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 STEVENS, dissenting.

This case arises out of a commercial dispute between respondent, a private engineering firm, and the Puerto Rico Aqueduct and Sewer Authority (PRASA or Authority). The parties entered into a multimillion dollar contract providing for the construction of extensive improvements to Puerto Rico's wastewater treatment facilities. Respondent brought suit in the Federal District Court for the District of Puerto Rico alleging breach of contract. The Authority filed a motion to dismiss, claiming that the action was barred by the Eleventh Amendment. The District Court concluded that the claim had no merit and denied the motion to dismiss. The Court of Appeals dismissed PRASA's appeal from that order because it was not final within the meaning of 28 U. S. C. §1291.

If the Authority were a private litigant engaged in a commercial dispute, it would be perfectly clear that the dismissal of its appeal was required by our precedents. For the denial of a motion to dismiss on jurisdictional grounds—a motion that asserts that the defendant cannot be sued in a particular forum—is not a final order within the meaning of §1291. *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 526–527 (1988); *Catlin* v. *United States*, 324 U. S. 229, 236 (1945). In this case, PRASA makes the same assertion—namely, that it may not be sued in a federal forum but rather must be sued in another court. Brief for Petitioner 4–5.

Nonetheless, despite our decisions in *Biard* and *Catlin*, the Court holds that when a State or state entity claiming to be an "arm of the State" asserts that it cannot be sued in a federal forum because of the Eleventh Amendment, the "final decision" rule must give way and the claim must be subject to immediate appellate review. The Court reasons that such a claim is analogous to a government official's claim of absolute or qualified immunity, which we have held is subject to interlocutory appeal. *Nixon* v. *Fitzgerald*, 457 U. S. 731 (1982); *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985). I cannot agree.

The defense of absolute or qualified immunity is designed to shield government officials from liability for their official conduct. In the absence of such a defense, we have held, "officials would hesitate to exercise their discretion in a way injuriously affecting the claims of particular individuals even when the public interest required bold and unhesitating action." *Nixon* v. *Fitzgerald*, 457 U. S., at 744–745 (internal quotation marks and citation omitted). Because the specter of a long and contentious legal proceeding in and of itself would inhibit government officials from exercising their authority with the freedom and independence necessary to serve the public interest, we have held that claims of absolute or qualified immunity are subject to immediate appeal. *Id*., at 742–743; *Mitchell* v. *Forsyth*, 472 U. S., at 526–527.

While the Eleventh Amendment defense available to States and state entities is often labeled an "immunity," that label is virtually all that it has in common with the defense of absolute or qualified immunity. In contrast to the latter, a defense based on the Eleventh Amendment, even when the Amendment is read at its broadest, does not contend that the State or state entity is shielded from liability for its conduct, but only that the federal courts are without jurisdiction over claims against the State or state entity. See *ante,* at 4. Nothing in the Eleventh

Amendment bars respondent from seeking recovery in a different forum. Indeed, as noted above, petitioner acknowledges that it is not seeking immunity for its conduct, but merely that the suit be brought in the courts of the Commonwealth of Puerto Rico. Brief for Petitioner 4–5.

Plainly, then, the interests underlying our decisions allowing immediate appeal of claims of absolute or qualified immunity do not apply when the so-called "immunity" is one based on the Eleventh Amendment. *Whether* petitioner must bear the burden, expense, and distraction of litigation stemming from its contractual dispute with respondent has nothing whatsoever to do with the Eleventh Amendment; the Eleventh Amendment only determines *where*, or more precisely, *where not*, that suit may be brought.[1] Because the Amendment goes to the jurisdiction of the federal court, as opposed to the underlying liability of the State or state entity, *Biard* and *Catlin*, not *Nixon* and *Mitchell*, are the relevant precedent for determining whether PRASA's claim is subject to interlocutory appeal.

If indeed the interests underlying our decisions permitting immediate appeal of claims of absolute or qualified immunity do not apply to a State or state entity's objection to federal jurisdiction on Eleventh Amendment grounds, what then is driving the Court to hold that PRASA's claim under the Eleventh Amendment is subject to immediate appeal? The Court tells us, *ante,* at 7: "[The] ultimate justification is the importance of ensuring that the State's dignitary interests can be fully vindicated." Whereas a private litigant must suffer through litigation in a federal tribunal despite his claim that the court lacks

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[1]Not surprisingly, we have expressly characterized the Eleventh Amendment defense, albeit in a different context, as "partak[ing] . . . of a jurisdictional bar." *Edelman* v. *Jordan*, 415 U. S. 651, 678 (1974).

jurisdiction, *e.g.*, *Biard* and *Catlin*, a State or state entity must be protected from the "*indignity*" of having to present its case—as to both the court's jurisdiction and the underlying merits—in the neutral forum of a federal district court.

I find that rationale to be embarrassingly insufficient. The mandate of §1291 that appellate jurisdiction be limited to "final decisions of the district courts" is not predicated upon "mer[e] technical conceptions of `finality,'" *Catlin*, 324 U. S., at 233, but serves important interests concerning the fair and efficient administration of justice. The "final decision" rule preserves the independence of the trial judge and conserves the judicial resources that are necessarily expended by piecemeal appeals. Moreover, and of particular relevance to this case, it serves an important "fairness" purpose by preventing "the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise . . . ." *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 374 (1981) (internal quotation marks and citation omitted). Sacrificing those interests in the name of preserving the freedom and independence that government officials need to carry out their official duties is one thing; doing so out of concern for the "dignitary" interest of a State or, in this case, a state aqueduct and sewer authority, is quite another.

For me, the balance of interests is easy. The cost to the courts and the parties of permitting piecemeal litigation of this sort clearly outweighs whatever benefit to their "dignity" States or state entities might derive by having their Eleventh Amendment claims subject to immediate appellate review. I would therefore hold, as did the court below, that the denial of a motion to dismiss on Eleventh Amendment grounds is not subject to immediate appellate review. Accordingly, I respectfully dissent.