NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 01–46

FEDERAL MARITIME COMMISSION, PETITIONER *v.* SOUTH CAROLINA STATE PORTS AUTHORITY ET AL.

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

[May 28, 2002]

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the question whether state sovereign immunity precludes petitioner Federal Maritime Commission (FMC or Commission) from adjudicating a private party's complaint that a state-run port has violated the Shipping Act of 1984, 46 U. S. C. App. §1701 *et seq*. (1994 ed. and Supp V). We hold that state sovereign immunity bars such an adjudicative proceeding.

I

On five occasions, South Carolina Maritime Services, Inc. (Maritime Services), asked respondent South Carolina State Ports Authority (SCSPA) for permission to berth a cruise ship, the M/V *Tropic Sea,* at the SCSPA's port facilities in Charleston, South Carolina. Maritime Services intended to offer cruises on the M/V *Tropic Sea* originating from the Port of Charleston. Some of these cruises would stop in the Bahamas while others would merely travel in international waters before returning to Charleston with no intervening ports of call. On all of these trips, passengers would be permitted to participate in gambling

activities while on board.

The SCSPA repeatedly denied Maritime Services' requests, contending that it had an established policy of denying berths in the Port of Charleston to vessels whose primary purpose was gambling. As a result, Maritime Services filed a complaint with the FMC,[1] contending that the SCSPA's refusal to provide berthing space to the M/V *Tropic Sea* violated the Shipping Act. Maritime Services alleged in its complaint that the SCSPA had implemented its antigambling policy in a discriminatory fashion by providing berthing space in Charleston to two Carnival Cruise Lines vessels even though Carnival offered gambling activities on these ships. Maritime Services therefore complained that the SCSPA had unduly and unreasonably preferred Carnival over Maritime Services in violation of 46 U. S. C. App. §1709(d)(4) (1994 ed., Supp. V),[2] and unreasonably refused to deal or negotiate with Maritime Services in violation of §1709(b)(10).[3] App. 14–15. It further alleged that the SCSPA's unlawful actions had inflicted upon Maritime Services a "loss of profits, loss of earnings, loss of sales, and loss of business opportunities." *Id.,* at 15.

To remedy its injuries, Maritime Services prayed that the FMC: (1) seek a temporary restraining order and preliminary injunction in the United States District Court for the District of South Carolina "enjoining [the SCSPA]

---

[1] See 46 U. S. C. App. §1710(a) (1994 ed.) ("Any person may file with the Commission a sworn complaint alleging a violation of this chapter . . . and may seek reparation for any injury caused to the complainant by that violation").

[2] Section 1709(d)(4) provides that "[n]o marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person."

[3] Section 1709(b)(10) prohibits a common carrier from "unreasonably refus[ing] to deal or negotiate."

from utilizing its discriminatory practice to refuse to provide berthing space and passenger services to Maritime Services;"[4] (2) direct the SCSPA to pay reparations to Maritime Services as well as interest and reasonable attorneys' fees;[5] (3) issue an order commanding, among other things, the SCSPA to cease and desist from violating the Shipping Act; and (4) award Maritime Services "such other and further relief as is just and proper." *Id.,* at 16.

Consistent with the FMC's Rules of Practice and Procedure, Maritime Services' complaint was referred to an administrative law judge (ALJ). See 46 CFR §502.223 (2001). The SCSPA then filed an answer, maintaining, *inter alia*, that it had adhered to its antigambling policy in a nondiscriminatory manner. It also filed a motion to dismiss, asserting, as relevant, that the SCSPA, as an arm of the State of South Carolina, was "entitled to Eleventh Amendment immunity" from Maritime Services' suit. App. 41. The SCSPA argued that "the Constitution prohibits Congress from passing a statute authorizing Maritime Services to file [this] Complaint before the Commis-

---

[4] See §1710(h)(1) (1994 ed.) ("In connection with any investigation conducted under this section, the Commission may bring suit in a district court of the United States to enjoin conduct in violation of this chapter. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation. Any such suit shall be brought in a district in which the defendant resides or transacts business").

[5] See §1710(g) (1994 ed., Supp. V) ("For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this chapter plus reasonable attorney's fees").

sion and, thereby, sue the State of South Carolina for damages and injunctive relief." *Id.,* at 44.

