NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

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

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

No. 91–1010. Argued November 9, 1992—Decided January 12, 1993

Petitioner, an autonomous Puerto Rico government instrumentality, moved to dismiss the diversity action brought against it by respondent, a private firm, on the grounds that it was an ``arm of the State,'' and that the Eleventh Amendment therefore prohibited the suit. After the District Court denied the motion, the Court of Appeals dismissed petitioner's appeal for want of jurisdiction, concluding that Circuit precedent barred both States and their agencies from taking an immediate appeal on a claim of Eleventh Amendment immunity.

Held: States and state entities that claim to be ``arms of the State'' may take advantage of the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.,* 337 U.S. 541, to appeal a district court order denying a claim of Eleventh Amendment immunity from suit in federal court. Although 28 U.S.C. §1291 requires that appeals be taken from ``final decisions of the district courts,'' *Cohen, supra,* at 546, provides that a ``small class'' of judgments that are not complete and final will be immediately appealable. Once it is acknowledged that a State and its ``arms'' are, in effect, immune from federal-court suit under the Amendment, see, *e. g., Welch* v. *Texas Dept. of Highways and Public Transportation,* 483 U.S. 468, 480, it follows that the elements of the collateral order doctrine necessary to bring an order within *Cohen*'s ``small class,'' see *Coopers & Lybrand* v. *Livesay,* 437 U.S. 463, 468, are satisfied. First, denials of Eleventh Amendment immunity claims purport to be conclusive determinations that States and their entities have no right not to be sued in federal court. Second, a motion to dismiss on Eleventh Amendment grounds involves a claim to a fundamental constitutional protection whose resolution

generally will have no bearing on the merits of the underlying action. Third, the value to the States of their constitutional immunity—like the benefits conferred by qualified immunity to individual officials, see *Mitchell* v. *Forsyth,* 472 U.S. 511, 526—is for the most part lost as litigation proceeds past motion practice, such that the denial order will be effectively unreviewable on appeal from a final judgment. Respondent's claim that the Amendment does not confer immunity from suit, but merely a defense to liability, misunderstands the role of the Amendment in our system of federalism and is rejected. Moreover, there is little basis for respondent's alternative argument that a distinction should be drawn between cases in which the determination of an Eleventh Amendment claim is bound up with factual complexities whose resolution requires trial and cases in which it is not. In any event, the determination of petitioner's Eleventh Amendment status does not appear to implicate any extraordinary factual difficulty and can be fully explored on remand. Pp.3–7.

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945 F.2d 10, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed a concurring opinion. STEVENS, J., filed a dissenting opinion.