PENNHURST STATE SCHOOL & HOSPITAL v. HALDERMAN

Supreme Court of the United States, 1984.
465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67.

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a federal court may award injunctive relief against state officials on the basis of state law.

I

This litigation, here for the second time, concerns the conditions of care at petitioner Pennhurst State School and Hospital, a Pennsylvania institution for the care of the mentally retarded. Although the litigation's history is set forth in detail in our prior opinion, it is necessary for purposes of this decision to review that history.

This suit originally was brought in 1974 by respondent Terri Lee Halderman, a resident of Pennhurst, in the District Court for the Eastern District of Pennsylvania. Ultimately, plaintiffs included a class consisting of all persons who were or might become residents of Pennhurst; the Pennsylvania Association for Retarded Citizens (PARC); and the United States. Defendants were Pennhurst and various Pennhurst officials; the Pennsylvania Department of Public Welfare and several of its officials; and various county commissioners, county mental retardation administrators, and other officials of five Pennsylvania counties surrounding Pennhurst. Respondents' amended complaint charged that conditions at Pennhurst violated the class members' rights under the Eighth and Fourteenth Amendments; § 504 of the Rehabilitation Act of 1973, the Developmentally Disabled Assistance and Bill of Rights Act, [42 U.S.C. § 6010] and the Pennsylvania Mental Health and Mental Retardation Act of 1966 (the "MH/MR Act"). Both damages and injunctive relief were sought.

In 1977, following a lengthy trial, the District Court rendered its decision. As noted in our prior opinion, the court's findings were undisputed: "Conditions at Pennhurst are not only dangerous, with the residents often physically abused or drugged by staff members, but also inadequate for the 'habilitation' of the retarded. Indeed, the court found that the physical, intellectual, and emotional skills of some residents have deteriorated at Pennhurst." The District Court held that these conditions violated each resident's right to "minimally adequate habilitation" under the Due Process Clause and the MH/MR Act, "freedom from harm" under the Eighth and Fourteenth Amendments, and "nondiscriminatory habilitation" under the Equal Protection Clause and § 504 of the Rehabilitation Act. Furthermore, the court found that "due process demands that if a state undertakes the habilitation of a retarded person, it must do so in the *least restrictive setting* consistent with that individual's habilitative needs." ([E]mphasis added). After concluding that the large size of Pennhurst prevented it from providing the necessary habili-

tation in the least restrictive environment, the court ordered "that immediate steps be taken to remove the retarded residents from Pennhurst." Petitioners were ordered "to provide suitable community living arrangements" for the class members, and the court appointed a Special Master "with the power and duty to plan, organize, direct, supervise and monitor the implementation of this and any further Orders of the Court."

The Court of Appeals for the Third Circuit affirmed most of the District Court's judgment. It agreed that respondents had a right to habilitation in the least restrictive environment, but it grounded this right solely on the "bill of rights" provision in the Developmentally Disabled Assistance and Bill of Rights Act. The court did not consider the constitutional issues or § 504 of the Rehabilitation Act, and while it affirmed the District Court's holding that the MH/MR Act provides a right to adequate habilitation, the court did not decide whether that state right encompassed a right to treatment in the least restrictive setting.

On the question of remedy, the Court of Appeals affirmed except as to the District Court's order that Pennhurst be closed. The court observed that some patients would be unable to adjust to life outside an institution, and it determined that none of the legal provisions relied on by plaintiffs precluded institutionalization. It therefore remanded for "individual determinations by the [District Court], or by the Special Master, as to the appropriateness of an improved Pennhurst for each such patient," guided by "a presumption in favor of placing individuals in [community living arrangements]."

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This Court reversed the judgment of the Court of Appeals, finding that 42 U.S.C. § 6010 did not create any substantive rights. We remanded the case to the Court of Appeals to determine if the remedial order could be supported on the basis of state law, the Constitution, or § 504 of the Rehabilitation Act. We also remanded for consideration of whether any relief was available under other provisions of the Developmentally Disabled Assistance and Bill of Rights Act.

On remand the Court of Appeals affirmed its prior judgment in its entirety. It determined that in a recent decision the Supreme Court of Pennsylvania had "spoken definitively" in holding that the MH/MR Act required the State to adopt the "least restrictive environment" approach for the care of the mentally retarded. The Court of Appeals concluded that this state statute fully supported its prior judgment, and therefore did not reach the remaining issues of federal law. It also rejected petitioners' argument that the Eleventh Amendment barred a federal court from considering this pendent state-law claim. The court noted that the Amendment did not bar a federal court from granting prospective injunctive relief against state officials on the basis of federal claims, and concluded that the same result obtained with respect to a pendent state-law claim. It reasoned that because *Siler v. Louisville & Nashville R. Co.,* an important case in the development of the doctrine of pendent jurisdic-

tion, also involved state officials, "there cannot be * * * an Eleventh Amendment exception to that rule."[b] Finally, the court rejected petitioners' argument that it should have abstained from deciding the state-law claim under principles of comity, and refused to consider petitioners' objections to the District Court's use of a special master. Three judges dissented in part, arguing that under principles of federalism and comity the establishment of a special master to supervise compliance was an abuse of discretion.

We granted certiorari and now reverse and remand.

II

Petitioners raise three challenges to the judgment of the Court of Appeals: (i) the Eleventh Amendment prohibited the District Court from ordering state officials to conform their conduct to state law; (ii) the doctrine of comity prohibited the District Court from issuing its injunctive relief; and (iii) the District Court abused its discretion in appointing two masters to supervise the decisions of state officials in implementing state law. We need not reach the latter two issues, for we find the Eleventh Amendment challenge dispositive.

A

* * *

The [Eleventh] Amendment's language overruled the particular result in *Chisholm,* but this Court has recognized that its greater significance lies in its affirmation that the fundamental principle of sovereign immunity limits the grant of judicial authority in Art. III. Thus, in *Hans v. Louisiana* the Court held that, despite the limited terms of the Eleventh Amendment, a federal court could not entertain a suit brought by a citizen against his own State. After reviewing the constitutional debates concerning the scope of Art. III, the Court determined that federal jurisdiction over suits against unconsenting States "was not contemplated by the Constitution when establishing the judicial power of the United

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[b] [AUTHORS' NOTE] The Third Circuit explained its rejection of the Eleventh Amendment argument as follows:

> [T]he defendants urge that we may not rely on that Act as support for the order appealed from because the Eleventh Amendment is a bar to federal court consideration of that claim. The contention that neither the district court, this court, nor the Supreme Court has jurisdiction to consider plaintiffs' state law claims has not previously been advanced in this action, and from the dearth of authorities cited in its support, not previously advanced anywhere.
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> [E]ven if the Commonwealth's unique interpretation of the pendent jurisdiction rule as inapplicable to suits against state offers had any substance, the Court's express mandate that we reconsider the state law issue appears to preclude its adoption in this case by this court.