The ALJ agreed, concluding that recent decisions of this Court "interpreting the 11th Amendment and State sovereign immunity from *private* suits . . . require[d] that [Maritime Services'] complaint be dismissed." App. to Pet. for Cert. 49a (emphasis in original). Relying on *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996), in which we held that Congress, pursuant to its Article I powers, cannot abrogate state sovereign immunity, the ALJ reasoned 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." App. to Pet. for Cert. 59a (emphasis in original). The ALJ noted, however, that his decision did not deprive the FMC of its "authority to look into [Maritime Services'] allegations of Shipping Act violations and enforce the Shipping Act." *Id.*, at 60a. For example, the FMC could institute its own formal investigatory proceeding, see 46 CFR §502.282 (2001), or refer Maritime Services' allegations to its Bureau of Enforcement, App. to Pet. for Cert. 60a–61a.

While Maritime Services did not appeal the ALJ's dismissal of its complaint, the FMC on its own motion decided to review the ALJ's ruling to consider whether state sovereign immunity from private suits extends to proceedings before the Commission. *Id.*, at 29a–30a. It concluded that "[t]he doctrine of state sovereign immunity . . . is meant to cover proceedings before judicial tribunals, whether Federal or state, not executive branch administrative agencies like the Commission." *Id.*, at 33a. As a result, the FMC held that sovereign immunity did not

bar the Commission from adjudicating private complaints against state-run ports and reversed the ALJ's decision dismissing Maritime Services' complaint. *Id.*, at 35a.

The SCSPA filed a petition for review, and the United States Court of Appeals for the Fourth Circuit reversed. Observing that "any proceeding where a federal officer adjudicates disputes between private parties and unconsenting states would not have passed muster at the time of the Constitution's passage nor after the ratification of the Eleventh Amendment," the Court of Appeals reasoned that "[s]uch an adjudication is equally as invalid today, whether the forum be a state court, a federal court, or a federal administrative agency." 243 F. 3d 165, 173 (CA4 2001). Reviewing the "precise nature" of the procedures employed by the FMC for resolving private complaints, the Court of Appeals concluded that the proceeding "walks, talks, and squawks very much like a lawsuit" and that "[i]ts placement within the Executive Branch cannot blind us to the fact that the proceeding is truly an adjudication." *Id.*, at 174. The Court of Appeals therefore held that because the SCSPA is an arm of the State of South Carolina,[6] sovereign immunity precluded the FMC from adjudicating Maritime Services' complaint, and remanded the case with instructions that it be dismissed. *Id.*, at 179.

We granted the FMC's petition for certiorari, 534 U. S. 971 (2001), and now affirm.

---

[6] The SCSPA was created by the State of South Carolina "as an instrumentality of the State," for among other purposes, "develop[ing] and improv[ing] the harbors or seaports of Charleston, Georgetown and Port Royal for the handling of water-borne commerce from and to any part of [South Carolina] and other states and foreign countries." S. C. Code Ann. §54–3–130 (1992). The United States Court of Appeals for the Fourth Circuit has ruled that the SCSPA is protected by South Carolina's sovereign immunity because it is an arm of the State, see, *e.g.*, *Ristow* v. *South Carolina Ports Authority*, 58 F. 3d 1051 (1995), and no party to this case contests that determination.

II

Dual sovereignty is a defining feature of our Nation's constitutional blueprint. See *Gregory* v. *Ashcroft*, 501 U. S. 452, 457 (1991). States, upon ratification of the Constitution, did not consent to become mere appendages of the Federal Government. Rather, they entered the Union "with their sovereignty intact." *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 779 (1991). An integral component of that "residuary and inviolable sovereignty," The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison), retained by the States is their immunity from private suits. Reflecting the widespread understanding at the time the Constitution was drafted, Alexander Hamilton explained,

> "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State of the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States . . . ." *Id.*, No. 81, at 487–488 (emphasis in original).

States, in ratifying the Constitution, did surrender a portion of their inherent immunity by consenting to suits brought by sister States or by the Federal Government. See *Alden* v. *Maine*, 527 U. S. 706, 755 (1999). Nevertheless, the Convention did not disturb States' immunity from private suits, thus firmly enshrining this principle in our constitutional framework. "The leading advocates of the Constitution assured the people in no uncertain terms that the Constitution would not strip the States of sovereign immunity." *Id.*, at 716.

The States' sovereign immunity, however, fell into peril in the early days of our Nation's history when this Court

held in *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), that Article III authorized citizens of one State to sue another State in federal court. The "decision 'fell upon the country with a profound shock.'" *Alden*, *supra,* at 720 (quoting 1 C. Warren, The Supreme Court in United States History 96 (rev. ed. 1926)). In order to overturn *Chisholm*, Congress quickly passed the Eleventh Amendment and the States ratified it speedily. The Amendment clarified that "[t]he judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." We have since acknowledged that the *Chisholm* decision was erroneous. See, *e.g., Alden*, 527 U. S., at 721–722.

