, including private suits pursuant to federal causes of action, suits by foreign nations, and suits by federal corporations.[28] Ultimately, the majority's conclusion is that any interpretation of the types of actions barred by the Eleventh Amendment should be construed broadly.[29]

Justice Thomas acknowledged the fact that there was little history to guide the Court's decision because administrative adjudications were not a reality at the time the framers drafted the Constitution.[30] In *Hans v. Louisiana*[31], the Court held that the Constitution was not intended to raise any proceedings against states that were "unheard of" when the Constitution was drafted.[32] At this point, the majority applied the *Hans* presumption to the type of adjudication in the case at bar, and ultimately concluded that "the similarities between FMC proceedings and civil litigation are overwhelming."[33]

From this analysis, the majority, through Justice Thomas, concluded that the "preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities."[34] Thus, the Court held that the importance of this "dignity" and the fact that FMC proceedings were so similar to civil litigation barred such proceedings as violating state sovereign immunity.[35] The remainder of the majority's opinion addresses various arguments posed by the United States (arguing on FMC's behalf), and accordingly, strikes each of these assertions down.[36] Thus, the majority affirmed the judgment of the court of

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28. *Id.* at 754. *See* Alden v. Maine, 527 U.S. 706 (1999); *Blatchford,* 501 U.S. at 775; Principality of Monaco v. Mississippi, 292 U.S. 313 (1934). *Id.*

29. *Fed. Mar. Comm'n,* 535 U.S. at 754. Justice Thomas pointed out this notion in a direct response to Justice Breyer's "literalist" interpretation. *Id.*

30. *Id.* at 755.

31. 134 U.S. 1 (1890)

32. *Id.* at 756. *See also Hans,* 134 U.S. 1. Justice Thomas briefly traced the history of administrative adjudications and concluded that the earliest example the United States (arguing on FMC's behalf) could find was a case in 1918. *Fed. Mar. Comm'n,* 535 U.S. at 756.

33. *Id.* at 759. Thomas considered various factors in coming to this conclusion, including, but not limited to, the similarity between ALJs and Article III (judiciary) judges, the common features between administrative adjudications and judicial proceedings, and the similarity in rules and procedures adhered to by FMC proceedings. *Id.* at 755-59.

34. *Id.* at 760.

35. *Fed. Mar. Comm'n,* 535 U.S. at 760-61.

36. *Id.* at 762-68. These arguments primarily focused on the distinctions between FMC (administrative) adjudications and civil litigation, including, but not limited to, the limited power of an FMC order, the type of relief that can be granted, and even a limited Commerce Clause argument. *Id.* The Court highlighted these distinctions, but ultimately con-

appeals barring the FMC proceedings pursuant to state sovereign immunity.[37]

Two dissenting opinions were filed in this 5-4 Supreme Court decision.[38] Justice Stevens' dissent focused on two areas where he believed the majority's opinion was faulty: (1) the Court's decision in *Alden v. Maine*[39] and (2) the majority's discussion of state "dignity."[40] First, Justice Stevens asserted that the dissent in cases like *Alden* highlighted the difference between private suits in civil litigation and administrative adjudications such as those conducted by the FMC.[41] Finally, Stevens concluded that the Court's extension of the States "dignity rationale" unreasonably interfered with federal administrative proceedings.[42]

In regards to the first part of his dissent, Justice Stevens discussed how the creation of the Eleventh Amendment was in direct response to the Court's decision in *Chisholm v. Georgia.*[43] Within this discussion, Justice Stevens deviated from the majority's interpretation of legislative history and Eleventh Amendment interpretation in that he concluded that the framers were only concerned with subject matter jurisdiction, and not the loftier objective of preserving state "dignity."[44] Stevens' dissent turns on the belief that the majority affords too much weight to its "dignity" analysis in finding that sovereign immunity extends to administrative adjudications.[45]

Justice Breyer's dissent focused on concerns not highlighted by the Stevens dissent. First, Justice Breyer concluded that adminis-

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cluded that such differences did not change the notion that FMC proceedings threatened the "balance of power embodied in our Constitution." *Id.* at 769.