States." In short, the principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art. III:

> That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that *the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given:* not one brought by citizens of another State, or by citizens or subjects of a foreign State, because of the Eleventh Amendment; and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification.

([E]mphasis added).[8]

A sovereign's immunity may be waived, and the Court consistently has held that a State may consent to suit against it in federal court. We have insisted, however, that the State's consent be unequivocally expressed. Similarly, although Congress has power with respect to the rights protected by the Fourteenth Amendment to abrogate the Eleventh Amendment immunity, we have required an unequivocal expression of congressional intent to "overturn the constitutionally guaranteed immunity of the several States." Our reluctance to infer that a State's immunity from suit in the federal courts has been negated stems from recognition of the vital role of the doctrine of sovereign immunity in our federal system. A State's constitutional interest in immunity encompasses not merely whether it may be sued, but where it may be sued. As Justice Marshall well has noted, "[b]ecause of the problems of federalism inherent in making one sovereign appear against its will in the courts of the other, a restriction upon the exercise of the federal judicial power has long been considered to be appropriate in a case such as this." Accordingly, in deciding this case we must be guided by "[t]he principles of federalism that inform Eleventh Amendment doctrine."

B

This Court's decisions thus establish that "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another state." There may be a question, however, whether a particular suit in fact is a suit against a State. It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by

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[8] The limitation deprives federal courts of any jurisdiction to entertain such claims, and thus may be raised at any point in a proceeding. "The Eleventh Amendment declares a policy and sets forth an explicit limitation on federal judicial power of such compelling force that this Court will consider the issue arising under this Amendment * * * even though urged for the first time in this Court."

the Eleventh Amendment. This jurisdictional bar applies regardless of the nature of the relief sought. ("Expressly applying to suits in equity as well as at law, the Amendment necessarily embraces demands for the enforcement of equitable rights and the prosecution of equitable remedies when these are asserted and prosecuted by an individual against a State").

When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself. Although prior decisions of this Court have not been entirely consistent on this issue, certain principles are well established. The Eleventh Amendment bars a suit against state officials when "the state is the real, substantial party in interest." Thus, "[t]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." And, as when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief.

The Court has recognized an important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State. * * * [In *Ex parte Young,*] [t]his Court held that the Eleventh Amendment did not prohibit issuance of an injunction. The theory of the case was that an unconstitutional enactment is "void" and therefore does not "impart to [the officer] any immunity from responsibility to the supreme authority of the United States." Since the State could not authorize the action, the officer was "stripped of his official or representative character and [was] subjected to the consequences of his official conduct."

While the rule permitting suits alleging conduct contrary to "the supreme authority of the United States" has survived, the theory of *Young* has not been provided an expansive interpretation. Thus, in *Edelman v. Jordan,* the Court emphasized that the Eleventh Amendment bars some forms of injunctive relief against state officials for violation of federal law. In particular, *Edelman* held that when a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief. Under the theory of *Young,* such a suit would not be one against the State since the federal-law allegation would strip the state officer of his official authority. Nevertheless, retroactive relief was barred by the Eleventh Amendment.

III

With these principles in mind, we now turn to the question whether the claim that petitioners violated state law in carrying out their official duties at Pennhurst is one against the State and therefore barred by the Eleventh Amendment. Respondents advance two principal arguments in support of the judgment below. First, they contend that under the doctrine of *Edelman v. Jordan,* the suit is not against the State because the

courts below ordered only prospective injunctive relief. Second, they assert that the state-law claim properly was decided under the doctrine of pendent jurisdiction. Respondents rely on decisions of this Court awarding relief against state officials on the basis of a pendent state-law claim.

A

We first address the contention that respondents' state-law claim is not barred by the Eleventh Amendment because it seeks only prospective relief as defined in *Edelman v. Jordan.* The Court of Appeals held that if the judgment below rested on federal law, it could be entered against petitioner state officials under the doctrine established in *Edelman* and *Young* even though the prospective financial burden was substantial and ongoing. The court assumed, and respondents assert, that this reasoning applies as well when the official acts in violation of state law. This argument misconstrues the basis of the doctrine established in *Young* and *Edelman.*

As discussed above, the injunction in *Young* was justified, notwithstanding the obvious impact on the State itself, on the view that sovereign immunity does not apply because an official who acts unconstitutionally is "stripped of his official or representative character," *Young.* This rationale, of course, created the "well-recognized irony" that an official's unconstitutional conduct constitutes state action under the Fourteenth Amendment but not the Eleventh Amendment. Nonetheless, the *Young* doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to "the supreme authority of the United States." As Justice Brennan has observed, "*Ex parte Young* was the culmination of efforts by this Court to harmonize the principles of the Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution." Our decisions repeatedly have emphasized that the *Young* doctrine rests on the need to promote the vindication of federal rights.

The Court also has recognized, however, that the need to promote the supremacy of federal law must be accommodated to the constitutional immunity of the States. This is the significance of *Edelman v. Jordan.* We recognized that the prospective relief authorized by *Young* "has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely a shield, for those whom they were designed to protect." But we declined to extend the fiction of *Young* to encompass retroactive relief, for to do so would effectively eliminate the constitutional immunity of the States. Accordingly, we concluded that although the difference between permissible and impermissible relief "will not in many instances be that between day and night," an award of retroactive relief necessarily " 'fall[s] afoul of the Eleventh Amendment if that basic constitutional provision is to be conceived of as having any present force.' " In sum[,] *Edelman*'s distinction between prospective and retroactive relief fulfills the underlying purpose of *Ex parte Young* while at the same time preserving to an important degree the constitu-

tional immunity of the States.

This need to reconcile competing interests is wholly absent, however, when a plaintiff alleges that a state official has violated state law. In such a case the entire basis for the doctrine of *Young* and *Edelman* disappears. A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment. We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law.

B

The contrary view of Justice Stevens' dissent rests on fiction, is wrong on the law, and, most important, would emasculate the Eleventh Amendment. Under his view, an allegation that official conduct is contrary to a state statute would suffice to override the State's protection under that Amendment. The theory is that such conduct is contrary to the official's "instructions," and thus *ultra vires* his authority. Accordingly, official action based on a reasonable interpretation of any statute might, if the interpretation turned out to be erroneous, provide the basis for injunctive relief against the actors in their official capacities. In this case, where officials of a major state department, clearly acting within the scope of their authority, were found not to have improved conditions in a state institution adequately under state law, the dissent's result would be that the State itself has forfeited its constitutionally provided immunity.