Instead of explicitly memorializing the full breadth of the sovereign immunity retained by the States when the Constitution was ratified, Congress chose in the text of the Eleventh Amendment only to "address the specific provisions of the Constitution that had raised concerns during the ratification debates and formed the basis of the *Chisholm* decision." *Id.,* at 723. As a result, the Eleventh Amendment does not define the scope of the States' sovereign immunity; it is but one particular exemplification of that immunity. Cf. *Blatchford*, *supra,* at 779 ("[W]e have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition of our constitutional structure which it confirms").

III

We now consider whether the sovereign immunity enjoyed by States as part of our constitutional framework applies to adjudications conducted by the FMC. Petitioner

FMC and respondent United States[7] initially maintain that the Court of Appeals erred because sovereign immunity only shields States from exercises of "judicial power" and FMC adjudications are not judicial proceedings. As support for their position, they point to the text of the Eleventh Amendment and contend that "[t]he Amendment's reference to 'judicial Power' and 'to any suit in law or equity' clearly mark it as an immunity from judicial process." Brief for United States 15.

For purposes of this case, we will assume, *arguendo,* that in adjudicating complaints filed by private parties under the Shipping Act, the FMC does not exercise the judicial power of the United States. Such an assumption, however, does not end our inquiry as this Court has repeatedly held that the sovereign immunity enjoyed by the States extends beyond the literal text of the Eleventh Amendment.[8] See, *e.g.*, *Alden*, *supra* (holding that sovereign immunity shields States from private suits in state courts pursuant to federal causes of action); *Blatchford*, *supra* (applying state sovereign immunity to suits by

---

[7] While the United States is a party to this case and agrees with the FMC that state sovereign immunity does not preclude the Commission from adjudicating Maritime Services' complaint against the SCSPA, it is nonetheless a respondent because it did not seek review of the Court of Appeals' decision below. See this Court's Rule 12.6. The United States instead opposed the FMC's petition for certiorari. See Brief for United States in Opposition.

[8] To the extent that JUSTICE BREYER, looking to the text of the Eleventh Amendment, suggests that sovereign immunity only shields States from the "'the judicial power of the United States,'" *post*, at 6 (dissenting opinion), he "engage[s] in the type of ahistorical literalism we have rejected in interpreting the scope of the States' sovereign immunity since the discredited decision in *Chisholm,*" *Alden* v. *Maine,* 527 U. S. 706, 730 (1999). Furthermore, it is ironic that JUSTICE BREYER adopts such a textual approach in defending the conduct of an independent agency that itself lacks any textual basis in the Constitution.

Indian tribes); *Principality of Monaco* v. *Mississippi*, 292 U. S. 313 (1934) (applying state sovereign immunity to suits by foreign nations); *Ex parte New York*, 256 U. S. 490 (1921) (applying state sovereign immunity to admiralty proceedings); *Smith* v. *Reeves*, 178 U. S. 436 (1900) (applying state sovereign immunity to suits by federal corporations); *Hans* v. *Louisiana*, 134 U. S. 1 (1890) (applying state sovereign immunity to suits by a State's own citizens under federal-question jurisdiction). Adhering to that well-reasoned precedent, see Part II, *supra,* we must determine whether the sovereign immunity embedded in our constitutional structure and retained by the States when they joined the Union extends to FMC adjudicative proceedings.

A

"[L]ook[ing] first to evidence of the original understanding of the Constitution," *Alden*, 527 U. S., at 741, as well as early congressional practice, see *id*., at 743–744, we find a relatively barren historical record, from which the parties draw radically different conclusions. Petitioner FMC, for instance, argues that state sovereign immunity should not extend to administrative adjudications because "[t]here is no evidence that state immunity from the adjudication of complaints by *executive officers* was an established principle at the time of the adoption of the Constitution." Brief for Petitioner 28 (emphasis in original). The SCSPA, on the other hand, asserts that it is more relevant that "Congress did not attempt to subject the States to private suits before federal administrative tribunals" during the early days of our Republic. Brief for Respondent SCSPA 19.