37. *Id.*

38. *Id.* at 770-88. Justice Stevens filed a dissenting opinion. *Id.* at 770-72 (Stevens, J., dissenting). Justice Breyer filed a dissenting opinion, in which Justices Stevens, Souter, and Ginsburg, joined. *Id.* at 772-88 (Breyer, J., dissenting).

39. 527 U.S. at 706.

40. *Fed. Mar. Comm'n,* 535 U.S. at 770 (Stevens, J., dissenting). Justice Stevens traced the constitutional development of the Eleventh Amendment, and concluded it was passed to protect states from judicial "subject-matter jurisdiction." *Id.* at 771.

41. *Fed. Mar. Comm'n,* 535 U.S. at 772 (Stevens, J., dissenting). Justice Stevens looked at holdings, such as those in *Alden*, 527 U.S. 706, and concluded even the majority in those cases did not contemplate sovereign immunity as applied by the majority in the case at bar. *Id.*

42. *Id.* (Stevens, J., dissenting).

43. *Id.* at 770 (Stevens, J., dissenting). *See* Chisholm v. Georgia, 2 U.S. 419 (1793). In *Chisholm*, the Court held that it had personal jurisdiction over the state defendant and subject-matter jurisdiction over the case. *Fed. Mar. Comm'n*, 535 U.S. at 771 (discussing *Chisholm*).

44. *Id.* at 771-72 (Stevens, J., dissenting).

45. *Id.* at 771 (Stevens, J., dissenting).

trative proceedings, such as those conducted by the FMC, are clearly out of the reach of sovereign immunity in that these proceedings are an Executive branch power and they are authorized by Congress for the administration of disputes in particular areas.[46] This dissent concludes that "[t]he upshot is that this case involves a typical Executive Branch agency exercising Executive Branch powers seeking to determine whether a particular person has violated federal law."[47]

Next, Breyer dissected various points the majority made in its argument.[48] Justice Breyer's dissent concluded that the majority's decision unduly threatened the Executive and Legislative Branches of government, and that states' "dignity" would not be infringed by allowing federal administrative agencies to settle disputes.[49]

Throughout his dissent, Justice Breyer focused on the various constitutional arguments, or lack of arguments rather, for holding that state sovereign immunity bars proceedings such as those assigned to the FMC. His initial analysis focused on the FMC as an "independent" federal agency.[50] Instead of focusing on states' rights, Justice Breyer couched his analysis in the constitutionality of Congress' power to delegate "rulemaking" and "adjudicative powers" to agencies.[51] Justice Breyer extended this focus into an argument that would place Executive Branch functions specifically outside of the scope of the Eleventh Amendment.[52] Ultimately, Justice Breyer stated that the FMC is merely choosing to evaluate complaints through an adjudicative process, but Congress authorizes this process through its delegation of authority to agencies like the FMC.[53]

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46. *Fed. Mar. Comm'n,* 535 U.S. at 772-73 (Breyer, J., dissenting). Justice Breyer went into a discussion of administrative adjudications in general, including the fact that such proceedings are referred to as "quasi legislative" or quasi adjudicative." *Id.*

47. *Id.* at 776 (Breyer, J., dissenting). Breyer opined that the majority should not penalize the FMC for merely "choosing" an ALJ as the means for determining whether a violation of the Shipping Act has occurred. *Id.*

48. *Id.* at 777-88 (Breyer, J., dissenting). The bulk of Breyer's dissent focused in on the Eleventh Amendment's explicit reference to "judicial power." *Id.*

49. *Id.* at 786-87 (Breyer, J., dissenting). Justice Breyer pointed out that he has consistently dissented where the Court has allowed loose interpretation "that restricts far too severely the authority of the Federal government." *Id.*

50. *Id.* at 773 (Breyer, J., dissenting).

