

SUPREME COURT OF THE UNITED STATES

No. 91-1010

PUERTO RICO AQUEDUCT AND SEWER AUTHORITY,
PETITIONER v. METCALF & EDDY, INC.

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

[January 12, 1993]

JUSTICE BLACKMUN, concurring.

I join the Court's opinion but write separately to make plain once again my position on one feature. I continue to believe that the Court's interpretation of the Eleventh Amendment as embodying a broad principle of state immunity from suit in federal court "simply cannot be reconciled with the federal system envisioned by our Basic Document and its Amendments." *Atascadero State Hospital v. Scanlon*, 473 U. S. 234, 303 (1985) (BLACKMUN, J., dissenting). Nevertheless, because I believe that the Eleventh Amendment does preserve a State's immunity from suit in the limited context of an action by a citizen of another State or of a foreign country on a state-law cause of action brought in federal court, *id.*, at 301 (Brennan, J., dissenting), a claim of immunity under the Eleventh Amendment ought to be appealable immediately. Whether the assertion of an Eleventh Amendment claim is well founded — a matter not before us in this case, see *ante*, at 2, n. 1 — is a question separate from the question whether the Eleventh Amendment interests are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546 (1949). Because I believe that the Eleventh Amendment does guarantee immunity from suit in a narrow class of cases, I concur in the Court's opinion and judgment that, regardless of the merits, a district court's denial of a claim of immunity under the

Eleventh Amendment should be appealable immediately. See *Sullivan v. Finkelstein*, 496 U. S. 617, 632 (1990) (opinion concurring in the judgment).

91-1010—CONCUR

P. R. AQUEDUCT & SEWER AUTH. v. METCALF & EDDY