REHNQUIST, J., Opinion of the Court

SUPREME COURT OF THE UNITED STATES

517 U.S. 44

Seminole Tribe of Florida v. Florida

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 94-12 Argued: October 11, 1995 --- Decided: March 27, 1996

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Indian Gaming Regulatory Act provides that an Indian tribe may conduct certain gaming activities only in conformance with a valid compact between the tribe and the State in which the gaming activities are located. 102 Stat. 2475, 25 U.S.C. § 2710(d)(1)(C). The Act, passed by Congress under the Indian Commerce Clause, U.S.Const., Art. I, § 10, cl. 3, imposes upon the States a duty to negotiate in good faith with an Indian tribe toward the formation of a compact, § 2710(d)(3)(A), and authorizes a tribe to bring suit in federal court against a State in order to compel performance of that duty, § 2710(d)(7). We hold that, notwithstanding Congress' clear intent to abrogate the States' sovereign immunity, the Indian Commerce Clause does not grant Congress that power, and therefore § 2710(d)(7) cannot grant jurisdiction over a State that does not consent to be sued. We further hold that the doctrine of *Ex parte Young,* 209 U.S. 123 (1908), may not be used to enforce § 2710(d)(3) against a state official.

I

Congress passed the Indian Gaming Regulatory Act in 1988 in order to provide a statutory basis for the operation and regulation of gaming by Indian tribes. *See* 25 U.S.C. § 2702. The Act divides gaming on Indian lands into three classes -- I, II, and III -- and provides a different regulatory scheme for each class. Class III gaming -- the type with which we are here concerned -- is defined as "all forms of gaming that are not class I gaming or class II gaming," § 2703(8), and includes such things as slot machines, casino games, banking card games, dog racing, and lotteries. [n1] It is the most heavily regulated of the three classes. The Act provides that class III gaming is lawful only where it is: (1) authorized by an ordinance or resolution that (a) is adopted by the governing body of the Indian tribe, (b) satisfies certain statutorily prescribed

requirements, and (c) is approved by the National Indian Gaming Commission; (2) located in a State that permits such gaming for any purpose by any person, organization, or entity; and (3) "conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect." § 2710(d)(1).

The "paragraph (3)" to which the last prerequisite of § 2710(d)(1) refers is § 2710(d)(3), which describes the permissible scope of a Tribal-State compact, *see* § 2710(d)(3)(C), and provides that the compact is effective "only when notice of approval by the Secretary [of the Interior] of such compact has been published by the Secretary in the Federal Register," § 2710(d)(3)(B). More significant for our purposes, however, is that § 2710(d)(3) describes the process by which a State and an Indian tribe begin negotiations toward a Tribal-State compact:

> (A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

The State's obligation to "negotiate with the Indian tribe in good faith," is made judicially enforceable by §§ 2710(d)(7)(A)(i) and (B)(i):

> (A) The United States district courts shall have jurisdiction over --
>
> (i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith. . . .
>
> (B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

Sections 2710(d)(7)(B)(ii)-(vii) describe an elaborate remedial scheme designed to ensure the formation of a Tribal-State compact. A tribe that brings an action under § 2710(d)(7)(A)(i) must show that no Tribal-State compact has been entered and that the State failed to respond in good faith to the tribe's request to negotiate; at that point, the burden then shifts to the State to prove that it did in fact negotiate in good faith. § 2710(d)(7)(B)(ii). If the district court concludes that the State has failed to negotiate in good faith toward

the formation of a Tribal-State compact, then it "shall order the State and Indian tribe to conclude such a compact within a 60-day period." § 2710(d)(7)(B)(iii). If no compact has been concluded 60 days after the court's order, then "the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact." § 2710(d)(7)(B)(iv). The mediator chooses from between the two proposed compacts the one "which best comports with the terms of [the Act] and any other applicable Federal law and with the findings and order of the court," *ibid.*, and submits it to the State and the Indian tribe, § 2710(d)(7)(B)(v). If the State consents to the proposed compact within 60 days of its submission by the mediator, then the proposed compact is "treated as a Tribal-State compact entered into under paragraph (3)." § 2710(d)(7)(B)(vi). If, however, the State does not consent within that 60-day period, then the Act provides that the mediator "shall notify the Secretary [of the Interior]," and that the Secretary

> shall prescribe . . . procedures . . . under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

§ 2710(d)(7)(B)(vii). [n2]

In September, 1991, the Seminole Tribe of Indians, petitioner, sued the State of Florida and its Governor, Lawton Chiles, respondents. Invoking jurisdiction under 25 U.S.C. § 2710(d)(7)(A), as well as 28 U.S.C. §§ 1331 and 1362, petitioner alleged that respondents had "refused to enter into any negotiation for inclusion of [certain gaming activities] in a tribal-state compact," thereby violating the "requirement of good faith negotiation" contained in § 2710(d)(3). Petitioner's Complaint, ¶ 24, *see* App. 18. Respondents moved to dismiss the complaint, arguing that the suit violated the State's sovereign immunity from suit in federal court. The District Court denied respondents' motion, 801 F.Supp. 655 (SD Fla. 1992), and the respondents took an interlocutory appeal of that decision. *See Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.,* 506 U.S. 139 (1993) (collateral order doctrine allows immediate appellate review of order denying claim of Eleventh Amendment immunity).

The Court of Appeals for the Eleventh Circuit reversed the decision of the District Court, holding that the Eleventh Amendment barred petitioner's suit against respondents. [n3] 11 F.3d 1016 (1994). The court agreed with the District Court that Congress in § 2710(d)(7) intended to abrogate the States' sovereign immunity, and also agreed that the Act had been passed pursuant to Congress' power under the Indian Commerce Clause, U.S.Const., Art. I, § 8, cl. 3. The court disagreed with the District Court, however, that the Indian Commerce Clause grants Congress the power to abrogate a State's Eleventh Amendment immunity from suit, and concluded therefore that it had no jurisdiction over petitioner's suit against Florida. The court further held that *Ex parte Young,* 209 U.S. 123 (1908), does not permit an Indian tribe to force good faith

negotiations by suing the Governor of a State. Finding that it lacked subject matter jurisdiction, the Eleventh Circuit remanded to the District Court with directions to dismiss petitioner's suit. [n4]

Petitioner sought our review of the Eleventh Circuit's decision, [n5] and we granted certiorari, 513 U.S. ___ (1995), in order to consider two questions: (1) Does the Eleventh Amendment prevent Congress from authorizing suits by Indian tribes against States for prospective injunctive relief to enforce legislation enacted pursuant to the Indian Commerce Clause?; and (2) Does the doctrine of *Ex parte Young* permit suits against a State's governor for prospective injunctive relief to enforce the good faith bargaining requirement of the Act? We answer the first question in the affirmative, the second in the negative, and we therefore affirm the Eleventh Circuit's dismissal of petitioner's suit. [n6]

The Eleventh Amendment provides:

> The 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.