The theory is out of touch with reality. The dissent does not dispute that the general criterion for determining when a suit is in fact against the sovereign is the effect of the relief sought. According to the dissent, the relief sought and ordered here—which in effect was that a major state institution be closed and smaller state institutions be created and expansively funded—did not operate against the State. This view would make the law a pretense. No other court or judge in the ten-year history of this litigation has advanced this theory. And the dissent's underlying view that the named defendants here were acting beyond and contrary to their authority cannot be reconciled with reality—or with the record. The District Court in this case held that the individual defendants "acted in the utmost good faith * * * *within the sphere of their official responsibilities,*" and therefore were entitled to immunity from damages. ([E]mphasis added). * * * As a result, all the relief ordered by the courts below was institutional and official in character. To the extent there was a violation of state law in this case, it is a case of the State

itself not fulfilling its legislative promises.[17]

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Thus, while there is language in the early cases that advances the authority-stripping theory advocated by the dissent, this theory had never been pressed as far as Justice Stevens would do in this case. And when the expansive approach of the dissent was advanced, this Court plainly and explicitly rejected it. In *Larson v. Domestic & Foreign Commerce Corp.,* the Court was faced with the argument that an allegation that a government official committed a tort sufficed to distinguish the official from the sovereign. Therefore, the argument went, a suit for an injunction to remedy the injury would not be against the sovereign. The Court rejected the argument, noting that it would make the doctrine of sovereign immunity superfluous. A plaintiff would need only to "claim an invasion of his legal rights" in order to override sovereign immunity. In the Court's view, the argument "confuse[d] the doctrine of sovereign immunity with the requirement that a plaintiff state a cause of action." The dissent's theory suffers a like confusion. Under the dissent's view, a plaintiff would need only to claim a denial of rights protected or provided by statute in order to override sovereign immunity. Except in rare cases it would make the constitutional doctrine of sovereign immunity a nullity.

The crucial element of the dissent's theory was also the plaintiff's central contention in *Larson.* It is that "[a] sovereign, like any other principal, cannot authorize its agent to violate the law," so that when the agent does so he cannot be acting for the sovereign. * * * It is a view of agency law that the Court in *Larson* explicitly rejected. *Larson* thus made clear that, at least insofar as injunctive relief is sought, an error of law by state officers acting in their official capacities will not suffice to override the sovereign immunity of the State where the relief effectively is against it. Any resulting disadvantage to the plaintiff was "outweigh[ed]" by "the necessity of permitting the Government to carry out its functions unhampered by direct judicial intervention." If anything, this public need is even greater when questions of federalism are in-

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[17] The dissent appears to be confused about our argument here * * *. It is of course true, as the dissent says, that the finding below that petitioners acted in good faith and therefore were immune from damages does not affect whether an injunction might be issued against them by a court possessed of jurisdiction. The point is that the courts below did not have jurisdiction because the relief ordered so plainly ran against the State. * * * It is evident that the dissent would vest in federal courts authority, acting solely under state law, to ignore the sovereignty of the States that the Eleventh Amendment was adopted to protect. Article III confers no jurisdiction on this Court to strip an explicit Amendment of the Constitution of its substantive meaning.

Contrary to the dissent's view, an injunction based on federal law stands on very different footing, particularly in light of the Civil War Amendments. As we have explained, in such cases this Court is vested with the constitutional duty to vindicate "the supreme authority of the United States." There is no corresponding mandate to enforce state law.

volved.[23]

The dissent in *Larson* made many of the arguments advanced by Justice Stevens' dissent today, and asserted that many of the same cases were being overruled or ignored. Those arguments were rejected, and the cases supporting them are moribund.

The reason is obvious. Under the dissent's view of the *ultra vires* doctrine, the Eleventh Amendment would have force only in the rare case in which a plaintiff foolishly attempts to sue the State in its own name, or where he cannot produce some state statute that has been violated to his asserted injury. Thus, the *ultra vires* doctrine, a narrow and questionable exception, would swallow the general rule that a suit is against the State if the relief will run against it. That result gives the dissent no pause presumably because of its view that the Eleventh Amendment and sovereign immunity " 'undoubtedly ru[n] counter to modern democratic notions of the moral responsibility of the State.' " This argument has not been adopted by this Court. Moreover, the argument substantially misses the point with respect to Eleventh Amendment sovereign immunity. As Justice Marshall has observed, the Eleventh Amendment's restriction on the federal judicial power is based in large part on "the problems of federalism inherent in making one sovereign appear against its will in the courts of the other." The dissent totally rejects the Eleventh Amendment's basis in federalism.

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[23] As we have discussed, *Edelman v. Jordan* also shows that the broad *ultra vires* theory enunciated in *Young* and in some of the cases quoted by the dissent has been discarded. In *Edelman,* although the State officers were alleged to be acting contrary to law, and therefore should have been "stripped of their authority" under the theory of the dissent, we held the action to be barred by the Eleventh Amendment. The dissent attempts to distinguish *Edelman* on the ground that the retroactive relief there, unlike injunctive relief, does not run only against the agent. To say that injunctive relief against State officials acting in their official capacity does not run against the State is to resort to the fictions that characterize the dissent's theories. Unlike the English sovereign perhaps, an American State can act only through its officials. It is true that the Court in *Edelman* recognized that retroactive relief often, or at least sometimes, has a greater impact on the State treasury than does injunctive relief, but there was no suggestion that damages alone were thought to run against the State while injunctive relief did not.

We have noted that the authority-stripping theory of *Young* is a fiction that has been narrowly construed. In this light, it may well be wondered what principled basis there is to the *ultra vires* doctrine as it was set forth in *Larson* and *Treasure Salvors.* That doctrine excepts from the Eleventh Amendment bar suits against officers acting in their official capacities but without any statutory authority, even though the relief would operate against the State. At bottom, the doctrine is based on the fiction of the *Young* opinion. The dissent's method is merely to take this fiction to its extreme. While the dissent's result may be logical, in the sense that it is difficult to draw principled lines short of that end, its view would virtually eliminate the constitutional doctrine of sovereign immunity. It is a result from which the Court in *Larson* wisely recoiled. We do so again today. For present purposes, however, we do no more than question the continued vitality of the *ultra vires* doctrine in the Eleventh Amendment context. We hold only that to the extent the doctrine is consistent with the analysis of this opinion, it is a very narrow exception.

C

The reasoning of our recent decisions on sovereign immunity thus leads to the conclusion that a federal suit against state officials on the basis of state law contravenes the Eleventh Amendment when—as here—the relief sought and ordered has an impact directly on the State itself. In reaching a contrary conclusion, the Court of Appeals relied principally on a separate line of cases dealing with pendent jurisdiction. The crucial point for the Court of Appeals was that this Court has granted relief against state officials on the basis of a pendent state-law claim. We therefore must consider the relationship between pendent jurisdiction and the Eleventh Amendment.