In truth, the relevant history does not provide direct guidance for our inquiry. The Framers, who envisioned a limited Federal Government, could not have anticipated the vast growth of the administrative state. See *Alden*,

supra, at 807 (SOUTER, J., dissenting) ("The proliferation of Government, State and Federal, would amaze the Framers, and the administrative state with its reams of regulations would leave them rubbing their eyes"). Because formalized administrative adjudications were all but unheard of in the late 18th century and early 19th century, the dearth of specific evidence indicating whether the Framers believed that the States' sovereign immunity would apply in such proceedings is unsurprising.

This Court, however, has applied a presumption—first explicitly stated in *Hans* v. *Louisiana*, *supra*—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.*, at 18. We therefore attribute great significance to the fact that States were not subject to private suits in administrative adjudications at the time of the founding or for many years thereafter. For instance, while the United States asserts that "state entities have long been subject to similar administrative enforcement proceedings," Reply Brief for United States 12, the earliest example it provides did not occur until 1918, see *id.*, at 14 (citing *California Canneries Co.* v. *Southern Pacific Co.*, 51 I. C. C. 500 (1918)).

B

To decide whether the *Hans* presumption applies here, however, we must examine FMC adjudications to determine whether they are the type of proceedings from which the Framers would have thought the States possessed immunity when they agreed to enter the Union.

In another case asking whether an immunity present in the judicial context also applied to administrative adjudications, this Court considered whether administrative law judges share the same absolute immunity from suit as do Article III judges. See *Butz* v. *Economou*, 438 U. S. 478 (1978). Examining in that case the duties performed by

an ALJ, this Court observed:

> "There can be little doubt that the role of the modern federal hearing examiner or administrative law judge . . . is 'functionally comparable' to that of a judge. His powers are often, if not generally, comparable to those of a trial judge: He may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions. More importantly, the process of agency adjudication is currently structured so as to assure that the hearing examiner exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency." *Id.*, at 513 (citation omitted).

Beyond the similarities between the role of an ALJ and that of a trial judge, this Court also noted the numerous common features shared by administrative adjudications and judicial proceedings:

> "[F]ederal administrative law requires that agency adjudication contain many of the same safeguards as are available in the judicial process. The proceedings are adversary in nature. They are conducted before a trier of fact insulated from political influence. A party is entitled to present his case by oral or documentary evidence, and the transcript of testimony and exhibits together with the pleadings constitutes the exclusive record for decision. The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." *Ibid.* (citations omitted).

This Court therefore concluded in *Butz* that administrative law judges were "entitled to absolute immunity from damages liability for their judicial acts." *Id.*, at 514.

Turning to FMC adjudications specifically, neither the

Commission nor the United States disputes the Court of Appeals' characterization below that such a proceeding "walks, talks, and squawks very much like a lawsuit." 243 F. 3d, at 174. Nor do they deny that the similarities identified in *Butz* between administrative adjudications and trial court proceedings are present here. See 46 CFR §502.142 (2001).

A review of the FMC's Rules of Practice and Procedure confirms that FMC administrative proceedings bear a remarkably strong resemblance to civil litigation in federal courts. For example, the FMC's Rules governing pleadings are quite similar to those found in the Federal Rules of Civil Procedure. A case is commenced by the filing of a complaint. See 46 CFR §502.61 (2001); Fed. Rule Civ. Proc. 3. The defendant then must file an answer, generally within 20 days of the date of service of the complaint, see §502.64(a); Rule 12(a)(1), and may also file a motion to dismiss, see §502.227(b)(1); Rule 12(b). A defendant is also allowed to file counterclaims against the plaintiff. See §502.64(d); Rule 13. If a defendant fails to respond to a complaint, default judgment may be entered on behalf of the plaintiff. See §502.64(b); Rule 55. Intervention is also allowed. See §502.72; Rule 24.

Likewise, discovery in FMC adjudications largely mirrors discovery in federal civil litigation. See 46 U. S. C. App. §1711(a)(1) (1994 ed.) (instructing that in FMC adjudicatory proceedings "discovery procedures . . . to the extent practicable, shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States"). In both types of proceedings, parties may conduct depositions, see, *e.g.*, 46 CFR §502.202 (2001); Fed. Rule Civ. Proc. 28, which are governed by similar requirements. Compare §§502.202, 502.203, and 502.204, with Rules 28, 29, 30, and 31. Parties may also discover evidence by: (1) serving written interrogatories, see §502.205; Rule 33; (2) requesting that another party either

produce documents, see §502.206(a)(1); Rule 34(a)(1), or allow entry on that party's property for the purpose of inspecting the property or designated objects thereon, §502.206(a)(2); Rule 34(a)(2); and (3) submitting requests for admissions, §502.207; Rule 36. And a party failing to obey discovery orders in either type of proceeding is subject to a variety of sanctions, including the entry of default judgment. See §502.210(a); Rule 37(b)(2).