Although the text of the Amendment would appear to restrict only the Article III diversity jurisdiction of the federal courts, "we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition . . . which it confirms." *Blatchford v. Native Village of Noatak,* 501 U.S. 775, 779 (1991). That presupposition, first observed over a century ago in *Hans v. Louisiana,* 134 U.S. 1 (1890), has two parts: first, that each State is a sovereign entity in our federal system; and second, that "'[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.'" *Id.* at 13 (emphasis deleted), quoting The Federalist No. 81, p. 487 (C. Rossiter ed. 1961) (A. Hamilton). *See also Puerto Rico Aqueduct and Sewer Authority, supra,* at 146 ("The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity"). For over a century, we have reaffirmed that federal jurisdiction over suits against unconsenting States "was not contemplated by the Constitution when establishing the judicial power of the United States." *Hans, supra,* at 15. [n7]

Here, petitioner has sued the State of Florida and it is undisputed that Florida has not consented to the suit. *See Blatchford, supra,* at 782 (States, by entering into the Constitution, did not consent to suit by Indian tribes). Petitioner nevertheless contends that its suit is not barred by state sovereign immunity. First, it argues that Congress, through the Act, abrogated the States' sovereign immunity. Alternatively, petitioner maintains that its suit against the Governor may go forward under *Ex parte Young, supra.* We consider each of those arguments in turn.

II

Petitioner argues that Congress, through the Act, abrogated the States' immunity from suit. In order to determine whether Congress has abrogated the States' sovereign immunity, we ask two questions: first, whether Congress has "unequivocally expresse[d] its intent to abrogate the immunity," *Green v. Mansour,* 474 U.S. 64, 68 (1985); and second, whether Congress has acted "pursuant to a valid exercise of power." *Ibid.*

A

Congress' intent to abrogate the States' immunity from suit must be obvious from "a clear legislative statement." *Blatchford,* 501 U.S. at 786. This rule arises from a recognition of the important role played by the Eleventh Amendment and the broader principles that it reflects. *See Atascadero State Hospital v. Scanlon,* 473 U.S. 234, 238-239 (1985); *Quern v. Jordan,* 440 U.S. 332, 345 (1979). In *Atascadero,* we held that

> [a] general authorization for suit in federal court is not the kind of unequivocal statutory language sufficient to abrogate the Eleventh Amendment.

473 U.S. at 246; *see also Blatchford, supra,* at 786, n. 4 ("The fact that Congress grants jurisdiction to hear a claim does not suffice to show Congress has abrogated all defenses to that claim") (emphases deleted). Rather, as we said in *Dellmuth v. Muth,* 491 U.S. 223 (1989),

> To temper Congress' acknowledged powers of abrogation with due concern for the Eleventh Amendment's role as an essential component of our constitutional structure, we have applied a simple but stringent test:

Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.

Id. at 227-228. *See also Welch v. Texas Dept. of Highways and Public Transp.,* 483 U.S. 468, 474 (1987) (plurality opinion).

Here, we agree with the parties, with the Eleventh Circuit in the decision below, 11 F.3d at 1024, and with virtually every other court that has confronted the question [n8] that Congress has in § 2710(d)(7) provided an "unmistakably clear" statement of its intent to abrogate. Section 2710(d)(7)(A)(i) vests jurisdiction in

> [t]he United States district courts . . . over any cause of action . . . arising from the failure of a State to enter into negotiations . . . or to conduct such negotiations in good faith.

Any conceivable doubt as to the identity of the defendant in an action under § 2710(d)(7)(A)(i) is dispelled when one looks to the various provisions of § 2710(d)(7)(B), which describe the remedial scheme available to a tribe that files suit under § 2710(d)(7)(A)(i). Section 2710(d)(7)(B)(ii)(II) provides that if a suing tribe meets its burden of proof, then the "burden of proof shall be upon the State. . . . "; § 2710(d)(7)(B)(iii) states that if the court "finds that the State has failed to negotiate in good faith . . ., the court shall order the State . . ."; § 2710(d)(7)(B)(iv) provides that "the State shall . . . submit to a mediator appointed by the court," and subsection (B)(v) of § 2710(d)(7) states that the mediator "shall submit to the State." Sections 2710(d)(7)(B)(vi) and (vii) also refer to the "State" in a context that makes it clear that the State is the defendant to the suit brought by an Indian tribe under § 2710(d)(7)(A)(i). In sum, we think that the numerous references to the "State" in the text of § 2710(d)(7)(B) make it indubitable that Congress intended, through the Act, to abrogate the States' sovereign immunity from suit. [n9]

B

Having concluded that Congress clearly intended to abrogate the States' sovereign immunity through § 2710(d)(7), we turn now to consider whether the Act was passed "pursuant to a valid exercise of power." *Green v. Mansour,* 474 U.S. at 68. Before we address that question here, however, we think it necessary first to define the scope of our inquiry.

Petitioner suggests that one consideration weighing in favor of finding the power to abrogate here is that the Act authorizes only prospective injunctive relief, rather than retroactive monetary relief. But we have often made it clear that the relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment. *See, e.g., Cory v. White,* 457 U.S. 85, 90 (1982) ("It would be a novel proposition indeed that the Eleventh Amendment does not bar a suit to enjoin the State itself simply because no money judgment is sought"). We think it follows *a fortiori* from this proposition that the type of relief sought is irrelevant to whether Congress has power to abrogate States' immunity. The Eleventh Amendment does not exist solely in order to "preven[t] federal court judgments that must be paid out of a State's treasury," *Hess v. Port Authority Trans-Hudson Corporation,* 513 U.S. ___ (1994); it also serves to avoid "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties," *Puerto Rico Aqueduct and Sewer Authority,* 506 U.S. at 146 (internal quotation marks omitted).