51. *Fed. Mar. Comm'n,* 535 U.S. at 772-73 (Breyer, J., dissenting). *See* I.C.C. v. Cincinnati, N.O. & T.P.R. Co., 167 U.S. 479 (1897); Crowell v. Benson, 285 U.S. 22 (1932).

52. *Fed. Mar. Comm'n,* 535 U.S. at 773 (Breyer, J., dissenting).

53. *Id.* at 773-74 (Breyer, J., dissenting).

The next segment of Justice Breyer's constitutional analysis deals with looking at, and debunking, the use of either the Tenth or Eleventh Amendments in application of sovereign immunity against the FMC in the instant case.[54] Justice Breyer looks at the majority's rationale and ultimately argues that Justice Thomas' lofty States' "dignity" theory does not withstand scrutiny, and it leaves the relations between the federal and state governments on lofty grounds.[55] The remainder of this dissenting opinion focuses on pointing out what the dissent views as a weak historical background for holding that sovereign immunity bars the FMC's actions in the case at bar.[56]

Early in the history of our nation, one of the framers of the Constitution, Alexander Hamilton, noted the importance of allowing states to maintain sovereign immunity from suits brought by private individuals as a way to safeguard the states as separate entities from the federal branch of government.[57] This idea was quickly threatened though when the Supreme Court put the notion of state sovereign immunity in limbo with its controversial decision in *Chisholm v. Georgia*.[58]

In *Chisholm,* individual citizens of South Carolina brought an action against the state of Georgia.[59] The plaintiffs in this case argued that an order should be entered against Georgia if it failed to appear in court.[60] The *Chisholm* court ultimately let the action stand, and in doing so, held that individual citizens of one state may sue another state to recover money judgments.[61]

Essentially, the court in *Chisholm*, after examining relevant portions of Article 3, Section 2 of the Constitution, came to three very important conclusions.[62] The first point, which the *Chisholm* court drew from the general words of Article 3, is that it gave the

54. *Id.* at 774-77 (Breyer, J., dissenting). The Eleventh Amendment bars any judicial proceeding against a state by a private individual, and the Tenth Amendment reserves rights to the states not delegated to the federal government. *Id.*

55. *Id.* at 776-78 (Breyer, J., dissenting).

56. *Id.* at 783-88 (Breyer, J., dissenting). Justice Breyer closed his dissent by highlighting his fear that the Court's decision would prove "randomly destructive" in regards to relations between the federal government, states, and the individual citizen. *Id.*

57. *Fed. Mar. Comm'n,* 535 U.S. at 752 (citing THE FEDERALIST NO. 81, at 487-88 (James Madison). (C. Rossiter ed., 1961).).

58. *Id.* at 752 (Breyer, J., dissenting).

59. *Chisholm*, 2 U.S. 419.

60. *Id.* at 429. Justice Iredell delivered the opinion of the majority. *Id.*

61. *Id.* at 449-50. Justice Iredell indicated he had some reservations about the decision, but ultimately the law as it stood at the time required such a result. *Id.*

62. *Id.* at 431. The relevant portions of this part of the Constitution pertain to the judicial powers granted to the Supreme Court of the United States.

Supreme Court exclusive jurisdiction in every civil controversy that arose between two or more states, among the several states, and any actions against ambassadors or officers of the United States.[63] Further, the majority in this case determined that the wording of Article 3 was such as to give the Supreme Court original jurisdiction in every civil controversy arising between a state and citizens of other states and between a state and foreign citizens.[64] Ultimately, the *Chisholm* majority upheld actions against states by citizens of other states solely because the Constitution did not prohibit it, and despite the Court's reservations, in considerations of common law notions of sovereign immunity, about doing so.[65]