Not only are discovery procedures virtually indistinguishable, but the role of the ALJ, the impartial officer[9] designated to hear a case, see §502.147, is similar to that of an Article III judge. An ALJ has the authority to "arrange and give notice of hearing." *Ibid.* At that hearing, he may

> "prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any question of fact in issue; rule upon offers of proof . . . and dispose of any other matter that normally and properly arises in the course of proceedings." *Ibid.*

The ALJ also fixes "the time and manner of filing briefs," §502.221(a), which contain findings of fact as well as legal argument, see §502.221(d)(1). After the submission of these briefs, the ALJ issues a decision that includes "a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues presented on the record, and the appropriate rule, order, section, relief, or denial thereof." §502.223. Such relief

---

[9] See 46 CFR §502.224 (2001) (requiring that ALJs be shielded from political influence in a manner consistent with the Administrative Procedure Act).

may include an order directing the payment of reparations to an aggrieved party. See 46 U. S. C. App. §1710(g) (1994 ed., Supp. V); 46 CFR §502.251 (2001). The ALJ's ruling subsequently becomes the final decision of the FMC unless a party, by filing exceptions, appeals to the Commission or the Commission decides to review the ALJ's decision "on its own initiative." §502.227(a)(3). In cases where a complainant obtains reparations, an ALJ may also require the losing party to pay the prevailing party's attorney's fees. See 46 U. S. C. App. §1710(g); 46 CFR §502.254 (2001).

In short, the similarities between FMC proceedings and civil litigation are overwhelming. In fact, to the extent that situations arise in the course of FMC adjudications "which are not covered by a specific Commission rule," the FMC's own Rules of Practice and Procedure specifically provide that "the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice."[10] §502.12.

C

The preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities. See *In re Ayres*, 123 U. S. 443, 505 (1887). "The founding generation thought it 'neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons.'" *Alden*, 527 U. S., at 748 (quoting *In re Ayres*, *supra,* at 505).

Given both this interest in protecting States' dignity and

---

[10] In addition, "[u]nless inconsistent with the requirements of the Administrative Procedure Act and [the FMC's Rules of Practice and Procedure], the Federal Rules of Evidence [are] applicable" in FMC adjudicative proceedings. 46 CFR §502.156 (2001).

the strong similarities between FMC proceedings and civil litigation, we hold that state sovereign immunity bars the FMC from adjudicating complaints filed by a private party against a nonconsenting State. Simply put, 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 the administrative tribunal of an agency, such as the FMC. Cf. *Alden*, *supra,* at 749 ("Private suits against nonconsenting States . . . present 'the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties,' *regardless of the forum*") (quoting *In re Ayres*, *supra*, at 505) (citations omitted; emphasis added)). The affront to a State's dignity does not lessen when an adjudication takes place in an administrative tribunal as opposed to an Article III court.[11] In both instances, a State is required to defend itself in an adversarial proceeding against a private party before an impartial federal officer.[12] Moreover, it would be quite strange to prohibit Congress from exercising its Article I powers to abrogate state sovereign

---

[11] One, in fact, could argue that allowing a private party to haul a State in front of such an administrative tribunal constitutes a greater insult to a State's dignity than requiring a State to appear in an Article III court presided over by a judge with life tenure nominated by the President of the United States and confirmed by the United States Senate.

[12] Contrary to the suggestion contained in JUSTICE BREYER's dissenting opinion, our "basic analogy" is not "between a federal administrative proceeding triggered by a private citizen and a private citizen's lawsuit against a State" in a State's own courts. See *post*, at 8. Rather, as our discussion above makes clear, the more apt comparison is between a complaint filed by a private party against a State with the FMC and a lawsuit brought by a private party against a State in federal court.

immunity in Article III judicial proceedings, see *Seminole Tribe*, 517 U. S., at 72, but permit the use of those same Article I powers to create court-like administrative tribunals where sovereign immunity does not apply.[13]

D

The United States suggests two reasons why we should distinguish FMC administrative adjudications from judicial proceedings for purposes of state sovereign immunity. Both of these arguments are unavailing

1

The United States first contends that sovereign immunity should not apply to FMC adjudications because the Commission's orders are not self-executing. See Brief for United States 18–21. Whereas a court may enforce a judgment through the exercise of its contempt power, the FMC cannot enforce its own orders. Rather, the Commission's orders can only be enforced by a federal district court. See, *e.g.*, 46 U. S. C. App. §1712(e) (1994 ed.) (enforcement of civil penalties); §§1713(c) and (d) (enforcement of nonreparation and reparation orders).