Similarly, petitioner argues that the abrogation power is validly exercised here because the Act grants the States a power that they would not otherwise have, *viz.,* some measure of authority over gaming on Indian lands. It is true enough that the Act extends to the States a power withheld from them by the Constitution. *See California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). Nevertheless, we do not see how that consideration is relevant to the question whether Congress may abrogate state sovereign

immunity. The Eleventh Amendment immunity may not be lifted by Congress unilaterally deciding that it will be replaced by grant of some other authority. *Cf. Atascadero,* 473 U.S. at 246-247 ("[T]he mere receipt of federal funds cannot establish that a State has consented to suit in federal court").

Thus our inquiry into whether Congress has the power to abrogate unilaterally the States' immunity from suit is narrowly focused on one question: Was the Act in question passed pursuant to a constitutional provision granting Congress the power to abrogate? *See, e.g., Fitzpatrick v. Bitzer,* 427 U.S. 445, 452-456 (1976). Previously, in conducting that inquiry, we have found authority to abrogate under only two provisions of the Constitution. In *Fitzpatrick,* we recognized that the Fourteenth Amendment, by expanding federal power at the expense of state autonomy, had fundamentally altered the balance of state and federal power struck by the Constitution. *Id.* at 455. We noted that § 1 of the Fourteenth Amendment contained prohibitions expressly directed at the States and that § 5 of the Amendment expressly provided that "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." *See id.* at 453 (internal quotation marks omitted). We held that through the Fourteenth Amendment, federal power extended to intrude upon the province of the Eleventh Amendment and therefore that § 5 of the Fourteenth Amendment allowed Congress to abrogate the immunity from suit guaranteed by that Amendment.

In only one other case has congressional abrogation of the States' Eleventh Amendment immunity been upheld. In *Pennsylvania v. Union Gas Co.,* 491 U.S. 1 (1989), a plurality of the Court found that the Interstate Commerce Clause, Art. I, § 8, cl. 3, granted Congress the power to abrogate state sovereign immunity, stating that the power to regulate interstate commerce would be "incomplete without the authority to render States liable in damages." *Union Gas,* 491 U.S. at 19-20. Justice White added the fifth vote necessary to the result in that case, but wrote separately in order to express that he "[did] not agree with much of [the plurality's] reasoning." *Id.* at 57 (White, J., concurring in judgment in part and dissenting in part).

In arguing that Congress, through the Act, abrogated the States' sovereign immunity, petitioner does not challenge the Eleventh Circuit's conclusion that the Act was passed pursuant to neither the Fourteenth Amendment nor the Interstate Commerce Clause. Instead, accepting the lower court's conclusion that the Act was passed pursuant to Congress' power under the Indian Commerce Clause, petitioner now asks us to consider whether that clause grants Congress the power to abrogate the States' sovereign immunity.

Petitioner begins with the plurality decision in *Union Gas,* and contends that

> [t]here is no principled basis for finding that congressional power under the Indian Commerce Clause is less than that conferred by the Interstate Commerce Clause.

Brief for Petitioner 17. Noting that the *Union Gas* plurality found the power to abrogate from the "plenary" character of the grant of authority over interstate commerce, petitioner emphasizes that the Interstate Commerce Clause leaves the States with some power to regulate, *see, e.g., West Lynn Creamery, Inc. v. Healy,* 512 U.S. ___ (1994), whereas the Indian Commerce Clause makes "Indian relations . . . the exclusive province of federal law." *County of Oneida v. Oneida Indian Nation of N. Y.,* 470 U.S. 226, 234 (1985). Contending that the Indian Commerce Clause vests the Federal Government with "the duty of protect[ing]" the tribes from "local ill feeling" and "the people of the States," *United States v. Kagama,* 118 U.S. 375, 383-384 (1886), petitioner argues that the abrogation power is necessary "to protect the tribes from state action denying federally guaranteed rights." Brief for Petitioner 20.

Respondents dispute the petitioner's analogy between the Indian Commerce Clause and the Interstate Commerce Clause. They note that we have recognized that "the Interstate Commerce and Indian Commerce Clauses have very different applications," *Cotton Petroleum Corp. v. New Mexico,* 490 U.S. 163, 192 (1989), and from that they argue that the two provisions are "wholly dissimilar." Brief for Respondents 21. Respondents contend that the Interstate Commerce Clause grants the power of abrogation only because Congress' authority to regulate interstate commerce would be "incomplete" without that "necessary" power. *Id.* at 23, citing *Union Gas, supra,* at 19-20. The Indian Commerce Clause is distinguishable, respondents contend, because it gives Congress complete authority over the Indian tribes. Therefore, the abrogation power is not "necessary" to the Congress' exercise of its power under the Indian Commerce Clause. [n10]

Both parties make their arguments from the plurality decision in *Union Gas,* and we, too, begin there. We think it clear that Justice Brennan's opinion finds Congress' power to abrogate under the Interstate Commerce Clause from the States' cession of their sovereignty when they gave Congress plenary power to regulate interstate commerce. *See Union Gas,* 491 U.S. at 17 ("The important point . . . is that the provision both expands federal power and contracts state power"). Respondents' focus elsewhere is misplaced. While the plurality decision states that Congress' power under the Interstate Commerce Clause would be incomplete without the power to abrogate, that statement is made solely in order to emphasize the broad scope of Congress' authority over interstate commerce. *Id.* at 19-20. Moreover, respondents' rationale would mean that where Congress has less authority, and the States have more, Congress' means for exercising that power must be greater. We read the plurality opinion to provide just the opposite. Indeed, it was in those circumstances where Congress exercised complete authority that Justice Brennan thought the power to abrogate most necessary. *Id.* at 20 ("Since the States may not legislate at all in [the

aforementioned] situations, a conclusion that Congress may not create a cause of action for money damages against the States would mean that no one could do so. And in many situations, it is only money damages that will carry out Congress' legitimate objectives under the Commerce Clause").