The *Chisholm* decision sent shockwaves through the nation, and Congress immediately passed the Eleventh Amendment to overturn the result in *Chisholm*.[66] The Eleventh Amendment stated quite plainly that "[t]he Judicial power of the United States shall not be construed to extend 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."[67] Rather than fully capture the concept of sovereign immunity as it pertains to states' rights, Congress chose only to address those concerns raised by the decision in *Chisholm*.[68] As such, the Eleventh Amendment has been seen as only providing one example of the possible scope of states' sovereign immunity.[69]

Since the passage of the Eleventh Amendment, the Court has taken a different view of state sovereign immunity than it had in *Chisholm*. In *Ex Parte Ayers*,[70] citizens of Virginia brought suit against the state's attorney general and several county attorneys to enjoin said officials from collecting taxes on certain bonds pursuant to a statute passed by the Virginia Legislature.[71] A lower federal court enjoined these state officials from collecting the taxes in dispute, and when the attorney general refused to follow the

63. *Id.* at 431.
64. *Chisholm*, 2 U.S. at 431-32.
65. *Id.* at 449-50. The majority made numerous indications that the Attorney General of the United States supported allowing such suits to stand, and in effect, doing away with sovereign immunity. *Id.*
66. *Fed. Mar. Comm'n*, 535 U.S. at 752-53.
67. *Id.* (quoting the Eleventh Amendment).
68. *Id.* at 753 (quoting Alden v. Maine, 527 U.S. 706).
69. *Id.* (quoting Blatchford v. Native Village of Noatak, 501 U.S. 775).
70. 123 U.S. 443 (1887).
71. *Ayers*, 123 U.S. at 493.

order, he and his subordinates were jailed.[72] Ultimately, the *Ayers* court held that the order was null and void as it was the result of a suit against officials of a state acting in their official capacity.[73] As such, the attorney general and the various county attorneys were shielded from suit by sovereign immunity.[74]

In coming to this conclusion, the Court relied primarily on the assertion that the Eleventh Amendment to the Constitution secures to the state immunity from suit by individual citizens of other states or aliens.[75] The majority opinion went on to explain that "[t]he very object and purpose of the 11th amendment were to prevent the indignity of subjecting a state to the coercive process of judicial tribunals at the instance of private parties."[76] The *Ayers* Court acknowledged that the literal text of the Eleventh Amendment had been interpreted by the Court to extend to officers of a state acting in their official capacity.[77] From this notion, the Court analyzed the case at bar and concluded that the actions of the Attorney General of Virginia and the various county attorneys were actions in official state capacity, and therefore, these individuals were shielded from suit by state sovereign immunity.[78]

This initial expansion of the Eleventh Amendment in regards to who was protected by state sovereign immunity progressed through the years to encompass various types of "suits" covered by this protection.[79] A prominent case in the Court's recognition and arguable expansion of sovereign immunity came in the 1890 case of *Hans v. State of Louisiana*.[80]

In *Hans,* a citizen of Louisiana brought suit against the state of Louisiana to recover certain amounts allegedly owed to him on certain coupons under the state's control.[81] Petitioner, Hans, argued that the Eleventh Amendment only applied to suits brought

72. *Id.* at 493-94.

73. *Id.* at 503-04. Justice Matthews delivered the majority opinion of the court.

74. *Id.* at 507-08. The majority concluded that the action was brought essentially against the state of Virginia, as the act of collecting taxes were done pursuant to a state statute. *Id.*

75. *Ayers,* 123 U.S. at 505-06.

76. *Id.* at 505.

77. *Id.* at 487-88 (quoting Poindexter v. Greenhow, 114 U.S. 270).

78. *Id.* at 507-08 (Field, J., concurring). Justice Field filed a concurring opinion. *Id.*

79. *Fed. Mar. Comm'n,* 535 U.S. at 753-54.

80. 134 U.S. 1.

