Sovereign Immunity
Fed. Maritime Comm'n v. S.C. State Ports Auth., 122 S. Ct. 1864 (2002).
Decided May 28, 2002.

South Carolina State Ports Authority (the "*Port Authority*") refused to grant South Carolina Maritime Services Inc. ("*Maritime*") permission to berth its cruise ship at the Port Authority's port in Charleston, citing its anti-gambling policy. Maritime filed a complaint with the Federal Maritime Commission (FMC), contending that the Port Authority had violated the Shipping Act of 1984. In the subsequent proceeding before an administrative law judge (ALJ), the Port Authority claimed that, as an arm of the State of South Carolina, it was entitled to immunity under the Eleventh Amendment from Maritime's suit. The ALJ agreed with the Port Authority, stating that "'[i]f federal courts that are established under Article III of the Constitution must respect States' 11th Amendment immunity and Congress is powerless to override the States' immunity under Article I of the Constitution, it is irrational to argue that an agency like the Commission, created under an Article I statute, is free to disregard the 11th Amendment or its related doctrine of State immunity from *private* suits.'" *Id*. at 1869 (alteration in original) (citation omitted). Maritime did not appeal the ruling; however, the FMC, on its own motion, reviewed and reversed the ALJ's ruling, holding that the Eleventh Amendment is intended to cover "'proceedings before judicial tribunals . . . not executive branch administrative agencies.'" *Id.* (citation omitted). The Port Authority appealed to the Fourth Circuit, which reversed the FMC's ruling, concluding that "the proceeding 'walks, talks, and squawks very much like a lawsuit.'" *Id.* (citation omitted). The Supreme Court affirmed the Fourth Circuit. Justice Thomas delivered the opinion of the Court, joined by the Chief Justice and Justices O'Connor, Scalia, and Kennedy. Justice Stevens filed a dissenting opinion. Justice Breyer filed a dissenting opinion in which Justices Stevens, Souter, and Ginsburg joined.

The Court first affirmed that the States only "surrender[ed] a portion of their inherent immunity" at the time the Constitution was ratified. *Id.* at 1870. While the States "consent[ed] to suits brought by sister States or by the Federal Government," they retained their immunity from private suits. *Id.* Having affirmed the "defining feature" of "[d]ual sovereignty," in the constitutional system, the Court next turned to the question of whether this sovereign immunity is limited to judicial proceedings or whether it extends to administrative proceedings. *Id.* Justice Thomas noted that history does not provide "direct guidance" for the question, as the Framers "could not have anticipated the vast growth of the administrative state." *Id.* at 1872. However, Thomas continued, "This Court . . . has applied a presumption . . . that the Constitution was not intended to 'rais[e] up' any proceedings against the States that were 'anomalous and unheard of when the Constitution was adopted.'" *Id.* (alteration in original). The similarities between the FMC proceeding and judicial proceedings are "overwhelming." *Id.* at 1874. Additionally, he emphasized, sovereign immunity is granted "to accord States the dignity that is consistent with their status as sovereign entities." *Id.* If the Framers thought it "an impermissible affront to a State's dignity to be required to answer the complaints of private parties in federal courts, we cannot imagine that they would have found it acceptable to compel a State to do exactly the same thing before [an] administrative tribunal." *Id.* The FMC made several attempts to distinguish the administrative proceedings from judicial proceedings; however, Thomas determined that none of these outweighed the "primary function" of sovereign immunity, which is to "afford the States the dignity and respect due sovereign entities." *Id.* at 1879.