Following the rationale of the *Union Gas* plurality, our inquiry is limited to determining whether the Indian Commerce Clause, like the Interstate Commerce Clause, is a grant of authority to the Federal Government at the expense of the States. The answer to that question is obvious. If anything, the Indian Commerce Clause accomplishes a greater transfer of power from the States to the Federal Government than does the Interstate Commerce Clause. This is clear enough from the fact that the States still exercise some authority over interstate trade but have been divested of virtually all authority over Indian commerce and Indian tribes. Under the rationale of *Union Gas,* if the States' partial cession of authority over a particular area includes cession of the immunity from suit, then their virtually total cession of authority over a different area must also include cession of the immunity from suit. *See Union Gas, supra,* at 42 (SCALIA, J., joined by REHNQUIST, C.J., and O'CONNOR and KENNEDY, JJ., dissenting) ("[I]f the Article I commerce power enables abrogation of state sovereign immunity, so do all the other Article I powers"); *see Ponca Tribe of Oklahoma v. Oklahoma,* 37 F.3d 1422, 1428 (CA10 1994) (Indian Commerce Clause grants power to abrogate), cert. pending, No. 94-1029; *Cheyenne River Sioux Tribe v. South Dakota,* 3 F.3d 273, 281 (CA8 1993) (same); *cf. Chavez v. Arte Publico Press,* 59 F.3d 539, 546-547 (CA5 1995) (After *Union Gas,* Copyright Clause, U.S.Const., Art. I, § 8, cl. 8, must grant Congress power to abrogate). We agree with the petitioner that the plurality opinion in *Union Gas* allows no principled distinction in favor of the States to be drawn between the Indian Commerce Clause and the Interstate Commerce Clause.

Respondents argue, however, that we need not conclude that the Indian Commerce Clause grants the power to abrogate the States' sovereign immunity. Instead, they contend that if we find the rationale of the *Union Gas* plurality to extend to the Indian Commerce Clause, then "*Union Gas* should be reconsidered and overruled." Brief for Respondents 25. Generally, the principle of *stare decisis,* and the interests that it serves, viz.,

> the evenhanded, predictable, and consistent development of legal principles, . . . reliance on judicial decisions, and . . . the actual and perceived integrity of the judicial process,

Payne v. Tennessee, 501 U.S. 808, 827 (1991), counsel strongly against reconsideration of our precedent. Nevertheless, we always have treated *stare decisis* as a "principle of policy," *Helvering v. Hallock,* 309 U.S. 106, 119 (1940), and not as an "inexorable command," *Payne,* 501 U.S. at 828. "[W]hen governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'" *Id.* at 827 (quoting *Smith v.*

Allwright, 321 U.S. 649, 665 (1944)). Our willingness to reconsider our earlier decisions has been "particularly true in constitutional cases, because in such cases 'correction through legislative action is practically impossible.'" *Payne, supra,* at 828, (quoting *Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)).

The Court in *Union Gas* reached a result without an expressed rationale agreed upon by a majority of the Court. We have already seen that Justice Brennan's opinion received the support of only three other Justices. *See Union Gas,* 491 U.S. at 5 (Marshall, Blackmun, and STEVENS, JJ., joined Justice Brennan). Of the other five, Justice White, who provided the fifth vote for the result, wrote separately in order to indicate his disagreement with the majority's rationale, *id.* at 57 (White, J., concurring in judgment and dissenting in part), and four Justices joined together in a dissent that rejected the plurality's rationale. *Id.* at 35-45 (SCALIA, J., dissenting, joined by REHNQUIST, C.J., and O'CONNOR and KENNEDY, JJ.). Since it was issued, *Union Gas* has created confusion among the lower courts that have sought to understand and apply the deeply fractured decision. *See, e.g., Chavez v. Arte Publico Press, supra,* at 543-545 ("Justice White's concurrence must be taken on its face to disavow" the plurality's theory); 11 F.3d at 1027 (Justice White's "vague concurrence renders the continuing validity of *Union Gas* in doubt").

The plurality's rationale also deviated sharply from our established federalism jurisprudence and essentially eviscerated our decision in *Hans. See Union Gas, supra,* at 36 ("If *Hans* means only that federal question suits for money damages against the States cannot be brought in federal court unless Congress clearly says so, it means nothing at all") (SCALIA, J., dissenting). It was well established in 1989, when *Union Gas* was decided, that the Eleventh Amendment stood for the constitutional principle that state sovereign immunity limited the federal courts' jurisdiction under Article III. The text of the Amendment itself is clear enough on this point: "The Judicial power of the United States shall not be construed to extend to any suit. . . ." And our decisions since *Hans* had been equally clear that the Eleventh Amendment reflects "the fundamental principle of sovereign immunity [that] limits the grant of judicial authority in Article III," *Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89, 97-98 (1984); *see Union Gas, supra,* at 38, ("'[T]he 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. . . .'") (SCALIA, J., dissenting) (quoting *Ex parte New York,* 256 U.S. 490, 497 (1921)); *see also* cases cited at n. 7, *supra.* As the dissent in *Union Gas* recognized, the plurality's conclusion -- that Congress could, under Article I, expand the scope of the federal courts' jurisdiction under Article III -- "contradict[ed] our unvarying approach to Article III as setting forth the *exclusive* catalog of permissible federal court jurisdiction." *Union Gas,* 491 U.S. at 39.

Never before the decision in *Union Gas* had we suggested that the bounds of Article III could be expanded by Congress operating

pursuant to any constitutional provision other than the Fourteenth Amendment. Indeed, it had seemed fundamental that Congress could not expand the jurisdiction of the federal courts beyond the bounds of Article III. *Marbury v. Madison,* 1 Cranch 137 (1803). The plurality's citation of prior decisions for support was based upon what we believe to be a misreading of precedent. *See Union Gas,* 491 U.S. at 40-41 (SCALIA, J., dissenting). The plurality claimed support for its decision from a case holding the unremarkable, and completely unrelated, proposition that the States may waive their sovereign immunity, *see id.* at 14-15 (citing *Parden v. Terminal Railway of Ala. Docks Dept.,* 377 U.S. 184 (1964)), and cited as precedent propositions that had been merely assumed for the sake of argument in earlier cases, *see* 491 U.S. at 15 (citing *Welch v. Texas Dept. of Highways and Public Transp.,* 483 U.S. at 475-476, and n. 5, and *County of Oneida v. Oneida Indian Nation of N. Y.,* 470 U.S. at 252).