81. *Id.* at 9. Justice Bradley delivered the majority opinion of the Court. *Id.* Justice Harlan filed a concurring opinion. *Id.*

82. *Id.* at 9-10.

by foreign citizens and citizens of another State.[82] The *Hans* Court ultimately held that the Eleventh Amendment extended to suits brought by citizens of the states being sued.[83]

In coming to this conclusion, Justice Bradley, writing for the majority, began with the recognition that numerous cases since the passage of the Eleventh Amendment clearly prohibited citizens of other states from bringing suit against a state.[84] From this starting point, Justice Bradley went on to harshly criticize the Court's holding in *Chisholm v. Georgia*, and to finally conclude that the Eleventh Amendment should be taken beyond its literal text and applied where the Court deems appropriate and just.[85] This opinion established the presumption that the Constitution was not intended to "raise up" any proceedings against the States that were "anomalous and unheard of when the Constitution was adopted."[86] As such, the Court in *Hans* concluded that the spirit of the Eleventh Amendment disallowed Hans, a citizen of Louisiana, from bringing a suit against the state of Louisiana.[87]

In re State of New York,[88] the Supreme Court was once again faced with an issue of choosing whether or not to expand the breadth of state sovereign immunity as rooted in the Eleventh Amendment.[89] In this case, citizens of New York filed suit against the state to recover damages allegedly caused to their boats while in New York waters.[90] The *New York* Court held state sovereign immunity, as set out in the Eleventh Amendment, shielded the state from liability in admiralty proceedings.[91]

The first part of the Court's analysis in this case focused on the fundamental protection of state sovereign immunity extended to the states through passage of the Eleventh Amendment.[92] From this starting point, Justice Pitney, writing for the majority, dis-

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83. *Id.*

84. *Id.* at 10 (citing Louisiana v. Jumel, 107 U.S. 711 (1882); Hagood v. Southern, 117 U.S. 52 (1886); and Ex Parte Ayers, 123 U.S. 443 (1887)).

85. *Hans*, 134 U.S. at 11-13. Justice Bradley pointed out that Justice Iredell was the only justice to state any reservations about the Court's decision in *Chisholm v. Georgia. Id.*

86. *Fed. Mar. Comm'n*, 535 U.S. at 755 (quoting *Hans*, 134 U.S. at 18).

87. *Hans*, 134 U.S. at 9-10.

88. *In re* State of New York, 256 U.S. 490 (1921).

89. *Fed. Mar. Comm'n*, 535 U.S. at 754 (discussing *New York*, 256 U.S. at 490).

90. *New York*, 256 U.S. at 494-95.

91. *Id.* at 497. The suit was brought specifically against the superintendent of the New York Department of Public Works, and the Court ultimately determined it was a suit against him in his official capacity as an agent of the state. *Id.*

92. *Id.* at 497.

93. *Hans*, 134 U.S. at 1.

cussed how cases like *Hans v. Louisiana*[93] stood for the proposition that the Eleventh Amendment would be expanded from its literal text to cover any proceedings deemed as "suits" by the Court.[94] The majority opinion concluded this analysis stating, "it seems to us equally clear that it [the Eleventh Amendment] cannot with propriety be construed to leave open for a suit against a State in the admiralty jurisdiction by individuals, whether its own citizens or not."[95]

This seeming extension of the doctrine of state sovereign immunity continued in the Supreme Court's 1934 decision in *Principality of Monaco v. State of Mississippi*.[96] In this case, the Principality of Monaco sought leave to bring suit against the State of Mississippi in regards to bonds issued by the state that were allegedly the sole property of Monaco.[97] The *Monaco* Court denied this relief, and in doing so, held that the Eleventh Amendment protection of sovereign immunity should be imputed to cover actions brought by foreign states/entities.[98]