Justice Breyer's dissent[1] summarized the case as a "typical Executive Branch agency exercising typical Executive Branch powers seeking to determine whether a particular person has violated federal law." *Id.* at 1882 (Breyer, J., dissenting). Breyer continued, "The Framers enunciated . . . the principle that the Federal Government may sue a State without its consent. They also described in the First Amendment the right of a citizen to petition the Federal Government for a redress of grievances. . . . [In this case,] a private citizen has asked the Federal Government to determine whether the State has complied with federal law and, if not, to take appropriate legal action in court." *Id.* at 1885. Breyer went on to acknowledge that the principles he articulated "apply only through analogy." *Id.* The citizen "believing that a State has violated federal law, seeks a determination by an Executive Branch agency that he is right . . . ; if the State fails to comply, the Federal Government may bring an action against the State in federal court." *Id*. Furthermore, Breyer argued, citizens cannot compel states to respond; they can merely "produce practical pressures upon the State to respond." *Id*. at 1886. Such practical pressures "cannot sufficiently 'affront' a State's 'dignity' as to warrant constitutional 'sovereign immunity' protections." *Id.* at 1887. The Court's response, he declared, "simply begs the question of *when* and *why* States should be entitled to special constitutional protection." *Id.* Breyer closes, despairing that the Court is departing from the understanding of the Constitution that has endured "since the New Deal." *Id.* at 1889. Instead, he mourns, they seem unable to understand "the Constitution's demands for structural flexibility sufficient to adapt substantive laws and institutions to rapidly changing social, economic, and technological conditions." *Id*. The Court's decision, he opines, restricts the Federal Government "far too severely." *Id.*

Lapides v. Bd. of Regents of Univ. Sys. of Ga., 122 S. Ct. 1640 (2002).
Decided May 13, 2002.

Respondent, a professor, brought a lawsuit against the Board of Regents of the University of System of Georgia, as well as other university officials. Respondent claimed that the placement of certain information in his personnel files violated

both Georgia and federal law. The defendants removed the case to federal court, where the individual defendants sought dismissal on qualified immunity grounds. The District court allowed dismissal of the individual federal suits. The State also sought dismissal of its case under the Eleventh Amendment, arguing that it retained immunity in federal court, despite the fact that a state statute had waived its sovereign immunity in state court. The Eleventh Circuit held for the State, but the Court reversed. Justice Breyer delivered the opinion for a unanimous court.

Although limiting its holding to state-law claims for which the State has explicitly waived its immunity from state-court proceedings, the Court found it "inconsistent" to allow a State to first invoke federal jurisdiction and then to claim Eleventh Amendment immunity. *Id*. at 1643. The Court noted that to allow such a scenario is to allow the State to first extend the judicial power of the United States to the case at hand, and then, in a second step, to deny the judicial power of the United States to the case at hand. A Constitution that "permit[s] States to follow their litigation interests by freely asserting both claims in the same case could generate seriously unfair results." *Id.* Adopting Georgia's interpretation of the Eleventh Amendment would allow "States to achieve 'unfair tactical advantage[s,]' if not in this case, in others." *Id.* at 1645 (alteration in original) (citation omitted). Nor can a "benign motive" excuse Georgia, as "[m]otives are difficult to evaluate, while jurisdictional rules should be clear." *Id.* Justice Breyer similarly found other arguments of Georgia inadequate to remove the State from the general rule that a voluntary act of the State binds it and that it cannot escape such a result by invoking the Eleventh Amendment. Such a rule "rest[s] upon the problems of inconsistency and unfairness that a contrary rule of law would create." *Id.*

Raygor v. Regents of the Univ. of Minn., 122 S. Ct. 999 (2002).
Decided February 27, 2002.

Petitioners allege age discrimination by their employer, the University of Minnesota. They filed suit in federal district court under the Age Discrimination in Employment act (ADEA) and a state law discrimination statute. The latter was filed under the federal supplemental jurisdiction statute, 28 U.S.C. § 1367, which also purports to toll the limitations period for supplemental claims while they are pending in federal court. The District Court dismissed all claims, citing the State's sovereign immunity. Petitioners refiled the state claims in state court, claiming that the statute of limitations had been tolled under § 1367(d). The Court held § 1367(d) unconstitutional when applied to claims against nonconsenting state defendants. Justice O'Connor delivered the opinion of the Court, joined by the Chief Justice and Justices Scalia, Kennedy, and Thomas. Justice Ginsburg filed an opinion concurring in part and concurring in the judgment. Justice Stevens filed a dissenting opinion, joined by Justices Souter and Breyer.