This Court long has held generally that when a federal court obtains jurisdiction over a federal claim, it may adjudicate other related claims over which the court otherwise would not have jurisdiction. The Court also has held that a federal court may resolve a case solely on the basis of a pendent state-law claim, and that in fact the court usually should do so in order to avoid federal constitutional questions. But pendent jurisdiction is a judge-made doctrine inferred from the general language of Art. III. The question presented is whether this doctrine may be viewed as displacing the explicit limitation on federal jurisdiction contained in the Eleventh Amendment.

As the Court of Appeals noted, in *Siler* and subsequent cases concerning pendent jurisdiction, relief was granted against state officials on the basis of state-law claims that were pendent to federal constitutional claims. In none of these cases, however, did the Court so much as mention the Eleventh Amendment in connection with the state-law claim. Rather, the Court appears to have assumed that once jurisdiction was established over the federal-law claim, the doctrine of pendent jurisdiction would establish power to hear the state-law claims as well. The Court has not addressed whether that doctrine has a different scope when applied to suits against the State.

[Prior] cases thus did not directly confront the question before us. "[W]hen questions of jurisdiction have been passed on in prior decisions *sub silentio,* this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us." We therefore view the question as an open one.

As noted, the implicit view of these cases seems to have been that once jurisdiction is established on the basis of a federal question, no further Eleventh Amendment inquiry is necessary with respect to other claims raised in the case. This is an erroneous view and contrary to the principles established in our Eleventh Amendment decisions. "The Eleventh Amendment is an explicit limitation on the judicial power of the United States." It deprives a federal court of power to decide certain claims against States that otherwise would be within the scope of Art. III's grant of jurisdiction. For example, if a lawsuit against state officials under 42 U.S.C. § 1983 alleges a constitutional claim, the federal court is

barred from awarding damages against the state treasury even though the claim arises under the Constitution. Similarly, if a § 1983 action alleging a constitutional claim is brought directly against a State, the Eleventh Amendment bars a federal court from granting any relief on that claim. The Amendment thus is a specific constitutional bar against hearing even federal claims that otherwise would be within the jurisdiction of the federal courts.

This constitutional bar applies to pendent claims as well. As noted above, pendent jurisdiction is a judge-made doctrine of expediency and efficiency derived from the general Art. III language conferring power to hear all "cases" arising under federal law or between diverse parties. The Eleventh Amendment should not be construed to apply with less force to this implied form of jurisdiction than it does to the explicitly granted power to hear federal claims. The history of the adoption and development of the Amendment confirms that it is an independent limitation on all exercises of Art. III power: "the entire judicial power granted by the Constitution does not embrace authority to entertain suit brought by private parties against a State without consent given." If we were to hold otherwise, a federal court could award damages against a State on the basis of a pendent claim. Our decision in *Edelman v. Jordan* makes clear that pendent jurisdiction does not permit such an evasion of the immunity guaranteed by the Eleventh Amendment. We there held that "the District Court was correct in exercising pendent jurisdiction over [plaintiffs'] statutory claim," but then concluded that the Eleventh Amendment barred an award of retroactive relief on the basis of that pendent claim.

In sum, * * * neither pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment. A federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh Amendment. We concluded above that a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment. We now hold that this principle applies as well to state-law claims brought into federal court under pendent jurisdiction.

D

Respondents urge that application of the Eleventh Amendment to pendent state-law claims will have a disruptive effect on litigation against state officials. They argue that the "considerations of judicial economy, convenience, and fairness to litigants" that underlie pendent jurisdiction, counsel against a result that may cause litigants to split causes of action between state and federal courts. They also contend that the policy of avoiding unnecessary constitutional decisions will be contravened if plaintiffs choose to forgo their state-law claims and sue only in federal court or, alternatively, that the policy of *Ex parte Young* will be hindered if plaintiffs choose to forgo their right to a federal forum and bring all of their claims in state court.

It may be that applying the Eleventh Amendment to pendent claims results in federal claims being brought in state court, or in bifurcation of claims. That is not uncommon in this area. Under *Edelman v. Jordan,* a suit against state officials for retroactive monetary relief, whether based on federal or state law, must be brought in state court. Challenges to the validity of state tax systems under 42 U.S.C. § 1983 also must be brought in state court. Under the abstention doctrine, unclear issues of state law commonly are split off and referred to the state courts.

In any case, the answer to respondents' assertions is that such considerations of policy cannot override the constitutional limitation on the authority of the federal judiciary to adjudicate suits against a State. That a litigant's choice of forum is reduced "has long been understood to be a part of the tension inherent in our system of federalism."

IV

Respondents contend that, regardless of the applicability of the Eleventh Amendment to their state claims against petitioner state officials, the judgment may still be upheld against petitioner county officials. We are not persuaded. Even assuming that these officials are not immune from suit challenging their actions under the MH/MR Act,[34] it is clear that without the injunction against the state institutions and officials in this case, an order entered on state-law grounds necessarily would be limited. The relief substantially concerns Pennhurst, an arm of the State that is operated by state officials. Moreover, funding for the county mental retardation programs comes almost entirely from the State, and the costs of the masters have been borne by the State. Finally, the MH/MR Act contemplates that the state and county officials will cooperate in operating mental retardation programs. In short, the present judgment could not be sustained on the basis of the state-law obligations of petitioner county officials. Indeed, any relief granted against the county officials on the basis of the state statute would be partial and incomplete at best. Such an ineffective enforcement of state law would not appear to serve the purposes of efficiency, convenience, and fairness that must inform the exercise of pendent jurisdiction.

V

The Court of Appeals upheld the judgment of the District Court

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[34] We have held that the Eleventh Amendment does not apply to "counties and similar municipal corporations." At the same time, we have applied the Amendment to bar relief against county officials "in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself." The Courts of Appeals are in general agreement that a suit against officials of a county or other governmental entity is barred if the relief obtained runs against the State. Given that the actions of the county commissioners and mental-health administrators are dependent on funding from the State, it may be that relief granted against these county officials, when exercising their functions under the MH/MR Act, effectively runs against the State. We need not decide this issue in light of our disposition above.

solely on the basis of Pennsylvania's MH/MR Act. We hold that these federal courts lacked jurisdiction to enjoin petitioner state institutions and state officials on the basis of this state law. The District Court also rested its decision on the Eighth and Fourteenth Amendments and § 504 of the Rehabilitation Act of 1973. On remand the Court of Appeals may consider to what extent, if any, the judgment may be sustained on these bases. The court also may consider whether relief may be granted to respondents under the Developmentally Disabled Assistance and Bill of Rights Act. The judgment of the Court of Appeals is reversed, and the case remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BRENNAN, dissenting.