The unanimous opinion in this case focused on looking at past cases that upheld sovereign immunity despite the fact that such suits were not specifically prohibited by the literal text of the Eleventh Amendment.[99] The *Monaco* Court rested its holding on the Supreme Court's manifested precedent that established that any sovereign immunity analysis cannot rest on a mere literal application of the Eleventh Amendment.[100] Applying this presumption to the case at bar, the Court concluded that state sovereign immunity extended to shield states from suits brought by foreign states/countries.[101]

In more modern Supreme Court cases, the Court has been apt to discuss the centrality of state sovereignty as the very essence of the founding of the United States.[102] In *Gregory v. Ashcroft,*[103] a Missouri state judge sued the Governor of Missouri to challenge

94. *New York,* 256 U.S. at 497-98.
95. *Id.* at 498.
96. 292 U.S. 313. Chief Justice Hughes wrote the unanimous opinion of the Court. *Id.*
97. *Id.* at 317.
98. *Id.* at 331-32.
99. *Id.* at 322 (citing *Hans,* 134 U.S. 1; Duhne v. New Jersey, 251 U.S. 311 (1920); and Smith v. Reeves, 178 U.S. 436 (1900)).
100. *Id.* at 322.
101. *Principality of Monaco,* 292 U.S. at 331-32.
102. *See Fed. Mar. Comm'n,* 535 U.S. at 755.
103. 501 U.S. 452 (1991). Justice O'Connor delivered the majority opinion of the Court. *Id.*
104. *Gregory,* 501 U.S. at 455-56.

the mandatory retirement provision as it was set out in Missouri's Constitution.[104] Justice O'Connor, writing for the majority, held that the case should be dismissed because it pertained to a power reserved to the sovereign states.[105] Although this case did not specifically turn on an issue of sovereign immunity, it goes into great detail to discuss the importance of separating the federal government from the state government to maintain our country's "dual sovereignty."[106]

The Supreme Court extended this discussion, and more pointedly referred to the importance of the notion of state sovereign immunity in *Blatchford v. Native Village of Noatak.*[107] In this case, residents of Alaskan Native villages brought an action against the State's Commissioner of Community and Regional Affairs, specifically challenging his implementation of the state's revenue-sharing statute.[108] Justice Scalia's opinion concluded that the suit was barred by the Eleventh Amendment's shield of state sovereign immunity.[109] In effect, this decision expanded sovereign immunity to shield states from actions brought by an Indian tribe.[110] Throughout the majority's analysis in *Blatchford*[111], the Court relied on the theme of state sovereign immunity as being integral to the very framework of our country's government.[112] Scalia's analysis ended with a blanket conclusion of the Supreme Court's general mindset since its decision in *Hans v. Louisiana,*[113] "that the States entered the federal system with their sovereignty intact" and "that the judicial authority in Article III is limited by this sovereignty."[114] Thus, Scalia's opinion sees this theme as justification for the expansion and upholding of state sovereign immunity beyond the bounds of the literal text of the Eleventh Amendment.[115]

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105. *Id.*
106. *Gregory,* 501 U.S. at 452 (discussed in *Fed. Mar. Comm'n,* 535 U.S. at 751).
107. 501 U.S. 775 (1991). Justice Scalia delivered the majority opinion of the Court.
108. *Blatchford,* 501 U.S. at 777-78.
109. *Id.* at 787-88 (Blackmun, J., dissenting). Justice Blackmun filed a dissenting opinion. *Id.*
110. *Id.* at 785-86 (Blackmun, J., dissenting).
111. *Fed. Mar. Comm'n,* 535 U.S. at 751-52 (quoting *Blatchford,* 501 U.S. at 775).
112. *Hans,* 134 U.S. at 1.
113. *Blatchford,* 501 U.S. at 779.
114. *Id.*
115. *Id.* at 779-81.
116. 527 U.S. 706 (1999). Justice Kennedy delivered the opinion of the Court. *Id.*
117. *Alden,* 527 U.S. at 711-12. The Fair Labor Standards Act is a federal statute. 29 U.S.C. §201 *et seq.* (1994).