The Court held that the grant of supplemental jurisdiction in § 1367(a) "does not extend to claims against nonconsenting state defendants." *Id.* at 1005. The grant of jurisdiction in § 1367(a) is broad, "insufficient to constitute a clear statement of an intent to abrogate state sovereign immunity." *Id.* The remaining question, O'Connor noted, is whether, under § 1367(d),[2] the statute of limitations can be tolled for a claim originally asserted as a supplemental claim under § 1367(a), but later dismissed on Eleventh Amendment grounds. In suits against the United States, O'Connor stated, the "limitations period may be 'a central condition' of the sovereign's waiver of immunity." *Id.* There is a rebuttable presumption that equitable tolling applies to the United States' waiver of immunity; however, this rule should not necessarily be applied to the States since the State "'may prescribe the terms and conditions on which it consents to be sued.'" *Id.* at 1006 (citation omitted). Instead, O'Connor held, "When 'Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute.'" *Id.* (citation omitted). A federal law tolling a statute of limitations "at least affects the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity." *Id.* Furthermore, § 1367(d) does not state a "clear intent to toll the limitations period for claims against nonconsenting States that are dismissed on Eleventh Amendment grounds." *Id.* Since the State never consented to suit, § 1367(d) does not apply, and the statute of limitations is not tolled.

Scope of the Spending Clause
Gonzaga Univ. v. Doe, 122 S. Ct. 2268 (2002).
Decided June 20, 2002.

Respondent was an undergraduate student in the School of Education at Gonzaga University. His "teacher certification specialist," motivated by information overheard regarding Respondent, as well as a state requirement that all new teachers obtain an affidavit of good moral character, disclosed certain of Respondent's personal information to a state agency responsible for teacher certification. Respondent alleged a violation of the Family Educational Rights and Privacy Act of 1974 (FERPA), a statute enacted under Congress' Spending Power. *See* 20 U.S.C. § 1232g(b)(1). Respondent claimed that this violation gave him a private right of action under 42 U.S.C. § 1983.[3] The Court found the Respondent's action to be foreclosed, as "the relevant provisions of FERPA create no personal rights to enforce under 42 U.S.C. § 1983." *Id.* at 2271-72. The Chief Justice delivered the opinion of the Court, joined by Justices O'Connor, Scalia, Kennedy, and Thomas. Justice Breyer filed an opinion concurring in the judgment, in which Justice Souter joined. Justice Stevens filed a dissenting opinion, in which Justice Ginsburg joined.

The Chief Justice's opinion addressed an important federalism issue. Can a federal court, relying upon § 1983, authorize private parties to enforce FERPA, a federal spending statute, against a state or local government that has accepted funds? No, said Rehnquist: "[U]nless Congress 'speak[s] with a clear voice,' and manifests an 'unambiguous' intent to confer individual rights, federal funding provisions provide no basis for private enforcement by § 1983." *Id.* at 2273 (citations omitted). Rehnquist continued, "[We] reject the notion that our cases permit anything short of an unambiguously conferred

right to support a cause of action brought under § 1983." *Id.* at 2275. The relevant inquiry, as with implied right of action cases, is "whether Congress *intended to create a federal right*." *Id.* Rehnquist rejected the argument of Stevens that separation of powers concerns are "more pronounced in the implied right of action context as opposed to the § 1983 context." *Id.* at 2277. Furthermore, Rehnquist held that if "'Congress intends to alter the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute."'" *Id.* at 2279 (citations omitted). The remainder of the opinion went on to evaluate whether or not such an unambiguous intent had, in fact, been manifested in the language of FERPA. The Court found that it had not.

Barnes v. Gorman, 122 S. Ct. 2097 (2002).
Decided June 17, 2002.