The United States presents a valid distinction between the authority possessed by the FMC and that of a court. For purposes of this case, however, it is a distinction without a meaningful difference. To the extent that the United

[13] While JUSTICE BREYER asserts by use of analogy that this case implicates the First Amendment right of citizens to petition the Federal Government for a redress of grievances, see *post*, at 8–9, the Constitution no more protects a citizen's right to litigate against a State in front of a federal administrative tribunal than it does a citizen's right to sue a State in federal court. Both types of proceedings were "anomalous and unheard of when the Constitution was adopted," *Hans* v. *Louisiana*, 134 U. S. 1, 18 (1890), and a private party plainly has no First Amendment right to haul a State in front of either an Article III court or a federal administrative tribunal.

States highlights this fact in order to suggest that a party alleged to have violated the Shipping Act is not coerced to participate in FMC proceedings, it is mistaken. The relevant statutory scheme makes it quite clear that, absent sovereign immunity, States would effectively be required to defend themselves against private parties in front of the FMC.

A State seeking to contest the merits of a complaint filed against it by a private party must defend itself in front of the FMC or substantially compromise its ability to defend itself at all. For example, once the FMC issues a nonreparation order, and either the Attorney General or the injured private party seeks enforcement of that order in a federal district court,[14] the sanctioned party is *not* permitted to litigate the merits of its position in that court. See §1713(c) (limiting district court review to whether the relevant order "was properly made and duly issued"). Moreover, if a party fails to appear before the FMC, it may not then argue the merits of its position in an appeal of the Commission's determination filed under 28 U. S. C. §2342(3)(B)(iv). See *United States* v. *L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 37 (1952) ("Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice").

Should a party choose to ignore an order issued by the FMC, the Commission may impose monetary penalties for each day of noncompliance. See 46 U. S. C. App. §1712(a)

---

[14] A reparation order issued by the FMC, by contrast, may be enforced in a United States district court only in an action brought by the injured private party. See Part IV–B, *infra*. 46 U. S. C. App. §1713(d) (1994 ed.).

(1994 ed., Supp. V). The Commission may then request that the Attorney General of the United States seek to recover the amount assessed by the Commission in federal district court, see §1712(e) (1994 ed.), and a State's sovereign immunity would not extend to that action, as it is one brought by the United States. Furthermore, once the FMC issues an order assessing a civil penalty, a sanctioned party may not later contest the merits of that order in an enforcement action brought by the Attorney General in federal district court. See *ibid.* (limiting review to whether the assessment of the civil penalty was "regularly made and duly issued"); *United States* v. *Interlink Systems, Inc.*, 984 F. 2d 79, 83 (CA2 1993) (holding that review of whether an order was "regularly made and duly issued" does not include review of the merits of the FMC's order).

Thus, any party, including a State, charged in a complaint by a private party with violating the Shipping Act is faced with the following options: appear before the Commission in a bid to persuade the FMC of the strength of its position or stand defenseless once enforcement of the Commission's nonreparation order or assessment of civil penalties is sought in federal district court.[15] To conclude that this choice does not coerce a State to participate in an FMC adjudication would be to blind ourselves to reality.[16]

---

[15] While JUSTICE BREYER argues that States' access to "full judicial review" of the Commission's orders mitigates any coercion to participate in FMC adjudicative proceedings, *post*, at 14, he earlier concedes that a State must appear before the Commission in order "to obtain full judicial review of an adverse agency decision in a court of appeals," *post*, at 12. This case therefore does not involve a situation where Congress has allowed a party to obtain full *de novo* judicial review of Commission orders without first appearing before the Commission, and we express no opinion as to whether sovereign immunity would apply to FMC adjudicative proceedings under such circumstances.