I fully agree with Justice Stevens' dissent. Nevertheless, I write separately to explain that in view of my continued belief that the Eleventh Amendment "bars federal court suits against States only by citizens of other States," I would hold that petitioners are not entitled to invoke the protections of that Amendment in this federal court suit by citizens of Pennsylvania. In my view, *Hans v. Louisiana,* upon which the Court today relies, recognized that the Eleventh Amendment, by its terms, erects a limited constitutional barrier prohibiting suits against States by citizens of another State; the decision, however, "accords to nonconsenting States only a nonconstitutional immunity from suit by its own citizens." To the extent that such nonconstitutional sovereign immunity may apply to petitioners, I agree with Justice Stevens that since petitioners' conduct was prohibited by state law, the protections of sovereign immunity do not extend to them.

JUSTICE STEVENS, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

This case has illuminated the character of an institution. The record demonstrates that the Pennhurst State School and Hospital has been operated in violation of state law. In 1977, after three years of litigation, the District Court entered detailed findings of fact that abundantly support that conclusion. In 1981, after four more years of litigation, this Court ordered the United States Court of Appeals for the Third Circuit to decide whether the law of Pennsylvania provides an independent and adequate ground which can support the District Court's remedial order. The Court of Appeals, sitting en banc, unanimously concluded that it did. This Court does not disagree with that conclusion. Rather, it reverses the Court of Appeals because it did precisely what this Court ordered it to do; the only error committed by the Court of Appeals was its faithful obedience to this Court's command.

This remarkable result is the product of an equally remarkable misapplication of the ancient doctrine of sovereign immunity. In a completely unprecedented holding, today the Court concludes that Pennsylvania's sovereign immunity prevents a federal court from enjoining the

conduct that Pennsylvania itself has prohibited. No rational view of the sovereign immunity of the States supports this result. To the contrary, the question whether a federal court may award injunctive relief on the basis of state law has been answered affirmatively by this Court many times in the past. Yet the Court repudiates at least 28 cases, spanning well over a century of this Court's jurisprudence, proclaiming instead that federal courts have no power to enforce the will of the States by enjoining conduct because it violates state law. This new pronouncement will require the federal courts to decide federal constitutional questions despite the availability of state-law grounds for decision, a result inimical to sound principles of judicial restraint. Nothing in the Eleventh Amendment, the conception of state sovereignty it embodies, or the history of this institution, requires or justifies such a perverse result.

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II

The majority proceeds as if this Court has not had previous occasion to consider Eleventh Amendment argument made by petitioners, and contends that *Ex parte Young* has no application to a suit seeking injunctive relief on the basis of state law. That is simply not the case. The Court rejected the argument that the Eleventh Amendment precludes injunctive relief on the basis of state law twice only two Terms ago.

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> [I]mmunity from suit is a high attribute of sovereignty—a prerogative of the State itself—which cannot be availed of by public agents when sued for their own torts. The Eleventh Amendment was not intended to afford them freedom from liability in any case where, under color of their office, they have injured one of the State's citizens. To grant them such immunity would be to create a privileged class free from liability for wrongs inflicted or injuries threatened * * *. Besides, neither a State nor an individual can confer upon an agent authority to commit a tort so as to excuse the perpetrator. In such cases the law of agency has no application—the wrongdoer is treated as a principal and individually liable for the damages inflicted and subject to injunction against the commission of acts causing irreparable injury.

The principles that were decisive in these cases are not confined to actions under state tort law. They also apply to claims that state officers have violated state statutes. In *Johnson v. Lankford,* the Court reversed the dismissal of an action against the bank commissioner of Oklahoma and his surety to recover damages for the loss of plaintiff's bank deposit, allegedly caused by the commissioner's failure to safeguard the business and assets of the bank in negligent or willful disregard of his duties un-

der applicable state statutes. The Court explained that the action was not one against the State.

> To answer it otherwise would be to assert, we think, that whatever an officer does, even in contravention of the laws of the State, is state action, identifies him with it and makes the redress sought against him a claim against the State and therefore prohibited by the Eleventh Amendment. Surely an officer of a State may be delinquent without involving the State in delinquency, indeed, may injure the State by delinquency as well as some resident of the State, and be amenable to both.

* * *

The Court also relies heavily on the fact that the District Court found petitioners immune from damages liability because they "acted in the utmost good faith * * * *within the sphere of their official responsibilities*." This confuses two distinct concepts. An official can act in good faith and therefore be immune from damages liability despite the fact that he has done that which the law prohibits, a point recognized as recently as *Harlow v. Fitzgerald.* Nevertheless, good faith immunity from damage liability is irrelevant to the availability of injunctive relief. The state officials acted in nothing less than good faith and within the sphere of their official responsibilities in asserting Florida's claim to the treasure in *Treasure Salvors;* the same can be said for the bank commissioner's actions in safeguarding bank deposits challenged in *Johnson v. Lankford,* the fund commissioner's decision to sell property mortgaged to the State challenged in *Rolston,* and the state food and dairy commissioner's decision to prosecute the appellant for violating the state food impurity act challenged in *Scully,* to give just a few examples. Yet in each of these cases the state officers' conduct was enjoined. *Greene* makes this point perfectly clear. There state officers did nothing more than carry out responsibilities clearly assigned to them by a statute. Their conduct was nevertheless enjoined because this Court held that their conduct violated the state constitution, despite the fact that their reliance on a statute made it perfectly clear that their conduct was not only in good faith but reasonable. Until today the rule has been simple: conduct that exceeds the scope of an official's lawful discretion is not conduct the sovereign has authorized and hence is subject to injunction. Whether that conduct also gives rise to damage liability is an entirely separate question.

III

On its face, the Eleventh Amendment applies only to suits against a State brought by citizens of other States and foreign nations. This textual limitation upon the scope of the states' immunity from suit in federal court was set aside in *Hans v. Louisiana*. * * * The Court stated

that some of the arguments favoring sovereign immunity for the States made during the process of the Amendment's ratification had become a part of the judicial scheme created by the Constitution. As a result, the Court concluded that the Constitution prohibited a suit by a citizen against his or her own state. When called upon to elaborate, the Court explained that the Eleventh Amendment did more than simply prohibit suits brought by citizens of one State against another State. Rather, it exemplified the broader and more ancient doctrine of sovereign immunity, which operates to bar a suit brought by a citizen against his own State without its consent.

