

KENNEDY, J., concurring

**SUPREME COURT OF THE UNITED STATES**

Nos. 00–1531 and 00–1711

00–1531 VERIZON MARYLAND INC., PETITIONER  
*v.*  
PUBLIC SERVICE COMMISSION OF  
MARYLAND ET AL.

00–1711 UNITED STATES, PETITIONER  
*v.*  
PUBLIC SERVICE COMMISSION OF  
MARYLAND ET AL.

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

[May 20, 2002]

JUSTICE KENNEDY, concurring.

For the reasons well stated by the Court, I agree Verizon Maryland Inc. may proceed against the state commissioners in their official capacity under the doctrine of *Ex parte Young*, 209 U. S. 123 (1908). When the plaintiff seeks to enjoin a state utility commissioner from enforcing an order alleged to violate federal law, the Eleventh Amendment poses no bar. See *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U. S. 261, 271 (1997) (principal opinion of KENNEDY, J., joined by REHNQUIST, C. J.).

This is unlike the case in *Idaho v. Coeur d’Alene Tribe of Idaho*, *supra*, where the plaintiffs tried to use *Ex parte Young* to divest a State of sovereignty over territory within its boundaries. In such a case, a “straightforward inquiry,” which the Court endorses here, *ante*, at 9, proves more complex. In *Coeur d’Alene* seven Members of this Court described *Ex parte Young* as requiring nothing more

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than an allegation of an ongoing violation of federal law and a request for prospective relief; they divided four to three, however, over whether that deceptively simple test had been met.

In my view, our *Ex parte Young* jurisprudence requires careful consideration of the sovereign interests of the State as well as the obligations of state officials to respect the supremacy of federal law. See *Coeur d'Alene, supra*, at 267–280 (principal opinion of KENNEDY, J., joined by REHNQUIST, C. J.). I believe this approach, whether stated in express terms or not, is the path followed in *Coeur d'Alene* as well as in the many cases preceding it. I also believe it necessary. Were it otherwise, the Eleventh Amendment, and not *Ex parte Young*, would become the legal fiction.

The complaint in this case, however, parallels the very suit permitted by *Ex parte Young* itself. With this brief explanation, I join the opinion of the Court.