[16] JUSTICE BREYER's observation that private citizens may pressure

The United States and JUSTICE BREYER maintain that any such coercion to participate in FMC proceedings is permissible because the States have consented to actions brought by the Federal Government. See *Alden*, 527 U. S., at 755–756 ("In ratifying the Constitution, the States consented to suits brought by . . . the Federal Government"). The Attorney General's decision to bring an enforcement action against a State after the conclusion of the Commission's proceedings, however, does not retroactively convert an FMC adjudication initiated and pursued by a private party into one initiated and pursued by the Federal Government. The prosecution of a complaint filed by a private party with the FMC is plainly not controlled by the United States, but rather is controlled by that private party; the only duty assumed by the FMC, and hence the United States, in conjunction with a private complaint is to assess its merits in an impartial manner. Indeed, the FMC does not even have the discretion to refuse to adjudicate complaints brought by private parties. See, *e.g.*, 243 F. 3d, at 176 ("The FMC had no choice but to adjudicate this dispute"). As a result, the United States plainly does not "exercise . . . political responsibility" for such complaints, but instead has impermissibly effected "a broad delegation to private persons to sue nonconsenting States."[17] *Alden, supra,* at 756.

---

the Federal Government in a variety of ways to take *other* actions that affect States is beside the point. See *post*, at 12–13. Sovereign immunity concerns are not implicated, for example, when the Federal Government enacts a rule opposed by a State. See *post*, at 13. It is an entirely different matter, however, when the Federal Government attempts to coerce States into answering the complaints of private parties in an adjudicative proceeding. See Part III–C, *supra*.

[17] Moreover, a State obviously will not know *ex ante* whether the Attorney General will choose to bring an enforcement action. Therefore, it is the mere prospect that he may do so that coerces a State to participate in FMC proceedings. For if a State does not present its arguments

2

The United States next suggests that sovereign immunity should not apply to FMC proceedings because they do not present the same threat to the financial integrity of States as do private judicial suits. See Brief for United States 21. The Government highlights the fact that, in contrast to a nonreparation order, for which the Attorney General may seek enforcement at the request of the Commission, a reparation order may be enforced in a United States district court only in an action brought by the private party to whom the award was made. See 46 U. S. C. App. §1713(d)(1). The United States then points out that a State's sovereign immunity would extend to such a suit brought by a private party. Brief for United States 21.

This argument, however, reflects a fundamental misunderstanding of the purposes of sovereign immunity. While state sovereign immunity serves the important function of shielding state treasuries and thus preserving "the States' ability to govern in accordance with the will of their citizens," *Alden*, *supra,* at 750–751, the doctrine's central purpose is to "accord the States the respect owed them as" joint sovereigns. See *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 146 (1993); see Part III–C, *supra*. It is for this reason, for instance, that sovereign immunity applies regardless of whether a private plaintiff's suit is for monetary damages or some other type of relief. See *Seminole Tribe*, 517 U. S., at 58 ("[W]e have often made it clear that the relief sought by a plaintiff suing a State is irrelevant to the question

---

to the Commission, it will have all but lost any opportunity to defend itself in the event that the Attorney General later decides to seek enforcement of a Commission order or the Commission's assessment of civil penalties. See *supra,* at 16–18.

whether the suit is barred by the Eleventh Amendment”).

Sovereign immunity does not merely constitute a defense to monetary liability or even to all types of liability. Rather, it provides an immunity from suit. The statutory scheme, as interpreted by the United States, is thus no more permissible than if Congress had allowed private parties to sue States in federal court for violations of the Shipping Act but precluded a court from awarding them any relief.

It is also worth noting that an FMC order that a State pay reparations to a private party may very well result in the withdrawal of funds from that State’s treasury. A State subject to such an order at the conclusion of an FMC adjudicatory proceeding would either have to make the required payment to the injured private party or stand in violation of the Commission’s order. If the State were willfully and knowingly to choose noncompliance, the Commission could assess a civil penalty of up to $25,000 a day against the State. See 46 U. S. C. App. §1712(a) (1994 ed., Supp. V). And if the State then refused to pay that penalty, the Attorney General, at the request of the Commission, could seek to recover that amount in a federal district court; because that action would be one brought by the Federal Government, the State’s sovereign immunity would not extend to it.

To be sure, the United States suggests that the FMC’s statutory authority to impose civil penalties for violations of reparation orders is “doubtful.” Reply Brief for United States 7. The relevant statutory provisions, however, appear on their face to confer such authority. For while reparation orders and nonreparation orders are distinguished in other parts of the statutory scheme, see, *e.g.*, 46 U. S. C. App. §1713(c) and (d) (1994 ed.), the provision addressing civil penalties makes no such distinction. See §1712(a) (1994 ed., Supp. V). (“Whoever violates . . . a Commission order is liable to the United States for a civil

penalty"). The United States, moreover, does not even dispute that the FMC could impose a civil penalty on a State for failing to obey a nonreparation order, which, if enforced by the Attorney General, would also result in a levy upon that State's treasury.