The Court has subsequently adhered to this interpretation of the Eleventh Amendment. For example, in *Quern v. Jordan,* the Court referred to the Eleventh Amendment as incorporating "the traditional sovereign immunity of the States." Similarly, in *Fitzpatrick v. Bitzer,* the Court referred to "the Eleventh Amendment and the principle of sovereign immunity it embodies * * *." Thus, under our cases it is the doctrine of sovereign immunity, rather than the text of the Amendment itself, which is critical to the analysis of any Eleventh Amendment problem.

The doctrine of sovereign immunity developed in England, where it was thought that the king could not be sued. However, common law courts, in applying the doctrine, traditionally distinguished between the king and his agents, on the theory that the king would never authorize unlawful conduct, and that therefore the unlawful acts of the king's officers ought not to be treated as acts of the sovereign.

* * *

The majority states that the holding of *Ex parte Young* is limited to cases in which relief is provided on the basis of federal law, and that it rests entirely on the need to protect the supremacy of federal law. That position overlooks the foundation of the rule of *Young* * * * and * * * [its] predecessors.

The *Young* Court distinguished between the State and its attorney general because the latter, in violating the Constitution, had engaged in conduct the sovereign could not authorize. The pivotal consideration was not that the conduct violated federal law, since nothing in the jurisprudence of the Eleventh Amendment permits a suit against a sovereign merely because federal law is at issue. Indeed, at least since *Hans v. Louisiana,* the law has been settled that the Eleventh Amendment applies even though the State is accused of violating the Federal Constitution. In *Hans* the Court held that the Eleventh Amendment applies to all cases within the jurisdiction of the federal courts including those brought to require compliance with federal law, and bars any suit where the State is the proper defendant under sovereign immunity principles. A long line of cases has endorsed that proposition, holding that irrespective of the need to vindicate federal law a suit is barred by the Eleventh Amendment if the State is the proper defendant. It was clear until today

that "the State [is not] divested of its immunity 'on the mere ground that the case is one arising under the Constitution or laws of the United States.' "

The pivotal consideration in *Young* was that it was not conduct of the sovereign that was at issue.[29] The rule that unlawful acts of an officer should not be attributed to the sovereign has deep roots in the history of sovereign immunity and makes *Young* reconcilable with the principles of sovereign immunity found in the Eleventh Amendment, rather than merely an unprincipled accommodation between federal and state interests that ignores the principles contained in the Eleventh Amendment.

This rule plainly applies to conduct of state officers in violation of state law. *Young* states that the significance of the charge of unconstitutional conduct is that it renders the state official's conduct "simply an illegal act," and hence the officer is not entitled to the sovereign's immunity. Since a state officer's conduct in violation of state law is certainly no less illegal than his violation of federal law, in either case the official, by committing an illegal act, is "stripped of his official or representative character."

* * *

[A]n illegal act strips the official of his state-law shield, thereby depriving the official of the sovereign's immunity. The majority criticizes this approach as being "out of touch with reality" because it ignores the practical impact of an injunction on the State though directed at its officers. Yet that criticism cannot account for *Young,* since an injunction has the same effect on the State whether it is based on federal or state law. Indeed, the majority recognizes that injunctions approved by *Young* "have an obvious impact on the State itself." In the final analysis the distinction between the State and its officers, realistic or not, is one firmly embedded in the doctrine of sovereign immunity. It is that doctrine and not any theory of federal supremacy which the Framers placed in the Eleventh Amendment and which this Court therefore has a duty to respect.

It follows that the basis for the *Young* rule is present when the officer sued has violated the law of the sovereign; in all such cases the con-

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[29] The distinction between the sovereign and its agents not only explains why the rationale of *Ex parte Young* and its predecessors is consistent with established sovereign immunity doctrine, but it also explains the critical difference between actions for injunctive relief and actions for damages recognized in *Edelman v. Jordan.* Since the damages remedy sought in that case would have required payment by the State, it could not be said that the action ran only against the agents of the State. Therefore, while the agents' unlawful conduct was considered *ultra vires* and hence could be enjoined, a remedy which did run against the sovereign and not merely its agent could not fit within the *ultra vires* doctrine and hence was impermissible. If damages are not sought from the State and the relief will run only against the state official, damages are a permissible remedy under the Eleventh Amendment.

duct is of a type that would not be permitted by the sovereign and hence is not attributable to the sovereign under traditional sovereign immunity principles. In such a case, the sovereign's interest lies with those who seek to enforce its laws, rather than those who have violated them.

* * *

The issuance of injunctive relief which enforces state laws and policies, if anything, enhances federal courts' respect for the sovereign prerogatives of the States. The majority's approach, which requires federal courts to ignore questions of state law and to rest their decisions on federal bases, will create more rather than less friction between the States and the federal judiciary.

Moreover, the majority's rule has nothing to do with the basic reason the Eleventh Amendment was added to the Constitution. There is general agreement that the Amendment was passed because the States were fearful that federal courts would force them to pay their Revolutionary War debts, leading to their financial ruin. Entertaining a suit for injunctive relief based on state law implicates none of the concerns of the Framers. Since only injunctive relief is sought there is no threat to the state treasury of the type that concerned the Framers, and if the State wishes to avoid the federal injunction, it can easily do so simply by changing its law. The possibility of States left helpless in the face of disruptive federal decrees which led to the passage of the Eleventh Amendment simply is not presented by this case. Indeed, the Framers no doubt would have preferred federal courts to base their decisions on state law, which the State is then free to reexamine, rather than forcing courts to decide cases on federal grounds, leaving the litigation beyond state control.

In light of the preceding, it should come as no surprise that there is absolutely no authority for the majority's position that the rule of *Young* is inapplicable to violations of state law. The only cases the majority cites, for the proposition that *Young* is limited to the vindication of federal law do not consider the question whether *Young* permits injunctive relief on the basis of state law—in each of the cases the question was neither presented, briefed, argued nor decided. It is curious, to say the least, that the majority disapproves of reliance on cases in which the issue we face today was decided *sub silentio,* yet it is willing to rely on cases in which the issue was not decided at all. In fact, not only is there no precedent for the majority's position, but, as I have demonstrated in Part II, there is an avalanche of precedent squarely to the contrary.[38]

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[38] In addition to overruling the cases discussed in part II, the majority's view that *Young* exists simply to ensure the supremacy of federal law indicates that a number of our prior cases, which held that the Eleventh Amendment may bar an action for injunctive relief even where the State has violated the Federal Constitution, *see, e.g., Alabama v. Pugh,* were incorrectly decided. The Court can have no satisfactory explanation for *Pugh,* which held that even as to a federal constitutional claim, a suit may not be brought directly