The plurality's extended reliance upon our decision in *Fitzpatrick v. Bitzer,* 427 U.S. 445 (1976), that Congress could under the Fourteenth Amendment abrogate the States' sovereign immunity was also, we believe, misplaced. *Fitzpatrick* was based upon a rationale wholly inapplicable to the Interstate Commerce Clause, viz., that the Fourteenth Amendment, adopted well after the adoption of the Eleventh Amendment and the ratification of the Constitution, operated to alter the preexisting balance between state and federal power achieved by Article III and the Eleventh Amendment. *Id.* at 454. As the dissent in *Union Gas* made clear, *Fitzpatrick* cannot be read to justify "limitation of the principle embodied in the Eleventh Amendment through appeal to antecedent provisions of the Constitution." *Union Gas,* 491 U.S. at 42 (SCALIA, J., dissenting).

In the five years since it was decided, *Union Gas* has proven to be a solitary departure from established law. *See Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993). Reconsidering the decision in *Union Gas,* we conclude that none of the policies underlying *stare decisis* require our continuing adherence to its holding. The decision has, since its issuance, been of questionable precedential value, largely because a majority of the Court expressly disagreed with the rationale of the plurality. *See Nichols v. United States,* 511 U.S. ___, ___ (1994) (the "degree of confusion following a splintered decision . . . is itself a reason for reexamining that decision"). The case involved the interpretation of the Constitution and therefore may be altered only by constitutional amendment or revision by this Court. Finally, both the result in *Union Gas* and the plurality's rationale depart from our established understanding of the Eleventh Amendment and undermine the accepted function of Article III. We feel bound to conclude that *Union Gas* was wrongly decided, and that it should be, and now is, overruled.

The dissent makes no effort to defend the decision in *Union Gas, see post* at ___, but nonetheless would find congressional power to abrogate in this case. [n11] Contending that our decision is a novel extension of the Eleventh Amendment, the dissent chides us for

"attend[ing]" to dicta. We adhere in this case, however, not to mere *obiter dicta,* but rather to the well established rationale upon which the Court based the results of its earlier decisions. When an opinion issues for the Court, it is not only the result, but also those portions of the opinion necessary to that result by which we are bound. *Cf. Burnham v. Superior Court of Cal., County of Marin,* 495 U.S. 604, 613 (1990) (exclusive basis of a judgment is not dicta) (plurality); *Allegheny County v. American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 U.S. 573, 668 (1989) ("As a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law.") (KENNEDY, J., concurring and dissenting); *Sheet Metal Workers v. EEOC,* 478 U.S. 421, 490 (1986) ("Although technically dicta, . . . an important part of the Court's rationale for the result that it reache[s] . . . is entitled to greater weight . . .") (O'CONNOR, J., concurring). For over a century, we have grounded our decisions in the oft-repeated understanding of state sovereign immunity as an essential part of the Eleventh Amendment. In *Principality of Monaco v. Mississippi,* 292 U.S. 313 (1934), the Court held that the Eleventh Amendment barred a suit brought against a State by a foreign state. Chief Justice Hughes wrote for a unanimous Court:

> [N]either the literal sweep of the words of Clause one of § 2 of Article III nor the absence of restriction in the letter of the Eleventh Amendment permits the conclusion that in all controversies of the sort described in Clause one, and omitted from the words of the Eleventh Amendment, a State may be sued without her consent. Thus Clause one specifically provides that the judicial power shall extend

to *all* Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

> But, although a case may arise under the Constitution and laws of the United States, the judicial power does not extend to it if the suit is sought to be prosecuted against a State, without her consent, by one of her own citizens. . . .
>
> Manifestly, we cannot rest with a mere literal application of the words of § 2 of Article III, or assume that the letter of the Eleventh Amendment exhausts the restrictions upon suits against nonconsenting States. Behind the words of the constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character. There is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent,

> save where there has been a "surrender of this immunity in the plan of the convention."

Id. at 321-323 (citations and footnote omitted); *see id.* at 329-330; *see also Pennhurst*, 465 U.S. at 98 ("In short, the principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art. III"); *Ex parte New York,* 256 U.S. at 497 ("[T]he 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 . . ."). It is true that we have not had occasion previously to apply established Eleventh Amendment principles to the question whether Congress has the power to abrogate state sovereign immunity (save in *Union Gas*). But consideration of that question must proceed with fidelity to this century-old doctrine.

The dissent, to the contrary, disregards our case law in favor of a theory cobbled together from law review articles and its own version of historical events. The dissent cites not a single decision since *Hans* (other than *Union Gas*) that supports its view of state sovereign immunity, instead relying upon the now-discrSyllabus & Opinions Only in *Chisholm v. Georgia,* 2 Dall. 419 (1793). *See, e.g., post* at ___ n. 47. Its undocumented and highly speculative extralegal explanation of the decision in *Hans* is a disservice to the Court's traditional method of adjudication. *See post* at ___.

The dissent mischaracterizes the *Hans* opinion. That decision found its roots not solely in the common law of England, but in the much more fundamental "'jurisprudence in all civilized nations.'" *Hans,* 134 U.S. at 17, quoting *Beers v. Arkansas,* 20 How. 527, 529 (1858); *see also* The Federalist No. 81, p. 487 (C. Rossiter ed. 1961) (A. Hamilton) (sovereign immunity "is the general sense and the general practice of mankind"). The dissent's proposition that the common law of England, where adopted by the States, was open to change by the legislature, is wholly unexceptionable and largely beside the point: that common law provided the substantive rules of law rather than jurisdiction. *Cf. Monaco, supra,* at 323 (state sovereign immunity, like the requirement that there be a "justiciable" controversy, is a constitutionally grounded limit on federal jurisdiction). It also is noteworthy that the principle of state sovereign immunity stands distinct from other principles of the common law in that only the former prompted a specific constitutional amendment.

Hans -- with a much closer vantage point than the dissent -- recognized that the decision in *Chisholm* was contrary to the well understood meaning of the Constitution. The dissent's conclusion that the decision in *Chisholm* was "reasonable," *post* at ___, certainly would have struck the Framers of the Eleventh Amendment as quite odd: that decision created "such a shock of surprise that the Eleventh Amendment was at once proposed and adopted." *Monaco, supra,* at 325. The dissent's lengthy analysis of the text of the Eleventh Amendment is directed at a straw man -- we long have recognized that blind reliance upon the text of the

Eleventh Amendment is "'to strain the Constitution and the law to a construction never imagined or dreamed of.'" *Monaco,* 292 U.S. at 326, quoting *Hans,* 134 U.S. at 15. The text dealt in terms only with the problem presented by the decision in *Chisholm;* in light of the fact that the federal courts did not have federal question jurisdiction at the time the Amendment was passed (and would not have it until 1875), it seems unlikely that much thought was given to the prospect of federal question jurisdiction over the States.