The Respondent, a paraplegic, was arrested for trespassing. Over Respondent's objection, the police officers arresting him removed him from his wheelchair and placed him in a police van. They used a seatbelt and Respondent's own belt to strap him to a bench in the van. When one of the belts subsequently came loose, Respondent fell to the floor and suffered serious injuries. Respondent filed suit, alleging that appropriate policies had not been implemented for the arrest and transportation of persons with spinal cord injuries and claiming that he had been discriminated against in violation of § 202 of the Americans with Disabilities Act of 1990 (ADA) and § 504 of the Rehabilitation Act of 1973. A jury found Petitioners liable and awarded the Respondent both compensatory and punitive damages. The Court, however, held that punitive damages may not be awarded in private suits brought under § 202 of the ADA and § 504 of the Rehabilitation Act. Justice Scalia delivered the opinion of the Court, joined by the Chief Justice and Justices O'Connor, Kennedy, Souter, and Thomas. Justice Souter filed a concurring opinion, in which Justice O'Connor joined. Justice Stevens filed an opinion concurring in the judgment, in which Justices Ginsburg and Breyer joined.

The Court refused to expand the scope of the federally imposed conditions that can be attached to funds disbursed under the Spending Power. Justice Scalia held that the remedies for both § 202 of the ADA and § 504 of the Rehabilitation Act are "coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964." *Id*. at 2100. As with other Spending Clause statutes, Scalia noted, Title VI operates "'much in the nature of a *contract:* in return for federal funds, the [recipients] agree to comply with federally imposed conditions.' . . . Just as a valid contract requires offer and acceptance of its terms, '[t]he legitimacy of Congress' power to legislate . . . rests on whether the [recipient] voluntarily and knowingly accepts the terms of the "contract."'" *Id.* at 2100-01 (citations omitted) (first, third, and fourth alterations in original). The same contract law analogy, the Court held, applies in determining the scope of remedies. Not only are punitive damages generally not available for breach of contract cases, but "it is doubtful that funding recipients would have agreed to exposure to such unorthodox and indeterminate liability; it is doubtful whether they would even have *accepted the funding* if punitive damages liability was a required condition." *Id.* at 2102. Therefore, merely by accepting federal funds, Title VI recipients have not implicitly consented to liability for punitive damages. Because suits brought under § 202 of the ADA and § 504 of the Rehabilitation Act are coextensive with Title VI, punitive damages may not be brought for those types of claims, either.

Immunity of State Officials Against § 1983 Suits
Hope v. Pelzer, 122 S. Ct. 2508 (2002).
Decided June 27, 2002.

Respondent, an inmate in an Alabama prison, was twice handcuffed to a hitching post for disruptive conduct. His arms were handcuffed above shoulder height, causing him to complain of pain. During the first incident, he was offered the opportunity for water and bathroom breaks. During the second incident, however, he was ordered to take off his shirt and stand in the sun for seven hours. He alleged that he was deprived of water and bathroom breaks and taunted for his thirst. Respondent filed suit under § 1983 against three guards involved in the first incident, only one of whom was also involved in the second incident. The Court held that the officials' claim of sovereign immunity was precluded at the summary judgment phase. Justice Stevens delivered the opinion of the court, in which Justices O'Connor, Kennedy, Souter, Ginsburg, and Breyer joined. Justice Thomas filed a dissenting opinion, in which the Chief Justice and Justice Scalia joined.

In its reversal of the Eleventh Circuit, the Court held to a looser standard for subjecting state officials to § 1983 liability than had the appellate court. First, the Court quickly resolved the "threshold inquiry" of "whether plaintiff's allegations, if true, establish a constitutional violation," determining that the Eleventh Amendment violation was "obvious." *Id*. at 2513-14.[4] Having deemed the actions "cruel and unusual punishment," the Court then turned to whether the officials should be shielded from liability because "their actions did not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Id.* at 2515 (citation omitted). The Eleventh Circuit had upheld the officials' claim of sovereign immunity, noting that "the federal law by which the government official's conduct should be evaluated must be preexisting, obvious and mandatory, . . . [established by] cases that are materially similar to the facts in the case in front of us." *Id*. at 2513 (internal quotation marks omitted). Although precedents existed which were "analogous," none was "materially similar" to Respondent's situation; therefore, qualified immunity should be upheld. *Id*. (internal quotation marks omitted). The Court, however, holding that such a standard placed a "rigid gloss on the qualified immunity standard," held that "fair warning," rather than a "materially similar" standard was sufficient. *Id*. at 2515-16. Respondent, it held, had met the "fair warning" burden.