That the doctrine of sovereign immunity does not protect conduct which has been prohibited by the sovereign is clearly demonstrated by the case on which petitioners chiefly rely, *Larson v. Domestic & Foreign Commerce Corp.* The *Larson* opinion teaches that the actions of state officials are not attributable to the state—are *ultra vires*—in two different types of situations: (1) when the official is engaged in conduct that the sovereign has not authorized, and (2) when he has engaged in conduct that the sovereign has forbidden. A sovereign, like any other principal, cannot authorize its agent to violate the law. When an agent does so, his actions are considered *ultra vires* and he is liable for his own conduct under the law of agency. Both types of *ultra vires* conduct are clearly identified in *Larson.*

> There may be, of course, suits for specific relief against officers of the sovereign which are not suits against the sovereign. If the officer purports to act as an individual and not as an official, a suit directed against that action is not a suit against the sovereign. If the War Assets Administrator had completed a sale of his own personal home, he presumably could be enjoined from later conveying it to a third person. On a similar theory, *where the officer*'s *powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions.* The officer is not doing the business which the sovereign has empowered him to do *or he is doing it in a way that the sovereign has forbidden.* His actions are *ultra vires* his authority and therefore may be made the object of specific relief. It is important to note that in such cases the relief can be granted, without impleading the sovereign, only because of the officer's lack of delegated power. A claim of error in the exercise of that power is therefore not sufficient. And, since the jurisdiction of the court to hear the case may depend, as we have recently recognized, upon the decision which it ultimately reaches on the merits, it is necessary that the plaintiff set out in his complaint the statutory limitation on which he relies.

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against a state even where it may be brought against its officials. On the majority's view, there is no basis for distinguishing between the state and its officials—as to both there is a need to vindicate the supremacy of federal law through the issuance of injunctive relief, and unless the officials are acting completely outside of their authority, they must be treated as is the state. However, *Pugh* can be explained simply by reference to *Young*'s use of the *ultra vires* doctrine with respect to unconstitutional conduct by state officers—such conduct is not conduct by the sovereign because it could not be authorized by the sovereign, hence the officers are not entitled to the sovereign's immunity. A suit directly against the state cannot succeed because the *ultra vires* doctrine is unavailable without a state officer to which it can be applied. *Pugh* makes it clear that *Young* rests not on a need to vindicate federal law, but on the traditional distinction between the sovereign and its agents.

([E]mphasis supplied).

Larson thus clearly indicates that the immunity determination depends upon the merits of the plaintiff's claim. The same approach is employed by *Young*—the plaintiff can overcome the state official's immunity only by succeeding on the merits of its claim of unconstitutional conduct.

Following the two-track analysis of *Larson,* the cases considering the question whether the state official is entitled to the sovereign's immunity can be grouped into two categories. In cases like *Larson,* which usually involve the state functioning in its proprietary capacity, the *ultra vires* issue can be resolved solely by reference to the law of agency. Since there is no specific limitation on the powers of the officers other than the general limitations on their authority, the only question that need be asked is whether they have acted completely beyond their authority. But when the State has placed specific limitations on the manner in which state officials may perform their duties, as it often does in regulatory or other administrative contexts, the *ultra vires* inquiry also involves the question whether the officials acted in a way that state law forbids. No sovereign would authorize its officials to violate its own law, and if the official does so, then *Larson* indicates that his conduct is *ultra vires* and not protected by sovereign immunity.

* * *

In sum, a century and a half of this Court's Eleventh Amendment jurisprudence has established the following. A suit alleging that the official had acted within his authority but in a manner contrary to state statutes was not barred because the Eleventh Amendment prohibits suits against States; it does not bar suits against state officials for actions not permitted by the State under its own law. The sovereign could not and would not authorize its officers to violate its own law; hence an action against a state officer seeking redress for conduct not permitted by state law is a suit against the officer, not the sovereign. *Ex parte Young* concluded in as explicit a fashion as possible that unconstitutional action by state officials is not action by the State even if it purports to be authorized by state law, *because the federal Constitution strikes down the state law shield.* In the tort cases, if the plaintiff proves his case, there is by definition no state-law defense to shield the defendant. Similarly, *when the state officer violates a state statute, the sovereign has by definition erected no shield against liability.* These precedents make clear that there is no foundation for the contention that the majority embraces—that *Ex parte Young* authorizes injunctive relief against state officials only on the basis of federal law. To the contrary, *Young* is as clear as a bell: the Eleventh Amendment does not apply where there is no state-law shield. That simple principle should control this case.

IV

The majority's decision in this case is especially unwise in that it overrules a long line of cases in order to reach a result that is at odds with the usual practices of this Court. In one of the most respected opinions ever written by a Member of this Court, Justice Brandeis wrote:

> The Court [has] developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:
>
> * * * The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.

The *Siler* case, cited with approval by Justice Brandeis in *Ashwander,* employed a remarkably similar approach to that used by the Court of Appeals in this case. The Court held that the plaintiff's claim * * * was sufficient to justify the assertion of federal jurisdiction over the case, but then declined to reach the federal question, deciding the case on the basis of state law instead:

> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons. In this case we think it much better to decide it with regard to the question of a local nature, involving the construction of the state statute and the authority therein given to the commission to make the order in question, rather than to unnecessarily decide the various constitutional questions appearing in the record.

The *Siler* principle has been applied on numerous occasions; when a suit against state officials has presented both federal constitutional questions and issues of state law, the Court has upheld injunctive relief on state-law grounds.

* * *

In fact, in this very case we applied the *Siler* rule by remanding the case to the Court of Appeals with explicit instructions to consider whether respondents were entitled to relief under state law.

Not only does the *Siler* rule have an impressive historical pedigree, but it is also strongly supported by the interest in avoiding duplicative

litigation and the unnecessary decision of federal constitutional questions.

* * *

In addition, application of the *Siler* rule enhances the decisionmaking autonomy of the States. *Siler* directs the federal court to turn first to state law, which the State is free to modify or repeal. By leaving the policy determinations underlying injunctive relief in the hands of the State, the Court of Appeals' approach gives appropriate deference to established state policies.

In contrast, the rule the majority creates today serves none of the interests of the State. The majority prevents federal courts from implementing state policies through equitable enforcement of state law. Instead, federal courts are required to resolve cases on federal grounds that no state authority can undo. Leaving violations of state law unredressed and ensuring that the decisions of federal courts may never be reexamined by the States hardly comports with the respect for States as sovereign entities commanded by the Eleventh Amendment.

V

One basic fact underlies this case: far from immunizing petitioners' conduct, the State of Pennsylvania prohibited it. Respondents do not complain about the conduct of the State of Pennsylvania—it is Pennsylvania's commands which they seek to enforce. Respondents seek only to have Pennhurst run the way Pennsylvania envisioned that it be run. Until today, the Court understood that the Eleventh Amendment does not shield the conduct of state officers which has been prohibited by their sovereign.