That same consideration causes the dissent's criticism of the views of Marshall, Madison, and Hamilton to ring hollow. The dissent cites statements made by those three influential Framers, the most natural reading of which would preclude all federal jurisdiction over an unconsenting State. [n12] Struggling against this reading, however, the dissent finds significant the absence of any contention that sovereign immunity would affect the new federal question jurisdiction. *Post* at ___. But the lack of any statute vesting general federal question jurisdiction in the federal courts until much later makes the dissent's demand for greater specificity about a then-dormant jurisdiction overly exacting. [n13]

In putting forward a new theory of state sovereign immunity, the dissent develops its own vision of the political system created by the Framers, concluding with the statement that

> [t]he Framer's principal objectives in rejecting English theories of unitary sovereignty . . . would have been impeded if a new concept of sovereign immunity had taken its place in federal question cases, and would have been substantially thwarted if that new immunity had been held untouchable by any congressional effort to abrogate it. [n14]

Post at ___. This sweeping statement ignores the fact that the Nation survived for nearly two centuries without the question of the existence of such power ever being presented to this Court. And Congress itself waited nearly a century before even conferring federal question jurisdiction on the lower federal courts. [n15]

In overruling *Union Gas* today, we reconfirm 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, like the regulation of Indian commerce, that is under the exclusive control of the Federal Government. Even 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. [n16] The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction. Petitioner's suit against the State of Florida must be dismissed for a lack of jurisdiction.

III

Petitioner argues that we may exercise jurisdiction over its suit to enforce § 2710(d)(3) against the Governor notwithstanding the jurisdictional bar of the Eleventh Amendment. Petitioner notes that since our decision in *Ex parte Young,* 209 U.S. 123 (1908), we often have found federal jurisdiction over a suit against a state official when that suit seeks only prospective injunctive relief in order to "end a continuing violation of federal law." *Green v. Mansour,* 474 U.S. at 68. The situation presented here, however, is sufficiently different from that giving rise to the traditional *Ex parte Young* action so as to preclude the availability of that doctrine.

Here, the "continuing violation of federal law" alleged by petitioner is the Governor's failure to bring the State into compliance with § 2710(d)(3). But the duty to negotiate imposed upon the State by that statutory provision does not stand alone. Rather, as we have seen, *supra* at ___, Congress passed § 2710(d)(3) in conjunction with the carefully crafted and intricate remedial scheme set forth in § 2710(d)(7).

Where Congress has created a remedial scheme for the enforcement of a particular federal right, we have, in suits against federal officers, refused to supplement that scheme with one created by the judiciary. *Schweiker v. Chilicky,* 487 U.S. 412, 423 (1988) ("When the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional . . . remedies"). Here, of course, the question is not whether a remedy should be created, but instead is whether the Eleventh Amendment bar should be lifted, as it was in *Ex parte Young,* in order to allow a suit against a state officer. Nevertheless, we think that the same general principle applies: therefore, where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right, a court should hesitate before casting aside those limitations and permitting an action against a state officer based upon *Ex parte Young.*

Here, Congress intended § 2710(d)(3) to be enforced against the State in an action brought under § 2710(d)(7); the intricate procedures set forth in that provision show that Congress intended therein not only to define, but also significantly to limit, the duty imposed by § 2710-(d)(3). For example, where the court finds that the State has failed to negotiate in good faith, the only remedy prescribed is an order directing the State and the Indian tribe to conclude a compact within 60 days. And if the parties disregard the court's order and fail to conclude a compact within the 60-day period, the only sanction is that each party then must submit a proposed compact to a mediator who selects the one which best embodies the terms of the Act. Finally, if the State fails to accept the compact selected by the mediator, the only sanction against it is that the mediator shall notify the Secretary of the Interior, who then must prescribe regulations governing Class III gaming on the tribal lands at issue. By contrast with this quite modest set of sanctions, an action brought against a state official under *Ex parte Young* would expose that official to the full remedial powers of a

federal court, including, presumably, contempt sanctions. If § 2710(d)(3) could be enforced in a suit under *Ex parte Young,* § 2710(d)(7) would have been superfluous; it is difficult to see why an Indian tribe would suffer through the intricate scheme of § 2710(d)(7) when more complete and more immediate relief would be available under *Ex parte Young.* [n17]

Here, of course, we have found that Congress does not have authority under the Constitution to make the State suable in federal court under § 2710(d)(7). Nevertheless, the fact that Congress chose to impose upon the State a liability which is significantly more limited than would be the liability imposed upon the state officer under *Ex parte Young* strongly indicates that Congress had no wish to create the latter under § 2710(d)(3). Nor are we free to rewrite the statutory scheme in order to approximate what we think Congress might have wanted had it known that § 2710(d)(7) was beyond its authority. If that effort is to be made, it should be made by Congress, and not by the federal courts. We hold that *Ex parte Young* is inapplicable to petitioner's suit against the Governor of Florida, and therefore that suit is barred by the Eleventh Amendment and must be dismissed for a lack of jurisdiction.

IV

The Eleventh Amendment prohibits Congress from making the State of Florida capable of being sued in federal court. The narrow exception to the Eleventh Amendment provided by the *Ex parte Young* doctrine cannot be used to enforce § 2710(d)(3) because Congress enacted a remedial scheme, § 2710(d)(7), specifically designed for the enforcement of that right. The Eleventh Circuit's dismissal of petitioner's suit is hereby affirmed. [n18]

It is so ordered.

[1.] Class I gaming

> means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations,

25 U.S.C. § 2703(6), and is left by the Act to "the exclusive jurisdiction of the Indian tribes." § 2710(a)(1). Class II gaming is more extensively defined to include bingo, games similar to bingo, nonbanking card games not illegal under the laws of the State, and card games actually operated in particular States prior to the passage of the Act. *See* § 2703(7). Banking card games, electronic games of chance, and slot machines are expressly excluded from the scope of class II gaming. § 2703(B). The Act allows class II gaming where the State "permits such gaming for any purpose by any person, organization or entity," and the "governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman" of the National Indian Gaming Commission.