In his dissent, Justice Thomas noted that the Court had correctly stated the initial standard for granting qualified immunity, but had then incorrectly applied it. *Id*. at 2522 (Thomas, J., dissenting). Instead, the Eleventh Circuit had "properly

noted," that "'[i]t is important to analyze the facts'" in prior cases and "'determine if they are materially similar to the facts in the case in front of us.'" *Id.* (alteration in original) (citations omitted). Far from imposing a "'rigid gloss,'" the Eleventh Circuit "merely (and sensibly) evaluated the cases relied upon by petitioner to determine whether they involved facts 'materially similar' to those present in this case." *Id.* at 2523. Thomas concluded that "conduct can be 'clearly established' as unlawful" even without identifying a "materially similar" case. *Id.* at 2522. There are "[c]ertain actions [that] so obviously run afoul of the law that an assertion of qualified immunity may [nevertheless] be overcome." *Id.* However, due to weaknesses in the Respondent's claim not discussed by the majority, neither the "materially similar" nor the "obviously run[s] afoul" standards were met and qualified immunity should have been granted to Petitioners.

Federal Preemption of State Laws

City of Columbus v. Ours Garage & Wrecker Serv., 122 S. Ct. 2226 (2002).

Decided June 20, 2002.

Federal preemption provisions relating to motor carriers specifically reserve certain safety regulations to the States. The City of Columbus, Ohio, a municipality, passed extensive safety regulations under this exception. The delegation of this responsibility to local governments in Ohio resulted in a challenge to the local statutes. While most of the *City of Columbus* opinion revolved around the specific language of the statutes in dispute, an important federalism point was made as the Court upheld the authority of the States, when delegated power by Congress, to, in turn, delegate this power to local governments. Justice Ginsburg delivered the opinion of the Court, in which the Chief Justice and Justices Stevens, Kennedy, Souter, Thomas, and Breyer joined. Justice Scalia filed a dissenting opinion, in which Justice O'Connor joined.

Federal preemption provisions relating to motor carriers preempt any provisions by "'a State [or] political subdivision of a State . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.'" *Id.*. at 2230 (citation omitted). The same preemption statute specifically reserves to the States the power to implement certain safety regulations. The general rule specifically mentions both "State[s]" and "political subdivision[s]," while the exception only mentions "State[s]." The Court held that the failure of the statute to mention political subdivisions does not prohibit the States from delegating its authority. Justice Ginsburg stated, "Ordinarily, a political subdivision may exercise whatever portion of state power the State, under its own constitution and laws, chooses to delegate to the subdivision. Absent a clear statement to the contrary, Congress' reference to the 'regulatory authority of a State' should be read to preserve, not preempt, the traditional prerogative of the States to delegate their authority to their constituent parts." *Id.* (citation omitted).

Rush Prudential HMO v. Moran, 122 S. Ct. 2151 (2002).

Decided June 20, 2002.

Respondent was denied surgery by Petitioner, her HMO, on the grounds that the procedure was not "medically necessary." Respondent made a written demand for an independent medical review of the claim, as provided for in § 4-10 of Illinois' HMO Act. The Illinois Act provides that, upon a finding through such an independent review that the claim is "medically necessary," the HMO is to pay for the requested procedure. Respondent's independent doctor determined the claim to be medically necessary, but Petitioner still refused to pay for the procedure. Respondent filed suit to compel compliance under § 4-10. In response, Petitioner claimed that § 4-10 is preempted by ERISA. The district court denied Respondent's claim on preemption grounds; however, the Seventh Circuit reversed. The Court affirmed, holding that ERISA does not preempt this provision of the Illinois Act. Justice Souter delivered the opinion of the Court, joined by Justices Stevens, O'Connor, Ginsburg, and Breyer. Justice Thomas filed a dissenting opinion, in which the Chief Justice and Justices Scalia and Kennedy joined.