In 1999, the Supreme Court solidified the continued vitality and expansion of sovereign immunity in *Alden v. Maine*.[116] In *Alden,* a group of state probation officers brought an action against the State of Maine for alleged violations of the Fair Labor Standards Acts ("FLSA").[117] The Supreme Court, through Justice Kennedy, dismissed the action, holding Congress could not subject a state to suit by statute without the state's express or implied consent.[118]

In coming to the above holding, the majority went through an extensive and detailed examination of state sovereign immunity and Eleventh Amendment interpretations therein.[119] The first relevant point the *Alden* majority established was that state sovereign immunity is neither derived from, nor limited by, the literal text of the Eleventh Amendment.[120] Next, the opinion stressed that state sovereign immunity is a fundamental aspect of the sovereign identity that states had even prior to the inception of the Constitution.[121] Justice Kennedy's analysis then highlighted the majority's belief that the federal system was established by the Constitution with the specific objective of preserving state sovereignty.[122] This portion of the Court's opinion then came to the conclusion that the Constitution was drafted, even before the inclusion of the Eleventh Amendment, with the idea that the states "are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not full authority, of sovereignty."[123] Based on these various assertions and understandings of the Constitution, before and after the Eleventh Amendment, the *Alden* Court came to the conclusion that Congress does not have the power through the FLSA to compel non-consenting states to face private suits.[124]

Keeping the aforementioned history in mind, the Court's holding in *Federal Maritime Commission* appears to be a logical extension of the Court's continued expansion of Eleventh Amendment

118. *Alden,* 527 U.S. at 712.
119. *Id.* at 720-757.
120. *Id.* at 713.
121. *Id.* at 713-714.
122. *Alden,* 527 U.S. at 714 (quoting THE FEDERALIST NO. 39, p. 245 (James Madison). (C. Rossiter ed., 1961).).
123. *Id.* at 715. The majority opinion indicates that exceptions to immunity apply where states expressly or impliedly consent to suit being brought against them. *Id.*
124. *Id.* at 712.
125. *Fed. Mar. Comm'n,* 535 U.S. at 760-65.
126. *Id.* at 770-72 (Stevens, J., dissenting); *Id.* at 772-88 (Breyer, J., dissenting).
127. *Id.* at 768-69.

protection since Congress' enactment of the Eleventh Amendment. Throughout the vast history of Eleventh Amendment considerations, the majority of the Supreme Court continues to recognize that the Eleventh Amendment is only a starting point, rather than an ending point, for protecting the integrity of the states. By barring private individuals from bringing suit through a federal administrative agency, the majority further solidifies the sovereign immunity reserved to the states to preserve their collective status as s separate entity from the federal government.

The Court's opinion in *Federal Maritime Commission* should not be construed as overreaching the intent of the Eleventh Amendment. The majority, through Justice Thomas, makes it clear that the ultimate determinant factor in the Court's decision is that it considers the Federal Maritime Commission's administrative proceeding as being a "suit" barred by state sovereign immunity.[125] It is important to note that the dissenting opinions never disagree with the majority's view of expanding the Eleventh Amendment beyond its literal text, but rather, the dissents focus on arguing the proceedings, overseen by the Federal Maritime Commission, should not be classified as the type of "suit" state sovereign immunity would bar.[126]

From the decision in this case, it is clear that state sovereign immunity will continue to be an important shield raised to protect states from suits by private individuals. *Federal Maritime Commission*[127] extends this protection to situations where private individuals seek redress through federal administrative agencies. Only time, and future court decisions, will tell how this will affect other government agencies. One thing is certain: the current majority on the Supreme Court of the United States clearly puts dual sovereignty above any administrative concerns. As long as the proceeding is considered a "suit" by the majority, it would seem states can successfully invoke sovereign immunity, as recognized and extended through the Eleventh Amendment.

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