§ 2710(b)(1). Regulation of class II gaming contemplates a federal role, but places primary emphasis on tribal self-regulation. *See* § 2710(c)(3)-(6).

[2.] Sections 2710(d)(7)(B)(ii)-(vii) provide in full:

> (ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that
>
> (I) a Tribal-State compact has not been entered into under paragraph (3), and
>
> (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith, the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.
>
> (iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court --
>
> (I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and
>
> (II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.
>
> (iv) If a State and an Indian tribe fail to conclude a Tribal-State compact . . . within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures --

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

[3.] The Eleventh Circuit consolidated petitioner's appeal with an appeal from another suit brought under § 2710(d)(7)(A)(i) by a different Indian tribe. Although the district court in that case had granted the defendants' motions to dismiss, the legal issues presented by the two appeals were virtually identical. See Poarch Band of Creek Indians v. Alabama, 776 F.Supp. 550 (SD Ala. 1991) (Eleventh Amendment bars suit against State), and 784 F.Supp. 1549 (SD Ala. 1992) (Eleventh Amendment bars suit against Governor).

[4.] Following its conclusion that petitioner's suit should be dismissed, the Court of Appeals went on to consider how § 2710(d)(7) would operate in the wake of its decision. The court decided that those provisions of § 2710(d)(7) that were problematic could be severed from the rest of the section, and read the surviving provisions of § 2710(d)(7) to provide an Indian tribe with immediate recourse to the Secretary of the Interior from the dismissal of a suit against a State. 11 F.3d at 1029.

[5.] Respondents filed a cross-petition, No. 94-219, challenging only the Eleventh Circuit's modification of § 2710(d)(7), see n. 4, supra. That petition is still pending.

[6.] While the appeal was pending before the Eleventh Circuit, the District Court granted respondents' earlier-filed summary judgment motion, finding that Florida had fulfilled its obligation under the Act to negotiate in good faith. The Eleventh Circuit has stayed its review of that decision pending the disposition of this case.

[7.] E.g., North Carolina v. Temple, 134 U.S. 22, 30 (1890); Fitts v. McGhee, 172 U.S. 516, 524 (1899); Bell v. Mississippi, 177 U.S. 693 (1900); Smith v. Reeves, 178 U.S. 436, 446 (1900); Palmer v. Ohio, 248 U.S. 32, 34 (1918); Duhne v. New Jersey, 251 U.S. 311, 313 (1920); Ex parte New York, 256 U.S. 490, 497 (1921); Missouri v. Fiske, 290 U.S. 18, 26 (1933); Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 51 (1944); Ford Motor Co. v. Department of Treasury of Ind., 323 U.S. 459, 464 (1945); Georgia Railroad & Banking Co. v. Redwine, 342 U.S. 299, 304, n. 13 (1952); Parden v. Terminal Railway of Ala. Docks Dept., 377 U.S. 184, 186 (1964); United States v. Mississippi, 380 U.S. 128, 140 (1965); Employees v. Department of Public Health and Welfare of Mo., 411 U.S. 279, 280 (1973); Edelman v. Jordan, 415 U.S. 651, 662-663 (1974); Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Cory v. White, 457 U.S. 85 (1982); Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 97-100 (1984); Atascadero State Hospital v. Scanlon, 473 U.S. 234, 237-238 (1985); Welch v. Texas Dept. of Highways and Public Transp., 483 U.S. 468, 472-474 (1987) (plurality opinion); Dellmuth v. Muth, 491 U.S. 223, 227-229, and n. 2 (1989); Port Authority Trans-Hudson Corp. v. Feeney, 495 U.S. 299, 304 (1990); Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991); Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, ___ (1993).

[8.] See Ponca Tribe of Oklahoma v. Oklahoma, 37 F.3d 1422, 1427-1428 (CA10 1994), cert. pending, No. 94-1029; Spokane Tribe v. Washington,28 F.3d 991, 994-995 (CA9 1994); Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 273, 280-281 (CA8 1993); Ponca Tribe of Oklahoma v. Oklahoma, 834 F.Supp. 1341, 1345 (WD Okla. 1993); Maxam v. Lower Sioux Indian Community of Minnesota, 829 F.Supp. 277 (D. Minn. 1993); Kickapoo Tribe of Indians v. Kansas, 818 F.Supp. 1423, 1427 (D. Kan. 1993); 801 F.Supp. 655, 658 (SD Fla. 1992) (case below); Sault Ste. Marie Tribe of Chippewa Indians v. Michigan, 800 F.Supp. 1484, 1488-1489 (WD Mich. 1992); Poarch Band of Creek Indians v. Alabama, 776 F.Supp. at 557-558.

[9.] The dissent argues that in order to avoid a constitutional question, we should interpret the Act to provide only a suit against state officials, rather than a suit against the State itself. Post at ___. But, in light of the plain text of § 2710(d)(7)(B), we disagree with the dissent's assertion that the Act can reasonably be read in that way. "We cannot press statutory construction 'to the point of disingenuous evasion' even to avoid a constitutional question." See United States v. Locke, 471 U.S. 84, 96 (1985), quoting George Moore Ice Cream Co. v. Rose, 289 U.S. 373, 379 (1933) (Cardozo, J.). We already have found the clear statement rule satisfied, and that finding renders the preference for avoiding a constitutional question inapplicable.

[10.] Respondents also contend that the Act mandates state regulation of Indian gaming and therefore violates the Tenth Amendment by allowing federal officials to avoid political accountability for those actions for which they are in fact responsible. See New York v. United States, 505 U.S. 144 (1992). This argument was not considered below by either the Eleventh Circuit or the District

Court, and is not fairly within the question presented. Therefore we do not consider it here. See this Court's Rule 14.1; Yee v. Escondido, 503 U.S. 519 (1992).

[11.] Unless otherwise indicated, all references to the dissent are to the dissenting opinion authored by JUSTICE SOUTER.

[12.] We note here also that the dissent quotes selectively from the Framers' statements that it references. The dissent cites the following, for instance, as a statement made by Madison:

> the Constitution "give[s] a citizen a right to be heard in the federal courts; and if a state should condescend to be a party, this court may take cognizance of it."

See post at ___. But that statement, perhaps ambiguous when read in isolation, was preceded by the following:

> [J]urisdiction in controversies between a state and citizens of another state is much objected to, and perhaps without reason. It is not in the power of individuals to call any state into court. The only operation it can have, is that, if a state should wish to bring a suit against a citizen, it must be brought before the federal courts. It appears to me that this can have no operation but this.