ERISA contains an express preemption provision, which states that ERISA is to "'supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.'" *Id.*. at 2158 (citation omitted). The preemption clause is followed by a saving clause, providing that "'nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.'" *Id.* (citation omitted). The Court noted that the "congressional language seems simultaneously to preempt everything and hardly anything." *Id.* at 2159. In such a scenario, Justice Souter noted, it is to be remembered that the "'historic police powers of the States were not [meant] to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Id.* (alteration in original) (citation omitted). Interpreting the language in the statute according to its "'ordinary meaning,'" Souter continued, § 4-10 can only be saved from preemption if it "regulates insurance" as provided for in the saving clause in ERISA. *Id.* (citation omitted). Souter concluded that § 4-10 does, under a "common-sense view," "regulate insurance"; therefore, ERISA does not preempt § 4-10 unless § 4-10 also imposes a "new obligation or remedy" that runs contrary to the congressional policy laid out in ERISA. *Id.* at 2159, 2163, 2170. Souter determined that the requirements in § 4-10 bear "a closer resemblance to second-opinion requirements than to arbitration schemes." *Id.* at 2170. Accordingly, no "new obligation or remedy" is imposed and the statute is not preempted.

Justice Thomas' dissent emphasized congressional intent to establish "a uniform federal law of employee benefits so that employers are encouraged to provide benefits to their employees." *Id*. at 2171 (Thomas, J., dissenting). Thomas and the majority were in agreement on some portions of the analysis to be applied: They each note that the preemption and saving clauses are "antithetically broad and 'are not a model of legislative drafting.'" *Id.* at 2174 (citations omitted). Furthermore, Souter and Thomas agreed that "even a state law that 'regulates insurance' may be pre-empted if it supplements the remedies provided by ERISA, despite ERISA's saving clause." *Id.* at 2171. However, Thomas concludes that § 4-10 "cannot be characterized as anything other than an alternative state law remedy or vehicle for seeking benefits." *Id.* at 2175. Failing to

uphold preemption would "eviscerate ERISA's comprehensive and exclusive remedial scheme. . . . [T]he Court today ignores the 'interlocking, interrelated, and interdependent' nature of that remedial scheme and announces that the relevant inquiry is whether a state regulatory scheme 'provides [a] new cause of action' or authorizes a 'new form of ultimate relief.'" *Id.* at 2176 (alteration in original) (citation omitted).

Also of Interest

John C. Eastman & Edwin Meese, *The Federalism Side of School Vouchers* (July 2002).
http://www.ashbrook.org/publicat/oped/eastman/02/vouchers2.html

Terry Eastland, *Federalism's Friends* (June 2002).
http://www.weeklystandard.com/Content/Public/Articles/000/000/001/410jskqg.asp

John C. Eastman, *The Federalism Issue Underlying The Vouchers Case* (February 2002).
https://www.claremont.org/projects/jurisprudence/020225eastman.html

Michael Greve, *Federalism on the Bench* (December 2001).
http://www.weeklystandard.com/content/public/articles/000/000/000/601rkzha.asp

Footnotes

1. Justice Stevens joined in Justice Breyer's dissent, but he also wrote a brief dissent of his own, stating his view that the "'dignity' rationale is '"embarrassingly insufficient."'" *Fed. Maritime Comm'n*, 122 S. Ct. at 1880 (Stevens, J., dissenting) (citations omitted).
2. § 1367(d) states that "'[t]he period of limitations for any claim asserted under subsection (a) . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."
3. The Washington courts found that petitioners acted "under color of state law" for purposes of § 1983. The Court assumed, without deciding, that the relevant disclosures occurred under color of state law. *Gonzaga*, 122 S. Ct. at 2272 n.1.
4. The dissent called this Eighth Amendment analysis "woefully incomplete." *Hope*, 122 S. Ct. at 2521 (Thomas, J., dissenting).