Throughout its history this Court has derived strength from institutional self-discipline. Adherence to settled doctrine is presumptively the correct course. Departures are, of course, occasionally required by changes in the fabric of our society. When a court, rather than a legislature, initiates such a departure, it has a special obligation to explain and to justify the new course on which it has embarked. Today, however, the Court casts aside well settled respected doctrine that plainly commands affirmance of the Court of Appeals—the doctrine of the law of the case, the doctrine of *stare decisis* (the Court repudiates at least 28 cases), the doctrine of sovereign immunity, the doctrine of pendent jurisdiction, and the doctrine of judicial restraint. No sound reason justifies the further prolongation of this litigation or this Court's voyage into the sea of undisciplined lawmaking.

As I said at the outset, this case has illuminated the character of an institution.

I respectfully dissent.

Notes and Questions

1. *Pennhurst* represents, first and foremost, a clash of theories underlying the idea that state officials can be sued in federal court pursuant to *Ex parte Young*. What are the two theories of state official liability competing in *Pennhurst?* Which is better supported by *Young* itself?

2. Note that the real issue in *Pennhurst* is far broader than the arcane question of whether pendent (now supplemental) jurisdiction extends to actions against state officials. The competing theories in *Pennhurst* connote vastly different views of the role of government *vis-à-vis* the individual. Which view gives the government more power and the individual less?

3. What is the effect of Justice Powell's view of *Young* on cases against state officials that present both federal and state claims? Plaintiffs have several choices. First, they may be able to litigate on two fronts, presenting state claims in state court and federal claims in federal court, thus incurring additional expense and inconvenience. But consider the effect on that option of *Migra v. Warren City School District Board of Education,* discussed in Note 8 below. Second, they can present either their federal or state claims in the appropriate forum and abandon the other claims. Third, they may, unless the federal claims are within the exclusive jurisdiction of the federal courts, present all claims in the state courts. Are these options desirable? Perhaps more to the point, is Justice Powell telling us that these options are constitutionally compelled?

4. Does 28 U.S.C.A. § 1367, the statute codifying supplemental jurisdiction, affect the *Pennhurst* majority opinion?

5. Does Justice Stevens's dissent prove too much? He argues that the Court has long decided cases on non-constitutional and non-federal grounds when possible. Does that suggest that in cases against state officials involving federal and state questions, the federal courts might adjudicate only the state questions? Given that at least one aim of the Eleventh Amendment was to eliminate diversity jurisdiction against the states, should the federal courts adjudicate state claims to the exclusion of federal claims?

6. Both *Hans* and *Young* have a role in *Pennhurst.* Justice Powell characterizes *Young* as a narrow exception to the general rule of Eleventh Amendment immunity. Is that correct, or should we instead regard *Young* as the rule and the *Edelman* exclusion of damages as the exception?

7. *Pennhurst* is remarkable, among other things, for the level of rhetoric between the Justices. Why do you think the discussion was so heated? Feelings continued to run high on the Court for some time after *Pennhurst*. In *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985) (text at 657, 672), decided the term after *Pennhurst*, Justice Stevens again dissented:

> Because my decision to join Justice Brennan's dissent is a departure from the opinion I expressed in *Florida Dept. of Health v. Florida Nursing Home Assn.,* a word of explanation is in order. As I then explained, notwithstanding my belief that *Edelman v. Jordan* was incorrectly decided, I then concluded that the doctrine of *stare decisis* re-

quired that *Edelman* be followed. Since then, however, the Court has not felt constrained by *stare decisis* in its expansion of the protective mantle of sovereign immunity, having repudiated at least 28 cases in its decision in *Pennhurst State School and Hospital v. Halderman* and additional study has made it abundantly clear that not only *Edelman,* but *Hans v. Louisiana,* as well, can properly be characterized as "egregiously incorrect." I am now persuaded that a fresh examination of the Court's Eleventh Amendment jurisprudence will produce benefits that far outweigh "the consequences of further unraveling the doctrine of *stare decisis*" in this area of the law.

8. In *Migra v. Warren City School District,* 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984), the defendant district offered a contract extension, and the plaintiff school supervisor accepted. Thereafter, the Board of Education voted not to renew the contract. Migra sued in state court, alleging breach of contract by the Board and wrongful interference with the contract by members of the Board, in their individual capacities but in conspiracy with each other. The Ohio court found for Migra on the breach of contract claim but declined to reach her claims against the individual Board members. The court ordered Migra's reinstatement and awarded compensatory damages. On Migra's motion, the court dismissed "without prejudice" the counts of her complaint relating to the liability of individual Board members.

Migra then commenced a federal action against the School District, the members of its Board, and the Superintendent. She pleaded claims under 42 U.S.C.A. §§ 1983, 1985 based on rights in the First, Fifth and Fourteenth Amendments, alleging that the Board attempted to terminate her contract because she participated, at the Board's request, in preparing a school desegregation plan. She sought injunctive relief and compensatory and punitive damages. The defendants pleaded res judicata, arguing that Migra could have litigated her federal claims in the state proceeding.

The Court rejected Migra's arguments that ordinary preclusion concepts should not apply to § 1983 actions, noting that Congress made no exception to the Full Faith and Credit Statute's requirement, 28 U.S.C.A. § 1738, that federal courts accord state court judgments the same preclusive effect as they would have in the rendering state. The Court reiterated its position from *Allen v. McCurry,* 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980), that neither the history of § 1983 nor that of § 1738 suggested special treatment for civil rights claims in this respect, and remanded so that the district court could consider the case in light of Ohio preclusion law.

a) Why did the plaintiff proceed as she did? If counsel had wanted to pursue the federal claim in federal court, why did the entire case not begin there initially? If you had been advising Ethel Migra, what would you have recommended?

b) Did the majority make much ado about nothing? It remanded the case for consideration of Ohio preclusion law. Does the Ohio trial court's dismissal of the individual and conspiracy claims without prejudice offer more than a clue? If dismissal without prejudice does not signify that the claim can be refiled, what does it mean? On the other hand, given that the plaintiff had never presented her federal claims to the state courts, but had

used state analogs instead, would it still be possible for Ohio to rule that the federal claims, though perhaps not the state analogs, were precluded?

c) What is the effect of *Migra* and *Pennhurst* taken together? Is it significant that they were decided on the same day? Reconsider the options that a plaintiff with federal and state claims has, as discussed in note 3 above. Which of those is still a realistic possibility following *Migra*? Does it affect how you would advise a client?