See 3 J. Elliot, Debates on the Federal Constitution 67 (1866).

[13.] Although the absence of any discussion dealing with federal question jurisdiction is therefore unremarkable, what is notably lacking in the Framers' statements is any mention of Congress' power to abrogate the States' immunity. The absence of any discussion of that power is particularly striking in light of the fact that the Framers virtually always were very specific about the exception to state sovereign immunity arising from a State's consent to suit. See, e.g., The Federalist No. 81, pp. 487-488 (C. Rossiter ed. 1961) (A. Hamilton) ("It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. . . . Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States and the danger intimated must be merely ideal.") (emphasis in the original); Madison in 3 Elliot, supra n. 11 ("It is not in the power of individuals to call any state into court. . . . [The Constitution] can have no operation but this: . . . if a state should condescend to be a party, this court may take cognizance of it").

[14.] This argument wholly disregards other methods of ensuring the States' compliance with federal law: the Federal Government can bring suit in federal court against a State, see, e.g., United States v. Texas, 143 U.S. 621, 644-645 (1892) (finding such power necessary to the "permanence of the Union"); an individual can bring suit against a state officer in order to ensure that the officer's conduct is in compliance with federal law, see, e.g., Ex parte

Young, 209 U.S. 123 (1908); and this Court is empowered to review a question of federal law arising from a state court decision where a State has consented to suit, see, e.g., Cohens v. Virginia, 6 Wheat. 264 (1821).

[15.] JUSTICE STEVENS, in his dissenting opinion, makes two points that merit separate response. First, he contends that no distinction may be drawn between state sovereign immunity and the immunity enjoyed by state and federal officials. But even assuming that the latter has no constitutional foundation, the distinction is clear: the Constitution specifically recognizes the States as sovereign entities, while government officials enjoy no such constitutional recognition. Second, JUSTICE STEVENS' criticizes our prior decisions applying the "clear statement rule," suggesting that they were based upon an understanding that Article I allowed Congress to abrogate state sovereign immunity. His criticism, however, ignores the fact that many of those cases arose in the context of a statute passed under the Fourteenth Amendment, where Congress' authority to abrogate is undisputed. See, e.g., Quern v. Jordan, 440 U.S. 332 (1979). And a more fundamental flaw of the criticism is its failure to recognize that both the doctrine requiring avoidance of constitutional questions, and principles of federalism, require us always to apply the clear statement rule before we consider the constitutional question whether Congress has the power to abrogate.

[16.] JUSTICE STEVENS understands our opinion to prohibit federal jurisdiction over suits to enforce the bankruptcy, copyright, and antitrust laws against the States. He notes that federal jurisdiction over those statutory schemes is exclusive, and therefore concludes that there is "no remedy" for state violations of those federal statutes. Post at ___ n. 1.

That conclusion is exaggerated both in its substance and in its significance. First, JUSTICE STEVENS' statement is misleadingly overbroad. We have already seen that several avenues remain open for ensuring state compliance with federal law. *See supra,* at n. 13. Most notably, an individual may obtain injunctive relief under *Ex parte Young* in order to remedy a state officer's ongoing violation of federal law. *See supra,* at n. 14. Second, contrary to the implication of JUSTICE STEVENS' conclusion, it has not been widely thought that the federal antitrust, bankruptcy, or copyright statutes abrogated the States' sovereign immunity. This Court never has awarded relief against a State under any of those statutory schemes; in the decision of this Court that JUSTICE STEVENS cites (and somehow labels "incompatible" with our decision here), we specifically reserved the question whether the Eleventh Amendment would allow a suit to enforce the antitrust laws against a State. *See Goldfarb v. Virginia State Bar,* 421 U.S. 773, 792 n. 22 (1975). Although the copyright and bankruptcy laws have existed practically since our nation's inception, and the antitrust laws have been in force for over a century, there is no established tradition in the lower federal courts of allowing enforcement of those federal statutes against the States. Notably, both Court of Appeals decisions cited by JUSTICE STEVENS were issued last year and were based upon *Union Gas. See Chavez v. Arte Publico Press,* 59 F.3d 539 (CA5

1995); *Matter of Merchants Grain, Inc. v. Mahern,* 59 F.3d 630 (CA7 1995). Indeed, while the Court of Appeals in *Chavez* allowed the suit against the State to go forward, it expressly recognized that its holding was unprecedented. *See Chavez,* 59 F.3d at 546 ("we are aware of no case that specifically holds that laws passed pursuant to the Copyright Clause can abrogate state immunity").

[17.] Contrary to the claims of the dissent, we do not hold that Congress cannot authorize federal jurisdiction under Ex parte Young over a cause of action with a limited remedial scheme. We find only that Congress did not intend that result in the Indian Gaming Regulatory Act. Although one might argue that the text of § 2710(d)(7)(A)(i), taken alone, is broad enough to encompass both a suit against a State (under an abrogation theory) and a suit against a state official (under an Ex parte Young theory), subsection (A)(i) of § 2710(d)(7) cannot be read in isolation from subsections (B)(ii)-(vii), which repeatedly refers exclusively to "the State." See supra at ___. In this regard, § 2710(d)(7) stands in contrast to the statutes cited by the dissent as examples where lower courts have found that Congress implicitly authorized suit under Ex parte Young. Compare 28 U.S.C. § 2254(e) (federal court authorized to issue an "order directed to an appropriate State official"); 42 U.S.C. § 11001 (1988 ed.) (requiring "the Governor" of a State to perform certain actions and holding "the Governor" responsible for nonperformance); 33 U.S.C. § 1365(a) (authorizing a suit against "any person" who is alleged to be in violation of relevant water pollution laws). Similarly the duty imposed by the Act -- to "negotiate . . . in good faith to enter into" a compact with another sovereign -- stands distinct in that it is not of the sort likely to be performed by an individual state executive officer or even a group of officers. Cf. State ex rel Stephan v. Finney, 836 P.2d 1169, 251 Kan. 559 (1992) (Governor of Kansas may negotiate, but may not enter into compact without grant of power from legislature).

[18.] We do not here consider, and express no opinion upon, that portion of the decision below that provides a substitute remedy for a tribe bringing suit. See 11 F.3d 1016, 1029 (CA11 1994) (case below).