IV

Two final arguments raised by the FMC and the United States remain to be addressed. Each is answered in part by reference to our decision in *Seminole Tribe.*

A

The FMC maintains that sovereign immunity should not bar the Commission from adjudicating Maritime Services' complaint because "[t]he constitutional necessity of uniformity in the regulation of maritime commerce limits the States' sovereignty with respect to the Federal Government's authority to regulate that commerce." Brief for Petitioner 29. This Court, however, has already held that the States' sovereign immunity extends to cases concerning maritime commerce. See, *e.g.*, *Ex parte New York,* 256 U. S. 490 (1921). Moreover, *Seminole Tribe* precludes us from creating a new "maritime commerce" exception to state sovereign immunity. Although the Federal Government undoubtedly possesses an important interest in regulating maritime commerce, see U. S. Const., Art. I, §8, cl. 3, we noted in *Seminole Tribe* that "the background principle of state sovereign immunity embodied in the Eleventh Amendment is not so ephemeral as to dissipate when the subject of the suit is an area . . . that is under the exclusive control of the Federal Government,"[18] 517 U. S., at

---

[18] JUSTICE BREYER apparently does not accept this proposition, see *post*, at 6–7, maintaining that it is not supported by the text of the Tenth Amendment. The principle of state sovereign immunity enshrined in our constitutional framework, however, is not rooted in the

72. Thus, "[e]ven when the Constitution vests in Congress complete lawmaking authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States." *Ibid.* Of course, the Federal Government retains ample means of ensuring that state-run ports comply with the Shipping Act and other valid federal rules governing ocean-borne commerce. The FMC, for example, remains free to investigate alleged violations of the Shipping Act, either upon its own initiative or upon information supplied by a private party, see, *e.g.*, 46 CFR §502.282 (2001), and to institute its own administrative proceeding against a state-run port, see 46 U. S. C. App. §1710(c) (1994 ed.); 46 CFR §502.61(a) (2001). Additionally, the Commission "may bring suit in a district court of the United States to enjoin conduct in violation of [the Act]." 46 U. S. C. App. §1710(h)(1).[19] Indeed, the United States has advised us that the Court of Appeals' ruling below "should have little practical effect on the FMC's enforcement of the Shipping Act," Brief for United States in Opposition 20, and we have no reason to believe that our decision to affirm that judgment will lead to the parade of horribles envisioned by the FMC.

Tenth Amendment. See Part II, *supra.* Moreover, to the extent that JUSTICE BREYER argues that the Federal Government's Article I power "[t]o regulate Commerce with foreign Nations, and among the several States," U. S. Const., Art. I, §8, cl. 3, allows it to authorize private parties to sue nonconsenting States, see *post*, at 6–7, his quarrel is not with our decision today but with our decision in *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996). See *id.,* at 72.

[19] For these reasons, private parties remain "perfectly free to complain to the Federal Government about unlawful State activity" and "the Federal Government [remains] free to take subsequent legal action." *Post*, at 5 (BREYER, J., dissenting). The only step the FMC may not take, consistent with this Court's sovereign immunity jurisprudence, is to adjudicate a dispute between a private party and a nonconsenting State.

B

Finally, the United States maintains that even if sovereign immunity were to bar the FMC from adjudicating a private party's complaint against a state-run port for purposes of issuing a reparation order, the FMC should not be precluded from considering a private party's request for other forms of relief, such as a cease-and-desist order. See Brief for United States 32–34. As we have previously noted, however, the primary function of sovereign immunity is not to protect State treasuries, see Part III–C, *supra,* but to afford the States the dignity and respect due sovereign entities. As a result, we explained in *Seminole Tribe* that "the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." 517 U. S., at 58. We see no reason why a different principle should apply in the realm of administrative adjudications.

* * *

While some might complain that our system of dual sovereignty is not a model of administrative convenience, see, *e.g.*, *post*, at 15–16 (BREYER, J., dissenting), that is not its purpose. Rather, "[t]he 'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties.'" *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985) (quoting *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 572 (1985) (Powell, J., dissenting)). By guarding against encroachments by the Federal Government on fundamental aspects of state sovereignty, such as sovereign immunity, we strive to maintain the balance of power embodied in our Constitution and thus to "reduce the risk of tyranny and abuse from either front." *Gregory* v. *Ashcroft*, 501 U. S., at 458. Although the

Framers likely did not envision the intrusion on state sovereignty at issue in today's case, we are nonetheless confident that it is contrary to their constitutional design, and therefore affirm the judgment of the Court of Appeals.

It is so ordered.